

Dated

12<sup>th</sup> March

2019

## AGREEMENT TO LEASE

Lessor

SELWYN DISTRICT COUNCIL

Lessee

[REDACTED]

## AGREEMENT TO LEASE

DATED

12th March

2019

### PARTIES

- (1) SELWYN DISTRICT COUNCIL (the "Lessor")
- (2) [REDACTED] (the "Lessee")

### BACKGROUND

- A. The Lessor is the registered proprietor of the Land.
- B. The parties have entered into this agreement to record the arrangements between them.

### TERMS OF THIS AGREEMENT

#### 1. DEFINITIONS

1.1 Definitions: In this agreement, unless the context requires otherwise:

- (a) "**Land**" means all that land contained in Lots 1, 2 and 3 Deposited Plan 67195 held in Certificate of Title CB39B/821 situated on Two Chain Road known as Two Chain Pit containing 4.0468ha or thereabouts, outlined in red on the Plan attached as Schedule Two;
- (b) "**Lease**" means the form of lease attached as Schedule One;
- (c) "**Lessee's Works**" means: -
  - (i) obtaining the necessary Resource Consents for the purpose of disposing clean-fill on the Land; and
  - (ii) liaising with the Department of Corrections to ensure they have no concerns with the proposed Lease and such confirmation to be in writing and supplied to the Lessor.
- (d) "**Unconditional Date**" means the date on which the conditions in clause 2.1 are satisfied.

#### 2. CONDITION

2.1 This Agreement is conditional on:

- (a) the Lessor satisfying all the statutory obligations in respect of leasing the Land, including but not limited to, obligations under the Reserves Act 1977, within eight (8) weeks of the date of this Agreement.
- (b) the Lessee advising the Lessor in writing that the Lessee's Works have been completed to the Lessor's satisfaction (the Lessor acting reasonably) within six (6) months of the date of this Agreement.

- 2.2 If this condition is not satisfied by the respective due date then either party may cancel this Agreement. If this agreement is cancelled pursuant to this clause, no party shall have any claim against the other.

### 3. EXECUTION OF LEASE

- 3.1 From the Unconditional Date, the Lessor grants, and the Lessee takes a lease of the Land on the terms and conditions contained in the Lease. As soon as practicable following the Unconditional Date the Lessee shall execute the Lease and provide it to the Lessor for execution.
- 3.2 The parties will be bound by the terms of the Lease from the Unconditional Date, even though the Lease may not have been executed as at the Unconditional Date.
- 3.3 The parties agree that, where relevant, the provisions of the Lease are implied into this Agreement.

### 4. FURTHER ASSURANCES

- 4.1 The Lessor and Lessee will co-operate with each other in good faith and in such a manner as will allow each to efficiently perform its obligations under this agreement. Each party shall make all applications and execute all other documents and do all other acts and things as may be necessary to implement and to carry out its obligations under, and the intent of, this agreement.

### EXECUTION

THE COMMON SEAL of  
SELWYN DISTRICT COUNCIL was:  
hereto affixed by and  
in the presence of:

)  
)  
)  
)



\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Executive



## SCHEDULE ONE – FORM OF LEASE

**Dated**

**2018**

**DEED OF LEASE**

**Lessor**

**SELWYN DISTRICT COUNCIL**

**Lessee**

[REDACTED]

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DATED

2018

**PARTIES**

- (1) **SELWYN DISTRICT COUNCIL** ("the Lessor")  
(2) [REDACTED] ("the Lessee")

**TERMS OF THIS DEED - GRANT OF LEASE**

1. Pursuant to section 61 of the Reserves Act 1977 the Lessor leases to the Lessee and the Lessee takes on lease the Land described in the First Schedule for the Term from the Commencement Date and at the Annual Rent, subject to review, as set out in the First Schedule.
2. The Lessor and the Lessee covenant as set out in the Second Schedule.

**EXECUTION**

THE COMMON SEAL of )  
SELWYN DISTRICT COUNCIL was )  
hereto affixed by and )  
in the presence of: )

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Executive

THE COMMON SEAL of )  
[REDACTED] )  
was hereto affixed in the presence of: )  
\_\_\_\_\_ )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Secretary

## FIRST SCHEDULE

### (Reference Schedule)

<b>Land:</b>	All that land contained in Lots 1, 2 and 3 Deposited Plan 67195 held in Certificate of Title CB39B/821 on Two Chain Road known as Two Chain Pit and having an area of 4.0468 ha more or less vested in the Lessor as a gravel pit, shown outlined red on the plan attached as the Third Schedule.
<b>Term:</b>	<p>The period being the lesser of:</p> <ul style="list-style-type: none"><li>• Five (5) years.</li><li>• The period from the Commencement Date until the date upon which, in the Council's reasonable view, restoration of the Land has occurred in accordance with the Resource Consents.</li></ul>
<b>Commencement Date:</b>	
<b>Final Expiry Date:</b>	<p>The date being the earlier of:</p> <ul style="list-style-type: none"><li>• The fifth (5<sup>th</sup>) anniversary of the Commencement Date.</li><li>• The date upon which, in the Council's reasonable view, restoration of the Land has occurred in accordance with the Resource Consents.</li></ul>
<b>Annual Rent:</b>	<div style="background-color: black; width: 150px; height: 1.2em; display: inline-block;"></div> (subject to clause 5)
<b>Rent Payment Dates:</b>	The 1 <sup>st</sup> day of each month, first payment due on the Commencement Date.
<b>CPI Review Dates:</b>	On every 3 <sup>rd</sup> anniversary of the Commencement Date.
<b>Default Interest Rate:</b>	A rate of interest per cent per annum equal to the Lessor's bank's commercial overdraft base rate at the date of such default, plus 5% per annum.
<b>Permitted Use:</b>	The disposal of Clean-fill in existing gravel pits

## SECOND SCHEDULE

### (General Terms and Conditions)

#### 1. DEFINITIONS AND INTERPRETATIONS

##### 1.1 In this Lease unless a contrary intention appears:

**"GST"** means Goods and Services Tax or any tax in the nature of a Goods and Services Tax.

**"Clean-fill"** means uncontaminated material which is permitted to be disposed of on the Land under Resource Consent granted by the Canterbury Regional Council and as amended from time to time in accordance with the Resource Management Act 1991.

**"the Lessee"** and **"the Lessor"** include their respective successors and permitted assigns and shall extend in the case of the Lessee to include the Lessee's employees, agents, contractors, invitees and any other person under the Lessee's control.

**"Resource Consents"** means the following Resource Consents:

(a) granted by the Canterbury Regional Council; and

(b) granted by the Selwyn District Council,

attached as the Fourth Schedule, as amended from time to time in accordance with the Resource Management Act 1991.

**"working day"** means a day, other than a Saturday or Sunday, a public holiday, Canterbury Anniversary Day and any day in the period commencing on 24 December in one year and ending with 5 January in the following year.

##### 1.2 In this Lease unless a contrary intention appears:

(a) Any reference in this Lease to the terms described in the First Schedule will have the meanings set out in the First Schedule.

(b) Words importing the singular shall include the plural. Words importing the masculine gender shall include the feminine or neuter and vice versa. Words importing persons shall include companies.

(c) Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.

(d) An obligation not to do something includes an obligation not to allow or cause that thing to be done.

(e) The word "including" and other similar words do not imply any limitation.

(f) The table of Contents and any headings and marginal notations in this Lease have been inserted for convenience only and shall not limit or govern the construction of the terms of this Lease.

- (g) Any reference in this Lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation and any re-enactments thereof.
- (h) Where the Lessor's consent or approval is required pursuant to any provision of this Lease such consent or approval shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.

## 2. TERM

- 2.1 This Lease shall be for the Term commencing on the Commencement Date fixed in the First Schedule.

## 3. EARLY TERMINATION

- 3.1 Without limiting clause 17.2, this Lease may be terminated prior to the Final Expiry Date in the following circumstances:
  - (a) If the Lessee has duly observed the terms of this Lease, the Lessee, in agreement with the Lessor, may terminate this Lease prior to the Final Expiry Date by giving to the Lessor not less than six (6) months' written notice of the proposed termination date (the "**Proposed Date**"), provided that prior to the Proposed Date the Lessee meets the requirements of clause 3.2. For the avoidance of doubt, the Lessee's notice under this clause 3 shall be ineffective and the Lease shall continue in force if the requirements of clause 3.2 are not met.
  - (b) After three (3) years from the Commencement Date, the Lessor may terminate this lease by giving to the Lessee not less than six (6) months' written notice if, in the Lessor's reasonable opinion, sufficient progress is not being made to fill the pit in the timeframe required by the Resource Consents.
- 3.2 If the Lease expires, or is otherwise terminated, prior to the expiry of all or any of the Resource Consents, the Lessee shall on the date of expiry or earlier termination (the "**Termination Date**"), transfer to the Lessor or the Lessors nominated party, all of the Lessee's right, title and interest in respect of the Resource Consents that do not run with the land under section 134 of the Resource Management Act 1991 provided that prior to the transfer the Lessee shall provide to the Lessor (at the Lessee's sole cost) evidence acceptable to the Lessor in all respects that the Lessee has complied with the Resource Consents and that any outstanding requirements of the Resource Consents are capable of compliance. For the avoidance of doubt, approval by the Lessor of the Lessee's compliance with the terms of the Resource Consents under this clause shall not prevent the Lessor from later claiming damages from the Lessee in respect of a breach of the conditions of any Resource Consent prior to the transfer which becomes apparent to the Lessor following the Termination Date.

**4. RENT**

- 4.1 The Lessee covenants to pay the Annual Rent specified in the First Schedule to the Lessor in accordance with the terms of this Lease.
- 4.2 The Lessee shall pay to the Lessor the Annual Rent in advance on the Rent Payment Dates (as specified in the First Schedule). All payments must be made by direct credit to the Lessor's account in accordance with the Lessor's instructions.
- 4.3 All amounts payable under this Lease, including without limitation the Annual Rent, shall be paid without deduction or set off of any kind and by direct credit to the Lessor's nominated account (or otherwise in accordance with the Lessor's instructions).

**5. RENT REVIEW**

- 5.1 The Lessor and the Lessee agree that (subject to clause 5.3) the Annual Rent shall be adjusted on every CPI Review Date to an amount which is equal to \$A, where:

$$A = \frac{B \times C}{D}$$

And where

"B" = the Annual Rent payable immediately prior to the relevant CPI Review Date,

"C" = the Consumer Price Index (All Groups) expressed as a percentage last published prior to the relevant CPI Review Date,

"D" = the Consumer Price Index (All Groups) last published prior to the last preceding CPI Review Date or the Commencement Date (as the case may be).

- 5.2 If at any time during the term of this Lease the Consumer Prices Index (All Groups) is no longer published, the references to that index will be deemed to be references to the index that most closely replaces the same.
- 5.3 In no circumstances following a review under clause 5.1 shall the rental payable be less than the rental payable immediately preceding the relevant CPI Review Date.
- 5.4 The new Annual Rent, at the option of the Lessor, may be recorded in a deed to be prepared by the Lessor's solicitors, at the cost of the Lessee.

**6. OUTGOINGS AND OTHER CHARGES**

- 6.1 The Lessee shall pay all charges and outgoings in respect of the Land. Without limiting the generality of the preceding sentence, the charges and outgoings shall include:
- (a) all rates, insurance, land tax and any other charge or imposition made upon the Lessor as owner of the Land; and

- (b) all GST paid or payable by the Lessor as a consequence of the receipt by the Lessor of any rent or other money payable under this lease.

- 6.2 The outgoings referred to in clause 6.1 shall be payable on demand without deduction or set-off and if required by the Lessor, the Lessor may estimate in advance the annual amount of the outgoings and require payment of such amount yearly together with rent in advance. The Lessor's estimate may be revised by the Lessor from time to time and the Lessee's annual amount adjusted accordingly. When the actual annual amount of outgoings payable is known any deficiency shall be paid by the Lessee promptly on demand and any excess shall be promptly refunded by the Lessor or credited towards future outgoings or rent at the Lessor's discretion. Where any outgoing has not been taken into account in determining the annual amount it shall be payable by the Lessee on demand from the Lessor.
- 6.3 In any case where the charges and expenses referred to in clause 6.1 are not separately assessed to the Land the Lessee shall pay a fair and reasonable proportion of those charges and expenses.
- 6.4 The Lessee shall not be liable for any proportion of the amounts payable under clause 6.1 and 6.3 which relate to any period falling outside the term of this Lease.

## **7. LESSEE'S OBLIGATIONS**

- 7.1 The Lessee shall in a proper and workmanlike manner and to the reasonable requirements of the Lessor:
  - (a) take all proper steps to keep the Land (and any roadside verge adjacent to the Land) properly mown and in a neat and tidy condition at all times, clear from broom, gorse, thistles, wild oats and other noxious plants, so as not to pose a fire risk, and from rabbits and vermin, and in particular comply with the provisions of the Biosecurity Act 1993 or any re-enactment of the Act as it affects the Land;
  - (b) maintain all improvements on the Land in the same order, structural repair and condition as they were in at the Commencement Date (and in the case of fences, in a stock-proof condition), and in the case of buildings, fences and other improvements erected on the Land after the Commencement Date in good order and repair, provided however in each case the Lessee shall not be liable for fair wear and tear arising from reasonable use or damage by fire, earthquake, flood, storm, act of God, inevitable accident or any risk against which the Lessor is insured unless the insurance monies are rendered irrecoverable in consequence of any act or default of the Lessee or the Lessee's agents, employees, contractors or invitees;
  - (c) maintain any ditches, drains, water courses, pipes or any other property of the Lessor on the Land in good clean operational order and make good any damage caused by improper, careless or abnormal use by the Lessee or those for whom the Lessee is responsible; and
  - (d) annually trim all shelter belts and live hedges.

- (e) maintain and control access to the Land to ensure no unsuitable, contaminated or unconsented material is deposited on the Land.
  - (f) Provide monthly declarations to the Lessor stating the fill material meets the Resource Consent conditions, identifying the source and volume of material.
- 7.2 The Lessee shall not paint erect or exhibit any sign or advertising device in upon or about the Land without the prior written consent of the Lessor, which may be given subject to such conditions as the Lessor thinks fit.
- 7.3 The Lessee shall not erect any building or improvements on the Land without the prior written consent of the Lessor, which may be given subject to such conditions as the Lessor thinks fit.
- 7.4 The Lessee may or shall, if required by the Lessor, prior to or on the expiry of the term of this Lease, remove all of the Lessee's buildings or improvements and make good damage to the Land caused by such removal. Where the term of this Lease is determined for any reason the Lessee may or shall, if required by the Lessor, effect such removal and making good of damage immediately forthwith after such determination. The purpose of this clause is to permit the Lessor to require the Lessee to return the Land as near as possible to the condition which it was in at the Commencement Date.
- 7.5 Subject to the provisions of clause 7.4, all or any buildings or improvements brought upon the Land by the Lessee (whether in the nature of a trade fixture or not) and which are on the Land at the expiration of the term of this Lease whether by termination or effluxion of time shall immediately upon such expiration or termination vest in the Lessor without right of payment or compensation to the Lessee by the Lessor.
- 7.6 The Lessee will throughout the term of the lease maintain all fences on the Land to the satisfaction of the Lessor. The Lessee will not call upon the Lessor to contribute towards the cost of the erection, maintenance or repair of any fences to the boundaries of the Land.
- 7.7 Except as provided in clause 7.1(d) the Lessee will not cut down or fell any trees or shrubs growing upon the Land.
- 7.8 The Lessee, prior to expiry or early termination of this lease, must leave the Land in a tidy and levelled condition to a satisfactory standard agreed to with the Lessor.
- 7.9 The Lessee, prior to expiry or early termination of this lease, must sow the levelled Land with an acceptable pasture grass agreed to with the Lessor.

## **8. PERMITTED USE**

- 8.1 The Lessee shall not use or permit the whole or any part of the Land to be used for any purpose other than the Permitted Use.
- 8.2 The Lessee shall at all times during the term of the Lease use and manage the Land for its Permitted Use in a workman like manner and in accordance with best industry practice.
- 8.3 The Lessee will at its sole cost comply with the Resource Consents. The conditions of the Resource Consents shall be binding in all respects upon the Lessee in the same manner as if

such provisions had been fully set out in this Lease. Where any requirement of any of the Resource Consents conflicts with any other of the Resource Consents or any other provision of this Lease, the provisions most restrictive on the Lessee shall, for the purposes of this Lease, prevail.

- 8.4 If at any time the Lessor (after making such enquiries as the Lessor thinks fit) is of the opinion that the Land is not being used for the Permitted Use and the Lessee has not, within a reasonable period after the date of receipt by the Lessee of written notice from the Lessor, ceased the non-Permitted Use, then the Lessor may terminate this Lease on one month's written notice. No compensation will be payable to the Lessee in the event of termination under this clause.
- 8.5 The Lessee will provide to the Lessor:
- (a) the Lessee's site management plan on execution of this Lease, and a health and safety plan and any amendments of either of those plans from time to time. In relation to the health and safety plan, the Lessee agrees that this plan must be approved by the Lessor prior to the Lessee commencing the Permitted Use. The health and safety plan must specify the risks associated with the land and the Permitted Use, specify the procedures to minimise those risks and set out the dangers of attempting to minimise the risks by other means. The Lessee will ensure that, at all times, its staff, contractors and invitees know and understand the details set out in the health and safety plan and strictly adhere to the health and safety plan at all times. The Lessee will ensure that all its staff and contractors are trained sufficiently to work within the bounds of the health and safety plan;
  - (b) copies of all correspondence, notices and other documentation received from the Canterbury Regional Council from time to time in relation to any of the Resource Consents, as soon as possible following receipt by the Lessee; and
  - (c) on receipt of written request from the Lessor, all records, documents and other information which the Lessor may request for the purpose of ensuring compliance with the terms of this Lease.
  - (d) a copy of certificate of competence as a B or above grade quarry manager.

## **9. COMPLIANCE WITH STATUTES**

- 9.1 The Lessee shall at its sole cost comply with the provisions of all statutes (including without limitation the Resource Management Act 1991, the Health and Safety at Work Act 2015 and the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016) all ordinances, regulations and by-laws relating to the use of the Land by the Lessee or other occupant and will also comply with the provisions of any licences, requisitions and notices issued by any competent authority in respect of the Land or its use by the Lessee or other occupant of the Land.

**10. NO NOXIOUS USE**

- 10.1 The Lessee shall not, except to the extent necessary to undertake the Permitted Use in compliance with all covenants of this Lease:
- (a) bring upon or store on the Land nor allow to be brought upon or stored on the land any machinery goods or things of an offensive noxious illegal or dangerous nature;
  - (b) use the Land or allow it to be used for any noisome noxious illegal or offensive trade or business;
  - (c) contaminate the Land and will undertake all works necessary to remove any contamination of the land. Contamination means any change to the physical chemical or biological condition of the Land by a "contaminant" as that word is defined in the Resource Management Act 1991; or
  - (d) allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Lessor or any other person, and generally the Lessee shall conduct the Lessee's activities on the Land in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons.

**11. THE LESSOR ACTING AS TERRITORIAL AUTHORITY**

- 11.1 The Lessee acknowledges that:
- (a) the Lessor, in its capacity as territorial authority, is required to carry out its statutory consent functions under the Resource Management Act 1991, the Building Act 2004 and other Acts in accordance with the provisions of those Acts;
  - (b) the granting by the Lessor of any consent or approval by the Lessor as territorial authority under any of those Acts shall not of itself be deemed to be a consent or approval by the Lessor (in its capacity as Lessor) under this Lease; and
  - (c) the Lessor is bound by statutory obligations to exercise its powers, including discretionary powers and duties under either of those Acts without regard to any relationship it may have with the Lessee under this Lease.
- 11.2 All powers, rights and authorities vested in the Lessor by this Lease may be exercised and enforced for and on behalf of the Lessor by any person authorised in that behalf by the Lessor.

**12. ASSIGNMENT/SUB-LETTING**

- 12.1 The Lessee shall not assign or otherwise part with the possession of the Land or any part thereof.
- 12.2 Where any Lessee is an unlisted company then any change in the legal or beneficial ownership of any of its shares or issue of new capital whereby in either case there is a change in the effective management or control of the company is deemed to be an assignment of this Lease, except where the Lessee obtains the Lessor's prior written consent to that change (not to be unreasonably withheld).

**13. INSURANCE**

- 13.1 The Lessee shall at all times during the Term maintain public liability cover of \$2,000,000.00 in the joint names of the Lessor and the Lessee and shall make a copy of the policy in respect of such insurance available to the Lessor on demand. Such cover to include (without limitation):
- (a) the Lessee's liability under the Forest and Rural Fires Act 1977;
  - (b) any loss or damage to the Lessor in respect of the Land, or any adjoining land owned or occupied by the Lessor or any occupier, caused by fire, contamination or otherwise as a result of the Lessee's activities on or near the Land; and
  - (c) any failure by the Lessee to comply with the terms of the Resource Consents.
- 13.2 The Lessee will not do or permit anything to be done on or near the Land whereby the Lessee's public liability insurance or any insurance effected by the Lessor may be void or voidable.

**14. LESSEE'S INDEMNITY**

- 14.1 The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident damage injury or loss occurring to or in relation to any person or property in or about the Land.
- 14.2 The Lessee shall keep the Lessor indemnified against all claims, demands, actions, losses and expenses of any kind which the Lessor may suffer or incur or for which the Lessor is or may become liable in respect of or arising out of or in connection with:
- (a) the Lessee's use of and activities on the Land (including without limitation the Permitted Use);
  - (b) the neglect or careless use or misuse by the Lessee of the Land or any of the utilities or other services to the Land or arising out of any faulty fixture or fitting of the Lessee;
  - (c) any accident, damage, injury or loss to property or persons arising from any occurrence in, on or near the Land wholly or in part by reason of any act or omission by the Lessee;
  - (d) any liability incurred by the Lessee whatsoever in respect of a breach by the Lessee, in, on or about the Land, of any of the provisions of any legislation, including without limitation, the Resource Management Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, and the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016.

**15. LESSOR'S COVENANTS**

- 15.1 The Lessor shall pay all rates and taxes charged levied or assessed on the Land at any time during the term except those that the Lessee is obliged to pay.

- 15.2 The Lessee upon paying the rent and other moneys payable to the Lessor and upon performing the Lessee's obligations under this Lease shall and may peaceably possess and enjoy the Land during the term of this Lease without any undue interruption or disturbance from the Lessor.

**16. REMOVAL OF CHATTELS AND FIXTURES**

- 16.1 At any time before the expiry of the Term the Lessee not being in breach may, and upon a re-entry if required by the Lessor shall, remove all of the Lessee's chattels and fixtures from the Land. If the Lessee fails to effect such removal within 7 days of a written request by the Lessor then, at the election of the Lessor:

- (a) ownership of the items not so removed shall vest in the Lessor; or
- (b) the Lessor may remove those chattels and fixtures and store the same, at the Lessee's expense in all respects.

**17. LESSOR'S RIGHTS**

**17.1 Right to Enter**

The Lessor shall have the right to enter upon the Land with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to inspect the Land to ascertain whether or not there has been any breach of the terms of this Lease; or
- (b) to remedy any breach by the Lessee of the terms of this Lease, and all costs and expenses incurred by the Lessor (including all legal costs and expenses on a solicitor/client basis) in remedying such defaults shall be paid by the Lessee to the Lessor forthwith on demand;
- (c) for the purpose of complying with the terms of any present or future legislation affecting the Land or of any notice served on the Lessor or Lessee by any competent authority for which the Lessee is not responsible under this Lease.
- (d) for the purpose of road maintenance storage and stockpiling purposes (if required) in collaboration with Councils Road Maintenance Contractor.

