

BUILD RICH LIMITED (6342504)
("BRL")

AND

THE BOTANIC LIMITED PARTNERSHIP (50032660)
("TBLP")

INFRASTRUCTURE FUNDING AGREEMENT



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AGREEMENT MADE this 7th day of September 2021

BETWEEN BUILD RICH LIMITED (6342504) of Auckland, New Zealand ("BRL")

AND THE BOTANIC LIMITED PARTNERSHIP (50032660) (50032660) of Auckland, New Zealand ("TBLP")

1. BACKGROUND

- A. BRL and TBLP own neighbouring properties which they are separately developing. They have agreed to develop certain infrastructure for the common benefit of their various properties.
- B. The properties owned separately by BRL and TBLP are detailed in Schedule 1 ("the Project Land"). This Agreement sets out the basis upon which BRL and TBLP will cooperate with each other in respect of, and will contribute to the agreed cost of, infrastructure to be installed for the Project Land.
- C. The types of Infrastructure Works, Budget and Completion Dates by the Parties for the Development over the Project Land is set out in Schedule 2; the Address for Service in Schedule 3, Schedule 4 providing the form of escrow deed, Schedule 5 providing the form of Continuity Guarantee and Step in Notice, Schedule 6 providing the form of Notice of Substitution, Schedule 8 providing the Ministry for the Environment Cleanfill Definition.
- D. BRL and TBLP wish to record their agreement in writing.

THE PARTIES AGREE:

2. INTERPRETATION

- 2.1 For the purposes of this Agreement the following terms have the following meanings:

"Agency Works" has the meaning in clause 4.1 and as set out in Schedule 2.

"Agreement" means this Agreement and all of its Schedules.

"Construction Contract" means a contract for the construction of Infrastructure Works entered into by the procuring party or parties.

"Contractor" means the party engaged as contractor to a Construction Contract.

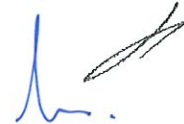
"Council" means the Auckland Council or the equivalent or replacement territorial authority.

"Deadline Date" means the latest date by which Infrastructure Works must be completed, subject to extension in accordance with this Agreement, and as set out in Schedule 2.

"Defects Notification Period" means the Defects Notifications Period defined in the Construction Contract.

"the Development" the proposed East Coast Height and TBLP development located at Silverdale, Auckland over the Project Land as set out in Schedule 1

"Easement" means any registered or unregistered easement, right to occupy, right to pass over or use, or other legal right in respect of land which grants a right over that land in favour of any other



"**Sewerage**" means facilities to convey sewage, including necessary pipelines, storage and pumping facilities and upgrades to Council systems to achieve connection to the Council's sewerage network, including any necessary facilities beyond the boundaries of the Project Land.

"**Spine Road Works**" means the works more particularly set out in Schedule 2.

"**Stormwater**" means stormwater drainage facilities to convey, treat, store and/or dispose of stormwater including pipelines, swales, storage areas, pumps and treatment systems.

"**Telecom**" means facilities to supply telecommunications and computer media from the relevant Network Supplier.

"**Unitary Plan**" means the Auckland Unitary Plan publicly notified in September 2013 under the Resource Management Act 1991.

"**Variation**" means the same meaning as in the relevant Construction Contract applicable.

"**Water**" means facilities to convey water, including necessary pipelines, storage and pumping and treatment facilities, and upgrades to Council systems to achieve connection to the Council's water supply network, including any necessary facilities beyond the boundaries of the Project Land.

"**Watercare**" means Watercare Water Services (ANZ) Pty Limited (ACN 069471334)

"**Working Day**" means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) a day in the period commencing on the 24th day of December in any year and ending on the 10th day of January in the following year, both days inclusive; and
- (c) the day observed as Auckland Anniversary Day.
- (d) A working day shall be deemed to commence at 9.00am and to terminate at 5.00pm.

2.2 In this Agreement unless the context otherwise requires:

- (a) a reference to a person includes any other entity or association recognised by law and the reverse;
- (b) words referring to the singular include the plural and the reverse;
- (c) any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both;
- (d) everything expressed or implied in this Agreement which involves more than one person binds and benefits those people jointly and severally;
- (e) words importing any gender shall include the other gender;
- (f) clause headings are for reference only;
- (g) references to clauses and schedules are references to clauses of and schedules to this Agreement;
- (h) references to money shall be deemed to be references to New Zealand currency;
- (i) expressions referring to "writing" shall be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by facsimile or email);
- (j) the expression "papers" shall be construed as including records, writing or material, whether in their original or any copied form or at any time stored or recorded in any data retrieval system;
- (k) a reference to a statute includes:
- (i) all regulations under that statute; and

land, person or body to occupy, pass over or use all or part of that land, temporarily or on a permanent basis, for the purpose of installing, operating, using and/or maintaining Infrastructure.

"Easement Instrument" means any instrument created to register an Easement against the title(s) to the relevant land.

"Engineer" means the person appointed as Engineer to a Construction Contract.

"Escrow Account" means for each party, an account administered by an Escrow Agent pursuant to the Escrow Deed.

"Escrow Agent" means for the Escrow Account arranged by:

BRL: Queen City Law

TBLP: Anthony Harper

"Escrow Deed" means the tripartite agreement entered into between an Escrow Agent and the parties for the administration and distribution of funds held in in Escrow Accounts for the purpose of the Infrastructure Works.

"GST" means Goods and Services Tax arising pursuant to the Goods and Services Act 1985.

"Hibiscus Coast Highway Works" means the works as further described in Schedule 2.

"Independent Works" has the meaning in clause 4.1 and as set out in Schedule 2.

"Infrastructure Works" means all works to be carried out under this Agreement, including services and works which are necessary to provide Water, Sewerage, Power, Telecom, Stormwater, Gas (if installed) and Roding to enable development of all or part of the Project Land and includes all necessary approvals and consents, design work, legal agreements and costs of any nature (including agreements with Network Suppliers), Easements, physical installation works and ancillary services and works necessary to install those services and/or complete those works so that they are connected to, and/or are able to service, the relevant lands.

"Intellectual Property" means copyright, patents, trademarks, service marks (whether registered or unregistered), trade names, designs, business names, know-how technology, trade secrets, confidential information and any other similar industrial and intellectual property right.

"Network Supplier" means an independent supplier of services via reticulated systems such as Power, Telecom, Gas, and includes Watercare.

"Power" means facilities to supply power from the relevant Network Supplier.

"Project Land" means the properties owned by BRL and TBLP as set out in Schedule 1.

"Pump Station Land" means the land where the Pump Station Work will be undertaken more particularly described in clause 7.3 and set out in Schedule 2.

"Pump Station Works" means the Pump Station Works on the Pump Station Land more particularly described in clause 7.3 and set out in Schedule 2.

"Roding" means roding necessary to service development of all or part of the Project Land including related landscaping, footpaths and street lighting.

- (ii) all amendments to that statute; and
- (iii) any statutes substituting for it which incorporates any of its provisions;
- (l) all periods of time or notice exclude the days on which they are given.
- (m) invoice includes payment claim or payment schedule as the context requires.

3. **TERM**

- 3.1 This Agreement shall become operative upon execution of this Agreement ("the Commencement Date") and, subject to the early termination rights recorded in this Agreement, shall expire on completion of the expiry of the Defects Notification Period of the last Construction Contract ("the Completion Date").

4. **WORKS CATEGORIES**

- 4.1 The Infrastructure Works will be procured and undertaken in one of the following manners, as set out in Schedule 2:

- (a) Procured by one party, for and on behalf of:
 - (i) that party and the other party jointly; or
 - (ii) the other party to this Agreement,
 and paid for in accordance with Schedule 2 ("Agency Works"),
- (b) Procured jointly by both parties for the joint and mutual benefit of both parties, and paid for in accordance with the proportions set out in Schedule 2 ("Joint Works"), or
- (c) Procured and paid for by one party in its own right, and completion of which is required by or beneficial to the other party, and paid for by the party procuring the Infrastructure Works ("Independent Works")

- 4.2 The Agency Works and the Independent Works must be procured and paid for by one party in its own right and principally for its own benefit but also the completion of which may be required by or beneficial to the other party. The other party has specified the purpose for which such works are required or beneficial to it in Schedule 2.

5. **PARTNERSHIP PRINCIPLES**

- 5.1 The Parties shall adopt the following partnering principles in relation to the Infrastructure Works and this Agreement:

- (a) a business relationship based on mutual trust;
- (b) the shared intention to achieve the maximisation of the parties' respective benefits;
- (c) openness, promptness, consistency, good faith, and fairness in all dealings and communications between the parties, their agents, and representatives;
- (d) an early warning system in respect of any issue or concern that is developing, including the timely supply of information as and when due, raising such issue or concern at the earliest possible opportunity;
- (e) non-adversarial and good faith dealings between the parties and constructive mutual steps to avoid differences and to identify solutions; and
- (f) open, prompt, good faith and fair notification and resolution between the parties of any differences or disputes which may arise or be apprehended.

- 5.2 The Parties shall cooperate with each other and shall work together to:

- (a) Commission the design and other works required for the Joint Works and where applicable, the Agency Works;

- (b) Work with consultants and with each other to optimise design and to minimise costs to be incurred by the Parties in respect of the design and construction of the Infrastructure Works;
- (c) Apply to the Council and to all necessary Network Suppliers for all consents and approvals required to construct the Joint Works;
- (d) Grant Access (where reasonably requested and required) to enable construction of any Infrastructure Works under this Agreement, and in particular each party agrees and acknowledges that the other will have irrevocable access over the portion of the Spine Road owned by the party prior to it vesting with Auckland Transport;
- (e) Promptly contribute to the costs of the Infrastructure Works in accordance with this Agreement;
- (f) Generally do all things necessary to complete the construction of the Joint Works, and facilitate completion of the Agency Works and Independent Works;
- (g) Prepare and work within the approved Budget and work towards to get all Infrastructure Works done within the approved project timetable; and
- (h) Use best endeavours to prepare and work within the approved Budget and work towards completing all Infrastructure Works within the approved project timetable.

5.3 The parties shall be obliged to engage in good faith negotiations, mediation, and adjudication before seeking any court action in accordance with clause 17 hereof.

6. AGENCY WORKS

6.1 The party specified as the procurer for the Agency Works in Schedule 2 ("Agent") shall procure the Agency Works to be carried out on behalf of the other party ("Beneficiary"), and where applicable, the Agent. The Agent must use best endeavours to procure the contract at the best possible price considering the value of the construction works, the quality of the workmanship and must generally act in the best interest of the Beneficiary (and where relevant, the Agent and the Beneficiary jointly).

6.2 The Agent will work proactively to:

- (a) procure tenders for the Construction Contract(s) relating to the Joint Works;
- (b) enter into Construction Contract(s) and other agreements necessary for the provision of the Joint Works; and
- (c) try to ensure the Joint Works are completed expeditiously, in a proper manner and in accordance with good industry practices.

6.3 Prior to entering into the Construction Contract, the Agent must report to the Beneficiary with the proposed Construction Contract and upon receipt, the Beneficiary shall have ten (10) working days to request reasonable amendments to the Construction Contract before signing. The Agent must forward any reasonable amendment requests to the Contractor for consideration and proactively use best endeavours to get the amendment requests inserted into the final Construction Contract.

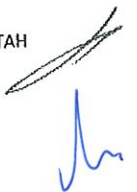
6.4 The Construction Contract for any Agency Works must be on terms similar to the 3910:2013 or 3916:2013 general conditions with reasonable modifications. The parties agree that, unless otherwise agreed, the Construction Contract must provide for the following:

- (a) 12 months Defects Notification Period (where reasonable);
- (b) 5% Contractor's performance bond for Construction Contracts with a value exceeding \$10,000,000;
- (c) Construction insurance to be procured by the Contractor with BRL and TBLP named as Insured Parties;
- (d) A bond in lieu of retentions, where retentions are appropriate;
- (e) liquidated damage; and
- (f) rights of step in so as to provide the Form of Continuity Guarantee and Step In Notice in Schedule 5, in favour of the Beneficiary which may be exercisable prior to termination of the



Construction Contract

- 6.5 The Agent must keep the Beneficiary fully informed of the progress of the Agency Works with an on-going reporting obligation to provide the Beneficiary with a minimum fortnightly update/report on the progress of negotiations/works/payment claims/payment schedules/extensions of time/liquidated damages/defects claim and/or anything else relevant to the Agency Works.
- 6.6 The cost of the Agency Works will be payable by the parties in accordance with the proportions in Schedule 2. Where any retentions or bonds are held by the Agent, the Agent must exercise its rights in relation to the bonds and the retentions for the benefit of the Beneficiary (and where applicable the Beneficiary and itself).
- 6.7 Where there are funds in the Escrow Account held on behalf of the paying party for the payment of invoices or payment claims which are due and payable in relation to the Agency Works, the Agent may notify the Escrow Agent that funds are to be paid directly to the relevant payee in satisfaction, or partial satisfaction, of the amounts payable by that party.
- 6.8 In the event there are insufficient funds in the Escrow Account, the Agent may serve a copy of the payment claim or invoice for the Agency Works on the Beneficiary, with such payment to be made directly to the payee before the due date for payment. The Beneficiary must provide notice and evidence of such payment to the Agent. In the event of non-payment, the Agent may:
- (a) make payment and recover the costs against the Beneficiary as a debt due and owing including any default interests and costs of recovery; and/or
 - (b) direct the whole or partial suspension of the Agency Works at the Beneficiary's costs.
- 6.9 Where the Agent is procuring works other than the Agency Works under the same Construction Contract or agreement with the payee, the Agent shall procure that the payee provides a standalone invoice or line item within an invoice solely for the Agency Works.
- 6.10 The Agent shall use best endeavours to consult with and obtain prior agreement from the Beneficiary as to any steps to be taken under the relevant agreement to the extent that it relates to the Agency Works, including in relation to payments, payment claims, payment schedules, disputes, variation claims, extension of time claims, defects, liquidated damages claim, suspension/termination claims, alterations to design, materials or substitutions and any other matter where payment and/or workmanship may be at issue.
- 6.11 If either party wishes to vary the Agency Works which relate solely to that party, then, following consultation with the other party, that party may request the **Variation**, or a price request for the Variation at its own cost, or where the party wishing to vary the works is the Beneficiary, that party may request the Agent to request the Variation or price request for the Variation at the Beneficiary's cost. It will be a pre-condition to the directing of the Variation, that the Beneficiary pays into the Escrow Account, the value or estimated value of the Variation (as determined by the Engineer).
- 6.12 If either party wishes to vary the Agency Works in a manner which will affect both parties, then the Variation may only proceed if the parties unanimously agree to direct the Variation.
- 6.13 If, at any stage during the construction of the Agency Works the Contractor to the Construction Contract submits a written Variation request to the Engineer and the Engineer is obliged under the Construction Contract to accept the Variation request, or where a Variation is deemed to exist under the terms of the Construction Contract, the parties will contribute to the cost of the Variation in accordance with Schedule 2, and if necessary, the Engineer will determine the required contributions. The Beneficiary must pay the required contribution for the Variation into the Escrow Account within 5 Working Days of the Variation being determined, failure of which will trigger the rights stipulated in



clause 6.6 above.

7. INDEPENDENT WORKS

- 7.1 Each party must diligently progress the Independent Works It is responsible for so as to achieve completion of such works by the relevant Deadline Dates set out in Schedule 6 herewith, and so that such works are fit for the purpose specified in Schedule 2 by the other party in accordance with this Agreement. For the avoidance of doubt, all parties shall be required to provide monthly updates to the other party to disclose and keep the other party informed of the details of the construction contracts in relation to the Independent Works.
- 7.2 In the event that any party has not completed the Independent Works by the Deadline Date set out in Schedule 6 herewith, or to the standard required by clause 7.1, that party hereby indemnifies the other for any additional costs, losses or damage incurred.
- 7.3 TBLP expressly warrants and guarantees that it shall complete the following works hereby referred to as "the TBLP Works":
- (a) the Pump Station and associated pipes connecting to BRL's designated positions (as set out in **Schedule 9**) by 31 March **2022** (subject to the extension pursuant to clause 19.3 and any extension due to supply chain issues or COVID-19), and subject to BRL making payment of 10% of the expected contribution for the pump station land into the Escrow Account within 10 Working Days of execution of this agreement. Payment of BRL's contribution will be a condition of TBLP commencing the Pump Station works. 100% of BRL's contribution will be payable to TBLP on vesting of the pump station in Watercare;
 - (b) the Spine Road Works ("the Spine Road Works") associated with TBLP's land (as set out in Schedule 10) by 30 November 2021; and
 - (c) Wastewater on Eastern Side (as set out in **Schedule 12**) by 30 April 2022.
- 7.4 BRL expressly warrants and guarantees that it shall complete:
- (a) East Coast Road intersection upgrade and associated (as set out in **Schedule 13**) by 30 April 2022.

8. PAYMENT FOR INFRASTRUCTURE WORKS

- 8.1 The funding contributions for the Infrastructure Works are set out in Schedule 2 of this Agreement.
- 8.2 Each party will procure that their Escrow Agent enters into an Escrow Deed in the form attached at Schedule 4 within 5 Working Days of execution of this Agreement.
- 8.3 Within 5 Working Days of execution of this Agreement, and at three monthly intervals thereafter, each party shall pay monies into the Escrow Account so that it will hold the full estimated cost of that party's share of the Agency Works which are to be procured, or which are ongoing, within the following 3 months, where that party is not the Agent
- 8.4 The funds held in the Escrow Account will be held in accordance with the terms of the Escrow Deed and will only be released by the Escrow Agent in accordance with the terms of the Escrow Deed.
- 8.5 In the event a party fails to make payment in accordance with this Agreement, in relation to the Agency Works the non-defaulting party may notify the other party's Escrow Agent and require payment pursuant to the terms of the Escrow Deed.
- 8.6 Where the amount in the Escrow Account falls below the amount specified in clause 8.3, that party

must immediately top up the Escrow Account. If at any time there is insufficient funds in the Escrow Account for the payment of an outstanding invoice, the non-defaulting party may serve notice on the other that the party is in default and require immediate top up and not less than five (5) working days from the date of the notice.

- 8.7 In the event of any increase or decrease in the cost of the Infrastructure Works, the Parties shall share the cost or savings in respect of the Infrastructure Works on a proportionate basis in accordance with the allocation for the relevant works set out in Schedule 2.

9. INFRASTRUCTURE WORKS DISPUTE RESOLUTION AND DECISIONS

- 9.1 If any dispute arises under the Construction Contract or other agreement relating to the Joint Works or the Agency Works, the parties will endeavour to minimise costs incurred and work collaboratively to resolve the dispute. The parties will contribute to the costs of the dispute resolution in the same proportion as set out for such works in Schedule 2 except where:

- (a) the dispute relates solely to Variation works directed by one party; or
- (b) where the dispute is raised solely by one party, or in relation to one party's default, in which case the cost of dispute resolution shall be borne solely by that party.

- 9.2 Where the dispute relates solely to Variation works directed by one party, or in relation to one party's default, that party shall be entitled to conduct the dispute resolution proceedings as it sees fit. Where the dispute relates to Agency Works, and the disputing party is the Beneficiary, the Agent will act in accordance with the Beneficiary's Instructions.

- 9.3 In the event that the parties cannot agree on actions required in relation to the Agency Works and/or the Joint Works, the parties shall seek the input of the Engineer to the Construction Contract for the relevant Infrastructure Works.

10. DRAINAGE WORKS AND EASEMENTS

- 10.1 The parties acknowledge that the Drainage Works are required for the sole benefit of BRL's land and will be carried out by TBLP on TBLP's land as Agency Works as set out in Schedule 2. TBLP shall grant BRL a free licence to use this area pursuant to a registered easement, granting BRL the right to use the relevant part of TBLP's land for this purpose. The benefit of the right to use the relevant area of TBLP's land for the Drainage Works is intended to run with BRL's land, and TBLP agrees to do all things necessary to facilitate the registration of an easement incorporating the standard provisions relating to services, including maintenance rights and obligations in Schedule 4 of the Land Transfer Regulations 2018 as a servient tenement for BRL who shall be the dominant tenement to the proposed easement. The registration of the easement, and all incidental costs to enable registration shall be at BRL's sole cost. The following provisions shall apply to the easement:

- (a) Subject to subclause (c) below, the easement under this clause shall be an easement in gross in favour of Council.
- (b) The location of the easement shall be determined by the grantor of the easement (namely TBLP) provided that such grantor shall act reasonably, including taking into account the desirability of minimising costs and maximising mutual benefits arising from installation of Infrastructure to the Parties.
- (c) If any temporary easement is required (pending determination of location and/or details of a permanent easement), and if the relevant Network Supplier will not accept the benefit of an easement in gross in respect of such temporary easement, then such easement shall be in favour of the land (BRL's land) requiring the benefit of such easement.

- 10.2 TBLP will carry out the Drainage Works based on design procured by TBLP being Independent Works. The design and all other information necessary for the construction of the Drainage Works must be provided by the Deadline Date.
- 10.3 The Parties acknowledge and agree that in order to create legal rights for the easement, this Agreement constitutes an easement agreement by TBLP in favour of BRL to grant the easement required under this clause 10 however the parties agree that any right to caveat TBLP's property is hereby waived by BRL who shall not lodge a caveat on the Record of Title to the property (or any part of the property) provided that this interest are recorded and registered in the land covenant.
- 10.4 The Parties acknowledge and agree that in the event Council requires any land or part of the land, or other aspect of Infrastructure to be vested or dedicated in the Council as a condition of subdivision consent or under the requirements of their Consent(s), the party whose land or Infrastructure is required to be vested or dedicated shall allow such vesting or dedication and will do all things reasonably necessary to enable such vesting or dedication to occur. Without derogating from the generality of this clause, this clause shall apply especially to land owned by one party required to be vested or dedicated as road, to enable Roading to service another party's land.
- 10.5 The Parties acknowledge and agree that in the event any Network Supplier requires that any land or other aspect of Infrastructure be transferred to or vested in that Network Supplier as a condition of supply, the party whose land or Infrastructure is required to be transferred or vested will allow such transfer or vesting to occur and will do all things reasonably necessary to enable such transfer or vesting to occur.
11. **TRANSFER OF TITLES & NON-OBJECTION PROVISION**
- 11.1 The Parties acknowledge and agree the rights and obligations of each party under this Agreement shall run with their respective lands. Subject to clause 11.2, each party must assign its rights and obligations under the Agreement when transferring any part of its interest in any part of its property to a successor in title.
- 11.2 In the event of a transfer, the transferring party shall procure a signed deed of novation from its successor, so that the successor in title is bound by the terms of this Agreement. If a party fails to procure a deed of covenant from its successor before transferring any part of its interest in any part of its property, then it shall remain liable to the other party for any losses, costs, damages that arise as a result of the failure.
- 11.3 Each party shall not register any caveat against the other party's land under this Agreement. On or soon after the date of this Agreement, the parties agree to lodge a land covenant to record and notify each party's interests provided for in this Agreement, over the other party's land and this is to ensure that each party complies with the covenants under this Agreement especially clause 10 during the term of this Agreement.
- 11.4 In consideration of the Parties entering into the Agreement, both parties shall not make any requisition or objection against the other party's proposed development plan within their own land. At the time when the parties are entering into the Agreement, the parties agree to enter into a separate deed of covenant recording that either party shall not object to the other party's proposed development plan and at the option of either party this can be registered against the other party's record(s) of title pending the completion of each party's development plan. This can be recorded within the same land covenant as referred in clause 10.3.
12. **PROJECT STEERING GROUP (PSG)**

- 12.1 The Parties acknowledge a high-level project steering group (PSG) has been established to include representatives of both parties.
- 12.2 The PSG will be a forum for the Parties to periodically report on progress against the Infrastructure Programme and budgets for the relevant Projects and to raise any issues material to the interests. The parties agree they will have regular meetings to discuss the Infrastructure Works related business such meetings to take place not less than quarterly and otherwise as reasonably needed.
- 12.3 Unless otherwise agreed, at least 3 days' prior written notice must be given to each party of each meeting specifying the general nature of the business to be transacted at the meeting.
- 12.4 The quorum for meetings is one representative from each party must be present. If a quorum is not present within half an hour from the time appointed for a meeting, no business proposed to be dealt with at the meeting may be dealt with and the meeting will be abandoned.
- 12.5 Each Party shall appoint a representative to the PSG who shall regularly attend meetings which shall be minute and circulated to the Parties. While each party shall be responsible for the costs of their own representative, any costs of the PSG shall be jointly paid by the Parties.
13. **DEFAULT**
- 13.1 If there is a default under this Agreement that relates to payment of the Agency Works or the Joint Works, the non-defaulting party may obtain payment or partial payment by requiring the Escrow Agent to make payment pursuant to the terms of the Escrow Deed.
- 13.2 If there is insufficient funds in the Escrow Account, the non-defaulting party must notify the other party that payment into the Escrow Account must be made in accordance with clause 8.3. Where payment is not made within 5 Working Days, and the default in payment is not rectified within the same time, the non-defaulting party will be entitled to take the steps in clause 13.4.
- 13.3 If there is a default under this Agreement that does not relate to payment or is not remedied by clause 13.1, the other party may give written notice of the default and require remediation within 20 Working Days.
- 13.4 Where the default is not remedied within the timeframe required, in relation to the:
- (a) **Agency Works,**
 - (i) if the non-defaulting party is the Beneficiary, the Beneficiary will be entitled to serve the **Step in Notice** (as per Schedule 5) on the Contractor and remedy the default at the defaulting party's cost, where applicable;
 - (ii) If the non-defaulting party is the Agent, the Agent will be entitled to either suspend the portion of the works for the benefit of the Beneficiary, remove those works from the scope of the Construction Contract, or complete the Agency Works, all at the Beneficiary's cost.
 - (b) **Joint Works,** the non-defaulting party will be entitled to serve a **Notice of Substitution** (as per Schedule 6) on the Contractor to the Construction Contract or other agreement to the effect that the defaulting party is to be removed as a Principal to the Construction Contract or party to any other agreement, and the non-defaulting party will have the sole entitlement and obligations of the Principal;
 - (c) **Independent Works,** the non-defaulting party may recover the costs and losses it incurs as a result of the non-completion or default, from the defaulting party. Where it is possible for the non-defaulting party to complete the Independent Works or a portion of them so as to mitigate or remove the detriment of the default, it shall be entitled to do so, and to recover the costs of so doing from the defaulting party;

without prejudice to any other rights and entitlements under the Agreement and at law, the non-defaulting party may terminate the Agreement.

- 13.5 In relation to both the Agency Works and the Joint Works, the non-defaulting party may complete the works in a manner that prevents access to or use by the defaulting party, or that prevents the defaulting party from having the benefit of such works. The defaulting party will not be entitled to have access to such works until and unless full payment is made for the relevant works in accordance with Schedule 2.

14. **CONFIDENTIALITY**

- 14.1 The Parties acknowledge that this Agreement must be kept confidential (except to the Parties' lawyers and relevant consultants) and must not be disclosed to any other party without express consent of the other party which shall not be unreasonably withheld unless required by law and court order. The Parties agree:

- (a) To use the information obtained under and pursuant to this Agreement for the purposes of enforcing this Agreement only;
- (b) Not to disclose or distribute, directly or indirectly, the information to any person, except to any officer, employee, consultant, adviser or related company of a party in connection with the above purpose.

- 14.2 The Parties acknowledge that the restrictions in 14.1 shall continue to apply unless, in respect of a particular item of information, (1) it is clearly and demonstrably publicly known, or (2) becomes publicly known after the date of this Agreement other than through the breach or non-performance of any of the parties' obligations under this Agreement, or (3) it must be disclosed by law or any order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this Agreement or by the rules of a stock exchange.

- 14.3 Each party shall take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information.

15. **GST**

- 15.1 The Parties acknowledge and agree that where any party ("Recipient") is entitled to reimbursement, contribution or payment ("Payment") of Infrastructure Works under this Agreement from the other party ("Payer"), and where there is GST payable (or GST has been paid) in respect of those Infrastructure Works:

- (a) The Payment by the Payer to the Recipient must include the Payer's proportionate share of any GST applicable to or associated with the Infrastructure Works; and
- (b) Where the Recipient is registered for GST, the Recipient shall be required to provide a GST invoice to the Payer as a condition of the requirement to make Payment.

16. **TERMINATION**

- 16.1 Either Party may terminate this Agreement by ten (10) Working Days' notice in writing:

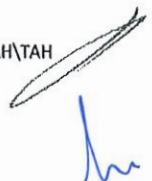
- (a) if the other Party commits an act of bankruptcy or makes or enters into any arrangement of composition with its creditors or, being a company, enters into liquidation, whether compulsorily or voluntarily or becomes subject to the appointment of a receiver.

- 16.2 Termination of this Agreement shall be without prejudice to other rights and remedies of the parties arising out of any default which occurs before the termination and shall be without prejudice to any claim for moneys payable as at the date of termination or in respect of any work done or of liabilities incurred before the termination.

- 16.3 On termination, the party issuing the termination notice may serve notice on the Escrow Agent of the defaulting party requiring the release of all remaining funds in the Escrow Account to the terminating party, in accordance with the terms of the Escrow Deed.

17. DISPUTES RESOLUTION

- 17.1 If during the term of the Agreement any issue arises under this Agreement the Parties shall meet at the earliest possible convenience with a view to resolving any such issue, and no later than 10 Working Days after the dispute is notified.
- 17.2 If the dispute is not resolved within a further 10 Working Days of the meeting, the dispute shall be referred to mediation by notice from one party to the other.
- 17.3 If such notice is given, the Parties shall endeavour to agree on a mediator and shall
- (a) submit the matter in dispute to the mediator within a further ten (10) Working Days. The rules of mediation shall be agreed through the mediator and all discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce any settlement concluded by mediation, be referred to in any later proceedings. The parties shall bear their own costs in the mediation and shall pay the cost of the mediator in equal shares.
- 17.4 If:
- (a) the parties have agreed upon mediation but have been unable within ten (10) Working Days of such agreement to agree upon a mediator; or
- (b) the parties have agreed upon reference in a nonbinding manner to an expert and a party disputes the expert's finding by notice in writing to the other parties given within ten (10) Working Days of the expert's determination; or
- (c) no agreement has been reached following mediation or otherwise within twenty (20) Working Days of the service of notice of mediation or notice of dispute, whichever may have occurred first, or within such further time as the parties may agree;
- then the matter in dispute shall be referred to arbitration under the Arbitration Act 1996 upon the service of a notice of intention to commence arbitration. The arbitration shall be governed by the Arbitration Act 1996 except to the extent modified by this clause 17.
- 17.5 The arbitration shall be by a single arbitrator. If the parties cannot agree on a single arbitrator within ten (10) Working Days of service of the notice of intention to commence arbitration any party may request the President of the New Zealand Law Society to appoint a sole arbitrator.
- 17.6 The arbitrator shall be obliged to proceed with expedition to deliver and award as soon as reasonably practicable and the parties agree to cooperate to achieve that end.
- 17.7 The parties further agree that the award of the arbitrator shall, save in the case of manifest error, be final and binding as between the parties and they and each of them waive any right to appeal against the award or seek any review of it in any court.
- 17.8 If the dispute is not resolved by mediation or arbitration, the Parties may elect court proceedings.
- 17.9 If the dispute is not resolved by mediation or arbitration, the Parties may elect to go to adjudication. If the parties cannot agree on an adjudicator, an adjudicator from the Building Disputes Tribunal shall be appointed at the request of either party.
- 17.10 This clause will not apply to:
- (a) A dispute arising in connection with any attempted re-negotiation of this Agreement; or



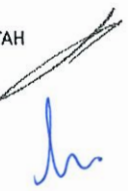
- (b) Any application by either party for urgent interlocutory relief.

18. WASH UP PAYMENT

- 18.1 The parties have incurred costs in relation to the Infrastructure Works prior to the execution of this Agreement. For Infrastructure Works which are to be paid for by the other party, or both parties, the parties will submit their account of costs incurred to date, together with the amount payable by the other party to date in accordance with this Agreement.
- 18.2 The parties will also be entitled to submit the cost of the land each party is exchanging or contributing to the Infrastructure Works, as set out in Schedule 2.
- 18.3 The parties will reconcile the amount that is to be paid by each party in accordance with Schedule 2 within 20 Working Days of execution of the Agreement or the Agreement becoming unconditional (whichever is later), for the Infrastructure Works. Where a net payment is payable to either party, the other party must make direct payment of that amount to the other within 20 Working Days of the reconciliation.
- 18.4 The parties will reconcile the amount that is to be paid by each party in accordance with Schedule 2 for contributions for the Infrastructure Works.

19. EARTHWORKS CUT TO FILL

- 19.1 TBLP warrants to make available, and BRL shall be entitled to take 55,000 cubic metres of earth ("Earth") being a by-product of the earthworks to be carried out on its land that has been certified (by an Engineer appointed by BRL), at no cost to BRL subject to the terms and conditions under this clause 19.
- 19.2 TBLP warrants to make the Earth comply with the "**Cleanfill Standard**" as prescribed by the Ministry for the Environment (and as set out in **Schedule 10** of this agreement) and as specified by the Geotech engineer appointed jointly by BRL and TBLP, at TBLP's cost and shall further provide the Earth to BRL between December 2021 to March 2022 and provide written notice of the same to BRL ("the Earth Notice")
- 19.3 The Parties further acknowledge and agree that if TBLP fails to honour its warranties under clause 7.3 to complete the TBLP Works by 31 March 2022, BRL in its sole discretion may refuse the Earth from TBLP. However, if:
- (a) a) TBLP have used its best endeavours to complete the TBLP Works by 31 March 2022,
 - (b) b) TBLP have continually reported the progress and delays to the TBLP Works to BRL and
 - (c) c) TBLP can prove that but for the third party delays or COVID-19 or supply chain issues, TBLP would have completed the TBLP Works in time, then BRL shall not be entitled to refuse the acceptance of the Earth from TBLP, and TBLP shall be granted an automatic one-off extension of 3 months, with a new date to complete the TBLP Works by **30 June 2022**.
- 19.4 TBLP shall compact the Earth to the jointly appointed Geotech engineer's requirement (at TBLP's cost) and further remove and transfer the approved Earth (at TBLP's cost) to the site designated by BRL (as set out in **Schedule 14**) within a reasonable time after notification. TBLP shall ensure that the compacted Earth shall be made available to BRL's designated site in accordance with the requirements/directions of BRL's Civil Engineer at BRL and TBLP's joint costs (50:50).



- 19.5 If BRL elects to accept the earth in the Earth Election Notice, but BRL is unable to obtain Auckland Council resource consent to remove the Earth by **30 April 2022**, TBLP shall have the right to provide the Earth (at TBLP's cost) to Location A (as set out in **Schedule 14**).
- 19.6 If BRL does not accept the Earth by **30 April 2022** there shall be a retrospective contribution by BRL to TBLP **at a rate of \$8/m³ (including GST)** for each m³ not taken of the 50,000m³ Earth. The amount payable shall be calculated by TBLP and payable by BRL to TBLP upon receiving a tax invoice. Should the parties disagree with the calculations, they shall use the disputes resolution clauses to this Agreement.
- 19.7 The Parties acknowledge and agree that the compaction of the Earth (after removal from TBLP's land) shall be arranged by TBLP, but the parties agree the costs shall be shared **50:50 between BRL & TBLP**. The amount payable shall be payable by BRL to TBLP upon receiving a tax invoice. Should the parties disagree with the calculations, they shall use the disputes resolution clauses to this Agreement.

20. NOTICES

- 20.1 Each notice, demand or other communication to be given or made by any party to this Agreement:
- (a) Must be made in writing by email, fax or letter and be signed by the party making the demand or giving the notice or other communication or their authorised officer;
 - (b) Must be given or made to the recipient at the address or fax number or the email address and marked for the attention of the person (if any), from time to time designated by the recipient;
 - (c) Will not be effective until received by the recipient:
 - (i) (If given or made by letter) when left at the address of the recipient or three Working Days after being put in the post, postage prepaid, and addressed to the recipient at that address; or
 - (ii) (If given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient; orprovided that any notice or communication received or deemed received after 5pm on a Working Day in the place to which it is sent or on a day which is not a Working Day in that place, is deemed not to have been received until the next Working Day in that place.
 - (d) Notwithstanding any provision under this agreement, a notice or communication is deemed to have been served: In the case of email, when sent to the email address (set out in Schedule 5) provided for the party, provided that any notice or communication received or deemed received after 5pm on a Working Day in the place to which it is sent or on a day which is not a Working Day in that place, is deemed not to have been received until the next Working Day in that place.
- 20.2 The Parties' address for service including their fax number, address, email address and person (if any) so designated by each party are set out in Schedule 5. If one of the Parties wishes to change any of such information, the party who is seeking to make such change must provide a written notice to the other party addressing the replacement address.

21. OTHER GENERAL PROVISIONS

- 21.1 The parties agree that there is and will be no capitalised or compounded interest in the payments due under this Agreement and that those payments are and will be the lowest price for the purposes of section EW32 of the Income Tax Act 2007.
- 21.2 Each party will with due diligence sign all necessary deeds and documents and do everything that is reasonably required to carry out the terms of this Agreement.

- 21.3 The parties acknowledge that issues are in future likely to arise in relation to the matters covered by this Agreement which have not been fully anticipated at the time of completion of this Agreement. The parties will act in good faith towards each other to resolve any such issues as they arise.
- 21.4 Any failure by a party to enforce any clause in this Agreement, or any forbearance, delay or indulgence granted by that party to any other party, will not be construed as a waiver of the other party's rights under this Agreement.
- 21.5 Each party warrants that it will use its reasonable endeavours to obtain its existing mortgagees' (and any other security holders') consent to, and agreement to the extent necessary to be bound by the terms of, this Agreement (where applicable).
- 21.6 No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure of either party to enforce any provisions of the Agreement at any time shall not be interpreted as a waiver of this provision.
- 21.7 This Agreement constitutes the entire agreement between the parties and shall supersede all previous negotiations, commitments and/or writings. Any subsequent written variation signed by both parties may be added on and shall then form part of this Agreement.
- 21.8 Neither party shall be liable for failure to perform its obligation if the failure results from force majeure, act of God, fire, explosion, industrial dispute, act of Government such as a change in legislation, regulation or order made under legislative authority or anything beyond the parties' control, including but not limited to epidemics or pandemics.
- 21.9 BRL and TBLP shall bear his or her own legal costs of an incidental to, preparation and execution of this Agreement.
- 21.10 The parties may not assign their rights and interests under this Agreement without the prior consent of the other party, not to be unreasonably withheld.
- 21.11 Any indemnity or obligation of confidentiality under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.
- 21.12 The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

22. INTELLECTUAL PROPERTY

- 22.1 Each Party acknowledges and agrees that all Intellectual Property in respect of the Infrastructure Works belongs exclusively to the following parties:
- (a) For the Agency Works, the Beneficiary and the Agent jointly;
 - (b) For the Joint Works, each party in equal share; and
 - (c) For the Independent Works, Beneficiary.
- 22.2 If required each party hereby assigns and transfers all Intellectual Property owned by relevant beneficiary upon receiving the demand from the owner of such Intellectual Property and each party shall, if necessary, enter into and execute a deed in the agreed form transferring all such Intellectual Property to the relevant owner of such Intellectual Property.

23. **COUNTERPARTS**

- 23.1 This Agreement may be executed by different parties executing counterpart and/or scanned copies which shall together constitute a completed Agreement. Any facsimile or PDF copy of this Agreement (including any facsimile or PDF copy of any document evidencing the execution of this Agreement by any party) may be relied upon by the other parties as though it were an original copy. The parties confirm that execution by electronic signature, or confirmation from the purported signatory in writing that the signature added electronically to the document is the signatory's confirmation of its intention to bind the relevant party, will be sufficient for the purposes of execution of this agreement.

SIGNED by BUILD RICH LIMITED (6342504)

by the directors

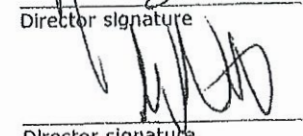
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Signed by

THE BOTANIC LIMITED PARTNERSHIP
(50032660)



Director signature
Kevin Clark

Director name


Director signature
Wayne Wright

Director name



Schedule 1 –Project Land

The Agreement relates to the proposed East Coast Height and TBLP development located at Silverdale, Auckland (the Development).

The Development is to be undertaken on the Project Land, which comprises of:

- a) LOT 1 DP 200971 (BRL)
- b) LOT 2 DP 65609 (BRL)
- c) SEC 216 PSH OF Okura SO 18072 (TBLP)
- d) LOT 9 DP 520205 (TBLP)



Schedule 2: Infrastructure Works (Types)

Agency Work

Project	Project: 1 Hibiscus Coast Highway Intersection Upgrade - Design
Description:	Intersection upgrade at Hibiscus Coast Highway and East Coast Road.
Principal	BRL
Engineer to the Contract	Aspire
Payment Proportion	BRL: 50% / TBLP: 50%
Timing:	January 2021 to October 2021
Total Project Costs (incl land and additional costs)	\$150,000 excluding GST

Project	Project :2 Hibiscus Coast Highway Intersection Upgrade – Build
Description:	Intersection upgrade at Hibiscus Coast Highway and East Coast Road.
Principal	BRL
Engineer to the Contract	Aspire
Payment Proportion	BRL: 50% / TBLP: 50%
Timing:	October 2021 to April 2022
Total Project Costs (incl land and additional costs)	\$1,300,000 excluding GST

Project	Project 3: Pump Station Design
Description:	Design of the Pump station & EPA Approval
Principal	TBLP
Timing:	May 2020 Sept 2020
Engineer to the Contract	MSC Consulting and Aspire Civil
Payment proportion	BRL: 66% TBLP: 34%
Total project cost estimate	\$150,000

Project	Project: 4 Pump Station - Land
Description:	Procuring and vesting land for construction of project 5 Average Daily Waste Flow l/s (ADWF) of permanent solution
Principal	TBLP
Timing:	N/A
Engineer to the Contract	N/A
Payment proportion	BRL: 66% TBLP: 34%
Total project cost estimate	Total estimated cost of land \$189,210 318 (sqm) * \$595(sqm) * Build Rich contribution (66) % = \$124,879 This figure is an estimate and is to be updated if the final area vested to Watercare changes from the above. BRL is to pay 10% of the expected contribution as a deposit upon signing of this Agreement to the Escrow Account, with 100% payable to TBLP upon vesting of the land to Watercare.

Project	Project: 5: Pump Station Construction
Description:	Average Daily Waste Flow l/s (ADWF) of permanent solution. Supply and installation of a pump station to the specifications and standards required by Watercare services limited to service the BRL & TBLP holdings. User pays basis, based on agreed waterflows as per MSC & Aspire development forecasting being:
Principal	TBLP
Timing:	31 March 22 (subject to the terms in the body of the agreement).
Engineer to the Contract	MSC
Payment proportion	BRL: 66% TBLP: 34%
Total project cost estimate	\$2,000,000

Project	Project x: HDPH Watermain along Spine Road
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