

IRON ORE (MOUNT NEWMAN) AGREEMENT.

13^o Elizabeth II., No. LXXV.

No. 75 of 1964.

AN ACT to approve an agreement relating to iron ore deposits at or near Mount Newman, and for incidental and 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:—

Short title and citation.

1. This Act may be cited as the *Iron Ore (Mount Newman) Agreement Act, 1964.*

Interpretation.

2. In this Act—

“the Agreement” means the agreement of which a copy is set out in the Schedule to this Act, and, if that agreement is added to or

SCHEDULE.

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

WHEREAS :

(a) The Company (being satisfied from investigations which prior to 1st day of June 1964 cost over three hundred thousand pounds (£300,000) that the mining areas defined in clause 1 hereof contain iron ore of tonnages and grades sufficient to warrant economic recovery and marketing) desires to carry out certain investigations relating to the mining transport by rail and shipment of iron ore from the mining areas and also to the entering into a contract or contracts for the export sale of that ore

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

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

NOW THIS AGREEMENT WITNESSETH:—

1. In this Agreement subject to the context—

"associated company" means—

(a) any company having a paid-up capital of not less than one million pounds (£1,000,000) notified in writing by the Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which—

(i) is a subsidiary of the Company within the meaning of the term "subsidiary" in section 6 of the Companies Act, 1961;

Interpre-
tation.

- (ii) holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the Company or by any company that holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company for all or any of the purposes of this Agreement and in which the Company or such other company holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) is related within the meaning of that term in the aforesaid section to the Company or to any company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital, and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Company in its business or operations hereunder;

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

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

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

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

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will not pass through a one half ($\frac{1}{2}$) 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 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 Port Hedland or such other port or place mutually agreed on and serving the Company’s wharf;
- “integrated iron and steel industry” means an industry for the manufacture of iron and steel or for the manufacture of steel from iron ore by a process which does not necessarily involve the production of pig iron or basic iron in the production of steel;
- “iron ore contracts” means the contract or contracts referred to in clause 5 (2) (b) hereof;
- “Land Act” means the Land Act, 1933;
- “mineral lease” means the mineral lease referred to in clause 8 (1) (a) hereof and includes any renewal thereof;

- “Mining Act” means the Mining Act, 1904;
- “mining areas” means the areas delineated and coloured red on the Plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification;
- “Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the 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;
- “person” or “persons” includes bodies corporate;
- “port townsite” means the townsite to be established pursuant to this Agreement near the harbour;
- “Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;
- “said State” means the State of Western Australia;
- “secondary processing” means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic mag-netic and gravity processing and agglomeration, pelletization or comparable changes in the physical character of iron ore;
- “special lease” means a special lease or license to be granted in terms of this Agreement under the Rati-fying 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 em-ployees 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;

1964.]

Iron Ore (Mount Newman) [No. 75.
Agreement.

December, 1965 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire—

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

whichever shall first happen;

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

3. (1) Clauses 8 9 10 (other than paragraphs (d) and (1) thereof) 11-21 both inclusive and 23 of this Agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in clause 2 (b) hereof is passed as an Act before the fifteenth day of November, 1964 or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of or done performed or omitted to be done or performed under this agreement except as hereinafter provided in clause 10 (d) hereof.

**Ratification
and
operation.**

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

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

Obligations
of Company
during
Phase 1.

4. (1) The Company at an estimated total cost as from the 1st June, 1964 of not less than three hundred and fifty thousand pounds (£350,000) shall with all reasonable diligence continue to do or shall carry out and by the 31st December, 1964 (or such extended date if any as the Minister may approve) shall complete the matters hereinafter in this subclause mentioned and everything necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5 (2) (a) hereof. The matters first referred to in this subclause are—

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;
- (c) an engineering investigation of the route for a railway from the mining areas to the harbour and wharf installation for the export of the iron ore;
- (d) an engineering investigation of a harbour site at or near Port Hedland or such other port or place mutually agreed on and wharf site therein for the

purposes of the Company but having regard to the proper development use and capacity of the harbour as a whole by persons and corporations other than the Company;

- (e) an investigation of suitable water supplies for the townsites and harbour or port services;
- (f) the planning of suitable townsites in consultation with the State but having due regard to the general development of the port townsite and (if and to the extent applicable) the deposits townsite for use by others as well as the Company; and
- (g) metallurgical and market research.

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

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

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the harbour area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the harbour area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the harbour area and approaches and the Company will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5 (2) (a) hereof in regard to the matters mentioned in this subclause the Company will so far as reasonably practicable ensure that the detailed proposals—

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

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

Company to
submit
proposals.

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

(a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant—

(A) to the mining from the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Company during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years; and

(B) to the transport and shipment of iron ore to be mined by the Company hereunder during the operation of Phase 2 of this Agreement—

and including the location area lay-out design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely—

(i) the harbour and harbour development including dredging 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 an ore-carrying capacity of not less than sixty thousand (60,000) tons;

(ii) the railway between the mining areas and the Company's wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;

(iii) townsites on the mining areas and near the harbour and development services and facilities in relation thereto;

(iv) housing;

(v) water supply;

(vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9 (2) (b) shall operate); and

(vii) any other works services or facilities proposed or desired by the Company;

and

(b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts for the sale by the Company hereunder and shipment from the Company's wharf of not less than fifteen million (15,000,000) tons of iron ore (and/or processed iron ore) from the mineral lease at not less than two million (2,000,000) tons in the first two (2) years next following the export date and in each succeeding year after the expiration of the said two (2) years at not less than one million (1,000,000) tons secondly of the availability of finance necessary for the fulfilment of the Company's proposals hereunder relating to the iron ore export project the subject of Phase 2 of this Agreement and thirdly of any necessary license to the Company from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

(3) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i) to (vii) inclusive of paragraph (a) of subclause (2) of this clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (1) of the said paragraph (a) of the said subclause (2) and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore contracts and the finance necessary for the iron ore export project.

(4) If the Company should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December, 1964 (or such later

(2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(2) Within two (2) months after receipt of evidence from the Company with regard to the matters mentioned in clause 5 (2) (b) hereof to the reasonable satisfaction of the Minister the State will give to the Company notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Company an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Company may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

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.

**Extension of
time.**

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

**Commence-
ment date.**

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

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

**Phase 2.
Obligations
of State.**

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

**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) (a) (A) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the

payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease;

- (b) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations—

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 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—

Lands.

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

- (ii) provide any services or facilities subject to the Company's bearing and paying the capital cost involved and reasonable charges for

Services and
facilities.

maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees—

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5 (4) hereof) the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which subject to its being payable by the Company to the State may from time to time at the option of the Company be payable in respect of such one or more of the special leases or other leases granted to the Company under this paragraph and remaining current) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore and iron ore concentrates in respect of which royalty is payable under clause 9 (2) (j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates SO NEVERTHELESS that where in respect of any such year the additional rental so payable is less than a minimum sum of one hundred and fifty thousand pounds (£150,000) the Company will within three (3) months after expiration of that year pay to the State as further rental the difference between one hundred and fifty thousand pounds (£150,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of two shillings and sixpence (2s. 6d.) per ton as aforesaid shall be offset by the Company against any amount payable by it to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

Other
rights.

- (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;

(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) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations

Non-
interference
with
Company's
rights.

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

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-
crimatory
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 reasonably required by the Company for its purposes under this Agreement; and

1964.] *Iron Ore (Mount Newman)* [No. 75.
Agreement.

(f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5 (2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company's making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

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 three (3) years next following the commencement date (or within such extended period not exceeding a further two years as the Company may satisfy the Minister that the Company reasonably requires and the Minister approves), and at a cost of not less than thirty million pounds (£30,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease to transport by rail to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore and without lessening the generality of this provision the Company shall within the aforesaid period or extended period as the case may be—

Phase 2
obligations
of the
Company.
To construct.

(a) construct install and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to meet and discharge its obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within three (3) years next following the export date;

On mining
areas.

(b) actually commence to mine transport by rail and ship from the Company's wharf iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;

To
commence
exports.

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

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 Company's wharf and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Company's wharf or as required for the purposes of this Agreement;

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 by the said date such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;

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;

1964.] *Iron Ore (Mount Newman)* [No. 75.
Agreement.

- (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.

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

Shipment of
and price for
ore.

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

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 those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

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;

- (j) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other iron ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows—
- (i) on direct shipping ore (not being locally used ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-d) per ton (subject to subparagraph (vi) of this paragraph) in respect of ore the subject of any shipment or sale;
 - (ii) on fine ore (not being locally used ore) at the rate of three and three quarter per centum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than three shillings (3/-d) per ton (subject to subparagraph (vii) of this paragraph) in respect of ore the subject of any shipment or sale;
 - (iii) on fines (not being locally used ore) at the rate of one shilling and sixpence (1s. 6d.) per ton;
 - (iv) on iron ore concentrates produced from locally used ore by secondary processing and on locally used ore (not being iron ore used for producing iron ore concentrates subject to royalty hereunder) at the rate of one shilling and sixpence (1s. 6d.) per ton;
 - (v) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
 - (vi) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under subparagraph (i) of this paragraph) in any financial year by six

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

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;

(vii) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and liable to royalty under subparagraph (ii) of this paragraph) in any financial year by 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

(viii) the royalty at the rate of one shilling and sixpence (1/6d.) per ton referred to in subparagraphs (iii) and (iv) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron 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.

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

Payment of
royalties.

(k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of iron ore from the Company's wharf furnish to

the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the 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 within the said State from a plant for secondary processing or for iron and steel manufacture or steel manufacture (whichever is first constructed) if and during the period that the total area for the time being comprised within the mineral lease—
- Rent for
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;
- (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;
- Other
rentals

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 hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and

Export to
places
outside the
Common-
wealth.

(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—

(i) to ore the subject of secondary processing or iron and steel or steel manufacture by the Company or an associated company within the said State;

1964.] *Iron Ore (Mount Newman)* [No. 75.
Agreement.

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

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

10. The parties hereto covenant and agree with each other **Mutual covenants.** as follows:—

- (a) that subject to and in accordance with proposals **Water and power supplies.** approved or determined under clause 6 hereof the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any

Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the Water Boards Act, 1904 and of a supply authority under the Electricity Act, 1945;

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

Effect of
determina-
tion of lease.

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

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 Determination of Agreement.

Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and

(m) that—

(i) for the purposes of determining whether and the extent to which—

(A) the Company is liable to any person or body corporate (other than the State); or

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

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

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

Secondary processing.

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

(a) the plant will by the end of year 12 have the capacity to process at an annual rate of and will during year 13 process not less than Five hundred thousand (500,000) tons of iron ore;

(b) production will progressively increase so that the plant will by the end of year 16 have the capacity

1964.]

Iron Ore (Mount Newman) [No. 75.
Agreement.

to process at an annual rate of and will during year 17 process not less than Two million (2,000,000) tons of iron ore; and

- (c) the capital cost involved will be not less than Eight million pounds (£8,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

Provided that if the Company satisfies the Minister that the Company's mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on an economic basis then the Minister may approve a modified proposal and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having regard to prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum on a revised programme and in approving such modified proposal the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and (c) of this subclause.

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

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

- (a) the Company shall not after the end of year 12 export iron ore hereunder at an annual rate in excess of Five million (5,000,000) tons unless prior

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

Iron and
steel
industry.

- (a) by the end of year 25 productive capacity will be at an annual rate of not less than and during year 26 production will be not less than Five hundred thousand (500,000) tons of pig iron foundry iron or steel (hereinafter together referred to as "product") of which not less than Two hundred and fifty thousand (250,000) tons will be steel;
- (b) production will progressively increase so that by the end of year 29 productive capacity will be at an annual rate of not less than and during year 30 production will be not less than One million (1,000,000) tons of product (of which not less than Five hundred thousand (500,000) tons will be steel) and by the end of year 31 productive capacity will be at an annual rate of not less than and during year 32 production will be not less than One million (1,000,000) tons of steel; and
- (c) the capital cost involved will be not less than Forty million pounds (£40,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of manufacture than any at present known to either party.

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

(3) If such proposals are not submitted by the Company to the Minister before the end of year 20 or if such proposals are so submitted but are not approved by the Minister

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

rental and royalty and (in the case of secondary processing by a third party pursuant to clause 11 hereof) to termination of rights as provided in clause 12 hereof if proposals for iron and steel manufacture or steel manufacture are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State under paragraph (e) of clause 10 hereof and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party PROVIDED HOWEVER that if after the end of year 33 the Minister gives notice to the Company under clause 12 hereof that another company or party has agreed to establish either secondary processing or an integrated iron and steel industry but not both then the latter company or party need not have any obligation to establish both.

Supply of
iron ore
by others.

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

Supply of
iron ore
to others.

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

(i) at such rates and grades (as may reasonably be available and be required);

(ii) at such points on the Company's railway;

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

Export
license.

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

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

No. 75.] *Iron Ore (Mount Newman)* [1964.
Agreement.

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 as may from time to time be necessary for the purposes of this Agreement.

Delays.

22. 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 majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the iron ore export industry) to profitably sell ore or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Power to extend periods.

23. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

Arbitration.

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

Notices.

25. 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 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.

26. (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 19 hereof; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 19 hereof;

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

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

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

Interpre-
tation.

1964.]

Iron Ore (Mount Newman) [No. 75.
Agreement.

Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say:—

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

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

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

IN WITNESS whereof we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company has been affixed hereto this

day of

19 .

THE SCHEDULE ABOVE REFERRED TO:

