

MINING (GOVE PENINSULA NABALCO AGREEMENT) ORDINANCE 1968

No. 15 of 1968

An Ordinance to approve an Agreement
between the Commonwealth of Australia and Nabalco
Pty Limited and for purposes connected with
that Agreement

[Reserved 1 May, 1968]
[Assented to 16 May, 1968]*

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act 1910-1967*, as follows:—

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| Short title | 1. This Ordinance may be cited as the <i>Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968</i> . |
| Commencement | 2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the <i>Gazette</i> . † |
| Definitions | 3. In this Ordinance, unless the contrary intention appears—
“statute” means an Ordinance or State Act of the State of South Australia in force as a law of the Territory and includes regulations, rules and by-laws made under an Ordinance or such a State Act;
“the Agreement” means the Agreement made on the twenty-second day of February, 1968, between the Commonwealth and the Company, being the agreement set out in the Schedule to this Ordinance;
“the Company” has the meaning defined in the definition of “the Company” in clause 1 of the Agreement. |
| Approval of Agreement | 4. The Agreement is approved. |
| Minister and Administrator to exercise powers consistently with Agreement | 5.—(1.) The Minister and the Administrator shall exercise their powers under the laws of the Territory in relation to the Company consistently with the provisions of the Agreement.
(2.) Without limiting the generality of the last preceding sub-section, the Minister and the Administrator shall exercise their powers under the laws of the Territory in relation to—
(a) the special mineral lease as defined in clause 1 of the Agreement; and |

* Notified in the *Northern Territory Government Gazette* dated 22 May, 1968.

† The date fixed was 29 May, 1968 (see *Northern Territory Government Gazette* No. 24 of 29 May, 1968, page 133).

- (b) all leases, licences, easements and other titles to be granted to the Company pursuant to sub-clause (2.) to (6.) inclusive of clause 4 of the Agreement,

consistently with the provisions of the Agreement.

6.—(1.) The Minister may grant to the Company such leases and the Commonwealth may grant to the Company such licences, easements and other titles as are required to be granted to the Company for the purpose of giving effect to clause 4 of the Agreement.

Powers of Minister and Commonwealth in relation to leases, &c.

(2.) Any lease (including any special mineral lease), licence, easement or other title granted pursuant to this section has effect according to its terms.

(3.) If the Minister grants a special mineral lease pursuant to this section he may—

(a) vary it for the purpose of giving effect to clause 4 or 6 of the Agreement; or

(b) renew it for the purpose of fulfilling the covenant in clause 2 of the form of lease in the First Schedule to the Agreement.

(4.) If the Minister grants a special purposes lease pursuant to this section, he may renew it for the purpose of giving effect to clause 4 of the Agreement.

(5.) If the Commonwealth grants a licence, easement or other title pursuant to this section it may renew it for the purpose of giving effect to clause 4 of the Agreement.

(6.) Where—

(a) a special mineral lease is varied or renewed pursuant to this section; or

(b) a special purposes lease, licence, easement or other title is renewed pursuant to this section,

it has effect according to its terms as so varied or renewed.

7.—(1.) Neither a mortgage or charge, being a mortgage or charge—

(a) in a form commonly known as a floating charge;

(b) consented to by the Minister pursuant to clause 16 of the Agreement; and

(c) given by the Company over a lease, licence, easement or other title granted under or pursuant to the Agreement,

nor a transfer or assignment in exercise of any power of sale contained in such a mortgage or charge shall require any approval or consent other than such consent as may be necessary under clause 16 of the Agreement.

(2.) A mortgage or charge of a kind referred to in the last preceding sub-section shall not be rendered ineffectual as an equitable charge—

Provisions concerning mortgages and charges under clause 16 of Agreement

- (a) by the absence of any approval or consent otherwise than as required by clause 16 of the Agreement; or
- (b) because the mortgage or charge is not registered under any provision of the Ordinance under which the lease, licence, easement or other title over which it is given is granted.

Leases, &c., under Agreement not to be subject to or capable of partition, &c.

8. No lease, sub-lease, licence, easement or other title granted or assigned under or pursuant to the Agreement shall be—

- (a) subject to or capable of partition, whether by agreement or by decree or order of any court of competent jurisdiction or otherwise; or
- (b) subject to the making of an order for sale under the Partition Act, 1881, of the State of South Australia in its application to the Territory.

Necessary power conferred on Commonwealth Minister and Administrator

9.—(1.) A specified person has, by reason of this section, such power as is necessary to be conferred on him in order to enable him to do an act or thing which—

- (a) he is, under the Agreement or a lease, required or permitted to do; and
- (b) it is necessary for him to do in order to give effect to the Agreement or a lease according to its terms.

(2.) In this section—

“lease” means a special mineral lease or special purposes lease granted pursuant to the Agreement;

“specified person” means, in relation to the doing of an act or thing, a person, being the Commonwealth, the Minister or the Administrator, specified in the Agreement or a lease as the person who shall or will or may do that act or thing.

Enforcement of bond

10.—(1.) If the Company, having been granted a special mineral lease such as is provided for in sub-clause (1.) of clause 4 of the Agreement and having entered into a bond does not observe and carry out the provisions on its part to be observed and carried out of sub-clauses (4.) and (5.) of clause 5 of the Agreement, the Company shall, whether or not the special mineral lease has been forfeited or surrendered, be liable to pay to the Commonwealth the sum in which the Company acknowledges itself in the bond to be bound, and that sum is a debt due to the Commonwealth and may be recovered by action in any court of competent jurisdiction.

(2.) If—

- (a) the Company has entered into a bond and, in accordance with the Agreement, has assigned the whole or any part of its rights under the Agree-

ment (including its right to or as the holder of any lease, licence, easement or other title);

- (b) the assignee has entered into a bond in substitution for the bond entered into by the Company, conditioned however to be void in case the assignee shall observe and carry out the provisions on the part of the Company to be observed and carried out of sub-clauses (4.) and (5.) of clause 5 of the Agreement; and

- (c) the assignee does not observe and carry out those provisions,

the assignee shall, whether or not the special mineral lease has been forfeited or surrendered, be liable to pay to the Commonwealth the sum in which the assignee acknowledges itself in the bond to be bound, and that sum is a debt due to the Commonwealth and may be recovered by action in any court of competent jurisdiction.

(3.) In and for the purposes of any proceeding to recover the sum referred to in sub-section (1.) or (2.) of this section—

- (a) that sum shall be deemed to be a genuine pre-estimate of the damage suffered and recoverable by the Commonwealth in respect of any failure or omission on the part of the Company or the assignee such as is referred to in sub-section (1.) or (2.) of this section;

- (b) it shall not be competent for the defence to plead—

(i) that the damage so suffered and recoverable was less than that sum; or

(ii) that the sum or any amount of it is a penalty or penal damages; and

- (c) evidence proving or tending to prove any of the matters set out in sub-paragraphs (i) and (ii) of the last preceding paragraph shall not be led or admitted.

(4.) In this section, “bond” means a bond such as is set out in the Third Schedule to the Agreement.

11. Subject to this Ordinance and the provisions of the Agreement—

- (a) the provisions of the *Mining Ordinance 1939-1967* and regulations made under that Ordinance apply to and in relation to a special mineral lease granted pursuant to the Agreement as if it were a special mineral lease granted under that Ordinance;

- (b) the provisions of the *Special Purposes Leases Ordinance 1953-1965* and regulations made under that Ordinance apply to and in relation to a special purposes lease granted pursuant to the Agreement

Application
of certain
Ordinances and
regulations

as if it were a special purposes lease granted under that Ordinance; and

- (c) the provisions of any applicable law other than this Ordinance apply to and in relation to any other lease or any licence, easement or other title granted pursuant to the Agreement as if that other lease or that licence, easement or other title were granted under that applicable law.

12. This Ordinance prevails over any inconsistent statute or rule or practice of law or equity.

This Ordinance
to prevail over
inconsistent
statute, &c.

THE SCHEDULE

THIS AGREEMENT is made the Twenty-second day of February, One thousand nine hundred and sixty-eight, BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the one part and NABALCO PTY. LIMITED, a company incorporated in the State of New South Wales whose registered office is situated at Goldfields House, 1 Alfred Street, Sydney in that State, (in this agreement called "the Company") of the other part.

WHEREAS—

- (1) deposits of bauxite are known to exist in the Gove Peninsula of the Northern Territory;
- (2) The Company desires—
 - (a) to test the extent of the said deposits;
 - (b) to develop the mining property and to bring the said deposits into production;
 - (c) to produce bauxite and alumina within the Territory;
 - (d) to export alumina; and
 - (e) if found economically feasible, to produce aluminium within the Territory and to have the right to export the same;
- (3) the Company is prepared to provide and expend the large capital amount required for these and associated purposes;
- (4) the Commonwealth is satisfied that a large capital expenditure is necessary to ensure that the said bauxite deposits are efficiently and economically developed for a long period and that it is in the interests of the Commonwealth that those bauxite deposits should be developed and that the Company is technically and financially capable of so developing those deposits; and
- (5) it is desirable that in consideration of the Company entering into the obligations on its part contained in this agreement, the Company should be granted the rights, titles and privileges set out in this agreement to enable the Company to develop the mining property:

NOW THIS AGREEMENT WITNESSETH as follows:—

Definitions

1.—(1.) In this agreement, unless the contrary intention appears—

"Australian company" means—

- (1) a member company of the group of companies referred to in sub-clause (1.) of clause 9 of this agreement;
- (2) a company which is incorporated in Australia and which is, or which the parties agree may reasonably be deemed to be, beneficially owned to the extent of seventy-five per centum (75 %) of its equity capital by—
 - (a) persons who are residents of Australia; or
 - (b) companies each of which is beneficially owned to the extent of seventy-five per centum (75 %) of its equity capital by persons who are residents of Australia; or
 - (c) a combination of such persons and companies; or
- (3) a company which has, in the opinion of the Minister, whose opinion shall be binding on the Company, Australian characteristics of identification such as Australian management, Australian share-holding or the like.

"equity capital" means (for the purposes of the definition of "Australian company") the share capital subscribed by shareholders in the relevant company;

- "red mud" means the residue from the chemical treatment process used in the production of alumina;
- "Swiss Aluminium Australia" means Swiss Aluminium Australia Pty. Limited, a company incorporated in the State of New South Wales that is a wholly owned subsidiary company of Swiss Aluminium Limited, and has its registered office at Goldfields House, 1 Alfred Street, Sydney in the said State;
- "Swiss Aluminium Limited" means Swiss Aluminium Limited, a company incorporated in Switzerland that has its registered office at Chippis Canton of Valais and its administrative head office at Zurich 8, Feldeggstrasse 4, Switzerland;
- "the Administrator" means the Administrator of the Territory appointed under the *Northern Territory (Administration) Act 1910-1967*, or the person for the time being duly appointed pursuant to that Act to act in the office of Administrator or the holder for the time being of, or the person for the time being performing the duties of, any office in substitution for the office of Administrator;
- "the bauxite treatment plant" means the plant to be erected by the Company pursuant to sub-clause (5.) of clause 5 of this agreement;
- "the Company" means Nabalco Pty. Limited and—
- (a) if this agreement is assigned, means all the permitted assigns of Nabalco Pty. Limited for the time being entitled to the benefit of this agreement; and
 - (b) where the rights of the Company under this agreement to or as the holder of a lease, licence, easement or other title have been transferred, assigned or charged by the Company, includes in relation to the lease, licence, easement or other title, the person or persons for the time being entitled to, or to the exercise of, those rights;
- "the feasibility study" means the study to be made by the Company pursuant to sub-clause (1.) of clause 5 of this agreement;
- "the Minister" means the Minister of State for Territories of the Commonwealth or such other Minister of State as may for the time being be charged with the administration of the *Northern Territory (Administration) Act 1910-1967* and includes any member of the Federal Executive Council who may for the time being be acting for that Minister;
- "the Ordinance" means the *Mining Ordinance 1939-1967* of the Territory;
- "the perimeter areas" means the land described in the Second Schedule to this agreement;
- "the Special Mineral Lease" means the Special Mineral Lease provided for by sub-clause (1.) of clause 4 of this agreement as varied at any time in accordance with this agreement and includes an extension or renewal of that lease;
- "the Territory" means the Northern Territory of Australia; and
- "this agreement" means this agreement as the same may be added to, varied or amended from time to time.

(2.) In this agreement any reference to an Act means that Act as amended from time to time or any Act in substitution for that Act.

(3.) In this agreement any reference to an Ordinance or the regulations thereunder means that Ordinance or those regulations as amended from time to time or any Ordinance or regulations in substitution for that Ordinance or those regulations.

(4.) In this agreement, unless the contrary intention appears, words in the singular shall include the plural and words in the plural shall include the singular.

(5.) Marginal notes shall not affect the interpretation or construction of this agreement.

2.—(1.) This agreement, other than clause 3 and sub-clause (1.) of clause 11, shall have no force or effect and shall not be binding on either party unless and until it is approved by an Ordinance of the Territory assented to by the Governor-General of Australia or the person for the time being administering the Government of the Commonwealth.

Operation of Agreement

(2.) Acts or things which have been done or carried out by or on behalf of a party to this agreement prior to the coming into force of this agreement but which were done or carried out in contemplation of this agreement and in accordance with its provisions shall, so far as is appropriate and practicable, be deemed to have been done or carried out under and for the purposes of this agreement.

3.—(1.) The Commonwealth will take the necessary action to have submitted to the Legislative Council for the Territory at the earliest practical date a Bill for an Ordinance to approve this agreement.

Approval of Agreement

(2.) The Bill referred to in the last preceding sub-clause shall also contain, *inter alia*, provisions for the purpose of—

- (a) enabling this agreement, the Special Mineral Lease and all leases, licences, easements and other titles to be granted to the Company pursuant to sub-clauses (2.) to (6.) inclusive of clause 4 of this agreement to take effect according to their terms notwithstanding anything to the contrary in, or any inconsistency with, the Ordinance or the regulations thereunder or any other Ordinance or regulations under such other Ordinance;
- (b) enabling the Commonwealth to enforce the bond referred to in clause 11 of this agreement against the Company according to its terms notwithstanding any rule of law relating to penalties and penal damages or any other rule or practice of law or equity whatsoever to the contrary;
- (c) providing that no mortgage or charge in a form commonly known as a floating charge consented to pursuant to clause 16 of this agreement by the Company or any assignee thereof over any lease, licence, easement or other title granted under or pursuant to this agreement and no transfer or assignment in exercise of any power of sale contained in such mortgage or charge shall require any approval or consent other than such consent as may be necessary under clause 16 of this agreement and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent otherwise than as required by clause 16 of this agreement or because the same is not registered under any provision of the relevant Ordinance under which the lease, licence, easement or other title is granted; and
- (d) providing that no lease, licence, easement or other title granted or assigned under or pursuant to this agreement shall be subject to or capable of partition including partition under The Partition Act, 1881, of the State of South Australia in its application to the Territory or under any order of any Court of competent jurisdiction under that Act or otherwise or be subject to the making of an order for sale under that Act.

Special
Mineral
Lease and
Other Rights

4.—(1.) The Minister shall grant on behalf of the Commonwealth to the Company, and the Company will accept, a Special Mineral Lease in the terms set out in the First Schedule to this agreement for a term which, subject to the payment of rents and royalties therein mentioned and to there being no default by the Company in respect of which the Commonwealth has given notice under clause 18 of this agreement, shall be for a period of 42 years commencing on the date of this agreement with a right of renewal as therein provided for a further 42 years on the same terms and conditions (except the right of renewal) but subject to earlier determination upon cessation or determination of this agreement.

(2.) Notwithstanding the provisions of clause 6 of this agreement, the Minister shall grant to the Company on behalf of the Commonwealth a lease or leases of such land within the area coloured pink on the plan designated 'NABALCO/PLAN 1' annexed to this agreement as is not included in the Special Mineral Lease and is reasonably required by the Company for the provision of services and for purposes ancillary to its operations under this agreement.

(3.) A lease under the last preceding sub-clause shall be granted, at the discretion of the Minister, by the variation of the Special Mineral Lease or by the grant of a Special Purposes Lease or Leases and shall be granted upon and subject to appropriate terms and conditions and, in the case of a Special Purposes Lease, for a term terminating on the termination of the Special Mineral Lease.

(4.) The Minister shall grant to the Company, upon and subject to appropriate terms and conditions, Special Purposes Leases of such land as is reasonably required by the Company to establish a township and to dispose of red mud on the Gove Peninsula in connexion with its mining operations under this agreement.

(5.) A lease, including the variation of a lease, under sub-clause (2.), (3.) or (4.) of this clause—

- (a) shall not impose on the Company obligations that are not reasonable in the circumstances of the use of the land leased and of the operations proposed to be carried out thereon;
- (b) shall not contain reservations other than those that are contained in the Special Mineral Lease, except that a Special Purposes Lease may contain a reservation of minerals;
- (c) shall contain provisions to the same effect as those that are contained in paragraphs (k), (l), (m), (n), (o) and (p) of clause 3 of the Special Mineral Lease, except that in a Special Purposes Lease the provision to the effect of paragraph (k) shall refer to the Special Purposes Leases Ordinance and to Special Purposes Leases.

(6.) In addition to the grant of the leases in accordance with the preceding provisions of this clause, the Commonwealth will grant or cause to be granted to the Company on appropriate tenures and upon and subject to appropriate conditions, including conditions for the payment of rent and royalties, under applicable laws in

locations to be agreed upon and, except when otherwise agreed, during such time as the Special Mineral Lease remains in force—

- (a) reasonable rights of passage over other areas of Gove Peninsula to enable the Company to carry out its obligations under this agreement;
- (b) such reasonable rights to take water, timber, stone, sand, lime, and other materials (except those that can be readily supplied on reasonable terms and conditions by the Yirrkala Mission or the Aborigines) as the Minister or the Administrator is satisfied are reasonably required to be granted to the Company for its purposes under this agreement; and
- (c) the right to win and use, in such quantities as may reasonably be required by the Company for its purposes under this agreement, shellgrit, coral and other calcium-bearing minerals from such parts of the sea and estuaries in the vicinity of the land leased to the Company as from time to time may be specified by the Administrator, but on condition that any shell taken is taken in conformity with the *Pearl Fisheries Act 1952-1953* and the *Pearling and Pearl Culture Ordinance 1964*.

5.—(1.) The Company will undertake a feasibility study to obtain the necessary physical and cost data on which to proceed subsequently with the detailed design and erection of a bauxite treatment plant with a capacity of not less than 500,000 tons of alumina per annum at Gove Peninsula and at such other location or locations within the Territory as the Company may wish to consider.

The Bauxite
Treatment
Areas

(2.) The Company will complete the feasibility study by the 31st day of December, 1967, and will spend on that study not less than One million dollars (\$1,000,000).

(3.) The Company will furnish to the Minister prior to the 31st day of March, 1968, a comprehensive report on the results of the feasibility study.

(4.) The Company will, prior to the 31st day of December, 1969, complete the detailed engineering design for a bauxite treatment plant with a capacity of not less than 500,000 tons of alumina per annum to be established at Gove Peninsula or at another location within the Territory proposed by the Company and accepted by the Minister.

(5.) The Company will undertake and complete before the 31st day of December, 1971, the construction of a bauxite treatment plant of the capacity and at the place referred to in the last preceding sub-clause or, in lieu thereof, of a bauxite treatment plant at that place that is in accordance with paragraph (b) of sub-clause (2.) of the next succeeding clause.

(6.) The Company will maintain the bauxite treatment plant in operable condition.

The Perimeter
Areas

(7.) The Company will, in consultation with and to the satisfaction of the Administrator, dispose of the red mud and other effluent from the bauxite treatment plant in accordance with good mining and industrial practice.

6.—(1.) In addition to the operations provided for by the last preceding clause, the Company will at no cost to the Commonwealth carry out, by the 31st day of March, 1968, or such later date as is agreed upon by the Minister and the Company, a drilling, sampling and analysing programme of the perimeter areas and will make the results thereof available to the Commonwealth.

(2.) If—

(a) the results of the said drilling, sampling and analysing are such that the Minister is satisfied that the perimeter areas contain 50 million tons or less than 50 million tons of practicably extractable bauxite having a percentage of available alumina of over 44 per centum and having under five per centum of silica; and

(b) the Company commits itself to erect, in lieu of a bauxite treatment plant of the minimum capacity provided by sub-clause (4.) of the last preceding clause, a bauxite treatment plant with a capacity of 750,000 tons of alumina per annum and designed for expansion to a capacity of one million tons of alumina per annum,

then the perimeter areas shall, subject to the next succeeding sub-clause, be included in and form part of the land demised by the Special Mineral Lease and the Schedule to that lease shall be varied accordingly.

(3.) If the results of the said drilling, sampling and analysing are such that the Minister is satisfied that the perimeter areas contain appreciably more than 50 million tons of practicably extractable bauxite having a percentage of available alumina of over 44 per centum and having under five per centum of silica, the Commonwealth shall have the right to reconsider the inclusion of the perimeter areas in the Special Mineral Lease and whether it shall be bound by the provisions of the last preceding sub-clause and any decision of the Commonwealth shall be notified forthwith to the Company.

(4.) In the event that by virtue of the decision of the Commonwealth under the last preceding sub-clause the perimeter areas are not included in the Special Mineral

Lease, the Commonwealth will pay to the Company the proper costs incurred by the Company in carrying out the said drilling, sampling and analysing.

(5.) For the purposes of this clause—

“percentage of available alumina” means that percentage of alumina arrived at by subtracting the percentage figure of total silica content from the percentage figure of total alumina; and

“practically extractable bauxite” means bauxite having a minimum thickness of six feet or a minimum thickness of four feet with a maximum overburden ratio of 1.5 of overburden to one of bauxite.

Aluminium
Smelter

7.—(1.) Prior to the 31st day of December, 1971, or, if the Minister so approves, within a further period of twelve months after that date, the Company will—

(a) make a complete study of the economic feasibility of aluminium smelting at such location or locations within the Territory as the Company may wish to consider;

(b) furnish the Minister with a comprehensive report of that study; and

(c) forward to the Minister for discussion a firm proposal for the erection and establishment of an aluminium smelter within the Territory subject only to any conditions revealed by that study as to the supply and price of continuous power.

(2.) If aluminium smelting does not eventuate from this first proposal, the Company shall make further studies and furnish reports at such time or times as the Minister shall reasonably request in the light of any significant change having occurred in the prospects for supply and price of continuous power since the making of the previous proposal. Each such report shall be accompanied by a further proposal based on such further study for discussion with the Minister for the establishment of a smelter within the Territory subject only to any conditions revealed by such further study as to the supply and price of continuous power.

Reports

8.—(1.) The Company will supply to the Minister and to the Administrator as at the last days of June and December in each year reports setting out the progress on the study referred to in sub-clause (1.) of clause 5 of this agreement and on the expenditures incurred by the Company up to the date of the completion of the bauxite treatment plant on the overall project, each report to be lodged within two months of the end of the period being reported on.

(2.) The Company will supply to the Minister such statistics of quantities of production, shipments and stocks of bauxite and alumina and of employment as are from time to time reasonably required by the Minister.

Share holdings
in the Company

9.—(1.) The Company will use its best endeavours to ensure that, until the 31st day of March, 1968, and thereafter unless and until it is demonstrated by the Company to the satisfaction of the Minister in the feasibility study that the cost of alumina produced in the bauxite treatment plant will exceed the world market price of alumina (that cost for the purposes only of this clause being deemed to include a profit available for dividend distribution of seven and a half per centum (7½%) per annum on the whole of the equity capital of the Company), fifty per centum (50%) of the Company's issued shares will be held by Swiss Aluminium Australia and/or by Swiss Aluminium Limited in such proportions as Swiss Aluminium Limited may from time to time determine and the remaining fifty per centum (50%) will be held by the undermentioned group of Australian companies, either in the undermentioned proportions or in such other proportions in substitution thereof as may be mutually agreed to by members of the said group, namely—

The Colonial Sugar Refining Co. Ltd.	..	..	..	27½%
Australian Mutual Provident Society	..	..	..	5%
Bank of New South Wales	..	..	..	2½%
Elder Smith Goldsbrough Mort Ltd.	..	..	..	2½%
Mount Morgan Limited	..	..	..	2½%
The Commercial Banking Company of Sydney Ltd.	..	..	..	2½%
Peko-Wallsend Investments Ltd.	..	..	..	3½%
The Mutual Life and Citizens Assurance Co. Ltd.	..	..	..	3½%
				50%

(2.) For the purposes of the last preceding sub-clause, the profit available for dividend distribution will be deemed to be the profit remaining after—

(a) deducting all costs, charges and outgoings of and incidental to the mining of bauxite, to the production of alumina and to the sales of products, including royalties, rents, rates, interest on loan moneys, maintenance and year-by-year replacements;

(b) making provision for taxes and other matters for which it is proper and reasonable according to usual commercial and mining practices to make provision; and

(c) amortising all assets over twenty years from the date of commencement of the production of alumina.

(3.) If as a result of it having been demonstrated by the Company to the satisfaction of the Minister in the feasibility study that the cost of alumina as defined in sub-clause (1.) of this clause read with sub-clause (2.) of this clause produced in the bauxite treatment plant will exceed the world market price of alumina an Australian company referred to in sub-clause (1.) desires, after the 31st day of March, 1968, to dispose of the whole or a part of its shares in the Company, the Company will use its best endeavours to persuade one or more of the remaining Australian companies referred to in sub-clause (1.) of this clause to acquire the shares which the first-mentioned Australian Company desires to dispose of.

(4.) If the Company is unsuccessful in the endeavours referred to in the last preceding sub-clause, it will confer with the Minister and will, within a reasonable time, use its best endeavours to persuade another or other suitable Australian company or companies, not being a company or companies within the aluminium industry but being a company or companies approved by Swiss Aluminium Australia, to acquire those shares, it being agreed, so far as the Company is in any position to prevent the same, that Swiss Aluminium Australia and Swiss Aluminium Limited shall not increase their total share-holding in the Company beyond fifty per centum (50%) of the equity capital unless the Company, having used its best endeavours as aforesaid, has been unable within a reasonable time to persuade another or other suitable Australian company or companies to acquire the said shares.

(5.) Nothing contained in sub-clauses (1.), (3.) and (4.) of this clause shall be deemed to prevent individual members of the said group of Australian companies from disposing of their shares, after the said 31st day of March, 1968, to other Australian companies, not being companies within the aluminium industry but being approved by Swiss Aluminium Australia.

10.—(1.) The Company will negotiate and enter into a contract with Swiss Aluminium Limited on terms whereby—

Sale of Alumina

(a) Swiss Aluminium Limited will contract to purchase for export firm for a period of 20 years the whole output of the bauxite treatment plant;

(b) the price as determined under the price formula in the contract for that output will be subject to the Minister being satisfied that it is reasonable having regard to evidence to be advanced by the Company that the proposed price adjusted to a delivered basis—

(i) is not below the cost of production and freight; and

(ii) is reasonably comparable with the delivered prices for alumina that would be applicable to like quantities, quality and duration supplied under arms-length contracts from other world sources, not being contracts for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising.

(2.) The Company will take all practicable steps necessary to ensure that the contract is continued in force and performed subject to the force majeure provisions (if any) in such contract.

(3.) The Company will not negotiate downwards the original price specified in the contract referred to in sub-clause (1.) of this clause during the life of that contract except with the approval of the Minister.

(4.) In the absence of an agreement between the Australian companies holding shares in the Company and Swiss Aluminium Limited to the contrary, the contract referred to in sub-clause (1.) of this clause will give to the Australian companies holding shares in the Company an option at any time and from time to time on giving reasonable notice to purchase at comparable prices, terms and conditions to those applying under the said contract up to fifty per centum (50%) of the total production of alumina for their own unrestricted use or sale.

11.—(1.) On the signing of this agreement, the Company will execute and deliver to the Minister a bond substantially in accordance with the form in the Third Schedule to this agreement bind the Company in the sum of Two million dollars (\$2,000,000) as security for compliance by the Company with certain conditions of this agreement, compliance with which is expressed in the said bond to make the bond void.

Bond and Guarantee

(2.) As soon as practicable after the date on which this agreement comes into force and in any event not later than one month after that date, the Company shall deliver to the Minister a guarantee or guarantees, in a form or forms approved by the Minister, by a guarantor or guarantors approved by the Minister guaranteeing the payment of any judgment, together with costs, obtained by the Commonwealth against the Company on the bond referred to in sub-clause (1.) of this clause and in respect of interest payable on any such judgment.

12.—(1.) The Commonwealth will use its best endeavours to ensure that no Act or Ordinance is passed that will impose, and that the Administration of the Territory and the agencies or instrumentalities of the Commonwealth and of the Territory and

Discriminatory Taxes, &c.

any local or other authority are not permitted or authorized to impose, discriminatory taxes, discriminatory rates or discriminatory charges of any nature whatsoever on or in respect of the titles, property or other assets, products, material or services used or produced by or through the operations of the Company or of any subsidiary or associated company of the Company in the conduct of business incidental to the Company's business under this agreement.

(2.) The Commonwealth will not take or permit to be taken any other discriminatory action that would deprive the Company or any subsidiary or associated company of full enjoyment of the rights granted or to be granted to the Company under this agreement.

Grants of Mining
Rights to Other
Persons

13.—(1.) The Commonwealth will ensure that during the currency of the Special Mineral Lease no claim, lease or other mining tenement is registered or granted under the Ordinance or otherwise by which any person other than the Company would obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum) within the land comprised in the Special Mineral Lease or any other lease granted pursuant to this agreement if such claim, lease or other mining tenement would unduly prejudice the Company in relation to its operations under this agreement or under the relevant lease or would prejudicially interfere with such operations, assuming the taking by the Company of all reasonable steps to avoid the interference.

(2.) Authority under the Ordinance to occupy or mine any part of the land coloured blue on the plan designated 'NABALCO/PLAN II' annexed to this agreement shall not be granted by the Administrator where the occupation or mining would unduly prejudice the Company in its reasonable requirements in relation to its expected operations under this agreement and before any such authority is granted reasonable written notice will be given to the Company of the intention to grant the authority.

Zoning

14. The Commonwealth and the Company agree with each other that the land for the time being comprised in the Special Mineral Lease and the lands the subject of any lease, licence, easement or other title granted to the Company pursuant to this agreement shall be and remain zoned for use or otherwise protected 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 Commonwealth, the Administration of the Territory or any agency or instrumentality of either of them or any local or other authority of the Territory on the ground that such operations are contrary to any zoning by-law or regulation.

Third Parties

15. Without affecting the liability of the Company under this agreement, the Company shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which the Company is authorised or obliged to carry out hereunder.

Transfers, &c.

16. Subject to the provisions of this clause the Company may not transfer, assign or charge the whole or any part of the rights of the Company under this agreement (including its rights to or as the holder of any lease, licence, easement or other title) or part with possession of any land the subject of any such lease, licence, easement or other title (other than to a wholly owned subsidiary or to wholly owned subsidiaries of the Company) without the consent in writing of the Minister, which consent shall not be unreasonably withheld in the case of a mortgage or charge bona fide for financing the operations of the Company under this agreement.

Permissible
Delays

17.—(1.) If the Company incurs delay in the performance of any of its obligations under this agreement—

(a) from any cause arising without default or negligence on the part of and beyond the reasonable control of the Company; or

(b) without prejudice to the generality of the foregoing, by reason of fire, explosion, storm, flood, lightning, earthquake or other natural cause or accident, riot or civil commotion, strikes or lockouts, war (whether declared or not) or military or usurped power, act of government by way of restriction, embargo or prohibition arising without default or negligence on the part of the Company,

and if the Company furnishes evidence to the satisfaction of the Minister of the existence of the cause and of the fact that it was without default or negligence on the part of and beyond the reasonable control of the Company, then such obligation shall be suspended so far as it is so affected by such cause as aforesaid, but only during the continuance thereof.

(2.) Where an obligation that has been suspended under sub-clause (1.) of this clause requires the Company to undertake or complete any act, matter or thing by any date or by the end of any period, the Minister shall, by notice in writing to the Company, extend the date or the period, as the case may be, by the addition of a period equal to the period during which the Company was delayed in the performance of the obligation.

(3.) Notwithstanding any provision of this agreement the Minister may, at his discretion, at the request of the Company from time to time extend any period or

date referred to in this agreement for such period or to such later date as the Minister thinks fit and the extended period or later date, when advised to the Company by notice from the Minister, shall be deemed for all purposes of this agreement to be substituted for the period or date so referred to.

18.—(1.) In the event that the Company makes default in the due performance or observance of any of the covenants or obligations in this agreement or in any lease, licence, easement or other title granted or assigned hereunder or pursuant hereto on its part to be performed or observed and such default shall not have been remedied within a period of one hundred and eighty (180) days after notice as provided in sub-clause (4.) of this clause is given by the Commonwealth then and in any of such events the Commonwealth may by notice to the Company determine this agreement and the rights of the Company hereunder and under any lease, licence, easement or other title granted hereunder or pursuant hereto.

Determination

(2.) If the Company surrenders the entire Special Mineral Lease as permitted under paragraph (p) of clause 3 of the Special Mineral Lease then this agreement and the rights of the Company hereunder and under any lease, licence, easement or other title granted hereunder or pursuant hereto shall thereupon determine.

(3.) If a default by the Company referred to in sub-clause (1.) of this clause shall not have been remedied after notice as therein provided, the Commonwealth instead of determining this agreement because of the default, may itself remedy the default or cause the same to be remedied (for which purpose the Commonwealth 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 costs and expenses incurred by the Commonwealth in remedying or causing to be remedied such default shall be a debt payable by the Company to the Commonwealth on demand. Any action taken by the Commonwealth under this sub-clause shall not affect the operation of this clause or prejudice the rights of the Commonwealth under this clause in relation to any default other than that in respect of which the action is taken by the Commonwealth.

(4.) The notice to be given by the Commonwealth in terms of sub-clause (1.) of this clause shall specify the nature of the default entitling the Commonwealth to exercise the right of determination and, where appropriate or known to the Commonwealth, the party or parties responsible therefor and shall be given to the Company and to each assignee, mortgagee, chargee and disponee for the time being of the Company's said rights to or in favour of whom an assignment, mortgage, charge or disposition has been effected in terms of clause 16 of this agreement and the name and address for service of notice of whom as an assignee, mortgagee, chargee or disponee have previously been notified in writing to the Commonwealth by the Company or any such assignee, mortgagee, chargee or disponee.

19. The provisions of this agreement or of any lease, licence, easement or right granted pursuant thereto may from time to time be cancelled, added to, varied or amended by agreement in writing between the parties thereto provided that the cancellation, addition, variation or amendment shall not be inconsistent with or constitute a material alteration of the essential provisions of this agreement.

Variation

20. Any notice, consent or other communication to be given to or served upon the Company under this agreement shall be deemed to have been duly given or served if it is in writing signed by or on behalf of the Minister and posted in a prepaid letter addressed to the Company at its registered office and any notice or other communication to be given to or served upon the Commonwealth or the Minister under this agreement shall be deemed to have been duly given or served if it is in writing signed on behalf of the Company and posted in a prepaid letter addressed to the Minister at his usual office or to the Secretary to the Department of Territories at Canberra. Any notice, consent or other communication sent by post shall be deemed to be given or served at the time when in due course of post it would be delivered to the address to which it is sent.

Notices, &c.

21. This agreement is governed by and is to be construed according to the law for the time being in force in the Territory.

Applicable Law

THE SCHEDULES.

First Schedule

Clause 4.

THE NORTHERN TERRITORY OF AUSTRALIA
Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968
Mining Ordinance 1939-1967

SPECIAL MINERAL LEASE.

Lease No.

LEASE granted on the
One thousand nine hundred and sixty-
of an Agreement made the

day of
in accordance with clause 4
day of

*Mining (Gove Peninsula Nabalco
Agreement) Ordinance 1968*

1968 between THE COMMONWEALTH OF AUSTRALIA (in this lease called "the Commonwealth") of the one part and NABALCO PTY. LIMITED, a company incorporated in the State of New South Wales and having its registered office at Goldfields House, 1 Alfred Street, Sydney in the said State (in this lease called "the lessee") of the other part which Agreement was approved by the *Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968* WHEREBY the Commonwealth DEMISES to the lessee in consideration of the rent, royalties and covenants hereinafter reserved and provided and on the part of the lessee to be paid and observed ALL THAT piece or parcel of land (in this lease called "the leased land") containing by admeasurement 13,496 acres or thereabouts and particularly described and delineated in the Schedule to this lease AND ALL those mines, veins, seams, lodes and deposits of bauxite and other ores of aluminium, ores of calcium and ores of fluorine, together with any other minerals found in combination or association in the leased land with them so that the last-mentioned minerals must necessarily be mined in the mining of the bauxite or the said other ores, in or under the leased land TOGETHER WITH the rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining EXCEPTING and RESERVING out of this lease—

- (a) the right of the Commonwealth, its servants, officers and agents, at any time to enter and maintain and do work upon or in relation to the air-strip and any public roads for the time being subsisting over or upon the leased land;
- (b) the rights of ingress, egress, and regress hereinafter provided;
- (c) the right of the Commonwealth, subject to the provisions of the Agreement, to require the lessee—
 - (i) to grant or consent to the granting of such easements or rights in or over the leased land; or
 - (ii) to permit such use of the leased land, in each case as is or are reasonably necessary (taking into consideration the present and future use or development of the leased land by the lessee) in connection with the overall development or use of lands adjacent to the leased land, provided always that no such grant, consent or permission to use shall be required to be given by the lessee if such grant, consent or permission to use would—
 - (A) unduly prejudice the lessee in relation to its operations under the Agreement or this lease or prejudicially interfere with those operations; or
 - (B) increase the lessee's commitments or prejudicially interfere with the lessee's control over the leased land or any part thereof;

TO HOLD the same UNTO THE LESSEE for the full term of forty-two years commencing on the date of this lease with the right hereinafter provided to renew the same for a further period of forty-two years for the purpose of mining on and in the leased land for bauxite and the other ores and minerals previously referred to in this lease and for all purposes necessary effectually to carry on the lessee's overall mining operations under the Agreement on or in the leased land including—

- (i) cutting and constructing thereon water-races, drains, channels, dams, pathways, roads, tramways, railways, conveyors, pipe-lines, power-lines and other engineering services to be used in connexion with that mining;
- (ii) quarrying stone and gravel and taking sand for the lessee's operations under the Agreement;
- (iii) erecting on the leased land buildings, installations, facilities and machinery to be used in connexion with the mining, the treatment and the export of products, including the erection of a bauxite treatment plant;
- (iv) erecting residences and other buildings and facilities on the leased land in connexion with all or any of the above purposes; and
- (v) subject to paragraph (b) of clause 1 hereof, drilling bores and wells for water,

but upon and subject to the Agreement and to the Ordinance except in so far as the provisions of the Ordinance are inconsistent with the Agreement YIELDING AND PAYING therefor the yearly rent hereinafter provided AND FURTHER YIELDING AND PAYING therefor royalties at the rates and in the manner hereinafter provided: AND WHEREBY IT IS WITNESSED as follows:

1. The lessee for itself and for its successors and permitted assigns covenants with the Commonwealth—

- (a) to pay, during the period of this lease, the rent and royalties reserved by the lease clear of all deductions at the respective rates and times and in the manner from time to time provided in this lease and, except in so far as is otherwise so provided, by the Ordinance and the Regulations;

- (b) unless authorised to do so by the Administrator under the *Control of Waters Ordinance 1938-1965*, not to bore or sink for, pump or raise water, nor to erect any dam or other facility on existing rivers or water ways for the purpose of the supply of waters;
- (c) to operate in accordance with good mining practice and, subsequent to mining operations on any part of the leased land, to take all steps necessary to restore and leave the surface of the mined area in a condition satisfactory to the Administrator so that—
 - (i) there shall be no abnormal batters or contours;
 - (ii) the surface soil (if any) existing prior to the mining operations shall, where possible, be preserved and subsequently spread to maximum advantage over the mined area;
 - (iii) there shall be a minimum interference with the natural drainage system except where it is found expedient to use any mined area for the storage of water;
 - (iv) there shall not arise any pollution of any drainage system that is dangerous or injurious to public health; and
 - (v) the provisions of sub-paragraphs (i), (ii) and (iii) of this paragraph shall be carried out progressively and, in respect of a mined part, within two years of the cessation of mining on that mined part in order to allow of regeneration of vegetation;
- (d) not to use or work the leased land nor permit it to be used or worked except for the purposes for which it is leased;
- (e) to observe, perform and carry out the provisions of the Ordinance and the Regulations and of the *Mines Regulation Ordinance 1939-1962* and the Regulations for the time being in force under that Ordinance so far as those provisions affect or have reference to special mineral leases granted under the Ordinance and are not inconsistent with the Agreement and/or this lease;
- (f) to treat the bauxite in accordance with good industrial practice and to make the best use of the bauxite reserves;
- (g) to take competent advice in association with experts nominated by the Administrator as to what steps are reasonably possible to encourage and promote regeneration and development of vegetation on mined areas progressively;
- (h) to grant to all aboriginal residents of the Mission and to other persons specified in sub-section (3.) of section 17 of the *Social Welfare Ordinance 1964-1967* of the Territory, the right to enter, leave and move across the leased land at will, except across such areas as the lessee may for security or safety reasons designate as restricted areas;
- (i) to erect such fences or to take such other steps as may be reasonably necessary for security or safety purposes;
- (j) to permit access to any part of the leased land, not being a part or parts designated a restricted area as aforesaid, by the following persons for the performance of their duties—
 - (i) members of the staff of the Mission who have first obtained the approval of the lessee; and
 - (ii) officers, employees and agents of the Administration or the Commonwealth,and not to unreasonably withhold approval sought for the purposes of sub-paragraph (i) of this paragraph;
- (k) not to interfere with or mine on any public road on the leased land unless the lessee has provided an alternative road or taxiway, as the case may be, approved by the Administrator;
- (l) not to interfere with or mine in an area constituting the airstrip unless and until the lessee has first constructed an alternative comparable airstrip on other land specified for that purpose by the Administrator and the alternative airstrip is licensed for the same purpose as the existing airstrip;
- (m) to allow free public access to and along any public road and the airstrip or the alternative airstrip constructed in accordance with paragraph (l) of this clause;
- (n) for so long as the Mission is maintained at Yirrkala, to conduct its operations under this lease in such a way that it does not pollute, divert or otherwise interfere with the source of supply of water to the Mission from Yirrkala Creek unless it has first provided an alternative source of supply to the satisfaction of the Administrator;

- (o) not to export bauxite from the Territory, except for purposes of testing in laboratories or pilot plants, without the prior approval of the Minister; and
- (p) to observe, perform and carry out the covenants on the part of the lessee to be observed, performed or carried out under the Agreement.

2. The Commonwealth covenants with the lessee that the Minister will at the written request of the lessee made 12 months before the expiration of the term hereby created and if there shall not at the time of the request be any existing breach or non-observance of any of the covenants or obligations on the part of the lessee in respect of which the Commonwealth has given notice under sub-clause (1.) of clause 18 of the Agreement, which has not been remedied or subsequently waived, at the expense of the lessee renew this lease for the further term of forty-two years from the expiration of the said term upon and subject to the like covenants and conditions as are contained in this lease with the exception of the present covenant for renewal.

3. It is mutually agreed and declared—

- (a) that the rate of yearly rent payable by the lessee during each successive period of twenty-one years during the term of this lease and any extension of it shall be that rate of yearly rent that would be applicable in the case of a mineral lease of Crown land granted under the Ordinance at the commencement of that twenty-one year period;
- (b) that the initial rate of royalty payable by the lessee shall be Twenty cents (20c) per ton on bauxite mined and treated in Australia, and Thirty cents (30c) per ton on bauxite mined and exported as untreated bauxite, but the royalty payable on bauxite mined and treated in Australia shall be reduced—
 - (i) to Fifteen cents (15c) per ton in any year in which the lessee's net profit (as hereinafter defined) is less than the equivalent of Twelve dollars (\$12) per ton of alumina produced but not less than Eight dollars (\$8) per ton of alumina produced; or
 - (ii) to Ten cents (10c) per ton in any year in which the lessee's net profit (as hereinafter defined) is less than the equivalent of Eight dollars (\$8) per ton of alumina produced;
- (c) that if the Minister is satisfied that the capital investment necessary for the establishment of a bauxite treatment plant with a capacity of 500,000 tons per annum is above One hundred million dollars (\$100,000,000), the figures of Twelve dollars (\$12) and Eight dollars (\$8) respectively referred to in sub-paragraphs (i) and (ii) of the last preceding paragraph shall be deemed to be increased in the same proportion as the new capital investment bears to One hundred million dollars (\$100,000,000);
- (d) that for the purposes of paragraph (b) of this clause—
 - “the lessee's net profit” in a year shall be the profit of the lessee in the year after tax; and
 - “profit” shall, subject to the provisions of paragraph (e) of this clause, be the amount that is certified by the lessee's auditor to be the surplus remaining after deduction from the gross proceeds during the year from sales of bauxite and alumina produced from this lease of—
 - (i) all costs, charges, outgoings and overheads of and incidental to the mining, treatment, storage, handling, transport and sales of bauxite and alumina, including rents, rates, interest on loan moneys, maintenance and year-to-year replacements;
 - (ii) provisions on a basis that is consistent from year to year for replacement of assets; and
 - (iii) other appropriate provisions on a basis that is consistent from year to year, but not including provisions for royalties and tax;
- (e) that the following provisions shall apply in relation to the calculation of the profit of the lessee referred to in the last preceding paragraph—
 - (i) the system of accounts, any charges to the lessee by any related company (as defined by the Companies Ordinance) of the lessee and the provisions to be made in the calculation of the profit shall be subject to acceptance by the Administrator as being in accordance with usual commercial and mining practice and, when the system of accounts and the basis on which the provisions are to be made have been accepted for the purposes of the first royalty return, neither shall be changed except with the approval of the Administrator;
 - (ii) the Administrator shall be entitled to examine the books and records of the lessee for the purpose of verifying the calculation

- made on behalf of the lessee and the royalty payable in respect of the year;
- (iii) if the Administrator is not satisfied with the calculation made on behalf of the lessee he shall make the calculation that he considers is correct and notify the lessee of the calculation he has made;
 - (iv) as soon as practicable after a notification by the Administrator, the lessee and the Administrator shall consult together in an endeavour to agree upon the calculation of the profit concerned;
 - (v) the profit of the lessee for the purposes of the calculation of royalty in respect of a year shall be the profit calculated in accordance with paragraph (d) and sub-paragraph (i) of paragraph (e) of this clause as agreed upon by the lessee and the Administrator or, if agreement is not reached within a period of three months after the notification to the lessee by the Administrator, as certified by the Auditor-General for the Commonwealth as calculated in accordance with paragraph (d) and sub-paragraph (i) of paragraph (e) of this clause;
 - (vi) the lessee shall permit the Auditor-General or an officer authorized by him to examine the books and records of the lessee for the purpose of enabling a certificate provided for by the last preceding sub-paragraph to be given;
 - (vii) a certificate by the Auditor-General as provided for by sub-paragraph (v) of this paragraph shall be accepted as a conclusive determination of the profit of the lessee in the relevant year;
- (f) that the rate of royalty may be reviewed by the Commonwealth at seven-yearly intervals computed from the 31st day of December, 1971, or from the date on which alumina is first produced in commercial quantities, whichever is the earlier, the Commonwealth having regard to such matters as the profitability of the project at Gove Peninsula and the movement in royalties generally in the Commonwealth of Australia for bauxite and other minerals since the last review, the right being reserved to the Commonwealth when reviewing royalty, having regard to such matters as aforesaid, to introduce new bases for assessment;
- (g) that the rate of royalty payable by the lessee for the seven-yearly period immediately succeeding a review shall, subject to paragraph (h) of this clause, be the rate determined by the Commonwealth on the review or, if not so determined within six months after the date for the review, shall be the rate existing immediately prior to the date for the review;
- (h) that the rate of royalty payable under the preceding paragraphs of this clause during the first three seven-yearly royalty periods shall in no case be less than Ten cents (10c) or more than Forty cents (40c) per ton on bauxite mined and treated in Australia, or more than Fifty cents (50c) per ton on bauxite mined and exported as untreated bauxite;
- (i) that in relation to the payment of the royalty payable in accordance with the preceding paragraphs of this clause the following provisions shall apply—
- (i) the lessee shall within 28 days after the end of each quarter make a payment of Ten cents (10c) per ton on the tonnage input of bauxite to the bauxite treatment plant;
 - (ii) the lessee shall submit to the Administrator a royalty return for each year within 28 days after receipt of the taxation assessment of the lessee by the Commissioner for Taxation for the year accompanied by the certificate of the lessee's auditor stating the net profit after tax of that year and that the provisions referred to in paragraph (d) of this clause are on a basis consistent with those of the previous year;
 - (iii) any amount in addition to the total amount of the quarterly payments found to be payable after final calculation in respect of a year on the basis set out above shall be paid by the lessee within 28 days after notification to the lessee by the Administrator that the additional amount is payable;
- (j) that the lessee shall during the term of this lease pay royalty on the minerals other than bauxite mined by the lessee at the respective rates and at the respective times that would be applicable in the case of a mineral lease of the leased land provided for those minerals in the Ordinance at the time of their sale;
- (k) that the provisions of the Ordinance and of the Regulations so far as they relate to special mineral leases granted under the Ordinance and are not inconsistent with the Agreement and/or this lease shall apply to this lease as if those provisions were incorporated in this lease;

- (l) that the Commonwealth will have the right to resume any portion of the leased land for a public purpose, on payment to the lessee of compensation calculated as provided in paragraphs (m) and (n) of this clause;
- (m) that in the event of any part of the leased land being resumed by the Commonwealth under the last preceding paragraph, the lessee shall be entitled to compensation on just terms for the loss of bauxite and other minerals designated in this lease in, and improvements on or to, the land resumed and for any loss in value to the lessee of any improvements on or to the leased land (other than the resumed part) or on or to any other land the subject of a lease to the lessee or any assignee of the lessee and for any other losses necessarily incurred by the lessee or such assignee by reason of the resumption;
- (n) that for the purposes of paragraph (m) of this clause the value of bauxite and/or other minerals shall be their value as at the date of resumption, taking into account all costs which would be associated with the mining, transport, treatment and, if applicable, washing of those minerals;
- (o) that the lessee may, upon payment of all royalties and rent then due to the Commonwealth and having complied with the provisions of subparagraph (v) of paragraph (c) of clause 1 of this lease, surrender the whole or part of the lease; and
- (p) that this lease shall be subject to determination as provided in clause 18 of the Agreement.

4.—(1.) In this lease, unless the contrary intention appears—

“public road”, for the purposes only of paragraphs (k) and (m) of clause 1 of this lease and of this sub-clause, means—

(a) each of the three existing formed and constructed gravel roads connecting the airstrip with Dundas Point, the airstrip with the Mission and the airstrip with the European Launcher Development Organization (ELDO) campsite respectively; and

(b) every bitumen surface road and taxiway in the vicinity of the airstrip as identified on Road Plan C and L 464/D, a copy of which is held by the office of the Lands Branch, Darwin,

and includes an alternative road or taxiway provided in accordance with the said paragraph (k);

“the Administrator” means the Administrator of the Territory appointed under the *Northern Territory (Administration) Act 1910-1967*, or the person for the time being duly appointed pursuant to that Act to act in the office of Administrator or the holder for the time being of any office in substitution for the office of Administrator;

“the Agreement” means the agreement dated the
day of 1968, between the Commonwealth

and the lessee for the mining of bauxite at Gove Peninsula aforesaid and for other purposes to which the form of this lease was scheduled;

“the bauxite treatment plant” means the bauxite treatment plant that is erected pursuant to the Agreement;

“the leased land” includes public roads as defined in this sub-clause;

“the lessee” means Nabalco Pty. Limited and, if this lease is assigned, means all the assigns of Nabalco Pty. Limited for the time being entitled to the benefit of this lease;

“the Minister” means the Minister of State for Territories of the Commonwealth, or such other Minister of State for the Commonwealth as may for the time being be charged with the administration of the *Northern Territory (Administration) Act 1910-1967* or any member of the Federal Executive Council who may for the time being be acting for that Minister;

“the Mission” means the Mission establishment that is for the time being conducted at Yirrkala by the Department of Overseas Missions of the Methodist Church of Australia or by any successor of that Department or Church;

“the Ordinance” means the *Mining Ordinance 1939-1967* of the Territory;

“the Regulations” means the Regulations made under the Ordinance as those Regulations are amended from time to time; and

“the Territory” means the Northern Territory of Australia.

(2.) Any reference to an Act means that Act as amended from time to time or any Act in substitution for that Act.

(3.) Any reference to an Ordinance means that Ordinance as amended from time to time or any Ordinance in substitution for that Ordinance.

(4.) In this lease, unless the contrary intention appears words in the singular include the plural and words in the plural include the singular.

The Schedule.

ALL THAT piece or parcel of land in the Northern Territory containing an area of 13,496 acres more or less: commencing at the datum peg on the northwestern boundary of that land and numbered 6 on the plan annexed and which datum peg bears 291 degrees 17 minutes 50 seconds 655.6 links 305 degrees 46 minutes 30 seconds 3747.5 links 330 degrees 16 minutes 40 seconds 1430.2 links 7 degrees 46 minutes 30 seconds 794.9 links and 354 degrees 10 minutes 10 seconds 1989.9 links from Astrofix FNI at latitude 12 degrees 16 minutes 34 seconds south and longitude 136 degrees 49 minutes 24 seconds east and bounded thence by lines bearing 84 degrees 4 minutes 11225 links 4 degrees 31 minutes 30 seconds 15147.8 links 94 degrees 31 minutes 10 seconds 6063.2 links 166 degrees 5 minutes 40 seconds 18725.4 links 184 degrees 31 minutes 40 seconds 6183.7 links 94 degrees 32 minutes 20 seconds 18586.1 links 184 degrees 32 minutes 20 seconds 15084.2 links 229 degrees 32 minutes 40 seconds 4524.9 links 274 degrees 32 minutes 10 seconds 45772 links 309 degrees 15 minutes 10840.2 links 4 degrees 32 minutes 5816.9 links 94 degrees 32 minutes 9086.8 links 350 degrees 5 minutes 20 seconds 11567.1 links and 84 degrees 4 minutes 10239.4 links to the datum peg at the point of commencement.

IN WITNESS whereof the Minister has for and on behalf of the Commonwealth hereunto set his hand and seal and the lessee has hereunto affixed its common seal the day and year first above written.

SIGNED SEALED AND DELIVERED by the Minister of State for Territories of the Commonwealth of Australia for and on behalf of the Commonwealth in the presence of—

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of—

Director
Secretary

Second Schedule.

Clause 6.

The Perimeter Areas.

ALL THAT piece or parcel of land at Gove Peninsula in the Northern Territory of Australia, containing an area of 35,970 acres more or less and being the land described as follows, other than the land described in the Schedule to the form of lease that is set out in the First Schedule to the Agreement to which this Schedule is the Second Schedule—

Commencing at a point bearing 291 degrees 17 minutes 50 seconds 655.6 links, 305 degrees 46 minutes 30 seconds 3747.5 links, 330 degrees 16 minutes 40 seconds 1430.2 links, 7 degrees 46 minutes 30 seconds 794.9 links, 354 degrees 10 minutes 10 seconds 1989.9 links, 84 degrees 4 minutes 11225 links, 4 degrees 31 minutes 30 seconds 15147.8 links, 94 degrees 31 minutes 10 seconds 6063.2 links, 4 degrees 31 minutes 10 seconds 238.5 links, 94 degrees 31 minutes 10 seconds 10979.2 links from Astrofix FNI, parallel of south latitude 12 degrees 16 minutes 34 seconds, meridian of east longitude 136 degrees 49 minutes 24 seconds and situated near the windsock at Gove Airstrip: thence bounded by lines bearing 180 degrees 1 minute 9263.2 links, 126 degrees 39 minutes 5807 links, 90 degrees 1 minute 13273.9 links, 179 degrees 22 minutes 40 seconds 1709.8 links, 202 degrees 17 minutes 40 seconds 1681.3 links, 201 degrees 41 minutes 1274.3 links, 177 degrees 10 minutes 1252.2 links, 184 degrees 1 minute 50 seconds 1757.7 links, 216 degrees 5 minutes 30 seconds 768.1 links, 192 degrees 59 minutes 50 seconds 347.4 links, 165 degrees 19 minutes 50 seconds 502.4 links, 153 degrees 41 minutes 20 seconds 285.9 links, 200 degrees 37 minutes 20 seconds 558.1 links, 173 degrees 14 minutes 50 seconds 1237 links, 156 degrees 29 minutes 20 seconds 1485.7 links, 137 degrees 27 minutes 2052.5 links, 112 degrees 59 minutes 30 seconds 2006.9 links, 78 degrees 17 minutes 50 seconds 2751.2 links, 32 degrees 17 minutes 20 seconds 761 links, 14 degrees 49 minutes 30 seconds 483.4 links, 23 degrees 26 minutes 20 seconds 269.7 links, 3 degrees 56 minutes 40 seconds 557.5 links, 39 degrees 37 minutes 40 seconds 194.5 links, 48 degrees 18 minutes 20 seconds 434.9 links, 11 degrees 16 minutes 220 links, 44 degrees 38 minutes 30 seconds 756.3 links, 22 degrees 43 minutes 30 seconds 550.4 links, 153 degrees 26 minutes 30 seconds 497.6 links, 112 degrees 12 minutes 40 seconds 998.8 links, 108 degrees 48 minutes 50 seconds 856.9 links, 99 degrees 12 minutes 50 seconds 753.7 links, 83 degrees 41 minutes 619 links, 69 degrees 27 minutes 333.3 links, 103 degrees 17 minutes 50

seconds 447.8 links, 126 degrees 1 minute 30 seconds 623.1 links, 129 degrees 20 minutes 30 seconds 970.8 links, 115 degrees 43 minutes 30 seconds 553.8 links, 135 degrees 47 minutes 30 seconds 297.6 links, 162 degrees 27 minutes 30 seconds 449.4 links, 142 degrees 37 minutes 50 seconds 1295.9 links, 211 degrees 24 minutes 30 seconds 579.8 links, 142 degrees 54 minutes 30 seconds 616.2 links, 192 degrees 33 minutes 30 seconds 1342.7 links, 220 degrees 2 minutes 20 seconds 472.3 links, 212 degrees 32 minutes 50 seconds 1245.7 links, 173 degrees 40 seconds 1454.7 links, 183 degrees 55 minutes 1046.3 links, 150 degrees 32 minutes 20 seconds 1085.3 links, 152 degrees 6 minutes 40 seconds 1716.5 links, 127 degrees 2 minutes 30 seconds 1100.9 links, 199 degrees 20 minutes 30 seconds 582.4 links, 259 degrees 11 minutes 40 seconds 664.4 links, 192 degrees 33 minutes 40 seconds 1446.5 links, 89 degrees 52 minutes 50 seconds 558.5 links, 127 degrees 44 minutes 30 seconds 962.9 links, 175 degrees 39 minutes 30 seconds 2585.6 links, 160 degrees 40 minutes 30 seconds 738.8 links, 242 degrees 31 minutes 350.3 links, 164 degrees 4 minutes 440.7 links, 165 degrees 35 minutes 40 seconds 312.9 links, 176 degrees 30 minutes 10 seconds 408.5 links, 164 degrees 31 minutes 50 seconds 452.3 links, 128 degrees 26 minutes 40 seconds 532.6 links, 106 degrees 3 minutes 509.3 links, 173 degrees 57 minutes 30 seconds 837.4 links, 148 degrees 13 minutes 50 seconds 1715.2 links, 170 degrees 36 minutes 50 seconds 956.2 links, 114 degrees 54 minutes 50 seconds 1317.8 links, 172 degrees 48 minutes 30 seconds 416.6 links, 245 degrees 2 minutes 50 seconds 574.9 links, 234 degrees 23 minutes 50 seconds 361.1 links, 212 degrees 59 minutes 30 seconds 595.7 links, 242 degrees 16 minutes 40 seconds 425.4 links, 197 degrees 23 minutes 20 seconds 448.4 links, 210 degrees 5 minutes 50 seconds 876.6 links, 203 degrees 4 minutes 20 seconds 523.9 links, 175 degrees 54 minutes 1360.6 links, 128 degrees 47 minutes 50 seconds 789.8 links, 185 degrees 53 minutes 10 seconds 792.5 links, 206 degrees 14 minutes 1220.2 links, 297 degrees 45 minutes 20 seconds 777.6 links, 294 degrees 50 seconds 1218.5 links, 215 degrees 30 minutes 50 seconds 860.4 links, 188 degrees 15 minutes 40 seconds 500.8 links, 175 degrees 43 minutes 20 seconds 1147.5 links, 171 degrees 29 minutes 10 seconds 419.9 links, 251 degrees 6 minutes 10 seconds 189.8 links, 260 degrees 24 minutes 20 seconds 1031.9 links, 197 degrees 55 minutes 30 seconds 1150.7 links, 174 degrees 52 minutes 20 seconds 649.2 links, 241 degrees 5 minutes 50 seconds 247.5 links, 269 degrees 33 minutes 50 seconds 800.3 links, 292 degrees 34 minutes 20 seconds 367.8 links, 323 degrees 49 minutes 20 seconds 583 links, 276 degrees 47 minutes 20 seconds 1090.7 links, 237 degrees 49 minutes 20 seconds 630.3 links, 255 degrees 52 minutes 10 seconds 600.9 links, 263 degrees 16 minutes 445.4 links, 290 degrees 12 minutes 40 seconds 827.6 links, 273 degrees 4 minutes 50 seconds 1270.7 links, 228 degrees 48 minutes 20 seconds 726.7 links, 204 degrees 55 minutes 20 seconds 1225.4 links, 181 degrees 56 minutes 30 seconds 719.7 links, 184 degrees 34 minutes 30 seconds 532.4 links, 166 degrees 25 minutes 497 links, 170 degrees 58 minutes 40 seconds 451.5 links, 194 degrees 36 minutes 30 seconds 491.2 links, 220 degrees 21 minutes 20 seconds 471.7 links, 232 degrees 33 minutes 453.6 links, 218 degrees 1 minute 20 seconds 542.7 links, 200 degrees 20 minutes 578.4 links, 221 degrees 6 minutes 40 seconds 1327.1 links, 207 degrees 58 minutes 50 seconds 1132.3 links, 250 degrees 6 minutes 30 seconds 1248.9 links, 220 degrees 36 minutes 20 seconds 975.7 links, 230 degrees 18 minutes 30 seconds 681 links, 243 degrees 53 minutes 10 seconds 1114.3 links, 266 degrees 35 minutes 40 seconds 1108.5 links, 286 degrees 6 minutes 10 seconds 922.6 links, 267 degrees 29 minutes 30 seconds 1243.1 links, 250 degrees 31 minutes 30 seconds 1692.7 links, 305 degrees 50 minutes 10 seconds 1341.1 links, 228 degrees 30 minutes 10 seconds 641.6 links, 246 degrees 47 minutes 30 seconds 1233.1 links, 255 degrees 42 minutes 20 seconds 853.6 links, 134 degrees 18 minutes 40 seconds 713.3 links, 218 degrees 24 minutes 20 seconds 851.3 links, 270 degrees 1 minute 10 seconds 40449.3 links, 360 degrees 10670 links, 270 degrees 15616.2 links, 360 degrees 16331.8 links, 270 degrees 8000 links, 360 degrees 23420.8 links, 90 degrees 3 minutes 40 seconds 9581.4 links, 0 degrees 3 minutes 40 seconds 12000 links, 90 degrees 3 minutes 40 seconds 17162 links, 0 degrees 3 minutes 40 seconds 16053.4 links, 90 degrees 3 minutes 40 seconds 28156.6 links, 180 degrees 1 minute 7742.9 links to the point of commencement. All bearings are grid.

Third Schedule.

Clause 11.

Bond.

BY THIS BOND Nabalco Pty. Limited, a company incorporated under the laws of the State of New South Wales and having its registered office at Goldfields House, 1 Alfred Street, Sydney in that State, ACKNOWLEDGES ITSELF BOUND to the Commonwealth of Australia in the sum of Two million dollars (\$2,000,000) to be paid to the said Commonwealth of Australia.

SEALED this

day of

196 .

NOW THE ABOVE WRITTEN BOND is conditioned to be void in case the said Nabalco Pty. Limited shall observe and carry out the provisions on its part to

be observed and carried out of sub-clauses (4.) and (5.) of clause 5 of the Agreement made the _____ day of _____ 1968, between the said Commonwealth of Australia and the said Nabalco Pty. Limited in relation to the mining of bauxite and the production of alumina at Gove Peninsula in the Northern Territory of Australia as those provisions may be at any time affected, varied or amended under or by virtue of clause 17 or clause 19 of the said Agreement.

AND IT IS HEREBY DECLARED that this Bond shall be governed by, and have effect in accordance with, the law for the time being in force in the Northern Territory of Australia.

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by authority of a resolution of the Board of Directors in the presence of—

}
Director
Secretary

IN WITNESS whereof the Minister has for and on behalf of the Commonwealth hereunto set his hand and seal and the Company has hereunto affixed its common seal the day and year first above written.

SIGNED SEALED AND DELIVERED by CHARLES EDWARD BARNES, the Minister of State for Territories of the Commonwealth of Australia, for and on behalf of the Commonwealth in the presence of—
(Sgd.) W. L. Perry

} (Sgd.) C. E. Barnes
L.S.

THE COMMON SEAL of NABALCO PTY. LIMITED was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of—

} L.S.
(Sgd.) David Griffin
(Sgd.) J. Vernon
Directors
(Sgd.) C. Joehr
Secretary