June 30, 2017

Mindy Anthony
Department of Natural Resources and Environmental Control
Solid & Hazardous Waste Management Section
89 Kings Highway
Dover, DE 19901

RE: Beneficial Use Determination Renewal Application
Allan Myers DE, Inc. – Georgetown

Dear Ms. Anthony:

Please find enclosed a Beneficial Use Determination Application for Allan Myers DE, Inc.'s (Myers) Georgetown Asphalt plant located at 22351 Joseph Road, Georgetown, DE 19947. This application is to renew permit #33/120217B. The following provides a response to the Checklist For Persons Applying For A BUD:

1. **Application for a Recycling Permit or Composting Permit**

The Recycling Permit or Composting permit checklist and application is in Attachment 1.

2. **Proof of ownership of the property, or a copy of lease agreement**

A copy of the lease agreement is in Attachment 2.

3. **Written verification from the local zoning authority that the proposed activity is allowable at the proposed location**

N/A – This location consists of an existing hot mix asphalt plant. Storing up to 2,500 tons of manufacturer's waste asphalt shingles is consistent with our storage of materials used in the process of producing hot mix asphalt.

4. **A Plan of Operation including a site map and complete description of the equipment, process, and operating procedures, as well as the maximum quantity of feedstocks and product to be stockpiled**

Manufacturer's waste asphalt shingles will be delivered to the site by trucks equipped with tarps. Trucks delivering the material from the manufacturer will place the shingles in a staging area where they will remain until shredded. Shingles will be shredded periodically with a mobile shredding device on an as needed basis. Once shredded, the shingles will be used in the manufacture of hot mix asphalt (HMA) at a concentration not to exceed 6% of the product mix. Only shredded shingles will be used for the manufacture of HMA. The total amount of shingles, both shredded and unshredded, to be stored at the site will not exceed 2,500 tons. In the future, it may be

possible for Myers to obtain shingles that have shredded prior to delivery to our site. If this occurs, Myers will store shredded shingles and may no longer require the services of the mobile shredding device.

No additional equipment is required for Myers to incorporate manufacturer's waste asphalt shingles into our hot mix asphalt product. Manufacturer's waste asphalt shingles will be mixed with recycled asphalt pavement (RAP) and asphalt cement in the mixing chamber of the drum, not the drying chamber.

Myers maintains three (3) silos, each with a capacity of 100 tons, for the storage of hot mix asphalt. Frequently we only manufacture the amount of hot mix asphalt that can be used in a day. Hot mix asphalt is not typically stored overnight although the silos are designed for overnight storage and are sometimes used for overnight storage of hot mix asphalt.

5. **Evidence that the product use will not adversely affect human health and the environment. This may require analyses and other tests.**

N/A – The waste asphalt shingles are the same as asphalt shingles used in a variety of roofing applications.

6. **Contracts or letters of intent from buyers showing there is a true market for the product**

N/A – waste asphalt shingles are made of asphalt cement, one of the components of hot mix asphalt.

7. **A Conceptual Closure Plan [pursuant to Section 4.4.1 of the DRGSW]**

When operations cease at the Georgetown Asphalt plant, solid waste such as office, lunchroom, and break room waste will be disposed of in an off-site landfill.

In the unlikely event that manufacturer's waste asphalt shingles remain onsite after operations cease, they will be transported by truck off-site to the Allan Myers MD, Inc., located in Elk Mills Maryland. The estimated cost to load and transport 2,500 tons of manufacturer's waste asphalt shingles from Georgetown to Elk Mills is $45,000. This assumes $16.00/ton for transportation (subtotal $40,000) and $5,000 for loading (grand total $45,000). A letter from Allan Myers MD, Inc. indicating their willingness to accept manufacturer's waste asphalt shingles in included in Attachment 3.

Postclosure use is expected to be consistent with surrounding land use.

8. **Evidence of financial Assurance demonstrating financial responsibility for closure, as described in DRGSW Sec. 4.1.11.2**

A copy of the Standby Trust Agreement is included in Attachment 4 along with a rider showing a corporate name change.

9. **Proof that all applicable permits, licenses, and approvals have been obtained or applied for [pursuant to Section 4.4.1 of the DRGSW]**

A copy of the air permit has been included in Attachment 5 and a copy of the NPDES stormwater discharge permit has been included in Attachment 6.

10. **Background statement [pursuant to 7 Del. C. Chapter 79]**

The Environmental Permit Application Background Statement may be found in Attachment 7.

11. **Submit 3 copies of the completed application package as well as an electronic copy in '.pdf' format.**

Please find attached 3 copies of the completed application package. An electronic copy was submitted to you on June 30, 2017.

If you have any questions or need additional information, please do not hesitate to call me at (610) 222-3182.

Sincerely,

David Schnackenberg

ALLAN MYERS

CHECKLIST FOR PERSONS APPLYING FOR A RECYCLING PERMIT OR COMPOSTING PERMIT

Applications for a Recycling Permit or Composting Permit will not be processed unless all of the following information is provided by the applicant. The following checklist is based upon the specific requirements contained in Delaware's *Regulations Governing Solid Waste* (DRGSW). Please use this checklist to ensure the application contains all necessary documentation.

X 1. Application for a Recycling Permit or Composting Permit

X 2. Proof of ownership of the property, or copy of lease agreement

N/A 3. Written verification from the local zoning authority that the proposed activity is allowable at the proposed location

X 4. A Plan of Operation including a site map and complete description of the equipment, process, and operating procedures, as well as the maximum quantity of feedstocks and product to be stockpiled

N/A 5. Evidence that the product use will not adversely affect human health and the environment. This may require analyses and other tests.

N/A 6. Contracts or letters of intent from buyers showing there is a true market for the product

X 7. A Conceptual Closure Plan [pursuant to Section 4.4.1 of the DRGSW]

X 8. Evidence of financial assurance demonstrating financial responsibility for closure, as described in DRGSW Sec. 4.1.11.2

X 9. Proof that all applicable permits, licenses, and approvals have been obtained or applied for [pursuant to Section 4.4.1 of the DRGSW]

X 10. Background statement [pursuant to **7 Del. C.** Chapter 79]

X 11. Submit 3 copies of the completed application package as well as an electronic copy in '.pdf' format. Please submit the application and supporting documentation to:

Mindy Anthony
Department of Natural Resources and Environmental Control
Solid & Hazardous Waste Management Section
89 Kings Highway
Dover, DE 19901
Mindy.Anthony@state.de.us

Delaware Department of Natural Resources and Environmental Control
Solid and Hazardous Waste Management Section

RECYCLING PERMIT APPLICATION

INSTRUCTION: The applicant may claim that some of the information presented in this Application is confidential. An applicant wishing to make such a claim should write, preferably in red ink, "Claimed Confidential Information" at each point in the response where such confidentiality is claimed. The applicant must provide an explanation of why the release of such information would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation. The confidentiality determination will be subject to the **FOIA Regulation**, Section 6.

BRIEF DESCRIPTION OF RECYCLING ACTIVITY OR BENEFICIAL USE PROCESS

Store, process, and use manufacturer's waste asphalt shingles in the hot mix asphalt manufacturing process.

FACILITY INFORMATION

Facility Name: Allan Myers DE, Inc. - Georgetown		
Address: 22351 Joseph Road		
City: Georgetown	County: Sussex	State: DE
Zip Code: 19947	Phone: (302) 854-9285	Fax:
Total Site Area (Acres): 4.9	Latitude: 38° 38.3' N	Longitude: 75° 21.9' W
Tax Parcel Number (s): 133-6.00-53.09		
Expected Service Area:		

BUSINESS OWNER INFORMATION

Owner's Name: Allan Myers DE, Inc. d/b/a Allan Myers Materials		
Contact Person: David Schpackenberg	Title: Environmental Manager	
Address: 638 Lancaster Avenue		
City: Malvern	State: PA	Zip Code: 19355
Phone: 610-222-3182	Fax:	Email: david.schpackenberg@allanmyers.com

FACILITY OPERATOR INFORMATION

Operator's Name: Allan Myer DE, Inc. d/b/a Allan Myers Materials		
Contact Person: Matt Yates	Title: Area Operations Manager - Asphalt	
Address: 638 Lancaster Avenue		
City: Malvern	State: PA	Zip Code: 19355
Phone: 610-842-0122	Fax:	Email: matt.yates@allanmyers.com

OPERATING HOURS

Daily Operating Hours: 10	Daily Business Hours (Open to Public): 6AM-6PM
Days of Operation: Monday to Friday	Number of Operating Days Per Year: Less than 300

Delaware Department of Natural Resources and Environmental Control
Solid and Hazardous Waste Management Section

RECYCLING PERMIT APPLICATION

ESTIMATED QUANTITIES OF RECYCLABLE MATERIAL AND PRODUCT:

Maximum Daily Tonnage of Recyclable Material to be Accepted: 30-35	Daily ☒ Weekly ☐
Maximum Tonnage of Recyclable Material to be Stored (at any given time): 2,500	
Maximum Tonnage of Product to be Stored (at any given time): 0	

NOTE: Maximum daily and weekly tonnages must consider operating hours and days specified on next page.

I certify under penalty of law, that I have personally examined and am familiar with the information submitted in the Application and all supporting documentation and that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

Signature of applicant: David Schnackenberg		Date: 6-30-2017
Printed Name: David Schnackenberg		Phone: 610-222-3182
Title: Environmental Manager		Email: david.schnackenberg@allanmyers.com
Company: Allan Myers DE, Inc.		
Address: 638 Lancaster Avenue		
City: Malvern	State: PA	Zip Code: 19355

ATTACHMENT 2

LEASE AGREEMENT

ALLAN MYERS

ASPHALT PLANT LEASE
AND INVENTORY AND CONSTRUCTION CONTRACT SALE AGREEMENT

THIS **ASPHALT PLANT LEASE AND INVENTORY AND CONSTRUCTION CONTRACT SALE AGREEMENT** (this "***Lease***") is made and entered into as of March 17, 2009 (the "***Effective Date***") by and between TILCON MINERALS, INC., a Delaware corporation, whose address is 642 Black Rock Avenue, New Britain, CT 06050 ("***Tilcon***"), THE SHELLY COMPANY, an Ohio company, whose address is 80 Park Drive, Thornville, OH 43076 ("***Shelly***") and PENNSY SUPPLY, INC., a Pennsylvania corporation, whose address is 1001 Paxton Street, Harrisburg, PA 17104 ("***Pennsy***"; Tilcon, Shelly and Pennsy are referred to herein, individually or collectively, as applicable, as the "***Landlord***") and ICM of DELAWARE, INC., a Delaware corporation, whose address is c/o Independent Construction Materials, Inc., Attn: James Ward, 638 Lancaster Avenue, Malvern, PA 19335 (the "***Tenant***").

