

**--Draft Permit for Town Board Consideration in October 2012--**

**TOWN OF COOKS VALLEY**

**NONMETALLIC MINING PERMIT**

**GRANTED TO:**

**PREFERRED SANDS OF MINNESOTA, LLC**

**FINDINGS OF FACT**

- A. Preferred Sands of Minnesota, LLC (“**Permit Holder**”), is engaged in nonmetallic mining and related activities on land located in the Town of Cooks Valley (the “**Town**”), Chippewa County, Wisconsin, and described in the attached Exhibit A (the “**Property**”).
- B. The Property is owned by the following persons or entities (collectively, the “**Owners**”):
- (1) Samuel R. and Wendy M. LaGesse as to Parcel Nos. 23010-0331-00020000, 23010-0334-02000000, 23010-0342-00020000, 23010-0342-07250000 and 23010-0343-00020000.
  - (2) Donald W. Prill and Lisa A. Prill as to Parcel Nos. 23010-0332-00000000 and 23010-0333-00000000.
  - (3) James G. Springer and Claudia J. Springer as to Parcel Nos. 23010-0334-00020000, 23010-0331-04000000 and 23010-0343-04000000.
- C. Permit Holder has entered into separate agreements with each Owner to engage in the activities permitted under this Permit on the portion of the Property owned by each Owner.
- D. On or before the Effective Date of this Permit, Permit Holder;
- (1) obtained Nonmetallic Mining Reclamation Permit No. 2011-01 issued by Chippewa County, Wisconsin (as amended or renewed to date and from time to time hereafter, the “**Reclamation Permits**”);
  - (2) obtained Nonmetallic Mining Operations General Permit No. WI-0046515-05 issued by the Wisconsin Department of Natural Resources (as amended or renewed to date and from time to time hereafter, the “**WDNR Permit**”);
  - (3) obtained Industrial Well Approval No. 09-3-0014 issued by the Wisconsin Department of Natural Resources (as amended or renewed to date and from time to time hereafter, the “**Well Approval**”);
  - (4) entered into that certain Town Road Upgrade and Maintenance Agreement dated July 8, 2011, with the Town (as amended or renewed to date and from time to time hereafter, the “**Town Road Agreement**”);

- (5) entered into that certain County Road Upgrade and Maintenance Agreement dated July 11, 2011, with Chippewa County (as amended or renewed to date and from time to time hereafter, the “**County Road Agreement**”); and
- (6) obtained that certain Driveway and Road Approach Permit dated May 25, 2011, issued by the Town (as amended to date and from time to time hereafter, the “**Town Permit**”).

E. Permit Holder desires to obtain a nonmetallic mining permit from the Town in compliance with the requirements of the Town’s Nonmetallic Mining Ordinance, Chapter 19 of the Town’s code of ordinances (“**Mine Ordinance**”), and has applied for such a permit from the Town.

F. The Town Board has considered Permit Holder’s permit application and supporting documentation, the facts and circumstances unique to Permit Holder’s nonmetallic mine and mining operations, the recommendation of the Town Plan Commission, information presented to the Town Board at a public hearing, and additional information presented by Permit Holder and the Town’s legal counsel.

G. The Town Board finds that without the conditions and restrictions set forth in this Permit, Permit Holder’s nonmetallic mining operations would not be in the best interests of the citizens of the Town and would be inconsistent with protection of public health, safety and general welfare, as required under Mine Ordinance § 2.05(3).

H. The Town Board also finds that protection of general welfare within the vicinity of Permit Holder’s nonmetallic mining operations requires that the property values of existing homesteads located within one-half (1/2) mile of the exterior boundaries of Permit Holder’s nonmetallic mine be protected by Permit Holder with a property value guarantee as a condition of this Permit, and that such a condition is consistent with Wisconsin law under *State ex rel. Saveland Park Holding Corporation v. Wieland*, 269 Wis. 262 (1955), and subsequent cases.

I. The Town Board finds, however, that issuance of this Permit with the terms and conditions set forth herein is in the best interests of the citizens of the Town and will be consistent with protection of public health, safety and general welfare, as required under Mine Ordinance § 2.05(3).

