

ARTICLE 10

SUPPLEMENTARY USE REGULATIONS

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SECTION 10.01 INTENT

10 The intent of this article is to specify development standards applicable to specific uses. Certain uses require additional standards above those already specified in this Ordinance in order to ensure the general health, safety and welfare of Highland Township, and also to ensure compatibility between adjacent land uses. These standards are in addition to any other standards which are described elsewhere in this Ordinance.

15 **SECTION 10.02 ADULT DAY CARE FACILITIES**

The following regulations shall apply:

- 20 A. The proposed use shall not change the essential character of the surrounding residential area, and shall not create a nuisance.
- B. The proposed facility shall be enclosed by a fence that is reviewed and approved by the Planning Commission.
- 25 C. The hours of operation do not exceed 16 hours within a 24 hour period. No overnight care is permissible.
- D. The facility shall be limited to the first floor of the structure.
- 30 E. The Planning Commission shall determine the maximum number of clients based on building and property size and available parking.

35 **SECTION 10.03 ADULT ORIENTED BUSINESSES**

- A. General requirements for Regulated Uses.
 - 40 1. It is recognized that there are some uses, which because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Section.

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Prior to adopting these regulations, the Township reviewed studies prepared on these uses, reviewed ordinances and regulations prepared by other municipalities, and reviewed applicable federal and state case law, including the following: *Pap's AM v City of Erie*, 529 US 277 (2000); *Deja Vu of Nashville v Metropolitan Government of Nashville & Davidson County*, 466 G3d 391 (6th Cir 2006); *Sensations, Inc. v City of Grand Rapids*, 2006 WL 2504388 (WD MI 2006); *Van Buren Township v Garter Belt*, 258 Mich App 594; 673 NW2d 111 (2003); *Bronco's Entertainment v Charter Township of Van Buren*, 421 F3d 440 (6th Cir 2005), *Thomas v Chicago Park District*, 122 S Ct 775 (2002), *City of Renton v Playtime Theatres Inc*, 475 US 41 (1986), *Young v American Mini Theatres*, 426 US 50 (1976), *Barnes v Glen Theatre Inc*, 501 US 560 (1991); *California v LaRue*, 409 US 109 (1972); *DLS Inc v City of Chattanooga*, 107 F3d 403 (6th Cir 1997); *East Brooks Books Inc v City of Memphis*, 48 F3d 2200 (6th Cir 1995); *Broadway Books v Roberts*, 642 F Supp 4867 (ED Tenn 1986); *Bright Lights Inc v City of Newport*, 830 F Supp 378 (ED Ky 1993); *Richland Bookmart v Nichols*, 137 F3d 435 (6th Cir 1998); *Richland Bookmart v Nichols*, 278 F3d 570 (6th Cir 2002); *Déjà vu of Cincinnati v Union Township Board of Trustees*, 411 F3d 777 (6th Cir 2005); *Déjà vu of Nashville v Metropolitan Government of Nashville*, 274 F3d 377 (6th Cir 2001); *Bamon Corp v City of Dayton*, 7923 F2d 470 (6th Cir 1991); *Threesome Entertainment v Strittmather*, 4 F Supp 2d 710 (ND Ohio 1998); *JL Spoons Inc v City of Brunswick*, 49 F Supp 2d 1032 (ND Ohio 1999); *Triplett Grille Inc v City of Akron*, 40 F3d 129 (6th Cir 1994); *Nightclubs Inc v City of Paducah*, 202 F3d 884 (6th Cir 2000); *O'Connor v City and County of Denver*, 894 F2d 1210 (10th Cir 1990); *Deja Vu of Nashville Inc et al v Metropolitan Government of Nashville and Davidson County*, 2001 USA App LEXIS 26007 (6th Cir Dec 6, 2001); *ZJ Gifts D-2 LLC v City of Aurora*, 136 F3d 683 (10th Cir 1998); *Connection Distribution Co v Reno*, 154 F3d 281 (6th Cir 1998); *Sundance Associates v Reno*, 139 F3d 804 (10th Cir 1998); *American Library Association v Reno*, 33 F3d 78 (DC Cir 1994); *American Target Advertising Inc v Giani*, 199 F3d 1241 (10th Cir 2000); *ZJ Gifts D-2 LLC v City of Aurora*, 136 F3d 683 (10th Cir 1998); *ILQ Investments Inc v City of Rochester*, 25 F3d 1413 (8th Cir 1994); *Bigg Wolf Discount Video Movie Sales Inc v Montgomery County*, 2002 US Dist LEXIS 1896 (D Md Feb 6 2002); *Currence v Cincinnati*, 2002 US App LEXIS 1258 (3rd Cir Jan 24, 2002); and other cases; and on testimony to Congress in 136 Cong Rec S 8987; 135 Cong Rec S 14519; 135 Cong Rec S 5636; 134 Cong Rec E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square 1993; Bellevue, Washington, - 1998; Newport news, Virginia - 1996; new York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual

Violence, " by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House committee on Ethics and Constitutional Law, Jan 12, 2000, and the Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota).

2. Based on the evidence of adult uses presented in hearings and in the aforementioned reports made available to the Township Board, the Township Board finds that sexually oriented businesses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that the Charter Township of Highland is seeking to abate and prevent in the future. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area which would create such adverse effect(s). It is further the intent these regulations that these uses only be permitted as special land uses.

3. Uses (collectively "Regulated Uses") subject to these controls are as follows:

- a. Sexually oriented business (as defined in Sub-Section (3)(b) of this Section).
- b. Tattoo establishments.
- c. Pawnshops.
- d. Pool and billiard halls.
- e. Massage Establishment.

B. Locational requirements for Regulated Uses: The Planning Commission must find that there is not presently more than one (1) such Regulated Use within one thousand (1,000) feet of the boundaries of the site of the proposed Regulated Uses. The Planning Commission may not waive this location provision for sexually oriented businesses as defined by this Ordinance. The Planning Commission may waive this locational requirement for tattoo establishments, pawnshops, pool or billiard halls, or massage establishments, if the following findings are made:

- 1. That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of the Section will be observed.
- 2. That the proposed use will not enlarge or encourage the development of a "skid-row" area in which the homeless, unemployed, transients or others may loiter or congregate for no gainful purpose.

3. That the establishment of any additional Regulated Use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any plans for future development of the area according to the Township's Master Plan.

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4. That all applicable regulations of this Ordinance will be observed.

C. Conditions of approval: The Planning Commission may recommend that the Township Board impose such conditions or limitations upon the establishment, location, construction, maintenance or operation of the Regulated Uses, as shall, in its judgment, considering the standards set forth in Article 6, Special Land Use Procedures and Standards, be necessary for the protection of the public health, safety, welfare and interest, except that any conditions imposed on a sexually oriented business as defined in this Section shall be limited to those conditions necessary to assure compliance with the standards and requirements of Section 10.03.H. Any evidence and guarantee may be required as proof that the conditions stipulated in connection with the establishment, maintenance and operation of a sexually oriented business shall be fulfilled.

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D. Time limits for review: An application for special land use approval of a Regulated Use shall proceed before the Planning Commission for recommendation, and then the Township Board for final decision. Applications for special use approval of a Regulated Use, with the exception of a sexually oriented business, shall be processed in the normal course. The following time limits shall apply to the review of an application by the Planning Commission and Township Board for special approval of a sexually oriented business as defined in Article 2.

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1. The Planning Commission will publish notice and hold a public hearing as required for special land use approval review within sixty (60) days of receiving a complete and technically compliant special land use approval and site plan application, as required by Article 6 of this Ordinance, for a sexually oriented business as defined in Article 2.

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2. The Planning Commission will make its recommendation regarding the special approval application for a sexually oriented business at the next regularly scheduled meeting of the Planning Commission following the public hearing held to review the application, unless additional information is required from the applicant. If additional information is required, the Planning Commission will make its recommendation at the next regularly scheduled meeting after receipt of the requested additional information, provided the additional information is received no later than fifteen (15) days prior to the meeting.

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3. The recommendation of the Planning Commission will be forwarded to the Township Board within sixty (60) days of the meeting at which Planning Commission issues its recommendation. The Township Board will render its decision to grant or deny special approval of the sexually oriented business or to

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grant approval with conditions, as stipulated by the Zoning Ordinance at this meeting.

- 5 4. Failure of the Township to act within the above specified time limits shall not be deemed to constitute the grant of special approval to the sexually oriented business.
- 10 E. Effect of denial. No applicant for a Regulated Use which has been denied wholly or in part shall be resubmitted for a period of one (1) year from the date of said order of denial, except on the grounds of new evidence or proof of changed conditions.
- 15 F. Revocations: In any case where a building permit for a Regulated Use is required and has not been obtained within six (6) months after the granting of the special approval by the Township Board, the grant of special approval shall become null and void.
- 20 G. Reconstruction of damaged Regulated Uses: Nothing in this Section shall prevent the reconstruction, repairing or rebuilding and continued use of any building or structure, the use of which makes it subject to the controls of this Section, which is damaged by fire, collapse, explosion or act of God, provided that the expense of such reconstruction does not exceed sixty percent (60%) of the reconstruction cost of the building or structure at the time such damage occurred, provided that where the reconstruction repair or rebuilding exceeds the above-stated expense, the re-establishment of the use shall be subject to all provisions of this Section and further provided, that the re-established use complies with the off-street parking requirements of Article 11, Access Management, Parking and Circulation of this Ordinance.
- 25 H. Requirements for sexually oriented businesses:
- 30 1. Purpose and intent: It is the purpose of this Ordinance to regulate sexually oriented businesses to promote and protect the health, safety, morals and general welfare of the citizens of the Charter Township of Highland and to establish reasonable and uniform regulations to prevent a concentration of sexually oriented businesses within the Township. These regulations are intended to control the negative secondary impacts such businesses have been documented to have on the surrounding area and the community. The provisions of this Section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Likewise, it is not the intent of this Ordinance to legitimize activities which are prohibited by Township ordinance or state or federal law.
- 35 2. Definitions. Sexually oriented businesses are defined in Article 2.
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3. Classification: Sexually oriented businesses are classified as follows:

- a. adult arcades;
- b. adult bookstores or adult video stores;
- c. adult cabarets;
- d. adult massage parlors;
- e. adult motels;
- f. adult motion picture theaters;
- g. adult theaters;
- h. adult nudity or retail stores;
- i. escort and escort agencies;
- j. nude model studios; and
- k. sexual encounter centers.

4. Location of sexually oriented business.

- a. A sexually oriented business shall not be located closer than one thousand (1,000) feet to the property line of any of the following:
 - i. a church, religious institution, or building used primarily for religious worship and related religious activities;
 - ii. a public or private elementary or secondary school, vocational school, special education school, junior college or university;
 - iii. a residential zoning district;
 - iv. a lot or parcel in residential use;
 - v. a public park;
 - vi. an existing sexually oriented business; and
 - vii. a child care facility, nursery or preschool.

It shall be unlawful for any person to perform in any alcoholic commercial establishment, to knowingly permit or allow to be performed therein, any of the following acts or conduct:

- 5 a. The public performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellations, or any sexual acts which are prohibited by law;
- 10 b. The actual or simulated touching, caressing or fondling on the breasts, buttocks, anus or genitals in public; or
- c. The actual or simulated public displaying of the pubic hair, anus, vulva or genitals.

15 It shall be unlawful for the owner, operator, agent or employee of an alcoholic commercial establishment to allow any female to appear in an alcoholic commercial establishment so costumed or dressed that one or both breasts are wholly or substantially exposed to public view. Topless or bottomless or totally uncovered waitresses, bartenders or barmaids, entertainers including dancers, 20 impersonators, lingerie shows, or any other form for the attraction or entertainment of customers, is strictly prohibited. "Wholly or substantially exposed to public view" as it pertains to breasts shall mean the showing of the female breast in an alcoholic commercial establishment with less than a fully opaque veering of all portions of the areola and nipple, and the prohibition shall also extend to such events similar to wet t-shirt contests, lingerie shows or bikini shows.

- 6. Exterior display and signs.
 - 30 a. A sexually oriented business is in violation of this Section if:
 - i. the merchandise or activities of the establishment are visible from any point outside the establishment; or
 - 35 ii. the exterior portions of the establishment or signs have any words, lettering, photographs, silhouettes, drawing or pictorial representatives of any specified anatomical area or sexually explicit activity as defined in this Ordinance.

40 7. Enforcement: A violation of the provisions of this Section shall result, in addition to the remedies provided herein, possible criminal violations consisting of a fine of five hundred (\$500.00) dollars or a jail term of ninety (90) days, or both.

