**CONDITIONAL USE PERMIT COMPLIANCE AND RECLAMATION AGREEMENT**

THIS CONDITIONAL USE PERMIT COMPLIANCE AND RECLAMATION AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, 2013, by and between JAMES ZAVORAL and KATHLEEN ZAVORAL, husband and wife (collectively, the "Owner"); TILLER CORPORATION, a Minnesota corporation (the "Operator")(collectively, the Owner and the Operator shall be referred to herein as the "Applicant"); and the CITY OF SCANDIA, a Minnesota municipal corporation (the "City").

**ARTICLE ONE**
**RECITALS**

1. The following Recitals contain capitalized terms which, if not defined in such Recital are defined in subsequent portions of this Agreement including but not limited to Article Two hereof and are hereby made a part of this Agreement:

1.1 Owner's Property. The Owner is the fee title owner of the Owner's Property located in the City, County of Washington, State of Minnesota and legally described on **Exhibit A** attached hereto. The Owner's Property consists of approximately 114 acres and is located on State Trunk Highway 95 east of its intersection with State Trunk Highway 97.

1.2 Zoning. The Owner's Property is and at all times material to this Agreement has been zoned agricultural (AG) under the City's zoning map and development code (the "Code").

1.3 Project. Operator proposes to use the approximately 64 acre Project Site portion of the Owner's Property as identified on the sketch attached hereto as **Exhibit B** for a Project consisting of the Permitted Activities both as hereinafter defined and generally consisting of and limited to gravel mining operation in the manner and subject to the limitations provided in the Approval Resolution and the AOP as described in this Agreement.

1.4 CUP Requirement. Under the City's Comprehensive Plan in place at the time the initial application for the Project was submitted by the Applicant to the City and under the Code in place at the Time of the initial application, the Project proposed by the Applicant was a conditionally permitted use in the AG zone and required that a CUP be issued by the City. ~~The City's current comprehensive plan adopted after the Applicant initially applied for the CUP, prohibits the Project however, the City has elected to proceed with consideration and approval of the Applicant's request for the CUP~~.

1.5 AOP Requirement. In addition to the CUP, the City's Code requires the Operator to obtain from the City and to comply with an AOP initially prior to the commencement of the Project on the Project Site and annually thereafter.

1.6 City Approval. On or about February ___, 2013, the City Council of the City adopted the Approval Resolution No. _____ approving: (a) the CUP for the Project with conditions; (b) the initial AOP for the Project; and (c) this Agreement (collectively, the Approval Resolution, CUP, AOP and this Agreement may be referred to herein as the "Applicable Documents"). In general, the Applicable Documents set forth the Conditions, requirements and limitations which must be met and which must be complied with by the Applicant to conduct or

continue to conduct the Permitted Activities and for the continued validity of the CUP. The Applicable Documents further identify: (a) the limitations imposed by the City on the Project and the Project Site during the conduct of the Permitted Activities and (b) the Monitoring Actions required by the City to determine the actual operating conditions and project impacts in comparison to those modeled in the EIS and the Applicant's compliance with such Conditions, requirements and limitations in the manner set forth in the AOP from time to time and at the Applicant's expense.

1.7 Incorporation and Interpretation. Each of the Applicable Documents including but not limited to the AOP as initially approved and as approved annually thereafter are hereby incorporated into this Agreement as if set forth herein in full. To the extent of a conflict between any one or more of the Applicable Documents, the terms of the most restrictive of such Applicable Documents shall be deemed to apply.

1.8 Intent. Without limiting the foregoing, the parties to this Agreement desire to set forth herein: (a) the consent by the Applicant to each of the Conditions, requirements and limitations identified herein; (b) the continued compliance by the Applicant with each of such Conditions, requirements and limitations until the Termination Date provided herein; (c) the City's monitoring of the Applicant's compliance with such Conditions, requirements and limitations; (d) the Applicant's responsibility for all of the cost incurred in complying with such Conditions, requirements and limitations and the City's Monitoring Activities with respect thereto; (e) the mechanism for the payment of the City Costs by the Applicant; (f) the Applicant's reclamation of the Project Site including the scope, timing and standards thereof; and (g) the Applicant's posting of security to cover the described Reclamation Actions.

## ARTICLE TWO
## DEFINITIONS

2. Where used in this Agreement the following terms shall have the meanings set forth herein:

2.1 "AOP" means the annual operating permit granted by the City to the Operator from time to time including but not limited to the initial annual operating permit approved by the City by its adoption of the Approval Resolution.

2.2 "Applicable Documents" shall mean collectively, the Approval Resolution, the CUP, the AOP and this Agreement.

2.3 "Applicant" means collectively the Owner and the Operator and their respective heirs, personal representatives, successors and assigns.

2.4 "Approval Resolution" means City Resolution No. _____ ___ adopted by the City Council of the City on February ___, 2013 a copy of which is on file with the City.

2.5 "City" means the City of Scandia, Minnesota, a Minnesota municipal corporation.

2.6 "City Costs" means all costs incurred by the City in the negotiation and drafting of and the Owner's and Operator's compliance with the CUP, the AOP and this Agreement including but not limited to the Monitoring Activities (including but not limited to the costs of equipment, installation, site visits, data collection, data analysis, reporting and all other costs associated with monitoring activities) and the Reclamation Actions and further including those City Costs paid by the

Applicant to the City prior to the date hereof. Without limiting the foregoing, City Costs shall include the costs charged by any third party consultant (e.g. attorney, engineer etc.) and the wages, salaries, benefits and the expenses paid by the City to any of its employees to conduct any portion of the Monitoring Activities including but not limited to costs charged by the the City's surface water, wetland, ground water, noise, air quality and traffic consultants.

