



January 10, 2014 **Proposed Mining Agreement Draft - 12/11/13 - Larchmont Holdings, LLC**

MINING AGREEMENT

RECITALS

- A. Larchmont Holdings, LLC ("Larchmont"), a Wisconsin limited liability company, desires to engage in nonmetallic mining on the property ("Property") located in the Town of Garfield ("Town"), Jackson County, Wisconsin. See Exhibit A.
- B. The proposed Property is owned and/or under a Royalty Lease Agreement with Larchmont.
- C. Larchmont desires certain exceptions from and modifications of the requirements of Chapter 10 of the Town's code of ordinances ("Mine Ordinance").
- D. The Town is willing to grant such exceptions and modifications under the conditions set forth below.

AGREEMENT

THEREFORE, Larchmont and the Town agree as follows:

1. License

1.1. The Town acknowledges materials sufficient to fulfill the application requirements of the Town's code of ordinances, specifically Chapter 10, Nonmetallic Mine Operator's License. See Exhibit B.

1.2. By signing this Mining Agreement ("Agreement"), the Town grants Larchmont a license to mine nonmetallic minerals within the Town's jurisdictional boundaries. This Agreement is intended to satisfy the requirements of a development agreement for purposes of the Town's Mine Ordinance.

2. Term

2.1. This Agreement shall be effective upon signing by all parties.

2.2. This Agreement shall terminate at 11:59 p.m. on December 31, 2033.

2.3. The obligations of Larchmont and the Town's rights under this Agreement shall survive termination of the Agreement.

3. Operation

3.1. Larchmont shall use best management practices to keep noise from nonmetallic mining activity at or below sixty (60) decibels at the property boundary. These practices include the use of Mining, Safety and Health Administration (MSHA) approved "white noise," back up alarms, and properly maintained mufflers on mining equipment. Earthen berms will be built in accordance with the approved reclamation plan which will provide a substantial reduction of sound at the property boundary. Should the aforementioned measures fail to keep noise levels at or below sixty (60)

decibels, Larchmont will plant small trees or shrubs along the top of the berm to further reduce noise levels. In conjunction with this Agreement, Larchmont will also meet with Town officials and work towards reducing any other noise levels which are determined to be above the sixty (60) decibel level.

Exceptions to this section are blasting activities, haul trucks entering and leaving the site and work projects done on the screening berms, drainage ditches or Town and County road ditches.

3.2. Larchmont shall use back-up signals creating the least offensive noise audible to persons residing near the Property consistent with legal requirements.

3.3. Within the Town, trucks traveling to or from the Property;

3.3.1. Shall use only a pre-approved haul route (for example, a portion of Town Road "T" to access Hwy 10);

3.3.2. Shall not use compression release engine brakes, commonly known as Jake brakes;

3.3.3. Shall adhere to all posted speed limits;

3.3.4. Shall coordinate with the local school districts and not run trucks during time upon which school busses are on the road in order to minimize impact and not interfere with bus routes both in the morning and in the evening; and,

3.3.5. Shall enter into a separate Road Agreement consistent with Chapter 10.11.

3.4. Larchmont shall comply with the WDNR Air Permit, if the WDNR believes one is necessary given the smaller size of the mine.

3.5. Berms constructed by Larchmont on the Property shall be maintained in a good and erosion free condition. During the first year of construction, an analysis will be conducted to determine if other vegetation including small trees should be planted on the berms to improve dust migration. Berms only serve a purpose during the life of the mine so trees will not be permanent fixtures.

3.6. Mining activities as they relate to surface and ground water will occur in accordance with the Reclamation Plan for the Property and any amendments to that Reclamation Plan filed with and approved by Jackson County Land Conservation Department ("Reclamation Plan"), which is incorporated herein by reference.

3.7. All lights must have full cut-off shrouds so that no light is directed upward or at structures not on the Property. Portable lighting shall be used only as necessary to illuminate work areas.

3.8. Sand taken from the Property may be returned to the Property. In addition, Larchmont and Town understand and agree that fines or waste sand from other Wisconsin mines may be returned to the Property, provided that the total amount of reject sand (including fines and waste sand) being

returned to the Property shall not exceed the proportion of reject sand generated from the Property. For example, if 70% of the sand produced from the Property is product and 30% is reject sand, and 600,000 tons of sand is removed from the site, then 180,000 tons of reject sand (30% of 600,000 tons) of reject sand may be returned to the site.

3.9. Larchmont shall at all times have an agent, whose name, fax number, email address and telephone numbers are made known to the Town Clerk, available to respond to complaints and problems and the notice required under the Property Value Guarantee. See Exhibit C.

4. Storm Water Management

4.1. Larchmont shall comply with the Storm Water Management and Erosion Control plan included in the Reclamation Plan which is incorporated by reference.

4.2. Larchmont shall repair any damage to, and remove sediment from town road ditches and other drainage ways adjacent the Property.

4.3. Larchmont shall maintain the detention and retention ponds per the Reclamation Plan which is incorporated herein by reference.

5. Groundwater

5.1. Larchmont shall comply with the groundwater monitoring plan in the Reclamation Plan.

5.2. All test results shall be reported to the Town. In addition, test results of water samples taken from private wells shall be reported to the owners of the wells. Private wells within one-fourth (1/4) mile perimeter of the mining boundary shall be tested once every three years. This obligation shall begin prior to the commencement of mining. The water sample and well depth work which is done prior to mining shall create a baseline for future testing. These initial tests shall be released to both the township and to the owner and Larchmont shall keep a copy of such results through the lifetime of the mine.

5.3 In lieu of Section 10.10 of the Ordinance, private well owners described in Section 5.2 shall also be eligible for reimbursement related to well repair or re-drilling costs in the event that: (a) a preventive action limit or enforcement standard is exceeded in the well, or (b) there is a substantial adverse impact on the quantity of water, including but not limited to, the inability of any such well to provide water on a continuous basis. Any property owner seeking a remedy shall file a written notice with the Town and Larchmont of the occurrence of either of the above events.

Upon written notice to Larchmont of a violation under the aforementioned (a) or (b), Larchmont retains the right to consult with a qualified professional, acceptable to the private well owner, within a thirty (30) day time period to determine whether the well water impact is attributable to Larchmont's mining operations. In the event the professional determines the well impact is not a result of Larchmont's mining operations, Larchmont shall

not be responsible for repair of well drilling and/or repair costs or the purchase of any alternative water sources for private well owners.

The private well owner shall immediately, upon notification from Larchmont that it will reimburse the costs for re-drilling and/or repairing the well, retain a certified plumber or licensed well driller to re-drill and/or repair the well. The private well owner shall then provide Larchmont with a copy of an invoice and Larchmont will pay the actual cost related to the repair and/or re-drilling and shall make payment directly to the vendor within sixty (60) days of receipt of an invoice. Larchmont shall also reimburse private well owners for alternative drinking water costs between the time period upon which written notice is provided to Larchmont and the time in which the well drilling and/or well repair is completed. Well owners must present an invoice from a vendor demonstrating the costs of alternative water as part of reimbursement eligibility. Nothing in this paragraph precludes an owner from seeking reimbursement if the owner retains a certified plumber or licensed well driller prior to the notification from Larchmont regarding reimbursement.

This Section only applies to residential and agricultural wells, and not commercial and high capacity wells.

6. Blasting

6.1. Larchmont is committed to working towards not utilizing blasting and relying on excavation equipment for the removal of material. In the event blasting is the most reasonable method to engage in mining, such blasting events shall occur only between the hours of 10:00 a.m. and 3:00 p.m., except that blasting may occur after 3:00 p.m., if required for safety reasons beyond the reasonable control of Larchmont and its contractors.

6.2. Blasting velocities shall not exceed those specified in NFPA 495 and Wisconsin Administrative Code § SPS 307.

6.3. In addition to notifying the necessary residents in the area of a blasting event, Larchmont shall also notify the Town Clerk.

7. Property Value Assurance

7.1. Larchmont hereby grants Township residents who abut Larchmont property a Property Value Guarantee as set forth in the attached Exhibit C.

8. Restoration

8.1. Larchmont shall complete sequential restoration of the Property as set forth in the Reclamation Plan which is incorporated herein by reference.

9. Laws to be Observed

9.1. Larchmont shall at all times comply with all federal, state, county, and local laws, regulations and ordinances applicable to Larchmont's operations on the Property which are in effect or which may become effective in the

future.

9.2. Larchmont is aware that State legislation (Senate Bill 349) has been introduced which may impact the ability for the Town to monitor, direct and permit certain aspects of nonmetallic mining operations. Larchmont agrees that they shall maintain the status quo, from a licensing perspective, regardless of future legislation directed at nonmetallic minerals. Larchmont openly recognizes and agrees that they will maintain the status quo of the regulatory framework of the Town which exists upon the execution of this Agreement.

9.3. Larchmont shall provide the Town with copies of all such permits or licenses and all related application materials and reports submitted by or on behalf of Larchmont and all documents and other materials provided to Larchmont by such federal, state or local authorities.

10. Reimbursement and Enforcement

10.1 This section is intended to satisfy the requirements of a development agreement and thereby satisfy the requirements of select portions of Chapter 10.

10.2. Reimbursement. Larchmont shall reimburse the Town for all consulting, inspection, engineering and legal fees incurred in connection with the drafting of this Agreement, at an amount not to exceed Ten Thousand Dollars (\$10,000.00).

10.2.1. Any amounts due under this Agreement which are not paid within thirty (30) days of billing shall accrue interest at the rate of one percent (1%) per month.

10.3 Inspection and Right of Entry. Larchmont shall, upon request by the Town, provide the Town's officers, agents, employees and contractors with access to the Property for purposes of determining or enforcing compliance with this Agreement or as otherwise provided by law or this Agreement. In the event of Larchmont's failure or refusal to permit access to the Property, the Town may obtain an inspection warrant, injunction or other relief from a court to enforce its right to access.

10.4. Notice of Default. In the event that Larchmont fails to perform any of its obligations under this Agreement, the Town shall provide a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis unless the Town determines that threats to health, safety or property require a shorter notice period. If the parties cannot resolve the matter, the Town may elect to enforce the remedies provided for herein.

10.5 Disputes Concerning Agreement. Any dispute concerning any provision of this Agreement, other than a default under 10.4, shall be resolved as follows: The party which asserts a dispute shall first give notice thereof to the other party and specify the nature of the dispute and shall meet with

such other party, within thirty (30) days of the event giving rise to the dispute. Such notice shall set forth all reasons supporting the basis of the dispute. Within thirty (30) days following the date of the notice, a meeting between the Parties shall be held to attempt in good faith to negotiate a resolution of the dispute or controversy.

10.6 Remedies

A. Corrective Orders. The Town may issue a notice of violation and order that specifies the action to be taken to remedy a default and the time period for curing the default.

B. Remediation and Reimbursement. In the event Larchmont fails to perform any of its obligations under this Agreement, including, but not limited to, maintenance of storm water management facilities and restoration of the Property, the Town may, but shall not be required to, perform such obligations at Larchmont's expense. Before performing Larchmont's obligations, the Town shall give Larchmont at least thirty (30) days written notice unless the Town determines that threats to health, safety or property require a shorter notice period. Larchmont shall reimburse the Town for all expenses incurred for materials, contractors, engineers, attorneys and other consultants in connection with performing Larchmont's obligations within thirty (30) days of billing therefor.

C. Legal Action. In the event resolution attempts under 10.5 fail, the Town retains the right to commence legal action to enforce the terms of this Agreement and seek remedies which include: termination of the Agreement for a default, specific performance of the obligations under this Agreement, penalties and/or damages in an amount determined by the court, and/or injunctive relief.

10.7. Preservation of Remedies. The remedies provided herein shall not be exclusive of other remedies. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any subsequent violation(s).

10.8 Royalty Payment. In exchange for entering into this Mining Agreement, and not objecting to any of Larchmont's future permit requests from other regulatory agencies, Larchmont shall pay a royalty directly to the Town for which the Town has complete discretion and control in terms of expenditures. The dollar amount shall be \$0.05 (five cents) per ton of frac sand which is processed and shipped from the Garfield mine site. Payment shall not be capped and shall be made consistent with the timeframe when property tax payments are due. The commencement of this provision shall begin upon the shipping of sand which leaves the Garfield mine site.

11. Obligations to Run with the Land

11.1. Larchmont warrants that Larchmont is authorized to engage in nonmetallic mining on the Property and to enter into this Agreement.

11.2. Larchmont and the persons signing for Larchmont warrant that Larchmont has full right and authority to enter into this Agreement.

11.3. The obligations of Larchmont or either of them under this Agreement shall run with the land and be binding on Larchmont and their heirs, grantees, representatives, successors and assigns.

11.4. The Town may record a copy of this Agreement with the Register of Deeds. The cost of recording shall be paid by Larchmont.

12. Miscellaneous Provisions

12.1. All parties participated in negotiating the terms of this Agreement. No party shall privately benefit from not having drafted this Agreement. If any term, section or other portion of this Agreement is reviewed by an administrative agency, court, mediator, arbitrator or other judicial or quasi-judicial entity, such entity shall treat this Agreement as having been jointly drafted by the parties.

12.2. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and Larchmont, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute approval of any breach or wrongful act by Larchmont.

12.3. Any notice required or permitted by this Agreement, except the notice required under the Property Value Guarantee, shall be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, and addressed as follows:

If to Larchmont: Mr. Richard McHugh
3131 Stein Boulevard
Eau Claire, WI 54701

If to the Town: Ardy Robertson, Town Clerk
Town of Garfield
W14438 Valleybrook Lane
Osseo, WI 54758

Any party may change the address to which notices must be sent by giving notice as provided herein.

12.4. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. All disputes arising under this Agreement shall be venued in Jackson County, Wisconsin.

12.5. No changes, amendments, alterations or modifications to this Agreement shall be effective unless in writing and signed by both Parties and, if required, upon approval by competent governing authorities of each Party.

12.6. This Agreement is entered into with Larchmont for the Property for the purposes of nonmetallic mining. Larchmont may assign or transfer its rights and obligations under this Agreement to any entity with the prior written consent of the Town which shall not unreasonably be withheld, providing the Property will continue to be used for mining activities, the assignee assumes in writing the obligations of Larchmont pursuant to this Agreement and provides a copy of such Agreement to the Town prior to the transfer, and the assignee demonstrates that it has the financial wherewithal to fulfill the obligations of this Agreement. In the event Larchmont transfers its rights and obligations for a purpose other than nonmetallic mining, the Agreement shall be terminated.

[Signature pages follow]

Dated: _____, 2013
Larchmont Holdings, LLC
a Wisconsin limited liability company

By: _____
Name/Title: _____

STATE OF WISCONSIN
COUNTY OF

Personally came before me this _____ day of _____, 2013
the above-named _____ and
_____, to me known to be the
_____ and _____ of Larchmont
Holdings, LLC, and the persons who executed the foregoing instrument and
acknowledge the same.

Print Name: _____ (SEAL)
Notary Public, State of Texas
My commission expires _____

Dated: _____, 2013

TOWN OF GARFIELD
Jackson County, Wisconsin

By: _____

Name/Title: _____

By: _____

Name/Title: _____

STATE OF WISCONSIN
COUNTY OF JACKSON

Personally came before me this _____ day of _____, 2013
the above-named _____ and
_____, to me known to be the
_____ and _____ of the Town of
Garfield, and the persons who executed the foregoing instrument and
acknowledge the same.

Print Name: _____ (SEAL)

Notary Public, State of Wisconsin

My commission expires _____

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EXHIBIT A

Description of Larchmont Property

EXHIBIT B

Chapter 10 Town of Garfield
Nonmetallic Mining Operator's License

EXHIBIT C

Property Value Guarantee