

Johnson & Son's Excavating

10025 Gale Road
Goodrich, Michigan 48438
(810) 636-2104

VIA E-MAIL

November 17, 2023

Daniel McGeen
mcgeend@michigan.gov
Environmental Quality Analyst
Air Quality Division
Lansing District Office
P.O. Box 30242
Lansing, MI 48909

Dear Daniel McGeen:

As per our discussion via telephone about the complaint of dust from a crushing operation, Johnson & Sons doesn't or did not have a crusher or screener in operation at the time of complaint because of our operating agreement with Atlas Township describing that Johnson & Sons can only crush during the months of December, January, and February for a seven-day period every three years (see attached), due to the fact that we do not have enough material to crush as it takes three years to get the amount of material needed to crush at this Sojourner location for the seven days-worth of crushing. Please review attached operating agreement between Johnson & Sons Excavating and Atlas Township which we do adhere to since we do live in the community and like to be good neighbors.

The reason I'm sure of for the complaint of dust is the fact of our contract with Goodrich Area Schools for the new parking lot improvements during the months of July and August of 2023, where we had 1,740 gravel truck loads of stockpiling material at the Sojourner location, which was then transferred to smaller truck loads for access hauling back to the Goodrich Schools job sites, which is allowed under the provisions of property use at Sojourner Drive, Atlas Township. Note that we hauled out 19,740 tons and hauled in approximately the same amount.

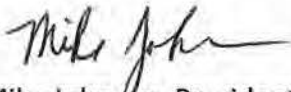
Johnson & Sons chloride the roads, but when we did, the unseasonable heavy rains of July and August washed most of the product off. We rented a water truck from AIA/CRC Contractors Rental for watering of roads in and out of Sojourner Drive, but still had issues after the water truck was returned.

To sum this all up, no crushing was in operation, but the amount of truck traffic was probably to blame.

Daniel, I will call you when we start crushing operations at Sojourner Drive, Atlas Township, as I stated in our phone conversation, so you, along with any other trainees you care to bring along, can observe this. I am planning after the holidays, during the first or second week of January 2024.

Hope you are feeling better after your bout with Covid.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Johnson, President
Johnson & Sons Excavating,
Goodrich, MI

Attachments:

Permit to Install Application

AIS/CRC Contractors Rental

Atlas Township/Johnson & Sons Conditional Use Approval



PERMIT TO INSTALL APPLICATION

For authority to install, construct, reconstruct, relocate, or modify process, fuel-burning or refuse burning equipment and/or control equipment. Permits to install are required by administrative rules pursuant to Section 5505 of 1994 PA

FOR EGLE USE
APPLICATION NUMBER

Please type or print clearly. The "Application Instructions" and "Information Required for an Administratively Complete Permit to Install Application" are available on the Air Quality Division (AQD) Permit Web Page. Please call the AQD at 517-899-6252, if you have not been contacted within 15 days of your application submittal.

1. FACILITY CODES: State Registration Number (SRN) and North American Industry Classification System (NAICS)
2. APPLICANT NAME: Johnson + Sons Excavating, Inc.
3. APPLICANT ADDRESS: 10025 Gale Rd.
4. EQUIPMENT OR PROCESS LOCATION: 10185 SOJOURNER DRIVE
5. GENERAL NATURE OF BUSINESS: Excavating
6. EQUIPMENT OR PROCESS DESCRIPTION: TESAB 700i SAW CRUSHER 70 TONS PER HOUR
7. REASON FOR APPLICATION: OTHER - DESCRIBE NEED PERMIT PER PAW MCGEEN AIR QUALITY DIVISION
8. IF THE EQUIPMENT OR PROCESS THAT WILL BE COVERED BY THIS PERMIT TO INSTALL (PTI) IS CURRENTLY COVERED BY ANY ACTIVE PERMITS, LIST THE PTI NUMBER(S): NO
9. DOES THIS FACILITY HAVE AN EXISTING RENEWABLE OPERATING PERMIT (ROP)? NOT APPLICABLE
10. AUTHORIZED EMPLOYEE: MIKE JOHNSON, President, 810-636-2104
11. CONTACT: (If different than Authorized Employee. The person to contact with questions regarding this application)
12. IS THE CONTACT PERSON AUTHORIZED TO NEGOTIATE THE TERMS AND CONDITIONS OF THE PERMIT TO INSTALL? YES

A PERMIT CERTIFICATE WILL BE ISSUED UPON APPROVAL OF A PERMIT TO INSTALL

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES AND ENERGY
PERMIT TO INSTALL APPLICATION INSTRUCTIONS

INFORMATION

A permit to install is required to install, construct, reconstruct, relocate, or modify any process or process equipment, including control equipment pertaining thereto, which may emit an air contaminant (R 336.1201). A process is an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant. Process equipment is all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process. An emission unit is any part of a stationary source that emits or has the potential to emit an air contaminant. Air pollution control equipment is any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere. An application may be submitted for one or more interrelated processes at a source.