I. GRANT OF LEASE; LEASED PREMISES; SUBLEASE

Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by Tenant, does hereby lease to Tenant and Tenant, in consideration of the covenants and agreements to be performed and observed by Landlord, does hereby lease and take from Landlord:

(i) the asphalt plants and the associated offices, buildings and improvements used exclusively in connection therewith (collectively, the "***Delmar Leased Improvements***") located on and permanently affixed to the land delineated on Exhibit A-1 attached hereto and by reference made a part hereof (the "***Delmar Leased Land***"; together with the Delmar Leased Improvements, the "***Delmar Property***"), which Delmar Leased Land is a portion of the parcel or parcels of land described or delineated on Exhibit B-1 attached hereto and by reference made a part hereof (the "***Delmar Land***");

(ii) the asphalt plants and the associated offices, buildings and improvements used exclusively in connection therewith (collectively, the "***Gumboro Leased Improvements***") located on and permanently affixed to the land delineated on Exhibit A-2 attached hereto and by reference made a part hereof (the "***Gumboro Leased Land***"; together with the Gumboro Leased Improvements, the "***Gumboro Property***"), which Gumboro Leased Land is a portion of the parcel or parcels of land described or delineated on Exhibit B-2 attached hereto and by reference made a part hereof (the "***Gumboro Land***");

(iii) the asphalt plants and the associated offices, buildings and improvements used exclusively in connection therewith (collectively, the "***Georgetown Leased Improvements***") located on and permanently affixed to the land delineated on Exhibit A-3 attached hereto and by reference made a part hereof (the "***Georgetown Leased Land***"; together with the Georgetown Leased Improvements, the "***Georgetown Property***"), which Georgetown Leased Land is a portion of the parcel or parcels of land described or delineated on Exhibit B-3 attached hereto and by reference made a part hereof (the "***Georgetown Land***"); and

(iv) the asphalt plants and the associated offices, buildings and improvements used exclusively in connection therewith (collectively, the "***Dover Leased Improvements***") located on

and permanently affixed to the land delineated on Exhibit A-4 attached hereto and by reference made a part hereof (the "***Dover Leased Land***"; together with the Dover Leased Improvements, the "***Dover Property***"), which Dover Leased Land is a portion of the parcel or parcels of land described or delineated on Exhibit B-4 attached hereto and by reference made a part hereof (the "***Dover Land***"; the Delmar Land, the Gumboro Land, the Georgetown Land and the Dover Land shall be collectively referred to herein as the "***Land***"; the Delmar Leased Land, the Gumboro Leased Land, the Georgetown Leased Land and the Dover Leased Land shall be collectively referred to herein as the "***Leased Land***"; the Delmar Leased Improvements, the Gumboro Leased Improvements, the Georgetown Leased Improvements and the Dover Leased Improvements shall be collectively referred to herein as the "***Leased Improvements***"; and, the Delmar Property, the Gumboro Property, the Georgetown Property and the Dover Property shall be collectively referred to herein as the "***Leased Premises***" and shall each be individually referred to herein as an "***Individual Property***");

together with a non-exclusive license to access and use the remaining portions of the Land solely for purposes of ingress and egress to and from the Leased Premises during the Lease Term (which license shall be irrevocable by Landlord during the term of this Lease, as the same may be renewed or extended);

provided that the Leased Premises shall not include (i) any portion of the Land other than the Leased Land, (ii) any of the improvements, fixtures or equipment listed on Exhibit C attached hereto and by reference made a part hereof, nor (iii) any equipment not located within or forming a part of the Leased Improvements (including, without limitation, any plant loaders or other miscellaneous mobile equipment) of Landlord or third parties located on the Land or used in connection therewith, subject however, to the following:

(1) The state of title of the Land and/or Leased Premises at the Effective Date;

(2) Subject to the terms of this Lease, any state of facts which an accurate survey of the Land and Leased Premises would show as of the Effective Date;

(3) All present and future zoning ordinances, laws, regulations, requirements and orders, including building restrictions and regulations, and all other present and future ordinances, laws, regulations, requirements and orders of all departments, boards, bureaus, commissions, and bodies, of any municipal, county, state or federal governments now or hereafter having or acquiring jurisdiction over the Land and/or Leased Premises, including but not limited to all Environmental Requirements, as such term is hereinafter defined;

(4) Tenant's proportionate share of Taxes for the year 2009 and subsequent years not yet delinquent;

(5) Covenants, easements and restrictions affecting the Land and/or Leased Premises and the revocable nature of any restriction, easement, agreement, ordinance or right affecting the Land and/or Leased Premises;

(6) Subject to the terms and conditions of this Lease, the physical condition of the Land and/or Leased Premises on the Effective Date and the Commencement Date; and

(7) Utility company rights and easements, if any, to maintain and operate poles, wires, lines, cables, pipes, boxes and other fixtures and facilities in, over and upon the Land and/or Leased Premises.

TENANT ACKNOWLEDGES THAT (1) IT HAS INSPECTED AND ACCEPTS THE LEASED PREMISES IN AN "AS IS, WHERE IS" CONDITION, (2) OTHER THAN TO THE EXTENT EXPRESSLY SET FORTH HEREIN, THE LEASED PREMISES ARE SUITABLE FOR THE PURPOSE FOR WHICH THE LEASED PREMISES ARE LEASED AND OTHER THAN TO THE EXTENT EXPRESSLY SET FORTH HEREIN, LANDLORD HAS MADE NO WARRANTY, REPRESENTATION, COVENANT, OR AGREEMENT WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LEASED PREMISES, (3) THE LEASED PREMISES ARE IN OPERABLE CONDITION, (4) OTHER THAN TO THE EXTENT EXPRESSLY SET FORTH HEREIN, NO REPRESENTATIONS AS TO THE REPAIR OF THE LEASED PREMISES, NOR PROMISES TO ALTER, REMODEL OR IMPROVE THE LEASED PREMISES HAVE BEEN MADE BY LANDLORD, AND (5) EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN, THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, WITH RESPECT TO THE LEASED PREMISES.

Tenant further acknowledges and agrees that (i) Tilcon's sole obligations hereunder are with respect to the Georgetown Land and the Dover Land, (ii) Shelly's sole obligations hereunder are with respect to the Delmar Land and the Gumboro Land, and (iii) Pennsy's sole obligations hereunder are with respect to the Leased Improvements. Shelly, Tilcon and Pennsy represent that as of the Effective Date, despite being separate legal entities, they are affiliated and under common ownership and control. Notwithstanding anything to the contrary contained in this Lease, if, at any time during the Lease Term, Shelly, Tilcon or Pennsy or their respective successors and assigns are not affiliated and under common ownership and control, Tenant's obligations under this Lease, including without limitation, Tenant's obligation to make the Minimum Aggregate Purchase, shall not be segregated by and between such entities and Tenant's performance of such obligations hereunder, whether benefiting either Tilcon, Shelly or Pennsy or their respective successors and assigns individually or all such parties collectively, shall be deemed to be full performance of Tenant's obligations under this Lease. Shelly, Tilcon and Pennsy, for themselves, and their respective successors and assigns, hereby acknowledge and agree that Tenant's obligations hereunder are for their mutual, collective benefit and that none of Tenant's obligations under this Lease shall be deemed to exclusively benefit either Shelly, Tilcon or Pennsy individually. Shelly, Tilcon and Pennsy for themselves and their respective successors and assigns further acknowledge and agree that any action or actions taken by either Shelly, Tilcon or Pennsy individually shall be deemed to conclusively bind the other parties hereunder and Tenant shall be entitled to rely on such actions as the actions of "Landlord" hereunder.

On the Commencement Date, Shelly and Tenant shall also execute and deliver that certain Sublease Agreement attached hereto as Exhibit D (the "***Sublease***"), pursuant to which Shelly shall sublease to Tenant, and Tenant shall sublease and take from Shelly, a portion of Shelly's leasehold interest in certain land adjacent to the Delmar Property, all as more particularly described in the Sublease.

II. LEASE TERM

The term of this Lease shall begin on March 17, 2009 (the "***Commencement Date***") and shall terminate on the date that is three (3) years after the Commencement Date (the "***Initial Term***"), unless this Lease shall be renewed or sooner terminated as provided herein. Provided that Tenant is not in default hereunder, Tenant shall have the option to renew this Lease for one (1) additional period of two (2) years (the "***Renewal Term***"), which option must be exercised, if at all, by written notice received by Landlord no later than six (6) months prior to the end of the Initial Term. All of the terms and provisions set forth in this Lease shall apply during the Renewal Term. The Initial Term and the Renewal Term are sometimes referred to herein as the "***Lease Term***". As used herein, the term ***"Lease Year"*** shall mean for the first such Lease Year of the Lease Term, the period commencing on the Commencement Date, as defined above and expiring on the date which is twelve (12) full calendar months after the Commencement Date. Each succeeding Lease Year during the Lease Term shall mean each successive period of twelve (12) full calendar months after the last day of the preceding Lease Year.

III. RENT

A. **Annual Rent.** Tenant agrees to pay Landlord during the Lease Term annual installments of rent, each in the amount of One Million One Hundred Thousand and No/100 Dollars ($1,100,000.00) ("***Annual Rent***"), at such place within the United States as Landlord shall from time to time direct by written notice to Tenant. The Annual Rent shall be payable in advance beginning on the Commencement Date and thereafter on the first day of each subsequent Lease Year during the Lease Term. Reference to Annual Rent hereunder shall not be implied or construed to the effect that this Lease or the obligation to pay rent hereunder is from year to year, or for any term shorter than the Initial Term. For the purposes hereof, "***Applicable Rent***" shall mean the portion of the Annual Rent applicable to each Individual Property, and shall be (i) Three Hundred Thousand Dollars ($300,000) annually with respect to the Delmar Property, (ii) Three Hundred Thousand Dollars ($300,000) annually with respect to the Gumboro Property, (iii) Two Hundred Fifty Thousand Dollars ($250,000) annually with respect to the Georgetown Property, and (iv) Two Hundred Fifty Thousand Dollars ($250,000) annually with respect to the Dover Property.

B. **Additional Rent.** Tenant shall also pay to Landlord, as "***Additional Rent***", any other sums or amounts identified as owed by Tenant to Landlord in this Lease.

C. **Independent Covenants; Default Rate and Late Charges.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and other than as expressly set forth herein, Tenant shall not be entitled to any deduction or setoff of the Annual Rent or Additional Rent owing hereunder against Landlord. Any Annual Rent or Additional Rent which is not paid within ten (10) days after Tenant receives written notice from Landlord that it is overdue shall thereafter bear interest at an annual rate of eight percent (8%), or the highest annual rate permitted by applicable usury law, whichever is lower, until paid. Further, in the event any Annual Rent or Additional Rent owing hereunder is not paid when due, Landlord and Tenant agree that Landlord will incur additional administrative expenses, the amount of which will be difficult if not impossible to determine. Accordingly, in

the event any Annual Rent or Additional Rent owing hereunder is not paid within ten (10) days after Tenant receives written notice from Landlord that the same is overdue, Tenant shall pay to Landlord an additional, one-time late charge for any such late payment in the amount of five percent (5%) of such payment.

IV. TAXES

A. **Personal Property Taxes.** Tenant shall be liable for all taxes levied against any leasehold interest of Tenant or personal property and trade fixtures owned or placed by Tenant in the Leased Premises.

B. **Real Estate Taxes.** During the Lease Term, Tenant shall pay when due all Applicable Real Estate Taxes, provided, however, in no event shall Tenant be required to pay such Applicable Real Estate Taxes in excess of the applicable Real Estate Tax Cap, as such term is hereinafter defined, with respect to any Lease Year. Said differently, Tenant's total, aggregate liability for Applicable Real Estate Taxes relating to the Leased Premises in any Lease Year shall be the lesser of (i) Applicable Real Estate Taxes actually assessed against the Leased Premises, or (ii) the applicable Real Estate Tax Cap. If Landlord is billed for any Applicable Real Estate Taxes and Landlord elects to pay such taxes directly, Landlord will deliver such bill to Tenant and Tenant will reimburse Landlord for any Applicable Real Estate Taxes within twenty (20) days after receiving such bill from Landlord. For the purposes hereof, "***Applicable Real Estate Taxes***" shall mean, collectively (i) all real estate taxes and assessments applicable to the Leased Improvements, and (ii) Tenant's Pro Rata Share of real estate taxes and assessments applicable to the Land, together with any interest and penalties lawfully imposed thereon as a result of Tenant's late payment thereof. For the purposes hereof, "***Tenant's Pro Rata Share***" shall mean a fraction, the numerator of which is the acreage of the Leased Land and the denominator of which is the total acreage of the Land. As of the Effective Date, Tenant's Pro Rata Share is eighty percent (80%). As used herein, the term ***"Real Estate Tax Cap"*** shall mean: (i) Fifteen Thousand Dollars ($15,000) for the first Lease Year, (ii) Fifteen Thousand Four Hundred Fifty Dollars ($15,450) for the second Lease Year, (iii) Fifteen Thousand Nine Hundred Thirteen and 50/100 Dollars ($15,913.50) during the third Lease Year, (iv) Sixteen Thousand Three Hundred Ninety and 91/100 Dollars ($16,390.91) during the first Lease Year of the Renewal Term (if applicable), and (v) Sixteen Thousand Eight Hundred Eighty Two and 63/100 Dollars ($16,882.63) during the second Lease Year of the Renewal Term (if applicable). In the event this Lease commences on a date other than the first day of any applicable tax year, Applicable Real Estate Taxes and the Real Estate Tax Cap shall be prorated accordingly. In the event the Lease expires on a date other than the last day of any applicable tax year, Applicable Real Estate Taxes and the Real Estate Tax Cap shall be prorated accordingly.

C. **Changes in Method of Taxation.** Landlord and Tenant further agree that if at any time during the Lease Term, the present method of taxation or assessment of real estate shall be changed so that the whole or any part of the real estate taxes, assessment or governmental impositions now levied, assessed or imposed on the Leased Premises shall, in lieu thereof, be assessed, levied, or imposed as a capital levy or otherwise upon the rents reserved herein or any part thereof, or as a tax, corporation franchise tax, assessment, levy or charge, or any party thereof, measured by or based, upon the Leased Premises or on the rents derived therefrom and

imposed upon Landlord, then Tenant shall pay all such taxes, assessments, levies, impositions, or charges.

