

Reclamation of Land in Western Kingston.

I attach for the information of the House copies of Heads of Agreement which have been executed between the Government of Jamaica and the Foreshore Development Company Limited.

2. The agreement provides that the Company is entitled to reclaim up to a total of 254.8 acres of land in an area to the west of the Jamaica Ice Company Limited property, south of the Marcus Garvey Drive, and extending westward to the point where the Marcus Garvey Drive turns northward. The lands are to be created by dredging and filling in the swamp and sea area enclosed by these boundaries. The land when reclaimed will be subdivided into lots for sale for industrial and commercial purposes. Deep water facilities are to be provided for some of the lots bordering the sea.

3. The Kingston area has been short of lands for industrial development and as a result of this, such limited lands as are available have been selling at such prices as would make it impossible for some industrial enterprises to establish themselves.

4. The siting of the Oil Refinery in this area will, it is hoped, result in the creation of new industries which will be dependent on the by-products coming from the Refinery, or in providing supplies or services for the refinery. The reclamation, therefore, should make a substantial contribution to the economy of the country.

5. As will be seen from the Heads of Agreement, all appropriate safeguards have been provided for. The land is to be brought under Town Planning control, the rights of third parties are to be protected, and proper drainage and access roads are to be constructed.

6. Under the Beach Control Law, ownership of the floor of the sea vests in the Government. The land which will be reclaimed and built up on the floor of the sea will therefore also....

be no objection to the assignment by the Company of any of these rights to any other Company which is wholly owned by the Foreshore Development Company or by the owners of that Company.

II UNDERTAKINGS BY THE GOVERNMENT:

14. The Government agrees to make available to the Company the lands totalling approximately 254.8 acres shown on the plan referred to in paragraph 1 above subject to the Company carrying out the undertakings referred to in paragraph 1-13 above and to the Government receiving from the Company the appropriate share of the profits and other considerations as described in those paragraphs.

15. The Government agrees to make available to the Company the necessary rights-of-way from the Foreshore Road to the reclaimed area, the exact layout and location of such roads and the method of inter-connection with the Foreshore Road of such roads being subject to the approval of the Government.

16. The Government will grant a free licence to the Company to undertake dredging to the depths agreed to by the Government, after considering the advice of the Government's technical advisers and subject to approval of the dredging plans as set out in paragraph 5 above.

17. The Government will take all necessary steps to facilitate the obtaining by the Company of appropriate licences or approvals to be obtained by the Company for carrying out the dredging, reclamation and other development works referred to above, e.g. licences from the Beach Control Authority as may be required under the Beach Control Law 1955 (Law 63 of 1955).

18. The Government agrees that subject to advice by the Government's technical advisers as to the specific area of the deep water concerned the Company should be permitted to create a deep water entry up to 3,000 feet from the perimeter of the area to be reclaimed, with right of access to the ships' channel. The Government, however, can give no undertaking to the Company that the agreement by the Government to this deep water entry will imply that the Government will approve of public wharves along the developed area, although the owners of waterfront land in that area would, no doubt, be given permission to construct piers for the handling of their individual business.

/The....

The Government further agrees that, subject to the advice of the Government's technical advisers, the Government will offer no objection to the Company obtaining fill for the area to be reclaimed from within the Harbour up to 3,000 feet from the perimeter of the area to be reclaimed.

19. The Government undertakes to issue to the Company the title for all lands as requested on payment to the Government of the agreed consideration on the part to be transferred or provided that security has been given satisfactory to the Government for such payment; e.g. a mortgage on the part of the land to be transferred or a bank guarantee.

20. The Government offers no objection to the assignment by the Company of any of its rights under this Agreement to any other Company provided that such Company is wholly owned by the Foreshore Development Company, or by the owners to that Company.

III
21. Termination of Agreement and General:

In the event that the Company fails to carry out its undertakings given in paragraph 1-13 above, the Government will be free to terminate the Agreement at the end of the first period of four years from the date of the coming into force of this Agreement.

22. (1) Failure on the part of the Company to fulfil any of the terms and conditions of this Agreement shall not give the Government any claim against the Company or be deemed a breach of this Agreement in so far as such failure arises from force majeure, and if through force majeure the fulfilment by the Company of any of the terms and conditions of this Agreement be delayed, the period of such delay shall be added to the periods fixed by this Agreement.

In this clause the expression "force majeure" includes the act of God, war, insurrection, riot, civil commotion, strikes or other labour disturbances, tide, storm, tidal wave, flood lightning, explosion, fire, earthquake and any other hapenning whether similar to the foregoing or not which the Company could not reasonably prevent or control.

23. If any difference shall arise between the parties hereto touching the construction of these presents or the respective rights or liabilities of the parties under or arising out of these presents, the matter in dispute shall be referred to a single arbitrator in case the

/parties can.....

parties can agree upon one otherwise to two arbitrators, one to be appointed by each party and in each case in accordance with and subject to the provisions of the Arbitration Law or any statutory modification or amendment thereof for the time being in force and such reference to arbitration shall be a condition precedent to litigation in the Courts.

Signed on behalf of the GOVERNMENT OF JAMAICA)
by the Honourable Norman Washington Manley,) Sgd. N.W. Manley
M.M., Q.C., Premier and Minister of Development).....

In the presence of:-) Sgd. A. D. Soutar
) J. P., Kingston.

Signed on behalf of FORESHORE DEVELOPMENT)
COMPANY LIMITED BY:) Sgd. Albert Goldfarb
)
Mr. Albert Goldfarb, Director) Sgd. M. Matalon
Mr. Moses Matalon, Director)

In the presence of:-) Sgd. A. D. Soutar
)
) J.P., Kingston.

Dated this Eighth day of November, 1961

also vest in the Government. Under the agreement the Government in effect will therefore be selling to the company land which the company has created. The sale price has been agreed at 30 per cent of the difference between the sale price received by the Foreshore Development Company Limited and the cost of reclamation and development. In addition, Government will receive 40 per cent of the remaining profit under the Income Tax Law. If the project is a success the Government therefore stands to receive a considerable sum of money for an area which now has no economic use.

7. Although not stated in the Heads of Agreement, the promoters have agreed to so grade the reclaimed area that at the western end of the reclamation a proper bathing beach of at least 500 feet in length will be constructed. The Government will in turn accept part of its purchase price in land which it will use to create a recreational area in the vicinity of the beach. This should provide badly needed recreation facilities in an area which is very crowded and where such facilities are in very short supply.

8. Part of the area to be reclaimed has been used previously as a depository for garbage. All this garbage however, has to be removed since it cannot form the basis of a suitable fill. This operation has already commenced and dredging operations have to await its completion. Dredging should commence within four months, the date being contingent on the progress of the operations in the Esso Reclamation Scheme which is being carried out in the same area. Once commenced, the reclamation of the first 100 acres should be completed in two months.

(N.W. MANLEY)
Premier and Minister of Development
27th February, 1962.

Heads of Agreement between
The Government of Jamaica and the
Foreshore Development Company Ltd.

DEFINITION:

"Government" whenever used herein shall mean the Government of Jamaica.

"Company" whenever used herein shall mean the Foreshore Development Company Ltd.

"Development" whenever used herein shall mean the laying down of water supplies and sewerage, and construction of roads after the land has been reclaimed with a view to bringing the land into an appropriate condition for sale.

I. UNDERTAKINGS BY THE FORESHORE DEVELOPMENT COMPANY LTD:

1. Agreement to reclaim and develop

The Company agrees to reclaim and develop lands up to a total of approximately 254.8 acres, shaded red on the plan prepared by Construction Aggregates Corporation which was submitted with the joint letter to the Ministry of Development from Construction Aggregates Corporation and Matalon Brothers dated the 16th of April, 1960. A copy of the plan is annexed to this Agreement.

2. Phasing

The Company agrees to reclaim and develop fully within a period not exceeding four years from the date of approval having been received from the Government, not less than 100 acres of land in the area shown on the abovementioned plan.

The Company agrees to reclaim and develop fully within a further period of four years, immediately succeeding the first period of four years, a further amount up to approximately 154.8 acres of land, or such lesser amount to the extent as the first area of land reclaimed and developed exceeds 100 acres, so that a total area up to approximately 254.8 acres of land in all is reclaimed and developed in the area shown in red on the aforesaid plan. The Company further agrees that if it elects to reclaim and develop less than /the...

the balance of the remaining area, i.e. less than the remainder of the 254.8 acres after the first portion of not less than 100 acres have been developed at the end of the first period of four years, the Company will forfeit its right to the remainder (and will only be given the smaller amount for which it elects).

3. Bonding of the Companies

The Company undertakes to furnish to the Government a Bond, acceptable to the Government, in the amount of £250,000 guaranteeing the faithful performance by the Company of the reclamation and development, subject to the terms and conditions of this Agreement, to be in force for the first period of four years or a lesser period if this phase of the work is sooner concluded from the date of approval having been received from the Government; and again at the end of the first period, for the second period of four years during which the remaining area for which the Company elects is being reclaimed and developed.

The Company agrees that if the first undertaking referred to in paragraph 2 above, viz, that the Company should reclaim and develop fully within a period of four years not less than 100 acres of land, is not carried out within the time stated, the Government may proceed against the Bond and the company will also lose the right to reclaim and develop the remainder of the lands in question. In the event that the Company fulfils satisfactorily its obligations under the Agreement during the first four year period but fails to fulfil satisfactorily its obligations under the Agreement for the second four-year period, the Government may proceed against the Bond and the Company will lose the right to reclaim and develop the lands in question.

4. Acceleration of Scheme

Should the Company at any time be in a position to accelerate the progress of the various stages mentioned in paragraph 2 above the Company will use its best endeavours to do so and will immediately consult with the Government as to the drawing up of a new time-table.

5. Approval of plans, etc.

The Company agrees to submit to the Government for approval the detailed dredging, reclamation and development specifications, such
/specification....

specifications to specify the phasing of the dredging, if any, the areas in which the dredging will take place, and the areas in which fill not required for the project will be disposed of.

Where the dredging and reclamation are carried out in stages the Company agrees to submit for the approval of the Government prior to commencement of dredging and reclamation, the details, plans and specifications of the navigational dredging and reclamation and other works to be undertaken in each stage.

The Company agrees that its dredging programme will be carried out on the basis approved by the Government as revised from time to time. Approval, however, shall not in any case be arbitrarily or unreasonably withheld or delayed by the Government. It will be the Company's duty to ensure that the carrying out of the approved dredging programme does not obstruct navigation in Kingston Harbour and in the event of any obstruction the Company will abide by directions given by the Harbour Master.

The Company further agrees that in the event that any conflict occurs in the requirements of the Company and of Esso Standard Oil S.A. Ltd. in the respective areas from which the Company and Esso propose to obtain fill for the Company's reclamation project and for the reclamation of land for a site for an oil refinery and ancillary installations to be constructed by Esso, respectively, the requirements of Esso will have priority over the requirements of the Company, provided that the area from which Esso will obtain fill does not conflict or overlap with the area to be reclaimed by the Company.

6. Drainage and access roads:

The Company agrees that the provision for drainage of the reclaimed area and areas in the vicinity thereof and access roads into the reclaimed areas should be in accordance with such reasonable specifications as shall be agreed with the appropriate Government authorities. The widths and alignments of the streets also should be agreed with the appropriate Government authorities.

The cost of such drainage works, access roads and any road works necessary to ensure the proper intersection of the access roads with the Foreshore Road shall be at the Company's expense.

7. Effects of reclamation and development on other land owners in area:

The Company agrees that the project will be so designed that neither the operations of reclamation nor development of the lands will affect the availability and use of the adjoining waterfront property and the foreshore thereof to their present owners, and including the pier of the Jamaica Ice Company Ltd. The Company further agrees that at the end of the first period of four years the position of the Jamaica Ice Company's pier should be examined carefully with a view to ascertaining the effects, if any, of the reclamation project on the pier, in particular with reference to possible silting of the pier and in the light of the position at that time and in the event of damage, the Company undertakes to arrange for a suitable settlement to be made, possibly in the form of a lump sum payment to be made as compensation.

The Company also agrees that it will indemnify the Government in respect of any claims which may be made by any person in respect of damages for loss or injury to person or property caused directly or indirectly by the dredging and reclamation and development programme to be undertaken by the Company and in respect of all costs, charges and expenses incidental to any suits, actions, claims or demands arising out of such claims, without prejudice to any defences the Company or the Government may have against the claimant thereto and provided that such claim shall not arise by reason of any direction given by the Government.

8. Reports to be furnished to the Government, etc:

The Company agrees to furnish the Government with the results of its trial borings and site exploration, to furnish quarterly reports on the progress of its reclamation and development programme and to provide facilities during working hours for the inspection of the dredging, reclamation and development programme by duly authorised agents of the Government.

9. Area when reclaimed to conform with Town and Country Planning Law:

The Company agrees that the development of the area when reclaimed should conform to such requirements as may be imposed under the Town and Country planning Law, 1957 (Law 42 of 1957).

10. Compensation for the Government:

The Company agrees that the Government of Jamaica should be compensated on the following basis giving effect to cost as herein-after indicated:-

- (i) The land to be reclaimed shall be divided into approximately 11 areas, the precise number, size and location of which shall be determined by reference to the cost of reclamation, these areas not necessarily being as shown on the plan referred to in paragraph 1 above and may be of such lesser number as may be agreed on between the Company and the Government in the event that the Company elects to reclaim and develop a lesser amount than the amount of 254.8 acres. The aim shall be to have areas where the cost of reclamation has been more or less uniform throughout the particular area;
- (ii) the cost of physical improvements such as fill, water supplies, roads sewerage (including any expenses arising out of operations referred to in paragraphs 6 and 7 above) and others, together with administrative and overhead expenses including financial costs; should then be distributed over each of the areas referred to in (i) above, in order that each area will bear a fair proportion of the costs;
- (iii) following on action as at (i) and (ii) above, a basic cost would then be arrived at for each area on the completion of the reclamation and development and that cost would be applied within the area on a cost per square foot basis;
- (iv) the lots would then be sold by the Company and as each lot was sold payment would be made to the Government of a percentage of the difference between the net sale price after deducting selling expenses as agreed with the Government and the cost of the land as determined by the cost per square foot

/arrived.....

arrived at as mentioned above. Payment would be in cash or land, or in special cases acceptable to the Government, by a consideration other than cash or land. The then available lots may be sold by the Company before or after the reclamation or improvements are accomplished provided that due allowance is made for the cost thereof when each lot is sold;

(v) with reference to (iv) above, the Government should receive 30% of the profit on each lot;

(vi) after the Government's share of the profit on each lot, referred to in (v) above, has been deducted, the profit on the sale of each lot will be subject to Income Tax at the normal rate;

(vii) there should be a final adjustment of accounts when all the sales have been completed.

The Company further agrees that in cases where the land is sold outright for cash the Government will have the option to take its share in cash or land, such land to be valued on the basis of its market value and in such location as may be agreed between the two parties, on condition that if the Government opts to take land the Government will undertake not to sell the land until the Company has sold at least 90% of the remaining land. In these cases it is the Company's understanding that the Government will only be taking land for its own use. In cases where the land is sold on a deferred payment basis or for a consideration other than cash, the Company will have the option to give the Government its share in land on the basis set out above (the market value of the land to be on a basis agreed between the Government and the Company or by a mutually acceptable independent valuator) or cash and in such cases the Government will have the unfettered right to sell the land if it so desires. In cases where the land is sold for a consideration other than cash the Government will have no objection to the Company putting forward for the Government's consideration other proposals for giving to the Government a consideration other than cash or land.

11. Reservation of area under lease to Radio Jamaica Ltd:

The Company agrees to the reservation within the area of approximately 254.8 acres earmarked for reclamation as shown on the plan referred to in paragraph 1 above of an area of approximately 12 acres of land which is at present under lease to Radio Jamaica Ltd., unless or until the Company can make arrangements with Radio Jamaica Ltd. for the termination of their lease, thus making the lands concerned available to the Company.

12. Fishermen - Re-settlement of:

The Company agrees that if required by the Government to do so, it will prepare at its own expense suitable beach lands of the same dimensions as those now available to the fishermen at the Greenwich Town fishing beach for the temporary use of the fishermen pending the eventual transfer of the fishermen to a permanent new site to be provided by Esso Standard Oil, S.A. Ltd., provided that the movement of the fishermen by the Government to the land so prepared will not commence until the construction of the Esso site has commenced and that the eventual removal of the fishermen by the Government will be carried out at the conclusion of the Esso site fill subject to the following provisos:-

- (i) if the Government moves the fishermen to the new site before work on the Esso site has commenced and before the Company has started reclamation, then the cost of moving the fishermen and of preparing the new area will be for the account of the Government;
- (ii) if the fishermen are moved to the new site as at (i) above before the Company starts reclamation, when the Company is ready to start reclamation, the Company will have to provide arrangements satisfactory to the Government for the removal and relocation of the fishermen.

13. Company not to assign rights without approval by the Government:

The Company agrees that it will not assign any of the rights under this agreement to any third party without prior approval thereto having been first obtained from the Government. However, there will

/be no.....