

IRON ORE (MOUNT NEWMAN) AGREEMENT.

No. 63 of 1967.

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

[Assented to 5th December, 1967.]

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:—

Short title.
and
citation.

1. (1) This Act may be cited as the *Iron Ore (Mount Newman) Agreement Act Amendment Act, 1967.*

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

(3) The principal Act as amended by this Act may be cited as the *Iron Ore (Mount Newman) Agreement Act, 1964-1967.*

2. Section two of the principal Act is amended by adding after the word, "Agreement" being the last word in the interpretation, "the Company", a passage as follows— S. 2 amended.

" ;

"the variation agreement" means the agreement a copy of which is set forth in the Second Schedule to this Act".

3. The principal Act is amended by adding after section three a section as follows— S. 3A added.

3A. The variation agreement is approved. Variation agreement approved.

4. The principal Act is amended by adding after section four, the following sections— Ss. 5 and 6 added.

5. Notwithstanding the provisions of section 82 of the Mining Act, 1904 and of regulations 192 and 193 made thereunder and of section 81D of the Transfer of Land Act, 1893,— Certain provisions of Mining Act, 1904, etc., and Transfer of Land Act, 1893 not to apply to floating charge.

(a) no mortgage or charge in a form commonly known as a "floating charge" made or given, whether made or given before or after the commencement of this section, pursuant to clause 19 of the Agreement over any lease, licence, reserve or tenement granted under or pursuant to the Agreement 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 of the Agreement; and

(b) no transfer or assignment, whether made or given before or after the commencement of this section, in exercise of any power of sale contained in such mortgage or charge,

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 (Mount Newman) Agreement Act, 1964.
- C. By sub-clause (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 of 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 1878 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.I.S. or 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.

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.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 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 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.

12. Clause 10 is amended by substituting for paragraph (1) thereof the following paragraph:

(1) (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 subparagraph (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 effected 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 disponee to be an assignee mortgagee chargee or disponee 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 sub-clause (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 contract 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:

C. W. COURT
Minister for Industrial
Development

DAVID BRAND

[L.S.]

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 pur-
suant to a resolution of the
Board of Directors:

J. E. MAKINSON
Director

L. SHEPHERDSON
Secretary

[L.S.]

THE COMMON SEAL of
DAMPIER MINING COM-
PANY LIMITED was here-
unto affixed by authority
of the Board of Directors:

R. G. WALLACE
Secretary

M. A. CUMING
Director

[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.]

1967.]

*Iron Ore (Mt. Newman)
Agreement.*

[No. 63.]

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.]