V. UTILITIES

Tenant shall pay for all water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial and other services and utilities incident to Tenant's use of the Leased Premises, whether or not the cost thereof be a charge or imposition against the Leased Premises. If Landlord is billed for any such amounts and Landlord elects to pay such amounts directly, Landlord will deliver such bill to Tenant and Tenant will reimburse Landlord for any amounts applicable to the Leased Premises within ten (10) days after receiving such bill from Landlord.

VI. MAINTENANCE AND REPAIR; ALTERATIONS

A. **Tenant's Repairs.** Tenant, at its sole expense, shall repair, replace and maintain in operable condition and in compliance with all applicable legal requirements all portions of the Leased Premises. In the event that any repair or maintenance obligation required to be performed by Tenant hereunder may affect the structural integrity of the Leased Improvements (e.g., roof, foundation, structural members of the exterior walls), prior to commencing any such repair, Tenant shall provide Landlord with written notice of the necessary repair or maintenance and a brief summary of the structural component or components of the Leased Premises that may be affected by such repair or maintenance. Without limiting the foregoing, Landlord represents and warrants, and Tenant acknowledges and agrees, that as of the Commencement Date the Leased Improvements are in operable condition. Following the Commencement Date, Tenant, at its sole discretion, cost and expense, may make repairs to the Leased Improvements provided that Tenant otherwise complies with the requirements of this Section VI(A). Notwithstanding anything to the contrary contained herein, if Tenant believes that any repair or any portion of a repair to the Leased Improvements should be characterized as a Capital Improvement (as hereinafter defined), then Tenant may so notify Landlord and request reimbursement from Landlord of the Residual Value (as hereinafter defined) of such repair. Upon such request, Landlord and Tenant shall negotiate in good faith to determine (i) whether such repair should be characterized as a Capital Improvement, and, if applicable, the amortization schedule that should be applied thereto, and (ii) the cost, if any, that would have been required to undertake such repair or portion thereof, but only to the extent necessary to maintain in operable (but no greater) condition the Leased Improvement in question, and the Residual Value, if any, shall be calculated based upon such cost. If after thirty (30) days following Tenant's notice to Landlord the parties are unable to reach an agreement as to whether such repair should be characterized as a Capital Improvement or as to the applicable amortization schedule for such repair, then such repair shall be deemed not to be a Capital Improvement and Tenant shall have no right to reimbursement of the Residual Value hereunder, provided, however, that the Tenant shall thereafter have the right to elect that the dispute be resolved by the Capital Improvements Accountant (as hereinafter defined), in accordance with Section VI(B)(4). If either (i) the parties agree that the repair in question is properly characterized as a Capital Improvement, but are unable to agree on the extent to which the repair undertaken by Tenant was necessary to maintain in operable (but no greater) condition the Leased Improvement in question, within thirty (30) days following Tenant's notice to Landlord, or (ii) the Capital Improvements Accountant determines that such repair is properly characterized as a Capital Improvement but the parties are

unable to agree on the extent to which the repair undertaken by Tenant was necessary to maintain in operable (but no greater) condition the Leased Improvement in question, then, in either case, the Tenant shall thereafter have the right to elect that a qualified engineer employed by the manufacturer of the Leased Improvement in question determine the cost, if any, that would have been required to undertake such repair or portion thereof, but only to the extent necessary to maintain in operable (but no greater) condition the Leased Improvement in question, and the Residual Value, if any, shall be calculated based upon such cost. The decision of such engineer shall be final and binding and its costs and expenses shall be borne equally by Landlord and Tenant.

B. **Tenant Alterations.**

(1) Except with respect to the repairs required or permitted to be made by Tenant under Section VI(A) above, all alterations, additions, and improvements made by or on behalf of Tenant to the Leased Premises ("***Tenant Alterations***") shall be subject to Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Tenant shall provide to Landlord, simultaneously with its request for Landlord's consent to any Tenant Alteration, (i) such information and documentation as is reasonably necessary for Landlord to determine whether to approve such Tenant Alteration, including, if applicable, plans and specifications, and (ii) if Tenant believes that such Tenant Alteration should be characterized as a Capital Improvement (as hereinafter defined), a request for reimbursement from Landlord of the Residual Value (as hereinafter defined) in accordance with Section VI(B)(4) hereof, along with Tenant's proposed amortization schedule. Landlord shall communicate, in writing, its consent or a detailed reason for denial of consent to a Tenant Alteration within thirty (30) days of Landlord's receipt of notice from Tenant of Tenant's intent to make such Tenant Alteration (the "***Alterations Consent Period***"); provided, however, that if Tenant indicates to Landlord that commencement of a Tenant Alteration is required to be made prior to the expiration the Alterations Consent Period, then Landlord shall use its reasonable best efforts to respond to Tenant's request for consent in the time period within which Tenant indicates that Landlord's response is needed. Notwithstanding the foregoing, in the event that Tenant proposes to make a Tenant Alteration which, if delayed, would (i) pose an immediate threat to the safety of Tenant's operations, any person or property and/or (ii) result in a material disruption in production or Tenant's other business operations, Tenant shall immediately notify Landlord of the need to make such a Tenant Alteration, and Landlord shall communicate its consent or a detailed reason for denial of consent to Tenant within three (3) business days' of Landlord's receipt of such notice, provided that the foregoing shall not shorten the "Alterations Consent Period" for the purposes of Section VI(B)(4) hereof.

(2) Tenant shall cause, at its expense, all Tenant Alterations to comply with the insurance requirements set forth in this Lease and with all legal requirements and shall construct at its expense any incidental alteration or modification required by applicable legal requirements as a result of any Tenant Alterations. All Tenant Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and the materials used in such Tenant Alteration shall be of the same or similar quality that exist at the Tenant Improvements as of the Commencement Date. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable

laws, codes, rules and regulations. Prior to beginning such construction, Tenant shall provide Landlord with the identities and mailing addresses of all general contractors performing work at the Leased Premises, and shall use reasonable efforts to provide similar information with respect to any subcontractors and materials suppliers involved in such work, and Landlord may post on and about the Leased Premises notices of non-responsibility pursuant to applicable law. Tenant shall assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Other than to the extent caused by Landlord's gross negligence, or the gross negligence of Landlord's agents, employees or invitees, Tenant further agrees to hold harmless and indemnify Landlord from and against any and all injury, loss, claims or damage to any person or property occasioned by or arising out of the doing of any such work by Tenant or its employees, agents or contractors. Upon completion of any Tenant Alterations, Tenant shall deliver to Landlord statements setting forth the names of all contractors and subcontractors who did work on the Tenant Alterations and thereafter, Tenant shall use its best reasonable efforts to obtain final lien waivers from all such contractors and subcontractors. In the event that Tenant, after using such reasonable best efforts is unable to obtain final lien waivers from any such contractor or subcontractor, Tenant shall provide Landlord with an executed indemnity agreement, in a form reasonably acceptable to Landlord, whereby Tenant agrees to indemnify Landlord from and against any damage that Landlord may incur as a result of liens which such contractors or subcontractors may file as a result of the Tenant Alterations.

(3) Upon surrender of the Leased Premises, all Tenant Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Leased Premises as Landlord's property, except to the extent Landlord requires removal at Tenant's expense of any Tenant Alterations or Landlord and Tenant have otherwise agreed in writing in connection with Landlord's consent to any Tenant Alterations. Notwithstanding the foregoing, in the event Landlord's consent is required for any Tenant Alteration, Landlord shall, upon granting such consent, provide Tenant with written notice that Landlord will require Tenant to remove such Tenant Alteration upon the expiration or earlier termination of this Lease. In the event Landlord fails to provide such notice, Landlord will be deemed to have waived its right to require Tenant to remove such Tenant Alteration upon the expiration or earlier termination of the Lease. Notwithstanding anything to the contrary contained herein, any equipment, machinery, trade fixtures or personal property that Tenant affixes or brings onto the Leased Premises shall remain the property of Tenant at all times and Tenant shall be entitled to remove any such items upon the expiration or earlier termination of this Lease. To the extent removal is required hereunder or Tenant elects to remove its equipment, machinery, trade fixtures or personal property, Tenant shall repair any damage to the Leased Premises caused by such removal.

(4) If Tenant, in its original request for Landlord's consent to a Tenant Alteration, states that it believes that such Tenant Alteration should be characterized as a Capital Improvement and requests reimbursement from Landlord of the Residual Value, then during the Alterations Consent Period, Landlord and Tenant shall negotiate in good faith to determine whether such Tenant Alteration should be characterized as a Capital Improvement and, if applicable, the amortization schedule that should be applied thereto. If Landlord and Tenant are unable to reach an agreement as to whether such Tenant Alteration should be characterized as a

Capital Improvement or, if applicable, the amortization schedule that should be applied thereto, on or before the expiration of the Alterations Consent Period, then such Tenant Alteration shall be deemed not to be a Capital Improvement and Tenant shall have no right to reimbursement of the Residual Value hereunder, provided, however, that Tenant shall thereafter have the right to elect that the dispute be resolved by an independent certified public accountant reasonably acceptable to Landlord and Tenant (the "***Capital Improvements Accountant***"). The costs and expenses of the Capital Improvements Accountant shall be borne equally by Landlord and Tenant, and the decision of the Capital Improvements Accountant, either with respect to whether the Tenant Alteration is properly characterized as a Capital Improvement, or the amortization schedule that should be applied thereto, shall be final and binding upon the parties hereto. For the purposes hereof, ***"Capital Improvements"*** shall mean any Tenant Alterations that are of the type that should be capitalized in accordance Generally Accepted Accounting Principles ("***GAAP***") consistently applied. For the purposes hereof, "***Residual Value***" shall mean the residual value, as determined by an agreed-upon amortization schedule or, if applicable, the amortization schedule selected by the Capital Improvements Accountant, of any Capital Improvements as of the date of the expiration of the Lease Term. To the extent that any Tenant Alteration is agreed by the parties to be a Capital Improvement, or determined by the Capital Improvements Accountant to be a Capital Improvement, Landlord shall reimburse Tenant for the Residual Value of such Capital Improvement as of the date of the expiration of the Lease Term, and such payment shall be made within sixty (60) days after the expiration or earlier termination of the Lease Term. If Landlord does not pay any portion of the Residual Value when due and continues such failure for ten (10) days after Landlord receives written notice of such failure from Tenant then such unpaid amounts shall thereafter bear interest at an annual rate of eight percent (8%), or the highest annual rate permitted by applicable usury law, whichever is lower, until paid. Further, in the event the Residual Value owing hereunder is not paid when due, Landlord and Tenant agree that Tenant will incur additional administrative expenses, the amount of which will be difficult if not impossible to determine. Accordingly, in the event any portion of the Residual Value is not paid within ten (10) days of Landlord's receipt of written notice from Tenant noting any such deficiency, Landlord shall pay to Tenant an additional, one-time late charge for any such late payment in the amount of five percent (5%) of such payment. The provisions of this Section VI(B)(4) shall survive expiration or earlier termination of this Lease. In the event that Tenant is entitled to reimbursement of the Residual Value in accordance with the terms of this Section VI(B)(4), Shelly, Tilcon and Pennsy shall be jointly and severally liable for such reimbursement of the Residual Value and any other sums due under this Section VI(B)(4).

(5) Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby acknowledge that Tenant desires to make the Capital Improvements listed on Exhibit E attached hereto and made a part hereof (the ***"Initial Capital Improvements"***) and Landlord hereby consents to such Initial Capital Improvements and agrees to reimburse Tenant for the Residual Value of such Capital Improvements within sixty (60) days after the expiration or earlier termination of this Lease. The provisions of Section VI(B)(4) with regard to any late payments by Landlord shall also be applicable to any late payments by Landlord under this Section VI(B)(5). The provisions of this Section VI(B)(5) shall survive expiration or earlier termination of this Lease. In the event that Tenant is entitled to reimbursement of the Residual Value in accordance with the terms of this Section VI(B)(5), Shelly, Tilcon and Pennsy shall be

jointly and severally liable for such reimbursement of the Residual Value and any other sums due under this Section VI(B)(5).

VII. LANDLORD ACCESS

Upon reasonable advance notice to Tenant (except in the event of emergency, in which case no notice shall be required) Landlord and its agents shall be permitted to enter the Leased Premises to (i) examine the Leased Premises, (ii) show the Leased Premises to prospective purchasers of the Leased Premises and/or Land, (iii) inspect such repairs, improvements, alterations or additions thereto as may be required or allowed under the provisions of this Lease, (iv) audit Tenant's use of Aggregates and Hard Stone (as defined in Section VIII(A)(1) below) and (v) inspect Tenant's inventory of Aggregates in accordance with Section VIII(A)(4). In addition, throughout the Lease Term, Landlord shall have the right to enter upon and access the Leased Land in order to utilize and access the Stockpiles (as hereinafter defined), provided that Landlord shall not materially interfere with Tenant's use, occupancy or operations at the Leased Premises.

VIII. TENANT'S PURCHASE AND PAYMENT OBLIGATIONS

A. Aggregate.

(1) During the Lease Term, Landlord shall have the exclusive right to sell to Tenant, and Tenant shall exclusively purchase from Landlord, all Aggregates (as defined below) that Tenant requires for the production of asphalt at the Leased Premises (the "***Aggregate Requirements Purchase***"). For purposes of this Lease, "***Aggregates***" shall mean crushed stone now or in the future customarily used for the production of asphalt, including without limitation, screenings, sand, and 1/4 inch rice, #7, #8, #10, #57 and #67 stone, but shall not include "hard stone" of a type not available for purchase from Landlord ("***Hard Stone***"). Tenant shall have the right to purchase Hard Stone from outside suppliers. For purposes of this Section VIII only, the term "Landlord" shall collectively mean Shelly, Tilcon, Pennsy and their respective affiliates engaged in the production of Aggregates.

(2) Without limiting the foregoing, during each Lease Year, Tenant and/or its Affiliates (as defined below) shall collectively purchase from Landlord a total of at least 375,000 tons of Aggregates, including at least 300,000 tons of stone and 75,000 tons of sand, (collectively, the "***Minimum Aggregate Purchase***"); provided, that only Aggregates purchased by Tenant and/or its Affiliates for delivery or pick-up within the state of Delaware or at the Delmar, MD terminal shall count toward the Minimum Aggregate Purchase. For purposes of this Section VIII(A) and Section XII of this Lease, Affiliates shall mean (i) any natural person or legal entity that directly or indirectly controls, is controlled by or is under common control with Tenant, (ii) any natural person or legal entity to whom Tenant assigns or subleases all or any portion of the Leased Premises in accordance with Section XVII hereof, including, without limitation, David A. Bramble Inc. ("***Bramble***), or (iii) to the extent that Bramble subleases any Individual Property in accordance with Section XVII hereof, any natural person or legal entity that directly or indirectly controls, is controlled by or is under common control with Bramble, but only to the extent that such person or entity purchases such Aggregates for use in production of asphalt.

(3) The purchase prices for the Aggregates shall initially be as set forth on Exhibit F attached hereto, and on the first day of each subsequent Lease Year, such prices, shall be increased by the greater of (i) three percent (3%) for sand products and three and a half percent (3.5%) for stone products and (ii) the year-over-year increase in the producer price index for broken and crushed rock as published by the United States Department of Labor, Bureau of Labor Statistics. Notwithstanding anything to the contrary contained in this Lease, the purchase prices for the Aggregates sold by Landlord to Tenant during the Initial Term or any Renewal Term shall be no greater than the most favorable pricing for Aggregates made available by Landlord in the state of Delaware or at the Delmar, MD terminal, as applicable, to other producers of asphalt during such Lease Year. When and if the Aggregates are delivered to Landlord's Delaware or Delmar, MD terminals by rail, the fuel surcharge schedule attached as Exhibit G hereto shall apply for deliveries of Aggregates made to such terminals during months in which the average price per barrel of West Texas Intermediate crude oil exceeds the applicable thresholds set forth on Exhibit G. During each Lease Year, Tenant shall be required to pay Landlord for Aggregates equal to at least the Minimum Aggregate Purchase, at the then-applicable purchase prices for the Aggregates; provided, however, that if Tenant, in order to satisfy the Minimum Aggregate Purchase, elects to pay for Aggregates that are not delivered to Tenant, then the payment for such undelivered Aggregates shall be, during the initial Lease Year, $4.50/ton for sand and $3.50/ton for stone, with such amounts to increase by three percent (3%) during each subsequent Lease Year; provided, further that such amounts shall in no event be subject to the fuel surcharges contemplated by this Section VIII(A)(3). All prices shall be F.O.B. at the applicable supply location. Payment terms are net 60 days from date of Seller's invoice.

(4) During each Lease Year, on a quarterly basis, Tenant shall provide Landlord with a non-binding, good faith estimate of its anticipated Aggregates requirements for the following three months. Whenever practical, in Tenant's reasonable discretion, Tenant shall maintain inventory of Aggregates sufficient for Tenant to conduct its operations for at least three (3) business days without further supply of Aggregates. Tenant shall use commercially reasonable efforts to provide Landlord with purchase orders for all Aggregates to be purchased under this Lease at least five (5) business days prior to the Tenant's required delivery date for such Aggregates. If Tenant submits a purchase order for Aggregates in compliance with the preceding sentence and Landlord is not able to fulfill such order (either as to the quantity or size of Aggregates ordered or the quality of Aggregates required to be delivered) within five (5) business days of such submission, then Landlord shall promptly (but not later than the close of business on the fourth business day of such five (5) business day period) notify Tenant of the amount or type of Aggregates which Landlord cannot provide (***"Landlord's Inability Notice"***), and Tenant shall, for such individual order, have the right to acquire from third parties that quantity or type of Aggregates which Landlord has advised it cannot supply. If Tenant purchases Aggregates from a third-party supplier in accordance with the preceding sentence, the quantity of Aggregates acquired from such third-party supplier shall be credited against the Minimum Aggregate Purchase and, unless (i) Tenant is in breach of this Lease and such breach has continued beyond any applicable notice and grace periods provided herein, (ii) a Force Majeure Event (as hereinafter defined) has occurred or (iii) Landlord has delivered a Temporary Stoppage Notice (as hereinafter defined) to Tenant, Tenant shall have the right, at its option, either to be reimbursed by Landlord for the amount by which the price paid by Tenant for such Aggregates exceeds the then current applicable purchase price otherwise payable under this Lease, or to deduct such difference from the price otherwise payable by Tenant to Landlord for subsequent

orders of Aggregates (either, a "***Landlord Reimbursement***"). Tenant agrees to use reasonable efforts, consistent with Tenant's business obligations to its customers and its performance schedules, to purchase such Aggregates from the third-party supplier offering the lowest prices, for delivery at the same location as requested in Tenant's order to Landlord, for the type and quantity of Aggregates that Landlord is unable to supply. Unless (i) Tenant is in breach of this Lease and such breach has continued beyond any applicable notice and grace periods provided herein, (ii) a Force Majeure Event has occurred or (iii) Landlord has delivered a Temporary Stoppage Notice to Tenant, if, after Tenant submits a purchase order for Aggregates in accordance with the above, Landlord fails to timely deliver Landlord's Inability Notice and thereafter Landlord fails to fulfill Tenant's order (either as to the quantity or size of Aggregates ordered or the quality of Aggregates required to be delivered), in addition to Tenant's remedies set forth herein, Tenant shall be entitled to any and all remedies at law or in equity resulting from such failures, including, without limitation, consequential damages. Notwithstanding anything to the contrary in this Lease, Landlord shall not be obligated to supply Aggregates to Tenant under this Lease during the continuance of a default by Tenant (i) in the payment of Annual Rent or Additional Rent, (ii) in the payment of amounts due for previous purchases of Aggregates or (iii) under Section XII of this Lease, in any event beyond any notice and grace periods provided herein.

(5) If, at any point, Landlord determines that, for reasons outside Landlord's reasonable control, it can only supply the Aggregates required by Tenant at a monetary loss, Landlord shall promptly provide written notice to Tenant of such inability (a "***Temporary Stoppage Notice***"). In such event, Tenant will (i) have the right to acquire Aggregates from third parties until such time as Landlord provides written notice to Tenant that it is able to resume its supply of Aggregates to Tenant and (ii) no longer be obligated to purchase Aggregates equal to the Minimum Aggregate Purchase for the then-current Lease Year.

(6) All Aggregates sold by Landlord to Tenant under this Section VIII(A) shall comply with all applicable AASHTO standards (to the extent that there is an AASHTO standard for such material) and any relevant DOT specifications for Tenant's intended use of the Aggregates in all material respects. Tenant shall have the right to reject any Aggregates that do not comply with applicable AASHTO and any relevant DOT standards for Tenant's intended use of the Aggregates in all material respects. In order to reject a shipment of Aggregates, Tenant must (i) give notice to Landlord of Tenant's intent to reject such shipment within five (5) business days after receipt together with a written indication of the reasons for such possible rejection and (ii) as promptly as possible thereafter, provide Landlord notice of final rejection and the full basis therefor. If no such notice of intent to reject a shipment of Aggregates is received within five (5) business days of Tenant's receipt of the Aggregates, Tenant shall be deemed to have accepted such delivery of Aggregates. After notice of Tenant's intent to reject a shipment of Aggregates is given, Tenant shall cooperate with Landlord in determining whether such rejection is justified. In any event, Tenant shall pay for the shipment of Aggregates as otherwise provided herein and, if such rejection is determined to be justified, Tenant shall be entitled to a refund or a credit, as determined by Tenant, of the purchase price (including any delivery charges and any other out of pocket expenses that Tenant incurs in connection with the transport of the Aggregates) of properly rejected Aggregates; provided that if Landlord disputes the rejection, the refund or credit, as applicable, shall be made, if at all, at the time the dispute is finally resolved. Landlord shall notify Tenant as promptly as possible whether it accepts

Tenant's basis for any rejection. If after thirty (30) days of Tenant's delivery of its final rejection notice, Landlord and Tenant are unable to agree on whether such rejection is justified, Landlord and Tenant shall engage a mutually agreeable independent third party with knowledge of the applicable AASHTO and any relevant DOT standards to make a final determination as to whether such rejection is justified and such determination shall be binding on Landlord and Tenant. The non-prevailing party in such dispute shall be required to pay the costs and expenses relating to engaging such independent third party. Whether or not Landlord accepts Tenant's basis for rejection, promptly on receipt of a notice of rejection, Landlord shall use its commercially reasonable efforts, at Tenant's request, to provide replacement Aggregates in accordance with this Lease, which shall be purchased by Tenant subject to the terms and conditions of this Lease.

(7) Nothing in this Section VIII(A) shall be construed to limit Landlord's right to sell Aggregates to any third-party.

(8) Not more than one time during any Lease Year, Landlord shall have the right, at its sole discretion and expense, to audit Tenant's use of Aggregates and Hard Stone to ensure Tenant's compliance with the requirements of this Section VIII(A). Landlord shall provide Tenant with at least three (3) business days advance written notice of its intent to conduct such audit and Tenant shall have the right to have a representative present for all or any portion of such audit. Any such audit shall not materially interfere with Tenant's use, occupancy or operations at the Leased Premises and shall be conducted during Tenant's normal business hours. Upon completion of such audit, Landlord or Landlord's agents, employees, and contractors conducting such audits shall promptly restore the Leased Premises and repair any damage to the Leased Premises arising from such audit so the Leased Premises shall be in substantially the same condition as existed prior to such audit. Upon completion of such audit, Landlord shall provide Tenant with copies of any written reports or assessments resulting therefrom.

B. **Force Majeure.**

(1) For purposes of this Lease, a "***Force Majeure Event***" is defined as any cause or causes beyond the reasonable control and without the intentional fault or negligence of the party affected thereby, which shall include acts of god, labor strife, strikes or lockouts, changes in legal requirements, including, without limitation zoning laws and ordinances, unusual accumulations of snow or ice, floods, interruptions of transportation, interruptions or breakdowns of public utility power facilities, embargoes, acts of civil authority (including state and federal agencies, legislative bodies, and courts of competent jurisdiction), acts of military authority, war, acts of terrorism, insurrections, riots or material breakdowns (including shutdowns for emergency maintenance or the like which may be necessary to mitigate or eliminate the imminent threat of explosions, fires or mechanical breakdowns), condemnation or acts of eminent domain or other causes of similar nature.

(2) In the event Tenant's operations at any Individual Property are adversely affected by a Force Majeure Event, Tenant shall not be obligated to purchase or take delivery of Aggregates hereunder and thereafter Landlord and Tenant shall negotiate in good faith to adjust the Minimum Aggregate Purchase in a manner that properly accounts for the impact of such Force Majeure Event on Tenant's operations. In the event that a change in any applicable zoning

code, law or ordinance makes, after exhausting any applicable appeal rights, Tenant's Permitted Use (defined below) and operation of any Individual Property an impossibility, this Lease shall terminate with respect to such Individual Property upon the date that the final determination of such impossibility is made. Upon such termination, the Applicable Rent shall cease to accrue with respect to such Individual Property, Landlord shall either return to Tenant (or give Tenant a credit against other sums becoming due hereunder) the amount of the Applicable Rent paid in advance by Tenant, and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase, as hereinafter defined.

C. **Records**. Tenant shall keep true, accurate and complete in all material respect records and weight tickets of all asphalt produced by Tenant at the Leased Premises. Landlord or its agents shall have access, upon not less than five (5) business days advance written notice to Tenant and in no event more than once during each Lease Year, to audit, inspect and make copies of Tenant's books of account, hauling tickets, shipping weights and volumes with respect to asphalt produced at the Leased Premises and insofar as is necessary or helpful to verify the amounts of Aggregates utilized by the Leased Premises. All such records shall be maintained by Tenant for at least three (3) years after the period to which they relate. Notwithstanding anything to the contrary contained herein, Landlord agrees to keep confidential the results of any such audit conducted by Landlord or its auditors and any information obtained by Landlord during the course of such audit, and that such information shall only be disclosed to (i) third parties who must have such information in order to perform accounting, financial or legal services for Landlord, (ii) governmental authorities if required by law, (iii) lenders or prospective lenders of Landlord or (iv) prospective purchasers of Landlord's interest in this Lease (who will likewise be required to maintain the confidentiality of such information). Furthermore, any auditor or accountant engaged by Landlord to review or audit Tenant's books shall be hired on an hourly basis and not on a contingency basis.

D. **Inventory**. On the Commencement Date, Landlord agrees to sell to Tenant against payment therefor certain inventories of stone, sand, oil, shingles and RAP located as of the Commencement Date at the Leased Premises (the "***Inventory***"). Exhibit H lists the amounts and value of the Inventory to be purchased by Tenant hereunder. Tenant shall pay Landlord $2,450,000 for the Inventory, $800,000 of which shall be paid on the Commencement Date (the "***Commencement Date Inventory Payment***") and the remainder of which shall be paid in two equal installments of $825,000, with the first such payment to be made on or prior to August 31, 2009, and the second such payment to be made on or prior to January 31, 2010. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees that Landlord owns certain stockpiles of materials located upon the Leased Land (the "***Stockpiles***"), and unless such Stockpiles are specifically listed on Exhibit H attached hereto, such Stockpiles shall remain the property of Landlord throughout the Lease Term and Tenant shall have no rights with respect thereto.

E. **Construction Contracts.** Subject to the terms and conditions contained in Exhibit I and pursuant to the Assignment and Assumption Agreement attached hereto as Exhibit J, on the Commencement Date, Pennsy will assign to Tenant and Tenant will assume each of the contracts, purchase orders and other agreements listed on Exhibit K attached hereto (the "***Construction Contracts***"). Notwithstanding the foregoing, nothing in this Agreement or the Assignment and Assumption Agreement shall be construed as an agreement to assign any

Construction Contract that by its terms or pursuant to applicable law is not capable of being assigned or transferred without the consent or waiver of a third party unless and until such consent or waiver shall be given. Landlord and Tenant shall use their reasonable best efforts and shall cooperate in good faith to obtain such consents and waivers and to resolve the impediments to the assignment or transfer of the Construction Contracts. In the event that any consents or waivers are not obtained prior to the date upon which work under a given Construction Contract is required to be commenced under such Construction Contract, then Landlord and Tenant shall cooperate in good faith to enter into any lawful and commercially reasonable arrangement, as Landlord and Tenant may agree and which would not reasonably be expected to give rise to a breach of such Construction Contract, under which Tenant would obtain the economic claims, rights and benefits under such Construction Contract and assume the economic burdens and obligations with respect to such Construction Contract.

F. **Commencement Date Payments.** On the Commencement Date, Tenant shall pay the first installment of Annual Rent and the Commencement Date Inventory Payment to Landlord, in one lump sum, by delivery of immediately available funds.

IX. INSURANCE, INDEMNITY AND ENVIRONMENTAL

A. **Insurance.** Effective as of the Commencement Date, and continuing during the Lease Term, Tenant, at its expense, shall obtain and maintain in full force the following insurance coverage:

(1) all risk property insurance including, without limitation, theft, sprinkler leakage and boiler and machinery coverage and earthquake, fire and flood coverage, covering the full replacement cost of the Leased Premises. Tenant shall immediately make available to Landlord all such proceeds from such insurance for the replacement of the Leased Improvements, and Tenant shall use such additional proceeds to replace trade fixtures, furniture, inventory and other personal property and for the restoration of Tenant's improvements, alterations, and additions to the Leased Premises. Landlord shall be named as loss payee with respect to the Leased Premises and all alterations, additions, or improvements of the Leased Premises other than Tenant's trade fixtures, furniture, inventory and other personal property;

(2) worker's compensation insurance in accordance with the laws of the state in which the Leased Premises are located with employer's liability insurance in an amount not less than $1,000,000.00;

(3) business interruption, loss of income and extra expense insurance covering all periods of interruption, with limits not less than one hundred percent (100%) of all charges payable by Tenant under this Lease for a period of twelve (12) months;

(4) business automobile liability insurance covering owned, hired and non-owned vehicles with limits of $2,000,000.00 combined single limit per occurrence.

(5) commercial general liability insurance which insures against claims for bodily injury, personal injury, advertising injury, and property damage occurring in or about the Leased Premises. Such commercial general liability insurance shall afford, at a minimum,

$2,000,000.00 per occurrence and $5,000,000.00 in the aggregate, provided that such limit may be satisfied by a combination of primary liability policies and umbrella policies. Such commercial general liability insurance and such umbrella policies shall name Landlord, its trustees, officers, directors, members, agents, and employees, and Landlord's mortgagees, as additional insureds. This coverage shall include blanket contractual liability, broad form property damage liability, premises-operations and products-completed operations and shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke, or fumes from a hostile fire, and a contractual liability endorsement, and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). Such insurance shall be written on an occurrence and not a claims-made basis, and contain a standard separation of insureds provision; and

(6) pollution liability insurance to insure claims for pollution damage at the Leased Premises arising from Tenant's operations. Such insurance shall be written on a claims-made basis, with minimum limits of $1,000,000.00 per claim, and shall remain in effect for at least two years after the expiration or termination of this Lease. Such insurance shall name Landlord, its trustees, officers, directors, members, agents, and employees, and Landlord's mortgagees, as additional insureds. The provisions of this Section IX(A)(6) shall survive the expiration or termination of this Lease.

All policies required to be carried by Tenant hereunder shall be issued by and binding upon an insurance company licensed to do business in the state in which the Leased Premises are located with a rating of at least "A - X" or better as set forth in the most current issue of Best's Insurance Reports, unless otherwise approved by Landlord in writing. Tenant shall not do or permit anything to be done that would invalidate the insurance policies required herein. Liability insurance maintained by Tenant shall be primary coverage without right of contribution by any similar insurance that may be maintained by Landlord. Certificates of insurance, reasonably acceptable to Landlord, evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord prior to delivery or possession of the Leased Premises and within ten (10) days following the commencement of each subsequent Lease Year. Certificates of insurance shall include an endorsement for each policy showing that Landlord, its trustees, officers, directors, members, agents, and employees, Landlord's mortgagees are included as additional insureds on liability policies and that Landlord is named as loss payee on the property insurance. In the event that Tenant fails to comply with the foregoing insurance requirements or to timely deliver to Landlord copies of such policies and certificates evidencing the coverage required herein, Landlord, in addition to any remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand all costs thereof. The limits of insurance required by this Lease, or as carried by Tenant, shall not limit the liability of Tenant or relieve Tenant of any obligation thereunder. Any deductibles selected by Tenant shall be the sole responsibility of Tenant. Should Tenant engage the services of any contractor to perform work on the Leased Premises, unless such contractor is covered by Tenant's insurance policies, Tenant shall ensure that such contractor carries commercial general liability, business automobile liability, umbrella/excess liability, worker's compensation and employers liability coverages in reasonable and customary amounts. The above requirements shall apply equally to any subcontractor engaged by any such

contractor unless otherwise covered by either Tenant's insurance polcies or the insurance policies of such contractor.

Each of Tenant and Landlord hereby waives all rights of recovery and shall cause its respective insurers to waive their rights of subrogation against Landlord and any of Landlord's agents and employees or Tenant and of Tenant's agents and employees, as applicable, for loss or damage covered by any of the property insurance maintained by Tenant or Landlord, as applicable, pursuant to this Lease.

Within ten (10) days following Tenant's request, but not more than once during each Lease Year, Landlord will provide Tenant with a certificate of insurance evidencing workers compensation, auto liability and general liability coverage, and naming Tenant as an additional insured on such general liability policy for any incident caused by or arising out of Landlord's activities while accessing Landlord's Stockpiles.

B. **Indemnification.**

(1) Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord, and Landlord's members, officers, directors, agents, employees and contractors, from and against any and all claims, demands, losses, liabilities, causes of action, suits, judgments, damages, costs and expenses (including reasonable attorneys' fees) for (i) any injury to person or damage to or loss of property on or about the Land or Leased Premises caused by Tenant, its employees, contractors, assignees, subtenants or invitees, or arising out of Tenant's use of the Land or Leased Premises, except in the event of gross negligence or willful misconduct by Landlord or (ii) actual violation of applicable laws, statutes, regulations, ordinances, rules, codes, judgments, permits, authorizations, orders, binding policies or other similar binding requirements of any governmental authority, agency or court by Tenant, its employees, contractors, assignees, subtenants or invitees, including any such violation arising out of the act of assigning or subletting this Lease. This indemnity provision shall survive termination or expiration of this Lease. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this indemnity. This indemnity provision excludes Tenant's indemnity obligations with respect to environmental matters which shall be governed solely by Section IX(C) below.

(2) Landlord agrees to indemnify, defend (with counsel reasonably acceptable to Tenant) and hold harmless Tenant, and Tenant's members, officers, directors, agents, employees and contractors, from and against any and all claims, demands, losses, liabilities, causes of action, suits, judgments, damages, costs and expenses (including reasonable attorneys' fees) for (i) any injury to person or damage to or loss of property on or about the Land or the Leased Premises caused by Landlord, its employees, contractors, assignees, subtenants or invitees, except in the event of gross negligence or willful misconduct by Tenant, or (ii) actual violation of applicable laws, statutes, regulations, ordinances, rules, codes, judgments, permits, authorizations, orders, binding policies or other similar binding requirements of any governmental authority, agency or court by Landlord, its employees, contractors, assignees, subtenants or invitees, including any such violation arising out of the act of assigning this Lease. This indemnity provision excludes Landlord's indemnity obligations with respect to environmental matters which shall be governed solely by Section IX(C) below.

(3) Landlord agrees to indemnify, defend (with counsel reasonably acceptable to Tenant) and hold harmless Tenant, and Tenant's members, officers, directors, agents, employees and contractors, from and against any and all claims, demands, losses, liabilities, causes of action, suits, judgments, damages, costs and expenses (including reasonable attorneys' fees and Tenant's actual out of pocket costs related to relocating such materials) related to any encroachment of materials, Inventory or Aggregates upon the property adjoining the southern side of the Georgetown Property, but only to the extent such encroachment exists as of the Commencement Date.

C. **Environmental.**

(1) Except in compliance with Environmental Requirements, Tenant hereby represents, warrants and covenants that Tenant will not produce, use, store or generate any Hazardous Materials (other than such materials customarily used in the production of asphalt and in compliance with Environmental Requirements) on, under or about the Leased Premises or Land without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole discretion. Tenant, at its sole cost and expense, shall operate its business at the Leased Premises in compliance with all Environmental Requirements and all requirements of this Lease. Tenant shall promptly deliver to Landlord a copy of any written notice of violation relating to the Leased Premises of any Environmental Requirement. The term "***Environmental Requirements***" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, permits, authorizations, orders, binding policies or other similar binding requirements of any governmental authority, agency or court regulating or relating to health, safety, or environmental conditions on, under, or about the Land or Leased Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including, without limitation, nuisance or trespass, and any other requirements of this Lease. The term "***Hazardous Materials***" means and includes any substance, material, waste, pollutant, or contaminant that is regulated under any Environmental Requirement, including, without limitation, any solid or hazardous waste, hazardous substance, asbestos, petroleum (including crude oil or any fraction thereof, natural gas, synthetic gas, polychlorinated biphenyls (PCBs), and radioactive material).

