

**ANNEXATION AGREEMENT BY AND BETWEEN**  
**THE VILLAGE OF NORTH AURORA AND**  
**LAFARGE AGGREGATES ILLINOIS, INC.**

**THIS ANNEXATION AGREEMENT** (hereinafter referred to as this “Agreement”) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **VILLAGE OF NORTH AURORA, ILLINOIS**, a Municipal Corporation, (hereinafter referred to as the “Village”), and Lafarge Aggregates Illinois, Inc., (hereinafter referred to as the “Owner”).

**WITNESSETH:**

**WHEREAS**, the Village and the Owner are referred to herein individually as “Party” and collectively as the “Parties;” and

**WHEREAS**, Owner is the owner of record of the property legally described in Exhibit “A”, which is attached hereto and made a part hereof (hereinafter referred to as the “Conco Property”), located at Illinois State Route 25 and Interstate 88, that is located within the corporate limits of the Village of North Aurora pursuant to a certain Annexation Agreement between Conco Western Stone Company and the Village of North Aurora for the Annexation and Development of the Conco Western Stone Quarry dated May 26, 1992 and recorded in the Recorder of Deeds office as document #92K55707 (hereinafter referred to as the “1992 Annexation Agreement”); and

**WHEREAS**, under the 1992 Annexation Agreement the Conco Property was zoned under the I-2 designation of the Village’s Zoning Ordinance as a Special Use for the purpose of operating surface and subterranean aggregate stone mining; and

**WHEREAS**, Owner is also the owner of record of the property legally described in Exhibit “B”, which is attached hereto and made a part hereof (hereinafter referred to as the “Territory”); and

**WHEREAS**, the Territory is located within unincorporated Kane County, Illinois (hereinafter referred to as the “County”), and is not otherwise located within the corporate boundaries of any municipal corporation; and

**WHEREAS**, the Territory constitutes land that is contiguous to the Conco Property and may be annexed to the Village of North Aurora as provided in the Illinois Municipal Code (65 ILCS 5/7-1-1 et seq.); and

**WHEREAS**, a Petition for Annexation of the Territory has been filed with the Village in accordance with the Illinois Municipal Code and all applicable ordinances and codes of the Village; and

**WHEREAS**, the Owner desires to have the Territory annexed to the Village to be used for mining purposes consistent with the zoning and use granted under the 1992 Annexation Agreement and upon the terms and conditions set forth more fully herein; and

**WHEREAS**, the Owner also owns five (5) parcels of property that are adjacent to the western boundary of the Conco Property with frontage along Illinois Route 25 in the Village of North Aurora, but which parcels are not zoned for mining special use nor are subject to the 1992 Annexation Agreement, and which parcels are legally described in the document attached hereto and incorporated herein by reference as Exhibit “C” (hereinafter referred to as the “Five Parcels”) and Owner desires to conduct mining operations on the Five Parcels; and

**WHEREAS**, the Village granted Owner in 2009 temporary permission to mine within a sixty (60) foot setback area by Ordinance number 09-09-21-04, which modified the conditions in the 1992 Annexation Agreement; and

**WHEREAS**, the Owner filed an application to rezone the Five Parcels for special use for mining consistent with the current zoning for special use for mining designation of the Conco Property; and

**WHEREAS**, the Territory, the Conco Property and the Five Parcels shall hereinafter be referenced collectively as the “Property”; and,

**WHEREAS**, the 1992 Annexation Agreement will expire by its terms on May 26, 2012, but the Village acknowledges that the zoning will be preserved for the Conco Property in accordance with Illinois state statute; and,

**WHEREAS**, the Owner and the Village agree to extend certain rights and obligations under the 1992 Annexation Agreement and create certain additional rights and obligations and therefore have agreed to enter into this Agreement to provide for continued and extended mining operations on the Property for a twenty (20) year term to begin upon the execution of this Agreement and approval of the appropriate ordinance reflecting same; and

**WHEREAS**, the Owner and the Village agree to apply the terms of the 1992 Annexation Agreement and such additional terms and conditions as are set out herein, and the extension of same as granted herein, including providing for re-zoning of the Property for the special use for mining, to apply to the Territory and Five Parcels; and

**WHEREAS**, the Parties desire that the Property and its continued use and future development shall be hereafter governed pursuant to and in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, this Agreement is entered into pursuant to the provisions of 65 ILCS 5/11-15.1-1 through 11-15.1-5; and

**WHEREAS**, all notices, publications, procedures, public hearings, and other matters required for the consideration, approval, and execution of this Agreement have been given, made, held and performed as required by the Illinois Municipal Code and all other applicable statutes of the State of Illinois and Ordinances of the Village; and

**WHEREAS**, the annexation, rezoning, and future development of the Territory and the rezoning of the Five Parcels as to the Conco Property for the use and purposes provided herein will promote sound planning, will aid in developing the Village as a balanced community, and will assist the Village in realizing the purpose of the Comprehensive Plan of the Village of North Aurora; and

**WHEREAS**, Owner is currently leasing (the “City Lease”) mining property in the City of Aurora that is immediately south of the Conco Property on the south side of Illinois Tollway Route I-88 (the “Tollway”) which is connected to the Conco Property by two existing passageways (known hereinafter as “Drifts”) which are located under the Tollway;

**WHEREAS**, under the terms of the City Lease the City of Aurora has the right to require Owner to vacate Levels 1 and 2 of the Aurora mine in order to allow the City of Aurora to store by-products from the City’s Water Treatment Plant, and Owner will also be allowed to mine level 3 and possibly mine a nearby twenty-three (23) acre parcel owned by the City of Aurora and Owner wishes to be able to access the City of Aurora mine from the Conco Property by connecting the two mines with new Drifts under the Tollway; and

**WHEREAS**, Owner also has entered into a lease agreement with Commonwealth Edison in regards to mining rights to certain property owned by Commonwealth Edison along the northern and eastern borders of the Conco Property identified by the legal description attached hereto as Exhibit “D” (known hereinafter as the “ComEd Property”) with the intention of annexing that property into the Village for the contemplated use and purposes provided herein; and

**WHEREAS**, Owner intends to completely close and seal the existing Drifts, with access to Levels 1 and 2 of the Aurora mine solely for inspection, once the new Drifts are completed to provide a connection to the existing mine which Owner operates in the City of Aurora;

**WHEREAS**, the Village has, by a vote of two-thirds (2/3) of the Corporate Authorities currently holding office, directed the President to execute and the Village Clerk to attest to this Agreement on behalf of the Village.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby agreed by and between the Village and the Owner as follows:

1. **RECITALS.** The representations and recitations set forth in the foregoing Recitals are material to this Agreement and are hereby incorporated into and are a part of this Agreement as though more fully set forth herein.

2. **ANNEXATION.** Owner has filed a proper application to the Village for annexation of the Territory. The Village has held the necessary public hearings on the zoning and the annexation of the Territory. The Village shall annex the Territory, subject to applicable sections of the Illinois Municipal Code, the Zoning Ordinances of the Village, and the terms and conditions of this Agreement. Such annexation and zoning of the Territory, as more fully set forth herein, shall occur without further public hearing by the Village.

3. **ZONING.** Immediately upon annexation of the Territory to the Village, the Territory and the Five Parcels shall be rezoned and classified, without further public hearing, under the provisions Title 17 of the North Aurora Municipal Code (“Zoning Ordinance”), as **I-2 General Industrial District**, with a special use for **Mining Operations and Processing** by the passage of and subject to the conditions of a special use ordinance consistent with the document attached hereto and incorporated herein by reference as Exhibit “E” (hereinafter the “Special Use Ordinance”) and the zoning of the Conco Property shall continue to be governed by this zoning designation. In so doing, the Village has specifically found that:

- a. The proposed use of the Territory and the Five Parcels pursuant to the terms and conditions of this Agreement will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare and is consistent with the adjacent use of the Conco Property.
- b. The proposed use of the Territory and Five Parcels pursuant to the terms and conditions of this Agreement will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood and is consistent with the adjacent use of the Conco Property.
- c. The proposed use of the Territory and Five Parcels pursuant to the terms and conditions of this Agreement will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district, and is consistent with the use of the adjacent Conco Property.

