

The Schedules

First Schedule

[Heading inserted by No. 63 of 1963 of 1967 s.5.]

THIS AGREEMENT under seal made the twenty-sixth day of August, one thousand nine hundred and sixty-four BETWEEN THE HONOURABLE DAVID BRAND, M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the one part AND MT. NEWMAN IRON ORE COMPANY LIMITED a company incorporated under the Companies Act 1961 of the State of Western Australia and having its registered office and principal place of business at 25 William Street Perth in the State of Western Australia (hereinafter called "the Company" which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the company under clause 19 hereof) of the other part.

WHEREAS:

(a) The Company (being satisfied from investigations which prior to 1st day of June 1964 cost over six hundred thousand dollars (\$600,000) that the mining areas defined in clause 1 hereof contain iron ore of tonnages and grades sufficient to warrant economic recovery and marketing) desires to carry out certain investigations relating to the mining transport by rail and shipment of iron ore from the mining areas and also to the entering into a contract or contracts for the export sale of that ore.

(b) The Company having heretofore commenced investigation of the feasibility of establishing within the State of Western Australia a plant for secondary processing agrees to review this matter from time to time with a view to its being in a position to submit to the State proposals for such establishment as hereinafter provided.

(c) The Company agrees to investigate in due course the feasibility of establishing within the State of Western Australia an integrated iron and steel industry and to review this matter from time to time with a view to its being in a position to submit to the State proposals for such establishment as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH: —

Interpretation

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company having a paid-up capital of not less than two million dollars (\$2,000,000) notified in writing by the Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —
 - (i) is a subsidiary of the Company within the meaning of the term “subsidiary” in section 6 of the Companies Act 1961;
 - (ii) holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the Company or by any company that holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company for all or any of the purposes of this Agreement and in which the Company or such other company holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) is related within the meaning of that term in the aforesaid section to the Company or to any company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital, and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Company in its business or operations hereunder;

“commencement date” means the date referred to as the commencement date in clause 7 (3) hereof;

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

“Company’s wharf” means the wharf to be constructed by the Company pursuant to this Agreement for the shipment of iron ore from the mineral lease or (except for the purposes of the definition of “harbour”) other the temporary wharf for the time being approved by the Minister as the Company’s wharf for the purposes hereof during the period to which such approval relates;

“deposits townsite” means the townsite to be established on or near the mining areas pursuant to this Agreement;

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will not pass through a one half (1/2) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“export date” means the earlier of the following dates namely —

- (a) the date or extended date if any referred to in clause 9 (1) of this Agreement;
- (b) the date when the company first exports iron ore hereunder (other than iron ore shipped solely for testing purposes);

“financial year” means a year commencing on and including the first day of July;

“fine ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will pass through a one half (1/2) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a one half (1/2) inch mesh screen;

“f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Company or an associated company less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the ore shall be placed on ship at the Company’s wharf to the time the same is delivered and accepted by the purchaser including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;

- (4) all costs properly incurred in delivering the ore from port of discharge to the smelter and evidenced by relevant invoices;
- (5) all weighing sampling assaying inspection and representation costs;
- (6) all shipping agency charges after loading on and departure of ship from the Company's wharf; and
- (7) all import taxes by the country of the port of discharge;

“harbour” means the port or harbour at or near Port Hedland or such other port or place mutually agreed on and serving the Company's wharf;

“integrated iron and steel industry” means an industry for the manufacture of iron and steel or for the manufacture of steel from iron ore by a process which does not necessarily involve the production of pig iron or basic iron in the production of steel;

“iron ore contracts” means the contract or contracts referred to in clause 5 (2) (b) hereof;

“Land Act” means the Land Act 1933;

“mineral lease” means the mineral lease referred to in clause 8 (1) (a) hereof and includes any renewal thereof;

“Mining Act” means the Mining Act 1904;

“mining areas” means the areas delineated and coloured red on the Plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“port townsite” means the townsite to be established pursuant to this Agreement near the harbour;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration, pelletization or comparable changes in the physical character of iron ore;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the *Jetties Act 1926* and includes any renewal thereof;

“this Agreement” “hereof” and “hereunder” include this Agreement as from time to time added to varied or amended;

“ton” means a ton of two thousand two hundred and forty (2,240) lbs. net dry weight;

“townsite” in relation to the townsite to be established near the harbour means a townsite (whether or not constituted and defined under section 10 of the Land Act) primarily to facilitate the Company’s operations in and near the harbour and for employees of the Company and in relation to the mining areas means such a townsite or townsites or any other townsite or townsites which is or are established by the Company for the purposes of its operations and employees on or near the mining areas in lieu of a townsite constituted and defined under section 10 of the Land Act;

“wharf” includes any jetty structure;

“year 1” means the year next following the export date and “year” followed immediately by any other numeral has a corresponding meaning;

reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in

substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

power given under any clause of this Agreement other than clause 23 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 23;

marginal notes shall not affect the interpretation or construction hereof;

the phases in which it is contemplated that this Agreement will operate are as follows —

- (a) Phase 1 — the period from the execution hereof by the parties hereto until the commencement date;
- (b) Phase 2 — the period from the commencement date until a plant for secondary processing or an integrated iron and steel industry is established by the Company hereunder or by another company or party as referred to in clause 11 or clause 12 hereof whichever first occurs;
- (c) Phase 3 — (operative if the Company commences secondary processing before establishing an integrated iron and steel industry hereunder) — the period from the commencement of secondary processing by the Company hereunder until the Company has established an integrated iron and steel industry hereunder which period shall include a continuation of Phase 2 operations;

and

- (d) Phase 4 — the period after the Company has established an integrated iron and steel industry hereunder which period shall include a continuation of Phase 2 operations.

Obligations of the State during Phase 1

2. The State shall —

- (a) upon application by the Company at any time prior to the 31st day of March, 1965 (and surrender of the then existing rights of occupancy already granted in respect of any portions of the mining areas) cause to be granted to the Company and to the Company alone rights of

occupancy for the purposes of this Agreement (including the sole right to search and prosper for iron ore) over the whole of the mining areas under section 276 of the Mining Act at a rental at the rate of eight dollars (\$8) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1965 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire —

- (i) on the date of application for a mineral lease by the Company under clause 8 (1) (a) hereof;
- (ii) at the expiration of one month from the commencement date;
- (iii) on the determination of this Agreement pursuant to its terms; or
- (iv) on the day of the receipt by the State of a notice from the Company to the effect that the Company abandons and cancels this Agreement,

whichever shall first happen;

- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage prior to the 15th day of November, 1964;
- (c) to the extent reasonably necessary for the purposes of clauses 4 and 5 hereof allow the Company to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a harbour wharf railway townsite (both in or near the harbour and on or near the mining areas) stockpiling processing and other areas required for the purposes of this Agreement; and
- (d) at the request and cost of the Company co-operate with the Company in the discharge of its obligations under clause 4 (1) (a) hereof.

Ratification and operation

3. (1) Clauses 8 9 10 (other than paragraphs (d) and (1) thereof) 11-21 both inclusive and 23 of this Agreement shall not operate unless and until the Bill to

ratify this Agreement as referred to in clause 2 (b) hereof is passed as an Act before the fifteenth day of November, 1964 or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement except as hereinafter provided in clause 10 (d) hereof.

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in subclause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the provisions of subclauses (1) (2) (3) and (4) of clause 8 the proviso to paragraph (a) of subclause (2) of clause 9 subclause (3) of clause 9 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10 and clauses 20 22 23 and 26 shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;
- (b) subject to paragraph (a) of this subclause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the Public Works Act 1902 resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company.

Obligations of Company during Phase 1

4. (1) The Company at an estimated total cost as from the 1st June, 1964 of not less than seven hundred thousand dollars (\$700,000) shall with all reasonable diligence continue to do or shall carry out and by the 31st December, 1964 (or such extended date if any as the Minister may approve) shall complete the matters hereinafter in this subclause mentioned and everything necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5 (2) (a) hereof. The matters first referred to in this subclause are —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;
- (c) an engineering investigation of the route for a railway from the mining areas to the harbour and wharf installation for the export of the iron ore;
- (d) an engineering investigation of a harbour site at or near Port Hedland or such other port or place mutually agreed on and wharf site therein for the purposes of the Company but having regard to the proper development use and capacity of the harbour as a whole by persons and corporations other than the Company;
- (e) an investigation of suitable water supplies for the townsites and harbour or port services;
- (f) the planning of suitable townsites in consultation with the State but having due regard to the general development of the port townsite and (if and to the extent applicable) the deposits townsite for use by others as well as the Company; and
- (g) metallurgical and market research.

(2) The Company shall keep the State fully informed at least quarterly commencing within one (1) quarter after the execution hereof as to the progress and results of the Company's operations under subclause (1) of this clause.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in subclause (1) of this clause or any alternative harbour site the Company shall co-operate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this subclause.

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the harbour area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the harbour area and

the dredging thereof and of approaches thereto with a view to the reasonable use by others of the harbour area and approaches and the Company will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5 (2) (a) hereof in regard to the matters mentioned in this subclause the Company will so far as reasonably practicable ensure that the detailed proposals —

- (a) do not materially depart from the report and recommendations of the consultant engineers;
- (b) provide for the best overall development of the harbour area; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Company's preferences in regard thereto.

5. (1) As soon as possible after the execution of this Agreement the Company will submit to the Minister its proposal for the location of a site for the harbour and the Minister will within one month notify the Company of his approval or otherwise or may submit an alternative proposal.

(2) Subject to agreement being reached (as to which clause 24 hereof shall not apply) as to the site for the harbour then by the 31st day of December, 1964 (or such extended date if any as the Minister may approve) the Company will submit to the Minister —

- (a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant —
 - (A) to the mining from the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Company during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years; and
 - (B) to the transport and shipment of iron ore to be mined by the Company hereunder during the operation of Phase 2 of this Agreement —

and including the location area lay-out design number materials and time programme for the commencement and completion of

construction or the provision (as the case may be) of each of the following matters namely —

- (i) the harbour and harbour development including dredging and depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and harbour installations facilities and services all of which shall permit of adaptation so as to enable the use of the harbour and wharf by vessels having an ore-carrying capacity of not less than sixty thousand (60,000) tons;
 - (ii) the railway between the mining areas and the Company's wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
 - (iii) townsites on the mining areas and near the harbour and development services and facilities in relation thereto;
 - (iv) housing;
 - (v) water supply;
 - (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9 (2) (b) shall operate);
- and
- (vii) any other works services or facilities proposed or desired by the Company;
- and
- (b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts for the sale by the Company hereunder and shipment from the Company's wharf of not less than fifteen million (15,000,000) tons of iron ore (and/or processed iron ore) from the mineral lease at not less than two million (2,000,000) tons in the first two (2) years next following the export date and in each succeeding year after the expiration of the said two (2) years at not less than one million (1,000,000) tons secondly of the availability of finance necessary for the fulfilment of the Company's proposals

hereunder relating to the iron ore export project the subject of Phase 2 of this Agreement and thirdly of any necessary license to the Company from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

(3) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i) to (vii) inclusive of paragraph (a) of sub-clause (2) of this clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (i) of the said paragraph (a) of the said subclause (2) and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore contracts and the finance necessary for the iron ore export project.

(4) If the Company should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December, 1964 (or such later date if any previously granted or approved by the Minister) within which to make the iron ore contracts and then demonstrates to the satisfaction of the Minister that the Company has duly complied with its other obligations hereunder has genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably requires an additional period for the purpose of making iron ore contracts the Minister will grant such extension as is warranted in the circumstances as follows —

- (a) for up to six (6) months on request made within one month of the 31st day of December, 1964;
- (b) if an extension is granted under paragraph (a) of this subclause then further for up to three (3) years on request made within one month of the expiration of the period of extension granted under the said paragraph (a);
- (c) if an extension is granted under paragraph (b) of this subclause then further for up to two (2) years on request made within one month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Company satisfactory evidence that some third party is able and willing if made the lessee of the mineral lease to obtain and duly fulfil that party's obligations under contracts for the sale of iron ore (or processed iron ore) from the leased land which contracts are comparable with iron ore contracts under this Agreement on terms from the State not more

favourable on the whole (having regarded *inter alia* to initial expenditure) to that party than those applicable to the Company hereunder;

subject always and in every case to the condition that the Company duly complies (or complies to the satisfaction of the Minister) with its other obligations hereunder.

Consideration of other proposals under clause 5 (2)

6. (1) Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in clause 5 (2) (a) hereof the Minister shall give to the Company notice either of his approval of the proposals or alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(2) Within two (2) months after receipt of evidence from the Company with regard to the matters mentioned in clause 5 (2) (b) hereof to the reasonable satisfaction of the Minister the State will give to the Company notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Company an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Company may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the

expiration of that period cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

Extension of time

7. (1) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is of hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1965 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 28th day of February, 1965 or if any extension or extensions should be granted under clause 5 (4) hereof or any other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 10 (d) hereof.

(3) Subject to the approval by the Minister or determination by arbitration as herein provided of each and every of the detailed proposals and matters referred to in clause 5 (2) hereof the date upon which the last of those proposals of the Company shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Company and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

Phase 2. Obligations of State

8. (1) As soon as conveniently may be after the commencement date the State shall —

- (a) after application is made by the Company for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a parallelogram or parallelograms) of the mining areas in conformity with the Company's detailed proposals under clauses (2) (a) (A) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease;
- (b) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations —
 - (i) grant to the Company in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company —

for nominal consideration — townsite lots; at the peppercorn rental — special leases of Crown lands within the harbour area the townsites and the railway; and

at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the Jetties Act, 1926 or under the provisions of the Land Act modified as in subclause (2) of this clause provided (as the case may require) as the Company reasonably requires for its works and operations hereunder including the construction or provision of the railway wharf roads airstrip water supplies and stone and soil for construction purposes; and

- (ii) provide any services or facilities subject to the Company's bearing and paying the capital cost involved and reasonable charges for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees —

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5 (4) hereof) the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which subject to its being payable by the Company to the State may from time to time at the option of the Company be payable in respect of such one or more of the special leases or other leases granted to the Company under this paragraph and remaining current) equal to twenty-five cents (25c.) per ton on all iron ore and iron ore concentrates in respect of which royalty is payable under clause 9 (2) (j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates SO NEVERTHELESS that where in respect of any such year the additional rental so payable is less than a minimum sum of three hundred thousand dollars (\$300,000) the Company will within three (3) months after the expiration of that year pay to the State as further rental the difference between three hundred thousand dollars (\$300,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of twenty-five cents (25c.) per ton as aforesaid shall be offset by the Company against any amount payable by it to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

[Further Proviso]³

- (c) on application by the Company cause to be granted to it such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease;

[(d)]⁴

(2) For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause the Land Act shall be deemed to be modified by —

- (a) the substitution for subsection (2) of section 45A of the following subsection:

(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;

- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(3)⁵ The provisions of subclause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

- (4) The State further covenants with the company that the State —
- (a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the Petroleum Act 1936)⁶ within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;
 - (b) subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's operations hereunder;
 - (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;
 - (d) except as provided in this Agreement shall not impose nor permit nor authorize any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;

- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Company for its purposes under this Agreement; and
- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5 (2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company's making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

(5) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company pursuant to this Agreement in any case where pursuant to clause 10 (e) hereof such improvements will remain or become the absolute property of the State.

[(6)]⁷

Phase 2. Obligations of the Company

9. (1) The Company shall within three (3) years next following the commencement date (or within such extended period not exceeding a further two years as the Company may satisfy the Minister that the Company reasonably requires and the Minister approves), and at a cost of not less than sixty million dollars (\$60,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease to transport by rail to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore and without lessening the generality of this provision the Company shall within the aforesaid period or extended period as the case may be —

- (a) construct install and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to meet and discharge its obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built

up progressively to not less than ten thousand (10,000) tons of iron ore per diem within three (3) years next following the export date;

- (b) actually commence to mine transport by rail and ship from the Company's wharf iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;
- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 6 hereof (but subject to the provisions of the Public Works Act 1902 to the extent that they are applicable) a four feet eight and one-half inches (4' 8 1/2") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mining areas to the Company's wharf and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Company's wharf or as required for the purposes of this Agreement;
- (d) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;
- (e) construct the Company's wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and
- (f) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the Company to accept obligations —
 - (i) dredge the berth at the Company's wharf and the channel and approaches thereto and any necessary swinging basin;

- (ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
- (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
- (iv) construct and provide other works (if any) including an airstrip.

(2) Throughout the continuance of this Agreement the Company shall —

- (a) operate its railway in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Company) PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise;
- (b) except to the extent that the Company's proposals as finally approved or determined under clause 6 hereof otherwise provide allow the public to use free of charge any roads constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;
- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State;
- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in clause 10 (b) hereof dredging and water and power supplies for the time being the subject of this Agreement;

- (e)⁸ ship from the Company's wharf all iron ore mined from the mineral lease and sold and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT this paragraph shall not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;
- (f) subject to and in accordance with by-laws (which shall include provisions for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and harbour installations wharf machinery and equipment and wharf and harbour services and facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Company;
- (g) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral lease (by separate route road or railway) PROVIDED THAT such access over shall not unduly prejudice or interfere with the Company's operations hereunder;
- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;
- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said State where it is not prejudicial to the interests of the Company so to do;
- (j) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the

circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other iron ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows —

- (i) on direct shipping ore (not being locally used ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than sixty cents (60c.) per ton (subject to subparagraph (vi) of this paragraph) in respect of ore the subject of any shipment or sale;
- (ii) on fine ore (not being locally used ore) at the rate of three and three quarter per centum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than thirty cents (30c.) per ton (subject to sub-paragraph (vii) of this paragraph) in respect of ore the subject of any shipment or sale;
- (iii) on fines (not being locally used ore) at the rate of fifteen cents (15c.) per ton;
- (iv) on iron ore concentrates produced from locally used ore by secondary processing and on locally used ore (not being iron ore used for producing iron ore concentrates subject to royalty hereunder) at the rate of fifteen cents (15c.) per ton;
- (v) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (vi) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under subparagraph (i) of this paragraph) in any financial year by sixty cents (60c.) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (vii) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and

liable to royalty under subparagraph (ii) of this paragraph) in any financial year by thirty cents (30c.) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of fine ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly; and

(viii) the royalty at the rate of fifteen cents (15c.) per ton referred to in subparagraphs (iii) and (iv) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron fob. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963.

⁹For the purposes of this paragraph "locally used ore" means iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for secondary processing or in an integrated iron and steel industry and includes iron ore used by any other person or Company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an integrated iron and steel industry;

(k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of iron ore from the Company's wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the fob. revenue realised in respect of the shipments shall have been ascertained;

- (l) by way of rent for the mineral lease pay to the State annually in advance a sum equal to thirty—five cents (35c.) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Company commences production in commercial quantities within the said State from a plant for secondary processing or for iron and steel manufacture or steel manufacture (whichever is first constructed) if and during the period that the total area for the time being comprised within the mineral lease —
- (i) is not more than one hundred (100) square miles the annual rent shall be twenty cents (20c.) per acre;
 - (ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be twenty-five cents (25c.) per acre; and
 - (iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be thirty cents (30c.) per acre;
- (m) pay to the State the rental referred to in the proviso to clause 8 (1) (b) hereof if and when such rental rent shall become payable;
- (n) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company relative to any shipment or sale of iron ore hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and
- (o) ensure that without the prior written approval of the Minister all iron ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if it fails so to ensure the Company will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Company shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding one dollar (\$1) per ton of the iron ore as the Minister

shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Company of the provisions hereof. If ore is shipped in a vessel not owned by the Company or an associated company or any other company in which the Company has a controlling interest and such ore is off-loaded in the Commonwealth the Company will not be or be deemed to be in default hereunder if it takes appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from force majeure or otherwise) where the Company could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply —

- (i) to ore the subject of secondary processing or iron and steel or steel manufacture by the Company or an associated company within the said State;
- (ii) to ore processed by the Company or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so processed does not in any year exceed fifty per centum (50%) of the total quantity of iron ore the subject of secondary processing and/or iron and steel manufacture or steel manufacture by the Company or an associated company within the said State; or¹⁰
- (iii) to ore processed by the Company or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore the subject of secondary processing and/or iron and steel manufacture or steel manufacture by the Company or an associated company within the said State with the prior written approval of the Minister as aforesaid.¹⁰

[(iv)]¹⁰

(3) The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under paragraphs (a) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of subclause (2) of this clause and under clause 10 (a) hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the

Company shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

Mutual covenants

10. The parties hereto covenant and agree with each other Mutt as follows: —
 - (a) that subject to and in accordance with proposals approved or determined under clause 6 hereof the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the Water Boards Act 1904 and of a supply authority under the Electricity Act 1945;
 - (b) that the Company may use any public roads which may from time to time exist in the area of its public operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Company shall on demand pay to the State or the shire council concerned the cost of making good any damage to such roads occasioned by —
 - (i) such user by the Company prior to the export date; and
 - (ii) user by the Company for the transportation of iron ore won from the mineral lease;
 - (c) that the State will at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;
 - (d) that on the cessation or determination of this Agreement —
 - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the

Company or of any assignee of the Company or any mortgagee to in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder AND the Company will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown grant issued under the Land Act pursuant to this Agreement;

- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) the Company shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4 (1) hereof if and insofar as the statements may not have been so furnished; and
 - (iv) save as aforesaid and as provided in clause 7 (4) hereof and in the next following paragraph neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement;
- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 19 hereof of land for the Company's wharf for any installation within the harbour for the Company's railway or for housing at the port or port townsite the improvements and things erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant equipment and removable buildings or any of them from any land it shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at valuation in situ the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment

then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

- (f) that subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues;
- (g) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law or regulation;
- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company in any townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;
- (i) that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease;
- (j) that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorized or obliged to carry out here under;

- (k) that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

- (l) ¹¹that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under clause 8. (1) (a) this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Company shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and

- (m) that —
 - (i) for the purposes of determining whether and the extent to which —
 - (A) the Company is liable to any person or body corporate (other than the State); or

- (B) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and

- (ii) for the purposes of this paragraph the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the Local Government Act 1960.

Secondary processing

11. (1) The Company having commenced already to investigate the feasibility of establishing a plant for the secondary processing by the Company within the said State of iron ore from the mineral lease will from time to time review this matter with a view to its being in a position before the end of year 10 to submit to the Minister detailed proposals for such plant (capable ultimately of treating not less than Two million (2,000,000) tons of iron ore per annum) containing provision than —

- (a) the plant will by the end of year 12 have the capacity to process at an annual rate of and will during year 13 process not less than Five hundred thousand (500,000) tons of iron ore;
- (b) production will progressively increase so that the plant will by the end of year 16 have the capacity to process at an annual rate of and will during year 17 process not less than Two million (2,000,000) tons of iron ore; and
- (c) the capital cost involved will be not less than sixteen million dollars (\$16,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

Provided that if the Company satisfies the Minister that the Company’s mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on a economic basis then the Minister may approve a modified proposal and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having

regard to prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum on a revised programme and in approving such modified proposal the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and (c) of this subclause.

(2) If before the end of year 10 such proposals are submitted by the Company to the Minister the State shall within two months of the receipt thereof give to the Company notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(3) If such proposals are not submitted by the Company to the Minister before the end of year 10 or if such proposals are so submitted but are not approved by the Minister within two months of receipt thereof then (subject to any extension of time granted under subclause (1) of clause 7 hereof)

- (a) the Company shall not after the end of year 12 export iron ore hereunder at an annual rate in excess of Five million (5,000,000) tons unless prior to year 10 the Minister shall have approved the Company entering into a contract or contracts for the export of iron ore at an annual rate in excess of Five million (5,000,000) tons; and
- (b) If by the end of year 13 (or extended date if any) the State gives to the Company notice that some other Company or party (hereinafter referred to as "the Third Party") has agreed to establish a plant for secondary processing within the said State of iron ore from the mineral lease on terms not more favourable on the whole to the Third Party than those proposed by or available to the Company hereunder this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 and of clause 15 hereof) cease and determine at the end of year 21 or at the date by which the Third Party has substantially established the plant referred to in this subclause in accordance with the terms agreed upon by the State and the Third Party whichever is the later.

PROVIDED THAT if by the end of year 13 (or extended date if any) the State has not given to the Company the notice referred to in this subclause paragraph (a) of this subclause shall thereupon cease to have effect AND PROVIDED FURTHER that the Company may at any time after the end of year 10 submit proposals as

aforesaid if at that time it has not received the notice aforesaid and the provisions of subclause (2) of this clause shall apply to such proposals but (subject to any extension of time as aforesaid) the Company may not submit proposals as aforesaid after the end of year 10 and before the end of year 13 if it has received a notice from the Minister that he is negotiating with a Third Party and such notice has not been withdrawn.

(4) Subject to the provisions of clause 12 hereof and except as provided in paragraph (b) of subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder and with such proposals by the Company as are approved by the Minister.

(5) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the, Company and subject to the provisions of clause 12 hereof the only consequence arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

Iron and steel industry

12. (1) The Company will in due course investigate the feasibility of establishing an integrated iron and stem industry within the said State and will from time to time review this matter with a view to its being in a position before the end of year 20 to submit to the Minister detailed proposals for such industry (capable ultimately of producing one million (1,000,000) tons of steel per annum) containing provision that —

- (a) by the end of year 25 productive capacity will be at an annual rate of not less than and during year 26 production will be not less than Five hundred thousand (500,000) tons of pig iron foundry iron or steel (hereinafter together referred to as “product”) of which not less than two hundred and fifty thousand (250,000) tons will be steel;
- (b) production will progressively increase so that by the end of year 29 productive capacity will be at an annual rate of not less than and during year 30 production will be not less than One million (1,000,000) tons of product (of which not less than Five hundred thousand (500,000) tons will be steel) and by the end of year 31 productive capacity will be at an annual rate of not less than and during year 32 production will be not less than One million (1,000,000) tons of steel; and
- (c) the capital cost involved will be not less than eighty million dollars (\$80,000,000) unless the Company utilises a less expensive but at

least equally satisfactory method of manufacture than any at present known to either party.

(2) If before the end of year 20 such proposals are submitted by the Company to the Minister the State shall within two months of the receipt thereof give to the Company notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(3) If such proposals are not submitted by the Company to the Minister before the end of year 20 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof then (subject to any extension of time granted under subclause (1) of clause 7 hereof) if by the end of year 23 (or extended date if any) the State gives to the Company notice that some other company or party (hereinafter referred to as "the Fourth Party") has agreed to establish either —

- (a) a plant for secondary processing within the said State of iron ore from the mineral lease (if proposals by the Company for the establishment of such a plant have not previously been submitted to and approved by the Minister) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Company hereunder; or
- (b) an integrated iron and steel industry within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Company hereunder;

then and in either case this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 hereof and clause 15 hereof) cease and determine —

- (i) in the case of the Fourth Party proceeding with secondary processing then when the Fourth Party has substantially established the plant referred to in paragraph (a) of this subclause;
- (ii) in the case of the Fourth Party proceeding with an integrated iron and steel industry then (if proposals by the Company for a plant for

secondary processing have previously been submitted to and approved by the Minister) at the end of the year 30 or at the date by which the Fourth Party has substantially established that industry whichever is the later; and

- (iii) in the case of the Fourth Party proceeding with an integrated iron and steel industry then (if proposals by the Company for a plant for secondary processing have not previously been submitted to and approved by the Minister) at the date by which the Fourth Party has substantially established that industry.

(4) If by the end of year 23 (or extended date if any) the State has not given to the Company any such notice as is referred to in subclause (3) of this clause that subclause shall thereupon cease to have effect except that (to the extent they can from time to time operate) the provisions of subclause (3) of this clause shall revive (for a period of three years) at the end of year 33 and at the end of each successive period of 13 years thereafter in such a way that each year referred to in that subclause shall be read as the year thirteen years or (as the case may require) a multiple of thirteen years thereafter (subject to extensions of dates if any as aforesaid).

(5) The Company may at any time after the end of year 20 submit proposals for an integrated iron and steel industry if at that time it has not received any notice under subclause (3) of this clause and the provisions of sub-clauses (1) and (2) of this clause shall apply to such proposals.

(6) Except as provided in subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder and with such proposals by the Company as are approved by the Minister.

(7) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and the only consequences arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

“Substantial establishment”

13. The Third Party or the Fourth Party shall have substantially established a plant for secondary processing or an integrated iron and steel industry when and not before that party's secondary processing plant has the capacity to treat not less than two million (2,000,000) tons of iron ore per annum or (as the case may be) that party's integrated iron and steel industry has the capacity to produce one

million (1,000,000) tons of steel per annum and in either case the Minister has notified the Company that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

Terms “not more favourable”

14. In deciding whether for the purposes of clause 11 or clause 12 hereof the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Company regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Company had it proceeded with secondary processing or (as the case may be) iron and steel manufacture or steel manufacture including its obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in the case of secondary processing by a third party pursuant to clause 11 hereof) to termination of rights as provided in clause 12 hereof if proposals for iron and steel manufacture or steel manufacture are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State under paragraph (e) of clause 10 hereof and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party PROVIDED HOWEVER that if after the end of year 33 the Minister gives notice to the Company under clause 12 hereof that another company or party has agreed to establish either secondary processing or an integrated iron and steel industry but not both then the latter company or party need not have any obligation to establish both.

Supply of iron ore by others

15. If at the date upon which this Agreement ceases and determines pursuant to clauses 11 or 12 hereof the Company remains under any obligation for the supply of iron ore arising out of a contract or contracts entered into by the Company with the consent of the Minister the Company may give notice to the Minister that it desires the State to ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such remaining obligations to supply iron ore or to supply iron ore to the Company into ships to enable it to discharge such obligations. Forthwith upon receipt of such notice the State will ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such obligations in accordance with such contract or contracts on a basis which is fair and reasonable as between the Company and the Third Party (or the Fourth Party as the case may be) or if desired to supply iron ore to the Company into ships on such fair and reasonable basis.

Supply of iron ore to others

16. The Company covenants and agrees with the State that should the Company remain in possession of the too, mineral lease for any period during which the Third Party or the Fourth Party is operating or is ready to operate a plant for secondary processing of iron ore or an integrated iron and steel industry then during such period (whenever commencing) the Company will supply the Third Party or the Fourth Party or both (as the case may be) with iron ore from the mineral lease (not exceeding in all Five million (5,000,000) tons per annum unless otherwise agreed) —

- (i) at such rates and grades (as may reasonably be available and be required);
- (ii) at such points on the Company's railway;
- (iii) at such price; and
- (iv) on such other terms and conditions;

as may mutually be agreed between the Company and the State or failing agreement decided by arbitration between them PROVIDED ALWAYS that the price shall unless otherwise agreed between them be equivalent to the total cost of production and transport incurred by the Company (including reasonable allowance for depreciation and all overhead expenses) plus ten per centum of such total cost.

[16A]¹²

Alteration of works

17. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company's wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company shall within a reasonable time after its receipt of the notice but at the expense in all things of the State (unless the alteration is rendered necessary by reason of a breach by the Company of any of its obligations hereunder) alter the situation thereof accordingly.

Indemnity

18. The Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment

19. (1) Subject to the provisions of this clause the Company may at any time —

- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
- (b) appoint as of right an associated company or with the consent in writing of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder,

subject however to the assignee or (as the case may be) the appointee executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the company to be complied with observed or performed in regard to the matter or matters so assigned or (as the case may be) the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

[*Proviso*]¹³

Variation

20. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of

any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of the Company's operations hereunder by an associated company as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of iron ore to the extent that the addition cancellation or variation implements or facilities the method of achieving any of the purposes of iron ore export secondary processing or manufacture of iron and steel or of steel based on ore from the mineral lease.

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or harbour site and/or port facilities or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof.

Export license

21. (1) On request by the Company the State shall make representations to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of iron ore in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Company and to maximum tonnages of iron ore for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Company (except as to a rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of iron ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State then the Company will at the request of the State and within three (3) months of such request inform the State whether or not it intends to export to the limit of the tonnage permitted to it under Commonwealth licenses in respect of the financial year next following and if it does not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the

Commonwealth in respect of that year as the Company does not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State.

(3) The Company shall be in default hereunder if at any time it fails to obtain any license or licenses under Commonwealth law for the export of iron ore as may be necessary for the purpose of enabling the Company to fulfil its obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Company or to the Company not being *bona fide* in its application to the Commonwealth or otherwise having failed to use its best endeavours to have the license granted or restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Company shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Company is not for the time being permitted to export at least the tonnage it has undertaken with the State it will export then the Company shall not be obliged to export the tonnage not so permitted until such time as it is so permitted and thereafter it will export the tonnage it has undertaken with the State it will export. The State shall at all times be entitled to apply on behalf of the Company (and is hereby authorized by the Company so to do) for any license or licenses under Commonwealth law for the export of iron ore as may from time to time be necessary for the purposes of this Agreement.

Delays

22. This Agreement shall be deemed to made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God *force majeure* floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the iron ore export industry) to profitably sell ore or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Power to extend periods

23. Notwithstanding any provision hereof the Minister may 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 hereof substituted for the period or date so extended.

Arbitration

24. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act 1895.

Notices

25.¹⁴ Any notice consent or other writing authorized or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorized by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of the post.

Exemption from stamp duty

26. (1) The State shall exempt from any stamp duty which but for the operations of this clause would or might be chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of

the Company any tenement lease easement license or other right or interest;

- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 19 hereof; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 19 hereof,

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

(2) If prior to the date on which the Bill referred to in clause 2 (b) hereof to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Interpretation

27. This Agreement shall be interpreted according to the law for the time being in force in the said State.

SCHEDULE

WESTERN AUSTRALIA

IRON ORE (MOUNT NEWMAN) AGREEMENT ACT 1964

MINERAL LEASE

Lease No

Goldfield(s)

ELIZABETH THE SECOND by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS: KNOW YE that WHEREAS by an Agreement made the day of , 1964 between the State of Western Australia of the one part and MT. NEWMAN IRON ORE COMPANY LIMITED (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees of the Company under Clause 19 of the said Agreement) of the other part the said State agreed to grant to the Company a mineral lease of portion or portions of the lands referred to in the said Agreement as “the mining areas” AND WHEREAS the said Agreement was ratified by the Iron Ore (Mount Newman) Agreement Act 1964 which said Act (*inter alia*) authorized the grant of a mineral lease to the Company NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the Goldfield(s) containing by admeasurement be the same more or less and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the Mining Act 1904 including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Company is entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of , 19

with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say: —

1. The Company shall and will use the land *bona fide* exclusively for the purposes of the said Agreement.
2. Subject to the provisions of the said Agreement the Company shall and will observe, perform, and carry out [lie provisions of the Mines Regulation Act 1946, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and subject to and also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

Director

[First Schedule amended by No. 113 of 1965 s.8.]

Second Schedule

[Section 2]

THIS AGREEMENT under seal made the 16th day of November One thousand nine hundred and sixty-seven BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the First Part AMAX IRON ORE CORPORATION a company incorporated in the State of Delaware in the United States of America and registered in the State of Western Australia as a foreign Company (hereinafter called "Amax Iron") PILBARA IRON LIMITED a company incorporated in the State of Western Australia (hereinafter called "Pilbara") DAMPIER MINING COMPANY LIMITED a company incorporated in the State of Western Australia (hereinafter called "Dampier") SELTRUST IRON ORE LIMITED a company incorporated in England and registered in the State of Western Australia as a foreign company (hereinafter called "Seltrust Iron") and MITSUI-C. ITOH IRON PTY. LTD. a company incorporated in the State of Western Australia (hereinafter called "Mitsui Iron") of the second Part AND MT. NEWMAN IRON ORE COMPANY LIMITED a company Incorporated in the State (hereinafter called "the Mt. Newman Company") of the Third Part

WHEREAS:

- A. By an agreement dated the Twenty-sixth day of August One Thousand nine hundred and sixty-four (hereinafter called "the Mt. Newman Agreement") and made between the Mt. Newman Company of the one part and the State of the other part the Mt. Newman Company acquired upon the terms and conditions set forth in such Agreement certain rights interests and benefits and assumed certain obligations with respect to: —
 - (i) the exploration for and development of iron ore deposits in the mining areas as therein defined and the mining transportation and shipment of iron ore therefrom; and
 - (ii) the investigation of the feasibility of establishing secondary processing operations and an integrated iron and steel industry within the State.
- B. The Mt. Newman Agreement was approved by the Iron Ore (Mt. Newman) Agreement Act 1964.
- C. By subclause (1) of clause 19 of the Mt. Newman Agreement the Mt. Newman Company was granted the right *inter alia* at any time to assign or dispose of as of right to an associated company as defined in the Mt. Newman Agreement (hereinafter called the "associated companies") the

whole or any part of its rights and obligations under the Mt. Newman Agreement subject however to the assignee executing in favour of the State a deed of covenant in the form approved by the Minister for Industrial Development of the State to comply with observe and perform the provisions of the Mt. Newman Agreement on the part of the Mt. Newman Company to be complied with observed or performed in regard to the matters so assigned.

- D. Amax Iron and Pilbara were on the Sixth day of May One thousand nine hundred and sixty-five associated companies of the Mt. Newman Company.

- E. By a deed dated the Sixth day of May One thousand nine hundred and sixty-five and made between the Mt. Newman Company of the one part and Amax Iron and Pilbara of the other part the Mt. Newman Company pursuant to sub-clause (1) of clause 19 of the Mt. Newman Agreement transferred and assigned to Amax Iron and Pilbara the Mt. Newman Agreement and the full benefit and advantage thereof and all the right title interest claim and demand whatsoever of the Mt. Newman Company in and under the Mt. Newman Agreement and including without prejudice to the generality of the foregoing rights of occupancy over temporary reserves leases licenses lands tenements and hereditaments and other rights interests and other property to which the Mt. Newman Company was then or thereafter entitled thereunder to hold the same unto and to the use of Amax Iron and Pilbara as tenants in common in equal undivided shares absolutely.

- F. Amax Iron and Pilbara by indenture dated the Twenty-fourth day of June One thousand nine hundred and sixty-five entered into the requisite deed of covenant with the State in compliance with the provisions of sub-clause (1) of clause 19 of the Mt. Newman Agreement.

- G. Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron were on the Twelfth day of April One thousand nine hundred and sixty-seven and are at the date hereof associated companies of the Mt. Newman Company.

- H. By a deed dated the Twelfth day of April One thousand nine hundred and sixty-seven and made between Amax Iron and Pilbara of the one part and Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron of the other part Amax Iron and Pilbara pursuant to sub-clause (1) of clause 19 of the Mt. Newman Agreement transferred and assigned to Amax Iron Pilbara

Dampier Seltrust Iron and Mitsui Iron the Mt. Newman Agreement and the full benefit and advantage thereof and all right title interest claim and demand whatsoever of Amax Iron and Pilbara in and under the Mt Newman Agreement and including without prejudice to the generality of the foregoing rights of occupancy over temporary reserves leases licenses lands tenements and hereditaments and other rights interests and other property to which Amax Iron and Pilbara were then or thereafter entitled thereunder to hold the same unto and to the use of Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron as tenants in common in undivided shares absolutely as follows:

Pilbara	30 per centum
Dampier	30 per centum
Amax Iron	25 per centum
Mitsui Iron	10 per centum
Seltrust Iron	5 per centum

- I. Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron by Indenture dated the Twelfth day of April One thousand nine hundred and sixty-seven entered into the requisite deed of covenant with the State in compliance with the provisions of sub-clause (1) of clause 19 DE the Mt. Newman Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. This Agreement shall have no force or effect and shall not be binding upon the parties until it is approved by the Parliament of Western Australia.
2. The Mt. Newman Agreement is amended or altered as hereinafter provided and the Mt. Newman Agreement shall be read and construed accordingly.
3. Paragraph (b) of sub-clause (1) of clause 8 is amended by adding at the end thereof the following words “PROVIDED FURTHER that no additional rental pursuant to this paragraph will be payable in respect of iron ore sold or otherwise disposed of to the Broken Hill Proprietary Company Limited (hereinafter called “B.H.P.”) or to Australian Iron & Steel Proprietary Limited (hereinafter called “A.I.S.”) or to any company or companies related to B.H.P. or A.I.S. within the meaning of sub-section (5) of

Section 6 of the Companies Act 1961 of the State for use within the Commonwealth for manufacture into iron or steel”.

4. Paragraph (c) of sub-clause (1) of clause 8 is amended by adding thereto a new paragraph as follows:

- (d) Notwithstanding the provisions of Section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of Section 81D of the Transfer of Land Act 1893 insofar as the same or any of them may apply no mortgage or charge in a form commonly known as a floating charge made or given pursuant to clause 19 hereof over any lease license reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to clause 19 hereof 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 19 hereof 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 19 hereof or because the same is not registered under the provisions of the Mining Act.

5. Sub-clause (3) of clause 8 is amended by inserting after the word “provisions” in the first line the words “of paragraph (d) of sub-clause (1) of this clause and the provisions”.

6. Clause 8 is amended by adding thereto a sub-clause as follows:

“(6) no fee simple lease sub-lease license or other title or right granted or assigned under or pursuant to this Agreement shall be subject to or capable of partition including partition under the Partition Act 1878² 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 the said Act.”

7. Paragraph (e) of sub-clause (2) of clause 9 is amended by substituting for the proviso thereto the following proviso:

PROVIDED HOWEVER that this paragraph shall not apply to:

- (i) iron ore used for secondary processing or for the manufacturing of iron or steel in any part of the said State lying north of the twenty- sixth parallel of latitude; or

- (ii) iron ore sold or otherwise disposed of to B.H.P. or A.S.S. or any company or companies related to B.H.P. or A.S.S. within the meaning of subsection (5) of section 6 of the Companies Act 1961 of the State for use within the Commonwealth for manufacture into iron or steel.
- 8. Paragraph (j) of sub-clause (2) of clause 9 is amended by substituting for the last sentence thereof the following:

For the purposes of this paragraph “locally used ore” means:

 - (i) iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this sub-clause for secondary processing or in an integrated iron and steel industry;
 - (ii) iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an integrated iron and steel industry; or
 - (iii) iron ore sold or otherwise disposed of to B.H.P. or to A.S.S. or to any company or companies related to B.H.P. or A.S.S. within the meaning of sub-section (5) of section 6 of the Companies Act 1961 of the State for use within the Commonwealth for secondary processing or for further manufacture into iron or steel.
- 9. Sub-paragraph (ii) of paragraph (o) of sub-clause (2) of clause 9 is amended by deleting the word “or” at the end thereof.
- 10. Sub-paragraph (iii) of paragraph (o) of sub-clause (2) of clause 9 is amended by adding the word “or” at the end thereof.
- 11. Paragraph (o) of sub-clause (2) of clause 9 is further amended by adding thereto a sub-clause as follows:
 - (iv) to ore sold or otherwise disposed of to B.H.P. or to A.I.S. or to any company or companies related to B.H.P. or A.I.S. within the meaning of subsection (5) of section 6 of the *Companies Act 1961* of the State for use within the Commonwealth for secondary processing or for further manufacture into iron or steel.
- 12. Clause 10 is amended by substituting for paragraph (1) thereof the following paragraph:

- (l) (i) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sub-lease license or other title or document granted or assigned under this Agreement on its part to be performed or observed or shall abandon or repudiate its operations under this Agreement and such default shall not have been remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in sub paragraph (ii) of this paragraph is given by the State (or if the alleged default abandonment or repudiation is contested by the Company and within sixty (60) days after such notice is submitted by the Company to arbitration then within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under clause 8 (1) (a) of this Agreement then this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the default shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and
- (ii) the notice to be given by the State in terms of sub-paragraph (i) of this paragraph shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate or known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's

said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been affected in terms of clause 19 (1) (a) hereof whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponent to be an assignee mortgagee chargee or disponent as the case may be;

(iii) the abandonment or repudiation by or liquidation of the Company referred to in sub-paragraph (i) of this paragraph means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in clause 19 hereof.

13. The Mt. Newman Agreement is amended by adding thereto a new clause after clause 16 as follows:

16A (1) Subject to subclause (2) of this clause if at the date on which this Agreement but for this clause would have ceased and determined by virtue of paragraph (b) of sub-clause (3) of clause 11 hereof or by virtue of sub-clause (3) of clause 12 hereof there are one or more assignees of the Company not subject to the obligations imposed by such clauses (in this clause called "the remaining assignee") then this Agreement shall cease and determine as between the State and the parties other than the remaining assignee but for all purposes remain in full force and effect as between the State and the remaining assignee and in particular but without restricting the generality of the foregoing:

- (a) the acts omissions events or circumstances which have caused this Agreement to cease and determine as regards such other parties as aforesaid shall not as regards the remaining assignee constitute a failure of performance or observance of obligations under this Agreement;
- (b) (notwithstanding the provisions of sub-clauses (d) and (e) of clause 10 hereof) the cessation and determination of this Agreement as between the State and the parties other than the remaining assignee shall not prejudice or affect the rights of the remaining assignee in the mineral lease or any other lands leases licenses easements or rights granted hereunder or pursuant thereto and no act or omission by the State with regard to the cessation or determination of this Agreement as between the State and the parties other than the remaining assignee shall adversely affect the rights or interests of the remaining assignee in or under this Agreement or in

the mineral lease or other lands leases licenses easements and rights granted hereunder or pursuant thereto;

- (c) on the cessation and determination of the Agreement as aforesaid as between the State and the parties other than the remaining assignee all the rights and interests of such other parties in the mineral lease and other lands leases licenses easements and rights granted hereunder or pursuant thereto shall vest in the remaining assignee subject to any mortgage charge or other encumbrance affecting the same and subject to the right of the State under sub-clause (2) of this clause.

(2) At any time after the vesting referred to in paragraph (c) of sub-clause (1) of this clause the remaining assignee shall on request by the State and without further consideration assign and transfer or the State may by writing appoint to the Third Party or Fourth Party or such other party as may be agreed between the remaining assignee and the State (as the case may be) a 65% share and interest (or such lesser percentage share and interest as the Minister shall have previously approved in writing expressly for the purpose of this sub-clause) as tenant in common in this Agreement and in the mineral lease and any other lands leases licenses easements and rights granted hereunder or pursuant thereto.

(3) Contemporaneously with an assignment or transfer or exercise of the power of appointment pursuant to sub-clause (2) hereof the State will at the request of the remaining assignee procure that the Third Party or the Fourth Party or any other party referred to in sub-clause (2) hereof (as the case may be) will become obligated with the remaining assignee to discharge any then outstanding obligations to supply iron ore from the mineral lease under a contract or contracts entered into with the consent of the Minister by the Company or any assignee or assignees therefrom in accordance with the terms of such contact or contracts on a basis which is fair and reasonable as between the remaining assignee and the Third Party or the Fourth Party or any other party referred to in sub-clause (2) hereof (as the case may be).

(4) The remaining assignee will supply the Third Party or the Fourth Party with iron ore from the mineral lease during the period and on the terms and conditions specified in clause 16 hereof as if the remaining assignee were the Company.

14. Sub-clause (2) of clause 19 is amended by adding thereto a proviso as follows:

PROVIDED HOWEVER that the Minister may agree to release the Company from such liability where having regard to all the circumstances of any such assignment mortgaging charging

sub-letting disposition or appointment as mentioned in sub-clause (1) of this clause he considers such release will not be contrary to the interest of the State hereunder.

15. Clause 25 is amended by inserting after the words "its registered office for the time being in the said State" the words "or in the case of any other addressee to his or its address for service of notices notified in writing to the State."

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED SEALED AND
DELIVERED by the said THE
HONOURABLE DAVID
BRAND M.L.A. in the presence
of:

}

DAVID BRAND
[L.S.]

C. W. COURT
MINISTER FOR INDUS-
TRIAL DEVELOPMENT

Attest:

AMAX IRON ORE
CORPORATION

By ANTHONY CHANDLER
Assistant Secretary

By JOHN PAYNE
President
[L.S.]

THE COMMON SEAL of
PILBARA IRON LIMITED was
hereunto affixed pursuant to a
resolution of the Board of
Directors:

}

J. E. MAKINSON
Director

L. SHEPHERDSON
Secretary
[L.S.]

THE COMMON SEAL of
DAMPIER MINING
COMPANY LIMITED was
hereunto affixed pursuant to a
resolution of the Board of
Directors:

}

M. A. CUMING
Director

R. G. WALLACE
Secretary

[L.S.]

THE COMMON SEAL of
SELTRUST IRON ORE
LIMITED was hereunto affixed
by authority of the Board of
Directors in the presence of: }

J. R. CHEESEMAN
Assistant Secretary

H. L. BEALE
Director

[L.S.]

THE COMMON SEAL of
MITSUI-C ITOH IRON PTY.
LTD was hereunto affixed by
authority of the Board of
Directors in the presence of: }

A. CARO
Secretary

S. AOKI
Director

[L.S.]

THE COMMON SEAL of MT.
NEWMAN IRON ORE
COMPANY LIMITED was
hereunto affixed in the presence
of: }

J. McLEAN
Secretary

ANTHONY CHANDLER
Director

G. F. JOKLIK
Director

[L.S.]

[Second Schedule inserted by No. 63 of 1967 s.6.]

Third Schedule

THIS AGREEMENT made the 9th day of May One thousand nine hundred and seventy nine BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, K.C.M.G., O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the First Part AMAX IRON ORE CORPORATION a company incorporated in the State of Delaware in the United States of America and registered in the State of Western Australia as a foreign company (hereinafter called "Amax Iron") PILBARA IRON LIMITED a company incorporated in the State of Western Australia (hereinafter called "Pilbara") DAMPIER MINING COMPANY LIMITED a company incorporated in the State of Western Australia (hereinafter called "Dampier") SELTRUST IRON ORE LIMITED a company incorporated in England and registered in the State of Western Australia as a foreign company (hereinafter called "Seltrust Iron") and MITSUI-C. ITOH IRON PTY LTD a company incorporated in the State of Western Australia (hereinafter called "Mitsui Iron") of the Second Part and MT. NEWMAN IRON ORE COMPANY LIMITED a company incorporated in the State of Western Australia (hereinafter called "the Mt. Newman Company") of the Third Part.

WHEREAS:

- (a) By an agreement under seal made the 26th day of August, 1964 BETWEEN the State of the one part and the Mt. Newman Company of the other part (which agreement was approved by and is scheduled to the Iron Ore (Mount Newman) Agreement Act 1964 and is hereinafter referred to as "the 1964 agreement") the Mt. Newman Company acquired upon the terms and conditions set forth in the 1964 agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing and shipment of iron ore therefrom.
- (b) By virtue of various agreements under seal Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron became entitled to all the right title interest claim and demand whatsoever of the Mt. Newman Company in and under the 1964 agreement and by virtue of certain Deeds of Covenant with the State assumed the obligations of the Mt. Newman Company thereunder.
- (c) By an agreement under seal made the 16th of November, 1967 between the State of the first part and Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron of the second part and the Mt. Newman Company of the third part (which is scheduled to the Iron Ore (Mount Newman) Agreement Act Amendment Act 1967 and is hereinafter referred to as "the first variation agreement") the parties thereto varied the agreement as therein set out.

- (d) The parties desire to add to and amend the provisions of the 1964 agreement as amended by the first variation agreement (hereinafter referred to as “the Principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. The provisions of this agreement shall not come into operation unless and until a Bill to approve and ratify this agreement is passed by the legislature of the State and comes into operation as an Act.

3. The Principal Agreement is hereby varied as follows:

(1) As to clause 1 —

(a) by adding after the definition “harbour” the following definition —

“housing scheme” means any scheme to be established by the Company from time to time pursuant to any proposal approved hereunder or any approved proposal as varied pursuant to subclause (3) of clause 20 hereof in relation to a townsite or townsites for the sale to employees engaged in the operations of the Company under this Agreement of lots of land whether improved or unimproved within or near such townsite or townsites;

(b) by substituting for the passage “in lieu of a townsite constituted and defined under section 10 of the Land Act;” in lines 11 and 12 of the definition of “townsite”, the following passage —

“(whether or not such townsite or townsites are constituted and defined under section 10 of the Land Act);”; and

(c) by adding after the definition “Year 1” the following passage —

“reference in this Agreement to the Company shall not include persons (other than the parties to this Agreement) to whom townsite lots are or are by agreement with the Company

agreed to be assigned or transferred pursuant to a housing scheme;”;

(2) by adding after clause 6 two new clauses 6A and 6B as follows —

Additional proposals

6A. (1) The Company may submit to the Minister from time to time detailed proposals relating to —

- (a) any housing scheme;
- (b) the transfer to the State or the appropriate instrumentality of the State of any facility owned and/or operated by the Company hereunder;
- (c) the vesting in, transfer or lease to the State and/or the relevant local authority of any land of which the Company is the lessee or proprietor in fee simple hereunder; or
- (d) any other purpose relating to the use maintenance or operation of the Company’s services or facilities in or near a townsite as the Minister shall approve.

(2) The provisions of subclause (1) of clause 6 and subclause (1) of clause 7 of this Agreement shall *mutatis mutandis* apply to proposals submitted pursuant to sub-clause (1) of this clause. Provided that in the event of arbitration the decision of the arbitrator, arbitrators or umpire (as the case may be) shall be final and shall be accepted and given effect to by the parties and the provisions of subclause (1) of clause 6 dealing with cessation and determination of this Agreement shall not apply. The proposals modified or altered in accordance with the award on arbitration shall be deemed approved on the date of delivery of the award.

(3) The Company shall implement the approved proposals in accordance with the terms thereof.

Authorization of local authority and certain Minister to enter agreements

6B. Where pursuant to any approved proposal as to any of the matters referred to in clause 6A hereof or as varied pursuant to subclause (3) of clause 20 hereof provision is made for the relevant local authority consistent with its functions as a local authority to enter into and carry out

any agreement with the Company and/or for the Minister or respective Ministers administering the Country Areas Water Supply Act 1947 and the Country Towns Sewerage Act 1948 to enter into and carry out any agreement with the Company —

- (a) the Local Government Act 1960 and/or the Country Areas Water Supply Act 1947 and the Country Towns Sewerage Act 1948 shall for the purposes of implementing such approved proposals be deemed to be modified by the inclusion of a power whereby such relevant local authority and/or Minister or Ministers are authorized and empowered to enter into and carry out any such agreement; and
 - (b) the relevant local authority and such Minister or Ministers may enter into and carry out any such agreement notwithstanding the other provisions of this Agreement.;
- (3) as to clause 8 —
- (a) as to paragraph (b) of subclause (1) by adding after the word “hereof” in line 3 the following passage —
 - “ or under clause 6A hereof or as varied from time to time pursuant to subclause (3) of clause 20 hereof”;
 - (b) as to subclause (2) —
 - (i) by deleting the word “and” in line 4 of paragraph (e);
 - (ii) by substituting for the passage “Act.” in line 9 of paragraph (f) the passage “Act;”; and
 - (iii) by adding after paragraph (f) the following paragraphs —
 - “ (g) the inclusion of a power whereby any special lease granted to the Company hereunder may be varied by agreement or surrendered in whole or in part; and

- (h) the inclusion of a power whereby any land granted or leased to the Company hereunder may be —
 - (i) acquired by the State or any instrumentality of the State from the Company by way of transfer or exchange; or
 - (ii) leased or subleased by the Company to the State or any instrumentality of the State.”;
- (c) by adding after subclause (3) a new subclause (3A) as follows —
 - “ (3A) Notwithstanding the provisions of the Land Act if proposals approved hereunder so provide, the Minister for Lands shall not at any time put up for sale or lease to persons other than the Company 30 or more lots of land as a single release within the deposits townsite without first consulting with the Company for the purpose of ensuring that provision has been made for the Company’s future development requirements pursuant to this Agreement.”;
- (d) as to paragraph (b) of subclause (4) by substituting for the words “nor any of the lands the subject of any lease or license granted to the Company in terms of” in lines 10, 11 and 12 the words “nor any lands for the time being owned by the Company in fee simple hereunder or under any lease or license issued pursuant to”; and
- (e) by substituting for the words “granted or assigned” in line 2 of subclause (6) the words “held by the Company”;
- (4) as to clause 1 —
 - (a) as to paragraph (a) by substituting for the passage “1945;” at the end of the paragraph, the passage “1945 PROVIDED HOWEVER that such powers and authorities shall be modified from time to time to accord with proposals approved under clause 6A hereof (including any variation thereto pursuant to subclause (3) of clause 20 hereof);”;
 - (b) as to paragraph (d) by substituting for the passage “Agreement;” at the end of paragraph (i) the following passage

“Agreement PROVIDED that this subparagraph shall not apply to townsite lots which have been granted to or acquired by the Company for the purposes of a housing scheme unless such lots are then owned by the Company;”; and

(c) as to paragraph (g) —

(i) by substituting for the words “granted to” in line 3 the words “held by”; and

(ii) by adding after the words “this Agreement” in line 3 the words “or in respect of which the Company has any right to purchase pursuant to a housing scheme”;

(5) as to clause 16A by adding after the word “Company” in line 7 of subclause (1) the words “other than assignees of the Company under a housing scheme”;

(6) as to clause 19 by adding after subclause (2) two new subclauses (3) and (4) as follows —

“(3) Where in respect of any land acquired by the Company hereunder the Company makes any disposition pursuant to any approved proposal as to any of the matters referred to in clause 6A hereof or as varied pursuant to subclause (3) of clause 20 hereof, then notwithstanding the provisions of subclause (1) of this Clause but subject to any contrary intention contained in any such approved proposal, the consent in writing of the Minister shall not be required to any such disposition nor shall any assignee from the Company be required to enter into a deed of covenant as provided in subclause (1) of this clause.

(4) Notwithstanding subclause (2) of this clause, where in the performance of its obligations under sub-clause (3) of clause 6A hereof the Company enters into any agreement with a person which results in that person discharging all or any of the obligations undertaken by the Company under this Agreement or renders it unnecessary for the Company to discharge any obligation undertaken by it hereunder the Minister will discharge or temporarily relieve the Company from such part of its said obligations as is reasonable having regard to the extent to which and the period for which that person agrees to effect the discharge of those obligations.”; and

(7) by adding after clause 26 a new clause 26A as follows —

Further exemption from stamp duty

26A (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) any agreement transfer or other instrument evidencing the sale or transfer to the Company from the Rural and Industries Bank of Western Australia of any townsite lot pursuant to any housing scheme;
- (b) any agreement transfer or other instrument evidencing the sale or transfer of any lot in fee simple in the deposits townsite or the town of Port Hedland from the Company to any employee or to the Company from any such employee or former employee (as the case may be) pursuant to any housing scheme; and
- (c) any mortgage to the Company from any employee in respect of any land the subject of a transfer from the Company to any such employee,

PROVIDED THAT this clause shall not apply to any such agreement transfer mortgage or other instrument executed or made more than 10 years from the 1st day of June, 1979.

(2) For the purposes of paragraphs (b) and (c) of subclause (1) of this clause the expression "employee" means any person engaged in the operations of the Company under this Agreement and employed by the Company or by Mt. Newman Mining Co. Pty. Limited (or other manager for the time being of the operations of the Company hereunder) and shall for the purposes of any transfer pursuant to paragraph (b) of subclause (1) of this clause include the legal personal representatives of any such person.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

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

}
}

CHARLES COURT

ANDREW MENSAROS

MINISTER FOR INDUSTRIAL DEVELOPMENT

Executed by AMAX IRON
ORE) CORPORATION by being
signed in Western Australia by
its duly appointed Attorney
Donald L. Davenport under
Power of Attorney dated 25th
April, 1979 in the presence of —

DONALD L. DAVENPORT

JOHN GALE

Executed by PILBARA IRON
LIMITED by being signed in
Western Australia by its duly
appointed Attorneys Colin
Russell Leith and John
McKenzie Middleton under
Power of Attorney dated 24th
April, 1979 in the presence of —

C. R. LEITH
J. M. MIDDLETON

Norman Leslie Smithson

Executed by DAMPIER
MINING COMPANY LIMITED
by being signed in Western
Australia by its duly appointed
Attorney Norman) Leslie
Smithson under Power of
Attorney dated 2nd May, 1979 in
the presence of —

N. L. SMITHSONS

Raymond John Smith

Executed for and on behalf of
SELTRUST IRON ORE
LIMITED by being signed in
Western Australia by its duly
authorized representative)
Gordon MacEwan Smith in the
presence of —

G. M. SMITH

Thomas McLean

THE COMMON SEAL of
MITSUI-C. ITOH IRON PTY.
LTD. was hereunto affixed with
the authority of the Board of
Directors in the presence of —

[C.S.]

Director,
K. Eguchi

Secretary,
J. N. MacKenzie

Executed by MT. NEWMAN
IRON ORE COMPANY
LIMITED by being signed in
Western Australia by its duly
appointed Attorney Norman
Leslie Smithson under Power of
Attorney dated 3rd May, 1979 in
the presence of —

N. L. SMITHSON

Raymond John Smith

[Third Schedule inserted by No. 12 of 1979 s.5.]

Fourth Schedule

THIS AGREEMENT is made the 12th day of July 1990 BETWEEN: THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the one part AND PILBARA IRON LIMITED a company incorporated in the State of Western Australia, BHP MINERALS LIMITED a company incorporated in the State of Western Australia, MITSUI-C. ITOH IRON PTY. LTD. a company incorporated in the State of Western Australia and CI MINERALS AUSTRALIA PTY. LTD. a company incorporated in the State of Western Australia of the other part.

WHEREAS:

- (a) the State and the other parties hereto (pursuant to certain assignments and Deeds of Covenant and the release of Mt. Newman Iron Ore Company Limited pursuant to clause 19 (2) of the Principal Agreement as hereinafter defined) are now the parties to the agreement dated the 26th day of August 1964 (hereinafter called "the 1964 Agreement") which agreement was approved by and is scheduled to the Iron Ore (Mount Newman) Agreement Act 1964 and has been varied by —
 - (i) the agreement dated the 16th day of November 1967 approved by the Iron Ore (Mount Newman) Agreement Act Amendment Act;
 - (ii) the agreement dated the 9th day of May 1979 approved by the Iron Ore (Mount Newman) Agreement Act Amendment Act 1979;
 - (iii) agreements dated respectively the 11th day of December 1985 and the 27th day of January 1987 entered into pursuant to clause 20 (1) of the 1964 Agreement;
- (b) the 1964 Agreement as so varied is hereinafter referred to as "the Principal Agreement";
- (c) the parties desire to amend the Principal Agreement pursuant to clause 20 (1) thereof.

NOW THIS AGREEMENT WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the Principal Agreement.

2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the State of Western Australia and comes into operation as an Act.
3. The Principal Agreement is hereby varied as follows —
 - (1) Clause 1 —
 - (a) by deleting the definitions of “direct shipping ore”, “fine ore”, “fines” and “f.o.b. revenue”;
 - (b) by inserting, in the appropriate alphabetical positions, the following definitions —

““agreed or determined” means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister and in agreeing or determining a fair and reasonable market value of such iron ore assessed at an arm’s length basis the Company and/or the Minister as the case may be shall have regard to prevailing markets and prices for that type of iron ore both outside and within the Commonwealth and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

“beneficiated ore” means iron ore which has been concentrated or upgraded otherwise than by washing drying crushing or screening or a combination thereof;

“deemed f.o.b. point” means on ship at the Company’s wharf;

“deemed f.o.b. value” means an agreed or determined value of the iron ore at the time the iron ore becomes liable to royalty established on the basis that the iron ore was sold f.o.b. at the deemed f.o.b. point;

“fine ore” means iron ore (not being beneficiated ore) which is sized minus six millimetres;

“f.o.b. value” means —

 - (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by

the purchaser thereof to the Company or an associated company or, where the Minister is not satisfied that the price payable in respect of the iron ore represents a fair and reasonable market value for that type of iron ore assessed at an arm's length basis, such amount as is agreed or determined, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the Company's wharf to the time the same is delivered and accepted by the purchaser including — A

- (1) ocean freight;
 - (2) marine insurance;
 - (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the Company's wharf;
 - (7) all import taxes by the country of the port of discharge; and
 - (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in all other cases, the deemed f.o.b. value. For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm's length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore and in this circumstance where the Minister in his discretion is satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be

satisfied that such entire consideration represents the fair and reasonable market value;

“iron ore” includes beneficiated ore;

“lump ore” means iron ore (not being beneficiated ore) which is sized plus six millimetres minus thirty millimetres;

“washing” means a process of separation by water using only size as a criterion;”;

- (c) in the definition of “associated company”, by deleting “section 6 of the Companies Act 1961” and substituting the following —

“section 7 of the Companies (Western Australia) Code”;

- (d) in the definition of mineral lease, by inserting after “thereof” the following —

“and any areas included therein pursuant to clause 9A hereof ”.

- (2) Clause 8 (1) (b) —

- (a) in the first proviso, by deleting “and iron ore concentrates which become” and substituting the following —

“which becomes”;

- (b) in the second proviso, by deleting “sub-section (5) of Section 6 of the Companies Act 1961 of the State” and substituting the following —

“section 7 of the Companies (Western Australia) Code”.

- (3) Clause 9 (2) (e) —

by deleting “sub-section (5) of section 6 of the Companies Act 1961 of the State” and substituting the following —

“section 7 of the Companies (Western Australia) Code”.

- (4) Clause 9 (2) (j) —

by deleting paragraph (j) of clause 9 (2) and substituting the following paragraph —

“(j) pay to the State royalty on all iron ore from the mineral lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows —

(i) on lump ore and on fine ore where such fine ore is not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value except that the rate of royalty in respect of lump ore used within the Commonwealth by B.H.P. or A.I.S. or any company or companies related to B.H.P. or A.I.S. within the meaning of section 7 of the Companies (Western Australia) Code for manufacture into iron or steel and becoming liable for royalty during the period from and including 1st July 1989 to and including 31st December 1990 shall be —

(A) during the period 1st July 1989 to 31st December 1989, 5% of the f.o.b. value; and

(B) during the calendar year 1990, 6.25% of the f.o.b. value;

(ii) on fine ore sold or shipped separately as such at the rate of 3.75% of the f.o.b. value;

(iii) on beneficiated ore at the rate of 3.25% of the f.o.b. value;

(iv) on all other iron ore of whatever kind at the rate of 7.5% of the f.o.b. value;”.

(5) Clause 9 (2) (k) —

(a) by deleting “all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced” and substituting the following —

“all beneficiated ore produced and all other iron ore the subject of royalty hereunder and shipped sold transferred or otherwise disposed of or used”;

- (b) by deleting “of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold” and substituting the following —

“thereof or if the f.o.b. value is not then finally calculated, agreed or determined”;
- (c) by inserting after “of such iron ore” the following —

“or on the basis of estimates as agreed or determined”;
- (d) by deleting “f.o.b. revenue realised in respect of the shipments shall have been ascertained” and substituting the following —

“f.o.b. value shall have been finally calculated, agreed or determined”.
- (6) Clause 9 (2) (n) —
 - (a) by inserting after “the Company” where it first occurs the following —

“including contracts”;
 - (b) deleting “f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps” and substituting the following —

“f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore outside and within the Commonwealth and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii)”;
 - (c) by deleting “hereunder; and” and substituting the following —

“hereunder.”.
- (7) By deleting clause 9 (2) (o).
- (8) By inserting after clause 9 the following clause —

Additional areas

- “9A. (1) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 the Company may on or before the 1st day of October, 1990 (or such later date as the parties may agree) apply to the Minister for Mines for inclusion in the mineral lease of such of the land coloured red on the plan marked ‘B’ (initialled by or on behalf of the parties hereto for the purpose of identification) as the Company at the time of such application holds under exploration licences granted under the Mining Act 1978 and the Minister for Mines shall, subject to the Company surrendering from the mineral lease the land coloured red on the plan marked ‘C’ (initialled by or on behalf of the parties hereto for the purpose of identification) and the lands so applied for out of the exploration licences, include the land so applied for (herein after called “the additional areas”) in the mineral lease by endorsement on the mineral lease subject to such of the conditions of the surrendered exploration licences as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of the additional areas has not been completed but subject to correction to accord with the survey when completed at the Company’s expense.
- (2) The Company shall not mine the additional areas except in accordance with proposals with respect thereto approved or determined pursuant to subclauses (3) to (10) of this clause.
- (3) If and whenever the Company desires to mine the additional areas it shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to the mining of iron ore from the additional areas and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities;
 - (b) roads;

- (c) housing and accommodation for the persons engaged in the development and/or mining of the additional areas and associated activities including the provision of utilities, services and associated facilities;
 - (d) water supply;
 - (e) power supply;
 - (f) iron ore transportation;
 - (g) airstrip and other airport facilities and services;
 - (h) any other works, services or facilities desired by the Company;
 - (i) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company its agents and contractors;
 - (j) any leases licences or other tenures of land required from the State; and
 - (k) an environmental management programme as to measures to be taken, in respect of the Company's activities at additional areas, for rehabilitation and the protection and management of the environment.
- (4) The proposals pursuant to subclause (3) of this clause may with the approval of the Minister be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.
- (5) On receipt of the said proposals the Minister shall subject to the Environmental Protection Act 1986 —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters

mentioned in subclause (3) of this clause not covered by the said proposals; or

- (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use of other parties as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the *Environmental Protection Act 1986* subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (6) The Minister shall within two months after receipt of the said proposals or, if applicable, within two months of service on him of an authority under section 45 (7) of the *Environmental Protection Act 1986* give notice to the Company of his decision in respect of the same.
- (7) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (5) of this clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect of some particular matter.
- (8) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (5) of this clause and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (6) of this clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (5) of this clause shall not be referable to arbitration hereunder.

- (9) The Company may withdraw its proposals submitted pursuant to subclause (3) of this clause at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the proposed mining of the additional areas.
- (10) The Company shall implement the proposals as approved by the Minister or an award made on arbitration (where the proposals are not withdrawn) as the case may be in accordance with the terms thereof and in such implementation shall comply with all requirements in connection with the protection of the environment that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.
- (11) (a) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities at the additional areas beyond those specified in any proposals approved or determined under this clause it shall give notice of such desire to the Minister and if required by the Minister within two months of the giving of such notice shall submit to the Minister within such period as the Minister may reasonably allow (but in any event not less than two months) detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (3) of this clause as the Minister may require. The provisions of subclauses (4) to (9) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof and the provisions of subclause (10) of this clause.
- (b) If the Minister does not require the Company to submit proposals under paragraph (a) of this subclause the Company may, subject to compliance with all applicable laws, proceed with the modification expansion or variation of its activities the subject of the notice to the Minister under that paragraph.
- (12) (a) The Company shall, in respect of the matters referred to in paragraph (k) of subclause (3) of this clause and which are the subject of proposals approved or

determined under this clause carry out with effect from such date of approval or determination a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time (but not more frequently than once in every twelve months) submit to the Minister a detailed report thereon.

- (b) Whenever as a result of its monitoring under paragraph (a) of this subclause or otherwise reliable information becomes available to the Company which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any proposals approved or determined under this clause or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
 - (c) The Minister may within two (2) months of the receipt of a detailed report pursuant to paragraphs (a) or (b) of this subclause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.
 - (d) The Company shall within two months of the receipt of a notice given pursuant to paragraph (c) of this subclause submit to the Minister additional detailed proposals as required and the provisions of subclauses (5), (6), (7), (8), (10) and (11) of this clause and this subclause shall *mutatis mutandis* apply in respect of such proposals.
- (13) The Company shall, in respect of its activities at the additional areas in lieu of the provisions of clause 9 (2) (i) of this Agreement —
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia or if such labour is

not available then, except as aforesaid, use labour otherwise available within Australia;

- (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
- (c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors;
- (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation;
- (f) except as otherwise agreed by the Minister in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies require as a condition thereof that such third party shall undertake the same obligations as are referred to in paragraphs (a) — (e) of this subclause and

shall report to the Company concerning such third party's implementation of that condition;

- (g) submit a report to the Minister at monthly intervals or such longer period as the Minister determines concerning its implementation of the provisions of this subclause together with a copy of any report received by the Company pursuant to paragraph (f) of this subclause during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine; and
 - (h) keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.
- (14) The Company shall be responsible for the provision at no cost to the State of suitable accommodation for its employees and the dependants of its employees and for other persons (and dependants of those persons) engaged in the development and/or mining of the additional areas and associated activities.
- (15) The Company shall except as otherwise agreed by the Minister pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services in Newman to the extent to which those additional works and services are made necessary by reason of the persons (and their dependants) engaged in the development and/or mining of the additional areas and associated activities residing therein or by reason of the Company's activities in relation to the additional areas or such proportion of any such cost as may be agreed by the Minister taking into account the permanent or temporary nature of the services or facilities. The additional services, works and associated equipment referred to in this subclause shall be provided by the State (or the State shall cause the same to be

provided) to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.

- (16) The Company shall confer with the Minister and the relevant local authority with a view to assisting in the cost of providing at Newman appropriate community recreation, civic, social and commercial amenities if required by reason of the development and/or mining of the additional areas and associated activities.”.

(9) Clause 24 —

by deleting “Arbitration Act, 1895” and substituting the following —

“Commercial Arbitration Act 1985 and notwithstanding section 20 (1) of that Act each party may be represented by a duly qualified legal practitioner or other representative”.

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

SIGNED by the said THE
HONOURABLE CARMEN
MARY LAWRENCE, B.Psych.,
Ph.D., M.L.A. in the presence of:

}

CARMEN LAWRENCE

J. M. BERINSON
Minister for Resources

THE COMMON SEAL of
PILBARA IRON LIMITED was
hereunto affixed by authority of
the Board of Directors:

}

[C.S.]

Director
D. F. COLLINS

Secretary
ADA LIAN DAVIES

THE COMMON SEAL of BHP
MINERALS LIMITED was
hereunto affixed by authority of
the Board of Directors:

}

[C.S.]

Director
D. J. WOOD

Secretary
G. J. HEATH

THE COMMON SEAL of
MITSUI-C. ITOH IRON PTY.
LTD. was hereunto affixed by
authority of the Board of
Directors in the presence of: } [C.S.]

Director
T. SUZUKI

Secretary
J. MacKENZIE

THE COMMON SEAL of CI
MINERALS AUSTRALIA
PTY. LTD. was hereunto affixed
by authority of the Board of
Directors in the presence of: } [C.S.]

Director
M. YAMAMOTO

Secretary
M. L. APPLEBEE

[Fourth Schedule inserted by No. 51 of 1990 s.6.]

Fifth Schedule

[section 2]

THIS AGREEMENT is made the 30th day of November 1993

B E T W E E N:

THE HONOURABLE RICHARD FAIRFAX COURT, B.Com., M.L.A. Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called "the State") of the one part

AND

PILBARA IRON LIMITED ACN 008 694 853 a company incorporated in the State of Western Australia, **BHP MINERALS PTY. LTD.** ACN 008 694 782 a company incorporated in the State of Western Australia, **MITSUI-ITOCHU IRON PTY. LTD.** ACN 008 702 761 a company incorporated in the State of Western Australia and **CI MINERALS AUSTRALIA PTY. LTD.** ACN 009 256 259 a company incorporated in the State of Western Australia of the other part.

WHEREAS:

- (a) the State and the other parties hereto (pursuant to certain assignments and Deeds of Covenant and the release of Mt. Newman Iron Ore Company Limited pursuant to clause 19(2) of the Principal Agreement as hereinafter defined) are now the parties to the agreement dated the 26th day of August 1964 (hereinafter called "the 1964 Agreement") which agreement was approved by and is scheduled to the Iron Ore (Mount Newman) Agreement Act 1964 and has been varied by —
 - (i) the agreement dated the 16th day of November 1967 approved by the Iron Ore (Mount Newman) Agreement Act Amendment Act 1967;
 - (ii) the agreement dated the 9th day of May 1979 approved by the Iron Ore (Mount Newman) Agreement Act Amendment Act 1979;
 - (iii) agreements dated respectively the 11th day of December 1985 and the 27th day of January 1987 entered into pursuant to clause 20(1) of the 1964 Agreement; and
 - (iv) the agreement dated the 12th day of July 1990 ratified by the Iron Ore (Mount Newman) Agreement Amendment Act 1990;

- (b) the 1964 Agreement as so varied is hereinafter referred to as "the Principal Agreement";
- (c) the parties desire to amend the Principal Agreement pursuant to clause 20(1) thereof.

NOW THIS AGREEMENT WITNESSES —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1993 or such later date as may be agreed between the parties hereto.
3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
 - (b) a Bill to ratify an agreement of even date herewith made between the State of the one part and BHP Minerals Pty. Ltd., BHP Energy Holdings Pty. Ltd. and BHP Power Holdings Pty. Ltd. of the other partare passed as Acts before 31 December 1993 or such later date (if any) as the parties hereto agree upon.
- (2) If before 31 December 1993 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Act is hereby varied as follows —

- (1) Clause 1 —

By inserting after the definition of "**person**" the following definition —

"Pilbara Energy Project Agreement" means the agreement (as amended from time to time) ratified by the Pilbara Energy Project Agreement Act 1994;".

- (2) Clause 12 —

By deleting the expressions appearing in the first column of the Table to this subclause wherever they occur and substituting in each case respectively the dates appearing alongside those expressions in the second column of the Table: —

Table

Year 20	December 1996
Year 23	December 1999
Year 25	December 2001
Year 26	December 2002
Year 29	December 2005
Year 30	December 2006
Year 31	December 2007
Year 32	December 2008
Year 33	December 2009

- (3) By inserting after clause 12 the following Clause —

"12A. (1) If each of the power station, the gas pipeline and the Newman facilities as defined in the Pilbara Energy Project Agreement are constructed, in accordance with the provisions of subclause (7) of clause 7 of that agreement, by 31 December 1996 the obligations of the Company under clause 12 of this Agreement shall cease on the date of completion of construction of those works and from and after that date clauses 12, 13, 14, 15, 16 and 16A of

this Agreement shall be deemed deleted from this Agreement and this Agreement shall be read and construed accordingly.

(2) If the date for completion of the power station, the gas pipeline and the Newman facilities pursuant to the Pilbara Energy Project Agreement is extended by reason of force majeure under clause 27 or pursuant to clause 28 of that agreement or otherwise in accordance with the provisions of that agreement, the date 31 December 1996 appearing in subclause (1) of this clause and each of the dates appearing in clause 12 hereof shall be extended by a period equal to the period of force majeure allowed or the period of extension granted or provided for under that agreement."

5. The State acknowledges that the Company has no further obligations under Clause 11 of the Principal Agreement.

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

SIGNED by the said
**THE HONOURABLE
RICHARD FAIRFAX COURT**
in the presence of:

}

RICHARD F COURT

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of
PILBARA IRON LIMITED
was hereunto affixed by
authority of the Board of
Directors:

}

Director G L WEDLOCK

Secretary L DAVIES

THE COMMON SEAL of
BHP MINERALS PTY. LTD.
was hereunto affixed by
authority of the Board of
Directors:

}

Director R J CARTER

Secretary CLAIR MEDHURST

THE COMMON SEAL of
**MITSUI-ITOCHU IRON
PTY. LTD.** was hereunto
affixed by authority of
the Board of Directors
in the presence of:

}

Director N HINOHARA

Secretary P KATAVATIS

THE COMMON SEAL of
**CI MINERALS AUSTRALIA
PTY. LTD.** was hereunto
affixed by authority of
the Board of Directors in
the presence of:

}

Director Y KOWATA

Secretary M APPELBEE

[Fifth Schedule inserted by No. 8 of 1994 s.6.]