

# MINING AGREEMENT

## RECITALS

- A. EOG Resources, Inc. (“EOG”), a Delaware corporation, desires to engage in nonmetallic mining on the property (“Property”) located in the Town of Howard (“Town”), Chippewa County, Wisconsin, and described in the attached Exhibit A.
- B. The Property is owned by Robert Schindler and Jeffrey Sikora (collectively, the “Owners”).
- C. EOG desires certain exceptions from and modifications of the requirements of chapter 17 of the Town’s code of ordinances (“Mine Ordinance”).
- D. The Town is willing to grant such exceptions and modifications under the conditions set forth below.

## AGREEMENT

THEREFORE, the Owners, EOG and the Town agree as follows:

### 1. License

- 1.1. The Town acknowledges receipt of the fee and materials sufficient to fulfill the application requirements of sections 17.05 and 17.06 of the Mine Ordinance and chapter 15 of the Town’s code of ordinances (“Blasting Ordinance”). See Exhibit B.
- 1.2. By signing this Mining Agreement (“Agreement”), the Town grants a license to mine and a blasting permit for the term of this agreement. This Agreement is intended to satisfy the requirements of a Development Agreement for purposes of Town Mine Ordinance.

### 2. Term

- 2.1. This Agreement shall be effective upon signing by all parties.
- 2.2. This Agreement shall terminate at 11:59 p.m. on December 31, 2031.
- 2.3. The obligations of the Owners and EOG and the Town’s rights under this Agreement shall survive termination of the Agreement.

### 3. Operation

- 3.1. Except as provided below, EOG shall comply with the restrictions on hours of operation in section 17.07(2)(e) of the Mining Ordinance.
- 3.2. For an approximate six (6) month period (“Transport Period”) from October 15 to end of following year’s spring frost road ban pursuant to Wis. Stat. § 349.16, or April 30<sup>th</sup> of each year, whichever comes later. If there is no applicable road ban in place by April

30<sup>th</sup> the Transport Period will end on April 30<sup>th</sup>. EOG may engage in transportation activities twenty-four (24) hours per day from Monday to Saturday inclusive, except during peak traffic times.

3.2.1 For 2011 (start-up year) only, Transport Period will begin on September 1, 2011.

- 3.3. EOG shall not transport mineral aggregates, nonmetallic minerals, other products or waste materials to or from the Property except during the Transport Period.
- 3.4. EOG shall not transport more than 600,000 tons of material from the Property during any Transport Period. EOG shall provide the Town monthly written accounts of the amount of material transported the previous month. EOG shall provide scale records if requested by the Town.
- 3.5. EOG shall use best management practices to keep noise from nonmetallic mining activity at or below sixty (60) decibels (dba) at the property boundary. These practices include the use of mining, safety and health administration (MSHA) approved "white noise," back up alarms, and properly maintained mufflers on mining equipment. Earthen berms will be built in accordance with the approved reclamation plan which will provide a substantial reduction of sound at the property boundary. Should the aforementioned measures fail to keep noise levels at or below 60 decibels, EOG will plant small trees or shrubs along the top of the berm to further reduce noise levels. In conjunction with Section 10 of this Agreement, EOG will also meet with Town officials and work towards reducing any other noise levels which are determined to be above the 60 dba level.

Exceptions to this section are blasting activities permitted by Chapter 15 of the Town's Ordinances, haul trucks entering and leaving the site and work projects done on the screening berms, drainage ditches or Town and County road ditches.

- 3.6. EOG shall use back-up signals creating the least offensive noise audible to persons residing near the Property consistent with legal requirements.
- 3.7. Within the Town, trucks traveling to or from the Property;
  - 3.7.1. Shall use only county trunk highways;
  - 3.7.2. Shall not use compression release engine brakes, commonly known as Jake brakes; and
  - 3.7.3. Shall adhere to all posted speed limits.
- 3.8. EOG shall comply with the WDNR Air Permit, which is attached hereto as Exhibit C and incorporated herein by reference.

