

WESTERN AUSTRALIA

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# IRON ORE (MARILLANA CREEK) AGREEMENT ACT

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No. 2 of 1991

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**AN ACT to ratify an Agreement between the State and BHP Minerals Limited relating to the development and mining of iron ore deposits, the processing of iron ore, and for incidental and other purposes.**

*[Assented to 27 May 1991.]*

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Iron Ore (Marillana Creek) Agreement Act 1991*.

## **Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

## Interpretation

3. In this Act, unless the contrary intention appears—

“Agreement” means the Agreement a copy of which is set out in the Schedule and includes that Agreement as varied from time to time in accordance with its provisions.

## Agreement ratified

4. (1) The Agreement is ratified.

(2) The implementation of the Agreement is authorized.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.

## SCHEDULE

(Section 3)

THIS AGREEMENT is made this 20th day of December 1990

BETWEEN

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and

BHP MINERALS LIMITED a company incorporated in the State of Western Australia and having its registered office at Level 18, 200 St George’s Terrace, Perth (hereinafter called “the Company” in which term shall be included its successors and permitted assigns) of the other part.

WHEREAS:

- (a) the Company has established within the lands the subject of Exploration Licences Nos. 47/294, 47/71 and 47/23 iron ore of tonneages and grades sufficient to warrant economic recovery and marketing;
- (b) the said Exploration Licence No. 47/294 comprises the land within Temporary Reserve No. 3359H which (with other land) has hitherto been reserved by the

State under the provisions of clause 23(4)(g) of the Agreement defined in section 2 of the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964 (hereinafter called "the 1964 Agreement");

- (c) by an assignment dated the 18th day of March 1966 the benefit of the said clause 23(4)(g) and certain other clauses of the 1964 Agreement was assigned with the consent of the State to the Company;
- (d) The Broken Hill Proprietary Company Limited and Australian Iron & Steel Proprietary Limited also hold interests under the 1964 Agreement and by an agreement of even date herewith they the State and the Company have agreed to the cancellation of the 1964 Agreement to take effect on the coming into operation of this Agreement;
- (e) the Company has put forward a project outline for an initial mining operation which will produce approximately 5,500,000 tonnes of iron ore per annum for transportation from the mining lease and have capacity to produce up to 10,000,000 tonnes of iron ore per annum for transportation from the mining lease as markets develop and which will provide accommodation for the mine workforce by way of temporary facilities established in the vicinity of the mining lease; and
- (f) the State and Company have agreed to enter into this Agreement for the purpose of assisting the establishment of the initial mining operation as described above and providing a framework for managing future changes to the project, particularly in relation to production and workforce increases and changes in workforce accommodation arrangements.

#### NOW THIS AGREEMENT WITNESSES:

##### Definitions

##### 1. In this Agreement subject to the context—

"accommodation area" means an area or areas on or in the vicinity of the mining lease for accommodation and ancillary facilities for the mine workforce;

"advise", "apply", "approve", "approval", "consent", "certify", "direct", "notify", "request", or "require", means advise, apply, approve, approval, consent, certify direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

"agreed or determined" means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister and in agreeing or determining a fair and reasonable market value of such iron ore assessed at an arm's length basis the Company and/or the Minister as the case may be shall have regard to prevailing markets and prices for iron ore not including beneficiated ore or

beneficiated ore as the case may require both outside and within the Commonwealth and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

"approved proposal" means a proposal approved or determined under this Agreement;

"beneficiated ore" means iron ore which has been concentrated or upgraded otherwise than by washing drying crushing or screening or a combination thereof by the Company in a plant constructed pursuant to an approved proposal;

"Clause" means a clause of this Agreement;

"commencement date" means the date the Bill referred to in Clause 3 comes into operation as an Act;

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

"Company's workforce" means the persons (and the dependants of those persons) connected directly with the Company's activities under this Agreement, whether or not such persons are employed by the Company;

"deemed f.o.b. point" means on ship at the loading port;

"deemed f.o.b. value" means an agreed or determined value of the iron ore as if the iron ore was sold f.o.b. at the deemed f.o.b. point as at—

- (i) in the case of iron ore the property of the Company which is shipped out of the said State, the date of shipment;
- (ii) in any other case, the date of sale, transfer of ownership, disposal or use as the case may be;

"EP Act" means the Environment Act 1986;

"f.o.b. value" means—

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or, where the Minister is not satisfied that the price payable in respect of the iron ore represents a fair and reasonable market value for that iron ore assessed at an arm's length basis, such amount as is agreed or determined, 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 iron ore shall be placed on ship at the loading port 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 iron 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 loading port;
- (7) all import taxes by the country of the port of discharge; and
- (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;

(ii) in all other cases, the deemed f.o.b. value.

