

**INDUSTRIAL LANDS
(MADDINGTON) AGREEMENT.**

13° Elizabeth II., No. LXXXIX.

No. 89 of 1964.

AN ACT to approve an agreement relating to the disposition of certain lands at Maddington for Industrial Purposes.

[Assented to 14th December, 1964.]

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

Short title.

1. This Act may be cited as the *Industrial Lands (Maddington) Agreement Act, 1964.*

Agreement approved.

2. The agreement set out in the Schedule to this Act is approved.

SCHEDULE.

Schedule.

THIS AGREEMENT made the nineteenth day of November 1964 BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called "the Vendor") of the one part and DAVISON ESTATES PTY. LTD. a company incorporated under the provisions of the Companies Act 1961 and having its registered office at care of Parker & Parker Solicitors of 164 Saint George's Terrace Perth in the said State (hereinafter called "the Company") of the other part.

WHEREAS:

(1) The Crown is registered as the proprietor of an estate in fee simple in the lands more particularly described in Part 1 of the Schedule hereto (hereinafter called "the said lands"). Rectal.

(2) The said lands are held under the provisions of the Industrial Development (Resumption of Land) Act 1945.

(3) The Company is desirous of acquiring the said lands for the purpose of subdividing the said lands and establishing industries upon the subdivided land.

(4) It is the intention of the Company to establish as many industries as it is able upon the said lands and the Company shall use its best endeavours at all times to achieve the establishment of industries in the terms of this agreement.

(5) The Vendor desires the establishment of industry within the State and has agreed to sell the said lands to the Company at and for the price and upon the terms and conditions following:—

NOW THIS AGREEMENT WITNESSETH:

1. IN this agreement subject to the context:—

Interpre-
tation.

"allotment" means a defined portion of land which at the time of its survey is not contained within a section and may be (subject to Town Planning approval) of any size and dimensions;

"cost of development work" means—

(1) the cost (being material and labour costs only) of—

(a) the provision of the sewerage and drainage installations in the terms of this agreement;

(b) the construction and formation of all roads footpaths water courses culverts made or constructed on the said lands;

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- (c) all survey fees paid in the survey of the whole or any part or parts of the said lands;
 - (d) providing the sewerage treatment plant for the sewerage of the area within the said lands hereby sold;
 - (e) the construction installation and erection or formation of any fixed improvements structures erections and buildings to the said lands in the terms of this agreement;
 - (f) the cost to the Company of the construction and erection of any fixed improvements structures erections and buildings for the establishment of an industry (being a noxious industry or unsanctioned industry) on land in the said State other than the said lands PROVIDED HOWEVER moneys expended under this provision shall be claimed only in respect of not more than five individual industries and the aggregate amount claimed shall not exceed SEVENTY FIVE THOUSAND POUNDS (£75,000);
 - (g) the construction installation erection or formation of any fixed improvements structures erections or buildings on any allotment or lot within the subdivisions; .
- (2) Such amounts as the Minister considers reasonable for—
- (a) fees and costs payable to architects engineers and quantity surveyors in respect of all work carried out and performed in respect of the development of the said lands including the cost and preparation of plans;
 - (b) the reasonable salary of a managing supervisor of a project and the reasonable salaries of office staff and persons in or about the project;

and in calculating and computing the cost of such works and services no charge disbursement expense or outlay arising out of or incidental to preparation of the outline plot plan or its approval (including specialist or consultant advice) or the

servicing of any loan or loans raised by the Company or the capital cost of the said lands shall be taken into account;

“diagram of survey” means a diagram prepared and certified by a duly qualified and licensed surveyor;

“date of possession” means the 1st day of January 1965;

“first section” means the first parcel of land selected for development in the terms of this agreement by the Company having an area not being more than 30 acres or less than 20 acres;

“lot” means a defined portion of land depicted on a diagram of survey (approved by the Titles Office) of the first section or any other section and for which a separate Crown Grant or Certificate of Title has been or can be issued;

“noxious industry” shall have the like meaning as “offensive trades” in the Health Act 1911;

“outline plot plan” means a diagrammatic scale plan showing in detail or reasonably indicating the Company’s tentative proposals for the subdivision of the said lands giving as much detail as is possessed by the Company in a form acceptable to the Minister in respect of the following matters:—

