

## GRANT OF EASEMENT

THIS GRANT OF EASEMENT is entered into this 1<sup>st</sup> day of June, 2004, between **THE RUSSELL C. BARGER TRUST DATED MAY 22, 1997, PATRICIA A. RUSSELL and DELORES J. BARGER ("Grantors")** and **PIONEER SAND COMPANY, INC. ("Grantee")**.

### WITNESSETH:

WHEREAS, Grantors, together or separately, own the real property described as follows:

See Exhibit A attached hereto and by this reference incorporated herein ("**Grantors' Property**"); and

WHEREAS, Grantee owns the real property described as follows:

See Exhibit B attached hereto and by this reference incorporated herein ("**Grantee's Property**"); and

WHEREAS, Grantee desires an easement across the property described on Exhibit A to the property described on Exhibit B;

NOW, THEREFORE, it is agreed, upon the exchange of mutual consideration, the adequacy and receipt of which is acknowledged by each of the parties hereto, as follows:

1. Grant of Easement. Grantors hereby grant to Grantee as the owner of the property described on Exhibit B and each of the successors and assigns of Grantee, as owner(s) of the property described on Exhibit B for the use by Grantee and its successors, assigns, invitees, employees, agents, licensees, and guests (the "Grantee's Beneficiaries") an appurtenant permanent easement for access, passage and for the use of vehicular ingress and egress upon, across, and over the property described on Exhibit A. Said access shall be 60 feet in width and shall be the existing roadway currently providing access across the property described on Exhibit A from U.S. Highway 287 to the property described on Exhibit B (the "**Easement**").

2. Nonexclusive Use. Grantee's use of the Easement property shall be nonexclusive with others who may be invited to use said property by the Grantors. In this regard, Grantee acknowledges that the Easement is used for road purposes by individuals that are traveling to and from private homes to the west and businesses that are also located near the Easement.

3. Maintenance of Easement. So long as Grantee is using the Easement property for the operation of the quarry located on Grantee's Property, Grantee agrees at

SCOTT DOYLE, CLERK  
LARIMER COUNTY CO  
RCPTN# 2004-0074972  
07/30/2004  
12:16:00  
#362785  
PAGES - 9 FEE \$46.00 DOC \$0.00

CLERKS NOTE: LEGIBILITY OF WRITING,  
TYPING OR PRINTING UNSATISFACTORY IN  
PORTIONS OF THIS DOCUMENT WHEN RECEIVED

2 its sole cost and expense to maintain and repair the Easement to at least as good a condition as currently exists. In this regard, Grantee agrees to take reasonable steps necessary to control any dust and/or other pollution caused by vehicles using the Easement for access to and from the Grantee's Property. Further, Grantee will take the reasonable steps necessary to insure that vehicles traveling to and from the Grantee's Property adhere to the posted 15 mph speed limit for said road. Grantee may, but shall have no obligation to, remove snow from the Easement property.

4. Insurance. Grantee will obtain and maintain liability insurance of at least One Million and No/100 Dollars (\$1,000,000.00) for any claims of personal injury or property damage on the Easement arising from the use of the Easement property by Grantee and the Grantee's Beneficiaries. Grantors shall be shown as additional named insureds on said policy. Grantee shall indemnify, defend and hold harmless Grantors and their respective successors and assigns from and against any and all claims and causes of action asserted against any or all of them in any way arising from or in connection with the use of the Easement property by Grantee, Grantee's Beneficiaries or anyone else authorized to use the Easement property by Grantee, and all damages, liabilities, losses, judgments, costs and expenses (including, without limitation, reasonable attorney's fees) incurred or suffered by the indemnified parties as a result of or in connection with such claims and causes of action.

5. No Dedication. The Easement granted by this agreement is not intended, nor will it create, any prescriptive right in the public to the Easement conveyed and granted by this agreement.

6. Covenant Running with the Land. This agreement and the covenants and conditions contained herein run with the land and will inure to the benefit of and be binding upon both the Grantors and the Grantee and their respective successors, assigns, and transferees. Upon the transfer of ownership of either or both of the property shown on Exhibits A and B, all rights and duties and obligations of this agreement as to the respective property owners shall transfer to the new owner thereof, and the previous owner shall be relieved of any rights, duties and obligations which may accrue after the date of said transfer.

7. Remedies in Case of Default. In the event of a default by either of the parties hereto, the nondefaulting party shall give written notice of said default to the defaulting party. The defaulting party shall then commence to cure said default within ten (10) days after receipt of said written notice and shall proceed to completion of said cure in a timely manner. If the defaulting party fails to do so, the nondefaulting party is entitled to pursue whatever rights or remedies are available to it, both legal and equitable, as provided by law, and shall also be entitled to reimbursement of all reasonable attorney's fees incurred in connection with the enforcement of the terms herein, provided, however, a default by one party will not give the nondefaulting party the right to terminate the Easement granted by this agreement.

8. Entire Understanding. This agreement sets forth the entire understanding

3 between the parties relating to the subject matter hereof and any and all prior correspondence, conversations and memoranda or other writings are merged herein and are without effect hereon.

9. Extent of Easement. The Easement is granted only for the use of the present and future owners of the property described on Exhibit B and the Grantee's Beneficiaries solely for the use of allowing the owner of the property described on Exhibit B ingress, egress and access to and from the property described to U.S. Highway 287 as it currently exists.

10. Survey of Easement. The parties hereto do not require that the exact location of the Easement be surveyed at the present time. In the future, both the Grantors and the Grantee reserve the right to have the Easement surveyed and to provide a survey description showing the exact location of the Easement.

11. Notices. Any notice or other communication given by any of the parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below; or (ii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below; or (iii) on the date and at the time shown on the facsimile if telecopied to the number specified below and receipt of such telecopy is acknowledged:

(a) If to Grantors:

The Russell C. Barger Trust Dated May 22, 1997  
125 S. Howes Street, 7<sup>th</sup> Floor  
Fort Collins, CO 80521  
Attn: Richard F. Spillman, Trustee  
Facsimile: (970) 482-3231

Patricia A. Russell  
P.O. Box 237  
La Porte, CO 80535  
Facsimile: (970) 223-9334

Delores J. Barger  
11585 N. Highway 287  
La Porte, Co 80535  
Facsimile: 493-0433

4

(b) If to Grantee:

Pioneer Sand Company, Inc.  
P.O. Box 7650  
Colorado Springs, CO 80933-7650  
Attn: Joe Kraig, President  
Facsimile: (719) 599-5317

IN WITNESS WHEREOF, Grantors and Grantee have caused this agreement to be executed by their respective duly authorized officers, as of the day and year first above written.

**"GRANTORS"**

THE RUSSELL C. BARGER TRUST DATED  
MAY 22, 1997

By: Richard F. Spillman  
Richard F. Spillman, Trustee

Patricia A. Russell  
Patricia A. Russell

Delores J. Barger  
Delores J. Barger

**"GRANTEE"**

PIONEER SAND COMPANY, INC.

By: Joe Kraig  
Joe Kraig, President

STATE OF COLORADO )  
 )ss.  
COUNTY OF LARIMER )

Subscribed and sworn to before me this 1<sup>st</sup> day of July, 2004  
by Richard F. Spillman, Trustee of The Russell C. Barger Trust Dated May 22, 1997.

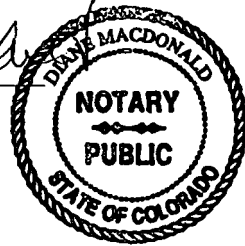
Witness my hand and official seal.

My commission expires:

7/27/2007

*Deane MacDonald*

Notary Public



STATE OF COLORADO )  
 )ss.  
COUNTY OF LARIMER )

Subscribed and sworn to before me this 1<sup>st</sup> day of July, 2004  
by Patricia A. Russell.

Witness my hand and official seal.

My commission expires:

7/27/2007

*Deane MacDonald*

Notary Public



STATE OF COLORADO )  
 )ss.  
COUNTY OF LARIMER )

Subscribed and sworn to before me this 1 day of July, 2004  
by Delores J. Barger.

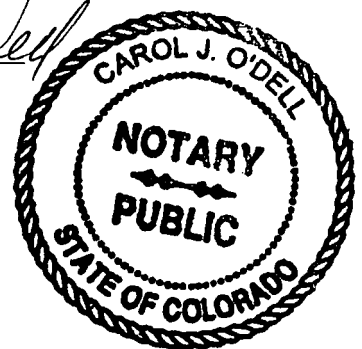
Witness my hand and official seal.

My commission expires:

11-8-2005

*Carol J. O'Dell*

Notary Public

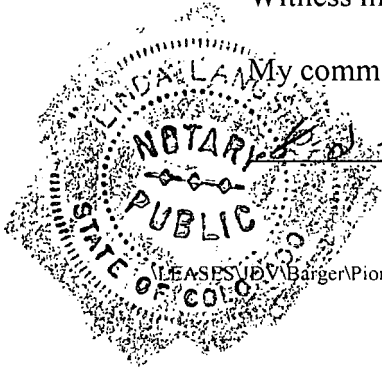



6  
STATE OF COLORADO     )  
                                      )ss.  
COUNTY OF EL PASO     )

Subscribed and sworn to before me this 28 day of June, 2004  
by Joe Kraig, as President of Pioneer Sand Company, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires:



  
Notary Public

LEASES\DV\Barger\Pioneer\GRANT OF EASEMENT(Final 6-1-2004).doc

7

**EXHIBIT A**

The Northeast Quarter of the Southeast Quarter of Section 24, Township 9 North, Range 70 West of the 6<sup>th</sup> P.M. and that portion of the Northwest Quarter of the Southeast Quarter of Section 24, Township 9 North, Range 70 West of the 6<sup>th</sup> P.M., not included on Exhibit B.

8  
EXHIBIT B

PARCEL I

That portion of the Northeast Quarter of Section 24, Township 9 North, Range 70 West of the 6th P.M., which, considering the North line of said Northeast Quarter as bearing South 89 degrees 55 minutes 44 seconds West, and with all bearings contained herein relative thereto, being more particularly described by the following boundary lines:

Commencing at the North Quarter corner of said Section 24; thence South 01 degrees 35 minutes 27 seconds East 1330.48 feet to the Center-North sixteenth corner; thence North 89 degrees 39 minutes 26 seconds East 100.68 feet to the True Point of Beginning, said point being on the South line of the Northwest Quarter of the Northeast Quarter of Section 24; thence North 03 degrees 11 minutes 52 seconds West 376.23 feet; thence South 90 degrees 00 minutes 00 seconds East 1100.74 feet; thence South 06 degrees 32 minutes 06 seconds East 16.24 feet; thence South 12 degrees 20 minutes 23 seconds West 126.09 feet; thence South 05 degrees 33 minutes 44 seconds West 224.28 feet; thence South 01 degrees 00 minutes 13 seconds East 6.92 feet to the sixteenth line; thence South 89 degrees 39 minutes 26 seconds West 1033.05 feet, more or less, to the True Point of Beginning, County of Larimer, State of Colorado; containing 9.098 acres.

PARCEL II

That portion of the Northeast Quarter of Section 24, Township 9 North, Range 70 West of the 6th P.M., which, considering the North line of said Northeast Quarter as bearing South 89 degrees 55 minutes 44 seconds West, and with all bearings contained herein relative thereto, being more particularly described by the following boundary lines:

Commencing at the North Quarter corner of said Section 24; thence South 01 degrees 35 minutes 27 seconds East 1330.48 feet to the Center-North Sixteenth corner; thence North 89 degrees 39 minutes 26 seconds East 100.68 feet to the True Point of Beginning, said point being on the South line of the Northwest Quarter of the Northeast Quarter of Section 24; thence North 89 degrees 39 minutes 26 seconds East 1033.05 feet; thence South 01 degrees 00 minutes 13 seconds East 73.65 feet; thence South 01 degrees 20 minutes 17 seconds East 693.50 feet; thence South 02 degrees 37 minutes 49 seconds East 374.57 feet; thence South 01 degrees 11 minutes 14 seconds East 183.49 feet to the Quarter line; thence South 89 degrees 23 minutes 09 seconds West 1024.15 feet; thence North 02 degrees 25 minutes 43 seconds West 662.13 feet; thence North 00 degrees 56 minutes 25 seconds West 454.34 feet; thence North 03 degrees 11 minutes 52 seconds West 213.34 feet, more or less to the True Point of Beginning, County of Larimer, State of Colorado; containing 31.309 acres.



12/9

PARCEL III

That portion of the Southeast Quarter of Section 24, Township 9 North, Range 70 West of the 6th P.M., which, considering the North line of said Northeast Quarter as bearing South 89 degrees 55 minutes 44 seconds West and with all bearings contained herein relative thereto, being more particularly described by the following boundary lines:

Commencing at the North Quarter corner of said Section 24; thence South 01 degrees 35 minutes 27 seconds East 2660.95 feet to the Center Quarter corner of Section 34; thence North 89 degrees 23 minutes 09 seconds East 111.17 feet to the True Point of Beginning, said point being on the South line of the Southwest Quarter of the Northeast Quarter of Section 24; thence North 89 degrees 23 minutes 09 seconds East 1024.15 feet; thence South 01 degrees 11 minutes 14 seconds East 34.54 feet; thence South 04 degrees 36 minutes 07 seconds East 214.00 feet; thence South 07 degrees 18 minutes 50 seconds East 344.60 feet; thence South 38 degrees 38 minutes 50 seconds East 27.92 feet; thence South 01 degrees 15 minutes 50 seconds East 161.09 feet; thence South 10 degrees 47 minutes 46 seconds West, 171.61 feet; thence South 66 degrees 44 minutes 45 seconds West 586.45 feet; thence South 58 degrees 10 minutes 13 seconds West 300.61 feet; thence North 90 degrees 00 minutes 00 seconds West 27.25 feet; thence North 14 degrees 20 minutes 14 seconds West 765.36 feet; thence North 06 degrees 17 minutes 34 seconds West 580.53 feet; thence North 02 degrees 25 minutes 43 seconds West 1.63 feet, more or less, to the True Point of Beginning, County of Larimer, State of Colorado; containing 25.593 acres.