(2) Tenant shall indemnify, defend, and hold Landlord and Landlord's members, officers, directors, agents, employees and contractors harmless from and against any and all losses (including, without limitation, diminution in value of the Land or Leased Premises and loss of rental income from the Leased Premises), claims, demands, liabilities, actions, suits, damages, expenses (including, without limitation remediation, removal, repair, corrective action, or cleanup expenses actually incurred), and costs (including, without limitation, reasonable, actually incurred attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the Leased Premises or disturbed by Tenant, its agents, employees, contractors, subtenants, assignees or invitees in breach of the requirements of this Lease, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord, its members, agents, employees, officers, or directors as a result of any release of Hazardous Materials by

Tenant, its agents, employees, contractors, subtenants, assignees or invitees, or any breach of Environmental Requirements by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. This indemnity shall survive the expiration and any termination of this Lease.

(3) Landlord shall indemnify, defend, and hold Tenant and Tenant's members, officers, directors, agents, employees, and contractors harmless from and against any and all losses, claims, demands, liabilities, actions, suits, damages, expenses (including, without limitation, remediation, removal, repair, corrective action or cleanup expenses actually incurred), and costs (including, without limitation, reasonable attorneys' fees, consultant fees or expert fees actually incurred) which are brought or recoverable against, or suffered or incurred by Tenant, its members, agents, employees, officers, or directors as a result of any violations of Environmental Requirements by Landlord, its agents, employees, contractors, subtenants, assignees or invitees. This indemnity shall survive the expiration and any termination of this Lease.

X. USE OF LEASED PREMISES BY TENANT

The Leased Premises may be occupied and used by Tenant exclusively for the production, storage, transport, manufacture, distribution and sale of asphalt bituminous products and all matters related or incidental thereto (***"Tenant's Permitted Use"***). Nothing herein contained shall give Tenant the right to use the Leased Premises for any other purpose or to sublease, assign or license the use of the Leased Premises to any sublessee, assignee or licensee, which or who shall use the Leased Premises for any other use. Tenant will use the Leased Premises in a careful, safe and proper manner and will not commit waste (other than to the extent customarily caused in the exercise of Tenant's Permitted Use), overload the floor or structure of the Leased Improvements or subject the Leased Premises to use that would damage the Land or Leased Premises (other than to the extent customarily caused in exercising Tenant's Permitted Use). Except incidental to Tenant's Permitted Use, Tenant shall not take any other action that would constitute an unreasonable nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any adjacent property owners (taking into account the nature of Tenant's Permitted Use). Outside storage, including without limitation, storage of trucks and other vehicles, is only permitted in strict compliance with all legal requirements. Tenant, at its sole expense, shall comply with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Leased Premises. Tenant will not use or permit the Leased Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance or increase the insurance risk. Landlord represents that Tenant's Permitted Use will not void Landlord's insurance or increase any premiums for Landlord's insurance and acknowledges that Tenant shall not be liable for any damages that arise out of Landlord's insurance being voided or premiums for insurance increases arising out of Tenant's Permitted Use of the Leased Premises.

XI. CASUALTY AND CONDEMNATION

A. **Casualty**. If at any time during the Lease Term any Individual Property is damaged by a fire or other casualty, Landlord shall notify Tenant within thirty (30) days after Landlord becomes aware of such damage as to the amount of time it will take to restore such

Individual Property, as estimated by an independent consultant selected by Landlord. If such Individual Property shall be so damaged by fire or other casualty as to render such Individual Property substantially untenantable and the restoration time is estimated to exceed six (6) months, Landlord or Tenant may elect to terminate this Lease only with respect to such Individual Property upon notice to the other party given no later than ten (10) days after Landlord's initial notice of the estimated time to repair, in which event the Applicable Rent for such Individual Property due hereunder shall be abated during the unexpired portion of the Lease Term effective as of the date of such fire or other casualty, Landlord shall, at Tenant's election either refund or provide Tenant with a credit in the amount of the pro-rated portion of the Applicable Rent paid by Tenant in advance, and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase. If neither Landlord nor Tenant elects to terminate this Lease with respect to such Individual Property or the Individual Property is not rendered substantially untenantable or the restoration time is estimated to be six (6) months or less, then, subject to Landlord's receipt of sufficient insurance proceeds from Tenant's insurers, Landlord shall promptly restore the Individual Property excluding the improvements installed by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure Events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Individual Property and commence doing business in accordance with this Lease. During any restoration, the Applicable Rent due hereunder shall be abated and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase in the event and to the extent the Individual Property, or any portion thereof is unfit for the operation of Tenant's Permitted Use thereon. Notwithstanding the foregoing, if at any time during the Lease Term an Individual Property is totally or partially damaged or destroyed, the loss to Landlord from which is not fully covered by Tenant's insurance, Landlord may, at its option, elect to either repair such damage or destruction or elect to terminate this Lease with respect to such Individual Property upon delivery of notice to Tenant within thirty (30) days following the later of Landlord's initial notice to Tenant regarding the estimated time to repair or Landlord's notice regarding the availability (or lack thereof) of insurance proceeds, and in the event of any such termination, the Applicable Rent due hereunder shall be abated and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase for the unexpired portion of the Lease Term effective as of the date of such fire or other casualty. Notwithstanding any contrary provisions of this Lease, Landlord shall not be responsible for any loss of or damage to property of Tenant or of others located on the Leased Premises, except where caused by the willful act or grossly negligent acts or omissions of Landlord, or Landlord's agents, employees, invitees or contractors.

B. **Condemnation.** If the whole or any part of any Individual Property should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, a "***Taking***") and the Taking would prevent or materially interfere with the use of such Individual Property for the purposes contemplated herein, this Lease shall (i) if the Taking is of the whole of the Individual Property, terminate with respect to such Individual Property and the Applicable Rent shall be abated and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase for the unexpired portion of this Lease, effective when the physical Taking

of said Individual Property shall occur; and (ii) if the Taking is of less than the whole of any Individual Property, this Lease shall terminate as to such part of the Individual Property taken and the Applicable Rent shall be abated to the extent of such taken portion and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase to the extent of such taken portion during the unexpired portion of this Lease, effective when the physical Taking of such Individual Property shall occur.

C. **Applicable Minimum Aggregate Purchase.** For the purposes hereof, "***Applicable Minimum Aggregate Purchase***" shall mean, with respect to an Individual Property, (i) during the first Lease Year of the Lease Term, twenty-five percent (25%) of the Minimum Aggregate Purchase, and (ii) thereafter, a fraction, the numerator of which is the amount of Aggregate purchased by Tenant from Landlord for pick up and/or delivery and use at the applicable Individual Property from the Commencement Date until the applicable date of determination, and the denominator of which is the total amount of Aggregate purchased by Tenant from Landlord pursuant to this Lease from the Commencement Date until the applicable date of determination.

XII. RESALE OF AGGREGATES

In consideration of, among other things, Landlord's execution of this Lease, neither Tenant nor Tenant's Affiliates nor Tenant's assignees or sublessees will at any point during the Lease Term, directly or indirectly, re-sell to any third party any Aggregates purchased from Landlord under this Lease; provided, that Tenant may re-sell Aggregates to its Affiliates, as such term is defined in Section VIII above, and, to the extent that Bramble subleases any Individual Property in accordance with Section XVII hereof, Bramble may re-sell Aggregates to any natural person or legal entity that directly or indirectly controls, is controlled by or is under common control with Bramble, but only to the extent that such person or entity purchases such Aggregates for use in production of asphalt.

XIII. LIENS

(1) Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord in the Land or Leased Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Leased Premises and that it will indemnify, defend, save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Land or Leased Premises or under this Lease caused by or on behalf of Tenant. Tenant shall give Landlord prompt written notice of the placing of any lien or encumbrance against the Land or Leased Premises, and cause such lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof; provided, however, that Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such thirty (30) day period.

(2) Notwithstanding anything to the contrary contained in the Lease, Landlord acknowledges and agrees that Tenant shall have the right to mortgage or collaterally assign its leasehold interest in the Leased Premises or any portion thereof to any of Tenant's lenders, without the need for Landlord's approval or consent, provided, however, that (i) Tenant shall not mortgage or encumber any interest of Landlord in the Land or the Leased Premises, (ii) Tenant shall provide Landlord with at least ten (10) days prior written notice of such mortgage or collateral assignment, and (iii) notwithstanding any such mortgage or collateral assignment, or the subsequent foreclosure or other similar exercise of remedies against Tenant's leasehold interest in the Leased Premises, Tenant shall remain primarily liable for all of its obligations under this Lease and shall not be relieved from its primary obligations hereunder to Landlord, including, but not limited to the payment of all Annual Rent and Additional Rent.

XIV. DEFAULT

In the event that:

(1) Tenant shall fail to pay, when due, any installment of Annual Rent or Additional Rent hereunder where such failure continues for thirty (30) days after written notice thereof to Tenant; or

(2) Tenant shall (i) make a general assignment for the benefit of creditors; (ii) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "***proceeding for relief***"); (iii) become the subject of any proceeding for relief which is not dismissed within ninety (90) days of its filing or entry; or (iv) be dissolved or otherwise fail to maintain its legal existence; or

(3) Tenant shall fail to comply with the Aggregate Requirements Purchase; or

(4) Tenant shall fail to comply with the provisions of Section XII of this Lease; or

(5) Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially adversely changed, except, in each case, as permitted in this Lease; or

(6) There shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease or the Sublease except as otherwise permitted in this Lease or the Sublease, as applicable; or

(7) Tenant shall fail to discharge any lien placed upon the Land, the Leased Premises or the Subleased Premises (as such term is defined in the Sublease) in accordance with Section XIII of this Lease; or

(8) Tenant shall be in default in the observance or performance of any other covenants and agreements required to be performed and observed by Tenant in this Lease or in the Sublease for a period of thirty (30) days after notice to Tenant in writing (or if such default

shall reasonably take more than thirty (30) days to cure, Tenant shall not have commenced the same within such thirty (30) days and diligently prosecuted the same to completion);

then Landlord shall be entitled, at its election, to exercise any one or more of the following rights:

(A) Terminate this Lease in which event Tenant shall immediately surrender the Leased Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying said Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor; and Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Leased Premises on satisfactory terms or otherwise, including the loss of Annual Rent and Additional Rent (including, without limitation, with respect to the Tenant's Minimum Aggregate Purchase requirements and reasonably expected total Aggregate requirements) for the remainder of the Lease Term, provided that such amounts shall not exceed the Default Payment (as hereinafter defined);

(B) INTENTIONALLY DELETED

(C) Enter upon the Leased Premises, by force if necessary, without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any reasonable, actually incurred expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action. No re-entry of the Leased Premises by Landlord pursuant to this Section XIV(C) shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to Tenant.

Landlord's acceptance of rent following a default hereunder shall not be construed as Landlord's waiver of such default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. Notwithstanding anything to the contrary contained herein, in the event of Tenant's default hereunder, Landlord shall use commercially reasonable efforts to mitigate its damages.

