

ADDENDUM TO THE 2005 AGREEMENT BETWEEN
THE TOWNSHIP OF HILLTOWN AND HAINES & KIBBLEHOUSE, INC.,

This Addendum ("Addendum") to the Agreement between the Township of Hilltown, and Haines & Kibblehouse, Inc., dated August 25, 2005 (the "Base Agreement") is made and entered into this 25th day of November, 2013, by and between the Township of Hilltown, (the "Township"), having offices at 13 W. Creamery Road, P.O. Box 260, Hilltown, Bucks County, Pennsylvania 18927, and Haines & Kibblehouse, Inc., ("H&K"), a Pennsylvania corporation having a principal office located at 2052 Lucon Road, Skippack, Montgomery County, Pennsylvania. Collectively, the Township and H&K shall be referred to as "Parties" and individually as "Party".

RECITALS/ BACKGROUND OF AMENDMENT

1. WHEREAS, the Parties entered into the Base Agreement concerning the Blooming Glen Existing Quarry Tract, the Rice Tract, and certain other parcels in order to resolve various disputes and litigation between the Parties which lead the Parties to seek an amicable resolution of the litigation and the Parties' disagreements concerning the uses to be allowed and related zoning matters; and

WHEREAS, the Parties now desire to amend the Base Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and of the mutual agreements and covenants hereinafter set forth and intending to be legally bound, the Parties agree as follows:

- 1 ***Incorporation of Recitals.*** The above Recitals are expressly incorporated herein as if fully set forth and made a part of this Addendum.
- 2 ***Definitions.*** Except to the extent modified by this Addendum, defined terms in this Addendum shall be as defined and used in the Base Agreement.
- 3 ***Quarrying Fee.*** The Parties wish to amend the Base Agreement concerning certain fees and charges. Paragraph 27.2 of the Base Agreement provides, *inter alia*, that H&K will pay to the Township a Quarrying Fee of Ten Cents (\$0.10) per ton of stone mined and sold from all the Quarry Tracts. The Parties now agree to amend said provision; and effective as of January 1, 2014, H&K agrees to pay the Township a Quarrying Fee of Thirty Five Cents (\$0.35) per ton of stone mined and sold from the Blooming Glen and Rice Quarry Tracts; and said stone tonnage shall also include all Blooming Glen and Rice Quarry stone used for the making of concrete and asphalt by H&K at any site. Additionally, effective January 1, 2021, H&K agrees to pay the Township a Quarrying

Fee of Fifteen Cents (\$0.15) per ton of stone mined and sold from the Skunk Hollow and the Murphy Quarry Tracts; and said stone tonnage shall also include all Skunk Hollow and Murphy Quarry stone used for the making of concrete and asphalt by H&K at any site. The Parties agree that no fines, overburden or non-stone materials shall be used to calculate the amount of weight for the purposes of this calculation.

- 4 **Reclamation Fee.** H&K agrees to pay the Township a reclamation fee of Three Dollars (\$3.00) per load of inbound material permanently placed at the Blooming Glen/Rice Quarry, effective as of January 1, 2014. Any reclamation fee paid to the Township shall be in addition to the Annual Quarry Fee for that particular year.

- 5 **Blooming Glen Quarry Tract Quarry Fee and Reclamation Fee Escalation; Existing Quarry Tract and the Murphy Tract Quarry Fee Escalation:** The Quarry Fee for the Blooming Glen Quarry Tract and the Reclamation Fee for the Blooming Glen Quarry Tract (collectively, the "Blooming Glen Fees") specified in this Addendum shall be fixed from the date of this Addendum through December 31, 2014. The Quarry Fee for the Existing Quarry Tract and the Murphy Tract (collectively, the "H&K Materials Quarry Fee") specified in this Addendum shall also be fixed from the date of this Addendum through December 31, 2014. Immediately upon the expiration of the aforesaid period and annually thereafter on December 31 of each year, the Blooming Glen Fees and the H&K Materials Quarry Fee shall be adjusted as follows:

- 5.1 **Quarry Fee for Blooming Glen Quarry Tract and the H&K Materials Quarry and Murphy Tract:** H&K shall calculate H&K's average sale price to third parties in arm's-length transactions of stone produced and sold from the Blooming Glen Quarry Tract (F.O.B. plant) for the calendar year just ending (the "Average Stone Sale Price"). To the extent that said Average Stone Sale Price is greater or less than that charged for stone produced and sold from the Blooming Glen Quarry Tract (F.O.B. plant) during the calendar year immediately prior to the calendar year just ending, the amount of Quarry Fee for the Blooming Glen Quarry Tract being paid for the next calendar year shall be increased or decreased by the same percentage over that paid for the calendar year just ending. The same calculation formula shall be used for the H&K Materials Quarry and Murphy Tract Fee escalation.

- 5.2 **Reclamation Fee for Blooming Glen Quarry Tract:** H&K shall calculate the average fee charged by H&K for placing inbound materials at the Blooming Glen Quarry Tract from third parties in arm's-length transactions for the calendar year just ending (the "Average Fee"). To the extent that said Average Fee is greater or less than that charged for placing inbound materials at the Blooming Glen Quarry Tract during the calendar year immediately prior to the calendar year just ending, (if there is no preceding period, the first month of the period just expiring shall be used), the amount of the Reclamation Fee for the Blooming Glen Quarry Tract being paid for the next calendar year shall be increased or decreased by the same percentage over that paid for the calendar year just ending.

- 6 ***Discount to Township for Materials Purchased from H&K.*** Paragraph 25 of the Base Agreement provides that "H&K shall receive a credit against any and all monies that may become due the Township under this Agreement for such materials provided to the Township at a rate equal to H&K's posted/published prices less five percent (5%)." The Parties agree that as of January 1, 2014, H&K shall receive a credit against any and all moneys that may become due the Township under this Agreement for such materials (stone, sand, asphalt and concrete) provided to the Township at a rate equal to H&K's posted/published prices less fifteen percent (15%).
- 7 ***Annual Minimum Quarry Fee.*** Commencing January 1, 2014, Quarrying Fees paid to Township by H&K shall not be less than One Hundred Thousand Dollars (\$100,000.00) for any given calendar year (the "Annual Quarry Fee"). Said Annual Quarry Fee shall be paid in quarterly payments of Twenty Five Thousand Dollars (\$25,000.00) on January 15, April 15, July 15, and October 15 of each calendar year. Any late payment shall accrue interest at a rate of 5% annually. All consistent provisions of Paragraph 27 of the Base Agreement shall apply as to the reconciliation of amounts with any excess Quarrying Fees over and beyond the Annual Quarry Fee for a particular year to be paid by February 28th of the following year; and the audit procedure contained within the Base Agreement shall apply to said calculation.
- 8.1 ***Payment in Lieu of Taxes.*** H&K has filed and may file in the future Appeals with the Bucks County Court of Common Pleas from decisions of the Bucks County Board of Assessment Appeals to challenge the real estate tax assessments of H&K's real estate holdings in Hilltown Township imposed by the Township pursuant to the General County Assessment Law [72 P.S. § 5020-1, *et seq.*] (the "Act"). H&K believes said tax assessments are inaccurate; and do not reflect the true value of H&K real estate. Realizing that if its current or future tax assessment Appeals should be successful, such event will result in less real estate taxes being paid to Hilltown Township pursuant to the Township's authority to impose real property taxes under the Act, and, therefore and provided that the Township has the authority to impose real property taxes under the Act, H&K agrees to pay a fee to Hilltown Township equal to the amount of Township real estate taxes imposed by the Township under the Act based on 2013 Bucks County tax assessments assigned to H&K's real estate holdings less the amount of real estate taxes that would be based on any future assessment determination resulting from the Appeals. In the event any of H&K's Hilltown properties be reassessed as a result of improvements to existing structures and fixtures or for the addition of new structures or fixtures, then said assessment shall be the basis used to compute the payment in lieu of taxes.
- 8.2 Said payment shall be made annually by H&K within thirty (30) days of the issuance of an invoice by the Township on or after April 1. In the event said payments are not made within the thirty (30) day period, interest shall begin to accrue on the 31st day after the issuance of said invoice at the rate then in effect as assessed by Hilltown Township.
- 9 ***Route 152 and Hilltown Pike Intersection.*** Paragraph 29 of the Base Agreement

requires that should a traffic light be deemed necessary by the Pennsylvania Department of Transportation at the Southern intersection of Route 152 in Hilltown Pike, H&K, "at H&K's own expense, will provide the cost of such traffic light as necessary to meet traffic conditions." The Parties agree that H&K has installed such upgrades and other road improvements as required by Permit No. 61-3617 issued by the Pennsylvania Department of Transportation, including the installation of the required traffic light at this intersection.

- 10.1 ***Duration of Mining.*** H&K shall be allowed to conduct non-coal surface mining at the Blooming Glen/Rice Quarry Tract to the full extent permitted by the Pennsylvania Department of Environmental Protection. Notwithstanding the foregoing, the Township grants an extension to Duration of Mining to December 31, 2035 ("the "Termination Date on which date H&K shall discontinue blasting as well as crushing of stone on the Blooming Glen/Rice Quarry Tract. H&K shall pay to the Township, commencing on January 1, 2021, and annually thereafter until December 31, 2035, the additional sum of Twelve Thousand Five Hundred Dollars (\$12,500) as an extension surcharge. In the event H&K should discontinue and terminate blasting and crushing of stone earlier than the Termination Date, and it has been determined by Township that said discontinuance and termination has occurred, then and in that event, the extension surcharge shall end as of that calendar year.
- 10.2 The Township further agrees that H&K shall have one extension option to Duration of Mining to continue blasting and crushing of stone for an additional five (5) year period after the Termination Date, until December 31, 2040 (the "Five Year Extension Option") provided that (i) H&K is not in material violation of the Base Agreement and any addendum and/or amendments thereto; and (ii) stone reserves remain at the Blooming Glen Quarry Tract. In the event that H&K has fulfilled its obligations hereinbefore identified to be eligible for the Five Year Extension Option, H&K shall pay to the Township, commencing on January 1, 2036 and annually thereafter during the Five Year Extension Period, an additional fee of Twenty Five Thousand Dollars (\$25,000.00) as an extension surcharge. The Five Year Extension Period is defined as that period from January 1, 2036 through December 31, 2040. In the event H&K should discontinue and terminate blasting and crushing of stone before the conclusion of the Five Year Extension Option, and it has been determined by the Township that said discontinuance and termination has occurred, then and in that event, the extension surcharge shall end at the end of the calendar year during which said termination occurs.
- 10.3 Notwithstanding anything contained in the Base Agreement and/or this Addendum to the contrary, there shall be no time limitation for any reclamation activities called for by the Base Agreement and/or this Addendum. Notwithstanding any provisions of the Base Agreement and/or this Addendum to the contrary and/or any other time limitations placed upon the reclamation, H&K will continue to have the right to import clean fill to the Blooming Glen Quarry Tract until it has substantially reached the configuration depicted in Exhibit A attached hereto which identifies the ultimate water impoundment/recreation lake therein depicted; and as further identified and described within Paragraph 10 hereof.

H&K agrees that it shall not export, sell or transport any clean fill from the Blooming Glen Quarry Tract.

- 11 ***Water Impoundment/Recreation Lake.*** The original Base Agreement provided that the Blooming Glen Quarry Tract would be reclaimed by the import of clean fill until such time that the quarry pit was filled to the approximate original grades. The parties hereby amend said provision to provide for the ultimate configuration of the Blooming Glen Existing Quarry Tract to be a water impoundment/recreation lake pursuant to Exhibit A attached hereto. Said configuration provides for the intended water impoundment/recreation lake to cover an approximate area of ten (10) acres with an approximate average depth of thirty (30) feet subject to variable water table and static water conditions at any given time. For access to said water impoundment/recreation lake, H&K agrees to install an appropriate and adequate ramp for the use of boats for emergency purposes as depicted upon Exhibit A. H&K further agrees to provide for the area surrounding the water impoundment/recreation lake to be rough graded in suitable fashion for future installation of the recreation improvements as depicted on Exhibit A. The Township shall be responsible for all other activities and work associated with the installation of the future recreation improvements. In addition to the boat ramp, H&K shall install a fishing pier, shall provide a paved parking area accommodating thirty (30) motor vehicles with a paved access driveway from the existing parking area of the Township's Forrest Road Park property; and shall provide the grading, gravel base and final paving for the eight (8) foot wide loop walking trail as shown on Exhibit A.
- 12 ***Trees, Limbs and Brush Collection.*** H&K shall provide to the Township, at H&K's sole cost and expense, a dumpster to be used by the Township for the collection of Township generated trees, limbs and brush and for the collection of trees, limbs and brush generated from property located in the Township by Township residents. The dumpster will be provided and located at the Township's facility and the Township shall be responsible for monitoring the dumpster and all materials placed or to be placed in the dumpster to ensure that no materials other than trees, limbs and brush are deposited in the dumpster. In the event that any materials other than trees, limbs and brush are deposited in the dumpster, the Township shall be responsible for removal and the proper disposal of any such other materials at its expense; and if said removal and disposal is not accomplished by Township, H&K shall charge Township for said expense. If the Township does not fulfill its responsibility under this paragraph, H&K may discontinue its service to provide said removal and disposal free of charge
- 13 ***Dispute Committee.*** Paragraph 32 of the Original Agreement provides for the creation of a Dispute Committee; and the parties hereto agree to amend said Dispute Committee provisions to delete the requirement under Paragraph 32.3 that any decision or resolution by the Dispute Committee shall require unanimous consent and approval by all members of that particular Dispute Committee. This language is hereby amended to require majority consent and approval by members of that particular Dispute Committee.
- 14 ***All Other Terms and Conditions.*** All other terms and conditions of the Base Agreement

unless specifically modified by this Addendum shall remain unchanged, and shall continue in full force and effect and remaining binding upon the Parties.

- 15 **Counterparts.** This Addendum may be executed in counterparts, and all of the counterparts shall be deemed a complete and binding agreement.
- 16 **Township Approval Resolution; Reaffirmation of Binding Effect.** The Township hereby certifies that it has approved this Addendum pursuant to a Resolution, duly and validly enacted under the laws of the Commonwealth of Pennsylvania prior to the execution of this Addendum. This Addendum shall not be effective unless and until the Board of Supervisors of the Township adopts the appropriate legislative measure. The parties hereto reaffirm the provisions of paragraph 44 of the Base Agreement (Binding Effect); and H&K specifically agrees that in the event of the sale or transfer of its Hilltown properties subject to this Addendum and the Base Agreement, that it shall provide Hilltown with a 60 day notice of such proposed sale or transfer; and agrees further to provide to Hilltown a written instrument of any successor in interest to the rights and obligations of H&K regarding non – coal surface mining and the related activities identified within this Addendum and the Base Agreement that provides an agreement and express assurance to discharge the rights and obligations of H&K under this Addendum and the Base Agreement regarding non – coal surface mining and the related activities identified within this Addendum and the Base Agreement without limitation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

ATTEST:

Lynda S. Seares
Township Secretary

TOWNSHIP OF HILLTOWN

Bertha A. Seares
Chairman

Vice Chairman

[Signature]
Supervisor

Attest:

John R. Kibbler
(Seal)

HAINES & KIBBLEHOUSE, INC.

BY:

Chris S. Haines

EXHIBIT A

