

TRAYLOR, BLACK & KANE, P.C.

Attorneys at Law

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December 2, 2015

Colorado Division of Reclamation Mining & Safety
1313 Sherman St., Room # 215
Denver, CO 80203

Re: Request to be heard re: possible application for Technical Revision or
Amendment - DRMS Permits: M2005075, M2006018 and M1978349

Ladies/Gentlemen:

This letter is written at the suggestion of Grand Junction based DRMS employee Stephanie Mitchell. I called and spoke with Ms. Mitchell on November 17. I advised her that I represent Colorado Rivers Edge, LLC ("CRE") and that CRE owns two DRMS permitted parcels of real property located east of Rifle, Colorado, north of the Colorado River and immediately south of the Union Pacific Railroad tracks. My client's two parcels are identified as "Parcels 450 and 451" (please note that all references herein to three digit "Parcel" numbers are based upon the last three digits of the Garfield County Assessor's Parcel numbers; the word "Parcel" will be capitalized in each such use below).

Both of my client's two parcels are separately permitted by DRMS. Permit M1978349 (the "Dick Casey Concrete Pit") covers an area which includes a portion of Parcel 451 but primarily lies within Parcel 298. Permit M1979205 (the "Chambers Pit") covers an area located primarily on Parcel 45) but also extends onto Parcel 451. Both of my client's two properties are separately leased to Old Castle SW Group, Inc. *dba* United Companies of Mesa County ("Old Castle") for operation, production, reclamation and permit compliance purposes. Old Castle's offices, shops and concrete plant are all located on Parcel 451. Old Castle's truck scales and material stockpiles are located on Parcel 450.

Old Castle owns three Parcels in the immediate vicinity which are permitted and operated by Old Castle under two DRMS Permits. Parcel 298 is permitted as M1978349 (the "Dick Casey Concrete Pit"). Parcels 294 and 305 are permitted as M2005075 (the "Glen's Pit").

Old Castle also leases and operates three other DRMS permitted sand and gravel pits in the same area. M1979075 (the "Chambers Gravel Pit") is located on Parcel 452. M2006018 (the "North Bank Resources Pit") is located on Parcels 513, 514 and 515 (all of which lie east of Parcel 294). M2000113 (the "Mamm Creek Pit") is located south of the Colorado River between the River and Interstate 70.

Only one commercial grade railroad crossing presently provides access across the railroad tracks by large commercial vehicles and equipment (including but not limited to sand and gravel haul trucks, cement and asphalt transport and haul trucks and other large haul trucks and equipment related to the sand and gravel operations) to the various permitted lands. That single railroad crossing has historically served and provided access to Parcels 450, 451, 452, 298, 294 and 305; meaning DRMS Permits: M1978349; M1979075; M1979205 and M2005075.

That railroad crossing is located on my client's Parcel 451 which means that all of Old Castle's haul trucks and other commercial traffic must cross some portion of my client's Parcel 451 when in route to any of Old Castle's permitted areas north of the River. Parcel 451 is burdened by two recorded access easements which purport to provide access to the single commercial grade railroad crossing.

A second, smaller railroad crossing located further to the east historically allows access onto Parcels 294, 298 and 305. A separate access easement applies to that crossing but that easement is restricted to use only by passenger cars and pick-up trucks. I understand that a third, unimproved railroad crossing provides access to the North Bank Resources property further to the east of Parcel 294.

My client is concerned with the negative impacts upon the current and future uses of CRE's properties, both Parcels 450 and 451, resulting from the use of a new road (the "new road") constructed by Old Castle in 2014. The new road connects Parcel 294 to Parcel 513, both of which are now operated by Old Castle under separate DRMS permits; Permits M2005075 (the "Glen's Pit") and M2006018 (the "North Bank Resources Pit"). Enclosed are two photos of Glen's Pit (both are looking eastward) showing the new road; the first depicts the road to the left of Old Castle's asphalt plant and the second is a close up of the road as it leaves Glen's Pit towards the North Bank Resources Pit.

Access by road to the North Bank Resources Pit using the commercial railroad crossing on Parcel 451 never existed before 2014. The new road allows Old Castle access to the North Bank Resources Pit through my client's property (Parcel 451) for its haul trucks and equipment. Old Castle, using the new road, has changed the nature of the mining operations on the North Bank Resources Pit. That change impacts my

client's property. To better understand my client's concerns, additional background information is necessary.

LeFarge West, Inc. ("LeFarge") permitted the North Bank Resources Pit in November 2006. Old Castle became the operator of Permit M2006018 in February, 2014 when DRMS approved the transfer of the mining operation, production, reclamation and permit compliance obligations from LeFarge to Old Castle. Old Castle leases the permitted area (Parcels 513, 514, and 515) from North Bank Resources, LLC. Parcel 294 and Parcel 513 share a common north/south boundary which, until the new road was constructed, was demarcated by a fence and a drain ditch.

The North Bank Resources Pit Mining Plan approved by DRMS became part of Permit M2006018. The Mining Plan specifies that all mined construction materials shall be transported via a conveyor system first, internally, across the North Bank Resources properties (Parcels 513, 514 and 515) and then across Colorado River to the Mamm Creek permitted property #M2000113. LeFarge operated the Pit using two conveyors; the first from the east end of the permitted area to the west (the "land conveyor") and the second across the Colorado River (the "River conveyor"). The River conveyor has its northern terminus on Parcel 513 and its southern terminus on the Mamm Creek property. The land conveyor delivered materials mined and crushed at the east end of the permitted area to the River conveyor. The River conveyor transported the mined material across the river to the Mamm Creek properties. The material was then trucked, as needed, via Interstate 70. None of the material mined by LeFarge in the North Bank Resources Pit ever crossed my client's properties until 2014.

Old Castle, after becoming the operator of the North Bank Resources Pit, continued through a contractor (Martin Marietta) to operate the LeFarge land conveyor system on the North Bank Resources properties until sometime in late 2014 when the Martin Marietta contract terminated. Old Castle then took over mining and transport operations on the North Bank Resources Pit and, as part of those operations, constructed the new road between Parcels 294 and 513. Since then, in spite of the fact that the River conveyor is still in place and is fully functional, Old Castle has been and continues today to haul construction materials mined on the North Bank Resources permitted area from Parcel 513 onto the Glen's Pit area and from there ultimately onto or across CRE's Parcel 451 to the commercial railroad crossing and also Parcel 450 if the truck scales located there are used.

Ms. Mitchell inspected the North Bank Resources Pit (M2006018) on March 11, 2015 and then authored a DRMS Inspection Report. She told me that the March 11, 2015 visit was her first time inspecting any of these respective properties. Ms. Mitchell told me that the new road was not pointed out to her during the March 2015 inspection nor

was its use explained to her. Her Inspection Report does not mention the new road between the two separately permitted properties (M2005075 and M2006018). A copy of Ms. Mitchell's Inspection Report is enclosed for your ease of reference.

I called Ms. Mitchell to inquire about the Inspection Report and the new road. In response to her question, I advised her about the declaratory judgment lawsuit pending in the District Court of Garfield County in which my client is the Plaintiff and Old Castle is the Defendant. Ms. Mitchell was unaware of the lawsuit. She told me that DRMS wants to keep informed about litigation which may have some possible effect on properties permitted by DRMS. She asked me to submit to DRMS a copy of my client's 20141121 *Complaint for Declaratory Relief* (with its Exhibits 1-4) and Old Castle's 20141209 *Answer and Affirmative Defenses*; per her request, copies of both are enclosed. Exhibit 1 to the *Complaint for Declaratory Relief* is a diagram depicting the relative locations of the Parcels located north of the Colorado River. As a courtesy, I am providing a copy of this letter to Mr. Hall, the attorney representing Old Castle in the pending lawsuit.

My client understands that Old Castle's use of the new road between Parcels 294 and 513 is contrary to the DRMS approved Mining Plan which is part of the North Bank Resources Pit Permit. A copy of that Mining Plan, which was Exhibit D to LeFarge's original Permit Application, is enclosed for your ease of reference.

The Mining Plan specifies that LeFarge (now Old Castle) will transport mined construction materials from the North Bank Resources properties via the River conveyor to the Mamm Creek properties. The Mining Plan does not mention and never contemplated a haul road between Parcels 294 and 513. Peter Siegmund, an Old Castle Vice President, testified in his deposition in the pending law suit that Old Castle is not acting in compliance with DRMS Permit M2006018 when it uses the new road to haul mined construction materials off of the North Bank Resources Pit (M2006018) and onto the Glen's Pit (M2005075). He also opined that Old Castle does not need a Technical Revision to M2006018 to operate in this fashion. A copy of that portion of Mr. Siegmund's deposition (p. 192, L. 9 through p. 193, l. 15) is enclosed.