- 3.9. The berms constructed by EOG on and adjacent to the Property shall be maintained in their present configuration in a good and erosion free condition. During 2011, analysis will be conducted to determine if other vegetation including small trees should be planted on the berms to improve dust migration. Berms only serve purpose during life of mine so trees will not be permanent fixtures.
- 3.10. Mining activities as they relate to surface and ground water will occur in accordance with the Reclamation Plan for the Property and any amendments to that Reclamation Plan filed with and approved by Chippewa County Land Conservation Department ("Reclamation Plan"), which is incorporated herein by reference.
- 3.11. All lights must have full cut-off shrouds so that no light is directed upward or at structures not on the Property. Portable lighting shall be used only as necessary to illuminate work areas.
- 3.12. Sand taken from the Property may be returned to the Property. In addition, EOG and Town understand and agree that fines or waste sand from other Wisconsin mines may be returned to the Property, provided that the total amount of reject sand (including fines and waste sand) being returned to the Property shall not exceed the proportion of reject sand generated from the Property. For example, if 70% of the sand produced from the Property is product and 30% is reject sand, and 600,000 tons of sand is removed from the site, then 180,000 tons of reject sand (30% of 600,000 tons) of reject sand may be returned to the site.
- 3.13. EOG shall at all times have an agent, whose name, fax number, email address and telephone numbers are made known to the Town Clerk, available to respond to complaints and problems and the notice required under section B.2. of the Property Value Guarantee (Exhibit D).

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

- 4.1. EOG shall comply with the Storm Water Management and Erosion Control plan included in the Reclamation Plan which is incorporated by reference.
- 4.2. EOG shall repair any damage to, and remove sediment from town road ditches and other drainage ways adjacent the Property.
- 4.3. EOG shall maintain the detention and retention ponds per the Reclamation Plan which is incorporated herein by reference.

#### **5. Groundwater**

- 5.1. EOG shall comply with the groundwater monitoring plan in Reclamation Plan plus one modification to testing scope which is the addition of acrylamide.

- 5.2. All test results shall be reported to the Town. In addition, test results of samples taken from private wells shall be reported to the owners of the wells. Private wells south of the Property and within one-fourth (1/4) mile perimeter of the mining boundary shall be tested once every three years. This obligation shall begin at the commencement of mining.
- 5.3 In lieu of Section 17.10 and 17.11 of the Ordinance, private well owners described in Section 5.2 shall also be eligible for reimbursement related to well repair or re-drilling costs in the event that: (a) a preventive action limit or enforcement standard is exceeded in the well, or (b) there is a substantial adverse impact on the quantity of water, including but not limited to, the inability of any such well to provide water on a continuous basis. Any property owner seeking a remedy shall file a written notice with the Town and EOG of the occurrence of either of the above events.

Upon written notice to EOG of a violation under the aforementioned (a) or (b), EOG retains the right to consult with a qualified professional, acceptable to the private well owner, within a 30 day time period to determine whether the well water impact is attributable to EOG's mining operations. In the event the professional determines the well impact is not a result of EOG's mining operations, EOG shall not be responsible for repair of well drilling and/or repair costs or the purchase of any alternative water sources for private well owners.

The private well owner shall immediately upon notification from EOG that it will reimburse the costs for re-drilling and/or repairing the well, retain a certified plumber or licensed well driller to re-drill and/or repair the well. The private well owner then shall provide EOG with a copy of the receipt and EOG will pay the actual cost related to the repair and/or re-drilling and shall make payment directly to the vendor within 60 days of receipt of invoice. EOG shall also reimburse private well owners for alternative drinking water costs between the time period upon which written notice is provided to EOG and the time in which the well drilling and/or well repair is completed. Well owners must present a receipt from a vendor demonstrating the costs of alternative water as part of reimbursement eligibility. Nothing in this paragraph precludes an owner from seeking reimbursement if the owner retains a certified plumber or licensed well driller prior to the notification from EOG regarding reimbursement.

