

Western Australia

**Northern Developments Pty. Limited Agreement
Act 1969**

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Western Australia

Northern Developments Pty. Limited Agreement Act 1969

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Northern Developments Pty. Limited Agreement Act 1969

An Act to approve an Agreement between the State of Western Australia and Northern Developments Pty. Limited relating to the Disposal of certain Crown Lands and for incidental purposes.

1. Short title

This Act may be cited as the *Northern Developments Pty. Limited Agreement Act 1969*¹.

2. Interpretation

In this Act —

“the Agreement” means the agreement of which a copy is set forth in the First Schedule, 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;

“the variation agreement” means the agreement a copy of which is set forth in the Second Schedule;

“the second variation agreement” means the agreement a copy of which is set forth in the Third Schedule;

“the third variation agreement” means the agreement a copy of which is set forth in the Fourth Schedule.

[Section 2 amended by No. 97 of 1969 s. 2; No. 49 of 1978 s. 2; No. 109 of 1981 s. 2.]

3. Approval of Agreement

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

3A. Variation agreement approved

The variation agreement is approved.

[Section 3A inserted by No. 97 of 1969 s. 3.]

3B. Second variation agreement approved

The second variation agreement is approved.

[Section 3B inserted by No. 49 of 1978 s. 3.]

3C. Third variation agreement approved and ratified

The third variation agreement is approved and ratified.

[Section 3C inserted by No. 109 of 1981 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 \$100 for any contravention of, or failure to comply with, any such by-laws; and

- (d) are not subject to the provisions of section 36 of the *Interpretation Act 1918*², but the by-laws shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

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The Schedules

[Heading inserted by No. 97 of 1969 s. 4.]

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[Heading inserted by No. 97 of 1969 s. 4.]

THIS AGREEMENT made the Twenty-third day of April, One thousand nine hundred and sixty nine 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 the instrumentalities thereof from time to time (hereinafter called "the State") of the one part and NORTHERN DEVELOPMENTS PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office in the State of Western Australia at the Third Floor Pastoral House Saint George's Terrace Perth (hereinafter called "the Company" which expression where the context permits shall include its successors and permitted assigns) of the other part.

WHEREAS:

- (a) This Agreement is intended to supersede the Agreement dated the twelfth day of November, 1957 made between the State of the one part and the Company of the other part (hereinafter called "the 1957 Agreement") which Agreement was approved by the *Northern Developments Pty. Limited Agreement Act 1957*.
- (b) Owing to a major change in the beneficial shareholdings in the Company it has become desirable in the interests of both parties to make substantial alterations to the 1957 Agreement and for that purpose the parties have agreed to cancel the 1957 Agreement and substitute this Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. (1) The 1957 Agreement is hereby cancelled and the rights and obligations of the parties thereto and all licenses thereunder are hereby terminated without prejudice however to the right title and interest of the Company and its transferees and successors in title to the land the subject of the Crown Grant acquired prior to the date hereof by the Company in respect of the first parcel of land referred to in clause 4(a) of the 1957 Agreement.

- (2) In this Agreement subject to the context

Definitions³

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

“approved crop” means a crop or crops first approved by the
Minister;

“Camballin Area” means the area of land delineated and shaded
yellow on the plan marked “B” initialled by or on behalf of
the parties hereto for the purposes of identification;

“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;

“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;

“Minister for Water Supplies” means the Minister of the Crown for
the time being discharging the duties of the office of the
Minister for Water Supplies in the said State;

“month” means calendar month;

“notice” means notice in writing;

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“parcel” means such area of land of approximately five thousand acres comprised within the subject land as the Minister determines;

“person” or “persons” includes bodies corporate;

“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;

“subject land” means the land (subject to survey) delineated and shaded red on the plan marked “A” initialled by or on behalf of the parties hereto for the purpose of identification and such other land up to a maximum of 50,000 acres in the Camballin Area as the Minister on request by the Company decides in his discretion to make available for the purposes of this Agreement;

“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 hereof³;

Ratification and operation³

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 operate as an Act before the 31st day of December 1969 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 22 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 any other Act or law and for the purposes of this Agreement and notwithstanding the generality of the foregoing the Land Act and the Rights in Water and Irrigation Act 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.

Licenses for parcels³

3. (1) Subject to the provisions of this Agreement the Company may from time to time apply to the State for a license in respect of a parcel of the subject land;
- (2) The license shall be in form set out in the Schedule hereto;
 - (3) The term of the license in respect of the first parcel applied for by the Company shall be three years;
 - (4) The term of the license in respect of the second and subsequent parcels shall be five years;
 - (5) At the request of the Company the Minister may extend the term of any license from time to time for such further period or periods as the Minister thinks fit.

Application for license³

4. The Company shall be entitled to make application for a license in respect of —
- (a) the first parcel — within thirty days from the commencement date;
 - (b) the second parcel —

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- (i) when the whole cultivable area of the first parcel has been planted with rice or other approved crop whether in one or more seasons; and
- (ii) when the term or extended term of the license for the first parcel has expired;
- (c) the third and (subject to paragraph (d) of this clause) any subsequent parcel successively —
 - (i) when the whole cultivable area of the immediately preceding parcel has been planted with rice or other approved crop whether in one or more seasons; and
 - (ii) when the term or extended term of the license for the immediately preceding parcel has expired;
- (d) The Company shall not be entitled to make application for a license for any parcel after the third parcel —
 - (i) except to the extent of the irrigable lands which from time to time in the opinion of the Minister are capable of being irrigated from the available irrigation system in the Camballin Area but in any event not exceeding in all in successive parcels fifty thousand acres; and
 - (ii) unless the Company at its own expense and in a proper and workmanlike manner to the satisfaction of the Minister and in accordance with plans and specifications approved by the Minister has first constructed a protective levee between the Fitzroy River and the land capable of being irrigated for the purpose of protecting the parcels of land to be developed progressively;
 - (iii) unless the Minister has decided to include the land as a parcel in the subject land.

Boundaries³

5. The State shall within seven days after the commencement date notify the Company of the details of the boundaries of the first parcel which it is entitled to make application for and shall within four calendar months of a request from the Company advise the Company of the details of the boundaries of each remaining parcel for which the Company becomes entitled to make application

under clause 4 of this Agreement PROVIDED that the State shall not be required to give the Company the details of the boundaries of any parcel until the Company is so entitled to make application for that parcel.

Issue of licenses³

6. Within thirty days of the receipt by the State of a written application by the Company for a license in respect of a parcel and provided there is no existing breach or non-observance of any of the terms and conditions on the part of the Company herein contained the State shall issue or cause to be issued to the Company a license in the form set out in the Second Schedule hereto.

Obligations of company to develop³

7. (1) When a license in respect of a parcel is granted to the Company it shall forthwith proceed with the progressive and continuous development of the parcel for the cultivation of rice or other approved crop.

(2) Without affecting the generality of the provisions of the preceding subclause the Company at its own cost and expense shall in respect of each parcel for which it is granted a license: —

To fence³

(a) within sixty calendar months following the day on which the license is granted therefor, in a substantial and workmanlike manner with the best materials of their several kinds and to the satisfaction of the Minister erect along the external boundaries of the parcel a cattleproof fence;

To provide irrigation works and equipment³

(b) within twelve months following the day on which the license is granted therefor, construct provide and instal to the satisfaction of the Minister such irrigation channels and other works and equipment to connect to and make use of available water supplies as the Minister in his absolute discretion considers necessary to irrigate the area of the parcel for the cultivation of rice or other approved crop on the parcel;

To cultivate and crop³

(c) during the first four seasons following the day on which the license is granted therefor, the Company shall in a proper

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and husbandlike manner seed the whole of the cultivable area of the parcel with rice or other approved crop and to ensure performance of this obligation the Company shall at the appropriate time in each of those seasons in the manner aforesaid seed with rice or other approved crop an area of not less than one-fifth of the virgin soil of the area of the parcel.

To pay survey costs³

(3) The Company shall pay to the State upon demand the cost of such topographical and boundary definition surveys in respect of each parcel as the Minister in his absolute discretion considers necessary. The cost of those surveys shall be in accordance with the scale set out in Regulation 150 of the Regulations for the Guidance of Surveyors in the Department of Lands and Surveys of the State or any amendment of that Regulation for the time being in force.

Use of parcels restricted³

(4) Without the consent of the State the Company shall not use or permit or suffer to be used the land comprised in a parcel for any purpose other than the cultivation and processing of rice or other approved crop and associated depasturing of stock.

Yearly rental³

8. (1) In respect of each parcel for which the State grants the Company a licence the Company shall pay to the State the yearly rental of TWO HUNDRED DOLLARS (\$200.).

Half-yearly payments³

(2) The rental payable under the provisions of this clause in respect of the land comprised in a parcel for which a license is granted shall be payable half-yearly in advance on the First day of March and the First day of September in each year during the currency thereof the first of such payments however to be made on the issue of the license therefore and to be apportioned for the period commencing on the day of the issue of the license and expiring on the day immediately preceding the next succeeding half-yearly day.

Maintenance of dam and barrage, etc.³

9. (1) The State may at its own cost and expense but only during such period as it thinks fit maintain and keep in repair —

- (a) the existing seventeen mile dam the Fitzroy River barrage and the constructed offtake works and other works necessary for the normal delivery of irrigation water to the boundary of the parcels of land in respect of which a license has been granted hereunder; and

Irrigation channels³

- (b) much part or parts of the irrigation channels as are from time to time during the continuance of this Agreement constructed by the Company to the satisfaction of the Minister and as are outside the area of a parcel in respect of which a license has been granted.