Ms. Mitchell told me that she recently received a phone call from Jason Burkey, Old Castle's Environmental Resource Manager for the Garfield County sand and gravel pits. According to Ms. Mitchell, Mr. Burkey asked her if Old Castle needs to file an application for a Technical Revision relative to the new road and the transport of materials from the North Bank Resources Pit via the new road. Ms. Mitchell told me that she responded to Mr. Burkey's question in the affirmative. When I asked whether such an application had been filed, she said she had not seen one yet but, if one had, that I could find a copy by searching the permit related documents available to the public on the DRMS website. Since my conversation with Ms. Mitchell, I have on

multiple occasions checked the on-line Permit files for both Glen's Pit (M2005075) and the North Bank Resources Pit (M2006018). I have not yet found in either Permit file any documents in the form of an application or request for a Technical Revision or an Amendment. Presently, I don't know if Old Castle has filed such a document.

Old Castle never asked CRE for its consent to allow Old Castle to haul materials mined on the North Bank Resources Pit, or asphalt or concrete made from such materials, onto or across Parcels 450 or 451. CRE has never been compensated for such uses. Whether Old Castle's use of the recorded easements for this purpose amounts to an improper expansion of those easements is one of the issues to be determined by the court in the declaratory judgment action.

The use of the new road as a haul road for the North Bank Resources Pit physically impacts CRE's property. Additionally, that use will, in all probability, delay Old Castle's final and complete reclamation of Parcels 450 and 451. A delay in the required reclamation may well keep both Parcels 450 and 451 from becoming productive, post mining properties for an extended, but unanticipated, amount of time. That delay could stretch into multiple years.

My client's properties, as a result of the construction and use of the new road, have effectively been made part of the "affected property" in relation to both the Glen Pit (M2005075) and the North Bank Resources Pit (M2006018). CRE is wondering if the significant change in circumstances resulting from Old Castle's new road requires an Amendment to the applicable Permits as opposed to a Technical Revision. Regardless, my client requests an opportunity for notice and to be heard as to any future administrative action to be taken by DRMS regarding these matters.

REQUEST FOR TIMELY NOTICE AND AN OPPORTUNITY TO BE HEARD

Ms. Mitchell told me to write this letter to alert DRMS of my client's concerns regarding the new road and to let DRMS know that, because of the potential impacts upon its properties, my client would like to be heard when, and if, Old Castle files either an application for a Technical Revision or for an Amendment. Please forward copies of any such application which is filed and please copy me on any subsequent related DRMS correspondence. Thank you.

TRAYLOR, BLACK & KANE, P.C.



Peter R. Black

Enclosures:

1. 20150311 DRMS Inspection Report - Glen's Pit - DRMS Permit M2005075
2. North Bank Resources Pit Permit Application Ex. D - Mining Plan
3. Photos of the new road
4. Complaint for Declaratory Relief (with Exhibits)
5. Answer and Affirmative Defenses
6. Peter Siegmund 9/22/2015 Deposition excerpt

cc: Client

Craig Hall, Esq. - counsel for Old Castle

Stephanie Mitchell (*via email and US Postage*)

Amy Yelldel (*via email and US Postage*)


Russel Means (*via email and US Postage*)



COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY
MINERALS PROGRAM INSPECTION REPORT
PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

MINE NAME: North Bank Resources	MINE/PROSPECTING ID#: M-2006-018	MINERAL: Sand and gravel	COUNTY: Garfield
INSPECTION TYPE: Monitoring	INSPECTOR(S): Stephanie J. Mitchell	INSP. DATE: March 11, 2015	INSP. TIME: 14:00
OPERATOR: Oldcastle SW Group, Inc. dba United Comp County	OPERATOR REPRESENTATIVE: Jason Burkey	TYPE OF OPERATION: 112c - Construction Regular Operation	

REASON FOR INSPECTION: Normal I&E Program	BOND CALCULATION TYPE: Complete Bond	BOND AMOUNT: \$196,600.00
DATE OF COMPLAINT: NA	POST INSP. CONTACTS: None	JOINT INSP. AGENCY: None
WEATHER: Clear	INSPECTOR'S SIGNATURE: 	SIGNATURE DATE: August 6, 2015

GENERAL INSPECTION TOPICS

This list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each. No problems or possible violations were noted during the inspection. The mine operation was found to be in full compliance with Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and/or for Hard Rock, Metal and Designated Mining Operations. Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; or any environmental protection facility designed to contain or control chemicals or waste which are acid or toxic-forming, as identified in the permit.

(AR) RECORDS-----Y	(FN) FINANCIAL WARRANTY-----Y	(RD) ROADS-----Y
(HB) HYDROLOGIC BALANCE-----Y	(BG) BACKFILL & GRADING-----Y	(EX) EXPLOSIVES-----NA
(PW) PROCESSING WASTE/TAILING-----N	(SF) PROCESSING FACILITIES-----N	(TS) TOPSOIL-----Y
(MP) GENL MINE PLAN COMPLIANCE-----Y	(FW) FISH & WILDLIFE-----Y	(RV) REVEGETATION-----Y
(SM) SIGNS AND MARKERS-----Y	(SW) STORM WATER MGT PLAN-----Y	(CI) COMPLETE INSP-----Y
(ES) OVERBURDEN/DEV. WASTE-----N	(SC) EROSION/SEDIMENTATION-----Y	(RS) RECL PLAN/COMP-----Y
(AT) ACID OR TOXIC MATERIALS-----N	(OD) OFF-SITE DAMAGE-----N	(ST) STIPULATIONS-----N

Y = Inspected and found in compliance / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

OBSERVATIONS

This inspection was conducted as part of the Division of Reclamation, Mining and Safety's (Division) normal monitoring program. Jason Burkey representing the Operator, United Companies, were present during this inspection. Photographs are included at the end of this report in order to illustrate some of the conditions observed during this inspection.

The North Bank Resources site is located approximately 3 miles east of Rifle and accessed from Hwy. 6. The site is a 112c operation that includes a total of 238 permitted acres. The Division currently holds a financial warranty amount of \$196,600.00 for this site. The Division will review the reclamation costs for this site in order to ensure the financial warranty reflects the actual current cost of fulfilling the requirements of the Reclamation Plan. The Operator will be notified if the Division determines that the current financial warranty amount is insufficient.

The affected area was marked by markers that were clearly visible and adequate to delineate the affected area boundary in accordance with Rule 3.1.12(2).

Mining at this site was occurring in the eastern extent of the permit area during the time of this inspection. Much of the north and south mined out slopes in Mine Cell B had been backfilled to approximately 3H:1V or less.

Material mined at the site is transported by trucks to the Mamm Creek Sand and Gravel site (M-2000-113), located on the south side of the Colorado River.

A dewatering trench along the south side of Mine Cell B delivers water to the discharge pump, which was located in the south central part of Mine Cell B.

Two fuel tanks, with built in secondary containment, was noted on site.

Noxious weeds were not observed at the site.

No other problems or violations were noted during this inspection.

Responses to this inspection report should be directed to Stephanie Mitchell at the Division of Reclamation, Mining and Safety, Grand Junction Field Office, 101 South 3rd Street, Room 301, Grand Junction, Colorado 81501, phone number (970) 242-5025.

EXHIBIT D - Mining Plan

Introduction

Mining at North Bank Resources will be by conventional open pit methods employing scrapers, front-end loaders, track hoe, trucks, if necessary, and farm implements for reseeded and reclamation. The planned operation will consist of dry mining the gravel by initially constructing a dewatering ditch around the perimeter of each of the proposed lakes and installing a dewatering pump that will dewater the sand and gravel and return the water to the Colorado River through an existing slough on the property. No explosives will be needed to extract the sand and gravel resources. The operation will produce natural sand and gravel and crushed stone which will be used in normal construction activities such as road base, pipe bedding, etc. and asphalt and concrete production. No other commodities will be produced as a result of the planned mining operation.

Dewatering

Dewatering will be accomplished by using a dewatering pump that will be relocated as mining progresses in each cell. Based on the current Mann Creek operations, the dewatering rate is expected to be on the order of 250 gallons-per-minute (gpm), when the dewatering pumps are active. In order to allow for the seasonal variations in water inflow, a 1,000-gpm pump will be utilized. Dewatering water will be discharged according to an approved plan into existing sloughs in order to return the water to the Colorado River system.

Mining

As illustrated on EXHIBIT C, mining will occur on the lower terrace approximately 10 feet inside of the break in slope between the upper and lower terraces. This 10-foot buffer will allow access around the entire perimeter of the proposed pit lake and mining area and also provide a "margin of safety" should any of the overburden from the upper terrace migrate down slope.

On the Colorado River side of the proposed pit, a 100-foot setback will be observed for the pit limit in order to ensure that during high-water events, the river does not attempt to capture the pit. The access road, overland conveyor routing, and temporary placement of overburden stockpiles will occur within the 100-foot buffer. In order to ensure that no material enters the river system a silt fence will be constructed and maintained along this side of the operation.

On the eastern end of Cell A and the western end of Cell B, where a gas well and pipeline are anticipated to be, a buffer of 15 feet on each side of a centerline of the access road or a 30-foot corridor will be observed as dictated by the geotechnical stability report which is located in APPENDIX A of this application. However, should mining commence prior to the construction of the gas well and gas pipeline, the area between Cells A and B will be mined to recover the sand and gravel and rebuilt with overburden and pit run to accommodate the gas well and pipeline.

The proposed operation is expected to average approximately 450,000 tons per year, depending on local market and economic conditions (conditions to date at neighboring operations indicate low-production ranges of 200,000 to 300,000 tons per year and high-productions ranges of 600,000 to 750,000 tons per year), and therefore, the expected operational life is approximately 12 years. This allows for 9 years of production and 3 years for release of the reclaimed site.

Material will be processed from two distinct pits: Cell A and Cell B. Cell A occupies approximately 47 acres and Cell B 31 acres, respectively. The proposed operation will start with the western Cell A, and completely mine it out prior to mining of Cell B. Each of the cells will be stripped in internal phases of approximately 15 to 20 acres each in order to allow for efficient removal of the resources, minimal "double-handling" and stockpiling of overburden, and concurrent reclamation. The Cells will be mined to a 0.5:1 slope and overburden replaced into the pit to create a 2:1 to 3:1 slope depending on proximity to the water elevation. Scrapers or other similar earthmoving equipment will be utilized to remove and stockpile the overburden for later use in reclamation of the site. Front-end loaders and/or backhoes and trucks, when necessary, will be used to mine the sand and gravel and deliver it to the primary crusher. The initial phase will require that the stripped overburden be placed in overburden stockpiles for later placement as part of the reclamation plan.

With the addition of the overburden stockpiles and roads, it is anticipated that approximately 35 acres of total disturbance will occur. Subsequent internal phases will be stripped just prior to completion of mining of the preceding phase with the stripped overburden being placed directly into the previous phase. This sequence will be repeated as each internal phase is completed and a new internal phase is opened up.

Based on exploration borings completed in the fall of 2004, the North Bank property on average contains approximately 2 to 5 feet of overburden, 18 to 25 feet of sand and gravel, and is underlain by shale. Approximate quantities are as follows:

North Bank Resources				
(All calculations based on Mining to 0.5:1 Slope and Reclaiming to 3:1 Slope)				
CELL	STRATA	CUBIC YARDS	TONS	AVG. THICKNESS (ft)
A	Overburden	191,750		1
	Sand & Gravel		2,167,200	20
B	Overburden	281,000		6
	Sand & Gravel		1,563,200	21
TOTAL	Overburden	472,750		
	Sand & Gravel		3,730,400	

Processing

The proposed operation will utilize Entarge West Inc.'s Mamm Creek Mine's processing facilities and scale house. A primary crusher will be located adjacent to the active mining area; from the primary crusher, the sand and gravel will go by conveyor across the Colorado River to

the Mamm Creek pit for processing and sale (or through the existing crushing and screening plant on that site.) This approach offers several advantages, such as:

- 1) Minimal traffic to and from US 6 & 50 (mostly employees and deliveries)
- 2) Minimal visual and noise disturbance for neighbors on the north side of US 6 & 50
- 3) Minimal visual disruption of scenic views from I-70, the main access to Rifle, and along US 6 & 50
- 4) Maximum use of an existing processing facility

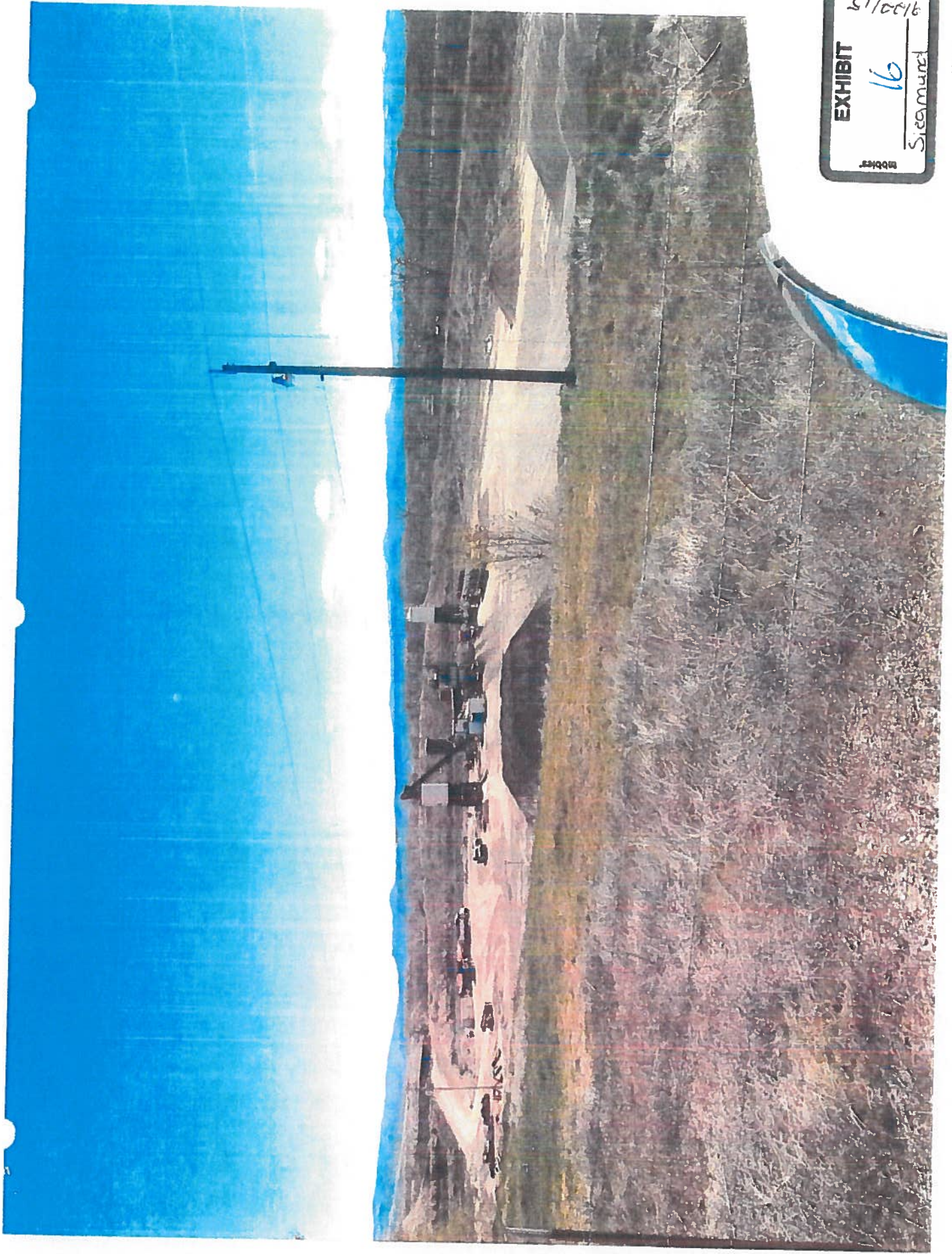
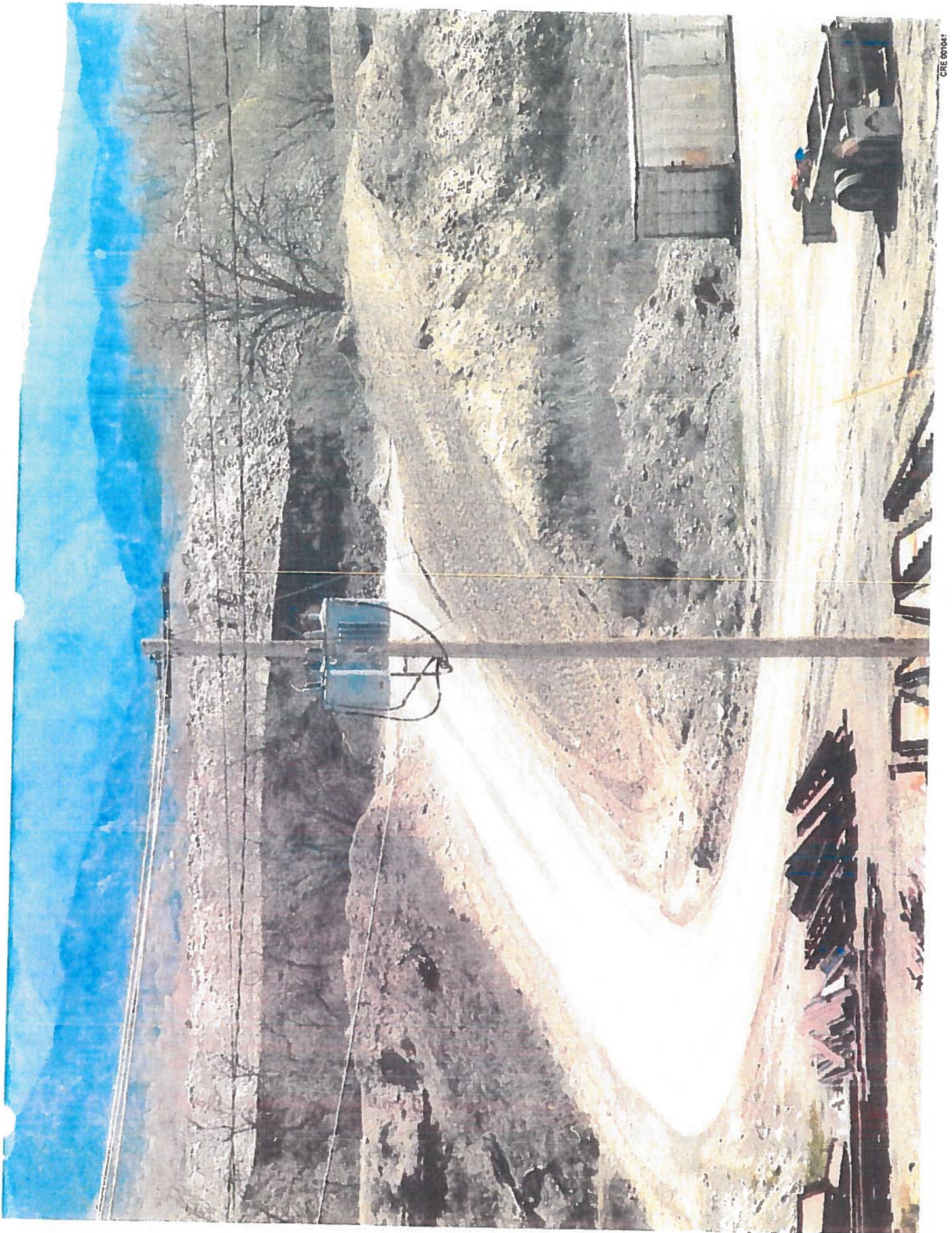