This Section only applies to residential wells and not commercial and agricultural wells.

## **6. Blasting**

- 6.1. Blasting as defined in chapter 15 of the Town's code of ordinances and shall occur between the hours of 10:00 a.m. and 3:00 p.m. Except that blasting may occur after 3:00 p.m. if required for safety reasons beyond the reasonable control of EOG and its contractors.
- 6.2. Blasting velocities shall not exceed those specified in NFPA 495 and Wisconsin Administrative Code § COMM 7.

6.3. The restrictions in this section 6 are in addition to, and not in lieu of, other provisions of this Agreement, including but not limited to section 9.

**7. Property Value Assurance**

7.1. EOG hereby grants the property owners specified in the attached Exhibit E the Property Value Guaranty set forth in the attached Exhibit D.

7.2. The property owners listed in Exhibit E are third party beneficiaries of section 7.1.

**8. Restoration**

8.1. EOG shall complete sequential restoration of the Property as set forth in the Reclamation Plan which is incorporated herein by reference.

**9. Laws to be Observed**

9.1. EOG shall at all times comply with all federal, state, county, and local laws, regulations and ordinances applicable to EOG's operations on the Property which are in effect or which may become effective in the future.

9.2. This Agreement modifies certain requirements of the Mine Ordinance relating to license application requirements pursuant to Section 17.06(5) and minimum standards of operation pursuant to Section 17.07(5). Any sections not specifically modified by this Agreement remain in effect.

9.3. EOG shall provide the Town with copies of all such permits or licenses and all related application materials and reports submitted by or on behalf of EOG or the Owners and all documents and other materials provided to EOG or the Owners by such federal, state or local authorities. The providing of these reports shall satisfy Section 17.08(1).

**10. Reimbursement and Enforcement**

10.1 This section is intended to satisfy the requirements of a Development Agreement and thereby satisfy the requirements in Section 17.09.

10.2. Reimbursement. EOG shall reimburse the Town for all consulting, inspection, engineering and legal fees incurred in connection with the drafting of this Agreement.

10.1.1. Any amounts due under this Agreement which are not paid within 30 days of billing shall accrue interest at the rate of one percent per month.

10.3 Inspection and Right of Entry. EOG shall, upon request by the Town, provide the Town's officers, agents, employees and contractors with access to the Property for purposes of determining or enforcing compliance with this Agreement or as otherwise provided by law or this Agreement. In the event of EOG's failure or refusal to permit access to the

Property, the Town may obtain an inspection warrant, injunction or other relief from a court to enforce its right to access.

- 10.4. Notice of Default. In the event that EOG fails to perform any of its obligations under this Agreement, the Town shall provide a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis unless the Town determines that threats to health, safety or property require a shorter notice period. If the parties cannot so resolve the matter the Town may elect to enforce the remedies provided for herein.
- 10.5 Disputes Concerning Agreement. Any dispute concerning any provision of this Agreement, other than a default under 10.4, shall be resolved as follows: The party which asserts a dispute shall first give notice thereof to the other party and specify the nature of the dispute and shall meet with such other party, within 30 days of the event giving rise to the dispute. Such notice shall set forth all reasons supporting the basis of the dispute. Within 30 days following the date of the notice, a meeting between the Parties shall be held to attempt in good faith to negotiate a resolution of the dispute or controversy.
- 10.6 Remedies
- A. Corrective Orders. The Town may issue a notice of violation and order that specifies the action to be taken to remedy a default and the time period for curing the default.
- B. Remediation and Reimbursement. In the event EOG fails to perform any of its obligations under this Agreement, including, but not limited to, maintenance of storm water management facilities and restoration of the Property, the Town may, but shall not be required to, perform such obligations at EOG's expense. Before performing EOG's obligations, the Town shall give EOG at least 30 days written notice unless the Town determines that threats to health, safety or property require a shorter notice period. EOG shall reimburse the Town for all expenses incurred for materials, contractors, engineers, attorneys and other consultants in connection with performing EOG's obligations within 30 days of billing therefor.
- C. Legal Action. The Town retains the right to commence legal action to enforce the terms of this Agreement and seek remedies which include: termination of the Agreement for a default, specific performance of the obligations under this Agreement, penalties and/or damages in an amount determined by the court, and/or injunctive relief.
- 10.7. Preservation of Remedies. The remedies provided herein shall not be exclusive of other remedies. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any subsequent violation(s).

