

NORTHERN DEVELOPMENTS PTY. LIMITED AGREEMENT.

No. 109 of 1981.

AN ACT to amend the Northern Developments Pty.
Limited Agreement Act 1969-1978.

[Assented to 2 December 1981.]

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

1. (1) This Act may be cited as the *Northern Developments Pty. Limited Agreement Amendment Act 1981*.

Short title
and citation.

(2) In this Act the Northern Developments Pty. Limited Agreement Act 1969-1978 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Northern Developments Pty. Limited Agreement Act 1969-1981.

Section 2
amended.

2. Section 2 of the principal Act is amended by deleting "Act." at the end of the section and substituting the following—

" Act;

"the third variation agreement" means the agreement a copy of which is set forth in the Fourth Schedule to this Act. " .

Section 3C
inserted.

3. After section 3B of the principal Act the following section is inserted—

Third
variation
agreement
approved and
ratified.

" 3C. The third variation agreement is approved and ratified. " .

Fourth
Schedule
added.

4. After the Third Schedule to the principal Act the following schedule is added.

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 incorporated 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 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 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.

- (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.

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.

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.

Term of lease.

(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.

Yearly rental.

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.

Development of subject land.

(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 State.

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 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—

- (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;
- (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

Maintenance
of works by
Company.

Water
Charges.

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
charges.

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
land.

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 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.

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.

Crown Grant
of balance
of subject
land.

13. During the six calendar months immediately preceding the expiration of each term of 5 successive years in the 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

Review of
rental and
purchase
price.

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
Creek.

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 Act.

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
- (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.

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.

Survey
Costs.

(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.

User.

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.

Indemnity.

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—

Disposal
of water
restricted.

(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—

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
exemption.

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 sub-clause (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

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

REGISTRATION FEE PAID KIMBERLEY DIVISION
LEASE No. 3116/ 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;

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 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.

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

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 .

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, INCOR- }
PORATED 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, INCOR-
PORATED 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