For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm's length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore and in this circumstance where the Minister in his discretion is satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be satisfied that such entire consideration represents the fair and reasonable market value;

"iron ore" includes beneficiated ore;

"Land Act" means the Land Act 1933;

"loading port" means the port of Port Hedland or if iron ore is not shipped, or is not shipped from that port, then such port (which may include the port of Port Hedland) as the Minister may determine for the purpose of this definition;

"local authority" means the council of a municipality that is a city, town or shire constituted under the Local Government Act 1960;

"mine site" means the mining lease the accommodation area and other areas provided for the facilities of the Company in the vicinity of the mining lease;

"mine workforce" means the Company's workforce engaged for the Company's activities on the mine site but shall not include persons visiting the mine site in connection with the Company's mining activities on a short term basis only or employed for a specific task of limited duration;

"Mining Act" means the Mining Act 1978;

"mining lease" means the mining lease granted pursuant to Clause 12 and includes any renewal thereof and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

"Minister" means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement 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;

"Minister for Mines" means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

"month" means calendar month;

"Mount Newman Participants" means the parties (or party) for the time being constituting "the Company" under the agreement defined in section 2 of the Iron Ore (Mount Newman) Agreement Act 1964;

"notice" means notice in writing;

"person" or "persons" includes bodies corporate;

"private roads" means the roads referred to in subclause (1) of Clause 16 and any other roads (whether within or outside the mining lease) constructed by the Company in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

"public road" means a road as defined by the Road Traffic Act 1974;

"said State" means the State of Western Australia;

"State Energy Commission" means The State Energy Commission of Western Australia as described in section 7 of the State Energy Commission Act 1979;

"subclause" means subclause of the Clause in which the term is used;

"this Agreement" "hereof" and "hereunder" refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“ultimate holding company” bears the same meaning as in section 7(6) of the Companies (Western Australia) Code (as enacted at the date of execution of this Agreement);

“washing” means a process of separation by water using only size as a criterion.

### **Interpretation**

#### **2. (1) In this Agreement—**

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 33 to extend any period or date shall be without prejudice to the power of the Minister under Clause 33;
- (c) clause headings do not affect the interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;

and

- (e) reference to an Act includes the amendments to that 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.
- (2) For the purposes of subclause (3) of Clause 7 and subclause (5) of Clause 23 the Company shall be deemed to be associated with the Mount Newman Participants in the following events—
- (a) when one party only constitutes “the Company” under this Agreement and one party only constitutes the Mount Newman Participants and—
    - (i) those parties are the same party; or
    - (ii) each of those parties has an ultimate holding company which is the same company; or
  - (b) when more than one party constitutes “the Company” under this Agreement and more than one party constitutes the Mount Newman Participants and each of the parties constituting “the Company” under this Agreement—
    - (i) is a Mount Newman Participant;

- (ii) has an ultimate holding company which is also the ultimate holding company of a Mount Newman Participant;
  - (iii) is the ultimate holding company of a Mount Newman Participant; or
  - (iv) has a Mount Newman Participant as its ultimate holding company
- AND either—
- (v) all the parties constituting the Mount Newman Participants are related to the parties constituting “the Company” under this Agreement in a manner mentioned in subparagraphs (i)-(iv) of this paragraph; or
  - (vi) if any parties constituting the Mount Newman Participants are not so related each of those parties has an ultimate holding company which is also an ultimate holding company of a Mount Newman Participant which is so related.

### **Initial obligations of the State**

#### **3. The State shall—**

- (a) introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an act prior to 30 June 1991; and
- (b) subject to the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) allow the Company to enter upon Crown lands (including, if applicable, land the subject of a pastoral lease) to the extent reasonably necessary for the purposes of undertaking its obligations under subclause (1) of Clause 6.

### **Ratification and operation**

- 4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (2) If before 30 June 1991 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.



- (3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

### **Cancellation of 1964 Agreement**

5. The parties hereto acknowledge that pursuant to the agreement referred to in recital (d) hereof the 1964 Agreement has on the coming into operation of this Agreement been cancelled and the rights and obligations of the parties thereunder terminated (but without affecting the variations made to the agreement ratified by the Broken Hill Proprietary Steel Industry Agreement Act 1952 and the agreement ratified by the Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960 (each as amended from time to time) by clauses 20 and 24 of the 1964 Agreement).

### **Initial obligations of the Company**

6. (1) The Company shall continue its field and office engineering, environmental, market and finance studies and other matters necessary to enable it to finalise and to submit to the Minister the detailed proposals referred to in Clause 7.
- (2) The Company shall keep the State fully informed in writing quarterly as to the progress and results of its operations under subclause (1).
- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish to undertake.

### **Company to submit proposals**

7. (1) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall on or before 31 October 1991 and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the production of up to 5,500,000 tonnes of iron ore per annum for transportation from the land to be the subject of the mining lease and the transport and shipment of iron ore produced which proposals shall make provisions for the Company's workforce and associated population required to enable the Company to mine and recover iron ore from the mining lease and transport and ship the iron ore and shall include the

location, area, lay-out, design, quantities, 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—

- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities and any processing of iron ore proposed to be carried out;
- (b) roads within the mining lease and roads serving the mining lease;
- (c) temporary accommodation and ancillary facilities for the mine workforce on or in the vicinity of the mining lease and housing or other appropriate accommodation and facilities elsewhere for the Company's workforce;
- (d) management of vehicles on the mine site;
- (e) water supply;
- (f) power supply;
- (g) transportation of iron ore by rail;
- (h) storage and ship loading of iron ore;
- (i) mine aerodrome on or in the vicinity of the mining lease and any other aerodrome facilities and services;
- (j) any other works, services or facilities desired by the Company;
- (k) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors;
- (l) any leases, licences or other tenures of land required from the State; and
- (m) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for rehabilitation and the protection and management of the environment.

### **Order of proposals**

- (2) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (m) of subclause (1).

**Use of existing infrastructure**

- (3) Each of the proposals pursuant to subclause (1) may with the consent of the Minister and that of any other parties concerned instead of providing for the construction of new facilities or equipment or the provision of new services of the kind therein mentioned provide for the use by the Company of any existing facilities equipment or services of such kind belonging to the Company or the Mount Newman Participants during any period when the Company is associated with the Mount Newman Participants, or upon reasonable terms and conditions of any other existing facilities equipment or services of such kind.

**Additional submissions**

- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

**Consideration of proposals**

8. (1) Subject to the EP Act, in respect of each proposal pursuant to subclause (1) of Clause 7 the Minister shall—
- (a) approve of the proposal without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 7 not covered by the said proposal; or
  - (c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause

shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

#### **Advice of Minister's decision**

- (2) The Minister shall within two months after receipt of proposals pursuant to subclause (1) of Clause 7 or where the proposals are to be assessed under section 40(1)(b) of the EP Act then within two months after service on him of an authority under section 45(7) of the EP Act give notice to the Company of his decision in respect to the proposals.

#### **Consultation with Minister**

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.

#### **Minister's decision subject to arbitration**

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

#### **Arbitration award**

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows—
- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award give notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the Company the decision shall 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.

**Effect of non-approval of proposals**

- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 31 October 1992 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 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 35.

**Implementation of proposals**

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof.

**Overall development**

9. (1) Having regard to the geographical relationship and physical association of the mining lease with other iron ore deposits in and to the general development of the central Hamersley Range area, the Company in its initial proposals under Clause 7 and any subsequent proposals pursuant to Clause 10 (other than a proposal under that Clause to increase production of iron ore where the total production after such increase will not exceed 10,000,000 tonnes of iron ore per annum for transportation from the mining lease and the proposal does not involve any significant variation to the mine infrastructure) or Clause 11 shall take into account and make provision where it is reasonably practicable so to do for:—
- (a) the economic and orderly overall development of the lands the subject of this Agreement and those other iron ore deposits;
  - (b) appropriate infrastructure development in the central Hamersley Range area having regard to then existing iron ore operations and facilities and other existing developments; and
  - (c) an open town or other appropriate housing and accommodation arrangements to service the iron ore mines and other developments in the central Hamersley Range area.
- (2) The Company and the State shall co-operate and consult with each other regarding the matters referred to in subclause (1), State Government policies and development objectives, the Company's commercial requirements and any other relevant matters that the Minister or the Company may wish to consider.

**Additional proposals**

10. (1) Subject to Clause 11 if the Company at any time during the continuance of this Agreement desires to produce more than 5,500,000 tonnes of iron ore per annum for transportation from the mining lease or to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those activities specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (m) of subclause (1) of Clause 7 as the Minister may require.
- (2) The provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

**Limits on mining**

11. (1) The Company shall not produce more than 10,000,000 tonnes of iron ore per annum for transportation from the mining lease nor shall the total number of the mine workforce exceed 100 without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with this Clause.
- (2) (a) If the Company desires to increase the annual tonnage or the mine workforce beyond that specified in subclause (1) it shall give notice thereof to the Minister and furnish to the minister with that notice an outline of its proposals in respect thereto (including the matters mentioned in paragraphs (a)-(m) of subclause (1) of Clause 7).
- (b) The Minister shall within one month of a notice under paragraph (a) of this subclause advise the Company whether or not he approves in principle the proposed increase. An approval by the Minister under this subclause may be given subject to conditions including a condition requiring variations of or additions to this agreement PROVIDED THAT any such condition shall not without the consent of the Company require variations of—
- (i) the term of the mining lease or the rail spur lease or the rental thereunder;

- (ii) the rentals payable under any other lease or licence hereunder;
  - (iii) the rates of or method of calculating royalty; and
  - (iv) Clause 23.
- (3) (a) If the Minister approves in principle a proposed increase the Company must within three months of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval otherwise that approval shall lapse.
- (b) The provisions of subclause (2) of Clause 10 shall apply to detailed proposals submitted pursuant to this subclause.
- (4) Any proposal under this Clause to increase the annual tonnage to be produced or the number of the mine workforce shall specify the proposed increase and on and after approval or determination of any such proposal pursuant to subclause (3)(b) the provisions of this Clause shall apply *mutatis mutandis* to the increased tonnage or number of the mine workforce as the case may be and also to any subsequent desires of the Company for an increase in the tonnage or mine workforce.

### Mining lease

12. (1) On application made by the Company, not later than 3 months after all its proposals submitted pursuant to subclause (1) of Clause 7 have been approved or determined and the Company has complied with the provisions of subclause (4) of Clause 7, for a mining lease for the mining of iron ore of so much of the land as is then held by the Company under the exploration licences referred to in recital (a) of this Agreement the State shall upon the surrender by the Company of the exploration licences cause to be granted to the Company at the rental specified from time to time in the Mining Act a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Company's expense) for the mining of iron ore only such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto.

### Term

- (2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary the term of the mining lease shall be for a period of 21 years commencing from the date of receipt of the application therefor under subclause (1) with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period for 21

years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this Agreement such right to be exercisable by the Company making written application for any such renewal not later than one month before the expiration of the current term of the mining lease.

### **Exemption from expenditure conditions**

- (3) The State shall ensure 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 expenditure conditions imposed by or under the Mining Act in regard to the mining lease.

### **Reports**

- (4) The Company shall lodge with the Department of Mines at Perth—
- (a) such periodical reports (except reports in the form of Form 5 of the Mining Regulations 1981 or other reports relating to expenditure on the mining lease) and returns as may be prescribed in respect of mining leases pursuant to regulations under the Mining Act provided that the Minister for Mines may waive any requirement for lodgment of exploration data in respect of areas within the mining lease;
  - (b) on an annual basis, a report on ore reserves within the mining lease (using the scheme recommended by the Australasian Institute of Mining and Metallurgy and the Australian Mining Industry Council or future equivalent) together with a list of any geotechnical, metallurgical, geochemical and geophysical investigations carried out during the year and, if requested by the Department, details of any of those investigations;
  - (c) reports on drilling operations and drill holes where the main purpose of the drilling was to discover or define future ore reserves on the mining lease and, if requested by the Department, reports on drilling done within blocks of proven ore for the purpose of mine planning.

### **Access over mining lease**

- (5) The Company shall at all times permit the State and third parties with the consent of the State (with or without stock, vehicles and rolling stock) to have access to and to pass over the mining lease (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the activities of the Company under this Agreement.



**Surrender of part of mining lease**

- (6) Notwithstanding the provisions of this Clause and the Mining Act with the approval of the Minister the Company may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the mining lease.

**Stone sand clay and gravel**

- (7) The Company in accordance with approved proposals may for the construction of works (and the maintenance thereof) for the purposes of this Agreement and without payment of royalty, obtain stone sand clay and gravel from the mining lease.

**Other mining tenements**

- (8) (a) Notwithstanding anything contained or implied in this Agreement or in the mining lease or the Mining Act mining tenements may subject to the provisions of this Clause be granted to or registered in favour of persons other than the Company under the Mining Act in respect of the areas subject to the mining lease unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the current or prospective operations of the Company hereunder with respect to iron ore assuming the taking by the Company of reasonable steps to avoid the prejudice or interference or is likely unduly to reduce the quantity of economically extractable iron ore available to the Company.
- (b) A mining tenement granted or registered as a result of this Clause shall not confer any right to mine or otherwise obtain rights to iron ore on the tenement.
- (c) (i) In respect of any application for a mining tenement made under the Mining Act in respect of an area the subject of the mining lease the Minister for Mines shall consult with the Minister and the Company with respect to the significance of iron ore deposits in, on or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective iron ore operations of the Company under this Agreement.
- (ii) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Company determines that the grant or registration of the application is likely to have the effect on the

operations of the Company or the iron ore referred to in paragraph (a) of this subclause, he shall, by notice served on the Warden to whom the application was made, refuse the application.

- (iii) Before making a determination pursuant to subparagraph (ii) of this paragraph the Minister for Mines may request the Warden to hear the application and any objections thereto and as soon as practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Company or the quantity of economically extractable iron ore that a grant of the application might have.
- (d) (i) Except as provided in paragraph (c) of this subclause a Warden shall not hear or otherwise deal with an application for a mining tenement in respect of an area the subject of the mining lease unless and until the Minister for Mines has notified him that it is not intended to refuse the application pursuant to paragraph (c) of this subclause. Following such advice to the Warden the application shall be disposed of under and in accordance with the Mining Act save that where the Warden has heard the application and objections thereto pursuant to paragraph (c) of this subclause, the application may be dealt with by the Warden without further hearing.
- (ii) The Company may exercise in respect of any application heard by the Warden any right that it may have under the Mining Act to object to the granting of the application.
- (iii) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Company pursuant to paragraph (c)(i) of this subclause and any matters raised by the Company before the Warden.
- (e) (i) On the grant of any mining tenement pursuant to an application to which this subclause applies the land the subject thereof shall thereupon be deemed excised from the mining lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid or of rent which has become due and has not been paid in advance.
- (ii) On the expiration or sooner determination of any such mining tenement or, if that tenement is a prospecting licence or exploration licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 of the Mining Act, then on the expiration or sooner determination of the substitute title the land the subject of such mining tenement or

substitute title as the case may be shall thereupon be deemed to be part of the land in the mining lease (with appropriate adjustment of rental) and shall be subject to the terms and conditions of the mining lease and this Agreement.

### **Royalties**

13. (1) The Company shall during the continuance of this Agreement pay to the State royalty on all iron ore from the mining lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows—

- (a) on beneficiated ore at the rate of 3.25% of the f.o.b. value;
- (b) on all other iron ore of whatever kind at the rate of 5.625% of the f.o.b. value.

(2) The Company shall—

- (a) 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 transportation of iron ore from the mining lease furnish to the Minister a return showing the quantity of all beneficiated ore produced and all other iron ore the subject of royalty hereunder and shipped sold transferred or otherwise disposed of or used (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 thereof or if the f.o.b. value is not then finally calculated, agreed or determined 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 or on the basis of estimates as agreed or determined and shall from time to time in the next following appropriate return and payment make (by return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. value shall have been finally calculated, agreed or determined;
- (b) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company including contracts relative to any shipment or sale of iron ore hereunder and records of iron ore in stockpile or transit and to take copies of extracts therefrom and for the purpose of determining the f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore outside and within the Commonwealth and other details and information that may be required by the Minister for

the purpose of agreeing or determining the f.o.b. value and (ii) 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 or iron ore which may affect the amount of royalty payable hereunder; and

- (c) as and when required by the Minister for Mines from time to time install and thereafter maintain in good working order and condition meters for measuring quantities of iron ore and iron ore products of such design or designs and at such places as the Minister for Mines may require.

#### Protection and management of the environment

14. (1) The Company shall in respect of the matters referred to in paragraph (m) of subclause (1) of Clause 7 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time submit to the Minister a detailed report thereon.
- (2) Whenever as a result of its activities pursuant to subclause (1) or otherwise information becomes available to the Company which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (3) The Minister may within 2 months of the receipt of a detailed report pursuant to subclauses (1) or (2) notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.
- (4) The Company shall within 2 months of receipt of a notice given pursuant to subclause (3) submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 8 shall *mutatis mutandis* apply.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the decision of the Minister or any award on arbitration as the case may be in accordance with the terms thereof.

**Use of local labour professional services and materials****15. (1) The Company shall, for the purposes of this Agreement—**

- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia (using all reasonable endeavours to ensure that as many as possible of the contractor's workforce be recruited from the Pilbara) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
  - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
  - (c) during design and when preparing specifications, calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
  - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors; and
  - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Company shall in every contract entered into with a third party for the supply of services labour works materials plant equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.

- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

#### **Roads—Private roads**

16. (1) (a) Except with the consent of the Minister roads providing access to the mining lease shall be restricted to—
- (i) a road between the mining lease and the accommodation area;
  - (ii) a road from the mine aerodrome serving the mining lease connecting with the mining lease or the road referred to in subparagraph (iv) of this paragraph;
  - (iii) a railway maintenance road serving the rail spur;
- and
- (iv) the existing road from the Newman-Port Hedland railway road to the mining lease.
- (b) (i) The use of the road referred to in paragraph (a)(iv) of this subclause is subject to the Company obtaining for itself the right to do so from the holder from time to time of the Crown Lease No. 19/1973 (Pastoral Lease No. 3114/984—Marillana Station) and likewise obtaining the right to use the Newman-Port Hedland railway road for the purposes of this Agreement from the holder or holders from time to time of the lease of that road.

- (ii) The Company shall not upgrade or propose any upgrading of the road referred to in paragraph (a)(iv) of this subclause beyond the standard specified in its initial proposals under Clause 7 without the consent of the Minister.

### **Construction of private roads**

#### **(2) The Company shall—**

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its activities hereunder;
- (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
- (c) at any place where any private roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

### **Maintenance of public roads**

- (3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

### **Upgrading of public roads**

- (4) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (3) or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) the Company shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

**Acquisition of private roads**

- (5) Where a road constructed by the Company for its own use is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the activities of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as is reasonable.

**Aerodrome**

17. (1) The Company shall confer with the Minister on any upgrading of existing aerodrome facilities and services in the Pilbara region that the Minister after consultation with the relevant local authority may consider to be required as a result of the Company's activities under this Agreement.
- (2) The Company shall not propose or construct any mine aerodrome of a standard greater than the minimum requirements for an Authorised Landing Area as defined by the Civil Aviation Authority standard AGA-6 dated 3 May 1990 or future equivalent without the approval of the Minister.

**Electricity—purchase of electricity**

18. (1) For the purposes of facilitating integration of electricity generation and transmission facilities in the areas where the Company carries on activities under this Agreement the Company shall purchase its electricity requirements (if available) from the State Energy Commission or negotiate with the State Energy Commission for the payment by the Company of an equitable contribution towards the augmentation of the facilities of the State Energy Commission to enable it to supply electricity to the Company. Electricity supplied to the Company pursuant to this subclause shall be at rates and on terms and conditions to be agreed between the State Energy Commission and the Company.

**Electricity generation**

- (2) In the event of the Company demonstrating to the satisfaction of the Minister that the provisions of subclause (1) would be unduly prejudicial to its activities or if the State Energy Commission is unable to provide supply the Company may—
  - (a) in accordance with its approved proposals hereunder and subject to the provisions of the Electricity Act 1945 and the approval and requirements of the State Energy Commission pursuant to any Act, install and operate without cost to the State, at an appropriate location equipment of sufficient capacity to generate electricity for its activities hereunder; and



- (b) transmit power within the mine site and for the operations of the rail spur subject to the provisions of the Electricity Act 1945 and the approval and requirements of the State Energy Commission pursuant to any Act.

### **Easements**

- (3) In the event that the Company is unable to procure easements or other rights over land required for the purposes of subclause (2) on reasonable terms the State shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said easements or other rights over land.

### **Supply to State Energy Commission**

- (4) If the State Energy Commission desires to purchase power for its own use and the Company has the ability to supply such power, the Company shall use its best endeavours to supply on terms and conditions to be negotiated between the State Energy Commission and the Company and the Company shall in that event be empowered to supply such power.

### **Water-mining lease**

- 19. (1) (a) To the fullest extent reasonably practicable the Company shall use water obtained from dewatering on the mining lease for its purposes under this Agreement.
- (b) Nothing in this Agreement shall be construed to exempt the Company from any liability to the State or to third parties arising out of or caused by extraction of water from the mining lease by dewatering or any discharge or escape from the mining lease of water obtained by dewatering.

### **Water requirements**

- (2) The State and the Company shall agree upon the amounts (and qualities thereof) of the Company's annual and maximum daily water requirements for use in its activities hereunder at the mine site (which amounts or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the mining water requirements") and amounts required to be withdrawn in dewatering.

**Search within mining lease**

- (3) The Company shall at its cost and in collaboration with the State continue its investigations with respect to underground water within the mining lease and shall furnish to the Minister details of the results of its investigations from time to time and copies of any reports prepared in connection therewith.

**Grant of licence**

- (4) Subject to and in accordance with the approved proposals the State shall grant or cause to be granted to the Company a licence to develop and draw from the source specified in those proposals, at the Company's cost but without fee, the mining water requirements and withdrawal amounts on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the mining water requirements on a continuous basis, the State may on at least 6 months prior notice to the Company (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which in the opinion of the Minister that source is hydrologically capable of meeting as aforesaid.

**Development of water sources**

- (5) The Company shall provide at its cost or with finance arranged by it and construct to standards and in accordance with designs approved by the State and operate and maintain in accordance with the relevant approved proposals all necessary dams, bores, valves, distribution pipelines, reticulation, meters, tanks, equipment and appurtenances necessary to draw transport use reticulate and dispose of water obtained by the Company pursuant to this Clause.

**Enlarged water capacity**

- (6) The State, after first having due regard to the mining water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the water resources referred to in this Clause or construct any works in connection therewith to a greater capacity than that required to supply the mining water requirements but in that event the Company shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

**Third party use**

- (7) The State may after first having due regard to the mining water requirements and to the hydrological adequacy of the applicable water source, upon not less than 3 months prior notice to the Company specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from that source PROVIDED HOWEVER that—
- (a) where the Company has paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source within 5 years of the commencement date the third party (but not the State) shall reimburse to the Company prior to the third party exercising its rights to draw water, such proportion of those moneys as the Minister determines is fair and reasonable; and
- (b) where the Company draws water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Company's requirements shall be reduced in such proportion as may be agreed.

**Charges for supply of water to third parties**

- (8) Subject to the Minister's approval the Company may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Company. The Company shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the Water Boards Act 1904 and, with the consent of the Minister for Local Government, those of a local authority.

**Minimisation of water consumption**

- (9) The Company shall to the extent that it is practical and economical design construct and operate all plant and equipment used in its activities under this Agreement so as to minimise water consumption and shall at all times use its best endeavours to minimise the consumption of water in its activities under this Agreement and ensure the most efficient use of the available water resources.

**State to restrict adverse grants**

- (10) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Company is drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the activities of the Company hereunder and is not likely to render the water source incapable of supplying the mining water requirements on a continuous basis.

**Rights in Water and Irrigation Act**

- (11) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the Rights in Water and Irrigation Act 1914 and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Company's purposes under this Agreement.

**Water-existing town**

20. Water for the Company's activities hereunder and the Company's workforce elsewhere than at the mine site shall where the same is available from the State or State instrumentality be subject to the provisions of the Country Areas Water Supply Act 1947 or other relevant Act.

**Provision of accommodation/housing**

21. (1) Accommodation for the mine workforce at the mine site when the Company is producing not more than 10,000,000 tonnes of iron ore per annum for transportation from the mining lease and the total number of the mine workforce is not more than 100 shall be by way of temporary accommodation units (not caravans) and ancillary facilities of a standard generally used in the mining industry located in the vicinity of the mining lease and—
- (a) the accommodation units and facilities ancillary to the accommodation units (which may include a mess/wet mess, amenities blocks and offices for Company management personnel) may be provided by the Company or a contractor to the Company but shall be subject to the prior approval of the Minister as to nature and type;
- (b) all accommodation units on the mine site shall be removed from the mine site upon the mine workforce being accommodated elsewhere than at the mine site;

(c) only the mine workforce and persons visiting the mine site in connection with the Company's mining activities on a short term basis or employed for a specific task of limited duration shall be permitted to stay at the accommodation area; and

(d) no dependants or pets shall be allowed on the mine site.

(2) If and whenever the Company proposes—

(a) to give a notice of proposed increase of tonneages or workforce pursuant to Clause 11;

(b) to substantially add to upgrade replace or relocate accommodation units;

(c) to use its own workforce in place of a contractor workforce in its mining activities; or

(d) to construct an additional accommodation area separate from that already established

it shall confer with the Minister with respect to the future accommodation of the mine workforce (including those members of the mine workforce then accommodated at the accommodation area) which may include expansion or alteration of the accommodation area, establishment of or assimilation into a new townsite, and assimilation into an existing town before submitting any proposal in regard thereto to the Minister.

(3) The Company shall likewise confer with the Minister at the request of the Minister if the State proposes an open town in the central Hamersley range area and shall co-operate with the State on any studies in relation to such a proposal that may be required to select a site for the town.

(4) If the State and the Company agree that the mine workforce can be located in the proposed open town then the Company will relocate the workforce to the open town within an agreed period of time at no cost to the State and make such contributions to the infrastructure and community facilities in the open town as are agreed between the State and the Company to be required to service the needs of the Company's workforce.

(5) As and when required by the Minister after consultation with the relevant local authority, the Company shall confer with the Minister with a view to assisting in the cost of providing any appropriate community, recreation, civic or social amenities at any existing town required for the Company's workforce and associated population.

**Lands**

22. (1) The State shall in accordance with the Company's approved proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Company, leases and where applicable licences easements and rights of way for all or any of the purposes of the Company's mining activities hereunder including any of the following namely—accommodation area, rail spur, private roads, tailing areas, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites, plant site areas and borrow pits for stone sand clay and gravel.

**Modification of Land Act**

- (2) For the purpose of this Agreement in respect of any land leased to the Company by the State 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 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 grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;

- (f) the inclusion of a power to grant leases or licences 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 the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

**Rail spur**

23. (1) Subject to and in accordance with approved proposals the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct along the route specified in the approval proposals (but subject to the provisions of the Public Works Act 1902, to the extent that they are applicable) a standard gauge railway specified in the approved proposals connecting the mining lease to the Newman-Port Hedland railway and shall also construct *inter alia* any necessary deviations loops spurs sidings crossings points bridges signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices (all of which together with the specified railway is referred to in this Agreement as "the rail spur") and shall operate the rail spur with sufficient and adequate locomotives freight cars and other railway stock and equipment for the purposes of the Company's activities under this Agreement.
- (2) The Company shall during the continuance of this Agreement operate the rail spur in a safe and proper manner and shall provide crossings for livestock and also for any roads and other railways which now exist and where it can do so without unduly prejudicing or interfering with its activities hereunder the Company shall allow such crossings for roads and railways which may be constructed for future needs and which may be required to cross the rail spur.
- (3) The Company shall if and when reasonably required so to do transport passengers and carry the freight of the State and third parties over the rail spur where it can do so without unduly prejudicing or interfering with its activities under this Agreement and subject to the payment to it of the charges prescribed by and for the time being payable under any by-laws made by the Company in respect of the transporting of passengers and the carriage of freight over the rail spur and subject to the due compliance with the other requirements and conditions prescribed by such by-laws or, should there be no such by-laws for the time being in force, then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case shall be reasonable having regard to the cost to the Company of the construction and operation of the rail spur.
- (4) In relation to its use of the rail spur when transporting passengers or carrying freight pursuant to subclause (3) the Company shall not be deemed to be a common carrier at law or otherwise.
- (5) (a) Subject to paragraph (b) of this subclause, the Company shall not enter into any agreement or other arrangement for the use of or the carriage of iron ore or iron ore products of the Company over any railway not established by the Company pursuant to this Agreement without the prior approval of the State thereto and to the proposed terms and conditions (including charges) for such use or carriage.

- (b) The provisions of paragraph (a) of this subclause shall not apply to the use or carriage of iron ore or iron ore products of the Company over the Newman-Port Hedland railway from the intersection of the rail spur with that railway to Port Hedland during any period when the Company is associated with the Mount Newman Participants. During any such period the Company shall keep the State fully informed of the terms and conditions including tonneages but excluding charges of its use and carriage of freight over the said railway.
- (6) the Minister may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under this Clause 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 Minister 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 Minister may reasonably require or (in the event of their being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

### **Further processing**

24. (1) During the continuance of this Agreement the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing facilities within the said State either alone or in association with others for the further processing of iron ore obtained from the mining lease and as and when requested by the Minister, but not more frequently than once in every two years, shall submit detailed reports of their investigations to the date of request and their conclusions in regard thereto.
- (2) The State may undertake similar investigations and, for this purpose, the Company shall provide the State, within a reasonable time of request, with such information as the State may reasonably request. The Company shall not be obliged to supply technical information of a confidential nature or financial and economic information the disclosure of which would unduly prejudice contractual or commercial arrangements between the Company and third parties, but will use reasonable endeavours to arrange for the supply of this or like information on request by the State.
- (3) If as result of investigations undertaken under subclause (1) or (2), the Company or the State reasonably concludes that further processing of iron ore from the mining lease with or without other iron ore and by the Company alone or in association with others is technically and economically feasible, then the State and the Company shall consult on the implementation of such further processing.



- (4) If the Company is unwilling to proceed with implementation of such further processing on a timetable acceptable to the State, the State may allow a third party to carry out that implementation but the State will not grant to the third party terms and conditions more favourable on the whole than it was prepared to grant to the Company. In such circumstances, the Company will if required by the third party supply iron ore to the third party at Port Hedland or such other place as the third party and the Company agree in sufficient quantities and appropriate rates and grades and at appropriate times to meet the requirements of the third party for at least the first ten years of its operations at a reasonable price but in any event not more than the equivalent (taking into account the place of delivery to the third party) of the average f.o.b. value then being obtained by the Company for its exports of iron ore. The Minister may relieve the Company in whole or in part of its obligations under this subclause where the Company demonstrates to the satisfaction of the Minister that full or partial supply of the required iron ore is not practicable on economic or technical grounds.

### **Zoning**

25. The State shall ensure after consultation with the relevant local authority that the mining lease and any lands the subject of any Crown Grant lease licence 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 activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning by-law regulation or order.

### **Rating**

26. (1) The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands the subject of this Agreement (except the accommodation area and any other parts of the lands the subject of this Agreement on which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining activities carried out by the Company pursuant to approved proposals) shall for rating purposes under the Local Government Act 1960, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate and further as regards the mining lease that the unimproved value thereof shall be calculated on the basis that the mining lease is a mining lease under the Mining Act and not as land held pursuant to an agreement made with the Crown in right of the State and scheduled to an Act approving the agreement.

- (2) It is hereby declared and agreed that the provisions of section 533B of the Local Government Act 1960 shall not apply to any lands the subject of this Agreement.

#### **No discriminatory rates**

27. Except as provided in this Agreement the State shall not impose, nor shall it permit or 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 activities of the Company in the conduct of its 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.

#### **Resumption for the purposes of this Agreement**

28. The State may as and for a public work under the Public Works Act 1902, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of that land to the Company and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Company shall pay to the State on demand the costs of an incidental to any land resumed at the request of and on behalf of the Company.

#### **No resumption**

29. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of this Agreement 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 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 purpose of this agreement or any of the works on the lands the subject of any lease or licence granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall 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 water right 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 activities under this Agreement.

**Assignment**

30. (1) Subject to the provisions of this Clause the Company may at any time assign mortgage charge sublet or dispose of to any company or persons with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of the mining lease (or the exploration licences referred to in recital (a) hereof if the mining lease is not then issued) or any other lease licence easement grant or other title) and of the obligations of the Company hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) 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 the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) 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 in this Agreement and in the mining lease or any other lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Mining Act, the Transfer of Land Act 1893 and the Land Act, insofar as the same or any of them may apply—
- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the mining lease or any other lease licence easement grant or other title granted under or pursuant to this Agreement by the Company or any assignee sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause) or because the same is not registered under the provisions of the Mining Act.

### Variation

31. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement grant or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

### Force majeure

32. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God *force majeure* earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability to sell iron ore profitably or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

**Power to extend periods**

33. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

**Determination of Agreement**

34. (1) In any of the following events namely if—

- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the mining lease or any other lease licence easement grant or other title or document granted or assigned under this Agreement on its part to be performed or observed; or
- (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement and such default is not remedied or such activities resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or
- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 30

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 30 whose name and address for service of notice has previously been notified to the State by the Company or any such assignee mortgagee chargee or disponent.
- (3) (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.

- (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a *bona fide* dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause 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 actual 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.

#### Effect of cessation or determination of Agreement

##### 35. (1) On the cessation or determination of this Agreement—

- (a) 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 mining lease and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Company and which are no longer owned by it) 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 under this Agreement;
- (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Subject to the provisions of subclause (3) upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease licence easement grant or other title made under or pursuant to this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances

and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

- (3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase *in situ* such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties or failing agreement determined by arbitration under this Agreement.

### **Environmental protection**

36. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

### **Indemnity**

37. The Company shall 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 any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or 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 works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

### **Commonwealth licences and consents**

38. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.

- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

### **Subcontracting**

39. The State shall ensure 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 activities which it is authorised or obliged to carry out hereunder.

### **Stamp duty exemption**

40. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on—

- (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 any tenement lease licence easement or other right or rights; and
- (c) assignments made by the Company in conformity with the provisions of subclause (1) of Clause 30 of interests in this Agreement (and titles referred to in Clause 30) as follows—
  - (i) a 7% interest to Mitsui Iron Ore Corporation Pty Ltd;
  - (ii) an 8% interest to CI Minerals Australia Pty Ltd;
  - (iii) the remaining 85% interest to an assignee related within the meaning of that term as used in section 7 of the Companies (Western Australia) Code to the Company

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 2 years from the date hereof.

- (2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document or transaction referred to in subclause (1) 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 or transaction to the person who paid the same.



**Arbitration**

41. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party under this Agreement 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 Commercial Arbitration Act 1985 and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

**Consultation**

42. The Company shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

**Notices**

43. 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 Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its address hereinbefore set forth or other address in the said State nominated by the Company to the Minister and by the Company if signed on its behalf by any person or persons authorised by the Company or by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service 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.

**Term of Agreement**

44. Subject to the provisions of subclause (6) of Clause 8, Clauses 34 and 35 and this Clause, this Agreement shall expire on the expiration or sooner determination or surrender of the mining lease.

**Applicable law**

45. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

**THE SCHEDULE****WESTERN AUSTRALIA****MINING ACT 1978****IRON ORE (MARILLANA CREEK) AGREEMENT ACT 1991****MINING LEASE****MINING LEASE NO.**

The Minister for Mines a corporation sole established by the Mining Act 1978 with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the Mining Act 1978 (except as otherwise provided by the Agreement (hereinafter called "the Agreement") described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for iron ore subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the Mining Act 1978 and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease (subject to the sooner determination of the said term upon the cessation or determination of the Agreement) upon and subject to such of the provisions of the Mining Act 1978 except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the Mining Act 1978 at the times and in the manner so prescribed and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take two successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to

the sooner determination of the term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease—

- “Lessee” includes the successors and permitted assigns of the Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

#### FIRST SCHEDULE

BHP MINERALS LIMITED a company incorporated in the State of Western Australia and having its registered office at Level 18, 200 St. George's Terrace, Perth.

#### SECOND SCHEDULE

The Agreement made between the State of Western Australia and BHP Minerals Limited and ratified by the Iron Ore (Marillana Creek) Agreement Act 1991.

#### THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field:

Area, etc.:

Being the land delineated on Survey Diagram No.                      and

recorded in the Department of Mines, Perth.

#### FOURTH SCHEDULE

All petroleum as defined in the Petroleum Act 1967 on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

## FIFTH SCHEDULE

(Date of commencement of the lease).

## SIXTH SCHEDULE

(Any further conditions or stipulations).

IN witness whereof the Minister for Mines has affixed his seal and set his hand  
hereto this    day of    19

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said  
THE HONOURABLE CARMEN  
MARY LAWRENCE  
in the presence of:

}

Carmen Mary Lawrence

DEPUTY PREMIER

**Ian Taylor**

Executed by BHP MINERALS  
LIMITED by being  
signed by its Attorney  
RICHARD JOHN CARTER  
under Power of Attorney  
dated 10th December 1990  
(who certifies that he has  
received no notice of  
revocation thereof) in the  
presence of:

}

**Richard John Carter**

**Witness:**

G. Wedlock

\_\_\_\_\_