- d. The proposed use of the Territory and Five Parcels pursuant to the terms and conditions of the Agreement demonstrates that the exterior architectural appeal and functional plan of any proposed structure will not be so at variation with either the exterior architectural appeal and functional plan of the structures already constructed on the Conco Property or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood, especially given the long term operation of the Conco Property for mining for more than forty (40) years.
- e. The proposed use of the Territory and Five Parcels pursuant to the terms and conditions of this Agreement, being consistent with the current operations of the mine on the Conco Property demonstrates that adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
- f. The proposed use of the Territory and Five Parcels pursuant to the terms and conditions of this Agreement, being consistent with the terms and conditions of the 1992 Annexation Agreement currently binding on the Conco Property, demonstrates that adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- g. The proposed use of the Territory and Five Parcels pursuant to the terms and conditions of the Annexation Agreement will comply with the regulations and conditions of the Zoning Ordinance as modified by the Development Plan.

**4. EXTENSION OF CURRENT ZONING DESIGNATION AND USE:** The Special Use for mining granted by the Special Use Ordinance shall survive and remain in effect after the termination or expiration of this Agreement, in accordance with Illinois law and as a material term of this Agreement, subject to any amendments or other changes from time to time that are approved by the Village in compliance with the Zoning Ordinance in effect now or as amended from time to time in the future and adopted pursuant to the terms of this Agreement.

**5. ZONING USE LIMITATIONS:** The Parties intend by this Agreement to apply the operational standards imposed on the Conco Property under the 1992 Annexation Agreement to apply to all of the Property except to the extent they may be modified herein. With respect to the mining operation described herein, the following provisions and/or performance standards shall apply to ongoing mining operations undertaken pursuant to the terms of this Agreement and the Special Use for Mining granted for the Property:

a. The underground mine shall consist of up to three levels, with up to three passes per level, as a room and pillar operation. Each pass shall be well underway before a succeeding pass is begun. The mine will be accessed through a single decline at a 17% grade approximately 910 feet in length. The decline will be accessed through a portal at the bottom of a ramp approximately 290 feet in length and 48 feet deep at a grade of 17%. The nominal cross-section will be 18 feet (high) X 14 feet (wide). An eight foot diameter air shaft approximately 181 feet in length shall be maintained to provide emergency access and ventilation. The first-pass rooms shall be mined using either blasting agents or explosives in small diameter holes (2.5 inches, or smaller) drilled by a single- or double-boom jumbo drill. Rooms shall be approximately forty to forty-five feet (40-45') wide and approximately twenty three feet (23') high. The second pass height is assumed to be twenty-seven (27') feet for a total of fifty (50') feet. The roof of each room shall be scaled to remove loose material and rock bolted as soon as practicable after a shot is made on the first pass.

b. Blasting is permitted in accordance with "Appendix B Alternative Blasting Level Criteria" of the U.S. Department of the Interior, Bureau of Mines, RI-8507 (Ground Vibration), such Appendix is modified to limit peak particle velocity to a maximum of 0.50 inches per second at frequencies from 5 Hz to 10 Hz. Such Appendix is attached hereto and incorporated herein by reference as Exhibit "F". Airblast is limited in accordance with paragraph 816.65 of (e)(1) of the Permanent Regulatory Program Implementing 501(b) of the Surface Mining Control and Reclamation Act of 1977, U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (Airblast), a copy of which document is attached hereto and incorporated herein by reference as Exhibit "G".

c. Aggregate crushing operations and random equipment noise shall be so conducted as not to transmit noise across any present residential district boundary line westerly of Route 25 or northerly of a line parallel to and one hundred (100) feet southerly of the southerly line of Hettinger Lane in excess of the decibel level set by the Village from time to time for industrial uses adjacent to residential uses, as uniformly applied throughout the Village, the application of which is described in North Aurora Code Title 8, chapter 8.20, as amended from time to time.

d. The Owner shall comply with all applicable provisions of the Illinois Surface Mined Land Conservation and Reclamation Act (225 ILCS 715/1) and regulations promulgated in respect thereto, the enforcement of which shall be determined by the Office of Mines and Minerals which is part of the Illinois Department of Natural Resources.

e. The operations authorized hereunder shall be conducted so as to meet any criteria imposed for the issuance of permits and other conditions and regulations imposed by the Illinois Environmental Protection Agency under Title 35 of the Illinois Administrative Code, Subtitle D, for Mine Related Water Pollution as set

forth in Chapter 1 thereof and all other applicable requirements of federal, state and local law.

f. The Owner shall not extend the use beyond the Property, above or below ground, or extend the depth of the Mining operation without amendment to the Special Use Ordinance, except that Owner shall be permitted to extend the mining operations under I-88 consistent with any lease agreement between Owner and the City of Aurora or ComEd (subject to the Village's approval of the annexation and zoning of the ComEd property as provided below) and will be allowed to move aggregate from the City of Aurora property to the Conco Property for processing as the Owner is currently undertaking. Owner shall be entitled to submit a petition to have the Village consider extending the use to the ComEd Property, provided that an Annexation Agreement, or amendment to this Annexation Agreement, is entered into pursuant to the terms described herein with the owner and/or its designee and/or assignee of the ComEd Property, after annexation of that property into the Village is completed in accordance with state statute and the Village Zoning Code. The Village further agrees to expedite processing of the petition for annexation of the ComEd Property and necessary Annexation Agreement by staff and the Village attorney.

g. The Owner shall maintain, at its cost, two (2) portable seismographs that will provide a visual reading and a tape recorded cassette or digital reading. The seismograph shall be accurate over a range of 0.03 to 1.0 inches per second over a frequency range of from 5 to 10 Hertz. The Owner shall retain control and sole use of one of the instruments and shall operate the seismograph so as to record each and every blast. The Owner shall provide the Village a portable seismograph for its use in monitoring the Owner's blasting. The Owner shall pay the cost for calibrating and periodically recalibrating, as needed, both seismographs in a manner that is traceable to the United States Bureau of Standards at annual intervals and shall maintain both seismographs in good working order. The Owner shall place its seismograph as close to the nearest offsite structure as possible or at other locations as directed by the Village.

h. When Owner has determined the time of a planned blast, it shall cause telephone or e-mail notice to be given to the Village at a telephone number or e-mail address and to a Village representative to be identified by the Village. Owner shall retain the data sheet from the seismograph in its possession for each blast, shall cause such data sheets to be interpreted by a duly certified and mutually agreed upon seismologist or mutually agreed upon professional engineer registered in the State of Illinois, and shall deliver such readings to the Village at agreed intervals.

i. Underground blasting shall not occur except between 8:00 a.m. and 4:00 p.m. without express consent by the Village for exceptional circumstances, and no blasting shall occur on Sundays.

j. Noise generated by the shaft ventilation fan shall not exceed the sound limit specified in Paragraph 5(c) above and in accordance with North Aurora Code Title 8, chapter 8.20, as amended from time to time, when measured at the nearest existing offsite structure or nearest offsite structure hereinafter built in accordance with the zoning laws of North Aurora. Owner shall be required maintain a concrete, block wall housing in order to baffle the sound generated by the fan in the event that the fan is determined to exceed the sound limits set forth herein.

k. The Owner shall communicate with the North Aurora Fire Protection District (hereinafter “NAFPD”) in regard to any unusual measures, training techniques or equipment which may be needed by NAFPD to deal with injuries, emergencies or incidents which may occur on or under the Property.