ADDITIONAL REQUIREMENTS

An administratively complete application must include reasonable responses to all requests for information on the application form and in these instructions. Additional detailed information may be attached to the application form and must be submitted in duplicate. In addition to the general information requested on the application form, the following information must be included for the application to be considered administratively complete:

- A. **Process Description** - In addition to the general process description which must be included in Item 6 on the application form, attach a written description in appropriate detail of each process covered by this application. State the size and type along with the make and model (if known) of the proposed process equipment, including any air pollution control equipment. Create a unique descriptive identifier (Emission Unit ID) for each emission unit. Specify the proposed operating schedule of the process equipment in hours per day, days per week, and weeks per year. Provide details of the type and feed rate of each material used in or produced by the process, in pounds per hour or similar measure. Describe any fuels and associated firing devices used in the process. Describe any waste generated by the process or equipment and methods of disposal or treatment. Applications for complex or multiple processes should also include a block diagram showing the flow of materials and intermediate and final products.
- B. **Regulatory Discussion** - Describe all federal, state, or local air pollution control regulations which you believe are applicable to the proposed process or process equipment. Include a discussion of how you believe the proposed process or process equipment complies with these regulations.
- C. **Control Technology Analysis** - Describe how the air contaminant emissions from the proposed process equipment will be controlled or otherwise minimized. Provide sufficient control method detail to show the extent and efficiency of any air pollution control devices. Air pollution control includes pollution prevention or other methods which result in reduced emissions from the process.
- D. **Emissions Summary and Calculations** - Explain clearly and in appropriate detail the nature, quantity (both controlled and uncontrolled), concentration, particle size, pressure, temperature, etc. of all air contaminants, including all toxic air contaminants, that are reasonably anticipated to be discharged to the atmosphere due to the operation of the source. Summarize these emissions calculations in tabular form for all equipment covered by the application and for each stack/vent.
- E. **Stack/Vent Parameters** - For each stack or vent related to the proposed process equipment provide the following information (including ranges if appropriate): the minimum height above the ground, maximum internal diameter or dimensions, discharge orientation (e.g., vertical, horizontal), maximum exhaust volume flow rate in cubic feet per minute (indicate actual or standard), maximum exhaust gas temperature, a description of any rain protection device, and location of any stack testing ports.
- F. **Site Description and Process Equipment Location Drawings** - Submit legible scale drawings which show a plan view of the owner's property to the boundary lines. Locate and identify the proposed equipment. Locate and identify all adjacent properties, include outline and height of all structures within 150 feet of proposed equipment and show any fence lines. Locate and identify all stacks/vents or other emission points related to the proposed process equipment and indicate the distance to the nearest property line. Indicate the scale of the plan and north direction on the drawing.

Additional information beyond that identified above may be required to complete the technical review of any individual application. Further information or clarification concerning permits to install, including the document "Information Required for an Administratively Complete Application," can be obtained from the address listed below, the Internet, or by calling 517-899-6252.

ADDITIONAL REQUIREMENTS FOR USE OF ELECTRONIC APPLICATION

The electronic version of the Permit to Install Application is a WORD template. This template may be downloaded and completed electronically. The department is **not** accepting electronic submittal of the application. Create three (3) paper copies of the application. Mail three (3) copies of this application along with two (2) copies of any plans, specifications, or drawings required by the above instructions to the address below. The application must include the original signature of an authorized employee of the applicant certifying the truth of the information in the application. Applicant should retain a copy of the application.