- (i) a complete plan of the lands hereby sold;
- (ii) the approximate area position size and boundary dimensions of all roads and footpaths;
- (iii) where applicable on the said diagram all angles shall be shown;
- (iv) the approximate dimensions and area of the land subdivided by the provision of streets; and
- (v) all other matters and things that the Vendor or the Minister shall reasonably require to indicate the matters aforesaid.

and where and to the extent that the outline plan is varied by the mutual consent of the Company and the Minister means that plan so varied;

“section” means any parcel of land (other than the first section) selected by the Company for development in the terms of this agreement having an area of not less than 30 acres and not more than 60 acres;

“street” means a road street thoroughfare footpath or other public highway or any private road maintained by the Local Authority;

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“the Company” means the Company and its successors in title and assigns;

“the Minister” means the Minister for the time being of Industrial Development;

“unsanctioned industry” means an industry which in the opinion of the Minister having regard to all the circumstances has or is likely to have a discharge of effluent drainage or sewerage beyond the capacity of the sewerage treatment plant to treat safely satisfactorily and/or effectively.

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

Sale of land
to Company.

2. THE Vendor shall cause to be sold and the Company shall purchase free from encumbrances at and for the price and upon the terms and conditions hereinafter mentioned all that the said lands more particularly described in Part 1 of the Schedule hereto.

Purchase
price.

3. THE purchase price of the said lands shall be the sum of THIRTY THOUSAND POUNDS (£30,000) and shall be payable by the Company in manner following:—

- (a) upon the registration of the first section of the said lands into the name of the Company at the Land Titles Office Perth the Company shall pay to the Vendor such sum of money as bears to the purchase price of THIRTY THOUSAND POUNDS (£30,000) the same proportion as the total area of the first section bears to the total area of the said lands;
- (b) upon the registration of any section of the said lands into the name of the Company at the Land Titles Office Perth the Company shall pay to the Vendor such sum of money as bears to the purchase price of thirty thousand pounds (£30,000) the same proportion as the total area of the section to be transferred bears to the total area of the said lands;
- (c) upon the registration of any area of land (not being part of the land comprised in the first section or any section) forming part of the said lands into the name of the Company or of such other company authority instrumentality or person as the Company may nominate in writing or upon the vesting of any area of

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land (not being part of the land comprised in the first section or any section) forming part of the said lands into the name of Her Majesty Queen Elizabeth the Second an authority council or instrumentality the Company shall pay to the Vendor such sum of money as bears to the purchase price of thirty thousand pounds (£30,000) the same proportion as the total area of the lands transferred or vested aforesaid bears to the total area of the said lands.

4. THE Company shall be entitled to possession of the said lands subject to the existing lease more particularly described in Part 2 of the Schedule hereto on the 1st day of January 1965. Possession.

5. THE said lands are sold subject to all easements (if any) affecting the same and are believed and shall be taken to be correctly described as to title quantity or otherwise but if any error misstatement or omission shall be discovered the same shall not annul the sale nor be the subject of any claim for compensation or abatement of purchase moneys. The Company admits having by its officers inspected the property and shall be deemed to purchase with full notice of the state and condition thereof in all respects. Covenant
in respect to
title and
inspection.

6. THE Company covenants and agrees with the Vendor that it shall at its own cost and expense in all things:— Company's
covenants.

- (a) prepare or cause to be prepared before the 1st day of May 1965 the outline plot plan of the said lands and submit the outline plot plan so prepared to the Minister for his approval. Subject to clause 17 hereof the Minister may approve alter modify vary change or refuse his consent outright to the outline plot plan; Outline
plot plan.
- (b) subject to clause 17 hereof use his best endeavours to obtain the consent of the Minister to the outline plot plan. The date on which the Vendor and the Company shall agree on the outline plot plan shall be hereinafter referred to as "the development date";
- (c) develop progressively the said lands in accordance with the terms of this agreement firstly by developing the first section and thereafter by developing the balance of the said lands in not less than four sections provided however that the Company may develop a particular allotment pursuant to the provisions of clause 13 hereof at any time;

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- (d) within 60 days following the approval of the outline plot plan by the Minister and unless the Company cancels this agreement pursuant to the provisions of clause 17 hereof—
- (i) nominate in writing to the Minister the first section of the said lands to be developed in the terms of this Agreement; and
 - (ii) prepare or cause to be prepared a plan of subdivision of the first section following as closely to the outline plot plan as reasonably possible and submit the plan of subdivision of the first section to the Town Planning Board and to The Metropolitan Region Planning Authority for their respective approvals;
- (e) subject to its rights of appeal under the provisions of the Town Planning and Development Act 1928 comply with and carry out all orders directions requisitions or requests of the Town Planning Board and The Metropolitan Region Planning Authority touching or concerning the subdivisional plans of the first section or any part or parts thereof respectively;
- (f) following the approval of the plan of subdivision in respect of the first section (with or without conditions) by the Town Planning Board and The Metropolitan Region Planning Authority forthwith cause to be surveyed the whole of the said lands forming the first section in the form approved for survey by the Town Planning Board and The Metropolitan Region Planning Authority;
- (g) upon notification of the Town Planning Board and The Metropolitan Region Planning Authority of their respective approvals to the diagram of survey or to each diagram of survey so submitted forthwith lodge a copy of the diagram of survey with the Registrar of Titles and shall do sign and execute all such acts deeds documents and things as shall be necessary or required before the Registrar of Titles approves the diagram of survey or each diagram of survey so submitted for dealing;
- (h) immediately after the first section has been developed in the terms of this agreement to a stage where the Company is entitled to a transfer of the first section pursuant to clause 11 hereof nominate a further section or sections

Town
planning
requirements.

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for development in accordance with this agreement to the intent that at all times after the first section has been developed aforesaid a section shall be in the course of development;

- (i) adopt the like procedure (with the necessary changes) to obtain the approval by the Town Planning Board and The Metropolitan Region Planning Authority to the subdivision of each section to be developed as is hereby stipulated in respect of the first section;
- (j) make form construct set down and maintain until taken over by the Local Authority in a good and workmanlike manner all roads and footpaths delineated and shown on the outline plot plan or on a diagram of survey of the first section or any other section in the position thereon specified except where and to the extent otherwise agreed with the Minister. The roads and footpaths shall be of such length width and breadth and formed and constructed on such levels as specified in the outline plot plan (or otherwise as agreed with the Minister) and the respective diagrams of survey and shall be constructed and made with materials of such quality and quantity as shall be approved by the Main Roads Department or the Local Government Authority whichever shall be appropriate in the circumstances. All works shall be commenced and proceeded with with all due dispatch to the intent that the development work shall be completed within the period hereinafter fixed;
- (k) within one month of the end of every period of twelve (12) calendar months from the development date supply the Vendor and the Minister with full details of anticipated development work to be undertaken in accordance with the outline plot plan and the sewerage and drainage plan approved by the Metropolitan Water Supply Sewerage and Drainage Board during the forthcoming twelve monthly period and shall also give to the Vendor and the Minister full details of all moneys claimed for the cost of development work expended by the Company during the immediately preceding twelve monthly period. In the event of such details of the cost of development work not being supplied within 60 days of the due date (whether formally requested or not) it shall be deemed that only such moneys as are assessed by the Minister have been expended towards the cost of

Roads and
footpaths.

Details of
anticipated
development.

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development work within the preceding twelve monthly period aforesaid and without the consent in writing of the Vendor and the Minister first had and obtained no amount shall be credited to the Company as having been expended in or towards the cost of development work for that twelve monthly period.

Plan for self-contained sewerage and drainage scheme.

(l) prepare or cause to be prepared in such manner and with such details as shall be required by the Metropolitan Water Supply Sewerage and Drainage Board (a Board established under the Metropolitan Water Supply Sewerage and Drainage Act 1909) a plan of a self-contained sewerage and drainage scheme for the whole of the said lands or as the Company may elect by progressive plans for each area under development from time to time;

(m) obtain the consent in writing of the Metropolitan Water Supply Sewerage and Drainage Board to the plan or plans as submitted or as varied with the consent of both parties and where necessary will comply with the reasonable demands of that Board in respect of the plan or plans;

Construction of sewers and drains.

(n) contemporaneously with the other development of the said lands construct install and lay down in a good and workmanlike manner all sewers and drains as are marked and delineated upon a plan or plans approved by the Metropolitan Water Supply Sewerage and Drainage Board using in the construction laying and installation of the said drains and sewers only such pipes piping sewers vents fixtures fittings and appurtenances and other materials as shall have been first approved in writing for use in the scheme by the Metropolitan Water Supply Sewerage and Drainage Board.

(o) prior to the enclosing or covering with earth or completing of all works undertaken in the installation laying down and provision of the sewerage and drainage scheme aforesaid or any part thereof obtain a certificate in writing from the Metropolitan Water Supply Sewerage and Drainage Board that—

(i) the type quality quantity size of materials (including gutters sewers culverts piping vessels shafts cement metal bolts fixtures and fittings) used therein are of a standard to and in conformity with the specifications and

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plans of the plan approved by the Metropolitan Water Supply Sewerage and Drainage Board;

- (ii) the installation construction and provision of the sewerage or drainage scheme is done in a good and workmanlike manner and in accordance with the plan approved by the Metropolitan Water Supply Sewerage and Drainage Board; and
- (iii) the drainage and sewerage schemes have been installed constructed and provided in their correct position according to the plan approved by the Metropolitan Water Supply Sewerage and Drainage Board ;
- (p) use its best endeavours for the development of each individual lot and obtain as part of such development person or persons corporation or corporations who or which desire to occupy one or more of such individual lots either as owner purchaser lessee or tenant and who or which will establish conduct and maintain an industry on such individual lot or lots PROVIDED HOWEVER no noxious industry or unsanctioned industry shall be established upon the said lands;
- (q) subject to the provisions of Clause 20 hereof after the installation construction and provision of all sewerage and drainage services upon the said lands operate the scheme put keep and maintain all drains pipes fixtures and fittings and appurtenances in good order repair and condition and thoroughly cleansed; and
- (r) after the erection or construction of any building erection or improvement on the said lands and until the said lands are transferred to the Company keep and maintain at all times all such buildings erections and improvements in a good tenantable state and condition of repair.

7. THE Company covenants and agrees with the Vendor that as from the date of possession it shall:—

Further
covenants
of the
Company.

- (a) until the said lands are transferred to the Company punctually bear pay and discharge all rates taxes charges assessments and outgoings now or hereafter payable (and whether payable by the owner or occupier thereof) in respect of the said lands;
- (b) expend in each and every year within the ten (10) year period next following the develop-

Minimum
yearly
expenditure.

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ment date or until the whole of the said lands are transferred to the Company (whichever is the earlier) the sum of at least FIFTY THOUSAND POUNDS (£50,000) on cost of development work;

Moneys to be
expended on
cost of
development
work.

- (c) expend on cost of development work to the said lands (i) the sum of at least TWO HUNDRED AND TWENTY FIVE THOUSAND POUNDS (£225,000) within the period of three (3) years next following the development date (ii) the sum of at least FIVE HUNDRED AND TWENTY FIVE THOUSAND POUNDS (£525,000) within the period of seven (7) years next following the development date (iii) the sum of at least SEVEN HUNDRED AND FIFTY THOUSAND POUNDS (£750,000) within the period of ten (10) years next following the development date; and
- (d) until such times as the said lands shall be transferred to the Company not without the consent of the Minister remove from any of the said lands which have not been transferred by the Company to a third party any buildings erections improvements fencing erected or hereafter to be erected on the said lands or alter the same so as to reduce their value or utility nor cut maim or injure any of the roofs walls partitions timber or floors thereof nor in the event of any such removal before or after the transfer to a third party use for any purpose hereunder any of the materials removed.

Further
covenants
of the
Company.

8. THE Company covenants and agrees with the Vendor that as from the date of possession it shall not without the previous consent of the Minister first had and obtained:—

- (a) make or cause permit or suffer to be made any alteration deviation change modification or variation in or to the approved outline plot plan the plan approved by the Metropolitan Water Supply Sewerage and Drainage Board the terms of this agreement or in the twelve monthly report given by the Company to the Minister and Vendor as aforesaid;
- (b) transfer assign mortgage charge or otherwise encumber or part with possession of any part of the said lands or the Company's estate or interest in that part unless and until that part shall be transferred to the Company hereunder;
- (c) establish conduct suffer or permit to be established or conducted from the said lands or any part or parts thereof any noxious industry or any unsanctioned industry.

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9. THE State shall:—

Obligations
of the State.

- (a) on receipt of a written notice signed on behalf of the Company certifying—
 - (i) that the occupier of a particular lot or allotment on the said lands desires to be connected to the water and/or electricity services within one month next following the date of the notice; and
 - (ii) that the development of the lot or allotment has reached a stage where the demand for the supply and the consumption of water and/or electricity is expected to be continuous

cause to be provided water and/or electricity connections to a point in the boundary (selected by the Vendor in collaboration with the Company) of the lot or allotment;

- (b) cause the said lands to be zoned in the manner prescribed by law as “industrial” and not without the consent of the Company cause or permit the area to be re-zoned in any other manner once the area is zoned as prescribed by law an industrial area; and
- (c) use its good offices to obtain the approval of the Town Planning Board and The Metropolitan Region Planning Authority to the outline plot plan in the terms of this agreement.

10. ANY immunity granted or waiver by the Vendor in respect to future alterations deviations changes or modifications to the outline plot plan or the twelve months work detail or in respect of past alterations deviations changes variations or modifications shall be given and taken in respect of that instance or those instances alone and shall not prejudice the Vendor in the exercise of his rights and powers granted under this Agreement nor mitigate to the benefit of the Company any other alteration deviation change or modification.

Changes and
modifica-
tions.

11. THE State will grant title to or execute and deliver a registerable transfer of the first section (hereinafter in this clause referred to as “that section”) of the said lands when the following conditions have been observed and performed:—

Conditions
before title
granted for
the “first
section”.

- (a) a diagram of survey of that section has been approved by the Town Planning Board and the Land Titles Office as approved for dealing;
- (b) all roads and footpaths within or adjoining that section have been formed laid out made and constructed pursuant to the terms and conditions of this agreement and to the satisfaction of the Local Government Authority;

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- (c) all drainage lines pipes culverts gutters fixtures fittings and appurtenances have been laid out formed made and constructed on that section pursuant to the terms and conditions of this agreement and to the satisfaction of the Metropolitan Water Supply Sewerage and Drainage Board and the Local Government Authority; and
- (d) the purchase price of that section (being such sum of money as bears to the overall purchase price the same proportion as the area of the land comprised in that section bears to the total area of the said lands) has been paid by the Company to the Vendor.

Conditions
before title
granted for
"any
section".

12. THE State will grant title to or execute and deliver a registerable transfer of any section (hereinafter in this clause referred to as "that section") forming part of the said lands when the following conditions have been observed and performed:—

- (a) a diagram of survey of that section has been approved by the Town Planning Board and by the Land Titles Office as approved for dealing;
- (b) all roads and footpaths within or adjoining that section have been formed laid out made and constructed pursuant to the terms and conditions of this agreement and to the satisfaction of the Local Government Authority;
- (c) all drainage lines pipes culverts gutters fixtures fittings and appurtenances have been laid out formed made and constructed on that section pursuant to the terms and conditions of this agreement and to the satisfaction of the Metropolitan Water Supply Sewerage and Drainage Board and to the satisfaction of the Local Government Authority;
- (d) all sewerage lines drains pipes gutters plant fixtures and fittings have been formed laid out made or constructed on the immediately preceding section developed by the Company pursuant to the terms and conditions of this agreement and to the satisfaction of the Metropolitan Water Supply Sewerage and Drainage Board;
- (e) the purchase price of that section (being such sum of money as bears to the overall purchase price the same proportion as the area of the land comprised in that section bears to the total area of the said lands) has been paid by the Company to the Vendor; and

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- (f) the expenditure on cost of development work is in excess of a sum of money that bears to seven hundred and fifty thousand pounds (£750,000) the same proportion as the aggregate area of the first section and any other area or section nominated for development by the Company bears to the whole area of the said lands.

13. THE State may grant title to or execute and deliver a registerable transfer of any allotment (hereinafter in this clause called "that allotment") forming part of the said lands when the following conditions have been observed and performed:—

Conditions
in respect of
granting title
for "any
allotment".

- (a) after a diagram of survey containing that allotment has been approved by the Town Planning Board and by the Land Titles Office;
- (b) all roads and footpaths within or adjoining that allotment have been formed laid out made and constructed pursuant to the terms and conditions of this agreement and to the satisfaction of the Local Government Authority;
- (c) all drainage lines pipes culverts gutters fixtures fittings and appurtenances have been laid out formed made and constructed on that allotment pursuant to the terms and conditions of this agreement and to the satisfaction of the Metropolitan Water Supply Sewerage and Drainage Board and to the satisfaction of the Local Government Authority;
- (d) all sewerage lines drains pipes gutters plant fixtures and fittings have been formed laid out made or constructed on the first section pursuant to the terms and conditions of this agreement and to the satisfaction of the Metropolitan Water Supply Sewerage and Drainage Board; and
- (e) the purchase price of that allotment (being such sum of money as bears to the overall purchase price the same proportion as the area of the land comprised in that allotment bears to the total area of the said lands) has been paid by the Company to the Vendor.

14. UPON payment of the overall purchase price of thirty thousand pounds (£30,000) and upon the expenditure of the capital moneys in cost of development work amounting in aggregate to seven hundred and fifty thousand pounds (£750,000) and upon the due performance of all the covenants obligations and conditions to be performed by the Company

Transfer on
payment of
purchase
price and
performance
of agreement.

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under the provisions of this agreement the Vendor shall cause to be executed in favour of the Company a transfer free from encumbrances of the said lands or so much thereof remaining in the name of the Crown as is required by this agreement to be transferred to the Company. Such transfer to be prepared at the expense of the Company which shall pay the stamp duty and registration fees thereon and the Vendor will send to the Company such transfer and the duplicate certificates of title of the said lands or so much thereof remaining as aforesaid.

Default.

15. IN case the Company shall make default for a period of twenty-one (21) days in payment of any purchase moneys payable hereunder or in the observance or performance of any of the Company's obligations of this agreement the Vendor may give six (6) months notice to the Company calling upon the Company to remedy the default or defaults complained of in the written notice and if at the expiration of the written notice the Company has not remedied the default or defaults complained of the Vendor may without tender of any assurance to or further demand upon the Company rescind this contract and resume and retake such of the said lands (including the whole thereof) as shall remain in the name of the Crown in which case all moneys expended thereon shall be absolutely forfeited to the Vendor as and for liquidated damages.

**Sewerage and
drainage
provisions.**

16. THE Company with the written consent of the Local Authority for the purposes of constructing providing extending maintaining repairing altering cleansing or improving the sewerage lines pipes drains sewers fixtures or fittings under the care management and control of the Company may:—

- (a) enter upon any street within the area of the said lands with or without workmen vehicles and other mechanical plant and equipment;
- (b) construct provide extend maintain repair alter cleanse or improve under any such street sewerage lines pipes drains sewers fixtures or fittings;
- (c) open and break up the soil of any such street and excavate and sink trenches; and
- (d) do such other acts matters and things as the Company may from time to time deem proper for the purposes aforesaid.

PROVIDED HOWEVER that where any damage has been caused to the street in or during the exercise of the Company of its powers hereby granted such damage shall be repaired by the Company in a good and workmanlike manner and to the absolute satisfaction of the Local Authority and where after notice by the Local Authority to the Company the

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damage has not been so repaired the Local Authority may cause the street to be restored repaired or reinstated to its satisfaction and the cost of such work shall be a debt due by the Company to the Local Authority and payable on demand and if not so paid shall carry interest at the rate of seven pounds (£7) per centum per annum until repaid and may be recovered by the Local Authority in any court of competent jurisdiction.

17. IF the Minister and the Company are unable to agree to an outline plot plan before the 1st day of August 1965 or if the Minister and the Company have agreed to the form of an outline plot plan and the Town Planning Board has required the observance and performance of certain requisitions or stipulations as a condition precedent to its approval of the outline plot plan and the Company is either unable or unwilling to observe and perform such requisitions and/or stipulations or any of them the Company may by notice in writing determine this agreement and thereupon this agreement and everything herein shall cease and be void but without prejudice to the remedies of either party against the other in respect of any antecedent claim or breach of covenant.

Failure
to agree
outline
plot plan.

18. THIS agreement shall be deemed to be made subject to any delays in the performance of obligations under this agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God *force majeure* floods storms tempests washaways fire (unless caused by the fault negligence or privity of the Company) act of war act of public enemies riots civil commotions strikes lockout stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors credit restrictions imposed by the Commonwealth Government of Australia or the Government of the United Kingdom through its exchange controls restricting the transfer of money from the United Kingdom to Australia PROVIDED HOWEVER that the party whose performance of obligations is affected by any of the said causes shall (a) claim by notice in writing the act or acts above responsible for or contributing to the delay in the performance of that party's obligations within twenty-eight (28) days of the commencement of the period for which delay is claimed or within twenty-eight (28) days from when the cause of the delay should have become reasonably apparent to or known to the Company (b) give written notice of the delay or termination of the period for which delay is claimed and (c) take reasonable steps to minimize the effect by any of the said causes as soon as possible after their occurrence.

Delays.

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- Inspection. 19. UNTIL such times as the said lands shall be transferred to the Company the Vendor may by officers agents workmen or others at all reasonable times enter the lands and inspect the same and the condition thereof and if the Company shall make default in any agreements stipulations or conditions on the Company's part herein contained it shall be lawful but not obligatory for the Vendor to make good any such default and for such purpose by officers agents and workmen and others to enter and remain upon the said lands and the cost thereof with interest calculated from the date of payment or expenditure thereof at the rate of seven pounds (£7) per centum per annum shall be repaid by the Company to the Vendor on demand and if not paid when demanded shall be deemed purchase money unpaid PROVIDED HOWEVER that nothing contained in this clause shall be deemed to prejudice the Vendor's rights under clause 15 hereof.
- Power to acquire sewerage undertaking. 20. WHEN in the opinion of the Metropolitan Water Supply Sewerage and Drainage Board (hereinafter called "the Board") it is desirable that the Board take over and carry on on behalf of the Board the Sewerage undertaking constructed set down and maintained by the Company or any part or parts thereof respectively the Board may by notice in writing compulsorily acquire the Sewerage undertaking or any part or parts thereof and at the termination of the notice the Sewerage undertaking or such part or parts thereof nominated in the said notice shall vest absolutely in the Board subject only to a claim for compensation by the Company. Compensation shall be the then value of the plant pipes sewerage fixtures and fittings acquired and shall be such sum as the Board and the Company may mutually agree and failing agreement shall be assessed by arbitration under the provisions of the Arbitration Act 1895.
- Arbitration. 21. ANY dispute or difference between the parties arising out of or in connection with this agreement or any variation thereof or as to the construction of this agreement or any such variation or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties in terms of this agreement shall in default of agreement between the parties and in the absence of any provision in this agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act 1895.
- Act not to apply. 22. NOTHING in the Industrial Development (Resumption of Land Act) 1945 shall prevent the said lands from being transferred in accordance with this agreement and for the purposes hereof section 14 of that Act shall be deemed to have no application.

1964.] *Industrial Lands (Maddington)* [No. 89
Agreement.

23. THE Company will not be required to surrender any portion of the said lands for recreation park or similar purposes.

Surrender
of portion
of lands.

24. THIS agreement shall have no force and effect unless before the thirty first day of December 1964—

Ratification
and
operation.

- (a) a Bill to ratify this agreement shall come into operation as an Act of Parliament; and
- (b) William Davison of "The Poplars" Church Road Sunbridge near Seven Oaks Kent in the United Kingdom Company Director shall execute a guarantee in a form acceptable to the Minister guaranteeing the Company's due compliance and observance with the terms and conditions of this agreement from the date hereof until the end of the period of three (3) years next following the development date.

25. ANY notice or demand required to be made or given to the Company shall be sufficiently made or given if contained in a registered letter addressed to the Company at its address aforesaid and shall be deemed to be served upon and received by the Company twenty-one (21) days after the same has been posted.

Notices.

26. TIME shall be of the essence of this contract in all respects.

27. THE State shall exempt from any stamp duty which but for the operation of this clause would or might have been payable or chargeable on this agreement.

Stamp duty.

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND M.L.A. has hereunto set his hand and seal and the Common Seal of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

No. 89.] *Industrial Lands (Maddington)* [1964.
Agreement.

THE SCHEDULE.

Part 1.

ALL THOSE pieces of land being—

- (a) Portion of Canning Location 13 and being part of the land on diagram 263 and being the balance of the land comprised in Certificate of Title Volume 870 Folio 6 containing two hundred and two (202) acres and three (3) perches or thereabouts; and
- (b) Portion of Canning Location 13 and being Lots 125, 126 and 127 on Plan 3043 and being the whole of the land comprised in Certificate of Title Volume 1095 Folio 185 containing four (4) acres three (3) roods twenty-eight (28) perches or thereabouts.

Part 2.

An Indenture of Lease made the 7th day of December 1955 between The State of Western Australia as Lessor of the one part and Orange Grove Bricks Pty. Limited as Lessee of the other part.

SIGNED SEALED AND DELIVERED }
by the said HONOURABLE DAVID } DAVID BRAND.
BRAND M.L.A. in the presence of— } [L.S.]

C. W. Court

Minister for Industrial Development.

THE COMMON SEAL of DAVISON }
ESTATES PTY. LTD. was hereunto }
affixed by the authority of the } [C.S.]
Directors in the presence of— }

Q. R. STOW.

Director.

H. S. LODGE.

Director.