

After recording return to:

Jack H. Grant  
Brett & Daugert, PLLC  
PO Box 5008  
Bellingham, WA 98227



200312150113  
Skagit County Auditor

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REFERENCE NUMBER OF RELATED DOCUMENT: 8912140077

GRANTORS: **TRILLIUM CORPORATION**

GRANTEE: **MILES SAND & GRAVEL COMPANY**

ABBREVIATED LEGAL DESCRIPTION: W1/2 OF LT 2 LESS RD DF1984 AF#8403150023; SW1/4 NE1/4 lying northwesterly of Grip Road; W1/2 SW1/4 LY WLY OF SAMISH RIV O/S #57 #829812 1977; SW1/4 SE1/4 CF-75; SE1/4 SE1/4 CF-75; NE1/4 SE1/4 S&W OF RIVER CF-75; NW1/4 SE1/4 CF-75; NE1/4 & E1/2 NW1/4 & E1/2 SW1/4 & N1/2 SE1/4 C/F-75; SW1/4 SE1/4 CF-75.

ASSESSOR'S TAX/PARCEL NUMBER(S): P35704; P35722; P50087; P50157; P50158; P50155; P50156; P50660; P50669.

## **RIGHT OF FIRST OFFER**

THIS AGREEMENT is made by and between MILES SAND & GRAVEL COMPANY (hereinafter called "**Miles**") and TRILLIUM CORPORATION (hereinafter called "**Trillium**").

NOW, THEREFORE, in consideration of one dollar (\$1.00) now paid by Miles to Trillium (the receipt and sufficiency of which is hereby acknowledged by Trillium and will not be denied) and upon the terms and conditions contained herein, the parties agree as follows:

## **SECTION 1 – DEFINITIONS**

1.1 "**Bona Fide Arm's Length Offer**" means an offer in writing signed by a Person dealing at arm's length with Trillium to whom such offer is made stating the price payable in cash in U.S. dollars and the terms upon which the Person making the offer is willing to purchase or lease or otherwise acquire an interest in some or all of the Property and no other property, rights or assets, in a form (even if subject to conditions which are solely for the benefit of such Person) legally enforceable against such Person and it is an offer by a principal, identified in the offer;

1.2 "**Dispose**" includes sell, lease assign or otherwise, transfer, or grant any interest, right or options in the Property;

1.3 "**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, and unincorporated organization, and the executors, administrators or other legal representatives of an individual in such capacity;

1.4 "**Property**" means the lands described in Schedule A attached hereto.

## SECTION 2 - RIGHTS OF FIRST OFFER

**2.1 General.** If Trillium wishes to Dispose of any of the Property, it will first offer to Miles the right to purchase or lease such Property in accordance with the provisions of this section 2. Trillium may not Dispose of any of the Property to a third party except pursuant to a Bona Fide Arm's Length Offer.

**2.2 Offer.** If Trillium either wishes to make an offer to Dispose of some or all of the Property, or receives from a third party a Bona Fide Arm's Length Offer for the acquisition of an interest in some or all of the Property (both of which offers are herein called an "Offer" and Trillium, either wishing to Dispose of Property or receiving a Bona Fide Arm's Length Offer is herein called the "Offeror"), which Offer it has either determined to make or has accepted subject to compliance with the provisions of this Agreement, as the case may be, it will give a notice (which notice is herein called the "Offering Notice") to Miles (the "Offeree").

**2.3 Offering Notice.** In the Offering Notice, the Offeror will offer to sell (or otherwise Dispose of the interest, as the case may be) to the Offeree the Property described in the Offer, at the price and subject to the terms and conditions as set forth in the Offer. Each Offer must include a provision to the effect that, if accepted, the Offeror will obtain the release of any financial encumbrances affecting the Property described in the Offer. If the Offeror has received a Bona Fide Arm's Length Offer, the Offeror will submit with the Offering Notice a true copy of the Offer, the names of the principal shareholders (if such are available to the Offeror upon request), the officers and directors of the proposed purchaser (which proposed purchaser is herein called the "Purchaser") and any other information reasonably requested by the Offeree.

**2.4 Affidavit.** If the Offeror has received a Bona Fide Arm's Length Offer, the Offering Notice will be accompanied by an affidavit of a senior officer of the Offeror declaring that there is no direct or indirect supplementary consideration (whether or not in the nature of a tangible or intangible asset, money, property, securities or other benefit), that the Offer is not made as part of or in connection with any other transaction. Any direct or indirect supplementary consideration received by or accruing to the Offeror which is not disclosed to Miles will be held in trust by the Offeror for the benefit of Miles.

**2.5 Election.** The Offeree may respond to the Offering Notice by written notice to the Offeror given within the period specified in the Offering Notice which will not be less than seventy (70) days from the receipt of the Offering Notice by the Offeree (which period is herein called the "Offer Period"). If the Offeree responds to the Offering Notice within the Offer Period, the Offeree has the right to elect to acquire the interest in the Property as described in the Offer, which acquisition will be completed as set forth in section 3.

**2.6 No Election to Purchase.** If the Offeree fails to give a notice of election as provided in section 2(5), the Offeror may either:

- (a) Offer the Property described in the Offer for sale or lease to Persons other than Miles (provided all agreements entered into by the Offeror comply with the provisions of a Bona Fide Arm's Length Offer); or
- (b) Dispose of the Property described in the Offer to the maker of the Bona Fide Arm's Length Offer,

as the case may be, at a price no less than the purchase price stated in the Offer and upon terms and conditions no less favorable to the Offeror than the terms and conditions set forth in the Offer, provided that such sale or other disposition must be completed within ninety (90) days from the expiration of the Offer Period. If the transfer to the Purchaser is not completed within the aforesaid ninety (90) day period, then the Offeror will not proceed with the transfer without again complying with the provisions of this Agreement.

**2.7 Drilling Expenses to be Reimbursed.** If Trillium Disposes of all or some of the Property to anyone other than Miles, Trillium agrees to reimburse Miles for all drilling expenses incurred by Miles in connection with the Property, and Miles agrees to deliver to Trillium all drilling and analysis records in connection with the Property. Payment will be due and payable upon receipt of Miles' invoice and in any event, payment will be made to Miles no later than the time of closing of the Disposition.

### SECTION 3 - CLOSING

**3.1** The closing ("**Closing**") of any sale or lease of the Property pursuant to this Agreement will be held at the address of Miles, at 10:00 o'clock in the forenoon (local time) on the date stipulated herein therefore or, if no date is stipulated, thirty (30) days after Miles becomes entitled to acquire the interest in the Property, or such other place and such earlier or later date and time as may be applicable **under section 3(2)** or as may be mutually agreed upon by the parties to the transaction. At the Closing, Trillium will execute and deliver to Miles:

- (a) in the case of a purchase, a Statutory Warranty Deed transferring the Property; and
- (b) in the case of a lease or other disposition, by way a lease or appropriate transfer document in a form reasonably acceptable to Miles;

as the case may be, together with such other documents and statements as may be necessary to effectively assign, transfer and convey the Property to Miles and record the transaction (herein collectively called the "**Transfer Documents**") and in each case, Trillium warrants good and marketable title to such Property and that the interest acquired by Miles will be free from all claims and encumbrances.

At the Closing, where the same has been determined in accordance with the provisions hereof, the purchase price will be paid to Trillium. Trillium will pay for the policy of title insurance covering the interests being transferred. If there are any sales or transfer taxes payable as incidental to the transfers and recording at the Closing, such taxes will be paid by Trillium.

**3.2 Abridging Time.** If Miles notifies Trillium in writing that it is willing and able to pay the price for the Property described in the Offer earlier than as required by these closing procedures, the time periods contained in this Agreement will be abridged as required by Miles in order to ensure that the Transfer Documents are delivered and that the closing can be made effective at an earlier date to satisfy Miles' requirements. The parties agree that the provisions hereof will be accelerated in order to meet the deadline requested by Miles.



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## SECTION 4 - EXCLUSIVITY

4.1 In further consideration of the effort and expense to be incurred by Miles in connection with the due diligence review in this proposed transaction, Trillium agrees that, except as otherwise expressly provided herein, it will negotiate exclusively with Miles for a period of ninety (90) days from the date the last party signs this agreement (the "Exclusivity Period"). During the Exclusivity Period, Trillium will not initiate any negotiations or discussions with any other parties regarding any sale, lease or exchange of the Property, or enter into any agreements, understandings, or transactions that would materially impair the value of the Property. Miles acknowledges that Trillium has engaged in discussions with the Upper Skagit Indian Tribe (the "Tribe") relating to the sale or other disposition of some or all of the Property. Miles understands and agrees that any offer or proposal made by or to the Tribe arising from those discussions affecting some or all of the Property during the Exclusivity Period will not be subject to this agreement except for the provisions of section 2.7, which will apply.

## SECTION 5 - MISCELLANEOUS

5.1 Time will be of the essence of this agreement and the contract resulting from the acceptance by Miles of an Offer pursuant hereto:

5.2 This agreement and any contract contemplated herein resulting from the exercise by Miles of the Right of First Offer pursuant hereto or from the acceptance by Miles of an Offer will enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

5.3 **Notices.** Notices required under this Agreement shall be in writing and shall be personally served or given by certified mail.

Such notice given by mail shall be deemed to have been served when seventy-two (72) hours have elapsed from the time such notice was deposited in the mail, certified and postage prepaid, addressed to the party below. Any address changes shall be promptly given in writing to the other party.

Trillium:

Trillium Corporation  
4350 Cordata Parkway  
Bellingham, WA 98226

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

DEC 15 2003

Amount Paid \$  
By Skagit Co. Treasurer Deputy

Miles:

Michael T. Crawford  
Miles Sand & Gravel Company  
663 Pease Road  
Burlington, WA 98233

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With copies to:

Jack Grant  
Brett & Daugert, PLLC  
300 N. Commercial  
PO Box 5008  
Bellingham, WA 98227-5008

and

John W. Murphy  
1002 S. Third Street  
Mount Vernon, WA 98273

Signed at BURLINGTON, Washington, this 3<sup>rd</sup> day of NOVEMBER, 2003.

MILES SAND & GRAVEL COMPANY

By:

Michael T. Crawford  
Michael T. Crawford  
Title: Vice-President

TRILLIUM CORPORATION

By:

David R. Syre  
Title: CEO



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**SCHEDULE A**  
**Description of Property**

**PARCEL #: P35704**

The West 1/2 of Government Lot 2; of Section 3, Township 35 North, Range 4 East, W.M., EXCEPT those portions conveyed to Skagit County for road purposes by deeds recorded April 14, 1915 under Auditor's File Nos. 107444 and 107452.

Situate in the County of Skagit, State of Washington.

**PARCEL # P35722**

That portion of the Southwest 1/4 of the Northeast 1/4 lying northwesterly of the Grip Road, of Section 3, Township 35 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington

**PARCEL #: P50087**

The West 1/2 of the Southwest 1/4 of Section 26, Township 36 North, Range 4 East, W.M., EXCEPT that portion lying Northeasterly of the Samish River as it presently exists.

Situate in the County of Skagit, State of Washington.

**PARCEL #'S: P50157, P50158, P50155 & P50156**

The Southeast 1/4, EXCEPT that portion lying Northeasterly of the centerline of the Samish River, all in Section 27, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

**PARCEL #'S: P50660 & 50669**

The Northeast 1/4; the East 1/2 of the Northwest 1/4; the East 1/2 of the Southwest 1/4; the North 1/2 of the Southeast 1/4 and the Southwest 1/4 of the Southeast 1/4 of Section 34, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.



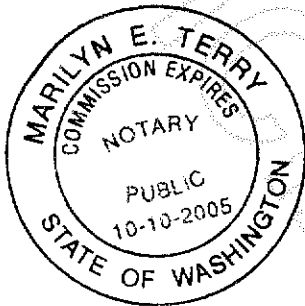
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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

I hereby certify that I know or have satisfactory evidence that Michael J. Crawford is the person who appeared before me and acknowledged that he/she signed this instrument and that it is his/her free and voluntary act for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Marilyn E. Terry  
NOTARY PUBLIC  
Marilyn E. Terry  
Print Name  
My commission expires: 10-10-2005

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

I hereby certify that I know or have satisfactory evidence that David R. Syre is the person who appeared before me and acknowledged that he/she signed this instrument and that it is his/her free and voluntary act for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Valerie W. Raines  
NOTARY PUBLIC  
Valerie W. Raines  
Print Name  
My commission expires: 042906



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