2.7 "Code" means the City's development code as applied, interpreted and amended from time to time by the City consistent with this Agreement.

2.8 "Conditions" means those conditions, limitations and requirements specifically identified in or otherwise referred to in the Applicable Documents.

2.9 "CUP" means the Conditional Use Permit approved by the City by the adoption of the Approval Resolution and a copy of which is attached hereto as **Exhibit C**.

2.10 "Escrow" means the non-interest bearing account established by the City to hold the amount required from time to time by Section 5.1 of this Agreement to secure the Applicant's payment of the City Costs.

2.11 "Monitoring Activities" means those activities reasonably deemed necessary by the City to monitor the compliance by the Applicant with the Conditions, the Applicable Documents and applicable laws, ordinances, rules and regulations and the reporting of the results of such activities to the City. In addition to the requirements of the Code and applicable law, the Monitoring Activities will be identified in the AOP as issued from time to time by the City.

2.12 "Operator" means Tiller Corporation, a Minnesota corporation and its successors and assigns.

2.13 "Owner" means James Zavoral, MD and Kathleen Zavoral, husband and wife~~, a single person~~ and ~~his~~their heirs, personal representatives, successors and assigns with respect to the ownership of the Owner's Property.

2.14 "Owner's Property" means the approximately 114 acres of real property owned in fee title by the Owner located in the City, County of Washington, State of Minnesota and legally described on **Exhibit A** hereto and upon a portion of which the Permitted Activities and the Reclamation Actions will be conducted.

2.15 "Permits" means any and all permits required for the conduct of the Project on the Project Site from time to time including but not limited to:

(a) CUP;
(b) AOP;
(c) Minnesota Department of Transportation Access Permit;
(d) Minnesota Department of Natural Resources Endangered Species Take Permit, if necessary; and
(e) Stormwater Management Permit from Carnelian-Marine on St. Croix Watershed District.
(f) National Pollutant Discharge Elimination System (NPDES) Permit from the Minnesota Pollution Control Agency

2.16 "Permitted Activities" means the mining, stock piling and removal of gravel from the Project Site by the Applicant in accordance with and as limited by the CUP and the AOP to be conducted as described in the Applicable Documents including but not limited to the Conditions. Permitted Activities specifically does not include the mining of any minerals other than gravel or sand, including "frac" sand, hydraulic fracturing activities or any processing activities of any kind including but not limited to asphalt or concrete processing.

2.17 "Plans" means those plans submitted to the City by or on behalf of the Applicant in connection with the Applicable Documents in the form approved and accepted by the City from time to time including, but not limited to:

(a) Groundwater Quality Protection Plan;
(b) Site Plan;
(c) Reclamation Plans;
(d) Surface Water Plan;
(e) Stormwater Pollution Prevention Plan;
(f) Dust Control Plan;
(g) Emergency/Contingency Response Plan.

2.18 "Project" means the Applicant's conduct of Permitted Activities on the Project Site in accordance with and subject to the Applicable Documents, the Code and applicable laws, rules and regulations.

2.19 "Project Site" means the approximately 64 acres of the Owner's Property upon which the Project will be permitted to be conducted as identified on **Exhibit B** hereto.

2.20 "Reclamation Actions" means the actions, including the scope and timing thereof, set out in the Plans, the Applicable Documents including but not limited to the Reclamation Plans in order to reclaim the portions of the Property described and in the manner including the scope and timing thereof, identified in the foregoing Plans and Applicable Documents. Reclamation Actions shall include such actions as are necessary, in the reasonable opinion of the City, to meet the required timing, performance standards, successful reclamation and reporting of such Reclamation Actions.

2.21 "Reclamation Plans" means the plan of reclamation of the Project Site as prepared and submitted by Operator and approved by the City on _____, as duly revised and amended from time to time at the request and with the approval of the City.

2.22 "Security" means the letter of credit in the form attached to this Agreement as **Exhibit D** to be delivered to the City to secure the completion of the Reclamation Actions on the Owner's Property.

## ARTICLE THREE
## APPLICANT AGREEMENTS

3. The following identify the agreements of the Applicant with respect to the matters identified in this Agreement:

3.1 Acknowledgement and Consent. The Applicant acknowledges having received, reviewed, read and understood each of the Applicable Documents. The Applicant hereby consents to and agrees with each of the Conditions, requirements and limitations imposed on them by the Applicable Documents in relation to the conducting of the Permitted Activities on the Owner's Property including the Project Site. Without limiting the generality of the foregoing, the Applicant agrees to the limitations on the Project Activities on the Owner's Property to those provided in and allowed by the Applicable Documents including but not limited to the termination of the Permitted Activities, the CUP and the AOP for the reasons identified in this Agreement and as otherwise allowed by the Code and any applicable ordinances, statutes, rules and regulations.

3.2 Standard of Performance. The Applicant agrees to fully and faithfully comply in all material respects with all of the terms, Conditions, requirements and limitations of the Applicable Documents. The Applicant shall at all times conduct and shall require any employees, agents, consultants and third parties to conduct the Permitted Activities and the Reclamation Actions in a safe and workmanlike manner and in accordance with the Applicable Documents and all applicable ordinances, laws, rules and regulations. The Applicant shall make all of its employees, agents, consultants and third parties aware of all such requirements and limitations and shall be responsible for the failure of any such employees, agents, consultants and third parties to comply with all such requirements and limitations, including but not limited to the Conditions and the Reclamation Actions.

3.3 License to Enter. By executing this Agreement, the Applicant hereby grants the City, its agents, employees, contractors and consultants, the right to access the Owner's Property and the Operator's facilities on the Owner's Property at any time and without notice for the purpose of conducting the Monitoring Activities and otherwise to ensure the continued compliance by the Applicant with the Applicable Documents.

