

**IRON ORE (MOUNT
GOLDSWORTHY)
AGREEMENT.**

No. 58 of 1971.

AN ACT to amend the Iron Ore (Mount Goldsworthy) Agreement Act, 1964.

[Assented to 15th December, 1971.]

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

1. (1) This Act may be cited as the *Iron Ore (Mount Goldsworthy) Agreement Act Amendment Act, 1971.* Short title and citation.

(2) In this Act the Iron Ore (Mount Goldsworthy) Agreement Act, 1964, is referred to as the principal Act.

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(3) The principal Act as amended by this Act may be cited as the Iron Ore (Mount Goldsworthy) Agreement Act, 1964-1971.

Amendment
to s. 3.
(Interpreta-
tion.)

2. Section 3 of the principal Act is amended—

(a) by adding after the word “the” in line two of the definition “the Agreement”, the word “First”; and

(b) by adding after the word “Agreement” being the last word in the definition “the Joint Venturers” the passage—

;

“the first Variation Agreement” means the agreement a copy of which is set out in the Second Schedule to this Act .

Section 4A
added.

3. The principal Act is amended by adding after section 4 a section as follows—

First
Variation
Agreement
approved.

4A. The first Variation Agreement is approved. .

Schedule
amended.

4. The heading to the Schedule to the principal Act is deleted and the following headings are substituted—

THE SCHEDULES.

FIRST SCHEDULE. .

Second
Schedule
added.

5. The principal Act is amended by adding at the end thereof, the following Schedule—

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SECOND SCHEDULE

Section 3.

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT

THIS FIRST VARIATION AGREEMENT made this 26th day of August 1971 BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, 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 CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED a Company incorporated under the Companies Ordinances of the Australian Capital Territory and having its executive office at Gold Fields House, Sydney Cove in the State of New South Wales and its registered office in the State of Western Australia (hereinafter referred to as "the said State") at 156 Saint George's Terrace, Perth, CYPRUS MINES CORPORATION a Corporation incorporated in the State of New York in the United States of America and having its executive offices situate at 1234 Pacific Mutual Building, 523 West Sixth Street, Los Angeles California in the United States of America and UTAH DEVELOPMENT COMPANY a Corporation incorporated under the laws of the State of Nevada in the United States of America with its executive offices situate at 550 California Street, San Francisco in the said United States of America and having its registered office in the State of Queensland at Pearl Assurance House at the corner of Queen and Eagle Streets, Brisbane (hereinafter called "the Joint Venturers" in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the other part.

WHEREAS:—

- (a) by an Agreement dated the 15th day of October, 1964 (hereinafter called "the Goldsworthy Agreement") made 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 of the one part and CONSOLIDATED GOLD FIELDS (AUSTRALIA) PTY. LIMITED, CYPRUS MINES CORPORATION and UTAH CONSTRUCTION & MINING CO. of the other part CONSOLIDATED GOLD FIELDS (AUSTRALIA) PTY. LIMITED, CYPRUS MINES CORPORATION and UTAH CONSTRUCTION & MINING CO. acquired upon the terms and conditions contained in the Goldsworthy 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

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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 industry for the additional upgrading of beneficiated ore.
- (b) the Goldsworthy Agreement was approved by the Iron Ore (Mount Goldsworthy) Agreement Act 1964.
- (c) by clause 21 of the Goldsworthy Agreement the parties thereto may from time to time by mutual agreement in writing (*inter alia*) add to cancel or vary all or any of the provisions of that Agreement or of any lease license easement or right granted thereunder or pursuant thereto for the purpose of implementing or facilitating the carrying out of such provisions.
- (d) by assignment dated the 28th day of February, 1970 pursuant to the provisions of the Goldsworthy Agreement, Utah Construction & Mining Co. assigned to Utah Development Company all of its right title and interest in and to the Goldsworthy Agreement;
- (e) Consolidated Gold Fields (Australia) Pty. Limited changed its name to Consolidated Gold Fields Australia Limited on the 28th day of September, 1966;
- (f) pursuant to clause 21 of the Goldsworthy Agreement the parties hereto have agreed to vary the Goldsworthy Agreement in the manner hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH:—

1. In this Agreement subject to the context words and phrases to which meanings are given under clause 1 of the Goldsworthy Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the Goldsworthy Agreement.

2. (1) The provisions of this Agreement other than subclause (2) of this clause shall not come into operation until the Bill referred to in that subclause has been passed by the Parliament of Western Australia and comes into operation as an Act;

(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 the Thirtyfirst day of December, 1971;

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iron ore but excluding any State taxes, duties or charges and any taxes, duties or charges levied by the Commonwealth for or on behalf of the State.

- (b) a cost or charge shall be deemed to be properly incurred if the Minister in his discretion so determines and in making his determination the Minister may have regard to such matters as the parties to and the bona fide nature of the transaction, resulting in the cost or charge.
- (2) by inserting in the definition of "mineral lease" after the word "hereof" in the penultimate line thereof the words "and any mineral lease granted under the provisions of clause 12 (4) hereof" and after the word "thereof" at the end of such definition the word "respectively";
 - (3) by deleting from the definition of "mining area "B"" the words "blue on the plan marked "B"" in the second line thereof and substituting the words "blue and yellow on the plan marked "B1"";
 - (4) by deleting from clause 11—
 - (a) in the marginal note the words "and Mining Area "C" ";
 - (b) in subclause (1)—
 - (i) in the fifth line the word "firstly" and the word "and";
 - (ii) in the sixth line the words "secondly of mining area "C" ", and
 - (iii) in the twelfth and fourteenth lines the words "those mining areas" and substituting the words "that mining area";
 - (c) in subclause (2) in the fifth and sixth lines the words "and of mining area "C" or any part or parts thereof";
 - (d) in subclause (2) (a)—
 - (i) in the first and second lines of sub-paragraph (ii) the words "those mining areas" and substituting the words "mining area "B" ";
 - (ii) sub-paragraphs (iii) and (v);
 - (iii) in the first line of sub-paragraph (vii) the words "those mining areas" and substituting the words "mining area "B" ";

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(7) by deleting clause 12 and inserting a new clause 12 as follows:—

Mining Area
"C" and
Secondary
Processing.

"12. (1) The Joint Venturers shall in respect of mining area "C"—

(a) continue with an exploration and study programme satisfactory to the State and keep the State fully informed at three monthly intervals thereafter of progress in respect thereof and complete such programme by 31st December, 1972;

(b) by 31st December, 1974 submit to the Minister detailed proposals for a plant for secondary processing of iron ore from Mining Area "C" together with detailed proposals for any works or services or further works or services as are necessary in connection therewith;

(c) the detailed proposals for such plant shall be for a plant capable ultimately of treating not less than two million (2,000,000) tons of iron ore per annum and shall contain provision that—

(i) the plant will by the end of the year 1976 have the capacity to process at an annual rate of and will during the year 1977 process not less than five hundred thousand (500,000) tons of iron ore;

(ii) production will progressively increase so that the plant will by the end of the year 1978 have the capacity to process at an annual rate of and will during the year 1979 process not less than one million (1,000,000) tons of iron ore and by the end of the year 1982 will have the capacity to process at an annual rate of not less than and will during the year 1983 process not less than two million (2,000,000) tons of iron ore;

(iii) the capital cost involved (exclusive of the cost referred to in clause 9 (1) hereof) will be not less than sixteen million dollars (\$16,000,000) unless the Joint Venturers utilise a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

PROVIDED THAT if the Joint Venturers satisfy the Minister that the Joint Venturers' 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 an economic basis then the Minister may approve modified or altered proposals and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having regard to the 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 on approving such modified or altered proposals the Minister may approve corresponding variations of the provisions of subparagraphs (i) (ii) and/or (iii) of this paragraph.

(2) If by the 31st December, 1974 such proposals are submitted by the Joint Venturers to the Minister the State shall within two months of the receipt thereof give to the Joint Venturers 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 either of the latter cases shall afford the Joint Venturers 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 Joint Venturers 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 Joint Venturers the Minister shall be deemed to have then approved the proposals of the Joint Venturers.

(3) If such proposals are not approved by the Minister or if by the award on arbitration the question is decided in favour of the Minister the State will not grant mining area "C" to any party other than the Joint Venturers until after 31st December, 1975. Thereafter the State will not grant mining area "C" to any other party on terms more favourable on the whole than those available to the Joint Venturers until after the 31st December, 1979.

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(4) If and when the Minister has approved or is deemed to have approved the Joint Venturers' proposals pursuant to this clause the Joint Venturers may apply for a mineral lease of mining area "C" or any part or parts thereof (not exceeding in aggregate area 300 square miles inclusive of the areas of the original mineral lease granted under clause 8 (2) (a) hereof and the second mineral lease if granted under clause 11 (6) hereof and in the shape of a parallelogram or parallelograms) and the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the survey to the State to be recouped to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease (hereafter referred to as "the third mineral lease") of the land so applied for (notwithstanding the survey in respect thereof has not been completed but subject to such corrections as may be necessary to accord with the survey when completed) for iron ore in the form of the lease in the Schedule hereto for a term which subject to the payment of rents and royalties hereinbefore mentioned and the performance and observance by the Joint Venturers of their obligations under the mineral lease shall be for a period commencing from the date of issue of the third mineral lease for a period co-extensive with the residue of the term then unexpired of the original mineral lease granted under clause 8 (2) (a) hereof with rights to successive renewals of twenty-one (21) years upon the same terms and subject to earlier determination upon the cessation or determination of this Agreement.

(5) If and when such proposals are approved or deemed to have been approved by the Minister the Joint Venturers will as soon as reasonably practicable thereafter commence the construction of the plant and of the other works and services and proceed progressively therewith and complete the same in accordance with the proposals and within the respective times specified herein.

(6) If the Joint Venturers' proposals as finally approved or as deemed to have been approved by the Minister require the State to provide any services or facilities (including any expanded services or facilities which from time to time are considered necessary by the Minister) the State will provide the same subject to the Joint

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grade ore (sixty per cent (60%) and higher in FE content) and the seventy-nine million (79,000,000) tons of low grade ore (minus sixty per cent (60%) in FE content) now estimated to be available the conditions of this Agreement in relation to the future mining of iron ore from the mineral lease (including the second mineral lease) shall be renegotiated by the parties hereto with a view to increasing the obligations and commitments of the Joint Venturers to the State as determined by mutual agreement and failing agreement as shall be determined by arbitration. In determining the new conditions regard shall be had to the overall economies of mining, transporting, processing and marketing of the additional iron ore available. Additional obligations or commitments to be undertaken by the Joint Venturers as part of such new conditions may take the form of higher royalties, rents, wharfage and other charges (or a combination of such charges) or contributions for the purpose of providing additional works or services or of some form of processing iron ore or a combination of any of these. On the determination by agreement or by arbitration of such new conditions this Agreement shall be deemed to have been varied by mutual consent of the parties hereto and as so varied shall operate accordingly;"

(8) by inserting in clause 13 (1)—

- (a) in the fourth line after the word "the" the word "third";
- (b) in the third line of the proviso after the word "operations" the words "on the third mineral lease";

(9) by inserting in clause 13 (3)—

- (a) in the second line of paragraph (a) in substitution for the word "hereunder" the words "won from the third mineral lease";
- (b) in the second line of paragraph (b) in substitution for the word "hereunder" the words "won from the third mineral lease";

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(16) by substituting for the passage "on fine ore (not being locally used ore)" in clause 9 (2) (j) (ii) thereof the passage "on fine ore sold or shipped separately as such (not being locally used ore)";

(17) by substituting for the passage "on fines (not being locally used ore)" in clause 9 (2) (j) (iii) thereof the passage "on fines sold or shipped separately as such (not being locally used ore)";

(18) by substituting for subparagraph (iv) of clause 9 (2) (j) thereof the following subparagraph—

"(iv) on locally used ore (not being iron ore used for producing iron ore concentrates) and on iron ore concentrates produced from locally used ore and shipped or sold or used in an integrated iron and steel industry or in plant for the production of metallised agglomerates (other than iron ore concentrates shipped solely for testing purposes) at the rate of fifteen cents (15c) per ton;"

(19) by deleting the words "(for averaging purposes)" in the first line of subparagraph (vi) and in the first line of subparagraph (vii) of clause 9 (2) (j) thereof;

(20) by adding the words "separately as such" after the words "shipped or sold" where twice appearing in clause 9 (2) (j) (vii) thereof;

(21) by substituting for the last seven lines of subparagraph (viii) of clause 9 (2) (j) thereof the passage "thereafter in accordance with any variation in the average of the basic prices of foundry pig iron c.i.f. Australian capital city ports as announced by The Broken Hill Proprietary Company Limited or any subsidiary thereof from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with such average for the calendar year, 1963."

(22) by adding the following paragraph after clause 9 (2) (k) thereof—

"(kk) pay to the State in addition to the royalty payable under paragraph (j) of this sub-clause a royalty (hereinafter referred to

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as "the additional royalty") on all iron ore from the mineral lease shipped or sold (other than iron ore shipped solely for testing purposes) at the rate of eight cents (8c) per ton as follows:—

(i) the additional royalty shall be payable only in respect of the financial years commencing in 1970, 1971, 1972 and 1973 inclusive and shall aggregate not less than 1.9 million dollars; and

(ii) the obligation of the Joint Venturers in respect of the additional royalty shall not exceed \$475,000 in any financial year and if the State so requires, this amount shall be paid at the commencement of each financial year in full satisfaction of the Joint Venturers' liability to pay the additional royalty for that financial year."

(23) by adding after clause 12 thereof a new clause 12A namely—

Grant of
Leases
Licenses
Reserves and
Tenements.

"12A. (1) As soon as conveniently may be after the proposals of the Joint Venturers under either clause 11 or clause 12 hereof have been approved or deemed to have been approved the State shall grant to the Joint Venturers or to a company nominated by the Joint Venturers and approved by the Minister (referred to in this clause as "the nominated company") such leases licenses reserves and tenements under the provisions of the Mining Act or the Land Act as the Joint Venturers may reasonably require and request for their purposes under such proposals respectively and the provisions of clause 8 (2) (b) hereof shall apply thereto *mutatis mutandis*.

(2) The Joint Venturers hereby covenant with the State that the Joint Venturers will duly and punctually observe perform and comply with all the covenants agreements and obligations to be performed or observed by the nominated company contained in any lease license reserve and tenement and any renewal thereof granted pursuant to the provisions of subclause (1) of this clause to the intent that the same shall be binding upon

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the Joint Venturers in the same manner and to the same extent as if the Joint Venturers were expressly named therein severally with the nominated company and the Joint Venturers acknowledge that a default by the nominated company in the due performance or observance of any such covenant agreement or obligation shall be or be deemed to be a default under paragraph (1) of clause 10 hereof by the Joint Venturers in the due performance or observance of that covenant agreement or obligation and that default entitles the State to exercise against the Joint Venturers its rights powers and remedies under and in conformity with that paragraph."

(24) by deleting clause 21 and inserting a new clause 21 as follows—

Variation

"21. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this clause would constitute a material or substantial alteration of the rights or obligations of either party hereto, the agreement shall contain a provision to that effect and the Minister shall cause that agreement to be laid on the table of each House of Parliament within twelve sitting days of the date of its execution.

(3) If either House does not pass a resolution disallowing the agreement, within twelve sitting days of that House after the agreement has been laid before it, the agreement shall have effect, from and after the last day on which the agreement might have been disallowed.

(4) Subject to the provisions of subclauses (1) (2) and (3) of this clause the Minister may with the consent of the Joint Venturers 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 facilitates the method of achieving any of the purposes of iron ore export, secondary processing, or for an industry for additional upgrading of beneficiated ore based on ore from the mineral lease.

(5) Subject to the provisions of subclauses (1) (2) and (3) 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."

(25) by deleting clause 25 and inserting a new clause 25 as follows—

" 25. Except where otherwise specifically provided in this Agreement 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 the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1895, but this clause does not apply to any case where the State the Minister or any Minister is by this Agreement given either expressly or impliedly a discretionary power."

Arbitration.

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(26) by adding after clause 27 thereof a new clause 28 namely—

Environ-
mental
Protection.

“28. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the Joint Venturers’ operations hereunder 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.”

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

SIGNED by the said THE HONOURABLE }
JOHN TREZISE TONKIN, M.L.A., } JOHN T. TONKIN
in the presence of— }

H. E. GRAHAM
Minister for Industrial Development

D. G. MAY
Minister for Mines

SIGNED SEALED AND DELIVERED for }
and on behalf of CONSOLIDATED GOLD }
FIELDS AUSTRALIA LIMITED by its } B. C. RYAN
duly appointed attorney } [L.S.]
BARTHOLOMEW CARRACK RYAN }
in the presence of— }

D. E. MOORE

SIGNED SEALED AND DELIVERED for }
and on behalf of CYPRUS MINES }
CORPORATION by its duly appointed } B. C. RYAN
attorney BARTHOLOMEW CARRACK } [L.S.]
RYAN in the presence of— }

D. E. MOORE

SIGNED SEALED AND DELIVERED for }
and on behalf of UTAH DEVELOPMENT }
COMPANY by its duly appointed } B. C. RYAN
attorney BARTHOLOMEW CARRACK } [L.S.]
RYAN in the presence of— }

D. E. MOORE