

ASSIGNMENT OF CERTIFICATE OF DEPOSIT FOR RECLAMATION OF EXTRACTION OPERATION

This Assignment made and entered into by and among _____ (“Operator”), the County of Henrico, Virginia, a political subdivision of the Commonwealth of Virginia (“County”), and _____ (“Bank”) provides as follows:

1. The Operator owns a certain parcel of real estate located in Henrico County, Virginia, described as Exhibit A attached hereto (the “Property”), on which real estate the Operator intends to extract materials from the earth, known as _____; and

2. The Operator has obtained a conditional use permit to extract materials from the earth in accordance with requirements of the Code of Henrico County, Virginia, and conditions imposed by the Board of Zoning Appeals (all of which are collectively referred to herein as the “Requirements”); and

3. In connection with its approval of extraction of materials from the Property, the County desires to obtain security, through the assignment of certain funds evidenced by a Certificate of Deposit held at the Bank, for the reclamation of the Property in accordance with the Requirements:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. *Assignment of Certificate of Deposit.* The Operator hereby irrevocably assigns to the County all of its right, title, and interest in and to funds represented by a Certificate of Deposit in the face amount of \$ _____ issued by the Bank, copies of which are attached hereto as Exhibit B (“Certificate”), as security for the reclamation work

required by the conditional use permit. The Certificate shall be held by the Bank as escrow agent for the County. The Bank shall hold the Certificate and its principal amount for the benefit of the County. The Bank shall not release the Certificate to the Operator or other third party unless directed by the Director of Planning or his designee pursuant to the terms and conditions set forth in this Assignment.

2. *Payment of Assigned Proceeds.* If the Operator does not complete the reclamation work in accordance with the Requirements, then the funds evidenced by the Certificate shall be paid directly by the Bank to the County. As a condition precedent to receiving funds assigned hereunder, the County shall provide the Bank with a certified statement, signed by the Director of Planning or his designee, stating that the Operator has failed to satisfactorily complete the reclamation work in accordance with the Requirements. Upon receipt of such certified statement, the Bank will be unconditionally obligated to release the funds to the County. Upon receipt of such funds from the Bank, the County shall forthwith apply same for the sole and exclusive purpose of completing the reclamation work and upon completion of such work shall promptly return all unused amounts to the Operator.

3. *Termination.* This Assignment shall terminate and be of no further force and effect on the date that the reclamation work is completed, as evidenced by a certified statement signed by the Director of Planning or his designee verifying that the Operator has satisfactorily completed all reclamation work and authorizing all funds assigned hereunder to be returned to the Operator. If the reclamation work is not completed at the end of the term of the Certificate, the Certificate shall be renewed without reduction.

4. *Warranties.* The Bank warrants that there are no legal or equitable defenses currently available to the Bank that might affect the County's ability to use proceeds of the

Certificate for the purpose of completing the reclamation work. The Operator warrants that there are no defects or prior liens incumbent on the Property.

5. *Effect of Assignment.* Nothing herein shall be construed to relieve the Operator of its independent legal obligation to complete the reclamation work.

6. *Interpretations.* This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and shall be binding on the parties, their successors and assigns.

WITNESS the following signatures and seals all as of this _____ day of _____, 20____.

(Bank) _____

By _____

Title _____

(Operator) _____

By _____

Title _____

County of Henrico, Virginia

By _____

Director of Planning

Approved as to form:

Assistant County Attorney