EXHIBIT
16
Sicamund
9/22/15



District Court Garfield County, State of Colorado Court Address: 109 8 th Street, Ste. 104 Glenwood Springs, CO 81601 <hr/> Plaintiff: Colorado Rivers Edge, LLC, a Colorado limited liability company, v. Defendant: Oldcastle SW Group, Inc., a Colorado corporation, dba United Companies of Mesa County	▲ COURT USE ONLY ▲
Attorney for Plaintiff: Peter R. Black, #8202 Robert Traylor, #10730 Traylor, Tompkins & Black, P.C. 751 Horizon Court, Suite 200 Grand Junction, CO 81506 Phone Number: (970) 242-2636 Fax Number: (970) 241-3234 E-mail: prb@grandjunctionlaw.com rst@grandjunctionlaw.com	
COMPLAINT FOR DECLARATORY RELIEF	

Plaintiff, Colorado Rivers Edge, LLC, complains against the Defendant pursuant to C.R.S. §13-57-101 et seq. and C.R.C.P. 57, as follows:

1. Colorado Rivers Edge, LLC is a Colorado limited liability company with a principle office address of 0966 Mesa Drive, Rifle, CO 81650.
2. Oldcastle SW Group, Inc. is a Colorado corporation with a principle office address 2273 River Road, Grand Junction, CO 81505.
3. Venue is proper in the Garfield County District Court because this is an action affecting real property located in Garfield County, Colorado.

GENERAL ALLEGATIONS

4. Attached hereto as **EXHIBIT 1** is a survey entitled *Colorado Rivers Edge LLC Properties Exhibit* which depicts lands owned by Plaintiff, Defendant and others.
5. Parcel No. 451 shown on **EXHIBIT 1** is owned by Plaintiff.
6. Defendant owns Parcel Nos. 298, 305 and 294 shown on **EXHIBIT 1**.

7. Two easements have been granted which burden Parcel No. 451, to-wit:
- a. Temporary Easement Agreement dated October 6, 2005 between Plaintiff and Defendant (the "Temporary Easement") a copy of which is attached as **EXHIBIT 2** which was intended to benefit Parcel Nos. 298, 305 and 294; and
 - b. Easement No. 2 in Exhibit B to Warranty Deed dated June 6, 1986 between Glen O. Chambers and Dorothy I. Chambers ("Chambers"), Plaintiff's predecessor in title to Parcel No. 451, and Richard N. Casey ("Casey"), Defendant's predecessor in title to Parcel No. 298, which easement was intended to benefit Parcel No. 298 ("Easement No. 2"). A copy of the Warranty Deed is attached hereto as **EXHIBIT 3** ("the Chambers Deed").

8. Paragraph 2 of the Temporary Easement, **EXHIBIT 2**, limits the use of the Temporary Easement "only as a roadway for access to Grantee's [Defendant's] operations on two parcels of land located in the County of Garfield, State of Colorado, lying east of the CRE Property, which parcels are located in Section 11, Township 6 South, Range 93 West of the 6th P.M. and which parcels total approximately 40 acres in size with a highway address of 028588 Highway 6 & 24 (collectively the "Chambers Property") and shall not be used for access to any other lands." The "two parcels of land" referenced in paragraph 2 of the Temporary Easement are Parcel Nos. 305 and 294.

9. The Chambers Deed, **EXHIBIT 3**, conveys Parcel No. 298 to Casey together with "two non-exclusive easements appurtenant" described on Exhibit B to the Chambers Deed, "the use of which easements is subject to the restriction therein contained."

10. Defendant is and has been using the Temporary Easement and Easement No. 2 for its operations on lands which lie east of Parcel No. 294, including the transportation of sand, gravel and other materials from said lands east of Parcel No. 294 across the Temporary Easement and Easement No. 2 to the railroad crossing identified on **EXHIBIT 1** and across the railroad crossing to Highway 6 & 24.

11. Such use of the Temporary Easement and Easement No. 2 by the Defendant was never contemplated or agreed upon by the parties to the Temporary Easement or Easement No. 2.

12. Plaintiff contends that Defendant's use of the Temporary Easement and Easement No. 2 for its operations east of Parcel No. 294, including the transportation of sand, gravel and other materials from lands east of Parcel No. 294 across the Temporary Easement and Easement No. 2 to the railroad crossing identified on **EXHIBIT 1** and across the railroad crossing to Highway 6 & 24 is a violation of the terms of the Temporary Easement and Easement No. 2, an unauthorized expansion of the Temporary Easement and Easement No. 2 and an unauthorized use of Plaintiff's property. Defendant denies Plaintiff's contention.

13. Plaintiff is "Lessor" and Defendant is "Lessee" under that certain lease dated June 6, 1986, modified by a Modification of Lease dated March 16, 1998, and attached hereto as **EXHIBIT 4** (the "Casey Lease").

14. Defendant contends that the terms of the Casey Lease, **EXHIBIT 4**, allow and authorize Defendant to use the Temporary Easement and Easement No. 2 for its operations on lands east of Parcel No. 294, including the transportation of sand, gravel and other materials from lands east of Parcel No. 294 across the Temporary Easement and Easement No. 2 to the railroad crossing identified on **EXHIBIT 1** and across the railroad crossing to Highway 6 & 24. Plaintiff denies Defendant's contention and asserts that the Casey Lease provides Defendant with no additional rights regarding use of the Temporary Easement and Easement No. 2.

15. An actual controversy relating to the legal rights of the parties exists between Plaintiff and Defendant.

16. All necessary parties are before the court as required by C.R.C.P. 57(j).

FIRST CLAIM FOR RELIEF

17. Plaintiff incorporates paragraphs 1 through 16 above by reference.

18. The Temporary Easement and Easement No. 2, and other documents referenced herein, are writings governing the rights, status or other legal relations of Plaintiff and Defendant.

19. Plaintiff seeks and is entitled to a determination of its rights under the Temporary Easement and Easement No. 2 and other relevant documents referenced herein, pursuant to C.R.S. §13051-101, et seq. and C.R.C.P. 57.

20. The declaration of rights sought by Plaintiff will terminate the controversy and remove the uncertainty created by the different interpretations of the

relevant documents by the parties.

WHEREFORE, Plaintiff prays that the Court enter judgment in favor of the Plaintiff and against Defendant as follows:

- A. Adjudging the rights and interests of the parties herein.
- B. Prohibiting and permanently enjoining Defendant's use of the Temporary Easement and Easement No. 2 for its operations on any lands other than Parcels 298, 305 and 294 for the Temporary Easement and for any lands other than parcel 298 for Easement No. 2, including the transportation of sand, gravel and other materials from lands east of Parcel No. 294 across the Temporary Easement and Easement No. 2 to the railroad crossing identified on **EXHIBIT 1** and across the railroad crossing to Highway 6 & 24.
- C. For such other relief as the Court deem proper.
- D. For an award of costs incurred by Plaintiff in prosecuting this declaratory judgment action.
- E. Plaintiff reserves the right pursuant to C.R.C.P. 57(h) to petition the court for further relief including, but not limited to, an award and judgment for damages, attorney fees, costs and expenses.

DATED this 21ST day of November, 2014.

TRAYLOR, TOMPKINS & BLACK, P.C.

By: /s/ Robert Traylor

Robert Traylor

Peter R. Black

Attorneys for Plaintiff

Plaintiff's Address:

0966 Mesa Drive

Rifle, CO 81650

In Section 11 and Section 14, Township 6 South, Range 93 West of the 6th Principle Meridian
Garfield County, Colorado

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Please Insert Recording Information Here

TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT ("Agreement") is made this 6th day of October 2005 between **Colorado Rivers Edge LLC**, a Colorado limited liability company, whose address is P.O. Box 1556, Rifle, CO 81650 ("Grantor") and **United Companies of Mesa County, Inc.**, a Colorado corporation, whose address is P.O. Box 3609, Grand Junction, CO 81502 ("Grantee"), WITNESSETH:

WHEREAS, Grantor is the owner of a certain parcel of land situated in the Southwest $\frac{1}{4}$ of Section 11 and the Northwest $\frac{1}{4}$ of Section 14, Township 6 South, Range 93 West of the 6th Principal Meridian, County of Garfield, State of Colorado, being more particularly described as follows:

Basis of bearing is N.00°27'54"W. between the West $\frac{1}{4}$ corner of Section 14 and the Southwest corner of Section 11.