US Post:

Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division – Permit Section
P.O. BOX 30260 Lansing, MI 48909-7760

For Priority/Express Mail:

Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division – Permit Section
Constitution Hall, 2nd Floor South
525 W Allegan Street, Lansing, MI 48933-1502

MASTER EQUIPMENT RENTAL AGREEMENT

LEASE. Lessor may lease to Lessee, and Lessee may lease from Lessor, during the term of this Agreement, one or more units of machinery, equipment or other property (individually and collectively, the "Equipment"). All Equipment that, during the term of this Agreement, is requested by Lessee and received by Lessor or delivered to Lessee or Lessee's worksite, as evidenced by Lessor's records, is subject to and governed by this Agreement. Equipment subject to this Agreement may, but need not, be evidenced by one or more schedules (each, a "Schedule") listing the particular Equipment, the Lease Term for such Equipment, and the Lease Charges (in each case as defined below), which shall be deemed incorporated into and made part of this Agreement. Lessee shall use and store the Equipment only at the worksite where such Equipment is delivered, unless otherwise agreed in writing.

1. LEASE CHARGE. In consideration of the lease of the Equipment on the reverse side hereof, Lessee shall pay to Lessor with respect to each piece of Equipment the amount set forth in the applicable Schedule on the reverse side hereof or otherwise agreed upon in writing by Lessor and Lessee (the "Lease Charge"). The Lease Charge for each piece of Equipment is due and payable in full prior to the delivery or receipt of each piece of Equipment, unless otherwise agreed in writing by the parties. The standard Lease Charge is based on 8 hours (one shift) per day, 40 hours per week, or 176 hours per four-week period. For any Equipment usage in excess of these amounts, Lessee will pay additional Lease Charges, computed on a pro-rata basis. The term of rental for each piece of Equipment shall be set forth in the applicable Schedule or otherwise agreed upon in writing by Lessor and Lessee, and shall begin on the time of receipt by, or delivery of the Equipment to, Lessee until the Equipment is returned to Lessor (the "Lease Term"). If Lessee does not return the Equipment immediately upon the expiration of Lease Term, Lessee shall pay additional Lease Charges. If the Equipment is used on a two shift per day basis for any period(s) during the Lease Term, Lessee shall pay double the standard Lease Charge allocable to such period(s). If the Equipment is used on a three shift per day basis for any period(s) during the Lease Term, Lessee shall pay triple the standard Lease Charge allocable to such period(s). The number of hours the Equipment has been used will be determined by the standard hour meter attached to the Equipment, if the Equipment has an hour meter. The Lease Charge is notched and agreed to by Lessor in advance and in the regard of actual Equipment use, breakdowns, slowdowns or acts of nature (including without limitation rain, snow, etc.). Equipment damaged by Lessee, its agents, representatives or employees during the Lease Term will be assessed additional Lease Charges for the time required for repair and replacement. All Lease Charges or other amounts payable by Lessee to Lessor that are not paid within 30 days of the due date or that are due by acceleration shall, upon demand by Lessor, accrue interest until paid at a rate equal to one and one-half percent per month, or the maximum rate permissible by law, whichever is lower.

2. TRUCKING AND FUEL EXPENSES. All trucking expenses are in addition to the Lease Charge, unless otherwise agreed in writing by the parties. Lessee will pay the cost of trucking the Equipment to and from Lessor's premises or the premises where the Equipment is stored, as applicable. Lessee is solely responsible for loading and unloading the Equipment. Upon termination of the applicable Lease Term, Lessee is also responsible for refueling all Equipment to Lessor with full tanks of fuel. Any fuel required upon return will be charged to Lessee at the rate of Seven Dollars 50 cents (\$7.50) per gallon.

3. TITLE TO EQUIPMENT. As between Lessor and Lessee, Lessor has sole title to the Equipment and under no circumstances shall title pass to Lessee. Lessee shall not change or remove any insignia or lettering that is on the Equipment indicating Lessor's ownership of the Equipment, and upon request of Lessor shall affix to the Equipment in a prominent place, labels, plates or other markings supplied by Lessor indicating Lessor's ownership of the Equipment. Lessee shall protect and defend Lessor's title to the Equipment against all persons claiming an interest in the Equipment and shall keep the Equipment free from all liens and encumbrances. Furthermore, Lessee shall give Lessor immediate written notice of any such liens or encumbrances and shall fully and completely indemnify Lessor from any loss caused thereby. Lessee shall further take all actions necessary to prevent the Equipment from becoming part of the real property on which it is placed and agrees that the Equipment shall remain Lessor's personal property at all times during the term of this Agreement.

4. USE AND MAINTENANCE OF EQUIPMENT; INSPECTION; REPAIRS. Lessee agrees to keep the Equipment in good operating condition, repair and upgrade and to furnish all labor, parts, medications and devices required to do so at Lessee's sole expense. Lessee agrees to use and maintain the Equipment in accordance with the owner's manual accompanying the Equipment and any and all instructions constituting a part of the Equipment, verbally or in writing, by Lessor to Lessee. Lessee agrees to use the Equipment in the regular course of business only, within a normal capacity and without abuse, and to comply with all federal, state, local and foreign laws and regulations with respect to the possession, use, maintenance or operation of the Equipment and certifies that its operators are qualified in safety operation of the Equipment. Lessee shall not make any modification, alteration or addition to the Equipment without Lessor's prior written consent. Lessor shall have the right, during the normal hours, upon reasonable prior notice to Lessee, to enter upon the premises where the Equipment is located in order to inspect, observe or remove the Equipment, or otherwise protect Lessor's interest. Lessee is solely responsible for all repairs to the Equipment in excess of those necessary by Lessee's use of the Equipment or other conduct, other than ordinary wear and tear. Repair costs will be charged at the same rate Lessor would charge other customers for similar repairs or at the rate paid by Lessor if a third party repairs the Equipment. Lessor reserves the right to charge Lessee for all repairs and lost rent resulting from Lessee's use of or damage to the Equipment or other conduct. Lessee acknowledges and consents to the installation or placement of a tracking device on any machine or attachment included in this rental and Lessee's tracking of same.

5. INSPECTION; TRAINING; NOTICE OF DEFECTS. Lessee acknowledges that (i) Lessee has had an opportunity to inspect the Equipment, (ii) Lessee finds the Equipment suitable for its needs and in good condition, and (iii) Lessee has received the owner's manual for each item of Equipment. Lessee represents and warrants to Lessor (a) that Lessee, its agents, representatives or employees have the knowledge and training necessary to operate the Equipment properly, safely and in accordance with all federal, state and local laws and regulations concerning its use and the possession, use or operation of the Equipment, and in accordance with any and all manufacturer's instructions and owner's manuals, and that Lessee, its agents, representatives or employees have operated substantially similar items of Equipment before, and (b) that Lessee will instruct its agents, representatives and employees in such proper use of the Equipment. Lessee acknowledges that Lessor may require Lessee, its agents, representatives or employees to complete a training course prior to the lease of certain items of Equipment. Lessor makes no representation or warranty concerning the adequacy or completeness of such training and disclaims all liability arising from or relating to Lessee's possession, use, operation and maintenance of the Equipment and any other action or inaction of Lessee. Lessee acknowledges its duty to inspect each item of Equipment daily prior to use and to promptly notify Lessor of any defects or if the owner's manual for any item of Equipment is missing.

6. RISK OF LOSS. Lessee shall have the entire risk of loss, damage to, or destruction of the Equipment from all causes whatsoever during the Lease Term. In the event of loss, damage or destruction of any item of Equipment, Lessee at its expense, and at Lessor's option, shall, immediately upon Lessor's assessment of such loss, damage or destruction, (a) repair such item, returning it to its previous condition, (b) pay Lessor all unpaid Lease Charges as may be allocated to such item of Equipment and either (1) pay Lessor's cost to repair such item (in case of damage) or (2) pay the current market value of such item (in the case of loss or destruction), or (c) replace such item with the item acceptable to Lessor, in good condition and of equivalent value, which shall become the property of Lessor. No loss or damage to Equipment shall relieve Lessee of its obligations pursuant to this Agreement, unless consented to in writing by Lessor.

7. INDEMNITY. Lessee agrees and promises that it shall indemnify Lessor and hold Lessor and his officers, directors, agents, employees, successors and assigns harmless from any and all claims, liability, damages, or loss, including reasonable attorneys' fees, arising out of the Equipment or Lessee's possession, use or operation of the Equipment, including any failure of the Equipment to comply with, or to be operated in accordance with any and all manufacturer's instructions and owner's manuals, and in accordance with any and all federal, state or foreign governmental entity, including without limitation the standards prescribed under the Occupational Safety and Health Act of 1970. Lessee shall, at its own cost and expense, defend Lessor against any and all suits or other proceedings which may be brought against Lessor, alone or in conjunction with others, based in any way upon Lessee's possession, use or operation of the Equipment or other action or inaction, including without limitation claims involving property damage, personal injury or wrongful death. Upon any such liability or claim Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action or suit. The indemnities and obligations hereunder provided shall continue in full force and effect notwithstanding the termination of this Agreement.