3.4 Permits. Unless otherwise required by the permitting agency, prior to commencement of any Permitted Activities, the Applicant will secure all permits necessary for the conduct of the Permitted Activities on the Project Site and the Reclamation Actions on the Owner's Property including, but not limited to the Permits. Prior to commencement of any Permitted Activities and not less frequently than annually thereafter, the Applicant shall provide copies of all such permits including the Permits to the City and notify the City within ten (10) days of the Applicant's (or either one of the Owner's or the Operator's) receipt thereof, of any notice of any violation or claim of violation or other matter which could affect the Applicant's (or either one of the Owner or the Operator) continued compliance with the requirements of each of such permit including the Permits.

## ARTICLE FOUR
## REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS BY APPLICANT

4. The Owner individually, the Operator individually and the Applicant (meaning both of the Owner and Operator) hereby represent and warrant and acknowledge to the City intending that the City rely thereon, each of the following to be true and accurate in all material respects on the date of this Agreement and while this Agreement remains in effect thereafter:

4.1 By Owner.

(a) The Owner is the fee title owner of the Owner's Property free and clear of any encumbrance which could cause this Agreement to be of no force and effect as to the holder thereof or otherwise impair or restrict the City's ability to at any time enforce the provisions hereof.

(b) The consent of no other person or entity other than the Owner is required to enter into this Agreement and bind the Owner and Owner's Property to the requirements hereof.

(c) The CUP granted by the City and the right to conduct Permitted Activities on the Owner's Property will terminate on the Termination Date and no activities including but not limited to Permitted Activities may be conducted on the Owner's Property except in full compliance with the then applicable ordinances of the City ~~which, the Owner acknowledges presently prohibit the conduct of the Permitted Activities on the Owner's Property~~.

(d) The Owner hereby waives any claim that the Conditions, limitations and requirements of this Agreement including the termination of the CUP as provided herein are void, unconstitutional or unenforceable against Owner.

4.2 By Operator.

(a) The Operator: (i) is a Minnesota corporation duly organized under the laws of the State of Minnesota, (ii) is in good standing and duly authorized to conduct business in the State, (iii) has duly approved of this Agreement and (iv)has by proper action authorized the execution and delivery of this Agreement.

(b) Operator has adequate power, authority and financial ability to use the Owner's Property for the purposes set forth in this Agreement.

(c) The Operator hereby waives any claim that the Conditions, limitations and requirements of this Agreement including the termination of the CUP as provided herein are void, unconstitutional or unenforceable against Operator.

4.3 By Applicant.

(a) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, the limitations proposed, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions or any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Owner or Operator is now a party or by which either of them is bound, or constitutes a default under any of the foregoing.

(b) The Applicant will cause the Project, Permitted Activities and Reclamation Actions to be constructed, operated and maintained in accordance with the Applicable Documents, the Permits and all local, state and federal laws and

regulations, including but not limited to, environmental, zoning, energy, conservation and public health laws and regulations.

(c) The Applicant will use its best efforts to obtain, or cause to be obtained, the Permits and all other required permits, licenses and approvals and will meet, in a timely manner all requirements of such permits including but not limited to the Permits.

(d) The Applicant will cooperate fully with the City with respect to any litigation commenced with respect to the Project or any of the Applicable Documents.

(e) The Applicant has the funds sufficient for compliance with the Applicable Documents including but not limited to the funding of the Escrow, the payment of City Costs and the posting of the security.

(f) The Applicant will cooperate fully with the City in the resolution of any traffic, parking, noise, dust, air quality, public safety, or reclamation problems which may arise in connection with the construction and operation of the Project.

(g) The Applicant will not assign, transfer or convey any interest or right in the Owner's Property or any Applicable Document without the City's consent which consent may be conditioned on the City's approval of such proposed Assignee's ability to perform under such Applicable Documents and on the proposed assignee's written acceptance of all of the terms and conditions of the Applicable Documents.

4.4 Indemnification. The Applicant shall indemnify and defend the City, its elected and appointed officials, agents, employees, successors and assigns ("Indemnified Parties") against, and shall hold the Indemnified Parties harmless from, any costs, expenses or damages of any kind or nature, including court costs and reasonable attorney's fees, which the Indemnified Parties may incur because of any breach of any of the agreements, covenants, representations or warranties herein contained, whether prior to or after the date hereof

## ARTICLE FIVE
## PAYMENTS OF CITY COSTS; SECURITY FOR RECLAMATION ACTIONS

5. The following provisions identify the obligations of and mechanism for the Applicant to pay for the City Costs incurred in the negotiating, drafting, approval and monitoring of the Applicable Documents and the Security to be posted by the Applicant to secure completion of the Reclamation Actions:

5.1 Escrow for City Costs. The Applicant shall establish the Escrow with the City in the initial amount of $25,000 _____ ("Escrow Amount") for the payment of ~~all~~ City Costs as they are actually incurred from time to time by the City in connection with the Applicable Documents, the Project operations and monitoring, supervision and inspection of the Applicant's compliance with the Applicable Documents and the Project operations. As part of the City's consideration of each AOP, the Escrow Amount shall be reviewed by the City annually during the term of this Agreement to reflect the City's best estimate of the City's cash requirements for City Costs anticipated to be

incurred during the upcoming year. City Costs shall be paid and the Escrow shall be used in accordance with the following:

(a) City Costs shall be documented to and may in the City's discretion be initially paid by the City from the Escrow or other City funds with such documentation being sent to the Applicant by United States mail for reimbursement to the City by the Applicant pursuant to this Agreement.