Beginning at the Southwest corner of said Section 11, and a point on the boundary of a parcel of land described in Book 704 at Page 435 of the Garfield County records; thence along the West line of said Section and said boundary N.00°27'48"W. 296.73 feet to a point on the southerly right-of-way of the Union Pacific Railroad; thence along said boundary and said right-of-way N.63°06'46"E. 1,923.39 feet; thence leaving said right-of-way and along said boundary S. 00°03'44"E. 488.92 feet; thence leaving said boundary the following seven (7) courses:

- 1) S.89°33'42"W. 399.52 feet
- 2) S.00°18'44"E. 2,195.76 feet
- 3) S.81°33'36"W. 117.89 feet
- 4) N.76°26'05"W. 440.93 feet
- 5) N.63°37'52"W. 426.19 feet
- 6) N.53°17'48"W. 382.46 feet
- 7) N.79°07'08"W. 85.75 feet to a point on the west line of said Section 14, and a point on the boundary of said parcel;

thence along said line and boundary N.00°27'54"W. 1,001.01 feet to the point of beginning (the "CRE Property");

AFTER RECORDING, RETURN TO:
John R. Schenk, P.C.
P.O. Box 945
Glenwood Springs, CO 81602

Please Insert Recording Information Here

WHEREAS, Grantee is the owner of two parcels of land lying east of the CRE Property; and

WHEREAS, Grantee has requested that Grantor provide a non-exclusive easement to Grantee for use as a roadway to the Chambers Property (as identified below), which easement is to pass over and across that portion of the CRE Property lying immediately south of and adjacent to the railroad right of way as identified above but on a temporary basis; and

WHEREAS, Grantor has agreed to grant a temporary easement to Grantee upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Grant of Temporary Easement.** Grantor hereby sells and quitclaims to Grantee, Grantee's successors and assigns, a temporary non-exclusive easement (the "Easement") fifty feet (50') in width over and across the most northerly portion of the CRE Property proceeding from the existing railroad crossing onto the CRE Property (said railroad crossing being generally located at Mile Post 384.570 of the Union Pacific Railroad) and then proceeding northeasterly to the northeast corner of the CRE Property, a distance of approximately 650 feet to its termination.
2. **Limitation on Lands to be benefitted by Easement.** This Easement may be used only as a roadway for access to Grantee's operations on two parcels of land located in the County of Garfield, State of Colorado, lying east of the CRE Property, which parcels are located in Section 11, Township 6 South, Range 93 West of the 6th P.M. and which parcels total approximately 40 acres in size with a highway address of 028588 Highway 6 & 24 (collectively the "Chambers Property") and shall not be used for access to any other lands.
3. **Limitations on Use.** This Easement will only be used for vehicular access and for no other purpose including, without limitation, utility lines or services.
4. **Railroad Crossing Permit and Right of Access.** Prior to any use of this Easement, Grantee shall obtain a Railroad Crossing Permit from the Union Pacific Railroad and shall furnish a copy of such permit to Grantor.

Please Insert Recording Information Here

5. **Term.** This Easement will terminate and Grantee's interest in this right of way will end at the earlier of the following occurrences:
- a. The sand and gravel resources on the Chambers Property are exhausted;
 - b. The mining permit for the Chambers Property is terminated;
 - c. Grantee obtains an alternate access to the Chambers property; or
 - d. The Railroad Crossing Permit is suspended, terminated or no longer in force for any reason whatsoever.
6. **Construction and Maintenance of Easement Improvements.** Construction, maintenance, modification, inspection, repair, replacement, substitution, relocation and removal of all improvements in this Easement shall be the sole responsibility and expense of Grantee. Grantee agrees to use all ordinary and reasonable care to maintain this Easement in a safe condition, and with due diligence to avoid as much as possible any interference with any other interest in the CRE Property and to adjacent real property.
7. **Indemnity.** Grantee shall protect, defend, indemnify and hold Grantor, its agents, employees, and lenders, if any, harmless from and against all liabilities, loss, claims, damages, costs, and expenses of whatever nature or type (including, without limitation, reasonable attorneys' fees) imposed upon or incurred by or asserted against Grantor or the CRE Property arising out of or in connection with any and all utilization, occupancy or activity on this Easement whether the same arises from or through Grantee's employees, agents, customers, invitees, agents or any other person gaining access to this Easement or any failure by Grantee to perform or comply with any of the terms of this Easement, it being agreed that this indemnity shall be interpreted in the broadest fashion to cover any direct or indirect claim or occurrence. If any action, suit or proceeding is brought against Grantor by reason of any such occurrence, Grantor shall immediately notify Grantee of such action, suit or proceeding and Grantee shall have the right, at its expense and provided Grantee acknowledges in writing its obligation to indemnify Grantor against such matter, to assume the defense of such action, suit or proceeding, or cause the same to be resisted and defended by counsel selected by Grantee with Grantor's approval, not to be unreasonably withheld or delayed.
8. **Rights of Grantor.** Grantor, Grantor's successors and assigns, reserve the right to use and enjoy this Easement, to the fullest extent possible so long as such use does not unreasonably

Please Insert Recording Information Here

interfere with the exercise by Grantee of Grantee's rights granted herein. Grantor further reserves the right to assign and convey to others Grantor's rights to use this Easement, subject to Grantee's rights as granted herein.

9. **Notices.** Any notice required or permitted herein shall be deemed delivered upon hand delivery or five (5) days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the party intended, at the party's address as set forth in the records of the Garfield County Assessor's office.
10. **Applicable Law.** This Agreement shall be construed in accordance with, and the rights of all parties hereto shall be governed by, the laws of the State of Colorado.
11. **Severability.** In the event any part of this Agreement is found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void part was deleted.
12. **Modification and Waiver.** This Agreement, including any exhibits, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
13. **Captions.** The captions for the articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
14. **Default.** In the event of a default or breach by either party hereto of any of the terms, covenants and conditions hereof, the other party shall be entitled forthwith to full and adequate relief by injunction or by all other available legal and equitable remedies from the consequences of such default or breach. All costs and expenses caused by or relating to such default or breach, including reasonable attorneys' fees and costs, whether incurred before or after suit, shall be assessed against and be the responsibility of the defaulting party and shall be recovered by the non-defaulting party. The remedies provided herein shall be cumulative and not exclusive.

Please Insert Recording Information Here

15. **Binding Effect.** All covenants, conditions, promises and provisions of this agreement shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed and delivered the day and year first above set forth.

GRANTOR: Colorado Rivers Edge LLC

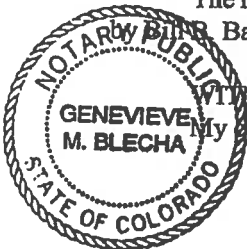
GRANTEE: United Companies of Mesa County, Inc.

By: [Signature]

By: [Signature]

STATE OF Colorado)
COUNTY OF Mesa) ss.

The foregoing was acknowledged before me this 14th day of October, 2005, by Brian Bailey as Manager of Colorado Rivers Edge LLC.



WITNESS my hand and official seal.

My commission expires: April 4, 2007

Genevieve M. Blecha
Notary Public

STATE OF Colorado)
COUNTY OF Mesa) ss.

The foregoing was acknowledged before me this 16th day of October, 2005, by Craig Lamberty as President of United Companies of Mesa County, Inc.

WITNESS my hand and official seal.

My commission expires: April 4, 2007

Genevieve M. Blecha
Notary Public



WARRANTY DEED

BOOK 689 PAGE 484

THIS DEED, Made this 6th day of June

1986, between GLEN O. CHAMBERS and DOROTHY I. CHAMBERS

of the County of Garfield

and State of

Colorado, grantor, and RICHARD W. CASBY

whose legal address is P.O. Box 1815, Rifle, Colorado

of the County of Garfield

and State of Colorado, grantor:

WITNESSETH, That the grantor for and in consideration of the sum of Ten Dollars and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the grantee, his heirs and assigns forever all the real property together with improvements, if any, situate, lying and being in the County of Garfield and State of Colorado described as follows:

That real property described on Exhibit A, attached and incorporated herein by this reference. Together with two non-exclusive easements appurtenant, described on Exhibit B, attached and incorporated herein by this reference; the use of which easements is subject to the restriction therein contained. Together with 2 1/2 shares in the Grand River Ditch, and the water and water rights represented thereby.

Reserving to the grantor utility and irrigation ditch easements in place and use, or hereafter to be created, and a non-exclusive easement for access and utilities, described on Exhibit A, attached and incorporated herein by this reference; and first cutting

TOGETHER with all and singular the benefits and appurtenances thereto belonging, or in anywise appertaining, and the reversion and inheritance, remainder and reversion, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the improvements and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the improvements and appurtenances, unto the grantee, his heirs and assigns forever. And the grantor, for himself, his heirs, and personal representatives, does covenant, grant, bargain, and agree to and with the grantee, his heirs and assigns, that at the time of the executing and delivery of these presents, he is well seized of the premises above conveyed, his good, true, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, leases, taxes, encumbrances, easements and restrictions of whatever kind or nature except the 1986 general property taxes, irrigation ditches in place and in use, patent reservations, apparent or recorded utility easements, lease agreements with Black Casey Concrete, Inc., lease with Blum Construction, Inc., recorded in Book 525 at Page 68 insofar as it affects Lot 2; oil and gas.

