

**STATE OF WEST VIRGINIA
VOLUNTARY REMEDIATION PROGRAM**

CERTIFICATE OF COMPLETION AND COVENANT

AREA A

ECR Investment Group, LLC, Kohler Company, and Rockwell International Corporation (“Applicants”) entered into a Voluntary Remediation Agreement with the Director of the Department of Environmental Protection (“Director”), dated November 1, 1999, and Amendments dated February 8, 2000, and September 26, 2000 (collectively referred to as the “Agreement”). The Agreement was entered into to address the release of any contaminants at the former Sterling Plumbing Facility (“Site”) located at 2001 Earl Core Road (WV Route 7), Morgantown, Monongalia County, West Virginia. The following documents are incorporated by reference, unless otherwise specified, as a part of this Certificate and Covenant:

The Voluntary Remediation Program Application dated June 20, 1997.

The Voluntary Remediation Agreement dated November 1, 1999, and amended February 8, 2000, September 26, 2000, and September 21, 2001.

The Final Report and Residual Risk Assessment for Area A, dated October 25, 2000, and revised February 20, 2001, and March 20, 2001, and amended October 24, 2001.

A legal description of Area A (attached as Exhibit A).

A description the contaminants at Area A for which applicable standards are met (attached as Exhibit B).

A description of any institutional or engineering controls that were used at Area A to achieve a remediation standard (attached as Exhibit C).

The land use covenant to be recorded for this site (See Exhibit D).

This Certificate of Completion for Area A is issued pursuant to W.Va. Code § 22-22-13 to Applicant in recognition of the completion of the work required under the Agreement.

Pursuant to W.Va. Code §§22-22-7(f) 22-22-13, 22-22-14, and 22-22-18, the director of the West Virginia Department of Environmental Protection (“WVDEP”), in the name of and on behalf of the State of West Virginia, now covenants not to bring any civil, criminal or administrative action or claim, resulting from or based upon the release or threatened release of contaminants that were the subject of the Voluntary Remediation Agreement. This covenant shall bar actions against Applicant, Applicant’s successors and assigns, and those persons identified in W.Va. Code §22-22-18, from all public and private claims arising under Chapter 22 of the West Virginia Code or rules adopted there under in connection with the release or threatened release that was the subject of the Voluntary Remediation Agreement. This covenant shall not apply to Applicant’s predecessors in title.

CONDITIONS

This Certificate and the covenant it contains are subject to the terms and conditions set forth below:

1. The following conditions, contained in W.V.A. Code §22-22-15, which may cause the Voluntary Remediation Agreement to be reopened:

- a) fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;
- b) new information confirms the existence of an area of previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;
- c) the level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as, a change in land use, or new information is obtained about a contaminant associated with the site which exposure assumptions beyond the acceptable range. This condition applies only where the level of risk is increased by a factor of at least five or the hazard index exceeds 1, or 10 where multiple systemic toxicants do not affect the same organ;
- d) the release occurred after the effective date of this Article on a site not used for industrial activity prior to the effective date of this Article; the remedy relied, in whole or in part, upon institutional or engineering controls instead of treatment or removal of contamination ; and treatment, removal or destruction has become technically and economically practicable; or
- e) The remediation methods failed to meet the remediation standard or combination of standards.

For purposes of this paragraph, "new information" means any information obtained directly or indirectly by the WVDEP from any person after issuance of a Certificate of Completion, but does not include information the WVDEP has received in the application for participation in the voluntary remediation program, including any site assessment, or other information available to the WVDEP under the voluntary remediation program prior to the execution of the Certificate of Completion. Information that does not qualify as new information may be considered by the WVDEP along with new information if necessary, to determine whether any of the conditions for reopening set out in section 16 of this rule, have occurred.

Where one of the foregoing conditions is found to exist for a portion but not all of the site, this certificate and covenant shall continue to apply to all portions of the site that were unaffected by the occurrence of that condition.

