

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made and entered into as of the ___ day of March, 2014, by and between BERNARDS TOWNSHIP (“the Township”), and MILLINGTON QUARRY, INC. (“MQI”) (collectively, the “Parties”).

RECITALS

WHEREAS, MQI submitted a Rehabilitation Plan on or about October, 2011 (“2011 Rehabilitation Plan”) to the Bernards Township Planning Board (the “Board”) in accordance with Sections 4-9.5 and 4-9.6 of the Revised General Ordinances of the Township of Bernards (“the Quarry Ordinance”) with respect to the Millington Quarry property located at Stonehouse Road, Lot 6, Block 6001, 191. 21+ acres, Bernards Township, Somerset County, New Jersey (the “Property”);

WHEREAS, a dispute has arisen among the Township and MQI regarding the Board’s adoption of a report on May 7, 2013, entitled, “Report of the Bernards Township Planning Board to the Township Committee on the Review of the 2011 Millington Quarry Rehabilitation Plan” (“Planning Board Report”), which recommends certain conditions for approval of the 2011 Rehabilitation Plan submitted by MQI;

WHEREAS, disputes have also arisen among the Township and MQI concerning the provisions established in Township Resolution #080308 (“Resolution”), adopted on July 2, 2008, and Township Ordinance #2025, entitled “An Ordinance Amending Chapter IV Entitled ‘General Licensing’, Section 4-9 Entitled ‘Quarrying’ of the Revised General Ordinances of the Township of Bernards, to Add Subsection 20 to Section 4-9.5 Entitled ‘Rehabilitation of Quarry Property,’” which ordinance is now codified as Section 4-9.14 of the Revised General Township Ordinances (the “Fill Prohibition Ordinance”);

WHEREAS, an action entitled *Millington Quarry Inc. v. Township of Bernards, et al.*, SOM-L-475-08, was filed by MQI in Somerset County Superior Court regarding the Township’s interpretation and enforcement of the Quarry Ordinance and the Fill Prohibition Ordinance (together the “Actions”);

WHEREAS, MQI seeks a prompt and complete rehabilitation of the Property for a use permitted by Township zoning; and

WHEREAS, this Settlement Agreement sets forth the terms and conditions of the settlement, compromise, and release of claims between and among the Township and MQI and those claims MQI has filed against the Board related to the Planning Board Report, Resolution, Fill Prohibition Ordinance, the Quarry Ordinance, and the Actions in the manner set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the receipt and sufficiency of which the parties acknowledge, the Township and MQI do hereby agree as follows:

In accordance with Section 4-9.5a.5., the Township Committee has reviewed the Planning Board Report and approves the 2011 Rehabilitation Plan subject to the following modifications, terms, and conditions with the consensual agreement of MQI:

SECTION 1: Effective Period.

The 2011 Rehabilitation Plan shall be effective upon the date of this Settlement Agreement and Release and shall expire on January 31, 2017 (the “Expiration Date”) and, in accordance with Section 4-9.5a.4, a revised rehabilitation plan shall be submitted not less than three (not six) months before the expiration of said rehabilitation plan.

SECTION 2: Soil Importation.

A. In accordance with Section 4-9.5.b.2. of the Quarry Ordinance and as set forth further herein the Township shall permit MQI to import no more than 300,000 cubic yards of soil to meet the grading requirements of the 2011 Rehabilitation Plan.

B. If prior to the Expiration Date MQI contends more imported soils are required to meet the grading requirements of the 2011 Rehabilitation Plan, MQI may make an application to the Planning Board to amend the Rehabilitation Plan to allow for the importation of additional soils. Notwithstanding any such supplemental application submitted by MQI, MQI must still submit a revised rehabilitation plan three months prior to the Expiration Date. MQI’s application shall be limited to requesting from the Planning Board no more than an additional 52,000 cubic yards of soil and shall be deemed complete upon the submission of an amended Rehabilitation Plan that shall include the following ordinance and/or requirements:

<u>Item</u>	<u>Submission</u>
1.	Information regarding measures to prevent erosion and earth slides for both the short and long term, as required by Section 4-9.5.b.2. of the Quarry Ordinance
2.	Information that all fill be of suitable material as required by Section 4-9.5.b.3. of the Quarry Ordinance and the Clean Acceptance Soil Procedure (dated January 2013); and that MQI will provide the Planning Board with the quantified volume of on-site material initially used to achieve the meadow area’s final proper grades.
3.	A grading plan based on ten-foot contour levels as required by Section 4-9.5.b.4. Specifically, MQI must provide grading plans depicting pre-rehabilitation contours, contours at the time of application for additional fill material, and proposed final contours. In addition, the applicant must provide a minimum of ten cross-sections of the existing and final elevations in areas where work has been completed, and ten cross-sections of the existing and final elevations in areas requiring additional fill material. The pre-rehabilitation grades should reflect the preliminary grades achieved after use of the available on-site fill material.
4.	Calculations by a licensed professional engineer to determine the existing availability of fill material to provide cover as required by Section 4-9.5.b.6. of the Quarry Ordinance. In addition, MQI must provide calculations to support MQI’s contention that additional fill material above 300,000 cubic yards is required to