(b) Payment of any such City Costs directly by the Applicant hereunder may ~~shall~~ be allowed by the City in its sole and absolute discretion and shall be deemed to be acceptance by the Applicant of both the reasonableness of such City Costs and the City's entitlement to reimbursement thereof. Accordingly, as to any such sums paid by the Applicant, the Applicant hereby waives any right to challenge either the amount of or the City's entitlement to the reimbursement of such City Costs.

(c) ~~If~~When the City pays any City Costs directly from the Escrow or if the City reimburses itself from the Escrow such that the balance falls below $5000 then, in that event, the Applicant agrees within thirty (30) days of notice from the City to deposit into the Escrow the amount necessary to replenish the Escrow to the then applicable Escrow Amount.

(d) Upon the termination of this Agreement, any funds remaining in the Escrow after the payment of any outstanding City Costs shall be paid to the Applicant.

(e) If the Applicant refuses or fails to make any payment of City Costs or to replenish the Escrow as above required, the City may, but shall not be obligated to draw upon the Security required by 5.2 below the amount of such unpaid City Costs or unreplenished Escrow.

5.2 Security.

(a) As security for: (1) the completion of the Reclamation Actions as and when required by the Applicable Documents; (2) the payment of the costs of constructing and inspecting the Reclamation Actions incuding, but not limited to the same cost items identified in the City Costs by Section 2.6 above ; (3) any unpaid City Costs after exhaustion of the Escrow established in Section 5.1 above and (4) the Applicant's compliance with each of the Applicable Documents, the Applicant shall furnish the City with the Security in the form of a $450,000 Performance Bond acceptable to the City in its sole and absolute discretion, both as to form and to surety. Such Security shall be in a form acceptable to the City, in its sole discretion, shall be provided to the City on or before _____ and shall be a condition to the actual commencement of the Project by the Applicant. The Applicant shall name the City as obligee or primary beneficiary of the amount reflected by such instrument.

~~(a)~~(b) The Applicant shall provide a Letter of Credit in the form of **Exhibit D** attached hereto or other financial guarantee (or combination thereof) acceptable to the City in its sole discretion in an amount equal to ~~$_____ which the~~

~~parties agree is one hundred twenty five percent (125%) of~~ the City-approved estimated costs of completion of ~~the~~those Reclamation Actions attributable to the mine phase or phases which have been or are expected to be commenced in the next operating season. The Reclamation security amount will be determined in conjunction with issuance of the AOP in each year.~~(the "Security Amount")~~. Such Security shall be in a form acceptable to the City, in its sole discretion, shall be provided to the City on or before_____ and shall be a condition to the actual commencement of the Project by the Applicant. The Applicant shall name the City as obligee or primary beneficiary of the amount reflected by such instrument.

~~(b)~~(c) Upon completion of each phase of the Reclamation Actions, the Applicant may provide evidence of the completion of such phase (including the passage of any warranty period) and may in writing request that the Security be reduced by the portion of the original amount thereof represented by such completed portion of the Reclamation Actions. The City will within thirty (30) days of the receipt of such request inspect the completed portion of the Reclamation Actions and the amount proposed by the Applicant for reduction of the Security (the "Reduction Amount"). Until a Certificate of Completion is issued by the City, approval of any Reduction Amount and any reduction in the Security does not constitute a waiver by the City of the right to draw funds under the Security on account of any defect in or failure of the Reclamation Actions that is detected or which occurs after the approval of such Reduction Amount.

~~(c)~~(d) Subject to the foregoing, after approval of each Reduction Amount in accordance with this Article, the amount, which the City is entitled to draw on the Security, will be reduced by an amount equal to one hundred percent (100%) of the Reduction Amount approved by the City.

~~(d)~~(e) If the Applicant is in default under this Agreement, the Applicant will have no right to request such approval or reduction by the City and the City shall have no liability for refusing to grant such Reduction Amount.

~~(e) Upon the approval of all of the Reclamation Actions an amount equal to twenty five percent (25%) of the Security will be available to the City for ninety (90) days after expiration of the later of (1) the date of such approval or (2) the last of any warranty period provided in the Applicable Documents regarding such Reclamation Actions.~~

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## ARTICLE SIX
## EVENTS OF DEFAULT; REMEDIES

6. The following provisions shall govern default by the Applicant (meaning either or both of the Owner or Operator) and the City's remedies for defaults under this Agreement:

6.1 Event of Default. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events:

6.1.1 Breach of Warranty or Representation. A breach by Applicant of any warranty or representation made by the Applicant in any of the Applicable Documents.

6.1.2 Failure to Meet Any Condition. The failure of the Applicant to meet any of the Conditions, requirements and limitations of any of the Applicable Documents.

6.1.3 Failure to Comply. The failure of the Applicant at any time to comply with any of the Conditions, requirements or limitations required of the Applicant under any of the Applicable Documents.

6.1.4 Failure to Perform. Failure by the Applicant to observe and substantially perform any covenant, condition, obligation or agreement on its part to be observed or performed under any of the Applicable Documents.

6.1.5 Failure to Post. Failure by the Applicant to fund or replenish the Escrow or to post the Security as, when, in the amount and in the form provided herein.

6.1.6 Failure to Pay. Failure by the Applicant to pay when due the payments required to be paid or secured under any provision of any of the Applicable Documents, including the payment of any City Costs or other payment required with respect to the Owner's Property or any portion thereof or otherwise required by this Agreement.

6.1.7 Prohibited Assignment. The Applicant shall make an assignment which is not in compliance with Section 4.3(g) hereof.

6.1.8 Insolvency. If the Applicant shall admit in writing its inability to pay its debts generally as they become due, or shall file or be involuntarily named as a debtor in a petition in bankruptcy, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Owner's Property.

