



**SOUTH WEST SETTLEMENT
NEGOTIATIONS**



TEMPLATE DEED IN RELATION TO MANAGEMENT ORDER FOR RESERVE

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

("MANAGEMENT BODY")

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 Area (**Native Title Settlement**).
- B. The Minister will by Order place the care, control and management of the Reserve with the Management Body for the Term on and subject to the provisions of the LAA and Management Order Conditions.
- C. As part of the Native Title Settlement the Minister has agreed to the establishment of the Noongar Land Estate which includes the creation of reserves and the making of management orders to the Management Body in accordance with Part 4 of the LAA.
- D. The Minister, the Management Body and the Trustee have entered into this Deed which sets out the terms and conditions on which the Minister will make a Management Order giving the care, control and management of Reserve, to the Management Body (**Deed**).
- E. The Management Body will take the care, control and management of the Reserve on the terms and conditions contained in this Deed and Management Order Conditions.

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 Management Order definitions

In this Deed, words and phrases defined in the Management Order have the same meanings where used this Deed and appear with an initial capital letter, except where expressly provided otherwise.

1.3 Other definitions

In this Deed, unless the contrary intention appears:

Claims means actions, claims, proceedings, suits, judgments, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand.

Deed means the deed constituted by this document and any amendments or variations of it and includes Schedule 1 and 2.

GST has the meaning given in section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

GST Rate means that rate of GST payable from time to time under the GST Act.

Insurance Amount means the amount specified in item 1 of Schedule 1 or such other amount as the Minister may reasonably require from time to time.

Insurance Policy means the insurance policy or policies required to be taken out under clause 3.4.

Interest Rate means the rate determined under section 8(1)(a) of the *Civil Judgments Enforcement Act, 2004* from time to time.

Management Order means the management order comprising LAA Form 1023, Annexure A and Schedules thereto, annexed in this Deed as Schedule 2.

Management Order Conditions means the conditions set out in the Management Order.

Parties means the Minister, the Management Body and the Trustee.

State's Authorised Users means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the State and any person entering onto the Reserve with the express or implied authority of the State.

Schedule means a schedule to this Deed.

Trustee means the trustee of the Noongar Boodja Trust.

Trustee's Authorised Users means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the Trustee and any person entering onto the Reserve with the express or implied authority of the Trustee.

1.4 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, Management Order 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.

2. GENERAL CONDITIONS

- 2.1** On the Date of Commencement the Management Body accepts the care, control and management of the Reserve on the terms and conditions set out in this Deed and the Management Order, included as Schedule 2 of this Deed.
- 2.2** The Management Body hereby consents to the revocation of the Management Order pursuant to section 50(1)(a) of the LAA if there is a breach of the Management Order Conditions contained in clauses 5.2(a) and 5.2(b) of Annexure A of the Management Order.
- 2.3** Subject to clause 2.4, the Management Body hereby consents, pursuant to section 46(2) of the LAA, to the variation of the Management Order Conditions as may be required by the Minister from time to time to ensure good Crown land administration and management, where such variation is consistent with the conditions on which the

Minister grants management orders to non-government management bodies prevailing at the time.

- 2.4 The Minister reserves the right to vary the Management Order Conditions, not more than once every ten years.

3. INDEMNITY, RELEASE AND INSURANCE

3.1 Definition

In clauses 3.2 and 3.3, **Indemnified Parties** means the State and the State's Authorised Users.

3.2 Indemnity

(a) The Management Body and the Trustee hereby covenant with the Minister to jointly and severally indemnify, and keep indemnified, the Indemnified Parties from and against all Claims whatsoever (whether based in contract, tort or statute or otherwise howsoever arising or any combination thereof) which may at any time be brought maintained or made against or incurred by all or any one or more of the Indemnified Parties:

(i) in respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property (whether real or personal) of any person whether or not on the Reserve and including the property of:

- (A) any of the Indemnified Parties;
- (B) the Management Body and the Trustee, or the Management Body's and the Trustee's Authorised Users;
- (C) the lessee, sub-lessee or licensee of the Reserve; or
- (D) the holders of any Encumbrances on the Reserve and their authorised users;