	complete the rehabilitation.
5.	An estimate for the date on which quarry operations will cease and the basis for the estimate as required by Section 4-9.5.b.8. of the Quarry Ordinance;
6.	Information identifying any anticipated and on-going environmental remediation which may be required, and the costs associated with same as required by Section 4-9.5.b.18. of the Quarry Ordinance;
7.	All plot plans and topographic maps shall be submitted in digital form, suitable for entry into the Township’s CAD and GIS systems as required by Section 4-9.5.b.19. of the Quarry Ordinance; and
8.	Schedule for rehabilitation as required by Section 4-9.5.c. of the Quarry Ordinance.
9.	MQI shall provide to the Board ten cross-sections for the affected areas requiring any additional fill above the 300,000 cubic yards to confirm that the requested additional material is actually needed for the proper creation of the meadow area and satisfaction of Section 4-9.5.b.2.

C. In accordance with Section 4-9.5, the Planning Board and Township Committee shall promptly review any application by MQI requesting the approval for the importation of additional soils not to exceed 52,000 cubic yards to the Property. MQI shall provide any information required by Section 2.B. and C. of the Agreement that is otherwise incomplete or deficient. The approval of same shall not be unreasonably withheld by either the Planning Board or Township Committee.

SECTION 3: Soil Testing.

A. Annexed hereto as **Exhibit A** is the Clean Soils Acceptance Procedure (“CSAP”) revised as of January, 2013, reviewed by the Township’s consultant, Jennifer Wollenberg, Ph.D. (“Dr. Wollenberg”) of The ELM Group, Inc. (“ELM”) and developed by Joseph Sorge of J.M. Sorge, Inc., L.S.R.P. License No. 573511 (the “LSRP”). The CSAP establishes a protocol by which soils related to the reclamation of the Property will be tested by MQI at the source prior to importation to the Property. MQI’s importation of soils to meet the grading requirements of the Rehabilitation Plan shall meet the requirements and procedures established by the CSAP.

B. In addition to testing soils at the source, random testing of imported soils shall be conducted by MQI upon their entry onto the Property. Upon notice to the Township of those soils intended for importation to the Property in accordance with CSAP, the Township, in its sole discretion, may request an overall of up to seventy-five (75) random samples be taken of the 300,000 cubic yards of soil that enter the Property. The Township shall notify and request J.M. Sorge, Inc. to collect the random samples the Township determines are necessary of the soils that enter the Property. The random samples shall be collected by MQI in accordance with the procedures described in the NJDEP 2005 Field Sampling Procedures Manual and the CSAP. Samples shall be collected under the oversight of the LSRP. Once the samples requested by the Township have been taken, the soils will be deposited into the Quarry for use in grading operations. Such soils will be tracked as set forth in Section 3.D. The LSRP will provide a

summary table of the laboratory results and the original laboratory reports to ELM upon receipt of same.

C. MQI shall reimburse the Township for the costs incurred by Dr. Wollenberg or another ELM designated representative, which shall include only the review of any documentation provided by the LSRP concerning the sampling related to the 300,000 cubic yards of soil, plus any additional soils that may be requested under Section 2.B., including the sampling results related to same. Such reimbursement shall be made through the escrow account that has already been established by MQI pursuant to Section 4-9.7.b.

D. In order to facilitate such random sampling, MQI will implement a grid system to track the placement of imported soils on the Property. Prior to the importation of any of the 300,000 cubic yards of soil, the aforesaid grid system shall be jointly prepared and approved by the LSRP and Dr. Wollenberg or another ELM representative. Approval of the grid system by ELM shall not be unreasonably withheld. To the extent the results of any random sample demonstrates an exceedance of the Residential Direct Contact Soil Remediation Standards set forth at N.J.A.C. 7:26D, Joseph Sorge, as the LSRP for the Property, shall take any and all remediation steps that are required by the New Jersey Department of Environmental Protection ("NJDEP"). No further importation of soils will be permitted from a site that has an exceedance of N.J.A.C. 7:26D during the random sampling without the consent of the Township.