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date not herein shown.

Glen O. Chambers

Dorothy I. Chambers

STATE OF COLORADO

County of Garfield

The foregoing instrument was acknowledged before me in the County of Garfield, this 6th day of June 1986, by Glen O. Chambers and Dorothy I. Chambers.

My commission expires

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Witness my hand and official seal.

My Commission Expires Dec. 2, 1987

Shirley K. Keith

*If in Denver, insert "City and"

DESCRIPTION OF FREE INTEREST CONVEYED

A parcel of land situate in Lot 1, Lot 2 and Lot 3, the NW1/4 SE1/4, and the NE1/4 SW1/4, lying southeasterly of the Denver and Rio Grande Western Railroad, all in Section 11, Township 6 South, Range 93 West of the 6th Principal Meridian, described as follows:

BEGINNING at a point on the southeasterly right-of-way of said railroad whence the stone monument for the East 1/4 corner of said Section 11 bears North 80°05'43" East 873.19 feet; thence South 12°38'00" East 37.78 feet; thence South 16°41'29" West 417.69 feet; thence South 31°44'00" West 150.73 feet; thence South 70°34'35" West 286.12 feet; thence South 51°34'46" West 219.50 feet; thence South 56°37'24" West 125.66 feet; thence South 35°40'35" West 240.05 feet; thence South 11°55'04" West 183.96 feet; thence South 89°25'58" West 303.07 feet; thence South 73°58'08" West 550.40 feet; thence South 480.15 feet; thence South 89°37'26" West 923.00 feet; thence North 488.92 feet to a point on the southeasterly right-of-way of said railroad; thence North 63°10'30" East 3,016.35 feet to the point of beginning.

DESCRIPTION OF RESERVED NON-EXCLUSIVE EASEMENT

An Easement for access and utility purposes thirty (30) feet in width extending along the easterly boundary line of the property above described to the southeasterly line of the Denver and Rio Grande Western Railroad right-of-way, to wit:

Beginning at a point on the southeasterly right-of-way of said railroad whence the stone monument for the East quarter corner of said Section 11 bears North 80°05'43" East 873.19 feet; thence South 12°38'00" East 37.78 feet; thence South 16°41'29" West 417.69 feet; thence South 31°44'00" West 150.73 feet; thence South 70°34'35" West 286.12 feet; thence North 31°44'00" East 184.04 feet; thence North 16°41'29" East 405.88 feet; thence North 12°38'00" West 22.34 feet to a point on the southeasterly right-of-way of said railroad; thence North 63°10'30" East 30.94 feet to the point of beginning.

EXHIBIT B TO WARRANTY DEED

Easement No. 1

An easement for access purposes, extending from the easterly boundary line of the property above described to the southeasterly line of the Denver and Rio Grande Western Railroad right-of-way, to wit:

Beginning at a point on the southeasterly right-of-way of said railroad whence the stone monument for the East quarter corner of said Section 11 bears North 80°05'43" East 873.19 feet; thence along said right-of-way North 63°11'41" East 50.00 feet; thence leaving said right-of-way 97.54 feet along the arc of a 50.00 foot radius curve to the right having a chord bearing of South 29°05'00" West 82.80 feet; thence North 16°41'29" West 13.51 feet; thence North 12°38'00" West 37.78 feet to the point of beginning.

Easement No. 2

An easement for access and utility purposes, situate in Lot 3 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, Township 6 South, Range 93 West of the 6th P.M., extending from the westerly boundary line of the property above described to the southeasterly line of the Denver and Rio Grande Western Railroad right-of-way, to wit:

Beginning at a point on the southeasterly right-of-way of said railroad whence the stone monument for the East quarter corner of said Section 11 bears North 66°21'15" East 4582.48 feet; thence along said right-of-way North 63°10'30" East 50.00 feet; thence continuing along said right-of-way North 63°10'30" East 673.68 feet; thence leaving said right-of-way South 33.62 feet; thence South 61°26'07" West 658.82 feet; thence 78.54 feet along the arc of a 50.00 foot radius curve to the right having a chord bearing of North 71°49'30" West 70.71 feet to the point of beginning.

Restriction on Use

The use of the easement described above as Easement No. 1 shall be restricted to access for passenger vehicles and light-weight trucks, unless the use of the easement described above as Easement No. 2 for heavy trucks is legally or physically obstructed by acts beyond the control of grantee. This covenant shall run with the land and be binding upon the grantee, his heirs, successors, and assigns.

AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of June, 1976 A.D. By and Between GLEN O. and DOROTHY I. CHAMBERS of Rifle, Colorado, hereinafter called "LESSOR", and RICHARD N. CASEY of Rifle, Colorado hereinafter called "LESSEE".

WITNESSETH THAT: The parties hereto, for and in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

1. The Lessor does hereby grant, demise and lease to the Lessee for the exclusive and only purpose of exploring for, mining, removing, crushing, washing and marketing sand and gravel (aggregate), and to produce and market Ready Mixed Concrete, and to produce and market Asphalt, thereon and therefrom, that real property situated in the County of Garfield, State of Colorado, described on Exhibit A, attached hereto and incorporated herein by this reference.

2. Receipt is hereby acknowledged of ONE DOLLAR and other good and valuable considerations as consideration upon the execution of this lease.

3. TO HAVE AND TO HOLD said land for a term of five (5) years from the date a "Permit Application" covering all or any part of the leased premises (other than that part presently permitted) has been approved by COLORADO MINED LAND RECLAMATION BOARD, and subject to the terms and conditions herein provided. That certain Agreement recorded as Reception No. 291545 shall be deemed merged in this Agreement upon the commencement of the term hereof. ? Feb. 1, 8
59-74
94-99

4. The "Royalty" payment shall be in the amount of thirty-five cents (35¢) per ton for each and every ton of

aggregate removed and marketed from the premises, with payment to be made on the 20th day of the month following the removal from said premises. A minimum annual rent payment will be made to Lessor in the amount of One Thousand Two Hundred Dollars (\$1,200.00). All royalty payments made during any of the stated five year terms of this Agreement shall be credited, applied and offset against the minimum annual rent payments, which shall be due and payable only to the extent that the cumulative royalty payments previously made during that term shall be less than the cumulative minimum annual rent payments which have accrued during that term. Minimum annual rent payment shall be made annually, during the term of this Agreement, no later than the last day of December of each calendar year. No royalty, wheelage or other charge shall be due to Lessor in connection with aggregate removed from other lands but processed or marketed from the leased premises. 5%
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5. The right and privilege of the Lessee to mine and remove the aggregate therefrom shall be exclusive in the sense that the Lessor will not grant said rights and privileges to anyone else during the term of this Agreement or any renewals thereof, nor shall the Lessor or any succeeding owner of the property exercise such rights and privileges during the term of this Agreement, or any renewals hereof.

6. The Lessee is hereby given the right, option and privilege to renew this Agreement upon the same terms and conditions contained herein for six (6) additional terms of five (5) years from the expiration of the original term hereof. Each successive option to renew shall automatically be deemed exercised by Lessee unless Lessee shall deliver to Lessor written notice electing not to renew prior to expiration of the preceeding term.

7. The Lessor covenants and agrees that they are the sole owners and have good title to the demised premises and covenant to defend title to said property and hold Lessee harmless against the claims of all persons whosoever during the terms of this Agreement, subject only to those exceptions set forth on Exhibit "B" attached, and agrees that if at any time Lessor should fail to pay any mortgage, loan deed, taxes or other lien upon the demised premises, Lessee shall have the right to pay such lien or

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other charge and that such payment shall subrogate Lessee to the rights of the holder thereof, Lessor further agrees that all such payments may be deducted from any royalty thereafter payable to Lessor. Lessor further warrants that Lessee shall have peaceable and quiet possession thereof as provided herein.

8. The Lessee shall ~~submit~~^{apply for} all necessary "Permits" as required by the County of Garfield and the State of Colorado with reference to the COLORADO MINED LAND RECLAMATION ACT of 1976 or any successor statute or law, and such applications and permits shall become a part of this Agreement and the mining operations shall be conducted in strict compliance with all of the laws, rules and regulations thereunder.

9. The Lessor shall make available to the Lessee, copies of the deed, water rights and other documents necessary to complete permit applications. Lessor shall otherwise cooperate with the Lessee in connection with the approval process. Lessor shall not contest or oppose any permit applications from time to time submitted by the Lessee, except opposition based upon breach or termination of this Agreement.

10. Upon termination of this Agreement, Lessor does hereby grant an extension of time of two (2) years, to the Lessee for the purpose of completing a reasonable reclamation program, as required by the COLORADO MINED LAND RECLAMATION BOARD or its successor.

