

UNCONTAMINATED SOIL FILL ACCEPTANCE AGREEMENT

BEVERLY MATERIALS, L.L.C.

This Agreement (“Agreement”) is made by and between Beverly Materials, L.L.C., 1100 Brandt Drive, Hoffman Estates, Illinois 60192 (“Beverly”) and (“Customer”).

Whereas, Customer will be engaged at a project located at the site described in Exhibit A attached hereto, (the “Site”).

Whereas, in connection with the project, fill material will be removed from the Site (“Fill Material”) BUT NOT areas or materials set forth on the attached Excluded Area/Material Description form and Customer desire to place the Fill Material at Beverly’s Quarry located at Beverly and Higgins Roads, Hoffman Estates/East Dundee, Illinois (“Quarry” or “Beverly Quarry”).

Whereas, material accepted by Beverly at its Quarry will be used as fill. In order to accept Fill Material at its Quarry, the Fill material must be “Uncontaminated Soil Fill” as defined in Illinois Compiled Statutes

Whereas, Fill Material from the Site consists of the material identified in Exhibit A attached hereto.

Whereas, Customer requires aggregates for the Project and will purchase all aggregates from Beverly’s Quarry in accordance with a purchase order(s).

Now, therefore in consideration of the above and the mutual covenants and agreements below, Beverly and Customer agree as follows:

Fill Material Acceptance Terms and Conditions

1. Customer shall not transport any material to the Beverly Quarry other than the Fill Materials from the Site unless transport of such other material is authorized pursuant to this Agreement or a separate fill acceptance agreement. Customer agrees to provide Beverly with copies of waste manifests evidencing that any material from the Site excluded by Beverly or not qualifying as Fill Material has been properly disposed of by Customer.

2. Customer represents and warrants that the Fill Material to be shipped from the Site satisfies the definition of Uncontaminated Soil Fill contained in Illinois Compiled Statutes, and is not subject to any federal, state or local treatment or remedial requirements or disposal restrictions. Customer represents and warrants that the Fill Material from the Site does not contain and will not release Hazardous Materials in quantities that would require investigation, monitoring, clean-up, containment, restoration, removal, governmental notification, or other remedial work under any applicable federal, state, or local law or regulation. The term “Hazardous Materials” means any hazardous or toxic substance, material or waste which is regulated by any governmental authority of the State of Illinois or the United States government, including without limitation, any material or substance which (i) is defined or listed as a “hazardous material”, “toxic pollutant”, “hazardous waste”, “hazardous substance” or “hazardous pollutant,” under applicable federal, state or local law or administrative codes promulgated thereunder, (ii) contains hydrocarbons of any kind, nature or description, including, but not limited to, gas, oil, or similar petroleum products, other than reclaimed asphalt pavement, (iii) contains asbestos, (iv) contains PCBs or (v) contains radioactive materials.

3. Customer agrees to release, indemnify, defend and hold Beverly and its officers, employees and agents harmless from and against any liability for losses, claims, demands, suits or judgments and any payments made in settlement thereof (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, the Solid Waste Disposal Act (or RCRA); the Toxic Substances Contract Act; the Federal Water Pollution Control Act; and any state counterparts or

extensions of the foregoing), including, without limitation, payment of reasonable attorney's fees and expenses, to the extent arising from, incidental to or connected with one or more of the following:

- (a) any claim of death, injury or damage to persons or property or claim of breach of Any requirement imposed by any state, federal or local governmental authority, whether Judicial, administrative or legislative, arising out of, incidental to, or connected with Customer's or Customer's agents' or employees' acts, omissions or deposits of Fill Material Or connected with the presence of Customer's trucks, or trucks under hire to Customer, on Beverly's premises;
- (b) any breach of any representation, warranty, covenant or certification made by Customer to Beverly;
- (c) Customer's negligent or intentional acts, omissions and breaches of duty;
- (d) any investigation or monitoring of site conditions or any clean-up containment, Restoration, removal or other remedial work required under any applicable federal, state or Local law, by any judicial order or by any governmental entity arising out of, incidental to Or connected with Customer's acts, omissions or deposits of Fill Material.

4. The warranties, representation, guarantees, and indemnities set forth herein shall survive and continue in full force and effect so long as the Fill Material is present at the Beverly Quarry.

Fill Material Handling, Inspection and Placement

5. Customer will be provided with a numbered series of Fill Material Tickets for Customer's use in connection with this Agreement. Customer shall not permit use of the Fill Material Tickets for any purpose other than transportation of Fill Material from the Site pursuant to this Agreement. Customer shall not release Fill Material Tickets to any persons other than as necessary in connection with this Agreement and shall return any unused tickets to Beverly.

6. All loads will be subject to inspection by Beverly personnel prior to placement of the Fill Material and no Fill Material will be unloaded without approval. Beverly reserves the right to reject any loads that Beverly, in its sole discretion, determines to be contaminated or in breach of the warranties herein. Beverly may terminate this Agreement if an investigation of the Site reveals the presence of, or potential presence of Hazardous Materials or material that is not Uncontaminated Soil Fill.

7. Loads of Fill Material shall be placed only in the fill area designated by Beverly's Quarry supervisors, during approved hours of operation, and in accordance with approved procedures.

8. Title to Fill Material shall pass upon placement; however, if after placement, any loads of Fill Material are found to be in breach of Customer's representations and warranties in paragraph 2, Customer shall retain title to such nonconforming material and Customer shall promptly remove such material and any resulting contamination to Beverly's premises and Customer shall bear all expenses of such removal and shall pay the nonconforming material handling charge set forth below.

9. Customer shall be responsible for compliance with all applicable truck laws, including load limit and tap laws, and all applicable safety rules at the Site and Beverly's premises. Customer agrees to provide Beverly prior to any placement of Fill Material with evidence of liability and worker's compensation insurance covering such delivery trucks and drivers with limits and terms satisfactory to Beverly (including waivers of subrogation as to Beverly).

10. In the event of breach by Customer of any terms and conditions herein, Beverly may terminate deposit of Fill Material without advance notice.

11. Broken concrete and reclaimed asphalt pavement shall be kept separate and shall not be intermixed with each other or with soil and other materials. Broken concrete and reclaimed asphalt will be placed in areas designed by Beverly Quarry supervisors.

Fill Deposit Fee and Nonconforming Material Handling Charge

12. Customer will pay to Beverly a fill deposit fee as set forth in Beverly's published Price List in effect as of the date of this Agreement. As Beverly makes changes to its Price List, such revised charges shall be deemed applicable on the date that Fill Material is brought into Beverly's Quarry. No alternate price shall be deemed effective unless set forth in Exhibit A and signed by Beverly's authorized agent.

13. In addition to the deposit fee and Customer's indemnification obligation under paragraph 3, in the event that any loads of Fill Material that do not comply with the representations and warranties of paragraph 2 of this Agreement are deposited, Customer agrees to pay a handling charge of \$_____ per load or yard for each load or yard of nonconforming material removed by Customer.

14. This Agreement constitutes the entire understanding between Beverly and Customer hereto and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, with respect to the subject matter hereof. No changes, alterations or modifications to this Agreement will be effective unless in writing and signed by Beverly and Customer hereto.

15. The person signing this Agreement as Guarantor, having a financial and other interest in the Customer and its business activities, hereby unconditionally guarantees the full and faithful performance of each and every obligation herein imposed upon the Customer which guaranty shall be deemed continuing notwithstanding the payment of all amounts due hereunder or notwithstanding the exercise by Beverly of any rights retained by its hereunder.

16. In the absence of the Customer signing a separate agreement for a separate or different Site(s) and at Beverly's election, this Agreement shall be deemed to continue in full force and effect even though Customer brings Fill Material from a location other than the Site designated herein. This Agreement may be supplemented by the parties execution and delivery of a supplemental form of Exhibit A which identifies a new or separate Site or additional terms which supplement or modify this Agreement.

Effective Date _____ 20____

BEVERLY MATERIALS, L.L.C.

By: _____

Title: _____

CUSTOMER:

Company Name _____

By: _____

Title: _____

Guarantor:
