

**CITY OF SCANDIA  
RESOLUTION NO. 02-19-13-06**

**RESOLUTION APPROVING CONDITIONAL USE PERMIT COMPLIANCE AND  
RECLAMATION AGREEMENT**

**WHEREAS**, Tiller Corporation (“Applicant”) has applied for a Conditional Use Permit (CUP) and Annual Operating Permit (AOP) to operate the Zavoral Mine and Reclamation Project (“Project”) on a property owned by James and Kathleen Zavoral, husband and wife, (“Owner”) located east of the intersection of State Trunk Highway 97 and State Trunk Highway 95 (“Site”); and;

**WHEREAS**, the City Council of the City of Scandia approved Resolution No. 02-19-13-04 approving a CUP for the Project; and

**WHEREAS**, the City Council of the City of Scandia approved Resolution No. 02-19-13-05 approving an AOP for the Project; and

**WHEREAS**, one of the conditions required of the Applicant and the Owner in the Conditional Use Permit was entering into a Conditional Use Permit Compliance and Reclamation Agreement with the City; and

**WHEREAS**, City Staff has prepared and presented to the City Council the Conditional Use Permit Compliance and Reclamation Agreement in the form attached to this Resolution and has recommended its approval by the City Council.

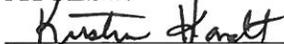
**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCANDIA, WASHINGTON COUNTY, MINNESOTA**, that it hereby approves the Conditional Use Permit Compliance and Reclamation Agreement in the matter of the Zavoral Mine and Reclamation Project, attached as “Exhibit A” to this Resolution.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Administrator and the Mayor are authorized to execute the Conditional Use Permit Compliance and Reclamation Agreement by and on behalf of the City of Scandia, Minnesota..

Adopted by the Scandia City Council this 19th day of February, 2013.

  
Randall Simonson, Mayor

ATTEST:

  
\_\_\_\_\_  
Kristina Handt, Administrator/Clerk

## EXHIBIT A

### CONDITIONAL USE PERMIT COMPLIANCE AND RECLAMATION AGREEMENT

THIS CONDITIONAL USE PERMIT COMPLIANCE AND RECLAMATION AGREEMENT (the "Agreement") is made and entered into this 19th day of February, 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 19, 2013, the City Council of the City adopted the Approval Resolutions consisting of: (a) Resolution No. 02-19-13-04 approving the CUP,(b) Resolution No.02-19-13-05 approving the AOP relating to the Project and the conditions imposed thereon and (c) Resolution No. 02-19-13-06 approving the Agreement; (collectively, the Approval

Resolutions, 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 Resolutions” means City Resolution Nos. 02-19-13-04; 02-19-13-05 and 02-19-13-06 all adopted by the City Council of the City on February 19, 2013 copies 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 and 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;
- (e) Stormwater Management Permit from Carnelian-Marine on St. Croix Watershed District; and
- (f) National Pollutant Discharge Elimination System (NPDES) Permit from the Minnesota Pollution Control Agency
- (g) Air Emissions 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 for construction purposes. Permitted Activities does not include mining silica sand (“frac” sand) for industrial purposes, 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; and
- (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 60 days following the approval of Resolution No. 02-19-13-04 as duly revised and amended from time to time at the request and with the approval of the City.

2.22 “Security” means collectively the Bond and the LOC required by Section 5.2 of this Agreement 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 \$40,000 (“Escrow Amount”) for the payment of 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 a statement from the City (the “City Cost Statement”) 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 by the Applicant hereunder 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) When the City pays any City Costs directly from the Escrow or if the City reimburses itself from the Escrow such that the City Costs Statement establishes that the balance has fallen below \$5000 then, in that event, the Applicant agrees within thirty (30) days of receipt of such City Cost Statement 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 including, 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: (i) a \$550,000

Performance Bond acceptable to the City in its sole and absolute discretion, both as to form and to surety (the “Bond”) and (ii) 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 the City-approved estimated costs of completion of 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 “LOC”). Such Security shall in all cases be in a form acceptable to the City, in its sole discretion. The Bond shall be provided to the City on or before the earlier of (1) commencement of any Project activities on the Project Site or (2) April 15, 2013, the initial LOC shall be provided within 30 days after all permits required prior to the start of the mining operations are obtained 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) The Bond shall be in place and enforceable at all times prior to the City’s issuance of a Certificate of Completion. The LOC security amount will be determined by the City in conjunction with issuance of the AOP in each year and the Applicant shall furnish the City with a new LOC in the amount so determined by the City within ten (10) days of the issuance of the AOP. The prior LOC will continue to be effective until the new LOC is provided to and accepted by the City.
- (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.
- (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 Bond, will be reduced by an amount equal to one hundred percent (100%) of the Reduction Amount approved by the City.
- (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.

**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 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, a receiver of the Operator or of the whole or substantially all of its property, or approve a petition filed against the Operator seeking reorganization or rearrangement of the Operator 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 imminent risk to 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.

**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 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:

- 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
- 8.1.3 Completion of the Project and issuance of a Certificate of Completion.
- 8.1.4 3.3 years beginning 30 days after all permits required prior to the start of mining operations are obtained.

8.2 As to Reclamation Actions. As to Reclamation Actions, this Agreement and the Applicable Documents shall terminate upon the later of all of the following as determined by the City in its reasonable discretion:

- 8.2.1 Applicant's completion of all such Reclamation Actions,
- 8.2.2 Receipt and approval by the City of a recommendation from the Washington Conservation District, or another competent public entity designated by the City, that the Reclamation Actions as specified in the Reclamation Plans have been satisfactorily completed in all material respects
- 8.2.3 The issuance of a Certificate of Completion by the City, and
- 8.2.4 Expiration of the required reclamation monitoring periods as set forth in the Conditional Use Permit.

**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 209<sup>th</sup> 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*  
Randall Simonson, Mayor

By: *Kristina Handt*  
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 19<sup>th</sup> day of February, 2013 on behalf of the City.

*Brenda Eklund*  
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 C**

**Conditional Use Permit Resolution No. 02-19-13-04**

**CITY OF SCANDIA, MINNESOTA  
RESOLUTION NO. 02-19-13-04**

**APPROVING A CONDITIONAL USE PERMIT FOR THE ZAVORAL MINE AND  
RECLAMATION PROJECT**

**WHEREAS**, Tiller Corporation (“Applicant”) has applied for a Conditional Use Permit (CUP) to operate the Zavoral Mine and Reclamation Project (“Project”) on a property owned by James and Kathleen Zavoral, husband and wife, located east of the intersection of State Trunk Highway 97 and State Trunk Highway 95 (“Site”); and

**WHEREAS**, the Site is located in Washington County, Minnesota and legally described in Attachment A; and

**WHEREAS**, the Applicant submitted an application for a CUP for the Project to the City on November 25, 2008, including the required Environmental Assessment Worksheet (EAW); and

**WHEREAS**, the Site proposed for the Project is located within the Agriculture (AG) Zoning District in the City’s 2020 Comprehensive Plan and related Development Code, and those were the adopted Comprehensive Plan and regulations at the time of the application; and

**WHEREAS**, the City reviewed the EAW for the project and the City Council approved the Findings of Fact and Record of Decision for the EAW for the Project on March 3, 2009 that concluded that an Environmental Impact Statement (EIS) was needed to determine the project’s potential for significant environmental impacts; and

**WHEREAS**, the City Council approved a Scoping Decision Document for the EIS on April 21, 2009, hired a consultant to complete the EIS, and established a Project Advisory Committee for the EIS in December, 2009; and

**WHEREAS**, the Applicant revised the project to eliminate all aggregate processing activities at the Site, and based on the revised Project, the City conducted a formal Scope Amendment Process and approved a Revised Scoping Decision Document for the Project in January 2010; and

**WHEREAS**, the City and its consultant completed the Zavoral Mine and Reclamation Project EIS to meet the requirements of Minnesota Rules 4410, and the EIS concluded that if the mitigation recommendations included in the EIS were implemented that the Project will not have significant environmental impacts; and