45 8. Injunction: In addition to the provisions of this Section, the Township, at its option, may commence proceedings in the circuit court under the appropriate

court rule or statute to enjoin any activity conducted by a sexually oriented business that is deemed to be in violation of these provisions.

5 **SECTION 10.04 AIRPORTS, AIRSTRIPS AND HELIPORTS**

The following regulations shall apply:

- 10 A. The plans for such facilities shall be reviewed and approved by all applicable Federal, State and County agencies related to aviation prior to submittal to the Planning Commission for its review and approval.
- B. Location of runway shall be reviewed relative to effects on residential areas.
- 15 C. If the airport or airstrip will serve more than the property owner, the property must have access to a principal or minor arterial street.

SECTION 10.05 BED AND BREAKFAST ESTABLISHMENTS

20 The following regulations shall apply:

- A. **Alterations.** The dwelling unit and all proposed exterior alterations shall be customary for other single family residences in the Township and meet the following:
- 25 1. All additions are compatible in style and design with the original structure and surrounding area and will not impact the traffic, the character or the appearance of the Township negatively.
- 30 2. The proposed additions can be incorporated back into the structure for a use permitted by right in the district if the Bed and Breakfast establishment terminates in the future.
- B. **Parking.**
- 35 1. In residential districts all required off-street parking shall be located in the side or rear yards and designed to maintain the residential character of the principal use. Parking "lots" are to be avoided and the use of grass pavers or similar materials is encouraged.
- 40 2. In commercial districts all required parking shall meet the standards set forth in Article 11, Access Management, Parking and Circulation.
- C. **Signage.**
- 45 1. In residential districts one (1) non-illuminated sign is permitted, not to exceed four (4) square feet and stating only the name and address of the bed and breakfast establishment.

2. In commercial districts signs are regulated by Article 14 Signs.

D. Operations.

- 5 1. The maximum length of stay of any guest(s) shall be fourteen (14) consecutive calendar days per year.
- 10 2. The applicant shall submit proof of the Oakland County Health Department's evaluation of the adequacy of the on-site sewage disposal system, in relation to the number of guest rooms proposed, in addition to the principal residential use.
- 15 3. All requirements of this ordinance and any conditions imposed by the Planning Commission shall apply equally to the original applicant and any subsequent owner(s). The owner of a bed and breakfast establishment shall notify the Township in writing thirty (30) days in advance of the proposed sale of the bed and breakfast establishment. The name, address, and phone number of the new owner(s) shall be provided with the notice of proposed sale.
- 20 4. All bed and breakfast establishments shall be inspected by the Township Zoning Administrator, Building Inspector, and Fire Chief. A report from each shall be submitted to the Planning Commission identifying all zoning, building, fire, and safety code issues.
- 25 5. No accessory building or garages are to be utilized for sleeping rooms.
- 30 6. Kitchen facilities shall be used for food preparation for consumption on the site by the owner, operator, residents and overnight bed and breakfast guests only. No food shall be prepared which is taken off-site or which is served to persons other than residents and overnight guests. No cooking facilities are permitted for use by the guests.
- 35 7. The bed and breakfast establishment shall not be used as a banquet facility.
8. When combined with the owner's residence, the bed and breakfast establishment shall be clearly subordinate to the use of the building as the owner/operator's principal residence; and
- 40 9. Not more than forty percent (40%) of the gross floor area of the dwelling may be devoted to guest rooms.

SECTION 10.06 BOAT LAUNCHING FACILITIES

The following regulations shall apply:

- 45 A. Such uses shall comply with Chapter 24, Article III Lake Access and Docking Regulations of the Township Code of Ordinances.

SECTION 10.07 CAMPGROUNDS

The following regulations shall apply:

- 5 A. The minimum site area shall be twenty (20) acres.
- B. The site shall have direct accessibility to a paved principal or minor arterial or a collector street.
- 10 C. A minimum one hundred (100) foot setback shall be established around the perimeter of the property for the purpose of buffering a public campground in relation to adjacent residentially zoned or used properties. The perimeter buffer shall be kept in its natural state. Where natural vegetation or land contour are insufficient to buffer a campground or recreational vehicle park in relation to surrounding properties, the Township may
- 15 require additional setback, landscaping, and/or berming.
- C. Mobile homes shall not be permitted to be located within a campground, unless specifically permitted by the Township.
- 20 D. The use and occupancy of a campground shall be in strict compliance with the current laws and requirements of the State of Michigan governing such uses.

SECTION 10.08 CEMETERIES

25 The following regulations shall apply:

- A. Maintenance buildings, mausoleums and similar facilities shall have a setback at least eighty (80) feet from any property line.
- 30 B. Screening between maintenance buildings, mausoleums and similar facilities and adjacent residentially zoned or used property shall be provided in accordance with Section 12.04, Screening Between Land Uses.

35 **SECTION 10.09 CHILD CARE CENTERS**

The following regulations shall apply:

- 40 A. Fencing of portions of the site where it is necessary to ensure the safety and security of the children shall be provided unless it is determined by the Planning Commission that the applicant has satisfied this condition through other means. A fenced outdoor play area of at least five thousand (5,000) square feet must be provided.
- 45 B. Screening between the outdoor play area adjacent residentially zoned and used property shall be provided in accordance with Section 12.04, Screening Between Land Uses.

C. A child care center located in a residential zoning district may not exceed sixteen (16) hours of operation during a 24-hour period and may not operate between the hours of 10 p.m. and 6 a.m.

5 D. The operator must provide an operations plan indicating the number of children to be cared for, number of employees, and hours of operation. The plan must indicate traffic patterns for pickup and dropoff of the children, including designation of suitable parking areas. Off-street parking must be provided for any employees. The operation plan is subject to review and approval by the Planning Commission.

10 E. A child care center must have frontage on either a principal or minor arterial street.

F. Signage must comply with the provisions of Article 14, Signs.

15 **SECTION 10.10 CHURCHES, TEMPLES AND SIMILAR PLACES OF WORSHIP**

The following regulations shall apply:

20 A. **General Standards.**

1. Religious facilities shall only be located on a lot of record that borders a paved principal arterial, minor arterial or collector street.

25 2. All religious activities shall take place in a fully enclosed building except as may be approved by the Planning Commission.

30 3. Facilities incidental to the main religious sanctuary must be used for church, worship, or religious education purposes, in a manner which is consistent with residential zoning and compatible with adjacent residential property. No buildings shall be used, leased, or rented for commercial purposes, except by Zoning Administrator approval upon findings that the use will not negatively impact the surrounding neighborhood.

35 B. Standards Specific to Large-Scale Religious Facilities. Large-scale institutional religious facilities may have negative impacts on single-family residential areas because of the scale of buildings, parking, traffic and frequency of use, which are different from similar smaller uses and smaller churches that have traditionally been compatible with single-family areas. Because of these impacts, large-scale religious facilities are more compatible with non-residential districts, subject to conditions which minimize these impacts.

40 Each large-scale religious facility permitted as a special land use shall meet the following conditions in addition to all other provisions of this Ordinance. These standards are intended to restrict large religious facilities to suitable locations, and to mitigate any adverse impacts of the uses on the community.

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1. The site shall have at least one hundred and fifty (150) feet of frontage on a major thoroughfare with an existing or planned right-of-way of not less than one hundred and twenty (120) feet. All ingress and egress to the site shall be directly onto such major thoroughfares.
2. All buildings, structures, and parking and loading areas shall be set back a minimum of one hundred (100) feet from any abutting residential zoning district. Such setback area shall be heavily landscaped so as to create a complete visual and physical separation between the two unlike land uses, forming an effective screen in compliance with the provisions of Section 12.04, Screening Between Land Uses.
3. Traffic from events (including church worship services) and other large assemblies shall be controlled by the facility so as not to create congestion or unreasonable delays on the public street. A schedule of expected frequency of events (including church worship services) and assemblies, a description of the method(s) of traffic control and a traffic impact study shall be presented to the Planning Commission for approval.
4. Associated uses on the site such as recreation centers, retreat facilities, conference centers, schools (if not the primary use), convents, and others shall meet all requirements of this Ordinance for such uses.
5. There shall be no outside loudspeakers or amplified sound outside of a totally enclosed building.

SECTION 10.11 CONSTRUCTION CONTRACTORS' OPEN STORAGE YARDS

The following regulations shall apply:

- A. Such uses shall have front, side or rear yard setbacks of two hundred (200) feet when adjacent to any residential district. Such spaces shall be screened in accordance with Section 12.04, Screening Between Land Uses or maintained as a greenbelt in accordance with Section 12.06, Greenbelts, whichever is applicable.
- B. If it is deemed essential by the Planning Commission to prevent loose materials from blowing onto adjacent properties, a fence, tarpaulin or obscuring wall of no less than six (6) feet shall be required around the stored material.
- C. No required yard spaces shall be used for the storage of equipment or material.

SECTION 10.12 ELDERLY HOUSING

The following regulations shall apply:

- A. **Maximum Allowable Density.** The maximum allowable density varies by housing type, but shall not exceed the following:

1. Independent Living for the Elderly. Dwellings may be provided for as single-family detached, two-family or multiple-family units. The minimum site area requirements for purposes of calculating density shall be as follows:

<i>Dwelling Unit Size</i>	<i>Site Area/Unit (Square Feet)</i>
Efficiency/one (1) bedroom	4,500
Two (2) bedroom	5,000
Each additional bedroom	500 additional

2. Assisted Living for the Elderly. Where such facilities contain individual dwelling units with kitchen facilities, the density requirements set forth in Section 9.05, Multiple Family Residential Regulations shall apply. Where facilities do not contain kitchen facilities within individual dwelling units, the site area per bed shall be 4,500 square feet.

B. Minimum Useable Floor Area.

1. Useable Floor Area by Unit Type.

Efficiency	350 square feet
One (1) bedroom units	500 square feet
Two (2) bedroom units	650 square feet
Each additional bedroom	150 square feet

2. Efficiency units are permitted only in housing development where a common dining area option is provided.
3. No residential unit shall have more than one-third (1/3) of its total area in a basement level.

C. Elderly Housing Schedule of Regulations.

1. Lot coverage and setback requirements of the RM Districts as set forth in Section 9.05, Multiple Family Residential Requirements shall apply.
2. In addition, the following setbacks and dimensional regulations apply regardless of housing type:
- a. Parking setback to adjacent properties: Parking is not allowed in any required front yard. Parking is permitted in side and rear yards provided a minimum twenty (20) foot setback is observed.
 - b. Parking setback to front faces of residential buildings: There shall be a minimum separation of twenty (20) feet between any common parking areas and the front faces of residential buildings. This regulation does not

apply to spaces assigned to garages and driveways.

5 c. Where building length exceeds eighty (80) feet, the architectural design shall include both projecting and recessing elements across the façade. The difference between recessed and projecting elements shall be at least four (4) feet.

10 d. Where the site development consists of clusters of townhouses, no more than twenty percent (20%) of the total number of groupings shall contain more than six (6) units with shared walls. In no case shall any grouping contain more than eight (8) units. Within any grouping, there shall be multiple front setbacks, so that no more than fifty percent (50%) of the units share the same setback. The minimum variation between setbacks is four (4) feet.

15 e. Maximum height of structures.

20 i. Principal residential structures: twenty-five (25) feet/two (2) stories.

25 ii. Accessory structures: fifteen (15) feet/two (2) stories plus one (1) foot for each additional two (2) feet in setback beyond the minimum setback requirement not to exceed twenty-eight (28) feet in height.

30 3. In those cases where the site design includes grouping of like multiple-family or townhouse buildings, the buildings shall be designed and oriented to provide light, ventilation, privacy, public safety, fire safety and to achieve aesthetic harmony.

SECTION 10.13 EQUESTRIAN SPORTS ACADEMIES

The following regulations shall apply:

35 A. The minimum site area shall be ten (10) acres.

B. Outdoor pens, corrals, riding rings and/or arenas shall be located no nearer than fifty (50) feet from any property line, or at least one hundred (100) feet from existing schools, churches, or residentially zoned or used property.

40 C. Permanent lighting shall meet the provisions of Article B. The use of additional event lighting shall be temporary. The use of temporary event lighting shall only be allowed between the hours of 8:00 am and 11:00 pm. In addition to the provisions above, sound producing equipment, including but not limited to public address systems, radios, phonographs, musical instruments and recording devices, shall not be operated outdoors
45 on the premises so as to be unreasonably loud or raucous, or so to be a nuisance or

disturbance to the peace and tranquility of the citizens of the Township. The use of sound producing equipment shall only be allowed between the hours of 8:00 am and 11:00 pm.

- 5 D. Events held outdoors, in whole or in part, at such a facility and that is open to participants beyond those who board or train at the facility are only allowed if specifically permitted by the Township.
- 10 E. Off-street parking, loading and unloading shall be provided in accordance with the standards set forth in Article 11, except that the requirements for hard-surfacing may be waived by the Township.
- 15 F. One single-family dwelling, occupied by the owner or manager of the equestrian facility, will be considered customary and incidental as part of this use.

SECTION 10.14 GOLF COURSES, PAR 3 COURSES AND DRIVING RANGES

The following regulations shall apply:

- 20 A. All buildings shall meet the setbacks in the district in which they are located.
- B. Buildings, parking areas, outdoor speaker systems, lighting and other site features shall be located to minimize any negative impacts on adjacent residential property.
- 25 C. All storage, maintenance and service areas shall be screened in accordance with Section 12.04, Screening Between Land Uses.

SECTION 10.15 GROUP CHILD CARE HOMES

The following regulations shall apply:

- 30 A. Fencing of portions of the site where it is necessary to ensure for the safety and security of the children shall be provided unless it is determined by the Planning Commission that the applicant has satisfied this condition through other means. A fenced outdoor play area of at least two thousand five hundred (2,500) square feet must be provided.
- 35 B. A group child care home must maintain the property consistent with the visible characteristics of the neighborhood, including but not limited to landscaping.
- 40 C. A group child care home may not exceed sixteen (16) hours of operation during a 24-hour period and may not operate between the hours of 10 p.m. and 6 a.m.
- 45 D. The operator must provide an operations plan indicating the number of children to be cared for, number of employees, and hours of operation. The plan must indicate traffic patterns for pickup and dropoff of the children, including designation of suitable parking

areas. Offstreet parking must be provided for any employees. The operation plan is subject to review and approval by the Planning Commission, who may, at their discretion, place reasonable conditions on the operations of the group child care home.

- 5 E. Signage must comply with the provisions of Article 14, Signs.

SECTION 10.16 HOSPITALS

The following regulations shall apply:

- 10 A. The site shall have a minimum five hundred (500) feet contiguous frontage along a major thoroughfare. Main access points shall be onto roads classified as principal or minor arterial streets.
- 15 B. Access to individual uses shall be an internal roadway system.
- C. No power plants, storage or maintenance buildings shall be permitted within four hundred (400) feet of a public street.
- 20 D. Pedestrian systems connecting visitor parking to building entrances shall be provided.

Ambulance, emergency and delivery areas shall not face a public street and shall be screened from view of residential uses by use of walls, berms and landscaping.

25 **SECTION 10.17 INSTITUTIONAL USES**

The following regulations shall apply:

- 30 A. A Traffic Management Plan must be submitted and reviewed by the Township Planning Department.
- B. Screening requirements adjacent to residential properties shall be consistent with Section 12.04, Screening Between Land Uses.
- 35 C. A minimum of ten percent (10%) of the site shall be set aside for open space in accordance with Section 7.04, Open Space Regulations.

SECTION 10.18 KENNELS

40 The following regulations shall apply:

- 45 A. Any building or fenced area where animals are kept shall be located a minimum of one hundred (100) feet from any public right-of-way, one hundred (100) feet from any property line, and one hundred fifty (150) feet from any residential dwelling located off

the premises. These setbacks are to prevent noise and odor from negatively affecting surrounding properties.

- 5 B. A operation and maintenance plan shall be submitted that specifically addresses how noise will be attenuated and waste handled.
- C. Any permit requirement of County and State agencies shall be met.

SECTION 10.19 LARGE ANIMAL VETERINARY CLINICS

10 The following regulations shall apply:

- 15 A. Any building or fenced area where animals are kept shall be located a minimum of one hundred (100) feet from any public road right of way, and one hundred (100) feet from any property line.
- B. An operation and maintenance plan shall be submitted that specifically addresses how noise will be attenuated and waste handled.

20 **SECTION 10.20 MASSAGE ESTABLISHMENT**

The following regulations shall apply:

- 25 A. **Applicability.** No person, firm, corporation, partnership or entity shall operate a massage establishment without first obtaining a special land use approval from the Township.
- 30 B. **Exemptions.** The requirement for special land use approval for a massage establishment shall not apply to the following:
 - 35 1. Medical doctors, doctors of osteopathic medicine, doctors of chiropractic medicine, physical therapists, psychiatrists, psychologists, clinical social workers and family counselors who are licensed to practice temporarily under the auspices of an associate or establishment duly licensed in the state, or athletic trainers administering massage in the normal course of training duties;
 - 40 2. Nurses who are registered under the laws of this state and who administer a massage in the normal course of their nursing duties;
 - 45 3. Barbers and beauticians who are duly licensed under the laws of this state and who administer a massage in the normal course of their barbering and beautician duties;
 - 4. Individuals administering massage for therapeutic purposes in the normal course of their duties in a hospital, nursing home, or other medical care facility.

C. **Standards.**

1. No establishment shall be open for business between the hours of 10pm and 6am.
2. Only a massage therapist licensed pursuant to the following criteria may be employed as a massage therapist by the establishment:
 - a. Proof of graduation from a school of massage, licensed by the state, or a current license by another state with the equivalent standards of education from a state licensed school in the United States, or proof of comparable education, training, and/or experience in massage; or
 - b. A current basic certification by the International Myomassethics Federation (IMF), or proof of current professional membership in the American Massage Therapy Association (AMTA), Associated Body Work and Massage Professional (ABMP), or another national massage therapy organization with comparable membership requirements.
3. The establishment shall provide a waiting area for patrons separate from any area wherein massages are given. There shall be a direct access to this area from the main entrance or from the hallway connected only to the main entrance.
4. Rooms in which massage is to be practiced or administered shall have at least seventy (70) square feet of clear floor area and shall maintain a light level of no less than forty (40) footcandles as measured at three (3) feet above the floor. Lighting in colors other than white shall be prohibited. Such rooms shall not be locked during business hours or during massage therapy sessions.

SECTION 10.21 PETROLEUM BULK STATIONS AND TERMINALS

The following regulations shall apply:

- A. Such uses shall be located only on a paved principal or minor arterial street.
- B. The lot size shall be a minimum of ten (10) acres.
- C. Such uses shall be located at least five hundred (500) feet from any residential district.
- D. A minimum front yard setback of two hundred (200) feet, a minimum rear yard setback of one hundred (100) feet and a minimum side yard setback of one hundred (100) feet shall be provided. This space shall be maintained as a greenbelt in accordance with Section 12.06, Greenbelts.

SECTION 10.22 SALVAGE YARDS

The following regulations shall apply:

- A. No such use shall be allowed within three hundred (300) feet of any residential district.
- 5 B. Open burning is prohibited.
- C. Due to the prevalence of solvents, lubricants and fuels associated with salvage yards, operations shall be in accordance with an approved plan for protecting ground and surface water contamination by hazardous materials. Said plan shall be submitted and reviewed pursuant to site plan review.
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- D. Screening shall be provided in accordance with Section 12.04, Screening Between Land Uses except that such screening shall be a minimum of eight (8) feet in height.
- 15 E. Materials shall not be stacked higher than the screening.

SECTION 10.23 TAXIDERMIST FACILITY

20 The following regulations shall apply:

- A. Due to the nature of this use extra precautions are needed to protect the local environment from pollution. This section also requires that taxidermist facilities adhere to all applicable Local, State, Federal laws and regulations and also the criteria in this Ordinance.
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- B. The proposed use shall not change the essential character of the surrounding area, create nuisances, odors, and health issues or burden the adjacent uses.
- 30 C. The Planning Commission shall be provided with a plan for daily operations including detailed Material Handling data sheets for any chemicals handled on site and a plan for waste disposal.
- D. Outdoor storage is prohibited.
- 35 E. In ARR Taxidermist may only be an accessory use.

SECTION 10.24 WIRELESS COMMUNICATIONS FACILITIES

- 40 A. **Intent.** It is the intent of this section to provide standards for the location, construction and maintenance of wireless communication facilities in a way which will retain the integrity, character, property values and aesthetic quality of neighborhoods and the entire Township, and minimize the negative visual impact of wireless communication facilities
45 on neighborhoods, community landmarks, historic sites and buildings, natural beauty areas and public rights-of-way. The priority of the Township is to minimize the overall

number of newly established locations for wireless communication support facilities within the community by encouraging the collocation of existing wireless communication support facilities where possible. To achieve this goal, the Planning Commission must agree that all collocation options were pursued and exhausted prior to the review of application for any new wireless communication facility. It is required that all new and modified wireless communication support facilities (WCSFs) shall be designed and constructed so as to accommodate collocation. This section also requires that wireless communication antennas (WCAs), wireless communication facilities (WCFs) and wireless communication support facilities (WCSFs) shall adhere to all applicable Local, State, Federal laws and regulations, and the standards of this section.

B. Authorization.

1. Subject to the standards and conditions set forth below in Section 10.24.C, General Regulations, wireless communication facilities shall be permitted uses in the following circumstances, and in any districts:

a. An existing structure which will serve as an attached wireless communications facility where the existing structure is not, in the discretion of the Township, proposed to be either materially altered or materially changed in appearance.

b. A proposed co-location upon an attached wireless communication facility which has been approved earlier by the Township.

c. An existing structure which will serve as an attached wireless communication facility consisting of a utility pole located within a right-of-way, where the existing pole is not proposed to be modified in a manner which, in the discretion of the Planning Commission, would materially alter the structure and/or result in an impairment of sight lines or other safety interests.

d. An existing wireless communication support structure established within a right-of-way having an existing width of more than two hundred and four (204) feet.

2. If it is demonstrated by an applicant that a wireless communication facility is required to be established outside an area identified in Section 10.24.B.1, Authorization then, wireless communication facilities may be applied for elsewhere in the Township and must follow the district specific criteria and is subject to the criteria and standards set forth in this Ordinance.

C. General Regulations.

1. Standards and Conditions Applicable to All Facilities.

All applications for wireless communication facilities shall be reviewed in accordance with the following standards and conditions, and, if approved, shall be constructed and maintained in accordance with such standards and conditions. In addition, if the facility is approved, it shall be constructed and maintained with any additional conditions imposed by the Planning Commission and/or the Township Board:

a. Facilities shall not be demonstrably injurious to neighborhoods or otherwise detrimental to the public safety and welfare.

b. Facilities shall be located and designed to be harmonious with the surrounding areas.

c. Wireless communication facilities shall comply with applicable federal and state standards relative to the environmental effects of radio frequency emissions.

d. Applicants shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs which might result in lower heights.

e. The following additional standards shall be met:

i. The maximum height of the new or modified support structures and antenna shall be the minimum height demonstrated to be necessary for reasonable communication by the applicant (and by other entities to collocate on the structures). The accessory building contemplated to enclose such things as switching equipment shall be limited to the maximum height for accessory structures within the respective district.

ii. The setback of the support structure from any residential district shall be at least the height of the highest point of any structure on the premises. The setback of the support structure from any existing or proposed rights-of-way or other publicly traveled roads shall be no less than the height of the structure.

iii. Where the proposed new or modified support structure abuts a parcel of land zoned for a use other than residential, the minimum setback of the structure, and accessory structures, shall be half of the distance of the highest point of any structure on the premises.

iv. There shall be unobstructed access to the support structure, for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement. This access shall have a width and location determined by such factors as: the location of

adjacent thoroughfares and traffic and circulation within the site; utilities needed to service the tower and any attendant facilities; the location of buildings and parking facilities; proximity to residential districts and minimizing disturbance to the natural landscape; and the type of equipment which will need to access the site.

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v. The division of property for the purpose of locating a wireless communication facility is prohibited unless all zoning requirements and conditions are met.

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vi. Where an attached wireless communication facility is proposed on the roof of a building, if the equipment enclosure is proposed as a roof appliance or penthouse on the building, it shall be designed, constructed and maintained to be architecturally compatible with the principal building. The equipment enclosure may be located within the principal building or may be an accessory building. If proposed as an accessory building, it shall conform with all district requirements for principal buildings, including yard setbacks.

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vii. The Planning Commission shall, with respect to the color of the support structure and all accessory buildings, review and approve so as to minimize distraction, reduce visibility, maximize aesthetic appearance, and ensure compatibility with surroundings. It shall be the responsibility of the applicant to maintain the wireless communication facility in a neat and orderly condition.

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viii. The support system shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer, licensed in the State of Michigan. This soils report shall include soil borings and statements indicating the suitability of soil conditions for the proposed use. The requirements of the Federal Aviation Administration, Federal Communication Commission, and Michigan Aeronautics Commission shall be noted.

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- ix. A maintenance plan, and any applicable maintenance agreement, shall be presented and approved as part of the site plan for the proposed facility. Such plan shall be designed to ensure the long term, continuous maintenance to a reasonably prudent standard.

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2. Standards and Conditions Applicable to Special Land Use Facilities.

Applications for wireless communication facilities, which may be approved as special land uses, shall be reviewed, and if approved, constructed and maintained, in accordance with the standards and conditions set forth herein.

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- a. The applicant shall demonstrate the need for the proposed facility to be located as proposed based upon the presence of one or more of the following factors:

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- i. Proximity to an interstate or major thoroughfare.
- ii. Areas of population concentration.
- iii. Concentration of commercial, industrial, and/or other business centers.
- iv. Areas where signal interference has occurred due to tall buildings, masses of trees, or other obstructions.
- v. Topography of the proposed facility location in relation to other facilities with which the proposed facility is to operate.
- vi. Other specifically identified reason creating need for the facility.

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- b. The proposal shall be reviewed in conformity with the co-location requirements of this section.

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D. Application Requirements.

- 1. A site plan prepared in accordance with Article 5, Site Plan Review shall be submitted, showing the location, size, screening and design of all buildings and structures, including fences, and the location and size of outdoor equipment, and the location, number, and species of proposed landscaping.

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- 2. The site plan shall also include a detailed landscaping plan where the support structure is being placed at a location which is not otherwise developed, or where a developed area will be disturbed. The purpose of landscaping is to provide screening and aesthetic enhancement for the structure base, accessory buildings and enclosure. In all cases, there shall be shown on the plan fencing which is required for protection of the support structure and security from children and

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other persons who may otherwise access the facilities.

3. The application shall include a signed certification by a State of Michigan licensed professional engineer with regard to the manner in which the proposed structure will fall, which certification will be utilized, along with other criteria such as applicable regulations for the district in question, in determining the appropriate setback to be required for the structure and other facilities.
4. The application shall include a description of surety to be posted at the time of receiving a building permit for the facility to ensure removal of the facility when it has been abandoned or is no longer needed, as provided in Section 10.24.F, Removal. In this regard, the surety shall, at the election of the applicant, be in the form of: (1) cash; (2) letter of credit; or, (3) an agreement in the form approved by the Township Attorney and recordable at the office of the Register of Deeds, establishing a promise of the applicant and owner of the property to timely remove the facility as required under this section of the ordinance, with the further provision that the applicant and owner shall be responsible for the payment of any costs and attorney fees incurred by the community in securing removal.
5. The applicant shall include a map showing existing and known proposed wireless communication facilities within the Township, and further showing existing and known proposed wireless communication facilities within areas surrounding the borders of the Township in the location, and in the area, which are relevant in terms of potential co-location or in demonstrating the need for the proposed facility. If and to the extent the information in question is on file with the community, the applicant shall be required only to update as needed. Any proprietary information may be submitted with a request for confidentiality in connection with the development pursuant to MCL 15.243(1)(g). This ordinance shall serve as the promise to maintain confidentiality to the extent permitted by law. The request for confidentiality must be prominently stated in order to bring it to the attention of the community.
6. The applicant should include the name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.
7. The application shall include a copy of the lease agreement between the applicant and the property owner to verify terms of the agreement.

E. Co-location.

1. Feasibility of co-location: Co-location shall be deemed to be “feasible” for purposes of this section where all of the following are met:

- a. The wireless communication provider entity under consideration for co-location will undertake to pay market rent or other market compensation for co-location.
- 5 b. The site on which co-location is being considered, taking into consideration reasonable modification or replacement of a facility, is able to provide structural support.
- 10 c. The co-location being considered is technologically reasonable, e.g., the co-location will not result in unreasonable interference, given appropriate physical and other adjustment in relation to the structure, antennas, and the like.
- 15 d. The height of the structure necessary for co-location will not be increased beyond a point deemed to be permissible by the Planning Commission, taking into consideration the several standards set forth herein.

2. Requirements for Co-location:

- 20 a. An approval for the construction and use of a new wireless communication facility shall not be granted unless and until the applicant demonstrates that a feasible co-location is not available for the coverage area and capacity needs.
- 25 b. All new and modified wireless communication facilities shall be designed and constructed so as to accommodate co-location.
- 30 c. The policy of the community is for co-location. Thus, if a party who owns or otherwise controls a facility shall fail or refuse to alter a structure so as to accommodate a proposed and otherwise feasible co-location, such facility shall thereupon and thereafter be deemed to be a nonconforming structure and use, and shall not be altered, expanded or extended in any respect.
- 35 d. If a party who owns or otherwise controls a facility shall fail or refuse to permit a feasible co-location, and this requires the construction and/or use of a new facility, the party failing or refusing to permit a feasible co-location shall be deemed to be in direct violation and contradiction of the policy, intent and purpose of the Township, and, consequently such party shall take responsibility for the violation, and shall be prohibited from receiving approval for a new wireless communication support structure within the Township for a period of five (5) years from the date of the failure or refusal to permit the co-location. Such a party may seek and obtain a variance from the Zoning Board of Appeals if and to the limited extent the applicant demonstrates entitlement to variance relief which, in
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45 this context, shall mean a demonstration that enforcement of the five (5)

year prohibition would unreasonably discriminate among provider of functionally equivalent wireless communication services, or that such enforcement would have the effect of prohibiting the provision of personal wireless communication services.

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F. Removal.

1. A condition of every approval of a wireless communication facility shall be adequate provision for removal of all or part of the facility by users and owners upon the occurrence of one or more of the following events:

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a. When the facility has not been used for one hundred eighty (180) days or more. For purposes of this section, the removal of antennas or other equipment from the facility, or the cessation of operations (transmission and/or reception of radio signals) shall be considered as the beginning of a period of non-use. The applicant shall notify the Township upon cessation of operations or removal of antenna.

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b. Six months after new technology is available at reasonable cost as determined by the Township Board, which permits the operation of the communication system without the requirement of the support structure.

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2. The situations in which removal of a facility is required, as set forth in paragraph F.1.a above, the property owner or persons who had used the facility shall immediately apply or secure the application for any required demolition or removal permits, and immediately proceed with and complete the demolition/removal, restoring the premises to an acceptable condition as reasonably determined by the Township.

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3. If the required removal of a facility or a portion thereof has not been lawfully completed within sixty (60) days of the applicable deadline, and after written notice, the Township may remove or secure the removal of the facility or required portions thereof, with its actual cost and reasonable administrative charge to be drawn or collected from the security posted at the time application was made for establishing the facility.

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SECTION 10.25 YARD WASTE COMPOSTING FACILITIES

The following regulations shall apply:

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1. Maximum site size for yard waste composting facilities in the ARR District shall be twenty (20) acres. A minimum site size of five (5) acres is required for such uses in the IT District.

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collection, detention, and drainage of storm water shall be provided for review and approval by the Township. Storm water shall be directed to a sedimentation pond/detention area prior to discharging off-site. The Township may permit or require sheet flow over a vegetated swale or other best management practice to filter pollutants prior to discharge off-site. Any direct discharge to a water body may require a Michigan Department of Environmental Quality permit.

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13. The operator shall provide sufficient equipment on-site to properly manage the composting process. As a minimum, this shall include a front end loader or similar machinery for loading, unloading, turning, and aeration operations; a shredder for reducing new material to a smaller particle size for faster decomposition; a source of water or watering trucks; and a screen to improve the quality and marketability of the final product.

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14. The volume of yard wastes handled by the facility shall not exceed the practical capacity of the site. The Township may seek advice from a compost expert in reviewing this or other site and operational issues.

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15. The Applicant shall submit a Compost Operations Management Plan with the preliminary site plan. This plan shall provide details regarding the daily operations of the proposed compost facility. The following minimum information shall be included in the plan:

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a. The name, address, and phone number of the person responsible for operation of the site and the person responsible for correcting all operational problems that may result in complaints being made to the Township.

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b. A detailed description of the type of material that will be accepted.

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c. A detailed plan on how unacceptable material will be removed from the incoming waste stream and removed from the site.

d. A plan for the processing of materials including a) initial handling, b) active composting, and c) finishing of material for the aftermarket.

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e. A stormwater management plan including a written description of how stormwater will be processed and how problems, including unexpected ponding of water, will be addressed.

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f. A traffic impact analysis indicating how many trips will be expected during the a.m. peak hour, p.m. peak hour, and on a daily basis. The trips shall be classified by type of vehicle, including passenger cars and trucks. Truck traffic shall be classified by weight and truck capacity and by whether it is carrying inbound material or finished product. The study

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shall include recommendations regarding deceleration lanes, passing or center left-turn lanes, and driveway geometrics.

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16. The operator understands and agrees that failure to maintain and operate the site in a responsible manner that minimizes the potential for adverse impacts on neighboring properties shall constitute grounds for enforcement action by the Township.
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17. Yard wastes shall be actively rotated in an aerobic condition. Wastes shall not be allowed to accumulate for longer than two (2) years before being finished and removed from the site.
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18. The operator shall provide plans showing all equipment maintenance and storage areas. Plans shall show the location of all fuel storage facilities and shall detail primary and secondary containment for all hazardous materials, including product-tight containers for primary containment. Hours of operation shall also be specified and are subject to review and approval by the Township.
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19. The applicant shall provide a plan for the removal of unmarketable compost.
20. An annual inspection/permit fee for all yard waste composting facilities shall be established by resolution of the Township Board.
- 25
21. The operator shall keep a manifest documenting the quantity of yard waste going in and finished product and other material going out of the facility on a weekly basis. Said manifest shall be summarized in an annual report to be provided to the Township on the anniversary of the first day of operation. It shall also be available for inspection by Township officials upon twenty-four (24) hours notice.
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22. Copies of all Michigan Department of Natural Resources and Department of Environmental Quality applications / permits, if required, shall be provided to the Planning Commission as part of the application package.
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23. The use shall conform to all applicable performance standards in **Section 8.18 Environmental Performance Standards (in the current ZO this refers back to section 1001.7, industrial performance standards)** including, but not limited to, noise, dust and smoke, as contained in this Ordinance.

SECTION 10.26 MINERAL EXTRACTION & MINING

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- A. **Applicability.** This section is intended to regulate the use of land for all type of mineral extraction and mining. The extraction of oil and gas is not regulated by this section. This section provides procedures for the evaluation of applications for the issuance of special land use permits to establish such mining and quarrying uses. Special use regulations and special use application evaluation procedures are needed because mining and mineral extraction may pose significant land use problems, including environmentally damaging
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changes in topography, impairment of load bearing capacity of adjacent land, safety hazards due to heavy truck traffic on roads not designed for such traffic, levels of noise from mining and related operations, threats to air quality from dust and other emissions, threats to water quality from erosion and chemical emissions, threats to water levels, aesthetic problems, zoning and license enforcement problems, land use compatibility problems, loss of natural resources, threat to desirable land use patterns and potentials, residential blight, and/or attractive nuisance hazards.

No mining or mineral extraction shall be permitted unless the Township Board shall first have issued a special land use permit in accordance with the provisions of this section. Special land use permits shall be issued only in accordance with the procedures and standards set forth herein. It is the intent of these procedures and standards to ensure that mining and quarrying shall occur in places and ways which will be consistent with public health, safety and welfare and to ensure that lands subject to mining operations shall continuously be reclaimed and rendered fully suitable for a use approved pursuant to issuance of the applicable special land use permit.

B. Exemptions. Mining and mineral extraction shall not include the removal from a single parcel of land during any calendar year of: 1) less than 1,000 cubic yards of material when such removal is NOT attendant to development in accordance with a subdivision preliminary approval, or 2) less than 10,000 cubic yards of material when such removal is attendant to development in accordance with a subdivision preliminary approval. All removal which is not regulated as mining and mineral extraction shall be subject to the site plan review provisions of this ordinance, in the case of removal attendant to development subject to site plan review, and to the soil erosion and sedimentation control regulations of Highland Township, in the case of all removal. Such removal of earth resources may also be subject to any land improvement ordinance or other pertinent regulations which Highland Township may enact subsequent to the enactment of this ordinance.

C. Mining and Mineral Extraction Special Land Use Applications.

1. An application for a Special Land Use permit for mining and mineral extraction shall be submitted jointly on behalf of, and signed by, each person or entity having ownership of the land on which the use is to be located, including, but not limited to, all Applicants and all Lien holders (as those terms are defined in Section 10.26.C.2). The application shall contain the sworn certificate of each such person or entity certifying as to the accuracy and completeness of each statement pertaining to it contained therein. The application shall not be eligible for consideration until it is in satisfactory form, has been duly executed, and has been submitted to the Zoning Administrator, accompanied by all necessary fees as provided in this ordinance.

2. The application shall be made on forms provided by the Zoning Administrator and shall be accompanied by such documentation as is required to determine compliance with this ordinance, but not less than the following:

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- a. The name and address of each person or entity having ownership of the land (whether as owner, tenant, optionee, vendor, vendee, or otherwise, vested or contingent, present or future, direct or indirect, but excluding any Lien holder on which the use is to be located (all such persons and entities are hereinafter collectively referred to as the "Principals"), together with a description of each Principal's interest in the land.
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- b. The name and address of each person or entity having ownership of the land which confers, or will confer, any right of access, development, operation, or other right in the land on which the use is to be located, whether vested or contingent, and should include, but shall not be limited to, a person or entity that is a party to a lease, development agreement, operating agreement, or any other agreement which pertains to a mining or quarrying operation on the land on which the use is to be located, the removal of resources from the site, or contracting with others for any such activity (all such persons and entities are hereinafter collectively referred to as the "Operators"), together with a description of each Operator's interest.
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- c. The name and address of each other person or entity having ownership of the land or in the development thereof or any operation thereon, together with a description of each of their respective interests in the land on which the use is to be located.
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- d. All Principals, all Operators, and every other person or entity having ownership of the land or in the development or operation thereof, but not including any Lien holder shall be collectively referred to herein as the "Applicants".
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- e. Specification of the location, size and legal description of the land for which special land use approval is sought, together with any and all adjoining land in which any of the applicants and/or any person or entity affiliated with any of the applicants has any interest (whether as owner, tenant, optionee, vendor, vendee, Lien holder or otherwise; vested or contingent, present or future, direct or indirect).
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- f. A record search of title to the lands described in subsection "e" above prepared by a reputable title company satisfactory to Highland Township certified as of a date not more than thirty (30) days prior to the date of application and disclosing all interests in the land on which the use is to be located, including but not limited to, the interests of each Applicant and each lien or security interest with respect to any portion of such land.
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- g. A statement in writing from each holder of a lien or other security interest in any part of the land on which the use is to be located (all such persons
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and entities being hereinafter collectively referred to as "Lien holders"), acknowledging each Lien holder's willingness to subordinate its interest in the land to the interest of Highland Township in the exercise of its rights under the ordinance and any special use permit with respect to the restoration of the land in accordance with any Operations and Restoration Plan that may be entered into with respect to said land.

- h. The name, address and telephone number of one person, firm or corporation designated by each Applicant and each Lien holder as agent for all for the purpose of receiving all notices, correspondence and communications in connection with this ordinance.
- i. Name and address of the banking or savings and loan entity which is to issue the irrevocable letter of credit or other surety to be posted pursuant to Section 3.09, Permit Fees and Performance Guarantees and/or Section 10.26.I, Surety Requirements, if applicable.
- j. Sworn statement that none of the Applicants has defaulted on any financial surety posted to ensure performance in connection with any mining and/or construction activity, or if any of the Applicants has defaulted on any such bond, a brief description of the circumstances surrounding the default, including the name of the surety, date of default and any remedial action which was taken.
- k. The name of each Applicant's carrier for public liability and property damage insurance and policy limits thereof, together with current certificates of insurance for coverage's required under this Ordinance.
- l. Vertical aerial photographs, enlarged to a scale of one (1) inch equals two hundred (200) feet, from original photographs at a negative scale no smaller than one (1) inch equals one thousand (1,000) feet. The area covered by the vertical aerial photographs shall include: all land subject to the application; all contiguous land which is proposed to be used or has been used by any of the Applicants for any extraction, treatment or storage; all roads which can provide access to any land involved in the proposed operation; all roads other than state trunk lines which may be used to haul mined material; and all lands within one mile of each of the aforementioned areas. Each such area or feature shall be delineated on the aerial. All aerial photographs shall be taken not more than one year prior to the date of the application of which they are a part.
- m. Twenty (20) copies of an identification and topographic survey, prepared by an engineer or surveyor licensed by the State of Michigan to prepare such a survey, drawn to a scale of one (1) inch equals two hundred (200) feet with topographic contours drawn at two foot intervals on U.S.G.S. datum. This survey shall include the boundary of the entire tract by

courses and distances, all boundaries of the areas subject to the application, and the means of vehicular access to the proposed operation.

- 5 n. Twenty (20) copies of an isopach survey or other comparable geologic data indicating the location of deposits to be mined and the basic data and collection methods upon which such survey is based. Elevations shall be based on U.S.G.S. datum.
- 10 o. An estimate of the quantity of excavation on the site and the extent of resources on undeveloped land within one mile of the site.
- 15 p. Report by a qualified independent soil scientist, soils engineer, hydrologist, hydro geologist or geologist regarding the surface water, the level of the water table and the size and location of existing and new water bodies on the site and within one mile of the site. The report shall include an opinion as to each and every effect on the water table and private wells of property within the reasonably anticipated area of impact during and subsequent to the operation. The report shall also include an opinion
20 whether the exposure of subterranean waters and/or the impoundment of surface waters, where permitted, will establish a stable water level at the level or levels proposed as part of the operation, and that the same will not interfere with existing subterranean water or cause any harm or impairment to the general public. The report shall include a ground and
25 surface water quality analysis based on samples taken not more than one year prior to the date of the application of which the report is a part. The analysis shall be completed in accordance with engineering standards duly adopted by the Highland Township Board of Trustees. The report shall provide base line water quality data to be used in determining compliance with the requirements of this ordinance.
- 30 q. A detailed Operations and Restoration Plan for the extraction of the natural resource deposits and restoration of the site. The plan shall:
 - 35 i. Set forth in detail the arrangement and nature of all operations, including the quantity of each type of material to be removed and the machinery, equipment and methods to be used in the operation.
 - 40 ii. Set forth a detailed explanation as to routing of commercial vehicles and their size, weight and frequency of trips. If different routes will be used at different stages of the operation, a timetable for routing shall be included. The Applicant shall submit these proposed routings to Highland Township, affected adjoining townships, the Oakland County Road Commission, and the Michigan Department of Transportation for review of the physical and design capabilities of these routes to accommodate the
45 potential traffic, including turning movements to and from the site

at all points of egress and ingress. A letter from each jurisdiction indicating their comments shall be included as part of this application.

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- iii. Set forth in detail the types and amounts of explosives proposed to be used, and the areas to be blasted.
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- iv. Set forth in detail the amount and source of water to be utilized in processing, and the anticipated means and location of dispersals of such water following use.
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- v. Set forth in detail those features of the arrangement and nature of operations which will ensure that the operations have minimum negative impact on adjacent areas and on areas affected by the routing of trucks and other commercial vehicles.
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- vi. Set forth in detail the procedures to be employed to protect groundwater, watercourses, water bodies and wetlands from contamination and erosion directly or indirectly caused by extraction and restoration activities. Procedures should include the use of monitoring wells and the periodic sampling of watercourses and water bodies and the termination of mining activities if any of the periodic samplings indicate damage from contamination or erosion. Monitoring wells may be omitted if the Township Board finds, based on specific facts, that they are not needed to ensure protection of water quality.
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- vii. Set forth in detail the procedures to protect groundwater levels and the direction and flow rates of subsurface aquifers. Methods for the disposition by controlled flow or controlled drainage of any excess water into existing drains or watercourses shall be specified. Methods shall be such that the facilities of such drain and/or water course shall not be unduly burdened by the introduction of the additional drainage. Procedures should include the use of monitoring wells at the perimeter of the property and the termination of mining activities if monitoring wells indicate that impacts on groundwater could result in significant draw down of existing wells or the region's water table. Monitoring wells may be omitted if the Township Board finds, based on specific facts, that they are not needed to ensure protection of water quantity and flow.
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- viii. Set forth in detail a timetable for each stage of the operation and a plan for restoration in one or more phases. The restoration plan shall specify:

- (a) The use or uses to which each restored area will be put.
 - (b) The dates by which areas will be restored, as interim restored areas and final restored areas pursuant to Subsection 10.26.L.2.a.
 - (c) The restoration topography drawn as contours at an interval of two (2) feet on U.S.G.S. datum.
 - (d) The location of water bodies and other major physical features.
 - (e) The location of areas to be partitioned or subdivided, and the proposed layout of such areas.
 - (f) The methods and materials proposed for reclamation including topsoiling and the amount and type of plantings.
- ix. Provide for operations and restoration in conformance with the provisions of Section 10.26.L, Operation Requirements for Mining and Mineral Extraction Special Land Uses and Section 10.26.M, Restoration Requirements.
3. The application for approval of a mining Special Land Use may be accompanied by an application for a change in the zoning designation of the subject property, provided all applicable requirements for a zone change are met.
 4. The Applicants shall be responsible for payment of all application fees, including but not limited to all costs incurred by the township in reviewing and evaluating the application, as herein provided. The application shall be accompanied by a deposit against the application fee, which fee shall be in an amount sufficient to cover all costs of the Township associated with review of the application. Such costs may include, but shall not be limited to, costs of providing required public notice and thorough independent, professional technical reviews of all issues pertinent to consideration of the application. Technical reviews shall address such issues as land use impacts, land value impacts, traffic flow and traffic safety impacts, water quality impacts, other natural resource impacts, compliance enforcement problems, land restoration costs and other technical issues. Independent technical reviews shall be prepared by appropriately qualified independent professionals to a level of detail appropriate to the proposed mining operation. The Township Board shall from time to time establish by resolution the amount of the application fee deposit for each application, on a case-by-case basis.
- 45 **D. Mining and Mineral Extraction Special Land Use Application Procedures.**

1. Mining and Mineral Extraction Special Land Use applications review shall follow Article 7, Special Land Use Procedures and Standards and the following:

The Planning Commission shall make a recommendation regarding the special approval with conditions, or disapproval as per Article 6, Special Land Use Procedures and Standards, specifically, section 6.03, Review Procedures. The Planning Commission's recommendation shall be based on all available factual materials and public hearing comments pertinent to the requirements of this Section in general, and pertinent to the requirements and standards of Sections 10.26.C, Mining and Mineral Extraction Special Land Use Applications 10.26.F, Township Board Review and Approval of Mining and Mineral Extraction Special Land Uses, 10.26.L, Operation Requirements for Mining and Mineral Extraction Special Land Uses and 10.26.M, Restoration Requirements in particular.

- a. The application and the zone change application, if any, together with the Planning Commission's recommendations, shall be forwarded to the Township Board for review and consideration.

- b. The Township Board shall review and consider all technical reviews and all other factual material reviewed by the Planning Commission, all public hearing comments, and such additional information as it deems pertinent, including additional technical reviews of the type set forth in this Section.

- i. If the application is approved or approved with conditions, a special land use permit will be issued to conduct operations. The permit shall incorporate by reference, and operations shall be conducted in conformance with: (i) the Operations and Restoration Plan for the permit as approved by the Highland Township Board, (ii) any conditions attached thereto by the Township Board, and (iii) the terms and conditions of any other applicable laws, the ordinances of the Township of Highland, and any other applicable regulations. The permit shall not be valid until it has been signed by the Township Supervisor and the Township Clerk. The Supervisor and Clerk shall not sign the permit until they have determined that: i) all application review costs have been paid, ii) all required sureties have been deposited, iii) all permit signatures required pursuant to Sections 10.26.J.6 and 10.26.J.7 have been obtained, and iv) all other conditions which are required to be fulfilled prior to commencement of operations have been fulfilled. The Operations and Restoration Plan and any conditions shall become an integral part of this ordinance and all mining activities and subsequent use of the land shall conform thereto. No change in the terms of the Operations and Restorations Plan or the conditions attached by the Township Board thereto or to the persons named as Applicants shall be made except by the issuance of an amended special land use permit

pursuant to the same procedures and standards set forth herein for issuance of the initial special land use permit.

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- c. No application for a special land use permit which has been denied by the Township Board shall be resubmitted until the expiration of one (1) year from the date of such denial, except on grounds of newly discovered evidence or proof of changed conditions, sufficient to justify reconsideration by the Township Board. Each reapplication will be treated as a new application.

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E. **Time Limit and Renewal of Mining and Mineral Extraction Special Land Use Permit.**

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- 1. Mining and mineral extraction special land use permits shall be issued for a period which is not less than twelve (12) months and which is not longer than one hundred and twenty (120) months.
 - 2. Mining and mineral extraction special land use permits may be renewable upon submission and approval of an application for renewal. In order for an application for renewal to be approved it shall: 1) meet all the requirements set forth for initial applications, and 2) contain satisfactory evidence of compliance with the requirements of this ordinance and any conditions of approval applicable to the permit for which renewal is sought. Evidence of compliance shall be obtained pursuant to the provisions of Section 10.26.G, Special Land Use Permits Compliance Reports, with all costs for determining compliance being paid by those persons, firms and/or corporations designated to bear such costs pursuant to Section 10.26.G.
 - 3. Applications for renewal of mining and mineral extraction special land use permits shall be submitted not more than six (6) months prior to expiration of the permit for which renewal is sought.

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F. **Township Board Review and Approval of Mining and Mineral Extraction Special Land Uses.**

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- b. General Standards for Approval. The Township Board shall approve the establishment or enlargement of a mining activity as a special land use only after it has determined, based on the facts submitted by the Applicants or otherwise available, that no areas directly or indirectly affected by the proposed mining and related activities will suffer any very serious consequences as a result of the proposed land use. The seriousness of consequences shall also be weighed in relationship to the scarcity of and the public need for the material to be mined. In making such a determination, the Township Board shall make specific, separate findings as to each of the following aspects of the proposed mining operation:

- 40
- a. Off-site Impacts.
- 45

5 i. There will be no very serious impairment to the safety of motorists as a result of increased vehicular congestion, roadway deterioration, debris thrown from trucks, and/or the mixture of slower truck with faster automobile traffic, or any other cause. In making such a finding, consideration shall be given to existing and future traffic volumes, thoroughfare geometrics, topographic and other pertinent conditions.

10 ii. Existing roadways are adequately improved to carry traffic which will result, or there are funds available to make necessary improvements.

15 iii. There will be no very serious impairment to the safety of school children riding school buses or walking to school as a result of increased vehicular congestion, roadway deterioration and debris thrown from trucks, and/or the mixture of slower truck with faster automobile traffic, or any other cause. In making such a finding, consideration shall be given to existing and future populations of school children.

20 iv. There will be no very serious impairment to the quiet enjoyment of properties due to noise from truck traffic generated by the mining site. In making such a finding, consideration shall be given to the nature of existing and future development.

25 v. There will be no very serious impairment to the quiet enjoyment of properties due to dust and exhaust from truck traffic generated by the mining site. In making such a finding, consideration shall be given to the nature of existing and future development.

30 vi. There will be no very serious impairment to the quiet enjoyment of properties due to dust and exhaust from truck traffic generated by the mining site. In making such a finding, consideration shall be given to the nature of existing and future development.

35 c. On-site Impacts.

40 i. There will be no very serious impairment to the quiet enjoyment of properties due to noise from the mining or processing of materials on the site. In making such a finding, consideration shall be given to the nature of existing and future development.

45 ii. There will be no very serious impairment to the quiet enjoyment of properties due to dust, exhaust or other emissions from on site

extraction, moving or processing of mined materials. In making such a finding, consideration shall be given to the nature of existing and future development.

- 5
- iii. There will be no contamination of groundwater from the mining operations.
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- iv. There will be no very serious draw down of groundwater levels or alteration of the direction or flow rate of aquifers.
- v. There will be no very serious negative aesthetic impact from open pits, processing structures, stockpiles of mined material, reuse piles or other similar facilities.
- 15
- vi. Potential attractive nuisance or other dangers associated with mining operations will be minimized by appropriate safety precautions.
- 20
- vii. There will be no very serious impairment to the general level of air quality due to dust, exhaust or other emissions from on site extraction, moving or processing of mined materials.
- d. Mid- and Long-Range Planning Considerations.
- 25
- i. The use of land after reclamation will be compatible with the existing and planned development of surrounding areas.
- 30
- ii. There will be no very serious loss of agricultural land and/or alternate development opportunities.
- 35
- iii. Other lands within the Township will not be blighted by the mining operations or associated activities.
- e. Assurances of Compliance.
- 40
- i. The Applicants have provided adequate financial assurances that reclamation will occur as approved and on schedule.
- 45
- ii. The Applicants have provided adequate financial resources to pay all costs of Township monitoring of compliance.
- iii. The Applicants have provided adequate financial and contractual assurances that hauling will comply with approved time schedules and routes.

iv. The Applicants have provided all other assurances necessary for the Township to determine that there will be compliance with all requirements of this ordinance.

5 f. Scarcity and Need for Material to be Mined. Available supplies of the material to be mined from existing sources other than the proposed mining site and from unidentified, but reasonably anticipated other sites, do not substantially exceed reasonably foreseeable public needs. In evaluating available supplies and public needs, consideration shall be given to all
10 supplies and all needs, whether generated inside or outside of the Township, which are likely to affect the market area which might be served by the site for which special use approval is sought.

15 g. Size, Duration and Location Relationships. In determining whether or not the general standards set forth in Section 10.26.F, Township Board Review and Approval of Mining and Mineral Extraction Special Land Use, above are met, the Township Board shall consider the following factors in relation to each other: 1) the size of the proposed operation, 2)
20 the location of the proposed operation (including haul routes) in relation to residential land and state trunk line highways, and 3) the anticipated duration of the proposed operation. In general, the Township Board shall not approve 100 acre or larger operations of anticipated ten (10) year or longer duration when proposed for locations with haul routes from the operation to a state trunk line highway in excess of one (1) mile through or
25 adjacent to areas planned or developed for residential use. The Township Board may approve such operations, provided it finds that there are specific factual circumstances which mitigate the impacts of the operation and/or which indicate that the material to be extracted is scarce in proportion to the need for said material. For the purpose of this subsection,
30 100 acre or larger operations shall be operations which have a 100 acre or larger area in which mining and related operations could take place in accordance with the provisions of Section 10.26.L.2.b.

35 h. Scarcity of and Need for Material to be Mined. In determining whether or not the general standards set forth in Section 10.26.F.1 above are met, the Township Board shall consider the scarcity of and public need for the material to be mined in Highland Township and the larger regional and national community of which the Township is a part. Scarcity and public need consideration shall be weighed in relation to size, location and
40 duration considerations.

i. Cumulative Impact of Existing and Proposed Operation. In determining whether or not the general standards set forth in Section 10.26.F, above are met, the Township Board shall consider the cumulative impact of
45 existing and proposed operations. Special land use approval shall not be granted if the Board is unable to find that no very serious consequences

will result from the cumulative impact of a proposed operation and one or more existing operations.

- 5 j. Complete Application and Compliance with Operation and Restoration Requirements. The Township Board shall approve the establishment or enlargement of a mining activity as a special land use only after it has examined the application for a special land use permit and found that it conforms with the requirements of Section 10.26.F, and in particular that the Operations and Restoration Plan provides for operations and restoration in accordance with the standards of Section 10.26.L, Operation Requirements For Mining and Mineral Extraction Special Land Use and Section 10.26.M, Restoration Requirements.

15 **G. Special Land Use Permit Compliance Reports by Zoning Administrator.**

- 20 1. To ensure compliance with the provisions of this ordinance including any conditions established pursuant to special land use approval, the Zoning Administrator shall conduct not less than one (1) inspection of each mining and quarrying operation every six (6) months. Employees and agents of the Township of Highland shall be permitted to come upon the lands subject to a mining and quarrying special use permit for the purpose of inspecting, monitoring and/or administering this Ordinance and other ordinances and lawful regulations of the Township of Highland.
- 25 2. At least one (1) such inspection shall be completed and reported to the Township Board thirty (30) days prior to the date on which the subject special land use permit expires.
- 30 3. The Zoning Administrator shall retain the assistance of planners, engineers and any other professionals necessary to evaluate compliance with this ordinance.
- 35 4. The cost of all compliance inspections shall be paid by the Applicants and such other persons, firms or corporations who have been made subject to liability pursuant to licensing and/or other Township regulations. Each such person, firm or corporation shall be jointly and severally responsible for the full cost of compliance inspections.

40 A Compliance Inspection Reserve Fund which is controlled by the Township shall be established for each special land use which is approved pursuant to this Section. The fund shall be maintained by monthly deposits made by the persons, firms and corporations responsible for paying the costs of compliance inspections. The deposits shall be equal to \$500.00 per month or six (6) cents for each cubic yard of mineral removed from the subject property during the month, whichever is greater. At the end of each calendar year, and as of the date of termination in the final year of operations, an independent certified public accountant

45 satisfactory to the Township shall certify to the Township the amount of materials

removed from the subject land during the previous year, or during such portion of the year until the date of termination, as applicable.

After thirty-six (36) monthly deposits have been made to a Compliance Inspection Reserve Fund, and so long as the balance in the fund exceeds the larger of either \$18,000.00 or the total costs of all compliance inspections made during the most recent thirty-six (36) months, then deposits to the fund may be suspended until the balance in the fund falls below the larger of either \$18,000.00 or the total cost of all compliance inspections made during the most recent thirty-six (36) months.

Should the Compliance Inspection Reserve Fund be at any time insufficient to cover the full cost of inspections, the persons, firms and corporations responsible for paying the costs of compliance inspections shall be billed directly for the difference. Failure to pay such charges within thirty (30) days of billing shall be a violation of this ordinance.

In individual circumstances, the Township Board may specify lower or higher monthly deposits and/or a lower or higher minimum Compliance Inspection Reserve Fund balance upon a finding that such lower or higher deposits and/or balances will be adequate or necessary to cover the costs of the compliance inspections in the particular circumstance.

H. Notice of violations, correction of violations, revocation of Special Land Use Permit, and lien against property.

1. Should the Zoning Administrator determine that a probable violation of the provisions of this Section exists, a written notice of the probable violation and the pertinent facts relating thereto shall be served on all Applicants, all Lien holder and any other persons, firms and/or corporations who have been made subject to liability pursuant to licensing and/or other Township regulations. Said persons, firms and/or corporations and each Operator shall have thirty (30) days to file a response to the notice and to provide the Zoning Administrator with facts and information demonstrating compliance. Should such facts and information not be provided within thirty (30) days, or should the Zoning Administrator determine that the facts and information filed fail to demonstrate compliance, the Zoning Administrator shall serve a second notice. The persons, firms and/or corporations upon whom notice is served shall have thirty (30) days to file a response to the second notice and to provide the Zoning Administrator with additional facts and information demonstrating compliance. Should a satisfactory response not be provided to the second notice, the Zoning Administrator shall file a notice of probable violation with the Township Board.

2. Following the Board's receipt of the notice of probable violation, the Board shall schedule a public hearing for the purpose of hearing comments pertaining to the probable violation. The hearing shall be notice as required by Michigan law for special land use review, provided that notice shall be provided to all Applicants,

to all Lien holder and to person, firm and/or corporation who has signed the special land use permit pursuant to Section 10.26.J.7, and on any other persons, firms and/or corporations who have been made subject to liability pursuant to licensing and/or other Township regulations.

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3. Following the public hearing, the Township Board shall determine if the subject use has been operated in violation of the terms of this ordinance including any conditions established pursuant to special land use approval.

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4. Should the Board determine that the subject use has been operated in violation of the terms of this ordinance, including any conditions established pursuant to special land use approval, the Board shall implement such remedies as are appropriate to the circumstances. The remedies which the Board may implement shall include, but shall not be limited to any one or more of the following:

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a. Order that the operation and the property be brought into compliance.

b. Order the restoration of all areas disturbed by mining and quarrying operations in accordance with the approved restoration plan.

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c. Revoke the special land use permit for mining and quarrying operations.

d. Revoke all Highland Township mining and quarrying licenses held by all operators who are licensed to conduct operations on the subject site.

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e. Order such remedial actions as the Board may determine necessary to correct environmental or other on-site and/or off-site damage which may have resulted from operation of the subject use in violation of the requirements of this Ordinance, including the conditions of the applicable special land use permit.

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f. Take such other actions as the Board may determine are appropriate to the circumstances, but not including the actions provided for in Section 10.26.H.7. Such actions shall be undertaken only after a second public hearing pursuant to Section 10.26.H.6, below.

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5. Pursuant to the implementation of appropriate remedies, the Board may establish such specifications for compliance as are appropriate. The Board may direct the Zoning Administrator to monitor compliance with actions ordered by the Board and report to the Board on such actions.

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6. Should the Zoning Administrator report that actions to correct violations are not proceeding in accordance with specifications established pursuant to Section 10.26.H.5, the Board shall schedule a public hearing with notice as provided by Michigan law for special land use approval. Subsequent to the public hearing, the

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Board shall determine whether actions to correct the violation have been carried out in accordance with the Board's specifications.

5 7. Should the Board determine that any of the specified corrective actions have not
been taken, the Board shall have the right to enter on the property for the purpose
of restoring the property in accordance with the approved Restoration Plan, and/or
to take such remedial action which it deems appropriate to correct environmental
or other damage which may have resulted from operation of the subject use in
violation of the requirements of this ordinance, including the conditions of the
10 applicable special land use permit, and/or to take such other actions as the Board
may determine are appropriate. The cost of any such actions shall be charged
against the surety deposited pursuant to Section 10.26.I, Surety Requirements and
any other applicable surety deposited pursuant to licensing or other Township
regulations. In the event that the surety deposits and other resources of the
15 Applicants available to the Township are, in the opinion of the representatives of
the Township, insufficient to cover such costs, the Township shall be entitled to
recover said deficiency out of the land, and, to effectuate said right, the Township
shall be entitled under such circumstances to exercise all of the rights of a first
lien holder whose lien is in default, and shall be entitled to exercise all remedies
20 available to such a first lien holder under the laws of the State of Michigan,
including, but not limited to, the right to foreclose said lien and the right to obtain
appointment of a receiver for any purpose.

25 8. In the event that the value of the property is insufficient to cover the balance of
the costs, liability shall fall jointly and severally upon the Applicants, non-
applicant operators on the subject site and on all other persons, firms and/or
corporations who have been made subject to liability pursuant to licensing and/or
other Township regulations. Applicants on whom liability shall fall shall include
30 Principals, Operators and others as defined in Sections 10.26.C.2.a through
Section 10.26.C.2.d and as identified on the Special Land Use Permit. Said
liability shall fall on said Applicants based on their being named in the applicable
Special Land Use Permit and those so named shall not escape liability even if they
no longer meet the definition of Principals, Operators or others with an interest in
the land pursuant to Sections 10.26.C.2.a through Section 10.26.C.2.d. If a
35 Special Land Use Permit has been amended pursuant to the provisions of Section
10.26.D, Mining and Mineral Extraction Special Land Use Application
Procedures so that one or more entities originally named as Applicants are no
longer named as Applicants, then those that once were named as Applicants, but
are no longer named as Applicants shall not be liable to cover the balance of the
40 costs in the event that the value of the property is insufficient to cover the balance
of the costs. Non-applicant operators on whom liability shall fall shall include all
operators licensed by Highland Township to conduct operations at the subject site.

45 I. **Surety Requirements.**

1. So as to assure faithful restoration, the Applicants shall deposit with the Township a surety bond which is in form and substance satisfactory to the Township Board. No less than twenty-five percent (25%) of the total bond shall be in the form of cash or an irrevocable and unconditional letter of credit issued by a banking or savings and loan institution satisfactory to the Township Board making the Township the beneficiary thereof. With the approval of the Township Board, up to seventy-five percent (75%) of the bond may be in the form of a corporate surety bond.
2. The cash or irrevocable letter of credit plus all other components of the surety bond shall remain in force, and in the possession of the Township until the parcel or parcels have been reclaimed, and all equipment, machinery, materials, buildings and other improvements removed as required by the terms of the ordinance.
3. In the establishment of the amount of the surety bond, the Township Board shall take into account the size and scope of the proposed operation, the current and projected costs of reclamation in the event of default by those responsible for restoration at such time as it is likely to be most costly, and other such conditions and factors as might be relevant in determining a sum reasonable in light of all the facts and circumstances. In establishing the amount of the deposit, the board shall consider, but not be bound by, the Applicants' estimate of the amount that will be required, provided such estimate is certified as accurate by an officer of each Applicant. In determining the amount of the Bond the Township Board may consider, but shall not be bound by an independent appraisal of the actual cost of restoration. Such an appraisal shall be prepared by appropriately qualified independent professionals selected by the Township Board. Costs for obtaining such an independent appraisal shall be charged to the Applicants. Final determination of the amount of the Bond shall be made by the Township Board, but unless good cause be shown therefore, the deposit shall be in an amount not less than forty thousand dollars (\$40,000) for the first twenty (20) acres or portion thereof, and a minimum of one thousand dollars (\$1,000) for each acre over twenty acres. The Township Board, in considering any application to amend, modify or renew the special land use permit, may, in its discretion, increase or decrease the amount of the surety bond, based upon increased costs, new information or partial reclamation.
4. All cash deposited as surety shall be deposited in an interest bearing account in control of the Township at a bank or savings and loan institution satisfactory to the Township, provided that all sums on deposit shall be readily accessible to the Township in the event of need or default. Interest earned on any such deposit shall accrue in the account and shall be available for restoration and other purposes which may be charged against those liable for inspection, restoration and remediation costs pursuant to this Ordinance, with the balance, if any, returned to the Applicants upon compliance with all other provisions of this Ordinance.

- 5. The surety deposit shall be submitted by the Applicants prior to the issuance of the special land use permit.

- 5 6. Monies may be released to the Applicants in proportion to the work completed on the different restoration activities after an inspection report is filed by the Township Engineer and approved by the Board. Not more than eighty percent (80%) of the monies deposited shall be released until all work has been completed and subsequently inspected by the Township Engineer and approved by the Board. Upon completion of restoration and/or rendition in accordance with this ordinance to the satisfaction of the Township, any balance of such deposit together with any remaining interest thereon, shall be returned to the various Applicants in the proportions designated by the Applicants on the approved special land use permit.

- 10 7. The amount of the surety deposit shall be subject to an annual reevaluation of its adequacy to pay for all required restoration and rendition activities. The reevaluation of the surety deposit shall consider changes in the Consumers Price Index for the Detroit Metropolitan Area as published monthly by the U.S. Bureau of Labor Statistics for Hourly and Clerical Wage Earners plus other pertinent factors. Pursuant to reevaluation, the Township Board may increase or decrease the required surety deposit. If the Township Board increases the surety requirement, all Applicants, all Lien holders and all other persons, firms and/or corporations who have been made subject to liability pursuant to licensing and or other Township regulations shall be notified. Within ninety (90) days of said notification, the additional surety shall be deposited with the Township in a form acceptable to the Township. Failure to deposit the additional surety within ninety (90) days shall be deemed a violation of this ordinance. Action against said violation shall be taken pursuant to Section 10.26.H, Notice of Violation, Correction of Violation, Revocation of Special Land Use Permit and Lien Against Property.

- 15 20 25 30 8. The Township Board may, at its discretion, approve surety deposits for areas less than the total acreage for which a special land use permit is sought. However, at no time shall any excavation be undertaken unless and until sufficient surety deposit has been deposited to ensure that the restoration of the area to be disturbed conforms with all other requirements of this ordinance.

- 35 40 45 9. Insurance shall be a precondition to commencement of operations, and maintenance in full force and effect of insurance shall be a precondition to the right of continued operations. The Applicants shall provide binders for personal injury and property damage insurance for the project to be carried during all times which any reclamation is left to be done, and during all times any machinery and/or equipment remains on the site, or any structures, equipment or improvements to be removed remain on the site. This insurance shall be carried in an amount no less than one million (\$1,000,000.00) dollars for personal injury and damage to more than one person's property arising out of a single occurrence.

This insurance shall cover injury or damage occurring upon the site of the operation, as well as upon injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject's property.

5 J. **Permit Content.**

1. The name and address of each of the Applicants for the Special Land Use permit and each Lien holder with respect to the land subject to the lien.
- 10 2. The name, address and phone number of the person designated by each of the Applicants and each of the Lien holders as agent for all notice, correspondence and communication.
- 15 3. The legal description of the property to which the permit shall apply.
4. The period for which the permit shall be valid, including its commencement date and expiration date.
- 20 5. A statement essentially corresponding to the following: "This permit is subject in general to this Section, Special Land Use Procedures and Standards for Mining and Quarrying and other applicable provisions of the Highland Township Zoning Ordinance under which this special land use permit was approved, that ordinance being the one in effect on, and in particular to the Operations and Restoration Plan approved pursuant to this permit and dated."
- 25 6. A statement essentially corresponding to the following: "This permit may be suspended or revoked in accordance with the procedures and notice requirements set forth in the Highland Township Zoning Ordinance, based upon a failure to comply with one or more of the applicable requirements, and/or the terms and conditions of this permit, or upon the grounds that the use constitutes a nuisance or danger to the public health, safety and/or welfare."
- 30 7. A statement to be endorsed by all Applicants and all Lien holders substantially in accordance with the following: "Each of the undersigned has read this permit and understands and agrees that all of the statements and contents of the Operation and Restoration Plan for the permit as approved by the Highland Township Board together with any conditions attached thereto by the Highland Township Board are incorporated herein by reference as a part of the terms and conditions hereof, together with the terms and conditions of any other applicable law, the ordinances of the Township of Highland, and any other applicable regulations. Each of the undersigned further acknowledges that employees and agents of the Township of Highland are permitted to come upon the lands at any reasonable time for the purpose of inspecting, monitoring and/or administering the ordinances and other lawful regulations of the Township of Highland, including those regulating mining and quarrying operations upon the land which is the subject of this permit. Each of the undersigned further acknowledges that this permit shall be recorded
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with the Oakland County Register of Deeds and shall constitute evidence of a first lien, prior in right to all other liens with respect to the lands subject to this permit, in favor of Highland Township for the purpose of securing the performance of the restoration obligations set forth in the Operation and Restoration Plan, it being understood that, in the event that the surety deposits and other resources of the Applicants available to the Township are, in the opinion of the representatives of the Township, insufficient to assure restoration of the land in accordance with the Operation and Restoration Plan, the Township shall be entitled to recover said deficiency out of the land, and, to effectuate said right, the Township shall be entitled under such circumstances to exercise all of the rights of a first lien holder whose lien is in default, and shall be entitled to exercise all remedies available to such a first lien holder under the laws of the State of Michigan, including, but not limited to, the right to foreclose said lien and any purpose, and the Township shall be authorized to engage persons on behalf of the Applicants to enter onto said land and to perform such restoration and other actions as are appropriate to effectuate the provisions of the Operations and Restoration Plan. Each of the undersigned also acknowledges that the first lien evidenced by this permit shall also be for the purpose of securing the performance such remedial action which the Township Board of Trustees may deem appropriate pursuant to Section 10.26.H.4 through Section 10.26.H.7 of the Highland Township Zoning Ordinance to correct environmental or other damage which may have resulted from operation of the subject use in violation of the requirements of this permit."

8. A statement to be countersigned by all Applicants corresponding substantially to the following: "The undersigned have read this permit and understand and agree to be fully liable both jointly and severally for the entire cost of restoring the land pursuant to the Restoration Plan for this permit as approved by the Highland Township Board, and also for the cost of such other actions which the Highland Township Board of Trustees may deem appropriate pursuant to Section 10.26.H.4 through Section 10.26.H.7 of the Highland Township Zoning Ordinance to correct environmental or other damage which may have resulted from operation of the subject use in violation of the requirements of this Section of the Highland Township Zoning Ordinance. However, the undersigned understand that the liability hereby accepted shall only be for restoration and other costs which exceed the sum of (i) the value of the surety deposits and other funds provided pursuant to Section 10.26.I, Surety Requirements, of the Highland Township Zoning Ordinance, plus (ii) the amount realized by the Township as a result of the sale of the land at foreclosure."

9. A statement to be countersigned by all Applicants naming one person, firm or corporation as agent for all for the purpose of receiving notices required pursuant to this ordinance.

K. Maintenance of Permit Records.

5 The Township Clerk shall maintain a copy of each Special Land Use permit issued
pursuant to the provisions of this Section. Along with each permit approved there shall
also be maintained: 1) a complete copy of the approved Operations and Restoration Plan
and any conditions imposed by the Township Board pursuant to approval of the permit;
10 and 2) a complete copy of the entire Highland Township Zoning Ordinance under which
the permit was approved. The Clerk shall certify the Operations and Restoration Plan
along with any conditions attached thereto, and the copy of the Zoning Ordinance as the
documents applicable to the particular special land use permit with which they are
maintained. The Clerk shall record the permit signed by the Township Supervisor and
15 Clerk and by all Applicants as required by Section 10.26.J.7, Section 10.26.J.8 and
Section 10.26.J.9 of this Ordinance. The recorded permit shall constitute evidence of a
first lien, prior in right to all other liens with respect to the lands subject to this permit, in
favor of Highland Township for the purpose of securing the performance of the
restoration and other obligations pursuant to this ordinance.

15 **L. Operation Requirements for Mining and Mineral Extraction Special Land Uses.**

20 Removal operations must be conducted in a way which is compatible with existing and
proposed development and in a way which protects the natural environment and
minimizes negative impacts on surrounding land and development. Operation
requirements as set forth in this section shall apply.

25 1. Conformance to Approved Operations and Restoration Plan.

Operations shall be in accordance with an approved detailed plan as submitted
pursuant to Section 10.26.C.2.q.

30 2. Arrangement of Operations.

35 a. During any given phase of the operation, the entire site subject to the
special land use permit shall be divided into the following seven types of
areas: 1) buffer areas, 2) preservation areas, 3) future excavation and
operations areas, 4) excavation-and-operations-in-progress areas, 5)
interim restoration-in-progress areas and 6) interim restored areas, 7) final
restored areas. Said areas shall be defined and regulated as follows:

40 i. *Buffer areas:* Buffer areas shall be located on the subject property.
Buffer areas are required by this ordinance to be incorporated in
the approved Operations and Restoration Plan. During the period
for which the special land use permit is valid, buffer areas shall not
be disturbed by mining of materials or on-site operations
appurtenant to mining (such as washing, grading, sorting, crushing,
grinding, cutting and stockpiling), except that on-site roadways
providing necessary access to various other areas shall be
45 permitted to pass through buffer areas. Buffer areas may

incorporate sight barriers required pursuant to Section 12.04, Screening Between Land Uses.

- 5 ii. *Preservation areas:* Preservation areas shall be located on the
subject property. Preservation areas are not required per se by this
ordinance, but may be established by the approved Operations and
Restoration Plan for the convenience of the Applicants or as a
method of conforming to one or more requirements which are
10 specified in this ordinance. During the period for which the special
land use permit is valid, preservation areas shall not be disturbed
by mining of materials or on-site operations appurtenant to mining
(such as washing, grading, sorting, crushing, grinding, cutting and
stockpiling), except that on-site roadways may be permitted.
15 Preservation areas may incorporate sight barriers required pursuant
to Section 12.04, Screening Between Land Uses.
- 20 iii. *Future excavation and operations areas:* Future excavation and
operations areas shall be located within the operating limits as
designated in the approved Operations and Restoration plan. No
mining of materials or on-site operations appurtenant to mining
(such as washing, grading, sorting, crushing, grinding, cutting and
stockpiling) shall take place within the future excavation and
operations areas, except that on-site roadways may be permitted.
- 25 iv. *Excavation-and-operations-in progress areas:* Excavation-and-
operations-in- progress areas shall be located within the operating
limits as designated in the approved Operations and Restoration
plan. At any one point in time, the size of all excavation-and-
operations-in-progress areas shall not exceed the lesser of 150
30 acres of forty (40) percent of the property which is the subject of
the special land use permit. At any one point in time, all mining of
materials and on-site operations appurtenant to mining (such as
washing, grading, sorting, crushing, grinding, cutting and
stockpiling) shall take place within the excavation-and-operations-
35 in-progress area applicable for that point in time, except that on-
site roadways providing necessary access to various other areas
may be permitted outside excavation-and- operations-in-progress
areas.
- 40 v. *Interim restoration-in-progress areas:* Interim restoration-in-
progress areas shall be located within the operating limits as
designated in the approved Operations and Restoration plan. The
total acreage of all interim restoration-in-progress areas plus all
excavation-and-operation-in-progress areas shall not exceed the
45 lesser of 225 acres or sixty (60) percent of the property which is
the subject of the special use permit. Interim restoration-in-

progress areas shall be areas which have previously been mined and in which restorative grading and vegetation planting is underway. No mining or related operations shall take place in any area while it is classified as an interim restoration-in-progress area. An area which has been classified as an interim restoration-in-progress area may be reclassified as an excavation-and-operations-in-progress area pursuant to the limitations of Section 10.26.L.2.a.iv above.

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vi. *Interim restored areas:* Interim restored areas are areas which have had their topography, soils and vegetation restored in accordance with the interim provisions of the approved Operations and Restoration Plan. Interim restored areas need not be improved with buildings, permanent roadways, other permanent structures or with related landscaping which may be required for final restoration by the Operations and Restoration Plan. No mining or related operations shall take place in an area while it is classified as an interim restored area. An area which has been classified as an interim restored area may be reclassified as an excavation-and-operations-in-progress area pursuant to the limitations of Section 10.26.L.2.a.iv above.

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b. **Minimum Setbacks for Future Excavation and Operations Areas, Excavation-and-Operations-in- Progress Areas, Interim Restoration-in-Progress areas and Interim Restored Areas:**

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i. Future excavation and operations areas, excavation-and-operations-in-progress areas, interim restoration-in-progress areas and interim restored areas shall be setback from the outer boundary of the subject property a minimum of 50 feet, except that a larger setback may be required by the Township Board in circumstances where a greater setback is deemed necessary to adequately protect adjacent land areas. Grading and excavation activities may take place up to the property line beginning six (6) months before the completion of excavation in an area when necessary to implement an approved restoration plan.

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ii. Excavation, washing and stockpiling of extracted material shall not be conducted closer than three hundred (300) feet to the margin of any stream or waterway without written permission from the Michigan Water Resources Commission.

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c. **Frontage and Access.** Each such tract of land shall have a minimum frontage on a major or secondary thoroughfare of at least two hundred fifty (250) feet, except that the Township Board may approve a tract that

has lesser frontage if it is fronted by an active mining or quarrying operation, whose timetable for development would coincide with the proposed operation and written permission for access to a major thoroughfare is secured from any owner in fee or lease holder.

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d. Elevation of Processing Facilities. All processing facilities shall be located within the excavation area at an elevation as much lower than the general level of the surrounding terrain as is reasonably practicable in order to reduce the visual, noise and dust impacts of the plant.

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e. Sight Barriers. Sight barriers shall be provided in accordance with the provisions of Section 12.04, Screening Between Land Uses.

3. Operating Procedures.

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a. General Operating Standards. All activities, equipment, roadways and material storage areas shall be treated, covered, muffled or otherwise controlled to ensure compliance with the following performance standards:

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i. Operations will be conducted in a way to minimize negative impacts on adjacent areas.

ii. Operations will be conducted in a way to minimize negative impact groundwater, watercourses, water bodies and wetlands.

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iii. Operations will be conducted in a way to minimize dust and dirt.

4. Equipment used shall be constructed, maintained and operated in such a manner as to eliminate insofar as is practicable, noises and vibrations which are injurious or substantially annoying to persons living in the vicinity.

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a. Hours of Operation. Excavation, washing and stockpiling of extracted material and all truck movements associated with the hauling of extracted material shall be restricted to weekdays between the hours of 7:00 A.M. and 7:00 P.M. except in cases of a public emergency declared by the Township Board.

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b. Truck Routes. Truck traffic associated with the use shall be prohibited on all streets except those for which it is specifically approved by the Township Board pursuant to special land use approval. Streets shall be approved for truck traffic so as to minimize the impact of such traffic on residential and related uses and activities.

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c. Enclosure and Spraying of Trucks. Any and all trucks hauling any extracted materials to or from the site on rights-of-way which are subject to the jurisdiction of Highland Township shall, to the extent required by

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the Township Board after due consideration, be enclosed or covered to prevent materials from blowing or falling from trucks, and shall be sprayed to prevent gravel from falling or being thrown from the wheels and under carriage of trucks.

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d. Treatment of Private Roads to Minimize Dust. All private access roads shall be treated so as to create dust-free surface for a distance of three hundred (300) feet from any public access road. Arrangements shall also be made to minimize dust on public access routes traveled in the Township.

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e. Processing of Material Extracted Off-Site Prohibited. No natural resource extracted outside the limits of the approved special land use area shall be brought in for washing, grading, or further processing, except in the event of a public emergency requiring the use of said natural resource, as declared by the Township Board.

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f. Fencing. All mining and mineral extraction sites shall be fenced prior to the commencement of operations and prior to the placement on the site of machinery or buildings. The fencing shall completely surround the borders of the subject property, provided, however, for good cause shown in relation to the protection of public safety and in view of the operations conducted, the Township Board may, in its discretion, modify the location of fencing. The minimum specifications for the fencing shall be as follows: a six (6) foot high farm-type fence of Number 9 gauge top wire, Number 12 gauge bottom wire, Number 14 gauge stays and intermediate wires and spacing of six (6) inches vertically by twelve (12) inches horizontally; all stays shall be of fourteen (14) gauge wire; support posts shall be spaced on sixteen (16) foot centers or less.

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g. Stockpiling of Topsoil. Sufficient topsoil shall be stockpiled on the site so that the all areas which require vegetative restoration may be recovered with a minimum of six (6) inches of topsoil when excavating operations are completed. The topsoil replacement shall be made immediately following the termination of excavating operations. All replaced topsoil shall immediately be planted with grass or other plant material acceptable to the Board so as to prevent erosion of slopes. Those lands under water or in approved beach areas are excluded from top soil replacement and planting requirements.

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h. Explosives. Explosives shall be used in accordance with the "Regulations for Storage and Handling of Explosives," as published by the Michigan State Police, Fire Marshal Division, East Lansing, Michigan.

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- i. Slopes at the End of Each Working Day. At the end of each working day, slopes of areas being excavated shall not exceed a ratio of one (1) foot of rise for each two (2) feet of run.
 - j. Applicability of General performance Standards. Mining and quarrying activities shall be conducted in conformance with the provisions of Section 8.18, Environmental Performance Standards, except where provisions of this section require higher standards.
 - k. Applicability of Operations and Restoration Plan to Applicant and Independent Haulers. Any and all haulers of mine or quarry material, including those who are not mine or quarry operators, shall be subject to the requirements of the Special Use Permit, including but not limited to the Operations and Restoration Plan.
 - l. License Requirements. This ordinance requires and the Operations and Restoration Plan shall provide that no person, firm or corporation shall operate a mining or quarrying activity without first obtaining a license from Highland Township pursuant to such ordinances as may from time to time be enacted by the Township. This Ordinance further requires that no person, firm or corporation shall haul from a mine or quarry site more than ten loads in any thirty (30) day period nor more than twenty (20) loads in any 365 day period without first obtaining a license from Highland Township pursuant to such ordinances as may from time to time be enacted by the Township.
 - M. Restoration Requirements. Restoration shall be completed so as to leave the area compatible with existing and proposed development and so as to protect the natural environment and minimize negative impacts on surrounding land and development. Restoration requirements as set forth in this section shall apply.
 - 1. Conformance to Approved Operations and Restoration Plan. Restoration shall be in accordance with an approved detailed Operations and Restoration Plan as submitted pursuant to Section 10.26.C.2.n.
 - 2. Restoration Schedule.
 - a. All excavation-and-operations-in-progress areas shall be restored to interim restoration areas within twelve (12) months after the cessation of mining and quarrying operations therein. For the purpose of this subsection, operations shall be deemed to have ceased for twelve (12) months if no more than one thousand (1,000) cubic yards of material has been removed for a twelve (12) month period.
 - b. All interim restoration areas shall be fully restored in accordance with the final restoration provisions of the approved Operations and Restoration

Plan within thirty six (36) months of the cessation of operations in the entire parcel approved as a mining and quarrying special land use.

- 5 c. Deviations from the timetable of the restoration plan and the uses to which the proposed areas will be put shall be permitted only upon approval of an amended special land use permit.

3. Restoration Standards.

10 a. All excavation shall be either to a water-producing depth or shall be graded or backfilled to ensure that the excavated area will not retain or collect stagnant water. For the purposes of this subsection, a water-producing depth shall be defined as not less than ten (10) feet below the average summer level of water in the excavation.

15 b. In the event filling of the mined area is necessary in the course of reclamation, the fill material shall not consist of or contain any organic waste, hazardous materials, toxic materials, radioactive materials, agricultural waste, industrial waste, sludge or sewage residues, whether or not compounded, mixed, combined, bound or contained within any other material through any chemical or physical process or a combination thereof, or in any other fashion, and, moreover, such fill material shall not contain any machinery or equipment or parts thereof, or any other material which will, or is likely to, impair or harm the air, water and natural resources, and public trust therein, and/or the public health and safety. Only material which will settle firmly without pockets shall be used.

20 c. In general, grades of areas which are not permanently submerged will be gently rolling to minimize soil erosion and shall be blended into existing grades in a harmonious manner. No unsubmerged grade shall exceed one (1) foot vertical to four (4) feet horizontal.

25 d. Top soil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water, roads or other structures. The depth of topsoil over the entire site shall not be less than six (6) inches.

30 e. Vegetation shall be restored by the appropriate seeding of grasses or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface and to minimize erosion.

35 f. Within twelve (12) months of cessation of mining operations, all plant structures, buildings, stockpiles and equipment shall be removed, provided, however, that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the

requirements of the zoning district in which the property is located may be retained.

5 N. **Districts where Mining and Mineral Extraction may be approved as Special Land Uses Pursuant to this Section.**

1. Subject to the provisions of this Section, mining and quarrying may be approved as a special land use in any Highland Township zoning districts.

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