8. INSURANCE. Lessee shall be the absolute insurer of the Equipment during the applicable Lease Term and until the Equipment is returned to Lessor pursuant to Paragraph 19 of this Agreement. Lessee agrees, during the Lease Term and while the Equipment is in transit to and from Lessee and until safely returned to Lessor, to keep the Equipment fully insured and to pay all insurance premiums, at its own expense, for not less than the replacement value of the Equipment as of the commencement date of this Lease against all risks, including adequate public liability (bodily injury and property damage liability insurance), but not less than (a) \$1,000,000 per person and \$1,000,000 per occurrence for personal injury (including death) and (b) \$1,000,000 per occurrence for property damage. Lessee shall cause copies of the above mentioned policy of insurance to be furnished promptly to Lessor. The duty of establishing any requisite safeguards for the full protection of Lessor against all risks shall be solely Lessee's. The proceeds of any insurance shall, at Lessor's option, be applied to the replacement or the repair of the Equipment or in reduction of Lessee's obligations due to or to become due under this Lease, including without limitation obligations arising under Section 7 above.

9. DAMAGE WAIVER. With Lessor's written consent, Lessee may elect in writing to enter into a "Damage Waiver" with Lessor. Upon electing to enter into a Damage Waiver, Lessee shall not be required to reimburse Lessor for loss of or damage to the Equipment expressly covered by such Damage Waiver, except for the first \$1,000 (or such other amount as may be specified on the Damage Waiver). Notwithstanding the foregoing or anything to the contrary in any Damage Waiver, Lessee shall remain fully liable for all loss of and damage to Equipment resulting from (a) mysterious disappearance or theft, (b) neglect, misuse, wrong application, or abuse of the Equipment, and (c) making of the Equipment into mud or water, (d) job sites of the Equipment in water (with the exception of tracked machines) or (e) use of the Equipment in demolition activities, and (f) fire damage. (g) any damage to the equipment during transportation of the Equipment by Lessee, its employees or subcontractors. This Damage Waiver is elected by Lessee, does not apply in any way to damage to person or property other than the Equipment damage specifically set forth in this section 9. No Damage Waiver shall apply in any way to damage to person or property other than the Equipment. No Damage Waivers will be available for items of Equipment used in demolition activities. Upon entering into a Damage Waiver, Lessee shall pay to Lessor, an additional Lease Charge an amount equal to ten percent (10%) of the aggregate Lease Charges relating to the item(s) of Equipment covered by such Damage Waiver, or such greater amount as may be specified in the Damage Waiver.

10. DISCLAIMER OF WARRANTIES. LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS LEASED "AS IS". LESSOR HAS NOT MADE AND DOES NOT MAKE ANY AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS FOR PARTICULAR PURPOSE, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY CONNECTION OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER AGREEMENT, REPRESENTATION OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. Lessee agrees that Lessor has not made any representation or warranty with respect to, and disclaims any warranty relating to, the Equipment's compliance with any law, ordinance, regulation, specification or contract pertaining thereto, or related to any patent, copyright or trademark infringement or latest defect. Lessee acknowledges and agrees that Lessor shall not assume any liability for any representation or warranty of any kind or character, express or implied, with respect to the Equipment. Lessee agrees to assume all risks of claims, actions or lawsuits arising from the possession, use and operation of the Equipment and the parties acknowledge that Lessor shall not be liable for any direct, consequential and incidental damages with respect to the Equipment, including without limitation damages caused by any defect, failure or malfunction, whether any claim for such damages is based upon warranty, contract, negligence or otherwise.

11. ASSIGNMENT. LESSEE SHALL NOT ASSIGN THIS AGREEMENT, SUBLEASE THE EQUIPMENT, BELONGS CONTROL OF THE EQUIPMENT TO ANY PERSON OTHER THAN LESSOR, OR ALLOW ANY OTHER PERSON TO USE OR OPERATE THE EQUIPMENT, Lessor may, without notice to Lessee, assign or sell its interest in, or a greater security interest in, or otherwise transfer, in whole or in part, this Agreement, any or all of the Equipment or any of its rights, interests or obligations with respect thereto, including, without limitation, all Lease Charges and other sums due to or to become due hereunder to one or more persons or entities. Lessee shall, upon receipt of notice of transfer from Lessor, be bound by such transfer. LESSEE SHALL NOT ASSERT AGAINST ANY ASSIGNEE ANY CLAIM, DEFENSE, COUNTERCLAIM OR SET-OFF THAT LESSEE MAY AT ANY TIME HAVE AGAINST LESSOR. This Agreement shall be binding on the parties, their heirs, successors and permitted assigns.

