

Western Australia

Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985

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**Camballin Farms (AIL Holdings Pty. Ltd.)
Agreement Act 1985**

CONTENTS

1.	Short title	1
2.	Commencement	1
3.	Interpretation	1
4.	Ratification of Agreement	1
5.	Orders in Council to take effect	2
6.	By-laws	2
	Schedule	3
	Notes	
	Compilation table	39

Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985

An Act to ratify an agreement between the State of Western Australia and AIL Holdings Pty. Ltd. with respect to the disposal of certain Crown lands, the development of those lands for irrigated agriculture and for incidental and other purposes.

1. Short title

This Act may be cited as the *Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985*¹.

2. Commencement

This Act shall come into operation on the day on which it is assented to by the Governor¹.

3. Interpretation

In this Act —

“**the Agreement**” means the agreement a copy of which is set forth in the Schedule and that agreement as altered from time to time in accordance with its provisions.

4. Ratification of Agreement

- (1) The Agreement is hereby ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.

5. Orders in Council to take effect

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

6. By-laws

By-laws may be made for the purposes of and in accordance with the Agreement and the by-laws —

- (a) shall be published in the *Government Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the by-laws;
- (c) may prescribe penalties not exceeding \$100 for a breach of any of the by-laws;
- (d) are not subject to section 42 of the *Interpretation Act 1984*, but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*; and
- (e) may be altered and repealed in accordance with the Agreement.

Schedule

[Section 3]

THIS AGREEMENT is made the 14th day of October 1985
BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time ("the State") of the one part AND AIL HOLDINGS PTY. LTD. a company incorporated in the State of Western Australia and having its registered office at care of Messrs. Freehill Hollingdale and Page, Solicitors, 9th Floor, Australia Place, 15-17 William Street, Perth, Western Australia ("the Company" in which term shall be included its successors and permitted assigns) of the other part.

WHEREAS:

- (a) the State and the Company (pursuant to assignment) are now the parties to the agreement dated the 23rd April, 1969 scheduled to the *Northern Developments Pty. Limited Agreement Act 1969* as altered by agreements dated respectively the 20th October 1969, the 3rd May 1978 and the 19th November 1981 (hereinafter as so altered called "the 1969 Agreement") and to the agreement approved and ratified by the *Northern Developments Pty. Limited Agreement Amendment Act 1981* (hereinafter called "the 1981 Agreement");
- (b) the Company is registered as the proprietor of Pastoral Leases No. 3114/975 and No. 398/728 (Crown Leases No. 227/1974 and No. 152/1985) and Fitzroy Locations 30 and 39;
- (c) development of Camballin Farms in the manner contemplated by the 1969 Agreement and the 1981 Agreement has been shown as unlikely to be successful and it is intended to supersede the 1969 Agreement and the 1981 Agreement and to provide for the development of Camballin Farms on the terms and subject to the conditions hereinafter appearing;
- (d) the Company intends to undertake the investment and development programme outlined in the Investment and Development Submission;
- (e) the State has agreed to grant freehold title to the Company in respect to land developed in accordance with Approved Development Proposals.

NOW THIS AGREEMENT WITNESSES as follows: —

Schedule

Cancellation of Previous Agreements ²

1. The 1969 Agreement and the 1981 Agreement are hereby cancelled and the rights and obligations of the parties thereto and to any licences leases grants and other rights thereunder are hereby terminated without prejudice however to the right title and interest of the Company and its mortgagees transferees and successors in title to the land the subject of the Crown Grant referred to in subclause (1) of Clause 1 of the 1969 Agreement and the Crown Grant referred to in Clause 18A of that Agreement namely Fitzroy Locations 30 and 39.

Definitions and Interpretation ²

2. (1) In this Agreement except where inconsistent with the sense or context: —

“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 Development Proposal” means a proposal approved
pursuant to subclause (2) of Clause 6;

“associated company” means Camballin Farms Pty. Ltd. a company
incorporated in the said State and any other company approved
by the Minister for the purpose of this definition;

“Camballin Farms” means the areas of land (including Fitzroy
Locations 30 and 39) delineated and bordered pink on the plan
marked “A” initialled by or on behalf of the parties hereto for
the purposes of identification;

“Clause” means a Clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3
comes into operation 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;

“Investment and Development Submission” means the Investment and Development Submission delivered by Australasian Investments Limited to the State on 25th February 1985 and such amendments thereto as may be made by agreement between the Minister and the Company;

“Land Act” means the *Land Act 1933*;

“Leased Area” means Camballin Farms excluding Fitzroy Locations 30, 39 and 216 and so much of the required reserves as are within Camballin Farms;

“Minister” means the Minister of the Crown to whom the administration of the Act to ratify this Agreement 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 Company and includes the successors in office of the Minister;

“Minister for Water Resources” means the Minister of the Crown for the time being responsible for the administration of the *Water Authority Act 1984*;

“month” means calendar month;

“the Mortgagee” means such person as may from time to time with the consent of the Minister for Lands and Surveys be the holder of mortgage securities given by the Company over Camballin Farms and/or the rights of the Company under this Agreement and at the date of this Agreement includes AETNA Life Insurance Company;

“notice” means notice in writing;

“parcel of the Leased Area” means an area of land, to be approved by the Minister, comprised within the Leased Area and containing not less than 1 000 hectares;

“person” or “persons” includes bodies corporate;

“proposed public roads” means the proposed public roads as shown on the said Plan “A”;

Schedule

“required reserves” means lands required by the State as reserves for Uralla Creek, the 17 Mile Dam and associated works and the levee referred to in Clause 7 all as shown on the said Plan “A” and thereon coloured green red brown and blue;

“Rights in Water and Irrigation Act” means the *Rights in Water and Irrigation Act 1914*;

“said State” means the State of Western Australia;

“Special Lease” means the Special Lease to be granted to the Company by the State pursuant to Clause 5;

“subclause” means subclause of the Clause in which the term is used;

“the exchange area” means Fitzroy Location 216 being the land to be granted by the State in exchange for the land shown coloured red on the said Plan “A” being surrendered by the Company out of Fitzroy Location 30 pursuant to Clause 5;

“this Agreement” “hereof” and “hereunder” includes this Agreement as from time to time added to varied or amended;

“Water Authority” means the Water Authority of Western Australia established pursuant to the *Water Authority Act 1984*.

(2) In this Agreement: —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 29 to extend any period or date shall be without prejudice to the power of the Minister under Clause 29;
- (c) marginal notes do not affect the interpretation or construction²; and
- (d) reference to an Act includes the amendments to that 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.

Initial Obligations of the State ²

3. 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 prior to 31st December, 1985.

Ratification and Operation ²

4. (1) The provisions of this Agreement other than this Clause and Clauses 2 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before 31st December, 1985 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Special Lease ²

5. (1) The Company shall at its cost carry out or cause to be carried out as soon as practicable a survey of the Leased Area and shall have the same approved by the Surveyor General.

(2) On application made by the Company, as soon as practicable after the approval of the plan of survey referred to in subclause (1) for a special lease of the Leased Area the State shall provided there is no existing breach or non-observance of any of the terms and conditions on the part of the Company herein contained and subject to the surrender by the Company of the Leased Area and the required reserves out of Pastoral Leases No. 3114/975 and No. 398/728 (Crown Leases No. 227/1974 and No. 152/1985) and Fitzroy Location 30: —

- (a) grant or cause to be granted to the Company a lease of the Leased Area such lease to be granted under and except as otherwise provided in this Agreement subject to the Land Act but in the form set out in the Schedule hereto; and

Schedule

(b) cause a Crown Grant in respect of the exchange area to be issued to the Company in the form set out in the Third Schedule to the Land Act.

(3) Subject to the performance by the Company of its obligations under this Agreement the Special Lease of the Leased Area shall be for a period expiring on the 30th June, 2010 and the Special Lease shall be deemed to have commenced on the 1st July, 1985.

(4) The Company shall pay to the State in respect of the land comprised in the Special Lease a yearly rental calculated at the rate of \$50 for every 500 hectares or part thereof contained in the Special Lease (subject to increase in accordance with the provisions of Clause 13) payable half-yearly in advance on the 1st July and the 1st January in each year during the term of the Special Lease the first of such payments however to be made on the issue of the Special Lease and to be in respect of the period commencing on the day on which the term of the Special Lease shall be deemed to have commenced and expiring on the day immediately preceding the half-yearly day next after the date of grant of the Special Lease.

(5) The Company at its own cost and expense shall: —

(a) as and when required by the Minister from time to time 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 Camballin Farms or such part or parts thereof as may be so required a cattleproof fence;

(b) maintain and keep in repair all boundary fences of Camballin Farms (whether erected pursuant to paragraph (a) of this subclause or otherwise).

(6) Upon the expiration of the term of the Special Lease upon effluxion of time the Minister shall or upon the sooner determination of the Special Lease (for whatever cause) the Minister may except in either case as may be otherwise agreed between the Company and the Minister include in the said Pastoral Lease No. 3114/975 (or any substitute title issued in respect thereof) provided that the Company is then the holder of the said Pastoral Lease (or substitute title) such part or parts of the land included in the Special Lease before such expiration or determination as are in the Minister's opinion appropriately contiguous to the said Pastoral Lease (or substitute title).

Development ²

6. (1) The Company shall at its cost and expense proceed with the progressive and continuous development of the Leased Area for agricultural purposes generally in accordance with the Investment and Development Submission and in accordance with Approved Development Proposals.

Approved Development proposals ²

- (2) (a) The Company may from time to time submit to the Minister proposals for the development of parcels of the Leased Area. Without limiting the Minister's powers to seek information such proposals shall include details indicating: —
- (i) that the proposed development is compatible with overall development of Camballin Farms;
 - (ii) how road access is to be provided to the parcel of the Leased Area;
 - (iii) the works proposed to be constructed to irrigate and drain the parcel of the Leased Area and where necessary protect that parcel from flooding;
 - (iv) the crops proposed to be grown on the parcel of the Leased Area; and
 - (v) a timetable for the development and any conditions under which such development proposals may not proceed or may be discontinued.
- (b) The Minister shall promptly, but in any event within 2 months after the receipt of any such proposals give to the Company notice of either —
- (i) his approval thereof; or
 - (ii) any objections or alterations desired thereto and in such case shall afford the Company an opportunity to consult with and submit new or revised proposals to the Minister.
- (c) If within 2 months of receipt of a proposal pursuant to paragraph (a) of this subclause (2) agreement is not reached as to such proposal the same shall lapse on the expiration of such

Schedule

2 month period (but without prejudice to the right of the Company to make thereafter further proposals in respect of the same or other parcels of the Leased Area).

(3) The Company shall implement the Approved Development Proposals in accordance with the terms thereof PROVIDED HOWEVER that the Minister may approve variations thereto from time to time or may agree that the same need not be proceeded with.

(4) Where an Approved Development Proposal contains provision for the construction outside the boundaries of Camballin Farms of roads pump stations pipelines channels drains and appurtenant works and levees or any of them the Company shall surrender to the State the land on which the works are to be constructed or have been constructed upon which surrender the State shall create or cause to be created a reserve in respect of that land for the purpose of those works.

(5) The State acknowledges that proposals submitted under subclause (2) may differ from the experimental programme referred to in paragraph (b) of subclause (6) and agrees that the nature of and capital investment in that programme shall not constitute any precedent for proposals under this subclause (2) and that each proposal shall be considered upon its merits.

Crown Grants ²

(6) (a) Subject to the Company completing an Approved Development Proposal in accordance with the terms thereof and to the satisfaction of the Minister the Company shall be entitled to apply for a Crown Grant in respect of the parcel of the Leased Area the subject of that Proposal.

(b) Subject to the Company spending not less than \$3,400,000.00 by the 31st December 1990 on: —

(i) animal feed and feeding experiments;

(ii) human food crop experiments; and

(iii) partial restoration of irrigation works (for experiments)

generally in accordance with the experimental programme set out in the Investment and Development Submission (as that programme is amended or modified by the Company after

consultation with the Minister from time to time) the Company shall be entitled to nominate to the Minister land within the Leased Area not exceeding 2,000 hectares in area and subject to the Company making provision for road access to that land to the satisfaction of the Minister and subject to the Company constructing to the satisfaction of the Minister irrigation and drainage facilities in accordance with plans and specifications previously approved by the Minister in respect of that land shall be entitled to apply for a Crown Grant in respect of that land.

- (c) Where the Company has applied for a Crown Grant pursuant to paragraph (a) or (b) of this subclause (6) the State shall provided the Company is not in default of any conditions on its part in the Special Lease or this Agreement contained and subject to the surrender by the Company of the land applied for out of the Special Lease and the payment of the costs of survey and of the purchase price therefor calculated at the price of \$50 per hectare (subject to increase in accordance with the provisions of Clause 13.1) cause a Crown Grant to be issued as soon as practicable to the Company in respect of the land so applied for in the form set out in the Third Schedule to the Land Act.

Levee²

7. (1) The Company shall at such time as it may elect but not later than 31st December, 1989 repair and reconstruct or cause to be repaired and reconstructed to the satisfaction of the Minister the levee shown coloured brown and blue on the said plan "A" generally in accordance with the plans and specifications to which the levee was originally constructed or with such variations (which may include raising the height of the levee) as may be agreed by the Minister and for the purpose of such work the Company may enter upon the land reserved for the levee.

(2) Before carrying out or causing to be carried out any works pursuant to subclause (1) the Company shall consult with the Water Authority with regard to the cost of the proposed works and obtain the agreement of the Water Authority thereto. Where the Company and the Water Authority are unable to agree the cost of any such work the cost of that work shall be the cost determined by the Water Authority and the Water Authority shall unless it and the Company otherwise agree carry out or cause to be carried out that work for the Company at that cost and the Company shall reimburse the Water Authority

Schedule

progressively for that cost as it is incurred PROVIDED THAT the cost to be incurred by the Company shall not exceed the amount of the Levee Advance as defined in the loan facility agreement referred to in paragraph (c) of subclause (1) of Clause 32 unless the Minister and the Company otherwise agree.

(3) All work carried out by the Company pursuant to subclause (1) shall be carried out under the general supervision of the Water Authority.

Records²

8. The Company shall maintain proper books of account and records showing the amounts and particulars of expenditure incurred by the Company in carrying out the experimental programme referred to in paragraph (b) of subclause (6) of Clause 6 and the repair and reconstruction work referred to in Clause 7 to allow accurate determination of the costs thereof and shall permit the Minister or his nominee at all reasonable times to inspect the said books and records and take copies thereof.

Maintenance of Works²

9. (1) The State shall cause the Water Authority at its cost and expense: —
- (a) to maintain and keep in repair the Fitzroy River barrage and Uralla Creek offtake structure and water course, the 17 Mile Dam and appurtenant works necessary for the normal delivery of water therefrom; and
 - (b) subject to the land on which the same are constructed in each case being surrendered to the State and to the facilities and works hereinafter mentioned in each case being constructed by the Company as specified by this Agreement (or if not so specified then being constructed to the satisfaction of the Minister) to operate and maintain the levee referred to in Clause 7 and all pump stations pipelines channels drains and appurtenant works and levees constructed provided or installed by the Company on land outside Camballin Farms in accordance with Approved Development Proposals PROVIDED THAT the obligation of the State hereunder to operate and maintain any levee (other than the levee referred to in Clause 7) shall not arise until such levee shall have withstood two floods of the Fitzroy River sufficient in the opinion of the Minister to test the construction and design thereof.

- (2) The Company shall: —
- (a) at its own cost and expense during the continuance of this Agreement construct operate maintain keep in repair and replace whenever necessary all pump stations pipelines channels drains and appurtenant works within Camballin Farms that are necessary effectively to irrigate and drain Camballin Farms; and
 - (b) until the Water Authority shall assume the obligation to operate and maintain the same in accordance with paragraph (b) of subclause (1) at its own cost and expense operate and maintain the pump stations pipelines channels drains and appurtenant works and levees constructed provided or installed by the Company on land outside Camballin Farms in accordance with Approved Development Proposals and do all things necessary to protect and make good any damage to lands adjoining any such levee.

No Liability²

10. Notwithstanding the provisions of Clause 9 neither the State nor the Water Authority shall have any liability whatsoever in respect of any loss or damage arising as a result of any flooding over or through the levee referred to in Clause 7 (whether any such flooding occurs before or after completion of the work provided for in Clause 7) or over or through any other facilities works or levees the maintenance of which is the responsibility of the Water Authority pursuant to Clause 9 except where such loss or damage arises from negligence of the Water Authority its servants agents or contractors in maintaining such facilities works or levees.

Water Charges²

11. (1) The Company shall pay to the Water Authority water charges: —
- (a) in respect of each year from and including the year commencing 1st July, 1985 until the repair and reconstruction work on the levee referred to in Clause 7 is completed, at an annual rate of \$150,000.00; and
 - (b) thereafter during the currency of this Agreement at an annual rate of \$180,000.00 subject however to the provisions of subclause (5).

Schedule

Payment of the said water charges shall be by quarterly instalments in advance in each year on the quarter days the 1st July, 1st October, 1st January and 1st April PROVIDED THAT the first and second payments (due in respect of the period from 1st July 1985 to 31st December 1985) shall be made forthwith after the commencement date.

- (2) (a) The punctual payment of the amounts referred to in subclause (1) shall oblige the Water Authority (subject to the availability of water) to deliver to Camballin Farms during each year commencing 1st July such amount of water as will enable the Company to irrigate an area up to but not exceeding 7,500 hectares.
- (b) The Company shall pay to the Water Authority for all water delivered by the State in excess of that quantity in any year at the rate of \$20.00 (subject to the provisions of subclause (5)) per hectare of land irrigated in excess of 7,500 hectares.
- (c) Payment for excess water charges shall be made by the Company to the Water Authority within 30 days following the service of an assessment on the Company therefor.

(3) If any quarterly sum or excess water charge is not paid by the due date interest shall be charged at the rate of 18% per annum on a daily basis or such other rate as may be prescribed for late payments under Section 42AA of the Rights in Water and Irrigation Act. Unpaid amounts including interest charges may be recovered as provided in Section 40C of the Rights in Water and Irrigation Act.

(4) Notwithstanding the provisions for charging interest and other penalties, the Water Authority may refuse to supply water where any amount payable pursuant to this Clause is not paid within 30 days of the due date therefor.

Review ²

- (5) (a) The annual sum and rates per hectare of land irrigated referred to in subclauses (1) and (2) and the system of charging for water hereunder for the year commencing the 1st July, 1990 and each year (commencing on the 1st July) thereafter shall be subject to review by the Water Authority. Each review shall be carried out prior to the 30th April immediately preceding the commencement of the relevant year and after making such

review the Water Authority shall forthwith give written notice to the Company of the amount of the reviewed annual sum and rates and any changes to the system of charging and the amount of the reviewed annual sum rates and/or other charges shall become payable by the Company to the Water Authority in respect of the year for which they are made so payable.

- (b) Review of the annual sum and rates per hectare and/or any other charges in accordance with paragraph (a) of subclause (5) shall be on the basis that such water charges shall recover the estimated expenditure to be incurred by the Water Authority in operating and maintaining (but with no allowance for return on capital invested by the Water Authority) the facilities and works referred to in subclause (1) of Clause 9 in the relevant year or such proportion thereof as shall be determined from time to time by the Minister for Water Resources to be reasonable in the circumstances.
- (c) Where the Water Authority proposes changing the system of charging for water it shall consult fully with the Company in regard thereto.

Right to Subdivide ²

12. (1) The Company being the holder of the Special Lease (less any portions thereof granted to the Company pursuant to subclause (6) of Clause 6) and not being in default of the provisions of the Special Lease or of this Agreement and having proved to the satisfaction of the Minister the practicability and economic soundness of agricultural production on Camballin Farms shall have the right with the approval of the Minister to subdivide up to one half of the land then the subject of the Special Lease into holdings of a size and shape approved by the Minister for sublease of such holdings on the basis that the sublessee may purchase and acquire title to the land if and when a Crown Grant thereof is issued to the Company pursuant to this Agreement PROVIDED THAT the Company shall not be in breach of the provisions of this subclause (1) where the Company enters into an agreement requiring approval of the Minister hereunder and such agreement is expressly conditional on the Minister's approval being obtained and nothing in this Clause renders such a conditional agreement illegal or void by reason only that the agreement was entered into before the approval of the Minister to the agreement was obtained.

Schedule

(2) Any subdivision pursuant to subclause (1) shall provide for such roads irrigation channels drains and any 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 survey of the subdivision may be formally approved.

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

Review ²

13. During the six calendar months immediately preceding the expiration of each term of 5 successive years in the period commencing on the 1st July, 1985 and expiring on the termination of this Agreement the State may review and increase the rate per hectare payable by way of yearly rental for the land contained in the Special Lease and the amount per hectare payable by way of purchase price for grants of land within the Leased Area to be payable in each case in respect of the next succeeding term of 5 years in the event of the State making such review it shall forthwith give written notice to the Company of the increased rate or rates and the reviewed rate or rates (as the case may be) shall become payable by the Company in respect of the term for which they are so made payable.

Levee Credit ²

14. (1) The Company shall be entitled subject and in accordance with this Clause following completion of the repair and reconstruction of the levee referred to in Clause 7 to a credit against water charges payable pursuant to Clause 11 and at the time for payment of the moneys payable by the Company pursuant to Clause 33 (to the extent of the levee credit (if any) at that time) against those moneys of an amount equal to the cost of repairing and reconstructing the said levee which amount (adjusted as hereinafter provided) is in this Clause called "the levee credit" PROVIDED THAT the levee credit shall not exceed the amount of the Levee Advance as defined in the loan facility agreement referred to in paragraph (c) of subclause (1) of Clause 32 unless the Minister and the Company otherwise agree when authorising the extent of the works under Clause 7.

(2) The levee credit shall be increased by an amount equal to 3% per annum on each anniversary of the completion of the said levee such increase to

be calculated on the lowest balance of the levee credit for the preceding 12 months and to be capitalised.

(3) As and when water charges become payable to the Water Authority after completion of the repair and reconstruction of the levee referred to in Clause 7 pursuant to paragraph (b) of subclause (1) or paragraph (b) of subclause (2) of Clause 11 the State shall offset the amount thereof against the levee credit until the levee credit is extinguished.

(4) The levee credit shall be reduced by the offsetting of water charges and (to the extent of the levee credit) moneys payable by the Company pursuant to Clause 33 as herein provided. In the event this Agreement ceases or determines before the levee credit is extinguished the State shall not be liable to make any payment to the Company in respect thereof.

Modification of Land Act ²

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

- (a) the deletion of the proviso to section 116;
- (b) the deletion of section 135; and
- (c) the inclusion of a power to offer for sale or grant leases for terms or periods and on such terms and conditions and in forms consistent with the provisions of this Agreement in lieu for the terms or periods, the terms and conditions and the forms referred to in the Land Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Land Act.

(2) The provisions of subclause (1) shall not operate so as to prejudice the rights of the State to determine any lease or other right or title in accordance with the other provisions of this Agreement.

Survey Costs ²

16. The Company shall pay to the State upon demand the costs of such topographical and boundary definition surveys in respect of the required reserves and reserves created pursuant to subclause (4) of Clause 6 as the Minister in his absolute discretion considers necessary. The costs of those surveys shall be in accordance with Regulation 150 of the *Regulations for the*

Schedule

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.

User of Leased Area ²

17. (1) Without the consent of the Minister the Company shall not use or permit or suffer to be used the Leased Area for any purpose other than agricultural purposes.

(2) Whenever any part or parts of the Leased Area is being used for pastoral or grazing purposes, Part VI of the Land Act shall, to the extent determined by the Minister, apply to that land as if it were the subject of a pastoral lease under the Land Act.

Road ²

18. The State will use all reasonable endeavours to have maintained a trafficable public road from Derby to the boundary of 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.

Inspection ²

19. The State may from time to time inspect and examine the operations of the Company hereunder and for this purpose the Minister and servants workmen contractors and agents of the State may enter upon and pass and repass with or without vehicles over Camballin Farms and may conduct tests and experiments on Camballin Farms. If as a result of such investigations the Minister after consultation with the Minister administering the *Soil and Land Conservation Act 1945* is of the opinion that any land is likely to be damaged or detrimentally affected by salinity as a result of the Company's operations the Company shall take such remedial measures as the Minister may determine.

Underground Water ²

20. For the purpose of this Agreement and for the purpose of serving Camballin Farms the Company may develop underground water sources on Camballin Farms but in doing so shall perform and observe all the provisions of the Rights in Water and Irrigation Act and of any other Act or law relating thereto.

Irrigation Board ²

21. (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 Camballin Farms or becomes a purchaser under an agreement for sale contemplated by Clause 12 the Governor may by Order in Council direct that for Camballin Farms 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 subclause and dissolve any Board constituted pursuant to such Order.

- (2) (a) 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 Resources;
 - (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) 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.
- (b) 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 3 years and the time at which they shall go out of office and shall make provisions for the appointing of deputies and for the filling up of vacancies and for all other matters incidental to the office of member.

Meetings ²

- (3) (a) 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.
- (b) The Chairman of the Board and in his absence his deputy shall be chairman of all meetings of the Board.

Schedule

- (c) The quorum for a meeting of the Board shall be the chairman of the meeting and the 2 members or in the absence of both or either of them their respective deputies or deputy.
- (d) 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.
- (e) 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.

(4) 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.

By-laws ²

(5) 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:

- (a) the general conduct of its business and proceedings;
- (b) preventing and remedying the waste misuse or undue consumption of water contained in or supplied from any dam or through the distribution system or otherwise under the control of the Board;
- (c) subject to the provisions of Clause 22 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;
- (d) 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;
- (e) 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;
- (f) specifying the purpose 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;

- (g) the protection of the water and every part of the irrigation system from trespass or injury;
- (h) the manner in which may be ascertained (whether by measuring instrument or otherwise) the quantity of water supplied to any owner or occupier of a holding in Camballin Farms and the manner by which the quantity of water so supplied may be proved in any proceedings; and
- (i) for any other purposes relating to the administration of the irrigation of Camballin Farms and the exercise of the powers vested in the Board.

Insufficiency of Water²

22. (1) If at any time in the opinion of the Minister for Water Resources the supply of water at the disposal of the Company is insufficient to afford all owners or occupiers of holdings in Camballin Farms 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 Camballin Farms 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 Camballin Farms if the want of such supply arises from drought or any other cause beyond the reasonable control of the Company.

Schedule

Assignment ²

23. (1) Subject to the provisions of this Clause the Company may at any time: —

- (a) assign mortgage charge sublet or dispose of to an associated company or the Mortgagee as of right or to any other company or person with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its, rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Company hereunder;
- (b) appoint as of right an associated company or the Mortgagee or any receiver appointed by the Mortgagee or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities that are or may be conferred on the Company hereunder;

subject however in the case of an assignment subletting or disposition to the assignee sublessee disponee or the appointee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting disposition or appointment PROVIDED THAT the Company shall not be in breach of the provisions of this Clause where the Company enters into an agreement which requires or the acts or matters to be done thereunder require consent of the Minister hereunder and such agreement is expressly conditional on the Minister's consent being obtained to the agreement or the acts or matters (as the case may be) and nothing in this Clause renders such a conditional agreement illegal or void by reason only that the agreement was entered into before the consent of the Minister to the agreement or the acts or matters (as the case may be) was obtained.

(2) Notwithstanding anything contained in or anything done under or pursuant to this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease easement grant or other title the subject of an assignment mortgage subletting or disposition or appointment under this Clause PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

Default²

24. (1) 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 except as provided in subclause (6) of Clause 5 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 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 PROVIDED FURTHER THAT the State will not determine this Agreement in any of the events aforementioned unless the State shall have first given notice of its intention so to do to the Mortgagee and the Mortgagee shall have failed within thirty (30) days from the receipt of such notice to either —

- (a) cause the default to be remedied to the reasonable satisfaction of the Minister; or
- (b) appoint a receiver or receiver and manager to Camballin Farms under its mortgage securities who shall agree to comply with the obligations of the Company under this Agreement to the reasonable satisfaction of the Minister.

(2) On the cessation or determination of this Agreement except as provided in subclause (6) of Clause 5: —

Schedule

- (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 lease 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 PROVIDED THAT this subclause shall not apply to any land of which the Company or any transferee or assignee of the Company is registered or then entitled to be registered as the holder of a Crown Grant;
- (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 otherwise provided in subclause (3) 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.

(3) On the cessation or determination of the Special Lease the house or houses sheds and other buildings used in connection therewith and all plant and equipment necessary for the effective operation of the irrigation system thereon shall at the option of the State 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 By Company ²

25. 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 or arising out of or in connection with the construction or maintenance by the Water Authority of the barrage offtake structure and watercourse dam and appurtenant works and levees referred to in Clause 9 or any of them PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the Water Authority its servants agents or contractors are negligent in the construction or maintenance of such works or where the action suit claim demand or cost arises out of a contract (other than this Agreement) entered into by the State or the Water Authority with any person.

Disposal of Water Restricted ²

26. Except as provided in Clause 21 and except for use on Camballin Farms the Company shall not at any time or times after the coming into operation of this Agreement enter into any contract with any person or corporation for the disposal or supply either directly or indirectly to any person or corporation of any water obtained or delivered: —

- (a) from the dam barrage watercourse and other irrigation works channels and drains referred to in Clause 9; or
- (b) from any pump or other device operating on Camballin Farms

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

Variation ²

27. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease easement or right granted hereunder or pursuant

Schedule

hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Delays ²

28. 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 or 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 ²

29. 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.

Arbitration ²

30. 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 the rights duties or liabilities of either party hereunder 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.

Notices ²

31. (1) 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 State acting by the direction of the Minister and forwarded by prepaid registered post to the Company or sent by telex to the Company addressed as provided in subclause (2) 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 registered post to the Minister or sent by telex to the Minister addressed as provided in subclause (3) and any such notice consent or writing shall if sent by post 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 and in the case of telex upon receipt of the recipient's answer-back code.

(2) In the case of the Company notices shall be addressed: —

“AIL Holdings Pty. Ltd. of care of Mr. G. Laitt or Mr. A. P. Salvaris,
Messrs. Freehill Hollingdale & Page, Solicitors, 9th Floor, Australia
Place, 15-17 William Street, Perth, Western Australia”

and served as provided in subclause (1) at that address and in the case of telex sent to Messrs. Freehill Hollingdale & Page to Telex Number AA92937.

(3) In the case of the State notices shall be addressed to the Minister: —

Schedule

“care of the Department of Lands and Surveys, Central Government Buildings, Cathedral Avenue, Perth, Western Australia”

and served as provided in subclause (1) at that address and in the case of telex sent to the Minister to Telex Number AA93784.

Stamp duty Exemption ²

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

- (a) this Agreement;
- (b) a contract of sale dated the 24th May 1985 made between AETNA Life Insurance Company (“AETNA Life”), The AETNA Casualty and Surety Company, the Company, Camballin Farms Pty. Ltd. (then known as “Dusif Pty. Ltd.”) (“Camballin Farms”) and Australasian Investments Limited (“AIL”);
- (c) a loan facility agreement dated the 24th May 1985 made between AETNA Life, AIL, the Company and Camballin Farms;
- (d) a promissory note issued by AIL on the 6th August 1985;
- (e) Mortgage D083076;
- (f) a mortgage to be granted by the Company to AETNA Life substantially in the same form as Mortgage D083076 but in respect of Pastoral Lease No. 398/728 (Crown Lease No. 152/1985) only;
- (g) a debenture dated the 24th May 1985 granted by the Company and Camballin Farms Pty. Ltd. to AETNA Life;
- (h) a deed of guarantee and indemnity dated the 24th May 1985 given by the Company and Camballin Farms in favour of AETNA Life;
- (i) a transfer dated the 4th day of September 1985 from Northern Developments Pty. Ltd. to the Company of Pastoral Lease No. 398/728 (Crown Lease No. 152/1985);
- (j) Transfer D083074; and

(k) Transfer D083075.

(2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Payment²

33. The Company shall pay to the Water Authority the sum of \$240,465.00 on or before the 1st July 1990.

Proposed Public Roads²

34. As and when agreed with the Minister the Company shall surrender to the State the proposed public roads out of the Special Lease or any other title held by the Company.

Governing Law²

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

Continuance of Agreement²

36. This Agreement will subject to the provisions hereof continue in force until the 30th June, 2010.

THE SCHEDULE
WESTERN AUSTRALIA
SPECIAL LEASE
UNDER SECTION 116 OF THE *LAND ACT 1933*
AND THE *CAMBALLIN FARMS (AIL HOLDINGS PTY. LTD.)*
AGREEMENT ACT 1985

REGISTRATION FEE PAID
LEASE No. 3116/

KIMBERLEY DIVISION
FITZROY LOCATIONS

Schedule

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

WHEREAS:

- (i) The State and the Lessee are the parties to the Agreement scheduled to the *Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985*;
- (ii) Subject to and in accordance with the provisions of subclause (2) of Clause 5 of the Agreement the Lessee has applied for a lease of the land described in the Schedule hereto;
- (iii) By the Land Act, power is given to the Minister for Lands and Surveys in the Government of Our State of Western Australia to grant leases of any portion of land to any person for any purpose approved pursuant to and upon the terms and conditions set forth in Section 116 of that Act;
- (iv) Clause 15 of the Agreement provides that for the purposes of the Agreement (but without prejudice to the rights of the State to determine any lease or other right or title in accordance with the other provisions of the Agreement) the Land Act shall be deemed to be modified *inter alia* by the deletions of the proviso to Section 116 and of Section 135 and by the inclusion of a power to offer for sale or grant leases for terms or periods and on such terms and conditions and in forms consistent with the provisions of the Agreement in lieu of for the terms or periods, the terms and conditions and the forms referred to in the Land Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Land Act;
- (v) To give effect to the obligations of the State under subclause (2) of Clause 5 of the Agreement written notice of the approval of the granting of a lease of the land described in the Schedule hereto to the Lessee for the special purpose hereinafter mentioned has been given in the *Government Gazette* pursuant to the Land Act;
- (vi) Our Minister for Lands and Surveys has in pursuance of Section 137 of the Land Act (to the extent (if any) to which that Section applies to this lease) allowed directed and approved the granting of this lease;

Now We of Our especial Grace, and in consideration of the premises and also in consideration of the rents hereinafter reserved and on the part of the lessee to be paid and in the exercise of the powers in that behalf to Us given by the Act the

Land Act and the Agreement, do by these presents demise and lease to the Lessee the natural surface and so much of the land as is below the natural surface to a depth of 12.19 metres of ALL THAT piece or parcel of land described and delineated in the Schedule hereto with the appurtenances and for the purposes specified in subclause (1) of Clause 6 of the Agreement to HAVE AND TO HOLD the demised premises with all the rights powers and privileges conferred on the Lessee by those Acts and by the Agreement But Subject Nevertheless to the covenants agreements obligations powers reservations and conditions herein and in the Agreement AND to the provisions in the Land Act as are applicable hereto as modified by Clause 15 of the Agreement for a term which shall be deemed to have commenced on the 1st day of July 1985 but determinable as hereinafter provided and if not so determined expiring on the 30th day of June 2010 YIELDING AND PAYING therefor during the term unto Us, Our heirs and successors subject to and in accordance with the provisions of subclause (4) of Clause 5 of the Agreement a yearly rental calculated at the rate of FIFTY DOLLARS (\$50.00) for every five hundred hectares or part thereof of the demised premises (subject to increase in accordance with Clause 13 of the Agreement) payable half-yearly in advance on the First days of January and July (hereinafter called "half-yearly days") in each year during the currency of this lease the first of such payments to be made on the issue of this lease and to be in respect of the period commencing on the day on which the term is deemed to have commenced and expiring on the day immediately preceding the half-yearly day next following the date of issue of this lease.

PROVIDED NEVERTHELESS that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to resume and enter upon possession of any part of the demised premises which it may at any time by Us, Our heirs and successors be deemed necessary to resume for roads tramways railways railway stations bridges canals towing paths harbour or river improvements and works drainage or irrigation works quarries and generally for any other works or purposes of public use utility or convenience and for the purposes of exercising the power to search for minerals hereinafter reserved, and such land so resumed to hold to Us, Our heirs and successors as of Our or their former estate without making to the Lessee or any person claiming under it any compensation in respect thereof; so nevertheless that the lands so to be resumed shall not exceed one twentieth part in the whole of the lands aforesaid and that no such resumption be made of any part of the demised premises upon which any building may have been erected or which may be enclosed and in use as gardens or otherwise for the more convenient occupation of any such buildings or on which any other improvements as defined by the Land Act have been made without

Schedule

compensation; Provided also, that it shall be lawful at all times for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority to cut and take away any such indigenous timber and search and dig for and carry away any stones or other materials which may be required for making or keeping in repair any roads tramways railways railway stations bridges-canals towing paths harbour works breakwaters river improvements drainage or irrigation works and generally for any other works or purposes of public use utility or convenience without making to the Lessee or any person claiming under it any compensation in respect thereof and We do hereby save and reserve to Us, Our heirs and successors, all mines of gold, silver, copper, tin or other metal, ore and mineral, or other substances containing metals and all gems and precious stones, and coal or mineral oil and all phosphatic substances in and under the demised premises with full liberty at all times to search and dig for and carry away the same and for that purpose to enter upon the demised premises or any part thereof PROVIDED FURTHER that all petroleum on or below the surface of the demised land is reserved to Us, Our heirs and successors with the right for Us, Our heirs and successors or any person claiming under Us or them or lawfully authorised in that behalf to have access to the demised premises for the purpose of searching for and for the operations of obtaining petroleum in and under any part of the demised premises under the provisions of the *Petroleum Act 1967*.

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

- (1) THAT the Lessee will pay the rent hereinbefore reserved at the times and in the manner aforesaid.
- (2) THAT the Lessee will subject to the Agreement duly and punctually pay such rates and taxes in respect of the demised premises as it is obliged at law to pay from time to time.
- (3) THAT the Lessee will subject to and in accordance with the Agreement develop and use the demised premises for agricultural purposes and will not use the demised premises or permit or suffer the demised premises to be used for any other purpose without the prior written consent of the Minister.
- (4) THAT the Lessee will permit the Minister and the Minister for Lands and Surveys full and free right and liberty by their servants workmen contractors and agents at all times to enter and to go pass and repass with

or without animals carts or other carriages or vehicles or motor or other mechanical vehicles laden or unladen into or out of and from the demised premises for the purpose of inspecting and examining the operations of the Lessee hereunder and under the Agreement.

- (5) THAT the Lessee will at all times during the term duly and punctually observe perform and comply with all covenants agreements conditions provisions and obligations on the part of the Lessee contained or implied in the Agreement.
- (6) THAT the Lessee will not otherwise than in strict accordance with the Agreement and in particular Clauses 12 and 23 thereof sub-divide, sub-lease dispose of or otherwise part with the possession of the demised premises or any part or parts thereof or assign mortgage or charge the demised premises or any part or parts thereof for all or any part of the term.
- (7) THAT the Lessee will at all times indemnify and keep the Lessor and the Minister for Lands their servants and agents indemnified against all actions claims demands damages and costs by or of third parties arising from caused by incidental to or resulting from any default by the Lessee in the due and punctual performance and observance of and compliance with the covenants conditions or obligations contained or implied herein or the occupation and use by the Lessee of the demised premises.
- (8) THAT subject to the Agreement the Lessee shall duly and punctually perform, observe, comply with, carry out, and conform to the provisions of all statutes (Federal or State) for the time being in force and of all ordinances, statutory rules, regulations and by-laws respectively made thereunder and for the time being in force and all requisitions, requirements, orders and conditions of any authority (statutory or otherwise) affecting the demised premises or any crops or any improvement of whatsoever nature or kind constructed operated or used thereon.
- (9) THAT the Lessee will upon the determination of this lease yield up the demised premises and all the improvements and things thereon of whatsoever nature or kind in such state of repair condition order and preservation as shall be in strict accordance with the covenants and agreements of the Lessee herein and in the Agreement.

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

Schedule

(1) THAT subject to —

- (i) the Lessee duly and punctually performing observing and complying with the covenants agreements conditions and obligations herein and in the Agreement and on its part to be performed observed or complied with;
- (ii) the Agreement not having been determined;
- (iii) the preceding provisions of this lease

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

(2) THAT the Lessee having observed performed and complied with all the terms and conditions on its part contained in this lease and the Agreement may apply for Crown Grants of portions of the demised premises from time to time in accordance with the provisions of subclause (6) of Clause 6 of the Agreement.

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

(1) THAT it shall be lawful at all times for the Lessor —

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

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

- (2) THAT subject to the Agreement all rights in the demised premises (other than those expressly or impliedly granted under this lease) are reserved to the Lessor or the Minister for Lands and Surveys as the case may be.
- (3) THAT upon the determination of this lease which may be determined by effluxion of time or pursuant to the Agreement or by surrender it shall be lawful for the Lessor (without prejudice to any right of action of any one or more parties having rights hereunder in respect of any breach non-performance or non-observance of or non-compliance with any of the covenants conditions and obligations contained herein and on the part of the Lessee to be performed observed or complied with and subject to subclause (6) of Clause 5 and to subclause (1) of Clause 24 of the Agreement) to re-enter into and upon the demised premises or any part thereof in the name of the whole and the same to have again repossess and enjoy as if this lease had never been executed and the house or houses sheds and other buildings used in connection with the demised premises and all plant and equipment necessary for the effective operation of the irrigation system on the demised premises shall then remain or become the absolute property of the Lessor without compensation and freed and discharged from all mortgages and encumbrances and in such case the Lessee will do and execute such documents and things (including surrenders) as the Minister may reasonably require to give effect to this provision AND the Lessee hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Lessee to execute those documents and things (including surrenders).
- (4) ANY dispute or difference as to questions of fact between the parties arising out of or in connection with this lease or any agreed amendment or variation thereof or agreed addition or as to the rights duties or liabilities of either party or any other person hereunder or as to any matter to be agreed upon between the parties hereto under this lease shall in default of agreement between the parties and in the absence of any provision in this lease or the 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

Schedule

expressly or impliedly the Lessor of the Minister for Lands and Surveys or the Minister is given a discretionary power hereunder.

(5) THAT any notice consent request or other writing authorised or required by this lease to be given or sent shall be deemed to have been duly given by the party giving the same if given in accordance with the provisions in that regard in the Agreement.

(6) IN this lease, unless the context otherwise requires: —

“Act” means the *Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985*;

“Agreement” means the agreement between the State and the Lessee approved by the *Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985* and includes the Agreement as amended from time to time;

“demised premises” means the land described in the Schedule hereto together with all pump stations pipelines channels drains levees and appurtenant works and all buildings erections and other improvements for the time being constructed and maintained thereon in accordance with the provisions of this lease and of the Agreement;

“Land Act” means the *Land Act 1933*;

“Lessee” means AIL Holdings Pty. Ltd. a company incorporated in the State of Western Australia and having its registered office at care of Messrs. Freehill Hollingdale and Page, Solicitors, 9th Floor, Australia Place, 15-17 William Street, Perth and includes the Lessee’s successors transferees and permitted assigns;

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

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

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

“term” means the term of this lease;

Reference to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

SCHEDULE

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

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

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

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

.....

Schedule

EXECUTED by the said AIL HOLDINGS PTY.
LTD. by being signed by its duly appointed
Attorney

in the presence of:

.....

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

REGISTRAR OF TITLES

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

SIGNED by the said THE
HONOURABLE BRIAN THOMAS
BURKE, M.L.A. in the presence of:

BRIAN BURKE

K. F. McIVER.

MINISTER FOR LANDS
AND SURVEYS

EXECUTED by the said AIL HOLDINGS
PTY. LTD. by being signed by its duly
appointed Attorney ALEXANDER PHILIP
SALVARIS in the presence of:

ALEX SALVARIS

R. W. MICKLE.

Notes

¹ This is a compilation of the *Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985*. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985</i>	71 of 1985	20 Nov 1985	20 Nov 1985 (see s. 2)
Reprint of the <i>Camballin Farms (AIL Holdings Pty. Ltd.) Agreement Act 1985</i> as at 6 Dec 2002			