2. To the extent that the Agreement or any of the documents referenced in this certificate impose obligations that continue after the execution of this certificate, there shall be continued compliance with such obligations.

3. This certificate and covenant do not preclude the State of West Virginia from taking any unilateral action at the site, under any existing or future statutory authority, to protect human health and the environment; provided however, in no event shall the State have a right of recovery against Applicant or any other person to whom the covenant herein applies to the extent that such right of recovery arises under Chapter 22 of the West Virginia Code, and relates to matters covered by the Agreement.
4. This certificate and covenant do not preclude the State from seeking recovery of such sums as the Applicant has agreed to pay the WVDEP under the Agreement.

WHEREFORE, the director of the Department of Environmental Protection, on behalf of the State of West Virginia, issues this certificate and covenant, with all aforementioned privileges, responsibilities, conditions and reservations, this 30th day of October, 2001, to Applicant.

Ken Ellison

Director, Department of Environmental Protection

EXHIBIT A

**DESCRIPTION OF SURVEY
FOR
AREA "A" STERLING SITE**

All that certain tract or parcel of real estate, lying and being in the Sixth Ward, City of Morgantown, Monongalia County, West Virginia, and more particularly described as follows:

Beginning at a point in the southern right of way line of Eljadio Street and in the western right of way line of West Virginia Route 7, said point also standing as a corner to ECR Investment Group, LLC (Db 1193 /Pg 308) a part of the property described herein; thence leaving said Eljadio Street and with right of way line of said Route 7 and ECR Investment

S 14° 39' 59" E 138.26 feet to a point; thence with a curve concave to the to the northeast, having a radius of 4584.00 feet

Southeasterly 71.75 feet along said curve through an angle of 00° 53' 48" to a point standing as a new corner to said ECR Investment, said curve having a chord bearing and distance of S 15° 06' 53" E 71.75 feet; thence leaving said Route 7 and original line of said ECR Investment and with a new lines through said ECR Investment

S 75° 27' 50" W 487.00 feet to a point; thence

N 14° 32' 10" W 210.00 feet to a point in the southern right of way line of said Eljadio Street, standing in the original line and as a new corner to said ECR Investment; thence with said right of way line and original line

N 75° 27' 50" E 485.96 feet to the place of beginning, **containing 2.3442 acres**, more or less, as surveyed in February, 1999, by Triad Engineering, Inc. of Morgantown, West Virginia, and shown as Lots One and Two on a plat of survey for ECR Investment Group, Inc., dated the 23rd day of March, 2000. The meridian for all bearings in this description is West Virginia State Plane North Zone "Grid North".

Being a portion of the same tracts or parcels of real estate conveyed unto ECR Investment Group, LLC, from Kohler, Incorporated, by deed dated the 8th day of February, 2000, of record in the Office of the Clerk of Monongalia County, West Virginia, in Deed Book 1193, at Page 308. Said tract or parcel of real estate is more specifically show on Tax Map No. 33 as Parcel 54 and on Tax Map No. 44 as Parcel 34.

EXHIBIT B

**AREA A
LIST OF CONTAMINANTS**

Groundwater	Soils
lead	lead
arsenic	arsenic
iron	manganese
manganese	

EXHIBIT C

AREA A

DESCRIPTION OF INSTITUTIONAL AND ENGINEERING CONTROLS

Institutional Controls

A land use covenant has been recorded with the Clerk of the Monongalia County Commission, which restricts use of the Site as follows:

1. Prohibits use of the Site for residential purposes, as defined by the Voluntary Remediation Act (WVC § 22 -22-1, et seq).
2. Prohibits installation or use of water wells or other devices for the purpose of withdrawing groundwater from beneath the Site, except as necessary to obtain samples of groundwater for purposes of environmental monitoring.
3. Prohibits all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant contained as part of the remedial action.

Engineering Controls

A Remedial Action Plan has been prepared which requires the installation of a clean soil cover possessing a minimum thickness of 2 ft. to minimize potential for contact with contaminated surface soils, and an asphalt layer possessing a minimum thickness of 4 in. to minimize infiltration of precipitation through on-site soils.

EXHIBIT D
LAND USE COVENANT

WHEREAS, ECR Investment Group, LLC has entered into a Voluntary Remediation Agreement (hereinafter referred to as “the Agreement”) with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code §22-22-1 through §22-22-2 (hereinafter referred to as “the Act”), for certain property, located on Earl Core Road (Route 7) in the Sixth Ward of the City of Morgantown, Monongalia County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1193, at page 308, and

WHEREAS, Paragraph A of the Agreement requires ECR Investment Group, LLC, as the owner of said property, to file a Land Use Covenant with the Clerk of the County Commission of Monongalia County, and

WHEREAS, the Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the County Commission of Monongalia County for the purpose of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

NOW THEREFORE, as ECR Investment Group, LLC (hereinafter referred to as “Owner”) and the director have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.

2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:

- a) Excavation, drilling or penetration through any protective cover placed or installed as a remedial action for the site unless the excavation operations and activities are either performed by a qualified and knowledgeable contractor that is aware of any potential release of a contaminant and has a Health and Safety Plan to protect the public and workers or a contractor working under the direct supervision of a Licensed Remediation Specialist (LRS) or a similarly qualified individual or organization, and
- b) Removal of asphalt cap or building foundations placed on Area A, for any reason other than installation, removal, or maintenance of underground facilities, expansion of present commercial facility, or construction of future non-residential facilities. The owner must notify the Director prior to maintenance of underground facilities, expansion of present commercial facility, or construction of future non-residential facilities that disturbs the asphalt cap or existing building foundation in areas where the soils exceed the Industrial De Minimus Risk-Based Standard, and
- c) Extraction of groundwater at the site for any potable or non-potable use, and
- d) Alteration of the existing or future land use of the site to residential use.

3. The Owner shall restrict the uses of the property to uses ~~other than Residential Land~~ Use as described by the Voluntary Remediation Act (West Virginia Code §22-22-1, et seq). This

restriction prohibits use of the property for any residential use, including schools, daycare centers, nursing homes, or other residential-style facilities or recreational areas.

4. The Owner shall provide written notice to the director of the Department of Environmental Protection of the intent to transfer any interest in the property.

5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and any Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, West Virginia Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner and any person identified in West Virginia Code §22-22-18, from any civil liability to the State of West Virginia, as provided under the Act, so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owner, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or releases signed by the director and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of Monongalia County, where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the director of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the director or his successor. Within five days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the County Commission of Monongalia County, and within five days thereafter the Owner shall provide a true copy of the recorded amendment, modification or termination to the director of the Department of Environmental Protection.

The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS WHEREOF, the said Owner of the above-described property and the director of the Department of Environmental Protection, have caused this Land Use Covenant to be executed this 30th day of October, 2001.

ECR INVESTMENT GROUP, LLC

By David E. Bryte

Its Managing Member

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By Ken Ellison

Its Director

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, Clara J. Babb, a Notary Public in and for the State and County aforesaid, do hereby certify that David E. Bryte, the Managing Member of ECR Investment Group, LLC, whose name is signed to the writing above, bearing date the 30th day of October, 2001, has this day acknowledged same to be his true act and deed.

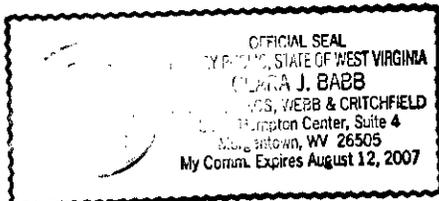
Given under my hand this the 31st day of October, 2001.

My commission expires:

8-12-07

Clara J. Babb

Notary Public



STATE OF WEST VIRGINIA,

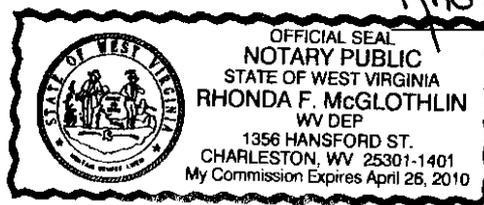
COUNTY OF KANAWHA, TO-WIT:

I, Rhonda F. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Kem Ellison, the Director of the Department of Environmental Protection, whose name is signed to the writing above, bearing date the 30th day of October, 2001, has this day acknowledged same to be his true act and deed.

Given under my hand this the 30th day of October, 2001.

My commission expires:

April 26, 2010



Rhonda F. McGlothlin

Notary Public

357559
1223-109**LAND USE COVENANT**

WHEREAS, ECR Investment Group, LLC has entered into a Voluntary Remediation Agreement (hereinafter referred to as “the Agreement”) with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code §22-22-1 through §22-22-2 (hereinafter referred to as “the Act”), for certain property, located on Earl Core Road (Route 7) in the Sixth Ward of the City of Morgantown, Monongalia County, West Virginia and more particularly described in a deed of record in the office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book No. 1193, at page 308, and

WHEREAS, Paragraph A of the Agreement requires ECR Investment Group, LLC, as the owner of said property, to file a Land Use Covenant with the Clerk of the County Commission of Monongalia County, and

WHEREAS, the Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the County Commission of Monongalia County for the purpose of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

NOW THEREFORE, as ECR Investment Group, LLC (hereinafter referred to as “Owner”) and the director have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.

2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:

- a) Excavation, drilling or penetration through any protective cover placed or installed as a remedial action for the site unless the excavation operations and activities are either performed by a qualified and knowledgeable contractor that is aware of any potential release of a contaminant and has a Health and Safety Plan to protect the public and workers or a contractor working under the direct supervision of a Licensed Remediation Specialist (LRS) or a similarly qualified individual or organization, and
- b) Removal of asphalt cap or building foundations placed on Area A, for any reason other than installation, removal, or maintenance of underground facilities, expansion of present commercial facility, or construction of future non-residential facilities. The owner must notify the Director prior to maintenance of underground facilities, expansion of present commercial facility, or construction of future non-residential facilities that disturbs the asphalt cap or existing building foundation in areas where the soils exceed the Industrial De Minimus Risk-Based Standard, and
- c) Extraction of groundwater at the site for any potable or non-potable use, and
- d) Alteration of the existing or future land use of the site to residential use.

3. The Owner shall restrict the uses of the property to uses other than Residential Land Use as described by the Voluntary Remediation Act (West Virginia Code §22-22-1, et seq). This

restriction prohibits use of the property for any residential use, including schools, daycare centers, nursing homes, or other residential-style facilities or recreational areas.

4. The Owner shall provide written notice to the director of the Department of Environmental Protection of the intent to transfer any interest in the property.

5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and any Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, West Virginia Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner and any person identified in West Virginia Code §22-22-18, from any civil liability to the State of West Virginia, as provided under the Act, so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owner, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or releases signed by the director and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of Monongalia County, where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the director of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the director or his successor. Within five days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the County Commission of Monongalia County, and within five days thereafter the Owner shall provide a true copy of the recorded amendment, modification or termination to the director of the Department of Environmental Protection.

The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

IN WITNESS WHEREOF, the said Owner of the above-described property and the director of the Department of Environmental Protection, have caused this Land Use Covenant to be executed this 30th day of October, 2001.

ECR INVESTMENT GROUP, LLC

By David E. Bryte

Its Managing Member

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By Ken Ellison

Its Director

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

I, Clara J. Babb, a Notary Public in and for the State and County aforesaid, do hereby certify that David E. Bryte, the Managing Member of ECR Investment Group, LLC, whose name is signed to the writing above, bearing date the 30th day of October, 2001, has this day acknowledged same to be his true act and deed.

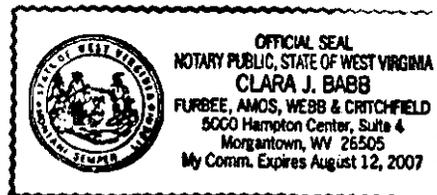
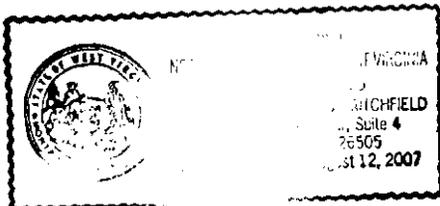
Given under my hand this the 31st day of October, 2001.

My commission expires:

8-12-07

Clara J. Babb

Notary Public



STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

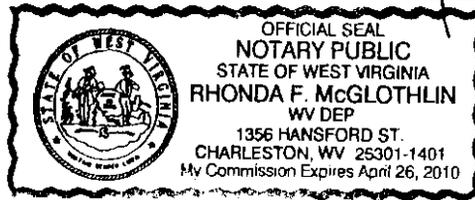
I, Rhonda J. McGlothlin, a Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, the Director of the Department of Environmental Protection, whose name is signed to the writing above, bearing date the 30th day of October, 2001, has this day acknowledged same to be his true act and deed.

Given under my hand this the 30th day of October, 2001.

My commission expires:

April 26, 2010

Rhonda J. McGlothlin



Notary Public

Prepared by the WV Department of Environmental Protection.

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA
TO WIT:

I, Michael A. Oliverio, Monongalia County Clerk, do hereby certify that the foregoing writing, with certificate thereto annexed, was this day produced to me in my office and duly admitted to record.

Witness my hand

Michael A. Oliverio, Clerk

Monongalia County Clerk
Michael A. Oliverio
GOVERNMENT Drawer 1
Date/Times: 10/31/2001 14:05
Inst #: 93002
Recd/Tax: 1.00 .00

ECR Inv. Group

FAX COVER SHEET

ORANGE CONSTRUCTION CORPORATION

PO Box 861
Morgantown, WV 26507-0861

Phone (304) 291-6765
Fax (304) 291-6975

SEND TO Company name WV DEP	From ONAS ALIFF
Attention DAVID HIGHT	Date 4-18-01
Office location	Office location
Fax number (304) 558-3998	Phone number

- Urgent Reply ASAP Please comment Please review For your information

Total pages, including cover: 2

COMMENTS

David
Follows is request for
Certificate of Completion for
Area A @ Sterling Site.
of Foxed to you per request
of John M. Meeks, LRS.
this Original being mailed to you
this date.

Onas

ECR INVESTMENT GROUP



PO Box 661 ♦ Morgantown, WV 26507-0661
Phone 1-304-291-6765 ♦ Fax 1-304-291-6975

April 18, 2001

Ken Ellison, Chief
Office of Environmental Remediation
1356 Hansford Street
Charleston, WV 25301

Subject: REQUEST FOR CERTIFICATE OF COMPLETION
Area A - Former Sterling Plumbing Facility
Morgantown, West Virginia

Dear Mr. Ellison:

In accordance with 60CSR3, Section 12.1.c.1, we are writing to request that the Director of the Division of Environmental Protection issue a certificate of completion for the subject property, as provided for in 60CSR3, Section 12.2. This request is based on the Final Report and Residual Risk Assessment issued by Mr. John Meeks, L.R.S., of Triad Engineering, Inc., and approved by your office on April 16, 2001.

We trust this information meets your needs at this time. Should you have any questions or require additional information, please call.

Sincerely,

A handwritten signature in cursive script that reads "David E. Bryte".

David E. Bryte
Managing Member
ECR Investment Group, LLC