12. TAXES AND MISCELLANEOUS CHARGES. Lessee shall be solely responsible for all washing, highway road services and towing charges or tolls and all fees incurred in connection with Equipment.

13. FAILURE OF CONDITIONS. If Lessee fails to maintain the Equipment, discharge all taxes, fees or other charges, pay all expenses or procure and maintain the insurance required by this Agreement, Lessor may do so at Lessor's option. Any expenses incurred by Lessor in doing so shall be added to the Lease Charge and shall be immediately paid to Lessor by Lessee.

14. DEFAULT. If Lessee fails to pay any Lease Charge or other charges when due or fails to perform any of its other obligations under this Agreement, breaches any provision of this Agreement, dissolves, suspends its usual business activities, files a voluntary or involuntary petition under any of the provisions of the United States Bankruptcy Code, applies for or is appointed a receiver or liquidator, or makes an assignment for the benefit of creditors, Lessor, at its option and in addition in any rights or remedies it may have, may (a) enter on any premises where the Equipment is located and without court order or other process of law, and take possession of the Equipment without notice to Lessee, (b) terminate this Agreement and/or (c) declare all Lease Charges and their sums immediately due and payable. Lessor specifically reserves all rights and remedies available to Lessor under applicable law. Lessee agrees to pay any and all fees and charges added to individual invoices. LESSEE UNDERSTANDS THAT THERE IS A TIME PRICE DIFFERENTIAL CHARGE OF 1% APPLIED TO ALL PAST-DUE BALANCES AND CONSENTS TO THE ASSESSMENT OF SAME. Failure to collect Lease Charges for any particular month is not a waiver of Lessor's right to collect such Lease Charges or any other amounts that are or may become due to Lessor. Future orders may, at Lessor's sole discretion, be subject to C.O.D. or Do Not Sell status if Lessee's account is delinquent.

15. ADDITIONAL AGREEMENTS AND DOCUMENTS. The parties acknowledge that the parties may enter into or exchange certain other agreements and documents with respect to the Equipment or the lease contemplated by this Agreement, including without limitation the Schedules (collectively, the "Related Documents"). The parties acknowledge and agree that the terms of this Agreement will control over the terms of any and all Related Documents, and any conflicting or additional terms in such Related Documents will have no force and effect, unless such Related Documents are fully executed by both parties.

16. LESSEE'S WAIVER; ABSOLUTE OBLIGATIONS. To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon Lessee by Sections 2A-308 through 2A-522 of the Michigan Uniform Commercial Code, including without limitation Lessee's right to (a) cancel this Agreement, (b) repudiate this Agreement, (c) reject the Equipment, (d) revoke acceptance of the Equipment, (e) recover damages from Lessor for any breach of warranty or for any other reason, (f) deduct all or any part of any claim of damages resulting from Lessor's alleged default, if any, under this Agreement from the Lease Charges; (g) "cover" by leasing any similar piece of Equipment in substitution for the Equipment leased pursuant to this Agreement; (h) recover any general, special, incidental or consequential damages, for any reason whatsoever, or (i) claim any security interest in any item of Equipment. Lessee's obligations under this Agreement are absolute and unconditional, regardless of any alleged breach by Lessee of this Agreement, and shall not be subject to any statement, reduction, set-off, defense, counterclaim or recoupment, for any reason whatsoever.

17. HOUR METER. An hour meter is attached to most items of Equipment to count the number of hours that the Equipment is used. Lessee shall not permit any tampering with the hour meter in any manner. In the event that an hour meter fails to function properly, Lessee shall immediately notify Lessor. LESSOR HAS NOT MADE AND DOES NOT MAKE ANY AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE NUMBER OF HOURS ON THE EQUIPMENT AT THE TIME OF RENTAL OR INITIATION OF LEASE TERM.

18. ENVIRONMENTAL SITES. Lessee is responsible for informing Lessor before delivery of any item of Equipment to any site where Environmental Protection Agency decontamination procedures are required before the Equipment can be removed from such site.

19. RETURN. Upon the expiration or earlier termination of this Agreement, Lessee shall at its own expense return the Equipment to the same condition as when delivered to Lessee, ordinary wear and tear excepted, to Lessor at the location specified by Lessor.

