STATE OF WISCONSIN TOWN OF STOCKBRIDGE CALUMET COUNTY

NON-METALLIC MINING LICENSING ORDINANCE

The Town Board of the Town of Stockbridge, Calumet County, Wisconsin, does ordain as follows:

NON-METALLIC MINING LICENSING ORDINANCE

I. LEGISLATIVE FINDINGS.

The purpose of this Ordinance is to regulate non-metallic mining operations in the Town in order to promote the public health, safety and general welfare; to authorize the development and utilization of non-metallic mineral resources in a manner compatible with the public interest; to minimize potential adverse impacts of non-metallic mining operations through the utilization of best management practices; to avoid the degradation of existing private and public water supplies; and, to protect the Niagara Escarpment, which is a unique geological formation.

II. AUTHORITY.

This Ordinance is adopted pursuant to the police powers granted to the Town under Chapter 60 of the Wisconsin Statutes, together with the Town's village powers authorizing the Town to regulate, control, prevent and enforce certain uses, activities, businesses and operations by persons or entities that may affect the public health, safety and general welfare.

III. APPLICABILITY.

This Ordinance is applicable to all new operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand and gravel and non-metallic minerals such as asbestos, beryl, clay, feldspar, peat and talc. It includes, without limitation, operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of non-metallic minerals. Finally, it includes processes such as crushing, screening, scalping, dewatering and blending. For purposes of this Ordinance, "new" operations or activities include the expansion of an existing operation that is already open and being mined beyond its current boundaries as identified in its reclamation plan. The regulations contained herein apply to all surface areas from which materials are removed together with related storage and processing areas, areas where non-metallic mining refuse is deposited and areas disturbed by the non-metallic mining operation through activities such as the construction or improvement of roads and berms. This section does not apply to the following activities:

(A) Activities on less than 5 acres, for the exclusive use of the property owner, such as extractions in connection with the construction of a home or business.

(B) Pre-mining activities such as site surveying, coring, test pits smaller than 200 square feet for exploratory purposes only, mapping and other functions necessary solely for the preparation of the permit application.

(C) Excavation in conjunction with utility installation, which is to be backfilled.

(D) Excavation directly and currently related to road construction, within the limits of the right-of-way.

(E) Excavation which by its nature is of limited duration such as graves, septic tanks and swimming pools.

(F) Agricultural drainage work incidental to agricultural operations and irrigation/stock watering ponds.

(G) Excavation for structures, parking areas and stripping of up to 1-1/2 feet of topsoil for the development of subdivisions.

(H) Regrading of property for aesthetic purposes that does not affect existing drainage.

(I) Dredging operations under the jurisdiction of the U.S. Army Corps of Engineers and other governmental bodies.

(J) Ponds developed for wildlife purposes in conjunction with the Soil Conservation Service or Land and Water Conservation Department, upon the written permission of the Town of Stockbridge Town Board.

(K) Excavation activities related to sod farming.

(L) Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility or a hazardous waste disposal facility, as the same are defined and regulated under the Wisconsin Statutes; provided, however, this section does apply to activities related to solid or hazardous waste disposal that are conducted at a non-metallic mining site separate from the solid or hazardous waste disposal facility, such as activities to obtain non-metallic minerals to be used for lining, capping, covering or construction berms, dikes or roads.

(M) Any other uses determined to be exempt by the Town.

IV. LICENSE APPLICATION.

All new non-metallic mining operations, including expansions of existing operations beyond current boundaries as identified in the reclamation plan, must obtain a license from the Town. An application for a license to conduct non-metallic mining operations in the Town must include the following information. The Town Board reserves the right to require additional information or waive the submission of information, as circumstances warrant.

(A) General Background Information. All applications for a license for non-metallic mining shall include the following general background information:

(1) The name, address and phone number of the property owner and the proposed operator if different from the owner.

(2) If the applicant is a corporation, partnership, limited liability company or limited liability partnership, the application shall include the exact name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address and home phone numbers of the registered agent, if applicable; the names and addresses of all officers and directors, operating or managing partners or general partners; managing members or managers, whichever is applicable for the particular form of business.

(3) The name, address and phone number of an individual who is responsible for the day-to-day operation of the site and who will be the contact person for the Town.

(4) A statement that the applicant is familiar and in compliance with the provisions of this section, including the responsibility to reimburse the Town its reasonable costs and professional fees associated with the processing, review, issuance, administration and enforcement of this Ordinance.

(5) A signed copy of the lease or a letter signed by the owner of record authorizing the proposed operator to enter upon the owner’s land for the purpose of non-metallic mining.

(6) A legal description and general location map of the tracts of land involved. (Note: The Town reserves the right to require a survey either with the application or prior to the issuance of a license.)

(7) A plan of the site showing proposed and existing roads and drives, including all points of ingress and egress.

(8) A plan of the site showing the sources, quantity and disposition of both surface water and groundwater, which plan shall be prepared by a competent and qualified Wisconsin professional engineer or hydrologist.

(9) Certification that notice of the application has been hand-delivered or sent by first class mail to the owners of all property contiguous to the property containing the proposed quarry site (tier one property) and the owners of all property contiguous to any tier one property.

(B) Plan of Operation. An operation plan that includes the following information:

(1) A map drawn to scale of 1 inch equals 200 feet

(2) A written description explaining the mapped information, including, but not limited to, the existing site and future expansion of the site; boundaries of previous excavations; storage of reclamation topsoil and methods of disposing of material not to be sold or reclaimed; areas for excavation, processing, manufacturing, stock-piling and phasing of these activities across the site over time; location and height of berms, fencing and vegetation to screen the operation from adjacent property owners.

(3) Unless already included in the general information described above, roads used and to be used for transportation of excavated material, including all points of ingress and egress and an estimate of the maximum and average number of trucks entering and leaving the site on a daily basis; information on the estimated average and maximum weight of trucks and other equipment to be used; an estimate of the quantity and type of materials removed and to be removed from the site as well as the timetable to complete the excavation; a list of the type and quantity of equipment used or to be used; hours and days of operation; noise and dust control measures; and, a cross-section map showing in detail the estimated final depth of the excavation.

(4) Measured or estimated depth to groundwater and general groundwater flow direction at the site. Information from the Calumet County, Wisconsin Water Table and Aquifer Susceptibility Maps shall be used as a part of the reference documentation.

(C) A drainage and erosion control plan that includes the following information:

(1) A map drawn to scale of 1 inch equals 200 feet.

(2) A written description detailing the mapped information; contours shown at no greater than 10 foot intervals, existing drainage ways, subsurface tile drains, pipes and culverts; existing floodplains, wetlands and water bodies; arrows showing the direction of surface water drainage; the impact of the non-metallic mining activity on adjacent property both upstream and downstream from the mining site in order to demonstrate that runoff rates from mining activity will not exceed pre-mining runoff rates; location and design details of runoff detention facilities planned or constructed; and, temporary and permanent erosion control measures.

(3) A copy of the general Wisconsin Department of Natural Resources WPDES permit, if issued, or a copy of the application for the general permit.

(D) The application shall also include documentation confirming the receipt of all necessary local, county, state and federal approvals, if relevant, including Wisconsin Department of Natural Resource permits.

(E) A copy of the Wisconsin Department of Natural Resources NR135 Reclamation Plan filed with Calumet County or East Central Wisconsin Regional Planning Commission.

(F) The application must include a description of the number of years the applicant has engaged in the quarrying business under its present name, and the name of the state where incorporated. The application must also include a financial statement showing that the applicant has the financial resources to meet its obligations under any license granted under this Ordinance. The application must also include such additional financial information requested by the Town to determine whether the applicant is adequately prepared to perform in accordance with its license, if granted.

The application must also include such additional information as will assist the Town in determining whether the applicant is adequately prepared to perform in accordance with its license, as required by the Town Board.

V. SETBACKS.

The following setback standards shall apply:

(A) The setback requirements of this ordinance apply to all non-metallic mining activity including, without limitation, the storage of waste materials, inventory and equipment. If an existing non-metallic mining operation has already exceeded the minimum setback requirements as of the effective date of this Ordinance, the operation may continue to mine materials from the area that has already been opened and has been actively mined, but it shall not extend the area so as to further reduce the setback. The Town reserves the right to require greater setbacks for sand and gravel operations in order to protect the integrity of the sloped perimeters from erosion. The setback requirements below are inapplicable to berms or other forms of landscaping. Setbacks from residences are to be measured from the property line of the lot on which the residence is located.

(B) All property operations, site and phase boundaries must be staked or otherwise prominently marked and the applicant shall notify the Town of the staking prior to the commencement of operations.

(C) The applicant shall comply with the following specific setback requirements:

(1) Along all public roads the setback shall be not less than 100 feet from the centerline of the right-of-way.

(2) A minimum setback of 1,000 feet shall be maintained from the property line of all properties containing residences, unless a lesser setback is mutually agreed between the operator and the affected property owner, which lesser setback is reflected in a written easement or comparable document registered with the Calumet County Register of Deeds. A lesser setback may also be agreed upon between adjacent quarry operators.

(3) A setback of at least 100 feet along adjacent property lines, but in no event less than 1,000 feet from the property line of any property containing a residence.

(4) A setback of 1,200 feet from the property line of a landfill, unless a hydrogeologic study demonstrates that groundwater contamination will not occur and that groundwater flow patterns will not be disrupted. The hydrogeologic study will be conducted by a registered engineer demonstrating the impact on existing groundwater flow patterns. Unless otherwise determined by the Town, the determination of a landfill location will be based on Wisconsin Department of Natural Resource records of active, inactive and abandoned landfills located in the Town, as updated by the Department from time to time.

VI. BERMS AND RELATED LANDSCAPING.

Applicant will construct and landscape the exterior berms as stripped overburden and topsoil become available from the quarry site or from suitable outside sources. Applicant will provide appropriate financial assurance relating to the timely completion of the berms. Prior to the commencement of construction of such berms, the applicant will submit and obtain approval from the Town for a detailed berm, landscaping and related drainage and erosion control plan. Notwithstanding anything to the contrary, all berms shall be at least 10 feet above the surface of the center of the adjacent public road. Furthermore, berms half the height of the largest wheel of equipment used in the mining operation will be installed around active mining areas that are not adjacent to public roads, but in no event of a lesser height than that required by the Mine Safety and Health Administration ("MSHA"). Only clean overburden from the mining site or suitable outside sources will be used in constructing the berms. The berms will have an aesthetically pleasing natural appearance and may be maintained in a natural rather than a manicured condition. The exterior of such berms will be kept free of noxious weeds, trash and other debris. The outward-facing slopes of such berms will not be steeper than three horizontal units to one vertical unit. The inner-facing slopes may be steeper, but must remain stable. The berms will be constructed so as no to result in flooding, concentrated runoff, inadequate drainage or excessive erosion or sedimentation. The Town may require the use of evergreen, coniferous trees as additional screening.

VII. HOURS OF OPERATION.

Except as stated below, non-metallic mining operations of whatever nature are limited to the hours of 6 a.m. to 6 p.m., Monday through Friday, and 6 a.m. to 2 p.m. Saturday. No non-metallic mining activity may be conducted on Sundays or legal holidays. The above restrictions may be adjusted to address special circumstances, but only if the Town provides its prior written consent to the modification. The maintenance of non-metallic mining equipment and machinery is not subject to the above time restrictions.

VIII. BLASTING.

The applicant must comply with all applicable state and federal limits on blasting, including vibration and air blast regulations. The Town may seek independent verification of compliance with the ground vibration and air blast limitations. The applicant shall reimburse the Town for the cost incurred to seek this independent verification. The applicant will maintain a blasting log for each blast and will keep the blasting logs on site at the site office for not less than 5 years. Upon the written request of the Town, the applicant will promptly submit to the Town information regarding any particular blast. A resident call list will be established by the applicant for the purpose of notifying neighbors at home in the vicinity of the site of imminent blasting activity. Residents within 2,500 feet of the boundary of the licensed non-metallic mining operation shall receive advance notice of the blasting, provided the relevant neighbors have requested that the applicant provide prior notice. A pre-blast contact diary will be maintained by the applicant at the on-site office, including the date of blast, neighbors contacted or attempted to be contacted, and any pertinent remarks. The applicant will promptly submit a copy of such diary entries to the Town upon written request. Notwithstanding anything to the contrary, flyrock traveling in the air or in the ground will remain in the controlled blasting site area and may not travel onto adjoining property. All blasting will be performed by or under the direct supervision of a State-licensed blaster. Blasting shall be limited to the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday; however the Town may impose more restrictive hours in an applicant's license. Maximum blasting charge may not exceed 3,000 pounds; however, the Town may impose more restrictive charge limits in an applicant's license. The applicant shall provide the Town Board with reports showing all seismic readings documenting seismic activity at the quarry property at least once every six months.

IX. COMPLAINTS.

The applicant will maintain a log of all complaints received, whether received directly from residents or from the Town. The log will include at least the time and date of the complaint, the name and address of the complainant, a summary of the complaint, and a summary of what, if any, action was taken regarding the complaint. Any complaints logged-in shall be reported to the Town within 10 days of the complaint.

X. DUST CONTROLS.

Applicant will comply with all applicable state and federal air quality regulations. In addition, applicant will utilize the latest cost-effective technology proven and demonstrated in the applicant's industry in its efforts to control and minimize fugitive dust, including, without limitation, the following: landscaped earthen berms, paved entrance roadways, standard methods of water spray (weather permitting), dust covers on transfer points, screen covers, wheel wash (weather permitting), and contract sweeping, as needed. Applicant will also maintain proper records of all dust control activities,

including the time, location, method and type and quantity of materials used. The Town acknowledges that each non-metallic mining operation has unique characteristics that may justify greater or lesser dust control prevention measures.

XI. NOISE CONTROLS.

Applicant shall comply with all applicable noise regulations and shall limit noise emanating from its site to 60 dBA at all property lines. Applicant shall also use "white noise" back-up alarms for all of applicant's vehicles and equipment equipped with back-up alarms. In the event of any noise problems, the applicant will utilize the latest cost-effective technology proven and demonstrated in the applicant's industry in its efforts to control and minimize noise impacts. The preceding restrictions may be modified to address special circumstances, but only if the Town provides its prior written consent to the modification.

XII. GROUNDWATER MONITORING.

The following groundwater monitoring procedures shall apply to all non-metallic mining operations:

(A) Applicant will establish and implement a groundwater monitoring program at the non-metallic mining site. At a minimum, this monitoring program will produce a database that will assist the applicant in responding meaningfully to concerns about the impact of the non-metallic mining operation on nearby wells. If circumstances warrant, the groundwater monitoring program shall include one or more background monitoring wells consistent with non-metallic mining industry best practices. The Town reserves the right to require additional safeguards reasonably related to the location and circumstances of the proposed site.

(B) Applicant shall send a certified letter, return receipt requested, to the owner of each residence located within one mile of the perimeter of the site notifying the owner of the owner's right to have baseline testing performed on the owner's well. The applicant is responsible for testing of all wells, unless the relevant owner has indicated in writing its intentions to be excluded from the baseline testing. Subject to the consent of eligible owners, the applicant shall arrange for and pay the cost of well testing of all wells within one mile of the boundary of the non-metallic mining site. The testing shall be for bacteria and turbidity. Testing must be completed prior to the commencement of the operation, and at least annually thereafter. Tests shall be performed by a qualified and certified independent professional. The result of the tests shall be provided to the Town and to all owners within one mile of the boundary of the non-metallic mining site within 5 days of receipt by the applicant. If test results indicate any

negative impact from the activities authorized by the license, the applicant shall take all reasonable steps necessary to alleviate any problems including, but not limited to, immediately providing a temporary water source or well replacement. The applicant is also responsible, at the applicant's option, for either the total costs to re-drill or case any failed residential well existing and in use on the date of the issuance of the license or of drilling and casing any required new well to replace an existing well, or for the incremental extra cost of such re-drilled or new replacement well attributable to the well being within the one mile boundary specified above, plus the costs of determining the amount of such incremental extra cost, subject, however, to all of the following conditions:

(1) The failed well is an existing residential well in use as of the date of the issuance of the license.

(2) The existing property owner or the owner's predecessor-in-title permitted a well inspection by the applicant and promptly resolved all problems noted in the inspection in accordance with the requirements of applicable statutes, ordinances, rules, regulations and other laws.

(3) The well re-drilling or replacement is made in compliance with the requirements of all applicable statutes, ordinances, rules, regulations and other laws, including any necessary licensure of those performing such work.

(4) The qualifications of the well driller are mutually satisfactory to the property owner and the applicant, but with neither unreasonably withholding its approval.

(C) The determination as to whether any existing well has "failed" so as to require re-drilling or replacement will be made by the Town Board in consultation with a well specialist of the Board's choosing and in accordance with the requirements of all applicable statutes, ordinances, rules, regulations, orders, and other laws. The costs to the Town of consulting with a well specialist shall be paid by the applicant.

(D) Applicant will provide the Town with appropriate financial assurance relating to the timely performance of its obligations under this Section dealing with groundwater monitoring.

(E) The applicant must obtain the Town's prior written approval for the use of water for the purpose of either washing stone or manufacturing stone products.

XIII. HOME INSPECTIONS.

Applicant will send a certified letter, return receipt requested, to the owner of each residence within 2,500 feet of the non-metallic mining boundary notifying the owner of the owner's right to have a baseline inspection done of the owner's home to document any existing cracking or other conditions that might be alleged to have resulted from blasting. The applicant is responsible for inspections of all homes for which the owners have not provided written notice of their intentions to be excluded from the home inspection. The home inspections will be conducted by a qualified third-party consultant with substantial expertise and experience in conducting inspections relating to alleged blasting damage. The selection of the consultant will be by the applicant, subject to the Town's approval, which approval will not be unreasonably withheld. Within 30 days after the issuance of a license, the applicant will notify each eligible homeowner in writing of the details of the home inspection program. Home inspections will be completed within 90 days after the applicant's acceptance of the license and before the applicant begins its non-metallic mining operations. Applicant may, in its sole discretion, update any previously conducted home inspection at intervals of not less than 5 years. Within 60 days after the completion of each home inspection, a copy of the inspection report will be mailed or delivered to the Town and to the relevant homeowner.

XIV. SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN.

The applicant will, prior to or simultaneously with acceptance of the license, file with the Town a spill prevention control and countermeasure plan to be placed into effect if an emergency occurs due to spillage of contaminants. The plan will include provisions for any equipment needed and actions required to contain and remove the spilled materials, and for the appropriate employee training. The plan shall provide that all spills will be remediated as soon as practicable and without delay and that the applicant will bear financial responsibility for all costs of remediation. This plan will be placed on file at the on-site office and a copy shall be submitted to the Town.

XV. WETLAND PRESERVATION.

The staked wetlands on the non-metallic mining site will not be disturbed by the applicant's mineral extraction and related operations and activities; provided, however, that applicant reserves the right, with appropriate required permits or approvals from the Wisconsin DNR and the U.S. Army Corps of Engineers and Calumet County to modify and mitigate the wetland areas.

XVI. SURFACE WATER COLLECTON AND SEDIMENTATION CONTROL.

Applicant will take all reasonable steps required to collect in the site all surface water run-off containing significant amounts of suspended solids from stripping and other non-metallic mining-related land disturbing activities and to settle and filter out such solids before discharge in compliance with applicable Wisconsin DNR WPDES permit requirements. Applicant will apply to the Town for appropriate erosion control permits for any earth-disturbing activities that do not drain into the site.

XVII. ROAD MAINTENANCE.

(A) Access to the non-metallic mining site shall be identified and agreed upon prior to the start-up of operations. Any road or intersection improvements deemed necessary to service the proposed operation (including acceleration and deceleration lanes) will be improved and maintained at the applicant's sole expense in accordance with the standards determined by the Town Board (in consultation with the County Highway Department) to allow for safe truck movements in and out of the site. The improvements will be made prior to the commencement of any hauling from the site, except for the hauling of material necessary to improve the intersection. The entrance road to the site must be paved. Haul roads will be maintained in a dust-free manner in accordance local, state and federal regulations. Restrictions on use of Town roads may be placed on the operation, subject to exceptions authorized by the Town Board for unusual circumstances. A detailed traffic study will be conducted and submitted to the Town. The study shall include, without limitation, the effect of trucking on traffic volume, patterns, safety and road capacity on all affected routes within one mile of the non-metallic mining operation.

(B) The applicant shall, at its expense, repair or cause to be repaired any road, including road culverts or gravel surfaces, for damage caused as a result of traffic to and from the site. Applicant shall also confer with the Town over alternative routes to the site in order to minimize damage to Town roads. To the extent allowed by law, applicant shall, at its expense, repair, cause to be repaired, or provide payment to the Town for repair in lieu of repair for any damage to Town roads caused by traffic to and from the site as determined by an independent consultant selected by the Town, whether such damage is caused by the applicant, its successors or assigns, its employees, agents, contractors, subcontractors, material suppliers, or their respective transport providers. Damage for which applicant shall be responsible is limited to the incremental increase in damage to the roads caused by the applicant, its successors and assigns, its employees, agents, contractors, subcontractors, material suppliers or their respective transport providers and shall not include any damage due to normal wear and tear.

(C) If any repair work to Town roads undertaken by applicant under this section shall require any repairs due to failure of the repair during the one (1) year period following completion of the repair, applicant shall, upon notification by the Town of the necessity for the repair, make such repairs at the applicant's cost and expense. Should the applicant fail to make the repairs within the time specified in the notification, the Town may cause the work to be done and the Town may invoice the applicant for payment.

XVIII. SITE INSPECTION AND COMPLIANCE COMMITTEE.

The Town Chairperson shall appoint an inspection committee. The committee's responsibilities shall include, without limitation, the following:

(A) The inspection of each existing non-metallic mining operation on a semi-annual basis in order to determine compliance with this Ordinance; and

(B) The submission of a report of the committee's findings of its inspections with a statement describing the degree of compliance or non-compliance of the operations inspected by the committee. The report shall be submitted to the Town Chairperson with a copy to the Town Clerk for distribution to the Town Board. The committee shall provide the applicant with reasonable advance notice of an inspection and, further, shall comply with all reasonable safety policies applicable to non-applicant employees present at the site. However, the applicant shall take all reasonable steps to facilitate the committee's inspection of the site consistent with the purposes of this Ordinance.

XIX. ADDITIONAL REQUIREMENTS.

Any license issued to an applicant for a non-metallic mining operation shall contain provisions regarding the following additional requirements; provided, however, the following requirements must be met regardless whether the license specifically mentions the following requirements:

(A) With respect to all new buildings, structures, signs, site improvements or other non-metallic mining extraction-related facilities to be constructed or installed on the site, the applicant will first obtain all necessary building, occupancy, land disturbing, operational and similar permits required by the Town, County, State and Federal government.

(B) Upon issuance of the license, applicant will promptly submit financial security in a form and amount approved by the Town, to secure its obligations under the license as well as to protect the Town against any

reasonably foreseeable damage to Town roads. A pre-operation inspection of all relevant Town roads shall be conducted to establish a benchmark. Thereafter, annual inspections shall be conducted to determine the extent of damage, if any. Applicant will keep such financial assurance in effect at all times during the pendency of the license, and if the financial assurance is drawn upon, the applicant will promptly take such actions as are necessary to replenish the amount of the financial assurance. In lieu of requiring new financial security, the Town Board may accept the financial assurances filed by the licensee pursuant to Chapter NR 135 of the Wisconsin Administrative Code, provided the Town is a beneficiary of the financial assurances.

(C) An initial license will be granted for a period of one year, which term shall begin on the commencement of grading and earth movement activities on the site. Thereafter, licenses may be renewed for periods of up to 3 years. A license cannot be revoked by the Town without first providing the licensee with a notice of hearing and a hearing at which the licensee shall be given a right to respond to the alleged default or breach.

(D) The applicant will provide to the Town an agreement to defend and hold the Town harmless against any third-party claims whatsoever resulting from or arising out of any negligent or intentional and wrongful act or omission of the applicant, its employees, officers or agents in conducting the operations of the non-metallic mining site that are regulated by the license through the date of completion of final reclamation. The hold harmless agreement shall be subject to approval as to form by the Town Attorney. Furthermore, upon request of the Town, applicant will present to the Town a certificate of excess general liability insurance coverage in a form provided by the Town Attorney for the band of coverage of not less than $2,000,000, which amount will be adjusted as circumstances warrant. Applicant will maintain such insurance in effect at all times while conducting extraction or reclamation activities under the license and will obtain the designation of the Town as an additional insured.

(E) The applicant will be responsible to the Town for all reasonable actual costs incurred by the Town in the monitoring of the applicant's operations and in the administration of the license and the review of any plans submitted for approval pursuant to or in connection with the license. Such actual costs will be the actual salary and benefit costs incurred for the actual reasonable time spent by Town employees or officials on such monitoring, review or administration activities, and the actual reasonable costs to the Town of any independent contractors or consultants hired by the Town for such monitoring, review or administrative services. However, no unusual monitoring or review projects will be undertaken by

the Town, at the applicant's cost, without good cause and without giving the applicant reasonable notice and opportunity to be heard regarding the need for any reasonableness of any such proposals. In addition to the above, the applicant is responsible to reimburse the Town for the Town's reasonable attorneys' fees and costs incurred in the review, administration or enforcement of the license or the provisions of this Ordinance.

(F) Any license issued to an applicant will be assignable only upon the written approval of the Town, which approval will not be unreasonably withheld or conditioned, subject to acceptance of such permit in writing by the proposed assignee or successor and satisfaction by the proposed assignee or successor of any reasonable financial security requirements imposed by the Town.

(G) No material provision of a license may be modified except upon the written application by the applicant and after public notice and hearing. The Town makes no representations regarding the applicant's right to obtain whatever additional authorizations or permits may be necessary for the operation of non-metallic mining.

(H) The Town reserves the right to require such additional restrictions that the Town reasonably believes are necessary to protect the public health and welfare and to implement the legislative purposes of this Ordinance. No waiver or inaction by the Town or its officials shall be deemed to be made unless the same shall be in writing and be signed by a duly authorized Town official. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Town in any other respect at any other time. In addition, the Town reserves the right to waive one or more of the requirements of this Ordinance if justified by the specific, proven circumstances of the particular non-metallic mining site.

(I) The issuance of a license shall not be considered as in any manner affecting the title of the premises upon which the permitted activity will occur nor does it release the applicant from any liability for damage to person or property caused by or resulting from the non-metallic mining activity. In no manner does the Town assume any liability, directly or indirectly, for any loss due to damage, installation, maintenance or operation of the non-metallic mining activity authorized by the license.

(J) All references in this Ordinance referring to the "applicant" include, without limitation, the operator or owner (if other than the operator) of the relevant non-metallic mining operation.

(K) The provisions of this Ordinance shall apply to existing non-metallic mining operations, unless said operations are operating pursuant to the terms of a license issued by the Town. Licenses that are renewed by the Town subsequent to the adoption of this Ordinance shall comply with the provisions of this Ordinance, to the extent practicable.

XX. COMPENSATION TO PERSONS FOR DIMINUTION OF PROPERTY VALUE.

Applicant shall notify by certified mail all property owners within 1/2 mile of the proposed quarry or quarry expansion within 60 days after the effective date of a license granted under this Ordinance. The notice shall inform those individuals that they are entitled to a real estate appraisal on their real property to determine diminution of value award, if any, on their property as a result of the applicant's quarry operations. The applicant shall in the notice also inform these individuals that the expense of the appraisal shall be paid by the applicant and that should any diminution of value award over an amount of $500 be awarded by the appraisers selected pursuant to this section, these individuals will be entitled to a specific dollar amount from the applicant, which shall be established by the diminution of value award. The applicant shall notify the individuals that in order to be eligible for the diminution of value award, they must have owned the property in fee simple on the date the license was granted to the applicant and that they are only entitled to such award upon the actual sale of their property. The Town shall approve the form and consent of the notice to be sent to the individuals prior to the applicant mailing it.

To be eligible for diminution of value award, the individuals must place their property on the market for sale with a real estate broker licensed under the laws of the State of Wisconsin. At such time as the property is offered for sale, the owner or his or her agent must provide the applicant with both the name of the broker with whom the property is listed and a copy of the listing agreement.

Within 20 days of receipt of the listing information, the applicant and the owner shall each select an appraiser. Each appraiser must have, at a minimum, a designated membership from the American Institute of Real Estate Appraisers or be recognized by the Society of Real Estate Appraisers. Each appraiser shall appraise the property at its fair market value both (a) as of that day, and (b) as of that day but making the sole additional assumption that the quarry had never been opened.

Upon completion of the appraisals, the two appraisers shall meet and attempt to arrive at an agreed single diminution of value amount for the owner. If the two appraisers cannot agree on the amount, they shall then mutually select and retain a third appraiser. Within 10 days after being retained, the third appraiser shall

individually appraise the property at its fair market value both (a) as of that day, and (b) as of that day but making the sole additional assumption that the quarry had never been opened. The amount selected by the third appraiser will be the maximum amount of the diminution of value compensation. When the agreed maximum diminution of value compensation for the owner has been reached by the two appraisers or the maximum amount has been reached by the third appraiser, whichever is applicable, the appraisers shall submit copies of their final appraisals and their final diminution of value computations to the owner and the applicant, with a copy to the Town Clerk.

Within 30 days after receiving written notice of the closing of the sale of the subject property pursuant to a bona fide arm's length offer to purchase and the amount of the sale of the property, the applicant shall pay directly to the owner the difference in (a) the actual sales price, or (b) the fair market value of the residential property, if less than the fair market value of the property, assuming that the quarry had never been opened. The applicant has an option to make an outright purchase of the property at the actual sales price. No diminution of property value compensation shall be paid if the property is transferred other than pursuant to a bona fide third party offer to purchase. Eligible individuals, who hold property in joint tenancy or tenancy in common, shall receive only one diminution of value compensation with the amount made payable to both joint tenants or to both tenants in common.

XXI. SEVERABILITY.

If any section, clause, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect the remainder of this Ordinance.

XXII. ENFORCEMENT.

It shall be unlawful to construct, operate, install, improve, extend, enlarge, relocate or convert any non-metallic mining operation in violation of the provisions of this Ordinance. It shall also be unlawful to fail to comply with any condition of this Ordinance. Any person or entity, including, but not limited to, the owner or operator of the non-metallic mining operation, who fails to comply with any provisions of this Ordinance shall be subject to a forfeiture of not less than $50 nor more than $500, together with the costs of prosecution, including reasonable attorneys' fees, for each violation. Each day that a violation exists or continues shall constitute a separate offense. In addition to other remedies, the Town reserves the right to institute appropriate action or proceedings to prevent, restrain, correct or abate such violation, and to prevent activity not authorized by this Ordinance. Adoption of this Ordinance does not preclude the Town from adopting any other ordinance or providing for the enforcement of any other law, ordinance or regulation to the same or other subject matters.

XXIII. REPEAL AND REVOCATION.

All previously adopted non-metallic mining ordinances and any non-metallic mining ordinances or regulations previously submitted to Calumet County or made part of Calumet County's comprehensive plan are hereby revoked and repealed.

XXIV. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and posting or publication as provided by law.

This Ordinance was passed and adopted by the Town Board this _____ day of _____, 2012.

TOWN OF STOCKBRIDGE

By:_____
Ken Schaefer, Town Chairperson

Attest:

_____
Janene Van Hoorn, Town Clerk

Published and posted this _____ day of _____, 2012.