

**NORTHERN DEVELOPMENTS
(ORD RIVER) PTY. LTD.
AGREEMENT.**

9° Elizabeth II., No. XXXII.

No. 32 of 1960.

AN ACT to approve and ratify an Agreement relating to the disposal of certain Crown Lands.

[Assented to 1st November, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. This Act may be cited as the *Northern Developments (Ord River) Pty. Ltd. Agreement Act, 1960.*

Agreement
approved
and
ratified.
Cf. No. 37
of 1933,
s. 89D.

2. The agreement entered into by the Treasurer for and on behalf of the State with Northern Developments (Ord River) Pty. Ltd. and executed

on the fourteenth day of June, one thousand nine hundred and sixty, a copy of which is set forth in the Schedule to this Act, is approved and ratified. Schedule.

THE SCHEDULE.

S. 2.

THIS AGREEMENT under seal made the fourteenth day of June One thousand nine hundred and sixty BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State (hereinafter referred to as "the State") of the one part AND NORTHERN DEVELOPMENTS (ORD RIVER) PTY. LTD. the registered office of which is situate at Third Floor Pastoral House 156 Saint George's Terrace Perth in the said State (referred to in this Agreement as "the Company" which expression includes its successors and assigns) of the other part.

WHEREAS the Government of the said State:

A. IS desirous of ascertaining whether and to what extent the area of the said State adjacent to watered by or capable of being irrigated from the Ord River can satisfactorily be developed and settled.

B. BELIEVES from information received including reports of research and experiment carried out in the area by the Kimberley Research Station that the best prospects for such development and settlement lie in irrigation farming particularly of crops of rice cotton safflower linseed and other agricultural crops and pastures.

C. IS arranging for certain diversion damming operations to be carried out in the Ord River referred to in this Agreement as the Ord River Diversion Dam Scheme.

D. CONSIDERS that the stage has now been reached when not only should research and experiment in the area be intensified but also that practical tests should be made of the farming prospects of the area by irrigation farming methods carried out on a pilot farm with a view to—

- (a) ascertaining the capabilities of the area in irrigation farming and the best kinds and methods of farming in the area with particular regard to the growing of rice cotton safflower linseed and other agricultural crops and pastures;

- (b) supporting with facts figures and reliable detailed and exhaustive records an approach by the State Government to the Commonwealth Government three or four years from the date hereof for financial and other assistance for the large scale development and settlement of the area; and
- (c) showing a pattern for and providing advice to future farmers on irrigation farming in the area as and when large scale development and settlement proceeds.

E. HAS requested the Company to carry out on a selected portion of the area consisting of not less than two thousand acres the work tests experiments and practical farming herein referred to and to keep full and accurate records of all activities in order to ascertain—

- (a) what crops and pastures may successfully and economically be produced and grown in the area under different seasonal conditions with particular regard to crops of rice cotton safflower linseed and other agricultural crops and pastures how they may best be produced and grown and the economic and other factors involved in such production and growth;
- (b) the approximate sizes and locations of individual holdings which would be best suited in the area for each kind of crop which may economically be grown and marketed;
- (c) what plant equipment machinery and farming methods would be most appropriate for each kind of crop the capital required for reasonable development and what services facilities and amenities should be provided for large scale development and settlement;
- (d) the advantages and disadvantages of larger and smaller holdings considered in conjunction with the matters herein referred to; and
- (e) other factors which may affect or relate to the development of the area the attraction thereto of suitable settlers and necessary capital labour and amenities and the well-being of the inhabitants of the area.

AND WHEREAS the Company has agreed to carry out on the pilot farm such work tests experiments and practical farming as is herein referred to and to make and keep records in regard thereto for use by the State upon and subject to the provisions hereof.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context—

“budget” means a statement of proposed purchases or work as referred to in clause 3 hereof;

“Minister” means the Minister for the North-West for the time being in the Government of the said State and includes a Minister for the time being discharging the duties of Minister for the North-West;

“month” means calendar month;

“person” and “persons” include the other of such words and also a body corporate;

“pilot farm” means the area of not less than two thousand acres referred to in clause 2 hereof;

“said State” means the State of Western Australia.

2. From areas totalling approximately 19,200 acres resumed or about to be resumed from Pastoral Lease 396/454 (held by the Ivanhoe Grazing Company Pty. Ltd.) the State will allocate for the purposes of this Agreement an area of not less than 2,000 acres at a site already agreed upon by the parties hereto adjacent to the take-off point of water from the Ord River Diversion Dam Scheme and within one year from the date hereof will cause that area to be surveyed. That area is referred to in this Agreement as “the pilot farm.”

3. (1) Simultaneously with the execution hereof the Company will deliver to the State a budget which has already been prepared by the Company and approved by the State setting out in respect of work which the Company considers should be done on or with regard to the pilot farm for the purposes of this Agreement during the period covered by the budget (being a period expiring not earlier than the 30th day of June, 1960)—

- (a) the plant equipment machinery seeds plants and other things which the Company considers that it will require to purchase or acquire for the purposes of this Agreement during the period covered by the budget the anticipated cost and method of purchase or acquisition of each item shown in the budget and the anticipated use thereof where such use is not fully apparent from the nature of the item;

- (b) itemised particulars of the work or project which the Company considers should be done or undertaken in relation to particular and identified plots of land within the area of the pilot farm including the nature and extent in relation to each plot of clearing draining cultivating fencing preparing of the soil for sowing and the crop or crops to be sown tended and/or harvested;
- (c) the anticipated expense which will be involved in respect of each item mentioned in the budget for labour materials plant machinery travelling expenses salaries payments to experts and other advisers offices overhead and other costs and expenses relative to carrying out the objects of this Agreement.

And the State will within seven days of the delivery of the budget pay to the Company the total of the amounts shown in the budget.

(2) The Company will quarterly or at such other intervals as may be agreed prepare and deliver to the State commencing three months after the execution hereof a budget for the period covered by the budget and setting out the matters following—

- (a) the plant equipment machinery seeds plants and other things which the Company considers that it will require to purchase or acquire for the purposes of this Agreement during the period covered by the budget the anticipated cost and method of purchase or acquisition of each item shown in the budget and the anticipated use thereof where such use is not fully apparent from the nature of the item;
- (b) itemised particulars of the work or project which the Company considers should be done or undertaken in relation to particular and identified plots of land within the area of the pilot farm including the nature and extent in relation to each plot of clearing draining cultivating fencing preparing of the soil for sowing and the crop or crops to be sown tended and/or harvested;
- (c) the anticipated expense which will be involved in respect of each item mentioned in the budget for labour materials plant machinery travelling expenses salaries payments to experts and other advisers offices overhead and other costs and expenses relative to carrying out the objects of this Agreement.

(3) Each budget will disclose the period to which it refers will be delivered in triplicate in such form as the State may from time to time require and will give such information in respect of each item shown in the budget as will fairly enable the State to make a decision upon the desirability or otherwise of the items. Items mentioned in any budget will be serially numbered to facilitate reference thereto.

(4) The period to be covered by each budget after the first budget shall be approximately three months and the next subsequent budget after any budget will be delivered to the State not less than three weeks prior to the expiration of the period covered in such last mentioned budget.

(5) The State shall immediately after receipt of any budget after the first budget examine the same and shall within twenty-one days from its receipt of the budget notify the Company by reference to the serial numbers in the budget the items therein of which the State approves and subject to the provisions of subclause (7) of this clause the State will within seven days of such approval pay to the Company the total of the moneys with respect to every item approved.

(6) The State may from time to time on reasonable notice to the Company request that additional items be added to any budget and subject to the provisions of subclause (7) of this clause shall pay to the Company the estimated cost involved in respect of such additional item. The Company is at liberty to dispute any such additional item within three weeks after receipt thereof and the dispute insofar as it relates to the carrying out of work on or in relation to the pilot farm shall be referred to and determined by the Minister but insofar as it relates to the payment or the expenditure of money shall be referred to and determined by arbitration as hereinafter provided.

(7) The Company will ensure that every budget after the first budget which the Company delivers to the State will be accompanied by a financial statement verified by the Company's auditors and showing details of expenditure incurred by the Company in making the purchases or acquisitions and in doing the work referred to in previous budgets (insofar as not previously finalised) up to the 25th day of the month immediately preceding the month in which the budget is delivered to the State and showing also the net amount payable by the State to the Company after allowing for past expenditure by the Company payments due in respect of approved items in any budget or additional items requested by the State and the credits to be given to the State for—

- (a) the proceeds from sales of plant equipment machinery and other things purchased or acquired wholly or in part with moneys provided by the State;

- (b) the total net proceeds from sales of agricultural produce from the pilot farm; and
- (c) the amounts due to the State for hire and use of plant equipment and machinery as referred to in Clause 5 (g) hereof

to the intent that the State will be responsible only for the cost of purchases made and work done pursuant to items approved in budgets and additional items requested by the State (less the credits referred to in this subclause) and the Company will not be out of pocket in respect of such costs but that the Company will itself be solely responsible for and bear the cost and expense involved in other purchases and work of and incidental to the development and testing of the pilot farm.

4. The Company agrees with the State at the proper times and in proper manner—

- (a) to prepare and deliver to the State the budgets and financial statements referred to in the last preceding clause;
- (b) to make the purchases or acquisitions to carry out the tests and experiments and to do the work on or in connection with the pilot farm in accordance with items approved in budgets or additional items requested as referred to in the last preceding clause and within the respective periods contemplated by the several budgets provided that the expense involved in carrying out the work contemplated by additional items requested by the State shall be included in the sum of ONE HUNDRED THOUSAND POUNDS (£100,000) referred to in the next succeeding clause of this Agreement unless the State agrees that exceptional circumstances require or warrant the provision of additional money by the State for the purposes of the additional item or items;
- (c) at least quarterly commencing from the expiration of three months from the date hereof and oftener if and when so required by the State to keep the State fully informed from time to time as to the progress made by the Company in regard to the development of the pilot farm and the particular plots thereof and all factors in relation thereto which should reasonably interest the State and also as to the intentions and recommendations of the Company as to future work and development;
- (d) subject to availability of water to sufficiently favourable seasonal conditions to the provision of necessary finance and to the provisions of

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clause 10 hereof (relating to delays) to fully develop the area of the pilot farm with the crops and in the manner from time to time contemplated by approved items in budgets within the period of five years from the date hereof;

- (e) to market sell and turn to account on the most favourable practicable terms the agricultural produce from the pilot farm and to account to the State for the net proceeds (including the proceeds of all crops sown or harvested during the fifth year of the term hereof) of all such sales;
- (f) to keep and maintain full and accurate records for and in relation to each and every test and experiment and each plot of ground development within the area of the pilot farm to sales of produce therefrom and the activities of the Company in regard thereto and to make such records available to the State for inspection from time to time on request and to furnish the State on request with copies or extracts therefrom not less frequently than once quarterly commencing from the expiration of three months after the execution of this Agreement and the Company will keep and maintain and similarly make available to the State such additional records as the State may from time to time in writing reasonably request. All records shall be kept in such form and manner as the State may from time to time in writing reasonably request;
- (g) to ensure that all moneys which it expends pursuant to this Agreement and which are provided by the State will be spent in accordance with approved items in the budget or additional items requested by the State and accepted by the Company or finally required by the Minister. The Company agrees that the State shall incur no liability for or in respect of any moneys referred to in any item in a budget unless and until that item has been approved in writing by the State under this Agreement;
- (h) in the first three months of the year 1963 to review the provisions of this Agreement in close negotiation with the State with a view to the making of a further agreement between the parties hereto varying the provisions of this Agreement in such manner as the parties hereto may mutually agree upon;

- (i) if and when required in writing by the State to appoint an auditor or auditors and to provide such auditor or auditors with all particulars and facilities reasonably necessary to enable him or them properly and expeditiously to audit the affairs and activities of the Company pursuant to or for the purposes of this Agreement;
 - (j) to construct as part of the budget items all subsidiary channels and drains necessary or expedient for the supply of water from the main channels (constructed by the State) referred to in clause 5 (b) hereof for irrigating plots or farming units within the area of the pilot farm;
 - (k) to comply with all laws for the time being in force with regard to the pilot farm and with all requirements and orders of any statutory or other authority in all cases affecting the pilot farm and the use thereof or the licensee or occupier thereof;
 - (l) to insure and keep insured under and in accordance with the provisions of the Workers' Compensation Act 1912 and its amendments for the time being in force all of its employees who are employed wholly or in part by it for the purposes of this Agreement;
 - (m) to grant unto the State full and free right and liberty for the State at all times during the currency of this Agreement by its servants workmen contractors and agents to enter and to go pass and re-pass with or without vehicles into on and out of the pilot farm;
 - (n) to indemnify and keep indemnified the State against all actions claims damages costs and demands arising out of or in connection with the carrying out by the Company of its obligations rights and powers under this Agreement; and
 - (o) generally to use all reasonable endeavours to assist the State to achieve the objectives referred to in the recitals to this Agreement.
5. The State agrees with the Company:
- (a) to make available for the purposes of this Agreement over the period of three years from the date hereof a total sum of ONE HUNDRED THOUSAND POUNDS (£100,000) payable periodically in advance on the basis of items in budgets submitted by the Company to the State from time to time and approved in writing by the State but including additional items requested by the State and accepted by the Company or finally determined by the Minister;

- (b) to construct and maintain main water supply channels to the highest practical level or levels in or near the area of the pilot farm as indicated on Public Works Department Plan No. 38140 headed "Ord River Project Drainage and Irrigation Channel Pilot Area" a copy of which plan is annexed to this Agreement;
- (c) to use reasonable endeavours to make available to the extent reasonably required a constant supply of water to the main supply channel or channels constructed by the State pursuant to the last preceding subclause and for this purpose during the first three years of the currency of this Agreement to provide at least sufficient water for the purposes of this Agreement for the following maximum areas:—
 - 200 acres, 1960-61—wet season rice.
 - 200 acres, 1961—dry.
 - 400 acres, 1961-62—wet season rice.
 - 400 acres, 1962—dry.
 - Up to 600 acres, 1962-63—wet season rice.
 - 600 acres, 1963—dry. ;
- (d) to co-operate with the Company in its operations under this Agreement by supplying technical advice from the Kimberley Research Station and the Department of Agriculture;
- (e) during the first three months of the year 1963 to review the provisions of this Agreement in close negotiation with the Company with a view to the making of a further Agreement as contemplated by the provisions of clause 4 (h) hereof;
- (f) that the Company may at its own expense and risk breed and run livestock on the pilot farm and/or enter into contracts with third parties for or in relation to the development of lands outside the area of the pilot farm provided however that the Company shall not allow or suffer any such breeding or running of livestock or any such contract to operate to the detriment of the development of the pilot farm as contemplated by this Agreement;
- (g) where and to the extent that the Company for purposes other than the purposes of this Agreement as indicated in approved items in budgets or in additional items requested by the State uses or allows or suffers the use of plant equipment or machinery purchased or acquired wholly or in part with moneys provided by the State under this Agreement the Company will pay to the State for the hire and use thereof

a reasonable sum to be determined in default of agreement by arbitration as hereinafter provided;

- (h) subject to the performance by the Company of its obligations under this Agreement and to the settlement or determination of all disputes (if any) between the parties hereto and upon the written request of the Company to the State made at any time not earlier than four years (unless otherwise mutually agreed) nor later than five years from the date of this Agreement and subject to the prior payment to the State of the price referred to in this subclause to issue to the Company under and subject to the provisions of the Land Act 1933 and its amendments for the time being in force and pursuant to section 89D thereof a Crown Grant of the lands comprised within the pilot farm. The price to be paid for the land shall be calculated on the basis of ONE POUND (£1) per acre plus the economic value of all improvements on the pilot farm at the date of giving the request mentioned in this subclause and together also with the economic value of all further improvements subsequently effected on the pilot farm with money provided by the State prior to the issue of the Crown Grant. In default of agreement as to price it shall be determined by arbitration as hereinafter provided. The Company shall also have the right to purchase at a price to be agreed or determined as aforesaid the plant equipment and machinery acquired by it wholly or in part with moneys provided by the State under this Agreement if the Company shall give to the State notice in writing of its intention to do so not less than one month after the making of the written request referred to in this paragraph. If the Company shall fail to exercise the option hereby given it the Company shall on demand deliver the said plant equipment and machinery to the State at the Kimberley Research Station or otherwise as the parties may mutually agree;
- (i) to introduce and sponsor a Bill for the ratification by the Parliament of Western Australia of this Agreement with a view to such ratification being made within six months from the date hereof;
- (j) not within five years from the date hereof to dispose of or grant any rights to the processing and marketing of agricultural products from any portion of the first 15,000 acres brought

into cultivation of the area referred to in clause 2 hereof without first giving to the Company notice in writing with full particulars of the proposals for such disposition or grant and the Company shall thereupon have an option to be exercised within three months of the receipt of the notice of taking and acquiring such rights upon the same terms and conditions as are set out in such notice; and

- (k) to allow the Company for a period of ten years following the expiration of three years from the date hereof to participate as a consumer upon usual terms in any irrigation scheme effected by the State which serves or is reasonably capable of serving the area of the pilot farm.

6. If the Company—

- (a) at any time enters into compulsory or voluntary liquidation (other than a voluntary liquidation for the purpose of reconstruction); or
- (b) fails after one month's notice in writing given to it by the State specifying a breach by the Company of its obligations under this Agreement to remedy such breach; or
- (c) at any time abandons or repudiates this Agreement—

the State may by notice in writing delivered to the Company determine this Agreement and the decision of the State shall be final and thereupon the obligations of the State under this Agreement shall determine but such determination shall not prejudice or affect the enforcement of any right obligation or liability acquired accrued or incurred prior to such determination.

7. Any right or obligation under this Agreement may from time to time be cancelled added to or varied by an Agreement in writing to that effect signed by or on behalf of the parties hereto.

8. Without the prior consent in writing of the State the Company will not assign or otherwise dispose of its rights under this Agreement or any interest herein.

9. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed variation thereof or as to the construction of this Agreement or as to the rights duties liabilities or obligations of either party hereunder or as to any matter to be agreed between the parties in terms of this Agreement shall in default of agreement between the parties be referred to and settled by arbitration under the provisions of the Arbitration Act, 1895 and its amendments for the time being in force.

10. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement 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 caused by or arising from Act of God act of war force majeure act of public enemies strikes lock-outs stoppages restraint of labour or other similar acts (whether partial or general) shortage of labour or of essential materials reasonable failure to secure contractors delays of contractors riots and civil commotion.

11. Any notice consent statement budget or other writing authorised 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 his Executive Officer for the time being and forwarded by prepaid post to the Company at its registered office in the said State or at the pilot farm and by the Company if signed on behalf of the Company by a Director Manager or Secretary of the Company and forwarded by prepaid post to the said Minister or his Executive Officer and every such notice consent statement budget or writing shall be deemed to have been duly given sent or delivered on the day on which it would be delivered in the ordinary course of post.

12. Subject to the provisions hereof the term of this Agreement shall be five (5) years from the date hereof and during that period the State shall not grant to any person a right of occupancy or use of the pilot farm.

IN WITNESS whereof the Honourable David Brand has hereunto affixed his seal and the Company has affixed its Common Seal the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED

by THE HONOURABLE DAVID
BRAND M.L.A. in the presence
of—

DAVID BRAND.
[L.S.]

R. H. DOIG J.P.

THE COMMON SEAL of NORTH-
ERN DEVELOPMENTS (ORD
RIVER) PTY. LTD. was hereunto
affixed by authority of the Board
of Directors in the presence of—

[L.S.]

W. FARLEY,
Director.

F. G. STONE,
Secretary.