IN THE EVENT OF A TERMINATION OF THIS LEASE PURSUANT TO THE PROVISIONS OF SECTION XIV(A) ABOVE, TENANT SHALL PAY TO LANDLORD, WITHIN THIRTY (30) DAYS AFTER LANDLORD'S DEMAND, AS LANDLORD'S SOLE AND EXCLUSIVE REMEDY HEREUNDER, AN AGREED UPON PAYMENT IN THE AMOUNT OF THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($3,500,000.00) AS LIQUIDATED DAMAGES PLUS ANY ACCRUED BUT UNPAID RENT DUE HEREUNDER (THE "***DEFAULT PAYMENT***"). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IF SUCH TERMINATION OCCURS DURING THE FIRST SIX (6) MONTHS OF ANY LEASE YEAR, TENANT SHALL BE ENTITLED TO A CREDIT AGAINST THE DEFAULT PAYMENT IN THE AMOUNT OF

ANY ADVANCE RENT PAID BY TENANT FOR PERIODS FROM AND AFTER THE DATE THIS LEASE IS TERMINATED IN ACCORDANCE WITH SECTION XIV(A) ABOVE. THE PARTIES HAVE AGREED THAT LANDLORD'S ACTUAL DAMAGES HEREUNDER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT SUCH LIQUIDATED DAMAGES HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF LANDLORD'S DAMAGES HEREUNDER. FURTHERMORE, IF THE LIQUIDATED DAMAGES AS SET FORTH ABOVE ARE NOT ENFORCEABLE UNDER APPLICABLE LAW, TENANT AGREES THAT LANDLORD HAS NOT WAIVED ITS RIGHT TO SEEK ACTUAL DAMAGES FROM TENANT, AND THAT THE APPROPRIATE MEASURE OF ACTUAL DAMAGES IS SET FORTH IN THE PRECEDING PARAGRAPHS OF THIS SECTION XIV, PROVIDED, HOWEVER, THAT SUCH ACTUAL DAMAGES SHALL BE CAPPED AT THE AMOUNT OF THE DEFAULT PAYMENT FOR THE PURPOSES HEREOF. TENANT COVENANTS AND AGREES THAT IT SHALL NOT CONTEST THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS SET FORTH IN THIS PARAGRAPH, BUT SUCH AGREEMENT SHALL NOT BE CONSTRUED TO CONSTITUTE A WAIVER OF TENANT'S RIGHT TO CONTEST WHETHER A DEFAULT HAS ACTUALLY OCCURRED HEREUNDER. NOTHING IN THIS SECTION XIV SHALL LIMIT ANY OF TENANT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS LEASE.

INITIALS: Landlord _____ Tenant _____

XV. SUBORDINATION AND ESTOPPEL CERTIFICATES

A. **Subordination.** Only upon Landlord's delivery of a commercially reasonable non-disturbance agreement from Landlords' current lender or ground lessor, this Lease shall be subject and subordinate to the lien of any mortgages and/or ground leases now covering the Land or Leased Premises, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof. This Lease shall be subject to and subordinate to any future mortgage or ground lease covering the Land or Leased Premises, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof, provided that the applicable mortgagee or ground lessee enters into a commercially reasonable non-disturbance agreement with Tenant. Tenant agrees that if the Land or Leased Premises are sold at foreclosure under any such mortgage or deed of trust or is transferred in lieu of foreclosure, or if the landlord repossesses the Land or Leased Premises under any such ground lease, upon delivery of a commercially reasonable non-disturbance agreement, Tenant will attorn to the purchaser, transferee or landlord upon request.

B. **Estoppel Certificates.** Landlord and Tenant each agree, from time to time, within ten (10) days after request of the other party, to execute and deliver to such requesting party, or their respective designees, a commercially reasonable estoppel certificate, stating that this Lease is in full force and effect, the date to which rent has been paid, that the non-requesting party is not in default hereunder (or specifying in detail the nature of any such default), the termination date of this Lease and such other matters pertaining to this Lease as may be reasonably requested by such requesting party.

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A. **Subordination.** Only upon Landlord's delivery of a commercially reasonable non-disturbance agreement from Landlords' current lender or ground lessor, this Lease shall be subject and subordinate to the lien of any mortgages and/or ground leases now covering the Land or Leased Premises, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof. This Lease shall be subject to and subordinate to any future mortgage or ground lease covering the Land or Leased Premises, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof, provided that the applicable mortgagee or ground lessee enters into a commercially reasonable non-disturbance agreement with Tenant. Tenant agrees that if the Land or Leased Premises are sold at foreclosure under any such mortgage or deed of trust or is transferred in lieu of foreclosure, or if the landlord repossesses the Land or Leased Premises under any such ground lease, upon delivery of a commercially reasonable non-disturbance agreement, Tenant will attorn to the purchaser, transferee or landlord upon request.

B. **Estoppel Certificates.** Landlord and Tenant each agree, from time to time, within ten (10) days after request of the other party, to execute and deliver to such requesting party, or their respective designees, a commercially reasonable estoppel certificate, stating that this Lease is in full force and effect, the date to which rent has been paid, that the non-requesting party is not in default hereunder (or specifying in detail the nature of any such default), the termination date of this Lease and such other matters pertaining to this Lease as may be reasonably requested by such requesting party.

ANY ADVANCE RENT PAID BY TENANT FOR PERIODS FROM AND AFTER THE DATE THIS LEASE IS TERMINATED IN ACCORDANCE WITH SECTION XIV(A) ABOVE. THE PARTIES HAVE AGREED THAT LANDLORD'S ACTUAL DAMAGES HEREUNDER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT SUCH LIQUIDATED DAMAGES HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF LANDLORD'S DAMAGES HEREUNDER. FURTHERMORE, IF THE LIQUIDATED DAMAGES AS SET FORTH ABOVE ARE NOT ENFORCEABLE UNDER APPLICABLE LAW, TENANT AGREES THAT LANDLORD HAS NOT WAIVED ITS RIGHT TO SEEK ACTUAL DAMAGES FROM TENANT, AND THAT THE APPROPRIATE MEASURE OF ACTUAL DAMAGES IS SET FORTH IN THE PRECEDING PARAGRAPHS OF THIS SECTION XIV, PROVIDED, HOWEVER, THAT SUCH ACTUAL DAMAGES SHALL BE CAPPED AT THE AMOUNT OF THE DEFAULT PAYMENT FOR THE PURPOSES HEREOF. TENANT COVENANTS AND AGREES THAT IT SHALL NOT CONTEST THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS SET FORTH IN THIS PARAGRAPH, BUT SUCH AGREEMENT SHALL NOT BE CONSTRUED TO CONSTITUTE A WAIVER OF TENANT'S RIGHT TO CONTEST WHETHER A DEFAULT HAS ACTUALLY OCCURRED HEREUNDER. NOTHING IN THIS SECTION XIV SHALL LIMIT ANY OF TENANT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS LEASE.

INITIALS: Landlord _____ Tenant _____

XV. SUBORDINATION AND ESTOPPEL CERTIFICATES

A. **Subordination.** Only upon Landlord's delivery of a commercially reasonable non-disturbance agreement from Landlords' current lender or ground lessor, this Lease shall be subject and subordinate to the lien of any mortgages and/or ground leases now covering the Land or Leased Premises, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof. This Lease shall be subject to and subordinate to any future mortgage or ground lease covering the Land or Leased Premises, and to all increases, renewals, modifications, consolidations, replacements, and extensions thereof, provided that the applicable mortgagee or ground lessee enters into a commercially reasonable non-disturbance agreement with Tenant. Tenant agrees that if the Land or Leased Premises are sold at foreclosure under any such mortgage or deed of trust or is transferred in lieu of foreclosure, or if the landlord repossesses the Land or Leased Premises under any such ground lease, upon delivery of a commercially reasonable non-disturbance agreement, Tenant will attorn to the purchaser, transferee or landlord upon request.

B. **Estoppel Certificates.** Landlord and Tenant each agree, from time to time, within ten (10) days after request of the other party, to execute and deliver to such requesting party, or their respective designees, a commercially reasonable estoppel certificate, stating that this Lease is in full force and effect, the date to which rent has been paid, that the non-requesting party is not in default hereunder (or specifying in detail the nature of any such default), the termination date of this Lease and such other matters pertaining to this Lease as may be reasonably requested by such requesting party.

XVI. HOLDING OVER

Upon the expiration or termination of this Lease, Tenant shall remove its goods and effects and those of all persons claiming under it, and yield up peaceably to Landlord the Leased Premises in operable condition. In the event that Tenant or anyone claiming under Tenant shall continue occupancy of any Individual Property after the expiration of the Initial Term or any Renewal Term without any agreement in writing between Landlord and Tenant with respect thereto, such occupancy shall not be deemed to extend or renew the Initial Term or any Renewal Term of the Lease, but such occupancy shall continue as a tenancy at will, from month to month, upon the covenants, provisions and conditions herein contained. The monthly rental for such hold-over period shall be equal to one hundred fifty percent (150%) of the Applicable Rent and Additional Rent (including, without limitation, with respect to the Tenant's Minimum Aggregate Purchase requirements) for such Individual Property in effect during the immediately preceding Initial Term or Renewal Term, as applicable, prorated and payable for the period of such occupancy.

XVII. ASSIGNMENT AND SUBLETTING

(1) Tenant shall neither sublet any part of the Leased Premises nor assign this Lease or any interest herein to any third party without the written consent of Landlord first being obtained, which consent shall not be unreasonably withheld, conditioned or delayed. All documents utilized by Tenant to evidence any subletting or assignment to which Landlord has consented shall be subject to prior approval by Landlord or its counsel. Tenant shall pay on demand all of Landlord's actually incurred costs and expenses, not to exceed two thousand dollars ($2,000) for each request, including reasonable attorneys' fees, incurred in determining whether or not to consent to any requested sublease or assignment and in reviewing and approving such documentation. If this Lease is assigned, or if the Leased Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may, during the continuance of a default by Tenant, collect the Annual Rent and Additional Rent from the assignee, subtenant, or occupant and apply the net amount collected to the amounts herein reserved, but no such assignment, subletting, occupancy, or collection shall be deemed an acceptance of the assignee, subtenant, or occupant as Tenant hereof or a release of Tenant from further performance by Tenant of covenants on the part of Tenant herein contained. Consent by Landlord to any one sublease or assignment of this Lease to any party, in whole or in part shall not in any way be construed as relieving Tenant from obtaining Landlord's express written consent to any further assignment or sublease. In the event of any sublease or assignment, notwithstanding the consent of Landlord thereto, such sublessee or assignee must agree in writing to be bound by the terms of this Lease, including, without limitation, the Aggregate Requirements Purchase (as applicable to the requirements of such sublessee or assignee). In the event of any sublease or assignment, notwithstanding the consent of Landlord thereto, Tenant shall remain primarily liable for all of its obligations under this Lease and shall not be relieved from its primary obligations hereunder to Landlord, including, but not limited to the payment of all Annual Rent and Additional Rent. In the event of any sublease, if Tenant collects any rental or other amounts from a subtenant in excess of the Annual Rent and Additional Rent, Tenant shall pay to Landlord, as and when Tenant receives the same, 50% of such excess amounts received by Tenant.

(2) Notwithstanding the restrictions in Section XVII(1) hereof, Tenant shall have the right to sublet the Gumboro Property and the Delmar Property without the prior consent of Landlord, provided that (i) Tenant is not in default hereunder, (ii) Tenant shall give Landlord at least sixty (60) days prior written notice of such sublease (except with respect a sublease of the Gumboro Property and/or the Delmar Property to Bramble, for which no additional notice shall be required and no fees shall be due to Landlord hereunder), and (iii) Tenant and such sublessee comply with all of the other provisions and requirements of this Section XVII and this Lease.

(3) Notwithstanding anything to the contrary contained herein, provided that Tenant is not in default hereunder and provided that Tenant shall give Landlord at least fifteen (15) days prior written notice, Tenant may, without Landlord's consent, assign this Lease or sublet all or any portion of the Leased Premises or all or any portion of any Individual Property to any of Tenant's Affiliates, or to any entity with whom Tenant merges or consolidates or engages in any reorganization, or to any entity succeeding to all or substantially all of the business and assets of Tenant or of the business unit of Tenant that operates the Leased Premises (a ***"Permitted Transfer"***). Landlord shall be given a duplicate original of such sublease or assignment prior to such Permitted Transfer. As used in this Section XVII, the term ***"Tenant Affiliate"*** means any corporation, partnership or other business entity which controls, is controlled by or is under common control with the party in question. For the purpose hereof, the words "control", "controlled by" and "under common control with" shall mean, with respect to any corporation, partnership or other business entity, (a) the ownership of fifty percent (50%) or more of the voting interests, or (b) the ownership of at least twenty percent (20%) of the voting interests and the possession of the power to direct or cause the direction of the management and policy of such corporation, partnership or other business entity by reason of the ownership of such voting interests or by virtue of voting trusts or other contractual arrangements.

XVIII. LANDLORD'S REPRESENTATIONS

A. Landlord represents warrants and covenants to Tenant, as follows:

(1) With respect to the Delmar Land and the Gumboro Land, Shelly has all necessary power to execute and deliver this Lease and the Sublease and perform its obligations hereunder. The execution, delivery and performance of this Lease and the Sublease by Shelly (i) has been duly and validly authorized by all necessary action on the part of Shelly, (ii) does not conflict with or result in a violation of any agreement, judgment, writ, injunction, order or decree of any court, governmental authority or arbiter binding upon Shelly or in any proceeding to which Shelly is a party, (iii) does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument which will remain in effect after the Commencement Date by which Shelly is bound or to which Shelly is a party, and (iv) does not require the consent of any other party, unless such consent has previously been obtained.

(2) With respect to the Georgetown Land and the Dover Land, Tilcon has all necessary power to execute and deliver this Lease and perform its obligations hereunder. The execution, delivery and performance of this Lease by Tilcon (i) has been duly and validly authorized by all necessary action on the part of Tilcon, (ii) does not conflict with or result in a violation of any agreement, judgment, writ, injunction, order or decree of any court,

governmental authority or arbiter binding upon Tilcon or in any proceeding to which Tilcon is a party, (iii) does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument which will remain in effect after the Commencement Date by which Tilcon is bound or to which Tilcon is a party, and (iv) does not require the consent of any other party, unless such consent has previously been obtained.

(3) With respect to the Leased Improvements, Pennsy has all necessary power to execute and deliver this Lease and perform its obligations hereunder. The execution, delivery and performance of this Lease by Pennsy (i) has been duly and validly authorized by all necessary action on the part of Pennsy, (ii) does not conflict with or result in a violation of any agreement, judgment, writ, injunction, order or decree of any court, governmental authority or arbiter binding upon Pennsy or in any proceeding to which Pennsy is a party, (iii) does not conflict with or constitute a breach of, or constitute a default under, any contract, agreement or other instrument which will remain in effect after the Commencement Date by which Pennsy is bound or to which Pennsy is a party, and (iv) does not require the consent of any other party, unless such consent has previously been obtained.

(4) To Landlord's knowledge, no Landlord is a party to or is affected by any litigation, administrative action, investigation or other governmental or quasi-governmental proceeding which could reasonably be expected to have a material adverse affect upon the Leased Premises or upon the ability of such Landlord to fulfill its obligations under this Lease, or the ability of Tenant to operate the Leased Premises for the uses permitted hereunder.

(5) To Landlord's knowledge, there are no presently outstanding or uncured notices of any violations of any laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state and local governmental authorities, officials, agencies and subdivisions of each thereof having jurisdiction which as of the Effective Date may be applicable to the Leased Premises, except for those violations which could not reasonably be expected to have a material adverse affect upon the Leased Premises or the ability of Tenant to operate the Leased Premises for the uses permitted hereunder.

(6) Other than the Construction Contracts, there are no security, maintenance, pest control, trash removal, equipment leases, or other such service agreements with respect to or affecting the Leased Premises or any portion thereof for which Tenant will have any liability or responsibility.

(7) Landlord has not received any notice of proceedings pending nor, to Landlord's knowledge, are any proceedings threatened against or affecting the Leased Premises or any portion thereof or interest therein in the nature of or in lieu of condemnation or eminent domain proceedings.

XIX. MISCELLANEOUS

A. **Notices.** All notices, requests, demands, waivers and other communications given as provided in this Lease shall be given in writing by (i) personal delivery, (ii) reputable

overnight delivery service with proof of delivery, (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) legible facsimile transmission, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (i), (ii) or (iii) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Lease shall be as follows:

Landlord:

Pennsy Supply, Inc.
1001 Paxton Street
Harrisburg, PA 17104
Attention: Derek Vanderslice
Facsimile: (717) 236-7031

With a copy to:

Oldcastle Materials, Inc.
900 Ashwood Parkway, Suite 700
Atlanta, GA 30338
Attention: William B. Miller
Facsimile: (770) 392-5305

And a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10017
Attention: Steve Shoemate, Esq.
Facsimile: (212) 351-5316

Tenant:

ICM of Delaware, Inc.
c/o Independent Construction Materials, Inc.
638 Lancaster Avenue
Malvern, PA 19335
Attention: James Ward
Facsimile: (610) 560-7920

With a copy to:

American Infrastructure, Inc.

1805 Berks Road
Worcester, PA 19490
Attention: Richard Fooks
Facsimile: (610) 222-2306

And a copy to:

Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
Attention: Steven Dubow
Facsimile: (215) 832-5755

B. **Invalidity of Particular Provision.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

C. **Waivers.** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

D. **Parties.** The term "Landlord" in this Lease shall mean only the owner for the time being of the Leased Premises, and in the event of the transfer by such owner of its interest in the Leased Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease or arising out of the relationship between Landlord and Tenant shall be limited solely to its interest in the Leased Premises, and in no event shall any personal liability be asserted against Landlord, its partners, shareholders, members, directors, employees or agents in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord. Except as otherwise provided, the terms and provisions of this Lease shall be binding

upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of a joint venture between the parties hereto.

E. **Brokers.** Each of Landlord and Tenant hereby represent and warrant to each other that they have not employed any broker in regard to this Lease and that they have no knowledge of any broker being instrumental in bringing about this Lease transaction. Each party agrees to indemnify the other against all costs, expenses, attorneys' fees or other liability for commissions or other compensation or charges claimed by any broker or agent claiming the same by, through or under the indemnifying party

F. **Entire Agreement; Amendments.** This instrument contains the entire and only Lease between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force and effect. This Lease shall not be modified in any way except by a writing executed by both parties.

G. **Governing Law.** All matters pertaining to this Lease (including its interpretation, application, validity, performance and breach) shall be governed by, construed and enforced in accordance with the laws of the State of Delaware.

H. **Rules of Construction.** Each party acknowledges that it has had the opportunity to consult counsel with respect to this Lease, and therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

I. **Time of the Essence.** Time is of the essence as to the performance of Landlord's and Tenant's obligations under this Lease.

J. **Exhibits.** All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

K. **Attorneys' Fees.** If either Landlord or Tenant commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with this Lease or the Leased Premises, including but not limited to any action for recovery of rent due and unpaid, or to recover possession or for damages for breach of this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

L. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

M. **Memorandum of Lease.** Tenant may not record or file this Lease or any memorandum thereof in any public records without the prior written consent of Landlord, which consent may not be unreasonably, withheld, conditioned or delayed.

N. **Quiet Enjoyment.** For any period when an event of default is not continuing, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term of this Lease without hindrance or interruption by Landlord or by any other person or persons claiming by, through or under Landlord, subject, nevertheless, to the terms, covenants, conditions and provisions of this Lease.

XX. RIGHT OF FIRST REFUSAL

(1) Tenant shall have a right of first refusal (the "***Right of First Refusal***") to purchase (i) the Leased Premises or any portion thereof, (ii) any Individual Property or any portion thereof, (iii) the Land, or any portion thereof (whether or not the same constitutes part of the Leased Premises), or (iv) the land, the asphalt plants and the associated offices and buildings used exclusively in connection therewith located on and permanently affixed to the parcel or parcels of land described on Exhibit L attached hereto, or any portion thereof (collectively, the "***Wilmington Property***") (any of the foregoing, the "***Right of First Refusal Premises***") during the Lease Term on the terms set forth in this Section XX.

(2) If, during the Lease Term, Landlord receives any written offer (an ***"Offer"***) to purchase the Right of First Refusal Premises from any person (the "***Offeror***") which Landlord desires in good faith to accept, Landlord must first offer to sell such Right of First Refusal Premises to Tenant, or Tenant's affiliate in accordance with this Section XX by giving written notice of the Offer (***"Notice of Offer"***) to Tenant. The Notice of Offer shall state (i) the name and address of the Offeror, (ii) the price or other consideration to be paid by the Offeror for the Right of First Refusal Premises ("***Offer Price***") and (iii) all other terms and conditions of such proposed purchase of the Right of First Refusal Premises (collectively, ***"Offer Terms"***).

(3) Tenant (in its sole discretion) shall have the option to acquire all (but not part) of the Right of First Refusal Premises at the Offer Price and on the Offer Terms by delivering a non-binding letter of intent to Landlord with respect thereto (***"LOI"***) within fourteen (14) days after the date of the Notice of Offer. If Tenant delivers such LOI within such fourteen (14) day period, Tenant and Landlord shall enter into a contract for the sale and purchase of the Right of First Refusal Premises at the Offer Price and on the Offer Terms within thirty (30) days after delivery of the LOI and shall proceed to closing under the terms of such contract, provided, however, that if Tenant shall default in its obligations under such contract, such default shall also

be deemed to be a default hereunder and Landlord shall be entitled to exercise any of the remedies set forth in Section XIV hereof. If Landlord defaults in its obligations under such contract, then Tenant shall have the right and option to terminate this Lease without further liability to Landlord, and to sue for specific performance of such contract or for damages. If Tenant fails to deliver the LOI within such fourteen (14) day period to purchase the Right of First Refusal Premises, or fails to a enter into a contract for the sale and purchase of the Right of First Refusal Premises at the Offer Price and on the Offer Terms within thirty (30) days after delivery of the LOI, then such failure shall conclusively be deemed to be Tenant's election not to purchase the Right of First Refusal Premises.

(4) If Tenant elects not to purchase the Right of First Refusal Premises pursuant to this Section XX (or is deemed to have made such election hereunder), Landlord may sell such Right of First Refusal Premises to any party, only at the Offer Price (or a higher price) and substantially upon the Offer Terms (or upon terms more favorable to Landlord) (collectively, the "***Allowed Third Party Sale Terms***"), at any time within one hundred eighty (180) days following Tenant's election (or deemed election) not to purchase the Right of First Refusal Premises, and not thereafter or upon terms other than the Allowed Third Party Sale Terms, unless the procedures set forth in this Section XX are again followed.

(5) The provisions of this Section XX shall run with the land and be binding on Landlord's successors and assigns. Notwithstanding anything to the contrary set forth herein, Tenant's Right of First Refusal shall automatically terminate upon the occurrence of any default hereunder beyond any applicable notice and cure period. The Right of First Refusal shall not be applicable to the Subleased Premises (as such term is defined in the Sublease), and shall be personal to Tenant and its affiliates and shall not be transferred, assigned, sublet or encumbered.

XXI. PERMITS

Notwithstanding anything to the contrary set forth herein, in the event that Tenant is unable to obtain those permits required to operate the Leased Premises for Tenant's Permitted Use (as listed on Exhibit M hereto, the "***Required Permits***") either through the transfer by Landlord of such permits to Tenant or the issuance of new permits by the applicable governmental authorities, then Tenant shall have the right to terminate this Lease with respect to the Individual Property as to which the Required Permits have been unobtainable by giving Landlord written notice of such termination and such termination shall be effective as of the date of such notice, provided, however, that the foregoing termination right shall not be applicable in the event and to the extent that Tenant may, under applicable law, continue to operate the applicable Individual Property for Tenant's Permitted Use under Landlord's permits and receives written confirmation thereof from the applicable governmental authority. Upon any such termination, the Applicable Rent due hereunder shall be abated and the Minimum Aggregate Purchase shall be reduced by the Applicable Minimum Aggregate Purchase during the unexpired portion of the Lease Term effective as of the effective date of such termination and Landlord and Tenant shall have no further obligation to one another with respect to such Individual Property. Landlord shall cooperate with Tenant, at Landlord's sole cost and expense, in assisting Tenant to obtain the Required Permits either by assignment from Landlord or by issuance of new permits to Tenant.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Effective Date.

LANDLORD:

TILCON MINERALS, INC.,
a Delaware corporation

By: Thomas W. Drennen
Name: THOMAS W. DRENNEN
Title: CFO / SECRETARY

THE SHELLY COMPANY,
an Ohio company

By: _____
Name: Doug Radabaugh
Title: _____

PENNSY SUPPLY, INC.,
a Delaware corporation

By: _____
Name: Derek Vanderslice
Title: _____

TENANT:

ICM of DELAWARE, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

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a Delaware corporation

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Name: _____
Title: _____

THE SHELLY COMPANY,
an Ohio company

By: _____
Name: Doug Radabaugh
Title: CFO

PENNSY SUPPLY, INC.,
a Delaware corporation

By: _____
Name: Derek Vanderslice
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an Ohio company

By: _____
Name: Doug Radabaugh
Title: _____

PENNSY SUPPLY, INC.,
a Pennsylvania corporation

By: _____
Name: Derek Vanderslice
Title: CFO/SECRETARY

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an Ohio company

By: _____
Name: Doug Radabaugh
Title: _____

PENNSY SUPPLY, INC.,
a Pennsylvania corporation

By: _____
Name: Derek Vanderslice
Title: _____

TENANT:

ICM of DELAWARE, INC.,
a Delaware corporation

By: _____
Name: James O Ward
Title: VP/GM