

1969.]

*Northern Developments Pty.  
Limited Agreement.*

[No. 41.]

# NORTHERN DEVELOPMENTS PTY. LIMITED AGREEMENT.

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No. 41 of 1969.

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**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.**

*[Assented to 21st May, 1969.]*

**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. This Act may be cited as the *Northern Developments Pty. Limited Agreement Act, 1969.* Short title.

Interpre-  
tation.

2. In this Act—

“the Agreement” means the agreement of which a copy is set forth in the Schedule to this Act, and if the Agreement is added to or varied or any of its provisions are cancelled in accordance with those provisions includes the Agreement as so altered from time to time.

Approval of  
Agreement.

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

Orders in  
Council to  
take effect.

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

By-laws.

5. (1) By-laws may be made for the purposes of, and in accordance with, the Agreement.

(2) By-laws made pursuant to this section—

(a) shall be published in the *Government Gazette*;

(b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;

(c) may prescribe penalties not exceeding one hundred dollars for any contravention of, or failure to comply with, any such by-laws; and

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

### SCHEDULE.

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

**Definitions.**

"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;
- “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 hereof;

2. (1) This Agreement shall not operate unless and until a Bill (which the State hereby undertakes to introduce and sponsor) to ratify this Agreement commences to operate as an Act before the 31st day of December 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.

Ratification and operation.

(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.

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;

Licenses for parcels.

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- (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 license.**

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—
    - (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 con-

structed 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.

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. Boundaries.

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. Issue of licenses.

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. Obligations of company to develop.

(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:—

(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 fence.

(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 provide irrigation works and equipment.

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To cultivate  
and crop.

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

(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  
restricted.

(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  
rental.

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  
payments.

(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.

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  
channels.

(b) such 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 satis-

faction of the Minister and as are outside the area of a parcel in respect of which a license has been granted.

(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.

Road from Derby.

(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.

10. The Company—

Maintenance of reticulation works.

(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 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 access.

(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 measure.

(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 works.

(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 restricted.

(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.

(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.

Tenancy Agreements.

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.

Review of water charges.

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

Disposal of water restricted.

- (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.

13. (1) The Company not being in default hereunder and having constructed the levee referred to in clause 4 hereof 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.

Subdivision of Parcels.

(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.

Under-  
ground  
water.

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  
Board.

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 or otherwise the Chairman from time to time determines.

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

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

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

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

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

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: Board may  
make  
by-laws.

- (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 water.

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  
Grants.

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:

- (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.

(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.

Determina-  
tion of  
price per  
acre.

19. The Pastoral Appraisement Board shall when acting under the provisions of this Agreement have all powers (*mutatis mutandis*) of a Pastoral Appraisement 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.

Board of  
appraisers.

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No assign-  
ment without  
consent.

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.

Determina-  
tion of  
agreement  
by the  
State.

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 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.

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

Rights of  
State on  
default.

- (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).

Indemnity.

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.

Variation.

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 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 periods.

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.

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.

Arbitration.

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.

Notices.

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

Exemption from stamp duty.

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

Interpretation.

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

Continuance of Agreement.

## 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 provisos 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 NORTH-  
ERN 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—

DAVID BRAND  
[L.S.]

STEWART BOVELL.

The Common Seal of NORTH-  
ERN DEVELOPMENTS PTY.  
LIMITED was hereunto  
affixed in the presence of—

J. HARVEY, Director.

M. LEVI, Director.

[C.S.]

F. G. STONE, Assist. Secretary.

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