20. CLEANING, POINT, EDGES AND TEETH. Lessee will pay all cleaning charges on Equipment that is returned and uncleaned. All tractors included in the Equipment leased by Lessee will be shipped with 30% minimum ground engaging tools. Lessee shall be responsible for items of Equipment returned without same.

21. SECURITY DEPOSIT. Lessor may require Lessee to deposit with Lessor, as security for Lessee's performance of its obligations under this Agreement, a security deposit with respect to one or more pieces of Equipment (the "Security Deposit"). As promptly as practicable after the return of all of the items of Equipment to Lessor, Lessor shall determine whether Lessee has fully complied with its obligations under this Agreement and may deduct such amounts from the Security Deposit as are necessary to remedy any default by Lessee in the performance of its obligations hereunder. The remainder of the Security Deposit, if any, shall promptly be returned to Lessee.

22. CHOICE OF LAW, ARBITRATION. This Agreement shall be governed by and interpreted according to the laws of the State of Michigan, without regard to conflict of laws principles. All court proceedings (including enforcement of any judgment upon the award rendered by arbitrators) shall be brought only in a federal or state court whose district includes Kent County, Michigan, and Lessee irrevocably consents that each court shall have personal jurisdiction over Lessee and waives any objection to venue or that such court is an inconvenient forum. Lessee knowingly and voluntarily waives any objection to venue.

23. SECURITY INTEREST AND COLLATERAL ASSIGNMENT. Lessee hereby assigns and grants a security interest to Lessor in all of Lessor's right, title and interest in and to any proceeds to be paid to Lessee for Lessee's work on any job where the Equipment is used, with full power to sue for, collect and discharge, or sell and assign the same. This assignment is made and given as collateral security for payment in full of all of Lessee's obligations under this Agreement.

24. ACCESS AND RECLAMATION. IN THE EVENT THAT PAYMENT WITH RESPECT TO ANY EQUIPMENT IS NOT MADE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, LESSOR RESERVES THE RIGHT TO RECLAIM ANY GOODS OR MATERIAL STILL ON LESSEE'S PREMISES TO APPLY AS AN OFFSET TO ANY AMOUNT OUTSTANDING. Lessee shall allow Lessor's representatives to access to its premises at all reasonable times for the purpose of ascertaining the location, condition and/or status of any such goods or materials.

25. EXPENSES. Lessee agrees to pay all costs and expenses, time price differential charges, applicable irrevocable damages, actual attorney fees consultant and expert fees: in each case as incurred by Lessor in exercising any of its rights and/or remedies regarding the relationship or this Agreement, including any actions for force collection of any sums due.

26. MANAGEMENT OF ASSETS. Lessee acknowledges its fiduciary duty pursuant to the Michigan Building Contract Fund Act and its fiduciary duty to properly manage, oversee, supervise, control, preserve and prevent waste of any assets now or in the future owned or otherwise held by Lessee or by entities owned in whole or in part by Lessee ("Lessee's Assets"), and shall hold in trust, to and for the benefit of Lessor, any income generated or derived from the ownership, operation and management of Lessee's Assets, including, but not limited to, management fees, administration fees, accounting fees, insurance disbursements, sales, sales commissions, incremental tax credits, tax refunds, and consulting fees, to be used by Lessee to repay, and to secure the repayment of, the indebtedness owing to Lessor according to the terms of this Agreement including, without limitation, all amounts due Lessor under, arising out of, or in connection with this Agreement, and all equipment and/or material received from Lessor, and any proceeds received from the sale, use, or from jobs/projects on which the equipment and/or material is incorporated, is expressly held in trust by the Lessee as the principals for the benefit of Lessor until Lessor has been paid for the materials. Use of any funds received from the sale, use, or from jobs/projects on which the material is incorporated, before Lessor has been paid for the materials, is a breach of the trust and the fiduciary duty of the Lessee as principals. Any debt that arises out of the breach of the trust and/or defalcation of the material and/or funds held in trust is non-dischargeable in bankruptcy.