6.1.9 Court Order. If the ~~Applicant~~Operator, on a petition in bankruptcy filed against it, be adjudicated a bankrupt, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Operator~~Applicant~~, a receive~~d~~r of the Operator~~Applicant~~ or of the whole or substantially all of its property, or approve a petition filed against the Operator~~Applicant~~ seeking reorganization or rearrangement of the Operator~~Applicant~~ under the federal bankruptcy laws, and such adjudication, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

6.2 Remedies on Default. Whenever any Event of Default occurs, the City may, in addition to any other remedies or rights given the City under this Agreement or available at law or in equity but only after the Applicant's failure to cure such Event of Default within thirty (30) days of written notice of default which notice shall be effective on the date mailed or hand delivered to the Applicant, take one or more of the following actions in the City's sole discretion:

6.2.1 Draw Upon Escrow or Security. Draw upon the Escrow or the Security or both as provided herein.

6.2.2 Suspend Project Activities. Suspend the Applicant's performance of Project Activities under this Agreement until the City receives assurances from the Applicant, deemed reasonably adequate by the City, that the Applicant will cure its default and continue its performance under this Agreement in accordance with its terms.

6.2.3 Terminate Applicable Documents. After giving the Applicant: (a) written notice of its intent to do so and (b) an opportunity to present its case to the City Council, the City may revoke the Applicable Documents including, but not limited to the CUP and the AOP. The revocation of the Applicable Documents shall not require the City to release the Escrow or the Security until the later of City determining that all City Costs have been paid and all Reclamation Actions have been fully completed either by the Applicant or the City and such revocation may no longer be challenged by the Applicant or any other party.

6.2.4 Action. Take any action, including legal or administrative action, which the City determines is necessary or desirable.

6.2.5 Enforce Agreement. Take whatever action at law or in equity appearing necessary or desirable to the City to collect any payments due under this Agreement, or to enforce performance or observance of any obligation, agreement or covenant of the Applicant under this Agreement including but not limited to collection or other enforcement against the Escrow or the Security.

6.2.6 Withhold Certificate or Permit. Withhold any certificate or permit required hereunder including, without limitation the AOP and the Certificate of Completion.

6.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission in exercising any right or power accruing upon any Event of Default shall impair any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary for the City to give notice, other than such notice as may be required in this Article Six.

6.4 Threat to Safety. In the event that the City reasonably determines that the continuance of the Project Activities as and in the manner conducted by the Applicant present ~~and~~an imminent and substantial risk to public health or safety, the City may immediately ~~and without notice~~ require that the Project, Permitted Activities and/or Reclamation Actions be suspended until ~~the City is satisfied that~~ such risk no longer exists.

## ARTICLE SEVEN
## CERTIFICATE OF COMPLETION

7. Upon the Applicant's satisfactory performance of all of the requirements of the Applicable Documents, including but not limited to the Reclamation Actions, the City will, at the request of the Applicant, approve and execute a Certificate of Completion in the form of **Exhibit E** hereto which

Certificate of Completion may be recorded by Applicant at its expense and shall serve to terminate the obligations of the Applicant hereunder. The City will issue partial Certificates of Completion for each mining phase of the Project.

## ARTICLE EIGHT
## TERM AND TERMINATION

8. This Agreement including the Applicable Documents may be terminated by the City and shall terminate automatically as to each of the Permitted Activities and Reclamation Actions as follows:

8.1 As to Permitted Activities. The right to conduct~~As to~~ Permitted Activities except Reclamation Actions, pursuant to~~,~~ this Agreement and the Applicable Documents will terminate on the earlier of the following and upon such termination the Applicant shall have no further right to conduct such activities~~Permitted Activities~~:

8.1.1 The termination thereof as and in the manner allowed by Section 6.2.3 hereof;
8.1.2 The mining of all sand and gravel above the elevation of 840 feet above mean sea level~~_____ yards of gravel on the Project Site; or~~
8.1.3 Completion of the Project and issuance of a Certificate of Completion.
~~8.1.3~~8.1.4 Five years after the date of commencement of mining operations which is defined as the date when the Operator begins the clearing of vegetation and overburden at the Project Site.

8.2 As to Reclamation Actions. As to Reclamation Actions, this Agreement and the Applicable Documents shall terminate upon completion of all such Reclamation Actions, the issuance of a Certificate of Completion~~approval thereof~~ by the City and the expiration of the 5 year survival monitoring ~~any warranty~~ periods set forth in the Reclamation Plans.

## ARTICLE NINE
## MISCELLANEOUS

9. The following miscellaneous provision are hereby made a part of this Agreement:

9.1 Restrictions on Use. The Owner, Operator and/or Applicant each agrees for itself, its assigns and every successor in interest to the Project Site, or any part thereof, that the Owner, Operator and/or the Applicant and such successors and assigns shall during the term of this Agreement devote the Project Site to, and in accordance with, the uses specified in this Agreement as amended from time to time.

9.2 Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Project Site or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision

relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the Applicant in the event of any default or breach by the City under the terms of this Agreement.

9.3 Titles of Articles and Sections. Any titles of the several parts, articles and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.4 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

In the case of the Owner is addressed to or delivered personally to:

James Zavoral, MD
Kathleen Zavoral
5239 W. Highwood Drive
Edina MN 55436

Tiller Corporation
Attention Mike Caron Director of Land Use Affairs
7200 Hemlock Lane, Suite 200
P.O. Box 1480
Maple Grove MN 55311

With a copy to the attorney for Tiller Corporation:

Gregory E Korstad
Larkin, Hoffman, Daly & Lindgren LTD
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Bloomington MN 55431

In the case of the City is addressed to or delivered personally to the City at:

City of Scandia
14727 209th Street
Scandia, MN 55073
Attn: City Clerk/Administrator

With a copy to the City Attorney for the City:

Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP
1809 Northwestern Avenue
Stillwater, MN 55082
Attn: Nick Vivian

9.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

9.6 Modification. If the Applicant is requested by the holder of a Mortgage or by a prospective holder of a prospective Mortgage to amend or supplement this Agreement in any manner whatsoever, the City will, in good faith, consider the request with a view to granting the same unless the City, in its reasonable judgment, concludes that such modification is not in the public interest, or will significantly and undesirably weaken the financial security provided to the interests of the City by the terms and provisions of this Agreement.