**WHEREFORE**, the Town hereby grants this Nonmetallic Mining Permit (this “**Permit**”) to Permit Holder upon the terms and conditions set forth herein.

## **PERMIT**

### **1. Permit**

- 1.1. The Town acknowledges receipt of the fee and materials sufficient to fulfill the application requirements of section 2.06(1) of the Mine Ordinance. See Exhibit B.
- 1.2. By signing this Permit, the Town grants a permit to Permit Holder to engage in nonmetallic mining operations and related activities regulated under the Mine

Ordinance at the Property for the term of this Permit. This Permit is intended to set forth conditions to protect public health and safety and promote the general welfare of the Town pursuant to section 2.06(7) of the Mine Ordinance.

- 1.3. The Town affirms that Permit Holder's compliance with this Permit shall be deemed compliance with the Mine Ordinance. The Town shall not enforce the Mine Ordinance, or any amendment thereto or revision thereof, against Permit Holder, or otherwise subject the Permit Holder to regulation of its mining activities on the Property except as provided herein.

## **2. Terms and Conditions**

- 2.1. This Permit shall be effective upon approval by the Town and acceptance by Permit Holder (the "**Effective Date**"). This Permit shall expire on the 30th anniversary of the Effective Date.
- 2.2. This Permit shall be reviewed annually by the Town during the first five years of operation of a nonmetallic mine on the Property. Annual review of the Permit by the Town during the first five (5) years shall take place at least 15 and no more than 30 days prior to the anniversary of the date of issuance of the Permit. The annual Permit review fee during the first five (5) years shall be \$200.00 annually. This fee shall be paid to the Town of Cooks Valley Clerk within 30 days following receipt of invoice.
- 2.3. If at any time during the term of this Permit the activities or operations permitted under this Permit are alleged to have caused unforeseen public health or safety problems, the Town shall hold a public hearing on the matter. If upon a factual finding that unforeseen substantial public health or safety problems have been caused by the activities or operations permitted under this Permit, the Town may reasonably modify the Permit to address such problem.
- 2.4. If any term or condition of this Permit is violated by Permit Holder, the Town shall notify Permit Holder and Permit Holder shall work to cure such violation in a timely manner. If Permit Holder fails to work diligently to cure the violation in a timely manner or a pattern of violations occurs, the Town may hold a public hearing on the matter.
- 2.5. Subject to the Town's compliance with the notice and hearing conditions contained in this Permit, legal action may be initiated by the Town to enforce the terms and conditions of this Permit to the extent necessary to protect the public health, safety and general welfare of the Town.
- 2.6. In the event of lawful revocation of this Permit, this Permit shall be void and the Property shall be reclaimed by Permit Holder in accordance with its Reclamation Permits.
- 2.7. This Permit shall be subject to revocation prior to its expiration date if active mining operations on the Property have been ceased for three (3) consecutive years by Permit Holder. Upon notification from the Town confirming that this

Permit has been so revoked, Permit Holder shall perform reclamation of the Property as required under its Reclamation Permits.

- 2.8. Performance bonds, financial security arrangements, and road agreements and maintenance procedures previously agreed to by the Town and Permit Holder shall be adhered to by Permit Holder. Failure to comply with such agreements and arrangements may provide grounds for revocation of this Permit by the Town.

### 3. Mining and Hauling Operations

- 3.1. Permit Holder may conduct nonmetallic mining operations under this Permit up to twenty-four (24) hours per day, seven (7) days per week; 365 days per year. However, Permit Holder shall limit sand trucking to no more than 430 truck loads per day from the Property. The maximum weight per truck load shall not exceed twenty-six (26) tons of sand and material. The hours of trucking operations shall not exceed sixteen (16) hours per day. Trucking of sand and material shall be limited to the hours of 6:00 a.m. to 10:00 p.m. on Monday through Friday, and one shift from 6:00 a.m. to 2:00 p.m., on Saturday, except that Permit Holder shall not conduct sand trucking on any Town roads on federal holidays and during the time periods set by the Town under to Subsection 3.4.6, when school buses are regularly scheduled to use Town roads to pick up and drop off students.
- 3.2. Upon request from the Town, which may be made no more frequently than once quarterly, Permit Holder shall make available for review by the Town monthly written accounts of the amount of material transported from the Property. Permit Holder shall also provide scale records if requested by the Town.
- 3.3. This Section 3.3 sets forth the Permit Holder's "**Light and Noise Mitigation Plan.**"
  - 3.3.1 Noise emitted from Permit Holder's nonmetallic mining operations shall not exceed L10 of seventy-five (75) dbA and L50 of seventy (70) dbA, as measured at the property lines of the mine operation in line with and adjacent to existing residential structures. In addition, noise received from Permit Holder's nonmetallic mine and onsite mining operations shall not exceed L10 of fifty (50) dbA between the hours of 7:00 a.m. and 6:00 p.m., or L10 of forty-five (45) dbA between the hours of 6:01 p.m. and 6:59 a.m., as measured at existing residential structures within one-half (1/2) mile of the exterior property lines of the mine operation. Exceptions to this condition are noise from haul trucks and vehicles entering and leaving the Property, blasting activities, and work projects done on drainage ditches or Town and County road ditches.
  - 3.3.2. With respect to noise measurement, L10 is the sound level, expressed in dbA, which is exceeded ten percent (10%) of the time for a one (1) hour noise or sound survey. L50 is the sound level, expressed in dbA, which is exceeded 50% of the time for a one (1) hour survey. dbA is the unit of

sound level expressed in decibels (db) and A-weighted, as described in ANSI s 1.4, 1983, section 1.5.

- 3.3.3. With respect to noise measurement methodology, all sound or noise measuring devices must meet Type O, I, II or S specifications under ANSI s 1.4 1983. Devices must be externally field calibrated before and after monitoring using a calibration device of known frequency and sound pressure levels. Measurements must be made using the A weighting and Fast Response characteristics of the sound measuring device as specified in ANSI 2, 1.4 1983.
  - 3.3.4. In order to demonstrate the mine operation's ability to meet the noise limitations set forth in Subsection 3.3.1 above, Permit Holder shall conduct a noise or sound study within sixty (60) days of the Effective Date of this Permit, to collect noise data emanating from the mine operation. A copy of the results of such noise study shall be provided to the Town.
  - 3.3.5. In the event that noise from the operation exceeds the limitations set forth in Subsection 3.3.1 above, Permit Holder shall implement mitigation measures to remedy the exceedance.
  - 3.3.6. Permit Holder shall also implement, within thirty (30) days of the Effective Date of this permit, the nighttime use of mobile equipment strobes in compliance with federal Mining Safety and Health Administration ("MSHA") regulations to replace the nighttime use of audible back up alarms.
  - 3.3.7. Permit Holder shall use back-up signals creating the least offensive noise audible to persons residing near the Property consistent with legal requirements.
  - 3.3.8. Permit Holder shall complete an inventory of all light sources associated with the mine operation within thirty (30) days of the Effective Date of this Permit. Based on this inventory, Permit Holder shall mitigate to the extent reasonably possible, without compromising safety, any light nuisances existing throughout the operation. Mitigation measures may include installation of downward and inward facing light shrouds to direct light where necessary while limiting unnecessary light emanating from the source. Portable lighting without such shrouds shall be used only as necessary to illuminate work areas or for legitimate safety reasons. In addition, Permit Holder shall plant at least two (2) rows of trees to mitigate the effects of light and noise on the adjoining property owned by Rosemary Gehring within one (1) year of the Effective Date.
- 3.4. Permit Holder shall take measures to ensure, to the extent reasonably possible, that within the Town, trucks traveling to or from the Property:
    - 3.4.1. Shall use only roads and highways approved from time to time for such use by the Town, Chippewa County or the State of Wisconsin;

- 3.4.2. Shall not use compression release engine brakes, commonly known as Jake brakes;
  - 3.4.3. Shall adhere to all posted speed limits;
  - 3.4.4 Shall be properly maintained and operated in a safe and lawful manner;
  - 3.4.5 Shall be covered to prevent sand and other materials from falling on the roadways and other vehicles; and
  - 3.4.6 Shall not use any Town roads during the regular morning and afternoon time periods when school buses are regularly scheduled to use Town roads to pick up and drop off students (such times to be established from time to time by the Town in consultation with local schools and Permit Holder).
- 3.5. Permit Holder shall comply with its fugitive dust control plan previously submitted to the Wisconsin DNR (as same may be amended from time to time, the “**Dust Control Plan**”). Permit Holder shall provide to the Town a copy of Permit Holder’s current Dust Control Plan and any and all subsequent modifications thereof. In addition, if Permit Holder’s operations require that an air permit be obtained from the State of Wisconsin, Permit Holder shall obtain such air permit and provide a copy to the Town. To the extent that Wisconsin law requires Permit Holder to perform air quality monitoring and to maintain air quality monitoring data, Permit Holder shall make such data available to the Town as may be requested by the Town, but no more frequently than once quarterly.
  - 3.6. Permit Holder’s mining activities, as they relate to surface and ground water, shall be conducted in accordance with the Reclamation Permits, the WDNR Permit and all other applicable laws and regulations.
  - 3.7. Sand taken from the mine Property may be returned to the mine Property. In addition, Permit Holder and the Town understand and agree that fines or waste sand from other Wisconsin sand mines may be returned to the Property, provided that the total amount of such sand (including fines and waste sand) that is 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 (30% of 600,000 tons) of reject sand may be returned to the mine Property.
  - 3.8. Permit Holder 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 issues related to Permit Holder’s compliance with this Permit.

#### **4. Storm Water Management**

- 4.1. Permit Holder shall comply with all provisions of the Reclamation Permits and the WDNR Permit, and all applicable state and Federal laws and regulations pertaining to storm water management, retention and detention.
- 4.2. Permit Holder shall repair any damage to, and remove sediment from, Town road ditches to the extent such damage and/or sediment build up is directly caused by Permit Holder's operations.

#### **5. Groundwater Testing and Well Protection**

- 5.1. This Section 5.1 sets forth Permit Holder's "**Groundwater Testing and Well Protection Plan**":

- 5.1.1 The Permit Holder will comply with Wisconsin Department of Natural Resources regulations under Wis. Admn. Code Ch. NR 820 ("**NR 820**") relating to protection of groundwater quantity and it shall obtain a high capacity well permit for all qualifying wells that may be installed for mining and production purposes as may be required by WDNR.
- 5.1.2 The Permit Holder may, at its discretion or for the purpose of complying with Wisconsin Department of Natural Resources regulations and high capacity well permit requirements, install a groundwater level monitoring well network for the purpose of monitoring changes to the groundwater elevation that may occur over time as a result of groundwater appropriation for production water.
- 5.1.3 The groundwater level monitoring network shall be designed to triangulate the elevation of the water table surface and to establish the direction of groundwater flow near the high capacity well(s). The groundwater level monitoring well network shall be designed by a professional hydrologist or professional engineer.
- 5.1.4 Using the information gathered in the monitoring well network, if applicable, the Permit Holder shall prepare a groundwater elevation map. The Permit Holder shall provide this map to the Town prior to regular production use of the high capacity well.
- 5.1.5 The Permit Holder shall provide a copy of any application and permit for a high capacity well that is subject to state permit requirements to the Town.
- 5.1.6 The Permit Holder shall comply with the requirements of the high capacity well permit as determined by the Wisconsin Department of Natural Resources, which may include maintaining records of pumping rates and volumes for all high capacity wells at the mine site on a monthly basis following procedures established in NR 820.13. To the extent that such records are required pursuant to the high capacity well permits, the Permit Holder shall make copies of such records available for review by

the Town upon the Town's request, which may be made no more frequently than quarterly during any 12-month period.

5.1.7 The Permit Holder shall comply with the requirements of the high capacity well permit as determined by the Wisconsin Department of Natural Resources and NR 820, which may include preparing a Water Conservation Plan to limit consumptive use of groundwater. The plan may include a water budget for the operation that shows the typical annual volume of gains and losses to mining and reclamation activities. The plan may also describe the processes and best management practices used in mining and reclamation to reduce the consumptive use of groundwater at the mine site. To the extent that a Water Conservation Plan is required by the Wisconsin Department of Natural Resources in order to comply with permits and regulations governing the use and management of groundwater quantity, the Permit Holder shall provide a copy of the Plan to the Town.

5.1.8 The Permit Holder has previously sampled the onsite monitoring wells installed by it in order to characterize the baseline water quality condition. Permit Holder shall share those sampling results with the Town within thirty (30) days after the Effective Date. Moreover, Permit Holder shall share with the Town on a quarterly basis onsite monitoring data collected by Permit Holder as to the water table level. The Town may require Permit Holder to monitor onsite water quality should the Town have probable cause to believe that contamination has occurred as a direct result of Permit Holder's operations.

5.1.9 In the event that activities at this site are proved to have caused a degradation of groundwater quality below standards listed in Wis. Admn. Ch. NR 140, the Permit Holder shall work to mitigate these effects by altering site operations.

5.2 This Permit does not relieve the owner or Permit Holder of the responsibility for compliance with all provisions of Wisconsin State Statute 281, Wisconsin Administrative Code NR 820, or Wisconsin Administrative Code NR 812, as they may pertain to waters of the state and the operation of any private wells on neighboring properties, nor does this Permit restrict any property owner from pursuing rights or remedies available under applicable laws, including but not limited to common law and Wis. Stat. § 281.77, for damages sustained as a result of Permit Holder's failure to comply with the referenced statutes and regulations.

## **6. Blasting**

6.1. Permit Holder may conduct blasting at the mine Property only between the hours of 10:00 a.m. and 3:00 p.m. However, additional blasting may be conducted during other hours if required for safety reasons which are beyond the reasonable control of Permit Holder and its contractors.

6.2. Blasting velocities shall not exceed those specified in NFPA 495 and Wis. Admn. Code Ch. COMM 7.

**7. Property Value Protection**

7.1. This Permit contains a Property Value Guarantee as set forth in Exhibit C.

**8. Reclamation**

8.1. Permit Holder shall complete sequential reclamation of the Property as set forth in the Reclamation Permits.

**9. Laws to be Observed**

9.1. Permit Holder shall at all times comply with all federal, state, county and, subject to the provisions of Section 1.3 of this Permit, local laws, regulations and ordinances applicable to Permit Holder's operations on the Property which are in effect or which may become effective in the future.

9.2. A failure by Permit Holder to comply with the provisions of any permit issued by any governmental authority related to Permit Holder's mining operations at the Property shall not constitute a violation of this Permit unless the subject permit is permanently revoked by the applicable governmental authority.

9.3. A violation by Permit Holder of any law, regulation or ordinance applicable to Permit Holder's operations on the Property shall not constitute a violation of this Permit so long as Permit Holder is working diligently with the governmental authority(ies) charged with administering such law, regulation or ordinance to cure such violation.

**10. Reimbursement, Environmental Monitoring, and Enforcement**

10.1. Reimbursement. Permit Holder shall reimburse the Town for its documented consulting, inspection, engineering and legal fees and expenses up to \$10,000 actually paid by the Town in the review of Permit Holder's Permit application materials and the development, drafting, review, and approval of this Permit. Permit Holder shall reimburse the Town for these fees and expenses within thirty (30) days after submission of an invoice and supporting documentation by the Town to Permit Holder, following approval of this Permit.

10.1.1. Any amounts owed to the Town by Permit Holder under this Permit which are not paid within 30 days of invoicing shall accrue interest at the rate of one percent per month.

10.2. Environmental Monitoring. After the Effective Date, the Town may contract with an independent, third-party consultant to develop and implement an environmental monitoring program to monitor and test air and well water quality, on a periodic basis, at various locations within one-half (1/2) mile of the exterior boundaries of Permit Holder's nonmetallic mine. The environmental monitoring and testing program may include testing air quality for dust, silica, and other

particulates, and well water quality for chemicals used by Permit Holder at its mining operations. Environmental monitoring results shall be provided by the Town to Permit Holder and shall be considered public records when received by the Town. Permit Holder shall cooperate with the Town, and any independent contractor retained by the Town to conduct such monitoring, by providing information on chemicals used by Permit Holder at its mine site and by providing controlled access to the mine site for purposes of conducting environmental monitoring. Permit Holder shall pay the Town an annual environmental monitoring fee of \$8,000.00 toward the cost of the environmental monitoring program beginning in 2013, if the Town contracts for such monitoring. Thereafter, the annual environmental monitoring fee may be adjusted by the Town but shall not exceed \$10,000.00. Each annual payment provided for in this section shall be evidenced by an invoice from the Town that includes documentation confirming that the environmental monitoring program has been initiated and is continuing, identifies the vendors who have been retained to conduct the environmental monitoring program, and provides a reasonably detailed estimate of the costs associated with the environmental monitoring program during the relevant calendar year. Payment shall be due upon the later of 30 days following Permit Holder's receipt of the invoice or January 15 of the relevant calendar year. If at any time the Town, after consultation with Permit Holder, determines that the environmental monitoring provided for under this section is unnecessary, because of substantially similar environmental monitoring by Permit Holder or another entity, the Town may suspend or discontinue further environmental monitoring under this section. If the Town suspends or discontinues further environmental monitoring, Permit Holder shall not be responsible for making payments to the Town to cover the costs of monitoring during any periods when monitoring has been suspended or discontinued, and Permit Holder shall be entitled to a refund or amounts pre-paid for periods when monitoring has been suspended or discontinued.

- 10.3. Inspection and Right of Entry. Permit Holder 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 Permit or as otherwise provided by law or this Permit. In the event of Permit Holder'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 of access.
- 10.4. Notice of Violation. In the event that Permit Holder violates the terms or conditions of this Permit, the Town shall provide a notice of violation and the parties shall hold an initial meeting within ten (10) days following receipt of notice of such violation for purposes of attempting to resolve the violation unless the Town determines that threats to health or safety require a shorter notice period. If the parties cannot so resolve the matter the Town may elect to enforce the remedies provided for herein.

10.5. Disputes Concerning Permit. Any dispute concerning the terms or conditions of this Permit, other than a violation under Section 10.3, 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 30 days of the event giving rise to the dispute. Such notice shall set forth all reasons supporting the basis of the dispute. Within 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

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

10.6.2 Remediation and Reimbursement. In the event Permit Holder fails to comply with the terms and conditions of this Permit, the Town may, but shall not be required to, take such corrective actions as it deems necessary to comply with such terms and conditions at Permit Holder's expense. Before taking any corrective actions, the Town shall give Permit Holder at least 30 days written notice unless the Town determines that threats to health or safety require a shorter notice period. Permit Holder shall reimburse the Town for all reasonable, documented expenses paid by the Town for materials, contractors, engineers, attorneys and other consultants in connection with taking corrective actions within 30 days of billing therefor. This Permit does not afford to the Town the right to perform corrective actions with respect to compliance matters that are under the jurisdiction of any other governmental authority.

10.6.3 Legal Action. The Town retains the right to commence legal action to enforce the terms and conditions of this Permit and seek remedies which may include: termination or revocation of the Permit for a violation, 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. Nothing in this Permit shall restrict any private right of action otherwise available to any person under applicable law to redress any injury, loss or damage sustained by such person as a result of Permit Holder's operations on the Property.

**11. Miscellaneous Provisions**

11.1. No waiver of any provision of this Permit 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 Permit signed by both the Town and Permit Holder, nor shall the waiver of any violation under this Permit be deemed a waiver of any subsequent violation or violations of the same type. The Town's failure to exercise any right or otherwise enforce any terms of this Permit shall not constitute approval of any violation or wrongful act by Permit Holder.

- 11.2. Any notice required or permitted by this Permit 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 Permit Holder: Kevin Traynor  
Executive Vice President, Partner  
Preferred Sands  
One Radnor Corporate Center  
100 Matsonford Ave., Suite 101  
Philadelphia, PA 19087

If to Town: Town Clerk, Town of Cooks Valley  
Victoria Trinko  
15784 40th Street  
Bloomer, WI 54724

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

- 11.3. Permit Holder may assign or transfer its rights and obligations under this Permit to any entity with the prior written consent of the Town which shall not unreasonably be withheld, provided that the Property shall continue to be used for nonmetallic mining activities, the assignee assumes in writing the obligations of Permit Holder pursuant to this Permit, and provides a copy of such assumption to the Town prior to the transfer, and the assignee demonstrates that it has the financial wherewithal to comply with the terms and conditions of this Permit.
- 11.4 This Permit shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin. All legal disputes arising under this Permit shall be venued in the Circuit Court for Chippewa County, Wisconsin.
- 11.5 Severability. In the event that any of the terms and conditions of this Permit are declared void or unenforceable, such terms and conditions shall be deemed severed from this Permit and this Permit shall otherwise remain in full force and effect; provided that this Permit shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Permit provides essentially the same rights and benefits as if such severance and reformation were not required.

**SIGNATURE PAGE**

**PERMIT ISSUED TO AND ACCEPTED BY:**

**PREFERRED SANDS OF MINNESOTA, LLC**

\_\_\_\_\_ Date: \_\_\_\_\_

By: Kevin Traynor  
Executive Vice President, Partner  
Preferred Sands  
One Radnor Corporate Center  
100 Matsonford Ave., Suite 101  
Philadelphia, PA 19087

**TOWN OF COOKS VALLEY:**

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

TOWN OF COOKS VALLEY  
Chippewa County, Wisconsin

**SIGNATURES OF TOWN BOARD MEMBERS:**

CHAIRMAN: \_\_\_\_\_

SUPERVISOR: \_\_\_\_\_

SUPERVISOR: \_\_\_\_\_

ATTEST: \_\_\_\_\_

TOWN CLERK: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**EXHIBIT B**  
**NONMETALLIC MINING ORDINANCE**

## EXHIBIT C

### PROPERTY VALUE GUARANTEE

Permit Holder shall provide a property value guarantee to the owners (the “**Protected Owners**”) of legal parcels of real property which contain existing homesteads located within one-half (1/2) mile of the exterior boundaries of Permit Holder’s nonmetallic mine (the “**Protected Area**”), as of the Effective Date of this Permit (the “**Guaranteed Properties**”), subject to the following terms and conditions:

- (1) The Protected Owners are identified on Attachment 1 hereto.
- (2) A property value guarantee (“**Guarantee**”) shall be provided in connection with the sale of any Guaranteed Property that closes within five (5) years following the Effective Date (the “**Guarantee Term**”).
- (3) The fair market value of each Guaranteed Property (the “**Fair Market Value**”) shall be equal to the estimated fair market value of the Guaranteed Property (land and improvements) as disclosed in the tax assessment records for the Guaranteed Property for the 2011 tax year, plus ten percent (10%).
- (4) If a Protected Owner elects to sell a Guaranteed Property at any time during the Guarantee Term, such Protected Owner shall first notify the Permit Holder of such desire in writing.
- (5) After such notice, the Protected Owner shall enter into a listing contract with a real estate broker licensed in the State of Wisconsin. The listing price shall be not less than the Fair Market Value. Any listing contract shall exclude Permit Holder as a potential buyer so that if Permit Holder purchases the Guaranteed Property, no commission shall be due.
- (6) If, following the listing of the Guaranteed Property as provided above, the Protected Owner receives a bona fide arm’s-length offer for a price less than the Fair Market Value that the Protected Owner wishes to accept, the Protected Owner shall provide a copy of such offer to Permit Holder. For two (2) days after receipt of such offer by Permit Holder, Permit Holder shall have the right to elect to purchase the Guaranteed Property on the same terms and conditions as contained in the bona fide offer, less any commission the Protected Owner would be required to pay on such sale (the “**Right of First Refusal**”). Permit Holder shall exercise its Right of First Refusal by delivering written notice of such exercise to Protected Owner. If Permit Holder fails to so notify Protected Owner, Protected Owner shall be free to accept the bona fide offer from such third party and sell the Guaranteed Property.
- (7) If the Protected Owner sells the Guaranteed Property for less than the Fair Market Value pursuant to a bona fide offer, and such sale closes within the Guarantee Term, Permit Holder shall pay the Protected Owner the difference between the selling price set forth in the bona fide offer and the Fair Market Value, less the realtor’s commission that would have been payable on that difference, subject to the limitations below. Such payment shall be due even if

Permit Holder exercises its Right of First Refusal. Permit Holder shall make such payment within thirty (30) days of the closing of the sale of the Guaranteed Property to a third party, or at the closing of the sale if Permit Holder is the purchaser.

(8) This Guarantee shall apply only once for any Guaranteed Property and shall be available only to the Protected Owners.

(9) A Guaranteed Property will not qualify for the Guarantee in the event the Protected Owner sells or otherwise conveys the Guaranteed Property by a transaction which is not considered a bona-fide, arm's-length sale (such as a sale or gift to a relative).

(10) This guarantee shall cease to apply to any Protected Owner who uses the Guaranteed Property or any other of such owner's land within the Protected Area for nonmetallic mining, who subjects all or any portion of his Guaranteed Property or any other of such owner's land within the Protected Area to a lease, a purchase and sale agreement or any other financial arrangement or agreement with any person or entity engaged in nonmetallic mining, or if such Guaranteed Property or portion thereof or any other of such owner's land within the Protected Area is intended to be used in connection with nonmetallic mining following consummation of any such lease, purchase and sale agreement, financial arrangement or agreement.

(11) This guarantee shall cease to apply to any Protected Owner who subdivides his Guaranteed Property during the Guarantee Term.

ATTACHMENT 1 TO EXHIBIT C

List of Protected Owners

<b>Protected Owner</b>	<b>Guaranteed Property Identification Number</b>	<b>Guaranteed Property Description*</b>	<b>Guaranteed Property Acreage*</b>	<b>FMV</b>
Rosemary Gehring	23010-0314-50090000	GOVT LOT 9 (SE NE)	38.7	\$143,900
Jeff & Cindy Michaelis	23010-0344-70784002	E 1/2 SE LOT 2 OF CERT SUR MAP #784 IN V2 P357	4.1	\$181,400
Chad D & Barbara J Arendt	23010-0344-70784001	E 1/2 SE LOT 1 OF CERT SUR MAP #784 IN V2 P357 DOC #475900 L-SHAPE PCL	7.7	\$183,400
Floyd J & Eva C Niesen	23010-1011-08750000	NE NE PCL BEG @ SE COR; N 658', W 240', S 658' M/L TO S LN, E 240' M/L TO POB.	3.1	\$151,300
David J Michels	23010-0231-73821001	N 1/2 SW LOT 1 OF CERT SUR MAP #3821 IN V17 P212 DOC #792627	3.3	\$142,300
Gerald N & Renee A Harms	23010-1122-05010000	NW NW THE S 1/2	19.4	\$382,200
Christopher S & Andrea B Cagle	23010-1123-73825009	SW NW LOT 9 OF CERT SUR MAP #3825 IN V17 P217 DOC	14.5	\$226,100

		#792662		
Marie Anderson Properties LLC	23010-1014-00020000	SE NE EX CSM #2699 FARMLAND PRESERVATION 1/87	37.3	\$147,100

**Note: The list of protected property owners also includes three additional property owners who are not listed above, and who are not personally engaged in nonmetallic mining. They are: Ryan Lagesse, Barry Sarauer, and Lee Prill.**

\*Per Chippewa County tax records