(ii) in respect of the death of, injury to or illness of, any person including:

- (A) any of the Indemnified Parties;
- (B) the Management Body and the Trustee, or the Management Body's and the Trustee's Authorised Users;
- (C) the lessee, sub-lessee or licensee of the Reserve; or
- (D) the holders of any Encumbrances on the Reserve and their authorised users;

directly or indirectly caused by or arising out of or in connection with:

- (iii) the use of the Reserve by the Management Body and the Management Body's Authorised Users;
- (iv) any work carried out by or on behalf of the Management Body under this Deed;

- (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Management Body and the Management Body's Authorised Users under this Deed;
 - (vi) any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land caused or contributed to by the Management Body and the Management Body's Authorised Users.
 - (vii) any remediation required in respect of the Relevant Land or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use of the Relevant Land by the Management Body and the Management Body's Authorised Users;
 - (viii) any default by the Management Body and the Management Body's Authorised Users in the due and punctual performance of or compliance with any of the Management Order Conditions or the terms, covenants and conditions contained in this Deed, or any other Law that applies to the exercise of the Management Body's rights in respect of the Reserve; or
 - (ix) any negligent or other tortious act or omission of the Management Body or the Management Body's Authorised Users.
- (b) The obligations of the Management Body and the Trustee under this clause 3.2 are unaffected by the obligation to take out insurance and the obligation of the Management Body and the Trustee to indemnify are paramount.
 - (c) The indemnities contained in this clause 3.2 continue in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to expiry or revocation of the Management Order or the termination of this Deed.

3.3 Release

- (a) The Management Body agrees to take and be subject to the same risks and responsibilities to which it would be subject in respect of persons and property if, during the Term it were the owner and occupier of the freehold of the Reserve.
- (b) The Management Body and the Trustee release, to the fullest extent permitted by law, the Indemnified Parties from:
 - (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property or death of, injury to, or illness of, any person, of any nature in or near the Reserve;
 - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land at any time throughout the duration of the Management Order whether or not identified in an audit undertaken by the Management Body or the Trustee; and

- (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the Management Body or the Management Body's Authorised Users;

except to the extent that such loss or damage is caused or contributed to by the negligence of the Indemnified Parties.

- (c) The release contained in this clause 3.3 continues in full force and effect notwithstanding expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to expiry or revocation of the Management Order or the termination of this Deed.

3.4 Insurance

- (a) The Management Body must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the *Insurance Act 1973 (Cth)* and to the satisfaction of the Minister, a public liability insurance policy for the Insurance Amount for any one occurrence and unlimited in the aggregate during any one period of insurance and which covers all Claims and losses howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:
 - (i) any illness of, injury to or death of, any person;
 - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
 - (iii) the loss of use of any property, including the property of any of the Indemnified Parties;
 - (iv) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Relevant Land caused or contributed to by the Management Body or the Management Body's Authorised Users; or
 - (v) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under this Deed in respect of which insurance is ordinarily obtainable.
- (b) Any policy of insurance effected pursuant to this clause must contain such conditions, endorsements and exclusions as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
- (c) The Management Body must give to the Minister a copy of the certificate of currency for the Insurance Policy at the date of execution of this Deed, and the Management Body is to submit evidence to the Minister on each anniversary of the date of execution of this Deed, or as otherwise requested by the Minister, which shows that the Insurance Policy is still current.
- (d) The Management Body is:

- (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policy;
- (ii) to notify the Minister immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy;
- (iii) to comply with the requirements of any Governmental Agency, the Insurance Council of Australia and any insurer;
- (iv) to expend any moneys received in respect of a claim made under the Insurance Policy in satisfaction of the relevant Claim;
- (v) to ensure that the Insurance Policy is in joint names of the Trustee and the Management Body;
- (vi) to have the interests of the Minister and the State noted on the Insurance Policy and to ensure that under the Insurance Policy the insurer has no rights of subrogation against the Minister or the State;
- (vii) to indemnify the Minister and the State against any loss arising from a breach of subclause (v) and the indemnities contained in this sub clause continue in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to termination of this Deed;
- (viii) to ensure that all premiums in respect of the Insurance Policy and renewals of the Insurance Policy are paid punctually;
- (ix) to ensure that it does not at any time during the duration of the Management Order do or bring upon the Reserve anything where the Insurance Policy may be rendered void or voidable; and
- (x) to ensure that if the Management Body does anything or brings anything onto the Reserve where the rate of premium on the Insurance Policy will be liable to be increased, the Management Body will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Reserve is put by the Management Body.

4. YIELDING UP

On the expiry or within two months of the revocation of the Management Order, or such longer period as the Minister allows, the Management Body must, to the reasonable satisfaction of the Minister:

- (a) surrender peaceably and yield up the Reserve to the Minister:
 - (i) clean;
 - (ii) free from rubbish; and
 - (iii) in a state of good repair and condition;

- (b) fill in, consolidate and level off any unevenness, excavation or hole caused by the Management Body or by the Management Body's care, control and management of the Reserve;
- (c) remove any equipment, materials, fittings or any other property (**Materials**) on the Reserve as may be required by the Minister except Materials that:
 - (i) are identified in the Special Conditions as existing on the Reserve as at the Date of Commencement; or
 - (ii) the Minister otherwise determines were on the Reserve as at the Date of Commencement;
- (d) remove anything which is not an Authorised Improvement;
- (e) remove any Authorised Improvement, except an Improvement which existed on the Reserve at the Date of Commencement, at the request of the Minister;
- (f) promptly make good any damage caused by the removal in subclauses (c), (d) or (e); and
- (g) promptly make good and rehabilitate the Reserve and remediate any Contamination, Pollution or Material Environmental Harm of or to the Relevant Land arising from, or connected with the care, control and management of the Reserve by the Management Body or the Management Body's Authorised Users whether such use and occupation is or was under the terms of the Management Order or some other lease, licence or agreement.

5. REMEDY MANAGEMENT BODY'S DEFAULT

The Minister may, but is not obliged to, remedy any default by the Management Body in performing or complying with the Management Order Conditions or this Deed without notice (unless any clause specifically provides otherwise).

6. RECOVER COSTS AND INTEREST FROM MANAGEMENT BODY AND TRUSTEE

- 6.1** If the Minister carries out any works under clause 6.1(b) of Annexure A of the Management Order which it is the Management Body's obligation to do under the Management Order or remedies a default under clause 5, the Management Body and the Trustee are to pay to the Minister on demand all debts, costs and expenses, including legal costs and expenses, incurred by the Minister as a result of carrying out those works or remedying that default.
- 6.2**
- (a) If any amount payable by the Management Body and the Trustee under clause 6.1 is not paid within 20 Business Days after it becomes due for payment, the Management Body and the Trustee is to pay to the Minister interest on demand, on the amount from the due date for payment until it is paid in full.
 - (b) Interest is to be calculated on a daily basis, at the Interest Rate.

7. CONDITIONS CONTINUE AFTER EXPIRY OR REVOCATION OF MANAGEMENT ORDER

7.1 Continuation of Management Order Conditions

The conditions contained in clause 4 of Annexure A of the Management Order continue after the expiry or revocation of the Management Order in respect of any act, deed, matter or thing occurring before the expiry or revocation of the Management Order.

7.2 Continuation of Rights and Obligations – Deed

The rights and obligations under clauses 2, 3, 4, 5 and 6 of this Deed continue after the expiry or revocation of the Management Order in respect of any act, deed, matter or thing occurring before the expiry or revocation of the Management Order.

8. GENERAL PROVISIONS

8.1 Exclusion of warranties

The Management Body acknowledges having inspected the Reserve and that in entering into this Deed and accepting management of the Reserve, the Management Body has not relied on any statement, representation or warranty (other than those implied by or deemed to have been given by law and which cannot be contracted out of) by or on behalf of the Minister or the State whether express or implied, other than the statements, representations and warranties expressly set out in this Deed.

