

1992

THE STATE OF WESTERN AUSTRALIA

AND

SWAN PORTLAND CEMENT LIMITED

A G R E E M E N T

**DRAFT**

CROWN LAW DEPARTMENT  
PERTH

TELEPHONE : 264 1711  
CLD :  
WP : wempldswan

PROPOSED QUICKLIME (SWAN PORTLAND  
CEMENT LIMITED) AGREEMENT  
PRELIMINARY DRAFT - 15 October 92

THIS AGREEMENT is made this                      day of                      1992

B E T W E E N

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D.,  
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 one part and

SWAN PORTLAND CEMENT LIMITED A.C.N. 008 667 785 a company  
incorporated in the State of Western Australia and having its  
registered office at Portland House, Burswood Road,  
Rivervale (hereinafter called "the Company" which term shall  
include its successors and permitted assigns) of the other  
part.

W H E R E A S :

- RIDGES (N.P. EXTENSION)*
- (a) the Company is the holder of mining leases 70/138,  
70/139, 70/141, 70/143 and other rights to extract  
limestone within the mining areas hereinafter defined  
and desires to construct and operate a lime kiln and  
other plant at Nowergup for the manufacture of  
quicklime, cement and associated products;
  - (b) the Company intends to provide such plant and  
facilities services as may be necessary for its  
activities under this Agreement; and

- (c) the State for the purpose of promoting development within Western Australia has agreed to assist the Company upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

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 a proposal approved or determined under this Agreement;
- "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;
- "EP Act" means the Environmental Protection Act 1986;
- "local authority" means the council of a municipality that is a city, town or shire constituted under the Local Government Act 1960;
- "Mining Act" means the Mining Act 1978;
- "mining areas" means the areas coloured blue on the plan marked "A" initialled by or on behalf of the

parties hereto for the purpose of identification and includes any area or areas added thereto pursuant to the provisions of subclause (7) of Clause 9;

"Mining Lease" means a mining lease granted pursuant to subclause (1) of Clause 9;

"Minister" means the Minister in the Government of the State for the time being responsible for the administration of the Act which ratifies 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 Company and includes the successors in office of the Minister;

"month" means calendar month;

"notice" means notice in writing;

"person" or "persons" includes bodies corporate;

"plant site" means the site of the quicklime plant on the Mining Lease shown outlined red on the said plan marked "A";

"private road" means a road (not being a public road) which is either constructed by the Company in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

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

"quicklime plant" means a lime kiln together with any other kilns or other plant constructed on the plant

site for the manufacture of quicklime, cement and associated products the subject of approved proposals under Clause 4 (which proposals may be added to from time to time under Clause 6);

"said State" means the State of Western Australia;

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

"subclause" means a subclause of the Clause in which the term is used;

"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.

#### Interpretation

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 16 to extend any period or date shall be without prejudice to the power of the Minister under Clause 16;
- (c) Clause headings do not affect the interpretation or construction hereof;
- (d) words in the singular shall include the plural and words in the plural shall include the

singular according to the requirements of the context; and

- (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Ratification and operation

- 3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 1993.
- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If before 31 December 1993 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.

- (4) 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.

Proposals

4. (1) The Company shall on or before 30 June 1994 (or by such extended date as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans and specifications where reasonably required by the Minister) with respect to the establishment and operation of a quicklime plant on the plant site to manufacture quicklime and associated products and having a production capacity of not less than two hundred thousand tonnes of quicklime per annum which proposals 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 the quicklime plant and of each of the following matters, namely -
- (a) the mining of limestone from within the mining areas for processing in the quicklime plant;

- (b) roads;
  - (c) water supplies;
  - (d) power supply;
  - (e) use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors;
  - (f) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for the protection and management of the environment.
- (2) Each of the proposals pursuant to subclause (1) 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 (f) of subclause (1).
- (3) At the time when the Company submits the said proposals it shall -
- (a) submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it

proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto; and

(b) furnish to the Minister's satisfaction evidence of -

(i) marketing arrangements demonstrating the Company's ability profitably to sell quicklime manufactured in accordance with the said proposals;

(ii) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and

(iii) the readiness of the Company to proceed to carry out the operations referred to in the said proposals.

Consideration of proposals

5. (1) Subject to the EP Act, in respect of proposals pursuant to subclause (1) of Clause 4 the

Minister shall -

- (a) approve the said proposals either wholly or in part without qualification or reservation; or
- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 4 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 Company make such alteration thereto or comply with such conditions in respect thereof as he thinks reasonable and in such case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall if the case so requires incorporate a requirement that the Company make such alteration to the proposals as may be necessary to make them accord with those conditions or procedures.

- (2) The Minister shall within two (2) months of receipt of the said proposals pursuant to subclause (1) of Clause 4 or where the said proposals are to be assessed under section 40(1)(b) of the EP Act then within two (2) months of service on him of an authority under section 45(7) of the EP Act give notice to the Company of his decision in respect of the said proposals.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) then the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect of some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable then the Company within two (2) months of receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

- (5) Subject to and in accordance with the EP Act, the Mining Act and any approvals and licences required under those Acts the Company shall implement the proposals as approved or determined pursuant to this Clause in accordance with the terms thereof.
- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 30 June 1994 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months' notice of the Minister's intention to determine this Agreement and unless before the expiration of the said 12 month 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 18.

Additional proposals

6. If the Company at any time during the continuance of this Agreement desires significantly to modify expand or otherwise vary its activities carried on pursuant

to this Agreement (including levels of production) beyond those activities specified in approved proposals it shall give notice of such desire to the Minister and within two (2) months thereof 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 (f) of subclause (1) of Clause 4 and such other relevant information as the Minister may require. The provisions of Clauses 4 and 5 shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within three (3) months of the award by notice to the Minister that it shall not be proceeding with them. Subject to and in accordance with the EP Act, the Mining Act and any approvals and licences required under those Acts the Company shall implement proposals approved or determined pursuant to this Clause in accordance with the terms thereof.

Use of local labour professional services and materials

7. (1) The Company shall, for the purposes of this Agreement -
  - (a) except in those cases where the Company can demonstrate it is impracticable so

to do, use labour available within Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

(b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants, experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;

(c) during design and when preparing specifications, calling for tenders or letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified suppliers manufacturers and contractors within

Western Australia and the remainder of Australia are given fair and reasonable opportunity to tender or quote;

- (d) give proper consideration and where possible preference to suppliers manufacturers and contractors within Western Australia 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 or, subject to the foregoing, give that consideration and where possible preference to other suppliers, manufacturers and contractors from within Australia; and
- (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a supplier, manufacturer or contractor from within Western Australia or Australia give proper consideration and where possible preference to tenders, arrangements or proposals that include participation by persons within Western Australia or Australia.

- (2) Except as otherwise agreed by the Minister the Company shall in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or 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) and shall report to the Company concerning such third party's implementation of that condition.
- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such report need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this

Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Protection and Management of the Environment

8. (1) The Company shall, in respect of the matters referred to in paragraph (f) of subclause (1) of Clause 4 and which are the subject of proposals approved or determined under this Clause (hereinafter called "the approved proposals"), carry out a continuous programme of investigation, research and monitoring to ascertain the effectiveness of the measures it is taking both generally and pursuant to such approved proposals for the rehabilitation, protection and management of the environment.
- (2) The Company shall during the currency of this Agreement submit to the Minister at yearly intervals commencing from the date when the

Company's proposals are approved or determined (except those years in which a comprehensive report is required to be submitted) a brief report concerning investigations research and monitoring carried out pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment in the year ending two calendar months before the due date for the brief report, and at three yearly intervals commencing from such date, a comprehensive report on the result of such investigations research and monitoring and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment during the three year period ending two calendar months before the due date for the comprehensive report and the programme proposed to be undertaken by the Company during the following three year period in regard to investigations research and monitoring pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment.

- (3) The Minister may within two (2) months of receipt of a report pursuant to subclause (2) notify the Company that the Minister -
- (a) requires amendment of the report and/or programme; or
  - (b) requires additional detailed proposals to be submitted for the protection and management of the environment.
- (4) The Company shall within two (2) months of receipt of a notice pursuant to paragraph (a) of subclause (3) submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with the Minister on the Minister's requirements during the preparation of any amended report or programme.
- (5) The Minister may within one month of receipt of an amended report or programme pursuant to subclause (4) notify the Company that the Minister requires additional detailed proposals to be submitted for the protection and management of the environment.
- (6) The Company shall within two months of the receipt of a notice given pursuant to paragraph (b) of subclause (3) or subclause (5) submit to the Minister additional detailed proposals as

required and the provisions of subclauses (1), (2), (3) and (4) of Clause 6 shall mutatis mutandis apply in respect of such proposals.

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the decision of the Minister or any award on arbitration as the case may be in accordance with the terms thereof.

Roads

9. (1) The Company shall -
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;
  - (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from use of any private roads specified in approved proposals as not for use by the public; and
  - (c) at any place where any private road crosses any railway or public road provide at its cost such reasonable

protection and signposting as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

- (2) In the event that for or in connection with the Company's operations hereunder the Company or any person engaged by the Company uses or wishes to use a public road which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) the Company shall pay to the State or the local authority as the case may require the whole or an equitable part as determined by the Minister of the total cost of any upgrading required the amount of which shall be determined by the Commissioner of Main Roads or the local authority as the case may be or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads or relevant local authority having regard to the use of such public road by others.

Acquisition of private road

- (3) Where a road constructed by the Company for its own use is subsequently required for public

use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the operations of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as the State considers to be reasonable.

Mining areas

10. (1) Within 12 months of all its proposals submitted pursuant to Clause 4 having been approved the Company shall make application for a mining lease over so much of the mining areas as the Company desires and in respect of which the Company at that time either holds mining leases or which are lands deemed to be vacant Crown land for the purposes of the Mining Act pursuant to subclause 6, and the State shall upon the surrender by the Company of all such mining leases cause to be granted to the Company a mining lease over any part or parts of the land within the mining areas so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to correction in accordance with the survey when completed at the Company's expense) such mining

lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but substantially in the form of the Schedule hereto and subject to such conditions and stipulations consistent with the provisions of the Agreement and approved proposals as the Minister for Mines may determine.

- (2) Subject to due performance of the terms and conditions thereof and except as otherwise provided in this Agreement the Mining Lease and other mining tenements under the Mining Act held by the Company during the term of this Agreement within the mining areas shall be held pursuant to and subject to the Mining Act.
- (3) The State shall ensure that during the currency of this Agreement and subject to compliance by the Company with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to any mining lease granted under this clause.
- (4) With respect to this Agreement the provisions of section 235 of the Local Government Act 1960 and by-laws thereunder shall have no application to the Company in relation to the

mining of limestone and related operations within the Mining Lease when the Company is acting pursuant to and in accordance with approved proposals.

- (5) The Company shall not commence any mining or related operations for the purposes of this Agreement on privately owned land unless and until it has entered into a written agreement with the owner and occupier of such land in respect thereof and for the purpose of providing for compensation arising out of its operations or proposed operations on the land.
- (6) With respect to this Agreement the definition of minerals contained in section 8 of the Mining Act shall have no application to the Company in relation to the issue of the Mining Lease when the Company is acting pursuant to and in accordance with approved proposals.
- (7) The Company may from time to time during the currency of this Agreement apply to the Minister for areas outside the mining areas held by the Company either freehold or under a mining lease granted under the Mining Act to be included in the mining areas and the Minister in the Minister's discretion may include such land or part thereof in the mining areas

subject to such terms and conditions as the Minister may determine.

- (8) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act 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 with the right during the currency of this Agreement to take a renewal of the said term 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 Company making written application for any such renewal not later than one month before the expiration of the current term of the Mining Lease.

The Minister may, upon request by the Company no later than five (5) years prior to the expiry of the second term of the Mining Lease, grant a further term for a period of 21 years upon the same terms and conditions.

- (9) (a) The Company shall pay to the State in respect of all limestone mined or

produced by the Company from the Mining Lease and used, sold, transferred or otherwise disposed of by it royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act.

(b) The Company shall -

(i) comply with the provisions of the Mining Act and regulations thereunder with respect to the filing of production reports and royalty returns and the assessment, verification and payment of royalties;

(ii) lodge with the Department of Mines at Perth such periodical reports and returns as may be prescribed in respect of the Mining Lease pursuant to regulations under the Mining Act.

(10) Notwithstanding the provisions of this Clause the Company may from time to time with the approval of the Minister in consultation with the Minister for Mines and subject to survey if required by the Minister for Mines at the Company's expense surrender to the State all or

any portion or portions (of reasonable size and shape) of the Mining Lease (with abatement of future rent in respect of the area surrendered but without any abatement of rent already paid or any rent which has become due and has not been paid) provided however that such portion or portions have been rehabilitated in accordance with proposals approved hereunder. Any surrendered portion of the Mining Lease which was privately owned land prior to the coming into operation of this Agreement shall revert to privately owned land upon surrender.

Zoning

11. The State shall ensure after consultation with the relevant local authority that the plant site and the mining areas shall be and remain zoned during the currency of this Agreement so that the operations of the Company 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 or statutory body of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating

12. (1) 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 the plant site (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 manufacture of quicklime, cement or associated products) shall for rating purposes under the Local Government Act 1960 be deemed to be on the unimproved value thereof and the plant site shall not be subject to any discriminatory rate.

- (2) It is hereby declared and agreed that the provisions of section 533B of the Local Government Act 1960 shall not apply to any lands the subject of this Agreement.

Assignment

13. (1) Subject to the provisions of this Clause the Company may at any time with the consent of the Minister assign mortgage charge sublet or dispose of the whole or any part of the rights of the Company hereunder and of the obligations of the Company hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponsee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a

deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.

- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

Variation

14. (1) The parties to this Agreement 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 for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within twelve (12) sitting days next following its execution.
- (3) Either House may, within twelve (12) sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Power to extend periods

15. Notwithstanding any provision of this Agreement the Minister may at the request of the Company 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 for such period 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.

Determination of Agreement

16. (1) In any of the following events namely if-
- (a) (i) the Company makes default which the State considers material in

the due performance or observance of any of the covenants or obligations of the Company in this Agreement; or

(ii) the Company abandons or repudiates this Agreement or its operations under this Agreement

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

(b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three (3) months of the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 12 the State may by notice to the Company determine this Agreement.

(2) The notice to be given by the State under subclause (1) 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 Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 12 whose name and an address for service of notice within the said State has previously been notified to the State by the Company or any such assignee mortgagee chargee or disponee.

- (3) (a) If the Company contests an alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within sixty (60) days of receipt of notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
- (b) If the question is decided against the Company, the Company 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 Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than ninety (90) days from the date of such award.

- (4) If a default referred to in paragraph (a) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause 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 Company 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 Company to the State on demand.

Effect of cessation or determination of Agreement

17. On the cessation or determination of this Agreement-
- (a) except as otherwise agreed by the Minister the rights of the Company to in or under this

Agreement 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 under this Agreement;

- (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement

PROVIDED ALWAYS THAT such cessation or determination shall in no way affect any mining tenements then held by the Company within the mining areas which for their remaining unexpired terms and any extensions shall continue in force in accordance with the Mining Act.

Indemnity

- 18. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands and costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its

activities hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Subcontracting

19. The parties agree 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.

Arbitration

20. (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 to 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 Commercial Arbitration Act 1985 and notwithstanding section 20(1) of that

Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

- (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 either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is 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 under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Environmental protection

21. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made under the EP Act.

Term

22. Subject to the provisions of Clause 15 this Agreement shall expire on the date of expiration or sooner determination of the Mining Lease.

Notices

23. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or delivered by hand to the Company's address in the said State hereinbefore set forth or other address in the said State nominated by the Company to the Minister for the purpose of this Clause and by the Company if signed on its behalf by any person or persons authorised by it or by its 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.

Applicable law

24. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

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 CARMEN )  
MARY LAWRENCE in the )  
presence of : )

MINISTER FOR STATE DEVELOPMENT

THE COMMON SEAL of )  
SWAN PORTLAND CEMENT )  
LIMITED A.C.N. 008 667 785 )  
was hereunto )  
affixed by authority of )  
the Board of Directors )  
in the presence of : )

\_\_\_\_\_ Director

\_\_\_\_\_ Secretary