Road from Derby³

(2) The State will use all reasonable endeavours to have maintained a trafficable road from Derby to Camballin townsite which road is in the opinion of the Commissioner of Main Roads suitable for the reasonable requirements of the Company for the purpose of its operations under this Agreement.

(3) The State will continue to arrange for letting to the Company of the existing houses which were erected for the accommodation of the employees of the Company pursuant to the provisions of the 1957 Agreement and such letting shall be at rentals calculated in accordance with the formula laid down in the *Commonwealth and State Housing Agreement Act 1945* and subject to any subsidy granted by the State in respect of the rental of houses erected by the State Housing Commission north of the twenty-sixth parallel of south latitude, and otherwise for such period or periods and on such terms and conditions as the said Commission may reasonable require.

Maintenance of reticulation works³

10. The Company —

(1) At its own cost and expense in all things during the continuance of this Agreement —

- (a) shall make construct maintain and keep in repair all improvements works and facilities that are necessary within each parcel or part thereof for which a license or Crown Grant has been granted, to reticulate water therein; and,
- (b) shall maintain and keep in repair such part or parts of any of the irrigation channels referred to in paragraph (b) of

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clause 9 hereof as may from time to time be or become included within the boundaries of any parcel or part thereof for which a license or Crown Grant has been granted.

(2) Shall pay to the State for the period from the commencement date and expiring on the termination of this agreement the annual sum of SIX THOUSAND DOLLARS (\$6,000.) subject however to the provisions of clause 11 hereof. Payment of that sum will be made by half-yearly payments in advance on the first days of the months of January and July in each and every year during that period the first of such payments however to be made on the day of completion and to be apportioned if necessary in respect of that portion of the half-year commencing on the commencement date and expiring on the day preceding the next succeeding half-yearly day. The punctual payment of that annual sum shall entitle the Company to delivery during the year in respect of which it is paid of such amount of water from the weir as is available up to but not exceeding two thousand acre feet of water. All water delivered by the State to the Company in excess of that quantity the Company shall subject however to the provisions of clause 11 hereof pay for at the rate of three dollars (\$3.) per acre foot payment for which shall be made by the Company to the State within sixty days following the service of the assessment on the Company in respect of same. For the purpose of measuring the quantity of water delivered by the State to the Company all water obtained by the Company by means of any pump operating on near or about Uralla (Snake) Creek and within the boundaries of any parcel for which a license has been granted shall be deemed to be delivered by the State to the Company but the Company shall not be under any obligation to pay for water from underground sources developed by the Company.

Right of access³

(3) Grants unto the State full and free right and liberty for the State at all times during the continuance of this Agreement by its servants workmen contractors and agents to enter and to go pass and repass with or without animals carts or other carriages or vehicles or motor or other mechanical vehicles laden or unladen into and out of and from any parcel or part thereof for which the Company has been granted a license or a Crown Grant for the purposes of —

- (a) installing and maintaining such gauging equipment as the Minister approves on the irrigation channels within that parcel and at any place where water is obtained by pump or pumps therein; and,

(b) reading such gauging equipment.

Water measure³

(4) Shall accept the register of each gauging equipment referred to in subclause (3) of this clause as prima facie evidence of the quantity of water provided by the State through the point whereon it is erected and installed.

Indemnity in respect of irrigation works³

(5) Shall indemnify and keep indemnified the State against all actions claims damages costs and demands arising out of or in connection with the construction or maintenance by the State of the weir barrage off-take works and other works referred to in Clause 9 hereof or any of them.

Letting of houses restricted³

(6) Shall ensure that the houses referred to in subclause (3) of clause 9 shall be let only to employees of the Company engaged in working the subject land pursuant to this Agreement.

Tenancy Agreements³

(7) When and as often as required by the State Housing Commission shall enter into tenancy agreements with respect to the houses referred to in subclause (3) of clause 9.

Review of water charges³

11. During the six calendar months immediately preceding the expiration of each term of three successive years in the period mentioned in subclause (2) of clause 10 hereof the State may review the annual sum and the rate per acre foot referred to in that subclause and determine the annual sum and rate per acre foot to be payable in respect of the next succeeding term of three successive years and in the event of the State making such review it shall forthwith give written notice to the Company of the amount of the reviewed annual sum and of the reviewed rate and the amount of the reviewed annual sum and the reviewed rate shall become payable by the Company to the State in respect of the term for which they are so made payable.

Disposal of water restricted³

12. The Company shall not at any time or times during the continuance of this Agreement enter into any contract with any person or corporation for the

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disposal of or supply either directly or indirectly to any person or corporation with any water obtained or delivered —

- (a) from the dam and barrage and other irrigation works and channels referred to in subclause (1) of clause 9 hereof; or,
- (b) from any pump or other device operating on the subject land

without the previous consent of the Minister for Water Supplies PROVIDED HOWEVER the Minister for Water Supplies may condition his consent to such disposal or supply of water at such rate or rates and on such terms and conditions as the Minister for Water Supplies may deem fit.

Subdivision of Parcels³

13. (1) The Company not being in default hereunder and having constructed the levee referred to in clause 4 hereof of and having proved to the satisfaction of the Minister the practicability and economic soundness of growing rice or other approved crops on any parcel or parcels shall have the right with the prior approval of the Minister to subdivide up to one half of the parcel or parcels into holdings of a size and shape approved by the Minister and to enter into agreements in a form approved by the Minister for the sale of such holdings on the basis of the purchaser acquiring title to the land if and when a Crown Grant for the parcel is issued and either with or without earlier possession being given to the purchaser.

(2) Any subdivision pursuant to subclause (1) of this clause shall provide for such roads irrigation channels drains and other facilities of a communal nature as the Minister may require.

(3) The Minister may give his approval of a subdivision subject to conditions which shall be carried out by the company before the approval becomes effective.

(4) Section 136 of the Land Act shall not apply to any subdivision made pursuant to this clause.

Underground water³

14. For the purpose of this Agreement and for the purpose of serving the subject land the Company may develop underground water sources on its pastoral leases and in the bed of the Fitzroy River in the vicinity of the subject land but in doing so shall perform and observe all the Rights in Water and Irrigation Act and of any other Act or law relating thereto.

Irrigation Board³

15. (1) At any time after a person (other than the Company or a person for and on behalf of the Company) becomes registered or entitled to be registered as the proprietor of a Crown Grant or certificate of title to any part of the subject land or becomes a purchaser under an agreement for sale referred to in clause 13 hereof the Governor may, by Order in Council, direct that for the Camballin 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 for Water Supplies;
- (ii) one, to be nominated by the Company, shall be appointed to represent the Company; and
- (iii) one, to be nominated by the proprietors and purchasers referred to in subclause (1) of this clause shall be appointed to represent those proprietors and purchasers and in the event of there being only one proprietor or purchaser then by that person.

(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 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 add the two members or in the absence of both or either of them their respective deputies or deputy.

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(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-laws³

16. 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 17 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 Company having due regard to the cost to the Company of supplying the water from time to time;
- (v) the payment to and collection by the Company 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 irrigation 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 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 area under this Agreement and the exercise of the powers vested in the Board.

Insufficiency of water³

17. (1) If at any time in the opinion of the Minister for Water Supplies the supply of water at the disposal of the Company is insufficient to afford all owners or occupiers of holdings in the area the supplies which they respectively reasonably require under normal conditions for their respective holdings, the Company may deliver to such owners or occupiers such amount of water as is then at the disposal of the Company 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 Company 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 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 Company shall not be liable to any penalty or damages for not supplying water to the owner or occupier of a holding in the area if the want of such supply arises from drought.

Crown Grants³

18. (1) If the Company has observed performed and complied with all the terms and conditions on its part herein contained then on written application by the Company for a Crown Grant being made within sixty days or such further time as the Minister may approve after the expiry of the term or extended term of a license in respect of a parcel and the payment of the cost of survey and of the purchase price therefor calculated:

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- (i) at the price of TWO DOLLARS (\$2.) per acre for the land comprised in the first parcel; and
- (ii) at such price per acre as the Minister determines for the remaining parcels (but not exceeding TEN DOLLARS (\$10.) per acre for the land comprised in the second parcel and TWENTY DOLLARS (\$20.) per acre for the land comprised in the third and succeeding parcels) and subject to the provisions of the next succeeding subclause,

the State shall cause a Crown Grant to issue to the Company in respect of that parcel freed from all encumbrances in the form set out in the Third Schedule to the Land Act but subject to the insertion of the words “for the purpose of an area of not less than one-fifth of the said land being planted annually with rice or other crop or crops first approved by the Minister provided there is sufficient water available therefor and in the event of there being insufficient water such lesser area for which sufficient water is available and conditional upon such area or such lesser area of the said land being so used and for no other purpose whatsoever save and except with the consent in writing of the Governor” after the words, “fee simple” in line twenty-one of that form.

Determination of price per acre³

(2) In the event of the Company being dissatisfied with the price per acre determined by the Minister under the provisions of the preceding subclause in respect of the land comprised in the third or fourth or succeeding parcels the Company shall within fourteen days following the notification to it of the price per acre so determined give notice to the State that it is so dissatisfied and the reasons for that dissatisfaction whereupon the State shall direct the Pastoral Appraisement Board (as appointed under the provisions of the Land Act) or other body person or persons in substitution thereof to review the price per acre so determined. Notice of the time and place of hearing shall be given by the Pastoral Appraisement Board to the Company and after having heard the Company by its solicitor or agent and considered any evidence adduced or if the Company by its solicitor or agent does not attend the hearing the Pastoral Appraisement Board may either maintain or vary the price per acre so as determined and the price per acre so maintained or fixed (as the case may be) by the Pastoral Appraisement Board shall be the price per acre payable for the land comprised in that parcel.

Board of appraisers³

19. The Pastoral Appraisal Board shall when acting under the provisions of this Agreement have all powers (*mutatis mutandis*) of a Pastoral Appraisal Board appointed under the provisions of section 98A of the Land Act as if the review of the price per acre referred to in clause 18 of this Agreement were a review or reassessment referred to in that section.

No assignment without consent³

20. (1) Subject to clause 13 hereof the Company shall not without the consent of the State first had and obtained assign or transfer the benefit of this Agreement or any part thereof or interest therein or license hereunder to any person or persons or corporation or otherwise by any act or deed procure allow or suffer either voluntarily or involuntarily this Agreement or any part thereof or interest therein or license hereunder to be assigned or transferred PROVIDED HOWEVER that the State may as a condition of its consent require the execution of a deed of covenant in a form approved by the Minister by the proposed assignee or transferee binding him or it (as the case may be) to observe and comply with the terms and conditions contained in this Agreement and such further terms and conditions as the Minister may deem fit.

(2) Notwithstanding anything contained or anything done under or pursuant to subclause (1) of this clause the Company 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 license or Crown Grant issued under or pursuant to the provisions of this Agreement.

Determination of agreement by the State³

21. In any of the following events namely if the Company makes default in the due performance or observance of any of the covenants stipulations or obligations to the State herein or in any licence or other title or document granted under this Agreement and on the Company'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 Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration or if the Company shall abandon or repudiate its obligations or operations under this Agreement or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the

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State may by notice to the Company determine this Agreement and thereupon this Agreement shall cease and determine PROVIDED HOWEVER that if the Company 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 any land (notwithstanding that a person or persons other than the Company 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 Company to the State on demand made by the State.

Rights of State on default³

22. (1) On the cessation or determination of this Agreement either by its terms or under clause 21 hereof —

- (a) the rights of the Company to in or under this Agreement and the rights of the Company or any transferee or assignee of the Company or of any mortgagee to in or under any licence or right granted hereunder or pursuant hereto 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 Company 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 licence or right granted hereunder or pursuant hereto and the Company 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 Company to execute the transfer or surrenders aforesaid;
- (b) the Company 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 subclause (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 licence granted hereunder or pursuant hereto by the State to the Company and the house or houses sheds and other buildings used in connection with the parcel and all plant and equipment necessary for the effective operation of the irrigation system on the parcel shall remain or become the absolute property of the Crown without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision AND the Company 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 Company to execute those documents and things (including surrenders).

Indemnity³

23. The Company 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 Company 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 Company or its servants agents or contractors of the Company's improvements works or services the subject of this Agreement or the plant or equipment used in connection therewith.

Variation³

24. 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 licence or right granted 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.

25. 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 Company) 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

First Schedule

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 periods³

26. Notwithstanding any provision hereof the Minister may at the request of the Company 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 Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so intended.

Arbitration³

27. 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*. Provided that this clause shall not apply in any case where either expressly or impliedly the State or the Minister is given a discretionary power by this Agreement.

Notices³

28. Any notice consent 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 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 Company at its registered office for the time being in the said State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company 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 duty³

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

Interpretation³

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

Continuance of Agreement³

31. This Agreement will, subject to the provisions thereof, continue in force until the 31st day of December, 2007.

THE SCHEDULE

LICENSE

KNOW all men and these presents witness that

in pursuance of the powers vested in him pursuant to the provisions of the Agreement hereinafter referred to does hereby authorise empower and license NORTHERN DEVELOPMENTS PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office in Western Australia at the Third Floor Pastoral House Saint George's Terrace Perth (hereinafter referred to as "the Company") by its servants workmen and agents to enter upon the parcel of land described in the Schedule hereto and delineated and bordered in blue in the plan drawn hereon and to hold the same from the natural surface thereof to a depth of forty feet below the natural surface for the purpose of cultivating and processing thereon rice or other crop or crops first approved by the Minister for Lands for the term of _____ years from the _____ day of _____ One thousand nine hundred and _____ SUBJECT to the terms and conditions set out in the Agreement dated the _____ day of _____ One thousand nine hundred and _____ and made between THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia contracting for and on behalf of the said State and the Government and instrumentalities thereof from time to time of the one part and NORTHERN DEVELOPMENTS PTY. LIMITED of the other part AND to the

First Schedule

provisoes contained in the prescribed form of Crown Grant for Rural lands under the *Land Act 1933* such provisos being construed as if the parcel referred to in this License were the tract or parcel referred to in the said form of Crown Grant AND the Company hereby accepts this License on the terms and conditions herein set out.

THE SCHEDULE

(Description of parcel of land)

GIVEN under my hand at Perth on the day of
One thousand nine hundred and

By Order of the Minister for Lands,

The Common Seal of NORTHERN DEVELOPMENTS PTY. LIMITED was hereunto affixed in the presence of —
.....

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

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

DAVID BRAND
[L.S.]

The Common Seal of NORTHERN DEVELOPMENTS PTY. LIMITED was hereunto affixed in the presence of —

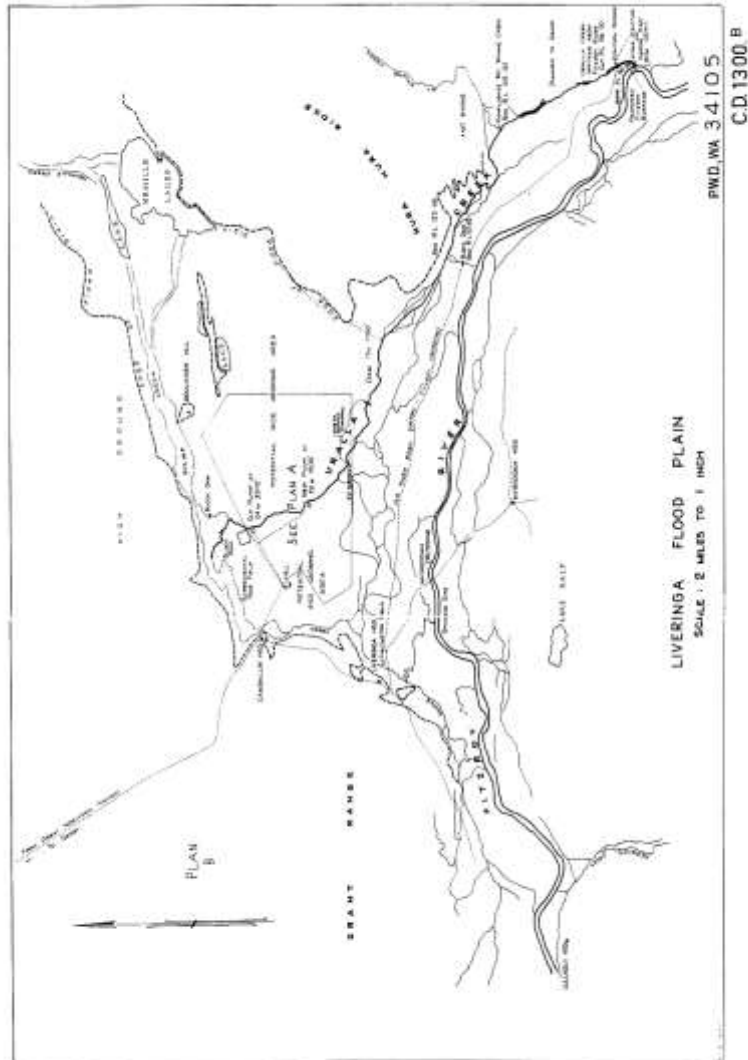
J. HARVEY, Director.

M. LEVI, Director.

[C.S.]

First Schedule

PLAN B



[The stated scale on this map does not apply because it has been reduced for inclusion in this reprint.]

Second Schedule

[s.2.]

THIS AGREEMENT made the twentieth day of October One thousand nine hundred and sixty nine BETWEEN THE HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and NORTHERN DEVELOPMENTS PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office in the State of Western Australia at the Third Floor Pastoral House, Saint George’s Terrace, Perth (hereinafter called “the Company” which expression where the context permits shall include its successors and permitted assigns) of the other part.

WHEREAS the parties are the parties to and desire to amend the agreement between them defined in section 2 of the *Northern Developments Pty. Limited Agreement Act 1969* of The State of Western Australia (which agreement is hereinafter referred to as “the principal agreement”).

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 approved by an operative Act of the Legislature of the State.
3. Clause 1 of the principal agreement is amended as to subclause (2) —
 - (a) by adding after the definition “Crown Grant” the following definition —

“irrigable land” means land which the Company proves to be capable of being irrigated at such time as adequate supplies of suitable water are available;
 - (b) by substituting for the definition “parcel” the following definition —

“parcel” means land comprised within the subject land and which includes an area of irrigable land not exceeding 10,000 acres;

Second Schedule

- (c) by substituting for the definition “subject land” the following definition —

“subject land” means land (subject to survey) located within the Camballin Area containing an area not greater than 55,000 acres and which includes not more than 50,000 acres of irrigable land;

4. The principal agreement is amended by adding after the word “rice” wherever it appears the words “grain sorghum”.

5. Clause 4 of the principal agreement is deleted and replaced by the following clause —

- (1) The Company shall be entitled to make application for a license in respect of —

- (a) the first parcel within thirty days from the commencement date;
- (b) the second and any subsequent parcel successively when the whole cultivable area of the immediately preceding parcel has been planted with rice grain sorghum or other approved crop whether in one or more seasons;

(2) Notwithstanding the provisions of subclause (1) of this clause the Company shall not be entitled to make application for a license for any parcel after the second parcel unless the Company at its own expense and in a proper and workmanlike manner to the satisfaction of the Minister and in accordance with plans and specifications approved by the Minister has first constructed a protective levee between the Fitzroy River and the irrigable land for the purpose of protecting the parcels to be developed progressively.

PROVIDED that the Minister may in his discretion waive any of the requirements of this clause.

6. Clause 6 of the principal agreement is amended by deleting the word “Second” in the last line of the clause.

7. Clause 7 of the principal agreement is amended by adding the following subclause —

(5) The Company shall set aside forthwith an area of at least 100 acres of the subject land and shall promptly commence and continue throughout the currency of this Agreement experimental work for the cultivation of rice and other crops on such land with a view to promoting the successful growing thereof in the Camballin Area. The Company shall from time to time as required by the Minister keep the Minister fully informed in writing as to the progress and results of the experimental work.

8. Clause 8 of the principal agreement is amended as to subclause (1) —
by substituting for the words “the yearly rental of TWO HUNDRED DOLLARS (\$200)” the words “a yearly rental calculated at the rate of forty dollars (\$40) for every thousand acres or part thereof of land contained in the license”.

9. Clause 9 of the principal agreement is amended as to subclause (1) —

(a) by deleting the word “and” at the end of paragraph (a);

(b) by adding the following paragraph —

(c) the protective levee referred to in subclause (2) of clause 4 hereof from the date profits completion.

10. Clause 10 of the principal agreement is amended —

(a) as to subclause (3) —

by adding the following paragraph —

(c) inspecting and examining the operations of the Company hereunder;

(b) as to subclause (4) —

by adding the following proviso —

PROVIDED that the State shall install such gauging equipment as close as practicable to the boundary of each parcel;

Second Schedule

(c) as to subclause (5) —

- (i) by adding the words “by third parties” after the word “demands” in line 2;
- (ii) by adding the words “protective levee” in line 5 before the words “and other works”;

11. The principal agreement is amended —

(a) as to clause 18 —

- (i) by adding the words “excepting the associated depasturing of stock” after the word “purpose” in line 28;
- (ii) by deleting the word “whatsoever” in line 29;

(b) as to the license set out in the schedule thereto —

by adding the words “and for the associated depasturing of stock” after the words “Minister for Lands” in line 16;

(c) as to clause 22 —

- (i) by deleting the word “and” first appearing in line 3 of subclause (2);
- (ii) by adding the following proviso to subclause (2) —

PROVIDED that on application by the Company for a Crown Grant of any parcel or parcels the improvements, plant and equipment referred to in this subclause shall not be valued for the purposes of clause 18 hereof and the same improvements, plant and equipment shall pass to the Company free of cost upon the issue of the Crown Grant in respect of the parcel upon which the same improvements, plant and equipment are situated.

12. The principal agreement is amended by adding after clause 10 the following clause —

10A. The State may from time to time inspect and examine the operations of the Company hereunder and for this purpose may conduct tests and experiments on any parcel. If as a result of such investigations the Minister is of the opinion that any land is likely to be damaged or

detrimentally affected by salinity as a result of the Company's operations the Company shall take such remedial measures as the Minister may determine.

13. The principal agreement is amended by adding after clause 23 the following clause —

Immunity³

23A. The Company shall not bring any action suit claim demand or other proceeding against the State and its servants agents and contractors arising out of or in connection with any work carried out by the State and its servants agents and contractors pursuant to this Agreement or relating to its operations hereunder whether or not caused by the negligence of the State and its servants agents and contractors.

IN WITNESS whereof these presents have been executed the date and year first hereinbefore written.

SIGNED BY THE HONOURABLE
SIR DAVID BRAND K.C.M.G., M.L.A., } DAVID BRAND
in the presence of —

STEWART BOVELL

THE COMMON SEAL of
NORTHERN DEVELOPMENTS } [C.S.]
PTY. LIMITED was hereunto affixed
in the presence of —

J. B. ILBERY
Director.

J. G. MEYER
Secretary.

[Second Schedule inserted by No. 97 of 1969 s. 5.]

Third Schedule

Third Schedule

[s.2.]

THIS AGREEMENT made this 3rd day of May, 1978 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 from time to time (hereinafter called "the State") of the one part and NORTHERN DEVELOPMENTS PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office in the State of Western Australia at 160 Stirling Highway, Claremont (hereinafter called "the Company" which expression where the context permits shall include its successors and permitted assigns) of the other part.

WHEREAS: —

- (a) The parties are the parties to the agreement between them defined in section 2 of the *Northern Developments Pty. Limited Agreement Act 1969* (which agreement is hereinafter referred to as "the principal agreement").
- (b) The parties desire to amend the principal agreement.

NOW THIS AGREEMENT WITNESSETH

1. The principal agreement is hereby varied as follows —
 - (1) Clause 1 is amended as to subclause (2) by substituting for the definition of "parcel" the following definition —

"parcel" means an area of land, to be approved by the Minister, comprised within the subject land and which includes not more than 10 000 acres of irrigable land;
 - (2) Clause 7 is amended as to paragraph (a) of subclause (2) by inserting before the word "within" in line one, the passage "unless the Minister otherwise determines,";
 - (3) Clause 18 is amended as to subclause (1) —
 - (a) by deleting the word "and" at the end of paragraph (i);

- (b) by substituting for paragraph (ii) the following paragraph —
 - (ii) at such price per acre as the Minister determines for the second parcel but not exceeding TEN DOLLARS (\$10) per acre for the first 5,000 acres and not exceeding TWENTY DOLLARS (\$20) per acre for the balance of the land comprised in that parcel; andand
- (c) by adding after paragraph (ii) the following paragraph as paragraph (iii) —
 - (iii) at such price per acre as the Minister determines for the remaining parcels but not exceeding TWENTY DOLLARS (\$20) per acre and subject to the provisions of the next succeeding subclause.
- (4) By adding after Clause 18 the following clause as Clause 18A —
 - 18A (1) Notwithstanding anything contained in the Agreement, the land shaded blue on the plan marked “C” (initialled by or on behalf of the parties hereto for the purposes of identification), shall for the purposes of the Agreement be deemed to be “the first parcel” and the Company shall be deemed to have observed performed and complied with all the terms and conditions on its part contained in the Agreement in respect of that parcel.
 - (2) The Company shall on written application to the Minister not later than 31st December, 1978, or such further time as the Minister may approve, and on payment of the costs of survey and of the purchase price calculated in accordance with the provisions of Clause 18(1)(i) of the Agreement and of the sum of ONE THOUSAND, ONE HUNDRED DOLLARS (\$1 100) in lieu of license fees, be entitled to a Crown Grant in respect of such land and, subject to this Clause, in accordance with the provisions of Clause 18(1) of the Agreement.

Third Schedule

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

Signed by the said the Honourable
Sir Charles Walter Michael Court,
O.B.E., M.L.A. in the presence of — } CHARLES COURT

JUNE CRAIG
Minister for Lands

The Common Seal of Northern
Developments Pty. Limited was
hereunto affixed in the presence of — } (C.S.)

JACK M. FLETCHER
Director

DEREK R. FICKLING
Secretary

[Third Schedule inserted by No. 49 of 1978 s. 4.]

Fourth Schedule

THIS AGREEMENT is made the 19th day of November, 1981, BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, K.C.M.G., 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 from time to time (hereinafter called "the State") of the one part and NORTHERN DEVELOPMENTS PTY. LIMITED a company duly incorporate in the State of New South Wales and having its registered office in Western Australia at 2nd Floor, 49 Stirling Highway, Nedlands (hereinafter called "Northern Developments and AE FOUR, INCORPORATED a company duly incorporate in the State of Connecticut in the United States of America and having its registered office in Western Australia at care of Messrs. Stone James & Co., 6th Floor, Law Chambers, Cathedral Square, Perth (hereinafter called "AE Four") for and on behalf of a limited partnership consisting of The Aetna Casualty and Surety Company a company duly incorporated in the State of Connecticut in the United States of America and having its registered office in Western Australia at care of Messrs. Stone James & Co., 6th Floor, Law Chambers, Cathedral Square, Perth as the limited partner and Northern Developments and AE Four as the general partners duly registered in Western Australia in accordance with the provisions of the *Limited Partnerships Act 1909* under the firm name of "Camballin Farms" (hereinafter together called "the General Partners") of the other part.

WHEREAS:

- (a) the State and Northern Developments are the parties to the agreement between them defined in section 2 of the *Northern Developments Pty. Limited Agreement Act 1969-1978* (which agreement is hereinafter referred to as "the Principal Agreement");
- (b) by Deed dated the 3rd day of June 1980 Northern Developments assigned all its right title and interest in and to the Principal Agreement to the General Partners; and
- (c) the parties hereto desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. 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 said State and comes into operation as an Act.

Fourth Schedule

2. The Principal Agreement is hereby varied in subclause (2) of clause 1 as follows: —

- (a) by deleting the definition of “approved crop”, and substituting the following definition —

“approved crop” means a crop or crops first approved by the Minister after consultation with the Minister for Agriculture; ;

- (b) by inserting, after the definition of “approved crop”, the following definition —

“balance of the subject land” means the subject land less Fitzroy Location 39; ;

- (c) by deleting the definition of “Camballin Area” and substituting the following definition —

“Camballin Area” means the area of land (including Fitzroy Locations 30 and 39) delineated and shaded red on the plan marked “D” initialled by or on behalf of the parties hereto for the purposes of identification; ;

- (d) by inserting, after the definition of “Minister”, the following definition —

“Minister for Water Resources” means the Minister in the Government of the State for the time being responsible for the administration of the Rights in Water and Irrigation Act; ;

- (e) by deleting the definition of “Minister for Water Supplies”;

- (f) by deleting, in the definition of “parcel”, “10,000 acres” and substituting “4,046.86 hectares”;

- (g) by deleting the definition of “subject land” and substituting the following definition —

“subject land” means land (subject to survey) located within the Camballin Area inclusive of Fitzroy Location 39 but not including Fitzroy Location 30 containing an area not greater than 22,260 hectares and which includes not more than 20,240 hectares of irrigable land; ; and

- (h) by inserting after the definition of “this Agreement”, the following paragraph —

“A reference in this Agreement to the “Minister for Water Supplies” shall be construed as a reference to the Minister for Water Resources;” .

3. Subject to the context the words and expressions used in this agreement have the same meanings respectively as they have in and for the Principal Agreement as amended by clause 2 of this agreement.

4. For the purposes of the Principal Agreement and this agreement the expression “the Company” shall subject to the context mean the General Partners.

Lease of balance of subject land ³

5. (1) Notwithstanding anything in the Principal Agreement upon the coming into operation of this agreement all rights of the Company under the Principal Agreement to apply for and be issued with a licence or licences in respect of a parcel or parcels shall cease and in lieu thereof the Company shall be entitled to be granted a lease of the balance of the subject land in accordance with the provisions of subclauses (2) and (3) of this clause.

(2) The Company shall prior to the 31st day of December, 1981 notify the State of the land which the Company proposes should comprise the subject land and the State shall in consultation with the Company determine the extent and boundaries of the subject land and carry out or cause to be carried out a survey of the subject land and shall within seven days after the approval of the Surveyor General of the plan of survey notify the Company of the details of the boundaries of the subject land.

(3) On application made by the Company, within 30 days after notification by the State of the approval of the plan of survey referred to in subclause (2) of this clause, for a lease of the balance of the subject land the State shall provided there is no existing breach or non-observance of any of the terms and conditions on the part of the Company herein and in the Principal Agreement contained and subject to the surrender by the Company of the balance of the subject land out of Pastoral Lease No. 3114/975 (Crown Lease No. 227/1974) grant or cause to be granted to the Company a lease of the balance of the subject land such lease to be granted under and except as otherwise provided in this agreement subject to the Land Act but in the form set out in the Schedule hereto.

Fourth Schedule

Term of lease³

6. (1) Subject to the performance by the Company of its obligations under this Agreement the term of the lease of the balance of the subject land shall be for a period expiring on the 21st day of May, 2005 which shall be deemed to have commenced on the 31st day of May, 1980.

Yearly rental³

(2) The Company shall pay to the State in respect of the land comprised in the lease of the balance of the subject land a yearly rental calculated at the rate of FORTY DOLLARS (\$40.00) for every four hundred and five hectares or part thereof contained in the lease (subject to increase in accordance with the provisions of clause 13 of this agreement) payable half-yearly in advance on the First day of March and the First day of September in each year during the currency of the lease the first of such payments however to be made on the issue of the lease therefor and to be in respect of the period commencing on the day on which the term of the lease shall be deemed to have commenced and expiring on the day immediately preceding the half-yearly day next after the date of grant of the lease.

Development of subject land³

7. (1) On and from the grant of a lease of the balance of the subject land to the Company it shall forthwith proceed with the progressive and continuous development of the subject land for the cultivation of rice grain sorghum or other approved crop.

(2) Without affecting the generality of the provisions of the preceding subclause the Company at its own cost and expense shall —

- (a) unless the Minister otherwise determines, by the 30th day of May, 1985 in a substantial and workmanlike manner with the best materials of their several kinds and to the satisfaction of the Minister erect along the external boundaries of the subject land a cattleproof fence;
- (b) by the 30th day of November, 1983 construct provide and instal on the subject land, in accordance with plans and specifications previously approved by the Minister and in a proper and workmanlike manner, channels drains and appurtenant works necessary effectively to irrigate and drain the subject land;

- (c) by the 30th day of November, 1983 construct provide and instal in accordance with plans and specifications previously approved by the Minister and to the satisfaction of the Minister, on reserves outside the subject land made available by the State for such purpose pump stations channels drains and appurtenant works necessary for the effective supply of water to and drainage of water from the subject land and levees for the purpose of protecting the subject land from flooding;
- (d) subject to subclause (3) of this clause by the 1st day of June, 1984 in a proper and husband-like manner crop all areas of the subject land serviced by works provided by the Company in accordance with the provisions of paragraphs (b) and (c) of this subclause with rice grain sorghum or other approved crop and during each year (commencing the 1st day of June) after the 31st day of May, 1984 in like manner crop at least 4,000 hectares of the subject land with rice grain sorghum or other approved crop.

(3) Until the Company shall have completed to the satisfaction of the Minister the works provided for in subclause 2(c) of this clause the Company shall not be entitled to crop in any period commencing on the 1st day of December in a year and expiring on the 31st day of May in the following year any part of the subject land which is, in the opinion of the Minister, not protected against flooding.

Maintenance of work by the State³

8. The State shall on and from the coming into operation of this agreement in lieu of the provisions of subclause (1) of clause 9 of the Principal Agreement at its own cost and expense —

- (a) maintain and keep in repair the Fitzroy River barrage the Uralla Creek offtake structure and water course, the 17 Mile Dam and appurtenant works necessary for the normal delivery of water therefrom; and
- (b) subject to the facilities and works hereinafter mentioned being constructed by the Company to the satisfaction of the Minister, operate and maintain the pump stations channels drains and appurtenant works and levees constructed provided or installed by the Company in accordance with subclause 2(c) of clause 7 of this agreement PROVIDED that the obligation of the State hereunder to operate and maintain any levee shall not arise until such levee

Fourth Schedule

shall have withstood two floods of the Fitzroy River sufficient, in the opinion of the Minister, to test the construction and design thereof.

9. The Company shall on and from the coming into operation of this agreement in lieu of the provisions of subclauses (1) and (2) of Clause 10 of the Principal Agreement —

Maintenance of works by Company³

- (a) (i) at its own cost and expense during the continuance of the Principal Agreement construct, operate, maintain, keep in repair and replace whenever necessary all pump stations channels drains and appurtenant works within the subject land that are necessary effectively to irrigate and drain the subject land; and
- (ii) until the State shall assume the obligation to operate and maintain the same in accordance with paragraph (b) of clause 8 of this agreement, at its own cost and expense operate and maintain the pump stations channels drains and appurtenant works and levees constructed provided or installed by the Company in accordance with subclause 2(c) of clause 7 of this agreement and do all things necessary to protect and make good any damage to lands adjoining any such levee;

Water charges³

- (b) pay to the State for the period from the 1st day of December 1980 and expiring on the termination of the Principal Agreement the annual sum of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150 000.00) subject however to the provisions of clause 10 of this agreement. Payment of the annual sum in respect of the year commencing the 1st day of December 1980 shall be made on demand by the State therefor and subsequent payments shall be made yearly in advance on the 1st day of December in each and every year during that period. The punctual payment of the annual sum shall oblige the State (subject to availability of water) to deliver during the year commencing on the 1st day of December in respect of which it is paid such amount of water from the 17 Mile Dam as will enable the Company effectively to irrigate an area up to but not exceeding 7 500 hectares. The Company

shall pay for all water delivered by the State in any year commencing the 1st day of December in excess of that quantity at the rate of TWENTY DOLLARS (\$20.00) (subject however to the provisions of clause 10 of this agreement) per hectare of land effectively irrigated PROVIDED that if water is delivered by the State to the Company to grow a second crop or more than two crops within a year commencing the first day of December on an area to which water has already been delivered to grow a crop during that year the Company shall pay to the State for such water at the rate of FIFTEEN DOLLARS (\$15.00) (subject to the provisions of clause 10 of this agreement) for each hectare on which a second or subsequent crop is effectively irrigated. Payment for water chargeable by rate shall be made by the Company to the State within sixty days following the service of an assessment of the Company therefor.

Review of water charges³

10. (1) The annual sum and rates per hectares of land effectively irrigated referred to in paragraph (b) of clause 9 of this agreement for the year commencing the 1st day of December, 1984 and each year (commencing on the 1st day of December) thereafter shall be subject to review by the State. Each review shall be carried out prior to the 30th day of September immediately preceding the commencement of the relevant year and after making such review the State shall forthwith give written notice to the Company of the amount of the reviewed annual sum and of the reviewed rates and the amount of the reviewed annual rates shall become payable by the Company to the State in respect of the year for which they are made so payable.

(2) Reviews of the annual sum and rates per hectare in accordance with subclause (1) of this clause shall be on the basis that such water charges shall recover to the State the estimated expenditure to be incurred by the State in operating and maintaining the facilities and works referred to in paragraph (b) of clause 8 of this agreement in the relevant year or such proportion thereof as shall be determined from time to time by the State to be reasonable in the circumstances.

Subdivision of subject land³

11. (1) The Company being the holder of a lease granted pursuant to this agreement of the balance of the subject land and not being in default of the provisions of that lease or of this agreement or of the Principal Agreement and

Fourth Schedule

having proved to the satisfaction of the Minister the practicability and economic soundness of growing rice grain sorghum or other approved crop on the subject land shall have the right with the prior approval of the Minister to subdivide up to one half of the subject land into holdings of a size and shape approved by the Minister and to enter into agreements in a form approved by the Minister for sublease of such holdings on the basis that the sublessee may purchase and acquire title to the land if and when a Crown Grant for the balance of the subject land is issued to the Company pursuant to this agreement.

(2) Any subdivision pursuant to subclause (1) of this clause shall provide for such roads irrigation channels drains and other facilities of a communal nature as the Minister may require.

(3) The Minister may give his approval of a subdivision subject to conditions which shall be carried out by the Company before the approval becomes effective.

(4) Section 136 of the Land Act shall not apply to any subdivision made pursuant to this clause.

Crown Grant of balance of subject land³

12. The Company being the holder of a lease granted pursuant to this agreement of the balance of the subject land and having observed performed and complied with all the terms and conditions on its part in that lease and in this agreement and in the Principal Agreement contained may apply at any time during the term of the lease after the 30th day of May 1985 for a Crown Grant of the balance of the subject land and on payment of the cost of survey and of the purchase price therefor calculated at the price of FORTY SIX DOLLARS AND NINETY SEVEN CENTS (\$46.97) per hectare (subject to increase in accordance with the provisions of clause 13 of this agreement) the State shall cause a Crown Grant to issue to the Company in respect of the balance of the subject land in the form set out in the Third Schedule to the Land Act but subject to the insertion of the words “for the purpose of an area of not less than one-fifth of the said land being planted annually with rice grain sorghum or other crop or crops first approved by the Minister and conditional upon such area of the said land being so used and for no other purpose excepting the associated depasturing of stock save except with the consent in writing of the Governor” after the words “fee simple” in that form.

Review of rental and purchase price³

13. During the six calendar months immediately preceding the expiration of each term of 5 successive years in the pure period commencing on the 30th day of May 1980 and expiring on the termination of the Principal Agreement the State may review and increase the rate per hectare payable by way of yearly rental for the land contained in the lease of the balance of the subject land and the amount per hectare payable by way of purchase price for the balance of the subject land to be payable in each case in respect of the next succeeding term of five years and in the event of the State making such review it shall forthwith give written notice to the Company of the increased rate or rates and the reviewed rate or rates (as the case may be) shall become payable by the Company in respect of the term for which they are so made payable.

Enlargement of Uralla Creek³

14. (1) The State shall at its own cost and expense at such times as the parties shall agree progressively enlarge the Uralla Creek offtake structure and watercourse so as to permit the passage of water sufficient to effectively irrigate the area or areas of the subject land from time to time being cropped by the Company pursuant to this agreement.

(2) The parties hereto acknowledge that prior to the date of this agreement the Company has expended the sum of THREE HUNDRED AND THREE THOUSAND FIVE HUNDRED AND SIXTY THREE DOLLARS AND THIRTY EIGHT CENTS (\$303,563.38) on enlarging the said watercourse and that the State has paid to the Company the sum of EIGHTY FIVE THOUSAND FOUR HUNDRED AND THIRTY SIX DOLLARS AND NINETY FIVE CENTS (\$85,436.95) on account of such monies. The State shall pay the balance of such monies, namely the sum of TWO HUNDRED AND EIGHTEEN THOUSAND ONE HUNDRED AND TWENTY SIX DOLLARS AND FORTY THREE CENTS (\$218,126.43) to the Company as to ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) on or before the 30th day of June, 1983 and as to the balance of SIXTY EIGHT THOUSAND ONE HUNDRED AND TWENTY SIX DOLLARS AND FORTY THREE CENTS (\$68,126.43) on or before the 30th day of June, 1985.

Modification of Land Act³

15. For the purpose of this agreement in respect of any land leased or sold to the Company by the State the Land Act shall be deemed to be modified by —

- (a) the deletion of the proviso to section 116;
- (b) the deletion of section 135; and

Fourth Schedule

- (c) the inclusion of a power to offer for sale or grant leases for terms or periods and on such terms and conditions and in forms consistent with the provisions of this agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Land Act. .

The provisions of this clause shall not operate so as to prejudice the rights of the State to determine any lease or other right or title in accordance with the other provisions of this agreement and the Principal Agreement.

Survey costs³

16. (1) The Company shall pay to the State upon demand the cost of such topographical and boundary definition surveys in respect of the subject land and reserves made available by the State pursuant to subclause 2(c) of clause 7 of this agreement as the Minister in his absolute discretion considers necessary. The cost of those surveys shall be in accordance with Regulation 150 of the Regulations for the Guidance of Surveyors in the Department of Lands and Surveys of the State or any amendment of that Regulation for the time being in force.

User³

(2) Without the consent of the State the Company shall not use or permit or suffer to be used the subject land for any purpose other than the cultivation and processing of rice, grain sorghum or other approved crop and associated depasturing of stock and for farmhouses and farm buildings required in connection therewith.

Indemnity³

17. In lieu of the provisions of subclause (5) of clause 10 of the Principal Agreement the Company shall on and from the coming into operation of this agreement indemnify and keep indemnified the State against all actions claims damages costs and demands by third parties arising out of or in connection with the construction or maintenance by the State of the barrage, offtake structure and watercourse, dam and appurtenant works and levees referred to in clause 8 of this agreement or any of them.

Disposal of water restricted³

18. In lieu of the provisions of clause 12 of the Principal Agreement the Company shall not at any time or times after the coming into operation of this agreement enter into any contract with any person or corporation for the disposal or supply either directly or indirectly to any person or corporation of any water obtained or delivered —

- (a) from the dam barrage watercourse and other irrigation works channels and drains referred to in clause 8 of this agreement; or
- (b) from any pump or other device operating on the subject land

without the previous consent of the Minister for Water Resources

PROVIDED HOWEVER the Minister for Water Resources may condition his consent to such disposal or supply of water at such rate or rates and on such terms and conditions as the Minister for Water Resources may deem fit.

19. The Principal Agreement is hereby further amended as follows: —

- (1) in clause 7 subclause (5) — by deleting “100 acres” and substituting the following —
“40.47 hectares”;
- (2) in clause 10 —
 - (a) subclause 3 —
by deleting the whole of the subclause from and including “any parcel or part thereof” to the end of the subclause and substituting the following —
“the subject land for the purpose of inspecting and examining the operations of the Company hereunder.”;
 - (b) by deleting subclause (4);
- (3) in clause 10A —
by deleting “any parcel” and substituting the following —
“the subject land”;
- (4) in clause 14 —

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by deleting “its pastoral leases and in the bed of the Fitzroy River in the vicinity of” ;

(5) in clause 31 —

by deleting “31st day of December, 2007.” and substituting the following —

“21st day of May, 2005.”.

20. Clauses 15, 20, 21, 22 and 24 of the Principal Agreement shall *mutatis mutandis* apply to this agreement, the works and operations to be carried out by the Company and the State hereunder and any lease or Crown Grant of the balance of the subject land granted hereunder.

Stamp Duty exemption³

21. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) this agreement;
- (b) the Limited Partnership Agreement dated the 22nd day of May, 1980 between Northern Developments, AE Four and The Aetna Casualty and Surety Company and the statement in respect thereof lodged pursuant to section 11 of the *Limited Partnerships Act 1909*;
- (c) the Deed referred to in recital (b) of this agreement;
- (d) Registered Transfers under the Transfer of Land Act numbered B929901 and B976817;
- (e) Registered Mortgage under the Transfer of Land Act numbered B929902 (or any statement note or memorandum evidencing or showing the amount or containing the particulars of the loan the subject thereof);
- (f) a Promissory Note dated the 22nd of May, 1980 and made between Northern Developments, AE Four and Aetna Life Insurance Company;
- (g) a Debenture Charge dated the 29th day of May, 1980 and made between Northern Developments, AE Four and Aetna Life Insurance Company;

- (h) a Deed of Trust dated the 30th day of May, 1980 and made between Northern Developments and AE Four of the one part and Northern Developments, AE Four and The Aetna Casualty and Surety Company of the other part;
- (i) a Deed dated the 3rd day of June, 1980 and made between Northern Developments and AE Four of the first part, Northern Developments of the second part and The Kimberley Pastoral Company Limited of the third part relating to the transfer of the land comprised in Pastoral Lease 3114/975 and Fitzroy Locations 30 and 39 and any retransfer of part of the land comprised in Pastoral Lease 3114/975 and Fitzroy Location 30 pursuant thereto;
- (j) a Deed of Charge dated the 28th day of April, 1981 and made between Northern Developments and The Aetna Casualty and Surety Company; and
- (k) a Bill of Sale and a Crop Lien both dated the 28th day of April, 1981 and made between Northern Developments and AE Four and The Aetna Casualty and Surety Company.

(2) If prior to the date on which the Bill referred to in clause 1 of this agreement to ratify this agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

22. A Minister in the Government of the said State may enter into and carry out agreements relating to the payment of costs in respect of works constructed for the purpose (solely or otherwise) of facilitating operations under this agreement and the Principal Agreement.

23. The provisions of the Principal Agreement shall be read and construed subject to the provisions of clauses 5 to 18 inclusive and 20, 21 and 22 of this agreement.

THE SCHEDULE

WESTERN AUSTRALIA

SPECIAL LEASE

Fourth Schedule

UNDER SECTION 116 OF THE *LAND ACT 1933-1980*
AND THE *NORTHERN DEVELOPMENTS PTY. LIMITED*
AGREEMENT ACT 1969-1981

REGISTRATION FEE PAID
LEASE No. 3116/

KIMBERLEY DIVISION
FITZROY LOCATIONS

Elizabeth the Second, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth, To all to whom these presents shall come, GREETING Know ye that:

WHEREAS:

- (i) Camballin Farms as assignee under a Deed dated the 3rd day of June 1980 of all the right title and interest of Northern Developments in and to the Principal Agreement is under and pursuant to the Agreement engaged in the acquisition development and use for agricultural purposes of certain lands in Western Australia;
- (ii) Subject to and in accordance with the provisions of clause 5(3) of the 1981 Agreement the Lessee has applied for a lease of the land described in the Schedule hereto;
- (iii) By the Land Act power is given to the Governor in Council of Our State of Western Australia to grant leases of any portion of land to any person for any purpose approved by the Governor in Council by notice in the *Government Gazette* upon the terms and conditions set forth in Section 116 of that Act;
- (iv) Clause 15 of the 1981 Agreement provides that for the purposes of the 1981 Agreement (but without prejudice to the rights of the State to determine any lease or other right or title in accordance with the other provisions of the 1981 Agreement and of the Principal Agreement) the Land Act shall be deemed to be modified *inter alia* by the deletions of the proviso to Section 116 and of Section 135 and by the inclusion of a power to offer for sale or grant leases for terms or periods and on such terms and conditions and in forms consistent with the provisions of the 1981 Agreement in lieu of for the terms or periods, the terms and conditions and the forms referred to in the Land Act and upon application by the

Company in forms consistent as aforesaid in lieu of in the forms referred to in the Land Act;

- (v) To give effect to the obligations of the State under clause 5(3) of the 1981 Agreement the Governor in Council by written notice in the *Government Gazette* approved the granting of a lease of the land described in the Schedule hereto to the Lessee for the special purpose hereinafter mentioned;
- (vi) Our Minister for Lands (hereinafter called “the Minister for Lands”) has in pursuance of Section 137 of the Land Act (to the extent (if any) to which that Section applies to this lease) allowed directed and approved the granting of this lease;

Now We of Our especial Grace, and in consideration of the premises and also in consideration of the rents hereinafter reserved and on the part of the Lessee to be paid and in the exercise of the powers in that behalf to Us given by the Act the Land Act and the Agreement, do by these presents demise and lease to the Lessee the natural surface and so much of the land as is below the natural surface to a depth of 12.19 metres of ALL THAT piece or parcel of land described and delineated in the Schedule hereto (subject to survey) with the appurtenances for the purposes specified in clause 16(2) of the 1981 Agreement and referred to in clause 1(3) hereof TO HAVE AND TO HOLD the demised premises with all the rights powers and privileges conferred on the Lessee by those Acts and by the Agreement But Subject Nevertheless to the covenants agreements obligations powers reservations and conditions herein and in the Agreement AND to the provisions in the Land Act as are applicable hereto as modified by clause 15 of the 1981 Agreement for a term which shall be deemed to have commenced on the 31st day of May 1980 but determinable as hereinafter provided and if not so determined expiring on the 21st day of May 2005 YIELDING AND PAYING therefor during the term unto Us, Our heirs and successors subject to and in accordance with the provisions of clause 6(2) of the 1981 Agreement a yearly rental calculated at the rate of FORTY DOLLARS (\$40.00) for every four hundred and five hectares or part thereof of the demised premises (subject to increase in accordance with clause 13 of the 1981 Agreement) payable half-yearly in advance on the First days of March and September (hereinafter called “half-yearly days”) in each year during the currency of this lease the first of such payments to be made on the issue of this lease and to be in respect of the period commencing on the day on which the term is deemed to have commenced and expiring on the day immediately preceding the half-yearly day next following the date of issue of this lease;

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PROVIDED NEVERTHELESS that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to resume and enter upon possession of any part of the demised premises which it may at any time by Us, Our heirs and successors be deemed necessary to resume for roads tramways railways railway stations bridges canals towing paths harbour or river improvements and works drainage or irrigation works quarries and generally for any other works or purposes of public use utility or convenience and for the purposes of exercising the power to search for minerals hereinafter reserved, and such land so resumed to hold to Us, Our heirs and successors as of Our or their former estate without making to the Lessee or any person claiming under it any compensation in respect thereof; so nevertheless that the lands so to be resumed shall not exceed one twentieth part in the whole of the lands aforesaid and that no such resumption be made of any part of the demised premises upon which any buildings may have been erected or which may be enclosed and in use as gardens or otherwise for the more convenient occupation of any such buildings or on which any other improvements as defined by the Land Act have been made without compensation; Provided also, that it shall be lawful at all times for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority to cut and take away any such indigenous timber and search and dig for and carry away any stones or other materials which may be required for making or keeping in repair any roads tramways railways railway stations bridges canals towing paths harbour works breakwaters river improvements drainage or irrigation works and generally for any other works or purposes of public use utility or convenience without making to the Lessee or any person claiming under it any compensation in respect thereof and We do hereby save and reserve to Us, Our heirs and successors, all mines of gold, silver, copper, tin or other metal, ore and mineral, or other substances containing metals and all gems and precious stones, and coal or mineral oil and all phosphatic substances in and under the demised premises with full liberty at all times to search and dig for and carry away the same and for that purpose enter upon the demised premises or any part thereof PROVIDED FURTHER that all petroleum on or below the surface of the demised land is reserved to Us, Our heirs and successors with the right for Us, Our heirs and successors or any person claiming under Us or them or lawfully authorised in that behalf to have access to the demised premises for the purpose of searching for and for the operations of obtaining petroleum in and under any part of the demised premises under the provisions of the *Petroleum Act 1967*.

1. — THE Lessee to the intent that the obligations may continue throughout the term COVENANTS AND AGREES with the Lessor and the Minister for Lands as follows: —

- (1) THAT the Lessee will pay the rent hereinbefore reserved at the times and in the manner aforesaid.
- (2) THAT the Lessee will subject to the Agreement duly and punctually pay such rates and taxes in respect of the demised premises as it is obliged at law to pay from time to time.
- (3) That the Lessee will subject to and in accordance with the Agreement develop and use the demised premises for the cultivation and processing of rice, grain sorghum or other approved crop and associated depasturing of stock and for farmhouses and will not use the demised premises or permit or suffer the demised premises to be used for any other purpose without the prior written consent of the Minister.
- (4) THAT the Lessee will permit the Minister and the Minister for Lands full and free right and liberty by their servants workmen contractors and agents at all times to enter and to go pass and repass with or without animals carts or other carriages or vehicles or motor or other mechanical vehicles laden or unladen into or out of and from the demised premises for the purpose of inspecting and examining the operations of the Lessee hereunder and under the Agreement.
- (5) THAT the Lessee will at all times during the term duly and punctually observe perform and comply with all covenants agreements conditions provisions and obligations on the part of the Lessee contained or implied in the Agreement.
- (6) THAT the Lessee will not otherwise than in strict accordance with the Agreement and in particular with clause 11 of the 1981 Agreement and clause 20 of the Principal Agreement sub-divide, sub-lease dispose of or otherwise part with the possession of the demised premises or any part or parts thereof or assign mortgage or charge the demised premises or any part or parts thereof for all or any part of the term.
- (7) THAT the Lessee will at all times indemnify and keep the Lessor and the Minister for Lands their servants and agents indemnified

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against all actions claims demands damages and costs by or of third parties arising from caused by incidental to or resulting from any default by the Lessee in the due and punctual performance and observance of and compliance with the covenants conditions or obligations contained or implied herein or the occupation and use by the Lessee of the demised premises.

- (8) THAT subject to the Agreement the Lessee shall duly and punctually perform, observe, comply with, carry out, and conform to the provisions of all statutes (Federal or State) for the time being in force and of all ordinances, statutory rules, regulations and by-laws respectively made thereunder and for the time being in force and all requisitions, requirements, orders and conditions of any authority (statutory or otherwise) affecting the demised premises or any crops or any improvement of whatsoever nature or kind constructed operated or used thereon.
- (9) THAT the Lessee will upon the determination of this lease yield up the demised premises and all the improvements and things thereon of whatsoever nature or kind in such state of repair condition order and preservation as shall be in strict accordance with the covenants and agreements of the Lessee herein and in the Agreement.

2. — THE Lessor and the Minister for Lands hereby COVENANT with the Lessee: —

- (1) THAT subject to —
 - (i) the Lessee duly and punctually performing observing and complying with the covenants agreements conditions and obligations herein and in the Agreement and on its part to be performed observed or complied with;
 - (ii) neither the Principal Agreement nor the 1981 Agreement having been determined;
 - (iii) the preceding provisions of this lease

the Lessee shall peaceably hold and enjoy the demised premises during the term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

- (2) THAT the Lessee having observed performed and complied with all the terms and conditions on its part contained in this lease and

the Agreement may apply at any time during the term after the 30th day of May 1985 for a Crown Grant of the demised premises and on payment of the cost of survey and of the purchase price therefor calculated at the price of FORTY SIX DOLLARS AND NINETY SEVEN CENTS (\$46.97) per hectare (subject to increase in accordance with the provisions of clause 13 of the 1981 Agreement) the Lessor will issue a Crown Grant to the Lessee in respect of the demised premises in the form set out in the Third Schedule to the Land Act but subject to the insertion of the words “for the purpose of an area of not less than one-fifth of the said land being planted annually with rice grain sorghum or other crop or crops first approved by the Minister and conditional upon such area of the said land being so used and for no other purpose excepting the associated depasturing of stock save except with the consent in writing of the Governor” after the words “fee simple” in that form;

3. — PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the Lessor the Minister for Lands and the Lessee as follows: —

- (1) THAT it shall be lawful at all times for the Lessor —
 - (i) to grant to the Lessor in right of the State of Western Australia or of the Commonwealth of Australia easements (including easements without dominant tenements) or rights over the demised premises for any public purpose or purpose approved by the Lessor;
 - (ii) to require the Lessee to consent to the granting of such easements (including easements without dominant tenements) or rights in or over the demised premises as may from time to time be reasonably necessary for the overall development or use of the demised premises or for the overall development or use of the surrounding lands; and
 - (iii) to use or permit the use of the demised premises as is reasonably necessary for the overall development or use of the demised premises or for the overall development or use of the surrounding lands.

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PROVIDED ALWAYS that no such grant requirement use or permission to use shall be made if such grant requirement use or permission to use (as the case may be) would unduly prejudice the Lessee or unduly interfere with the operations of the Lessee under the Agreement.

- (2) THAT subject to the Agreement all rights in the demised premises (other than those expressly or impliedly granted under this lease) are reserved to the Lessor or the Minister for Lands as the case may be.
- (3) THAT upon the determination of this lease which may be determined by effluxion of time or pursuant to the Agreement or by surrender it shall be lawful for the Lessor (without prejudice to any right of action of any one or more parties having rights hereunder in respect of any breach non-performance or non-observance of or non-compliance with any of the covenants conditions and obligations contained herein and on the part of the Lessee to be performed observed or complied with) into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as if this lease had never been executed and the house or houses sheds and other buildings used in connection with the demised premises and all plant and equipment necessary for the effective operation of the irrigation system on the demised premises shall then remain or become the absolute property of the Lessor without compensation and freed and discharged from all mortgages and encumbrances and in such case the Lessee will do and execute such documents and things (including surrenders) as the Minister may reasonably require to give effect to this provision AND the Lessee 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 Lessee to execute those documents and things (including surrenders) PROVIDED that on application by the Lessee for a Crown Grant of the demised premises the improvements plant and equipment referred to in this subclause shall not be valued for the purposes of clause 18 of the Principal Agreement and the same improvements, plant and equipment shall pass to the Lessee free of cost upon the issue of the Crown Grant in respect of the demised premises upon which the same improvements, plant and equipment are situated.

- (4) ANY dispute or difference as to questions of fact between the parties arising out of or in connection with this lease or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this lease or any such amendment variation or addition or as to the rights duties or liabilities of either party or any other person hereunder or as to any matter to be agreed upon between the parties hereto under this lease shall in default of agreement between the parties and in the absence of any provision in this lease to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895* provided that this clause shall not apply in any case where either expressly or impliedly the Lessor or the Minister for Lands or the Minister is given a discretionary power hereunder.
- (5) THAT any notice consent request or other writing authorised or required by this lease to be given or sent shall be deemed to have been duly given by the Minister is signed by the Minister or by any senior officer of the Public Service of Western Australia acting by the direction of the Minister or by the Minister for Lands if signed by the Under Secretary for Lands or other the officer for the time being discharging the duties of that office and forwarded by prepaid post to the Lessee at its registered office for the time being in Western Australia and by the Lessee if signed on its behalf by a director manager or secretary of the Lessee or by any person or persons authorised by the Lessee 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 the Minister for Lands at their respective offices for the time being in Perth 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.
- (6) IN this lease, unless the context otherwise requires: —
- “Act” means the *Northern Developments Pty. Limited Agreement Act 1969-1981*;
- “Agreement” means the Principal Agreement and the 1981 Agreement;
- “1981 Agreement” means the agreement between the State and the Lessee approved by the *Northern Developments Pty.*

Fourth Schedule

Limited Agreement Amendment Act 1981 and includes the 1981 Agreement as amended from time to time;

“approved crop” means an approved crop as defined in subclause (2) of clause 1 of the Principal Agreement;

“Camballin Farms” means the limited partnership of that name referred to in the definition of “Lessee”;

“demised premises” means the land described in the Schedule hereto situate within the Camballin Area (as defined in subclause (2) of Clause 1 of the Principal Agreement) together with all pump stations channels drains levees and appurtenant works and all buildings erections and other improvements for the time being constructed and maintained thereon in accordance with the provisions of this lease and of the Agreement;

“Land Act” means the *Land Act 1933-1980*;

“Lessee” means Northern Developments and AE FOUR, INCORPORATED a company incorporated in the State of Connecticut in the United States of America and having its registered office in Western Australia at care of Messrs. Stone James & Co., 6th Floor, Law Chambers, Cathedral Square, Perth (hereinafter called “AE Four”) for and on behalf of a limited partnership consisting of The Aetna Casualty and Surety Company a company incorporated in the State of Connecticut in the United States of America and having its registered office in Western Australia at care of Messrs. Stone James & Co., 6th Floor, Law Chambers, Cathedral Square, Perth as the limited partner and Northern Developments and AE Four as the general partners duly registered in Western Australia in accordance with the provisions of the *Limited Partnerships Act 1909* under the firm name of “Camballin Farms”;

“Lessor” means Her Majesty Queen Elizabeth the Second Her heirs and successors in right of the State of Western Australia;

“Minister” means the Minister in the Government of Western Australia for the time being responsible (under whatsoever title) for the administration of the Act and includes the successors in office of the Minister;

“Northern Developments” means Northern Developments Pty. Limited a company incorporated in New South Wales and having its registered office in Western Australia at 49 Stirling Highway Nedlands;

“Principal Agreement” means the agreement between the State and Northern Developments a copy of which is set out in the First Schedule to the Act as amended by the agreements copies of which are set out in the Second and Third Schedules to the Act and by the 1981 Agreement and includes the Principal Agreement as further amended from time to time;

“State” means the Premier of the State of Western Australia acting for and on behalf of the Government of the said State and instrumentalities thereof from time to time;

“term” means the term of this lease;

Reference 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.

SCHEDULE

Fitzroy Locations as delineated
and shown on Lands and Surveys Original Plan .

IN WITNESS whereof this lease has been executed by or on behalf of the
parties hereto this day of 198 .

Fourth Schedule

THE COMMON SEAL of the
MINISTER FOR LANDS was hereunto
affixed by me THE HONOURABLE

the MINISTER FOR LANDS for the
time being in the presence of:

.....

SIGNED for and on behalf of
AE FOUR, INCORPORATED
by its duly appointed Attorney
under Power of Attorney dated
the day of 198
in the presence of:

.....

Registered the day of 198
in conformity with Section 81C of Act 56 Victoria No. 14 and
numbered 198 .

.....
REGISTRAR OF TITLES.

IN WITNESS WHEREOF this agreement has been executed by or on behalf of
the parties hereto the day and year first hereinbefore mentioned.

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

CHARLES COURT

DAVID J. WORDSWORTH
Minister for Lands.

THE COMMON SEAL OF
NORTHERN DEVELOPMENTS
PTY. LIMITED was hereunto affixed
by authority of the Directors in the
presence of:

} [C.S.]

JACK M. FLETCHER
Director.

DEREK R. FICKLING
Secretary.

SIGNED for and on behalf of
AE FOUR, INCORPORATED
by its duly appointed Attorney under
Power of Attorney dated the
9th day of November, 1981
in the presence of:

} AE Four, Incorporated
By:
M. E. WRIGHT

J. M. TERRELL

[Fourth Schedule inserted by No. 109 of 1981 s. 4.]

Defined Terms

Notes

- ¹ This is a compilation of the *Northern Developments Pty. Limited Agreement Act 1969* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Northern Developments Pty. Limited Agreement Act 1969</i>	41 of 1969	21 May 1969	21 May 1969
<i>Northern Developments Pty. Limited Agreement Act Amendment Act 1969</i>	97 of 1969	17 Nov 1969	17 Nov 1969
<i>Northern Developments Pty. Limited Agreement Act Amendment Act 1978</i>	49 of 1978	29 Aug 1978	29 Aug 1978
<i>Northern Developments Pty. Limited Agreement Amendment Act 1981</i>	109 of 1981	2 Dec 1981	2 Dec 1981

Reprint of the *Northern Developments Pty. Limited Agreement Act 1969* as at 7 Dec 2001 (includes amendments listed above)

- ² Repealed by the *Interpretation Act 1984*.
- ³ Marginal notes in the agreements have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.