



**SOUTH WEST SETTLEMENT
NEGOTIATIONS**



**TEMPLATE DEED IN RELATION TO
ALLOCATION OF FREEHOLD**

This document has been agreed in principle on a without prejudice basis between the State, the Noongar Negotiation Team, and the South West Aboriginal Land and Sea Council.

8 October 2014

THIS DEED is made on the date specified on the cover page

BETWEEN

THE STATE OF WESTERN AUSTRALIA acting through the Minister for Lands, a body corporate under section 7 of the *Land Administration Act* ("**MINISTER**")

and

("Land Sub")

and

("TRUSTEE")

RECITALS:

- A. The State and the Minister, among others, have entered into the ILUAs, one with each Agreement Group, to settle their native title claim(s) under the NTA in relation to the relevant Agreement Areas (**Native Title Settlement**).
- B. As part of the Native Title Settlement the Minister has agreed to the establishment of the Noongar Land Estate which includes the transfer of freehold land to the Land Sub pursuant to section 74 of the LAA.
- C. The Minister, the Land Sub and the Trustee have entered into this Deed which sets out the terms and conditions on which the Minister will transfer Land, as identified in each Schedule, in freehold to the Land Sub (**Deed**).

COVENANTS AND CONDITIONS

THE PARTIES AGREE AS FOLLOWS:

1. DEFINED TERMS AND INTERPRETATION

1.1 LAA definitions

In this Deed, words and phrases defined in the LAA have the same meaning where used in this Deed.

1.2 Other definitions

In this Deed, unless the contrary intention appears:

Agreement Area means the Agreement Area as defined in the relevant ILUA.

Agreement Group means the Native Title Agreement Group as defined in the relevant ILUA.

Allocation means the conveyance of each lot of Land as identified in each Schedule held by the State in any of its capacities or agencies, to the Land Sub in unconditional freehold.

Business Day means any day other than Saturday, Sunday or State public holiday in Western Australia.

Commencement Date means the date specified on the cover page.

Completion means the completion of an Allocation in accordance with clause 3.

Completion Date means the date an Allocation is actually effected.

Conclusively Registered has the meaning given in the ILUAs.

Contaminated has the meaning given in the CSA, and **Contamination** is the state of being Contaminated.

Crown means the Crown in right of the State of Western Australia.

CSA means the *Contaminated Sites Act 2003*.

DOL means the Department of Lands of 140 William Street, Perth, Western Australia.

Encumbrance means a mortgage, charge, bill of sale, lien, pledge, easement, reservation, condition, positive covenant, restrictive covenant, memorial (and any conditions or statements contained in the memorial), Notification, building condition, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest of any third party affecting the Land or any part of the Land.

Environmental Laws means all planning, environmental or Contamination or Pollution laws and any regulations, orders, directions, ordinances or requirements, permission, permits or licenses issued thereunder.

EPA means the *Environment Protection Act 1986*.

ILUA means each of the Indigenous Land Use Agreements entered into (pursuant to Part 2, Division 3, Subdivision C of the NTA) by the State, each Agreement Group and others, which has or have been Conclusively Registered and described as follows:

- 1
- 2
- 3
- 4
- 5
- 6

LAA means the *Land Administration Act 1997*.

Land means each lot of land described in Item 1 of each Schedule (if there is more than one Schedule to this Deed) with all buildings and improvements on the Land.

Landgate means the Western Australian Land Information Authority established under the *Land Information Authority Act 2006* and being the agency or department responsible for the registration of dealings relating to the land in the register kept pursuant to the TLA.

Minimum Identified Amount has the same meaning as given in clause 7.1 of Annexure J of Schedule 10 of the ILUA.

Minister means the Minister for Lands, being a body corporate continued under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor.

NBT means the Noongar Boodja Trust.

Notification means a notification endorsed on the certificate of Crown land title for the Land under section 70A of the TLA.

NTA means the *Native Title Act 1993 (Cth)*.

Outgoings means all rates, taxes, assessments, State land tax, Metropolitan Region Improvement Tax, charges (including but not limited to charges for water consumption and fixed charges), and outgoings (periodic or otherwise) chargeable or payable in respect of the Land.

Pollution means anything that is pollution within the meaning of that term as defined in the EPA that is not authorized under any law.

Rate means the rate of 12 % per annum as calculated on a daily basis.