E. In the event MQI seeks an Amended Rehabilitation Plan for the importation of additional soils not to exceed 52,000 cubic yards as set forth in Section 2 above, the Township, in its sole discretion, may request an overall of up to eighteen (18) random samples be taken of the additional 52,000 cubic yards of soil that enter the Property.

SECTION 4: Truck Traffic.

A. For the purposes of the soil importation anticipated by this Settlement Agreement, truck traffic to and from the Millington Quarry shall be permitted Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m. Each truck transporting soils to the Property shall have a completed bill of lading in the form attached hereto as **Exhibit B**. The volume of trucks shall be limited to a monthly average of 150 trucks per day, and in no event shall not be more than 225 trucks on any single day and 3,000 trucks per calendar month.

B. The limitations on truck traffic set forth in Section 4.A. shall be strictly enforced. An initial exceedance of the truck traffic limitations by MQI during any given month shall result in a two-month suspension of truck traffic. A second exceedance of the truck traffic limitations by MQI during any given month shall result in a four-month suspension of truck traffic. A third exceedance of the truck traffic limitations by MQI during any given month shall result in a ban on truck traffic.

C. MQI shall provide a written monthly update to the Township Engineer of the soils imported to the Property within ten (10) business days after the end of each month. The monthly updates shall include the following information: (1) the source from which soils were

imported during the preceding month; (2) the approval number of each source as required by the CSAP, and (3) amount of material imported from each source.

SECTION 5: Pumping System.

The existing pumping system that maintains the water level in the quarry pit shall remain in operation during the rehabilitation of the Property. This is a modification of Item 13 set forth on Page 16 of the Planning Board Report.

SECTION 6: Cost-Estimate.

Annexed hereto as **Exhibit C** is the Cost-Estimate required by Section 4-9.5.b.7. of the Quarry Ordinance, which establishes the costs agreed to among the parties that are associated with implementing the 2011 Rehabilitation Plan. Such Cost-Estimate shall be used for determining the financial assurances required by the Township for the completion of the Rehabilitation Plan. The Parties agree that any financial assurances required by the NJDEP in connection with any site remediation are sufficient and the Township shall not require any additional financial assurances. MQI shall copy the Township on all communications with the NJDEP concerning such financial assurances.

SECTION 7: Oversight Subcommittee.

A. An advisory Oversight Subcommittee shall be established by the Township Committee to address any issues that may arise during the course of implementing the Rehabilitation Plan.

B. The advisory Oversight Subcommittee shall consist of the following Bernards Township officials or their successors: (1) Mayor John Carpenter or the Mayor's designee; (2) Township Engineer, Tom Timko, P.E.; and (3) Police Chief, Brian Bobowicz.

SECTION 8: Releases.

The Township and MQI agree that all claims, counterclaims, and cross-claims filed or that could have been filed in connection with the matter captioned as *Millington Quarry Inc. v. Township of Bernards, et al.*, SOM L-475-08 shall be dismissed **with prejudice** and without costs to any party, including any claims MQI has instituted against the Planning Board. The Parties expressly reserve their rights to bring any and all claims in violation or breach of this agreement, which claims are not released or otherwise waived by this Settlement Agreement.

SECTION 9: Admissions.

Nothing contained in this Settlement Agreement, nor any action taken or not taken by any Party in connection with this Settlement Agreement, constitutes or shall be deemed to be an admission of fault or liability, such fault and liability being expressly denied.

SECTION 10: Entire Agreement.

This Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth herein, and supersedes any prior written or oral agreements, reports, resolutions, ordinances, understandings, or arrangements.

SECTION 11: Conflicts

The Parties agree that the provisions of this Settlement Agreement represent the manner in which the 2011 Rehabilitation Plan is to be administered. To the extent that any provision of this Settlement Agreement conflicts with the Planning Board Report, the provisions of this Settlement Agreement shall govern and control.

SECTION 12: Governing Law.

This Settlement Agreement is made in, and shall be governed, enforced and construed under the laws of the State of New Jersey.

SECTION 13: Dispute Resolution.

All disputes relating to the validity, breach, interpretation or enforcement of this Settlement Agreement, as well as all disputes of any kind, including statutory claims of any kind, shall be filed in the Superior Court of New Jersey, Somerville, New Jersey.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement and Release to be executed as of the day and year first written above and MQI and the Township have adopted authorizing Resolutions as required by law.

<p>Attest:</p> <p>By: _____ Denise Szabo, Clerk</p> <p>Dated: March __, 2014</p>	<p>BERNARDS TOWNSHIP</p> <p>By: _____ Mayor John Carpenter</p>
<p>Attest:</p> <p>By: _____ , Secretary</p> <p>Dated: March __, 2014</p>	<p>MILLINGTON QUARRY, INC.</p> <p>By: _____ Gary A. Mahan, President</p>