

MEMORANDUM OF AGREEMENT BETWEEN:

AROAMS QUARRY (PTY) LTD

Registration number: 2019/ 115729/ 07

(hereinafter referred to as "the applicant")

(herein duly represented by Mr Johan Le Roux in his capacity as Business Manager)

and

SPH KUNDALILA (PTY) LTD

Registration number: 1997/ 015857/ 07

(hereinafter referred to as "the contractor")

(herein duly represented by Mr Riaan Mouton in his capacity as Director)

and

GIDEON ADOLF GERBER

Identity number: 660315 5087 088

and

ERIKA GERBER

Identity number: 650801 0137 087

(hereinafter collectively referred to as "the landowners")

WHEREAS the applicant applied to the Department of Mineral Resources and Energy for a mining right over a portion of Portion 2 of the farm Aroams No 57, Administrative district of Namaqualand, for the mining of Aggregate, Granite, Gravel and Dolerite, which application is still to be determined;

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AND WHEREAS the Department of Mineral Resources and Energy requires the application to be accompanied by landowners' consent (which this Memorandum of Agreement constitutes) and whereas the landowners are desirous to provide the applicant and contractor with access and use of its land for the purpose of mining, subject to the conditions herein;

NOW THEREFORE the parties agree as follows:

1. INTERPRETATION:

1.1. In this agreement:

- 1.1.1. **"Applicant"** shall mean Aroams Quarry (Pty) Ltd, Registration number: 2019/ 115729/ 07, a private company duly incorporated in terms of the statutes of the Republic of South Africa;
- 1.1.2. **"Effective date"** shall mean the date on which the mining right is granted;
- 1.1.3. **"Commencement date"** shall mean the date on which the mining right has been executed and mining activities commence on site;
- 1.1.4. **"Contractor"** shall mean SPH Kundalila (Pty) Ltd, Registration number: 1997/ 015857/ 07, a private company duly incorporated in terms of the statutes of the Republic of South Africa, which company is an affiliate company of the applicant;
- 1.1.5. **"DMRE"** shall mean the Department of Mineral Resources and Energy;
- 1.1.6. **"High Grade Aggregate Product"** shall mean G1, G2, G3, G4 or G5 and road stone (6.7mm, 13.2mm, 9.5mm and 19mm) and crusher dust, all derived from the crushing of fresh dolerite, aggregate, granite and gravel;
- 1.1.7. **"Land"** shall mean a portion of Portion 2 (Remaining Extent) of the farm Aroams No 57, Administrative District of Namaqualand, Northern Cape;
- 1.1.8. **"Landowners"** shall mean Gideon Adolf Gerber, an adult male with identity number 660315 5087 088 together with Erika Gerber, an adult female with identity number 650801 0137 087;

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- 1.1.9. **"MOA"** shall mean this land use agreement concluded between the parties and set out more fully in this document, together with any annexures or addendums thereto;
- 1.1.10. **"Object"** shall mean any item (fixed or not) that is located on the landowners' land and/or site but excludes the product;
- 1.1.11. **"Parties"** shall mean the applicant, contractor and the landowners, collectively;
- 1.1.12. **"Party"** shall mean the applicant, contractor or the landowners, as the context requires;
- 1.1.13. **"Product"** shall mean all High Grade Aggregate Product (as described in clause 1.1.6) and as derived from dolerite, aggregate, gravel and granite rock excavated on site, which product is used in construction projects or sold as aggregate for whatsoever purpose;
- 1.1.14. **"Projects"** shall mean any active project or projects wherein the tenders have already been awarded to the applicant or consultant and in which project the product sold is used or will be used;
- 1.1.15. **"Review Period"** shall mean every 3 (three) years from commencement date of the mining right;
- 1.1.16. **"Signature date"** shall mean the date of last signature to this MOA;
- 1.1.17. **"Site"** shall mean the area of land over which the mining right is granted and where mining activities, and all activities ancillary to mining, will take place;
- 1.1.18. **"SPH"** shall mean SPH Kundalila (Pty) Ltd, Registration number: 1997/015857/07, a private company duly incorporated in terms of the statutes of the Republic of South Africa, which company is an affiliate company of the applicant;
- 1.1.19. **"VAT"** shall mean value added tax levied in terms of the Value Added Tax Act No 89 of 1991.

1.2. Any reference to gender shall include the other gender/s.

1.3. The clause headings of this MOA have been inserted for convenience only and shall not be taken into account in its interpretation.

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- 1.4. If any period is referred to in this MOA by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a public holiday or weekend, in which case the day shall fall on the next succeeding business day.
- 1.5. Where figures are referred to as numerals and words, and in the event of any conflict, the words shall prevail.

2. APPOINTMENT OF CONTRACTOR

- 2.1. SPH is herewith appointed by the applicant as the contractor who will be responsible for all mining activities as well as other activities ancillary to mining on the site, once mining activities commence, which appointment SPH herewith accepts.
- 2.2. No other contractor *in respect of mining of the product, as per clause 1.1.13* shall be appointed by the applicant or the landowners without the prior written consent from the contractor.

3. BACKGROUND

- 3.1. SPH currently holds a mining permit for the mining of aggregate over the land, held under departmental reference number NC 30/5/1/3/2/10400 MP, which permit is currently within its third renewal period.
- 3.2. SPH and the landowners concluded an agreement for the use of land by SPH for the mining of aggregate dated 28 October 2014, for the duration of the abovementioned mining permit period, which period expires on 05 March 2020. Notwithstanding the fact that this MOA is concluded for the mining right application the current agreement applicable to the mining permit shall remain valid until such time as the mining permit expires.

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- 3.3. Due to there still being mineable material available as well as current and future projects, the applicant needs more time to finalise its mining activities on the land, which resulted in this mining right application, still to be determined.

4. CONDITIONS OF THIS AGREEMENT

- 4.1. The landowners consent to:

- 4.1.1. The applicant continuing with the application for a mining right over the land and to do all things necessary to obtain such mining right;
- 4.1.2. The applicant appointing SPH as its contractor for purposes of all mining activities ***solely in respect of the product as per clause 1.1.13 above, on the site;***
- 4.1.3. The contractor being granted access to the land and site before, during and after the mining right period for the purpose of mining, rehabilitation and all activities ancillary to mining;
- 4.1.4. The contractor shall commence mining under the mining right once the mining right has been granted and executed;
- 4.1.5. The contractor shall be entitled to drive vehicles, including heavy machinery and large trucks on new and existing roads on the land in order to gain access to the site and to establish all equipment and temporary infrastructure associated with the excavation of rock from the site and for the producing of the product on the site, provided that all roads used shall be properly maintained;
- 4.1.6. The contractor is granted consent for the use of the land and site for ***solely the activities as provided for here-in,*** on the condition that once the mining activities commence under the mining right the landowners will have the right to review the conditions of this agreement every 3 (three) years from commencement date of the mining right;

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4.2. In consideration for the consent of the landowners, the contractor agrees to pay the following amounts to the landowners, which amounts will become due upon commencement of mining activities:

4.2.1. A royalty of R5-00 (Five Rand) per ton (excluding VAT) for all High Grade Aggregate Product. The High Grade Aggregate Product will be measured in tons over a weighbridge. Any High Grade Aggregate Product remaining in stockpile on the site and not used in the works, will either be dumped into the excavated hole on site during the rehabilitation period or it will be left in stockpile for the landowners' exclusive use;

4.2.2. It is agreed that the product remaining on site (whether left in stockpile for the landowners' exclusive use or dumped into the excavated hole) will not be subject to any royalty payments;

4.2.3. Any royalties due to the landowners will be paid to the landowners by the end of the month following the month in which the product was used in the works. For example, if product from site is used in projects during the month of July 2019, the royalty in respect thereof is payable to the landowners at the end of August 2019.

4.2.4. The account details which the landowners will use for this purpose is:

Account holder: GD Gerber

Bank name: ABSA

Account number: 800340241

Branch code: 632-005

4.3. The landowners acknowledge that the application for and the granting of a mining right is time consuming and there is no guarantee that the mining right will be granted by the DMRE.

4.4. The contractor undertakes that, should the mining right be granted:

4.4.1. All blasting operations will be carried out using controlled blasting techniques to monitor peak particle velocity and frequency to maximise

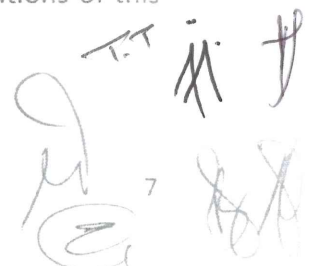
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safety and protection to private property. This will be monitored using vibro recorders for each and every occurrence when blasting takes place. The contractor will be responsible for any damage caused to private property due to uncontrolled blasting operations;

- 4.4.2. Watercarts will be utilised for dust suppression of stockpile and haul roads to minimise the effects of dust generation;
- 4.4.3. The contractor will be responsible for fencing of the site;
- 4.4.4. Water (including borehole water) taken from the landowners site and/or land shall be used only for mining purposes on the site and for purposes ancillary thereto;
- 4.4.5. Any damage to the land and/or site and/or objects without the landowners' consent (save for fair wear and tear) shall be repaired by the contractor to its previous condition or the landowners will be compensated for the damages, on the condition that these damages are directly related to the mining activities on site;
- 4.4.6. The contractor takes full responsibility for the rehabilitation on site, which rehabilitation will be done concurrent to mining activities as well as after the completion of mining activities. Rehabilitation must be conducted in accordance to the provisions of the Mineral and Petroleum Resources Development Act No. 28 of 2002, the National Environmental Management Act No. 107 of 1998, the Mine Health and Safety Act No. 29 of 1996, as well as all regulations and amendments thereto;
- 4.4.7. The contractor will be responsible for the removal and relocation of protected plant species as prescribed by the Department of Environment & Nature Conservation.

5. STATUS OF THIS AGREEMENT

- 5.1. This MOA constitutes a binding agreement between the parties, or its successors in title, from signature date and the terms and conditions of this agreement shall become effective upon effective date.



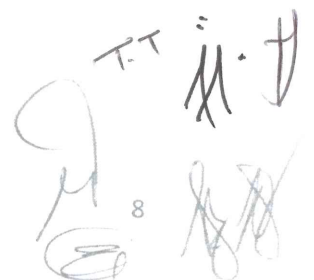
- 5.2. No addition to, variation or consensual cancellation of this MOA shall be of force or effect unless in writing and signed by or on behalf of both Parties.
- 5.3. The parties agree that each clause of this MOA shall be severable, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect.
- 5.4. Save as specifically provided in this MOA, neither party shall be entitled to cede or delegate any of its rights or obligations under this MOA without the prior written consent of the other Party affected by such transfer of rights or obligations.

6. COMMENCEMENT, DURATION AND LANDOWNERS RIGHT OF REVIEW

- 6.1. This MOA shall be binding on the parties, or its successors in title, for the duration of the mining right, subject to the conditions herein.
- 6.2. In terms of clause 3.1.6 this agreement shall be subject to a 3 (three) yearly review by the landowners, in which the landowners will be entitled to review the terms and conditions of this agreement. This three-year review period shall be counted from commencement date of the mining right.
- 6.3. The landowners will have the right to reasonably amend the terms and conditions of this MOA, which amendments must be agreed to in writing by both parties.
- 6.4. In the event that the contractor has any projects the landowners shall not have the right to review the terms and conditions of this MOA, until such time as the contractor's projects have been finalised.

7. BREACH AND TERMINATION


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- 7.1. If any party breaches any material term of this MOA and fails to remedy that breach within 14 (fourteen) days of receipt of a written notice requiring it to do so, then the aggrieved party shall be entitled, without notice, in addition to any other remedy available to it in law or under the MOA, including obtaining an interdict, to terminate this MOA or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damage.
- 7.2. Save for in the case of breach as set out in clause 6.1, the landowners shall not terminate this MOA during the review period in the event that the contractor is in the process of implementing projects. In the event that the contractor has no projects and the landowners terminate this agreement, the landowners must provide the consultant with 3 (three) months' notice, as well as its motivation for the termination.
- 7.3. Upon termination the applicant will notify the DMRE of such termination, commence with rehabilitation in terms of the approved Environmental Management Programme, and after rehabilitation the applicant will apply for closure of the mining right.
- 7.4. In the event of early termination, the landowners shall continue to provide the contractor with access to the land and site up until date that a closure certificate has been issued by the DMRE.

8. SETTLEMENT OF DISPUTES

- 8.1. Any dispute arising between the parties relating to this MOA shall be determined in terms of this clause, unless the parties agree otherwise in writing.



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- 8.2. If a dispute arises and the parties are unable to amicably resolve such dispute, the dispute shall be submitted for determination by an expert.
- 8.3. The expert shall be a practicing attorney or advocate with no less than 10 (ten) years standing and experience in mining and commercial matters, to be appointed by the Chairperson of the Legal Practice Council for the Northern Cape Province, or its successors.
- 8.4. The expert shall determine the matter not more than 45 (forty-five) calendar days after its appointment.
- 8.5. Any determination made by the expert:
- 8.5.1. Shall be final and binding;
 - 8.5.2. Will be carried into effect; and
 - 8.5.3. May be made an order of any Court to which jurisdiction the parties are subject to.
- 8.6. This clause shall however not prevent any party from seeking urgent interim relief in a Court of Law which will has jurisdiction over the dispute.

9. GOVERNING LAW

This agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa.

10. CONFIDENTIALITY

The parties shall keep the terms of this MOA confidential.

11. DOMICILIUM

- 11.1. Each party chooses the address set out below as its address to which any written notice in connection with this MOA may be addressed:

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Applicant: 18 Marconi Road
Montague Gardens
7441
Email: johan@sphgroup.co.za
Attention: Johan le Roux

Contractor: 18 Marconi Road
Montague Gardens
7441
Email: riaan@sphgroup.co.za
Attention: Riaan Mouton


Landowners: Portion 2, Farm Aroams 57
Namaqualand
Email: erika.gerber@mweb.co.za
Attention: Mr Gideon Adolf Gerber

- 11.2. Any party may by written notice to the other party change its address for the purposes of clause 10.1 to any other address (other than a post office box number) provided that the change shall become effective on the 7th day after the receipt of the notice.
- 11.3. Receipt of any documentation for the purpose of this clause shall be deemed received in good order if such documentation has been send by email and a delivery report has been delivered to the sender.

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Signed at PRETORIA on the 29th day of October 2019.

Witnesses:

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2. 






Landowners

Signed at Milnerton on the 30th day of October 2019.

Witnesses:

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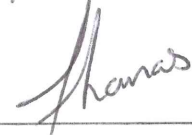


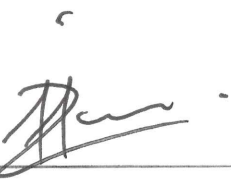
Applicant

Signed at Milnerton on the 30th day of October 2019.

Witnesses:

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2. 



Contractor