

## IRON ORE (DAMPIER MINING COMPANY LIMITED) AGREEMENT.

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No. 78 of 1969.

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**AN ACT to ratify an agreement between the State and Dampier Mining Company Limited relating to certain iron ore deposits, and for other purposes.**

*[Assented to 7th November, 1969.]*

**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. This Act may be cited as the *Iron Ore (Dampier Mining Company Limited) Agreement Act, 1969.* Short title.

2. (1) The agreement, a copy of which is set out in the Schedule to this Act, is ratified. Ratification of agreement.



S. 2.

SECOND SCHEDULE.

AN AGREEMENT under seal made the 30th day of September One thousand nine hundred and sixty-nine BETWEEN THE HONOURABLE SIR DAVID BRAND, K.C.M.G. M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and instrumentalities thereof from time to time (hereinafter referred to as "the State") of the one part and DAMPIER MINING COMPANY LIMITED a company incorporated under the Companies Act of the State of Western Australia and having its registered office at 37 St. George's Terrace, Perth, in the said State (hereinafter called "the Company" which term shall include its successors and permitted assigns) of the other part.

WHEREAS—

- (a) The State and The Broken Hill Proprietary Company Limited (hereinafter called "B.H.P.") have entered into an agreement (which agreement is set out in the Schedule to the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964, and is hereinafter referred to as "the principal agreement"), for the mining by B.H.P. of iron ore in an area therein defined (which area is hereinafter referred to as "the Deepdale area") and for the establishment by B.H.P. of certain port and railway facilities to be used for the transportation of such iron ore and for the construction and establishment within the said State of plant for the secondary processing of iron ore and with regard to other matters. All rights of B.H.P. under the principal agreement have been duly assigned with the approval of the State to the Company and the Company has duly executed and delivered to the State deeds of covenant as required by Clause 27 (i) of the principal agreement.
- (b) The State and Basic Materials Pty. Limited have entered into an agreement (which agreement is set out in the Schedule to the Iron Ore (Cleveland-Cliffs) Agreement Act, 1964, and is hereinafter referred to as "the Cleveland-Cliffs Agreement") for the mining by the Company of iron ore in an area therein defined (which area is hereinafter referred to as "the Robe River area") and for the establishment by that Company of a railway, iron ore pellet plant and port for the transportation and pelletisation of such ore and with regard to other matters. All rights of Basic Materials Pty. Limited under the Cleveland-Cliffs Agreement have been duly assigned with the approval of the State to Cliffs International, Inc. a wholly owned subsidiary

of The Cleveland Cliffs Iron Company and incorporated under the laws of the State of Ohio one of the United States of America and registered as a foreign company under the Companies Act of Western Australia and having its registered office in the said State at 84 St. George's Terrace Perth (hereinafter called "Cliffs") and Cliffs has duly executed and delivered to the State deeds of covenant as required by Clause 13 (1) of the Cleveland-Cliffs Agreement.

- (c) The Deepdale and Robe River areas are adjacent and the Company and Cliffs have now entered into an agreement (hereinafter referred to as "the Companies Agreement") which provides for various consultation and co-operation between them and, subject to any necessary consents of the State for—
- (i) the Company to make available to Cliffs from the Deepdale area an amount of up to ONE HUNDRED AND FIFTY MILLION (150,000,000) tons of iron ore or such larger amount as the Company may be obliged to make available;
  - (ii) Cliffs to make available for purchase by the Company any iron ore that the Company may require up to an amount of TWO MILLION (2,000,000) tons per annum (or such larger amount as the Companies may agree);
  - (iii) a right to the Company to purchase part of the railway facilities and/or part or the whole of the port facilities to be provided by Cliffs pursuant to its obligations under the Cleveland-Cliffs Agreement;
  - (iv) consultation together as to the technical and commercial feasibility of co-operation to increase the capacity of the pelletising facilities at Cape Lambert in order to produce iron ore pellets for the Company.
- (d) The State, the Company and Cliffs have now agreed that Cape Lambert is a more desirable port site for the initial development of the deposits in the Robe River and Deepdale areas than those considered earlier. Cliffs has already submitted proposals for the development of certain facilities at Cape Lambert.
- (e) In view of the Companies Agreement, it is desirable and is in accordance with the provisions of Clause 28 of the principal agreement that there should be some addition to the various rights and obligations of the parties created by the principal agreement and by the Cleveland-Cliffs Agreement.



State bona fide proposals for the carrying on of operations for the extraction and treatment and sale or use of the remaining balance of the amount of ore referred to in the first proviso to this subclause.

(2) The mineral lease herein provided for may be sub-let to Cliffs for the purpose of enabling Cliffs to mine the quantity of iron ore referred to in subclause (1) of this Clause.

5. The Minister shall before approving or rejecting any proposals (whether original or amended) submitted to him by Cliffs for the construction of a spur railway from Cliffs' railway to the Deepdale deposits submit those proposals to the Company to enable it to make such representations thereon as it sees fit, and shall thereafter afford Cliffs reasonable opportunity to submit amended proposals (or, as the case may be, further amended proposals) which take account of the representations made by the Company.

6. The State shall in accordance with the terms of the Cleveland-Cliffs Agreement (as amended) grant to Cliffs a lease or leases of an area near Cape Lambert in the said State previously agreed to by the Company sufficient to provide—

- (a) for the development by Cliffs of the facilities which that company has undertaken to establish at Cape Lambert pursuant to the terms of the Cleveland-Cliffs Agreement, and
- (b) for use by or on behalf of the Company for facilities for the handling and treatment of Deepdale ore.

7. In order to permit the maximum future use to be made of the Cape Lambert area as an industrial and port facility for the hinterland the State shall reserve until the 31st day of December, 1975, the Cape Lambert area and the surrounding area (but with provision for the granting of the lease contemplated in Clause 6 hereof) and until that time shall take all practicable administrative steps to prevent any development on such area likely to interfere with this use. The reservation shall extend over such area as may be agreed upon between the Company and the State.

8. The Minister shall before approving or rejecting any proposals (whether original or amended) submitted to him by Cliffs for the lay-out of the port and harbour and of the ore treatment and handling facilities at or near the port submit those proposals to the Company to enable it to make representations thereon.

9. (1) The Company may not later than the 30th day of June, 1975, submit to the Minister proposals for—

- (a) the establishment on a defined area within that part of Cape Lambert as has been reserved pursuant to Clause 7 hereof of such facilities as the Company may desire for the purpose of exploiting the iron ore deposits in the Deepdale area in accordance with the principal agreement; or
- (b) the general development of the whole of the area reserved pursuant to Clause 7 hereof which proposals may seek provision for the establishment of the facilities referred to in paragraph (a) of this subclause (1).

(2) If the Company submits proposals pursuant to subclause (1) of this Clause and there is, before the 31st day of December, 1975, agreement between the Company and the Minister as to how the area in question should be developed or by that time any dispute involving such proposals has been or is being settled in the manner hereinafter provided the State shall extend from time to time the reservation referred to in Clause 7 hereof for such period or periods as shall reasonably be required to give assurance that the area involved in the proposals will be available for these developments.

(3) Any proposals submitted by the Company pursuant to subclause (1) of this Clause shall be dealt with in the same manner as is prescribed in Clause 19 of the principal agreement for dealing with the detailed proposals therein mentioned.

(4) Any proposals submitted by the Company pursuant to subclause (1) of this Clause shall have regard to the general development of the Cape Lambert area, both on-shore and off-shore, with a view to the possible use of the area by others.

(5) Nothing in this Clause shall be construed as involving the Company in any obligation to establish facilities required for the exploitation of the iron ore deposits in the Deepdale area any sooner than is required under the principal agreement.

10. Where the Minister has given his approval to proposals submitted by the Company pursuant to subclause (1) of Clause 9 or an arbitrator has decided in favour of the Company with regard to any dispute as to an alteration or condition which the Minister has sought to impose on any such proposal then, insofar as they concern things to be done by the Company, the Company will proceed with the

implementation of the proposals as so approved and in the case of proposals submitted under paragraph (b) of subclause (1) of Clause 9 so as substantially to complete the implementation thereof by the 31st day of December, 1980 or five years from the approval of the Minister or the decision of the Arbitrator, whichever is the latest.

11. (1) If the Company elects to exercise either or both of the options conferred on it by the Companies Agreement and respectively entitling it to purchase part of the rail facilities and/or part or the whole of the port facilities established by Cliffs in accordance with the terms of the Cleveland-Cliffs Agreement it shall furnish to the Minister forthwith true copies of—

- (i) the financial statements and supporting data supplied to the Company by Cliffs in establishing the original cost of the facilities in respect of which the Company shall have elected to exercise its option, and
- (ii) the Company's notice to Cliffs of its election to exercise such option which notice shall show the percentage interest in such facilities to be acquired by the Company.

(2) The Minister will discharge the Company from its obligations under paragraphs (a) to (e) (both inclusive) of Clause 11 and under Clauses 15, 16 and 18 of the principal agreement and the provisoes to subclause (1) of Clause 4 of this Agreement shall no longer apply to the mineral lease if:—

- (a) the permanent ore producing capacity of Cliffs has been increased by an amount of at least TWO MILLION (2,000,000) tons per annum in consequence of the Company's having exercised its right to purchase ore from Cliffs as provided in the Companies Agreement; or
- (b) in exercise of the options referred to in subclause (1) of this Clause, the Company has elected to purchase a one half interest in the railway facilities or at least a one half interest in the port facilities provided by Cliffs; or
- (c) the Company has become obliged to carry out proposals for development submitted pursuant to paragraph (b) of subclause (1) of Clause 9 hereof.

(3) If the Company causes Cliffs to increase the capacity of its secondary processing plant by purchasing processed material or otherwise or if the capacity of Cliffs' secondary processing plant be added to by agreement



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between Cliffs and the Company then in either case the increase shall be regarded as satisfying or partly satisfying (as the case may be) the Company's obligation under the provisions of subclause (c) of Clause 14 of the principal agreement.

(4) Any expense to the Company involved in meeting all or any of the commitments mentioned in paragraphs (a) and (c) of subclause (2) hereof and in subclause (3) hereof and that part of the original cost of the port and railway which is attributable to the interests therein purchased by the Company as mentioned in paragraph (b) of subclause (2) hereof shall be regarded as satisfying pro tanto the Company's obligation under Clause 13 (1) of the principal agreement. Except as provided in this subclause nothing in this Agreement shall effect any diminution of the obligation of the Company under the said Clause 13 (1) to expend a sum of not less than TWENTY-FIVE MILLION POUNDS (£25,000,000) in providing the works and facilities therein referred to.

12. Any material breach by the Company of the Companies Agreement may be regarded by the State as a breach of this Agreement.

13. 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 contained in or arising under this Agreement or under the principal agreement or under any lease licence or other title or document granted or assigned under this Agreement or under the principal agreement and on its part to be performed or observed and shall fail to remedy that breach within reasonable time after notice specifying the breach 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 under the principal agreement 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 thereupon the rights of the Company hereunder and under any lease licence 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.

14. (1) The provisions of paragraphs (a) (b) (c) (d) (f) (h) and (i) of subclause (1) and subclause (2) of Clause 21 of the principal agreement shall, where appropriate, apply mutatis mutandis to the operation and control and management of any facilities acquired or established by the Company at Cape Lambert.

(2) The following provisions of the principal agreement shall, mutatis mutandis, be deemed to be incorporated with and to form part of this agreement—

- (i) paragraph (e) of subclause (1) of Clause 21;
- (ii) paragraphs (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) and (m) of Clause 22;
- (iii) Clause 23;
- (iv) Clauses 25 to 39 (both inclusive).

(3) Notwithstanding the provisions of this Agreement and of Clause 10 of the principal agreement the rates of royalty set out in Clause 9 of the Cliffs Agreement shall apply to ore mined by Cliffs or sold by the Company to Cliffs from the areas referred to in Clause 4 hereof for use or sale by Cliffs other than sale to the Company.

(4) Notwithstanding the provisions of Clause 9 of the Cliffs Agreement the rates of royalty set out in Clause 10 of the principal agreement shall apply to ore mined by Cliffs and sold to the Company.

15. The State will permit the appropriate transfers and assignments of interests in leases licences and other rights in property necessary to give effect to the exercise by the Company of its several options to purchase interests in the port and railway to be constructed by Cliffs.







and subject to and also (as modified by the said Agreements) the Mining Act so far as the same affect or have application to this lease.

PROVIDED THAT this lease and any renewal thereof shall not be determined or forfeited otherwise than under and in accordance with the provisions of the said Agreements.

PROVIDED FURTHER that all mineral oil on or below the surface of the demised land is reserved to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the Petroleum Act, 1936, or the Petroleum Act, 1967.

IN WITNESS WHEREOF we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of Dampier Mining Company Limited was hereunto affixed by authority of the Board of Directors this  
day of 19 .

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

SIGNED SEALED AND DELIVERED by the said THE HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A. in the presence of—

DAVID BRAND  
[L.S.]

C. W. COURT,  
Minister for Industrial Development.

ARTHUR GRIFFITH,  
Minister for Mines.

THE COMMON SEAL of DAMPIER MINING COMPANY LIMITED was hereunto affixed by authority of the Board of Directors—

[C.S.]

Director. IAN M. McLENNAN

Secretary. R. G. WALLACE