

1964.]

Iron Ore (Cleveland-Cliffs) [No. 91.
Agreement.

IRON ORE (CLEVELAND-CLIFFS) AGREEMENT.

13^o Elizabeth II., No. XCI.

No. 91 of 1964.

AN ACT relating to an Agreement between the State of Western Australia and Basic Materials Pty. Limited with respect to certain iron ore deposits, and for other purposes.

[Assented to 14th December, 1964.]

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 (Cleveland-Cliffs) Agreement Act, 1964.* Short title.

2. In this Act, unless the contrary intention appears, Interpre-
tation.

SCHEDULE.

Section 2.

THIS AGREEMENT under seal made the eighteenth day of November, 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 BASIC MATERIALS PTY. LIMITED a company incorporated under 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 13 hereof) of the other part.
and

WHEREAS :

(a) The Company is a wholly owned subsidiary of Cliffs International Inc. a Delaware Corporation registered in Western Australia as a foreign corporation under the provisions of the Companies Act 1961. Cliffs International Inc. is a wholly owned subsidiary of The Cleveland-Cliffs Iron Company an Ohio Corporation. The Company is the holder of the Mining Areas defined in Clause 1 hereof.

(b) The parties hereto believe that the mining areas contain large deposits of iron ore with an average iron content appreciably below 60% and with physical characteristics which render such iron ore unsaleable as direct shipping ore (as defined in clause 1 hereof) under the quality requirements of the world steel industry.

(c) Attempts were made to improve and upgrade the said iron ore but test work indicated that either such iron ore was not amenable to then known concentrating techniques or the degree of beneficiation was very slight and consequently uneconomic.

(d) Exhaustive research in Western Australia and in the United States of America (culminating in full scale pilot plant tests) satisfied the Company that iron ore pellets equal to or superior to pellets currently produced in the United States of America could be produced from this iron ore by the Pelletisation process.

(e) The pelletisation process is an advanced treatment process of iron ore and requires considerable technical organisation and skill. As contrasted to mining of direct shipping ore (as defined in clause 1) the process requires extensive additional facilities and utilises a process with vastly increased technical and consumable supply and electric power requirements. The necessary pelletisation plant

No. 91.] *Iron Ore (Cleveland-Cliffs)* [1964.
Agreement.

“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 and includes the commercial wharf to be constructed by the Company for the reception of inward cargoes or (except for the purposes of 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 ($\frac{1}{2}$) 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 or iron ore pellets hereunder (other than iron ore shipped solely for testing purposes);

“financial year” means a year commencing on and including the 1st 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 ($\frac{1}{2}$) 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 ($\frac{1}{2}$) 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 Cape Preston or such other port or place mutually agreed on and serving the Company's wharf;

“iron ore pellet contracts” means the contract or contracts referred to in clause 5 (1) hereof;

“iron ore pellets” means iron ore in pellet or other form produced by pelletisation or more advanced reduction or other more advanced treatment process from iron bearing material mined from the mining areas.

“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 Rati-fying 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;

- “parent company” means and includes both Cliffs International Inc. and The Cleveland-Cliffs Iron Company;
- “person” or “persons” includes bodies corporate;
- “plant site” means the area near the harbour at Cape Preston on which the pellet plant or plants crushing and grinding facilities stockpiling yards electric power generating plant petroleum storage and other ancillary facilities thereto (or such other site as shall be approved by the State) shall be situated;
- “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;
- “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 17 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 17;

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; and
- (b) Phase 2—the period thereafter.

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 prospect for iron ore) over the whole of the mining areas under section 276 of the Mining Act at a rental at the rate of four pounds (£4) 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—

Obligations
of the State
during
Phase 1.

- (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 30th day of November, 1964;
- (c) to the extent reasonably necessary for the purposes of clause 5 hereof allow the Company to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a plant site and harbour wharf railway townsite (both

in or near the harbour and on or near the mining areas) and other areas required for the purposes of this Agreement; and

(d) take the administrative steps set out in Clause 5 (5) (b) hereof.

Ratification
and
operation.

3. (1) Clauses 8 9 10 (other than paragraphs (d) and (1) of clause 10) 11-15 both inclusive and 17 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 thirtieth 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 sub-clause (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 sub-clause (2) of clause 9 subclause (3) of clause 9 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10 and clauses 14 16 17 and 20 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.

Initial
obligations
of Company.

4. The Company will actively and conscientiously endeavour to conclude the contracts and to make the arrangements set out in Clause 5 (1) hereof and will from time to time and on request keep the State informed on these matters.

5. (1) At any time prior to the 31st December, 1965, the Company may give notice to the Minister that:

Company
to give
notice.

- (a) The Company has entered into or intends to enter into contracts satisfactory to the Company for the sale by the Company of iron ore pellets.
- (b) The Company has made or is about to make arrangements satisfactory to the Company for financing by any means the works referred to in clause 9 hereof and that the Company proposes to proceed with the works set out in clause 9 hereof.

(2) The Company may at any time and shall as soon as possible after giving the notice referred to in Clause 5 (1) hereof submit to the Minister:

Company
to submit
proposals.

- (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 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 to the plant site of iron ore the pelletisation and shipment before or after pelletisation of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years 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 the depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which wharf 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 a draught of 42 feet;
- (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 other than those set out in sub-paragraph (b) of this subclause; and

(b) the location and respective production and storage capacities of the pelletisation plant and facilities.

(3) (a) If, within one (1) month of the 31st December, 1965 the Company gives notice to the Minister that it has been unable to make the contracts and arrangements set out in clause 5 (1) hereof the Minister will grant such extension of time as the Company requests up to the 31st December, 1969.

(b) If an extension is granted under paragraph (a) of this subclause and if within one (1) month of the 31st December, 1969 the Company demonstrates to the reasonable satisfaction of the Minister that the Company has duly complied with its other obligations and has genuinely and actively but unsuccessfully endeavoured to make the contracts and arrangements set out in clause 5 (1) hereof and the Company reasonably requires an additional period up to the 31st December, 1972 for the purpose of making such contracts and arrangements and has reasonable prospects in that regard if granted an extension the Minister will grant such extension as is warranted in the circumstances up to the 31st December, 1972.

(c) If an extension is granted under paragraph (b) of this subclause then prior to the date such extension expires the Company shall give notice to the Minister whether or not it has concluded the contracts and arrangements set out in clause 5 (1) hereof. If the notice is to the effect that such matters have been concluded the Company will within twelve (12) months after such notice commence and within four (4) years after commencement complete the works set out in clause 9 hereof and will be ready to commence production therefrom.

If the notice is to the effect that such matters have not been concluded then the Minister may at any time after the expiration of the extension granted under paragraph (b) of this subclause give notice to the Company requiring it within twelve (12) months thereafter to conclude the iron ore pellet contracts and arrangements for finance referred to in clause 5 (1) hereof and to give notice accordingly to the Minister. If the Company gives such notice the Company will within twelve (12) months of the

giving of the notice commence and within four (4) years thereafter complete the construction referred to above. If the company fails to give such notice and no other agreement is made between the State and the Company in regard to the matter then at any time after the expiration of twelve (12) months from the giving of the notice by the State either party may by notice to the other terminate this agreement.

(4) If the Company fails within the time or extended time as the case may be hereinbefore in this clause mentioned to give the notice referred to in subclause (1) of this clause or to submit the proposals referred to in subclause (2) of this clause or fails duly and punctually to carry out its proposals as agreed or determined hereunder and to remedy the failure within reasonable time after notice specifying the failure is given to the Company by the State (or—if the alleged failure 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) then subject to the provisions of clause 16 hereof (relating to delays) the State may by notice to the Company given at any time thereafter determine this Agreement whereupon the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant thereto shall cease and determine but without prejudice to any liability on the part of the Company for any antecedent breach of or liability under any of the provisions hereof.

(5) (a) At any time prior to the 31st December, 1965 the Company may give notice to the State that it reasonably requires the reservation until the 31st December, 1966 of an area or areas of Crown Land and or land the subject of a pastoral lease at or near Cape Preston for possible development by the Company for the plant site the Company's wharf and harbour and road and rail access thereto from the mining areas.