l. The Owner shall maintain all applicable permits for underground mining on the Property at all times that any mining operation is ongoing.

m. The Owner’s work hours (except for blasting) in connection with the operation of the underground mine shall be permitted around the clock, so long as the noise requirements of this Ordinance are complied with, but in no event shall any loading of customer trucks with mined materials occur outside the hours of 6:00 a.m. to 6:00 p.m. and truck loading on Sundays shall be limited to ten (10) Sundays a year, to be determined by the Owner with prior notice to the Village Community Development Director, and truck loading shall be limited to the hours of 8:00 a.m. to 6:00 p.m. on those Sundays.

n. The Owner shall at all times operate according to the Operations Plan attached hereto incorporated herein by reference as Exhibit “I”, describing the method of construction of additional facilities, ramps and the like on the Property and illustrating the manner in which the underground mining operation will be conducted on the Property, and, to the extent applicable, the mining operations in the City of Aurora that are connected to the Property. Due to the requirements of the City of Aurora for lime sludge storage, Owner may later mine only the third level of the City leased property, but may also mine the adjacent Com Ed property and twenty-three (23) acre City of Aurora parcel on up to three levels. Similarly, Owner may operate consistent with the terms of that plan for the ComEd Property, provided that an Annexation Agreement, or amendment to this Annexation Agreement, is entered into pursuant to the terms described herein with the owner of the ComEd Property, once the annexation of that property into the Village is completed in accordance with state statute and the Village Zoning Code.

o. In respect to the underground mining operation, Owner shall locate and conduct underground all drilling, blasting, mucking with front-end loaders, and primary crushing. Further, to control the emission of dust, Owner shall:

(1) Spray the secondary crushing material with water (weather permitting);

(2) Construct, operate and maintain a truck tire washing station at an agreed location at the bottom of the ramp to assure that dust adhering to exposed tire parts will be removed before trucks enter public roadways;

(3) Maintain the existing blacktopped roadway and ramp from Illinois State Route 25 to the existing quarry floor. Such roadway need not be maintained in accordance with the standards for public roads as required by the North Aurora Code; but the maintenance shall be agreed by Owner and the Village Engineer;

(4) Utilize other commercially reasonable measures to reduce the amount of dust migration off the site; and

(5) Comply with all applicable provisions of the IEPA regulations regarding particulate emissions.

p. Trucks shall be loaded so as to prevent spillage. Tarpaulins shall be used if repeated spillage occurs or in accordance with State law. Any spillage on public roadways or material adhering to truck tires shall be removed periodically from such roadways at intervals of not more than twenty-four (24) hours, and all appropriate safety precautions shall be observed during such removal. All vehicular traffic shall enter and exit the Property at Illinois State Route 25 and Conco Street, which has been dedicated to the Village.

q. The floor of the quarry around the proposed opening to the underground mine shall be shaped in such a manner as to prevent storm runoff water from entering the decline ramp and tunnel and so as to direct it to open drainage ditches and the open ponds that comprise the present drainage system on the bottom of the quarry. The Owner shall monitor the quality of storm water runoff that collects in the quarry consistent with the terms of a certain NPDES permit, a copy of which is attached hereto as Exhibit "J", and shall provide copies of water quality reports to the Village upon request. The Owner shall otherwise promptly comply with all the requirements of the NPDES permit along with any and all other requirements of the Illinois Environmental Protection Agency.

r. The Owner shall maintain the landscaping and berm on the Property in accordance with the Conco Western Stone Company Underground Mine Proposed Landscaping and Berming Recommendations dated May 26, 1992, a copy of which is attached hereto and incorporated herein by reference as marked Exhibit "K".

s. The Owner shall be entitled to maintain and preserve any and all signs currently in place on the property. For any and all additional signs, the Owner shall comply with the Village Sign Ordinance in all respects, except as specifically allowed to the contrary herein, and shall not allow any off-premise signs or billboards on the Property.

6. **MINING OPERATION.**

A. **Monitoring Fee and In-kind Payment Agreement.** Together with the application for annexation of the Territory and for zoning for a special use for mining for the Five Parcels and the Territory, the Owner has applied for and/or requested that the Mining License that was granted pursuant to the 1992 Annexation Agreement for the Conco Property and for extension of the Mining License to the Territory and the Five Parcels, shall be superseded by a certain ordinance for the payment by the Owner to the Village of an annual fee and in-kind payment for certain expenses (“Monitoring Ordinance”) related to the mining operations conducted on the Conco Property and extended to the Territory, the Five Parcels and, if allowed, the ComEd Property from and after the passage, approval and effective date of the ordinance approving this Agreement and ordinance annexing the Territory, subject to terms and conditions of the Monitoring Ordinance to be approved in the form attached hereto and incorporated herein by reference as Exhibit “L”. The Monitoring Ordinance shall survive and remain in effect after the termination or expiration of this Agreement as long as the Property is used for mining. The fee and in-kind payment to be paid under the terms of the Monitoring Ordinance and shall include any payment, whether monetary or in-kind, which may arise out of the contemplated annexation of the ComEd Property referenced herein.

The Parties acknowledge that the amount of the fee and in-kind payment may not be directly related to the Village’s costs to administer and monitor its responsibilities as such costs relate to the mining operations; however, in light of the extended term of the mining operations on the Property and for the benefit to the Village in being able to budget for the anticipated oversight and the benefit to Owner to be able to budget the cost of such fee and in-kind payment, the Parties agree that the fee and in-kind payment set forth therein is fair and equitable and should be enforceable by each Party against the other. Owner shall not refuse to make the in-kind payment nor have any right to question the validity of such in-kind payment.

B. **In-kind Payment.** The in-kind payment to be paid under the terms of the Monitoring Ordinance shall be established as reflected in the Monitoring Ordinance attached hereto as Exhibit “L”. Owner has agreed to this in-kind payment in order to help the Village defray some of the costs of monitoring the mining operations.

C. **Environmental.** Subject to the qualifications contained in this subsection, Owner represents and warrants that, with respect to the Property, neither Owner, nor any lessee of the Owner which is using any portion of the Property, during the period since

Owner took title to the Property on October 3, 2006, has used, generated, released, discharged, stored or disposed of, or is issuing, generating, releasing, discharging, storing or disposing of any hazardous waste, toxic substance or related materials (“Hazardous Materials”) on, under, in or about the Property, or transported, or is transporting, any Hazardous Materials to or from the Property, and that no Hazardous Materials are present or being released on the Property. The Village acknowledges that the representations made herein are conditioned by the fact the Owner uses Hazardous Substances in its mining operations and these representations only extend to Hazardous Substances not used in the ordinary course of Owner’s mining operations. Further, the Village further acknowledges that the Owner makes no representations and does not warrant the condition of the Property due to any possible generation, release, discharge, storage or disposal of any Hazardous Materials by any prior owners of the Property and that the Owner represents only that it does not have any actual knowledge of same. Subject to these limitations, Owner shall not cause, suffer to exist or permit the presence, use, generation, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from the Property, except in its mining operations and consistent with applicable environmental laws. The term “Hazardous Materials” in addition shall include any substance, material or waste which is or becomes regulated by any legal governmental authority, the State of Illinois, or the United States government, including, but not limited to, any material or substance that is:

(1) petroleum or petroleum-based substances (except those petroleum-products used during the normal operations of Owner’s mining operations);

(2) asbestos;

(3) polychlorinated biphenyls;

(4) designated as a “hazardous substance” pursuant to §311 of the Clean Water Act, U.S.C. §1251 et. seq. (33 U.S.C. §1321) or listed pursuant to §307 of the Clean Water Act (33 U.S.C. §1371);

(5) defined as “hazardous waste” pursuant to §1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. (42 U.S.C. §6903);

(6) defined as “hazardous substance” pursuant to §101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §6901, et. seq. (42 U.S.C. §6901); or

(7) subject to regulations as a hazardous chemical substance pursuant to § 6 of the Toxic Substances Control Act, 15 U.S.C. §2601 et. seq. (15 U.S.C. §2605).

