



No. \_\_\_\_\_

**NONMETALLIC MINERALS LEASE FOR  
CONSTRUCTION SAND, GRAVEL, COBBLES,  
BOULDERS AND CLAY  
MICHIGAN DEPARTMENT OF NATURAL RESOURCES**

By authority of Part 5, Section 502, Act 451 of 1994, as amended.

This Lease, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_,

By and between the DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES for the STATE OF MICHIGAN, hereafter called "Lessor," whose address is P. O. Box 30452, Lansing, Michigan 48909 and \_\_\_\_\_, whose address is \_\_\_\_\_, hereafter called "Lessee."

Witness, that the Lessor is the owner of rights to any nonmetallic minerals and/or nonmetallic mineral products lying on, in or under the lands described below and has the authority to lease the lands for exploration, mining and taking away of the following nonmetallic minerals and/or nonmetallic mineral products.

Construction Sand, Gravel, Cobbles, Boulders and Clay

Now therefore, the Lessor for and in consideration of the first year minimum royalty rate in hand paid, and of the covenants and agreements hereinafter contained on the part of the Lessee to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise, lease and let without warranty, expressed or implied, unto the said Lessee all of those certain tracts of land situated in the State of Michigan, and more particularly described below for the sole and only purpose of mining and producing nonmetallic minerals and/or nonmetallic mineral products therefrom, for selling the same. Included is the reasonable right to ingress and egress, the right to construct buildings, make excavations, stockpiles, impoundments, treatment, tailings or settling basins, roads, utilities and other improvements as may be necessary to produce, save and take care of such nonmetallic minerals and/or nonmetallic mineral products on or from the leased premises. The locations of all such activities and the use of all highways, surface conveyances, leases, licenses or easements of public record are subject to Lessor approval. No operations shall be conducted by the Lessee on any of the following described land situated in the State of Michigan without obtaining all separate written permissions required by the Lessor or any other local, State or federal governmental agencies:

County  
T R

**Parcels**

Description	Section	Acres	Equity
Township:			Min % Sur %

**Stipulations**

None

## A. DEFINITIONS

For the purposes of this Lease, the following definitions apply:

1. "Assignment" means the transfer of lease rights by writing.
2. "Commingled Waste Materials" means waste materials from property of the Lessee mixed with waste materials from property of the Lessor.
3. "Construction Sand" means sand commonly used for road fill, mixing into aggregate products, concrete, etc.
4. "Gravel" means an unconsolidated, natural accumulation of typically rounded rock fragments resulting from erosion, consisting predominantly of particles larger than sand, such as boulders, cobbles, pebbles, granules, or any combination of these fragments.
5. "Leased Premises" means the land, property, and/or mineral rights of the Lessor herein leased to the Lessee.
6. "Mining" means part or all of the process involved in the harvesting and/or removal of specified nonmetallic mineral and/or nonmetallic mineral products including development, extraction, beneficiation, water storage and separation of waste.
7. "Mining Operation Area" means the land area where active mining operations are, have been, or are projected, to take place, and as delineated in the mining and reclamation plan. Areas include, but are not limited to stockpiles, roads, processing plants, impoundments, treatment and settling basins, drainage ditches, water level control structures, and shipping facilities.
8. "Performance bond" means a bond received from Lessee in cash, or other approved form, bonding amount varies with department schedule, which Lessor may apply to cover costs for activities required of, but not provided by, Lessee.
9. "Production" means the extraction, processing, stockpiling, and/or sales of specified nonmetallic minerals and/or nonmetallic mineral products from the leased premises. For royalty purposes, production only includes materials sold, which leave the property, or are moved into a secondary product processing and/or storage area.
10. "Reclamation" means reconditioning or rehabilitation of the affected leased premises as delineated in the mining and reclamation plan.
11. "Short Ton" means 2,000 pounds avoirdupois.
12. "Specified Nonmetallic Minerals and/or Nonmetallic Mineral Products" include, and are limited to construction clay, construction sand, gravel, cobbles, and boulders. No other materials may be removed or mined under the terms and conditions of this lease unless specified by Lessor.
13. "Tailings" means waste materials that have been placed in a confined waste or storage basin.
14. "Tailings Basin" means land on which tailings are deposited including surrounding dikes constructed to contain the tailings.
15. "Waste" means soil and vegetation, overburden, waste rock, and other materials of no economic value originating on the leased premises directly resulting from or displaced by mining, and deposited on the surface of the leased premises and other property under control of the Lessee. Ninety (90) percent or better of waste product shall pass through a number four (#4) screen with openings approximately 4.75mm or .187 inches in size.

## B. TERM OF LEASE

1. This lease shall remain in force for a PRIMARY term of seven (7) years. Lease may be considered for a three (3) year extension by a negotiation process begun in the first month of the sixth (6<sup>th</sup>) year of the existing lease at the sole discretion of the Lessor. All mining will cease and required reclamation activities shall be completed by the termination of the lease.
2. All applicable laws and rules are made a part and condition of this Lease. Violations of any of the applicable laws or rules shall be considered a violation of the terms of this Lease and the Lessor, at its sole discretion, may invoke D(7), D(8), D(9), or D(10), or any combination thereof. No rules made after the approval of this Lease shall operate to affect the term of the Lease, rate of royalty, rental, or acreage, unless agreed to by both parties.
3. Production may begin only after payment for first year's minimum royalty, issuance of lease and acceptance by Lessor of approved mining and reclamation plans.

## C. ECONOMIC TERMS

### 1. Minimum Royalties

- a. Lessee shall pay to the Lessor a minimum royalty of \_\_\_\_\_ per year. Fifty percent of the first year's minimum royalty must be paid within ten (10) days of the bid opening; the remaining fifty percent must be paid before the lease is issued.
- b. Subsequent payments shall be paid annually, by Lessee, in advance of the lease anniversary date. Lease rights shall terminate and the Lessee shall be required to file a release with the Lessor as hereinafter provided whenever these payments remain unpaid for a period of ten (10) days after the anniversary date. Lessor may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties upon Lessee's submittal in writing of proper and satisfactory proof as to cause, along with payments due. Any payments made by Lessee under these circumstances shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- c. The determined minimum royalty paid by Lessee to Lessor is to be credited to the Lessee for the production royalties owed the Lessor each year. The paid minimum royalty does not accumulate nor carry forward to successive years. Each year, when the royalty owed to the Lessor exceeds the lease minimum royalty, the Lessee must pay production royalties to the State as outlined in Section C.2 below.

### 2. Production Royalties

- a. Lessee shall pay to Lessor a production royalty for the nonmetallic minerals and/or nonmetallic mineral products mined from the leased premises which shall be the product of the removed mined tonnage (tonnage of material removed from sites) times the Production Royalty rate of \_\_\_\_\_ per ton (2000 lbs. avoidrupois). No allowance shall be made for moisture content of materials.
  1. The production royalty rate shall be adjusted at the end of the third (3<sup>rd</sup>) year and at the end of the seventh (7<sup>th</sup>) year if the lease is extended. The adjustment of the royalty rate shall be based upon the average of the changes in the producers' price index (PPI) for construction sand and gravel (CSG) for the north central region as published by the U.S. Bureau of Labor statistics.

The adjusted royalty rate shall be calculated as follows:

Year 3 –

$[PPI(t+3) \div PPI(t)] \times \text{royalty rate bid} = \text{adjusted royalty rate}$

Year 7 –

$[PPI(t+7) \div PPI(t)] \times \text{royalty rate bid} = \text{adjusted royalty rate}$

Where:

PPI (t) = annual producer price index for (CSG) for the year in which the lease is bid.

PPI (t+3) = average of the monthly producer price index (CSG) for the latest 12 months available on the third (3<sup>rd</sup>) anniversary of the lease.

PPI (t+7) = average of the monthly producer price index (CSG) for the latest 12 months available on the seventh (7<sup>th</sup>) anniversary of the lease.

Royalty rate bid = royalty rate bid at the time of leasing.

- b. Production royalties shall be paid on a monthly basis on or before the twenty-fifth (25<sup>th</sup>) day of the month following the calendar month in which nonmetallic minerals and/or nonmetallic mineral products were sold.
- c. Lessee shall secure written authorization of the Lessor in order to delay any royalty payments beyond the date specified. Payments made after the due dates shall include interest at the rate of 1.5 percent per month, or at the maximum legal rate, whichever is less, on the amount of royalty unpaid. If royalty payments are delayed, or if such authorization is not secured, Lessor may, at its sole discretion, declare the lease defaulted under the provisions of Section D herein or invoke any other remedies available to Lessor under the lease.
- d. Lessee agrees that all royalties accruing to the Lessor herein shall be without deduction of any costs incurred by the Lessee unless agreed to in writing by the Lessor.
- e. The Lessor is not liable for any taxes incurred by the Lessee and no tax deductions may be taken in computing the royalty.
- f. Lessee is responsible to reimburse Lessor for any collection or legal fees, plus interest at the above rates, which may be required for Lessor to collect royalties past due from Lessee or their agents.

### 3. In Lieu of Production Royalties

- a. Lessee may, during the term of this lease, and with the concurrence of the Lessor, suspend production of nonmetallic minerals and/or nonmetallic mineral products from a mining operation area established under the terms of this lease for one year, or longer at the sole discretion of Lessor, and may in such case maintain this lease as to those portions of the leased premises contained in a mining operation area by the payment of the determined minimum royalty per year in lieu of production royalties. Suspended production will not extend the term of the lease. Suspended production without concurrence of Lessor shall be determined a default of the lease.
- b. While production is suspended, minimum royalties in lieu of production royalties shall continue to be paid in advance of the lease anniversary date. Lease rights shall terminate and the Lessee shall be required to file a release with Lessor as hereinafter provided whenever these payments shall be and remain unpaid for a period of ten (10) days after the payment is due. Lessor may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties in lieu of production royalty payments upon Lessee's submittal in writing of proper and satisfactory proof as to cause, along with payment due. Any payments by Lessee after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- c. Lessee's tax obligations, if any, continue as if production were underway.
- d. When Lessee resumes the production of nonmetallic minerals and/or nonmetallic mineral products on the leased premises, the minimum royalties paid in the current year in lieu of production royalties for those lands included in the mining operation area shall be credited against future production royalty's payable under this lease to the Lessor for the current lease year only.

### D. DEFAULT OF LEASE

1. All mine reclamation requirements are the obligation of the Lessee as defined in Section H, regardless as to the circumstances involved in the releasing of the rights to mine or the termination of the lease. The right to mine under this lease may be forfeited. However, forfeiture of mining rights will not relieve Lessee of any obligations for reclamation of the premises.
2. In the event the Lessor shall determine a default in the performance by the Lessee of any express or implied covenant of this Lease, the Lessor shall give notice, in writing, by personal service or certified United States mail, return receipt requested, to the Lessee's last known address, specifying the facts by which default is claimed. Except as to royalty requirements as herein provided, the Lessee shall have thirty (30) calendar days from the date such notice is mailed in which to satisfy the obligation of the Lessee, if any, with respect to the Lessor's notice.
3. No tools, fixtures, machinery or other property of the Lessee shall be removed from said premises, if any royalties, damages, or other payments are due to the Lessor, and all sums due on royalties, damages, or other payments, shall be a lien on all implements, tools, movable machinery, and all other chattels used in operating said property, and also upon all of the unsold construction sand, gravel, cobbles, boulders and clay obtained from the land herein leased, as security for the payment of said royalties, damages, or other payments.
4. Should the Lessee be prevented from complying with any express or implied covenant of this Lease, from conducting operations thereon, or from producing construction sand, gravel, cobbles, boulders and clay therefrom, after effort made in good faith, for any cause beyond the reasonable control of the Lessee, such as, but not limited to war, rebellion, riots, strikes, acts of God or an order or rule of governmental authority, then while so prevented, the Lessee's obligation to comply with such covenant shall be suspended upon proper and satisfactory proof presented to the Lessor in support of the Lessee's contention.

The Lessee shall not be liable for damages for failure to comply therewith except in the event of lease operations suspended for wrongful acts or omissions of the Lessee. This Lease shall be extended as to such portion of the leased premises as, while, and so long as the Lessee is prevented, by any such cause, from producing construction sand, gravel, cobbles, boulders and clay thereon or therefrom, provided, however, that nothing herein shall be construed to suspend the payment of royalties as herein provided.

The Lessee is expected to make application for all separate written permissions required by governmental agencies, including but not limited to easements, mining permits, and surface use permits, prior to production under the Lease. Lessee's obligations under this Lease shall not be excused by failure to make timely applications for permits, annual frost law road restrictions, winter snow conditions or other conditions which are reasonably foreseeable.

5. As required by R299.4006 (3), before a lease will be executed for construction sand, gravel, cobbles, boulders and clay production, the Lessee shall file with the Lessor a lease performance bond, in an amount established by the Lessor, to cover costs incurred by the Lessor due to breach of any clause contained herein by the Lessee, including

but not limited to the costs of any enforcement actions necessary on the part of the Lessor, costs of any necessary environmental remediation, clean-up or site restoration and conditioned that the Lessee, its heirs, executors, administrators, successors, and assigns, shall faithfully perform the covenants, conditions, and agreements specified in the Lease, and the laws and rules of the State of Michigan which apply.

6. The Lessee shall keep in full force and effect a sufficient lease performance bond to cover the acreage held under this Lease. If the amount of the lease performance bond in effect becomes depleted or partially depleted because of any claim or claims, the Lessee shall file a new or additional lease performance bond as required by the Lessor.
7. The Lessor may invoke part or all of the lease performance bond when it determines that part or all of the covenants, conditions or agreement specified in the Lease are not being fulfilled.
8. In addition to invoking a part of or all of the lease performance bond noted under D(7), the Lessor, at the Lessor's sole option, may determine that the Lessee be placed on a "Hold Action" list until such time as any and/or all infractions by the Lessee have been resolved to the satisfaction of the Lessor. Placement on said list may result in barring the Lessee from any further leases, assignments, easements, extensions or other approvals required by the Lessor. However, placement on said list does not eliminate the Lessor's ability to forfeit any or all parts of said Lease under D(9).
9. If the Lessee fails to voluntarily satisfy the claim of default as herein provided relative to any condition or any express or implied covenants of this Lease, the Lessor may proceed, at its sole discretion, with forfeiture of all or part of said leased premises in accordance with the provisions of Act 81 of Public Acts of 1929, being Sections 554.281 and 554.282 of the Michigan Compiled Laws with invocation of all or part of the lease performance bond or with any combination thereof.
10. Lessor reserves the right to recover any and all staff and attorney fees and costs associated with any legal action required of the lease from Lessee associated with carrying out the provisions of Section D (default of lease) of the lease.

#### **E. ASSIGNMENTS AND CONTRACTS**

1. No assignments of this lease, or any rights hereunder, shall be valid except upon written approval of the Lessor, and upon payment of an administrative fee as established by the Lessor in a published schedule. Such approval shall not be unreasonably withheld. Application for assignment must be submitted in a format designated by Lessor.
2. Assignments by Lessee of any portion of the leased premises shall be construed as creating a separate lease agreement as to the acreage or portions assigned. Development on the assigned acreage, after the assignment has been made, shall not affect the rate of royalties or term of the lease on the unassigned acreage; and, conversely, development on the unassigned acreage, after the assignment has been made, shall not affect the rate of royalties or term of the lease on the assigned acreage.
3. If the Lessee's interest or any part thereof is assigned, each and every clause and covenant hereof shall extend to the assignee, its or their heirs, executors, administrators, successors, agents, or assigns.

#### **F. SURFACE DAMAGE PAYMENTS**

1. Lessee shall pay or agree upon payment to the surface owner, or any person, or governmental agency, holding under the owner, for all damages or losses (including any loss of the use of all or part of the surface) caused directly or indirectly by operations hereunder, whether to growing timber or farm crops, buildings, to any person or property, or to other operations.
2. Before mining operations may be commenced on the land in which the State of Michigan owns mineral rights only, and as described in this lease, proof shall be submitted to the Lessor, in writing, that either voluntary agreement or stipulated settlement relative to surface use and damages has been reached between the Lessee or Lessee's authorized agent and the surface owner or F(3) is invoked.
3. When a mutually satisfactory agreement relative to surface use and damages cannot be reached, either party can inform the Lessor, in writing, that a dispute exists and Lessor will notify both parties and will grant a negotiation period of thirty (30) days in which no mining operations may be conducted by the Lessee. This time period is to allow for the resolution of the dispute. If, at the end of this period, proof of the agreement is not submitted in writing to the Lessor, mining operations will not be prohibited by the Lessor and resolution of the dispute rests solely with the Lessee and the surface owner independent of the Lessor.

## G. RECORDS AND REPORTS

### 1. Production Reports

- a. Lessee shall keep an accurate account of all mining operations under this lease, including daily production volumes and shall submit to Lessor at the time of each monthly payment of production royalties, a signed statement showing the quantities of the specified nonmetallic minerals, and/or nonmetallic mineral products produced in the past month. The quantities sold and their sales value, quantities otherwise disposed of from the leased premises and methods used to determine same shall be submitted at lease termination.

All specified nonmetallic minerals or nonmetallic mineral products produced from the leased premises and further processed or combined with other materials within the mining operation or leased area shall be weighed, gauged or measured prior to any additional processing or combining with other materials.

- b. If any specified nonmetallic minerals and/or nonmetallic mineral products produced from the leased premises are transported to a point outside of the mining operation area before being weighed, gauged or measured, Lessee shall have all the material weighed, gauged or measured by the transporting firm and shall furnish Lessor with the transporter's statements of the weights of all shipments during the preceding month. Any written certificate or statement of any transporter concerning any shipment from the leased premises and its weight, and any copies of transcripts from the books of any transporter concerning shipments or their weights may be admitted as evidence of those facts in any suit or controversy between Lessee and Lessor.

- c. Lessee shall also furnish Lessor with annual reports on the anniversary date of the lease of the status of mining development and reclamation efforts to date and current mine maps of the leased premises and premises from which specified nonmetallic minerals and/or nonmetallic mineral products are mined showing the area mined, as well as any other pertinent information to determine royalties.

- d. Upon termination of this lease or surrender of any part of the leased premises, Lessee shall furnish to Lessor an up-to-date report of all mining development and reclamation efforts conducted by Lessee on that part of the leased premises. This report shall contain suitable maps and information on the location and extent of surface workings, and other pertinent information, including the following:

1. The tonnage (or equivalent unit of measure) of all commingled specified nonmetallic minerals and/or nonmetallic mineral products mined from the leased premises.
2. The tonnage (or equivalent unit of measure) of all commingled specified nonmetallic minerals and/or nonmetallic mineral products as determined at the first point at which an actual weight measurement is taken.
3. The tonnage (or equivalent unit of measure) of specified nonmetallic minerals and/or nonmetallic mineral products from all premises, including the leased premises, processed at the processing plant, less losses which can be accounted for by Lessee.
4. The tonnage and average grade of concentrates or remaining product, derived from the leased premises and all commingled specified nonmetallic minerals and/or nonmetallic mineral products.
5. Tonnage of processed specified nonmetallic minerals and/or nonmetallic mineral products produced.
6. Tonnage (or equivalent unit of measure) of specified nonmetallic minerals and/or nonmetallic minerals produced, from which processed specified nonmetallic minerals and/or nonmetallic mineral products were produced.
7. Copies of receipts from sales of specified nonmetallic minerals and/or nonmetallic mineral products.
8. Such additional data on production and sales as may be necessary to determine royalty.

- e. Lessee shall, at the sole discretion of the Lessor, submit to an audit of all transactions, contractual agreements and production, or such other records as Lessor may determine appropriate which are related to establishment of the removed mined tonnage used to calculate the correct royalty due the Lessor. The audit may be performed by the Lessor, or contracted for by the Lessor, at Lessor's discretion. The Lessee shall be responsible for the cost of the audit if, based upon the final audit report, any underpayment of royalty calculated before interest is in excess of five percent (5%) of the payment made for the audit period.

### 2. Waste and Unused Materials Reports

- a. Lessee shall keep an accurate and cumulative record of the waste and unused materials, and Lessee shall annually before the sixtieth (60<sup>th</sup>) day following the anniversary date of this lease, furnish Lessor a waste and unused materials report for the preceding lease year.
- b. The waste and unused materials from this lease shall belong to the Lessor.
- c. In order to make maximum use of the resources, now and in the future, Lessee shall stockpile all waste and unused materials in size classified designated waste and storage areas of the lease as defined by the mining and mine reclamation plans approved by Lessor.

### 3. Site Resource Exploration and Development Reports

- a. In the event any site resource exploration and development studies are conducted under this lease, the Lessee shall retain and store all factual site resource exploration and development data and records at a location(s) mutually agreeable with Lessor and Lessee. The Lessor retains the right to examine all such data and records, including representative material samples from drill holes, test pits, etc., along with geologic data, geophysical test and drill hole data, maps and reports.
- b. Upon termination of this lease or surrender of any part of the leased premises, Lessee shall furnish to Lessor any representative material samples requested by Lessor, and an up-to-date report of any and all site resource exploration and development studies conducted by Lessee on that part of the leased premises. Final reports shall contain copies of all factual data generated from any and all site resource exploration and development activities on the leased premises as of the date of surrender, including data, records and materials listed in "a." above.

## H. MINING AND RECLAMATION OPERATION

### 1. Lessee Reclamation Obligation

- a. Lessee is obligated to comply with all steps of the approved mining and reclamation plan prior to complete termination of the lease and return of the bond.
- b. Reclamation efforts and requirements are triggered by termination of the lease due to time limitation of the lease, voluntary termination, or through default of the lease agreement by Lessee.
- c. Lessor will use all legal avenues to obtain the required reclamation efforts, including revocation of the performance bond and legal actions.

### 2. Mining and Reclamation Plan

- a. No mining shall take place on leased premises without a Lessor approved mining and reclamation plan developed by Lessee based upon requirements of Lessor.
- b. If the surface rights are not owned by the Lessor, the Lessor shall notify the surface owner and provide an opportunity of 20 work days to review and comment on the plan prior to its approval.
- c. Lessee shall reclaim the surface of the leased premises in accord with the approved mining and reclamation plan. The reclamation shall proceed concurrently with mine production in accordance with this plan and shall be completed following termination of mine operation and prior to the termination of the lease.
- d. A mining and reclamation plan for the leased premises shall be developed to insure to the maximum extent practicable that:
  1. Mining and extraction operations do not have significant adverse impacts on air, plant, wildlife, fishery, surface and groundwater resources, and wetlands of the State, or on public safety.
  2. Waste and unused material piles are located, designed and utilized to minimize the threat to public safety, to minimize impact to resources, to minimize negative impacts on aesthetics, and to allow prescribed reclamation.
  3. Mining is conducted in a manner which will prevent or mitigate hazardous conditions.
  4. Areas are reclaimed in an acceptable manner given prior uses, necessary disruption caused by mining operations, reclamation techniques, the public trust in the natural resources, and applicable statutes, laws, rules and ordinances.
- e. The mining and reclamation plan shall include the following:
  1. Accurate plan maps, with appropriate scale, and other supporting data showing:
    - a. Location of the proposed mining operation area.
    - b. Resources proposed to be affected throughout the mining phase, including existing groundwater, streams, lakes, wetlands, floodings and impoundments, threatened and endangered species, and significant plant and animal communities. Proposed protection and mitigation measures should be included where applicable.
    - c. Description of proposed development of the mining operation area including materials handling and overburden stripping plans on the leased premises.
    - d. Product and raw materials storage areas and loading facilities.

- e. Proposed and alternative locations, where feasible, and designs of waste, waste material and unused material piles, settling basins, tailings treatment basins, and topsoil and subsoil storage.
- f. Existing and proposed buildings, utility corridors, roads and auxiliary facilities to be used and/or constructed on leased lands.
- g. Land contours, both existing prior to development and proposed after reclamation.
- 2. A description of proposed reclamation of the mining operation area on the leased premises including:
  - a. A description of the capacity of the land to support its anticipated use or uses following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses after reclamation.
  - b. Provisions for grading, establishing self-sustaining vegetation and stabilization that will minimize erosion and sedimentation and public health and safety problems of pits, banks, waste piles and waste material piles, roads and tailings basins during and upon completion of the mining phase.
  - c. Provisions for buffer areas, landscaping and screening.
- 3. Estimated timetables necessary for accomplishing the events contained in the mining and reclamation plan shall be developed by Lessee and approved by Lessor.
- 4. Evidence that all necessary permits and licenses required by Federal, State and Local units of government have been obtained, as provided by the Lessee.
- f. The Lessor and Lessee shall meet and discuss the plan prior to commencement of any operations under the lease. Prior to beginning mining operations each year, an application to commence or continue mining shall be submitted to Lessor. The application shall be accompanied by updates to the plan and a fee to cover Lessor's costs of review or monitoring as provided by law. Any mining changes to the annual updated mining and reclamation plan shall be approved by Lessor prior to start of mining each year.
- g. Proposed and alternative locations/methods of disposal for tree tops, branches, roots, stumps and other vegetational debris generated during clearing activity shall be part of the plan.
- h. Any changes proposed by Lessee in an approved plan shall be prepared and submitted as an application for a modified plan to Lessor. If these changes would result in the need for amendments of any permits or licenses issued by Federal, State or Local units of government, these amendments shall be obtained prior to submitting a modified plan and shall be attached to this plan. Any such changes shall not be commenced until Lessor has reviewed and approved such modified plan.

**I. STORAGE OF PRODUCT, WASTE AND UNUSED MATERIALS**

1. Waste and unused Materials and Tailings Disposal

Waste and unused materials resulting from the mining and processing operations shall be deposited by the Lessee in accordance with the approved mining and reclamation plan. Waste and unused materials shall not be deposited on other premises without a mutually agreed upon method of accounting for the Lessor's interest.

2. Stockpiling

Specified nonmetallic minerals and/or nonmetallic mineral products taken from the leased premises, whether stockpiled or otherwise, shall at all times be kept separate and distinct from any other nonmetallic minerals and/or nonmetallic mineral products obtained from other sources, until measured and sampled to determine and preserve the rights and liens of the Lessor therein.

**J. TAXES**

- 1. Lessee, or agent, shall pay all taxes and assessments, whether general, special or specific, including but not limited to property taxes on personal property, levied upon the leased premises, on any part thereof, or any property or improvements on the leased premises. If the State, as Lessor, only owns and leases mineral ownership, Lessee must have a signed agreement with the private surface owner as to any additional property tax obligations due to the sand and gravel extraction operation being located upon said property.
- 2. Upon the termination of this lease for any cause and with respect to any of the leased premises, Lessee, or agent, shall pay the taxes and assessments whether general, special or specific, assessed or levied on all of the leased premises for the entire calendar year.



3. Lessee, or agent, shall have the right consistent with statutes in such cases made and provided to contest the validity of any tax and assessment whether general, special or specific, and may seek its cancellation, reduction, readjustment or equalization.
4. Lessee, or agent, shall not permit the leased premises, any part thereof, any nonmetallic minerals and/or nonmetallic mineral products, or any improvements or personal property thereon, to be sold at any time for any taxes or assessments whether general, special or specific.

#### **K. PROTECTION OF PROPERTY AND PUBLIC SAFEGUARDS**

1. Lessee, or agent, shall not alter, or authorize others to alter, the leased premises except as authorized by the lease.
2. Lessee, or agent, shall maintain for the term of this lease, proper fences or other protective barriers around any openings on the leased premises created by Lessee. Lessee shall further employ all reasonable and practical safeguards for the protection of all persons entering in or upon such leased premises used or occupied by Lessee in conjunction with operations under this lease.
3. At the termination of this lease, in whole or in part, for whatever reason, Lessee shall surrender the leased premises to Lessor in a safe condition. All pits, openings, and other dangerous areas created by Lessee, or agent, shall be fenced, filled or protected so as to adequately protect public safety to the satisfaction of Lessor. Post-mining and lease termination requirements to fulfill the conditions of this section shall be specified in the Mining and Reclamation Plan under Section H of this lease.

#### **L. LAWS, RULES AND REGULATIONS**

Any operations under this lease shall be subject to all applicable local, federal and State laws and rules or ordinances now or hereafter in force. This lease is not in itself an authorization to mine. In addition to compliance with the provisions of this lease, Lessee must obtain all permits which may be or are required under local, federal and State laws, or any rules or ordinances adopted thereunder.

#### **M. INSURANCE**

1. Lessee shall obtain and maintain all worker's compensation insurance as required by State law in accordance with Act 317 of Public Acts of 1969, as amended, as well as liability insurance and policies of insurance against risks in amounts customarily obtained in similar mining operations, and shall furnish Lessor proof of insurance prior to the commencement of any operations.
2. All insurance shall be maintained by Lessee at its own expense. The companies issuing such policies shall also be required to furnish the Lessor written notice thirty (30) days prior to cancellation, termination, or other change of any insurance.

#### **N. INDEMNIFICATION**

1. In connection with all of its operations under this lease, the Lessee, or agent, will save, protect and hold harmless the Lessor against any and all claims, demands, or judgments for loss, damage, death or injury to persons or property arising out of the Lessee's, or agent's, activities or operations on the leased premises, except with respect to claims of the Lessor, its assigns, contractors, employees, successors or agents unless the claims arise as a result of negligence or other tortious conduct of the Lessee, or agent, or violations of the terms of this lease by Lessee, or agent. Lessor shall give prompt notice to Lessee, or agent, or any third party claim for injuries or damage made against Lessor.
2. The Lessee shall, at Lessee's expense, during the term of the lease and any extensions thereof, obtain and maintain insurance which insures the premises for public liability in amounts not less than those set forth below naming the State of Michigan, its several departments, commissions, boards, officers and employees as an additional insured and protecting against all claims, demands, actions, suits or causes of action, and judgments, settlements or recoveries, for bodily injury, death or property damage arising out of Lessee's use or occupancy of or operations conducted upon the leased premises. Lessee agrees to maintain minimum policy limits in the amount of \$1,000,000 per occurrence for property damage and \$1,000,000 per occurrence for bodily injury or death, and to provide the State with a Certificate of Insurance within thirty (30) days following final execution and delivery of this lease to Lessee. The companies issuing such policies shall also be required to furnish the Lessor written notice thirty (30) days prior to cancellation, termination, or other change of any such insurance. The Lessor shall periodically review the level of the indemnification insurance and may require the amount of such insurance to be increased or decreased to reflect changes in risk exposure.

## O. LESSOR RIGHTS

1. Lessor retains all of its timber, coal, oil and/or gas and other metallic and nonmetallic mineral interests in the leased premises and any nonmetallic minerals or rights not included in this lease, and reserves the right to make any use of the leased premises which may be undertaken without detriment to the rights and privileges herein specifically granted. Lessor may relinquish its timber rights on the uncleared and unmined portion of the premises for the duration of the lease to Lessee upon payment to Lessor of a fee based upon the current timber consideration fee schedule.
2. Lessor shall not be liable for any damages resulting from failure of its title to rights included herein; provided, however, that if the Lessor's title fails as to any or all of the rights covered by this lease, the Lessor shall refund to the Lessee all minimum royalties, production royalties, or payments in lieu of production royalties made by the Lessee attributable to that part or portion of, or interest in, the title which has failed.
3. Should Lessor be prevented from complying with any express or implied covenant of this lease because of a force majeure (i.e., for any cause beyond the reasonable control of the Lessor such as, but not limited to, acts of God, legislative action, rules of any other governmental body, any judgment or injunctive order entered by a court of competent jurisdiction, acts of the public enemy, riots, strikes, labor disputes, labor or material shortages, fire or flood), then such covenant shall be suspended to the extent made necessary by the aforesaid force majeure.
4. Lessor, and any of its authorized employees, may at all times enter upon the leased premises and ascertain compliance with any condition of this lease and the kind, qualities and quantities of nonmetallic minerals and/or nonmetallic mineral products on the leased premises or removed therefrom. Lessor shall also have the right to check the movement of nonmetallic minerals, specifically construction sand, gravel, cobbles, boulders and clay, and/or their nonmetallic mineral products from the workings of the leased premises to storage and to the processing plant; to be present at all measuring, gauging, weighing and sampling stations; and to take samples and to observe the flow of these specific nonmetallic minerals and/or nonmetallic mineral products from the leased premises through the processing plant. The Lessor shall have the right upon reasonable notice to examine the books, records and supporting documents of the Lessee insofar as they relate to the amount of production and sale of these specific nonmetallic minerals and/or nonmetallic mineral products derived from the premises herein leased. 'Reasonable notice' means a maximum of three (3) working days advance notice to Lessee.
5. Unless the leased premises and adjoining or nearby properties are within a common mining operations area, Lessor reserves the right to deny to Lessee use of the leased premises for operations in connection with operations on adjoining or nearby properties.

## P. LESSEE RIGHTS

1. Lessee may from time-to-time surrender all or any part of the premises herein leased by giving notice in writing to the Lessor. Lessee shall not escape any prior obligation of the lease by filing a release. If the lease being surrendered has been recorded by the Register of Deeds, upon Lessor's approval of Lessee's surrender, Lessee shall execute and deliver to the Register of Deeds in the county wherein the land is situated, for recording a proper and sufficient instrument of release of all of Lessee's rights and interest under this lease, insofar as they apply to the premises surrendered, and shall have said instrument delivered to the Lessor within thirty (30) days after recording with Register of Deeds.
2. May at any time remove all machinery and fixtures placed on the leased premises by the Lessee, provided, however, that said Lessee has complied with and fulfilled all other provisions of the lease as herein provided.
3. At the termination of the lease by any means except default under Section D of this lease, and with Lessee's fulfillment of all lease obligations, covenants, agreements and context of this lease, Lessee shall have removed all tools, machinery, structures and all other property situated on the leased premises as to which this lease is being terminated, except any supports placed in openings, any timbers, framework or fences necessary to the use and maintenance of openings, approaches to operating pit, or dikes, water level control structures, roads or other developments as specified by Lessor and mutually agreed to by Lessor and Lessee. If Lessee fails to remove its property by the lease termination, the property shall become the property of Lessor and may be removed by Lessor with expenses recovered from the performance bond. By agreement of the parties, any of Lessee's property on the leased premises may become the property of Lessor.
4. Following the approved mining and mine reclamation plans on the leased premises, the Lessee is hereby granted the right to mine and remove the nonmetallic minerals specified to be construction sand, gravel, cobbles, boulders and clay, or their nonmetallic mineral products included in this lease by means of openings or pits which may be sunk or made upon adjoining or nearby premises owned or controlled by the Lessee, and may stockpile any of the specified nonmetallic minerals and/or nonmetallic mineral products from the leased premises or any part thereon upon stockpile ground situated upon any such adjoining or nearby premises. Before products subject to the lease may be stockpiled off lease premises, Lessee must have prior written approval of Lessor and provide accurate

records of product measurements and sampling to determine and preserve the rights and liens of the Lessor therein. Prior written authorization of property owner at the adjacent stockpile location must be presented to Lessor at time of permission request.

5. Lessee may install, maintain and use roads, pipelines, electric transmission lines and other facilities which are located on surrendered portions of the leased premises, with written consent of Lessor, and payment of surface use fees as determined by the Lessor, so long as they are reasonably necessary to Lessee's operations on leased premises remaining under this agreement. All installations must meet Lessor's specifications.
6. Lessee may mix the specified nonmetallic minerals and/or nonmetallic mineral products taken from the leased premises with any other nonmetallic minerals and/or nonmetallic mineral products from other premises after the nonmetallic minerals and/or nonmetallic mineral products from the leased premises have been measured and sampled to determine and preserve the rights and liens of the Lessor therein.

SAMPLE

The said Lessor, by its Director, has signed and affixed the seal of the State of Michigan by virtue of action taken by Lessor on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and the Lessee has signed the day and year written below.

**ACKNOWLEDGEMENT BY LESSOR**

**DEPARTMENT OF NATURAL RESOURCES  
STATE OF MICHIGAN**

By: \_\_\_\_\_ (signature)

M. Scott Bowen, Director

Acknowledged before me in \_\_\_\_\_ County, Michigan on \_\_\_\_\_, 20\_\_\_, by M. Scott Bowen, Director of the Department of Natural Resources for the State of Michigan.

By: \_\_\_\_\_ (notary signature)

\_\_\_\_\_ (printed name)

State of Michigan, County of: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Acting in County of: \_\_\_\_\_

**ACKNOWLEDGEMENT BY LESSEE**

IN WITNESS WHEREOF, the signatory below herein represents and warrants that the execution, delivery, and performance of this Lease has been duly authorized and signed by a person who has legal authority to sign on behalf of its business or organization as named in this Lease and has signed the foregoing instrument this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

LESSEE: \_\_\_\_\_

By: \_\_\_\_\_ (signature)

\_\_\_\_\_ (printed name)

Its: \_\_\_\_\_

Before me, the undersigned, a notary public in and for said county and State, on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared \_\_\_\_\_ who acknowledged to me that they executed the same as their free and voluntary act and deed.

By: \_\_\_\_\_ (notary signature)

\_\_\_\_\_ (printed name)

State of: \_\_\_\_\_, County of: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Acting in County of: \_\_\_\_\_

**This Lease was approved by the Michigan State Administrative Board on:**

Prepared by: \_\_\_\_\_, DNR-MMS, P.O. Box 30452, Lansing, MI 48909

Return to: \_\_\_\_\_