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CSR 2482

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RIGHT-OF-WAY AND EASEMENT AGREEMENT

RETURN TO :
Ruder Ware, L.L.S.C.
Attn: Derek L. Prestin
P.O. Box 187
Eau Claire, WI 54702-0187

Parcel Identification Nos.: Parts of 046-00361-0000,
046-00362-0000, 046-00363-1000,
and 046-00364-1000

This **RIGHT-OF-WAY AND EASEMENT AGREEMENT** (the "Agreement") is executed as of this 28 day of July, 2016 by and between the **TOWN OF WELLS, MONROE COUNTY, WISCONSIN**, a Wisconsin municipality (the "Grantee") and **UNIMIN CORPORATION**, a Delaware corporation (the "Grantor").

RECITALS:

A. Grantor is the owner of certain real property located in Monroe County, Wisconsin, as described on the attached Exhibit A and referred to on the exhibit and in this Agreement as the "Unimin Property."

B. Grantee is currently reconstructing and reconfiguring Jancing Avenue (the "Road"), the town road that is adjacent to certain portions of the Unimin Property and desires to use certain portions of the Unimin Property (the "Right-of-Way Area") as part of the new right-of-way for the Road.

C. Grantor desires to grant to Grantee the right and easement to use the Right-of-Way Area as part of the new right-of-way for the Road and the roadway for the Road as may be reconstructed by Grantee.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Definitions.** The terms set forth in this Agreement shall have the following definitions:

a. **Owner:** The person or persons, including any business organization, having the power to convey the fee simple title to any portion of the Unimin Property.

b. **Municipality:** The Town of Wells, Monroe County, Wisconsin.

2. **Creation of Right-of-Way and Easement.** A Right-of-Way and Easement (the "Right-of-Way") is hereby created across that portion of the Unimin Property defined as the Right-of-Way Area, as set forth and described in Exhibit B, which is attached hereto and incorporated herein by reference, for ingress and egress for the purpose of granting vehicular and pedestrian access across the Right-of-Way area to Grantee and members of the public in connection with their use of the Road. The Owner of the Unimin Property shall be permitted to utilize the Right-of-Way Area and any improvements located thereon, provided, however, that (a) such use shall not interfere with the use of the Right-of-Way or the Road by Grantee; (b) such use shall not interfere with the use of the Road by members of the public; and (c) such use shall comply with all applicable ordinances, laws, and regulations, including, but not limited to, those ordinances, regulations, and laws applicable due to the presence or use of the Road adjacent to the Right-of-Way Area. Grantee shall be allowed to, at the sole cost and expense of Grantee, construct a paved road within the Right-of-Way to be utilized as the Road. The Grantee shall be solely responsible for the upkeep, maintenance, and repair of any improvements, including, but not limited to, any roadway, constructed by Grantee within the Right-of-Way Area, as well as any snowplowing of the Road. The Municipality, and any other applicable governmental body, shall have the right to establish reasonable ordinances and regulations governing the use of the Road during such time as the Road is utilized as a public roadway.

3. **Creation of Easement for Fire Department and Vehicular Access.** An easement is hereby created across the Right-of-Way Area for emergency access by the local fire department serving the Municipality and any other emergency services, and for ingress and egress for garbage and waste disposal trucks and other service vehicles for the purpose of granting the providers of these services vehicular and emergency access across the Right-of-Way Area.

4. **Creation of Easement for Utilities.** Grantor grants to Grantee and its contractors, subcontractors and licensees, a perpetual easement and right-of-way to construct, reconstruct, maintain, operate, supplement, and/or remove utility facilities, including, but not limited to electrical lines, communications cables, gas lines, sanitary sewer, water, force main, and storm sewer utilities, consisting of buried cables, wires, pipes, and other related fixtures, equipment, and appurtenances that may from time to time be required for the installation and maintenance of said utilities, with the right of ingress and egress for the purpose of this grant,

over the Right-of-Way Area. Grantee, or the applicable utility company as may be the case, shall be solely responsible for the upkeep, maintenance, and repair of the utilities and the components thereof constructed within the Right-of-Way Area.

5. **Cessation of Use of Road or Right-of-Way.** The Right-of-Way and any easement granted hereunder shall automatically expire and terminate upon the cessation of use of the Road as a town roadway or upon any future reconstruction or relocation of the roadway of the Road, such that the Right-of-Way Area hereunder will no longer be utilized as part of the right-of-way for the Road. Grantee agrees to cooperate with the current Owner of the Unimin Property to cause the recording of a termination or release of this Agreement upon any such expiration or termination hereunder.

6. **Indemnification.** Grantee shall indemnify Grantor and any future Owner of the Unimin Property from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity related to any activities conducted on the Right-of-Way Area in connection with the use of the Road and the activities conducted by Grantee and members of the public (and their occupants, lessees, agents, employees, guests, licensees, and invitees) upon the Right-of-Way Area, regardless of the cause of the injury.

7. **Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by Grantee and the Owners of the Unimin Property and any portion thereof and their respective successors and assigns. The Right-of-Way granted under this Agreement is an easement appurtenant to Unimin Property and may not be transferred separately from, or severed from, title to the Unimin Property. Grantor and any successors or assigns to Grantor as a fee simple owner of the Unimin Property shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Unimin Property.

8. **Non-Use.** Non-use or limited use of the easement rights granted in this Agreement shall not prevent the benefiting party from later use of the easement rights to the fullest extent authorized in this Agreement.

9. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin, without reference to its principles of conflicts of law.

10. **Notices.** All notices to Grantor, or any future Owner of the Unimin Property, and Grantee under this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the property tax bills for the Unimin Property are sent (in the case of notices to Grantor or a future Owner of the Unimin Property) or the current address for the Town Hall or Town Chairman for the Municipality (in the case of notices to Grantee).

11. **Invalidity.** If any term or condition of this Agreement, or the application of this

Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

12. **Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

13. **Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date first written above.

GRANTOR:
Unimin Corporation

GRANTEE:
Town of Wells
Monroe County, Wisconsin

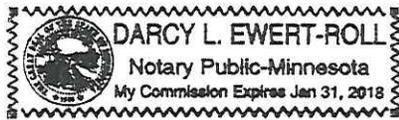
Chuck Collins
By: Chuck Collins
Its: Regional Vice President - Operations

Dennis Hemmersbach
By: Dennis Hemmersbach
Its: Chairman Town of Wells

ACKNOWLEDGMENTS

STATE OF MN)
) ss
Blue Earth COUNTY)

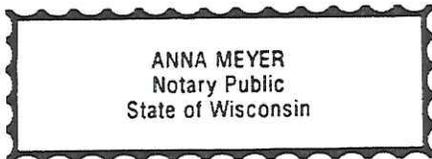
Personally came before me this 29 day of July, 2016, the above named **Chuck Collins**, who to me stated that he is the **Regional Vice President - Operations** of **Unimin Corporation**, and known to me to be the person who executed the foregoing instrument and acknowledged the same on behalf of said corporation, by its authority.



Darcy L. Ewert-Roll
* Darcy L. Ewert-Roll
Notary Public, State of MN
My commission 1-31-18

STATE OF WISCONSIN)
) SS:
MONROE COUNTY)

This instrument was acknowledged before me on July 28, 2016, by Dennis Hemmersbach, to me known to be the Chairman of the **Town of Wells, Monroe County, Wisconsin**, and to be the person who executed the foregoing instrument.

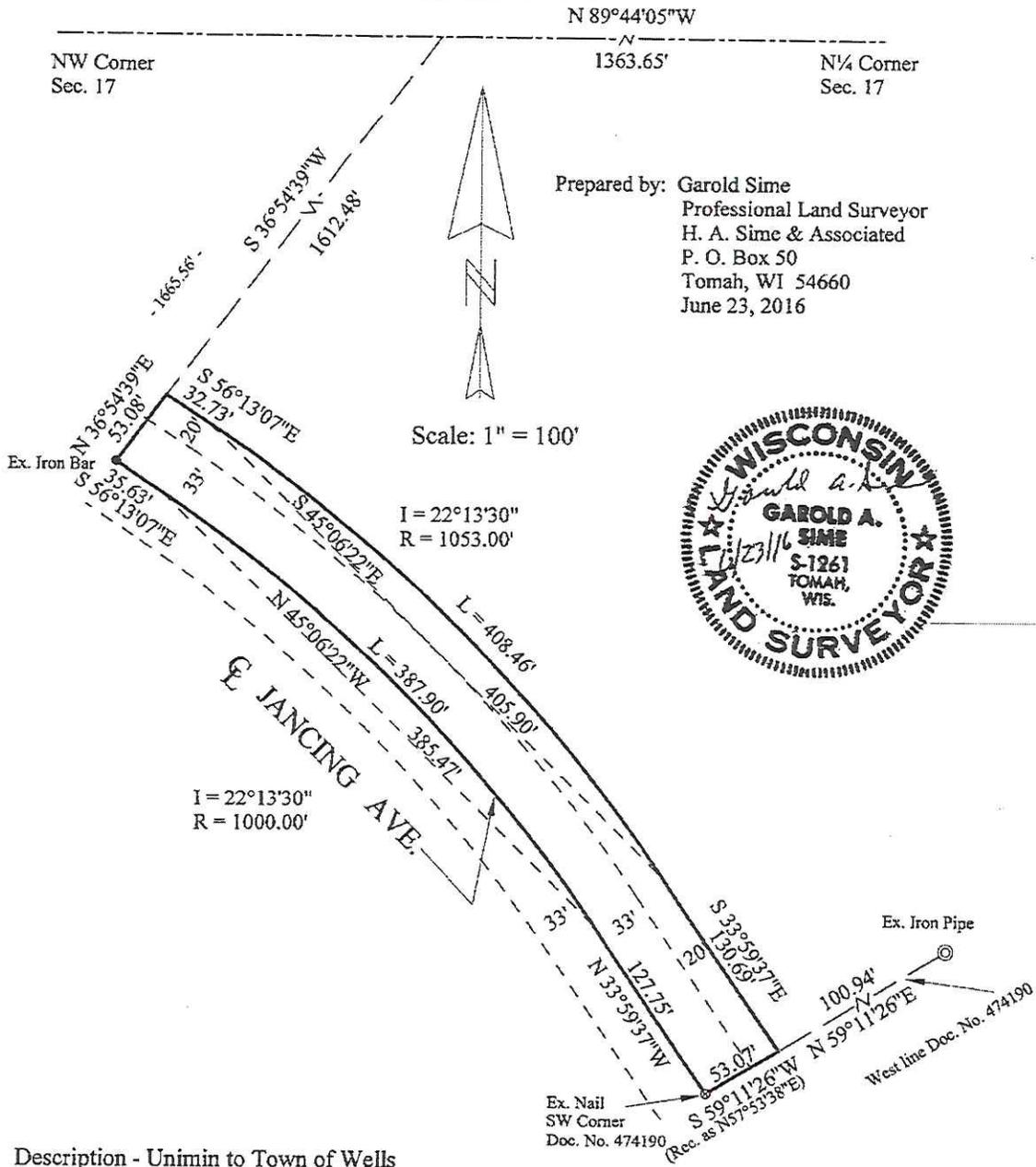


Anna Meyer
* Anna Meyer, Notary Public
Monroe County, Wisconsin
My Commission 11/6/17



*Print or type name of notary public.

This instrument was drafted by Attorney Derek L. Prestin, Ruder Ware, L.L.S.C., P.O. Box 187, Eau Claire, Wisconsin 54702-0187.



Description - Unimin to Town of Wells

A parcel of land located in the NW 1/4-NW 1/4 and SW 1/4-NW 1/4, Section 17, T16N-R3W, Town of Wells, Monroe County, Wisconsin described as follows: Commencing at the N 1/4 corner of said Section 17, thence N89°44'05"W along the north line of said NW 1/4, a distance of 1363.65 feet to the Northwest corner of lands described in Document Number 614461; thence S36°54'39"W along the west line of said lands, a distance of 1612.48 feet, being the Point of Beginning; thence S56°13'07"E parallel with the centerline of Jancing Ave., a distance of 32.73 feet; thence Southeasterly parallel with said centerline, along a curve concave to the southwest, having a radius of 1053.00 feet (the Long Chord of which bears S45°06'22"E, 405.90 feet) a distance of 408.46 feet; thence S33°59'37"E parallel with said centerline, a distance of 130.69 feet to the east line of lands as described in said Document Number 614461; thence S59°11'26"W along said east line, a distance of 53.07 feet to the centerline of Jancing Ave.; thence N33°59'37"W along said centerline, a distance of 127.75 feet; thence Northwesterly along said centerline, along a curve concave to the southwest, having a radius of 1000.00 feet (the Long Chord of which bears N45°06'22"W, 385.47 feet) a distance of 387.90 feet; thence N56°13'07"W along said centerline, a distance of 35.63 feet to the Southwest corner of lands described in said Document Number 614461; thence N36°54'39"E, a distance of 53.08 feet to the Point of Beginning. Containing 0.683 acres of land more or less. Subject to all easements and right-of-ways of record

EXHIBIT A

Legal description of Unimin Property:

A parcel of land located in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 17, Township 16 North, Range 3 West, Town of Wells, Monroe County, Wisconsin, the boundary of which is described as follows: Beginning at the N $\frac{1}{4}$ corner of Section 17; thence N89 degrees 44'05" W along the North line of the NW $\frac{1}{4}$ 1363.65 feet; thence S36 degrees 54'39"W, 1665.56 feet to the centerline of Jancing Avenue; thence S56 degrees 13'06"E along said centerline; 12.36 feet; thence along said centerline 338.38 feet along the arc of a 1000.00 foot radius curve concave to the Southwest, the long chord of which bears S46 degrees 31'30"E, 336.75 feet; thence S36 degrees 49'54"E along said centerline, 211.28 feet; thence N57 degrees 53'38"E, 530.98 feet; thence N77 degrees 45'27"E, 1448.11 feet; thence N85 degrees 11'38"E to the East line of the NW $\frac{1}{4}$; thence North along the East line of the NW $\frac{1}{4}$ to the point of beginning.

Parcel Nos. 046-00361-0000, 046-00362-0000, 046-00363-1000, and 046-00364-1000

EXHIBIT B

CSR 2482

Legal description of Right-of-Way Area:

A parcel of land located in the NW 1/4-NW 1/4 and SW 1/4-NW 1/4, Section 17, T16N-R3W, Town of Wells, Monroe County, Wisconsin described as follows: Commencing at the N 1/4 corner of said Section 17, thence N89°44'05"W along the north line of said NW1/4, a distance of 1363.65 feet to the Northwest corner of lands described in Document Number 614461; thence S36°54'39"W along the west line of said lands, a distance of 1612.48 feet, being the Point of Beginning; thence S56°13'07"E parallel with the centerline of Jancing Ave., a distance of 32.73 feet; thence Southeasterly parallel with said centerline, along a curve concave to the southwest, having a radius of 1053.00 feet (the Long Chord of which bears S45°06'22"E, 405.90 feet) a distance of 408.46 feet; thence S33°59'37"E parallel with said centerline, a distance of 130.69 feet to the east line of lands as described in said Document Number 614461; thence S59°11'26"W along said east line, a distance of 53.07 feet to the centerline of Jancing Ave.; thence N33°59'37"W along said centerline, a distance of 127.75 feet; thence Northwesterly along said centerline, along a curve concave to the southwest, having a radius of 1000.00 feet (the Long Chord of which bears N45°06'22"W, 385.47 feet) a distance of 387.90 feet; thence N56°13'07"W along said centerline, a distance of 35.63 feet to the Southwest corner of lands described in said Document Number 614461; thence N36°54'39"E, a distance of 53.08 feet to the Point of Beginning.

Containing 0.683 acres of land more or less. Subject to all easements and right-of-ways of record.

Part of Parcel Nos. 046-00362-0000 and 046-00363-1000