D. **Indemnity.** Owner hereby covenants and agrees to indemnify, defend and hold the Village harmless from and against any claim, action, suit, proceeding, loss,

cost, damage, liability, deficiency, fine, punitive damage or expenses from, arising out of, or based upon the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such materials to or from any portion of the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost or expenses arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, releases or other adverse effect on the environment. This indemnity shall not apply to events caused by the negligence or willful misconduct of the Village.

E. **Stormwater.** The Conco Property is already subject to an NPDES permit found in Exhibit “J”, which shall apply to all of the Property. Owner shall be responsible to comply with the conditions required by its NPDES permit.

F. **Bond.** As a condition of the Annexation, Special Use, and Monitoring Ordinance, and prior to expansion of the mining operation into, over or under the Territory and Five Parcels, the Owner shall present and/or continue a guaranty for performance (in the form of a surety bond acceptable to the Village) of all of its obligations under this Agreement. Such surety bond to secure the performance of the afore described obligations shall be in an amount of \$100,000.00 and in a form and from a company that is acceptable to the Village, in accordance with the document attached hereto and incorporated herein as Exhibit “M” and tailored to refer to any specific circumstances applicable to the Property. The surety shall be available to the Village in the event of a default or failure by the Owner in the performance of the obligations described in this Agreement. The Owner acknowledges and agrees to the form of security, by virtue of this Agreement, supersedes and controls over Section 11-12-8 of the Municipal Code (65 ILCS 5/11-12-8) and Section 3 of the Public Construction Bond Act (30 ILCS 550/3). If deficiencies are noted by the Village in any work performed by Owner, notice shall be given to the Owner of such deficiencies without unreasonable delay. Such notice from the Village shall: (i) identify, with specificity, any deficiencies in the work on the affected public improvements or incomplete work on such improvements; and (ii) list, in detail, all corrections to defective work and/or work to be completed in order to obtain the Village Engineer’s certification of completion of the work on the affected improvements. Any necessary re-inspection shall be completed within thirty (30) days following notice from the Owner to the Village Engineer that it has corrected such deficiencies and/or completed such work, as the case may be. If the condition needing correction involves an emergency situation, this time period shall be the reasonable time necessary to make an emergency correction. In the event that the correction will take more than thirty (30) days, Owner shall act with reasonable care to complete the necessary corrections within a commercially reasonable time period. The Village acknowledges that Owner has no present obligation to perform any public

improvements and that the purpose of the security is to insure performance of the conditions for mining contained in this Agreement.

The Village may reject a surety bond from a financial institution: 1) that exhibits a deteriorating trend in its capital asset ratio and/or non-performing assets as reported by an independent agency that tracks and reports on the financial condition of banks, such as the FDIC, the FFIEC, Bauer Financial or similar institutions; or 2) that is the subject of regulatory enforcement action as reported by the FDIC, the State of Illinois, the OCC or the Federal Reserve. The Village may declare itself insecure in regard to a surety bond already posted if the financial institution providing the surety bond exhibits a deteriorating trend in its capital asset ratio and/or non-performing assets as reported by an independent agency that tracks and reports on the financial condition of banks, such as the FDIC, the FFIEC, Bauer Financial or similar institutions, or 2) that is the subject of regulatory enforcement action as reported by the FDIC, the State of Illinois, the OCC or the Federal Reserve. In such case, the Village shall notify the Owner in writing of its determination, and the Owner shall have thirty (30) days to provide a substitute surety bond from a bank that does not have a negative financial trend and is not the subject of enforcement action, or a guaranty (commitment) from a bank that does not have a negative financial trend and is not the subject of enforcement action to stand behind the surety bond. If a substituted surety bond is not provided within thirty (30) days from the date of the request thereof in writing, the Owner shall be in default and the Village may draw on the existing surety bond. A deteriorating trend shall be deemed present if the financial institution issuing the security has a capital asset ratio and/or nonperforming assets that reveal a negative progression over a period of not less than two quarters or six months.

G. **Limited Liability.** The Village shall not be held responsible for any limitations or restrictions imposed on the Owner, the Property or on the Village's obligations under this Agreement that are required or imposed by any other governmental body having jurisdiction over the Property, including, but not limited to, the County, State or Federal agencies.

7. [Reserved]

8. [Reserved]

9. **RECLAMATION OF THE PROPERTY.**

A.. **Village's First Option to Purchase the Property.** When the Owner determines that it will no longer mine the Property, or will no longer mine a portion of the Property that can reasonably and practicably be reclaimed without adversely affecting any ongoing mining operation, and in any event before offering the Property, or any portion thereof, for sale to third parties for purposes other than mining, the Owner shall comply with the following provisions. The Owner shall give written notice to the Village, pursuant to this provision, that Owner will hold the Property, or that relevant portion of the Property, off the market for sale to third parties in order for the Village to

consider making an offer to purchase the Property or the affected portion of the Property, including the underground mined areas, exclusive of the two (2) acres already reserved to the Village under subsection C. below. The Village shall have ninety (90) days from that date of the Owner's written notice to make an offer to the Owner. During that period, the Owner shall deal exclusively with the Village to discuss any proposed offer. If the Village does not make an offer within the ninety (90) day period, this First Option shall expire. Alternatively, if the Village makes an offer, the Owner agrees to exclusively negotiate with the Village for a period of up to ninety (90) days from the date the offer is received. If the Parties are unable to reach agreement on a purchase price, this First Option will expire and the Village will have no further right to exclusively negotiate for the purchase of the Property or the affected portion of the Property. Once this First Option period expires, Owner may market and sell the Property, or the affected portion thereof, to a third party, subject to the terms and conditions of the Reclamation Plan. Owner may commence implementation of the Reclamation Plan at the beginning of the Option period, unless the Village notifies Owner to delay implementation until the Option period expires.

**B. Reclamation Plan.** At the end of the mining operations, Owner shall be obligated to reclaim the Property pursuant to the Reclamation Plan attached hereto and incorporated herein by reference as Exhibit "N" (hereinafter the "Reclamation Plan"), which Reclamation Plan shall also be made a condition of and incorporated into the Monitoring Ordinance. The Reclamation Plan may include the filling of the mined out areas with suitable fill material consistent with standards adopted by the Illinois Bureau of Mines and the Village will cooperate with the Owner in securing any necessary permits to perform such fill operations. The purpose of such filling is to bring the elevation of the property back to a grade that would allow development of the property for private or public purposes by making it capable of supporting load bearing structures.

**C. Amendment to the Reclamation Plan.** Owner may seek to amend the Reclamation Plan by filing an application for amendment to the Village, which application will be processed as a site plan pursuant to the procedures and requirements of the Zoning Ordinance then in effect in the Village. In any case, Owner and Village shall engage in a review process of the Reclamation Plan every five (5) years during the term of this Agreement regarding the nature of the reclamation of the Property in order to modify the Reclamation Plan as necessary to address the needs of the Owner as well as the concerns of the Village.

**D. Land Donation.** Regardless of the Reclamation Plan that is ultimately adopted and implemented, the Owner shall transfer to the Village a minimum of two (2) acres, unless the Village chooses to take less land, to be used for public purposes to be determined by the Village in a location to be mutually agreed by the parties at the time the Reclamation Plan is implemented.

**E. Sidewalk.** A sidewalk shall be constructed along the IL Route 25 frontage with the implementation of any portion of the Reclamation Plan. In the event

that a sidewalk is installed on the property north of the Property at any time prior to the implementation of the Reclamation Plan, Owner will extend a sidewalk from the north Property line to the south Property line along Il Route 25.

**F. East-West Road.** The Village has expressed a strong interest in securing an east-west road that would link Route 25 on the west of the Property to currently undeveloped properties east of the Property. Lafarge has expressed concern about locating such a road because under the current operations of the mine there are no portions of the mine at grade that would allow for such a road. Lafarge has further pointed out to the Village that among the possible future uses of the mine is underground storage for commercial use or for the Village's use to store stormwater or potable water. In either of these scenarios, the Property would not be restored to a grade that would accommodate a roadway. Further, the current proposed Reclamation Plan would preserve current grades and also preclude such an east-west road. Therefore, the Parties are acknowledging that an east-west road may only be possible if the final Reclamation Plan involves the restoration of the original grades on the Property and that the Property is subject to redevelopment as outlined in Section 10 below.

#### 10. **CONDITIONS FOR REDEVELOPMENT OF THE PROPERTY.**

**A. Development/Redevelopment Process.** If, at any time in the future, Owner intends to develop or redevelop the Property by subdividing it and/or selling off portions of the Property or redeveloping portions of the Property for uses other than mining, the Owner shall submit a preliminary plat and plan pursuant to the Subdivision Control Ordinance of the Village as now in effect and as revised from time to time, and shall provide for all necessary and appropriate public and common improvements as may be required at such time.

**B. Phases.** The Village may allow development of the Property in phases, including allowing final plats for different phases of the Property for which final development approvals are requested. In connection with each separate phase, only those components of the public and private improvements required to allow such phase to function shall be required, except water looping consistent with good engineering practices shall be completed. By way of example, extensions of utility lines (except necessary water looping that may extend beyond the applicable phase), construction of public roadways, and construction of applicable detention areas shall be required only to the extent needed to serve the portion of the Property for which final plat and other final development approval is requested, unless stated otherwise in this agreement.

**C. Wetlands.** The Owner shall comply with all United States Army Corps of Engineer, Illinois Department of Natural Resources and Kane County requirements, as applicable, in connection with any wetland areas located on the Property and shall obtain permits from such agencies before construction begins and as a condition to any development approvals granted by the Village. The Owner shall copy the Village with any plans, applications for permits, and issued permits relating to such wetland areas.

D. **Stormwater.** The Owner shall provide for the handling of storm water in accordance with the applicable Rules and Regulations, if any, of the United States Army Corps of Engineers; the Illinois Department of Natural Resources; the Kane County Storm Water Management Ordinance, as revised; and the North Aurora Storm Water Management Ordinance #01-05-14-02, as amended; and any other Village Ordinance, now or hereafter in effect. Pursuant to the Kane County Storm Water Management Ordinance and the Village Storm Water Management Ordinance, the Owner affirmatively agrees to comply with the provisions of such ordinances, as amended from time to time. The storm water facilities shall include construction by the Owner of storm drainage retention/detention facilities as may be required by such agencies, ordinances, and the Village Engineer. The size, depth and outlet of the storm water detention areas is to be determined by final engineering plans based upon a controlled release rate of storm water run off which shall not exceed the rate set forth in such ordinances. To the extent that the Property continues to have unfilled areas, these areas may be used for stormwater detention consistent with a plan meeting applicable ordinances.

11. **REQUIRED IMPROVEMENTS.** The public and common improvements for any future development or redevelopment of the Property shall include on-site and off-site improvements, extensions, and related appurtenances including, but not limited to, the following:

A. **Public Improvements**

- (1) Water supply and distribution systems;
- (2) Sanitary sewer systems;
- (3) Storm sewer systems;
- (4) Streets, curbs, sidewalks, street signs (including street name, traffic control and advisory signs), parkway landscaping, street lighting, tree plantings and related improvements; and
- (5) Traffic Signalization.

B. **Common Public Improvements**

- (1) Retention and/or detention basins;
- (2) Grading and surface and subsurface drainage ways and facilities;

and

(3) Streets, curbs, sidewalks, street signs (including street name, traffic control and advisory signs), parkway landscaping, street lighting, tree plantings and related improvements not dedicated to the Village.

Owner shall grant to the Village, at no cost to the Village, all easements for any utilities and communication facilities that the Village may request. Prior to the approval of the Final Plat for the Property or any part of the Property, the Village shall have the right to designate which easements and dedications will be accepted by the Village (hereinafter "Public Improvements"). All such Public Improvements to be accepted by the Village shall be, in the case of land, by Deed, and in the case of personal property by Bill of Sale. All required Public Improvements shall be warranted by the Owner for one (1) year after substantial completion. All repairs or alterations (including normal maintenance) to the Public Improvements that are identified within such one (1) year period shall be promptly carried out by the Owner at Owner's expense. The security posted for that one (1) year period shall be in a form of cash or a letter of credit as provided in subsection C. below whereby the Village can compel the warrantor to complete, repair or reconstruct the Public Improvements to the satisfaction of the Village as required by applicable codes and ordinances and in keeping with sound engineering practices. The security shall be released following the one (1) year maintenance period, upon request by the Owner/Developer, confirmation by the Village Engineer that the Owner/Developer's warranty obligations have been fully satisfied, and approval by the Board by formal resolution or motion to release the security.

C. **Easements for Public Bodies.** A blanket easement over and upon all private common driveways and parking areas within the Property for access for police protection, together with related emergency and service vehicles and equipment, shall be provided by plat in favor of the Village, its respective officers, employees and agents. A similar blanket easement to the North Aurora and Countryside Fire Protection District ("Fire District"), its respective officers, employees and agents, for access for fire protection, together with related emergency and service vehicles and equipment, shall be provided by plat. The Owner hereby gives the North Aurora Police Department the authority and consent to enforce local and State traffic laws on the streets to be dedicated as public streets prior to acceptance by the Village. Easements over, under and upon specific locations within open space areas, private streets, private common driveways, parking areas and subdivided lots within the Property for the operation and access for maintenance, repair, replacement and customary servicing of all electricity, telephone, cable and video television and gas lines, natural gas supply systems and sanitary sewer, storm drainage and water main systems, communication facilities and other utilities shall also be provided by plat in favor of all of the involved utility companies, now or in the future, receiving a Village franchise, their respective officers, employees and agents, together with related emergency and service vehicles and equipment.

D. **Letters of Credit.** After approval of the Final Plat, and prior to signature by the President and Village Engineer, the Owner shall present a guaranty for completion of the improvements required by ordinance including, but not limited to, the required Public Improvements and Common Improvements, or in lieu thereof at Owner's

election, an undertaking by Owner as secured by an irrevocable letter of credit or escrow account certifying that adequate funds are and will be available at a sound and reputable banking or financial institution authorized to do business in the State of Illinois in the event of a default or failure by the Owner to complete the required Public Improvements and/or Common Improvements in conformance with the Final Plat and engineering plans. Such undertaking and irrevocable letter of credit or escrow account to secure the completion the afore described improvements shall be in an amount and form acceptable to the Village, in accordance with the document attached hereto and incorporated herein as Exhibit "O" and tailored to refer to any specific circumstances applicable to the Property. The Owner acknowledges and agrees to the form of surety, either a letter of credit or escrow account, by virtue of this Agreement, which Agreement shall supersede and control over Section 11-12-8 of the Municipal Code (65 ILCS 5/11-12-8) and Section 3 of the Public Construction Bond Act (30 ILCS 550/3); and the Developer specifically waives its right to substitute a form of surety other than what has been expressly agreed in this Agreement. If the surety is provided in the form of a letter of credit, the letter of credit shall be from a sound lending institution that is in sound financial condition, is stable and is satisfactory to the Village. Periodic reductions in posted security will be approved by the Village based upon the Village Engineer's certification of completion of work on the affected improvements based upon documentation supplied from time to time by the Owner/Developer and the inspection of such improvements by the Village Engineer. The Village Board shall approve reductions in the posted security from time to time upon application for such reduction by the Owner/Developer and certification of the completion thereof by the Village engineer. If deficiencies are noted, notice shall be given to the Owner/Developer of such deficiencies without unreasonable delay. Such notice shall: (i) identify, with specificity, any deficiencies in the work on the affected public improvements or incomplete work on such improvements; and (ii) list, in detail, all corrections to defective work and/or work to be completed in order to obtain the Village Engineer's certification of completion of the work on the affected improvements. Any necessary re-inspection shall be completed within fifteen (15) days following notice from the Owner/Developer to the Village Engineer that it has corrected such deficiencies and/or completed such work, as the case may be. Upon substantial completion of all of the public and common improvements within a particular Phase and certification thereof by the Village Engineer, the Owner/Developer shall furnish either an escrow or letter of credit in return for the Village's release of the original security described herein ("Maintenance Security"). The Maintenance Security shall be in an amount equal to twenty percent (20%) of the total cost of constructing all of the public improvements for the Development or phase thereof and shall contain an expiration date of one (1) year from the date of approval by the Village of the public and common improvements for which the Maintenance Security is submitted as provided by the Subdivision Control provisions of the North Aurora Code. The Owner/Developer shall fulfill its obligations in regard to the one year maintenance period as provided in the Subdivision Control provisions of the Code, and the security shall be released by the Village Board at the end of that period and subject to the fulfillment of those obligations as provided in the Subdivision Control provisions.

The Village may reject a letter of credit from a financial institution: 1) that exhibits a deteriorating trend in its capital asset ratio and/or non-performing assets as reported by an independent agency that tracks and reports on the financial condition of banks, such as the FDIC, the FFIEC, Bauer Financial or similar institutions, or 2) that is the subject of regulatory enforcement action as reported by the FDIC, the State of Illinois, the OCC or the Federal Reserve. The Village may declare itself insecure in regard to a letter of credit already posted if the financial institution providing the letter of credit exhibits a deteriorating trend in its capital asset ratio and/or non-performing assets as reported by an independent agency that tracks and reports on the financial condition of banks, such as the FDIC, the FFIEC, Bauer Financial or similar institutions, or 2) that is the subject of regulatory enforcement action as reported by the FDIC, the State of Illinois, the OCC or the Federal Reserve. In such case, the Village shall notify the Owner in writing of its determination, and Owner shall have thirty (30) days to provide a substitute letter of credit from a bank that does not have a negative financial trend and is not the subject of enforcement action, or a guaranty (commitment) from a bank that does not have a negative financial trend and is not the subject of enforcement action to stand behind the posted letter or credit, or to post a bond in addition to the letter of credit. If a substituted letter of credit, a committed letter of credit or a bond in addition to the letter of credit is not provided within thirty (30) days from the date of the request thereof in writing, the Owner shall be in default and the Village may draw on the existing letter of credit. A deteriorating trend shall be deemed present if a bank's capital asset ratio and/or nonperforming assets reveal a negative progression over a period of not less than two quarters or six months.

E. **Utility Recapture.**

1. Owner is expected to construct a twelve (12)-inch water line to serve the Property and shall extend such line to the far side of the Property where it will be available for further extension without any right of recapture by Owner. The Owner shall not be entitled to any recapture for improvements that are constructed, except as specifically provided in this Agreement.

2. In the event any improvements have been constructed that benefit the Property and are subject to a recapture obligation, Owner shall pay its proportionate share those improvements that benefit the Property.

F. **Limited Liability.** The Village shall not be held responsible for its inability to install any utility, or for any loss or damage including consequential damage, or delay in installation caused by strikes, riots, elements, embargoes, failure of carriers, inability to obtain material, or other acts of God, or any other cause beyond Village's reasonable control, including but not limited to the acquisition of easements and IEPA permits. Any other term of this Agreement notwithstanding, should any change, modification, amendment or alteration be required to be made to Village ordinances relating solely to potential remediation or change to the Village's water system as a result of the alleged existence of radium within the Village's water system, or should any such change result from a mandate or requirement imposed on the Village and/or other

municipal governments relating to health, safety or welfare by either the United States of America, the State of Illinois, Kane County, the Fox Metro Water Reclamation District, or any of each of their agencies, in such event or events the provisions of any such change, modification, amendment or addition to Village Ordinances or fees shall become applicable to the Property.

12. **FUTURE DEVELOPMENT OF THE PROPERTY FOR NON-MINING USES.**

A. **Deposits Required Before Building Permit.** No building permit shall be issued for construction of any structure on any portion of the Property until after all applicable deposits and fees have been paid, the final engineering plans and a final plat have been approved for such phase of development, a final plat has been recorded for the phase in which the building permit or permits are requested, a lot grading plan prepared by a registered professional engineer has been approved by the Village, roads complete up to binder course, water, sanitary sewer, storm water control and hydrants are in place within three hundred feet (300') to serve the phase and the lot(s) for which the permits are requested, except as provided otherwise for model units in Subsection H below..

B. **Mass Grading.** The Village shall issue a permit to Owner permitting Owner to mass grade the Property, upon approval of Owner's submission of the appropriate application(s) and evidence that all required permits and approvals relating to mass grading from the Village and other governmental units with jurisdiction over the Property have been issued in compliance with the Kane County Stormwater Ordinance and the Kane DuPage Soil and Water Conservation Service requirements, and the Village Engineer's approval, which approval shall not be unreasonably delayed or denied. The Village shall issue mass grading permits in phases at the Owner's request, even if the phases do not match development phases, provided that a Grading and Dirt Stockpile Management Plan, certified by an engineer and in compliance with the Kane County Stormwater Ordinance, has been reduced to writing and approved by the Village prior to the actual grading in each phase of the development. All mass grading permits shall be subject to the requirement that no graded parcel of land shall be allowed to stand undeveloped for a period longer than two (2) years from the date that the grading is undertaken.

Owner shall locate its dirt stockpile(s) at a site (or sites) on the Property which are mutually acceptable to the Village and Owner pursuant to the Grading and Dirt Stockpile Management Plan which must be reduced to writing and approved by the Village prior to the actual grading to be conducted in conjunction with each phase of the development. Owner agrees that no dirt stockpiles shall be allowed to remain in a development phase after the completion of the last structure in that development phase, and no occupancy permit shall be issued for the last structure in the development phase, until all dirt

stockpiles are removed from that phase. All dirt stockpiles shall be removed for each phase no later than two (2) years after the first building permit is issued for that phase. Owner shall abide by the Village's weed control ordinance in maintaining each dirt stockpile; and any dirt stockpile that remains in the same place longer than one (1) year must be seeded or sodded and maintained in that condition for the remainder of the term of that stockpile. No dirt may be stockpiled on any park site. Dirt stockpiles must be maintained in such a way as to minimize the height and to minimize the danger to children, including the removal of all potentially harmful debris. In no event shall a dirt stockpile be left unattended with a sheer side; and all sides must be rounded before the dirt stockpile may be left unattended.

Owner shall provide soil erosion control methods throughout the development for the life of the development process that satisfy the Village and Kane County Storm Water control ordinance requirements to the extent that they apply to the Property. Any cost to remediate soil erosion damage to offsite property shall be borne by the Owner, and the Owner shall indemnify and hold harmless the Village in respect to any such offsite damage. For the purpose of maintenance and damage control on the site, the Owner shall post a letter of credit in the form attached hereto as Exhibit "O" in an amount sufficient to cover the cost of ongoing maintenance and work necessary to manage the storm water and soil erosion consequences of the mass grading as approved by the Village Engineer.

The Owner shall grade, re-spread and seed and/or restore:

- 1) all rear yard swales within a given platted phase during the first construction season for that phase;
- 2) all open spaces and storm water management areas within a given platted phase; and
- 3) all unplatted, future phases with a suitable cover crop to avoid soil erosion; and
- 4) all lots shall be graded to drain to the nearest outlet when the curbs are backfilled at the time of substantial completion of the streets to binder course.

At no point shall the Owner allow more acres of ground to be disturbed in the development than is allowed pursuant to Section 300 of the Kane County Stormwater Ordinance, and the Owner shall comply with the requirements of the County Stormwater Control Ordinance, including the County's vegetation stabilization and soil erosion prevention requirements. In keeping with the Kane County Stormwater Ordinance, the development shall be subject to inspection after each significant rain event (greater than 1.5 inches in a 24 hour period), and any remedial maintenance requirements which are necessary as determined by the Village Engineer shall be undertaken within seven (7) calendar days from notice of that determination. The Owner shall be responsible to coordinate all reviews, approvals, pre-inspections, and on-going inspections with the

Kane DuPage Soil and Water Conservation Service. Notwithstanding any applicable Village ordinances or codes, neither the submission of a Final Plat(s), the completion of public sanitary sewer and water mains, roads, streets, nor other infrastructure improvements shall be required prior to the issuance of the mass grading permit; providing that all such mass grading prior to the issuance of a permit shall be at Owner's sole risk, and that no mass grading shall take place prior to the submission to and approval by the Village Engineer of the Grading and Dirt Stockpile Management Plan, certified by an engineer, necessary inspections and approvals by the Kane DuPage Soil and Water Conservation Service and full compliance with the Kane County Stormwater Ordinance. The location of any dirt storage must be approved by the Village Administrator consistent with the provisions of Section 11.B. above.

C. **Mass Grading Letter Of Credit.** The mass grading permit is conditioned upon Owner's posting of a cash bond or a Letter of Credit with the Village consistent with Section 11.D. above in an amount equal to one hundred percent (100%) of the estimated cost of the grading work to be performed, as well as any other deposits required by Village Ordinance. Any changes or adjustments to the requirements for such grading resulting from the review and approval of the final engineering plan for such phase shall be promptly performed by Owner at Owner's expense.

D. **Processing Of Building Permits.** No building permit shall be issued until building plans have been submitted, reviewed and approved by the Community Development Department and the Fire District, and a site plan has been reviewed and approved according to the terms of the Subdivision Ordinance. If the application is denied, the Village shall provide the Owner with a written statement specifying the reasons for denial of the application including specifications of the requirements of law which the application or supporting documents fail to meet. The Village shall issue such building permits upon the Owner's compliance with the forgoing requirements and, the payment of required fees. No permit shall be issued until after recordation of the final plat for the phase in which the property that is the subject of the permit is located and streets serving the phase are installed. No construction shall begin until portable toilets are in place in within reasonable proximity of the property for which the permit is issued as determined by the Community Development Department.

E. **Construction Trailers.** The Owner may place contractor supply storage trailers upon such parts of the Property as required for development purposes, but such trailers may remain within any phase of development within the Property only during active construction of building improvements for such phase of development, and no such trailers may be located within two hundred feet (200') of an existing residence as of the date of this Annexation Agreement nor within two hundred feet (200') of any completed and occupied residence within the subdivision without appropriate screening and landscaping. No advertising shall be visible on trailers within two hundred feet (200') of a public road.

F. **Underground Utilities.** Owner shall provide that all existing and new utilities and communications facilities including, but not limited to, telephone, electric and cable television to serve the Property shall be underground, and this requirement shall be noted on all final plats.

G. **Offsite Easements.** Owner shall be responsible for obtaining all offsite easements for improvements necessary to serve the Property, including easements over, under, through or across property that is subject to private property interests, other governmental bodies and public or private utilities. The Village shall cooperate with Owner, to the extent that the Village is able and has authority, in the acquisition of such easements, including the use of the Village's condemnation powers and the exercise of its contract authority, provided that such exercise of authority is not in contravention of the public health, safety and general welfare. To the extent that the Village incurs costs, including legal, engineering and other consulting fees, in cooperating with the Owner to acquire offsite easements for the construction of improvements necessary to serve the Property, the Owner shall reimburse to the Village such costs and shall indemnify and hold harmless the Village from any and all costs, claims, liabilities, causes of action and other obligations arising in connection with the acquisition of the easements and construction of improvements necessary to serve the Property. To the extent that the Village is required to become a primary obligor on any agreement to acquire an easement and/or to construct improvements necessary to serve the Property, the Owner hereby agrees to perform and/or shall guaranty the performance of those obligations and shall indemnify and hold the Village harmless from and against any and all costs, claims, liabilities, causes of action and other obligations arising in connection with those obligations, including reimbursement to the Village for costs incurred to perform those obligations when the Owner fails or otherwise does not perform them on the Village's behalf. To the extent that any primary obligations to the Village remain for ongoing maintenance, repair and restoration of the improvements, relocation of the improvements or other obligations related to the offsite easements, the Owner agrees to establish covenants to create an association of the successor owners and to obligate them to perform the ongoing obligations connected with the maintenance, repair and restoration of the improvements, relocation of the improvements or other obligations related to the offsite easements; and the Owner agrees to allow the Village to establish a back up special service area to fund the payment of the costs associated with those obligations if the association does not satisfy them as provided in Section 14 below.

### 13. **DEDICATION OF COMMON IMPROVEMENTS.**

All of the required common improvements that uniquely serve the Property, and which shall not be conveyed to the Village shall be known as the "Common Improvements" as more specifically described in Section 11 herein. The Owner shall be obligated to construct, repair and restore all of the required Common Improvements, and the Owner shall be required to maintain the Common Improvements unless and until such Common Improvements are conveyed or transferred to an association of owners of all of the buildable parcels created in the development and only on condition that, any such dedication, conveyance or transfer may only be after the establishment of an association

and covenants created for the purpose of providing for and funding the maintenance of the Common Improvements that will constitute a covenant running with the land and that is binding upon all successors in title. Upon each separate conveyance the then current owner of record shall be released from all obligations under this Agreement arising after the date of such conveyance, as to the portion of the Property conveyed for which such an association and covenants have been created. The Village shall have a right to purchase or acquire any or all of the outlots and/or common areas at no cost at any time. Said obligation shall be written on the plat of subdivision, and incorporated into the Covenants, Conditions and restrictions and the Home Owners Association documents as determined by the Village Attorney.

An owners association shall be created and covenants shall be recorded at the time the final plat is presented for approval, and the Village shall have the right to withhold final plat approval and/or recordation, and to withhold any building permit or occupancy permit, temporary or permanent, until an owners association has been created and covenants conforming to the requirements of this Agreement have been recorded and are in effect.

14. **MAINTENANCE OF COMMON IMPROVEMENTS.**

The Common Improvements shall be maintained by the Owner unless and until an association of owners has been created for that purpose pursuant to covenants that are recorded on the entire Property and run with the land. The association shall be responsible for the cost of maintaining, reconstructing, repairing and/or restoring such Common Improvements from financing generated by association assessments. The Village will establish a backup Special Service Area as the Village deems advisable covering the Common Improvements that specially serve the Property. In the event the Village determines that the Common Improvements are not being reasonably and adequately maintained, the Village may repair, restore, reconstruct and maintain the Common Improvements as the Village deems necessary for the public health, safety and welfare, and the Village may be reimbursed the cost for that repair, restoration, reconstruction and maintenance by levying taxes within the Special Service Area to pay for such costs, together with the costs to establish the Special Service area and for administration of those services. The Owner/Developer shall cooperate as reasonably requested in the establishment of the special service area.

15. **[Reserved].**

16. **[Reserved].**

17. **[Reserved].**

18 **REIMBURSEMENT.** The Owner shall reimburse the Village for all attorneys fees, engineering design and review, construction engineering, planning consultants and costs incurred by the Village in connection with the processing and review of all matters

pertaining to the Property, this Agreement, the zoning and special use, engineering and all other matters related to the development of the Property during the entire term of this Agreement. The Owner shall reimburse the Village promptly after receipt by the Owner of invoices for such fees and costs. If such amounts are not paid within thirty (30) days from receipt of the invoice, the Village shall have no obligation to proceed or to act upon any element of the development of the Property, nor to issue any permits of any type, until payment of such reimbursement amount which is due has been made in full.

19. **DISCONNECTION.** Owner agrees not to petition for disconnection from Village without Village approval under any statutory provision and agrees that if the Property were disconnected from the Village: (a) the growth prospects and plan and zoning ordinances of the Village would be unreasonably disrupted; (b) if disconnected, substantial disruption will result to existing municipal services facilities, such as, but not limited to, sewer systems, street lighting, water distribution, garbage collection and fire protection; and (c) if disconnected, the Village would be unduly harmed through the loss of tax and utility revenue in the future.

20. **REQUIREMENTS OF OTHER JURISDICTIONS.** It is agreed that the Village is not liable or responsible for any restrictions on the Village's obligations under this Agreement that may be required or imposed by any other governmental bodies or agencies having jurisdiction over the Property, Village or Owner. However, the Village will use its best efforts and shall cooperate in a manner to further the issuance of permits by other governmental bodies or agencies as may be necessary for the development of the Property in accordance with the terms of this Agreement, including any necessary agreements with the City of Aurora relating to the Owner's lease of the mine owned by the City of Aurora.

21. **BINDING EFFECT AND TERM.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, successors in interest, assignees, lessees, and upon any successor municipal authorities of the Village and successor municipalities for the period of twenty (20) years from the date hereof.

22. **COVENANT RUNNING WITH THE LAND.** This Agreement constitutes a covenant running with the land and is binding upon the parties hereto, all grantees, successors in interest, assigns and lessees, and successor Village Board.

23. **HOLD HARMLESS AND INDEMNIFICATION.** In the event a claim is made against the Village, or if the Village is made a party-defendant in any legal proceeding arising out of or in connection with the annexation, zoning, or the development of the Property, the Owner shall defend the Village and hold the Village harmless from all claims, liabilities, losses, taxes, judgments, costs and fees, including expenses and reasonable attorneys fees, in connection therewith, unless such action is based on the Village's own negligence or willful misconduct. The Village shall reasonably cooperate in the defense of such proceedings.



If to Owner: Lafarge North America, Inc.  
60119  
Matt Dantine, GM/VP  
15194 Il Rt 47  
Elburn, Il

With a copy to: Lafarge Aggregate Illinois, Inc  
Attn-John Fay  
1300 South Illinois Route 31  
South Elgin, Illinois 60177

With a copy to: 

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Dykema Gossett PLLC  
Attn – Bruce Goldsmith  
4200 Commerce Court, Suite 300  
Lisle, IL 60532

29. **RECORDING.** This Agreement shall be recorded in the Kane County Recorder of Deeds Office by the Village.

30. **REMEDIES.**

A. This Agreement shall be enforceable in the 16<sup>th</sup> Judicial Circuit Court of Kane County by either the Village or Owner, or any successor or successors in title or interest in any manner, or assigns of said Parties. Enforcement may be sought by mandamus or any other appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and obligations contained herein.

B. In the event of a material breach of this Agreement, the Parties agree that the Village or Owner shall have a period of sixty (60) days after such notice to correct such alleged breach prior to the seeking of any remedy provided for herein. However, if the affected Party has timely initiated remedial action or otherwise cured the asserted breach of this Agreement and it is reasonably necessary for such action to take more than sixty (60) days to correct, that Party shall be allowed the reasonable time to complete the corrective action before any attempts are made by the non-breaching Party to seek legal remedies.

C. If any Party to this Agreement shall fail to perform any of these obligations hereunder, and the Party or Parties affected by such default shall have given written notice of such default to the defaulting party, and such defaulting party shall have failed to cure such default within sixty (60) days after the receipt of such default notice unless further time is needed as allowed under subsection B above, then, in addition to any and all other remedies that may be available, either in law or equity, the Party or Parties affected by such default shall have the right (but not the obligation) to take such

action as in its or their reasonable discretion and judgment shall be necessary to cure such default. In the event that a court of competent jurisdiction determines and/or enters a finding that a Party has breached a material provision of this Agreement, then the non-breaching Party seeking enforcement of this Agreement shall be entitled to recover reasonable attorneys fees and costs necessary to do so.

31. **OWNER'S RIGHT TO CONVEY.** Nothing contained in this Agreement shall be construed to restrict or limit the right of Owner to sell or convey all or any portion of the Property, whether improved or unimproved. Upon transfer of any or all of the Property, all rights, duties and interest of Owner hereunder shall run to the benefit of and be binding upon Owner's successors in interest, and Owner's obligations under this Agreement shall terminate provided that substituted security is posted by new Owner and are approved and accepted by the Village, which approval and acceptance shall not be unreasonably withheld. Within thirty (30) days after the sale, transfer or assignment of all or any part of the Property or of the assignment of the beneficial interest in a land trust holding title to the Property, Owner shall notify Village thereof.

32. **VILLAGE'S AUTHORITY.** Owner hereby acknowledges that the Village is not a home rule municipality and is subject to limitations on the power and authority of all like non-home rule units. If, for reason that the Village is not a home rule municipality, this Agreement is deemed invalid under existing law, such determination of invalidity shall not immediately be deemed a default by the Village under this Agreement. In such case, the Owner agrees to cooperate with the Village in restructuring this Agreement to accomplish both Parties' ends to satisfy the current laws and in accordance with the power and authority of the Village vested in it by statute. Only after such reasonable efforts have been made to restructure this Agreement, and if all efforts fail after a reasonable time, shall the failure of the Village to facilitate the Agreement by virtue of its non-home rule status be deemed a default.

33. **EXCULPATION OF CORPORATE AUTHORITIES.** The Parties acknowledge and agree that the individuals who are members of the group consisting of the Corporate Authorities are entering into this Agreement in their official capacities as members of such group, and shall have no personal liability in their individual capacities.

34. **ENTIRE AGREEMENT.** This Agreement, including all exhibits identified herein and attached hereto, or which are to be prepared later consistent with the terms of this Agreement, all of which constitute a single agreement, sets forth all the promises, inducements, agreements, conditions and understandings between Owner and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those that are herein set forth.

**IN WITNESS WHEREOF**, the Parties have set their hands and seals on the date first above written.

**VILLAGE OF NORTH AURORA, ILLINOIS**  
**an Illinois Municipal Corporation**

ATTEST:

By: \_\_\_\_\_  
Village President

\_\_\_\_\_  
Village Clerk

**OWNER:**  
**LAFARGE AGGREGATES ILLINOIS, INC.**

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

**List of Exhibits**

**to the**

**ANNEXATION AGREEMENT BY AND BETWEEN**  
**THE VILLAGE OF NORTH AURORA AND**  
**LAFARGE AGGREGATES ILLINOIS, INC.**

- Exhibit A - Legal Description of the Conco Property
- Exhibit B - Legal Description of the Territory
- Exhibit C - Legal Description of the Five Parcels
- Exhibit D - Legal Description of ComEd Property
- Exhibit E - Special Use Ordinance
- Exhibit F - Blasting Appendix
- Exhibit G - Airblast Standard
- Exhibit H - **Reserved**
- Exhibit I - Operations Plan
- Exhibit J - NPDES Permit
- Exhibit K - Landscaping and Berming Recommendations
- Exhibit L - Monitoring Ordinance
- Exhibit M - Form of Surety Bond
- Exhibit N - Reclamation Plan
- Exhibit O - Letter of Credit