**WHEREAS**, the City Council approved the Findings of Fact and Record of Decision that found that the Zavoral Mine and Reclamation Project EIS was adequate to serve as the environmental review for the Project because it met the criteria set forth in Minnesota Rules

4410.2800 and the requirements of Minnesota Statutes Chapter 116D on September 25, 2012; and

**WHEREAS**, the Applicant submitted a revised application for the Conditional Use Permit for the Project on October 9, 2012 and the City determined that it was complete for review on October 23, 2012; and

**WHEREAS**, the Planning Commission held a public hearing on the Project on December 4 and December 12, 2012; and

**WHEREAS**, the City Council has received and reviewed the Conditional Use Permit Compliance and Reclamation Agreement (“Development Agreement”) in the form included in the City’s staff report regarding this Resolution; and

**WHEREAS**, the City Council recommends that the Project be implemented as described for Alternative 3 in the Zavoral Mine and Reclamation Project EIS, with a maximum duration of 3.3 years for the mining activity, beginning 30 days after all permits required prior to the start of mining operations are obtained; reclamation activities and reclamation monitoring shall continue for five years after the completion of the mining activities; and

**WHEREAS**, Council’s findings related to the request for approval of the Conditional Use Permit include the following:

1. The Project meets the Criteria for approval of a CUP included in the City’s Mining Ordinance No. 103:
  - The property size meets the ordinance requirement.
  - The Project meets the standards for approval of a conditional use permit included in Chapter One of the Development Code.
  - The Project is consistent with the goals and policies of the City’s 2020 Comprehensive Plan.
  - The application complied with all rules of the Minnesota Environmental Quality Board Environmental Review Program, and completed the required environmental review to comply with State Statutes and Rules.
2. When the mitigation recommendations included in the Zavoral Mine and Reclamation Project EIS and the conditions included in the CUP are implemented, the project will meet the Provisions and Performance Standards included in Ordinance No. 103:
  - The Project meets the requirements for protection of groundwater, includes the required Groundwater Quality Protection Plan, and monitoring.
  - The Project will obtain the required permits for air quality, noise, water quality, rare species and roadway access.
  - The Project includes the required surface water protection plan that addresses ongoing monitoring, accident response and remediation, and will obtain the required surface water management and erosion control permits from the MPCA and Carnelian-Marine-St. Croix Watershed District.

- The Project includes the required Dust Control Plan that when implemented, will meet MPCA requirements for dust control.
  - If all mitigation and monitoring requirements are implemented, the Project will meet the MPCA standards for noise.
  - The Project adequately addresses the required operating conditions identified in Ordinance No. 103.
3. The Project's Reclamation Plan exceeds the requirements of Ordinance No. 103.
  4. The conditional use is in compliance with and will not have a negative effect upon the City's 2020 Comprehensive Plan, including the public facilities plan and capital improvement plan.
  5. The establishment, maintenance and operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.
    - When the required mitigation and monitoring are implemented, the traffic generated by the Project will be controlled to prevent congestion, hazards and excessive traffic through residential areas.
    - When the required mitigation and monitoring are implemented, the Project will meet the MPCA standards for hazardous materials, noise, and air and water pollution.
    - The Project will have an economic benefit to the community and the Twin Cities region, because it will provide a resource that is critical to the maintenance and development of infrastructure, buildings and other products that are needed by Scandia and Twin Cities residents.
  6. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted and will not substantially diminish or impair property values or scenic views.
    - When the required mitigation and conditions are implemented, the Project will meet the ordinance and regulatory requirements for traffic control, environmental hazards, noise, air, surface and ground water management, and will not significantly affect the use and enjoyment of properties in the vicinity.
    - There is no available factual evidence that the implementation of the Project will substantially diminish or impair property values.
    - When the required mitigation is implemented, the Project will not diminish or impair scenic views.
  7. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
    - Uses permitted in the zoning district include agricultural uses, low-density residential, parks, recreation and open space. With the implementation of the required mitigation and conditions, the establishment of the Project will not impede the orderly development and improvement of surrounding property for those uses.
  8. Adequate public facilities and services are available or can be reasonably provided to accommodate the use which is proposed.

9. The conditional use will conform to the applicable regulations of the Agriculture District, and all other applicable standards of the Development Code if the mitigation recommendations of the EIS and conditions of the CUP are implemented.
10. The conditional use complies with the general and specific performance standards of the development code.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCANDIA, WASHINGTON COUNTY, MINNESOTA,** that it should and hereby does approve the Applicant's request for a Conditional Use Permit for the Zavoral Mine and Reclamation Project located on the Site east of the intersection of State Trunk Highways 95 and 97, with the following conditions:

1. The Conditional Use Permit is granted only for the Project identified in the plans and application submitted to the City on November 14, 2008, and updated on October 9, 2012, and revised as required by these conditions.
2. The applicant shall comply at all times with the City's ordinances and all applicable rules and regulations of Federal, State, County and local agencies, including the Carnelian-Marine-St. Croix Watershed District, and shall maintain existing permits granted by those agencies for all operations at the site.
3. The maximum depth of mining shall be 840 feet above mean sea level (amsl). Modeling completed for the EIS indicated that the separation between the maximum depth of mining and existing ground water level is 25 feet or more. The City or its consultant shall monitor ground water levels as specified in the AOP, and if the separation between the maximum depth of mining and ground water level is less than 25 feet, the consultant shall report this information to the City Council. The City shall inform the Minnesota DNR, Carnelian-Marine-St. Croix Watershed District, and Washington County if the separation between the maximum depth of mining and ground water level is less than 25 feet, the City may require additional monitoring, may require that the applicant cease mining operations, or take other appropriate actions based on potential negative impacts to groundwater or groundwater-related resources. The City shall report ground water levels on the site on a quarterly basis to the Minnesota Department of Natural Resources.
4. No mining of silica sand for industrial purposes ("frac sand mining") shall be permitted at this site.
5. No dewatering shall be permitted.
6. Daily pumping from the Zavoral Site Well shall not exceed 10,000 gallons at a maximum pumping rate of 1,200 gallons per minute. Annual pumping shall not exceed 1 million gallons.
7. To establish that Condition No. 6 above is being met, the applicant shall keep records of when the Zavoral Site Well is pumped, and provide the records to the City, WCD, Washington County Department of Public Health and Minnesota Department of Natural Resources for groundwater monitoring activities. The records shall document both the daily use and total annual pumped volume from the Zavoral Site Well.

8. The applicant shall revise the *Groundwater Quality Protection Plan (GWPP)* (October 2012) to address the corrections and issues identified in the Leggette, Brashears, and Graham Inc. (LBG) letter to the City dated November 15, 2012. The applicant shall revise the locations of the proposed borings and monitoring wells as requested by LBG. All such revisions shall be submitted to and are subject to the approval of the City and failure to obtain such approval shall be a violation of this condition.
9. The applicant shall maintain the groundwater observation wells or piezometers installed on the mine site at the current locations or as approved by the City. The applicant shall coordinate the number and locations of the observation wells and/or piezometers and frequency of monitoring in consultation with the City and its consultants.
10. The City's consulting hydrogeologist shall make scheduled site visits to download groundwater monitoring data and collect manual measurements. The hydrogeologist shall evaluate the data and report the results to the City at least annually with the AOP application, or more frequently if the consultant identifies issues or problems during the monitoring activity.
11. The City shall review and evaluate the GWPP on an annual basis or more frequently if a significant change in the groundwater conditions occurs. The applicant shall modify the GWPP as needed to address concerns identified by the City.
12. If diesel fuel is stored at the site, the applicant shall sample and analyze groundwater for diesel range organics. If gasoline is stored at the site, gasoline range organics and benzene shall be added to the analyte list.
13. The applicant shall meet Federal, State and City requirements for storage of fuels on the Site.
14. Equipment fueling for the Project shall be conducted in a designated area over a hard-surfaced fueling pad.
15. The applicant shall provide spill cleanup equipment on-site when other equipment is present.
16. The applicant shall obtain the required agency permits for stormwater management prior to beginning any operations at the site, and provide to the City copies of the permits approved by the CMSCWD and the Minnesota Pollution Control Agency.
17. The applicant shall review, update, provide to the City, obtain the City's approval and thereafter implement the Best Management Practices (BMP's) included in the Storm Water Pollution Prevention Plan (SWPPP) (July, 24, 2012), Surface Water Plan (October 2012), and CMSCWD permit to protect surface waters and manage erosion and sedimentation.
18. The applicant shall obtain the required Air Emissions Permit from the Minnesota Pollution Control Agency prior to beginning any operations at the site, and provide a copy of the approved permit to the City.
19. The applicant shall obtain an Endangered Species Take Permit before removing any Butternut (*Juglans cinerea*) trees identified on the site, if the Minnesota Department of Natural Resources (DNR) reclassified Butternut trees from a Special Concern to Endangered species.
20. The applicant shall comply with the "Summary of Recommendations for Avoiding and Minimizing Impacts to Blanding's Turtles Populations" included in Appendix C of the

Zavoral Mine and Reclamation Project EIS. Tiller Corporation shall provide the City or its consultant with its Blanding's Turtle Standard Operating Procedures guidelines for review and comment. The City or its consultant will conduct annual site visits to verify compliance.

21. The applicant shall inspect all trees for raptor nests prior to tree clearing. Trees with active nests may not be cleared while the nest is actively used.
22. The applicant shall construct the proposed berm on the south end of the Site as close to the mining and reclamation limits as possible to reduce off-site peak flow rates.
23. The applicant shall minimize the amount of unnecessary equipment on the Site and reduce soil tracking by off-site by vehicles.
24. The applicant shall monitor all on-site construction equipment for leaks and complete regular preventive equipment maintenance. Fueling and maintenance of vehicles shall occur within the area of active mining and no "topping off" of vehicle fuel tanks shall be allowed.
25. Any above-ground storage tank (AST) at the Site shall be located more than 500 feet from surface waters.
26. In accordance with MPCA rules, the applicant shall notify the Minnesota Pollution Control Agency of all AST's within 30 days of installation by submitting an AST Notification Form.
27. The City or its consultant shall monitor the potential impacts of mining activities on the water resources at the site. The monitoring locations, protocols, and methodology shall be specified in the AOP. The City shall submit all status reports and ground and surface water monitoring reports to the CMSCWD, WCD and the Minnesota DNR.
28. The monitoring point installed by the WCD for the EIS pump test that gathers baseline data in Zavoral Creek shall be maintained and monitored for the lifetime of the project. Monitoring shall include water quality and quantity parameters.
29. The City or its consultant shall install a monitoring station upstream of or near Crystal Springs in order to isolate potential effects due to mining from other effects due to unrelated activities within the watershed. The City or its consultant will analyze the data to determine the effect, if any, to the springs due to the Zavoral Mine operation, and identify any negative impacts. The results of the analysis shall be provided at least annually to the City for use during the review of the AOP for the Project.
30. The City or its consultant shall complete an annual field review of the wetland boundaries of wetlands within the project area, including black ash seepage swamps (Wetlands A, B, and C as shown in the CCES wetland delineation report dated January 14, 2011), to determine if the mining activities have any impact on the wetlands. The review shall occur within the growing season as defined by the U.S. Army Corps of Engineers Wetland Delineation Manual (North Central and Northeast Regional Supplement), and shall be coordinated with the applicant and when active mining operations are occurring.
31. The applicant shall obtain the required Minnesota Department of Transportation (Mn/DOT) Access permit (TP 1721) for the Project.
32. The applicant shall construct the new driveway access directly across from TH 97 as required by Mn/DOT for safe access.

33. The applicant shall construct a new north-bound right-turn lane as required by Mn/DOT (letter to the City of Scandia, January 22, 2009). The design of the right-turn lane shall be consistent with the design of the existing left-turn lane.
34. The City or its consultant shall complete traffic monitoring of the Project. The traffic monitoring protocol and requirements shall be identified in the AOP.
35. The applicant shall record and report the numbers of trucks hauling Class C add-rock from the Zavoral Mine site and the number and source location of trucks hauling Class C add-rock to the Scandia Mine to the City quarterly to ensure that additional truck traffic would not result from hauling from the Zavoral Site at peak demand concurrently with other sites. The applicant shall submit annual truck number and source reports with the Annual Operating Permit application.
36. Traffic generated by the Project shall not exceed the maximum levels analyzed in the EIS for Alternatives 3 (average 334 to 400 round trips per working day; 600 peak round trips per day.)
37. All truck traffic generated by the project for projects outside Scandia shall utilize TH 97, TH 95, CR 15 (Manning Ave), CR 91 (Lofton Ave) and the existing haul route between Lofton Avenue and the Scandia Mine. Tiller shall notify the City in advance of any hauling that will occur on local streets to serve local projects, and shall receive confirmation that the City received notice prior to the start of hauling on local streets. Trucks shall not back onto roadways.
38. Subject to approval from Mn/DOT, the applicant shall install truck warning signs that comply with the Minnesota Manual on Uniform Traffic Control Devices (MMUTCD) on State Scenic Byway TH 95 to advise drivers of trucks crossing TH 97 in and out of the Zavoral Site; on TH 97 at County Road 91 to advise drivers of trucks turning onto TH 97; and on County 91 at 223<sup>rd</sup> Street.
39. The applicant shall provide parking for all employees and visitors within the site. Circulation and parking shall minimize internal and external traffic conflicts.
40. If the applicant has knowledge that a crash or traffic violation occurs involving a truck hauling for Tiller, Tiller shall contact the City to report the incident immediately. The applicant shall report actions it will take to respond to the incident.
41. The applicant shall construct the fence included in the Project plans prior to beginning mining operations, and shall maintain the fence until reclamation is complete.
42. The hours of operation and hauling shall be conducted only between 7 a.m. and 7 p.m., Monday through Thursday and between 7 a.m. and 2 p.m. on Friday, excluding Federal holidays, during daylight hours, or one hour before sunrise and one hour after sunset during seasons when daylight is not available between 7 a.m. and 7 p.m., unless the City authorizes other hours or days of operation.

43. The applicant shall coordinate any proposed berm removals associated with Project completion with the City.
44. The applicant shall implement the Dust Control Plan (dated 10/8/12 and updated within 60 days of approval of the CUP), including all activities proposed during stripping, grading and active mining operations.
45. The applicant shall utilize non-chloride agriculturally derived organic polymers or naturally-occurring polymers on internal haul roads to control dust in accordance with the Dust Control Plan. The applicant shall review the coverage of the material on a regular basis, and reapply the polymers if they are no longer effective.
46. The City or its consultants shall perform periodic on-site review and monitoring of dust control activities to assure compliance with this permit. The monitoring locations, protocols and methodology shall be specified in the AOP.
47. The Dust Control Plan and air monitoring procedures shall be reviewed and updated as necessary on at least an annual basis with the AOP application.
48. The applicant shall implement the berms and screens proposed in the site plan.
49. Trucks shall not idle on the site and approach area for more than 30 minutes.
50. The project shall comply with the City's adopted noise standards. The City or its consultant shall complete noise monitoring at the Project site. The monitoring locations, protocols and methodology shall be specified in the AOP.
51. If the noise levels at the Project exceed State Standards the applicant will identify and take corrective actions to bring the noise levels into compliance. The City may order additional testing to confirm that the Project is in compliance.
52. The applicant shall require that all Tiller-owned equipment on the site use broadband alarms and haul trucks shall utilize a circular traffic pattern or other traffic pattern to the extent feasible that minimizes the need for haul trucks to back up on the site.
53. The applicant shall ensure that on-site Tiller-owned equipment is properly muffled and shall inspect mufflers on the on-site equipment on at least a weekly basis and document inspections.
54. The applicant shall ensure that the mining plan will minimize any time when the noise from the on-site equipment and haul trucks are operating without noise mitigation from berms and/or the mine face.
55. The applicant shall complete any clearing of vegetation (trees and brush) from previously-unmined areas from September through April to minimize noise impacts.
56. The applicant shall recycle debris created by clearing, grubbing and excavation, or dispose of stumps, trees and debris in another manner approved by the City.
57. The applicant shall maintain the mine site and equipment in an orderly condition, and shall control weeds in planted and reclaimed areas. The applicant shall preserve, maintain and supplement existing trees, berms and topsoil along existing public rights-of-way as proposed in the Site Plan and Reclamation Plan.

58. The applicant shall provide and maintain portable sanitary facilities to serve the site and shall meet all applicable standards and regulations for wastewater disposal.
59. The applicant shall dispose of any waste generated from the mining operation, including waste from vehicles or equipment maintenance, in accordance with Federal, State and City requirements.
60. Within 60 days of the approval of the CUP, the applicant shall prepare and provide to the City an updated reclamation plan (revising the Reclamation Plan dated October 9, 2012), which includes performance standards identified in the conditions that follow for approval by the City. Reclamation on the site shall be implemented in accordance with the updated and approved reclamation plan. Such updated reclamation plan shall be subject to review by and approval of the City.
61. Reclamation shall proceed concurrently and proportionally to mining operations. Progress on reclamation shall be demonstrated in each AOP application.
62. The applicant shall use clean, non-contaminated fill material and topsoil for all reclamation. The applicant shall use sandy subsoil available at the site with added organic soil amendments for reclamation topsoil. The applicant shall successfully establish permanent native vegetation in reclaimed areas as per the schedule, extents and methods as provided in the Zavoral Reclamation Plan and Zavoral Reclamation Plan Topsoil and Prairie Establishment Memorandum (October 3, 2011) by CCES.
63. Reclamation success shall be defined as follows:
  - 90% areal coverage of vegetation for each reclaimed area, within 3 years post seed installation;
  - Non-native and invasive plant species (as defined and listed by the Minnesota DNR) and potentially-aggressive native plant species (*Rhus* spp. And *Juniperus virginiana*) shall account for no more than 20% cover of the reclaimed areas at the end of the 5<sup>th</sup> growing season, post seed installation;
  - The reclaimed areas shall contain at least 50% of the species for both grasses and forbs contained in the specified seed mixes at the end of the 5<sup>th</sup> growing season, post seed installation;
64. Vegetation establishment and monitoring shall continue for a period of 5 years after completion of the Zavoral Mine Project, in its entirety.
65. The City shall monitor the transplantation of trees to ensure a survival rate of at least 80% for all transplanted trees. The Applicant shall provide the City with the quantity, location, species and proposed maintenance plan for all trees transplanted as part of the reclamation. Survival rates of less than 80% will require replacement of the dead trees by the applicant. Replacement tree species will be selected in consultation with the City and its consultant and approved by the City.
66. The applicant shall submit annual reclamation monitoring reports to the City, with the AOP application, that describe the reclamation activities that occurred in the specified year, and the status of all reclaimed areas. The applicant shall provide detailed information such as

percent coverage of vegetation, species composition, etc., pertaining to compliance with the performance standards, as provided above. If the City determines that a reclaimed area has not met the vegetative performance standards listed above, the city shall order corrective action(s) including, but not limited to, reseeding, over-seeding, spot seeding, or other actions so that the reclamation meets the criteria for success. The specific corrective actions may be dependent on site conditions. The city will determine the appropriate actions in consultation with its consultants, the applicant, and other experts, as necessary. The applicant shall include the required corrective actions in the reclamation monitoring report and AOP application.

67. The City or its consultants shall complete monitoring of reclamation activities on the site on behalf of the City. Monitoring locations, protocols and methodologies shall be specified in the AOP.
68. Final reclamation shall include removal of any equipment and backfilling and seeding the operations area.
69. Approval of the reclamation plan shall not constitute an approval by the City of Scandia of an ultimate use for the site. Ultimate use shall be determined based on the Scandia Comprehensive Plan and ordinances in effect at the time the mining is complete and applications for development of the site may be submitted.
70. The applicant shall not disturb existing woodlands and screening outside the mine area limits.
71. The applicant shall establish a maximum stockpile height of 880 feet above mean sea level. Stockpiles located in the Phase 1 mining area of the Site shall be maintained at a lower height as needed so that the stockpiles are not visible from the key viewpoints identified in the EIS.
72. All lighting on the site shall be hooded or controlled and meet the requirements of the City's Development code. Lighting shall be limited to the hours of mine operation. Lighting shall be arranged to deflect light away from any adjoining residential property or from public streets.
73. The applicant shall obtain the required sign permits for all signs proposed at the site.
74. The applicant shall pay all costs associated with site monitoring activities identified in this permit and the AOP including, but not limited to monitoring of traffic, air quality, noise, ground water and surface water, and the reclamation plan, and the costs of equipment, installation, site visits, data collection, data analysis, reporting, maintaining compliance and all other costs associated with all of the monitoring activities identified in these conditions.
75. The applicant shall cooperate with the City and provide access to the site as needed to conduct the monitoring activities required by this permit.
76. The applicant shall provide a final, corrected copy of the Groundwater Monitoring Plan, Reclamation Plan and Dust Control Plan to the City within 60 days of approval of the CUP.

All such updated plans shall be subject to review by and approval of the City. The Applicant shall implement the updated and approved plans.

77. The applicant and owner shall enter into a Conditional Use Permit Compliance and Reclamation Agreement (“Development Agreement”) with the City within fifteen (15) days of approval of the CUP. The Agreement shall specify that the project will be implemented to comply with Alternative #3 in the EIS. The Agreement shall specify that all Project activities, except reclamation, shall be completed within 3.3 years beginning 30 days after all permits required prior to the start of mining operations are obtained. Reclamation activities and reclamation monitoring shall continue for five years after completion of the mining activities, as specified in this permit.
78. If negative impacts or issues due to mining activities are identified by the City or its consultants during any of the monitoring described in the CUP or AOP, the City may request additional monitoring, may require the Applicant to cease mining operations, or may consult with other agencies to take appropriate actions.
79. The Agreement shall include a financial guarantee acceptable to the City to assure compliance with the reclamation plan, and provide for an escrow that the City will use to pay for City staff and consultant costs related to monitoring and reporting activities.
80. The applicant must apply for and obtain an Annual Operating Permit from the City.
81. The applicant shall, on or before the earlier of (1) commencement of any Project activities on the Project Site or (2) April 15, 2013, provide to the City an Irrevocable Letter of Credit, Performance Bond or other security satisfactory to the City in the amount of \$550,000 and the LOC required by the Development Agreement to guarantee the completion of the reclamation plan and the performance of its obligations set forth by this permit. The City may require the amount of this security to be adjusted in future years based on inflationary increases in construction and monitoring costs, or upon re-evaluation of the needs for reclamation, as a condition of approval of an Annual Operating Permit. Future reductions in this security shall be made as provided by the ordinance. The City may allow reductions in portions of the Letter of Credit or other security for completed and approved reclamation on a five-year basis.
82. The applicant shall pay all fees and escrows related to this application.
83. The Applicant shall at all times comply with the terms and conditions of this Conditional Use Permit, the Annual Operating Permit and the Development Agreement.

Adopted by the Scandia City Council this 19th day of February, 2013.

  
Randall Simonson, Mayor

ATTEST:

  
Kristina Handt, Administrator/Clerk

## 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

Resolution No.:

Page 14 of 14

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 D**

**Letter of Credit**

**Sample Letter of Credit #**

Date: \_\_\_\_\_

\$ \_\_\_\_\_

TO: City of Scandia  
14727 209<sup>th</sup> 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 February 19, 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 Article 8 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 February 19, 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