

DIAMOND (ASHTON JOINT VENTURE) AGREEMENT.

No. 12 of 1983.

AN ACT to amend the Diamond (Ashton Joint
Venture) Agreement Act 1981.

[Assented to 31 October 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Diamond (Ashton Joint Venture) Agreement Amendment Act 1983*. Short title.

(2) In this Act the Diamond (Ashton Joint Venture) Agreement Act 1981 is referred to as the principal Act. Act No. 108 of 1981.

Section 1
repealed and
substituted.

2. The principal Act is amended by repealing section 1 and substituting the following section—

“ 1. This Act may be cited as the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981-1983. ”.

Section 2
amended.

3. Section 2 of the principal Act is amended—

(a) by deleting the full stop at the end of the section and substituting a semicolon; and

(b) by inserting at the end of the section the following definition—

“ “the Supplementary Agreement” means the agreement of which a copy is set out in Schedule 3 to this Act. ”.

Section 3A
inserted.

4. After section 3 of the principal Act, the following section is inserted—

“ 3A. The Supplementary Agreement is approved and ratified. ”.

Section 5
amended.

5. Section 5 of the principal Act is amended in subsection (1) by inserting after “date” the following—

“ as defined in section 6 (1) ”.

Section 29
amended.

6. Section 29 of the principal Act is amended in subsection (2) by deleting “goods” in subparagraph (vi) of paragraph (b) and substituting the following—

“ property ”.

7. After Schedule 2 to the principal Act the following Schedule is added—

Schedule 3
added.

SCHEDULE 3.

THIS AGREEMENT is made the 11th day of October 1983, BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, 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 first part NEW BROKEN HILL CONSOLIDATED LIMITED a company deemed by Act of Parliament of the State of Victoria to be incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 18th Floor, 191 St. George's Terrace, Perth (hereinafter called "NBHC"), THE ZINC CORPORATION, LIMITED a company deemed by Act of Parliament of the State of Victoria to be incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 18th Floor, 191 St. George's Terrace, Perth (hereinafter called "ZC"), ASHTON MINING LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George's Terrace, Perth (hereinafter called "Ashton"), TANAUST PROPRIETARY LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 2nd Floor, Cecil Building, 6 Sherwood Court, Perth (hereinafter called "Tanaust"), A.O. (AUSTRALIA) PTY. LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George's Terrace, Perth (hereinafter called "AO") and NORTHERN MINING CORPORATION N.L. a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 2nd Floor, 31 Ventnor Avenue, West Perth (hereinafter called "Northern Mining") of the second part (the said parties of the second part being hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) and CRA LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 St. George's Terrace, Perth, (hereinafter called "the Guarantor") of the third part.

WHEREAS:

- (a) on the 17th day of November, 1981 the State, CRA Exploration Pty. Limited, Ashton, Tanaust, AO, Northern Mining and the Guarantor entered into an agreement

which was ratified by the Diamond (Ashton Joint Venture) Agreement Act 1981 and is hereinafter referred to as "the principal Agreement";

- (b) by an agreement effective as from the 1st day of July, 1982 CRA Exploration Pty. Limited assigned all its interest in and under the principal Agreement to NBHC and ZC; and
- (c) the parties have agreed to new arrangements in respect of the accommodation of the Joint Venturers' mine workforce and royalty payable under the principal Agreement and desire to vary the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

- 1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
- 2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.

- 3. The principal Agreement is hereby varied as follows—

(1) Clause 1—

- (a) by deleting the definition of "relevant town" and substituting the following—

"“relevant town” means in relation to the Argyle mining area and the Ellendale mining area respectively a town established in the Kimberley region by the Joint Venturers as a housing area for their mine workforce pursuant to an approved proposal and may in either case with the approval of the Minister include an existing town;”;

- (b) by deleting in the definition of "relevant town-site", "the relevant town" and substituting the following—

"a relevant town".

(2) Clause 7 subclause (1)—

- (a) by deleting the following—

"shall make provision where appropriate for the necessary workforce and associated population required to enable the Joint Venturers to mine and recover diamonds from ore from the area the subject of the proposals and";

- (b) by deleting paragraph (c) and substituting the following paragraphs—

“(c) accommodation for the mine workforce in the Kimberley region comprising, in the discretion of the Joint Venturers, any one or more of the following—

(i) establishment of a relevant town;

(ii) assimilation into any existing town;

and

(iii) establishment of accommodation facilities for the mine workforce to commute from elsewhere within the said State

including the provision of utilities, services and associated facilities;

(cc) any arrangements to commute the mine workforce from any place or places within the said State desired by the Joint Venturers;”.

- (3) Clause 21 subclause (9)—

by deleting subclause (9) and substituting the following subclauses—

“(9) Notwithstanding that the Joint Venturers have installed equipment to generate electricity at the Argyle mining area pursuant to the provisions of subclause (3) of this Clause, the Joint Venturers shall upon request by the State at any time or times before 31st December, 1988 enter into negotiations with the State Energy Commission with a view to the establishment on terms and conditions to be agreed between the State Energy Commission and the Joint Venturers of hydro electric generation works on the Ord River and distribution works to supply, *inter alia*, the Argyle mining area and any relevant town at the Argyle mining area.

(10) Subject to subclause (9) of this Clause and notwithstanding that they have installed equipment to generate electricity at the Argyle mining area pursuant to the provisions of subclause (3) of this Clause, the Joint Venturers may during the continuance of this Agreement enter into negotiations with the

State Energy Commission with a view to obtaining further or alternative electricity for the Argyle mining area and any relevant town at the Argyle mining area.

- (11) The provisions of subclauses (9) and (10) of this Clause shall not oblige the Joint Venturers or the State Energy Commission to enter into any agreement with the other pursuant to any negotiations under those subclauses and the provisions of subclause (1) of this Clause shall not apply to any such negotiations or to any agreement that may result from those negotiations.”.

(4) By inserting after Clause 24 the following clauses—

Provision for
mine
workforce.

“24A. The Joint Venturers shall make provision for the mine workforce serving the Argyle mining area and the Ellendale mining area respectively in any one or more (in their discretion) of the following ways—

- (a) commuting the mine workforce on a regular basis, as determined by the Joint Venturers in accordance with approved proposals, from any place or places within the said State to the relevant mining area and the provision of necessary accommodation facilities at or in the vicinity of the relevant mining area;
- (b) the establishment of a relevant town;
- (c) the assimilation of the mine workforce into any existing town in the Kimberley region.

Modification
of Mines
Regulation
Act.

24B. (1) For the purpose of this Agreement in respect of any mining operations of the Joint Venturers under this Agreement the Mines Regulation Act 1946 shall, where such mining operations are being conducted in accordance with a schedule of work approved by the Minister for Mines, be deemed to be modified by the deletion of paragraph (c) of subsection (1) of section 38.

- (2) Where in the opinion of the Minister for Mines any schedule of work approved for the purpose of subclause (1) of this Clause should be altered for reasons of safety the Joint Venturers shall consult

with the Minister for Mines with a view to making any alterations to that schedule as the Minister may consider reasonable in the circumstances.”.

(5) Clause 25—

(a) subclause (1)—

by deleting “Should the approved proposals” and substituting the following—

“Where any approved proposals”;

(b) subclause (4)—

by deleting “If the approved proposals” and substituting the following—

“Where any approved proposals”;

(c) subclause (5)—

by deleting “Should the approved proposals” and substituting the following—

“Where any approved proposals”;

(d) subclause (6)—

by deleting “the relevant townsite” and substituting the following—

“a relevant townsite”.

(6) By deleting Clause 26.

(7) Clause 29—

(a) subclause (1)—

- (i) by inserting in paragraph (I) of the definition of “allowable deductions” after “this Agreement” the following—

“or the Act to ratify the agreement dated 11th October, 1983 varying this Agreement”;

- (ii) by inserting in paragraph (v) of the definition of “allowable capital expenditure” after “and”, where it last occurs, the following—

“any”;

(b) subclause (5) paragraph (c)—

- (i) by inserting after “paid” where it first occurs the following—

“or where any offset has or offsets have been deducted pursuant to Clause 29C, the estimated royalty that would have been paid but for that offset or those offsets”;

- (ii) by inserting after "period" where it occurs in subparagraph (i) and in subparagraph (ii) the following—

"but excluding any offsets deducted therefrom pursuant to Clause 29C".

- (8) By inserting after Clause 29 the following clauses—

"29A. The Joint Venturers shall pay to the State—

- (a) royalties in the manner and at the times provided in Clause 29 and any increase thereto pursuant to subclause (6) of Clause 30; and
- (b) an additional royalty under this Agreement in the manner and at the times provided in Clause 29B.

29B. (1) The Joint Venturers shall pay to the State an additional royalty of \$50,000,000 in the manner and at the times following—

- (a) as to \$25,000,000 or such lesser amount as the Minister may allow, within 7 days after the date of approval by the Minister of the proposals submitted by the Joint Venturers pursuant to paragraph (B) of subclause (1) of Clause 7 (hereinafter called "the approval date"); and
- (b) as to the balance, within 45 days of the approval date or within such later time or times as the Minister may allow.

- (2) If the amount of \$25,000,000 referred to in paragraph (a) of subclause (1) of this Clause or such lesser amount as the Minister may allow as therein provided is not paid by the Joint Venturers to the State within 30 days of the coming into operation of the Act to ratify the agreement dated 11th October, 1983 varying this Agreement, the Joint Venturers shall pay interest at the rate of 14% per annum on the said sum of \$50,000,000 for the period from whichever is the later of 14th November, 1983 or the approval date to the date on which the said amount of \$25,000,000 (or such lesser amount as aforesaid) is paid to the State such interest to be paid to the State at the time of payment of the said sum of \$25,000,000 (or such lesser amount as aforesaid).

Further
royalty
provisions.

(3) The Joint Venturers shall on demand by the State from time to time pay to the State interest at the rate of 14% per annum on so much of the said sum of \$50,000,000 as may from time to time after the expiration of 7 days from the approval date be unpaid.

29C. (1) Subject to subclause (2) of this Clause, the amount of royalties that become due for payment by the Joint Venturers in respect of diamonds recovered from the areas the subject of this Agreement under Clause 29 and any increase thereto pursuant to subclause (6) of Clause 30 in respect of each quarter set forth in the Schedule below shall be partially offset by the amount shown as the scheduled offset amount for each quarter.

SCHEDULE.

Production Year (commencing 1st January)	Quarter	Scheduled Offset Amount
1986 	First 	\$1,000,000
	Second 	\$1,000,000
	Third 	\$1,000,000
	Fourth 	\$1,000,000
1987 	First 	\$1,625,000
	Second 	\$1,625,000
	Third 	\$1,625,000
	Fourth 	\$1,625,000
1988 	First 	\$1,875,000
	Second 	\$1,875,000
	Third 	\$1,875,000
	Fourth 	\$1,875,000
1989 	First 	\$2,000,000
	Second 	\$2,000,000
	Third 	\$2,000,000
	Fourth 	\$2,000,000
1990 	First 	\$1,500,000
	Second 	\$1,500,000
	Third 	\$1,500,000
	Fourth 	\$1,500,000
1991 	First 	\$1,500,000
	Second 	\$1,500,000
	Third 	\$1,500,000
	Fourth 	\$1,500,000
1992 	First 	\$2,000,000
	Second 	\$2,000,000
	Third 	\$2,000,000
	Fourth 	\$2,000,000
1993 	First 	\$1,000,000
	Second 	\$1,000,000
	Third 	\$1,000,000
	Fourth 	\$1,000,000

- (2) Whenever the scheduled offset amount for a quarter plus any amount added thereto as hereinafter provided exceeds 50% of the royalty otherwise due for payment in respect of that quarter the amount that may be offset for that quarter shall be limited to an amount equal to 50% of that royalty and the excess together with interest on such excess at the rate of 14% per annum calculated from the date of payment of the royalty for the quarter to which the excess relates to (subject to the proviso first hereinafter contained) whichever is the sooner of the date upon which royalty in respect of such succeeding quarter is paid or the date upon which such royalty becomes payable shall be carried forward and applied by the Joint Venturers to increase the scheduled offset amount applicable to the next succeeding quarter by the amount carried forward (which increased amount shall then become the scheduled offset amount for that quarter) PROVIDED THAT where in such succeeding quarter a royalty is payable by the Joint Venturers pursuant to subparagraph (i) of paragraph (c) of subclause (5) of Clause 29 including any increase effected thereto pursuant to subclause (6) of Clause 30 the excess and the interest then accrued thereon or so much thereof as does not exceed 50% of that royalty shall be retired by offset to the extent thereof against that royalty AND PROVIDED FURTHER that in the event that any such excess remains at the end of 1993 then it shall be carried forward and applied by the Joint Venturers in the manner provided in this subclause (2) until the amount of any such excess is reduced to zero.
- (3) The scheduled offset amounts mentioned in subclause (1) of this Clause shall apply in respect of any royalty, tax or other impost whatsoever that may be levied or imposed by the State at any time in the future in lieu of royalty payable pursuant to this Agreement.
- (4) If the State takes action otherwise than in accordance with the terms of this Agreement whereby the Joint Venturers

lose the benefit of this Agreement any outstanding scheduled offset amounts shall, except where the State has taken such action after an abandonment by the Joint Venturers of this Agreement or their operations under this Agreement, become amounts owing by the State to the Joint Venturers at the respective times they would have otherwise been available as offset amounts pursuant to Clause 29C.”.

(9) Clause 30 subclause 6—

by deleting in factor R “payable pursuant to Clause 29 for that year”

and substituting the following—

“that would be payable pursuant to Clause 29 for that year unaffected by any offsets deducted therefrom pursuant to Clause 29C”.

(10) by deleting “the revelant town”, wherever it occurs in the principal Agreement, and substituting the following—

“any relevant town”.

4. The Guarantor hereby consents to this Agreement.

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 BRIAN
THOMAS BURKE, M.L.A. in
the presence of—

MALCOLM J. BRYCE.

Minister for Economic Development and Technology

BRIAN BURKE.

SIGNED SEALED AND
DELIVERED for and on behalf
of NEW BROKEN HILL
CONSOLIDATED LIMITED by
its duly authorised attorney
THOMAS BARLOW under
Power of Attorney dated the
10th day of October, 1983 in
the presence of—

M. A. O'LEARY.

(L.S.)

T. BARLOW.

SIGNED SEALED AND
DELIVERED for and on behalf
of THE ZINC CORPORATION,
LIMITED by its duly author-
ised attorney THOMAS
BARLOW under Power of
Attorney dated the 10th day of
October, 1983 in the presence
of—

M. A. O'LEARY.

(L.S.)

T. BARLOW.

SIGNED for and on behalf of
ASHTON MINING LIMITED
by its duly appointed Attorney
RORY EDWARD STANLEY
ARGYLE under Power of
Attorney dated the 7th day of
October, 1983 in the presence
of—

G. BILLARD.

R. E. S. ARGYLE.

SIGNED for and on behalf of
TANAUST PROPRIETARY
LIMITED by its duly appointed
Attorney RORY EDWARD
STANLEY ARGYLE under
Power of Attorney dated the
7th day of October, 1983 in the
presence of—

G. BILLARD.

R. E. S. ARGYLE.

SIGNED for and on behalf of
A.O. (AUSTRALIA) PTY.
LIMITED by its duly appointed
Attorney RORY EDWARD
STANLEY ARGYLE under
Power of Attorney dated the
7th day of October, 1983 in the
presence of—

G. BILLARD.

R. E. S. ARGYLE.

1983.]

*Diamond (Ashton Joint
Venture) Agreement.*

[No. 12.]

THE COMMON SEAL of
NORTHERN MINING COR-
PORATION N.L. was hereunto
affixed by authority of the
Board of Directors in the pre-
sence of—

Director

C. L. S. HEWITT.

Director

A. G. BIRCHMORE.

(C.S.)

SIGNED SEALED AND
DELIVERED for and on behalf
of CRA LIMITED by its duly
authorised attorney THOMAS
BARLOW under Power of
Attorney dated the 10th day
of October, 1983 in the pre-
sence of—

M. A. O'LEARY.

(L.S.)

T. BARLOW.
