

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

DDD Mine DWR Pit Renewed Surface Leases

Jason McGraw <Jason.McGraw@generalshale.com>
To: "Eschberger - DNR, Amy" <amy.eschberger@state.co.us>

Tue, Apr 26, 2022 at 4:21 PM

Hello Amy,

I hope things are well.

Attached are the 5 year extension for the clay lease and surface agreement for the DWR Pit M-1984-076 for your records.

Best Regards,

Jason E. McGraw
Mine Supervisor

General Shale | www.generalshale.com

[1845 W. Dartmouth Ave.](#)

[Denver, CO. 80110](#)

[P \(303\) 783-3058](#) | [C \(303\) 435.3279](#) | [F \(303\) 783-2992](#)

jason.mcgraw@generalshale.com

This e-mail may contain confidential and/or privileged information. If you are not the intended recipient (or have received this e-mail in error) please notify the sender immediately and destroy this e-mail. Any unauthorized copying, disclosure or distribution of the material in this e-mail is strictly forbidden.

2 attachments



McDonald Amended and Restated Lease DDD Mine Section 2 DWR Pit 11-18-2021.pdf
3194K



Faulhaber and Zimbeck Surface Agreement DDD Mine Section 2 DWR Pit 11-18-2021.pdf
2593K



When recorded, return to:
General Shale Brick, Inc.
1845 W. Dartmouth Ave.
Denver, CO 80110

CLAY MINING LEASE

This CLAY MINING LEASE ("Agreement") is entered into effective November 18, 2021 ("Effective Date"), by and between MATTHEW J. MCDONALD and JOHN MCDONALD, who's address is 7997 Patrick Trail, Elizabeth, CO 80107 (collectively "Lessor"), and GENERAL SHALE BRICK, INC., a Delaware corporation, with offices at 1845 West Dartmouth Avenue, Denver, CO 80110 ("Lessee").

RECITALS

A. Lessor owns the fee title to that property situated in Elbert County, Colorado described in Exhibit A hereto (the "Property").

B. Lessor, Lessee and certain third parties entered into that Amended and Restated Lease, dated effective May 18, 2012 covering the Property and certain other properties owned by third parties (the "2012 Lease"). The 2012 Lease is set to expire on November 18, 2016 pursuant to the terms thereof.

C. Lessor and Lessee entered into that Amended and Restated Lease, dated effective November 18, 2016 covering the Property (the "2016 Lease"). The 2016 Lease is set to expire on November 18, 2021 pursuant to the terms thereof.

C. Lessor and Lessee desire to provide Lessee with additional rights to use the Property, pursuant to the terms set forth in this Agreement.

AGREEMENT

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Lessor and Lessee mutually agree as follows:

1. Scope of Agreement. As of the Effective Date of this Agreement, the 2016 Lease is hereby terminated solely as to the Property and is replaced with this Agreement. As of the Effective Date, this Agreement shall govern Lessor and Lessee's rights, obligations, duties and liabilities with respect to the Property. This Agreement does not in any way affect, amend or alter

the terms of the 2012 Lease with respect to any other portion of the "Section 2 Property" as defined in the 2012 Lease.

2. Grant of Lease. Lessor in consideration of the annual rental and royalty herein reserved and the covenants to be performed by Lessee does hereby lease, let and demise unto Lessee the Property in accordance with the terms of this Agreement.

3. Term of Lease. The term of this Agreement shall continue for a period of five (5) years from the Effective Date of this Agreement. At any time within ninety (90) days prior to or following the fourth anniversary of the Effective Date of this Agreement, Lessee may provide notice to Lessor of Lessee's desire to extend the term of this Agreement, in which case, the parties shall thereafter promptly enter into good faith negotiations for the terms of an extended Agreement. Following expiration of this Agreement, Lessee shall have a continuing right to access the Property for purposes of completing reclamation and post-reclamation maintenance and monitoring pursuant to Paragraph 17 below.

4. Fee Simple Title. Lessor represents and warrants that they own fee simple title to the entire Property and the right and power to lease the same and agrees that, if Lessor owns a less interest than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid to the Lessor only in the proportion which their interest bears to the whole undivided fee.

5. Possession, Purpose and Control of Property. Lessee shall have the exclusive right to immediately hold and use the Property for the purpose of prospecting, investigating and exploring for, producing, excavating, storing and mining and removing clay, clay derivatives and subsoil therefrom, and shall have all rights, privileges and easements necessary or convenient for carrying on said operations or any of them.

6. Annual Rental. Each year, beginning on the Effective Date of this Agreement and continuing through the fourth anniversary of the Effective Date so long as this Agreement remains in effect, Lessee shall pay to Lessor an annual rental in the sum of Five Thousand Dollars (\$5,000.00). All rental payments shall be credited against royalty payments due under Paragraph 7 below. Such right of credit shall apply to the first royalty payment payable under this Agreement and shall continue thereafter until Lessee has recovered the full amount of all previously paid rental payments. Payment of said annual rentals shall fully satisfy all of the exploration, development and mining obligations of Lessee. No implied covenants shall be read into this Agreement relating to the prospecting, developing or mining of the Property. Any operations conducted by Lessee on the Property shall be conducted at such time and in such manner as Lessee, in its discretion, deems advisable, subject only to the express provisions of this Agreement.

7. Royalties. Lessee shall pay the following royalties to Lessor: Ninety five cents (\$.95) per ton of clay, clay derivatives and subsoil removed from the Property and delivered to



Lessee's brick manufacturing facility, as weighed in trucks on Lessee's scales. Such royalties shall be due and payable on or before the 25th day of each month for clay, clay derivatives and subsoil removed from the Property and delivered to Lessee's brick manufacturing facility during the preceding month. Any clay, clay derivatives and subsoil that are mined from the Property and are stockpiled on the Property or on any other properties shall not be subject to royalties under this Agreement until those materials are delivered to Lessee's brick manufacturing facility. Any clay, clay derivatives and subsoil that are mined from other properties and stored on the Property shall not be subject to royalties under this Agreement. For clarification, all clay, clay derivatives and subsoil that was mined from the Property since the beginning of the current mining campaign in 2016, and is removed from the Property and delivered to Lessee's brick manufacturing facility during the term of this Agreement, shall be subject to this royalty. Royalties will continue to be paid after this 5 year lease term until the stockpile has been depleted completely.

8. Acts Beyond Control of Lessee. Whenever, as a result of fire, flood, windstorm, Acts of God, strike or other labor difficulty, rules and regulations of any federal, state or other governmental agency under asserted authority, inability to secure workers, material or transportation, or any other cause reasonably beyond Lessee's control, Lessee shall be prevented from performing any term or condition of this Agreement (other than payment of the above annual rental and royalties), Lessee shall not be liable in damages, at equity or for forfeiture of this Agreement, and its obligations hereunder (other than said payments) shall be suspended so long as such cause persists.

9. Payments. Lessee shall pay all royalties and rentals due hereunder directly to Lessor and Lessor shall accept Lessee's checks as equivalent of cash payments. If Lessee shall, in good faith and with reasonable diligence, attempt to pay any rental or royalty due hereunder but shall in fact pay an incorrect amount, Lessor shall not have the right to terminate this Agreement unless Lessee, within thirty (30) days after receipt of written notice of such error from Lessor, shall fail to pay the correct amount.

10. Change of Ownership. No change of ownership of the real property or any right to receive payments hereunder shall be binding upon Lessee unless and until written notice and proof thereof satisfactory to Lessee shall be submitted to it by Lessor.

11. Assignment of Agreement and Surrender. Lessee shall have the right to assign this Agreement in whole or in part at any time and from time to time; and, Lessee shall have the right to surrender this Agreement in whole or in part by executing and recording an appropriate instrument releasing and surrendering its interest.

12. Notices and Place of Payment. All written notices and payments required by the terms of this Agreement shall be sent by certified mail or by express courier that maintains a formal tracking system (e.g., DHL, Federal Express) to the addresses set forth below:



If to Lessor:

Matthew J. and John McDonald
603 4th Street Phillipsburg KS 67661

If to Lessee:

General Shale Brick, Inc.
1845 West Dartmouth Avenue
Denver, CO 80110

A party may change its address by written notice to the other parties.

13. Injuries Occurring on the Real Property and Insurance. During the term of the Agreement, Lessee shall assume all responsibility for injury to its employees or other persons on the Property resulting from Lessee's operations thereon. Lessee agrees to carry general liability insurance with respect to its activities on the Property in the amount of One Million Dollars (\$1,000,000.00). Such liability insurance shall designate Lessor as an additional insured. A copy of such insurance certificate will be provided to Lessor at Lessor's request.

14. Cattle Guards. Lessee shall have the right to install cattle guards and/or gates wherever necessary.

15. Personal Property and Improvements. In the event of the termination of this Agreement for any cause whatsoever, Lessor shall not have any right to claim or hold any personal property or improvements placed or erected on the real property by Lessee if Lessee removes said personal property and improvements from the real property within ninety (90) days after expiration of the term of this Agreement.

16. Rights-of-Way. During the term of this Agreement, Lessee shall have such rights-of-way over the land of Lessor as may be necessary and convenient to the removal and transportation of the clay, clay derivatives and subsoil between the Property and the county road or highway.

17. Operations and Reclamation Requirements.

(a) Lessee shall conduct all operations on the Property, including reclamation operations, consistent with sound and workmanlike mining practices and shall comply with all applicable statutes, regulations and local ordinances covering reclamation and restoration of the subject premises. Lessee shall complete all grading and earth work required under Lessee's Colorado Division of Reclamation, Mining and Safety ("DRMS") permit for the Property within six (6) months following expiration of the Lease term set forth in Paragraph 3 above, unless the term is extended by agreement of the parties, and shall complete all revegetation work required by such permit as soon as practicable thereafter. The parties acknowledge that Lessee may be



required under the terms of its permit and applicable regulations to conduct various post-reclamation monitoring and maintenance measures prior to DRMS's release of Lessee's reclamation surety. Lessee may enter the Property after the termination of this Agreement for the purpose of reclamation and post-reclamation monitoring and maintenance consistent with permit requirements and the regulations or other directives of governmental agencies. Lessor shall not conduct any activity on the Property that would delay or interfere with final reclamation of the Property or the release of Lessee's financial surety that is now or hereafter provided under DRMS requirements. Lessee's DRMS permit may be modified or amended in accordance with applicable laws and regulations, and Lessee shall comply with the terms of any such modification or Agreement.

(b) The parties acknowledge that as of the Effective Date of this Agreement three mining pits exist on the Property. Before any additional mining pits are constructed on the Property, Lessee will use commercially reasonable efforts to reduce the size of existing mine overburden piles through backfilling or other grading measures, to the extent practicable and consistent with Lessee's mining plans and permits. For any additional mine pits constructed on the Property following the Effective Date of this Agreement, Lessee shall use commercially reasonable efforts to complete the final reclamation grading of each new mine pit to the extent practicable before constructing another new mine pit. Lessee agrees to use reasonable efforts to reclaim each mine pit area on the Property to a final grade that has a slope no greater than 4:1.

(c) The parties recognize that Lessor desires that a stock water pond be constructed within the area of current mine disturbance as part of the final reclamation of those areas. The parties further recognize that Lessee's current reclamation plan approved by DRMS will need to be revised to allow for the construction of such a pond as part of the mine reclamation, and that other government approvals and permits may be required. Lessee agrees to use commercially reasonable efforts to obtain DRMS approval of a revision to the current mine reclamation plan to allow for construction of a stock water pond, and Lessor will cooperate with Lessee in seeking any required approvals from DRMS, including providing any necessary land owner consents. Lessor shall be solely responsible for obtaining any other required approvals or permits for construction and operation of such a pond, including any necessary water rights. If all required approvals are obtained by Lessor and Lessee as provided above no later than November 15, 2016 (unless a later date is agreed to in writing by the parties), Lessee will construct the pond as part of its final reclamation of the Property. Lessor shall be solely responsible for the operation and maintenance of such pond. The parties acknowledge that any other agreement between Lessor and Lessee as to the nature or extent of reclamation to be performed on any portion of the Property shall not be binding on any party unless such agreement is in writing signed by the parties thereto.

18. Materials for Gate Construction. The parties understand that Lessor intends to construct a gate along the western boundary of the Property. Lessee shall be provided with means



for accessing through that gate at all times for purposes associated with exercising the rights granted to Lessee by this Agreement. Lessee agrees to reimburse Lessor for the reasonable costs of all materials that Lessor utilizes in constructing such gate in an amount not to exceed \$1,000.00 ("Reimbursement Cap"). Lessor shall provide Lessee with copies of all invoices for such materials, and, subject to the Reimbursement Cap, Lessee shall reimburse Lessor for the invoiced amounts within 30 days following the receipt of such invoices.

19. Records. (a) Lessee shall keep accurate records of the amounts and kinds of clay, clay derivatives and subsoil removed from the Property. Lessor or its agents and employees shall have the right at all reasonable times to examine said records and to enter upon and inspect the leased premises, and Lessee shall furnish all reasonable assistance that may be required in such examination or inspection; (b) All clay, clay derivatives and subsoil removed from the Property shall be accounted for by truck load weight and haulage receipts on Lessee's scales. Copies of all haulage receipts shall be made available to Lessor upon request, and Lessor shall have the right, for the term of this Agreement and for twelve (12) months thereafter, during all regular business hours, to inspect said haulage receipts maintained by Lessee relative to the Property. Acceptance of any royalty payment under this Agreement shall not prejudice the right of Lessor to protest or question the correctness thereof; provided however, each such payment made to Lessor by Lessee or any statement or accounting in support thereof shall be presumed conclusively to be true and correct after twelve (12) months from the date of receipt by Lessor of such payment and/or statement or accounting, unless within the said twelve (12) month period Lessor takes written exception thereto and makes claim on Lessee for adjustment. No adjustment favorable to Lessee shall be made unless it is made in the same prescribed period.

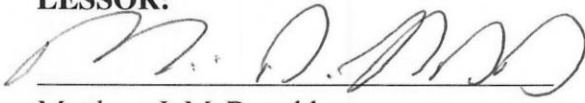
20. Benefit. This Agreement shall bind and inure to the benefit of the parties hereto and their successors, trustees, legal representatives and assigns.

21. Attorney's Fees. In any time litigation between the parties to this contract or persons claiming under them resulting from, arising out of, or in connection with this contract or the construction or enforcement thereof, the substantially prevailing party shall be entitled to recover from the other party, all reasonable costs, expenses, attorney's fees, expert fees, and other costs of suit incurred by it in connection with such litigation, including such costs, expenses and fees incurred prior to the commencement of the litigation, in connection with any appeals, and collecting any final judgment therein. If a party substantially prevails on some aspects of such action, but not on others, the court may apportion any award of costs and attorney's fees in such manner as it deems equitable.

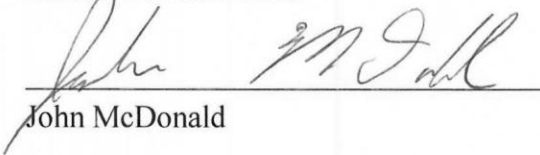
22. Signature in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this instrument is executed effective on the day first above written.

LESSOR:



Matthew J. McDonald



John McDonald

LESSEE:

General Shale Brick, Inc.

By: [Signature]

ACKNOWLEDGMENTS

LESSOR:

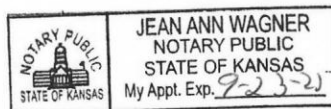
STATE OF KANSAS)

COUNTY OF Phillips) ss:

The foregoing instrument was acknowledged before me this 28th day of February, 2022, by MATTHEW J. MCDONALD.

Witness my hand and official seal.

My commission expires: 9-23-2025



[Signature]
Notary Public

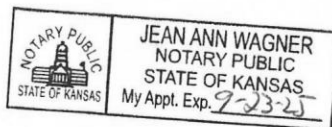
STATE OF KANSAS)

COUNTY OF Phillips) ss:

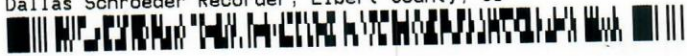
~~2022~~ The foregoing instrument was acknowledged before me this 28th day of February, ~~2021~~, by JOHN MCDONALD.

Witness my hand and official seal.

My commission expires: 9-23-2025



[Signature]
Notary Public



LESSEE:

STATE OF TENNESSEE)
) ss.
COUNTY OF Sullivan)

² The foregoing instrument was acknowledged before me on this 5th day of April, 2021, by Bryan Hoilman as Director of Procurement and Real Estate of GENERAL SHALE BRICK, INC.

Witness my hand and official seal.

My commission expires: January 21, 2024

Kimberly R. Witherspoon
Notary Public



My Commission Expires
January 21, 2024

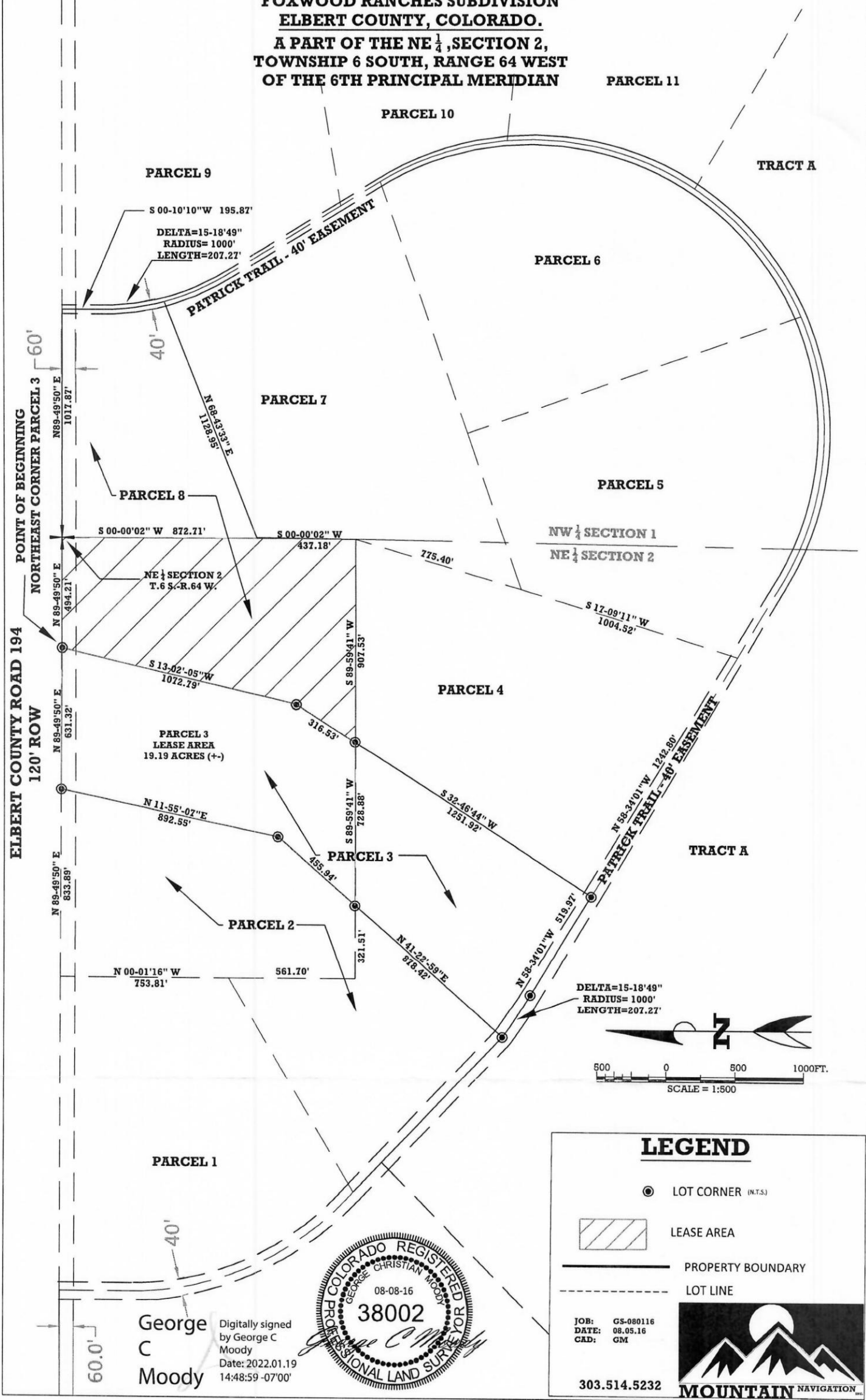
EXHIBIT A
TO
CLAY MINING LEASE

THE PROPERTY

619060 B: 827 P: 452 MINLSE
04/26/2022 01:16:37 PM Page: 10 of 11 R 63.00 D
Dallas Schroeder Recorder, Elbert County, Co



EXHIBIT A
PARCEL 3
FOXWOOD RANCHES SUBDIVISION
ELBERT COUNTY, COLORADO.
A PART OF THE NE $\frac{1}{4}$, SECTION 2,
TOWNSHIP 6 SOUTH, RANGE 64 WEST
OF THE 6TH PRINCIPAL MERIDIAN



George C Moody
Digitally signed by George C Moody
Date: 2022.01.19 14:48:59 -07'00'



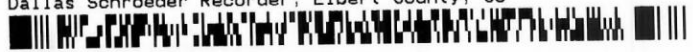
LEGEND

- LOT CORNER (N.T.S.)
- LEASE AREA
- PROPERTY BOUNDARY
- - - LOT LINE

JOB: GS-080116
DATE: 08.05.16
CAD: GM

303.514.5232

MOUNTAIN NAVIGATION



When recorded, return to:

General Shale Brick, Inc.
1845 W. Dartmouth Ave.
Denver, CO 80110

TERM SURFACE USE AGREEMENT

This Term Surface Use Agreement ("Agreement") is made effective November 18, 2021 ("Effective Date") between Matthew Faulhaber and Teodora Zimbeck whose address is 7355 Patrick Trail, Elizabeth, CO 80107 (collectively "Grantor") and General Shale Brick, Inc., a Delaware corporation, whose address is 1845 W. Dartmouth Ave., Denver, CO 80110 ("Grantee").

RECITALS

- A. Grantor owns the fee title to that property situated in Elbert County, Colorado described in Exhibit A hereto (the "Property").
- B. Grantor's predecessors, Grantee and certain third parties entered into that Amended and Restated Lease, dated effective May 18, 2012 covering the Property and certain other properties owned by third parties (the "2012 Lease"). The 2012 Lease expired on November 18, 2016 pursuant to the terms thereof.
- C. Lessor and Lessee entered into that Term Surface Use Agreement, dated effective November 18, 2016 covering the Property (the "2016 Agreement"). The 2016 Agreement is set to expire on November 18, 2021 pursuant to the terms thereof.
- D. Grantor and Grantee desire to provide Grantee with additional rights to use the Property, pursuant to the terms set forth in this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

TERMS OF AGREEMENT

I. Grant.

Grantor hereby grants to Grantee, and its successors and permitted assigns, the non-exclusive right to use the Property to: (i) deliver, place, store, stockpile and remove from such storage areas or stockpiles clay, clay derivatives, soil and subsoil that Grantee has mined or removed from other properties; (ii) construct, use, improve and maintain roads and haulage ways for access to and from any storage areas or stockpiles placed on the Property; (iii) construct and maintain any stormwater controls, sediment ponds or other facilities necessary or convenient in conducting the above-listed activities; and (iv) construct and maintain any gates, fences or other



controls to manage access to and from such storage areas or stockpiles. The maximum surface area of the Property that may be used by Grantee for such purposes is 10 acres.

2. Grantor's Reserved Rights. Grantor reserves unto itself, and its successors and assigns, the right and privilege to use the Property for any purpose whatsoever, including all roads or access routes currently existing or hereafter constructed; provided that any such uses shall not interfere with Grantee's access to or use of the Property for any and all purposes authorized by this Agreement. Grantor shall not construct or authorize any gates, fences, berms, or other features or facilities that would in any way limit or impair Grantee's access to or use of the Property without Grantee's prior written consent.

3. Term. The term of this Agreement shall begin with the Effective Date hereof and, unless earlier terminated as provided herein, shall continue for a period of five years. If Grantee notifies Grantor of its need to use more than 10 acres as provided in Section 1 above or that it desires to extend the term of this Agreement, Grantor agrees to consider and negotiate in good faith a possible amendment to this Agreement that would allow for additional acreage disturbance or provide an extended expiration date on terms agreeable to both Grantor and Grantee.

4. Rental. Within 10 days following the Effective Date of this Agreement, and on or before the first anniversary of the Effective Date of this Agreement and each anniversary date thereafter through the fourth anniversary date so long as this Agreement remains in effect, Grantee shall pay to Grantor an annual rental in the amount of \$180.00 for each acre of the Property that Grantee is actually using for roads, storage areas, stockpiles or other facilities. This rental amount shall be prorated for each fraction of acre used for such purposes. The initial payment shall be based upon the amount of unreclaimed disturbance from Grantee's activities existing as of the Effective Date of this Agreement. Following the initial payment, subsequent rental payments shall be made on or before each anniversary date of this Agreement beginning on the first anniversary based on the maximum area used by Grantee during the prior year. Grantee shall survey the unreclaimed portion of Property that is used for roads, storage areas, stockpiles or other facilities, and the annual payment due shall be based upon the maximum area used for such purposes during the prior year. At Grantor's request, Grantee will provide to Grantor the results of such surveys.

5. Title. Grantor represents and warrants that it owns in fee the entire right, title and interest in and to the Property.

6. Conduct of Operations.

(a) Grantee shall, at its expense, comply with all applicable laws, statutes, ordinances, regulations, rules, permits, orders and other requirements of all governmental bodies with jurisdiction over the Property or Grantee's activities on the Property, including but not limited to those relating to health, safety, noise, environmental protection and reclamation ("Laws"). Grantee will obtain any government permits required to conduct Grantee's activities and will post any bonds or other financial assurances required by Laws. Grantor will cooperate



with Grantee's efforts to obtain any required permits or other government approvals for authorized activities on the Property.

(b) Grantee shall at all times maintain any roadways constructed or used by or on behalf of Grantee in a safe and passable manner, free of noxious weeds, litter and debris.

(c) Grantee shall not construct any roads or other facilities within areas of the Property that are included in the existing bridle path easement, which is located 8.5 feet interior to the Property line.

(d) Grantee will promptly repair any damage it causes to any fences, gates, roads or other improvements now or hereafter existing on the Property. In the event Grantor makes any such repairs to address damages caused by Grantee or its permittees, Grantee shall promptly reimburse Grantor for the reasonable cost of repairing such damage.

7. Taxes. Grantee shall pay all taxes assessed against any personal property which it may place on the Property. Grantor shall provide promptly to Grantee copies of all documents it receives relating to such taxes. Grantor shall pay all real property taxes assessed against the Property, and shall maintain the title to the Property in good standing.

8. Liens. Grantee shall keep Grantor's interest in the Property free of all liens for labor or materials furnished to Grantee in its operations hereunder or otherwise arising from any activities that Grantee conducts on the Property, except for any such liens not yet due; provided that Grantee may refuse to pay any claims asserted against it or the Property that Grantee disputes in good faith. Grantee may, but shall have no obligation to, contest the validity of any lien on the Property at its expense, and Grantor shall cooperate in such contest, including but not limited to allowing such contest to be taken and prosecuted in Grantor's name. Any such lien shall not be deemed a default unless finally adjudicated to be valid and not discharged by Grantee. Grantor shall not cause or allow any other liens, encumbrances, or adverse claims to accrue against the Property, except for any liens, encumbrances or adverse claims that Grantor is in good faith contesting or that arise from Grantee's activities on the Property.

9. Indemnities and Insurance.

(a) Grantee shall indemnify, defend, release and hold harmless Grantor, its successors and assigns, along with their respective officers, directors, agents and employees, from any and all claims, demands, suits, losses, damages, demands, and liabilities whatsoever, including but not limited to environmental or reclamation liabilities, litigation costs and attorneys' fees, arising from or in connection with use of the Property by Grantee, its agents, employees or invitees. Sections 9(a) and 9(b) shall survive termination or expiration of this Agreement.

(b) Grantor shall indemnify, defend, release and hold harmless Grantee, its affiliates and subsidiaries and its successors, along with their respective officers, directors, employees, shareholders and agents, from and against any and all claims, losses, damages,



demands, and liabilities whatsoever arising from or in connection with the Property, other than those covered by Grantee's indemnification obligation set forth in Section 9(a) above.

(c) Grantee agrees to carry general liability insurance with respect to its activities on the Property in the amount of One Million Dollars (\$1,000,000.00). Such liability insurance shall designate Grantor as an additional insured. A copy of such insurance certificate will be provided to Grantor at Grantor's request.

10. Termination of Agreement.

(a) Grantee may terminate this Agreement as to all or a portion of the Property at any time by giving written notice thereof to Grantor.

(b) If Grantee fails to materially comply with any term or condition of this Agreement or comply with any obligation of this Agreement within 30 days following the receipt of written notice from Grantor specifying the nature of the default, Grantor may terminate this Agreement by written notice to Grantee. If the default cannot be completely cured within such 30-day period, this Agreement shall not be terminated provided that Grantee diligently commences correction of the default within such 30-day period and thereafter proceeds with diligence and in good faith to complete the remedy as soon as possible.

11. Post Termination or Expiration.

(a) Upon the expiration or termination of this Agreement, Grantee shall promptly reclaim all disturbances on the Property caused by or on behalf of Grantee, in accordance with applicable Laws. To the extent allowed by applicable Laws, Grantee shall construct a soil berm around the reclaimed clay stockpile area and any required stormwater management ponds or facilities. Subject to Section 11(d) below, Grantee shall remove from the Property all machinery, facilities and equipment owned or installed by Grantee, unless otherwise agreed in writing with Grantor. Grantee shall use reasonable efforts to remove all stockpiled clay from the Property and complete all required reclamation work within six months following the expiration or termination of this Agreement.

(b) The parties recognize that the current reclamation plan approved by the Colorado Division of Reclamation, Mining and Safety ("DRMS") for Grantee's activities on the Property will need to be modified to allow for construction of a berm around the clay stockpile area, for associated stormwater controls and, if the parties agree, to allow for reclamation of the clay stockpile area in a manner that generally maintains the post-mining topography and slope in the vicinity of the clay stockpile area. Grantor shall cooperate with Grantee in seeking to obtain any necessary approvals from DRMS for such modification, including providing any necessary land owner consents.

(c) Following termination or expiration of this Agreement, Grantee shall have a continuing right to access the Property for the purpose of completing any reclamation, restoration, inspections or monitoring required by applicable Laws for so long as reasonably necessary to complete all such reclamation, restoration, inspections and monitoring.



(d) Following the expiration or termination of this Agreement, any roads or gates on or within the Property, including the driveway accessing Elbert County Road 194/Arapahoe County Road 50, shall be left in place, in a passable and workable condition, to the extent authorized by applicable Laws.

12. Force Majeure. If any party is prevented from complying with any of its obligations under this Agreement by a force majeure (the "Affected Obligations"), the Affected Obligations shall be suspended and that party shall not be deemed in default or liable for damages or other remedies as a result thereof for so long as the party is prevented from complying with the Affected Obligations by the force majeure. For purposes of this Agreement, "force majeure" shall mean any matter (whether foreseeable or unforeseeable) beyond Grantee's reasonable control, including but not limited to: acts of God; unusually inclement weather; acts of war, insurrection, riots or terrorism, strikes, lockouts or other labor disputes; inability to obtain necessary equipment or materials, or obtain permits, approvals or consents; damage to, destruction of, or unavoidable shutdown of necessary facilities or equipment; and acts or failures to act on the part of local, state, federal, or foreign governmental agencies or courts, allegedly sovereign Native entities or organizations, or any officer or official acting under color of governmental authority.

13. Transfer of Interests. Grantor may transfer any of its interest in the Property or this Agreement to any third party, provided that Grantor shall provide notice of the transfer to Grantee within 30 days after the transfer, and any such transfer shall be made expressly subject to the terms of this Agreement. Grantee may transfer its interest in this Agreement to any third party, provided that Grantee shall provide notice of the transfer to Grantor within 30 days after the transfer.

14. Inurement. All covenants, conditions, indemnities, limitations and provisions contained in this Agreement apply to and are binding upon the parties to this Agreement, and their heirs, representatives, successors and assigns. This Agreement is intended to run with the land and shall be binding on any subsequent owner of any interest in the Property.

15. Amendment. This Agreement may not be amended or modified except by an instrument in writing, signed by both parties hereto.

16. Notice. All notices or other communications to any party pursuant to this Agreement shall be in writing and shall be sufficiently given if (i) delivered in person, (ii) sent by registered or certified mail, return receipt requested, or (iii) sent by overnight mail by a courier that maintains a delivery tracking system. Subject to the following sentence, all notices shall be effective and shall be deemed delivered (i) if by personal delivery, on the date of delivery, (ii) if by mail, on the date of delivery as shown on the actual receipt, and (iii) if by overnight courier, as documented by the courier's tracking system. A party may change its contact information by providing notice to the other party pursuant to this Section.

All notices to Grantor shall be delivered to:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MATTHEW FAULHABER

TEODORA ZIMBECK

GENERAL SHALE BRICK, INC.

By:

Name: Bryan Hoilman

Title: Director of Procurement and Real Estate

STATE OF COLORADO)

COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me on this 23 day of October, 2021, by MATTHEW FAULHABER, an individual.

Witness my hand and official seal.

My commission expires: 7-30-25

Adam P. Lobato
Notary Public

ADAM P LOBATO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124062132
MY COMMISSION EXPIRES JULY 30, 2025

STATE OF COLORADO)

COUNTY OF Arapahoe) ss.

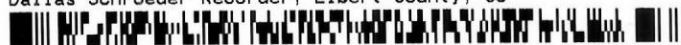
The foregoing instrument was acknowledged before me on this 23 day of October, 2021, by TEODORA ZIMBECK, an individual.

Witness my hand and official seal.

My commission expires: 7-30-25

Adam P. Lobato
Notary Public

ADAM P LOBATO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124062132
MY COMMISSION EXPIRES JULY 30, 2025



Matthew Faulhaber
7355 Patrick Trail
Elizabeth, CO 80107

All notices to Grantee shall be delivered to:

General Shale Brick, Inc.
1845 W. Dartmouth Ave.
Denver, CO 80110

17. Entire Agreement. All of the agreements and understandings of Grantee and Grantor with reference to the subject matter of this Agreement are embodied in this Agreement.

18. Further Assurances. Each of the parties agrees that it will take from time to time such actions and execute such additional documents as may be reasonably necessary or convenient to implement and carry out the intent and purposes of this Agreement.

19. Attorney Fees. In any litigation between the parties to this Agreement or persons claiming under them resulting from, arising out of, or in connection with this Agreement or the construction or enforcement thereof, the prevailing party shall be entitled to recover from the other party, all reasonable costs, expenses, attorney's fees, expert fees, and other costs of suit incurred by it in connection with such litigation, including such costs, expenses and fees incurred prior to the commencement of the litigation, in connection with any appeals, and collecting any final judgment entered therein. If a party substantially prevails on some aspects of such action, but not on others, the court may apportion any award of costs and attorney's fees in such manner as it deems equitable.

20. Construction. The section and paragraph headings contained in this Agreement are for convenience only, and shall not be used in the construction of this Agreement. The invalidity of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

22. Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with, and otherwise governed in all respects by, the laws of the State of Colorado without regard to that State's conflicts of laws provisions.

23. Waiver. The failure of either party to insist upon the strict and prompt performance of any of the terms, covenants, agreements, and conditions herein contained, by the other party, shall not constitute or be construed as a waiver or relinquishment of such party's right or rights thereafter to enforce any term, covenant, or provision in this Agreement.



STATE OF TENNESSEE)

COUNTY OF Sullivan) ss.

The foregoing instrument was acknowledged before me on this 5th day of April, 2022, by Bryan Hoilman, as Director of Procurement and Real Estate of GENERAL SHALE BRICK, INC.

Witness my hand and official seal.

My commission expires: January 21, 2024

Kimberly R. Witherspoon
Notary Public



My Commission Expires
January 21, 2024



**EXHIBIT 1
TO TERM SURFACE USE AGREEMENT**

The Property

EXHIBIT A
PARCEL 3
FOXWOOD RANCHES SUBDIVISION
ELBERT COUNTY, COLORADO.
A PART OF THE NE $\frac{1}{4}$, SECTION 2,
TOWNSHIP 6 SOUTH, RANGE 64 WEST
OF THE 6TH PRINCIPAL MERIDIAN