9.7 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

9.8 Reports. The Owner, Operator and/or the Applicant shall provide the City reports in a timely manner with such information about the Project as the City may reasonably request.

9.9 City Approvals. Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement, for the purpose of carrying out the terms of this Agreement or for the purpose of determining sufficient performance by Owner, Operator and/or the Applicant under this Agreement, may be made, executed or taken by the Mayor and Clerk of the City without further approval by the City Council. The Mayor and Clerk of the City may, but shall not be required to, consult with other City staff with respect to such matters.

9.10 Rule of Construction. The parties agree that this Agreement is not intended, nor shall it be construed, as a joint venture or other partnership between the City and the Owner, Operator and/or the Applicant or as empowering the Owner, Operator and/or the Applicant to act as an agent of the City.

9.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the day and year first above written.

**OWNER:**

_____
James Zavoral

_____
Kathleen Zavoral

STATE OF MINNESOTA )
)ss.
COUNTY OF _____)

Subscribed and sworn to before me by JAMES ZAVORAL and KATHLEEN ZAVORAL, husband and wife, this _____ day of _____, _____.

_____
Notary Public

**OPERATOR:**
**TILLER CORPORATION**

By: _____

Its: _____

STATE OF MINNESOTA )
)ss.
COUNTY OF _____)

Subscribed and sworn to before me by _____ the _____ of Tiller Corporation, a Minnesota corporation this _____ day of _____, _____ on behalf of the corporation.

_____
Notary Public

**CITY:**
**CITY OF SCANDIA**

By: _____
Randall Simonson, Mayor

By: _____
Kristina Handt, City Administrator

STATE OF MINNESOTA )
)ss.
COUNTY OF WASHINGTON )

Subscribed and sworn to before me by RANDALL SIMONSON and KRISTINA HANDT, respectively the Mayor and the City Administrator of the City of Scandia, a Minnesota municipal corporation this _____ day of _____, _____ on behalf of the City.

_____
Notary Public

**EXHIBIT A**

**Legal Description of Owner's Property**

DESCRIPTION OF PROPERTY
(Per Warranty Deed Doc. No. 850286)
All that part of the Southwest Quarter of the Southwest Quarter (SW 1/4 of SW 1/4) of Section 18, Township 32 North, Range 19 West, described as follows, to-wit: From a point on the South line of Section 18, Township 32 North, Range 19 West, distant 171 feet East of the Southwest corner thereof, run Northeasterly at an angle of 107 degrees 03 minutes with said South section line (measured from West to North), for a distance of 263.5 feet, thence deflect to the right at an angle of 72 degrees 57 minutes for a distance of 113 feet, more or less to the point of beginning (which point being on the Easterly right of way line of Trunk Highway 95 as now established and being a distance of 100 feet from the centerline of Trunk Highway 95 measured at right angle to said centerline), thence continuing Easterly for a distance of 375.4 feet, thence deflect to the left at an angle of 89 degrees 00 minutes for a distance of 1048.3 feet, thence deflect to the left at angle of 90 degrees 32 minutes for a distance of 75.5 feet to a point on the Easterly right of way line of Trunk Highway 95 as now established and being a distance of 100 feet from the centerline of Trunk Highway 95 centerline measured at right angle to said Trunk Highway 95 centerline, thence running Southwesterly along Easterly right of way line of Trunk Highway 95 to the point of beginning.
(Per Warranty Deed Doc. No. 544408)

PARCEL A.
That part of the Northwest 1/4 of the Southwest 1/4 of Section 18, Township 32 North, Range 19 West, Washington County, Minnesota, described as follows: Commencing at the West quarter corner of Section 18; thence South 0 degrees 00 minutes assumed bearing, along the West line of Section 18, a distance of 441.6 feet; thence North 89 degrees, 58 minutes East, a distance of 860.6 feet to the point of beginning, on the center line of State Highway No. 95: thence continuing North 89 degrees, 58 minutes East, a distance of 573 feet, more or less, to the East line of the Northwest 1/4 of Southwest 1/4, Section 18; thence Southerly along said East line, a distance of 863 feet, more or less, to the Southeast corner of the Northwest 1/4 of Southwest 1/4, Section 18; thence Westerly, along the South line of the Northwest 1/4 of the Southwest 1/4, Section 18, a distance of 874 feet, more or less, to the center line of State Highway No. 95; thence Northeasterly along said highway center line, a distance of 913 feet, more or less, to the point of beginning.

PARCEL B
The Southwest 1/4 of the Southwest 1/4 of Section 18, and the Northwest 1/4 of the Northwest 1/4 of Section 19, both in Township 32 North, Range 19 West, excepting therefrom the following:
(a) All those parts thereof that lie West of the Centerline of County State Aid Highway No. 53 and State Highway No. 95.
(b) That part of the Southwest 1/4 of the Southwest 1/4 of Section 18, Township 32 North, Range 19 West and that part of the Northwest 1/4 of the