11. The word "Lessor" wherever used herein shall include Lessor, their heirs, representatives, administrators, successors, and assigns; and the word "Lessee" wherever used herein shall include Lessee, its successors and assigns.

12. This Agreement shall be assignable in whole or in part by the Lessee or the Lessor.

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13. The Lessor shall have the right to inspect all records, books or accounts pertaining to mining, extraction, transportation and returns of materials taken from the herein demised premises.

14. Lessee may make or place such improvements and equipment upon the herein demised premises as may be reasonably necessary to mine, process and remove aggregate, and to produce and market ready mixed concrete, and to produce and market asphalt, therefrom and upon termination of this Agreement, Lessee may remove such improvements, equipment and stockpiles of material; provided, however, that all royalties have been paid and that such removal is accomplished within one (1) year of the termination date.

15. Lessee is hereby given the right to build and maintain a water reservoir at such a place on the herein demised premises as may be selected by the Lessee and to use the water there collected, or water from any stream in or on the demised premises, together with the right to lay and maintain all necessary water lines as may be required by the Lessee in the mining, processing, and removal of aggregate, and to produce and market ready mixed concrete, and to produce and market asphalt, therefrom.

16. It is mutually understood and expressly agreed that this instrument embodies the entire agreement of the parties hereto in relation to the subject matter hereof and that no understanding or agreements, verbal or otherwise, in relation thereto exist between the parties hereto except as are herein expressly set forth, and that no change or modification of this agreement shall be valid unless set forth in writing and signed by both the Lessor and the Lessee.

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17. As part of the consideration for this agreement, it is understood that the Lessee shall have the right to decide when, where, whether, and how to conduct operations hereunder.

18. After every third calendar year of operations, during the period of this Agreement and any extensions thereof, the royalties and rents as outlined in "Item 5" shall be increased or decreased by the percentage amount of the increase or decrease in the "Consumer Price Index" maintained by the United States Bureau of Labor Statistics, during the preceding three (3) years.

1-816-416-2481

19. Lessee agrees to excavate to eighteen (18) feet or the end of gravel, whichever comes first.

20. Any payments, notices or other communications required or appropriate under this Agreement shall be conclusively deemed accomplished and effective if dispatched to the respective parties at the address below, unless written notice of any change of address is received and acknowledged by all parties hereto.

LESSEE:

Richard M. Casey
P.O. Box 1815
Rifle, Colorado 81650

LESSOR:

Glen O. Chambers and
Dorothy I. Chambers
28584 U.S. Highway 6 & 24
Rifle, Colorado 81650

21. Lessee agrees to allow a 30 ft. right-of-way through said property for an access road for Lessor, their heirs, successors, and assigns in ownership of the remainder of Lot 1, Section 14; and the SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 1, Lot 2, and Lot 3 of Section 11 all in Township 6 South, Range 93 West of the 6th P.M., not to include any new railroad crossing; however, not restricting Lessor's use of the existing railroad crossing. The

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exact location of said right-of-way will be mutually established and agreed on by both Lessee and Lessor. Lessee shall have the right to cross said right of way for the purpose of transporting material and equipment.

22. Lessee agrees to remove material from and according to pre-existing Agreement recorded as Reception No. 291545 in the Garfield County, Colorado, records, before removing material under the remainder of the real property subject to this Agreement, PROVIDED THAT Lessee shall not be required to exhaust such reserves underlying or which would otherwise impair existing access roads or access easements created in favor of Lessee in connection with Lessee's purchase of certain adjoining property from the Lessor, nor shall this paragraph be deemed to require the mining of gravel underlying or which would impair the use and existence of the batch plant, the parking and stock pile areas and the other mining and processing facilities which form a part of, complement, or otherwise serve Lessee's operations conducted on the leased premises. It is understood that so long as Lessee continues to cover the annual rent payments pursuant to paragraph 4 hereof, through unapplied royalty credits for the applicable five year term, or in cash, Lessee may continue to utilize the leased premises for the batch plant, parking and stock pile areas, and processing facilities which form a part of, complement, or otherwise serve Lessee's operation conducted on the adjoining premises owned by him in fee.

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23. Contemporaneously with the execution hereof, Lessee is purchasing certain adjoining lands from the grantor, as more particularly described in Exhibit "C" attached. Lessee covenants and agrees that gravel mining operations on the property described in Exhibit "C" shall not be commenced until the gravel reserves on the property subject to this Agreement have been exhausted in accordance with the terms hereof. As indicated above, exhaustion of reserves on the leased premises shall not require mining of gravel underlying the batch plant, the parking and stock pile areas and the other mining and processing facilities located on the leased premises, or access thereto.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the day and year first above written.

LESSEE:

Richard M. Casey
Richard M. Casey

LESSOR:

Glen O. Chambers
Glen O. Chambers

Dorothy I. Chambers
Dorothy I. Chambers

B/C

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EXHIBIT A
LEGAL DESCRIPTION

A parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, and the NE $\frac{1}{4}$ of Lot 3 in Section 11, and Lot 1 in Section 14, Township 6 South, Range 93 West of the 6th P.M., described as follows:

Beginning at a point on the southeasterly right-of-way of the Denver and Rio Grande Western Railroad whence the East quarter corner of Section 11 bears North 63°10'30" East 3016.35 feet and North 80°05'43" East 873.19 feet; thence South 488.92 feet; thence South 89°37'26" West 399.52 feet; thence South 00°15'00" East 827.42 feet; thence West 630.34 feet; thence North 800 feet to a point on the southeasterly right-of-way of said railroad; thence North 63°10'30" East 1150.00 feet to the point of beginning.

EXHIBIT B

1. Reservations and exceptions contained in the United States Patents recorded in Book 12 at Page 87 and in Book 12 at Page 545;

a. Subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom.

b. There is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

2. Easement to Colorado Ute Electric Association, Inc., recorded August 5, 1976, as Reception No. 273844 in Book 487 at Page 492.

2. Lease Agreement with Klam Construction, Inc., recorded March 26, 1979, as Reception No. 292900 in Book 525 at Page 66; SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11; NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14.

3. Oil and Gas Lease with Cimarron Gas Company recorded May 26, 1983, as Reception No. 342432 in Book 528 at Page 42.

4. Ditches, roadways, and powerlines as shown on the survey prepared by Landmark Services.

5. Agreements by and between Glen O. and Dorothy I. Chambers, Lessors, and Dick Casey Concrete, Inc., Lessee, recorded in Book 521 at Page 869 and in Book 582 at Page 317.

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A parcel of land situate in Lot 1, Lot 2 and Lot 3, the NW1/4 SE1/4, and the NE1/4 SW1/4, lying southeasterly of the Denver and Rio Grande Western Railroad, all in Section 11, Township 6 South, Range 93 West of the 6th Principal Meridian, described as follows:

BEGINNING at a point on the southeasterly right-of-way of said railroad whence the stone monument for the East 1/4 corner of said Section 11 bears North 80°05'43" East 873.19 feet; thence South 12°38'00" East 37.78 feet; thence South 16°41'29" West 417.69 feet; thence South 31°44'00" West 150.73 feet; thence South 70°34'35" West 286.12 feet; thence South 61°34'46" West 219.50 feet; thence South 56°37'24" West 125.66 feet; thence South 35°40'35" West 240.05 feet; thence South 17°55'04" West 183.96 feet; thence South 89°25'58" West 303.01 feet; thence South 73°58'08" West 550.40 feet; thence South 480.15 feet; thence South 89°37'26" West 923.00 feet; thence North 488.92 feet to a point on the southeasterly right-of-way of said railroad; thence North 63°10'30" East 3,016.35 feet to the point of beginning.

EXHIBIT "C"

*for
D.C.*

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DISTRICT COURT, GARFIELD COUNTY, COLORADO Court Address: 109 8 th Street, Suite 104 Glenwood Springs, Colorado 81601		<div style="text-align: center;">◆ COURT USE ONLY ◆</div> Case No.: 2014CV030325 Div.: B Ctrm.:
Plaintiff: Colorado Rivers Edge, LLC, a Colorado limited liability company,	v.	
Defendant: Oldcastle SW Group, Inc., d/b/a United Companies of Mesa County, a Colorado corporation		
Attorney for Defendant: M. Craig Hall, #26647 Firm Name: Oldcastle Law Group Address: 900 Ashwood Parkway, Suite 600 Atlanta, GA 30338 Telephone No.: (770) 392-5310 Fax No.: (770) 392-5305 Email Address: <i>Craig.Hall@Oldcastlelaw.com</i> Attorney Reg. No.: 26647		
ANSWER AND AFFIRMATIVE DEFENSES		

Oldcastle SW Group, Inc., d/b/a United Companies of Mesa County ("Defendant"), by its undersigned attorney, hereby states its Answer and Affirmative Defenses to Complaint as follows:

1. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 1 of the Complaint and, therefore, denies the allegations.
2. Defendant admits the allegations of paragraph 2 of the Complaint.
3. Defendant admits this action affects real property in Garfield County. The remaining claims call for a legal conclusion and require no response.

GENERAL ALLEGATIONS

4. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 4 of the Complaint and, therefore, denies the allegations..
5. Defendant is without sufficient information to admit or deny the allegations contained in paragraph 5 of the Complaint and, therefore, denies the allegations.
6. Defendant admits the allegations of paragraph 6 of the Complaint.