**11. Obligations to Run with the Land**

- 11.1. EOG warrants that the Owners have authorized EOG to engage in nonmetallic mining on the Property and to enter into this Agreement.
- 11.2. EOG and the persons signing for EOG warrant that EOG has full right and authority to enter into this Agreement.
- 11.3. The obligations of EOG or either of them under this Agreement shall run with the land and be binding on the Owners and EOG and their heirs, grantees, representatives, successors and assigns.
- 11.4. The Town may record a copy of this Agreement with the Register of Deeds. The cost of recording shall be paid by EOG.

**12. Miscellaneous Provisions**

- 12.1. All parties participated in negotiating the terms of this Agreement. No party shall benefit from not having drafted this Agreement. If any term, section or other portion of this Agreement is reviewed by an administrative agency, court, mediator, arbitrator or other judicial or quasi-judicial entity, such entity shall treat this Agreement as having been jointly drafted by the parties.
- 12.2. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and EOG, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute approval of any breach or wrongful act by EOG.
- 12.3. Any notice required or permitted by this Agreement, except the notice required under the Property Value Guarantee (Exhibit D), shall be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, and addressed as follows:

If to EOG:	EOG Resources, Inc. 619 Bridge Street Suite 101 Chippewa Falls, WI 54729
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If to Owners:	Robert J. Schindler Jr. 11472 55 <sup>th</sup> Street Colfax, WI 54730
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Jeffrey R. Sikora  
11731 52<sup>nd</sup> Street  
Colfax, WI 54730

If to the Town: Town Clerk, Town of Howard

Sue Haake  
9750 30<sup>th</sup> St.  
Colfax, WI 54730

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

- 12.4. This Agreement shall be governed by and construed in accordance with the laws of the state of Wisconsin. All disputes arising under this Agreement shall be venued in a Wisconsin court of competent jurisdiction.
- 12.5. No changes, amendments, alterations or modifications to this Agreement shall be effective unless in writing and signed by both Parties and, if required, upon approval by competent governing authorities of each Party.
- 12.6. This Agreement is entered into with EOG for the Property for the purposes of nonmetallic mining. EOG may assign or transfer its rights and obligations under this Agreement to any entity with the prior written consent of the Town which shall not unreasonably be withheld, providing the property will continue to be used for mining activities, the assignee assumes in writing the obligations of EOG pursuant to this Agreement and provides a copy of such Agreement to the Town prior to the transfer, and the assignee demonstrates that it has the financial wherewithal to fulfill the obligations of this Agreement. In the event EOG transfers its rights and obligations for a purpose other than nonmetallic mining, the Agreement shall be terminated

[Signature pages follow]



Dated: \_\_\_\_\_, 2011  
EOG RESOURCES, INC.  
a Delaware corporation

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF TARRANT

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2011 the above-named  
\_\_\_\_\_ and \_\_\_\_\_, to me known to be the  
\_\_\_\_\_ and \_\_\_\_\_ of EOG Resources, Inc., and the persons  
who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Texas  
My commission expires \_\_\_\_\_

(SEAL)

Dated: \_\_\_\_\_, 2011

TOWN OF HOWARD  
Chippewa County, Wisconsin

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

STATE OF WISCONSIN  
COUNTY OF CHIPPEWA

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2011 the above-named  
\_\_\_\_\_ and \_\_\_\_\_, to me known to be the  
\_\_\_\_\_ and \_\_\_\_\_ of the Town of Howard, and the persons who  
executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires \_\_\_\_\_

(SEAL)