Register has the same meaning as defined in the TLA.

Registrar means the Registrar of Titles appointed under section 7 of the TLA.

State means the State of Western Australia acting through the Minister or the Minister's duly authorized delegate.

Terms of Allocation has the same meaning as defined in the ILUA.

TLA means the *Transfer of Land Act 1893*.

Transfer means a transfer of the Land, either as a single lot of Land described in a Schedule or as multiple lots of Land described in two or more Schedules, in a form approved by the Registrar under the TLA from the State to the Land Sub, which in substance and form is acceptable to Landgate for the purposes of registration under the TLA.

Trustee means the Trustee of the NBT.

1.3 Interpretation

In the Deed, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of the Deed or of any provision contained in this Deed;

- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, unincorporated association, corporation or other body corporate or a Governmental Agency;
- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to clauses, sub-clauses and schedules are references to clauses, sub-clauses and schedules of the Deed unless otherwise indicated;
- (g) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a references to any law includes consolidations, amendments, re-enactments or replacements of it;
- (j) the word "including" is deemed to be followed by the words "but not limited to";
- (k) if a Governmental Agency, association, body or authority, whether statutory or not ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;
- (l) a reference to the Deed or another instrument includes any variation of either of them;
- (m) if a word or phrase is defined, cognate words or phrases have corresponding definitions; and
- (n) covenants entered into by two or more persons are entered into by them jointly and severally.

1.4 Exercise and performance of the State's powers and duties

The Trustee and the Land Sub acknowledge that under the provisions of the LAA:

- (a) any right, duty or power conferred or imposed on the State under this Deed may be exercised or performed by the Minister; and
- (b) the Minister may, under an instrument of delegation, delegate to a person any right, duty or power which this Deed authorises or requires the Minister to exercise or perform.

1.5 Application of the LAA

The provisions of this Deed do not in any way affect, alter or derogate from the Minister's rights or powers conferred under the LAA.

2. LAND AND ENCUMBRANCES

The Land is offered for transfer in freehold to the Land Sub in accordance with this Deed free of all Encumbrances except:

- (a) as specified in Item 2 of each Schedule in relation to the Land described in Item 1 of the same Schedule; and
- (b) any easement, positive covenant, restrictive covenant, memorial (and any condition or statement contained in the memorial), reservation, condition, building condition or Notification recorded or registered or to be recorded or registered on the certificate of Crown land title for the Land.

3. COMPLETION

3.1 Requirements for Transfer

- (a) The Trustee must within 40 Business Days of receiving a Transfer for execution from DOL, cause the Land Sub to execute and deliver to DOL a Transfer duly executed by the Land Sub.
- (b) The period of 40 Business Days referred to in clause 3.1(a) may be extended by agreement in writing between DOL and the Trustee.
- (c) Where the Trustee fails to cause the Land Sub to provide a Transfer duly executed by the Land Sub within the timeframes specified at clause 3.1(a) or extended by agreement pursuant to clause 3.1(b), the State will provide the Trustee with a written notice of that fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to execute and return the Transfer duly executed to DOL. If the Trustee fails to cause the Land Sub to provide a Transfer duly executed by the Land Sub within this further 40 Business Day period:
 - (i) the State will no longer be under obligation to quarantine the Land from future dealings; and
 - (ii) the State is under no obligation to ensure the Land remains available for Allocation to the Land Sub; and
 - (iii) the Land will be deducted from the Minimum Identified Amount.

3.2 Acknowledgement of the Trustee and Land Sub

The Trustee and the Land Sub acknowledge that:

- (a) a duplicate certificate of Crown land title for the Land does not exist and will not be delivered by the State to the Land Sub upon Completion;
- (b) on the Completion Date, a Certificate of Title for the Land will not exist and the State is not obliged to produce to the Land Sub a duplicate Certificate of Title for the Land upon Completion;
- (c) a Certificate of Title will be created by the Registrar once the Transfer has been registered in accordance with the provision of the TLA where the Registrar will endorse on the Certificate of Title the particulars of all dealings and matters affecting the Land as specified in, or effected by the ILUA, the Terms of Allocation, this Deed and the Transfer; and
- (d) unless the Land Sub has on the Transfer requested the duplicate Certificate of Title for the Land not to be issued, a duplicate Certificate of Title will be

issued by the Registrar and forwarded to the Land Sub as requested on the Transfer.

