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04/23/2003 04:38 PM 36.00  
Book - 8783 Pg - 7581-7591  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
RAY GUINNEY & NEBEKER  
PO BOX 45385  
SLC UT 84145-0385  
BY: RDJ, DEPUTY - WI 11 p.

**WHEN RECORDED RETURN TO:**

Brian J. Babcock, Esq.  
BABCOCK SCOTT & BABCOCK, PC.  
57 West South Temple, 8<sup>th</sup> Floor  
Salt Lake City, UT 84101  
Tel: (801) 531-7000

**TEMPORARY EASEMENT AGREEMENT**

THIS TEMPORARY EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 27<sup>th</sup> day of March, 2003, by and between GENEVA ROCK PRODUCTS, INC., a Utah corporation (hereinafter referred to as "Geneva Rock"), and MATERIALS PACKAGING CORP. an Arkansas corporation (hereinafter referred to as "Materials Packaging").

**RECITALS:**

This Agreement is made and entered into with reference to the following definitions and recitals of fact, which are a material part of this Agreement:

A. Geneva Rock Property. Geneva Rock is the owner of certain real property located in Salt Lake County, State of Utah and more particularly described in Exhibit A attached hereto and by this reference made a part hereof. The property described in Exhibit A is hereinafter referred to as the "Geneva Rock Property."

B. Materials Packaging Property. Materials Packaging is the lessee of certain real property owned by AFM Limited Company, a Utah limited liability company, ("AFM") located adjacent to the Geneva Rock Property and more particularly described in Exhibit B attached hereto. The property described in Exhibit B is hereinafter referred to as the "Materials Packaging Property."

C. Temporary Easement. Materials Packaging has for a period of less than five (5) years used, along with the Right-of-Way (as defined in recital D below), the certain additional portion of the Geneva Rock Property described in Exhibit C attached hereto (hereinafter the "Easement Parcel") for the purposes of ingress and egress to the Materials Packaging Property. Geneva Rock has no objection to the use of the Easement Parcel by Materials Packaging for such purposes at the present time, on a temporary basis, subject to the terms and conditions hereinafter set forth. Geneva Rock and Materials Packaging desire to enter into this Agreement for the purposes of establishing the terms, conditions, and provisions upon which Materials Packaging shall be permitted to use the Easement Parcel.

D. Existing Right of Way. Geneva Rock and Materials Packaging acknowledge the existence of a defined and recorded non-exclusive perpetual right-of-way (owned by AFM and included in the lease to Materials Packaging) for ingress and egress across the Geneva Rock Property (hereinafter "Right-of-Way"). The Right-of-Way is described in Exhibit D.

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NOW, THEREFORE, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Geneva Rock and Materials Packaging hereby agree as follows:

1. Recitals. Recitals A through D are by this reference incorporated herein.

2. Temporary Easement. Subject to the provisions of this Agreement, Geneva Rock does hereby grant, convey, and transfer to Materials Packaging for use by Materials Packaging and its affiliated entities, customers, employees, and invitees, a temporary, nonexclusive easement and right-of-way over, upon, and across the Easement Parcel, solely for the purposes of ingress and egress of the Materials Packaging Parcel from the public roadway in such areas upon the Easement Parcel as shall not interfere with the day-to-day operations of Geneva Rock. Materials Packaging acknowledges and agrees that Materials Packaging has no right, title, or interest in or to the Geneva Rock Property, except for the temporary rights granted pursuant to this Agreement and the rights included in the Right-of-Way. The parties further acknowledge and agree that this temporary easement does not extinguish or modify the previously granted Right-of-Way.

3. Term. The term of the Temporary Easement granted pursuant to Section 2 of this Agreement shall commence on the date of this Agreement and shall terminate on the first to occur of: (a) thirty (30) years from the date of this Agreement; (b) termination of this Agreement pursuant to the provisions of Section 4 hereof; (c) termination of this Agreement pursuant to the provisions of Section 5 hereof; or (d) otherwise under applicable law.

4. Termination by Geneva Rock. Notwithstanding anything contained in this Agreement to the contrary, Geneva Rock shall have the sole and absolute right in its discretion to terminate all easements granted on the Easement Parcel pursuant to the provisions of this Agreement upon thirty (30) days prior written notice to Materials Packaging. The right of Geneva Rock to terminate such easements shall be absolute and not limited by any other provision of this Agreement and may be exercised by Geneva Rock without any responsibility to Materials Packaging for inconvenience, costs, or losses resulting from or related to such election to terminate early all easements granted pursuant to the provisions of this Agreement.

5. No Interference with Geneva Rock Operations. Materials Packaging acknowledges and agrees that Geneva Rock and its customers, employees, and invitees are engaged in the operation of the Geneva Rock business upon the Geneva Rock Property which includes the Easement Parcel, and Materials Packaging agrees that neither Materials Packaging nor any of its customers, employees, affiliates, or invitees entering upon the Easement Parcel shall interfere in any way with the business operations of Geneva Rock. Materials Packaging shall cause its employees, affiliates, customers, and invitees to comply with the reasonable rules and regulations established from time to time by Geneva Rock (such as, but not limited to, traffic control and nonuse areas for safety purposes) with regard to use of the Easement Parcel during the term of this Agreement.

Materials Packaging further agrees to properly secure Geneva Rock's security/access gate while it, or any of its customers, employees, affiliates, or invitees, access the Materials Packaging Property over the Right-of-Way or Easement Parcel. Likewise, Materials Packaging agrees to properly secure any other security/access gate on the Materials Packaging Property

in order to prevent any access over the Materials Packaging Property to the Geneva Rock Property.

6. Post-Termination: Cooperation. Following the expiration or earlier termination of this Agreement, Materials Packaging shall discontinue all use of the Easement Parcel and shall exercise its best efforts to cause any Materials Packaging affiliates, employees, customers, contractors, or others previously invited upon the Easement Parcel pursuant to the provisions of this Agreement to refrain from any use of the Easement Parcel.

7. Not a Public Declaration. Nothing contained in this Agreement, nor any use made of the Easement Parcel pursuant to the provisions of this Agreement, shall be deemed to be a gift or dedication of all or any portion of the Easement Parcel for the general public or for any public purposes whatsoever, it being the intention of the parties to this Agreement that this Agreement be strictly limited to the purposes and the term expressed in this Agreement.

8. Indemnification. Materials Packaging agrees to defend, indemnify, and hold harmless Geneva Rock, or its successor(s) in interest, from and against all liability, loss, or costs incurred, including without limitation reasonable attorney's fees, arising out of, related to, or caused by the acts or omissions, or use of the Easement Parcel by the customers and/or employees of the business located upon the Materials Packaging Property. Without limiting the generality of the foregoing, any damage caused to the Easement Parcel or driveways providing access to the Easement Parcel by customers or employees of the business located upon the Materials Packaging Property in vehicles other than customary passenger vehicles shall be repaired at the cost and expense of Materials Packaging.

9. Insurance. During the term of this Agreement, Materials Packaging shall maintain commercial general liability insurance, including without limitations, public liability and property damage insurance, personal injury liability, contractual liability, employer's liability, and owner's and contractor's protective insurance coverage, as well as owned and non-owned auto and vehicle liability, with respect to the Easement Parcel, with coverage including the activities anticipated to be conducted by Materials Packaging and its affiliates, employees, customers, and invitees thereon. Such policy will be (a) written with limits of at least Two Million and No/100 Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage combined, and aggregate limits of at least Two Million and No/100 Dollars (\$2,000,000.00) for bodily injury and for one or more persons, or property damage, and (b) containing a severability of interest clause and cross-liability clauses. Geneva Rock shall be named as an additional insured on such policy of insurance. Materials Packaging shall provide certificates of insurance evidencing such coverage upon request of Geneva Rock. Among other things, such insurance policy shall provide that it shall not be cancelled for coverages materially modified without thirty (30) days prior written notice to Geneva Rock.

10. Default by Geneva Rock. If there is a failure by Geneva Rock to perform, fulfill, or observe any covenant or agreement contained in this Agreement, to be performed, fulfilled, or observed by Geneva Rock, continuing for thirty (30) days after written notice of such default to Geneva Rock, Materials Packaging agrees that its sole and exclusive remedy for such breach shall be to seek and obtain an order from a court of competent jurisdiction compelling specific performance by Geneva Rock of its obligations under this Agreement.

11. Default by Materials Packaging. Upon the occurrence of any of the following events, Materials Packaging shall be in default under this Agreement: (i) Any failure by Materials Packaging to observe or perform any other term, covenant, or condition of this Agreement to be observed or performed by Materials Packaging, if such failure shall continue for thirty (30) days after written notice thereof from Geneva Rock; or (ii) any failure by Materials Packaging to pay to Geneva Rock an amount payable pursuant to Section 8 hereof.

Upon the occurrence of any default under this Agreement by Materials Packaging, Geneva Rock shall have the following remedies: (i) To terminate this Agreement and any rights to easements granted hereunder immediately upon giving written notice of such termination to Materials Packaging, in which event Materials Packaging shall immediately discontinue any use of the Easement Parcel pursuant to the provisions of this Agreement and shall cause all customers and employees of Materials Packaging to discontinue any use of the Easement Parcel. Additionally, in the event of such termination, Geneva Rock shall be entitled to recover from Materials Packaging damages resulting from such breach or default by Materials Packaging, together with any other amount, court costs, attorney's fees, and expenses necessary to compensate Geneva Rock for all detriment, injury, or loss approximately caused by the default of Materials Packaging; (ii) to recover damages from Materials Packaging without terminating this Agreement; or (iii) all other remedies now or hereafter provided by law or available in equity for enforcing the provisions of this Agreement, including without limitations the right to injunctive relief and orders for specific performance.

12. Construction. The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of Geneva Rock to grant a temporary, nonexclusive easement upon the Easement Parcel for the limited purposes set forth herein is carried out subject to the conditions and upon the terms and provisions set forth in this Agreement, according to the fair meaning of the language set forth in this Agreement.

13. Notices. All notices and other communications provided for in this Agreement shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by certified or registered U.S. mail, return receipt requested, postage prepaid, and addressed to the respective party at the address set forth below or at such other address as such party may hereafter designate by written notice to the other parties as herein provided.

To Geneva Rock: Geneva Rock Products, Inc.  
P.O. Box 538  
Orem, Utah 84059  
Attn: Mr. Tony Christofferson

With copy to:

Brian J. Babcock, Esq.  
BABCOCK SCOTT & BABCOCK, PC  
57 West South Temple, 8<sup>th</sup> Floor  
Salt Lake City, UT 84101

To Materials Packaging:

Materials Packaging Corp.  
15567 So. Minuteman Dr.  
Draper, UT 84020  
Attn: Mr. Scott Hanks

With copy to:

Ash Grove Materials Corporation  
8900 Indian Creek Parkway, Suite 200  
Overland Park, KS 66225  
Attn: Mr. John D. Novak

If personally delivered, notices and other communications under this Agreement shall be deemed to have been given and received and shall be effective when personally delivered. If sent by mail in the form specified in this action, notices and other communications under this Agreement shall be deemed to have been given and received and shall be effective when deposited in the U.S. mail.

14. Recording. This Agreement shall, at the option of Geneva Rock, be recorded in the office of the County Recorder for Salt Lake County, State of Utah, against both the Geneva Rock Property and the Materials Packaging Property for the purpose of giving actual and constructive notice to all interested persons of the effects of this Agreement upon the Materials Packaging Property and upon the Geneva Rock Property.

15. Entire Agreement. This Agreement, including the exhibit attached hereto, constitutes the entire agreement between the parties hereto relative to the subject matter hereof. Any prior negotiations, correspondence, or understandings relative to the subject matter hereof shall be deemed to be merged in this Agreement and shall be of no further force or effect. This Agreement may not be amended or modified except in writing executed by both of the parties hereto.

16. Interpretation. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the term "person" shall include an individual, partnership (general or limited), corporation, limited liability company, trust, or other entity or association, or any combination thereof. The section headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions of this Agreement shall be construed both as covenants and conditions in the same manner as though the words importing such covenants and conditions were used in each separate provision hereof. Exhibits A through D attached hereto are by this reference incorporated herein and made a part hereof.

17. Jurisdiction and Venue. The parties agree that any action or proceeding to enforce, interpret, terminate, or rescind this Agreement shall be commenced solely in the United States District Court for the District of Utah or in the Third Judicial District Court for Salt Lake



EXHIBIT A

THE GENEVA ROCK PROPERTY

Real property located in Salt Lake County, State of Utah, referenced as Parcel Numbers 33-13-300-005-000 and 33-13-300-011-0000, and more particularly described as follows:

Beginning at County Monument A.P. #8 on the Utah and Salt Lake County Line, which point is South 00 Deg 17'36" West along the Quarter Section Line 304.49 Feet and West 13.22 Feet (based on the Utah State Coordinate System, Central Zone) from the North Quarter Corner of Section 24, Township 4 South, Range 1 West, Salt Lake Base and Meridian. Thence South 27 Deg 04'18" West along said Utah and Salt Lake County Line 394.99 Feet to the South Line of the North ½ North ½ Northwest ¼ of said Section 24; thence South 89 Deg 44'04" West along said South Line 2170.34 Feet; thence North 1177.14 Feet; thence North 61 Deg 44'57" West 420.19 Feet to the Easterly Line of the Union Pacific Railroad Right-of-Way; thence along said Railroad Right-of-Way Line as follows:

North 28 Deg 15'03" East 764.90 Feet; Northeasterly 1328.14 Feet around the periphery of a curve to the Right having a Radius of 7439.44 Feet (Chord=North 33 Deg 17'51" East 1326.42 Feet); North 38 Deg 20'38" East 847.90 Feet; Northeasterly 600.26 Feet around the periphery of a curve to the Left having a Radius of 2964.84 Feet (Chord=North 32 Deg 32'38" East 599.23 Feet); North 26 Deg 44'38" East 870.50 Feet; Northeasterly 372.98 Feet around the periphery of a curve to the Right having a Radius of 1332.86 Feet (Chord=North 34 Deg 45'38" East 371.76 Feet); North 42 Deg 46'38" East 325.00 Feet, to the Quarter Section Line;

Thence leaving said Railroad Right-of-Way South 00 Deg 19'14" West along said Quarter Section Line 3654.12 Feet to the Northwest Corner of the SW ¼ SE ¼ of Section 13; thence North 89 Deg 53'59" East 1330.00 Feet to the Northeast Corner of said Southwest ¼ Southeast ¼ of Section 13; thence South 00 Deg 20'33" West 1323.13 Feet to the Southeast Corner of said Southwest ¼ Southeast ¼ of Section 13; thence South 00 Deg 19'47" West 189.23 Feet along the East Line of the Northwest ¼ Northeast ¼ of Section 24; to the Utah and Salt Lake County Line; thence South 84 Deg 43'18" West along said County Line 1349.08 Feet to the Point of Beginning.

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**EXHIBIT B**

**THE MATERIALS PACKAGING PROPERTY**

That certain property located at 426 West 15320 South, Bluffdale, State of Utah, referenced as Parcel Number 33-13-300-012-0000, and more particularly more particularly described as follows:

BEGINNING at a point on the Easterly line of the Union Pacific Railroad right-of-way, which point is North 00 Deg 19'14" East along the Quarter Section Line 709.75 feet and West 2738.99 feet (based on the Utah State Coordinate System, Central Zone) from the South Quarter Corner of Section 13, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence leaving said right-of-way line South 61 Deg 44'57" East 534.29 feet; thence South 28 Deg 15'03" West 212.32 feet; thence South 541.50 feet; thence South 89 Deg 35'30" West 294.73 feet; thence North 89 Deg 45'57" West 504.69 feet to the Easterly line of said railroad right-of-way; thence Northeasterly 1013.82 feet around the periphery of a curve to the right having a radius of 5931.14 feet (local chord=North 23 Deg 21'14" East 1012.58 feet); thence North 28 Deg 15'03" East continuing along said railroad right-of-way line 58.86 feet to the point of BEGINNING.

LESS AND EXCEPTING THEREFROM that portion conveyed to KENNETH F. WHITE, by that certain Warranty Deed, dated March 13, 1972, recorded March 21, 1972, as Entry No. 2444370, in Book 3053, at Page 496, the County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point 860 feet West and 660 feet South of the Northeast corner of Section 23, Township 4 South, Range 1 West, Salt Lake Base and Meridian. (Said point of beginning being on the East Boundary of the Los Angeles and Salt Lake Railroad Right of Way and the point of intersection of said Railway Right of Way with the North Boundary of the C. and G. Realty Inc. property.)

Thence along the North Boundary of the C. and G. Realty Inc. property East 1154 feet; thence North 400 feet; thence West 1024 feet, more or less, to the East Boundary of the Los Angeles and Salt Lake Railroad Right of Way; thence Southwesterly along the curve of the East Boundary of said Right of Way 400 feet, more or less to the point of BEGINNING.

ALSO, LESS AND EXCEPTING THEREFROM that portion conveyed to GENEVA ROCK PRODUCTS, INC., by that certain Warranty Deed, dated April 28, 1998, recorded April 29, 1998, as Entry No. 4945366, in Book 7960, at Page 1536, the County Recorder's Office, and being more particularly described as follows:

BEGINNING at a point that is South 61 Deg 44'57" East 420.19 feet from a point on the Easterly line of the Union Pacific Railroad right of way, which said right of way point is North 00 Deg 19'14" East along the Quarter Section line 709.75 feet and West 2738.99

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feet (Based on the Utah State coordinate system, central zone) from the South quarter corner of Section 13, Township 4 South Range 1 West, Salt Lake Base and Meridian; and running thence South 61 Deg 44'57" East 114.10 feet; thence South 28 Deg 15'03" West 212.32 feet thence North 241.06 feet to the point of BEGINNING.

Parcel 2:

A non-exclusive perpetual right-of-way easement for ingress and egress, as reserved in that certain Warranty Deed, dated March 1, 1990, in favor of ORRIN V. HANSEN aka O.V. HANSEN and MICHAEL S. HANSEN aka MICHAEL SNOW HANSEN, recorded March 2, 1990, as Entry No. 4887770, in Book 6202, at Page 312, the County Recorder's Office, across the following described parcel of land:

BEGINNING at a point on the Easterly line of the Union Pacific Railroad right-of-way, which point is North 00 Deg 19'14" East along the Quarter Section Line 709.75 feet and West 2738.99 feet (based on the Utah State Coordinate System, Central Zone) from the South Quarter corner of Section 13, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence North 28 Deg 15'03" East along said railroad right-of-way line 140.00 feet; thence leaving said right-of-way line South 61 Deg 44'57" East 125.00 feet; thence North 28 Deg 15'03" East 210.12 feet to a curve to the left having a radius of 80.00 feet; thence Northwesterly 125.66 feet around the periphery of said curve (chord=North 16 Deg 44'57" West 113.14 feet); thence North 61 Deg 44'57" West 45.00 feet to the Easterly right-of-way line of said Union Pacific Railroad; thence North 28 Deg 15'03" East along said right-of-way line 40.00 feet; thence leaving said right-of-way line South 61 Deg 44'57" East 45.00 feet to a curve to the right having a radius of 120.00 feet; thence Southeasterly 188.50 feet around the periphery of said curve (chord=South 16 Deg 44'57" East 169.71 feet); thence South 28 Deg 15'03" West 350.12 feet; thence North 61 Deg 44'57" West 165.00 feet to the point of BEGINNING.

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**EXHIBIT C**

**THE EASEMENT PARCEL**

Real property located in Salt Lake County, State of Utah, more particularly described as follows:

BEGINNING at a point on the Easterly Line of the Union Pacific Railroad Right-of-Way, which point is North 00 Deg 19'14" East along the Quarter Section Line 709.75 Feet and West 2738.99 Feet (based on the Utah State Coordinate System, Central Zone) from the South Quarter Corner of Section 13, Township 4 South, Range 1 West, Salt Lake Base and Meridian. Thence North 28 Deg 15'03" East along said Railroad Right-of-Way Line 475 Feet; thence leaving said Right-of-Way Line South 61 Deg 44'57" East 420.19 Feet; thence South 28 Deg 15'03" West 475 Feet; thence North 61 Deg 44'57" West 420.19 Feet to the Point of BEGINNING.

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**EXHIBIT D**

**THE RIGHT-OF WAY**

A non-exclusive perpetual right-of-way easement for ingress and egress, as reserved in that certain Warranty Deed, dated March 1, 1990, in favor of ORRIN V. HANSEN aka O.V. HANSEN and MICHAEL S. HANSEN aka MICHAEL SNOW HANSEN, recorded March 2, 1990, as Entry No. 4887770, in Book 6202, at Page 312, the County Recorder's Office, across the following described parcel of land:

BEGINNING at a point on the Easterly line of the Union Pacific Railroad right-of-way, which point is North 00 Deg 19'14" East along the Quarter Section Line 709.75 feet and West 2738.99 feet (based on the Utah State Coordinate System, Central Zone) from the South Quarter corner of Section 13, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence North 28 Deg 15'03" East along said railroad right-of-way line 140.00 feet; thence leaving said right-of-way line South 61 Deg 44'57" East 125.00 feet; thence North 28 Deg 15'03" East 210.12 feet to a curve to the left having a radius of 80.00 feet; thence Northwesterly 125.66 feet around the periphery of said curve (chord=North 16 Deg 44'57" West 113.14 feet); thence North 61 Deg 44'57" West 45.00 feet to the Easterly right-of-way line of said Union Pacific Railroad; thence North 28 Deg 15'03" East along said right-of-way line 40.00 feet; thence leaving said right-of-way line South 61 Deg 44'57" East 45.00 feet to a curve to the right having a radius of 120.00 feet; thence Southeasterly 188.50 feet around the periphery of said curve (chord=South 16 Deg 44'57" East 169.71 feet); thence South 28 Deg 15'03" West 350.12 feet; thence North 61 Deg 44'57" West 165.00 feet to the point of BEGINNING.

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