# **EXHIBIT A**

## **PROPERTY DESCRIPTION**

# **EXHIBIT B**

## **BLASTING ORDINANCE**

# **EXHIBIT C**

## **WDNR AIR PERMIT**

### **S&S (800,000 TON/YR) MINE**

# **EXHIBIT D**

## **PROPERTY VALUE GUARANTY**

# PROPERTY VALUE GUARANTY

Upon the execution of the attached Agreement (“Effective Date”) and until December 31, 2031 (“Termination Date”), EOG Resources, Inc. (hereinafter referred to as “EOG”), will provide property value Guaranty (“Guaranty”) to the owners of parcels of land, identified on the attached Exhibit E, subject to the following terms and conditions.

A. Determination of Fair Market Value.

- 1) An owner desiring to sell property shall notify EOG of that fact not later than March 1, 2031.
- 2) The owner and EOG shall then agree on an appraiser who is licensed as a real estate appraiser in Wisconsin.
- 3) In the event EOG and the owner cannot agree on an appraiser, the owner shall select a bank or credit union in Chippewa County, with whom the owner does not do business, to provide the name of an appraiser it regularly employs to do appraisals.
- 4) The appraiser selected pursuant to 2) or 3) above shall provide EOG and the owner with an appraisal of the fair market value of the property, assuming EOG’s sand mine did not exist (“Fair Market Value”).
- 5) EOG shall pay for the appraisal.

B. Sale of Property.

- 1) The owner shall then enter into a listing contract with a Wisconsin licensed real estate broker. The listing contract shall exclude EOG as a potential buyer so that if EOG purchases the property, no commission shall be due.
- 2) Before accepting any offer of less than the Fair Market Value, the owner shall give two (2) business days’ notice by fax, email or personal delivery with a copy of the offer to EOG’s agent as designated in Section 3.13. If notice is by fax or e-mail, it shall also require confirmed receipt by EOG that the notice has been received within two (2) business days. If EOG objects in writing within two (2) business days, the owner shall not accept such offer.
- 3) If the owner sells the property for less than the Fair Market Value, EOG shall pay the owner the difference between the selling price and the Fair Market Value less the realtor’s commission that would have been payable on that difference. EOG shall make the payment within 30 days of the recording of the conveyance of the property.

4) If the property is not sold within 180 days of the date of the listing contract, EOG shall immediately purchase the property for the Fair Market Value less the realtor's commission that would have been paid if sold under the listing contract.

C. Applicability.

1) The Guaranty shall apply only once for any property identified in Exhibit F and shall only be available to the property owners as of the Effective Date.

2) Property which is for sale on the Effective Date shall not be eligible for the Guaranty.

3) Properties do not qualify for the Guaranty in the event the property owner wishes to sell or otherwise convey the property to a third-party by a transaction which is not considered an arm's-length transaction (such as a sale or gift to a relative).



**EXHIBIT E**  
**PROPERTY OWNERS**

## PROPERTY OWNERS

Wayne Schindler  
5101 County Highway B  
Colfax, WI 54730

Vernon and Mary Schindler  
4674 100<sup>th</sup> Avenue  
Colfax, WI 54730

Charles and Frances Schindler  
5281 County Hwy B  
Colfax, WI 54730

Edward and Kim Dachel  
5585 County Hwy B  
Chippewa Falls, WI 54729

Cynthia Loew  
10929 County Hwy T  
Chippewa Falls, WI 54729

Thomas R. and Marie J. Dachel  
307 West Dell Street  
New Auburn, WI 54757

Jeffrey Bennesch  
4983 County Hwy B  
Colfax, WI 54730

Gilmore / Sikora Trust  
11507 55<sup>th</sup> Street  
Colfax, WI 54730

Chad and Brandalee Sikora  
11689 52<sup>nd</sup> Street  
Colfax, WI 54730

David Loew  
4364 County Hwy B  
Colfax, WI 54730

Charlie and Tracy Crawford  
(formerly Deutsch Bank  
Property)  
5221 County Hwy B  
Colfax, WI 54730