

SOUTHEASTERN INDUSTRIAL ENTERPRISES, INC.
RAILCAR NET LEASING AGREEMENT

This AGREEMENT, dated October 12, 1994, is by and between SOUTHEASTERN INDUSTRIAL ENTERPRISES, INC., a Georgia Corporation (hereinafter referred to as "Lessor"), and COLORADO AGGREGATES COMPANY OF NEW MEXICO, a NEW MEXICO Corporation, with its principal place of business at 2255 Lava Lane, Alamosa, Colorado 81101 (hereinafter referred to as "Lessee").

REGISTRATION NO. **19301** -A
LED 1425

W I T N E S S E T
MAR 21 1995 3:00 PM

1. **RAILCARS COVERED BY LEASE.** Lessor agrees to furnish and Lease to Lessee, and Lessee agrees to accept ~~and use, upon the terms and conditions set forth~~ herein, the railcars described on the rider(s) attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties (collectively called the "Cars"). Each rider shall be in the form of Exhibit A attached hereto and shall set forth a description of the Cars of each type, the specific Car marks and numbers as registered with the Association of American Railroads (AAR), the period for which the cars will be leased (the term), the rental charge per-car-per-period, the specific commodity of freight to be carried therein or thereon, any specific restrictions on use, the delivery location, the return location, and other pertinent information that may be desired by both parties. All Cars Leased pursuant to such rider(s), or otherwise delivered to and accepted by Lessee, are and shall be subject to the terms and conditions of this Lease and or any such riders hereto. This agreement and any and all riders hereto are herein collectively called the "Lease".
2. **NET LEASE.** This lease is a net lease. Lessee's obligation to pay all rent and other amounts payable hereunder, to maintain the Cars pursuant to paragraph 8 hereof and to insure the Cars pursuant to paragraph 19 hereof, shall be absolute and unconditional under any and all circumstances.
3. **DELIVERY, INSPECTION AND ACCEPTANCE.** Lessor agrees to deliver the Cars to Lessee at the point(s) designated in the applicable rider hereto or as otherwise mutually agreed between Lessor and Lessee. Lessor shall have no liability or obligation to Lessee for any delay in delivery resulting from causes beyond Lessor's control. Each of the Cars shall be subject to a joint inspection by Lessee and Lessor upon delivery. The condition of each Car will be evidenced by completion of an inspection form in the form of Exhibit B attached hereto. Lessee agrees to accept each such Car or to immediately notify Lessor of the nature and extent of any material defect that causes any Car to be reasonably deemed by the Lessee as unfit for use by Lessee. Execution by Lessee of a joint inspection form showing a Car to be free of material defects shall constitute acceptance thereof by Lessee. If no such inspection form shall have been so executed, then the loading of any Car so delivered, by the Lessee or at its direction, or the failure by Lessee to report any material defect in a car within ten days of delivery, shall be deemed to constitute acceptance thereof by Lessee as of the date of delivery. Lessee is responsible for having each Car visually inspected prior to each loading to determine whether such Car is suitable for receiving, transporting and discharging the commodity to be loaded therein. Lessee shall indemnify and hold Lessor harmless from all claims resulting from conditions which have or should have been determined from such inspection. In addition, Lessee shall be responsible for any loss of or damage (including corrosion damage) to any commodity, or to any Car or part thereof caused by the commodity contained therein or incurred in the process of loading or unloading such commodity, or caused by the chemical environment in which the Car is loaded, unloaded or stored, and Lessee shall indemnify Lessor from all claims resulting therefrom, unless such claims result directly from the negligent act or omission of Lessor. As between Lessee and Lessor, Lessee shall be responsible for any and all risk of loss of, damage to, or destruction of any Car, or part thereof, occurring while such Car is located upon private tracks or premises other than Lessor's.
4. **PAYMENT OF RENT.** Lessee's obligation to pay Lessor rent and any other amounts required under this Lease or any rider hereto for any Car shall commence on the date of delivery by Lessor of such Car and shall continue in all events until the end of the Term for each of the Cars as set forth in the applicable rider hereto, or the obligation to pay the same shall be terminated pursuant to paragraphs 9 or 21 hereof, and, in any case, until the Cars have been returned to the possession of Lessor pursuant to, and in the condition required by, paragraph 13 hereof. Lessee agrees to pay such rent and other amounts due in accordance with the terms of this Lease and any rider hereto. Lessee shall not be entitled to any abatement or reduction of, or setoff against, rent or any other amounts payable hereunder including, but not limited to, abatements, reductions or setoffs arising from any claims of Lessee against Lessor, under this Lease or otherwise, or against any other party. Such amounts shall be paid to Lessor in United States funds, monthly in advance on the first day of each month, and shall be prorated for any period for any Car that is leased for less than a full 30 days in any calendar month. Such payments shall be remitted to Lessor by wire transfer in accordance with instructions indicated on the applicable rider, or by check payable to SOUTHEASTERN INDUSTRIAL ENTERPRISES, INC. via first-class mail to: Southeastern Industrial Enterprises, Inc., Post Office Box 1069, Hartwell, Georgia 30643, or pursuant to such other instructions as Lessor shall from time to time direct in writing.
5. **USE OF CARS.** Lessee agrees (i) to use the Cars exclusively in its own service, except as part of normal interchange service or as hereinafter provided; (ii) to use the Cars only to carry commodities for which the Cars are designed; (iii) to ensure that none of the Cars is loaded in excess of the load limit stenciled on each of the Cars; and (iv) that none of the Cars shall be shipped beyond the boundaries of the United States or Canada except with the prior written consent of Lessor. Lessee may not use the Cars beyond the boundaries of the United States, or otherwise use or sublease the Cars in any

manner, so as to cause Lessor to lose any deductions, credits or other benefits of ownership thereof under the Internal Revenue Code of 1986, as amended.

The Cars shall be used in the service of Lessee, Lessee's affiliates, subsidiaries or legally associated companies with the understanding that Lessee is responsible to fulfill all obligations of this Agreement. Lessee shall not furnish, assign or subcontract any of the Cars, or make any transfer or assignment of this Agreement except to affiliates, subsidiaries or legal associates without Lessor's prior written approval which will not be unreasonably withheld nor withheld for competitive reasons, and provided that Lessee shall remain liable to Lessor for the fulfillment of all obligations under this Agreement. In the event Lessee furnishes, assigns or subcontracts any Car in violation of the foregoing, Lessee shall pay Lessor a daily surcharge equal to 100% of the prorated daily rent for such Car during the period of such furnishing, assignment or subcontract. This Agreement and the rights of Lessee herein shall not be assignable or transferable by operation of law; and no title, leasehold, or property interest of any kind shall vest in Lessee, or in Lessee's successors or assigns, by reason of this Agreement, or by reason of the delivery of the Cars to, or the use of the Cars by, Lessee, its successors or assigns. Subject to the foregoing limitations on assignment and subcontracting, this Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

The average combined loaded and empty mileage of all Cars under this Agreement shall not exceed 40,000 miles during any calendar year during the term hereof. In the event the 40,000 mile limit is exceeded, Lessee shall pay Lessor an amount equal to three (3) cents multiplied by the number of miles, loaded and empty, by which such average exceeds 40,000 multiplied by the number of Cars furnished under this Agreement during such year. The Cars shall be used exclusively within the boundaries of the United States (excluding Alaska and Hawaii) and Canada. Lessee is responsible for all taxes and duties and for complying with all governmental requirements arising out of any of the Cars leaving, being outside of, or returning to the boundaries of the United States; and Lessee shall defend and hold harmless Lessor from any and all claims connected therewith. Lessee shall comply with all AAR and governmental regulations respecting the use and operation of each of the Cars during the term of this Agreement.

6. RECORD OF MOVEMENTS. Lessee agrees to keep accurate and timely records pertaining to the movements of the Cars, and upon the request of Lessor, from time to time, to promptly provide to Lessor complete reports of the Car movements, including but not limited to dates received, loaded and shipped, commodity or freight loaded, destination, full junction routing and all other information or documents which Lessee may originate or receive from railroad companies or other sources which Lessor may reasonably request.

7. TAXES AND CHARGES. Lessor shall be solely responsible for the payment of income taxes assessed against it for any rental payments or other income received under this Lease. Lessee shall pay in a timely manner, and indemnify and hold Lessor harmless from: (i) any and all other taxes (withholding or otherwise), including but not limited to any ad valorem or property taxes imposed by the United States, Canada or Mexico, or any state or province thereof, or any governmental or administrative subdivision thereof, and any sales, lease, use, gross receipts, franchise and single business taxes, and (ii) any and all other charges, license fees, assessments, fines, levies, imposts, duties, tariffs, customs duties, switching charges, mileage equalization charges, empty movement charges, track storage, detention or demurrage charges, including penalties and interest thereon, levied or imposed by any domestic or foreign, federal, state or local government or taxing authority, railroad or other agency, imposed upon, or with respect to, either the Cars, the Lease, Lessee or Lessor in connection with this Lease. Lessee shall be under no obligation to pay any such taxes or other charges so long as Lessee is contesting in good faith and by appropriate legal proceedings imposition of such taxes or other charges and the nonpayment thereof does not or will not, in the reasonable opinion of Lessor, adversely affect any title, property or rights of Lessor hereunder in or to any car, or diminish the value thereof. For the purpose of this paragraph the railroad mileage and junction reports shall be prima facie evidence of the facts reported therein. Lessee agrees to promptly reimburse Lessor for any of the foregoing paid by Lessor.

8. MAINTENANCE AND REPAIR OF CARS. Lessee shall maintain and repair the Cars throughout the Term in good and fully serviceable condition, suitable for unrestricted revenue service and interchange, and in accordance with all applicable laws, rules and regulations of the Federal Railway Administration (FRA), the AAR, the U. S. Department of Transportation and any and all other organizations or their successors with authority or jurisdiction over the operation of railcars in the geographic areas in which, or through which, the Cars operate or travel. Lessee shall promptly notify Lessor upon receipt by Lessee of knowledge of any damage to any of the Cars.

Lessee shall, at its sole cost and expense, maintain each Car in serviceable condition, free of broken, damaged or missing parts, suitable for the commercial use intended and meeting all applicable standards prescribed in the AAR Rules and the rules and regulations of the U. S. Department of Transportation and any other federal authority having jurisdiction over Car design. All such maintenance, alteration, repair or replacement to any Car or part thereof shall be done after notice to Lessor and to standards and with parts that are of like kind and at least equal in quality to items being repaired or replaced. Car rental charges shall not abate during any period a Car is out of service for maintenance, modification or repair.

Lessee agrees to comply, at its sole cost and expense, with all applicable laws, regulations, directives, statutes, ordinances and rules, including without limitation the rules of the U. S. Department of Transportation, the Interstate Commerce Commission and the AAR Rules with respect to the use and maintenance of each Car. If a physical alteration or modification to any Car is required due to newly enacted regulations and/or rules by the AAR or any government, agency, group or committee exercising authority over freight car design or operation, Lessor shall make such modifications at its own cost and expense; provided, however, that if the amount of the cost and expense for any Car does not increase the investment by Lessor in the Cars beyond the level

considered prudent in the sole opinion of Lessor. Lessor may, at its' sole discretion, opt to retire the Cars from service and terminate the Lease. For mandated modifications, Lessee shall pay an increase in Rent payments of \$1.50 per car per month per \$100.00 spent by Lessor to effect said modifications.

If any repair or modification which shall be required to be made before the expiration of this Agreement involves costs and expenses with respect to any Car in excess of the AAR depreciated value of such Car, determined in accordance with the AAR Rules, Lessor has option to terminate this Agreement with respect to such Car, provided, that Lessor has given Lessee written notice of its intention to terminate this Agreement with respect to such Car.

Lessee shall reimburse Lessor for all charges imposed on Lessor by railroads under the AAR Rules for repairs performed by railroads on any Car. In the event that Lessor receives reimbursement from any railroad for the repair of any Car damaged by such railroad, Lessor will credit the Lessee with the amount of such reimbursement up to the extent of the amounts expended by Lessee on repair of the Car. Lessor retains the right to settle with any railroad for the depreciated value of any Car destroyed by such railroad.

Without limiting Lessee's obligations referred to above, Lessee shall maintain the sides and slope sheets as follows: (i) when the side or slope sheets reach a minimum thickness based on sonic readings of .100" or less and/or cracking or breakthrough is evident, the Lessee shall, at Lessee's expense, apply welded backing plates of 1/8" or greater to include all areas with sonic readings of less than .130", (ii) all weld cracks must be repaired in accordance with acceptable industry standards (iii) cross braces must be maintained to acceptable industry standards. Costs of maintenance and adjustment of the gates (door systems) are for the Lessee's account. All maintenance herein referred will be done in a workman'ike manner with the intent to maintain the Car in essentially the same condition as when received by the Lessee, except reasonable wear and tear at lease termination only.

9. CASUALTY. In the event any Car is totally damaged or destroyed or is lost for more than 60 days, Lessee shall pay to Lessor on the next following rent payment date, an amount equal to the greater of, (i) the casualty value of such Car as set forth in the casualty loss schedule attached to the applicable rider hereto, and (ii) that amount that would be calculated assuming that Rule 107 of the AAR, or any successor rule adopted by the AAR or any successor organization, in effect as of the date such car is removed from service, is applicable. Rent in respect to any such Car will continue until all amounts due and payable to Lessor in respect of such Car are received by Lessor. Without limiting the obligation of Lessee to pay in full the amount required by the first sentence of the paragraph 9, Lessor shall have the right, but shall not be obligated to substitute for any such Car another car of the same type and capacity and the rent in respect to such substituted Car shall commence upon delivery of such substituted Car to Lessee. This Lease shall not terminate nor shall the respective obligations of Lessee to Lessor otherwise be affected by reason of; (i) any defect in or damage to, any of the Cars from any cause; (ii) the taking or requisitioning of the Cars by condemnation or otherwise; (iii) the lawful prohibition of Lessee's use of the Cars; or (iv) the interference with such use by any person, other than Lessor when Lessee is not in default hereunder, the foregoing, or any present or future law to the contrary notwithstanding. To the extent permitted by applicable law, Lessee and Lessor hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the Lease of any Car except in accordance with the express terms hereof.

10. MODIFICATIONS TO CARS. Lessee agrees that it will not make any modifications to any of the Cars without the prior written consent of Lessor. In the event that any governmental agency or non-governmental organization having jurisdiction over the operation, safety or use of railroad equipment requires that any addition, modification, replacement or adjustment be made to any of the Cars in order to qualify them for operation in railroad interchange service (hereinafter "Modifications"), Lessor agrees to pay all costs or expenses required to make any such Modifications. Any parts or items added, whether as replacements or additions, shall be considered accessions to the Cars and title thereto shall be immediately vested in Lessor and shall remain on and not be removed from the Cars upon the return of the Cars to Lessor at Lease termination, except pursuant to paragraph 14 hereof. The cost of such modifications will be reimbursed to Lessor in the form of increased lease payments as defined in Paragraph 8 above.

11. MARKINGS ON CARS. Upon delivery to Lessee, the Cars will bear reporting marks and car numbers as detailed in the applicable rider to the Lease and as registered with the Association of American Railroads. Lessee shall ensure that the cars remain so marked throughout the term of this Lease. No lettering or marking of any kind shall be placed upon or removed from any of the Cars by Lessee without the prior written consent of Lessor except as directed by Lessor or as mandated under requirements of the FRA, the Interstate Commerce Commission (ICC), the AAR or other governmental agency or non-governmental organization having jurisdiction over labels or markings on railroad equipment. In the event any such change in any markings on any cars is mandated by any such organization with jurisdiction, Lessee will immediately notify Lessor in writing prior to effecting such change. Any such allowed changes in or of lettering or markings on a Car shall be performed at the expense of Lessee.

12. INSPECTIONS. Lessor or its designated agent shall have the right, from time to time, to inspect the Cars and Lessee's records and books with respect to the Cars at any reasonable time. Lessee agrees to assist Lessor in performing any such inspection to the extent such assistance does not materially interfere with Lessee's operations.

13. RETURN OF CARS. Upon termination of the Lease with respect to any Car, Lessee agrees at its sole cost and expense, to notify Lessor of the date and location of the final unloading at least 60 days prior to its occurrence. Each Car shall be subject to Lessor's inspection and acceptance upon redelivery. Each Car shall be in conformance with the applicable requirements of the AAR and FRA, or any successor organizations, and shall be in at least as good condition as when delivered to Lessee, excepting reasonable wear and tear at Lease termination only, including but not limited to: (i)

having fully functional and wind/water/commodity tight hatches, doors and outlets; (ii) being free from all charges and liens which Lessee is required to discharge pursuant to paragraph 14 hereof; and (iii) being free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. In addition, Lessee shall at its own cost and expense, at the sole discretion of Lessor, remove any structural members, bulkheads or any other load carrying or containing devices installed on or attached to any of the Cars by Lessee, and restore such Cars to the same configuration as when originally delivered to Lessee, except as herein required by Paragraphs 8 and 10. For each day any Car shall not have been so returned to Lessor or for each day any Car so returned is not in such required condition, Lessee's obligation to pay rent and any other amounts indicated in the applicable rider continue until Lessee shall so return and/or repair or clean any such Car, or reimburse Lessor for any expense incurred in repairing or cleaning any such Car. For all purposes of this Lease no Car shall be deemed to have been returned to Lessor's possession until all of Lessee's obligations herein have been performed.

Promptly upon the expiration or termination of this Agreement with respect to any Car, Lessee shall return such Car to Lessor in the same condition complete with all parts, equipment and accessories as when initially delivered to Lessee and cleaned of commodities. Each Car shall be deemed returned to Lessor hereunder when Lessee shall release such Car to a forwarding railroad within the boundaries of the United States (excluding Alaska and Hawaii) in accordance with instructions furnished to Lessee by Lessor either at the final unloading point or at such other point mutually agreed upon between Lessor and Lessee. Lessee shall give Lessor a minimum of six (6) months advance notice, confirmed promptly in writing, of the return date of each Car, including advice of the last contents of each such Car. Lessor shall give Lessee disposition instructions for each such Car prior to the later of (a) the return date specified in Lessee's notice, or (b) thirty (30) days following receipt by Lessor of Lessee's notice. Notwithstanding the foregoing, Lessee shall pay rental charges at 200% of the then current rate for any Car not promptly returned pursuant to the terms hereof or for any returned Car if Lessee has not caused Car to be free of residue.

14. **LIENS ON THE EQUIPMENT.** Lessee shall pay or satisfy and discharge any and all liens or charges which may be levied against or imposed upon any Car, and any and all claims which, if unpaid, might constitute or become a lien or a charge upon any Car, except for any lien which (i) results from an affirmative act of Lessor to create a lien, which act is neither consented to by Lessee nor created in connection with a Default, or (ii) results from claims against Lessor not related or connected to the ownership, leasing, use or operation of any of the Cars or its status as Lessor under this Lease. Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not, in the reasonable opinion of Lessor adversely affect or endanger the title or interest of Lessor herein or in and to the Cars, or diminish the value of the Cars. Lessee's obligations under this paragraph 14 shall survive the termination of this Lease.

15. **LIMITATIONS ON LESSEE'S INTEREST.** No right, title or interest in any of the Cars shall vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Cars, except the right to use the Cars in accordance with the terms of this Lease. Lessee shall make no transfer, assignment or pledge of its interest under this Lease in and to the Cars without Lessor's prior written consent. Lessee shall continue to remain liable to Lessor as principal and not as surety, under all terms and conditions of this lease and any riders hereto.

16. **LOSS OF OR DAMAGE TO COMMODITIES OR FREIGHT.** Lessor shall not be liable for any loss of or damage to any commodity or freight of any kind, including loss of use thereof, or any part thereof, loaded, unloaded or shipped in or on the Cars. Lessee agrees to assume responsibility for, and any liability arising from, any such loss or damage, and further agrees to defend, indemnify, reimburse, and hold harmless Lessor, its successors, assigns, agents, officers, directors, shareholders, employees and servants from claims for any such loss or damage.

17. **INDEMNIFICATION.** Lessee agrees to defend, indemnify, reimburse and hold harmless Lessor, its successors, assigns, agents, officers, directors, shareholders, employees and servants from and against any claims, damages, losses, liabilities, demands, suits, judgments, causes of action, legal proceedings, whether civil or criminal, penalties, fines and other sanctions, attorney's fees and other reasonable costs and expenses in connection herein or therewith resulting from any claim made or asserted by a third party, entity or by any governmental agency arising out of control of the Cars by Lessee or by Lessee's subcontractors, its selected railroad carrier or other vendors or resulting, in any way, from the loading, unloading or transportation of Lessee's products in or on the Cars, regardless of the negligence of Lessee, excepting, however, any loss, liability, claim, cost, damage or expense which is attributable to the gross negligence or willful misconduct of Lessor, its agents or employees, including but not limited to any claims of pollution or pollution clean-up.

18. **LATE PAYMENT.** Lessee shall pay interest on any payment or other amount due to Lessor not received by Lessor within ten (10) days of the required due date. Interest on any such late payment will accrue from and including the due date until the date received by Lessor at an interest rate of 15% per annum.

19. **INSURANCE.**

A. Insurance Against Loss or Damage to Property - Lessee shall procure and maintain in effect with insurers of recognized reputation and responsibility reasonably satisfactory to Lessor: (A) All Risk Inland Marine insurance, in a form acceptable to Lessor, covering, specifically, the Cars belonging to Lessor at any location or while in transit between locations or while being pulled by any railroad carrier and shall be in such amounts, not less than, the value stated in the casualty value schedule appended to the applicable Rider(s) attached hereto or not less than their 100% replacement value of

Lessor's property at any time on a "Stated or Agreed Value" basis without set off of any depreciation, betterment or coinsurance. Any deductible shall not exceed \$1,000.00 per occurrence. Such insurance shall be effective from the time the Car(s) is/are delivered to Lessee to the time the Car(s) is/are returned to and accepted by Lessor.

Any policies carried in accordance with this section: (1) shall be primary without right of contribution or recovery from any other insurance which may be carried by Lessor; (2) shall include Lessor as an additional insured and sole loss payee as their interest may appear; (3) shall provide that if such insurance is canceled or materially changed for any reason whatsoever, or the same is allowed to lapse for non payment of premium, such cancellation, change or lapse shall not be effective as to Lessor for thirty days after receipt by Lessor of written notice from such insurers of such cancellation or lapse or material change in policy terms and conditions; (4) shall waive any rights of set off, counterclaims or deduction and all rights of subrogation (recovery) against Lessor and its successors, assignors, agents, officers, directors, shareholders, employees and servants; (5) shall not be invalidated by any act or omission of Lessee, its affiliates, employees, officers, directors, or agents, regardless of any breach or violation by Lessee of warranty, declaration, or condition in such policies.

B. General Waiver of Subrogation - Lessee hereby waives any and every claim which arises or may arise in its favor against Lessor during the term of this lease or any extension thereof caused by any occurrence involving the Cars leased to Lessee by Lessor.

Inasmuch as the said waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees immediately to give to their insurance company which has issued to them policies of property insurance written notice of the terms of said waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

C. Public Liability and Property Damage Liability Insurance - Lessee, at its own expense, shall maintain in effect: at all times during the Term and any storage period applicable hereunder Commercial General Liability insurance against bodily injury and property damage losses arising out of Lessee's mining operations, manufacturing or processing of Lessee's products, the transportation or movement of Cars or of Lessee's products while loaded in the Cars, whether by Lessee, its subcontractors, its selected railroad carrier or other vendors, including, but not limited to, Contractual Liability, Products & Completed Operations Liability and Personal & Advertising Liability insurances (or equivalent coverage as per ISO Form CG 00 37 11 85) in an amount not less than \$11,000,000.00 for any one occurrence or \$11,000,000.00 in the aggregate. All such policies shall be maintained in effect with insurers of recognized reputation and responsibility, reasonably satisfactory to Lessor. Any policies of insurance carried in accordance with this section and any policies taken out in substitution of or replacement for any such policies shall be specifically endorsed to: (1) include Lessor, its successors, assignors, agents, officers, directors, shareholders, employees and servants as additional insured; (2) provide that if the insurers cancel such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium, or if there is any material change in policy terms and conditions, such cancellation, lapse, or change shall not be effective until thirty days after receipt by Lessor of written notice from such insurers of such cancellation, lapse or change; (3) provide that such Liability insurance shall be primary without right of contribution from any other insurance which may be carried by Lessor.

Lessee will notify Lessor of the products being transported in Lessor's Cars and Lessor may require Lessee to provide Pollution Liability insurance subject to the above limits if such products are classified as Pollutants. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and wastes. Waste includes materials to be recycled, reconditioned or reclaimed.

D. Insurance Certificates - Lessee shall have its insurance carrier provide a Certificate of Insurance to Lessor or its appointed Insurance Counselor in the form as per the attached Exhibit A, not less than ten (10) days prior to the effective date of this Agreement and thirty (30) days prior to each policies' renewal or anniversary date.

Lessee shall, at the request of Lessor, provide Lessor with copies of the insurance policies referenced in the Certificate of Insurance.

20. **DEFAULT.** Each of the following shall be a Default under this Lease: Lessee (i) fails to pay when due any rent or other amount required to be paid under this Lease or any rider hereto; or (ii) fails to perform any of its obligations under this Lease or any rider hereto; or (iii) is insolvent or makes an assignment for the benefit of creditors, or a trustee or a receiver is appointed for Lessee or for a substantial part of its assets, or a petition in bankruptcy or for reorganization or a similar proceeding is filed by or against Lessee; or (iv) does, or attempts to, abandon, remove, sell, encumber, assign or sublet (other than as specifically permitted hereby) any of the Cars; or (v) makes or made any material misrepresentation to Lessor in connection with this Lease.

21. **REMEDIES.** Upon the occurrence of a Default and at anytime thereafter, Lessor may, in its sole discretion, do any one or more of the following with respect to any or all of the Cars subject to this Lease or riders hereto: (i) demand immediate payment of the total amount of the unpaid rent and other payments then due and, in addition, as liquidated damages and not as a penalty, at Lessor's sole discretion, either (a) the present value of the remaining rents and other amounts to become due under this Lease and any riders hereto throughout the remaining Term thereof, less the fair rental value thereof (or

upon the re-leasing of the Cars to a new Lessee, the rentals payable as a result thereof with respect to the remaining Term) for such remaining term, after deduction of reasonable expenses or (b) the amount by which the then casualty value as of the date of default, as set forth on the applicable rider hereto exceeds the fair market value (less reasonable expenses) thereof, or, (upon any sale) the net sales proceeds (less reasonable expenses) received by Lessor; and/or (ii) demand the return of any or all of the Cars in accordance with paragraph 14 hereof; and/or (iii) take possession of any or all of the Cars, without demand or notice, without court order or other process of law and without liability for any damages occasioned by the taking of possession; and/or (iv) upon notice to Lessee, terminate this Lease and/or any riders hereto as to any or all of the Cars subject thereto; and/or (v) exercise any other right or remedy available to Lessor under applicable law. In the event of any such default, Lessee shall provide free storage of any cars subject to this Lease or any riders hereto until such Cars are re-leased or sold, and shall pay Lessor for all costs and expenses, including attorney's fees and court costs, incurred by Lessor in exercising any of Lessors rights or remedies hereunder or in enforcing any of the provisions of this Lease or any riders hereto. No remedy referred to in this Lease is intended to be exclusive, but each shall be in addition to any other remedy referred to or otherwise available to Lessor.

22. **SALE OR ASSIGNMENT BY LESSOR.** Lessee agrees that Lessor may sell, assign or pledge Lessor's interest in the Cars and/or this Lease and/or any riders hereto, in whole or in part, to any person, firm, partnership, or corporation (an "Assignee"), at Lessor's sole discretion, subject to the interests of Lessee arising from this Lease and any riders hereto, and that all of the rights of Lessor provided for herein may be enforced without limitation by the Assignee(s). Lessor shall inform Lessee of any completed sale or assignment affecting this Lease.

23. **WAIVER OF WARRANTIES AND REPRESENTATIONS.** LESSOR HEREBY MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE DESIGN, CONDITION, MERCHANTABILITY, SUITABILITY, QUALITY, FITNESS FOR A PARTICULAR USE OR SERVICE OR ANY OTHER MATTER CONCERNING THE CARS. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR ITS SUBSIDIARIES, SUCCESSORS OF ASSIGNS FOR ANY CLAIMS CAUSED BY THE CARS OR ANY DEFECT THEREIN OR THE OPERATION, MAINTENANCE OR REPAIR THEREOF. LESSEE EXPRESSLY ACKNOWLEDGES THAT IT LEASES THE CARS "AS-IS".

24. **FINANCIAL STATEMENTS.** Lessee agrees to provide to Lessor in a timely manner, unaudited financial statements for itself and audited financial statements for its ultimate legal parent (if any) on an annual basis, and unaudited financial statements on a quarterly basis, and such other financial reports as Lessor may from time to time request throughout the Term.

25. **ICC FILING.** Upon the request of Lessor, Lessee will execute a memorandum of this Lease and/or any rider or amendment hereto in form appropriate for filing with the Interstate Commerce Commission (the "ICC") or any other governmental department or agency or non-governmental organization. Lessor, at its discretion, may file and record this Lease and/or any rider or amendment hereto and/or any such memorandum with the ICC or other department or organization.

26. **NON-WAIVER.** Neither the failure nor the delay of Lessor to enforce any provision of this Lease or any rider hereto or to prosecute any Default shall be considered as a waiver of that provision or affect the right of Lessor to enforce such provision or any other provision hereof.

27. **LAW GOVERNING.** This Lease and any rider hereto shall be interpreted under, and its performance shall be governed by, the Laws of the State of Georgia and the applicable Laws of the United States.

28. **LESSEE'S REPRESENTATIONS, WARRANTIES AND GUARANTEE.** Lessee hereby represents and warrants that: (a) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state of Lessee's incorporation and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction wherein the failure to so qualify could have a material adverse effect on the business or financial condition of Lessee; (b) Lessee has full power and authority to execute, deliver and perform this Lease and all related documents or instruments and to own or lease its properties and to carry on its business as now conducted and as contemplated by this lease; (c) this Lease and all related documents or instruments have been duly authorized, executed and delivered by Lessee and constitute the legal, valid and binding obligations of Lessee enforceable against it in accordance with the terms hereof and thereof; (d) no authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Lessee of this Lease or any related document or instrument or for the acceptance, use or maintenance of the Cars; and (f) neither the execution, delivery or performance by Lessee of this Lease or any related document or instrument, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, or bylaws, as amended, of Lessee or any order, writ, injunction or decree of any court or governmental authority against Lessee or by which it is bound or of any financial, credit or other agreement to which it is a party.

29. **TERM.** Unless otherwise terminated pursuant to this Agreement, this Agreement shall remain in full force and effect until the expiration of all Riders attached hereto. Lessee's obligations to Lessor under this Agreement, however, shall remain in full force and effect until the time all Cars are returned to Lessor pursuant to Paragraph 13 of this Agreement.

If Lessor proposes to change the conditions of Lease, notification will be extended to Lessee approximately 120 days prior to expiration date of Lease. If no response is received from Lessee within 20 days after receipt of such notification, Lease will terminate in accordance with the terms and conditions

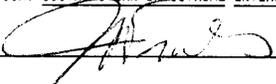
of the current Lease.

30. SECURITY DEPOSIT. Lessee will deposit with Lessor an amount equal to one monthly lease payment at time of execution of each rider to this Agreement. This deposit will be returned to Lessee after cars are returned in satisfactory condition to designated "Place of Return".

31. MISCELLANEOUS. (a) This Lease and any riders hereto shall be binding upon, and shall constitute the complete agreement between Lessor and Lessee, and may be amended or modified only in writing and lawfully executed by them. Any provision of this Lease or any rider hereto determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. Lessee waives any right to trial by jury on any issues or claims arising under this Lease. If agreeable to Lessor and Lessee, arbitration may be employed to resolve disputes. (b) If for reasons unrelated to equipment cost, Lessee desires to discontinue use of any equipment covered by this lease and applicable riders, Lessor agrees to exercise its' best efforts to reposition the Cars. Lessee agrees to pay to Lessor a penalty equal to two months' lease payments at the time of notice requesting early termination. If the Cars can be repositioned at a lease rate of at least 95% of the then-current lease rate, (as stated in the current Lease Agreement) Lessee will be relieved of any additional penalty payments. Lessee will have the right of refusal of any repositioned lease proposal which is less than 95% of the then-current lease rate; however, Lessee will remain liable for any difference between the then-current lease rate and the repositioned lease rate if the latter is less than 95% of the then-current rate. Lessee will remain liable for 100% of the then-current lease rate until the first payment is received from the Lessee of the repositioned Cars.

IN WITNESS WHEREOF, the parties hereto execute this Lease as of the day and year first above written.

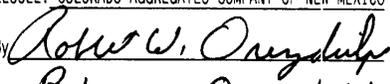
LESSOR: SOUTHEASTERN INDUSTRIAL ENTERPRISES, INC.

By: 

Name: J. W. FRANKS

Title: VICE-PRESIDENT

LESSEE: COLORADO AGGREGATES COMPANY OF NEW MEXICO

By: 

Name: Robert W. Oringdick

Title: President

EXHIBIT - "A"

RIDER NO. 1 TO LEASE DATED: October 12, 1994

- I. NUMBER OF CARS/CAR NUMBERS: 15 / SIEX 1000-1014
- II. DESCRIPTION OF CARS: 70 Ton, 3960 CF, OTH
- III. TERM: From date cars are accepted until one hundred twenty months thereafter. . . Thereafter the term and rate will be negotiated for renewal at Fair Market Value. Renewal will be handled in accordance with the referenced Lease Agreement.
- IV. RENTAL RATE: \$275.00 per car per month. First lease payment due and payable on date cars are accepted.
- V. ANTICIPATED DELIVERY DATE: Fourth Quarter 1994.
- VI. PLACE OF DELIVERY: These cars will be considered to enter your service for invoicing purposes when accepted at the P & LE Car Shop in Pittsburgh, Pennsylvania
- VII. PLACE OF RETURN: Site of final unloading. Lessee must notify Lessor 60 days prior to final unloading as to the date and location of this final unloading.
- VIII. CARS COVERED BY THIS RIDER MAY BE USED ONLY FOR THE TRANSPORTATION OF THE FOLLOWING TYPES OF COMMODITIES: Volcanic Scoria.
- IX. SPECIAL ITEMS: Cars must be delivered in interchange condition as defined by the AAR "Rules for Interchange".
- X. ADDRESSING OF NOTICES:

Lessee to Lessor

Lessor to Lessee

Southeastern Industrial
Enterprises, Inc.
Post Office Box 1069
Hartwell, Georgia 30643

Colorado Aggregates Co.
of New Mexico
2255 Lava Lane
Alamosa, Colorado 81101

AGREED AND ACCEPTED BY
LESSOR:

Southeastern Industrial
Enterprises, Inc.

By: J. W. Franks
J. W. Franks

Title: Vice-President

Date: 11/3/94

AGREED AND ACCEPTED BY
LESSEE:

Colorado Aggregates Co.
of New Mexico

By: Robert W. Oringulph
Robert Oringulph

Title: President

Date: 10-18-94

EXHIBIT - "A"

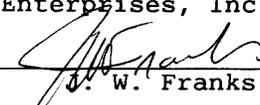
RIDER NO. 1-A TO LEASE DATED: October 12, 1994

- I. NUMBER OF CARS/CAR NUMBERS: 5 / SIEX 1015-1019
- II. DESCRIPTION OF CARS: 70 Ton, 3960 CF, OTH
- III. TERM: From date cars are accepted until one hundred twenty months thereafter. Thereafter the term and rate will be negotiated for renewal at Fair Market Value. Renewal will be handled in accordance with the referenced Lease Agreement.
- IV. RENTAL RATE: \$275.00 per car per month. First lease payment due and payable on date cars are accepted.
- V. ANTICIPATED DELIVERY DATE: Fourth Quarter 1994.
- VI. PLACE OF DELIVERY: These cars will be considered to enter your service for invoicing purposes when accepted at the P & LE Car Shop in Pittsburgh, Pennsylvania
- VII. PLACE OF RETURN: Site of final unloading. Lessee must notify Lessor 60 days prior to final unloading as to the date and location of this final unloading.
- VIII. CARS COVERED BY THIS RIDER MAY BE USED ONLY FOR THE TRANSPORTATION OF THE FOLLOWING TYPES OF COMMODITIES: Volcanic Scoria.
- IX. SPECIAL ITEMS: Cars must be delivered in interchange condition as defined by the AAR "Rules for Interchange".
- X. ADDRESSING OF NOTICES:

Lessee to Lessor	Lessor to Lessee
Southeastern Industrial Enterprises, Inc. Post Office Box 1069 Hartwell, Georgia 30643	Colorado Aggregates Co. of New Mexico 2255 Lava Lane Alamosa, Colorado 81101

AGREED AND ACCEPTED BY
LESSOR:

Southeastern Industrial Enterprises, Inc.

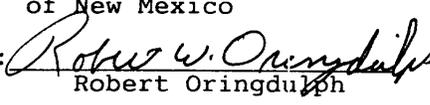
By: 
W. W. Franks

Title: Vice-President

Date: 11/7/94

AGREED AND ACCEPTED BY
LESSEE:

Colorado Aggregates Co.
of New Mexico

By: 
Robert Oringdahl

Title: President

Date: 10-25-94

STATE OF Colorado)
COUNTY OF Aggregate)

On this 24th day of October, 94 before me personally appeared Robert W Oringdolph, to me personally known, who, being duly sworn, did say that he/she is President of Colorado Aggregate, that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Notary Public

My commission expires:
MY COMMISSION EXPIRES:
April 11, 1998

STATE OF Ga.)
COUNTY OF DeKalb)

On this 7 day of November before me personally appeared J. W. Franks, to me personally known, who, being duly sworn, did say that he/she is Vice President of Southeastern Ind. Enterprises that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Carol J. Jones
Notary Public

My commission expires:

Notary Public, DeKalb County, Georgia.
My Commission Expires January 21, 2010.

RIDER NO. 2 TO LEASE DATED OCTOBER 12, 1994

CERTIFICATE OF ACCEPTANCE OF RAILROAD CARS

This Certificate relates to the railroad cars listed below leased by Southeastern Industrial Enterprises, Inc. to Colorado Aggregates Company of New Mexico under a Railcar Net Leasing Agreement for railroad cars dated October 12, 1994 (the "Lease"), into which this certificate is incorporated.

RAILROAD CAR NUMBERS:

SIEX1000 (2348)	SIEX1005 (2258)	SIEX1010 (2128)	SIEX1015 (2388)
SIEX1001 (2645)	SIEX1006 (2015)	SIEX1011 (2182)	SIEX1016 (2497)
SIEX1002 (2628)	SIEX1007 (2149)	SIEX1012 (2113)	SIEX1017 (2501)
SIEX1003 (2089)	SIEX1008 (2334)	SIEX1013 (2542)	SIEX1018 (2151)
SIEX1004 (2604)	SIEX1009 (2240)	SIEX1014 (2478)	SIEX1019 (2256)

EXCEPTIONS TAKEN TO CONDITION OF ANY CAR, IDENTIFIED BY CAR NUMBER:

None

LESSEE HEREBY CERTIFIES ITS ACCEPTANCE OF THE RAILROAD CARS.

LESSEE HEREBY CERTIFIES THAT THE REPRESENTATIONS AND WARRANTIES OF LESSOR CONTAINED IN THE LEASE ARE TRUE AND CORRECT ON THE DATE HEREOF.

COLORADO AGGREGATES COMPANY OF NEW MEXICO, LESSEE

BY: Robert W. Orszulak
 TITLE: President
 DATE: 3-20-95

Notarial Acknowledgment:

State of Colorado)
 County of Alamosa) ss.:

I hereby certify that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Robert W. Orszulak to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that (he, she, they) duly executed the same.

In Witness Whereof I have hereunto set my hand and official seal this 20th day of March, 1995.

My Commission Expires April 11, 1998 1998
MISSION EXPIRES:

(Official Seal)

Robert W. Orszulak
 Notary Public
 In and for said County and State or District of Columbia