4. POSSESSION AND RISK

4.1 Possession

Subject to the Trustee and the Land Sub having performed all of their obligations under this Deed, the Land Sub will be entitled to and the State will deliver to the Land Sub possession of the Land on the Completion Date.

4.2 Risk

Despite any rule of law or equity to the contrary, the Land is at the risk of the Land Sub from the Completion Date or from the date the Land Sub is entitled to or is given possession of the Land, whichever is the earliest.

5. OUTGOINGS

5.1 No Outgoings assessed on the Land

The Land is not subject to any Outgoings, as the Land is owned by the Crown in right of the State of Western Australia.

5.2 No adjustment of Outgoings

- (a) Consistent with clause 5.1, no Outgoings will be apportioned between the State and the Land Sub.
- (b) The Land Sub is responsible for the payment of all Outgoings chargeable or payable in respect of the Land from the Completion Date or the date the Land Sub is entitled to be given possession of the Land, whichever is the earliest.

6. GENERAL PROVISIONS

6.1 The Trustee and Land Sub acknowledgements

The Trustee and the Land Sub acknowledge and agree that, except as disclosed in this Deed:

- (a) no warranty or representation has been given or made to the Trustee, the Land Sub or to anyone on the Trustee's or the Land Sub's behalf, by the State, the Minister, or any agent, employee or contractor of DOL or any other person on the State's or Minister's behalf as to:
 - (i) the title to the Land;
 - (ii) any Encumbrance, restriction or right in favour of any third party affecting the Land;
 - (iii) the condition or state of repair of the Land or any part of the Land;

- (iv) the condition or state of repair of the improvements or any part of the improvements on the Land;
 - (v) the suitability of the Land for any use or purpose of any kind;
 - (vi) whether or not the fences (if any) purporting to be on the boundaries are in fact on the proper boundaries of the Land;
 - (vii) whether there is a constructed road, a gravel road, a track or other means of physical access over any dedicated legal access to the Land; and
 - (viii) the existence or suitability or safety of physical access (if any) to the Land;
- (b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in this Deed, and any such representation or warranty is excluded to the extent permitted by law;
 - (c) the Land is transferred as it stands with all existing faults, defects or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on the State to disclose or particularise any faults, defects or characteristics known to the State;
 - (d) the Trustee and the Land Sub are deemed to accept the Allocation of Land in reliance on the Trustee's and the Land Sub's own inspection of, and enquiries in relation to, the Land;
 - (e) the State will not be liable under any circumstances to make any allowance or compensation to the Trustee or the Land Sub for the exclusion of warranties or representations made in this clause 6.1 or for any fault, defect or characteristic in the Land;
 - (f) this clause will apply despite the contents of any brochure, document, letter or publication made, prepared by or published by the State or DOL or any other person with the express or implied authority of the State or DOL; and
 - (g) there is no obligation on the part of the State or the Minister to:
 - (i) provide physical access to the Land;
 - (ii) maintain or upgrade physical access to the Land; or
 - (iii) clear any rubbish from the Land.

6.2 Requisitions on title

Neither the Trustee nor the Land Sub is entitled to make any objection to or requisition on the title to the Land, and the State will not be obliged to furnish answers to any objection or requisition on the title to the Land delivered by or on behalf of the Trustee or the Land Sub, it being acknowledged by the Trustee and the Land Sub that:

- (a) the Land is Crown land within the meaning of the LAA;
- (b) the State of Western Australia is, or is entitled to be recorded as the registered proprietor of the Land by virtue of section 29(5) of the LAA;

- (c) the Minister is authorised pursuant to section 74 of the LAA to transfer Crown Land in fee simple; and
- (d) the Land is transferred under section 74 of the LAA and the provisions of the LAA relating to the transfer of Crown land in fee simple apply to the Allocation of Land to the Land Sub in freehold.

6.3 No compensation

The Trustee and the Land Sub are not entitled to make any objection, requisition or claim for compensation, or to terminate this Deed in respect of:

- (a) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone or other services or connections to the Land, or in respect of the fact that any services or connections may be joint services to any other land or because any facilities for services for any other land pass through the Land;
- (b) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (c) the location of any sewerage, water or drainage pipes or services affecting the Land, or that any sewer passes through, or penetrates the Land;
- (d) the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation;
- (e) the fact that any fence on the Land is not on the proper boundaries of the Land; or
- (f) the fact that the area of the Land is different from the area indicated on any plan, brochure or document issued or published by or on behalf of DOL or Landgate or as indicated on the certificate of Crown land title to the Land.

