

WESTERN AUSTRALIA

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# CEMENT WORKS (COCKBURN CEMENT LIMITED) AGREEMENT AMENDMENT ACT

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No. 82 of 1986

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AN ACT to amend the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*.

[Assented to 9 December 1986.]

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

## Short title

1. This Act may be cited as the *Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1986*.

### **Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

### **Principal Act**

3. In this Act the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*\* is referred to as the principal Act.

[\*Act No. 45 of 1971.]

### **Section 2 amended**

4. Section 2 of the principal Act is amended—

- (a) by deleting the full stop after the definition of “the Agreement” and substituting a semi-colon; and
- (b) by inserting after the definition of “the Agreement” the following definition—

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

### **Section 4 inserted**

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

#### **Variation agreement approved**

“ 4. (1) The variation agreement is approved and ratified.

(2) The implementation of the variation agreement is authorized.

(3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the variation agreement shall operate and take effect notwithstanding any other Act or law. ”.

## Schedule added

6. After the Second Schedule to the principal Act the following Schedule is added—

“

### THIRD SCHEDULE

THIS AGREEMENT under seal is made the 24th day of October 1986 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter called “the State”) of the first part THE HONOURABLE GAVAN JOHN TROY, B. Bus, A.F.A.I.M., J.P., M.L.A. the Minister in the Government of the said State for the time being responsible for the administration of the Fremantle Port Authority Act 1902 of the second part FREMANTLE PORT AUTHORITY a body corporate constituted by the Fremantle Port Authority Act 1902 of the third part and COCKBURN CEMENT LIMITED a company duly incorporated in Western Australia and having its registered office at 191 St. George’s Terrace, Perth (hereinafter called “the Company” which term shall include its successors and permitted assigns) of the fourth part.

WHEREAS the parties hereto desire to vary the Agreement defined in section 2 of the Cement Works (Cockburn Cement Limited) Agreement Act 1971 (which Agreement is hereinafter referred to as “the Principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context and subject as hereinafter appears the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement (as varied by this Agreement).
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 31st day of December, 1986.
4. The Principal Agreement is hereby varied as follows—

(1) Clause 1 subclause (2)—

- (a) by deleting the definition of “Mining Act” and substituting the following definition—

“ “Mining Act” means the Mining Act 1978;”

- (b) by deleting the definition of “Minister for Mines” and substituting the following definition—

“ “Minister for Minerals and Energy” means the Minister of the Government of the State for the time being responsible for the administration of the Mining Act;”

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(c) by adding after the definition of "ratifying Act" the following definition—

"“specified mineral” means mineral or minerals for use solely in the Company’s cement and clinker manufacturing operations or in any other operations approved by the State from time to time;”;

(d) by substituting for the map marked “B” referred to in the definition of “works site”, the map marked “X” which map is initialled by or on behalf of the parties hereto for the purpose of identification.

(2) By inserting after clause 6 the following clauses—

“6A. (1) Not later than the 31st day of December, 1986 and thereafter not later than the expiration of each successive two years during the currency of this Agreement the Company shall submit to the Minister to the fullest extent reasonably practicable a dredging and management programme (hereinafter called a “DMP”) containing its proposals for dredging operations upon the sand banks for its shell sand requirements and for the monitoring, protection and management of the environment in connection therewith for the 10 year period commencing the 1st day of January immediately following the due date for submission of the DMP. The proposals for the first two years covered by each DMP shall be in the most detail and the proposals for the subsequent years covered by the DMP may be presented in progressively less detail.

(2) Each DMP shall include—

(a) a plan to suitable scale showing, inter alia, the location of:

(i) proposed dredging areas;

(ii) proposed spoil dumping areas; and

(iii) any installations or works associated with the proposed dredging operations

in relation to significant physiographic and other features of the area;

(b) a description in reasonable detail of the proposed method of dredging and associated operations, the quantity and quality of the shell sand to be dredged each year and a schedule showing the sequence in which dredging operations are proposed to take place over the period covered by the DMP;



- 6C. (1) It is recognised that from time to time, variations to approved DMPs may be necessary as a result of changes in conditions since the preparation and approval of a DMP.
- (2) Such necessary variations to any approved DMP may be implemented from time to time following agreement to them between the Company and the Authority.
- (3) In the event of any dispute regarding a proposed variation to an approved DMP, the proposed variation shall be submitted to the Minister in the form of a new DMP and the provisions of clause 6B shall *mutatis mutandis* apply to that DMP.

6D. The Company shall on or before the 31st day of March, 1987 surrender to the State the lease dated the 15th day of May, 1974 and made between The Commonwealth of Australia as lessor of the one part and the Company as lessee of the other part and all the lands comprised therein and upon such surrender the State shall grant to the Company a lease and licence in the form set out in the Schedule hereto in respect of the lands therein described for the purposes and the term and at the rentals therein specified and on and subject to the terms and conditions therein contained.”.

(3) Clause 7—

(a) subclause (2)—

by deleting subclause (2) and substituting the following—

“(2) That so long as the Company continues to perform its obligations under the provisions of this Agreement and continues to carry out cement and clinker manufacturing operations and any other operations approved by the State from time to time on the works site or such other sites owned by the Company which the State may approve pursuant to clause 3 (1) hereof the State shall ensure that no person shall be granted any rights under the provisions of the Mining Act or the Land Act over the works site, or such other sites as aforesaid, or such other land as the State may in its absolute discretion approve subject to any reservations, qualifications or conditions that it thinks proper in any case, such other land being—

- (a) land owned by the Company during the currency of this Agreement;
- (b) land in respect of which the Company has obtained a mining tenement (as defined in the Mining Act) and which is—
- (i) Crown land within the meaning of the Mining Act (other than such as is, or may at any time be, constituted a reserve under the Land Act); or
- (ii) a State forest or timber reserve under the Conservation and Land Management Act 1984;

- (c) land owned by a third party in respect of which the Company has entered into an agreement with the owner for the extraction of limestone and/or lime sand therefrom and the owner consents to the exemption provided by this subclause;

and the Company shall during the currency of this Agreement in respect of the works site and in respect of other sites approved pursuant to clause 3 (1) hereof and in respect of other land approved in accordance with this subclause and in respect of the sandbanks designated by clause 6 of this Agreement be exempted from all provisions of the Mining Act (subject to subclause (2a) of this clause) and of the Land Act (other than any provisions of the Mining Act and the Land Act or either of them made applicable as a condition of any approval of the State given in accordance with this subclause).”;

- (b) by inserting after subclause (2) the following subclause—

“(2a) Any exemption from the provisions of the Mining Act pursuant to subclause (2) of this clause shall apply in respect of any lands referred to in paragraph (b) of that subclause only so long as the land is—

- (i) being mined by the Company for limestone, lime sand and/or specified mineral; or
- (ii) in the opinion of the Minister for Minerals and Energy being held by the Company for the purpose of future mining for limestone, lime sand and/or specified mineral and the Company is not carrying out any mining operations (other than exploring for limestone, lime sand and/or specified mineral) thereon.”;
- (c) subclause (3)—

by deleting subclause (3) and the marginal note thereto and substituting the following—

Expenditure  
conditions

“(3) During the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to such mining tenements (as defined in the Mining Act) which in the opinion of the Minister for Minerals and Energy are reasonably required by the Company for the purposes of its present or future cement and clinker manufacturing operations and any other operations approved by the State from time to time.”.

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- (4) By inserting after clause 7 the following clause—

“7A. During the currency of this Agreement the Company may with the prior consent of the State (which consent shall not be unreasonably withheld) dispose of any part or parts of the works site or such other sites approved by the State pursuant to clause 3(1) hereof or such other land owned by the Company during the currency of this Agreement the subject of an approval by the State in accordance with clause 7(2) hereof. Upon any such disposition, all the provisions of this Agreement shall cease to apply to the land disposed of and the said land shall thereupon cease to have the benefit of the rights and privileges conferred by this Agreement.”.

- (5) Clause 8—

by deleting “the said map marked “B” ” and substituting the following—

“the said map marked “X” ”.

- (6) By inserting after clause 10 the following clauses—

“10A. The Company shall keep the Minister fully informed in respect of, and when and in such form as reasonably required by the Minister from time to time report to the Minister on, the measures it has taken, is taking or proposes to take for the monitoring, protection and management of the environment in respect of its operations including without limiting the generality of the foregoing provisions with respect to the following matters—

- (a) noise from the works site;
- (b) emissions and discharges into the air from the works site;
- (c) emissions, discharges and disposals of matter on or from the works site onto or into land;
- (d) sand recovery and washing at Woodman Point including the effects thereof on surrounding land and water areas;
- (e) the Company's operations under clauses 6 and 6B(5) hereof

and as and when required by the Minister the Company shall liaise and co-operate with the Minister on measures it is taking and take additional reasonable measures with respect to the monitoring, protection and management of the environment arising from its operations.

- 10B. (1) If the Company at any time during the currency of this Agreement desires to significantly modify, expand or otherwise vary its cement and clinker manufacturing operations carried on pursuant to this Agreement or desires to carry on operations other than the manufacturing of cement and clinker on the works site or such other sites owned by the Company which the State may approve pursuant to clause 3(1) hereof it shall give notice of such desire to the Minister and, if required by the Minister within 2 months of the giving of such notice, shall submit to the Minister (within such period as the Minister may reasonably allow) to the fullest extent reasonably practicable detailed proposals in respect of all matters covered by such notice and other relevant information as the Minister may reasonably require.



- (2) If the Minister does not require the Company to submit proposals under subclause (1) of this clause, the Company may, subject to compliance with all applicable laws, proceed with the modification, expansion or variation of its activities carried on pursuant to this Agreement.
- (3) On receipt of proposals pursuant to subclause (1) of this clause the Minister shall—
  - (a) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of any matters (in addition to those required to be addressed pursuant to subclause (1) of this clause) which the Minister reasonably requires to be covered by the said proposals; or
  - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such alteration or conditions.
- (4) The Minister shall within two months after receipt of proposals pursuant to subclause (3) of this clause give notice to the Company of his decision in respect to the same.
- (5) If the decision of the Minister is as mentioned in either of paragraph (b) or (c) of subclause (3) of this clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (6) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3) of this clause, the Company may within two months after receipt of the notice mentioned in subclause (4) of this clause—
  - (a) if the Company considers that the decision is unreasonable, elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision; or
  - (b) advise the Minister that the Company does not wish to proceed with the matters the subject of the said proposal whereupon the said proposals shall lapse.
- (7) The Company shall implement the decision of the Minister or an award made on an arbitration as the case may be in accordance with the terms thereof.

10C. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.”.

(7) Clause 17—

- (a) by inserting after the clause designation “17” the subclause designation “(1)”;
- (b) by deleting “Arbitration Act, 1895” and substituting the following—  
“Commercial Arbitration Act 1985”;
- (c) by inserting the following subclause—  
“(2) Notwithstanding the provisions of Section 20 of the Commercial Arbitration Act 1985 on any reference to arbitration pursuant to subclause (1) of this clause any party may be represented by a duly qualified legal practitioner or other representative.”.

(8) By inserting after clause 20 the following schedule—

“

#### THE SCHEDULE

#### WESTERN AUSTRALIA

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#### LEASE AND LICENCE

THIS INDENTURE OF LEASE AND LICENCE is made the \_\_\_\_\_ day  
of \_\_\_\_\_ 198 .

BETWEEN:

HER MAJESTY QUEEN ELIZABETH THE SECOND (hereinafter “the Lessor”) of  
the one part and

COCKBURN CEMENT LIMITED a company duly incorporated in the State of Western  
Australia and having its registered office at 191 St. George’s Terrace Perth in that State  
(hereinafter “the Company” which term shall include its successors and permitted  
assigns) of the other part.

WHEREAS:

- A. The Lessor is registered as the proprietor of an estate in fee simple in the land described in the First Schedule (“the land”) subject so far as concerns portions of the land to the encumbrance notified in that Schedule.
- B. By clause 6D of the Agreement it was agreed that upon surrender to the State (as defined in the Agreement) by the Company of the lease mentioned in that clause (“the earlier lease”) the State would grant to the Company a lease and licence in the form of this Indenture in respect of the land for the purposes and the term and at the rentals herein specified and on and subject to the terms and conditions herein contained.
- C. The Company has surrendered the earlier lease to the State and the Lessor and the Company now desire to execute this Indenture of lease and licence under and for the purposes of the Agreement.

NOW THEREFORE THIS INDENTURE WITNESSETH—

1. THE Lessor in consideration of the premises and also in consideration of the rent and covenants hereinafter reserved and contained and on the part of the Company to be paid performed and observed HEREBY—

- (a) DEMISES AND LEASES to the Company that portion of the land described in the Second Schedule (hereinafter “the demised land”);

and

- (b) GRANTS to the Company the rights liberties and authorities respectively set out in the Third Fourth Fifth and Sixth Schedules in respect of the several portions of the land described in those schedules (hereinafter “the licensed areas”)

TO HOLD AND ENJOY the same unto the Company UPON AND SUBJECT to the covenants conditions provisions powers and reservations herein contained for a term commencing on the 1st day of April 1987 and expiring on the day on which the period of the dredging rights conferred on the Company by clause 6(1) of the Agreement (including any extension thereof pursuant to clause 6(5) of the Agreement) terminates or is determined but determinable as hereinafter provided (hereinafter “the said term”) the Company YIELDING AND PAYING therefor to the Lessor an annual rent of EIGHT THOUSAND FOUR HUNDRED DOLLARS (\$8 400) to be paid in advance on the 1st day of April in each and every year commencing on the 1st day of April 1987 AND SUBJECT TO reappraisalment of the rent as provided in clause 4(c).

2. THE Company to the intent that the obligations may continue throughout the said term HEREBY COVENANTS with the Lessor as follows:—

- (a) The Company will pay to the Lessor the rent hereby reserved (subject however to reappraisalment as herein provided) at the time and in the manner aforesaid without any abatement or deduction whatsoever;
- (b) Subject to the Agreement the Company will pay and discharge on the due date for payment thereof all present and future rates taxes charges assessments duties impositions penalties and other outgoings whatsoever which now are or during the said term shall be assessed and charged upon or in respect of the demised land and the licensed areas and the services and utilities provided therefor and all charges for water electricity and power used and consumed thereon;
- (c) The Company will at its own cost and expense in all things maintain the works and facilities now and hereafter established on the demised land and the licensed areas for the purpose of dredging washing processing and pumping of shell sand and the Company will at no time during the said term without the prior consent of the Lessor use the demised land or the licensed areas for any other purpose;
- (d) The Company will not without the consent of the Lessor build erect or install on or affix to or permit or allow to be built erected or installed on or affixed to the demised land or the licensed areas any additional buildings structures or improvements (either above or below the surface of the demised land and the licensed areas) and will submit to the Lessor with each application for consent thereto for approval by the Lessor plans and specifications in duplicate of the proposed works AND will make complete and carry out the work to the satisfaction of the Lessor in accordance with the plans and specifications approved by the Lessor;
- (e) Except for the purposes of necessary maintenance repairs or reinstatement and then only for such length of time as shall be necessary and proper for such purpose, the Company will not pull down demolish or remove or cause to be pulled down

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demolished or removed during the term hereby granted any building structure or improvement erected in upon under or over the demised land or the licensed areas without the prior consent of the Lessor;

- (f) The Company will at its own expense and to the satisfaction of the Lessor at all times during the said term put keep and maintain the demised land and the licensed areas and all new altered and improved buildings erections additions and improvements (including inter alia all fences gates tanks roadways and pipelines) and also all plant machinery electrical installations and electrical and other fixtures and fittings which may be for the time being erected or in the process of construction or situation thereon therein or thereover in good and substantial repair order and condition and in clean tidy and sanitary condition and safe for workmen and visitors to the demised land and the licensed areas;
- (g) The Company will forthwith on demand of the Lessor and at its own cost and expense make good replace and restore any damage which may be caused to or suffered by the land and buildings of the Lessor or of any other lessees of the Lessor by reason of the erection construction operation working maintenance and use of the works and facilities established on the demised land and the licensed areas by the Company its servants agents contractors invitees or licensees;
- (h) The Company will at all times and in all respects at its cost and expense perform and comply with the provisions of all statutes (both State and Federal) now or hereafter in force and of all regulations statutory rules and by-laws made thereunder and all lawful requirements and orders of any authority statutory or otherwise which affect the demised land or the licensed areas or the use thereof or the construction operation maintenance and use of any work installation plant machinery equipment service or facility thereon or used in connection therewith or which impose any duty or obligation upon the owner or occupier of the demised land or the licensed areas AND in particular without derogating from the generality of the foregoing the Company will comply with the provisions of the Fremantle Port Authority Act 1902 the Local Government Act 1960 the Electricity Act 1945 the Factories and Shops Act 1963 the Machinery Safety Act 1974 the Water Authority Act 1984 and the Health Act 1911 and all by-laws regulations proclamations and orders made thereunder and will perform discharge and execute all requisitions and work and do and perform all such acts and things upon and unto the demised land and the licensed areas or any pipeline or road or way or any part thereof as are or may be required or directed to be executed or done (whether by the Lessor or the Company) by any Local Authority Health Board Health Commissioner or Water Board or by any other local or public authority or by order or in pursuance of any statute (State or Federal) now or hereafter in force or by order or in pursuance of any by-law or regulation under any such statute;
- (i) The Company shall keep the land of the Lessor free and clean of any rubbish or spoil which may be spilt or deposited thereon by the Company or its servants workmen agents or contractors using the demised land the licensed areas or any pipeline or road or way and the Company will at all times take all such reasonable measures as are required by the Lessor for the purpose of preventing any materials whatsoever escaping from any pipeline or any road or way whilst they are in use and will install such devices for this purpose as are reasonably required by the Lessor;
- (j) At all times during the continuance of this lease and license the Company its officers agents servants and workmen will use their best endeavours to prevent any injury to or loss of life of any person and any damage of or injury to any property by reason of the erection construction maintenance and use of any powerline pipeline road or way on the licensed areas;
- (k) The Company will permit the Lessor or its agents workmen architects surveyors engineers or employees to enter upon the licensed areas to carry out such works or services on the licensed areas (not being works or services which would if carried out

prejudice or interfere with the use by the Company of the demised land or the licensed areas in accordance with the provisions of this Indenture) as the Lessor in its discretion shall deem fit PROVIDED THAT in exercising the rights conferred on it by this clause the Lessor shall use its best endeavours to ensure that use by the Company of the demised land and the licensed areas in accordance with the provisions of this Indenture is not prejudiced or interfered with;

- (l) The Company will permit the Lessor by its agents or servants with or without workmen and others at all reasonable times to enter upon and view the condition of the demised land and the licensed areas and will forthwith (so far as the Company is liable) execute all repairs and works reasonably required to be done thereto or to any improvements erected thereon by notice given by the Lessor PROVIDED ALWAYS THAT if the Company shall not within a space of fourteen (14) days after service of such notice commence and proceed diligently with the execution of the repairs and works mentioned in such notice it shall be lawful for the Lessor and its agents servants workmen architects surveyors engineers and employees to enter upon the demised land and the licensed areas and execute such repairs and works and the cost thereof shall be a debt due from the Company to the Lessor and bear interest at the rate of FIFTEEN per centum per annum and be forthwith recoverable by action;
- (m) The Company will permit the Lessor its servants agents or workmen at all times to enter upon and carry out such duties and exercise such powers upon the demised land and the licensed areas as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of any enactment or any regulation made thereunder and the Company shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by any action other than negligence on the part of the Lessor its servants agents or workmen PROVIDED THAT the Lessor will use its best endeavours to ensure that all such duties are carried out and all such powers are exercised in such manner as not to interfere unduly with the operations of the Company in the use of their facilities upon the demised land and the licensed areas;
- (n) The Company will not without the prior consent of the Lessor carry on or permit or suffer to be carried on in or upon the demised land the licensed areas or any part thereof any noxious noisome or offensive trade or business occupation or calling or do or omit to be done or suffer to be done or omitted any act matter or thing whatsoever which shall at any time during the said term be or grow to be a nuisance to the occupiers or owners of adjoining lands and properties;
- (o) The Company will not do or leave undone or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may properly be deemed to be a nuisance by any local or public authority or within the meaning of any statute (State or Federal) now or hereafter in force or any regulations or by-laws made thereunder may exist or continue upon or in connection with the demised land or the licensed areas or any business carried on upon the same or the use or occupancy thereof AND will forthwith abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such statute regulations or by-laws and of every requisition and order of any local or other public authority in reference thereto;
- (p) The Company will pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend or be called upon to repay in or about or in connection with performing discharging or executing any requisitions or works or abating any nuisance or alleged nuisance or with undertaking any obligation or paying any money which the Company is obliged to perform discharge execute or pay pursuant to the terms hereof and which contrary to the agreement herein contained the Company neglects or fails to perform discharge execute or pay and to pay the same to the Lessor notwithstanding that by any statute by-law or regulation the Lessor is liable alone or jointly with the Company and/or others to perform discharge execute or pay for the same or any part thereof;

- (q) The Company shall insure and keep insured at its own cost and expense all buildings structures and improvements erected or made by the Company on the demised land and the licensed areas from loss or damage by fire storm tempest and/or explosion and will provide to the Lessor or its agents on request full particulars of such insurance;
- (r) The Company will not do or permit to be done anything whereby the policy or policies of insurance or coverage in respect of damage by fire on any property of the Crown or of any instrumentality of the Crown or of the Lessor in or about the neighbourhood of the demised land and the licensed areas may become void or voidable AND where the rate of premium on any policy or policies of insurance in respect of any property of the Crown or any instrumentality of the Crown or the Lessor—

(i) which is insured against damage by fire at the date of commencement of this lease and licence is increased on account of any of the purposes for which the demised land or the licensed area is or is about to or may hereafter be used pursuant to this Indenture;

or

(ii) which is hereafter insured against damage by fire is in excess of the rate or premium which would be payable if the demised land or the licensed area were not used for all or any of the purposes for which it is leased or licensed pursuant to this Indenture as the case may be

THEN the Company shall at all times during the currency of this Indenture in respect of that policy or those policies pay to the Lessor the amount by which the premium or premiums thereon is increased or is in excess of the amount of the premium or premiums which would be payable if the demised land and the licensed areas were not used for all or any of the purposes for which it is leased or they are licensed;

- (s) The Company will at its own cost and expense in all things provide install and maintain at the most advantageous point on the demised land and the licensed areas such fire fighting and control equipment and fire protection services as are agreed on from time to time between the Lessor and the Company and as shall be in conformity with all statutory fire control standards applicable in respect of the demised land and the licensed areas and the purposes for which they are used and in case of any difference or dispute between the Lessor and the Company touching this subclause the difference or dispute shall be referred to the Chief Officer of the Western Australian Fire Brigades Board whose determination shall be final and conclusive between the Lessor and the Company;
- (t) The Company will indemnify and keep indemnified the Lessor the Minister for Lands and the Fremantle Port Authority and their respective 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 or on behalf of the Company pursuant to this Indenture or the Agreement or relating to its operations or rising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Indenture or the Agreement or the plant apparatus or equipment installed in connection therewith;
- (u) The Company will not affix or exhibit or cause or permit to be affixed or exhibited on any part the demised land or the licensed areas any poster signboard neon sign or other advertisement except as shall be first approved by the Lessor (which approval shall not be unreasonably withheld);

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- (v) The Company will not except in accordance with the provisions of the Agreement assign mortgage charge encumber sublet dispose of or part with possession of the demised land or the licensed areas or any part thereof or its interest under this Indenture or procure allow or suffer the demised land or the licensed areas or any part thereof to be assigned mortgaged charged encumbered sublet disposed of or the possession thereof parted with for all or any part of the said term and the provisions of Sections 80 and 82 of the Property Law Act 1969 are expressly excluded from this Indenture;
- (w) The Company will at all times during the said term duly and punctually observe perform and comply with all the covenants agreements conditions provisions and obligations on the part of the Company contained or implied in the Agreement;
- (x) The Company will pay all stamp duty on this Indenture and all usual counterparts;
- (y) Subject to clause 4 (d) the Company will yield up the demised land the licensed areas and all buildings fences gates tanks pipelines roads ways fixtures fittings plant machinery and other improvements thereon therein or thereover at the expiration or sooner determination of this Indenture in good and substantial repair and condition and as the case may require in proper working order and condition as shall be in accordance with its covenants herein contained.

3. THE Lessor HEREBY COVENANTS with the Company that the Company paying the rent hereby reserved and duly and punctually observing performing and complying with the terms covenants agreements stipulations and conditions herein and on its part to be observed performed and complied with shall peaceably hold and enjoy the demised land and the licences rights liberties and authorities hereby granted during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

4. AND IT IS MUTUALLY AGREED AND DECLARED by and between the parties hereto as follows:—

(a) If—

- (i) the rent hereby reserved or any part thereof is unpaid for one month after becoming payable (whether formally demanded or not) and such default continues for a further period of one month after notice by the Minister for Lands to the Company specifying the non-payment complained of; or
- (ii) the Company fails or ceases to use the demised land or the licensed areas for the purposes aforesaid for a continuous period of one hundred and eighty (180) days without the approval of the Lessor (such approval not to be unreasonably withheld); or
- (iii) any covenant on the Company's part herein contained or implied is not performed or observed and the default in such performance or observance continues for one month after service of a notice on the Company calling upon it to remedy such default within that time or such longer period as may be specified in that notice; or
- (iv) the Company shall go into liquidation either voluntarily or involuntarily (except for the purposes of reconstruction or amalgamation); or
- (v) the Agreement terminates

THEN in any of the said cases it shall be lawful for the Lessor at any time thereafter to re-enter into and upon the demised land and licensed areas or any part thereof in the name of the whole and the same to have again repossess and enjoy and to determine the rights liberties and authorities hereinbefore granted

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to the Company and eject the Company from the demised land and the licensed areas as if this Indenture had never been executed without making any compensation to the Company but without prejudice to any right of action of the Lessor in respect of any breach of the Company's covenants or agreements or of any terms conditions and provisions herein contained;

(b) Subject to the provisions of the Agreement it shall be lawful at all times for the Lessor—

- (i) to require the Company to consent to the granting of such easements (including easements without dominant tenements) or rights in or over the licensed areas as may from time to time be necessary for the overall development of the licensed areas or for the overall development or use of the surrounding lands; and
- (ii) to use or permit the use of the licensed areas as may be necessary for the overall development or use of the licensed areas 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 Company or unduly interfere with the operations of the Company under the Agreement;

(c) The Lessor shall be at liberty to reappraise the annual rent of the demised land and the licensed areas in respect of—

- (i) each three (3) year period of the said term commencing on the 1st day of April 1990;

and

- (ii) the balance of the said term commencing on the 1st day of April 2020

AND subject to the Minister for Lands or a person authorised by him in that behalf within the period of three (3) months immediately preceding the first day of the period in respect of which the reappraised rent is payable giving notice to the Company stating therein the amount of the reappraised rent and the period in respect of which it is payable the reappraised rent so notified shall be payable for the demised land and the licensed areas during the period notified at the times and in the manner hereinbefore provided and in all respects the demised land and the licensed areas shall continue to be held by the Company on the same terms and conditions as are herein contained unless within one month from the date of that notice the Company by notice addressed to the Minister for Lands objects to the reappraised rent so notified and requests a determination of the rent to be applicable for the relevant period in which event the rent shall be submitted for arbitration as hereinafter provided and the rent so determined shall be payable in respect of the demised land and the licensed areas for the relevant period and until the rent is so determined the Company shall pay to the Lessor the reappraised rent notified by that notice without any deduction or abatement and upon the rent being so determined the Lessor will refund any rent which according to such determination appears to have been overpaid or such rent shall be adjusted as required by the determination PROVIDED THAT in the event of the rent determined being the same as or greater than the rent notified by the notice aforesaid all costs of the determination shall be borne by the Company and in the event of such rent being less than notified as aforesaid all such costs shall be borne by the Lessor PROVIDED FURTHER THAT in determining the amount of the reappraised rent no regard shall be had to the value of any buildings structures improvements plant or equipment constructed or erected on or affixed to the demised land or the licensed areas at the cost and expense of the Company AND PROVIDED ALSO THAT in the event of failure to reappraise the



annual rent of the demised land and the licensed areas in respect of any period as aforesaid then the annual rent payable for that period shall be the annual rent payable in respect of the immediately preceding period;

- (d) If at the expiration or sooner determination of this Indenture there shall be no subsisting material breach of any condition herein contained on its part to be observed and performed the Company may at any time within three (3) months (or such longer period not exceeding six (6) months as the Minister in his discretion may determine) immediately following such expiration or sooner determination as aforesaid take down remove and carry away the buildings structures improvements plant and equipment erected or brought upon the demised land or (with the exception of any road or way) the licensed areas by the Company. The Company shall fill in consolidate and level off any unevenness excavation or hole caused thereby and leave the demised land and the licensed areas in a clean and tidy condition PROVIDED that no compensation shall be payable to the Company in respect of the buildings structures and improvements not so removed from the demised land nor in respect of any part of the powerlines pipelines and the roads and ways remaining on the licensed areas at the expiration of the aforesaid period and thereupon they shall become the absolute property of the Lessor;
- (e) (i) Any dispute or difference between the parties arising out of or in connection with this Indenture or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Indenture or any such amendment variation or addition or as to the rights duties or liabilities of any party thereunder or as to any matter to be agreed upon between the parties under this Indenture shall in default of agreement between the parties and in the absence of any provision in this Indenture to the contrary be referred to and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 PROVIDED THAT this paragraph shall not apply to any case where the Lessor the State or any Minister in the Government of the State is by the Agreement or this Indenture given either expressly or impliedly a discretionary power;
- (ii) Notwithstanding the provisions of Section 20 of the Commercial Arbitration Act 1985 on any reference to arbitration pursuant to paragraph (i) of this subclause any party may be represented by a duly qualified legal practitioner or other representative;
- (f) Any notice consent or other writing authorised or required by this Indenture to be given or sent shall be deemed to have been duly given or sent by the Lessor if signed by the Minister for Lands or by any senior officer of the public service of the State acting by direction of that Minister and forwarded by prepaid registered post to the Company at its registered office for the time being in the State and by the Company if signed by a director manager or secretary of the Company or by any person or persons authorised in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid registered post to the Minister for Lands at his office in Perth AND any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post;
- (g) In this Indenture unless the contrary intention appears—
- “the Agreement” means the Agreement (of which a copy is set out in the First Schedule to the Cement Works (Cockburn Cement Limited) Agreement Act 1971) as amended by the two Agreements (of which copies are set forth in the Second and Third Schedules to that Act) all of which Agreements were ratified by that Act;

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

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"Crown" means the Crown in right of the State of Western Australia;

"Minister" means the Minister in the Government of the State for the time being responsible (under whatsoever designation style or title) for the administration of the Cement Works (Cockburn Cement Limited) Agreement Act 1971 and includes the successors in office of that Minister;

"Minister for Lands" means the Minister in the Government of the State for the time being responsible (under whatsoever designation style or title) for the administration of the Land Act 1933 and includes the successors in office of that Minister;

"month" means calendar month;

"person" or "persons" include bodies corporate;

"the State" means the State of Western Australia;

Reference in this Indenture to any 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 or which forms part of and is incorporated therein and the regulations for the time being in force thereunder.

#### FIRST SCHEDULE

("the land")

Lots 51, 52, 53, 54, 55 and 59 on L.T.O. Plan 14756, Lots 56, 57 and 58 on L.T.O. Plan 14758 and Lot 61 on L.T.O. Diagram 67078 (copies of the said plans and diagram having been initialled by or on behalf of the Lessor and the Company for the purpose of identification).

#### Encumbrance

As to Lots 56, 57 and 58 on L.T.O. Plan 14758 only—

Transfer (Water Authority easement).

#### SECOND SCHEDULE

("the demised land")

THAT portion of Lot 59 on L.T.O. Plan 14756 delineated and outlined grey.

#### THIRD SCHEDULE

##### Power Lines

The right for the Company its servants agents and workmen at all times and for all purposes connected with the demised land and the licensed areas and with or without vehicles to enter upon those portions of the land hereunder in this Schedule mentioned ("this licensed area") and to construct and maintain thereon or therein a power line or power lines and the Company agrees with the Lessor:

- (a) The term "power line" includes all poles wires cables fittings and equipment associated therewith;
- (b) All power lines shall be constructed to specifications approved by the State Energy Commission of Western Australia and shall be completed and thereafter maintained in a standard to the reasonable satisfaction of both the Commission and the Lessor;

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                                 *Agreement Amendment Act*

- (c) Forthwith after opening up any part of this licensed area to fill in the same and clear and make safe and level the surface thereof;
- (d) As to any section of a power line which is laid or to be laid underground to ensure that the same is covered to a depth of at least seventy five (75) centimetres and does not interfere with Telecom Australia telegraph or telephone lines;
- (e) As to any line overhead or underground which is laid in any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority;

and

- (f) Not to make any alterations or additions to any power line without the prior consent of the Lessor which consent shall not be unreasonably withheld.

The land referred to in this Schedule comprises Lots 52, 53 and 54 and that portion of Lot 55 coloured green all on L.T.O. Plan 14756, Lots 57 and 58 on L.T.O. Plan 14758 and that portion of Lot 61 on L.T.O. Diagram 67078 coloured purple.

#### FOURTH SCHEDULE

##### Rights of Way

The right for the Company its servants agents workmen and others thereunto authorised by the Company in common with others from time to time entitled to use the same to go pass and repass at all times hereafter during the said term and for all purposes connected with the demised land and the licensed areas either with or without vehicles into and out of and from the demised land through over and along the road or way or several roads or ways situated on those portions of the land hereunder in this Schedule mentioned ("this licensed area") and the Company agrees with the Lessor:

- (a) The Company will pay to the Lessor the whole or an equitable part of the cost of making good any damage to or deterioration of the roads and ways as may be reasonably required by the Lessor having regard to the use of those roads and ways by others;
- (b) As to any road or way which is situated on any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority;
- (c) In respect of the portion of Lot 61 on L.T.O. Diagram 67078 coloured brown the rights hereinbefore in this Schedule conferred shall not arise or be exercisable until such time as the State or the Lessor completes the construction thereon of a road or way (notice of which completion shall be given to the Company) and upon such notice being given the rights hereinbefore in this Schedule conferred in respect of the portion of Lot 52 on L.T.O. Plan 14756 coloured orange shall immediately cease and determine.

The land referred to in this Schedule comprises Lots 52, 53, 55, that portion of Lot 54 coloured green and that portion of Lot 59 coloured red all on L.T.O. Plan 14756, Lots 57 and 58 on L.T.O. Plan 14758 and that portion of Lot 61 on L.T.O. Diagram 67078 coloured brown.

#### FIFTH SCHEDULE

##### Car Parking

The right for the Company its servants agents workmen and others thereunto authorised by the Company to use those portions of the land hereunder in this Schedule mentioned as are now or hereafter during the said term set aside for the purposes of motor vehicle parking and vehicular and pedestrian access ("this licensed area") and the Company agrees with the Lessor:

As to any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority.

The land referred to in this Schedule comprises those portions of Lots 52 and 53 on L.T.O. Plan 14756 and Lot 58 on L.T.O. Plan 14758 all coloured yellow.

#### SIXTH SCHEDULE

##### Pipelines

The right for the Company its servants agents and workmen at all times and for all purposes connected with the demised land and the licensed areas and with or without vehicles to enter upon those portions of the land hereunder in this Schedule mentioned ("this licensed area") and to lay construct use and maintain thereon or therein a line or lines of pipes for pumping water sand or spoil and the Company agrees with the Lessor;

- (a) The term "pipeline" includes all pumps tanks fittings and appliances associated therewith;
- (b) The Company shall at all times during the said term observe perform and comply with any lawful condition or requirement at any time made by the Water Authority of Western Australia regarding the laying construction use and maintenance of any pipeline;
- (c) Not to make any alterations or additions to any pipeline without the prior consent of the Lessor which consent shall not be unreasonably withheld;
- (d) Whenever reasonably required by the Lessor so to do but in any event not later than the expiration of the serviceable life of the pipeline presently constructed on Lots 51 on L.T.O. Plan 14756 and 56 on L.T.O. Plan 14758 to lay and construct a new pipeline for the same purpose alongside the pipeline presently constructed on Lots 52 and 54 on L.T.O. Plan 14756 and Lot 61 on L.T.O. Diagram 67078 and on commissioning of the new pipeline to remove the pipeline from Lots 51 and 56 to the extent reasonably required by the Lessor;
- (e) Upon commissioning of the new pipeline referred to in paragraph (d) the rights hereinbefore in this Schedule conferred in respect on Lots 51 and 56 shall immediately cease and determine without any abatement of rent.

The land referred to in this Schedule comprises Lots 51, 54, that portion of Lot 55 coloured green and those portions of Lots 52 and 53 coloured yellow and green all on L.T.O. Plan 14756, Lots 56, 57 and 58 on L.T.O. Plan 14758 and Lot 61 on L.T.O. Diagram 67078.



THE COMMON SEAL of  
FREMANTLE PORT AUTHORITY  
was hereunto affixed  
pursuant to a resolution  
of the said Authority by  
and in the presence of—

}

(C.S.)

Chairman of Commissioners T. J. LEWIS

Commissioner J. R. WATSON

A/Secretary R. SIMPSON

THE COMMON SEAL of  
COCKBURN CEMENT LIMITED  
was hereunto affixed by  
authority of the Board  
and in the presence of—

}

(C.S.)

Director D. W. BIBBY

Secretary B. J. FARRELL

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