7. The easements speak for themselves, and Defendant denies any allegations in paragraph 7 of the Complaint purporting to alter the legal effect of the easements attached as exhibits 2 or 3.

8. The easement attached as exhibit 2 speaks for itself, and Defendant denies any allegations in paragraph 8 of the Complaint purporting to alter the legal effect of the easement attached as exhibit 2.

9. The deed and easement attached as exhibit 3 speak for themselves, and Defendant denies any allegations in paragraph 9 of the Complaint purporting to alter the legal effect of the easement or deed attached as exhibit 3.

10. Defendant denies the allegations in paragraph 10 of the Complaint.

11. Defendant denies the allegations in paragraph 11 of the Complaint.

12. Defendant admits that it denies that it has breached either the Temporary Easement or Easement No. 2. Defendant is without sufficient information to admit or deny the remaining allegations contained in paragraph 12 of the Complaint and, therefore, denies the allegations.

13. The lease attached as exhibit 4 speaks for itself, and Defendant denies any allegations in paragraph 13 of the Complaint purporting to alter the legal effect of the lease attached as exhibit 4.

14. Defendant admits that it believes that it is operating in full compliance with the Casey Lease. Defendant is without sufficient information to admit or deny the remaining allegations contained in paragraph 14 of the Complaint and, therefore, denies the allegations.

15. Defendant admits that a dispute exists between the parties. The remaining claims included within paragraph 15 of the Complaint call for a legal conclusion and require no response.

16. Defendant is without sufficient information to admit or deny the allegations contained within paragraph 16 of the Complaint and, therefore, denies the allegations.

FIRST CLAIM FOR RELIEF

17. Defendant incorporates by reference its answers to paragraphs 1 through 16 of the Complaint.

18. Defendant admits the allegations of paragraph 18 of the Complaint.

19. The allegations contained within paragraph 19 of the Complaint call for a legal conclusion and require no response.

20. The allegations contained within paragraph 20 of the Complaint call for a legal conclusion and require no response.

AFFIRMATIVE DEFENSES

21. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

22. Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

23. Plaintiff's claims are barred, in whole or in part, by the doctrine of rescission or cancellation by mutual consent.

24. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver and release.

25. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

26. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel and equitable estoppel.

27. Plaintiff's claims are barred, in whole or in part, by the statutes of limitations.

28. Plaintiff's claims are barred, in whole or in part, by the doctrine of *in pari delecto*.

29. Plaintiff's claims are barred in whole or in part by Plaintiff's own authorization, acquiescence, or ratification of the actions of Defendant.

30. Plaintiff's action for declaratory judgment fails for lack of a case or controversy because Defendant is not in breach of the controlling documents.

31. Plaintiff has failed to mitigate its damages.

32. All allegations of the Complaint which are not expressly admitted are denied.

33. Defendant's actions are in full accord with the controlling lease document and easements.

WHEREFORE, Defendant respectfully requests that the Court enter judgment in favor of Defendant against Plaintiff as follows:

- A. Denying Plaintiff any of the relief it has requested, including any of the relief included in subpart A – E of its *ad damnum* clause in its Complaint, such that Plaintiff recovers nothing from Defendant;
- B. For such other relief as the Court deems proper;
- C. For an award of costs incurred by Defendant in defending against the Complaint; and
- D. Defendant reserves the right pursuant to C.R.C.P. 57(h) to petition the court for further relief including, but not limited to, an award and judgment for damages, attorney fees, costs and expenses.

DATED this 9th day of December, 2014.

OLDCASTLE LAW GROUP

s/M. Craig Hall

By _____

M. Craig Hall, Reg. # 26647
Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Robert Traylor, Peter R. Black, Traylor, Tompkins & Black, P.C., 751 Horizon Court, Suite 200, Grand Junction, CO 81506-8754, prb@grandjunctionlaw.com; rst@grandjunctionlaw.com, via e-filing with LexisNexis this 9th day of December, 2014.

/s/M. Craig Hall

M. Craig Hall

DEPOSITION OF PETER SIEGMUND
September 22, 2015

DISTRICT COURT, GARFIELD COUNTY
COLORADO

Court Address:

109 8th Street, Suite 104
Glenwood Springs, CO 81601

Plaintiff:

COLORADO RIVERS EDGE, LLC,
a Colorado limited liability
company

v.

Defendant:

OLDCASTLE SW GROUP, INC., d/b/a
UNITED COMPANIES OF MESA COUNTY, a
Colorado corporation

COURT USE ONLY

Peter R. Black
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Reg. #: 8202

CASE NUMBER:
2014CV030325

Div.: B

DEPOSITION OF PETER SIEGMUND
TUESDAY, SEPTEMBER 22, 2015

PURSUANT TO NOTICE, the deposition of
PETER SIEGMUND, a witness herein, called for
examination by Traylor, Black & Kane, P.C., counsel
for the Plaintiff, was taken at the law offices of
Traylor, Black & Kane, P.C., 751 Horizon Court,
Suite 200, Grand Junction, Colorado, beginning at
the hour of 9:03 a.m., September 22, 2015, before
Mary L. Doring, Notary Public in and for the State
of Colorado, and Registered Professional Reporter.

DEPOSITION OF PETER SIEGMUND
September 22, 2015

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1 with getting a crossing at the east end of 298. Do
2 you see that, for context?
3 A Yes, I see that.
4 Q All right. So, this was in August.
5 And then on September 12, and I'm on
6 page 379 of that exhibit, this is an acknowledgment
7 by the Division, DRMS, of the request for the
8 technical revision for the haul road; right?
9 A It looks like an approval for the
10 technical revision to put a haul road in.
11 Q Okay. Right. I'm with you.
12 So, in this instance, the company sought a
13 technical revision of a mining permit in order to
14 put in a haul road. Did the company seek a
15 technical revision of either the North Bank permit
16 or the Glen's pit permit to put the haul road
17 between North Bank and Glen's pit?
18 A Did not.
19 Q Why not?
20 A Well, I don't think it's necessary.
21 Q Do you know why it was done in 2006?
22 A I don't think it was necessary then. I
23 think they did that. But you're going from a
24 proposed gravel pit onto an existing gravel pit that
25 already has approval for haul roads onto another

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1 parcel that has approval for haul roads
2 (indicating). I don't know why it would be
3 necessary for that.
4 Q Okay. You're saying going from an
5 approved gravel pit, that would be Glen's pit?
6 A Glen's pit on 294, going onto an approved
7 gravel pit, called the Chambers gravel pit, on
8 Parcel 542, onto an approved gravel pit, called the
9 Chambers pit, on Parcel 450.
10 I might add that, maybe that was a process
11 that they decided to do just to cover everything,
12 which, in my opinion, wasn't really necessary.
13 Q At the time this letter was written, the
14 request for the TR, in August of '12 -- I'm sorry,
15 August of '6, and the approval of it in September,
16 the Glen's pit wasn't approved yet, was it? That
17 permit hadn't been issued yet, had it?
18 A Boy, I don't know when that was issued.
19 Q Maybe I can help.
20 Well, it's got a 2005 number, 2005-075.
21 A Yeah. There's a reference on Exhibit 17.
22 Q Exhibit 17?
23 A 753. CRE753.
24 Q Okay.
25 A This is an annual report.

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1 Q Right.
2 A Anniversary date of May 31, 2007. And
3 then the first sentence says, "This location began
4 to have some activity in mid-August of 2006."
5 Q Okay. What's that tell you? Was Glen pit
6 permitted when this technical revision request was
7 made in August of '06?
8 A Looks like about a month difference.
9 Q Okay. I only ask because you were saying
10 that, you know, going from one permitted parcel onto
11 another permitted parcel onto another permitted
12 parcel, you don't need a technical revision; right?
13 A That's what I'm saying.
14 Q Doesn't a permit, the mining plan, define
15 what the access is for the property to which it
16 applies?
17 A Yes.
18 Q Okay. And doesn't it also define the
19 means or the -- the means of transport, or how
20 you're going to get the material off the property?
21 A It defines that, yes.
22 Q Okay. And isn't that part of the permit
23 then?
24 A Yes.
25 Q Okay. Well, in the North Bank property

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1 case, the permit for the North Bank property
2 specifies that the material is to be -- once it's
3 mined, is to be taken off the property via the river
4 conveyor; right?
5 A That's correct.
6 Q But you're not following that permit?
7 A We are bringing it across the haul road
8 between the North Bank pit and 294.
9 Q Okay.
10 A Not all of it, but some of it.
11 Q You're not following the permit that
12 requires it to be all taken across the river on the
13 river conveyor; correct?
14 A Yeah. We're not following that portion of
15 it.
16 Q Okay. And what gives the company the
17 ability to ignore that portion of the permit?
18 A Well, you know, the mining plan is a plan
19 that is put out there, and it is described, and DRMS
20 reviews that, and they do approve that. But there
21 also are many things that happen during the course
22 of a mine. And when you have incidental changes,
23 and things like that, yes, there are provisions in
24 order to change the mining plan or -- but what
25 they're ultimately concerned with is what is it