**17.2 Default**

In any case where:

- (a) the Annual Rent, any part of the rent or any other amount payable by the Lessee under this Lease (including GST and any payment required on default by the Lessee of its obligations under this Lease) is unpaid on any day on which it ought to be paid and remains unpaid for ten (10) working days thereafter whether lawfully demanded or not; or
- (b) the Lessee:

- (i) not being a company, becomes bankrupt or insolvent or compound with or assign his estate or any substantial part thereof for the benefit of his creditors or any number of his creditor; or
- (ii) being a company, is placed in receivership or is the subject of a resolution or order for liquidation (except for the purpose of a reconstruction of the Lessee approved by the Lessor); or
- (c) execution is levied against any of the assets of the Lessee and remains unsatisfied;
- (d) the Lessee, being in breach of its obligations under this Lease, fails to remedy that breach within any period specified by the Lessor in a written notice requiring the remedy of that breach,

(each such case constituting an act of default under this Lease) then subject to the Lessor having served, in accordance with section 353 Property Law Act 2007, a valid notice pursuant to Section 245 or 246 (as the case may be) of the Property Law Act 2007, it will be lawful for the Lessor to re-enter the Land and determine the estate of the Lessee and remove or otherwise deal with any goods, fittings, fixtures and effects found on the Land without releasing the Lessee from any liability in respect of any antecedent breach.

#### **18. DISPOSAL OF CLEAN-FILL**

- 18.1 The Lessee shall allow the Lessor's officers, agents, employees and contractors to access the Land and dispose of Clean-fill material on the Land at a rate [REDACTED] per cubic metre of Clean-fill (the "Clean-fill Rate"). The Lessor shall comply with the Lessee's reasonable requirements in disposing of material on the Land.
- 18.2 The Clean-fill Rate set out in clause 18.1 shall be subject to annual CPI adjustment on each anniversary of the Commencement Date in accordance with the process set out in clause 5.1 (with all necessary amendments).

#### **19. RESERVES ACT 1977**

This Lease is intended to take effect as a Lease of a gravel pit reserve under section 61 of the Reserves Act 1977, and the provision of that Act and of the regulations made thereunder applicable to such a Lease shall be binding in all respects upon the parties hereto and the same manner as if such provisions had been fully set out herein.

#### **20. MISCELLANEOUS**

##### **20.1 Holding Over**

If the Lessor permits the Lessee to occupy the Land beyond the Final Expiry Date the Lessee shall do so as a monthly tenant only at a rent calculated daily but payable monthly in advance, determinable at any time by either party by one (1) month's written notice but otherwise the

tenancy shall continue on the same terms and conditions contained in this Lease, as applicable to a monthly tenancy.

**20.2 Entire Agreement**

This document embodies the entire understanding and the whole agreement between the parties. Any previous representations, warranties, arrangements and statements whether expressed or implied with reference to the subject matter of this Lease are merged herein.

**20.3 Survival**

Following termination or expiry of this Lease, clause 14.2, together with other provisions that are by their nature intended to survive, will remain in effect.

**20.4 No Waiver**

No waiver of a right or remedy under this Lease will be effective unless the waiver is in writing and signed by the Lessor. No delay or omission by the Lessor to exercise any right shall constitute a waiver of that right. Any waiver of a right will not constitute a waiver of any subsequent or continuing right. No single or partial exercise of a right shall restrict the further exercise of that or any other right.

**20.5 Costs**

The Lessee shall pay the costs of and incidental to the preparation of this lease and any variation or renewal of any Deed recording a rent review. If the Lessee defaults, the Lessee will pay the Lessor's legal costs (as between Solicitor and client) of and incidental to the enforcement or attempt enforcement of the Lessor's rights, remedies and powers under this Lease.

**20.6 Interest**

If the Lessee shall fail to pay any instalment of rent or other sum of money payable to the Lessor under this Lease on the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease, then any amount not so paid shall bear interest at the Default Interest Rate accruing on a daily basis from the due date for payment or the date of payment by the Lessor (as the case may be) down to the date that such amount is paid to the Lessor by the Lessee. Interest shall continue to accrue both before and after judgment, and before and after any termination.

**20.7 No Caveat**

The Lessee shall not register a caveat against the Land.

**20.8 Lessor Not Required to Register**

The Lessor shall not be obliged to do any act or thing or grant any consent or co-operate in any way with the Lessee to register this Lease under the Land Transfer Act 1952.

**20.9 Suitability**

No warranty or representation expressed or implied has been or is made by the Lessor that the Land is now suitable or will remain suitable or adequate for use by the Lessee or that any use of the Land by the Lessee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

#### 20.10 Notices

- (a) All notices must be in writing and must be served by one of the following means:
  - (i) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
  - (ii) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
    - (1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
    - (2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- (b) In respect of the means of service specified in clause 20.10(a)(ii)(2), a notice is deemed to have been served:
  - (i) in the case of personal delivery when received by the addressee;
  - (ii) in the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
  - (iii) in the case of facsimile transmission, when sent to the addressee's facsimile number; or
  - (iv) in the case of email, when acknowledged by the addressee by return email or otherwise in writing.
- (c) In the case of a notice to be served on the Lessee, if the Lessor is unaware of the Lessee's last known address in New Zealand or the Lessee's facsimile number, any notice placed conspicuously on any part of the Land shall be deemed to have been served on the Lessee on the day on which it is affixed.
- (d) Any notice given by the Lessor shall be valid if served or given under the hand of the Chief Executive or other authorised officer of the Lessor.

#### 20.11 Dispute Resolution

- (a) In the event of any dispute or difference between the parties in relation to or arising out of this Lease then, if the parties so agree, the dispute or difference may be referred to mediation, with such mediation to be conducted on such basis as the parties may agree.
- (b) In the event of the dispute or difference not being resolved by mediation, then it shall be determined by a single arbitrator. That arbitrator shall be agreed between the parties, or

failing agreement shall be appointed by the President for the time being of the Canterbury District Law Society. Clause 1 of the Second Schedule to the Arbitration Act 1996 shall not apply but otherwise the arbitration shall be conducted in accordance with the Arbitration Act 1996 or any statute enacted in substitution for the time being in force.

- (c) Nothing in this clause 20.11 will preclude a party from seeking urgent interlocutory relief before a court or the Lessor from taking proceedings for the recovery of any rent or other amount payable under this Lease which remain unpaid.

## **21. HEALTH AND SAFETY**

- 21.1 The Lessee will do all things necessary as a "person conducting a business or undertaking" (as that term is defined in the Health and Safety at Work Act 2015 and as the occupier of the Land to comply with its duties and obligations under the Health and Safety at Work Act 2015 and the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 including but without limitation:
- 21.2 Take all reasonably practicable steps to ensure that:
  - (a) The Land (as a work environment) does not pose any risk to health and safety;
  - (b) All plant, structures and systems situated on the Land are safe and maintained;
  - (c) There are adequate facilities for the Lessee's employees and workers welfare while on the Land;
  - (d) All persons entering the Land receive appropriate information, training, instructions and/or supervision necessary to protect them from any health and safety risks;
  - (e) The health of the Lessee's employees and workers and the conditions at the Land, as a workplace, are monitored so as to prevent illness or injury to any employee or worker.
- 21.3 Implement or update the Lessee's health and safety management system, including undertaking a safety review of the Lessee's business and the hazards and risks register, to ensure that all hazards, risks and controls, as they relate to the Land, are appropriately recorded and up to date; and
- 21.4 Notify Worksafe of all notifiable incidents, illnesses or injuries (as those terms are defined in the Health and Safety at Work Act 2015 and the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016) occurring on the Land as soon as the Lessee becomes aware of such incident, illness or injury.
- 21.5 Ensure that comprehensive training is provided to all of the Lessee's employees and workers on matters of health and safety so as to satisfy any requirements of the Health and Safety at Work Act 2015 and the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016.

**THIRD SCHEDULE**

**(Plan)**

DRAFT

Two Chain Road Pit Lease Area



**FOURTH SCHEDULE**

**(Resource Consents)**

DRAFT

# SCHEDULE TWO – PLAN OF LAND

## Two Chain Road Pit Lease Area

