

**DIAMOND
(ASHTON JOINT VENTURE)
AGREEMENT ACT 1981.**

(No. 108 of 1981.)

ARRANGEMENT.

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SCHEDULE 2.

DIAMOND (ASHTON JOINT VENTURE) AGREEMENT.

No. 108 of 1981.

AN ACT to ratify and authorize the implementation of an Agreement between the State of Western Australia and CRA Exploration Pty. Limited, Ashton Mining Limited, Tanaust Proprietary Limited, A.O. (Australia) Pty. Limited and Northern Mining Corporation N.L. and CRA Limited relating to the mining, marketing and processing of diamonds and to matters related thereto; to make provision as to rights in respect of certain land and minerals to which the Agreement relates and as to the security of operations carried on pursuant to or for the purposes of the Agreement; and for incidental and other purposes.

[Assented to 4 December 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present

Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

Short title. 1. This Act may be cited as the *Diamond (Ashton Joint Venture) Agreement Act 1981.*

Interpretation. 2. In this Act unless the contrary intention appears—

“Schedule” means a Schedule to this Act;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the term is used;

“the Agreement” means the Agreement a copy of which is set out in Schedule 2, and includes that Agreement as altered from time to time in accordance with its provisions;

“the Company” means CRA Exploration Pty. Limited, a company incorporated in the State of New South Wales;

“the Joint Venturers” has the same meaning as that expression has in and for the purposes of the Agreement.

PART II—RATIFICATION OF AGREEMENT.

Agreement ratified and implementation authorized.

3. (1) The Agreement is hereby ratified.

(2) The implementation of the Agreement is authorized.

By-laws.

4. (1) The Governor may, on the recommendation of the Joint Venturers, make by-laws in accordance with and for the purposes referred to in the Agreement.

- (2) By-laws made pursuant to this section—
- (a) are not subject to section 36 of the Interpretation Act 1918 but—
 - (i) shall be published in the *Gazette*; and
 - (ii) shall take effect and have the force of law from the date they are so published or from a later date provided for in the by-laws;
 - (b) may provide that contravention of or failure to comply with a by-law constitutes an offence and provide penalties not exceeding a fine of \$100 for offences against the by-laws.

5. (1) Subject to subsection (2), the Money Lenders Act 1912 does not apply to or in relation to any loan made, before the termination date, to or by a party to the Agreement, or to or in relation to any contract or security relating to such a loan.

Money Lenders Act 1912 not to apply.

(2) Subsection (1) does not prevent the application of the Money Lenders Act 1912 to or in relation to a loan made by a party to the Agreement to a person who is not a party to the Agreement, or to or in relation to any contract or security relating to such a loan, unless the loan is made for the purposes of, or for purposes incidental to, the implementation of the Agreement.

(3) In this section—

“loan” has the meaning given to that expression by section 2 of the Money Lenders Act 1912;

“party to the Agreement” means the Joint Venturers, or any of them, or CRA Limited, a company incorporated in Victoria.

PART III.—MINING TENEMENTS AND RIGHTS AS TO MINERALS.

6. (1) In this Part unless the contrary intention appears—

Interpretation and application of this Part.

“court” includes a tribunal or person acting judicially, administratively or otherwise

and, without limiting the generality of the foregoing, includes a warden presiding at a warden's court or acting or adjudicating in any other capacity;

“marking out” includes marking off;

“Minister” and “warden”—

(a) before the coming into operation of section 3 of the Mining Act 1978, have the same meanings as those expressions have, respectively, in and for the purposes of the Mining Act 1904;

(b) after the coming into operation of section 3 of the Mining Act 1978, have the same meanings as those expressions have, respectively, in and for the purposes of that Act;

“temporary reserve” means a reserve created under section 276 of the Mining Act 1904;

“termination date” means the date of the cessation or determination of the Agreement in accordance with the terms thereof or of the determination of the Agreement by agreement between the parties thereto;

“the Department” means the Department of Mines of the Public Service of the State;

“the Mining Act 1904” includes the regulations made thereunder;

“the Mining Act 1978” includes the regulations made thereunder;

“the subject land” means the area within the surveyed boundaries described on the plan marked “A” (initialled by or on behalf of the parties to the Agreement for the purposes of identification) which area is coloured blue on that plan for the purposes of identification and for those purposes only;

“the temporarily reserved land” means the land that was, immediately before the coming into operation of this Act, comprised in temporary reserves 7216H, 7217H, 7311H and 7323H but does not include any portion of the subject land.

(2) A reference to the marking out of land includes a reference to the occupation of and marking out of land or the taking possession of and marking out of land.

(3) The provisions of this Part apply notwithstanding any law or the provisions of any other Act or any regulation.

7. (1) The applications recorded in a register kept in the Department as—

Registration
and validity
of certain
mineral
claims.

- (a) applications by the Company for mineral claims with the designations MC 80/6787, MC 80/6788, MC 80/7854 and MC 80/7855, respectively;
- (b) applications by the Company for mineral claims with the respective designations set out in Schedule 1; and
- (c) applications by the Company for mineral claims with the designations MC 80/6834, MC 80/6835 and MC 80/6836, respectively,

are deemed to be and always to have been validly and effectually made and received for the purposes of the Mining Act 1904.

(2) On the coming into operation of this Act—

- (a) each application mentioned in subsection (1) (a) is, by operation of this subsection, approved under and for the purposes of the Mining Act 1904 for the whole of the area the subject of the application;
- (b) the whole of the area the subject of each application mentioned in subsection (1) (a)

shall, by operation of this subsection, cease to be temporarily reserved pursuant to section 276 of the Mining Act 1904; and

- (c) a mineral claim for diamonds with the appropriate designation mentioned in subsection (1) (a) is, by operation of this subsection, registered in the name of the Company under and for the purposes of the Mining Act 1904 for the whole of the area the subject of each of the applications mentioned in subsection (1) (a).

- (3) The mineral claims registered by operation of subsection (2) shall be subject to the same conditions as were imposed on the approval of the application recorded in a register kept in the Department as an application for a mineral claim with the designation MC 80/6792.

- (4) The approval of each of the applications mentioned in subsection (1) (b) under and for the purposes of the Mining Act 1904 is deemed to be and always to have been valid and effectual according to its tenor, and in each case, on the coming into operation of this Act—
 - (a) such portion or portions of the area the subject of the application as are temporarily reserved under section 276 of the Mining Act 1904 shall, by operation of this subsection, cease to be so reserved;
 - (b) a mineral claim with the appropriate designation set out in Schedule 1 is, by operation of this subsection, registered in the name of the Company under and for the purposes of the Mining Act 1904 in accordance with the terms on which the application was so approved and subject to the conditions imposed when the application was so approved.

- (5) Such entries may be made in registers and on documents, and such certificates or other documents may be issued, as may be appropriate to record and evidence the approvals, cessations of reservation and

registrations effected by subsection (2), the conditions imposed by subsection (3), and the cessations of reservation and registrations effected by subsection (4).

(6) The approval of each of the applications mentioned in subsection (1) (c) under and for the purposes of the Mining Act 1904 and the registration in each case of a mineral claim in the name of the Company with the appropriate designation mentioned in subsection (1) (c) are deemed to be and always to have been valid and effectual according to their tenor.

(7) The mineral claims registered by operation of subsections (2) and (4) and the mineral claims the registration of which is mentioned in subsection (6) are deemed to be and always to have been valid mineral claims under and for the purposes of the Mining Act 1904.

(8) The following matters, that is to say—

(a) the validity or effect of—

(i) an application mentioned in this section; or

(ii) an approval or registration effected by, or mentioned in, this section; or

(b) the validity of a mineral claim registered by operation of, or mentioned in, this section,

shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in any proceedings before a court whether instituted before or after the coming into operation of this Act.

8. (1) Without limiting any other right, title, interest, benefit or entitlement the company may have in or in respect of the subject land or any minerals found thereupon, or the effect of section 7, it is hereby expressly declared—

(a) that on and from the coming into operation of this Act the Company has exclusive possession of the subject land for the

Protection of
certain rights
and interests
of Company.

purposes of the Mining Act 1904 and the Mining Act 1978; and

(b) that—

(i) all diamonds found upon the subject land before the coming into operation of this Act excluding diamonds removed from the subject land before 15 October 1979 by a person other than the Company; and

(ii) all diamonds found upon the subject land after the coming into operation of this Act but before the relevant date,

shall be the absolute property of the Company,

and the entitlement of the Company to such possession and such property shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in any proceedings before a court whether instituted before or after the coming into operation of this Act.

(2) Subsection (1) does not—

(a) apply to or in relation to the possession after the relevant date of the subject land;

(b) apply on or after the relevant date to or in relation to diamonds found before the relevant date upon the subject land but not removed from that land before that date;

or

(c) affect any right, title, interest, benefit or entitlement of the Joint Venturers or any of them.

(3) In this section “relevant date” means—

(a) the date of the grant of a mining lease of the subject land pursuant to clause 15 of the Agreement; or

(b) the termination date,

whichever is the earlier.

9. (1) Any right, title, interest, benefit or entitlement that is held—

Termination
of other
rights and
interests.

- (a) immediately before the coming into operation of this Act;
- (b) under and for the purposes of the Mining Act 1904;
- (c) by any person other than—
 - (i) the Company; or
 - (ii) the Joint Venturers or any of them;
 and
- (d) in or in respect of the subject land or any portion thereof or in or in respect of any mineral found thereupon,

is, by operation of this subsection, extinguished and deemed never to have existed.

(2) Any right, title, interest, benefit or entitlement that might, but for this subsection, vest or otherwise be acquired—

- (a) under and for the purposes of the Mining Act 1904 or the Mining Act 1978;
- (b) in or by any person other than—
 - (i) the Company;
 - (ii) the Joint Venturers or any of them;
 or
 - (iii) a person acting for or on behalf of the Company or the Joint Venturers or any of them;
- (c) in or in respect of the subject land or any portion thereof or in or in respect of any mineral found thereupon; and
- (d) by reason of any act, matter or thing done or commenced before the coming into operation of this Act, or after the coming into operation of this Act but before the relevant date,

shall not so vest or be so acquired.

(3) In subsection (2) "relevant date" means the termination date unless the portion of land in question is surrendered to the State under clause 15 (5) of the Agreement in which case "relevant date" means, in relation only to that portion of land, the date on which that surrender takes effect.

(4) Any right, title, interest, benefit or entitlement that is held—

- (a) immediately before the coming into operation of this Act;
- (b) under and for the purposes of the Mining Act 1904;
- (c) by any person other than—
 - (i) the Company; or
 - (ii) the Joint Venturers or any of them;and
- (d) in or in respect of the temporarily reserved land or any portion thereof or in or in respect of any mineral found thereupon,

is, by operation of this subsection, extinguished and deemed never to have existed.

(5) Any right, title, interest, benefit or entitlement that might, but for this subsection, vest or otherwise be acquired—

- (a) under and for the purposes of the Mining Act 1904 or the Mining Act 1978;
- (b) in or by any person other than—
 - (i) the Company;
 - (ii) the Joint Venturers or any of them;or
- (iii) a person acting for or on behalf of the Company or the Joint Venturers or any of them;
- (c) in or in respect of the temporarily reserved land or any portion thereof, or in or in respect of or in any mineral found thereupon; and

- (d) by reason of any act, matter or thing done or commenced before the coming into operation of this Act, or after the coming into operation of this Act but before the relevant date,

shall not so vest or be so acquired.

(6) In subsection (5) "relevant date" means—

- (a) the date of the expiration of a period of 5 years from the coming into operation of this Act; or
- (b) the termination date,

whichever is the earlier.

(7) Nothing in subsections (1) to (6), both inclusive, affects any right, title, interest or entitlement of the Crown in right of the State except that a mining tenement shall not be granted to any person under the Mining Act 1904 or the Mining Act 1978 in or in respect of any land or mineral if the vesting in that person, or the acquisition otherwise by that person, of any right, title, interest, benefit or entitlement in or in respect of the land or mineral under and for the purposes of either of those Acts is precluded by those subsections.

10. (1) The marking out of any portion of the subject land as a mining tenement for the purposes of the Mining Act 1904—

Effect of marking out of certain land.

- (a) before the coming into operation of this Act; and
- (b) otherwise than by or on behalf of the Company,

shall have no effect and shall be deemed never to have had any effect.

(2) The marking out of any portion of the subject land as a mining tenement for the purposes of the Mining Act 1904 or the Mining Act 1978—

- (a) after the coming into operation of this Act but before the relevant date; and

- (b) otherwise than by or on behalf of the Company,

shall have no effect.

(3) In subsection (2) “relevant date” has the same meaning as it has in section 9 (2).

(4) The marking out of any portion of the temporarily reserved land as a mining tenement for the purposes of the Mining Act 1904—

- (a) before the coming into operation of this Act; and
- (b) otherwise than by or on behalf of the Company,

shall have no effect and shall be deemed never to have had any effect.

(5) The marking out of any portion of the temporarily reserved land as a mining tenement for the purposes of the Mining Act 1904 or the Mining Act 1978—

- (a) after the coming into operation of this Act but before the relevant date; and
- (b) otherwise than by or on behalf of—
 - (i) the Company; or
 - (ii) the Joint Venturers or any of them,

shall have no effect.

(6) In subsection (5) “relevant date” has the same meaning as it has in section 9 (5).

Saving of
applications.

11. (1) In this section “pending application” means an application for the registration of a mining tenement for the purposes of the Mining Act 1904 being an application that—

- (a) relates to a portion of land that is marked out wholly or partly on the temporarily reserved land;
- (b) was made by a person other than—
 - (i) the Company; or

- (ii) the Joint Venturers or any of them, after the creation of the temporary reserve on which the portion of land is marked out but before 9 February 1980; and
 - (c) is pending immediately before the coming into operation of this Act.
- (2) Nothing in section 9 (4), 9 (5) or 10 (4) prevents—
- (a) the warden from recommending the approval of a pending application if he is satisfied that the applicant was, at the time of the creation of the temporary reserve on which the portion of land is marked out, carrying out *bona fide* prospecting operations on that portion of land; or
 - (b) the Minister, in his absolute discretion, from approving a pending application if—
 - (i) the warden has, in accordance with paragraph (a) of this subsection, recommended the approval thereof; and
 - (ii) the Minister is satisfied as to the matter mentioned in paragraph (a) of this subsection; or
 - (c) the registration of a mining tenement that is the subject of a pending application if the Minister has, in accordance with paragraph (b) of this subsection, approved the application,
- to the extent, and only to the extent, that the portion of land marked out is not within the subject land.

12. No proceedings shall be taken or maintained in any court to prevent or restrain the grant of a mining lease pursuant to clause 15 of the Agreement and where such a mining lease has been granted—

- (a) the validity of the mining lease including, without limiting the generality of the

Validity of
mining lease
under Agree-
ment.

foregoing, its validity in respect of any land included therein pursuant to clause 15 (6) of the Agreement; and

- (b) the rights, powers and authorities granted under or by virtue of the mining lease,

shall not be liable to be challenged, appealed against, reviewed, quashed, or called into question by or in any proceedings before a court on any ground including, without limiting the generality of the foregoing, the ground—

- (c) that any land in respect of which the mining lease is granted was not, at the time application was made under clause 15 of the Agreement for the grant of the mining lease, land in respect of which the Company held a mineral claim; or
- (d) that any land included in the mining lease pursuant to clause 15 (6) of the Agreement was not land in respect of which the Company or the Joint Venturers or any of them held mining tenements under the Mining Act 1904 or mining leases under the Mining Act 1978.

Continuation
of
mining
tenements.

13. Without limiting or otherwise affecting the application of the Government Agreements Act 1979 to and in relation to the Agreement it is hereby expressly declared—

- (a) that notwithstanding anything contained in the Mining Act 1904 or the Mining Act 1978 the mineral claims mentioned in clauses 16 (1) and 19 (1) of the Agreement and the mining tenements mentioned in clause 16 (3) of the Agreement shall remain in force for the periods respectively provided for in the Agreement; and
- (b) that except as provided in this Part or in the Agreement the mineral claims and mining tenements referred to in paragraph (a) of this section shall be subject to the Mining Act 1904 and shall continue to be subject to that Act after the coming into

operation of section 3 of the Mining Act 1978 as though the first-mentioned Act had not been repealed.

PART IV—SECURITY OF DIAMOND MINING
AND PROCESSING AREAS.

14. In this Part unless the contrary intention appears—

Interpreta-
tion of
this Part.

“authorized officer” means any person acting in the exercise or performance of a power, authority, duty or function conferred or imposed by or under any Act and having a right of entry conferred by or under any Act but does not include a police officer;

“controlled access point” means a place provided and designated in accordance with regulations made under section 29 (2) (b) and, where used in relation to an act of a particular kind, means a place so provided and designated for acts of that kind or for acts of that kind and acts of any other kind or kinds;

“designated area” means land that is, or premises that are, for the time being declared to be a designated area pursuant to section 15;

“medical practitioner” means a person registered under the Medical Act 1894;

“police officer” means a person appointed under Part I of the Police Act 1892 to be a member of the Police Force of Western Australia;

“premises” means any building or structure or part of a building or structure, and includes any area surrounding such building or structure or part of a building or structure;

“property” includes goods or articles of any kind;

“security officer” means a person who is the holder of a licence as a guard under the Security Agents Act 1976 and is employed by the Owners or any of them;

“the Owners” means the Joint Venturers and each of them and any company formed by the Joint Venturers, or any of them, to manage operations conducted pursuant to the Agreement;

“this Part” includes the regulations made under this Part;

“uncut diamond” includes any crushed diamond, diamond dust, diamond fragment or partly cut or partly processed diamond;

“vehicle” has the same meaning as it has in and for the purposes of the Road Traffic Act 1974.

Designated
areas.

15. (1) Where it appears to the Governor that the mining, treatment, processing, sorting, storage or cutting of diamonds is being, or is proposed to be, carried out—

(a) on any land in the State; or

(b) on or within any premises in the State,

in the course of operations conducted for the purposes of or incidental to the implementation of the Agreement, the Governor may by Order in Council published in the *Gazette* declare that land or those premises, as the case may be, to be a designated area for the purposes of this Part.

(2) An Order in Council published under subsection (1)—

(a) declaring land to be a designated area shall define the boundaries of that land;

- (b) declaring premises to be a designated area shall describe the boundaries or limits of those premises.

(3) The Governor may by Order in Council published in the *Gazette* amend or revoke any previous Order in Council published under this section.

(4) An Order in Council published under this section shall take effect on the day of its publication or on such later day as is specified therein.

16. A person who is within a designated area and who, without lawful authority or excuse, the proof of which lies on him, has an uncut diamond—

Unlawful
possession
of diamonds.

- (a) on his person; or
- (b) in his possession, or under his control, in any vehicle or other property or in any place,

commits an offence and is liable to a fine not exceeding \$10 000 or to imprisonment for a term not exceeding 2 years.

17. (1) A person shall not—

- (a) enter or leave a designated area;
- (b) drive a vehicle into or out of a designated area; or
- (c) take or consign any property into or out of a designated area,

Entry to and
egress from
designated
area.

other than by way of a controlled access point.

(2) A security officer may—

- (a) require a person who is entering or leaving a designated area to stop;

- (b) require a person driving a vehicle into or out of a designated area to stop the vehicle;
- (c) require a person who is taking or consigning property into or out of a designated area to produce the property to a security officer for examination; and
- (d) direct a person to—
 - (i) enter or leave a designated area;
 - (ii) drive a vehicle into or out of a designated area; or
 - (iii) take or consign any property into or out of a designated area,by way of a controlled access point specified by the security officer.

(3) A person shall not enter, drive a vehicle into, or take or consign any property into a designated area without the permission of a security officer on duty at a controlled access point.

(4) A police officer acting in the course of his duty shall not be refused permission to enter a designated area unless he fails to comply with a request made by a security officer at a controlled access point to—

- (a) produce evidence that he is a police officer;
- or
- (b) state the purposes for which he wishes to enter the designated area,

to the security officer.

(5) An authorized officer shall not be refused permission to enter a designated area unless he fails to comply with a request made by a security officer at a controlled access point to—

- (a) furnish his name and address;

- (b) state and provide evidence of his authority for entering the designated area; or
- (c) state the purpose for which he wishes to enter the designated area,

to the security officer.

(6) Subject to subsections (4) and (5) a security officer may refuse permission without giving any reason for that refusal.

(7) Without limiting the generality of subsection (6) permission for a person to enter a designated area, other than permission that is required to be granted by subsection (4) or (5), may be withheld by a security officer until the person agrees in writing to abide by such reasonable conditions of entry as the security officer considers necessary for the security of the designated area and of operations, persons and property therein, including, without limiting the generality of the foregoing, a condition that the person will, while within or leaving the designated area, allow a search of himself (other than a search by way of an examination of his body cavities), or a search of any vehicle he is driving or any other property in his possession or under his control, to be carried out by a security officer whenever requested to do so by a security officer.

(8) A person who—

- (a) contravenes subsection (1) or (3); or
- (b) fails to comply with a requirement imposed pursuant to subsection (2) (a), (2) (b) or (2) (c),

commits an offence and is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding one year.

(9) A person who having been given a direction by a security officer pursuant to subsection (2) (d)—

- (a) enters or leaves a designated area;

- (b) drives a vehicle into or out of a designated area; or
- (c) takes or consigns any property into or out of a designated area,

by way of a controlled access point other than that specified by the security officer commits an offence and is liable to a fine not exceeding \$500.

(10) In this section "permission" means permission under and for the purposes of subsection (3).

Security officer may give directions etc. to persons on designated area.

18. (1) A security officer may—

- (a) direct a person entering or within a designated area not to enter or remain within any portion of the designated area specified by the security officer either absolutely or unless he is in the company of a security officer;
- (b) require a person within a designated area to stop or require a person driving a vehicle within a designated area to stop the vehicle;
- (c) require a person within a designated area to furnish his name and address and to state his authority for being within the designated area and the purpose for which he is within the designated area; and
- (d) give such other direction to, or impose such other requirement on, a person entering or within a designated area, whether that direction or requirement is of a similar kind to those mentioned in paragraphs (a), (b) and (c) of this subsection or of a different kind, as the security officer considers necessary for the security of the designated area and of operations, persons and property therein.

(2) Where—

- (a) a person within a designated area fails to comply with a direction given or requirement imposed pursuant to subsection (1) (a), (1) (b) or (1) (c) or with any direction given or requirement imposed pursuant to subsection (1) (d) that may lawfully be complied with; or
- (b) a security officer is not satisfied that a person who has been permitted to enter a designated area has any need to remain therein,

a security officer may require the person to leave the designated area forthwith.

(3) A person who fails, without lawful authority or excuse, the proof of which lies on him, to comply with a requirement imposed pursuant to subsection (2) commits an offence and is liable to a fine not exceeding \$500.

19. Without affecting the liability of any person for an offence against section 17 or 18 a security officer may, using only such force as is reasonably necessary—

Removal of
persons and
things.

- (a) stop a person who fails to comply with a requirement imposed pursuant to section 17 (2) (a) or 18 (1) (b) or a vehicle the driver of which fails to comply with a requirement imposed pursuant to section 17 (2) (b) or 18 (1) (b);
- (b) remove from a designated area a person who fails to comply with a requirement imposed pursuant to section 18 (2);
- (c) remove any vehicle or other property from a designated area; and
- (d) enter a vehicle for the purpose of removing it pursuant to paragraph (c) of this section or section 20 (1) (b).

Search of
property.

20. (1) A security officer may search any vehicle or other property in the possession or under the control of a person within a designated area or which is being driven, taken or consigned out of a designated area and, for that purpose may—

- (a) dismantle the property;
- (b) remove the property to a place of safe custody and detain it there pending search or further search.

(2) In subsection (1) “property” does not include clothing being worn by a person.

Detention
and search
of persons.

21. (1) Where a person—

- (a) appears to a security officer to have an uncut diamond on his person, or in his possession or under his control within a designated area without lawful authority or excuse;
- (b) is reasonably suspected by a security officer of stealing or concealing an uncut diamond within a designated area; or
- (c) is found within a designated area without having received permission to enter that designated area under and for the purposes of section 17 (3),

a security officer may, using only such force as is reasonably necessary, detain that person at a place within the designated area set aside for that purpose in accordance with the regulations, until the arrival of a police officer.

(2) Without limiting the generality of subsection (1) (b), where a person who has, at any time before entering a designated area agreed in writing that he will, while within or leaving the designated area, allow a search of himself (other than a search by way of an examination of his body cavities), or a

search of any vehicle he is driving or any other property in his possession or under his control, to be carried out by a security officer whenever requested to do so by a security officer fails, when such a request is made, to allow such a search to be carried out, a security officer shall be deemed to have reasonable grounds for suspecting the person of stealing or concealing an uncut diamond.

(3) On detaining a person pursuant to subsection (1) a security officer shall forthwith report the detention to the nearest police officer or, if the whereabouts of the nearest police officer is not known, the nearest police station.

(4) Subject to subsections (5) and (7) a police officer may search any person who is detained pursuant to this section and any clothing worn by such a person.

(5) Subject to subsection (6) a search under subsection (4) shall be carried out by a police officer of the same sex as the person to be searched.

(6) Where it is not immediately practicable for subsection (5) to be complied with in relation to a search under subsection (4) a police officer may, subject to subsection (7), cause the search to be carried out, under the direction of a police officer, by a security officer of the same sex as the person who is to be searched or may—

(a) detain the person until; or

(b) convey or conduct the person to a place where,

it is practicable for subsection (5) to be complied with.

(7) Subsections (4) and (6) do not authorize a police officer, or a security officer acting under the direction of a police officer, to carry out a search by way of an examination of the body cavities of a

person but a police officer may arrange for a medical practitioner nominated by the police officer to examine the body cavities of the person and may—

- (a) detain the person until the arrival of that medical practitioner; or
- (b) convey or conduct the person to that medical practitioner.

(8) Subject to subsection (9) an examination arranged under subsection (7) shall be carried out in the presence of a police officer of the same sex as the person to be examined.

(9) Where it is not immediately practicable for subsection (8) to be complied with in relation to an examination arranged under subsection (7) a police officer may cause the examination to be carried out in the presence of a security officer of the same sex as the person to be examined or may—

- (a) detain the person until; or
- (b) convey or conduct the person to a place where,

it is practicable for subsection (8) to be complied with.

(10) A medical practitioner is hereby authorized to carry out an examination of the body cavities of a person arranged by a police officer under subsection (7) and no action shall lie against the medical practitioner in respect of anything reasonably done by him for the purposes of the examination.

(11) A police officer may use such force as is reasonably necessary, and may call on such assistance as he considers necessary, in order to—

- (a) detain a person under this section;

- (b) carry out a search under this section; or
- (c) facilitate the carrying out of a search caused by him or an examination arranged by him under this section.

(12) A person who—

- (a) resists detention under this section;
- (b) escapes or attempts to escape—
 - (i) from a place at which he is being detained under this section; or
 - (ii) from a police officer who is conveying or conducting him under subsection (6) (b), (7) (b) or (9) (b);
- (c) obstructs or hinders a police officer or a security officer in the carrying out of a search of that person, or clothing worn by that person, under subsection (4) or (6); or
- (d) obstructs or hinders a medical practitioner in the carrying out of any examination of that person under subsection (7),

commits an offence and is liable to a fine not exceeding \$10 000 or to imprisonment for a term not exceeding 2 years.

22. Sections 17 to 20, both inclusive, and section 21 (1) (c) do not apply to or in relation to a police officer or authorized officer acting lawfully in an emergency.

Emergency
action
exempted.

23. The powers conferred on a police officer by section 21 are in addition to any other powers that a police officer has apart from this Act and nothing in

Powers of
police not
affected.

this Part shall be construed as limiting or otherwise affecting the powers and duties that a police officer may exercise and perform within or in respect of a designated area.

Evidence.

24. In any prosecution under this Part an averment in the complaint—

- (a) that the place at or in respect of which a contravention of this Part is alleged to have occurred was, or was within, a designated area; or
- (b) that a place was a controlled access point for a specified purpose; or
- (c) that a person was at a material time a security officer,

shall be deemed to be proved in the absence of proof to the contrary.

Restitution
of diamonds.

25. Notwithstanding any law or any other Act, upon the conviction of any person for an offence against this or any other Act committed within a designated area and involving the stealing, receiving or possession of uncut diamonds the court shall order the uncut diamonds to be delivered to the Owners.

Security
Agents Act
1976 to
apply.

26. The provisions of the Security Agents Act 1976, and of the regulations made thereunder, that are applicable to the holder of a licence as a guard under that Act shall apply to and in relation to a security officer.

Offences
under other
Acts not
excluded.

27. Subject to sections 16 and 17 of The Criminal Code and section 45 of the Interpretation Act 1918 nothing in this Part affects the liability of any person to be prosecuted and punished for an offence under

The Criminal Code, the Police Act 1892, the Government Agreements Act 1979 or any other Act, regulation, rule or by-law.

28. A security officer or police officer who duly exercises any power conferred by this Part in relation to a person shall not, by reason of exercise of the power, be liable for any offence of obstructing or hindering a person in the exercise of a power, or the performance of a function or duty, under any Act or law.

Exercise
of powers
lawful.

29. (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

Regulations.

(2) Without limiting the generality of subsection (1) regulations may be made under this section—

- (a) requiring the Owners to erect and maintain fences, walls and other physical barriers around a designated area in accordance with the regulations;
- (b) requiring the Owners to provide and designate places, in accordance with the regulations, for—
 - (i) the entry of persons to a designated area;
 - (ii) the egress of persons from a designated area;
 - (iii) the driving of vehicles into a designated area;
 - (iv) the driving of vehicles out of a designated area;
 - (v) the taking or consignment of property into a designated area;
 - (vi) the taking or consignment of goods out of a designated area; or

- (vii) any two or more of the purposes referred to in the preceding subparagraphs;
 - (c) requiring the Owners to erect and maintain notices and signs at or near the perimeter of a designated area in accordance with the regulations;
 - (d) prohibiting the damaging, defacing, removal or destruction of fences, barriers, signs and notices erected pursuant to the regulations;
 - (e) regulating the detention of persons under this Part and in particular requiring the setting aside of places within designated areas for the detention of persons;
 - (f) regulating the carrying out of searches and examinations of persons under this Part;
 - (g) regulating the custody of, and carrying out of searches of, vehicles and other property under this Part;
 - (h) prohibiting or regulating search by X-ray apparatus;
 - (i) prohibiting persons from obstructing, hindering or interfering with a security officer acting under the authority of this Part;
 - (j) providing that contravention of or failure to comply with a regulation constitutes an offence and providing penalties not exceeding a fine of \$500 for offences against the regulations.
- (3) Regulations may be made under this section—
- (a) so as to apply—
 - (i) generally or in a particular class of case or in particular classes of cases;

- (ii) at all times or at a specified time or at specified times; and
 - (iii) to all designated areas or to a specified designated area or specified designated areas;
- (b) so as to require a matter affected by them to be—
- (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body; and
- (c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority.
- (4) In subsection (3) “specified” means specified in the regulations.

SCHEDULES.**SCHEDULE 1.****S. 7.**

MC 80/6792, MC 80/6793, MC 80/6794, MC 80/6795, MC 80/6796,
MC 80/6797, MC 80/6798, MC 80/6799, MC 80/6800, MC 80/6801,
MC 80/6802, MC 80/6803, MC 80/6804, MC 80/6805, MC 80/6806,
MC 80/6807, MC 80/6808, MC 80/6809, MC 80/6810, MC 80/6811,
MC 80/6812, MC 80/6813, MC 80/6814, MC 80/6815, MC 80/6816,
MC 80/6817, MC 80/6818, MC 80/6819, MC 80/6820, MC 80/6821,
MC 80/6825, MC 80/6826, MC 80/6827, MC 80/6828, MC 80/6829,
MC 80/6832, MC 80/6833, MC 80/6853, MC 80/6858, MC 80/6859,
MC 80/6860, MC 80/6861, MC 80/6862, MC 80/6863, MC 80/6864,
MC 80/6865, MC 80/6866, MC 80/6867, MC 80/6868, MC 80/7856,
MC 80/7857, MC 80/10261, MC 80/10262, MC 80/10263,
MC 80/10264, MC 80/10265, MC 80/10266, MC 80/10267,
MC 80/10268, MC 80/10275, MC 80/10276, MC 80/10277,
MC 80/10278, MC 80/10376, MC 80/10377, MC 80/10378,
MC 80/10379, MC 80/10380, MC 80/10381, MC 80/10382,
MC 80/10383, MC 80/10384, MC 80/10385, MC 80/10386,
MC 80/10387, MC 80/10388, MC 80/10389, MC 80/10390,
MC 80/10391, MC 80/10392, MC 80/10393, MC 80/10394,
MC 80/10395, MC 80/10396, MC 80/10397, MC 80/10398,
MC 80/10399, MC 80/10400, MC 80/10401, MC 80/10402,
MC 80/10403, MC 80/10404, MC 80/10405, MC 80/10406,
MC 80/10407, MC 80/10408, MC 80/10409, MC 80/10410,
MC 80/10411, MC 80/10412, MC 80/10413, MC 80/10414,
MC 80/10487, MC 80/10489, MC 80/10490, MC 80/10491,
MC 80/10492, MC 80/10493, MC 80/10494, MC 80/10495,
MC 80/10496, MC 80/10497, MC 80/10498, MC 80/10499,
MC 80/10500.

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SCHEDULE 2.

THIS AGREEMENT made this 17th day of November, 1981,
BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL
COURT, K.C.M.G., O.B.E., M.L.A., Premier of the State
of Western Australia, acting for and on behalf of the
said State and its instrumentalities from time to time
(hereinafter called "the State") of the first part
CRA EXPLORATION PTY. LIMITED a company incorporated
in the State of New South Wales and having its
principal place of business in the State of Western
Australia at 21 Wynyard Street, Belmont, (hereinafter
called "CRAE") ASHTON MINING LIMITED a company
incorporated in the State of Victoria and having its
principal place of business in the State of Western
Australia at 6th Floor, 189 St. George's Terrace,
Perth, TANAUST PROPRIETARY LIMITED a company
incorporated in the State of Victoria and having its
principal place of business in the State of Western
Australia at 2nd Floor, Cecil Building, 6 Sherwood
Court, Perth, A.O. (AUSTRALIA) PTY. LIMITED a company
incorporated in the State of New South Wales and having
its principal place of business in the State of Western
Australia at 6th Floor, 189 St. George's Terrace, Perth
and NORTHERN MINING CORPORATION N.L. a company
incorporated in the State of Victoria and having its
principal place of business in the State of Western
Australia at Homeric House, 442 Murray Street, Perth

(the said CRAE, Ashton Mining Limited, Tanaust Proprietary Limited, A.O. (Australia) Pty. Limited and Northern Mining Corporation N.L. being hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) of the second part and CRA Limited a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 St. George's Terrace, Perth, (hereinafter called "the Guarantor") of the third part.

W H E R E A S:

- (a) the Joint Venturers have established the existence of diamond bearing ore bodies (including kimberlite pipes and alluvial deposits) within the Argyle mining area and the Ellendale mining area defined in Clause 1 and have carried out certain investigations relating inter alia to the mining and treatment of that ore and the sale of diamonds;
- (b) the Joint Venturers intend to mine such ore bodies and recover and market diamonds and investigate the economic feasibility of and promote the processing of diamonds in the said State;
- (c) the Joint Venturers intend to provide such facilities and services as may be necessary for their operations under this Agreement and for

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the accommodation and welfare of their workforce at or in the vicinity of the said mining areas or elsewhere within the Kimberley region.

NOW THIS AGREEMENT WITNESSETH:

Definitions

1. In this Agreement subject to the context -
"advise", "apply", "approve", "approval",
"consent", "certify", "direct", "notify",
"request", or "require", means advise, apply,
approve, approval, consent, certify, direct,
notify, request, or require in writing as the
case may be and any inflexion or derivation
of any of those words has a corresponding
meaning;
"approved proposal" means any proposal approved
under this Agreement;
"Argyle mining area" means the area defined as
"the temporarily reserved land" in the Bill
referred to in Clause 3 which area is for the
purposes of identification coloured red on the
plan marked "A" (initialled by or on behalf of
the parties hereto for the purposes of
identification) (hereinafter called "the red
area") and the area defined as "the subject
land" in the said Bill which area is for the
purposes of identification coloured blue on the
said plan (hereinafter called "the blue area");
"associated company" means -
(a) any company or corporation having a paid

up capital of not less than \$2,000,000 which is incorporated or formed within the United Kingdom the United States of America or Australia or such other country as the Minister may approve and which -

(i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them or some other company or corporation acceptable to the Minister hold not less than a 25% interest or some lesser interest acceptable to the Minister; or

(ii) is related within the meaning of that term as used in section 6 of the Companies Act 1961, to one or more of the Joint Venturers or to any company or corporation in which the Joint Venturers or any of them or some other company or corporation acceptable to the Minister hold not less than 25% of the issued ordinary share capital; and

(iii) is notified to the Minister by the Joint Venturers or any of them as being such a company;

(b) any company or corporation approved in writing by the Minister.

"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;

"Commonwealth" means the Commonwealth of Australia and includes the Government for the time being thereof;

"Ellendale mining area" means the area bordered green on the plan marked "B" (initialled by or on behalf of the parties hereto for the purposes of identification);

"Land Act" means the Land Act 1933;

"local authority" means the council of a municipality that is a city, town or shire constituted under the Local Government Act 1960;

"Mining Act 1904" means (unless the context otherwise requires) the Mining Act 1904 and the amendments thereto and the regulations made thereunder as in force on 31st December, 1981;

"Mining Act 1978" means the Mining Act 1978;

"mining leases" subject to the context means the mining lease or mining leases granted pursuant to Clauses 15 and 18 and includes any renewal thereof and according to the requirements of the context shall describe the

area of land demised as well as the instrument by which it is demised and any area or areas added thereto pursuant to the provisions of Clause 15;

"Minister" means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

"Minister for Mines" means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act 1904 or the Mining Act 1978;

"month" means calendar month;

"notice" means notice in writing;

"ore" means any rock soil or alluvium bearing diamonds mined from mining leases granted pursuant to this Agreement;

"person" or "persons" includes bodies corporate;

"private road" means a road (not being a public road) which is either constructed by the Joint Venturers in accordance with their proposals as approved by the Minister

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hereunder or agreed by the parties to be a private road for the purposes of this Agreement;

"public road" means a road as defined by the Road Traffic Act 1974;

"relevant town" in relation to the Argyle mining area means the town or towns to be developed in the Kimberley region with the approval of the State by the Joint Venturers as the principal housing area for their mine workforce serving the Argyle mining area and in relation to the Ellendale mining area means the town or towns to be developed in the Kimberley region with the approval of the State by the Joint Venturers as the principal housing area for their mine workforce associated with the Ellendale mining area and may in either case with the approval of the State include an existing town;

"relevant townsite" means the site on which the relevant town is or is to be situated;

"said State" means the State of Western Australia;

"sorting" means the classification of diamonds after any necessary cleaning into categories in relation to their size, shape, colour or value and "sorted" has a corresponding meaning;

"State Energy Commission" means The State Energy Commission of Western Australia as described in section 7 of the State Energy Commission Act 1979;

"this Agreement" "hereof" and "hereunder" refer to this Agreement whether in its original form or as from time to time added to varied or amended.

Interpre-
tation

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 40 to extend any period or date shall be without prejudice to the power of the Minister under Clause 40;
- (c) marginal notes do not affect the interpretation or construction; and
- (d) reference to an Act (other than the Mining Act 1904) 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

3. The State shall -

- (a) introduce and sponsor a Bill in the Parliament of Western Australia to

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ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December, 1981; and

- (b) to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers to enter upon Crown Lands (including, if applicable, land the subject of a pastoral lease).

Ratification
and
operation

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 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, 1981 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.

Initial
obligations
of the
Joint
Venturers

5. (1) The Joint Venturers shall continue their field and office engineering, environmental, market and finance studies and other matters necessary to enable them to finalise and to submit to the Minister the detailed proposals referred to in Clause 7 and their proposed marketing arrangements pursuant to Clause 6.
- (2) The Joint Venturers shall keep the State fully informed in writing quarterly as to the progress and results of their operations under subclause (1) of this Clause. The first quarterly report shall be lodged during the month of April, 1982 and shall be in respect of the quarter ending on the last day of March, 1982 and thereafter the quarterly reports shall be in respect of the quarter ending on the last day of the month preceding the month in which they are lodged.
- (3) The Joint Venturers shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) of this Clause and any other relevant studies in relation to that

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subclause that the Minister may wish to undertake;

Marketing
arrangements

6. (1) Prior to or at the time of the submission of the proposals required pursuant to subclause 1(A) of Clause 7 the Joint Venturers shall also submit to the Minister for his approval their proposed arrangements for the marketing of diamonds to be produced pursuant to this Agreement.
- (2) The Minister shall within 2 months after receipt of any such submission notify the Joint Venturers of his approval or otherwise of the proposed arrangements.
- (3) In the event that the Minister does not approve the said submission (which approval shall not be unreasonably withheld) the Minister shall give reasons and shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised arrangements for his approval.
- (4) The Minister's determination in respect of any submission by the Joint Venturers pursuant to this Clause shall be final and shall not be referable to arbitration hereunder.
- (5) The Joint Venturers shall submit a report

to the Minister at half yearly intervals unless the Minister otherwise requires commencing from the date the said proposed arrangements are approved concerning their implementation of those arrangements.

- (6) If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify, expand or otherwise vary the approved marketing arrangements, they shall inform the Minister and submit their revised marketing arrangements for his approval pursuant to this Clause.

Joint
Venturers
to submit
proposals
for the
Argyle
mining area

7. (1) The Joint Venturers shall, subject to the provisions of this Agreement, submit to the Minister to the fullest extent reasonably practicable their detailed proposals -

- (A) on or before 31st December, 1982 for the mining and recovery of diamonds from not less than 500,000 tonnes per annum of diamond bearing alluvium from the Argyle mining area to commence not later than 6 months from the date of approval of such proposals; and
- (B) on or before 31st December, 1983 for the mining and recovery of

diamonds from not less than 2 million tonnes per annum of kimberlite ore from the Argyle mining area such plant to be in operation not later than 31st December, 1986

which proposals shall include plans where practicable and specifications where reasonably required by the Minister and shall make provision where appropriate for the necessary workforce and associated population required to enable the Joint Venturers to mine and recover diamonds from ore from the area the subject of the proposals and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely -

- (a) the mining and recovery of diamonds from ore including plant facilities and security measures;
- (b) roads;
- (c) relevant townsite and relevant town including housing, provision of utilities and services and

associated facilities including,
subject to the provisions of Clause
26, transitional arrangements;

- (d) water supply;
- (e) power supply;
- (f) airstrip in or adjacent to the mining areas and other airport facilities and services;
- (g) any other works, services or facilities desired by the Joint Venturers;
- (h) use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Joint Venturers, their agents and contractors;
- (i) any leases (other than mining leases), licences or other tenures of land required from the State; and
- (j) an environmental management programme as to measures to be taken, in respect of the Joint Venturers' activities under this Agreement, for the protection and management of the environment.

Order of
proposals

- (2) Each of the proposals pursuant to subclause (1) of this Clause may with

the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (j) of subclause (1) of this Clause.

Use of
existing
infrastructure

- (3) Each of the proposals pursuant to subclause (1) of this Clause may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Joint Venturers of any existing facilities of such kind belonging to the Joint Venturers or upon reasonable terms and conditions of any other existing facilities of such kind.

Financial
arrangements

- (4) At the time when the Joint Venturers submit each of the proposals pursuant to subclause (1) of this Clause they shall furnish to the State's satisfaction evidence of -
- (a) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
 - (b) the readiness of the Joint

Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

Consideration of proposals

8. (1) On receipt of each of the proposals pursuant to subclause (1) of Clause 7 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 Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 7 not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers 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 Joint

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Venturers 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 conditions.

Advice of
Minister's
decision

(2) The Minister shall within two months after receipt of each of the said proposals pursuant to subclause (1) of this Clause give notice to the Joint Venturers of his decision in respect to the same.

Consultation
with
Minister

(3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.

Minister's
decision
subject to
arbitration

(4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice mentioned in

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subclause (2) of this Clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision.

Arbitration
award

(5) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows -

- (i) if by the award the dispute is decided against the Joint Venturers then unless the Joint Venturers within 3 months after delivery of the award give notice to the Minister of their acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (ii) if by the award the dispute is decided in favour of the Joint Venturers the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of
non-
approval
of
proposals

(6) Notwithstanding that under subclause (1) of this Clause any detailed proposals of the Company are approved

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by the Minister or determined by
arbitration award, unless each and every
such proposal and matter is so approved
or determined by -

(i) 31st December, 1983 in respect
of the proposals made pursuant
to paragraph (A) of subclause (1)
of Clause 7; and

(ii) 31st December, 1984 in respect
of the proposals made pursuant
to paragraph (B) of subclause
(1) of Clause 7

or in each case by such extended date
or period if any as the Joint Venturers
shall be granted pursuant to the
provisions of this Agreement then the
Minister may give to the Joint Venturers
12 months notice of intention to
determine this Agreement and unless
before the expiration of the said 12
months period all the detailed proposals
and matters are so approved or
determined this Agreement shall cease
and determine subject however to the
provisions of Clause 42.

Implemen-
tation of
proposals

(7) The Joint Venturers shall implement the
approved proposals in accordance with

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the terms thereof.

Further
proposals -
Ellendale
mining area

9. (1) On or before 31st December, 1990 the Joint Venturers shall submit to the Minister detailed proposals for the development of the Ellendale mining area and as to such of the matters mentioned in paragraphs (a) to (j) of subclause (1) of Clause 7 as the Minister may require.
- (2) The provisions of Clauses 6, 7 and 8 (other than subclauses (5) and (6) of Clause 8) shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause.

Additional
proposals

10. If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify expand or otherwise vary their activities carried on pursuant to this Agreement beyond those specified in any approved proposals or desire to mine minerals other than diamonds they shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (j) of subclause (1) of Clause 7 as

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the Minister may require. The provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause. The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

Protection
and manage-
ment of the
environment

11. (1) The Joint Venturers shall in respect of the matters referred to in paragraph (j) of subclause (1) of Clause 7 and which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment.
- (2) The Joint Venturers shall during the currency of this Agreement at yearly intervals commencing from the respective dates when the Joint Venturers' proposals are approved submit an interim report to the Minister concerning investigations and research carried out

pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

- (3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) of this Clause notify the Joint Venturers that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the detailed report.
- (4) The Joint Venturers shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) where applicable shall mutatis mutandis apply in respect of such proposals.
- (5) The Joint Venturers shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.

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Use of
local pro-
fessional
services
labour and
materials

12. (1) The Joint Venturers shall, for the purposes of this Agreement, as far as it is reasonable and economically practicable so to do -
- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
 - (b) use labour available within the said State;
 - (c) when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
 - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price

quality delivery and service are equal to or better than that obtainable elsewhere.

(2) The Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) of this Clause and shall report to the Joint Venturers concerning such third party's implementation of that condition.

(3) The Joint Venturers shall submit a report to the Minister at quarterly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning their implementation of the provisions of this Clause together with a copy of any report received by the Joint Venturers pursuant to subclause (2) of this Clause during that quarter.

Roads - 13. (1)
Private roads

The Joint Venturers shall -

(a) be responsible for the cost of the construction and maintenance

of all private roads which shall
be used in their operations
hereunder;

- (b) at their own cost make such
provision as shall ensure that
all persons and vehicles (other
than those engaged upon the Joint
Venturers' operations and their
invitees and licencees) are
excluded from use of any such
private roads; and
- (c) at any place where such private
roads are constructed by the Joint
Venturers so as to cross any
railways or public roads provide
at their cost such reasonable
protection as may be required by
the Commissioner of Main Roads
or the Railways Commission as the
case may be.

Public
roads -
construction

- (2) The State shall construct or cause to be
constructed by either the Joint Venturers
or others after consultation with the
Joint Venturers within such period of
time as the parties shall agree public
roads in accordance with the
requirements of the Commissioner of Main
Roads to connect the relevant town and

the mining areas with existing public roads. The cost of such construction shall be borne by the Joint Venturers subject to the State contributing such amount as the State considers to be a reasonable proportion thereof.

Maintenance
of public
roads

- (3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Joint Venturers to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

Upgrading
of public
roads

- (4) In the event that the Joint Venturers' operations hereunder require the use of a public road referred to in subclause (3) of this Clause which is inadequate for the purpose, or result in excessive damage to or deterioration of any such public road (other than fair wear and tear) the Joint Venturers shall pay to the State the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main

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Roads having regard to the use of such public road by others.

Acquisition
of private
roads

- (5) Where a road constructed by the Joint Venturers for their own use is subsequently required for public use, the State may, after consultation with the Joint Venturers and so long as resumption thereof shall not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Joint Venturers such amount as the State considers to be reasonable.

Liability

- (6) The parties hereto further covenant and agree with each other that -
- (a) for the purposes of determining whether and if so the extent to which -
- (i) the Joint Venturers are liable to any person or body corporate (other than the State); or
- (ii) an action is maintainable by any such person or body corporate
- in respect of the death or injury of any person or damage to any

property arising out of the use of any of the roads for the maintenance of which the Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers; and

- (b) for the purposes of this Clause the terms "municipality" "street" and "care control and management" shall have the meaning which they respectively have in the Local Government Act 1960.

Airport

14. The Joint Venturers shall confer with the Minister with a view to reaching agreement on any upgrading of existing airport facilities and services in the Kimberley region that may be necessary for or result from the Joint Venturers' operations hereunder.

Mining
lease
Argyle
mining area

15. (1) On application made by the Joint Venturers, not later than 3 months after all their proposals submitted pursuant to paragraph (A) of subclause (1) of Clause 7 have been approved or

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determined and the Joint Venturers have complied with the provisions of Clause 6 and subclause (4) of Clause 7, for a mining lease of the blue area and in respect of which CRAE then holds mineral claims, the State shall upon the surrender by CRAE of all such mineral claims cause to be granted to the Joint Venturers at the rental specified from time to time in the Mining Act 1978 a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Joint Venturers' expense) such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act 1978 but in the form of the Schedule hereto for all minerals and subject to such of the conditions of the surrendered mineral claims as the Minister for Mines determines.

Term and
renewal

- (2) Subject to the performance by the Joint Venturers of their obligations under this Agreement and the Mining Act 1978 and notwithstanding any provisions of the Mining Act 1978 to the contrary the term of the mining lease shall be for a

period of 21 years commencing from the date of receipt of the application therefor under subclause (1) of this Clause with the right during the currency of this Agreement to take successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this Agreement, such right to be exercisable by the Joint Venturers making written application for any such renewal not later than 1 month before the expiration of the current term of the mining lease.

Exemption
from
expenditure
conditions

(3) The State shall ensure that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the Mining Act 1978 in regard to the mining lease.

Access over
mining
lease

(4) The Joint Venturers shall at all times permit the State and third parties with the consent of the State (with or without stock vehicles and rolling stock) to have access to and to pass

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over the mining lease (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement and subject at all times to any law of the State relating to security within any area or areas on which the Joint Venturers' operations are carried on.

Surrender
of part of
mining
lease

(5) Notwithstanding the provisions of this Clause and the Mining Act 1978 the Joint Venturers may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the mining lease.

Incorporation
of additional
areas in the
mining lease

(6) Notwithstanding the provisions of the Mining Act 1978 the Joint Venturers may, once within 5 years from the date of this Agreement, apply to the Minister for Mines for inclusion in the mining lease of such part or parts of the red area as the Joint Venturers nominate and in respect of which CRAE or the Joint Venturers or any of them

then hold mining tenements under the Mining Act 1904 or mining leases under the Mining Act 1978. The Minister for Mines may at his election include the whole or any part of the land applied for in the mining lease upon the surrender by the holder of the relevant mining tenements or mining leases subject to such of the conditions of the surrendered mining tenements and mining leases as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Joint Venturers' expense).

Mineral
claims in
the Argyle
mining area -
blue area

16. (1) Notwithstanding the provisions of the Mining Act 1978 any mineral claims in respect of the blue area held by CRAE on the commencement date shall subject to the provisions of subclauses (4) and (5) of this Clause be held under the provisions of the Mining Act 1904 for a period of 2 years (or until such earlier time as such mineral claims are surrendered for the purposes of

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subclause (1) of Clause 15 or such longer period as may be obtained pursuant to subclause (2) of this Clause) from the commencement date and shall then expire.

(2) The Minister shall at the request of the Joint Venturers extend the period referred to in subclause (1) of this Clause by additional periods each of 1 year but such extensions shall not exceed in total 3 years.

Red area

(3) Notwithstanding the provisions of the Mining Act 1978 any mining tenements in respect of the red area held by CRAE on the commencement date or subsequently granted to CRAE or to the Joint Venturers or any of them under the Mining Act 1904, shall subject to the provisions of subclauses (4) and (5) of this Clause be held under the provisions of the Mining Act 1904 for a period ending 5 years (or such earlier time as such mining tenements are surrendered for the purposes of subclause (6) of Clause 15 or otherwise) from the commencement date and shall then expire.

Exemption
from labour
conditions
and other
conditions
of work

(4) The mining tenements referred to in subclauses (1) and (3) of this Clause shall be exempt from the labour conditions and other conditions of work imposed by or

under the Mining Act 1904 subject to compliance by the holder thereof with its other obligations thereunder.

- Rent (5) The rent payable in respect of the mining tenements referred to in subclauses (1) and (3) of this Clause shall as from 1st January, 1984 be at the rate applicable to a mining lease from time to time pursuant to the Mining Act 1978.
- Mining leases in the Argyle mining area - red area (6) Any mining leases under the Mining Act 1978 in respect of the red area held by CRAE at the commencement date or subsequently granted to CRAE or to the Joint Venturers or any of them shall, subject to compliance with the obligations thereunder, remain in force for a period of 5 years (or such earlier time as such mining leases are surrendered for the purposes of subclause (6) of Clause 15 or otherwise) from the commencement date and shall then expire.
- Exemption from expenditure conditions (7) During such time as the mining leases referred to in subclause (6) of this Clause remain in force and subject to compliance with the other obligations thereunder the holder shall not be required to comply with the expenditure conditions imposed by or under the Mining Act 1978.

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Continuation
of Temporary
Reserves and
rights of
occupancy

17. (1) Subject to the provisions of this Clause and notwithstanding the provisions of the Mining Act 1904 or the Mining Act 1978 Temporary Reserves numbered 7216H 7217H 7311H and 7323H as they exist immediately after the commencement date and the rights of occupancy held by CRAE in respect thereto shall, subject to compliance by CRAE with the terms thereof (other than the requirement of relinquishment), continue for a period of 5 years from the commencement date and then be cancelled.
- (2) Notwithstanding the provisions of subclause (1) of this Clause the Minister may from time to time cancel such portions of the said Temporary Reserves and the rights of occupancy as may be included in any mining tenement granted pursuant to the Mining Act 1904 or the Mining Act 1978.

Mining
lease
Ellendale
mining area

18. On application made by the Joint Venturers, not later than 3 months after all their proposals submitted pursuant to Clause 9 have been approved or determined for a mining lease of such part or parts of the Ellendale mining area as the Joint Venturers nominate and in respect of which CRAE or the Joint Venturers or any of them then holds mineral claims, the State shall upon the

surrender of all such mineral claims cause to be granted to the Joint Venturers a mining lease of such land on the same terms covenants and conditions mutatis mutandis that apply to the mining lease granted pursuant to Clause 15 but excluding the provisions of subclause (6) of that Clause.

Mineral
claims
in the
Ellendale
mining area

19. (1) Notwithstanding the provisions of the Mining Act 1978 any mineral claims in respect of the Ellendale mining area held by CRAE or the Joint Venturers or any of them at the date of this Agreement or subsequently granted to CRAE or the Joint Venturers or any of them subject to the provisions of this Clause, shall be held under the provisions of the Mining Act 1904 for a period of 10 years (or such earlier time as such mineral claims are surrendered for the purposes of Clause 18 or otherwise) from the commencement date and shall then expire.

Exemption
from labour
conditions
and programme
of work

(2) The State shall ensure that subject to the holder undertaking annually a programme of work in respect of such mineral claims which shall first be approved by the Minister after consultation with the Minister for Mines, such holder shall not

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be required to comply with the labour conditions imposed by the Mining Act 1904 in respect of such mineral claims.

Rent

(3) The rent payable in respect of mineral claims held by CRAE or the Joint Venturers or any of them in the Ellendale mining area shall as from 1st January, 1984 be at the rate applicable to a mining lease from time to time pursuant to the Mining Act 1978.

Right to remove stone, sand, clay and gravel

20. The Joint Venturers may for the purposes of this Agreement and without payment of royalty, remove stone sand clay or gravel from the mining leases or from any other mining tenement held from time to time by CRAE or the Joint Venturers or any of them in the Argyle mining area or the Ellendale mining area under the Mining Act 1904 or the Mining Act 1978.

Electricity-Argyle

21. (1) (a) For the purposes of the provision of electricity to the Argyle mining area and the relevant town to be constructed for the Joint Venturers' operations at the Argyle mining area, the Joint Venturers shall undertake studies with the State Energy Commission with a view to the establishment, on terms and

conditions to be agreed between the State Energy Commission and the Joint Venturers, of hydro electric generation works on the Ord River and distribution works to supply inter alia the Argyle mining area and the relevant town at the Argyle mining area.

- (b) Subject to paragraph (d) of this subclause, the Joint Venturers shall following completion of the studies referred to in paragraph (a) of this subclause enter into an agreement with the State Energy Commission for the purchase by the Joint Venturers of electricity required for the Argyle mining area and the relevant town at the Argyle mining area from the hydro electric generation works referred to in paragraph (a) of this subclause.
- (c) The Joint Venturers in accordance with their approved proposals hereunder may, pending agreement being reached with the State Energy Commission pursuant to paragraphs (a) and (b) of this subclause and

the commencement of the supply of electricity from the said hydro electric generation works, install and operate equipment to generate electricity for the Argyle mining area and the relevant town at the Argyle mining area and the provisions of paragraphs (a) (b) and (c) of subclause (3) of this Clause shall apply to any such installation and operation.

- (d) In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the terms of the proposed agreements between the State Energy Commission and the Joint Venturers for the establishment of the said generation and distribution works and the supply of electricity to the Joint Venturers pursuant to paragraphs (a) and (b) of this subclause would result in an overall cost to the Joint Venturers which would be greater than the overall cost (including capital and operating costs) of supplying electricity to

the Argyle mining area and the relevant town at the Argyle mining area from a power station constructed by the Joint Venturers at the Argyle mining area, the provisions of subclauses (3) (4) (5) (6) (7) (8) and (9) of this Clause shall apply to the supply of such electricity to the Argyle mining area and the relevant town at the Argyle mining area.

Ellendale

(2) (a)

For the purposes of the provision of electricity to the Ellendale mining area and the relevant town constructed for the Joint Venturers' operations at the Ellendale mining area and for the purposes of facilitating integration of electricity generation and transmission facilities in the Ellendale mining area the Joint Venturers shall purchase electricity if available from the State Energy Commission, or, negotiate with the State Energy Commission for the payment by the Joint Venturers of an equitable contribution towards the augmentation of the facilities of the

State Energy Commission to enable it to supply electricity to the Joint Venturers. Electricity supplied to the Joint Venturers pursuant to this subclause shall be at rates to be agreed between the State Energy Commission and the Joint Venturers from time to time.

(b) In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the provisions of paragraph (a) of this subclause would be unduly prejudicial to their operations, the provisions of subclauses (3) (4) (5) (6) (7) and (8) of this Clause shall apply to the supply of electricity to the Ellendale mining area and the relevant town.

(3) Subject to subclauses (1) and (2) of this Clause the Joint Venturers may -

(a) in accordance with their approved proposals hereunder and subject to the provisions of the Electricity Act 1945 and the

approval and requirements of the State Energy Commission, install and operate without cost to the State, at an appropriate location equipment to generate electricity of sufficient capacity for their operations hereunder;

(b) transmit power within the mining areas and from the mining areas to the relevant town or elsewhere subject to the provisions of the Electricity Act 1945 and the approval and requirements of the State Energy Commission; and

(c) subject to the provisions of the Electricity Act 1945 and the requirements of the State Energy Commission sell power transmitted pursuant to paragraph (b) of this subclause to third parties within the mining areas and to third parties elsewhere.

(4) In the event that the Joint Venturers are unable to procure easements or other rights over land required for the purposes of subclause (3) of this Clause on reasonable terms the State shall

assist the Joint Venturers to such extent as may be reasonably necessary to enable them to procure the said easements or other rights over land.

- (5) Should the Joint Venturers' relevant approved proposal provide for the State Energy Commission to reticulate electricity to houses occupied by the Joint Venturers' workforce and by any other persons connected directly with the Joint Venturers' operations whether employees or not and to commercial establishments directly connected with such operations, the Joint Venturers shall sell to the State Energy Commission in bulk electricity in sufficient quantities to meet the needs of such workforce persons and establishments on terms and conditions to be negotiated between the State Energy Commission and the Joint Venturers.
- (6) If the State Energy Commission desires to purchase power for its own use and the Joint Venturers have the ability to supply such power, the Joint Venturers shall use their best

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endeavours to supply on terms and conditions to be negotiated between the State Energy Commission and the Joint Venturers, and the Joint Venturers shall in that event be empowered to supply such power.

Acquisition
of facilities

- (7) Notwithstanding the provisions of the State Energy Commission Act the State may at any time give to the Joint Venturers 12 months' notice of its intention to acquire and may thereafter acquire the Joint Venturers' electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Joint Venturers shall take all such steps as may be necessary to effect the acquisitions. The State undertakes that in such event the Joint Venturers shall for their purposes hereunder have first call on the power generated and transmitted by such electricity facilities so acquired at levels of supply from time to time agreed between the State and the Joint Venturers and

the State undertakes subject only to its inability to supply power for any of the reasons set forth in Clause 39 to supply the Joint Venturers with power for their purposes hereunder at the said levels of supply and that in the event of such inability to supply power occurring the State shall take all possible steps to restore such supply regardless of the time or day when such inability arises.

Charges for
electricity

- (8) In the event of the State acquiring the Joint Venturers' electricity facilities the Joint Venturers shall pay to the State Energy Commission the cost of all electricity supplied to the Joint Venturers by the State Energy Commission at rates to be agreed between the State Energy Commission and the Joint Venturers from time to time. Should the Joint Venturers desire to expand their operations hereunder and for that purpose require power beyond the level agreed pursuant to subclause (7) of this Clause the Joint Venturers shall give to the State 1 years notice of their additional power requirements and the State shall thereupon cause the State Energy

Commission to negotiate with the Joint Venturers the terms and conditions under which the additional generating capacity required to meet the needs of such expansion is to be provided.

Alternative
power -
Argyle

(9) Notwithstanding that the Joint Venturers have installed equipment to generate electricity at the Argyle mining area pursuant to the provisions of subclause (3) of this Clause the Joint Venturers may during the continuance of this Agreement enter into negotiations with the State Energy Commission with a view to obtaining further or alternative electricity for the Argyle mining area and the relevant town from hydro electric generation works on the Ord River.

Water-
Argyle

22. (1) The State and the Joint Venturers shall agree upon the amount of the Joint Venturers' annual and maximum daily water requirements for their purposes hereunder at the Argyle mining area and the relevant town constructed for the Joint Venturers' operations at the Argyle mining area (which amount or such other amounts as shall from time to time be agreed between the parties to be

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reasonable are hereinafter called "the
Argyle water requirements").

Lake
Argyle

- (2) The Joint Venturers may, subject to the relevant approved proposal and their entering into an agreement with the State or a statutory body designated by the State with respect to the construction operation and maintenance of facilities to take water from Lake Argyle and supply it to the Argyle mining area obtain subject to that agreement all or part of the Argyle water requirements from Lake Argyle.

Search in
Argyle
mining area

- (3) The Joint Venturers may at their cost and in collaboration with the State continue to search for underground water within the Argyle mining area. Where appropriate the Joint Venturers shall employ and retain experienced groundwater consultants. The Joint Venturers shall furnish to the Minister details of the results of their investigations and copies of the reports of such consultants as they become available.

Grant of
licence

- (4) If the investigations referred to in subclause (3) of this Clause prove to the satisfaction of the Minister the availability of any suitable underground

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water source in the Argyle mining area which can continue to be drawn on by the Joint Venturers without seriously affecting the water level in that water source beneath the Argyle mining area or adjacent areas the State shall on the request of the Joint Venturers grant to the Joint Venturers a licence to develop and draw from that source, at the Joint Venturers' cost but without fee, so much of the Argyle water requirements as shall be agreed between the parties on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the agreed amount of Argyle water requirements, the State may on at least 6 months prior notice to the Joint Venturers (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the

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maximum which that source is hydrologically capable of meeting as aforesaid.

Alternative
water
source

(5) Should the State at any time pursuant to the proviso to subclause (4) of this Clause limit the amount of water to be taken from any underground water source or if otherwise the Argyle water requirements cannot be met from any water source on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Joint Venturers search for new or additional water sources with a view to restoring or ensuring the full quantity of the Argyle water requirements. The Joint Venturers shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Joint Venturers and the State.

Development
of water
sources

(6) The Joint Venturers shall provide at their cost or with finance arranged by them and construct to standards and in accordance with designs approved by the State and operate and maintain in accordance with the relevant approved proposals all necessary bores, valves,

pipelines, meters, tanks, equipment and appurtenances necessary to draw transport use and dispose of water obtained by the Joint Venturers pursuant to this Clause.

State's
acquisition
of water
facilities

- (7) If during the currency of this Agreement the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water utilised by the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme, the Minister may, on giving 6 months prior notice to the Joint Venturers of his intention to do so, acquire the Joint Venturers' water supply facilities for a monetary consideration to be determined by the Minister. Immediately thereafter the State shall, subject only to the continued hydrological availability of water from such sources commence and thereafter continue to supply water up to an amount and at a rate required by the Joint Venturers being the amount and rate to which the Joint Venturers were previously entitled and the proviso to

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subclause (4) of this Clause and the provisions of subclause (5) of this Clause shall in like manner apply to this subclause.

Enlarged
water
capacity

(8) The State, after first having due regard to the Argyle water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the surface and/or underground water resources referred to in this Clause or construct any works in connection therewith to a greater capacity than that required to supply the Argyle water requirements but in that event the Joint Venturers shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

Third
party use

(9) The State may after first having due regard to the Argyle water requirements and to the hydrological adequacy of the applicable water source, upon not less than 3 months prior notice to the Joint Venturers specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that

third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from that source PROVIDED HOWEVER that -

- (a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source within 5 years of the commencement date the third party (but not the State) shall reimburse to the Joint Venturers prior to the third party exercising its rights to draw water, such proportion of those moneys as the Minister determines is fair and reasonable; and
- (b) where the Joint Venturers draw water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that

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the capacity of that water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Joint Venturers' requirements shall be reduced in such proportion as may be agreed.

Payment
for water

(10) The Joint Venturers shall pay to the State for water supplied by the State pursuant to subclauses (2) and (7) of this Clause a fair price to be agreed between the parties hereto having regard to the actual cost of establishing operating and maintaining the supply and provision for replacement of the water supply facilities. Notwithstanding the foregoing provisions of this subclause in respect of water supplied by the State to the Joint Venturers as aforesaid for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the Country Areas Water Supply Act 1947.

Design of
plant

(11) The Joint Venturers shall to the extent that it is practical and economical design construct and operate all plant

required under this Clause so as to ensure the most efficient use of the available water resources including if required by the Minister the use of brackish or saline water.

State to
restrict
adverse
grants

- (12) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Joint Venturers are drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder and is not likely to render the water source incapable of supplying the Argyle water requirements on a continuous basis.

Charges for
supply of
water to
third
parties

- (13) The Joint Venturers may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Joint Venturers. The Joint Venturers shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all

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or any of the powers of a water board under the Water Boards Act 1904 and, with the consent of the Minister for Local Government, a local authority.

Rights in
Water and
Irrigation
Act

(14) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the Rights in Water and Irrigation Act 1914 and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Joint Venturers' purposes under this Agreement.

Water-
Ellendale

23. (1) The State and the Joint Venturers shall agree upon the amount of the Joint Venturers' annual and maximum daily water requirements for their purposes hereunder at the Ellendale mining area and the relevant town constructed for the Joint Venturers' operations at the Ellendale mining area (which amount or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the

Ellendale water requirements").

Search in
Ellendale
mining area

- (2) The Joint Venturers shall at their cost and in collaboration with the State search for underground water within the Ellendale mining area. Where appropriate the Joint Venturers shall employ and retain experienced groundwater consultants. The Joint Venturers shall furnish to the Minister details of the results of their investigations and copies of the reports of such consultants as they become available.

Search
outside
Ellendale
mining
area

- (3) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (2) of this Clause indicate that any source of underground water in the Ellendale mining area is likely to be inadequate or unsuitable to supply the Ellendale water requirements the parties hereto shall collaborate and agree on a programme which shall be carried out by the State at the cost of the Joint Venturers to search for water inside and outside the Ellendale mining area.

Grant of
licence

- (4) If the investigations referred to in subclauses (2) and (3) of this Clause prove to the satisfaction of the Minister the availability of any suitable underground

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water source in or near the Ellendale mining area which can continue to be drawn on by the Joint Venturers without seriously affecting the water level in that water source beneath the Ellendale mining area or adjacent areas or the availability of water in the adjacent areas the State shall grant to the Joint Venturers a licence to develop and draw from that source at the Joint Venturers' cost but without fee, the Ellendale water requirements on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the Ellendale water requirements, the State may on at least 6 months prior notice to the Joint Venturers (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

Investigation
of surface
water

(5) In the event of water supplies from available underground sources proving insufficient to meet the Ellendale water requirements the Joint Venturers shall notwithstanding the provisions of subclause (4) of this Clause collaborate with the State in an investigation of surface water, water catchments and storage dams. The Joint Venturers shall if they propose to utilise such surface water, water catchments and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required.

(6) The provisions of Clause 22 subclauses (5) to (14) inclusive (but with the deletion in subclause (10) of "subclauses (2) and (7) of this Clause" and the substitution therefor of "subclause (5) of Clause 23 and subclause (7) of this Clause") shall mutatis mutandis apply to the Ellendale mining area and the Ellendale water requirements.

Lands

24. (1) For the purposes of the Joint Venturers' operations and associated works at the

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relevant town the State shall grant to the Joint Venturers for residential agricultural professional business commercial and industrial purposes and the provision of communal or other facilities at the relevant townsite a special lease or special leases under the provisions of the Land Act or occupancy rights on terms and conditions to be determined by the Minister for Lands of the said State for an area or areas of land in the relevant townsite in accordance with the Joint Venturers' proposals as finally approved. Such lease or leases or occupancy rights as the case may be shall be for a term not exceeding 21 years from the date of such grant and shall be at reasonable rentals subject to periodic review. The Joint Venturers may at any time during the currency of such lease or leases or occupancy rights purchase the fee simple of any relevant townsite lot on which buildings or structures of a type and to a value to be approved by the Minister have been erected and at such reasonable price and on and subject to

such terms and conditions not inconsistent with this Agreement as the Minister for Lands considers applicable in the circumstances and including a right for the State notwithstanding the provisions of Clause 36 at any time and from time to time to exclude from such lease or leases or occupancy rights or to resume without compensation any part or parts of such land on which no building or structure or any substantial improvements have been erected as the State may require for public purposes.

- (2) The State shall in accordance with the Joint Venturers' approved proposals grant to the Joint Venturers, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods and on such terms and conditions (including rental and renewal rights) as shall be reasonable having regard to the requirements of the Joint Venturers, leases and where applicable licences easements and rights of way for all or any of the purposes of the Joint Venturers' operations hereunder including any of the following namely -

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private roads, tailing areas, water pipelines, pumping installations and reservoirs, airstrip, power transmission lines and plant site areas and borrow pits for sand gravel and aggregate.

Modification
of Land Act

(3) For the purpose of this Agreement in respect of any land sold or leased to the Joint Venturers by the State the Land Act shall be deemed to be modified by -

- (a) the substitution for subsection (2) of section 45A of the following subsection -
 - "(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased.";
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;

- (f) the inclusion of a power to offer for sale or leasing land within or in the vicinity of the relevant townsite notwithstanding that the relevant townsite has not been constituted a townsite under section 10; and
- (g) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act;

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

Sale of
Land Act

- (4) Notwithstanding the provisions of the Sale of Land Act 1970, the Joint Venturers shall, subject to the prior consent of the Minister, have the right during the

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currency of any lease or leases or occupancy rights granted to them under subclause (1) of this Clause to enter into an agreement to sell any lot the subject of such lease or leases or occupancy rights on condition that the purchaser erects on such lot within 2 years from the date of such agreement, buildings or structures of a type and to a value to be approved by the Minister.

Townsite
and town
development

25. (1) (a) Should the approved proposals provide for the establishment of a new town or new towns the Joint Venturers shall at their cost or with finance arranged by them and in accordance with the approved proposals -
- (i) provide at the relevant townsite such housing accommodation services and works (including sewerage reticulation and treatment works water supply works and drainage works and also social cultural and civic facilities) as may be necessary in order to provide for the needs of persons (and the dependants of

those persons) connected directly with the Joint Venturers' operations under this Agreement, whether or not such persons are employed by the Joint Venturers;

- (ii) provide at the relevant townsite all necessary public roads and buildings required for educational, hospital, medical, police, recreation, fire and other services;
- (iii) provide all equipment required for the operation and proper functioning of the services and works referred to in subparagraphs (i) and (ii) of this paragraph;
- (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in subparagraphs (i) and (ii) of this paragraph;
- (v) (subject to and in accordance with by-laws from time to

time to be made and altered by the Joint Venturers which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licencees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or their employees licencees or agents including the dependants of such persons; and

- (vi) ensure that the roads buildings and other works mentioned in subparagraph (ii) of this paragraph and

the equipment mentioned in subparagraph (iii) of this paragraph are readily available free of charge to the State.

Limitation
on Joint
Venturers'
obligations

- (b) Nothing contained in paragraph (a) of this subclause shall be construed as placing on the Joint Venturers an obligation to provide and pay for personnel required to operate the educational hospital medical or police services (except as provided in Clause 31) mentioned in that paragraph.

Equipment

- (2) The Joint Venturers shall at their cost or with finance arranged by them equip all the buildings mentioned in paragraph (a) of subclause (1) of this Clause to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable townsites.

Staff
housing

- (3) The Joint Venturers shall at their cost or with finance arranged by them provide adequate housing accommodation for married and single staff directly

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connected with the educational hospital medical and police services mentioned in subparagraphs (i) and (ii) of paragraph (a) of subclause (1) of this Clause.

Existing towns

- (4) If the approved proposals provide for the assimilation into any existing town of the whole or part of the Joint Venturers' workforce (including their dependants) and any other persons (including their dependants) connected directly with the Joint Venturers' operations (whether employees of the Joint Venturers or not) whereby the normal population of such existing town is significantly increased then the Joint Venturers to the extent necessary to provide for the needs of the said increase in population of such existing town shall bear the cost of the provision at that existing town of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause. The said additional housing services works and equipment may be provided by the State, or, after consultation by the Minister with the Joint Venturers, by another party

under an agreement with the State and in either case shall be to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable towns. The Joint Venturers shall pay to the State or such other party such proportion of the cost of such additional housing services works and equipment as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

State
services

- (5) Should the approved proposals place an obligation on the State to provide for any of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause or require the State to procure and accept the responsibility of the provision of any services and facilities the State shall provide or procure the provision of the same but (unless the approved proposals otherwise provide) subject to the following conditions namely -
- (a) that the State is satisfied that the need to provide such services

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and facilities results from or is reasonably attributed to the Joint Venturers' operations under this Agreement; and

- (b) the Joint Venturers agree to bear the capital cost involved and thereafter to pay reasonable charges for the maintenance and operation of the said services or facilities other than the operation charges in respect of education hospital medical and police services.

By-laws

- (6) Unless and until the relevant townsite is declared a townsite pursuant to section 10 of the Land Act or otherwise with the consent of the Minister, the Governor in Executive Council may upon the recommendation of the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under this Clause upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) consistent with the provisions hereof. If at any time it

appears that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend to the Governor that he makes such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) as may be decided by arbitration as herein provided.

Transitional
arrangements -
Town

26. The Minister may in lieu of requiring the Joint Venturers to comply with all of the provisions of Clause 25 for the establishment of a new town or towns, or for the assimilation into any existing town, permit the Joint Venturers to enter into such transitional arrangements as he may approve, provided that such arrangements continue only until such time as the quantity of kimberlite ore from the Argyle mining area treated for the recovery of diamonds exceeds 3 million tonnes in any calendar year, or 31st December, 1987, whichever occurs first.

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Sewerage
facilities

27. (1) The Joint Venturers shall unless the Minister otherwise determines and subject to such conditions as the Minister may from time to time approve at their cost or with finance arranged by them construct or cause to be constructed and operate sewerage facilities at the relevant town and charge for such services. The Joint Venturers shall have all such powers and authorities with respect to such facilities as are determined by the Minister which may include, with the consent of the Minister for Local Government, all or any of the powers of a local authority.
- (2) If at any time the Minister is of the opinion that it would be desirable that the sewerage facilities operated by the Joint Venturers under subclause (1) of this Clause be controlled and operated by the State, the Minister may (after first affording the Joint Venturers a reasonable opportunity to consult with him) on giving 6 months prior notice to the Joint Venturers of his intention, acquire the Joint Venturers' sewerage facilities for a monetary consideration to be determined by the Minister.

Thereafter in respect of sewerage facilities operated by or on behalf of the State within the relevant town, rates and charges as levied from time to time pursuant to the provisions of the Country Towns Sewerage Act 1948 shall apply.

Appoint-
ment of
Administrator

28. The State may after consultation with the Joint Venturers appoint an administrator to administer (at the cost of the Joint Venturers) any new relevant town established by the Joint Venturers for the purposes of this Agreement and in so doing to exercise all or any of the functions and powers of a local authority under the Local Government Act 1960 until such time as agreement may be reached between the Joint Venturers, the State and the relevant local authority as to the transfer of those functions and powers to the relevant local authority.

Royalties -
Diamonds

29. (1) For the purpose of this Clause -
- (a) "above zero profit" means in relation to a year the amount (if any) by which the sales value for that year exceeds the allowable deductions for that year;
- "allowable deductions" means -
- (i) operating costs properly incurred by the Joint

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Venturers (but excluding those cost provisions not allowed under the Income Tax Assessment Act 1936) and directly attributable to the mining, recovery and sorting of rough diamonds from the areas the subject of this Agreement and such other costs as the Joint Venturers demonstrate to the reasonable satisfaction of the Minister are reasonably and necessarily incurred by the Joint Venturers in connection with the mining, recovery and sorting of rough diamonds from the areas the subject of this Agreement;

- (ii) such apportionment of costs as are reasonably attributable to or reasonably and necessarily incurred by the Joint Venturers but which are not wholly incurred in connection with or

applicable to the mining,
recovery, sorting and
marketing of rough
diamonds from the areas
the subject of this
Agreement as the Minister
may approve;

- (iii) direct marketing and
selling expenses properly
incurred by the Joint
Venturers in connection
with and prior to the sale
of sorted rough diamonds
from the areas the subject
of this Agreement and such
other expenses which the
Joint Venturers
demonstrate to the
reasonable satisfaction of
the Minister are
reasonable and necessary
in connection with the
sale of sorted rough
diamonds from the areas
the subject of this
Agreement;
- (iv) transport and insurance
costs relating to rough

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diamonds from the areas the subject of this Agreement properly incurred by the Joint Venturers prior to the sale, transfer, disposal or processing thereof;

(v) expenditure on exploration for diamonds within the areas the subject of this Agreement reasonably incurred by the Joint Venturers after the 31st December, 1981;

(vi) the value of unsold sorted rough diamonds from the areas the subject of this Agreement which the Joint Venturers had on hand at the beginning of a year less the value of unsold sorted rough diamonds from the areas the subject of this Agreement which the Joint Venturers have on hand at the end of that year. For the purpose of this paragraph (vi) the

value of the diamonds to be taken into account shall be deemed to be the direct cost of production (excluding depreciation, overheads, interest and financing costs) thereof;

- (vii) depreciation of allowable capital expenditure;
- (viii) expenditure which the Joint Venturers demonstrate to the reasonable satisfaction of the Minister was reasonably incurred by the Joint Venturers or any of them (or any corporation related within the meaning of that term as used in subsection (5) of section 6 of the Companies Act 1961 to one or more of the Joint Venturers) prior to 1st January, 1982 in the exploration for and evaluation of diamonds in the Kimberley region amortised on the basis and over the period hereinafter

provided for the calculation of depreciation of allowable capital expenditure;

(ix) actual interest costs and borrowing expenses incurred by the Joint Venturers on borrowings, not exceeding in amount 80% of the total investment proposed by the Joint Venturers to be incurred in their activities hereunder prior to 31st December, 1986, the repayment provisions of which are approved by the Minister and thereafter actual interest costs and borrowing expenses incurred by the Joint Venturers on such borrowings as the Minister (on the basis of proposals submitted by the Joint Venturers with respect to the financing of their operations under this Agreement and repayment of loans) may allow for the

purposes of this paragraph

(ix)

but does not include -

(I) royalties except where payable pursuant to an Act of the State (other than the Act to ratify this Agreement);

(II) taxes on or affecting income or profits; and

(III) any investment allowance permitted under the Income Tax Assessment Act 1936;

"allowable f.o.b. revenue costs"

means the following costs directly incurred in connection with the sale transfer or disposal of sorted rough diamonds from the areas the subject of this Agreement to the extent that they are reasonably and necessarily incurred and paid by the Joint Venturers -

(i) insurance and freight ex Perth;

(ii) selling and marketing expenses;

- (iii) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;

"allowable capital expenditure" means expenditure of a capital nature properly incurred by the Joint Venturers being -

- (i) expenditure on plant and equipment owned by the Joint Venturers and used by them for diamond mining and recovery within the mining areas the subject of this Agreement;
- (ii) expenditure on buildings plant and equipment owned by the Joint Venturers and used by them for sorting rough diamonds in the said State;
- (iii) expenditure on site preparation, mine development and buildings and other improvements

located within the areas
the subject of this
Agreement;

- (iv) expenditure on housing,
educational, hospital,
medical, police, recreation,
fire and other services
pursuant to the relevant
approved proposal for
employees and associated
workforce, which facilities
and services are located
within the Kimberley
region;
- (v) expenditure in providing,
or contributing to the
cost of providing, water,
electricity, sewerage,
radio and telephone
communications, roads and
airstrips pursuant to the
relevant approved proposals
and used for the diamond
mining and recovery and
associated relevant townsite
operations of the Joint
Venturers;
- (vi) such other capital

expenditure as the Minister
may determine to be
reasonable and necessary
for the Joint Venturers'
diamond mining recovery
and sorting operations
under this Agreement;

"depreciated value" means the cost
to the Joint Venturers of the
assets on which allowable capital
expenditure is incurred less the
total amount deducted therefrom by
way of depreciation pursuant to
the provisions of paragraph (b) of
this subclause;

"f.o.b. revenue" means in relation
to a year the sales value for that
year less the allowable f.o.b.
revenue costs for that year;

"offset amount" means the amount
or amounts which the Joint
Venturers may be entitled to
offset against future royalty
payments pursuant to subclause (3)
of this Clause;

"processing" means all or any of
the following activities carried

out in relation to sorted rough
diamonds -

- (i) the physical and chemical
treatment of diamonds;
- (ii) the cutting and polishing
of diamonds; and
- (iii) all other processes and
treatment of diamonds
which increase their
market value

but does not include the sorting
of rough diamonds;

"sales value" means -

- (i) the greater of the gross
sales revenue from the
sale transfer or disposal
by the Joint Venturers of
sorted rough diamonds on
an arms length basis or
the fair and reasonable
market value on an arms
length basis of sorted
rough diamonds sold
transferred or disposed of
by the Joint Venturers as
determined by the Minister
after consultation with

(ii) the Joint Venturers; and
in respect of sorted rough diamonds processed by the Joint Venturers the fair and reasonable market value prior to processing as determined by the Minister (having regard to any current sales on an arms length basis by the Joint Venturers of comparable categories of sorted rough diamonds and where sorted rough diamonds are processed in the said State by the Joint Venturers, having regard to the allowable f.o.b. revenue costs) after consultation with the Joint Venturers; and
"year" means the period from the commencement date to the 31st December, 1981 and thereafter a calendar year beginning on the 1st day of January;

(b) depreciation of allowable capital expenditure shall be calculated as follows -

- (i) where at the end of a year the estimated remaining life of the mine at which the Joint Venturers are carrying on diamond mining operations under this Agreement (or, where there is more than one such mine the estimated remaining life of the mine with the largest production) exceeds five years, by applying a rate of 20% to the depreciated value of allowable capital expenditure; and
- (ii) where at the end of a year the mine with the largest production has an estimated life of 5 years or less by dividing, each year thereafter, the depreciated value of

allowable capital
expenditure by the
remaining estimated life
of that mine.

For the purposes of this paragraph

(b) -

(I) the total amount of
depreciation claimed in
respect of any asset shall
not exceed the cost of
that asset; and

(II) the depreciated value of
allowable capital
expenditure shall be
reduced in respect of any
asset sold or otherwise
disposed of by the
proceeds of sale or
disposal (if any);

(c) where in relation to a year the
allowable deductions exceed the
sales value a loss shall be deemed
to have been incurred by the Joint
Venturers in respect of that year
and the amount of the loss shall
be deemed to be the amount by which

the allowable deductions for that year exceed the sales value for that year. So much of the losses incurred in any one of the 7 years next preceding a particular year as has not been allowed as a deduction from sales value in any one of those years shall be allowed as a deduction from sales value in calculating above zero profit for that year. The ageing of the balance on losses carried forward shall be determined on a first in first out basis;

- (d) where the Minister is required to be satisfied as to or to approve any costs or expenses or the calculation or apportionment thereof in connection with allowable deductions or sales value as defined in this Clause, the Minister shall consult with the Joint Venturers and have regard to any relevant provisions of the Income Tax Assessment Act 1936.

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Profit
based
royalty

(2) The Joint Venturers shall each year during the continuance of this Agreement pay to the State in respect of diamonds from the areas the subject of this Agreement (whether produced before or after the commencement date) royalty at the rate of 22.5% of the above zero profit for that year PROVIDED HOWEVER that whenever in respect of a year the royalty payable at the rate aforesaid is less than 7.5% of the f.o.b. revenue for that year or there is no above zero profit the Joint Venturers shall pay to the State in respect of that year by way of a minimum royalty payment an amount equal to 7.5% of the f.o.b. revenue for that year.

Royalty
offset

(3) (a) Where a minimum royalty payment has been made by the Joint Venturers pursuant to the proviso to subclause (2) of this Clause the Joint Venturers may offset against future royalties payable, in the manner set forth in subparagraphs (b) and (c) of this subclause, an amount equal to the

amount by which that minimum royalty payment exceeds 22.5% of the above zero profit for the year in respect of which that minimum royalty payment was made or if there is no above zero profit for that year the amount of the minimum royalty payment.

- (b) In any year in which three quarters of 22.5% of the above zero profit for that year is equal to or greater than 7.5% of the f.o.b. revenue for that year, one quarter of 22.5% of the above zero profit for that year or such lesser amount as shall be equal to the offset amount shall be retained by the Joint Venturers and the amount so retained shall be applied in reduction or retirement as the case may be of the offset amount.
- (c) In any year in which 22.5% of the above zero profit for that year exceeds 7.5% of the f.o.b. revenue for that year and three quarters

of 22.5% of the above zero profit is less than 7.5% of the f.o.b. revenue, the amount by which 22.5% of the above zero profit for that year exceeds 7.5% of the f.o.b. revenue for that year or such lesser amount as shall be equal to the offset amount shall be retained by the Joint Venturers and the amount so retained shall be applied in reduction or retirement as the case may be of the offset amount.

Review of
method of
calculation

- (4) (a) The method of calculation of the profit based royalty referred to in subclause (2) of this Clause shall during the currency of this Agreement be subject to review by the Joint Venturers and the State in the event that either party gives notice to the other that in its opinion the method of calculation is unfair, inequitable or unworkable.
- (b) In the event of any dispute between the parties arising from any review under paragraph (a) of this subclause the matter shall be referred to arbitration

hereunder.

Quarterly
royalty
returns

(5) (a)

The Joint Venturers shall during the continuance of this Agreement within 14 days after the following quarter days (which quarter days are referred to in this paragraph as "the due date") namely the last days of March, June, September and December in each year (commencing on 31st March, 1982) furnish to the Minister for Mines a return in a form approved by the Minister for Mines showing the quantity, value, allowable f.o.b. revenue costs and such other details (including estimated costs of production and claimed deductions itemised) as the Minister for Mines may require of diamonds on which royalty has accrued payable hereunder during, in respect of the return for the quarter ending 31st March, 1982, the period from the commencement date to 31st March, 1982 and thereafter, during the quarter immediately preceding the due date of the return and on such return shall state the opening and closing balance of stocks on hand and estimate the amount of royalty paid and payable in

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respect of the diamonds the subject of the return. The Joint Venturers, if required by the Minister for Mines, shall consult with him with respect to such estimates and revise such estimates if required on the basis of actual quarterly sales. Royalty at the rate aforesaid shall be payable on the due date and shall be paid by the Joint Venturers on the amount of the estimate or other amount agreed between the Joint Venturers and the Minister for Mines within 45 days of the due date.

Annual
royalty
returns

- (b) The Joint Venturers shall during the continuance of this Agreement within 4 months after the 31st December in each year (other than 31st December, 1981) (hereinafter called the annual return date) furnish to the Minister for Mines a return, audited by registered auditors, showing full details of all income derived and expenditure and all other details required to enable the calculation of the royalty payable thereon and the quantity and value of all diamonds sold transferred or otherwise disposed of during the year

of return. Returns shall be in a form approved from time to time by the Minister and shall itemise the basis of apportionment of any indirect costs that may be approved by the Minister as allowable deductions. The return for the year ending 31st December, 1982 shall be in respect of the period from the commencement date to the 31st December, 1982.

(c) Where a return furnished pursuant to paragraph (b) of this subclause shows that the estimated royalty paid in respect of the period to which the return relates is -

(i) less than the royalty payable for that period the difference shall be paid on lodgement of the annual return;

(ii) greater than the royalty payable for that period the amount overpaid may be deducted by the Joint Venturers from the next quarterly payment.

Royalty on
cessation
of this
Agreement

(6) On the cessation or determination of this Agreement and notwithstanding any other

provision of this Agreement, unless the Minister otherwise determines, the provisions of this Clause shall continue to apply until royalty has been paid in accordance with the provisions of this Clause on all rough diamonds produced by or on behalf of the Joint Venturers from the areas the subject of this Agreement.

- Inspections (7) (a) The Joint Venturers shall permit the Minister for Mines or his nominee -
- (i) at all reasonable times to inspect all books of accounts, records and documents of the Joint Venturers or any of them or of any person acting on their behalf relative to the operations of the Joint Venturers hereunder and to any shipment or sale of diamonds including sales contracts and to take extracts and copies therefrom. The information obtained by the Minister for Mines or his nominee as a result of any such inspection shall be used only for the purposes of verifying the amount of royalty payable by the

Joint Venturers and for no other purpose and shall be confidential and shall not be disclosed by the State, the Minister or the Minister for Mines or his nominee to any other party for any other purpose;

- (ii) at all reasonable times, notwithstanding any law of the State relating to security at areas on which the operations of the Joint Venturers are carried on, to have access to the areas the subject of this Agreement and all other areas and facilities at which diamonds are stored or sorted and to inspect all diamonds held by or on behalf of the Joint Venturers and to value such diamonds.

- (b) A valuer appointed by the Minister for Mines for the purpose of this paragraph shall be appointed after consultation with the Joint Venturers.

Lodgement
of returns

- (8) Returns pursuant to this Clause may, with the prior consent of the Minister, be lodged by the Joint Venturers individually.

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Other
minerals

(9) Subject to the provisions of Clause 20, the Joint Venturers shall pay to the State in respect of all minerals other than diamonds produced or obtained from the areas the subject of this Agreement royalties at the rates from time to time prescribed under or pursuant to the Mining Act 1904 or the Mining Act 1978 as the case may be.

Valuation
and
auditing
procedures

(10) (a) The Joint Venturers shall for the purposes of this Clause take all reasonable steps to satisfy the Minister for Mines as to the adequacy of its valuation and auditing procedures.

(b) Nothing in this subclause shall limit the power of the Minister for Mines to appoint independent valuers and auditors after consultation with the Joint Venturers to carry out further valuations and audits.

Further
processing

30. (1) For the purposes of this Clause "further processing" means all or any of the following activities carried out in the said State by or on behalf of the Joint Venturers or any of them in relation to cleaned, but unsorted diamonds from the areas the subject of this Agreement,

namely:

- (a) the classification and sorting of diamonds,
- (b) the physical and chemical treatment of diamonds,
- (c) the cutting and polishing of diamonds, and
- (d) all other processes and treatment of diamonds which increase their market value.

Establishment
of sorting
facilities

- (2) (a) Within one year after the commencement of production of diamonds under this Agreement, the Joint Venturers shall establish facilities in the said State for the sorting of diamonds from the areas the subject of this Agreement and shall thereafter during the continuance of this Agreement operate the said facilities.
- (b) The nature and extent of the facilities provided by the Joint Venturers pursuant to this subclause and the operation of those facilities shall be compatible with the Joint Venturers' marketing

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arrangements as approved from time to time by the Minister.

Investigation
of further
processing

(3) (a) During the continuance of this Agreement, the Joint Venturers shall investigate the technical and economic feasibility of appropriate further processing of diamonds and shall use their best endeavours to promote the establishment and operation of facilities to achieve the maximum further processing of diamonds in the said State, whether by themselves or in association with others.

(b) The Joint Venturers shall when required by the Minister, but not more frequently than once in every 2 years, submit to the Minister detailed reports of their investigations and endeavours to promote further processing carried out pursuant to paragraph (a) of this subclause.

Establishment
of other
facilities
for further
processing

(4) Subject to the provisions of subclauses (6) and (7) of this Clause and in addition to their obligations under

subclauses (2) and (3) of this Clause, the Joint Venturers shall, within 5 years after the commencement of production of diamonds pursuant to subclause (1) (B) of Clause 7, establish and thereafter during the continuance of this Agreement operate, or cause to be established and operated, facilities in the said State for the further processing of diamonds which shall result in increasing the value for sales purposes of diamonds produced from the areas the subject of this Agreement (or from elsewhere in exchange for diamonds produced from the areas the subject of this Agreement) in any year by an amount equivalent to 20% of the above zero profit (as defined in Clause 29) for that year less the amount of royalty payable to the said State for that year. For the purposes of this subclause not more than one half of the increase in the said value for sales purposes may accrue from sorting.

Effect of
non-compliance
with subclause
(4)

(5) Notwithstanding anything contained in this Clause the failure by the Joint Venturers to establish or operate the facilities

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as required by the provisions of subclause (4) of this Clause shall not constitute a breach of this Agreement by the Joint Venturers but subject as otherwise provided in this Clause the only consequence arising from such failure will be that set out in subclauses (6) and (9) of this Clause.

Additional
royalty

- (6) If the Joint Venturers fail to observe and perform their obligations under subclause (4) of this Clause, then in respect of each year in which they so fail the royalty payable for such year pursuant to Clause 29 shall, subject to subclause (7) of this Clause, be increased in accordance with the following formula -

$$R_1 = \frac{R}{100} [100 + 0.5 (20-D)]$$

where

R_1 is the royalty payable pursuant to this subclause.

R is the royalty payable pursuant to Clause 29 for that year.

D is the increase in sales revenue

from further processing for that year expressed as a percentage of the above zero profit (as defined in Clause 29) for that year less the amount of royalty payable to the said State for that year.

PROVIDED ALWAYS that the operation of this subclause shall not in any event reduce the royalty payable for any year below that payable in accordance with Clause 29.

Waiver
of
additional
royalty

- (7) (a) If the Joint Venturers at any time during the currency of this Agreement are able to demonstrate to the reasonable satisfaction of the Minister that further processing at the level provided for in subclause (4) of this Clause does not or would not be likely to result in a projected after tax internal rate of return of 10% on funds employed by the Joint Venturers in the further processing of diamonds to fulfil their obligations under this Clause the Minister shall release the Joint Venturers from their obligation to pay the increase in royalty provided

for in subclause (6) of this
Clause.

- (b) For the purposes of this subclause -
- (i) the internal rate of return shall be measured using the discounted cash flow internal rate of return method on the basis of a ten year project life and cash flow estimates at current exchange rates expressed in constant dollar terms and disregarding current and projected general or particular inflation rates and all aspects of project financing (including loans, loan guarantees, and principal repayments);
 - (ii) in determining annual net project cash flows such indirect costs and working capital as the Joint Venturers are able to demonstrate to the reasonable satisfaction of the Minister as attributable to the project shall be included in

the calculation;

- (iii) the expression "the discounted cash flow internal rate of return" shall mean the discount rate that equates the present value of expected cash outflows with the present value of expected cash inflows.

- (c) Any release by the Minister pursuant to paragraph (a) of this subclause shall remain in force for a period of 3 years but shall not during that period limit or affect the other obligations of the Joint Venturers under this Clause.

Supply
to third
parties

- (8) If the Joint Venturers -
- (a) supply diamonds produced from the areas the subject of this Agreement;
- or
- (b) are instrumental in causing or arranging sales of diamonds produced from areas other than the areas the subject of this Agreement
- to third parties for further processing by such third parties in the said State, the Minister after consultation with the Joint

Venturers shall, in the circumstances referred to in paragraph (a) of this subclause, and may, in the circumstances referred to in paragraph (b) of this subclause, allow all or part of the increase in value arising from the further processing of such diamonds by that third party as a credit to the Joint Venturers in the measurement of the compliance by the Joint Venturers of their further processing obligations pursuant to subclause (4) of this Clause.

Obligations
to supply to
third parties

- (9) If the Joint Venturers fail to establish the facilities referred to in subclause (4) of this Clause or, having established such facilities, cease at any time to operate them for a continuous period of 2 years, the Minister may, having regard to the approved marketing proposals require the Joint Venturers to make available and continue to make available during the currency of this Agreement to third parties, on fair and reasonable commercial terms, diamonds from the areas the subject of this Agreement for further processing by such third parties in the said State.

Additional
royalty
returns

- (10) (a) To enable the Minister for Mines to determine whether any additional royalty is payable pursuant to subclause (6) of this Clause, the Joint Venturers shall furnish to the Minister such returns accompanied by audited accounts and other relevant information as the Minister may require from time to time.
- (b) Any additional royalty payable pursuant to subclause (6) of this Clause shall be paid to the State within 45 days of the determination of the amount thereof.

Security

31. (1) The State recognises the need for the Joint Venturers to have adequate security arrangements for their operations under this Agreement and shall include in the Bill to be introduced in the Parliament of Western Australia referred to in Clause 3 provisions for that purpose.
- (2) The Minister shall during the currency of this Agreement, and after consultation with the Minister for Police and the Joint Venturers, take

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such reasonable measures (consistent with the Joint Venturers' approved proposals) as may be necessary and, at the Joint Venturers' expense, to provide adequate security.

Zoning

32. The State shall ensure after consultation with the relevant local authority that the mining leases and any lands the subject of any Crown Grant lease licence or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating

33. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or

which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining and treatment of diamonds) shall for rating purposes under the Local Government Act 1960, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate PROVIDED THAT nothing in this Clause shall prevent the Joint Venturers making the election provided for by section 533B of the Local Government Act 1960.

No discrimi-
natory
rates,

34. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of their business hereunder nor will the State take or permit to be taken by any such State authority any other

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discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement.

Resumption
for the
purposes of
this
Agreement

35. The State may as and for a public work under the Public Works Act 1902, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of that land to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of section 17 and 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Joint Venturers.

No
resumption

36. Subject to the performance by the Joint Venturers of their obligations under this Agreement the State shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the

subject of or used for the purpose of this Agreement or any of the works on the lands the subject of any lease or licence granted to the Joint Venturers in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder or which may conflict with any law of the State relating to security within any area or areas on which the Joint Venturers' operations are carried on.

- Assignment 37. (1) Subject to the provisions of this Clause the Joint Venturers or any of them may at any time -
- (a) assign mortgage charge sublet or dispose of to each other or to an associated company as of right, or to any other company or persons with the consent of the Minister the whole or any part of the

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rights of the Joint Venturers
hereunder (including their rights
to or as the holder of the mining
leases or any other lease licence
easement grant or other title)
and of the obligations of the
Joint Venturers hereunder; and
(b) appoint as of right an associated
company or with the consent of
the Minister any other company
or person to exercise all or any
of the powers functions and
authorities which are or may be
conferred on the Joint Venturers
hereunder;

subject however in the case of an
assignment subletting disposition or
appointment 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
Joint Venturers to be complied with
observed or performed in regard to the

matter or matters the subject of such assignment subletting disposition or appointment.

- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Joint Venturers 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 their part contained herein and in the mining leases or any other lease licence easement grant or other title the subject of an assignment mortgage subletting disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them from such liability where he considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Mining Act 1904, the Mining Act 1978, the Transfer of Land Act 1893 and the Land Act, insofar as the same or any of them may apply -

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the mining leases or any other lease licence easement grant or other title granted hereunder or pursuant hereto by the Joint Venturers or any assignee sublessee disponee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge shall require any approval or consent other than such consent as may be necessary under this Clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause) or because the same is not registered under the provisions of the Mining Act 1904 or the Mining Act 1978 as the case may be.

(4) The provisions of this Clause shall not apply to any sale by the Joint Venturers of a townsite lot to any employee engaged in their operations hereunder.

- Variation 38. (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 licence easement grant or other title granted hereunder or pursuant 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) of this Clause 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

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might have been disallowed neither
House has passed such a resolution the
agreement shall have effect from and
after that last day.

Force
majeure

39. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God force majeure earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability to sell diamonds profitably or factors due to overall world

economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to
extend
periods

40. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal hereunder for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determi-
nation of
Agreement

41. (1) In any of the following events namely
if -
(a) (i) the Joint Venturers make
default which the State
considers material in the

due performance or observance of any of the covenants or obligations to the State herein or in the mining leases or any other lease licence easement grant or other title or document granted or assigned under this Agreement on their part to be performed or observed; or

- (ii) the Joint Venturers abandon or repudiate this Agreement or their operations under this Agreement

and such default is not remedied or such operations resumed within a period of 180 days after notice is given by the State as provided in subclause (2) of this Clause or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3) of this Clause; or

- (b) the Joint Venturers or any of them go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and

unless within 3 months from the date of such liquidation the interest of that Joint Venturer is assigned to another Joint Venturer or to an assignee approved by the Minister under Clause 37

the State may by notice to the Joint Venturers determine this Agreement.

- (2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 37 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such

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assignee mortgagee chargee or disponee.

- (3) (a) If the Joint Venturers contest the alleged default abandonment or repudiation referred to in paragraphs (a) and (b) of subclause (1) of this Clause the Joint Venturers shall within 60 days after notice given by the State as provided in subclause (2) of this Clause refer the matter in dispute to arbitration.
- (b) If the question is decided against the Joint Venturers, the Joint Venturers shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Joint Venturers were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in subclause (1) of this Clause shall not have been

remedied after receipt of the notice referred to in subclause (1) of this Clause 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 lands occupied by the Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

Effect
of cessation
or deter-
mination of
Agreement

42. (1)

Subject to the provisions of Clause 29 on the cessation or determination of this Agreement -

(a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of theirs or any mortgagee to in or

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under the mining leases and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Joint Venturers and which are no longer owned by them) 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 or in respect of any indemnity given hereunder;

- (b) the Joint Venturers 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 this Agreement neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

(2) Subject to the provisions of subclause

(3) of this Clause upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Joint Venturers under the mining leases or any other lease, licence, easement grant or other title made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

- (3) In the event of the Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their fixed or moveable plant

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and equipment or any part thereof from any part of the land occupied by them at the date of such cessation or determination they shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

Provision
of finance

43. (1) Where under any provision of this Agreement the Joint Venturers are liable to make payments to the State the Joint Venturers may, subject to the prior consent of the Minister, in lieu of such payments otherwise provide finance or cause finance to be provided to an equal amount to the particular liability in such manner as may be determined by the Minister.
- (2) Where under any provision of this Agreement or any approved proposal hereunder the Joint Venturers are liable to make payments to the State for

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services and facilities to be provided by the State the parties shall subject to the relevant provision or approved proposal enter into an agreement regarding the nature and extent of such payments prior to the commencement of any such work or expenditure.

Environ-
mental
protection

44. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their 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.

Indemnity

45. The Joint Venturers shall 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 or on behalf of the Joint Venturers pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint

Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

Commonwealth
licences
and consents

46. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Joint Venturers to enter into this Agreement and to perform any of their obligations hereunder.
- (2) On request by the Joint Venturers the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in subclause (1) of this Clause.

Sub-
contracting

47. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

Stamp
duty
exemption

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

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any of them or any permitted assignee any tenement lease licence easement or other right or rights;
- (c) any assignment sublease or disposition and any appointment to or in favour of the Joint Venturers or any of them or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement;

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- (d) any instrument securing a charge
(or in respect of any such charge,
any statement note or memorandum
evidencing or showing the amount
or containing particulars of the
loan the subject of such charge)
over the assets of the Joint
Venturers or any of them or an
associated company for the purposes
of this Agreement; and
- (e) any insurance policy in the name
of the Joint Venturers or any of
them or an associated company for
the purposes of this Agreement

PROVIDED THAT this subclause shall not
apply to any instrument or other
document executed or made more than 7
years from the date hereof.

- (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) of this Clause the
State when such a 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.

- Arbitration 49. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to 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 the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act. 1895.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given a discretionary power.

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(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation 50. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Notices 51. 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 Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their respective nominated offices for the time being in the said State and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service 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.

Guarantee

52. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Joint Venturers whether or not notice thereof is given to the Guarantor by the State, the Guarantor hereby guarantees to the State the due performance by CRA Exploration Pty. Limited of all its obligations to be performed hereunder.

of the provisions of the Mining Act 1978 except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the Mining Act 1978 at the times and in the manner so prescribed and the royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this Lease -

- "Lessee" includes the respective successors and permitted assigns of each Lessee.
- The liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act and to any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE

(name address and description of the Lessee)

CRA EXPLORATION PTY. LIMITED a company incorporated in the

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FOURTH SCHEDULE

All petroleum as defined in the Petroleum Act 1967 on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease).

SIXTH SCHEDULE

(Any further conditions or stipulations).

IN witness whereof the Minister for Mines has
affixed his seal and set his hand hereto

this.....day of.....19.....

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

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

CHARLES COURT

PETER JONES

MINISTER FOR RESOURCES DEVELOPMENT

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SIGNED SEALED AND DELIVERED)
)
for and on behalf of CRA)
)
EXPLORATION PTY. LIMITED)
)
by its duly authorised)
)
attorney LEO JOHN CARDEN)
)
under Power of Attorney)
)
dated the 12th day of)
)
November, 1981 in the)
)
presence of:)

[L.S.]

JOHN CARDEN

M. A. O'LEARY

SIGNED for and on behalf of)
)
ASHTON MINING LIMITED by)
)
its duly appointed Attorney)
)
EWEN WILLIAM JOHN TYLER)
)
under Power of Attorney dated)
)
the 28th day of October, 1981)
)
in the presence of:)

E. W. J. TYLER

IAN K. WARNER

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Venture) Agreement.*

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SIGNED for and on behalf of)
)
TANAUST PROPRIETARY LIMITED)
)
by its duly appointed Attorney))
EWEN WILLIAM JOHN TYLER)
)
under Power of Attorney)
)
dated the 28th day of October,))
)
1981 in the presence of:)

E. W. J. TYLER

IAN K. WARNER

SIGNED for and on behalf of)
)
A.O. (AUSTRALIA) PTY. LIMITED)
)
by its duly appointed Attorney))
EWEN WILLIAM JOHN TYLER)
)
under Power of Attorney)
)
dated the 28th day of October,))
)
1981 in the presence of:)

E. W. J. TYLER

IAN K. WARNER

THE COMMON SEAL of)
)
 NORTHERN MINING)
)
 CORPORATION N.L. was) [C.S.]
)
 hereunto affixed by)
)
 authority of the Board of)
)
 Directors in the presence)
)
 of :)

N. R. TOWIE
 Director

BARRY D. MORGAN
 Director

SIGNED SEALED AND DELIVERED)
)
 for and on behalf of CRA)
)
 LIMITED by its duly) [L.S.]
)
 authorised attorney LEO)
)
JOHN CARDEN under Power of) JOHN CARDEN
)
 Attorney dated the 12th day)
)
 of November, 1981 in the)
)
 presence of:)

M. A. O'LEARY