

STATE OF
COLORADO

Armstrong - DNR, Ursula <ursula.armstrong@state.co.us>

Buffalo No 1 (M-1978-011) / Inspection Problem Letter

David Garrett <David.Garrett@generalshale.com>
To: "ursula.armstrong@state.co.us" <ursula.armstrong@state.co.us>
Cc: Jason McGraw <Jason.McGraw@generalshale.com>

Wed, Jul 9, 2025 at 1:18 PM

Hi Ursula,

Jason and I discussed the e-mail below, and I have reviewed your prior e-mails and memos on the outstanding requests; specifically, the issue regarding the legal right to enter. I wanted to follow-up with you directly to clarify a few things as they relate to the legal status and rights of the entities involved and make sure I have a clear understanding of the State's position.

I believe Jason previously provided the April 1987 Lease between Liberty Land and Cattle Co and Robinson Brick Company (the "Lease") to you, but I will attach it to this e-mail for clarity. I did not infer from your July 2 e-mail that you dispute that Robinson ("RBC") retains the right under the Lease to enter upon the property at issue for purposes of reclamation. However, your e-mail does indicate that the State takes issue with that right belonging to RBC rather than General Shale, who currently holds the permit for the property. Please correct me if that is a misstatement.

If all of that is correct, I deduce that if General Shale were named in the Lease, rather than RBC, the State would take no issue with the Lease satisfying the requirement under Rule 6.4.14.

I understand you may have had no reason to dig this far into the history here, but I wanted to clarify a few points I think are relevant. First, RBC was acquired by and merged into General Shale in 2007/2008. For your convenience, I have attached two documents filed with state offices in both Colorado and Delaware demonstrating this. Accordingly, pursuant to C.R.S. § 7-90-204(1)(a), all of the rights of RBC vested in, as a matter of law, and became the rights of General Shale after the 2007/2008 acquisition/merger. Here, the Lease, at Section 14, states: "[RBC] may enter said premises after the termination of this Lease for the purpose of reclamation consistent with directives of governmental agencies." Notably, this right of entry is neither limited in time nor expires after a set period of time (*i.e.*, the Lease does not limit the right to enter for the purpose of reclamation to, for example, 2, 5, or 10 years after expiration/termination of the Lease). Thus, RBC's right to enter for purposes of reclamation vested in and became the right of General Shale indefinitely after the 2007/2008 acquisition/merger.

Notwithstanding the foregoing, the Lease, at Section 8, states: "[RBC] shall have the right to assign this Lease in whole or in part at any time and from time to time." So, even if, for the sake of argument, RBC's rights did not automatically vest in and become those of General Shale upon the acquisition/merger, the Lease freely permits assignment between RBC and General Shale, such that General Shale can lawfully exercise any right, such as the right to enter for reclamation under the Lease, that RBC assigned to it.

Finally, as I'm sure you know, the Lease was recorded on May 4, 1987 at Book 405 Page 869. As such and pursuant to C.R.S. § 38-35-109, it is properly in the chain of title and valid as against any subsequent owner of the property. By this, I mean no subsequent owner could argue that RBC/General Shale's rights under the Lease are invalid due to the new owner not being on notice of the Lease's existence.

For the foregoing reasons and as a matter of law, any legal right to enter the property afforded to RBC under the Lease was either automatically vested in General Shale as a result of the 2007/2008 acquisition/merger or was freely assignable

by RBC to General Shale pursuant to the terms of the Lease, and, as such, providing a copy of the Lease explicitly satisfies Rule 6.4.14's requirement.

Since we believe General Shale already has the legal right to enter the property for purposes of reclamation under the Lease, we did not want to take any unnecessary steps, particularly anything which might create friction with the landowner(s) who may or may not be receptive to being approached and asked to sign a legal document requiring them to first retain the assistance of counsel. However, if that will be necessary, it would be helpful to get a better understanding of the State's position on the issues above so that, if necessary, we can be prepared to explain to the new owner and/or their legal counsel why the Lease is insufficient and we are making this request.

I look forward to hearing from you and hope we can gain better clarity on how we need to proceed.

Sincerely,

David C. Garrett, Jr.

In-House Counsel

General Shale
 wienerberger

General Shale | www.generalshale.com

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Johnson City, TN 37601

C 423.930.3016

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[Quoted text hidden]

3 attachments

 **Buffalo Section 4 Liberty RBC Agreement 4-30-1987.PDF**
261K

 **Certificate of Merger_Robinson Brick Company (002).pdf**
200K

 **Robinson Merger into General Shale.pdf**
1195K

RECEPTION No. 273909 MAY 10 1987
Elbert County Recorder
C. R. Keshberg
LEASE

BOOK 435 PAGE 869

THIS AGREEMENT made and entered into this 30th day of April, 1987 by and between Liberty Land and Cattle Co., a Colorado Joint Venture, hereinafter referred to as Lessor, and Robinson Brick Company, a Colorado corporation with offices at 1845 West Dartmouth, Denver, Colorado, hereinafter referred to as Lessee,

W I T N E S S E T H :

1. Description of Property - Grant of Lease. Lessor in consideration of Ten (\$10.00) Dollars and other considerations not mentioned including but not limited to: (1) The release of a clay lease by Lessee on other lands owned by Lessor, (2) Lessor's assurance that it, its managing partner and joint venturers individually and their grantees and assigns will cooperate with and not object to Lessee obtaining permits to explore, mine, and remove clay from Section 4, Township 8 South, Range 62 West, 6th PM., and Sections 27, 28, and 34, Township 7 South, Range 62 West, 6th P.M., all in Elbert County Colorado, whether required by county, state and/or federal governments; and, the covenants to be performed by the Lessee, the receipt of which is hereby acknowledged, does hereby lease and demise unto Lessee the following described real estate situate in the County of Elbert, State f Colorado, to wit:

South half of the South half (S1/2 S1/2) of Section four (4) and the Northwest Quarter of the Southwest Quarter (NW1/4 SW1/4) of Section

four (4) all in Township eight south (T8S), Range sixty-two West (R62W), Sixth P.M., County of Elbert, State of Colorado.

2. Term of Lease. The term of this Lease shall be a period of ten (10) years from the date hereof, hereinafter called the Primary Term, and as long thereafter as mining activity is maintained, including but not limited to prospecting, investigating and exploring, excavating, producing and removing clay, or clay derivatives and subsoil from the real property above-described.

3. Fee Simple Title. Lessor represents and warrants that it has fee simple title to the real property and the right and power to lease the same.

4. Possession, Purpose and Control of Property. Lessee shall have the right to immediately hold and use the real estate above-described for the purpose of prospecting, investigating and exploring for, producing, excavating 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.

5. Annual Rental and Royalties. Lessor specifically waives any and all rentals and/or royalties from Lessee under this Lease by reason of other considerations granted and conveyed to Lessor by Lessee.

6. Acts Beyond Control of Lessee. Whenever, as a result of fire, flood, windstorms, 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 men, material or transportation, or any other cause reasonably beyond Lessee's control, Lessee shall be prevented from performing any term or condition of this Lease, Lessee shall not be liable in damages or for forfeiture of this Lease, and its obligations hereunder shall be suspended so long as such cause persists whether during the Primary Term or thereafter.

7. Change of Ownership. No change of ownership of the real property shall be binding upon Lessee unless and until written notice and proof thereof satisfactory to Lessee shall be submitted to it.

8. Assignment of Lease and Surrender. Lessee shall have the right to assign this Lease in whole or in part at any time and from time to time.

9. Notices. All written notices shall be sent by certified mail at such addresses as the parties may from time to time designate in writing.

10. Injuries Occurring on the Real Property. During the term hereof, Lessee shall assume all responsibility for injury to its employees or other persons on the real property resulting from Lessee's operations thereon, and shall provide and maintain adequate Workman's Compensation and liability insurance.

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

12. Personal Property and Improvements. In the event of the termination of the Lease 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 90 days after expiration of the term of this Lease.

13. Rights-of Way. During the term of this Lease, 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 from the leased premises to the county road or highway.

14. Operations Requirements. Lessee shall conduct all operations on said leased property including reclamation operations consistent with sound and workmanlike mining practices and fully comply with all applicable statutes, regulations and local ordinances covering reclamation and restoration of the subject premises. Lessee may enter said premises after the termination of this Lease for the purpose of reclamation consistent with directives of governmental agencies.

15. Record. Lessee shall keep accurate records of the amounts and kinds of clay, clay derivatives and subsoil removed from the leased premises.

16. Prior Lease. Lessor and Lessee specifically agree that this Lease supersedes that certain Exploration Agreement Clay Mining Lease from Archie K. Lyttle and Mabel Lyttle to the Robinson Brick and Title Company, dated November 4, 1957, and recorded in Book 235 at Page 299 under reception No. 163163, and

upon the execution of this Lease, no annual rental payments or royalties are due Lessor from Lessee.

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

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

LIBERTY LAND AND CATTLE CO.,
A Colorado Joint Venture

By:

Dennis Niewoehner
Its: Managing Partner

ROBINSON BRICK COMPANY,
A Colorado Corporation

By:

George F. [Signature]
Its: President

ATTEST:

[Signature]
Secretary

STATE OF COLORADO)

COUNTY OF Apache)

ss.

The foregoing instrument was acknowledged before me this 16th day of April, 1987, by Dennis Niewoehner, Joint Venturer and Managing Partner, Liberty Land and Cattle Co., a Colorado Joint Venture.

WITNESS MY HAND AND OFFICIAL SEAL

My Commission Expires: 7-11-90

[Signature]
Notary Public

Address: 6312 S. Ladd Ave
Englewood, CO 80111

STATE OF COLORADO)

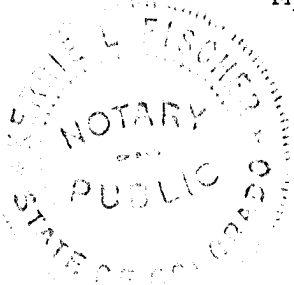
City & COUNTY OF Denver)

SS.

The foregoing instrument was acknowledged before me this 30th day of April, 1987, by F. George Robinson, Jr., President, and Belmore T. Martin, Secretary of Robinson Brick Company, a Colorado Corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission Expires: 3-10-91



Kerrie L. Fischer
Notary Public
Address: 5060 W. Oregon Pl.
Denver, Co 80219

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If document is filed on paper
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and select Business Center.

Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

Statement of Merger
(Surviving Entity is a Foreign Entity)

filed pursuant to § 7-90-203.7 and § 7-90-204.5 of the Colorado Revised Statutes (C.R.S.)

1. For each merging entity, its ID number (if applicable), entity name or true name, form of entity, jurisdiction under the law of which it is formed, and principal address are

(Caution: At least one merging entity must be an entity formed under the laws of Colorado.)

ID Number	19871109310 <i>(Colorado Secretary of State ID number)</i>		
Entity name or true name	Robinson Brick Company		
Form of entity	Corporation		
Jurisdiction	Colorado		
<u>Street</u> address	1845 West Dartmouth Avenue <i>(Street number and name)</i>		
	Denver <i>(City)</i>	CO <i>(State)</i>	80110 <i>(ZIP/Postal Code)</i>
	<i>(Province – if applicable)</i>	USA <i>(Country)</i>	
<u>Mailing</u> address (leave blank if same as street address)	<i>(Street number and name or Post Office Box information)</i>		
	<i>(City)</i>	<i>(State)</i>	<i>(ZIP/Postal Code)</i>
	<i>(Province – if applicable)</i>	<i>(Country)</i>	

ID Number	<i>(Colorado Secretary of State ID number)</i>		
Entity name or true name			
Form of entity			

Jurisdiction

Street address

(Street number and name)

(City)

(State)

(ZIP/Postal Code)

(Province – if applicable)

(Country)

Mailing address

(leave blank if same as street address)

(Street number and name or Post Office Box information)

(City)

(State)

(ZIP/Postal Code)

(Province – if applicable)

(Country)

ID Number

(Colorado Secretary of State ID number)

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Form of entity

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Street address

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(State)

(ZIP/Postal Code)

(Province – if applicable)

(Country)

Mailing address

(leave blank if same as street address)

(Street number and name or Post Office Box information)

(City)

(State)

(ZIP/Postal Code)

(Province – if applicable)

(Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)



There are more than three merging entities and the ID number (if applicable), entity name or true name, form of entity, jurisdiction under the law of which it is formed, and the principal address of each additional merging entity is stated in an attachment.

2. For the surviving entity which is a foreign entity, its entity ID number (if applicable), entity name or true name, form of entity, jurisdiction under the law of which it is formed, and principal address are

(Caution: The surviving entity cannot be an entity formed under the laws of Colorado.)

ID Number

20071593249

(Colorado Secretary of State ID number)

Entity name or true name General Shale Brick, Inc.

Form of entity Corporation

Jurisdiction Delaware

Street address 3211 N. Roan Street
(Street number and name)

Johnson City TN 37602
(City) (State) (ZIP/Postal Code)

(Province – if applicable) USA
(Country)

Mailing address
(leave blank if same as street address) (Street number and name or Post Office Box information)

(City) (State) (ZIP/Postal Code)

(Province – if applicable) (Country)

3. Each merging entity has been merged into the surviving foreign entity.

4. (If the following statement applies, adopt the statement by marking the box and state the appropriate document number(s).)

- ☐ One or more of the merging entities is a registrant of a trademark described in a filed document in the records of the secretary of state and the document number of each filed document is

Document number _____

Document number _____

Document number _____

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

- ☐ There are more than three trademarks and the document number of each additional trademark is stated in an attachment.

5. (Mark the applicable box and complete the statement. Caution: Mark only one box.)

- ☒ The surviving foreign entity maintains a registered agent in this state.

OR

- ☐ The surviving foreign entity does not maintain a registered agent in this state and service of process may be addressed to the entity and mailed to the principal address pursuant to section 7-90-704 (2), C.R.S.

OR

- ☐ The surviving foreign entity has not maintained a registered agent in this state and appoints a registered agent to accept service pursuant to section 7-90-204.5, C.R.S. The person appointed as registered agent has consented to being so appointed. Such registered agent's name and address are

Name
(if an individual)

(Last) (First) (Middle) (Suffix)

OR

(if an entity)

(Caution: Do not provide both an individual and an entity name.)

Street address

(Street number and name)

(City)

CO
(State)

(ZIP Code)

Mailing address

(leave blank, if same as street address)

(Street number and name or Post Office Box information)

(City)

CO
(State)

(ZIP Code)

6. (If applicable, adopt the following statement by marking the box and include an attachment.)

☐ This document contains additional information as provided by law.

7. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document are _____
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S. and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is identified in this document as one who has caused it to be delivered.

8. The true name and mailing address of the individual causing this document to be delivered for filing are

Green	Richard	L.	
(Last)	(First)	(Middle)	(Suffix)
c/o General Shale Brick, Inc.			
(Street number and name or Post Office Box information)			
3211 N. Roan Street			
Johnson City	TN	37601	
(City)	(State)	(ZIP/Postal Code)	
	USA		
(Province - if applicable)	(Country)		

(If applicable, adopt the following statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ROBINSON BRICK COMPANY", A COLORADO CORPORATION,
WITH AND INTO "GENERAL SHALE BRICK, INC." UNDER THE NAME OF
"GENERAL SHALE BRICK, INC.", A CORPORATION ORGANIZED AND
EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED
AND FILED IN THIS OFFICE THE SECOND DAY OF JANUARY, A.D. 2008,
AT 10:44 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE
NEW CASTLE COUNTY RECORDER OF DEEDS.



3735567 8100M

080000861

You may verify this certificate online
at corp.delaware.gov/authver.shtml

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6277063

DATE: 01-02-08

CERTIFICATE OF OWNERSHIP AND MERGER
MERGING
ROBINSON BRICK COMPANY
WITH AND INTO
GENERAL SHALE BRICK, INC.

(Pursuant to Section 253 of the
General Corporation Law of Delaware)

GENERAL SHALE BRICK, INC. ("*Parent*"), a corporation organized and existing under the laws of the State of Delaware, does hereby certify:

FIRST: That the Parent was organized pursuant to the provisions of the General Corporation Law of the State of Delaware, on December 4, 2003.

SECOND: That the Parent owns 100% of the outstanding shares of the capital stock of ROBINSON BRICK COMPANY (the "*Subsidiary*"), a corporation organized pursuant to the provisions of the Business Corporation Act of the State of Colorado on April 13, 1900.

THIRD: That the Parent, by the following resolutions of its Board of Directors, duly adopted by unanimous written consent on January 2, 2008, determined to merge the Subsidiary with and into the Parent, by the adoption thereof:

RESOLVED, that the Board deems it advisable and in the best interest of the Parent for Subsidiary, to merge with and into the Parent, with the Parent being the surviving entity (the "*Transaction*"); and be it further

RESOLVED, that the form, terms and provisions of the Merger Agreement and Plan of Merger, by and between the Parent and the Subsidiary, substantially in the form presented to the undersigned on the date hereof (the "*Merger Agreement*"), and the transactions contemplated thereby, are advisable and in the best interest of the Parent and its sole stockholder; and be it further

RESOLVED, that the Merger Agreement and the transactions contemplated thereby be, and they hereby are, authorized, adopted, approved and ratified in all respects; and be it further

RESOLVED, that the president and any vice president of the Parent be, and they hereby are, and each of them individually hereby is, authorized and empowered, in the name and on behalf of the Parent, to execute and deliver the Merger Agreement with such changes therein as the officer or officers so acting may, by his or their execution thereof approve, and the execution and delivery thereof to be conclusive evidence that the same has been approved; and be it further

RESOLVED, that the form, terms and provisions of the Delaware Certificate of Ownership and Merger and Colorado Statement of Merger, each substantially in the form presented to the undersigned on the date hereof (respectively, the "Delaware Certificate of Merger" and the "Colorado Statement of Merger"), be, and they hereby are, approved in all respects; and that the proper officers of the Parent be, and they hereby are, and each of them individually hereby is, authorized and empowered, in the name and on behalf of the Parent, to execute and file the Delaware Certificate of Merger with the Delaware Secretary of State and the Colorado Statement of Merger with the Colorado Secretary of State, with such changes therein as the officer or officers so acting may, by his or their execution thereof approve, and the execution and delivery thereof to be conclusive evidence that the same has been approved; and be it further

FOURTH: That the Certificate of Incorporation of the Surviving Corporation shall continue to be the Certificate of Incorporation of the surviving corporation until thereafter amended in accordance with applicable law.

FIFTH: That this Certificate of Ownership and Merger shall be effective upon filing with the Delaware Secretary of State.

[The signature page follows]

IN WITNESS WHEREOF, GENERAL SHALE BRICK, INC. has caused this Certificate of Ownership and Merger to be executed in its corporate name this 2nd day of January, 2008.

GENERAL SHALE BRICK, INC.

By:


Mark Kinser
Vice President