

SAMPLE PROPERTY VALUE GUARANTY PROVISIONS

ARTICLE 1 - IMPACTS ON ADJOINING LANDOWNER'S PROPERTY VALUES

Section 1.1 **Initial Eligibility.** For a period of three (3) years from the Effective Date as to lands now constituting Adjoining Property or three (3) years from the date of approval of a Reclamation Plan as to lands that become Adjoining Property after the Effective Date, Operator shall provide a Property Value Guarantee as set forth in this Article. Each owner of Adjoining Property who wishes to become eligible to participate in the Property Value Guarantee shall sign up with the Buffalo County Land Resources Department and provide written notice to Operator of the owner's election to participation in the Property Value Guarantee hereunder within one (1) year from the beginning of the applicable three (3) year period. Any owner that fails to sign up within the time provided is not eligible for the Property Value Guarantee. Additionally, only owners of Adjoining Property on the beginning of the applicable three (3) year period are eligible for the Property Value Guarantee. Any owner meeting the requirements of this Section is referred to as an "Eligible Owner."

Section 1.2 **Sale Required.** An Eligible Owner desiring to sell his or her property and to take advantage of the Property Value Guarantee shall notify the Buffalo County Land Resources Department and Operator in writing of his or her intent not later than the earlier of: (a) the end of the applicable three (3) year term set forth in Section 1.1; or (2) the date Operator has completed all Nonmetallic Mining Operations on a Mine Site subject to these provisions.

Section 1.3 **Determination of Fair Market Value by Agreement.** After an Eligible Owner has provided a notice under Section 1.2, the Eligible Owner and Operator shall attempt to agree upon the Fair Market Value of the Adjoining Property. If they agree, they shall reduce such agreement to writing. If they cannot so agree, they will try to agree upon an appraiser who is licensed as a real estate appraiser in the State of Wisconsin to determine the Fair Market Value of the Adjoining Property, and if they agree the Adjoining Property shall be appraised by that appraiser at Operator's expense.

Section 1.4 **Appraisal if no Agreement.** In the event that the Eligible Owner and Operator are unable, within thirty (30) days after the Eligible Owner has provided a notice under Section 1.2, to agree upon either the Fair Market Value of the Adjoining Property or on an appraiser, the Eligible Owner shall select a financial institution in Buffalo County, Wisconsin, that makes residential real estate loans and with whom the Owner does not do business and request that such institution provide to the Eligible Owner and Operator the name of an appraiser it regularly employs to conduct residential appraisals; provided, however, that if within five (5) business days of the financial institution identifying the appraiser, Operator may object to the appraiser so identified, in which event the financial institution shall identify another appraiser. The identified appraiser shall be retained to conduct the appraisal at Operator's expense and shall determine the Fair Market Value of the Adjoining Property and shall provide the Eligible Owner and Operator with copies of the appraisal.

Section 1.5 **Listing Contract Requirement.** Thereafter, the Eligible Owner may then enter into a listing contract for the Adjoining Property with a Wisconsin licensed real estate broker, which contract shall have a term of at least six (6) months and not more than one (1) year. The listing contract shall name Operator as a potential buyer excluded from the listing, such that if Operator purchases the property during the term of the contract no commission shall be due to the broker. The listing contract shall provide that the broker will not suggest, recommend, or persuade a potential buyer to make an offer to purchase the Adjoining Property at a price that takes into consideration that the Adjoining Owner is to receive pursuant to the Property Value Guarantee.

Section 1.6 **Option to Purchase.** Before accepting any Bona Fide Offer for the Adjoining Property received during the term of the listing contract at a price less than the Fair Market Value as determined in this Article, the Eligible Owner shall give Operator written notice by facsimile, e-mail, or personal delivery of the Eligible Owner's intention to accept the offer, which notice shall include a copy of the offer. Operator may, within fourteen (14) days of receipt of the notice and copy of the Bona Fide Offer, notify the Eligible Owner by facsimile, e-mail, or personal delivery that it elects to purchase the property for its Fair Market Value, and if Operator makes such an election, the Owner shall sell the property to Operator at the Fair Market Value and upon the other terms contained within the Bona Fide Offer (not including the purchase price, which shall be the Fair Market Value).

Section 1.7 **Sale Pursuant to Offer.** If Operator does not so notify the Eligible Owner within said time, the Eligible Owner may then accept the offer and sell the property as provided in the Bona Fide Offer. In such event, Operator shall make a payment to the Eligible Owner (the "Property Value Guarantee"). The amount of the Property Value Guarantee shall be equal to the difference between the selling price pursuant to the Bona Fide Offer and the Fair Market Value determined as provided in this Article, less the amount of the commission that would have been payable pursuant to the listing contract on that difference; provided, however, that the maximum amount that Operator shall be obligated to pay to the Eligible Owner is Twenty Five Thousand Dollars (\$25,000). The Property Value Guarantee shall be paid by Operator within thirty (30) days of the closing of the sale of the property by the Eligible Owner.

Section 1.8 **Exclusions.** The Property Value Guarantee shall apply only once for any Adjoining Property. Land now constituting Adjoining Property which was for sale prior to the Effective Date is not eligible for the Property Value Guarantee. Land which becomes Adjoining Property after the Effective Date which is for sale prior to the date of approval of a Reclamation Plan for the land is not eligible for the Property Value Guarantee. Adjoining Property shall not qualify for the Property Value Guarantee if the Eligible Owner sells or otherwise conveys the property to a third-party other than pursuant to a Bona Fide offer or by a transaction which is not considered an arm's length sale, such as a sale or gift to a relative. The death of an Eligible Owner shall not terminate the Property Value Guarantee if the Adjoining Property is transferred by will, descent, or survivorship upon the death of an Eligible Owner.

Section 1.9 **Adjoining Property Eligible for more than one Guarantee.** If an Adjoining Property is eligible for a Property Value Guarantee and is also eligible for a similar payment from one or more other operators, the Property Value Guarantee and the cost of any appraisals shall be paid in equal shares by Operator and the other operator or operators.

ARTICLE 2 - DEFINITIONS.

Section 2.1 **Applicable Definitions.** As used herein:

(a) “Adjoining Property” means all legally-described parcels of real estate that physically adjoin or are located across a public road or highway from a legally-described parcel on which Operator operates a Mine Site and upon which a single residence is situated.

(b) “Bona Fide Offer” means an offer to purchase by a potential purchaser of Adjoining Property which is arms- length, and in which the purchase price offered does not take into consideration the amount that the Adjoining Owner is to receive pursuant to the Property Value Guarantee.

(c) “Effective Date” means _____, 2014.

(d) “Fair Market Value” means the full value which could ordinarily be obtained for a property at a private sale on an arm’s length basis between a willing seller and a willing buyer, but assuming Operator’s Nonmetallic Mining Operation did not exist, and taking into account all other factors affecting the value of the property.

(e) “Mine Site” means all contiguous areas of mining is actually conducted, including the following:

(1) The location where the extraction from the earth of Nonmetallic Minerals is conducted;

(2) Storage and processing areas whether contiguous or not to areas excavated for nonmetallic mining;

(3) Areas where nonmetallic mining refuse is deposited; and

(4) Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

(f) “Nonmetallic Minerals” means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, nonrenewable materials. Nonmetallic minerals include but are not limited to stone, rock, gravel, sand, asbestos, beryl, diamond, clay, coal, feldspar, silica, peat and talc.

(g) “Nonmetallic Mining Operations” means any or all of the activities, processes, methods of approach, applications and means utilized, both mechanically and otherwise, including but not limited to blasting, grading, crushing, screening and scalping to cause the occurrence of one or more of the following:

(1) Extraction or excavation from the earth of nonmetallic minerals for off-site use or sale;

(2) Manufacturing or processing operations that may involve the use of equipment for the washing, drying and loading of or the crushing, screening, separating or blending of or other related processing of nonmetallic minerals obtained in the extraction process from the earth or using nonmetallic materials or other materials transferred to the site at which the operations are taking place;

(3) Manufacturing processes whose aim or goal is the production of nonmetallic products for sale or use by the Operator;

(4) Stockpiling of nonmetallic minerals for sale or use off-site and stockpiling of waste materials;

(5) Disposal of waste materials; and

(6) Reclamation of a Mine Site.

(h) “Operator” means Badger Bluff Sands, LLC.

(i) “Reclamation Plan” means a DNR or County-approved nonmetallic mining reclamation plan for a Mine Site.