Northwest 1/4 of Section 19, Township 32 North, Range 19 West, all in Washington County, Minnesota, described jointly as follows:
Commencing at the Southwest corner of said Section 18; thence East along the South line of said Southwest 1/4 of the Southwest 1/4 of Section 18, a distance of 171 feet; thence Northeasterly, deflecting to the left 72 degrees, 57 minutes, a distance of 263.5 feet to a point hereinafter referred to as "Point A"; thence East parallel with the South line of said Southwest 1/4 of the Southwest 1/4 to the point of beginning on the center line of State Highway No. 95 as the same is now laid out and traveled; thence continue East along same parallel line to a point distant 870.51 feet East of aforementioned "Point A", thence South at a right angle, a distance of 1460 feet, more or less, to the North line of the South 100 feet of the Northwest 1/4 of the Northwest 1/4 of Section 19; thence West along said North line to the center line of County Road No. 53 as the same is now laid out and traveled; thence Northwesterly along said center line to the intersection with a line drawn perpendicular to the North line of said Section 19 from a point of said North line distant 689.6 feet Easterly of the Northwest corner of Section 19; thence Northerly along said perpendicular line 675 feet, more or less, to the South line of the North 150 feet of said Section 19; thence West along the South line of said North 150 feet, a distance of 443 feet, more or less, to the center line of State Highway No. 95; thence Northerly along said center line 403 feet, more or less, to the point of beginning.
(c) Beginning at a point on the South line of said Section 18, distant 171 feet East of the Southwest corner thereof, run Northeasterly at an angle 107 degrees, 03 minutes with said South Section line measured from West to North for a distance of 263.5 feet; thence deflect to the right at an angle of 72 degrees, 57 minutes for a distance of 113 feet more or less to the point of beginning, which point being on the Easterly right-of-way line of Highway 95 as now established and being a distance of 100 feet from center line of Highway 95 measured at right angles to said center line; thence continuing Easterly for a distance of 375.4 feet; thence deflect to the left at an angle of 89 degrees, 00 minutes for a distance of 1,048.3 feet; thence deflect to the left at an angle of 90 degrees, 32 minutes for a distance of 75.5 feet to a point on the Easterly right-of-way line of Highway 95 as now established, and being a distance of 100 feet from the center line of Highway 95 measured at right angles to said center line of Highway 95; thence run Southwesterly along the Easterly right-of-way line of Trunk Highway 95 to the point of beginning.
(d) That part of the Northwest 1/4 of the Northwest 1/4 of Section 19 described as follows: Commencing at the Northwest corner of the Northwest 1/4 of the Northwest 1/4 of Section 19; thence East assumed bearing along the North line of the Northwest 1/4 of the Northwest 1/4 a distance of 689.6 feet; thence South, at right angles, a distance of 150 feet to the point of beginning; thence continuing South a distance of 675 feet, more or less, to the center line of County State Aid Highway No. 53; thence Northwesterly along said road center line, a distance of 440 feet, more or less, to the Easterly right-of-way line of State Highway No. 95; thence Northerly, along the Easterly right-of-way line a distance of 340 feet, more or less, to the point of intersection with a line drawn parallel

with and distant 150 feet South of the North line of the Northwest 1/4 of the Northwest 1/4 of Section 19; thence East along said line a distance of 342.2 feet to the point of beginning.

PARCEL C
That part of the Southeast 1/4 of the Southwest 1/4, Section 18, Township 32 North, Range 19 West, Washington County, Minnesota, which lies Westerly of the Minneapolis, St. Croix Railway Company right-of-way and also all that part of the Northeast 1/4 of the Southwest 1/4; Section 18, Township 32 North, Range 19 West, Washington County, Minnesota, described as follows: Commencing at a stone monument at the Southwest corner of the said Northeast 1/4 - Southwest 1/4; thence North along the West line of the said Northeast 1/4-Southwest 1/4 a distance of 17 rods to an iron pipe monument; thence North 75 degrees East a distance of 35 rods to an iron pipe monument; thence South 30 degrees East, a distance of 25 rods to an iron pipe monument in the South line of the said Northeast 1/4-Southwest 1/4; thence West along the South line of the said Northeast 1/4-Southwest 1/4 a distance of 44 rods to the point of beginning.

PARCEL D
That part of the Northeast 1/4 of the Northwest 1/4 of Section 19, Township 32, Range 19 lying West of the right-of-way of the Minneapolis, St. Paul and Sault Ste. Marie Railway Company, as the same runs over and across said tract, except that portion thereof platted as Otisville.
All according to the United States Government Survey thereof, according to the recorded plat thereof, and situate in Washington County, Minnesota.

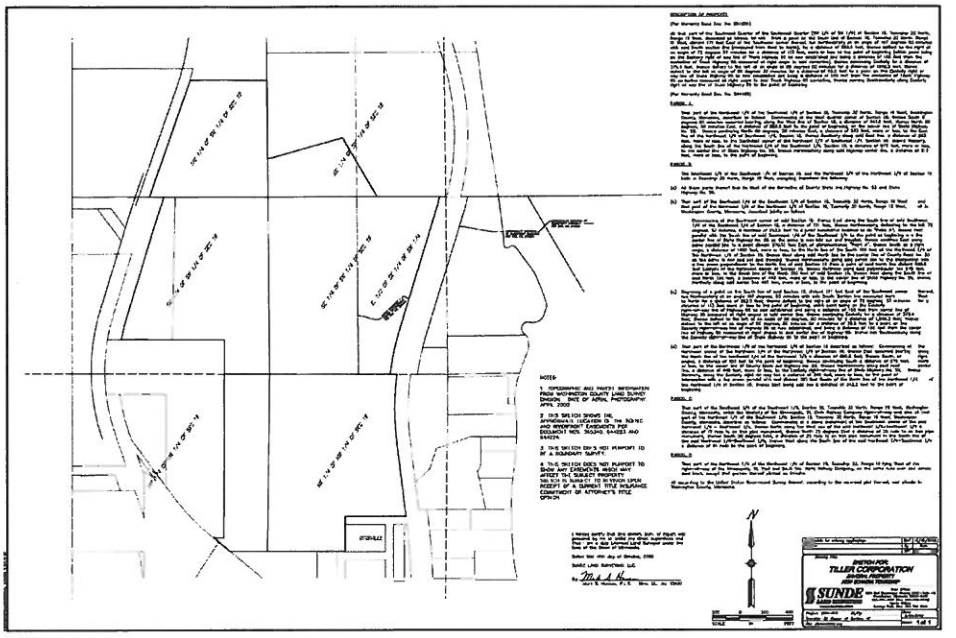

**EXHIBIT B**

**Project Site Sketch**

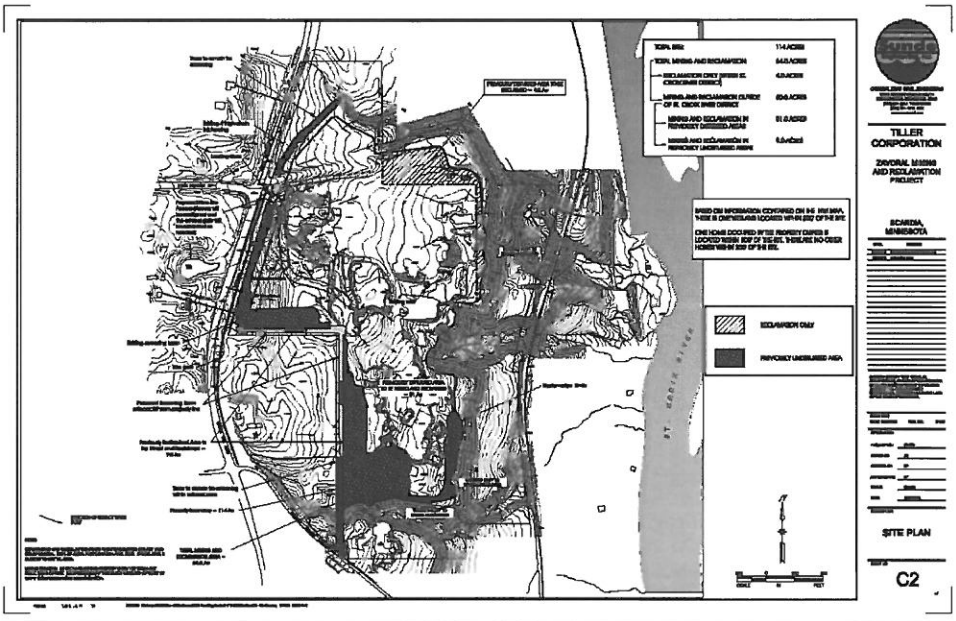

**EXHIBIT C**

**Conditional Use Permit**

**EXHIBIT D**

**Letter of Credit**

**Sample Letter of Credit #**

Date: _____ $_____

TO: City of Scandia
14727 209th Street
Scandia, MN 55073

Dear Sirs:

We hereby issue in your favor, this Irrevocable Letter of Credit # _____ for the account of Tiller Corporation, pertaining to Applicant's obligations, performance and undertakings, as described in the Conditional Use Permit Compliance and Reclamation Agreement dated _____ 2013 (the "Development Agreement"), between the Applicant and the City of Scandia, Minnesota (the "City"), in the amount of $_____, available to you by your draft at the sight of the undersigned bank when accompanied by a signed statement by the City Administrator of the City certifying that the conditions of the above referenced Development Agreement have not been satisfied in accordance with that Development Agreement as follows:

1. The City Administrator certifies to the Bank truthfully that:

   (a) Applicant is in default in the payment of City Costs or completion of the Reclamation Actions as defined in the Development Agreement or is otherwise in default under the Development Agreement; and

   (b) The City has given written notice of said default to each of Applicant and the undersigned and thirty (30) days or more has expired since the giving of such notice and such default continues; and

   (c) The City is drawing upon such Letter of Credit the amounts necessary to pay such City Costs or complete such Reclamation Actions or otherwise satisfy the Applicant's obligations under the Development Agreement and that it will utilize and funds for the completion of said Reclamation Actions.

2. The City presents this Letter of Credit; and

3. The City presents a copy of the 30-day written notice specified in (b) above.

This Letter of Credit will continue in full force and effect until the termination of the Development Agreement as provided in Section 8.2 thereof unless the City consents to the earlier termination thereof in writing which consent may be withheld for any or no reason.

Very truly yours,

_____
(Lender)
By: _____
Its: _____

**EXHIBIT E**

**Certificate of Completion**

## CERTIFICATE OF COMPLETION

The undersigned hereby certify that each of TILLER CORPORATION, a Minnesota corporation ("Operator") and JAMES ZAVORAL and KATHLEEN ZAVORAL, husband and wife ("Owner")(collectively, Operator and Owner are referred to as the "Applicant") has fully and completely complied with its respective obligations under the Permitted Activities, Reclamation Actions, and other requirements as defined in or required by the Agreement on and with respect to the real property located in Washington County, Minnesota and legally described on Exhibit A hereto ("Owner's Property") of that certain document entitled "Conditional Use Permit Compliance and Reclamation Agreement", dated _____, 2013 (the "Agreement"), between the City of Scandia and the Applicant with respect to _____, and is released and forever discharged from its obligations with respect to such Agreement and the Owner's Property is further released from the restrictions and requirements of the Agreement.

Dated: _____

**CITY OF SCANDIA:**

By: _____
Its: _____

By: _____
Its: _____

THIS INSTRUMENT WAS DRAFTED BY:

Thomas F. Miller, Esq. (#155676)
MILLER & STEVENS, P.A.
Oak Point Business Center, Suite 6
26357 Forest Boulevard, Box 807
Wyoming, MN 55092
Telephone: (651) 462-0206