8.2 Suitability and safety of Reserve

- (a) The Minister and the State do not represent or warrant that:
 - (i) the Reserve is suitable to be used for the Reserve Purpose;
 - (ii) any Improvements on the Reserve on the Date of Commencement are suitable to be used for the Reserve Purpose; or
 - (iii) the Reserve may lawfully be used for the Reserve Purpose.
- (b) Without affecting the generality of sub-clause (a):
 - (i) the Minister and the State do not represent or warrant that the zoning of the Reserve will allow the Reserve to be used for the Reserve Purpose, whether with the approval or permission of the relevant planning authority or otherwise; and
 - (ii) it is the Management Body's responsibility to make its own enquiries about zoning, and the Management Body and Trustee warrant that, before executing this Deed, the Management Body and Trustee have done so to their own satisfaction.

8.3 Contamination, Pollution or Environmental Harm

- (a) The Minister and the State make no representation or warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Reserve.
- (b) The Management Body relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Reserve.

- (c) There is no obligation on the part of the State or the Minister to clear any rubbish from the Reserve.

8.4 Access to the Reserve

- (a) Where the Minister has advised there is dedicated legal access to the Reserve, he or she makes no representation or warranty that this will ensure there is a constructed road, a gravel road, a track or other means of physical access over the dedicated legal access to the Reserve.
- (b) The Minister and the State make no representation or warranty as to the existence or suitability or safety of physical access (if any) to the Reserve.
- (c) There is no obligation on the State or the Minister to provide physical access to the Reserve nor to maintain or upgrade physical access to the Reserve, if any.

8.5 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 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.

8.6 Management Body's Warranties

- (a) The Management Body represents and warrants to the Minister that the Management Body has the full powers pursuant to its constitution under which it purports to act when entering into this Deed.
- (b) The Management Body further covenants that:-

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

9. NOTICES

9.1 Service of Notices on Management Body

Any notice or other document to be served on the Management Body under this Deed will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

9.2 Service of Notices on Trustee

Any notice or other document to be served on the Trustee under the Deed will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

9.3 Service of Notices on Minister

Any notice or other document to be served on the Minister under the Deed may be effected:

- (a) by delivering the document to the offices of the Department personally at the address set out at item 2 of Schedule 1 or at such other address previously notified to the Management Body by the Department; or
- (b) by sending the document by letter (by pre-paid post) to the address or by facsimile to the facsimile number of the Department, as set out in item 2 of Schedule 1 or to such other address or facsimile number previously notified to the Management Body by the Department.

9.4 Requirements of Notices on the Minister

A notice or other document to be served on the Minister under this Deed must be signed:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director or secretary of the corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

10. GOODS AND SERVICES TAX

10.1 Interpretation

Any reference in this clause 10 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.

10.2 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.

10.3 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.

11. GENERAL

11.1 Costs and duties

- (a) Subject to clause 10, 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.

11.2 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.

11.3 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; and
 - (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 clause 11.3(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.

11.4 Variation of this Deed

Except as provided for in clauses 2.3 and 2.4 of this Deed, this Deed may only be varied by a deed executed by or on behalf of each Party.

11.5 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.

11.6 No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

11.7 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.

11.8 Entire Agreement

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

- (a) embody the entire understanding of the Parties, and constitute the entire terms agreed by the Parties; and
- (b) supersede any prior written or other agreement of the Parties.

SCHEDULE 1

ITEM

- | | | |
|-----------|---|---|
| 1. | Insurance Amount | \$20,000,000.00 |
| 2. | Minister's Address
for Service of Notices: | Minister for Lands
C/Department of Lands
140 Williams Street
PERTH WA 6000

PO BOX 1143
West Perth WA 6872

Attention: The Director-General |
| | Facsimile No: | (08) 6552 4417 |

SCHEDULE 2

(Attach Management Order)

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 Management Body:

The Trustee: