



Western Australia

## **Irrigation (Dunham River) Agreement Act 1968**

Compare between:

[18 Oct 1976, 00-b0-03] and [15 Dec 2003, 00-c0-08]



## Irrigation (Dunham River) Agreement Act 1968

**An Act to approve an Agreement between the State and Goddard of Australia Pty. Ltd. relating to the Construction of a dam on Arthur Creek and on the Dunham River in the State for the purposes referred to in the Agreement.**

*[Assented to 13 November 1968.]*

Be it enacted —

**1. Short title**

This Act may be cited as the *Irrigation (Dunham River) Agreement Act 1968*.

**2. Interpretation**

In this Act —

“**the Agreement**” means the agreement of which a copy is set forth in the First Schedule to this Act, and if, the Agreement is added to or varied or any of its provisions are cancelled in accordance with those provisions includes the Agreement as so altered from time to time, and, except in section three of this Act, also includes the Agreement as altered by the Variation Agreement;

“**the Variation Agreement**” means the Variation Agreement a copy of which is set out in the Second Schedule to this Act.

*[Section 2 amended by No. 80 of 1976 s.2.]*

**3. Approval of Agreement**

The Agreement is approved, and subject to its provisions shall operate and take effect.

**3A. Approval and ratification of the Variation Agreement**

The Variation Agreement is approved and ratified.

*[Section 3A inserted by No. 80 of 1976 s.3.]*

**4. Orders in Council to take effect**

Any Order in Council made pursuant to the Agreement shall have effect according to its tenor.

**5. By-laws**

- (1) By-laws may be made for the purposes of, and in accordance with, the Agreement.
- (2) By-laws made pursuant to this section —
  - (a) shall be published in the *Government Gazette*;
  - (b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;
  - (c) may prescribe penalties not exceeding one hundred dollars for any contravention of, or failure to comply with, any such by-law; and
  - (d) are not subject to the provisions of section thirty-six of the *Interpretation Act 1918*, but the by-laws shall be laid before each House of Parliament within six sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

## **The Schedules**

*[Heading amended by No. 80 of 1976 s.4.]*

### **First Schedule**

THIS AGREEMENT is made the Twenty-Third day of October One thousand nine hundred and sixty eight BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND GODDARD OF AUSTRALIA PTY. LTD. a company incorporated under the provisions of the Companies Ordinance Act 1962 of the Australian Capital Territory and having its registered office in the State of Western Australia at 89 Saint George's Terrace Perth (hereinafter called “the Developer” which expression shall include the successors and assigns of the Developer including where the context so admits the transferees and assignees of the Developer under clause 26 hereof).

WHEREAS:

- (i) The pilot area (as hereinafter defined) is presently considered potentially suitable for agricultural purposes, but lacks irrigation works and facilities from which to irrigate the pilot area;
- (ii) The Developer wishes to undertake the construction of a dam on Arthur Creek to irrigate the pilot area to ascertain if it is both practical and economically sound to develop it for agricultural purposes by way of closer settlement in holdings of approximately one thousand (1 000) acres;
- (iii) When the State is satisfied that the pilot area can be so developed the Developer may apply for —
  - (a) a lease of a site on the Dunham River for the construction of a dam to irrigate the Dunham Area (as hereinafter defined), and
  - (b) leases for the holdings in the Dunham Area for the purpose of it being developed for agricultural purposes by way of closer

settlement in holdings of such area as is appropriate in the light of the experience acquired from the development of the pilot area

subject to and in accordance with the provisions of this Agreement.

NOW THIS AGREEMENT WITNESSETH:

Definitions

1. In this Agreement subject to the context —

“apply” “approve” “approval” “consent” “certify” “direct” or “notify” means apply approve approval consent certify direct or notify (as the case may be) in writing;

“agricultural purposes” means agricultural as distinct from pastoral purposes and includes the cultivation of the soil and the growing of crops in conjunction with the grazing of stock, and “agriculture” has a corresponding meaning;

“Arthur Creek dam site” means the land (subject to survey) delineated and shaded green in the plan marked “B” initialled by or on behalf of the parties hereto for the purpose of identification and such other land as the parties hereto may agree upon from time to time;

“associated company” means —

- (a) any company having a paid up capital of not less than one million dollars (\$1,000,000) notified in writing by the Developer to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —

(i) is promoted by the Developer for all or any of the purposes of this Agreement and in which the Developer holds not less than thirty per cent (30%) of the issued ordinary share capital;

or

(ii) is related within the meaning of the term subsidiary in section 6 of the Companies Act 1961 to any Company in which the Developer holds not less than thirty per cent (30%) of the issued ordinary share capital, and

(b) any company approved in writing by the Minister for the purposes of this agreement which is associated directly or indirectly with the business or operations hereunder;

“commencement date” means the date on which the Bill to ratify this Agreement commences to operate as an Act;

“Commissioner of Main Roads” means the person for the time being appointed Commissioner of Main Roads under the Main Roads Act 1930;

“costs of survey” means the actual total costs of survey;

“Crown Grant” means a Crown Grant under the provisions of the Land Act;

“Director of Agriculture” means the person for the time being holding the office of Director of Agriculture or acting in that office or any office in substitution of that office in the Public Service of the said State;

“Dunham Area” means the land (subject to survey) delineated and shaded blue in the plan marked “C” initialled by or on behalf of the parties hereto for the purpose of identification and such other land as the parties hereto may agree upon from time to time;

“Dunham dam site” means the land (subject to survey) delineated and shaded yellow in the plan marked “D” initialled by or on behalf of the parties hereto for the purpose of identification or such land as the parties hereto may agree from time to time is required for the construction and use of the dam and distribution system referred to in clause 17 hereof;

“holding” means each unit of subdivided land within the pilot area or Dunham Area pursuant to the provisions of clause 5 and 15 respectively;

“irrigable land” means land which the Company proposes to irrigate, and of such situation as to be capable of being irrigated —

in the case of the pilot area — from the dam and by the distribution system on Arthur Creek dam site;

in the case of the Dunham Area — from the dam and by the distribution system on Dunham dam site;

“Land Act” means the Land Act 1933;

“Minister” means the Minister of the Crown to whom the administration of the Ratifying Act is for the time being committed by the Governor and includes any Minister of the Crown for the time being discharging the duties of the office of the Minister and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Developer and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;



“occupier” means the person by whom, or on whose behalf a holding is occupied;

“owner” means the lessee of a special lease of a holding referred to in paragraph (i) of subclause (1) of clause 6 or 16 hereof or the transferee hereof pursuant and subject to this Agreement or (as the case may be) the person registered or entitled to be registered pursuant and subject to this Agreement as the proprietor of an estate in fee simple in a holding;

“pastoral purposes” means the grazing of stock solely or substantially on indigenous plant species naturally sown and grown on uncultivated soil and

“pastoral pursuits” has a corresponding meaning;

“person” or “persons” includes bodies corporate;

“pilot area” means the land (subject to survey) delineated and shaded red in the plan marked “A” initialled by or on behalf of the parties hereto for the purpose of identification and such other land as the parties hereto may agree upon from time to time;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 2 hereof;

“Rights in Water and Irrigation Act” means the Rights in Water and Irrigation Act 1914;

“said State” means the State of Western Australia;

“special lease” means a special lease to be granted in terms of this Agreement under the Land Act;

“survey fees” in relation to a holding for which a special lease or Crown Grant is applied for or granted means the costs of survey of the holding concerned;

“this Agreement”, “hereof” and “hereunder” includes this Agreement as from time to time added to varied or amended;

Reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

Marginal notes shall not affect the interpretation or construction hereof;

The phases in which it is contemplated that this Agreement will operate are as follows: —

- (a) Phase 1 — the period from the commencement date until the Minister gives the Developer the certificate referred to in clause 14 hereof; and
- (b) Phase 2 — the period thereafter.

#### Ratification and operation

2. (1) This Agreement shall not operate unless and until a Bill (which the State hereby undertakes to introduce and sponsor) to ratify this Agreement commences to operate as an Act before the 31st day of December 1968 or such later date if any as the parties hereto may mutually agree upon. If the Bill does not so commence to operate as an Act before that date or later date (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement except as hereinafter provided in clause 25 hereof.

(2) On the Bill to ratify this Agreement commencing to operate as an Act —

- (a) all the provisions of this Agreement shall operate and take effect as from the date of this Agreement notwithstanding the provisions of the Land Act or the Rights in Water and Irrigation Act both of which Acts shall for the purposes of this Agreement be deemed modified varied and amended to the extent necessary to enable full force and effect to be given hereto; and
- (b) the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to perform or enforce the powers discretions authorities and obligations conferred or imposed on them respectively hereunder.

Construction of dam and distribution system

3. THE Developer will diligently proceed with the construction on the Arthur Creek dam site of a —

- (a) dam having a storage capacity for water adequate to irrigate the pilot area and having a capacity of not less than three (3) acre feet per acre (measured at the boundary of the respective holdings) of the pilot area, and
- (b) distribution system capable of conveying an adequate supply of water for all the purposes set out in paragraphs (i) (ii) (iii) and (iv) of sub-clause (2) of clause 9 hereof

in accordance with and subject to the plans designs and specifications approved from time to time by the Minister.

Improvement to be done on pilot area by Developer

4. THE Developer will commence within the month next following the ratification of this Agreement and thereafter diligently and progressively proceed to the satisfaction of the Minister with —

- (i) the clearing of an area of irrigable land within the pilot area of not less than six thousand (6,000) acres of such trees suckers scrub and undergrowth as are necessary to establish that area for agricultural purposes;
- (ii) the stacking and burning of the trees suckers scrub and undergrowth resulting from the clearing of the area;
- (iii) the ploughing of the irrigable land so cleared in a manner suitable for the production of crops;
- (iv) the rotational sowing on the irrigable land in a proper and husbandlike manner at the appropriate times in each year of such crops as the Minister first approves and as most advantageously can be grown on the cleared area; and
- (v) the construction of an irrigation distribution system on or about the irrigable land in accordance with and subject to plans and specifications approved from time to time by the Minister.

Sub-division of pilot area into holdings

5. THE Developer hereby covenants with the State and it is hereby agreed and declared by and between the parties hereto —

- (1) That as one of the reasons for the State entering into this Agreement is to establish the practicability of the lands adjacent to the Dunham River and Arthur Creek being developed for closer settlement, the State requires the pilot area to be subdivided into holdings of approximately one thousand (1,000) acres. To achieve this the

Developer shall within the six (6) months next following the ratification of this Agreement submit to the Minister its proposed plan of subdivision of the pilot area into not more than ten (10) holdings each containing an area of approximately one thousand (1,000) acres of which approximately six hundred (600) acres will be irrigated (subject however to the provisions of sub-clause (7) of this clause) and which plan will show thereon —

- (a) the boundaries of each holding,
- (b) all the land to be irrigated from the dam on Arthur Creek, and
- (c) the land within the pilot area proposed to be reserved for roads and for uses of a communal nature

and shall give to the Minister such information and further plans in respect of the proposed subdivision of the pilot area as the Minister from time to time reasonably requires. In making this subdivision neither the Minister nor the Developer shall be bound by the provisions of section 136 of the Land Act. As soon as reasonably possible after the Minister has received the Developer's plan of subdivision and such further information and plans as he may reasonably require the Minister shall notify the Developer either —

- (i) that he approves of the Developer's plan of subdivision (as submitted or as amended) whereupon the Developer shall be at liberty to proceed with the subdivision as so approved; or
- (ii) that he has disapproved of the Developer's plan of subdivision in which case the difference shall be referred to such person as the officer in charge of the Commonwealth Scientific Industrial and Research Organisation in the said State at the time of the reference, or the person at that time performing the duties of that officer, nominates for determination as an umpire under and subject to the provisions of the Arbitration Act 1895.

- (2) That forthwith after the approval by the Minister to the plan of subdivision or the determination by arbitration is made (as the case may be) the Developer will commence and thereafter diligently proceed to construct all such irrigation channels and other improvements and to instal all oh equipment as will enable the water from the dam on Arthur Creek dam site to be used for the purposes set out in sub-clause (2) of clause 9 hereof AND will at all times hereafter in a proper and workmanlike manner to the satisfaction of the Minister at its own expense commence and thereafter diligently proceed to complete all such works and to instal all such equipment for all or any one or more of those purposes as is necessary or as directed by the Minister.
- (3) That the land to be reserved under the provisions of paragraph (c) of sub-clause (1) of this clause shall (subject to the prior excision of the land if comprised within a special lease or any other lease) be reserved for the relevant purposes under the provisions of section 29 of the Land Act.
- (4) That the State by its officers servants and agents may (with a minimum of inconvenience to the Developer or its transferee) enter into and upon any holding within the pilot area —
- (a) to inspect and examine the same and the operations carried on thereon or the result of those operations, and
- (b) to conduct and carry out such tests and experiments as the Minister considers reasonably necessary to ascertain if or if there is any likelihood of the soil within the pilot area or any part of it being damaged by salt or any related factors or by the manner in which those holdings are being developed for agricultural purposes or are being used

and for all or any one or more of those purposes may at all times enter and remain upon the pilot area with or without vehicles (mechanised or otherwise) and all such materials and equipment as may be reasonably necessary to carry into effect and operation the provisions of this sub-clause.

- (5) That if and whenever in consequence of any tests or experiments carried out pursuant to the provisions of sub-clause (4) of this clause the Director of Agriculture is of the opinion that a holding or holdings are being or are likely to be damaged or detrimentally affected and the Minister by notice to the Developer requires the farming practices therein mentioned to be discontinued or carried out (as the case may be) on the relevant holding or holdings mentioned in that notice then the Developer will with all due despatch observe and carry out the requirements mentioned in that notice.
  
- (6) That during the continuance of this Agreement the Developer shall within the fourteen days next following the last day of each half-year (terminating on the last day of the months of March and of September) submit to the Minister with respect to the pilot area a full and detailed report of its investigation research and experimental activities and the results for that half year and shall from time to time at the request of the Minister supply him with such other information as he may reasonably require.
  
- (7) That the Developer will cause one of the holdings referred to in sub-clause (1) of this clause to be located in a sandy soil which the Minister is satisfied is typical of the soils most difficult to irrigate within the Dunham Area.

#### Special leases for holdings

- 6. (1) Upon application by the Developer within the year next following the ratification of this Agreement (and subject to the prior surrender of any existing rights permits licenses or leases previously granted in respect of the pilot area and Arthur Creek dam site or any part of both or either of them) the State will subject to sub-clause (4) of this clause cause to be granted to the Developer —
  - (i) a special lease in respect of each holding within the pilot area for the purposes of Phase 1 of this Agreement in the form (*mutatis mutandis*) of the Twenty First Schedule to the Land Act at a peppercorn rental for a term of seven years;

- (ii) a special lease of the Arthur Creek dam site for the purposes of Phase 1 of this Agreement in the form (*mutatis mutandis*) of the Twenty First Schedule to the Land Act at a peppercorn rental for a term of twenty one (21) years.

(2) A special lease referred to in sub-clause (1) of this clause shall be issued under section 116 of the Land Act as modified amended or varied by or to give effect to the provisions of this Agreement and without limiting the generality thereof —

- (a) neither the minimum yearly rental nor the proviso to that section shall apply, and
- (b) that section shall be deemed to include the purposes of Phase 1 of this Agreement;
- (c) a special lease of a holding shall include a covenant by the Lessee for itself or himself its successors or his personal representatives (as the case may be) and its or his assigns covenanting —
  - (i) to keep and maintain all buildings erections dams windmills pumps troughs piping irrigation channels gates fences fixtures and fittings the distribution system and other improvements in on or about the holding in good and substantial repair and condition (fair wear and tear excepted), and
  - (ii) to manage cultivate and work the holding in a proper and skilful manner
- (d) that in lieu of the right of re-entry arising in respect of the default or failure set out in the form in the said Schedule that right of re-entry shall arise if this Agreement or special lease ceases or determines as provided in the Agreement.

(3) Where the Developer makes written application to the Minister within the year immediately preceding the termination of the Arthur Creek dam



site lease or of the relevant renewal of that lease (as the case may be) for a renewal of a further renewal of that lease and the State has not given the Developer the notice referred to in Clause 24 hereof then the State will grant to the Developer a renewal of that lease at a peppercorn rental for the term of twenty one years upon and subject to the provisions of this Agreement including the right of renewal granted in this sub-clause.

(4) The costs of survey or surveys for the purpose of such special lease or leases respectively shall be paid to the State by the Developer and the special lease or special leases may be issued subject to survey and to corrections to accord with survey when completed.

Maintenance of pilot area and dam site during Phase 1

7. THE Developer covenants with the Minister that the Developer shall —

- (a) to the satisfaction of the Minister during Phase 1 of this Agreement —
  - (i) keep and maintain or cause to be kept and maintained all buildings erections dams windmills pumps troughs piping irrigational channels gates fences fixtures and fittings the distribution system and other improvements in on or about the pilot area (including any part thereof the subject of a special lease) in good and substantial repair and condition and running order (fair wear and tear excepted);
  - (ii) progressively and continuously manage cultivate and work or cause to be managed cultivated and worked the pilot area (including any part thereof the subject of a special lease) in a proper and skilful manner;
- (b) to the satisfaction of the Minister in perpetuity keep and maintain the dam and the distribution system (on the Arthur Creek dam site) in good and substantial repair condition and running order and when necessary replace from time to time the whole or any part thereof;

- (c) permit the Minister by his agents with or without workmen and others at all reasonable times during the relevant periods to enter into and upon and examine the state of repair and condition of the pilot area and the Arthur Creek dam site and of all improvements of whatsoever kind respectively thereon and whenever the Minister notifies the Developer of any repairs or replacement necessary to be done or made the Developer shall forthwith execute the same.

Issue of Crown Grants for holdings in the pilot area

8. (1) When the Developer or a transferee (as the case may be) of a holding within the pilot area has to the Minister's satisfaction —
- (a) in a good and workmanlike manner and with the most appropriate materials therefore constructed or caused to be constructed —
    - (i) a cattle-proof fence on the boundaries of the holding,
    - (ii) internal fences dividing the holding into four (4) separate paddocks of reasonable dimensions; and
    - (iii) working and loading yards for livestock;
  - (b) (applicable only in the case of a holding transferred under and subject to the provisions of clause 26 hereof) a transferee has or has caused to be constructed a family dwelling house of reasonable standard and of at least ten (10) squares in size and containing at least two (2) bedrooms;
  - (c) (i) cleared or caused to be cleared an area thereon of irrigable land of not less than six hundred (600) acres of trees suckers scrub and undergrowth and burnt or caused to be burnt the same, and

- (ii) ploughed or caused to be ploughed that area in a proper and workmanlike manner,

then on the application of the Developer or the transferee the Minister shall issue to it or him (as the case may be) a certificate of the completion of the works.

(2) Where the Developer or a transferee (as the case may be) of a holding within the pilot area has to the Minister's satisfaction demonstrated that throughout a period of not less than two (2) successive years such crops as the Minister approves have been successfully grown thereon and that stock have been successfully pastured thereon then the Developer subject to the provisions of sub-clause (3) of this clause or the transferee (as the case may be) shall be entitled to apply for and in either case subject to —

- (i) the certificate of the completion of the works in respect of that holding having issued;
- (ii) the prior payment of the purchase price of the holding calculated at the rate of one (1) dollar per acre and of the survey fees;
- (iii) the performance of their respective obligations hereunder and pursuant hereto, and
- (iv) the special lease (the subject of that holding) being first surrendered

to obtain from the State a Crown Grant for the holding subject to the condition that the holding or any part thereof shall not without the consent of the Governor first had and obtained be used for an industry for or incidental to the processing of any of the crops which from time to time are or may be grown on the holding or any industry allied thereto.

(3) The Developer shall not sell transfer assign sub-let or otherwise part with the possession of any estate or interest in more than one half of the total number of holdings within the pilot area during Phase 1 of the Agreement.

Licence to take use store or dispose of water

9. (1) The State shall forthwith cause a license to be granted to the Developer for a term of twentyone (21) years to take use dispose of, or store in the dam on Arthur Creek such quantity of water which flows in the bed of Arthur Creek as the Developer reasonably requires for the purposes of this Agreement (subject however to the provisions of clause 12 of this Agreement) upon and subject to the provisions of this Agreement.

(2) That the Developer will not pursuant to the provisions of the preceding sub-clause of this clause take use store or dispose of nor suffer or permit to be taken used stored or disposed of any water for any purpose other than —

- (i) irrigating the holdings within both or either the pilot area and the Dunham Area for agricultural purposes,
- (ii) watering stock depasturing thereon,
- (iii) for domestic purposes within those holdings,  
and
- (iv) such industry or industries related to the agricultural purposes carried on in the pilot area as may be conveniently carried on in on or about the lands adjacent to the pilot area or the Dunham Area.

(3) Where the Developer makes written application to the Minister within the year immediately preceding the termination of the licence or of the relevant renewal of that licence (as the case may be) for a renewal or a further renewal of that licence and the State has not given the Developer the notice referred to in clause 24 hereof then the State will grant to the Developer a renewal of that licence for the term of twenty one years upon and subject to the provisions of this Agreement including the right of renewal granted in this sub-clause.

Obligation of Developer to supply water to pilot area

10. (1) The Developer after the completion of the construction of the dam and distribution system on the Arthur Creek dam site and subject to the provisions herein contained shall in perpetuity so long as an owner or occupier is regularly cultivating and working the whole of the irrigable land on a holding within the pilot area make available to the owner or occupier of the holding or the respective owners or occupiers of the holdings (as the case may be) within the pilot area a supply of water (subject to the payment by them respectively of the charges therefor herein mentioned) for the purposes referred to in sub-clause (2) of clause 9 hereof —

- (i) in such reasonable quantities and at such reasonable times and at such reasonable charges as are determined by the Developer, but
- (ii) if and whenever a relevant by-law comes into operation, in the quantities at the times and charges prescribed by that by-law or if the Board constituted under clause 11 hereof is dissolved then in the quantities at the times and charges provided for in subclause (3) of clause 21 hereof.

(2) When the Developer determines the charge for the water as provided in sub-clause (1) of this clause it shall have due regard to the cost of —

- (a) constructing and maintaining the dam and the distribution system on the Arthur Creek dam site; and
- (b) supplying the water from time to time to the owners or occupiers of the holdings within the pilot area for the purposes referred to in sub-clause (2) of clause 9 hereof.

Irrigation Board

11. (1) When a person (other than the Developer or a person for and on behalf of the Developer) becomes registered or entitled to be registered as the proprietor of a Crown Grant of a holding within the pilot area the Governor may,

by Order in Council, direct that for the pilot area there shall be an Irrigation Board to be constituted under and subject to the provisions of this Agreement and the Governor may in like manner revoke any order made under this sub-clause, and dissolve any Board constituted pursuant to such Order.

(2) The Board shall be constituted by the appointment by the Governor of three members of which —

- (i) one, who shall be Chairman, shall be appointed to represent the Minister;
- (ii) one, to be nominated by the Developer, shall be appointed to represent the Developer, and
- (iii) one, to be nominated by the respective registered proprietors of the Crown Grants of the holdings, shall be appointed to represent those registered proprietors and in the event of there being only one holding for which Crown Grant has issued then by the registered proprietor of that Crown Grant.

(3) The Order in Council for the constitution of the Board shall declare the time and respective mode of nomination of the nominated members their term of office not exceeding three (3) years, and the time at which they shall go out of office, and make provision for the appointing of deputies and for the filling up of vacancies and for all other matters incident to the office of member.

(4) The Board shall hold its meetings at such times and in such places as the Board or otherwise the chairman from time to time determines.

(5) The chairman of the Board and in his absence his deputy shall be chairman of all meetings of the Board.

(6) The quorum for a meeting of the Board shall be the chairman of the meeting and the two members or in the absence of both or either of them their respective deputies or deputy.

(7) All questions before a meeting of the Board shall be decided by a majority of votes and the chairman of the meeting shall not have a casting vote in addition to a deliberative vote.

(8) The Board shall cause minutes of its meetings to be kept in such manner and form as the Board decides and shall forthwith after each meeting submit a copy of the minutes to the Minister.

(9) The Board shall be a body corporate with perpetual succession and a common seal and shall have such name as is assigned to it by the Governor. A change in the mode of constitution of a Board shall not affect its continuity as a body corporate.

Board may make by-laws

12. (1) The Board may, with the approval of the Governor, from time to time make alter and repeal by-laws with respect to the following matters.

- (i) the general conduct of its business and proceedings;
- (ii) preventing and remedying the waste, misuse, or undue consumption of water contained in or supplied from the dam or through the distribution system or otherwise under the control of the Board;
- (iii) subject to the provisions of clause 13 hereof prescribing the quantity of water with which an owner or occupier of a holding may be supplied and the relevant times of supply of the water;
- (iv) prescribing scales of charges for water supplied by the Developer having due regard to the cost to the Developer of —
  - (a) constructing and maintaining the dam and the distribution system on the Arthur Creek dam site, and

- (b) supplying the water from time to time to the owners or occupiers of the holdings within the pilot area for the purposes referred to in sub-clause (2) of clause 9 hereof;
- (v) the payment to and collection by the Developer of charges for water supplied, and determining the time at which they are payable and whether in advance or otherwise, and the minimum quantity of water to be charged for;
- (vi) specifying the purposes for which, and the persons or classes of persons to whom, water may be supplied under agreement, and the general and special terms and conditions upon which water will be so supplied;
- (vii) the protection of the water and every part of the dam and distribution system from trespass or injury;
- (viii) the manner in which may be ascertained (whether by measuring instrument or otherwise) the quantity of water supplied to an owner or occupier of a holding in the pilot area, and the manner by which the quantity of water so supplied may be proved in any proceedings; and
- (ix) for any other purposes relating to the administration of the irrigation of the pilot are, under this Agreement and the exercise of the powers vested in the Board.

(2) In the event of the provisions of clause 10 hereof or of any act matter or thing done thereunder being inconsistent with a by-law made under sub-clause (1) of this clause, the by-law shall prevail, and the provisions of clause 10 and of any act matter or thing done thereunder shall, to the extent of the inconsistency, be invalid.

Insufficiency of water



13. (1) If at any time the supply of water at the disposal of the Developer is insufficient, in the opinion of

- (i) the Minister prior to the constitution of the Board;
- (ii) the Board until dissolved;

to afford all owners or occupiers of holdings in the pilot area the supplies which they respectively reasonably require under normal conditions for their respective holdings, the Developer may deliver to such owners or occupiers such amount of water is then at the disposal of the Developer in quantities proportional to the quantities which such owners or occupiers would, if sufficient water had been available, have respectively required.

(2) In the event of the water available to the Developer for supply falling short of the quantity necessary to supply water in sufficient quantity to be of practical service to all owners or occupiers of holdings in the pilot area the Governor may, whenever and as often as he is satisfied of the actual or approaching insufficiency of such supply, from time to time make, alter and repeal Orders in Council regulating the order of priority in which and the quantities with which the various owners and occupiers shall be entitled to be supplied.

(3) The Developer shall not be liable to any penalty or damages for not supplying water to the owner or occupier of a holding in the pilot area if the want of such supply arises from drought.

Developer to prove the economic capacity of holdings in the pilot area

14. THE Developer shall to the satisfaction of the Minister during Phase 1 progressively and continuously manage cultivate and work or cause to be managed cultivated and worked each holding within the pilot area in a proper and skilful manner and according to the most approved methods and when the Developer demonstrates and proves to the Minister's satisfaction the practicability of —

- (i) the holding referred to in sub-clause (7) of clause 5, hereof, and
- (ii) the other holdings (or approximately one thousand (1 000) acres) within the pilot area

being individually farmed by settlers for the fattening and marketing of cattle and for the growing of grain sorghum and other crops with results that are economically sound to the respective settlers then the Minister will so certify to the Developer.

Phase 2

15. IT is hereby agreed and declared by and between the parties hereto —

(1) That the Developer having established that it is both practical and economically sound to develop the pilot area for agricultural purposes by way of closer settlement, the Developer may submit to the Minister within the six months next following the commencement of Phase 2 a plan of sub-division of the Dunham Area into holdings of such respective areas as it reasonably considers will enable the holdings to be farmed for agricultural purposes with results that the State reasonably considers are economically sound to the respective owners or occupiers so farming them and shall delineate thereon —

- (a) the boundaries of each holding,
- (b) all the land to be irrigated in the Dunham Area, and
- (c) the land within the Dunham Area proposed to be reserved for a township roads and uses of a communal nature

and shall give to the Minister such information and further plans in respect of the proposed sub-division of the Dunham Area as the Minister from time to time reasonably requires. In making this sub-division neither the Minister nor the Developer shall be bound by the provisions of section 136 of the Land Act. As soon as reasonably possible after the Minister has been given the Developer's plan

of sub-division and such further information and plans as he may reasonably require the Minister shall notify the Developer either —

- (i) that he approves of the Developer's plan of sub-division (as submitted or as amended) whereupon the Developer shall be at liberty to proceed with the sub-division as so approved; or
- (ii) that he has disapproved of the Developer's plan of sub-division in which case the difference shall be referred to such person as the officer in charge of the Commonwealth Scientific Industrial and Research Organisation in the said State at the time of the reference, or the person for the time being performing the duties of that officer, nominates for determination as an umpire under and subject to the provisions of the Arbitration Act 1895.

(2) That forthwith after the approval by the Minister to the plan of sub-division or the determination by arbitration is made (as the case may be) the Developer shall —

- (i) by its servants workmen agents and contractors be at liberty to enter and remain upon the Dunham Area and the Dunham dam site with or without vehicles (mechanised or otherwise) and all such materials plant and equipment as may be reasonably necessary to carry out the construction and installation mentioned in paragraph (ii) of this sub-clause, and
- (ii) commence and thereafter diligently proceed to construct all such irrigation channels and other improvements and to instal all such equipment as will enable the water from the dam on Dunham dam site to be used for the purposes set out in sub-clause (2) of clause 19 hereof AND will at all times hereafter in a proper and workmanlike manner to the satisfaction of the Minister and at its own expense commence and thereafter diligently proceed to complete all such works and to instal all such equipment for all or any one or more of those purposes as is necessary or as directed by the Minister.

(3) That the land to be reserved under the provisions of paragraph (c) of sub-clause (1) of this clause shall (subject to the prior excision of the land if

comprised within a special lease or any other lease) be reserved for the relevant purposes under the provisions of section 29 of the Land Act.

- (4) That the State by its officers servants and agents may enter into and upon any holding within the Dunham Area —
- (a) to inspect and examine the same and the operations carried on thereon or the result of those operations, and
  - (b) to conduct and carry out such tests and experiments as the Minister considers reasonably necessary to ascertain if or if there is any likelihood of the soil within the Dunham Area or any part of it being damaged by salt or any related factors or by the manner in which those holdings are being developed for agricultural purposes or are being used

and for all or any one or more of those purposes may at all times enter and remain upon the Dunham Area with or without vehicles (mechanised or otherwise) and all such materials and equipment as may be reasonably necessary to carry into effect and operation the provisions of this sub-clause.

(5) That if and whenever in consequence of any tests or experiments carried out pursuant to the provisions of sub-clause (4) of this clause the Director of Agriculture is of the opinion that a holding or holdings are being or are likely to be damaged or detrimentally affected and the Minister by notice to the Developer requires the farming practices therein mentioned to be discontinued or carried out (as the case may be) on the relevant holding or holdings mentioned in that notice then the Developer will with all due despatch observe and carry out the requirements mentioned in that notice.

(6) That during the continuance of this Agreement the Developer shall within the fourteen days next following the last day of each half-year (terminating on the last day of the months of March and of September) submit to the Minister with respect to the Dunham Area a full and detailed report of its investigation research and experimental activities and the results for that half year and shall from time at the request of the Minister supply him with such other information as he may reasonably require.

Obligations of the State during Phase 2

16. (1) Upon application by the Developer within the three months next following the approval by the Minister or the determination by arbitration referred to in paragraph (ii) of sub-clause (1) of clause 15 hereof (and subject to the prior surrender of any existing rights permits licenses or leases previously granted in respect of the Dunham Area and Dunham dam site or any part of both or either of them) the State will subject to sub-clause (3) of this clause to be granted to the Developer —

- (i) a special lease in respect of each holding within the Dunham Area for the purposes of Phase 2 of this Agreement in the form (*mutatis mutandis*) of the Twenty First Schedule to the and Act at a peppercorn rental for a term of seven (7) years;
- (ii) a special lease of the Dunham dam site for the purposes of Phase 2 of this Agreement in the form (*mutatis mutandis*) of the Twenty First Schedule to the Land Act at a peppercorn rental for a term of twenty one (21) years.

(2) A special lease referred to in sub-clause (1) of this clause shall be issued under section 116 of the Land Act as modified amended or varied by or to give effect to the provisions of this Agreement and without limiting the generality thereof —

- (a) neither the minimum yearly rental nor the proviso to that section shall apply, and
- (b) that section shall be deemed to include the purposes of Phase 1 of this Agreement;
- (c) that in lieu of the right of re-entry arising in respect of the default or failure set out in the form in the said Schedule that right of re-entry shall arise if this Agreement or special lease ceases or determines as provided in the Agreement.

(3) Whenever the Developer makes written application to the Minister within the year immediately preceding the termination of the Dunham dam site lease or of the relevant renewal of that lease (as the case may be) for a renewal or a further renewal of that lease and the State has not given the Developer the notice referred to in clause 24 hereof then the State will grant to the Developer a renewal of that lease at a peppercorn rental for the term of twenty one years from that termination upon and subject to the provisions of this Agreement, including the right of renewal Granted in this sub-clause.

(4) The costs of survey or surveys for the purpose of such special lease or leases respectively shall be paid to the State by the Developer and the special lease or special leases may be issued subject to survey and to corrections to accord with survey when completed.

#### Construction of Dunham dam

17. (1) The Developer will, forthwith after the grant to it of the lease of the Dunham dam site, commence and thereafter diligently proceed with the construction thereon of a —

- (a) dam having a storage capacity for water adequate to irrigate the Dunham Area and having a capacity of not less than three (3) acre feet per acre (measured at the boundary of the respective holdings) of the Dunham Area, and
- (b) distribution system capable of conveying an adequate supply of water for all the purposes set out in paragraphs (i) (ii) (iii) and (iv) of sub-clause (2) of clause 19 hereof

in accordance with and subject to the plans designs and specifications approved by the Minister.

(2) The Developer will to the satisfaction of the Minister in perpetuity keep and maintain the dam and the distribution system (on the Dunham dam site) in good and substantial repair condition and running order and when necessary replace from time to time the whole or any part thereof.

Issue of Crown Grants for holdings in Dunham Area

18. (1) When the Developer or the transferee (as the case may be) of a holding within the Dunham Area has to the Minister's satisfaction —

- (a) in a good and workmanlike manner and with the most appropriate materials therefor constructed or caused to be constructed —
  - (i) a cattle-proof fence on the boundaries of the holding,
  - (ii) internal fences dividing the holding into separate paddocks of reasonable dimensions; and
  - (iii) working and loading yards for livestock;
- (b) (applicable only in the case of a holding transferred by the Developer) the transferee has or caused to be constructed a family dwelling house of reasonable standard and of at least ten (10) squares in size and containing at least two (2) bedrooms;
- (c)
  - (i) cleared or caused to be cleared an area thereon of land to be irrigated of not less than six hundred (600) acres or such other area as may be agreed upon by the Minister and the Developer of trees suckers scrub and undergrowth and burnt or caused to be burnt the same, and
  - (ii) ploughed or caused to be ploughed that area in a proper and workmanlike manner,

then on the application of the Developer or the transferee the Minister shall or the Minister may of his own accord issue to it or him (as the case may be) a certificate of completion of the works.

(2) Where a transferee of a special lease of a holding within the Dunham Area —

- (i) has obtained a certificate of completion therefor,
- (ii) has paid or caused to be paid to the State the purchase price thereof calculated at the rate of one dollar (\$1) per acre and the survey fee, and
- (iii) has surrendered the special lease therefor if it has not then expired or been terminated pursuant to the provisions of this Agreement

then that transferee shall be entitled to obtain from the State a Crown Grant for that holding subject to the condition that the holding or any part thereof shall not without the consent of the Governor first had and obtained be used for an industry for or incidental to the processing of any of the crops which from time to time are or may be grown on the holding or any industry allied thereto.

(3) The Developer shall during the respective terms of the special leases of the holdings in the Dunham Area sell or caused to be sold all its estate and interest in at least one half of the total number of those special leases to persons other than —

- (i) an associated company,
- (ii) any company which is related within the meaning of the term subsidiary in section 6 of the Companies Act 1961 to any company in which the Developer holds not less than thirty per cent (3) of the issued ordinary share capital, or
- (iii) any person who holds or will hold it for or in trust for the Developer or a company referred to in the preceding paragraphs of this sub-clause

and neither the Developer nor any company or person referred to in paragraphs (i) (ii) or (iii) of this sub-clause shall at any time be or become entitled to have an



estate or interest in more than one-half of the Crown Grants granted in respect of the Dunham Area.

- (4) Where —
  - (i) with respect to a holding in the Dunham Area the Developer —
    - (a) has obtained a certificate of completion therefor,
    - (b) has paid to the State the purchase price thereof calculated at the rate of one dollar (\$1) per acre and the survey fee
    - (c) has surrendered the special lease therefor if it has not then expired or been terminated pursuant to the provisions of this Agreement, and
  - (ii) with respect to holdings in the Dunham Area the number of Crown Grants therefor of which the respective registered proprietors are persons other than the Developer or a company or a person (as the case may be) referred to in paragraphs (i) (ii) or (iii) of sub-clause (3) of this clause exceeds the total number of Crown Grants of which the Developer and the Company and person referred to in those paragraphs or any one or more of them are the registered proprietors of an estate or interest therein in fee simple

then the Developer shall but subject to the provisions of sub-clause (3) of this clause be entitled to obtain from the State a Crown Grant for that holding subject to the condition that the holding or any part thereof shall not without the consent of the Governor first had and obtained be used for an industry for or incidental to the processing of any of the crops which from time to time are or may be grown on the holding or any industry allied thereto.

License to take use store or dispose of water

19. (1) The State shall grant a licence for a term of twenty-one (21) years (commencing from the same day as the term of the special lease of Dunham dam site commences) to the Developer to take use dispose of or store in the dam on Dunham River such quantity of water which flows in the bed of Dunham River as the Developer reasonably requires for the purpose of Phase 2 of this Agreement (subject however to the provisions of clause 12 as varied by sub-clause (6) of clause 21 hereof of this Agreement) upon and subject to the provisions of this Agreement.

(2) That the Developer will not pursuant to the provisions of the preceding sub-clause of this clause take use store or dispose of nor suffer or permit to be taken used stored or disposed of any waver for any purpose other than —

- (i) irrigating the holdings within both or either the Dunham Area and the pilot area for agricultural purposes,
- (ii) watering stock depasturing thereon,
- (iii) for domestic purposes within the Dunham Area, and
- (iv) such industry or industries related to the agricultural purposes carried on in the Dunham Area as may be conveniently carried on in or about the lands adjacent to the Dunham Area or the pilot area.

(3) Where the Developer makes written application to the Minister within the year immediately preceding the termination of the licence or of the relevant renewal of that licence (as the case may be) for a renewal or a further renewal of that licence and the State has not given the Developer the notice referred to in clause 24 hereof then the State will grant to the Developer a renewal of that licence for the term of twenty-one years upon and subject to the provisions of this Agreement including the right of renewal granted in this sub-clause.

Obligation of Developer to supply water to Dunham Area

20. (1) The Developer after the completion of the construction of the dam and distribution system on the Dunham dam site and subject to the provisions herein contained shall in perpetuity so long as an owner or occupier is regularly cultivating and working the whole of the irrigable land on a holding within the Dunham Area make available to the owner or occupier of the holding or the respective owners or occupiers of the holdings (as the case may be) within the Dunham Area a supply of water (subject to the payment by them respectively of the charges therefor herein mentioned) for the purposes referred to in sub-clause (2) of clause 19 hereof —

- (i) in such reasonable quantities and at such reasonable times and at such reasonable charges as are determined by the Developer, or
- (ii) if and whenever a relevant by-law comes into operation in the quantities at the times and charges prescribed by that by-law.

(2) When the Developer determines the charge for the water as provided in sub-clause (1) of this clause it shall have due regard to the cost of —

- (a) constructing and maintaining the dam and the distribution system on the Dunham dam site, and
- (b) supplying the water from time to time to the owners or occupiers of the holdings within the Dunham Area for the purposes referred to in sub-clause (2) of clause 19 hereof.

“Joint Board” for both the pilot area and the Dunham Area

21. (1) When a person (other than the Developer or a person for and on behalf of the Developer) becomes registered or entitled to be registered as the proprietor of a special lease of a holding within the Dunham Area the Governor may by Order in Council, direct that for the pilot area and the Dunham Area there shall be an Irrigation Board (which Board is herein referred to as the “Joint Board”) to be constituted under and subject to the provisions of this Agreement

and the Governor may in like manner revoke any order made under this sub-clause and dissolve any Board constituted pursuant to such order.

(2) When the Joint Board is constituted then by virtue of the provisions of this sub-clause —

- (i) the Irrigation Board constituted under Clause 11 hereof for the pilot area shall be dissolved on the day on which the Joint Board is constituted;
- (ii) the members of the Irrigation Board constituted under Clause 11 hereof — notwithstanding their respective terms of office shall not have expired — shall go out of office; and
- (iii) the regulations for the time being in force made under Clause 12 hereof are repealed.

(3) The Joint Board shall with all due dispatch in accordance with the provisions of paragraphs (iii) and (iv) of sub-clause (1) of clause 12 (as varied by sub-clause (6) of clause 21 hereof) prescribe the quantities of, the relevant times of supply of and a uniform scale of charges for water supplied by the Developer from both or either of the dams on Arthur Creek and Dunham River but until any one or more of them are so prescribed by the Joint Board the quantities, relevant times and charges (as the case may require) prescribed by the Irrigation Board constituted under clause 11 hereof and in force immediately prior to its dissolution shall apply.

(4) The Board shall be constituted by the appointment by the Governor of six members of which —

- (i) one, who shall be chairman, shall be appointed to represent the Minister;
- (ii) one, to be nominated by the Director of Agriculture, shall be appointed to represent the Director of Agriculture;

- (iii) two, to be nominated by the Developer shall be appointed to represent the Developer; and
- (iv) two, to be nominated by the persons (other than the Developer or an associated company or a company or person referred to in paragraphs (ii) or (iii) of sub-clause (3) of clause 18 hereof) registered or entitled to be registered as the respective proprietors of an estate in fee simple or in lease-hold in a holding in either the pilot area or the Dunham Area, shall be appointed to represent those registered proprietors.

(5) The quorum for a meeting of the Joint Board shall be the Chairman of the meeting and three members of the Joint Board or in the absence of all or any one or more of those three members their respective deputies or deputy.

(6) All questions before a meeting of the Joint Board shall be decided by a majority of votes and the chairman of the meeting shall have a casting vote in addition to a deliberative vote.

(7) The provisions of sub-clauses (3), (4), (5), (8) and (9) of Clause 11 hereof shall apply (*mutatis mutandis*) to the Joint Board as if the expression “Joint Board” were substituted for “the Board” wherever appearing in those sub-clauses.

(8) The provisions of —

- (i) Clause 12 hereof shall apply (*mutatis mutandis*) to the Joint Board as if the expressions, “Joint Board”, “dams”, “Arthur Creek dam site and Dunham Dam site”, “Pilot area and Dunham Area” and “of clause 9 and 19 hereof respectively” were respectively substituted for the expressions “Board”, “dam”, “Arthur Creek dam site”, “pilot area” and “of clause 9 hereof” wherever appearing in Clause 12 hereof;
- (ii) Clause 13 hereof shall apply (*mutatis mutandis*) to the pilot area and the Dunham Area in phase 2 hereof as if the expressions “Joint Board” and “pilot area and Dunham Area” were respectively

substituted for “the Board” and “pilot area” wherever appearing in Clause 13 hereof.

Future proposal with report to dams

22. Without prejudice to the obligations of the Developer under the provisions of this Agreement to supply water to the holdings within the pilot area and the Dunham Area the State acknowledges that it will at the respective times when Crown Grants for all the holdings within the pilot area and the Dunham Area have respectively been issued for all the holdings give consideration to implementing a proposal to be submitted by the Developer and approved by the State in respect of each of those areas whereby the dam and the distribution system on Arthur Creek dam site and on Dunham dam site may be maintained managed and controlled by the owners and occupiers of the pilot area and the Dunham Area respectively.

Roads and surveys

23. It is mutually agreed and declared by and between the parties hereto —

- (a) the Developer may at its own expense for the purpose of access to Arthur Creek dam site, pilot area, Dunham dam site and Dunham Area and along routes approved by the Minister construct and use roads through adjacent Crown lands including land the subject of a Pastoral Lease), and
- (b) all surveys (except soil surveys) required or necessary to be made for the purposes of this Agreement shall be carried out on behalf of the State by surveyors instructed by the Surveyor General, in the Public Service of the said State.

Determination of Agreement by the State

24. In any of the following events namely if the Developer makes default in the due performance or observance of any of the covenants stipulations or obligations to the State herein or in any lease licence or other title or document granted under this Agreement and on the Developer's part to be performed or observed and shall fail to remedy that default within a reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Developer and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Developer the arbitrator finding that there was a *bona fide* dispute and that the Developer and not been dilatory in pursuing the arbitration) or if the Developer shall abandon or repudiate its obligations or operations under this Agreement or if the Developer shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Developer determine this Agreement and thereupon this Agreement shall cease and determine PROVIDED HOWEVER that if the Developer shall fail to remedy any default after such notice or within the time fixed by the Arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon all or any one or more of the pilot area, Arthur Creek flap site, Dunham Area and Dunham dam site (notwithstanding that a person or persons other than the Developer may be the owner or occupier of any land so entered) and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Developer to the State on demand made by the State.

Rights of State on default

25. (1) On the cessation or determination of this Agreement either by its terms or under clause 24 hereof
- (a) the rights of the Developer to in or under this Agreement and the rights of the Developer or any transferee or assignee of the Developer or of any mortgagee to in or under any lease licence or right granted hereunder or pursuant hereto (subject however to the

provisions of sub-clause (3) of this clause) shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement and the Developer shall without further consideration but otherwise at the request and cost of the State transfer or surrender or cause to be transferred or surrendered to the State or the Crown all licences and all land the subject of any lease licence or right granted hereunder or pursuant hereto and the Developer hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Developer to execute the transfer or surrenders aforesaid;

- (b) the Developer shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as provided in sub-clause (2) of this clause neither of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement.

(2) That on the cessation or determination of any lease licence easement or right granted hereunder or pursuant hereto by the State to the Developer —

- (i) all the improvements (movable or immovable) in upon or about the Arthur Creek dam site and Dunham dam site, and
- (ii) the house or houses sheds and other buildings used in connection with the holding and all plant and equipment necessary for the effective operation of the irrigation system on the holding

shall remain or become the absolute property of the Crown without compensation and freed and discharged from all mortgages and encumbrances and the developer will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision AND the Developer hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Developer to execute those documents and things (including surrenders).



- (3) The provisions of this clause shall not —
  - (i) apply to a lease of a holding transferred or assigned to a third party pursuant and subject to the provisions of this Agreement, nor
  - (ii) affect prejudice or interfere with the rights of a mortgagee of a lease referred to in paragraph (i) of this sub-clause.

Assignment

- 26. (1) Subject to the provisions of this clause the Developer shall not —
  - (a) at any time transfer or assign to any person its right title and interest in the whole or any part of this Agreement but at any time may transfer and assign its right title and interest in the whole of this Agreement to any associated company;
  - (b) at any time or times unless with the consent of the Minister or unless to an associated company mortgage charge or encumber its right title and interest in the whole or any part of this Agreement or in any holding (being the subject of either a lease or Crown Grant) granted hereunder, or
  - (c) at any time or times unless with the consent of the Minister (and then subject to the proviso of sub-clause (3) of clause 8 hereof) transfer assign or sub-lease any holding within the pilot area being the subject of either a special lease or Crown Grant

and then in any of such cases subject to the transferee or assignee executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform such of the provisions hereof on the part of the Developer as are to be complied with observed or performed in regard to the holding the subject of the transfer assignment or sub-lease (as the case may be).

(2) Notwithstanding anything contained in or anything done under or pursuant to sub-clause (1) of this clause the Developer shall at all times during the continuance of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants agreements conditions and provisions on its part contained herein and in any Crown Grant lease licence or other title the subject of a transfer assignment or sub-lease under that sub-clause.

#### Indemnity

27. (1) The Developer will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Developer pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Developer or its servants agents or contractors of the Developer's improvements works or services the subject of this Agreement or the plant or equipment used in connection therewith.

(2) If in consequence of the construction or part construction of the dam on the Arthur Creek dam site water from time to time flows on to or across the Wyndham-Hall's Creek Highway, and —

- (i) damage is thereby caused to the Highway, or
- (ii) the Commissioner of Main Roads in his absolute opinion considers that the Highway is or is likely to be rendered from time to time unsafe or impassable by or as the result of the water so flowing on to or over it and in consequence constructs or causes to be constructed in the Highway a bridge

then upon demand being made upon the Developer by the State for payment of both or either the cost of repairing that damage and the cost of that bridge the Developer shall forthwith pay the same (as the case may require) to the State.

#### Variation

28. The parties hereto may from time to time by mutual agreement in writing add to, vary or cancel all or any of the provisions of the Agreement or any lease licence easement or right granted or demised hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating the carrying out of such provisions or of any of the objects or purposes of this Agreement.

#### Delays

29. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Developer) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence and shall give notice to the other party as soon as practicable after the occurrence of the delay.

#### Power to extend prices

30. Notwithstanding any provision hereof the Minister may at the request of the Developer from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Developer by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so intended.

Arbitration

31. Except where otherwise provided in this Agreement any dispute or difference as to questions of fact between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act 1895.

Notices

32. Any notice consent or other writing authorized or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Developer at its registered office for the time being in the said State and by the Developer if signed on its behalf by a director manager or secretary of the Developer or by any person or persons authorized by the Developer in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post.

Exemption from stamp duty

33. This Agreement shall be exempt from any stamp duty which but for the operation of this clause would or might be chargeable thereon.

Interpretation

34. This Agreement shall be interpreted according to the law for the time being in force in the said State.

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the Developer has hereunto been affixed the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED  
by the said THE HONOURABLE  
DAVID BRAND, M.L.A., in the  
presence of —

}

DAVID BRAND [L.S.]

STEWART BOVELL

THE COMMON SEAL OF  
GODDARD OF AUSTRALIA  
PTY. LTD. Was hereunto affixed  
by the Authority of the Directors  
and in the presence of —

}

[C.S.]

H.E. PETERSON  
Director.

J.G. ORR  
Secretary.



## **Second Schedule**

THIS AGREEMENT is made the twenty-fifth day of August One thousand nine hundred and seventy six BETWEEN the HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as "the State") of the one part and GODDARD OF AUSTRALIA PTY. LTD. a company incorporated under the provisions of the Companies Ordinance Act 1962 of the Australian Capital Territory the registered office of which in the State of Western Australia is at Law Chambers Cathedral Avenue Perth (hereinafter called "the Developer" which expression shall include the successors and assigns of the Developer including where the context so admits the transferees and assignees of the Developer).

**WHEREAS:**

- (a) The parties are the parties to an agreement between them defined in section 2 of the Irrigation (Dunham River) Agreement Act 1968 of the State of Western Australia (which agreement is hereinafter referred to as "the principal agreement").
- (b) The Developer has carried out certain works under the provisions of the principal agreement to the satisfaction of the State.
- (c) The Developer has as a result of its experience in connection with the works carried out pursuant to the principal agreement in the pilot area concluded that the catchment area of Arthur Creek is incapable of providing sufficient water for irrigation of all farms as envisaged under the principal agreement.
- (d) The parties have therefore agreed:
  - (i) That the Developer's obligations in respect of Phase I of the principal agreement shall be varied as provided in this Agreement and that Phase 2 of the principal agreement being considered impracticable shall not be proceeded with.

- (ii) That Crown Grants will issue to holdings known as “farm 7” and “farm 8” subject to certain restrictions referred to hereunder.
- (iii) That provision be made for the future utilisation of the Arthur Creek Dam and the distribution system during Phase I for the benefit of certain farms which have already been improved and developed by the Developer pursuant to the principal agreement.
- (iv) That provision be made for the issue of new special leases in respect of the dry land holdings (as hereinafter defined) known as “farm 2”, “farm 9” and “farm 10” respectively to the Developer.
- (v) That the Developer may transfer those holdings known as “farm 1”, “farm 3”, “farm 4”, “farm 5” and “farm 6” to WEE COUNTRY DEVELOPMENT CORP a corporation incorporated in the United States of America the registered office of which in the State of Western Australia is at Law Chambers, Cathedral Square, Perth.
- (vi) That provision be made for the Developer to assign part of its interest in the principal agreement to Arthur Creek Irrigation Company Pty. Ltd. a company incorporated under the Companies Act of the State of Western Australia and having its registered office situate at care of Messrs. Parker & Parker of 162-164 Saint George's Terrace Perth.

**NOW THIS AGREEMENT WITNESSETH**

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the principal agreement.



2. The provisions of this Agreement shall not come into operation unless and until a Bill to approve and ratify this Agreement is passed by the legislature of the State and comes into operation as an Act.

3. The principal agreement is hereby varied as follows:

- (1) by substituting for the definition of "Phase I" in clause 1, the following definition:

"the period from the commencement date until the tenure of the lessee for the time being under both the Arthur Creek dam site lease and the special lease or special leases of the dry land holdings (as hereinafter defined) and any renewals thereof has terminated;"

- (2) by deleting sub-clauses (4), (5) and (6) of clause 5;

- (3) by adding after clause 6 two new clauses 6A and 6B as follows:

Amendment of boundaries of "Farm 8"

6A. Notwithstanding anything contained in this Agreement Special Lease No. 3116/4529 issued pursuant to clause 6 hereof in respect of the holding known as "farm 8" shall be deemed to include the area hachured green on the plan marked "E" (initialled by or on behalf of the parties hereto for the purposes of identification) and the provisions of section 18 of the Land Act shall be deemed to apply.

Dry land Holdings

6B. (1) The Developer shall, not later than the 31st day of December, 1976:

- (a) surrender to the State all its right title and interest in Special Leases Nos. 3116/4523, 3116/4530 and 3116/4531 respectively being special leases in respect of holdings known as “farm 2”, “farm 9”, and “farm 10” respectively (hereinafter collectively referred to as “the dry land holdings”),
- (b) enter into a special lease or special leases of the dry land holdings in the form *mutatis mutandis* of the Twenty-First Schedule to the Land Act at a peppercorn rental for a term co-terminous with the term of the Arthur Creek dam site lease and containing rights to renew the term corresponding to such rights in the Arthur Creek dam site lease and such special lease or special leases may contain all or any of the modifications amendments or variations set out in sub-clause (2) of clause 6 of this Agreement,

(2) The Developer shall in a proper and workmanlike manner and with the most appropriate materials therefor construct or cause to be constructed to the satisfaction of the Minister, cattle-proof fencing on the boundaries of the dry land holdings in the manner following namely —

- (a) construction of such fencing shall be completed in respect of one half of the said boundaries not later than the 31st day of December, 1981,
- (b) notwithstanding the contents of paragraph (a) of this sub-clause, construction of such fencing shall be completed in respect of all the said boundaries not later than the 31st day of December, 1986 or at such date as stock is placed on the dry land holdings whichever date is the earlier.;

- (4) as to clause 7 —
- (a) by substituting for the passage “the pilot area (including any part thereof the subject of a special lease)” in lines 6 and 7 of sub-paragraph (i) of paragraph (a), the words “the Arthur Creek dam site and that part of the pilot area comprising the dry land holdings”;
  - (b) by deleting sub-paragraph (ii) of paragraph (a);
  - (c) by deleting paragraph (b); and
  - (d) by deleting the words “the pilot area and” in lines 4 and 5 of paragraph (c).;
- (5) by substituting for sub-clause (3) of clause 8 the following sub-clause —
- (3) The Developer may transfer to Wee Country Development Corp. the holdings known as “farm 1”, “farm 3”, “farm 4”, “farm 5 and “ “farm 6” .;
- (6) by adding after clause 8 a new clause 8A as follows:

Issue of Crown Grants to “farm 7” and “farm 8”

8A. (1) The Developer shall with respect to the holdings known as “farm 7” and “farm 8” being all those pieces of land respectively described in Special Lease No. 3116/4528 and Special Lease No. 3116/4529 (as amended by clause 6A hereof) be deemed to have complied with the provisions of subclause (1) of clause 8 of this Agreement and subject to complying with the provisions of paragraph (ii) of sub-clause (2) of clause 8 shall be deemed to have complied with the Developer's obligations pursuant to that sub-clause and shall be entitled to apply for and obtain from the State Crown

Grants in respect of “farm 7” and “farm 8” subject to the condition that the said holdings or any part thereof shall not without the consent of the Governor first had and obtained be used for an industry for or incidental to the processing of any crops which from time to time are or may be grown on the holdings or any industry allied thereto.

(2) Notwithstanding the issue to the Developer of Crown Grants in respect of “farm 7” and “farm 8” pursuant to sub-clause (1) of this clause the Developer shall not sell transfer assign lease or otherwise part with the possession of “farm 7” or “farm 8” until the Minister has issued to the Developer the certificate referred to in clause 14 hereof, PROVIDED HOWEVER that the Developer may, prior to the issue of the said certificate, lease “farm 7” and “farm 8” or either of them for any term not exceeding three (3) years and shall within twenty one (21) days of the date upon which any such lease is entered into, notify the State of the name and address of the lessee thereunder.;

(7) as to clause 9 —

- (a) by deleting the passage “(subject however to the provisions of clause 12 of this Agreement)” in lines 6 and 7 of sub-clause (1);
- (b) by inserting after the word “clause” in line 2 of sub-clause (2) the words “without the consent of the Minister”;
- (c) by substituting for paragraphs (i), (ii) and (iii) of sub-clause (2) the following three paragraphs:
  - (i) irrigating “farm 1”, “farm 3”, “farm 4”, “farm 5”, “farm 6”, “farm 7” and “farm 8” for agricultural purposes,

- (ii) watering stock depasturing on those holdings and the dry land holdings, and
  - (iii) for domestic purposes within the holdings referred to in paragraph (ii) of this sub-clause, and; and
  - (d) by substituting for the passage “area or the Dunham Area.” in line 4 of paragraph (iv) of sub-clause (2) the passage “area.”;
- (8) by substituting for clause 10 a new clause 10 as follows:

Obligation of developer to supply water

10. The Developer shall, subject to the provisions of this Agreement, during the term of the Arthur Creek dam site lease and any renewals thereof make available to the owner or occupier of any holding (or owners or occupiers of any holdings as the case may be) within the pilot area, a supply of water for the purposes referred to in sub-clause (2) of clause 9 hereof in such reasonable quantities and at such reasonable times and at such reasonable charges as are determined by the Developer. ;

- (9) by deleting clauses 11, 12, 13, 15, 16, 17, 18, 19, 20, 21 and 22 of the principal agreement;
- (10) by substituting for clause 14 a new clause 14 as follows:

Developer to prove economic capacity of holdings in pilot area

14. The Developer shall manage or cause to be managed “farm 7” and “farm 8” in a proper and skilful manner and according to the most approved methods and when the Developer demonstrates and proves to the satisfaction of the

Minister the practicability of all holdings within the pilot area (other than the dry land holdings) being farmed for the fattening and marketing of cattle and for the growing of grain sorghum and other crops with results that are economically sound to the respective proprietors of the holdings then the Minister will so certify to the Developer.

- (11) by adding after clause 14 a new clause 14A as follows:

Phase 2 not proceeding

14A. The Developer having given notice to the State of its intention not to proceed with Phase 2 of this Agreement it is hereby agreed and declared by the parties hereto that Phase 2 of this Agreement will not proceed and any rights or obligations to which the Developer would have been entitled or subject in respect of Phase 2 are hereby extinguished. ;

- (12) by deleting the words “Dunham dam site and Dunham Area” in line three of paragraph (a) of clause 23;

- (13) by deleting the words “Dunham Area and Dunham dam site” in line 29 of clause 24;

- (14) as to clause 25 —

- (a) by deleting the passage in lines 2 to 7 inclusive of paragraph (a) of sub-clause (1) “and the rights of the Developer or any transferee or assignee of the Developer or of any mortgagee to in or under any lease licence or right granted hereunder or pursuant hereto (subject however to the provisions of sub-clause (3) of this clause)”;

- (b) by deleting paragraph (c) of sub-clause (1);

- (c) by deleting the words “and Dunham dam site” in lines 2 and 3 of paragraph (i) of sub-clause (2); and
  - (d) by deleting sub-clause (3);
- (15) by adding after clause 25 a new clause 25A as follows:

Effect of default after assignment

25A. If the Developer assigns its right title and interest in any part of this Agreement pursuant to the provisions of clause 26 hereof, the provisions of clauses 24 and 25 hereof shall:

- (a) (where the assignee does any act or thing which would entitle the State to determine this Agreement under clause 24 hereof) *mutatis mutandis*, apply to the assignee in respect of that part of this Agreement so assigned to the assignee, but shall not apply to the Developer in respect of that part of this Agreement (if any) not so assigned by the Developer (the Developer not being in default thereunder);
  - (b) (where the Developer does any act or thing which would entitle the State to determine this Agreement under clause 24 hereof) *mutatis mutandis*, apply to the Developer in respect of that part of this Agreement not so assigned by the Developer, but shall not apply to the assignee in respect of that part of this Agreement so assigned to the assignee (the assignee not being in default thereunder).
- (16) by substituting for clause 26 a new clause 26 as follows:

Assignment

26. (1) The Developer shall not, without the consent of the Minister first had and obtained, transfer or assign to any person its right title and interest in any part of this Agreement.

(2) Any consent given by the Minister pursuant to this clause may be on such conditions as the Minister thinks fit.

and

(17) by substituting for sub-clause (1) of clause 27 the following new sub-clause:

(1) The Developer will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Developer in connection with the maintenance or use by the Developer or its servants agents or contractors of the Developer's improvements works or services the subject of this Agreement or the plant or equipment used in connection therewith.

IN WITNESS whereof these presents have been executed by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE HONOURABLE  
SIR CHARLES WALTER  
MICHAEL COURT, O.B.E.  
M.L.A. in the presence of:

}

CHARLES COURT

K.A. RIDGE,  
MINISTER FOR LANDS.



THE COMMON SEAL of GODDARD  
OF AUSTRALIA PTY. LTD. was }  
hereunto affixed by the } (C.S)  
Authority of the Directors }  
and in the presence of:

H.E. PETERSON,  
Director.

J.G. ORR,  
Secretary.

*[Second Schedule inserted by No. 80 of 1976 s.5.]*

**Notes**

- <sup>1.</sup> This is a compilation of the *Irrigation (Dunham River) Agreement Act 1968* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Irrigation (Dunham River) Agreement Act 1968</i>	60 of 1968	13 Nov 1968	13 Nov 1968
	80 of 1976	18 Oct 1976	18 Oct 1976

[This Act was repealed by the \*Statutes \(Repeals and Minor Amendments\) Act 2003 s. 8 \(No. 74 of 2003\)\* as at 15 Dec 2003 \(see s. 2\)](#)

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