Reservation
of harbour
site.

(b) Until the 31st December, 1965 (or if such notice is given until the 31st December, 1966) the State (unless the Company otherwise agrees) shall take all practicable administrative steps to prevent any development at Cape Preston which would be likely to interfere with the development by the Company of the plant site wharf harbour and road and rail access thereto under the terms of this Agreement.

(c) If the Company should desire to establish the Company's wharf at Cape Preston it will consult with a company to be nominated by the State (hereinafter called

“the nominated company”) and will not without the consent of the nominated company submit proposals in regard thereto without providing and ensuring therein—

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets for shipment from the Company's wharf remains available to the nominated company;
- (ii) that suitable road and rail access from the nominated company's mining areas to its plant site and from the plant site to the Company's wharf remains available to the nominated company;
- (iii) that the Company's wharf and associated facilities will be so constructed as to cater for the berthing of ships requiring at least forty-two feet (42') of water and so as to be adequate to handle the outward shipment of an aggregate of at least ten million (10,000,000) tons of iron ore and iron ore pellets per annum and to make suitable provision for inward cargo

and except with the consent of the Minister the Company in developing the Cape Preston area will ensure that effect is given to the factors in this paragraph mentioned.

(d) If no agreement is reached between the Company and the nominated company and if at any time after the 31st December, 1966 the Company has not submitted its own full and acceptable proposals to the State including the requirements of paragraph (c) of this subclause and the nominated company submits proposals to the Minister for the construction of a wharf and associated facilities at Cape Preston then subject to the remaining paragraphs of this subclause and provided this Agreement is still in force the Minister shall require that such proposals provide and ensure—

- (i) that there remains available to the Company a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets for shipment from the wharf to be constructed by the nominated company;
- (ii) that there remains available to the Company suitable road and rail access from the Company's mining areas to such plant site and from the plant site to the wharf of the nominated company;
- (iii) that the wharf and associated facilities of the nominated company will be so constructed as to cater for the berthing of ships requiring at least forty-two feet (42') of water and subject to paragraph (f) of this subclause will be adequate to

handle the outward shipment of an aggregate of at least ten million (10,000,000) tons of iron ore and iron ore pellets per annum and to make suitable provision for inward cargo.

(e) The proposals of the nominated company (insofar as they relate to the matters referred to in paragraph (d) of this subclause) shall before approval by the Minister be submitted by him to the Company to enable it to make such representations thereon as it sees fit either to the Minister or to the nominated company as to requiring the nominated company to—

- (i) extend or enlarge the wharf so as to be adequate to handle a greater capacity than ten million (10,000,000) tons per annum;
- (ii) make provision for the facilities associated with the wharf in excess of the facilities stated by the nominated company in its proposals as desired for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the Company;

but subject to the Company making arrangements which are mutually satisfactory with the nominated company for payment of the cost of such additional work. In the event of the Company and the nominated company being unable to agree on the basis for such payment the Minister shall determine the method of payment and the necessary security. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(f) If either company demonstrates to the State that at Cape Preston it would not be reasonably practicable for the proposals to include the matters or all matters referred to in paragraphs (c) (d) and (e) (as the case may be) of this subclause the Minister shall either waive compliance with the whole or part of the matters or shall submit alternative proposals for an equitable sharing of the harbour's capacity by both companies. The nominated company may accept the alternative proposals failing which the nominated company shall refer the matter to arbitration in which event the Company may be joined as a party to the arbitration.

(g) If prior to the 31st December, 1966 any company desires to submit proposals to the Minister for the establishment of a wharf at Onslow the Minister shall require it to first consult with the Company and that subject to paragraph (j) of this subclause such company does not (without the consent of the Company) submit proposals in regard thereto unless such proposals provide and ensure for the matters set out in paragraph (h) of this subclause.

(h) If the Company should after the 31st December, 1966 desire to establish the Company's wharf at Onslow it will consult with the nominated company and subject to paragraph (j) of this subclause will not without the consent of the nominated company submit proposals in regard thereto if the nominated company has previously submitted its own full and acceptable proposals to the State pursuant to an agreement with the State relating to the mining within the said State and shipment from Onslow of iron ore. If the nominated company has not so submitted proposals and no agreement is reached between the Company and the nominated company within three (3) months from the commencement of consultations the Company may submit proposals under clause 5 (2) of this Agreement for the construction of a wharf and harbour at Onslow but subject to the remaining subclauses the Minister may require that any such proposals shall provide and ensure—

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets per annum for shipment from the wharf to be constructed by the Company remains available to the nominated company provided that this does not unduly prejudice the selection of a site by the Company;
- (ii) that suitable road and rail access from the nominated company's mining areas to such plant site and from the plant site to the Company's wharf remains available to the nominated company provided that this does not unduly prejudice the selection of road and rail access by the Company;
- (iii) that the Company's wharf and associated facilities will be so constructed that they will cater for the berthing of ships of forty thousand (40,000) tons and also make provision for inward cargo required by the nominated company.

(i) The Minister shall refer the Company's proposals under paragraph (h) before approval thereof to the nominated company to enable it to make such representations thereon as it sees fit to the Minister as to requiring the Company to—

- (i) extend or enlarge the wharf;
- (ii) make provision for facilities associated with the Company's wharf in excess of the facilities stated by the Company in its proposals as desired by it for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the nominated company;

but subject to the Company making arrangements which are mutually satisfactory with the nominated company for payment for the cost of such additional work. In the event of the Company and the nominated company being unable to agree on the basis for such payment the Minister shall determine the method of payment and the necessary security. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(j) If either company demonstrates to the State that at Onslow it would not be reasonably practicable for the proposals to include all or any of the matters referred to in paragraphs (h) and (i) of this subclause the Minister shall either waive compliance with the whole or part of the matters or shall submit alternative proposals for an equitable sharing of the harbour's capacity by both companies. The Company may accept the alternative proposals failing which the Company shall refer the matter to arbitration in which event the nominated company may be joined as a party to the arbitration.

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) hereof the Minister shall give to the Company notice either of his approval of the proposals or of 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 of the port and other facilities 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 (subject to clause 5 (3) hereof) 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.

Consideration of other proposals under clause 5 (2).

Extension of
time.

7. (1) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is 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 31st day of December, 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 31st day of December, 1965 or if any extension or extensions should be granted under clause 5 (3) 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.

Commence-
ment date.

(3) Subject to the approval of 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 or the date upon which the Company gives notice to the Minister that it proposes to proceed with the works set out in clause 9 hereof (whichever shall be the later) 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.

Terms
"not more
favourable."

(5) In deciding whether for the purposes of clause 7 (4) 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 the works set out in clause 9 hereof including its obligations to mine transport by rail and ship iron ore pellets and restrictions relating thereto to pay rent additional rental and royalty 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.

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

Phase 2.
Obligations
of State.
Mineral
Lease.

(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 clause 5 (2) 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—

Under
Company's
proposals.

(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

Lands.

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 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

Services and facilities.

- (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 thirtieth anniversary of the export date 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 as the Company may from time to time designate in a notice to the Minister) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore and iron ore concentrates and iron ore pellets 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 or use or in the case of iron ore concentrates production as the case may be of the iron ore or iron ore concentrates or iron ore pellets; and

(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. Other
rights.

(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) 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) Non-
interference
with
Company's
rights.

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;

No
resumption.

(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;

Labour
requirements.

(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;

No dis-
criminatory
rates.

(d) except as provided in this Agreement shall not impose nor permit nor authorise 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;

Rights
to other
minerals.

(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 and substances 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 other than those required in clause 5 (2) hereof 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.

Consents to improvements on leases.

(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.

9. (1) The Company shall within four (4) 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 total cost of not less than thirty-five million pounds (£35,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease to transport by rail to the plant site pelletise and transport 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 pellets and will within a further period of five (5) years increase the capacity of such plant to a minimum of 3,000,000 tons of iron ore pellets per annum and without lessening the generality of this provision the Company shall within the first mentioned period or extended period as the case may be—

Phase 2. Obligations of the Company to construct.

- (a) construct install and provide upon the mineral lease or plant site 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 pellet 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 five (5) years next following the export date;

On mining areas and plant site.

To
commence
exports.

(b) actually commence to mine transport by rail and ship from the Company's wharf iron ore pellets produced from 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;

To construct
railway.

(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' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mining areas to the plant site 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;

To make
roads.

(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 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;

To construct
wharf.

(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

To carry out
proposals.

(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; Operation of railway.
- (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; Use of roads by others.
- (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; Compliance with laws.
- (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; Maintenance.
- (e) 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 Shipment of and price for ore.

time to time prevailing PROVIDED THAT this paragraph shall not apply to iron ore used for the production of iron ore pellets or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;

Use of wharf
and
facilities.

- (f) subject to and in accordance with by-laws (which shall include provision 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;

Access
through
mining areas.

- (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;

Protection
for
inhabitants.

- (h) subject to and in accordance with by-laws (which shall include provision 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 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 their employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

Use of local
labour and
materials.

- (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;

Royalties.

- (j) pay to the State royalty on all iron ore (or on iron ore pellets produced from 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 six shillings (6/-d) per ton (subject to subparagraph (viii) 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 three shillings (3/-d) per ton (subject to subparagraph (ix) 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 one shilling and sixpence (1/6d) per ton;
- (iv) on iron ore concentrates produced from locally used ore and on other locally used ore at the rate of one shilling and sixpence (1/6d) per ton;
- (v) on iron ore pellets produced in Western Australia north of the 26th parallel of latitude from iron ore with a combined average iron content of less than 60% at the rate of:
 - (a) one shilling (1/-d) per ton for all iron ore pellets shipped or sold during year one to year fifteen (both inclusive);
 - (b) one shilling and threepence (1/3d) per ton for all iron ore pellets shipped or sold during year sixteen to year twenty-five (both inclusive);
 - (c) one shilling and sixpence (1/6d) per ton for all iron ore pellets shipped or sold after year twenty-five;
- (vi) on iron ore pellets produced in Western Australia north of the 26th parallel of latitude from iron ore with a combined average iron ore content of 60% or over at the rate of one shilling and sixpence (1/6d) per ton;

- (vii) 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;
- (viii) (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 six shillings (6/-d) 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;
- (ix) (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 three shillings (3/-d) 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
- (x) the royalty at the rate of one shilling and sixpence (1/6d.) per ton referred to in subparagraphs (iii) (iv) and (vi) 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 f.o.b. 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.
- (xi) the respective royalties referred to in subparagraph (v) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January 1970 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 f.o.b. 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 1968.

For the purposes of this paragraph "locally used ore" means iron ore (other than iron ore from which iron ore pellets are produced which are subject to royalty under subparagraph (v) or (vi) of this paragraph) 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 the production of iron ore pellets 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 the production of iron ore pellets 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 or iron ore pellets from the Company's wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore pellets 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 pellets shipped or sold or 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 f.o.b. 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 three shillings and sixpence (3/6d) 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

Payment of royalties.

Rent for mineral lease.

within the said State of iron ore pellets 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 two shillings (2/-d) 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 two shillings and sixpence (2/6d) 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 three shillings (3/-d) per acre;
- Other rentals.** (m) pay to the State the rental referred to in the proviso to clause 8 (1) (b) hereof if and when such rental shall become payable;
- Inspection.** (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 or iron ore pellets 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 or iron ore pellets 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
- Export to places outside the Commonwealth.** (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 ten shillings (10/-d) 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 to iron ore pellets or iron and steel or steel manufacture by the Company or an associated company within the said State.

(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) (b) and (f) of sub-clause (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.

10. The parties hereto covenant and agree with each other 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 Board Act, 1904 and of a supply authority under the Electricity

By-laws.

Mutual covenants.

Water and power supplies

Act, 1945. The State acknowledges that large quantities of potable water up to four million (4,000,000) gallons a day will be required by the Company for its operations under this Agreement. The Company proposes to sink bores in the Fortescue area of the said State for the purposes of ascertaining and testing the availability of supplies. The Company will on request by the State from time to time give to the State particulars of the number depth and kind of bores sunk by it the precise situation of each and the quantities and quality of water obtained therefrom and will notify the State when supplies sufficient for the Company's purposes aforesaid have been proved. After such notice has been given the State will not itself and will not authorise any other to sink any new bore in any position which in the opinion of the State may injuriously affect the supply of water from the bore or bores sunk and required by the Company without making available to the Company adequate alternative supplies. The Company however shall not bore for or store water in any position which in the opinion of the State may injuriously affect any existing water supply of the lessee or occupier of any land;

Use of
public roads.

(b) that the Company may use any public roads which may from time to time exist in the area of its 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;

Upgrading
of existing
roads.

(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;

Effect of
determina-
tion of
Agreement.

(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; and
 - (iii) 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 13 hereof of land for the plant site or 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 other than plant and equipment 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 and equipment 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 and equipment 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;

Effect of
determina-
tion of lease.

No charge
for the
handling of
cargoes.

(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;

Zoning.

(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;

Rentals and
evictions.

(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;

Labour
conditions.

(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;

Sub-
contracting.

(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 authorised or obliged to carry out hereunder;

- (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; Rating.
- (l) 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 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 Determina-
tion of
Agreement.

(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.

Alteration
of works.

11. 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 those on the plant site and 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 (including increased operating costs and loss of profits if any) 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.

12. 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.

13. (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).

14. (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. Variation.

(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 the works set out in Clause 9 hereof to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of the export of iron ore (or iron ore pellets produced from iron ore) from the mining areas.

(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 proposals for joint user or joint construction or both of any such works facilities or services and other relevant factors arising after the date hereof.

(4) The Company shall be entitled at any time and from time to time with the prior approval in writing of the Minister to enter into an agreement with any third party for the joint construction maintenance and user or for the joint user only of any work constructed or agreed to be constructed by the Company pursuant to the terms of this Agreement or by such other party pursuant to any agreement entered into by it with the State and in any such event any amount expended in or contributed to the cost of such construction by the Company shall for the purpose of the calculation of the said sum of thirty-five million pounds agreed to be expended by the Company under Clause 9 hereof so long as the pelletising plant capacity stipulated hereunder and the processing capacity stipulated under the other agreement of each and every category of material shall not be reduced and provided such construction is part of the constructions to which the said sum of thirty-five million pounds relates be taken and accepted as an amount equal to the total amount expended (whether by the Company or the said third party or by them jointly) in the construction of such work.

(5) When any agreement entered into by the Company with some other company or person results in that other company or 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 of and period for which the other company or person actually effects the discharge of those obligations.

Export
license.

15. (1) On the 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 or iron ore pellets 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 or iron ore pellets 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 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 or iron ore pellets from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore or iron ore pellets (as the case may be) 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 or iron ore pellets (as the case may be) 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 or iron ore pellets 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 authorised by the Company so to do) for any license or licenses under Commonwealth law for the export of iron ore or iron ore pellets as may from time to time be necessary for the purposes of this Agreement.

16. This Agreement shall be deemed to be 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 Delays.

No. 91.] *Iron Ore (Cleveland-Cliffs)* [1964.
Agreement.

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 lockout 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 pellets export industry) to profitably sell iron ore pellets 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.

17. 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.

18. 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.

19. Any notice consent or other writing authorised 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 or other address of which such Company has given the State prior notice and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised 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 post.

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

- (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 13 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 13 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.

21. This Agreement shall be interpreted according to the law for the time being in force in the said State. Interpreta-
tion.

SCHEDULE

WESTERN AUSTRALIA

IRON ORE (CLEVELAND-CLIFFS) 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 Basic Materials Pty. 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 13 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 (Cleveland-Cliffs) Agreement Act, 1964 which said Act (*inter alia*) authorised 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

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

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 Industrial Development

ARTHUR GRIFFITH
Minister for Mines

THE COMMON SEAL OF BASIC MATERIALS PTY. LIMITED was hereunto affixed in the presence of—

} [C.S.]

W. E. DOHNAL
Director.

J. H. WILLIAMS
Secretary.