6.4 Planning and other matters

The Trustee and the Land Sub acknowledge that the Land is transferred subject to the following as at the Completion Date:

- (a) the provision of any town planning scheme, zoning by-laws and other laws affecting the Land;
- (b) any order or requisition affecting the Land;
- (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or rights of way adjacent to the Land by any competent authority or person;
- (d) any resumption or proposal to resume the Land or any part of the Land; and

- (e) any easement, memorial (and any conditions or statement contained in the memorial), Notification, reservation, condition, building condition, positive covenant or restrictive covenant affecting the Land;

and the Land Sub will take title subject to the above, and neither the Trustee nor the Land Sub will be entitled to make any objection, requisition, or claim for compensation, or to terminate this Deed in respect of any of the above.

6.5 Trustee's Warranties

- (a) The Trustee represents and warrants to the Minister that the Trustee has the full powers pursuant to its constitution and its deed of trust (generally and together (if more than one) called "the Trust") under which it purports to act when entering into this Deed.
- (b) The Trustee further covenants that:
 - (i) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
 - (ii) the Trust will remain unrevoked and not varied other than with the prior written consent of the Minister, which will not be unreasonably withheld;
 - (iii) the assets of the Trust as well as the assets of the Trustee will at all times be available to satisfy the obligations of the Trustee under this Deed;
 - (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
 - (v) no one has taken or threatened nor is the Trustee aware of any one who is likely to take action to have the Trust wound-up or otherwise administered by action brought in any Court or to charge the Trustee or any person at any time connected with the Trustee or acting on behalf or purportedly on behalf of the Trustee with any breach of trust or misappropriation of trust moneys in connection with the Trust; and
 - (vi) no facts are known to the Trustee where the Trust might be wound-up voluntarily or otherwise or the Trustee might be changed or the assets of the Trust vested in any other person or the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

6.6 Land Sub Warranties

- (a) The Land Sub represents and warrants to the Minister that the Land Sub has the full powers pursuant to its constitution under which it purports to act when entering into this Deed.
- (b) The Land Sub further covenants that:
 - (i) the Land Sub is lawfully and validly constituted and all instruments in respect of the Land Sub have been properly executed;

- (ii) the Land Sub will remain so constituted;
- (iii) the assets of the Land Sub will at all times be available to satisfy the obligations of the Land Sub under this Deed;
- (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Land Sub have been obtained and all necessary conditions precedent for that purpose have been met;
- (v) no one has taken or threatened nor is the Land Sub aware of any one who is likely to take action to have the Land Sub wound-up or otherwise administered by action brought in any Court or to charge the Land Sub or any person at any time connected with the Land Sub or acting on behalf or purportedly on behalf of the Land Sub with any breach of trust or misappropriation of moneys in connection with the Land Sub; and
- (vi) no facts are known to the Land Sub where the Land Sub might be wound-up voluntarily or otherwise or the assets of the Land Sub might be vested in any other person or the Land Sub may cease to operate or be deprived of funds prior to expiration of the Term.

6.7 Special Conditions

Special conditions (if any) particular to the Land are listed in Item 3 of each Schedule.

7. DIVIDING FENCES

7.1 State not liable

The State will not be liable to the Trustee or the Land Sub or any other party claiming through the Trustee or the Land Sub to contribute to the cost of erecting or repairing any dividing fence whether under the *Dividing Fences Act 1961* or otherwise and the Trustee and the Land Sub will assume any existing liability as from and including Completion.

7.2 The Trustee and the Land Sub to indemnify the State

Clause 7.1 will not prejudice or affect the rights of the Land Sub as between the Land Sub and adjoining owners other than the State, and the Trustee and the Land Sub agree to jointly and severally indemnify the State against all claims in respect of the cost of erecting or repairing any dividing fence from any future owner, whether legal or equitable, of any adjoining land.

8. CAVEATS

8.1 No lodgement of caveats

The Trustee and the Land Sub may not lodge a caveat on any Land after entering into this Deed if the State has lodged with the Registrar of Titles a memorial pursuant to section 17 of the LAA over the Land so as to quarantine the Land from further dealings until the Completion of an Allocation to the Land Sub.

8.2 Withdrawal of caveat

If a caveat is lodged against the certificate of Crown land title for any Land before the Completion Date, by or in relation to the Trustee or the Land Sub or the Trustee's or Land Sub's interest (if any) in the Land, the Trustee or the Land Sub will provide a withdrawal of caveat to DOL prior to Completion, for lodgement at Completion.

8.3 Caveat lodged by other interests

- (a) If a caveat is lodged against the certificate of Crown land title for any Land before the Completion Date (other than a caveat registered by or in relation to the Trustee or the Land Sub or the Trustee's or the Land Sub's interest in the Land), and the State is unable to produce to the Land Sub for Completion a withdrawal of the caveat:
- (i) despite any other clause in the ILUA or this Deed, the State may by written notice to the Trustee extend the Completion Date by such period not exceeding 60 Business Days as the State shall elect in its absolute discretion to attempt to cause the caveat to be withdrawn, removed or lapsed from the Register;
 - (ii) if the State for whatever reason cannot cause the caveat to be withdrawn, removed or lapsed from the Register on or before the extended Completion Date under sub-clause (i), this Deed will be deemed to have come to an end to the extent that it covers Land over which there is caveat and there will be no further claim under this Deed or the ILUA by either the State or the Trustee or the Land Sub against any of the other of them at law or in equity in respect of the Allocation of the Land over which there is a caveat; and
 - (A) the State will no longer be under obligation to quarantine the Land over which there is a caveat, from future dealings; and
 - (B) the State is under no obligation to ensure the Land over which there is a caveat remains available for Allocation to the Land Sub; and
 - (C) the Land will not be deducted from the Minimum Identified Amount.
- (b) If clause 8.2 is not complied with:
- (i) the State will no longer be under obligation to quarantine the Land over which there is a caveat from future dealings; and
 - (ii) the State is under no obligation to ensure the Land over which there is a caveat remains available for Allocation to the Land Sub; and
 - (iii) the Land over which there is a caveat will be deducted from the Minimum Identified Amount.

9. CERTIFICATE OF CROWN LAND TITLE NOT CREATED AND REGISTERED ON THE COMMENCEMENT DATE

9.1 Application

If a certificate of Crown land title for any Land has not been created and registered as at the Commencement Date, this clause shall apply.

9.2 State to apply for a certificate of Crown Land Title

The State will at the State's expense as soon as practicable after the Commencement Date, apply to the Registrar for the creation and registration of a separate certificate of Crown land title for the Land.

9.3 Minor alterations

The Trustee and the Land Sub must not unreasonably object to minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title as required by any third party whose consent or approval is required for the creation and registration of a certificate of Crown land title for the Land.

9.4 The Trustee and the Land Sub to accept title

The Trustee and the Land Sub must not refuse to accept title to the Land or make any claim for compensation for minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title for the Land.

9.5 Notification of creation and registration of the Certificate of Crown Land Title

The Minister must send a notice notifying the Trustee in writing within 10 Business Days of the creation and registration of a certificate of Crown land title for the Land.

10. CONNECTIONS TO SEWER

If, at the Commencement Date:

- (a) the Land is not connected to a sewer; and
- (b) the State has not received a notice from a competent authority requiring the Land to be so connected,

and on or before Completion Date a competent authority issues to the State a notice requiring the Land to be connected to a sewer, the Land Sub will be responsible for the payment of all costs and expenses payable to the competent authority or any other body in respect of that connection.

11. TERMINATION OF ALLOCATION

- (a) If for any reason outside of the control of the State, for example but without limitation if an injunction is granted, any Land cannot be transferred to the Land Sub on the Completion Date (in this clause an "**Impediment**") and the Impediment is not created, maintained or supported by the Trustee or the Land Sub:

- (i) the State may by written notice to the Trustee extend the Completion Date by such period not exceeding 60 Business Days as the State shall elect in its absolute discretion to attempt to cause the Impediment to be removed; and
 - (ii) if the State for whatever reason cannot cause the Impediment to be removed on or before the extended Completion Date under sub-clause (a), this Deed will be deemed to have come to an end to the extent that it covers Land over which there is an Impediment and there will be no further claim under the ILUA by either the State or the Trustee or the Land Sub against any of the other of them at law or in equity in respect of the Allocation of the Land over which there is an Impediment;
 - (A) the State will no longer be under obligation to quarantine the Land over which there is an Impediment from future dealings;
 - (B) the State is under no obligation to ensure the Land over which there is an Impediment remains available for Allocation to the Land Sub; and
 - (C) the Land over which there is an Impediment will not be deducted from the Minimum Identified Amount.
- (b) If the Impediment is created, maintained or supported by the Trustee or the Land Sub:
- (i) the State will no longer be under obligation to quarantine the Land over which there is an Impediment from future dealings; and
 - (ii) the State is under no obligation to ensure the Land over which there is an Impediment remains available for Allocation to the Land Sub; and
 - (iii) the Land over which there is an Impediment will be deducted from the Minimum Identified Amount.

12. CONTAMINATION AND RELATED MATTERS

12.1 No Warranty

The State makes no warranty:

- (a) as to the nature and extent to which the Land may be affected by any Contamination; and
- (b) that remediation works will not be required to be carried out by the Land Sub for any use which it may make of the Land.

12.2 Memorial

- (a) After the Commencement Date, the Minister will lodge with the Registrar of Titles a memorial pursuant to section 17 of the LAA over the Land to quarantine the Land from further dealings pending Completion and will withdraw such memorial on Completion.
- (b) After the Commencement Date, the Minister may lodge with the Registrar of Titles any other memorial pursuant to section 17 of the LAA over the Land:
 - (i) as specified in the special conditions of the relevant Schedule for the Land, which may include a statement warning of any Contamination of the Land or other relevant factors as a hazard or other factor affecting, or likely to affect, the use or enjoyment of the Land; or
 - (ii) as may be imposed by the WA Planning Commission as a condition of approval for subdivision.
- (c) Nothing in sub-clauses 12.2(a) and (b) impact on the State's power to lodge a memorial over land pursuant to the *Contaminated Sites Act 2003* (WA) or any other Act.
- (d) The Parties intend the memorial in sub-clause 12.2(b) to be lodged with the Transfer, but if this does not occur the parties agree that, notwithstanding clause 13.10, such memorial to be lodged on the Certificate of Title for freehold land, can be lodged after Completion.
- (e) The State will provide notice of the intention to lodge a memorial pursuant to sub-clause 12.2(b)(ii) with the Transfer when it is sent to the Trustee for execution by the Land Sub, or give the Trustee seven days' notice before such memorial is lodged for registration.
- (f) The Trustee's and Land Sub's execution of this Deed evidences the Trustee's and the Land Sub's acknowledgement and consent to any action by the State in accordance with sub-clauses 12.2(b) and 12.2(d) and may be relied upon as its consent for the purpose of lodging any such memorial, under section 17(1) of the LAA.

12.3 No Compensation

Without limiting anything in clause 6, the Trustee and the Land Sub agree and acknowledge and accept the Land in its present condition including without limitation the presence of any Contamination and shall not make or take any objection, requisition or claim for compensation, or terminate this Deed in relation to the presence of any Contamination in, over or on the Land which is present at, or may become apparent after, Completion.

12.4 Land Sub to assume all responsibility

The Land Sub as owner of the Land must at its own cost and expense assume all responsibility for the presence of any Contamination found over, on or in the Land and must to the fullest extent permitted by the law assume all responsibility for:

- (a) compliance with Environmental Laws;

- (b) the conduct and performance of any work required by any competent authority in respect of any Contamination or under any Environmental Laws; and
- (c) any legal, statutory or other liability under or in connection with or resulting from the presence of any Contamination over, on or in the Land.

12.5 Release and Indemnity

The Trustee and the Land Sub jointly and severally release and indemnify and will keep indemnified, the Minister and the Crown from and against all actions, claims, writs, proceedings, suits, demands, losses, damages, compensation, costs of remediation, legal costs, charges and expenses whatsoever which at any time may be brought, maintained or made against the Minister or the Crown arising from or relating to:

- (a) the state or condition of the Land;
- (b) any Contamination over, on or in the Land or emanating from the Land; or
- (c) both of the matters covered in sub-clauses (a) and (b).

13. MISCELLANEOUS

13.1 Costs and duties

- (a) Subject to clause 14, the State will bear any duties, or fees or taxes of a similar nature, and any related fines and penalties, associated with this Deed.
- (b) Each Party will bear their own costs including legal costs associated with the negotiation, drafting and execution of this Deed and the Completion of an Allocation.
- (c) The provisions of clause 7.1 of Annexure J of Schedule 10 of the ILUA apply to this Deed.

13.2 Default costs and expenses

The Trustee shall on demand pay to the State all monies, costs, charges and expenses incurred or expended by the State under or in connection with or by reason of the breach or failure by the Trustee or the Land Sub to observe and perform any of the covenants or conditions on the part of any of them in this Deed or by reason of or in relation to the exercise or attempted exercise by the State of the rights, powers and authorities of the State under this Deed together with interest on those monies at the Rate computed from the time of payment to but excluding the date of repayment or discharge of the liability.

13.3 Deemed delivery of documents

Where in this Deed reference is made to one Party delivering or submitting documents to another Party any such documents will be deemed to have been received:

- (a) in the case of delivery in person, when delivered; and
- (b) in the case of delivery by post, 2 Business Days after the date of posting.

13.4 Notices

Any notice given or required to be given under this Deed:

- (a) must be in writing addressed as shown below:
- (i) if to the State:
 - Address: Minister For Lands
c/Department of Lands
140 William St
PERTH 6000
 - PO BOX 1143
WEST PERTH WA 6872
 - Attention: The Director-General
 - and if by fax to
fax number: (08) 6552 4417
 - (ii) if to the Trustee:
 - Address:
 - (iii) if to the Land Sub:
- (b) must be signed by the sender or an officer of, or under the common seal, of the sender or by the sender's authorised representative (as the case may be);
- (c) is to be regarded as being given by the sender and received by the addressee:
- (i) If by delivery in person, when delivered to the addressee;
 - (ii) if by post (which posting must be by pre-paid security post), 3 Business Days from and including the date of posting to the addressee; and
 - (iii) if by facsimile transmission:
 - (A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and
 - (B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is to be regarded as being given at 9 am (addressee's time) on the next succeeding Business day and can be relied upon by the addressee, and the addressee is not liable to

any other person for any consequences of that reliance if the addressee believes it to be genuine, correct or authorised by the sender.

13.5 Moratorium

Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to this Deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect the rights, powers, privileges, remedies or discretions given or accruing to a party.

13.6 Governing law and jurisdiction

- (a) This Deed is governed by, and must be construed according to, the law applying in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.

13.7 Severance

- (a) If any provision of this Deed is or becomes void, voidable by any Party, unenforceable, invalid or illegal in any respect under the law of any jurisdiction:
 - (i) that will not affect or impair:
 - (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
 - (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed,
 - (ii) the provision will be read down so as to be legal, valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words), will be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.
- (b) If a part of this Deed is severed in accordance with this clause 13.7(a), the Parties will attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the intention of the severed component.

13.8 Variation of this Deed

This Deed may only be varied by a deed executed by or on behalf of each party.

13.9 Waiver

A right or power under this Deed will only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or

prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and

- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

13.10 Provisions to survive completion

- (a) The benefit of any assumption of liability or responsibility, indemnity, release, representation or warranty, or the exclusion of any representation or warranty, survive Completion.
- (b) Without limitation, to the extent that any obligations under this Deed have not been complied with on or before Completion, those obligations survive Completion and must be complied with.

13.11 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give full effect to this Deed and the matters contemplated by it.

13.12 Entire Agreement

To the extent permitted by law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

14. GOODS AND SERVICES TAX

14.1 Interpretation

Any reference in this clause 14 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

14.2 Amounts exclusive of GST

Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Deed are exclusive of GST.

14.3 GST payable

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Deed to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or

incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

ITEM

1. Description of Land:

District/Townsite:

Lot/Location number:

CLT: Volume.....Folio.....

Street Address:

2. Encumbrances:

3. Special Conditions:

EXECUTED as a Deed

Minister:

THE COMMON SEAL IS HEREUNTO)
AFFIXED for and on behalf of **THE STATE OF**)
WESTERN AUSTRALIA by the **MINISTER**)
FOR LANDS, a body corporate under section 7)
of the *Land Administration Act 1997* (WA),)
in the presence of:)

HON TERRY REDMAN MLA
MINISTER FOR LANDS

Signature of witness

Name of witness (block letters)

Address of witness

Occupation of witness

Date of signature

The Land Sub:

The Trustee: