

THE CORPORATION OF THE DISTRICT OF BURNABY

BY-LAW NO. 1953

A BY-LAW to authorize the execution of an Indenture of Lease from the Corporation to Messrs. D.C.B. and T. Pitkethly.



THE REEVE AND COUNCIL of the District of Burnaby, in open meeting assembled, ENACT as follows:-

1. Authority is hereby given to the Reeve and Clerk to affix the Corporate Seal of the Corporation to an Indenture of Lease in triplicate, expressed to be made between the Corporation of the first part and David Clarke Bell Pitkethly and Thomas Pitkethly of the other part, concerning a certain piece or parcel of land situate in the Municipality of Burnaby and being Lot "B" of subdivision of Part of Block One (1), of District Lot 215, Group 1, New Westminster District, Plan 9377, a copy of which Lease is hereto annexed and identified by the signature of the Reeve and Clerk respectively; and to attest such sealing and deliver one part of the said Lease to the Lessees.

2. This By-law shall come into force immediately upon the registration thereof.

3. This By-law may be cited for all purposes as the "PITKETHLY LEASE BY-LAW 1947."

DONE AND PASSED in Open Council, this Second (2nd) day of June, A.D. 1947.

RECONSIDERED AND FINALLY PASSED on the Tenth (10th) day of June, A.D. 1947.

G. Morrison

REEVE

Charles B. Brown

CLERK

I, Charles B. Brown, Clerk of the Corporation of the District of Burnaby do hereby certify the foregoing to be a true copy of a By-law passed by the Council for the Corporation of the District of Burnaby on the Tenth (10th) day of June, A.D. 1947.

Charles B. Brown

CLERK.



THIS INDENTURE of LEASE made the _____ day of
1947.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY,
having its seat at Municipal Hall, Edmonds
in the Province of British Columbia (here-
inafter called "the Lessor" which expression
shall where the context so admits include the
immediate reversioner for the time being
expectant upon the term hereby created)

OF THE ONE PART

A N D:

DAVID CLARK BELL PITKETHLY and THOMAS
PITKETHLY, carrying on business in partnership
as brick and tile manufacturers under the name
or style of PITKETHLY BROTHERS (hereinafter
called "the Lessees" which expression shall
where the context so admits include the
survivor and their and his executors,
administrators and assigns)

OF THE OTHER PART

W I T N E S S E T H as follows:

1. In consideration of the rents, covenants and agreements herein reserved and contained, the Lessor hereby demises to the Lessees ALL THAT certain piece or parcel of land abutting in part on the Barnet Road, in the Municipality of Burnaby aforesaid and more particularly known and described as follows:

Lot "B" of Subdivision of Part of Block One (1) of District Lot 215, Group One (1), New Westminster District, Map No. 9377

2. There are included in the said demise and for the purpose thereof the liberties and rights to the Lessees following:

(a) To get, obtain, take and use to the use of the Lessees from the said parcel of land, earth and clay (but by excavation open to the daylight and not by underground workings) and also sand, chalk and other materials used in the manufacture of bricks, tiles and other ceramics:

(b) To manufacture the materials got under the foregoing authority into bricks, tiles and other ceramic objects upon any part of the said pieces of land or upon other adjoining lands belonging to the Lessees and to sell and dispose of the same:

(c) To place and construct on the said parcel of land any

engines, machinery, and any roads and other conveniences and to make ash heaps and spoil banks:

(d) To remove the overburden or surface soil from the said lands so far as may be necessary to recover the said clay and to deposit such overburden or surface soil for the time being on other parts of the demised premises or upon adjacent lands owned by the Lessees or (with the prior consent in writing of the Engineer of the Lessor but not otherwise) upon any other neighbouring lands of the Lessor; but subject nevertheless to the covenants on the part of the Lessees hereinafter contained:

(e) To cut down, grub up, remove and appropriate to the own use all timber brush and undergrowth now on the demised lands but subject nevertheless to the covenants on the part of the Lessees hereinafter contained;

(f) Generally to do all things which shall be convenient or necessary for getting the clay and materials hereby authorized to be got and for manufacturing the same into bricks, tiles and ceramics as aforesaid:

3. THERE ARE EXCEPTED AND RESERVED to the Lessor out of this demise:

(a) All earth, mines, minerals and other substances not hereinbefore expressly authorized to be got from the demised lands by the Lessees:

(b) Liberty for the Lessor or their Lessees or tenants or other persons authorized by them to search for work get carry away and dispose of the excepted minerals and other substances and for such purposes to have the right to ingress, egress and regress over the demised lands and to make, erect and use all pits machinery, buildings, roads and other necessary works and conveniences, provided that the rights hereby reserved shall be exercised in such a way as to cause as little obstruction as possible to the Lessees in the use and enjoyment of their rights hereunder and that reasonable compensation for damage caused by any such obstruction shall be paid to the Lessees, the amount thereof in case of difference to be settled by arbitration as hereinafter provided.

4. The said premises shall be held by the Lessees from the 1st day of June, 1947 for the term of twenty years determinable as hereinafter provided. The Lessor agrees with the Lessees that if and insofar as the Lessor may be legally able to do so and if the Lessees shall have duly paid their rent and observed and performed all their covenants and obligations herein contained, the Lessor hereby grants to the Lessees the first option to renew this Lease for a further term of twenty years after the expiration of the term hereby demised on the same terms and conditions as in this Lease contained except this provision for renewal and except as to the rent payable thereunder which rent shall be in the amount mutually agreed upon between the parties at the time such renewal Lease (if any) is granted, and failing agreement between the parties thereon, the same shall be settled by arbitration and such arbitration shall be held in accordance with the provisions herein contained relating to the arbitration of any difference or dispute between the parties hereto; provided, that if the Lessees shall wish to exercise such option they shall give to the Lessor notice in writing of their intention to request such renewal on or before the 1st day of June, 1966; provided further that the Lessor gives no warranty or undertaking express or implied as to its power to confer the said option of renewal and so that no claim, action or proceedings shall be made or taken against the Lessor or against the Council of the Corporation of the District of Burnaby or against any member of such Council if it shall be found that the conferring of such option is beyond the power of the Lessor.

5. The Lessees shall pay to the Lessor a rent during the said term calculated as follows: The sum of ten cents per cubic yard for all clay and ceramic material removed by the said Lessees in each three month period during the said term for the manufacture of the said bricks, tiles and other ceramics. The amount of the said rent shall be ascertained and determined each and every three months period during the said term by the Engineer of the Lessor who shall thereupon issue his certificate

in writing as to the amount of such rent and thereupon the amount so certified shall become due and owing as rent from the Lessees to the Lessor and be paid not later than the 15th day of the month following the date of each certificate.

6. The Lessees for themselves and their respective executors, administrators and assigns and to the intent that the obligations may continue throughout the term hereby created jointly and severally covenant with the Lessor as follows:-

(a) To pay the said rent on the days and in manner aforesaid:

(b) Effectually to fence off all working operations or excavations upon the demised premises and to keep the fences in good repair and condition:

(c) Not to pile or store any lops, tops, branches or other timber or brush upon or adherent to other trees or upon other timber or brush, but to burn or remove all such lops, tops, branches or other timber from the demised premises and will not store or pile the same so as to become a fire hazard:

(d) Not to dig for clay over an area of more than two acres at any one time (the acres so to be worked to be approved from time to time by the Lessor's Engineer):

(e) Not to make any ash heaps or spoil banks within fifty yards of the said Barnet Road or of any dwelling-house now existing on the lands adjacent, contiguous or near the demised lands:

(f) To excavate the said land in a skilled manner and such as is approved by good class brickmakers and so as to maintain an even or clean face with a one to one slope that is to say: one foot up and one foot down:

(g) To observe the requirements of the Engineer of the Lessor with regard to levels and depth in excavating the said lands; and not to excavate below the present level of the said Barnet Road without the previous consent in writing of the Engineer of the Lessor:

(h) Not to conduct any prolonged or unreasonable blasting operation upon or in the demised lands and to conduct the same in accordance with and subject to the provisions of the

Metalliferous Mines Act and any and all other statutory enactments or municipal by-laws for the time being in force:

(i) Not to stop up, block, impede, divert or interfere with any water-course, spring or well in, upon or flowing through the demised lands:

(j) Not to assign, underlet or part with possession of the demised lands or any part thereof without the previous consent in writing of the Lessor, provided that if the Lessees shall propose as an intended assignee or sub-lessee of the demised lands or of any part thereof a limited liability Company the Lessor will grant its consent to an assignment or sub-lease to such company accordingly; provided that notwithstanding such consent the Lessees and their respective executors and administrators shall remain personally liable to pay the rent hereby reserved and to keep, observe and perform all the terms, covenants and agreements herein contained:

(k) Not to use the demised premises or any part thereof or permit the same to be used for any purpose of business except that of extracting clay therefrom and the manufacture of bricks, tiles and other ceramics:

(l) To conduct the said business in all respects in a lawful, orderly and proper manner and so as not to cause any damage, nuisance, annoyance or inconvenience to the Lessor, the inhabitants of the district wherein the demised lands are situate or of persons passing along the road or roads contiguous therewith; and so that all bricks, tiles and other ceramics manufactured upon the demised premises shall be treated, fired, baked or dried in kilns or ovens constructed according to the most approved and latest designs so as to prevent any nuisance arising from smoke smell or otherwise:

(m) As soon as the clay has been extracted from any part of the demised lands, will promptly fill in the excavation with or from the overburden or surface soil removed therefrom so as to leave the surface of the said land clean, orderly and at the previous and natural level as far as reasonably possible:

(n) At the request of the Engineer of the Lessor will

forthwith from time to time remove any overburden or surface soil theretofore permitted to be deposited or stored on any neighbouring land of the Lessor, and will deposit the same upon the demised lands or haul the same away and dispose thereof as the Engineer of the Lessor shall direct:

(o) To keep the Lessor indemnified against all actions, claims, demands and expenses arising out of the use of the said lands hereby demised for the purposes of the manufacture of bricks, tiles and other ceramics or in respect of any public or private nuisance apprehended therefrom or alleged to be occasioned thereby:

(p) To permit the Lessor or its Engineer and other agents at all reasonable times to enter upon the demised premises and to measure up the materials and clay removed therefrom and to view the condition and to inspect the works carried on upon the demised premises and the materials and bricks and tiles and other ceramics got therefrom and manufactured or in process of manufacture.

(q) At the determination of the lease to deliver up the demised premises with all erections and fixtures (save such as the Lessees are by law entitled to remove) in such condition respectively as shall be in accordance with the provisions of this deed save that the Lessees shall if so required by the Lessor remove any kilns, clamps and other erections and restore in manner provided by the foregoing covenant in that behalf the surface of any land which has been occupied by the lessees for the purpose of the works hereby authorized and has not then been so restored and shall fill in all excavations in the said lands and replace all overburden or surface soil removed therefrom and will clear and remove the same from the demised lands and any lands of the Lessor permitted to be used for depositing or storing such overburden or surface soil so as to leave the surface of the demised lands clean, orderly and level and in their natural condition as far as reasonably possible:

7. The Lessor hereby COVENANTS with the Lessee that the Lessees paying the said rent hereby reserved and observing and

performing the several covenants and stipulations herein on their part contained, shall peaceably hold and enjoy the premises, liberties and powers hereby demised and granted during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

8. PROVIDED ALWAYS and it is HEREBY EXPRESSLY AGREED as follows:

(a) If and whenever the rent hereby reserved or any part thereof shall be in arrear for seven days (whether the same shall have been legally demanded or not) the Lessor may (as an additional remedy and without prejudice to the power of distress and other the rights and remedies to which it would be entitled) enter into and upon the demised premises or any adjoining lands or works for the time being held, occupied or used by the Lessees together or in connection with the demised premises and prevent any bricks, tiles, ceramics or other articles or materials from being removed therefrom and may seize and distrain and sell all or any of the bricks, tiles and ceramics then manufactured and the unmanufactured material, engines, machinery, plant implements and chattels belonging to the Lessees upon the demised premises or other the lands and works so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rents and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees:

(b) If any part of the rent hereby reserved shall be unpaid for seven days after becoming payable (whether legally or formally demanded or not), or if the Lessees or either of them while the demised premises or any part thereof remain vested in them shall become bankrupt or may an arrangement for the benefit of or enter into any arrangement for composition with their or his creditors, or in the case of permitted assigns of the Lessees being a corporation shall go into liquidation, whether voluntary (save for the purpose of amalgamation or reorganization) or compulsory, or if any covenant on the Lessees' part herein contained shall not be performed or observed, or if after the 1st

day of June 1949 the minimum annual rental paid by the Lessees in any year of the said term shall be less than Two Hundred Fifty Dollars (\$250.00) (the said year to be computed from the 1st day of June) then, and in any of such events aforesaid, the Lessor may give to the Lessees a notice in writing specifying any breach or default aforesaid committed by the Lessees, and requiring the Lessees to cure or remedy any of the defaults or breaches aforesaid within fifteen days after receipt of such notice, and which notice may be given so often as any breach or default aforesaid may occur, and if the Lessees shall fail to cure or remedy any such breach or default within the time so notified then it shall be lawful for the Lessor at any time after the expiration of the said fifteen days to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Lessor in respect to any breach of non observance of the Lessees' covenants herein contained:

(c) At the determination of the lease the Lessees shall be at liberty to remove, carry away and dispose of all the stock of bricks, tiles and other ceramics upon the demised premises then manufactured and ready for delivery and all engines, machinery and Lessees' fixtures (whether affixed to the freehold or not) and all plant articles and things whatsoever they first paying the rent and performing and observing the covenants on their part hereinbefore reserved and contained and also making good any damage done by such removal:

(d) The Lessees will, without compensation, release such part of the demised parcel of land as may reasonably be required by the Lessor or by the Government of British Columbia for widening Barnet Road abutting the said parcel of land:

(e) If any question, difference or dispute shall arise between the parties hereto or any person, persons or corporation claiming under them respectively, concerning the rent or touching the construction of any clause herein contained or the

rights, duties or liabilities of the parties hereunder or in any other way touching or arising out of this deed the same shall be referred to the decision of two arbitrators one to be appointed by each party or of an umpire to be appointed by such arbitrators before proceedings in the reference in accordance with the Arbitration Act or any statutory re-enactment or modification thereof for the time being in force:

(f) Every notice requiring to be served hereunder shall be sufficiently served in the case of the Lessees if forwarded to them by registered prepaid letter post to or left at the office where the business or working the demised lands is being carried on; and shall be sufficiently served on the Lessor if delivered personally or forwarded by registered prepaid post or left at its principal office. A notice sent by registered mail shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

WHEREVER the singular or the masculine are used in this Indenture, the same shall be deemed to include the plural or the feminine, or the body politic or corporate:

THIS INDENTURE shall be binding upon and also enure to the benefit of the parties hereto and their respective heirs, administrators, successors and permitted assigns:

IN WITNESS whereof the Lessor has caused its Corporate Seal to be hereunto affixed and the Lessees have set their hands and Seals the day and year first above written.

THE CORPORATE SEAL of the Corporation of the District of Burnaby was hereunto affixed in the presence of:

SIGNED, SEALED AND DELIVERED by the said DAVID CLARK BELL PITKETHLY and THOMAS PITKETHLY in the presence of:

R. H. Ellis

G. A. Morrison
REEVE

Charles B. Brown
CLERK

D. C. B. Pitkethly
T. Pitkethly