

06-23-1999

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**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

New

Resubmission (Non-Recordation)  
Document ID#

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

**Conveyance Type**

Assignment  Security Agreement

License  Change of Name

Merger  Other   
**U.S. Government**  
(For Use ONLY by U.S. Government Agencies)

Departmental File  Secret File

**Conveying Party(ies)**

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

**Second Party**

Name (line 1)

Name (line 2)

Execution Date  
Month Day Year

**Receiving Party**

Mark if additional names of receiving parties attached

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**FOR OFFICE USE ONLY**

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**Correspondent Name and Address**      **Area Code and Telephone Number**

**Name**

**Address (line 1)**

**Address (line 2)**

**Address (line 3)**

**Address (line 4)**

**Pages**      **Enter the total number of pages of the attached conveyance document including any attachments.**      #

**Application Number(s) or Patent Number(s)**       **Mark if additional numbers attached**

*Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).*

Patent Application Number(s)			Patent Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5702199"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.      

Month	Day	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Patent Cooperation Treaty (PCT)**

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT <input type="text"/>	PCT <input type="text"/>	PCT <input type="text"/>
PCT <input type="text"/>	PCT <input type="text"/>	PCT <input type="text"/>

**Number of Properties**      **Enter the total number of properties involved.**      #

**Fee Amount**      **Fee Amount for Properties Listed (37 CFR 3.41):** \$

**Method of Payment:**      **Enclosed**       **Deposit Account**


**Deposit Account**  
(Enter for payment by deposit account or if additional fees can be charged to the account.)

**Deposit Account Number:** #

**Authorization to charge additional fees:**      **Yes**       **No**

**Statement and Signature**

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.*

Paul D. Zier, Esq.            6/11/99

**Name of Person Signing**      **Signature**      **Date**

**SCHEDULE A**

1. Patent No. 5,702,199, granted December 30, 1997
2. Trademark of the name "Plasphalt"

## ROYALTY AGREEMENT

THIS ROYALTY AGREEMENT (this "Agreement"), effective as of April 16, 1999, by and between PIEDRA ENTERPRISES, LLC, a Colorado limited liability company (hereinafter referred to "Piedra"), and PLASPHALT PROJECT LTD. CO., a New Mexico limited liability company (hereinafter referred to as "PPL").

### RECITALS

A. PPL is the owner of certain patents, patent applications, and trademarks as more particularly described on Schedule A, which is attached hereto and incorporated herein by this reference (the "Intellectual Property") and is or may become the owner of proprietary information or knowledge, ideas, processes, applications, documents, know-how, methods, technical information, drawings, blueprints, devices, data, technical papers, documents, instruments, apparatus, processes, formulac, derivatives, and inventions related to the Intellectual Property, including, without limitation, patents, patent applications, trademarks, service marks, ideas, processes, applications, proprietary information or knowledge, documents, know-how, methods, technical information, drawings, blueprints, devices, data, technical papers, documents, instruments, apparatus, processes, formulac, derivatives, and inventions related or reasonably related to the Intellectual Property which PPL and its affiliates may develop in the future (collectively, the foregoing property, including, without limitation, the Intellectual Property, is hereinafter referred to as the "Technology");

B. Piedra has purchased from PPL a one percent (1%) royalty interest in the gross revenues derived from utilization of the Technology (the "Previously Acquired Royalty Interest");

C. PPL has granted to Piedra an option (the "Option") to acquire an additional four percent (4%) royalty interest in the gross revenues derived from utilization of the Technology (the "Additional Royalty Interest"); and

D. Piedra has exercised the Option, and the parties desires to enter into this agreement to effectuate the transfer of the Additional Royalty Interest and set forth the terms and conditions with regard to the Additional Royalty Interest and the Previously Acquired Royalty Interest.

### AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and incorporating them herein by this reference, the representations, warranties, covenants, promises, and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. PURCHASE PRICE. In consideration of exercise of the Option and conveyance of the Royalty Interest (hereinafter defined), Piedra shall pay to PPL one hundred thousand dollars (\$100,000).

2. REPRESENTATIONS AND WARRANTIES. PPL represents and warrants to Piedra as follows:

2.1 Organization. PPL is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New Mexico. PPL has full power and lawful authority to (i) own and operate its assets, properties and business, (ii) carry on its business as presently conducted, (iii) enter into this Agreement, and (iv) consummate the transactions contemplated by this Agreement. PPL has all licenses and permits necessary to own and operate its business as presently conducted.

2.2 Authorization. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby has each been duly authorized by all necessary action on the part of PPL, including manager and member authorization. This Agreement constitutes the legal, valid and binding obligation of PPL, enforceable in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance or other similar laws affecting creditors generally. PPL's execution, delivery and performance of this Agreement does not and will not (i) constitute a breach or violation of PPL's articles of organization or operating agreement, (ii) constitute a breach or violation of any law, rule, regulation, material agreement, indenture, deed of trust, mortgage, loan agreement or any material instrument to which PPL, is a party or by which PPL or any of the Technology Assets is bound or affected, (iii) constitute a violation of any order, judgment or decree by which PPL or any of the Technology is bound or affected, (iv) result in the acceleration of any material debt owed by PPL, (v) result in the creation of any lien or charge on any of the Technology; or (vi) require any authorization or consent of any third party or agencies.

2.3 Title. PPL has good and marketable title to the Technology, free and clear of all lien, claims, security interests, restrictions, claims, charges, and encumbrances except those of Piedra.

2.4 Suitability. The Technology is suitable for the purposes for which it is presently used.

2.5 Adverse Claims. There is no present or, to the best of Seller's knowledge, threatened claim of any nature against PPL's use of the Technology.

2.6 Disputes. PPL does not know of any dispute which adversely affects, or may adversely affect, the Technology or PPL's business.

2.7 Litigation. Neither PPL nor the Technology are subject to any pending or, to the best of PPL's knowledge, threatened litigation, proceeding, or administrative investigation.

2.8 Violations of Law. To the best of PPL's knowledge, PPL has not violated any federal, state, or local law or ordinance or any rule, regulation, order, or decree of any governmental agency, court, or authority (including, without limitation, occupational health and safety laws and rules or regulations promulgated thereunder) having

jurisdiction over it or over any part of its operations or assets, which violation would have an adverse effect on the Technology, and PPL has not received any notice of any such violation.

2.9 Proprietary Rights. With respect to the Technology, (i) PPL owns all right, title, and interest in and to or has legal authority to use all of the Technology, (ii) there have been no claims made against PPL for the assertion of the invalidity, abuse, misuse, or unenforceability of the proprietary rights related to the Technology, and there are no grounds for the same, (iii) PPL has not received a notice of conflict with the asserted rights of others, and (iv) the conduct of the business of PPL has not infringed any such rights of others. PPL does not license or use any Third Party Proprietary Rights in connection with PPL's use of the Technology. For purposes of this Agreement, "Third Party Proprietary Rights" means all the following, in which, a person or entity other than PPL has any ownership or proprietary interest: (i) patents, patent applications, patent disclosures and improvements thereto, (ii) trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof, (iii) copyrights and registrations and applications for registration thereof, (iv) mask works and registrations and applications for registration thereof, (v) computer software data and documentation, (vi) trade secrets and confidential business information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information), (vii) other proprietary rights, and (viii) copies and tangible embodiments thereof (in whatever form or medium).

2.10 Protection of Intellectual Property and Technology. PPL has taken all action reasonably necessary to protect the Intellectual Property and the Technology.

2.11 Affiliate Transactions. PPL has disclosed in writing all transactions and agreements it has entered into with its affiliates.

2.12 Disclosure. As of the date hereof, neither this Agreement, nor other document, certificate or item delivered by PPL or Fishback or at PPL's or Fishback's direction to Picdra contains any untrue statement of a material fact or omits to state a material fact necessary to make each statement contained herein or therein not misleading. There is no fact which has not been disclosed to Picdra of which PPL or Fishback is aware and which has a material adverse effect on the business, financial condition, operating results, business prospects, assets, customer or supplier relations of PPL or Fishback relating to the Technology; additionally, there is no fact which has not been disclosed to Picdra of which PPL or Fishback is aware and which has a material adverse effect on the proprietary nature of the Technology.

3. GRANT OF ROYALTY. Subject to the terms and conditions of this Agreement, PPL hereby (i) grants, assigns, conveys, and transfers, to Picdra a four percent (4%) royalty interest in the Technology pursuant to which PPL will pay to Picdra an amount equal to four

percent (4%) of the Gross Revenue (defined hereinafter) derived from the Technology within thirty (30) days after the end of the calendar quarter in which such Gross Revenue is received; and (ii) acknowledges and affirms its grant, assignment, conveyance, and transfer to Piedra of a one percent (1%) royalty interest in the Technology pursuant to which PPL will pay to Piedra an amount equal to one percent (1%) of the Gross Revenue within thirty (30) days after the end of the calendar quarter in which such Gross Revenue is received. The Previously Acquired Royalty Interest and the Additional Royalty Interest are collectively referred to in this document as the Royalty Interest.

3.1 Definition of Gross Revenue. The term "Gross Revenue" as used in this Agreement means: all monies and other property received by PPL, Gary M. Fishback ("Fishback"), or any of their respective affiliates, successors, or assigns, in consideration of the utilization, license, lease, sale, conveyance, transfer, or assignment of the Technology or any products, goods, or services embodying or otherwise incorporating or utilizing the Technology without reduction for PPL's, Fishback's, their respective affiliates', or their successors or assigns, expenses of utilizing, licensing, leasing, selling, conveying, transferring, assigning, producing, distributing, marketing, or developing the Technology or any products, goods, or services embodying or otherwise incorporating or utilizing the Technology; provided, however, that the term "Gross Revenue" shall not include the receipt of payment for and investment in PPL or a similar royalty interest.

3.2 Statements and Payments. On the thirtieth (30th) day after the end of each calendar quarter, PPL shall furnish to Piedra complete and accurate statements certified to be accurate by PPL, accounting for the Gross Revenues during such calendar quarter. Payments with respect to the Royalty Interest (the "Royalties") shall be due on the thirtieth (30th) day of the month following the end of such calendar quarter, and payment shall accompany the statements furnished as required above. The receipt or acceptance by Piedra of any of the statements furnished pursuant to this Agreement or any Royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude Piedra or PPL from questioning the correctness thereof at any time, and in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payment made by PPL to Piedra or by Piedra to PPL, as the case may be.

3.2.1 Statements shall be in such form as Piedra shall reasonably approve. PPL and Piedra shall endeavor to agree upon the appropriate format for the statements to be furnished hereunder, but failure to agree upon the appropriate format shall not suspend PPL's obligations to render payments to Piedra, which shall be remitted to Piedra's address noted above or other addresses as Piedra may specify.

3.2.2 All payments made pursuant to this Agreement shall be in U.S. Dollars. Time is of the essence with respect to all payments hereunder. Statements shall be rendered by PPL for each calendar quarter whether or not Royalties have been earned and payable for the applicable quarter.

3.3 Audit. Piedra and its duly authorized representatives shall have the right to audit the records of PPL (or other records relating to the Technology or the utilization, license, lease, sale, conveyance, transfer, or assignment of the Technology or any products, goods, or services embodying or otherwise incorporating or utilizing the Technology) to determine the accuracy of the Royalties paid under this Agreement. PPL agrees to keep accurate books of account and records at its principal place of business covering all transactions relating to this Agreement, and Piedra and its duly authorized representatives at Piedra's expense shall have the right at all reasonable hours of the day and upon reasonable notice to an examination of said books of account and records and of all other documents and material in the possession or under the control of PPL or its affiliates with respect to the subject matter and terms of this Agreement; provided, however, that if Piedra's audit reveals an omission or misstatement that resulted in underpayment equal to ten percent (10%) or more of the amount actually due, then PPL shall reimburse Piedra for the costs and expenses relating to the audit. Piedra shall have free and full access thereto for said purpose and for the purpose of making extracts therefrom. All books of account and records shall be kept available for at least five (5) years after the date thereof.

3.4 Interest. PPL will pay to Piedra twelve percent (12%) interest per annum, compounded monthly, on all amounts due under this Agreement but not paid within the specified thirty (30) day period. Interest shall accrue from the end of the thirty (30) day period.

3.5 Best Efforts. PPL agrees that during the term of this Agreement it will, at the sole cost and expense of PPL, use its best efforts to diligently manufacture, develop, distribute, market, produce, and promote the Technology and any products, goods, or services embodying or otherwise incorporating or utilizing the Technology in accordance with this Agreement. PPL agrees that it will not discriminate against the Technology (as compared to other technology in which PPL or Fishback have a proprietary interest) relating to production, development, distribution, promotion, licensing, and the like. PPL agrees that it will not sell any product that competes with the Technology without the express written approval of Piedra. PPL agrees that it will not license or transfer the Technology to any of its affiliates without the prior written consent of Piedra. PPL agrees it will sell, license, and distribute the Technology, or related products, at a competitive price and that it will advise Piedra of the same. The expiration of the term of any patent shall not constitute a violation of this Section 3.5.

4. SECURITY ARRANGEMENTS. Upon Piedra's election, PPL, Fishback, and their respective affiliates shall provide to Piedra any documents and/or instruments requested by Piedra, in form and substance acceptable to Piedra, to perfect or evidence the Royalty Interest in any governmental office, whether domestic or foreign, whether local, state, or federal, including, without limitation, financing statements, assignments, and security agreements. In connection with this Agreement, PPL shall execute and deliver to Piedra security agreements requested by Piedra, in form and substance to Piedra, to secure PPL's, Fishback's, and their respective affiliates' performance of obligations under this Agreement; and Piedra may file any such documents and/or instruments in any government office, whether domestic or foreign, whether state, local, or federal.



5. PROTECTION OF TECHNOLOGY DERIVATIVES. PPL hereby covenants and agrees to take all steps necessary to ensure that it is, or will become, the owner of all proprietary information or knowledge, ideas, processes, applications, documents, know-how, methods, technical information, drawings, blueprints, devices, data, technical papers, documents, instruments, apparatus, processes, formulae, derivatives, and inventions related to the Intellectual Property or any of the foregoing already in existence related to the Intellectual Property, including, without limitation, patents, patent applications, trademarks, service marks, ideas, processes, applications, proprietary information or knowledge, documents, know-how, methods, technical information, drawings, blueprints, devices, data, technical papers, documents, instruments, apparatus, processes, formulae, derivatives, and inventions related to the Intellectual Property which PPL, its employees, agents, or affiliates may develop in the future.

6. INJUNCTION. PPL acknowledges that its failure to perform any of the terms or conditions of this Agreement shall result in immediate and irreparable damage to Piedra. PPL also acknowledges that there may be no adequate remedy at law for such failures and that in the event thereof Piedra shall be entitled to equitable relief in the nature of an injunction and to all other available relief, at law and/or in equity.

7. INDEMNITY. Piedra assumes no liability whatsoever to PPL or to third parties with respect to the performance characteristics of the Technology and any products, goods, or services embodying or otherwise incorporating or utilizing the Technology or otherwise. PPL hereby covenants and agrees to indemnify, defend, and hold harmless Piedra and its respective owners, members, managers, agents, representatives, attorneys, successors and assigns from damages, expenses, losses, and costs (including reasonable attorneys' fees and expenses) incurred in connection with any action, demand, investigation, inquiry (formal or informal), proceeding, claims, suits, or settlement thereof (whether formal or informal proceeding or action has been instituted) which arises out of or is based, promised, or contains allegations referring to any actual or alleged acts or circumstances relating to the Technology and any products, goods, or services embodying or otherwise incorporating or utilizing the Technology, including, without limitation, (i) any actual or alleged unauthorized use of or infringement of any trademark, service mark, copyright, patent, trade secret, process, method or device by PPL; (ii) actual or alleged defects or deficiencies in the Technology or the use thereof, the failure of the Technology to meet any applicable laws or standards, or false advertising, fraud, misrepresentations or other claims related to the Technology; (iii) any actual or alleged damage, injury, or sickness caused by the Technology or use thereof; (iv) any violation or breach of any warranty, representation, agreement, promise, covenant, or obligation under this Agreement by PPL; (v) any actual or alleged libel or slander against, or invasion of the right of privacy, publicity or property of, or violation or misappropriation of any other right of any third party; and/or (vi) agreements or alleged agreements made or entered into by PPL to effectuate the terms of this Agreement (vii) any actual or alleged violation of any national, federal, state or local law, regulation, ruling, standard, directive, or of any industry standard with respect to the Technology or to activities related thereto. Piedra shall give PPL and Fishback notice of the making of any claim or the institution of any action hereunder and Piedra may at its option participate in any action. Piedra assumes no liability whatsoever, for the acts and omissions of PPL, Fishback, their respective affiliates, or any of those with whom PPL may contract for the manufacture, license, distribution, promotion, or sale of the Technology and any products, goods, or services embodying or otherwise incorporating or utilizing the Technology. PPL shall indemnify and hold harmless

Piedra for damages, expenses, and costs, as described above, arising out of any acts or omissions of these third parties.

8. PPL COVENANTS REGARDING USE OF PURCHASE PRICE. PPL covenants that all amounts paid to it by Piedra pursuant to this Agreement will be used to obtain further patents protecting the Technology and further development of the Technology; and such amounts shall not be used to repay any indebtedness or compensation to Fishback or affiliates of Fishback or PPL. Fishback hereby agrees that any indebtedness of PPL to Fishback or affiliates of Fishback or PPL, whether now existing or hereafter created, shall be and is hereby subordinated to any amounts due by PPL to Piedra under this Agreement. PPL shall not pay or attempt to pay any amounts to Fishback or affiliates of Fishback or PPL until such time as the obligations of PPL hereunder have been paid and satisfied in full.

9. LIMITATION ON ADDITIONAL ROYALTY INTERESTS. PPL covenants and agrees not to enter into any other agreements, transactions, licenses, or other arrangements which would result in PPL, Fishback, or any of their respective affiliates or other parties which may have an interest in the Technology having granted royalty interests in the gross revenues related to the Technology (including the Royalty Interest granted hereunder and any royalty interest that may be granted upon exercise of the Option) to exceed twenty and one thousand four hundred twenty-eight ten thousandths percent (20.1428%) of the total gross revenues related to the Technology. Additionally, PPL covenants not to grant any royalty interest in the gross revenues derived from utilization of the Technology or any products, goods, or services embodying or otherwise incorporating or utilizing the Technology on terms more favorable to the grantee than those set forth herein with respect to Piedra; provided, however, more favorable royalty interests may be granted upon (i) the written consent of Piedra, which consent may be withheld in its absolute discretion, or (ii) upon written modification of this Agreement to include the terms more favorable to the grantee of such interest than those set forth herein with respect to Piedra. The foregoing provisions of this Section 9 shall not limit PPL's ability to issue equity interests in PPL.

10. INFRINGEMENT PROCEEDINGS. PPL agrees to promptly notify Piedra of any unauthorized use of the Technology by others as it comes to PPL's attention. PPL shall, at its sole expense, bring proceedings against material infringement, dilution, or unfair competition affecting the Technology (provided that, for the purpose of this sentence, any infringement, dilution, or unfair competition which could result in Piedra receiving \$10,000 less than if the same had not occurred shall be deemed to be "material").

11. COVENANT TO DEFEND TITLE. PPL covenants to warrant and defend title to the Royalty Interest against all adverse claims made by any person, firm, corporation, organization, entity, or association;

12. NO THIRD PARTY BENEFICIARIES. This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and assigns.

13. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and personal representatives, as applicable.

14. SECURITY. To secure the prompt, full and faithful payment and performance by PPL of its obligations under this Agreement, PPL hereby grants to Piedra a security interests in, and collateral assignment of, the Technology.

15. SUBORDINATION. Upon PPL's request, Piedra agrees to subordinate its security interest in the Technology to third party (*i.e.* persons who are not affiliates of PPL) lenders; provided that (i) any lending arrangements to which PPL requests Piedra to subordinate are on commercially reasonable terms, and (ii) the proceeds from any such lending arrangement are used to fund the promotion or development of the Technology; provided, however, that any such subordination shall not apply to the Royalty Interest.

16. TERM. This Agreement and the Royalty Interest shall continue in force and effect in perpetuity; and the Royalty Interest constitutes a vested ownership interest in the Technology.

17. TRANSFER OF TECHNOLOGY. Except for the royalty interest contemplated by Section 9 hereof and any security interest granted to a non-affiliate lender in accordance with the terms hereof, PPL may assign, transfer, pledge, sell, convey, or hypothecate (a "Transfer") its interest in the Technology only upon the party to whom such Transfer is made acknowledging this Agreement and agreeing to be bound by the terms hereof.

18. INTERPRETATION OF AGREEMENT. It is agreed that this Agreement shall be interpreted according to the laws of the State of Colorado, without regard to any choice of law rules which may direct the application of the laws of another jurisdiction, and the United States of America. In the event any dispute arises with respect to this Agreement, the parties hereby (i) consent to jurisdiction of the State of Colorado, (ii) shall be subject to service of process for the purpose of any suit, action, or proceeding brought to enforce this Agreement, and (iii) consent to the litigation of such disputes in the State of Colorado.

19. CONSTRUCTION. This Agreement is a product of negotiation between the parties, and the language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party, and no presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

20. FINAL INTEGRATION. Piedra and PPL intend this Agreement, as memorialized in this writing, to constitute the final and complete expression of their intent as to the Royalty Interest. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, representations, negotiations, statements, or proposals related to those matters set forth herein including that certain Royalty Agreement by and among Piedra, PPL, and Fishback dated March 8, 1999.

21. SEVERABILITY. The provisions of this Agreement will be deemed severable, and if any provision of this Agreement is held illegal, void, or invalid under applicable law

(including under the "rule against perpetuities"), such provision shall be modified to the extent reasonably necessary to make the provision legal, valid and binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement will not be voided but will remain binding in accordance with their terms.

22. MODIFICATION. Except as modified by a judicial body, pursuant to Section 19 hereof, no modification this Agreement shall be valid or binding upon the parties or entitled to any enforcement whatsoever unless such modification is reduced to writing and signed by the parties.

23. FACSIMILE AND COUNTERPART SIGNATURES. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument. For the purposes of execution of this Agreement, facsimile signatures shall be deemed originals.

24. INTERPRETATION OF CERTAIN TERMS.

24.1 For purposes of this Agreement, the term "affiliate" of any person or entity means any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person or entity. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," or and "under common control with"), as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of voting securities or interests, by agreement or otherwise; provided, however, that beneficial ownership of ten percent (10%) or more of the voting stock or interests of an entity shall be deemed control.

24.2 For purposes of this Agreement, any words herein used in the singular shall denote the plural as the context so requires and, when used herein in the plural shall denote the singular as the context so requires; pronouns used herein, whether masculine, feminine, or neuter, shall be interpreted as the context so requires; the word "including" shall mean "including, without limitation;" and any reference to any federal, state, or local law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

25. JOINT VENTURE. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between the parties. Neither party shall have any right to obligate or bind the other party in any manner whatsoever as a result of this Agreement alone, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third person.

26. NOTICES. Except as otherwise expressly set forth in this Agreement, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when given in person, by cable, telegram, or facsimile transmission, three (3) business days after mailing by

first class mail, registered or certified, return receipt requested, or one (1) business day after being sent by overnight courier to the Parties, in each case at the following addresses:

Notices to PPL and/or Fishback:

554 Sanatonro Street (Front House)  
Santa Fe, New Mexico 87501  
Attn: Gary M. Fishback  
Phone: (505) 983-0626  
Fax: (505) 983-0626

With a copy to:

Felker, Ish, Ritchie & Geer, P.A.  
911 Old Pecos Trail  
Santa Fe, New Mexico  
Attn: Randolph B. Felker, Esq.  
Phone: (505) 988 4183  
Fax: (505) 983-4876

Notices to Piedra:

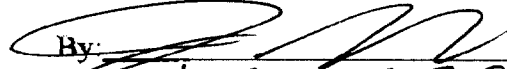
Piedra Enterprises, LLC  
P.O. Box 3232  
Glenwood Springs, Colorado 81602  
Attn: Jerome F. Gamba  
Phone: (970) 945-5903  
Fax: (970) 945-4996

With a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 17th Street, Suite 1600  
Denver, Colorado 80202  
Attn: Blair Lockwood, Esq.  
Phone: (303) 825-8400  
Fax: (303) 825-6525

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

PIEDRA ENTERPRISES, LLC, a Colorado limited liability company

By:   
Name: JEROME F. GAMBIA  
Title: MANAGER

PLASPHALT PROJECT LTD. CO., a New Mexico limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CERTIFICATE OF MANAGER**

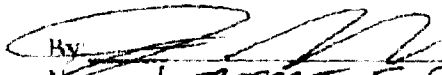
The undersigned hereby certifies to Piedra Enterprises, LLC, a Colorado limited liability company ("Picdra") that:

- 1. The representations and warranties of Plasphalt Project Ltd. Co. ("PPI") set forth above are true and correct in all material respects as of the date hereof.

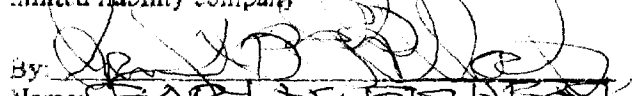
\_\_\_\_\_  
Gary M. Fishback

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

PIEDRA ENTERPRISES, LLC, a Colorado limited liability company

By:   
Name: JEROME F. GAMB  
Title: MANAGER

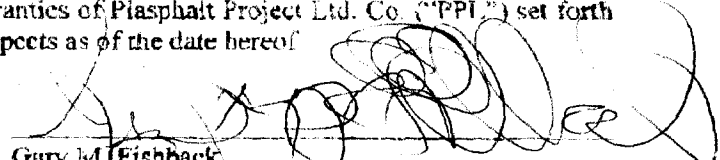
PIASPHALT PROJECT LTD. CO a New Mexico limited liability company

By:   
Name: GARY M. FISHBACK  
Title: CEO, DIRECTOR

**CERTIFICATE OF MANAGER**

The undersigned hereby certifies to Piedra Enterprises, LLC, a Colorado limited liability company ("Piedra") that:

1. The representations and warranties of Piasphalt Project Ltd. Co. ("PPI") set forth above are true and correct in all material respects as of the date hereof

  
Gary M. Fishback

OTTEN, JOHNSON, ROBINSON, NEFF & RAGONETTI, P.C.  
ATTORNEYS AND COUNSELORS AT LAW

950 SEVENTEENTH STREET  
SUITE 1600  
DENVER, COLORADO 80202

PATRICIA A. HUNZEKER  
DIRECT DIAL (303) 575-7534  
PHUNZEKER@OJRN.R.COM

TELEPHONE 303-825-8400  
FAX 303-825-6525

June 11, 1999

VIA EXPRESS MAIL

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, DC 20231

Re: Recording: Royalty Agreement  
Piedra Enterprises, LLC: Receiving Party  
Patent No. : 5,702,199  
Our Ref.: 16264-001


Dear Commissioner:

Enclosed for recording with the Assignment Division of the United States Patent and Trademark Office are the following documents relating to the above-referenced patent assignment recordation:

1. Recordation Form Cover Sheet, Patents Only;
2. Royalty Agreement, and
3. Return receipt card.

Please charge the amounts due to our Deposit Account No. 500480 and notify us of such withdrawal on our monthly statement.

Sincerely,



Patricia A. Hunzeker  
Paralegal  
for

OTTEN, JOHNSON, ROBINSON,  
NEFF & RAGONETTI, P.C.

/ph

417097.1

Enclosures

cc: Paul D. Zier, Esq., w/o enclosures

RECORDED: 06/12/1999

PATENT  
REEL: 010033 FRAME: 0102