27. INSOLVENCY. Neither this Agreement nor any interest therein is assignable or transferrable by operation of law. Lessor may exercise any one or more of the remedies set forth in this Agreement; and this Agreement shall, at the option of Lessor on notice to Lessee, immediately terminate and shall not be treated as an asset of Lessee, after the exercise of such option if any of the following occur: (a) any proceeding under federal bankruptcy law is commenced by Lessee or such an action is commenced against Lessee and is not dismissed within 60 days after the commencement thereof, (b) the Lessee makes any assignment for the benefit of its creditors, (c) a writ of attachment or execution is levied on any Equipment and is not released or satisfied within 10 days thereafter, or (d) if a receiver is appointed in any proceeding or action to which the Lessee is a party with authority to take possession or control of any Equipment.

28. MISCELLANEOUS. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all prior negotiations, agreements, and representations. This Agreement may not be modified except by an instrument in writing signed by both parties hereto. All notices hereunder shall be in writing and mailed by registered mail to the parties hereto at the address indicated on the reverse side for each. Should any provision, or part thereof, of this Agreement be declared illegal or unenforceable, such provision, or part thereof, shall be considered severable from this Agreement and the remaining provisions shall continue in full force and effect. The failure of Lessor to enforce performance by Lessee of any obligation pursuant to this Agreement shall be effective only if in writing and shall not constitute a waiver of Lessor's rights to thereafter enforce such performance. This Agreement will be governed by and interpreted in accordance with the laws of the State of Alabama, without reference to conflict of law principles. This Agreement and any Schedules may be executed in one or more counterparts, all of which shall be considered one and the same document, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party by facsimile.

Sojourner Drive/Johnson stone crushing

From "Shirley Kautman-Jones" <skjones@atlastownship.org>
To "Rickmisk@aol.com" <Rickmisk@aol.com>, "David Lattie (dlattie@lattelaw.com) (dlattie@lattelaw.com)" <dlattie@lattelaw.com>, "Matt Hart" <MHart@atlastownship.org>, "Tere Onica" <TOnica@atlastownship.org>, "Lomako, Nicholas (NLOMAKO@WadeTrim.com)" <NLOMAKO@WadeTrim.com>
Cc "johnson024@centurytel.net" <johnson024@centurytel.net>
Date Fri, 21 Feb 2014 12:04:38 -0500

Everyone,

I send this email as a recap of a meeting that Mike Johnson & I had regarding the stone crushing activity on Sojourner Drive on Wed. Feb. 19th, 2014.

Mike Johnson was given conditional use approval for stone crushing by Atlas Township Planning Commission.

He is **allowed 7 days** of stone crushing **every three year period**. Operation must take place during the months of Dec., Jan. or Feb. Working days of operation are Mon. – Fri. Within the hours of 8AM to 5PM.

First three year period of conditional use: 2010, 2011, 2012

Current three year period: 2013, 2014, 2015

Mike Johnson stated that he did not operate stone crushing in 2013 – due to road weight restrictions, inability to obtain machine, etc.

He will be bringing the machine in and begin stone crushing on Monday, February 24, 2014 through Friday, February 28, 2014. This will be 5 days of the 7 days allowed in a three year period. Allowing only 2 days of crushing in 2015 during either Dec., Jan. or Feb. If he chooses to not use the 2 days in 2015 he basically loses them and starts over a new three year period for 2016, 2017, 2018.

I asked that he or his staff call the office and inform myself, or Matt Hart or Tere Onica when he begins working, and I suggested that in the future he would always call us as to when they start/stop. As a note of consideration: the PC might consider Atlas Twp. receiving a formal/required notification when this operation commences and ends so we have accountability and can share that with residents, etc., and we are able to place in file and track for future allowable days of use remaining, etc.

We discussed the limitations he has discovered in this agreement since his original application. Now that he has actually operated under this use, it would be in his best interest to reapply to the Atlas Township Planning Commissions for a slight revision of months of operation. It may be more feasible to ask for Feb., March, April as the months of operation.

Depending on the upcoming weather for next week – because of temperatures – he may be very limited on how much material can actually be processed (think big frozen piles) but he has the opportunity to use the machine and his time period of use expires on the 28th of February 2014.

We also discussed ideas in buffering the sound/noise that results from this operation, utilizing landscaping, etc. as a proactive measure. Leaf off time of year is not in his best interest to diffuse the sound traveling down the hill to Hawthorne Ridge – but then summer months with windows open may be offensive as well. Lots to think about on that subject.

I will give the Clerk's office a copy of this email to place in PC file as a record of our meeting/conversation.

Please contact me with any comments.

Have a great weekend,

Shirley

Shirley Kautman-Jones 

**Atlas Township
Supervisor**

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