

HOUSING AUTHORITY
AND
TRUSTEE OF THE NOONGAR BOODJA TRUST
AND
LAND SUB

PROPERTY TRANSFER DEED

This document has been agreed in principle on a without prejudice basis between the State, the Noongar Negotiation Team and SWALSC

Housing Authority
99 Plain Street
EAST PERTH WA 6004

LEG130851

THIS DEED is made on [insert date and year]

BETWEEN Housing Authority, a statutory authority constituted under the *Housing Act 1980*, of 99 Plain Street, East Perth, Western Australia (**Authority**).

AND The Trustee of the Noongar Boodja Trust (Insert ACN) of [address], Western Australia (**NBT**)

AND [Insert details] of [address] (**Land Sub**)

BACKGROUND

- A. This Deed is entered into pursuant to the SW ILUAs.
- B. As part of the settlement of the Native Title Claims the Authority intends to transfer the Properties to the Land Sub.
- C. The Parties acknowledge that as part of the intended transfer of up to 121 properties to the Land Sub, the Authority will also make available to the NBT funding for the refurbishment and/or demolition of properties under a funding agreement to be entered into by the Parties.

THE PARTIES AGREE AS FOLLOWS

1 DEFINED TERMS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the contrary intention appears:

Asbestos has the meaning given in the *Occupational Safety and Health Regulations 1996* (WA);

Building Condition Assessment means a property assessment referencing the requirements of, and compliance with the National Construction Code 2013 prepared for each Property by a building surveyor appointed by the Authority and provided to the NBT as part of the transfer of the Property to the Land Sub;

Business Day means a day, not being a Saturday, Sunday or public holiday, on which banks in Western Australia are open for general business;

Commencement Date means 60 Business Days after either the declaration of the NBT or the incorporation of the Land Sub, whichever is the later;

Compensation has the meaning given to it in the SW ILUAs;

Contamination has a corresponding meaning to “contaminated” as defined in the *Contaminated Sites Act 2003* (WA);

Deed refers to this Property Transfer Deed, including its recitals, the schedules and annexures (if any);

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;

ILUA means an Indigenous Land Use Agreement and has the meaning given to it by the NTA;

Land Sub has the meaning given in the Settlement Terms.

Like to Like Model refers to the basis on which the Authority may propose a Substitute Property to replace a Property in Schedule 1 being that in the reasonable opinion of the Authority the Substitute Property has substantially similar attributes;

Native Title Agreement Groups has the meaning given in the Settlement Terms;

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

Native Title Claims means the following native title claims in South West Western Australia:

- Ballardong (WAD 6181/98);
- Gnaala Karla Booja (WAD 6274/98);
- South West Boojarah (WAD 253/2006);
- Harris Family (WAD 6085/98);
- Wagyl Kaip (WAD 6286/98);
- Southern Noongar (WAD 6134/1998);
- Whadjuk (WAD 242/11); and
- Yued (WAD 6192/98);

Party means any of the Authority, the NBT or the Land Sub, as the case requires, and **Parties** means all of them;

Properties mean the land or land and improvements in Schedule 1 to be transferred and **Property** means any individual such land or land and improvements and refers to Substitute Property as applicable;

Property Settlement means the delivery of possession of the Property by the Authority to the Land Sub;

Property Settlement Date means the date nominated by the Authority from time to time in accordance with clause 6;

Relevant Authority means any body or corporation or any municipal, government, statutory or non-statutory authority or body having authority or jurisdiction over the Property or to whose systems the Property is connected at any time;

Schedule 1 means the schedule to this Deed which identifies each of the Properties intended for transfer from the Authority to the Land Sub after the Commencement Date;

Settlement Terms means the settlement terms attached to the SW ILUAs at Schedule 10;

Substitute Property refers to a replacement property that replaces a Property identified in Schedule 1 for the purpose of transfer in accordance with clause 5;

SWALSC means the South West Aboriginal Land & Sea Council Aboriginal Corporation (ICN 3832);

SW ILUAs means each of the six ILUAs entered into by the Native Title Agreement Groups, SWALSC, the State and others in relation to the settlement of the Native Title Claims including the Settlement Terms; and

Transfer means the instrument required to transfer each Property to the Land Sub in a form acceptable for registration by Landgate, subject to signing by all Parties.

1.2 Interpretation

(a) In this document:

- (i) headings are for reference only and do not affect interpretation;
- (ii) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (iii) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (iv) no provision or expression is to be construed against a Party on the basis that the Party (or its advisers) was responsible for its drafting;
- (v) examples and use of the word 'including' and similar expressions do not limit what else may be included;
- (vi) nothing contained in this Deed will be deemed or construed as creating the relationship of partnership or of principal and agent;
- (vii) if a Party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this Deed; and

(b) Unless the context requires otherwise, a reference in this document to:

- (i) a Party to any document includes that person's successors and permitted substitutes and assigns;
- (ii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (iii) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (iv) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (v) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (vi) time is to Perth, Western Australia time unless stated otherwise;
- (vii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement; and

(viii) clause headings are for convenience only and will be ignored in the interpretation of this Deed.

2 TERM OF THIS DEED

The term of this Deed commences on the Commencement Date and shall operate until the earlier of:

- (a) 60 Business Days after the last Property is transferred to the Land Sub; or
- (b) the termination date of the last SW ILUAs; or
- (c) a date fixed by written agreement between the Parties.

3 Relationship with SW ILUAs

- (a) The Parties acknowledge and accept the terms of clauses 9.6, 9.7 and 10 of the SW ILUAs and how the operation of those clauses may affect this Deed.
- (b) Where any one or more of clauses 9.6, 9.7 and 10 applies in any one or more SW ILUAs the Authority will not, in accordance with the relevant clause, transfer Properties under this Deed that are located in any area that is covered by that or those SW ILUAs.

4 TRANSFER OF PROPERTY

4.1 The Properties

Subject to clause 3 and clause 5, the Authority agrees to transfer and the Land Sub agrees to accept an estate in fee simple in each of the Properties referred to in Schedule 1:

- (a) on the terms and conditions in this Deed; and
- (b) without limiting paragraph (a) above, for no monetary consideration but as part of the Compensation.

4.2 Time to effect transfer

- (a) The process for transfer of Properties shall commence on the Commencement Date and shall be completed within a period of five (5) years.
- (b) Notwithstanding subclause (a), the Parties agree that the period in which any Property may be transferred may be extended:
 - (i) for a further two (2) year period where there are exceptional circumstances, as determined solely by the Authority; or
 - (ii) by written agreement between the Parties.

4.3 Part of Transfer

The Authority will, as part of the transfer of each Property, provide to the Land Sub a Building Condition Assessment for each of the Properties except where the Property comprises vacant land.

5 SUBSTITUTE PROPERTY

- (a) The Authority may propose, in writing, a Substitute Property in place of any of the Properties in Schedule 1.
- (b) Any Substitute Property proposed by the Authority will be, in so far as practicable, determined solely by the Authority based on the Like to Like Model.
- (c) If the Authority proposes a Substitute Property then the Land Sub must within 20 Business Days of receipt of the notice to substitute a Property, indicate whether it will accept the Substitute Property.
- (d) If the Land Sub refuses to accept the Substitute Property then Schedule 1 is reduced by that one Property.
- (e) The terms and conditions of this Deed will apply to any Substitute Property.

6 PROPERTY SETTLEMENT

6.1 Nomination of Property Settlement Date

- (a) The Authority, in its absolute discretion, will determine when a Property is available for transfer.
- (b) As each Property becomes available for transfer, the Authority will provide written notice to the NBT nominating a Property Settlement Date.

6.2 Property Settlement Process

- (a) No later than 14 days prior to the Property Settlement Date, the Authority will arrange for the Transfer to be prepared and provided to the NBT.
- (b) No later than 5 days prior to Property Settlement Date, the NBT must:
 - (i) cause the Land Sub to sign the Transfer;
 - (ii) arrange for the Transfer to be endorsed by the Office of State Revenue; and
 - (iii) deliver the Transfer endorsed by the Office of State Revenue to the Authority; and
 - (iv) deliver to the Authority a photocopy of the Deed showing payment of any duty payable.
- (c) Property Settlement will take place at such time and place nominated by the Authority or as otherwise agreed to by the Parties.
- (d) The Parties must complete the Property Settlement on the Property Settlement Date or on any other date agreed to by the Parties.

6.3 Post Property Settlement

- (a) The Authority must lodge the Transfer and every other document required to enable Transfer to be registered at Landgate after the Property Settlement Date and the Authority must use its best endeavours to ensure that Transfer is registered as soon as possible.

- (b) If a requisition notice is issued by Landgate in relation to the registration of the Transfer or any other document which is lodged for registration with the Transfer, the Parties must immediately do everything reasonably necessary to satisfy the requirements of the requisition notice.
- (c) Where a requisition notice is issued by Landgate in respect of a document prepared by or on behalf of the Authority, the Authority will pay the fee required by Landgate in respect of that requisition notice.

7 POSSESSION AND RISK

7.1 Possession

The Land Sub will be entitled to and the Authority will deliver to the Land Sub possession of the Property on Property Settlement.

7.2 Risk

Notwithstanding any rule of law or in equity to the contrary, each Property is at the risk of the Land Sub in all respects (including without limitation, any damage to or destruction thereof) from the Property Settlement or from the date the Land Sub is entitled to or is given possession of the Property, whichever of these is the earlier.

8 TITLE

8.1 Inspection of title

The Certificate of Title in respect of each Property may be inspected by search at Landgate and neither the NBT nor the Land Sub is entitled to require the Authority to produce an abstract of title or any other evidence of the Authority's title or right to transfer each Property.

8.2 No requisitions on title

Neither the NBT nor the Land Sub are entitled to give the Authority a written statement of objections to or requisitions on the title of any Property.

9 ERROR OR MISDESCRIPTION

9.1 Meaning of error or misdescription

An error or misdescription of any Property means an error or misdescription in Schedule 1 or the Building Condition Assessment of:

- (a) a physical structure or physical feature of that Property;
- (b) a boundary of that Property; or
- (c) the area of that Property.

9.2 No termination or delay in the Property Settlement

An error or misdescription of any Property in Schedule 1 or the Building Condition Assessment shall not:

- (a) entitle the NBT or the Land Sub to terminate this Deed;
- (b) entitle the NBT or the Land Sub to a Substitute Property;

- (c) result in any deferment or delay in Property Settlement; or
- (d) entitle the NBT or the Land Sub to any compensation.

10 ENCUMBRANCES

Each Property is transferred to the Land Sub subject to the following:

- (a) any lease, easement, restrictive covenant or other right granted by the Authority at any time in favour of any other person or any Relevant Authority;
- (b) any easements, positive covenants, restrictive covenants, memorials (and any condition or statement contained in the memorial), rights, reservations, conditions and notifications lodged pursuant to any Act and interests, orders, tenancies, public roads and encroachment (if any) affecting each Property and which are mentioned in the Certificate of Title or which shall be mentioned or registered upon lodgement of the Transfer of each Property to the Land Sub at Landgate; and
- (c) all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Property by any local, state or federal government department or Relevant Authority or under any legislation,

and neither the NBT nor the Land Sub may make any objection, delay or refuse to effect Property Settlement or make any claim for compensation or damages arising from the matters specified in this clause 10.

11 DIVIDING FENCES

11.1 Boundaries

All fences and walls purporting to be on the boundaries of each Property will, as between the NBT, the Land Sub and the Authority, be deemed to be upon their survey boundaries and if any fence or wall is found, whether prior or subsequent to transfer, not to be on its true boundary, neither the NBT nor the Land Sub will be entitled to any compensation from or have any claim against the Authority.

11.2 No claim for dividing fences

- (b) Both the NBT and the Land Sub acknowledge and accept the state and condition of any boundary fence or wall erected on each Property as is, and for the avoidance of doubt, the NBT and the Land Sub acknowledge that the Authority has no obligation to:
 - (i) erect a new boundary fence or wall if no boundary fence or wall is in place at Property Settlement; or
 - (ii) replace or repair any existing boundary fence or wall, unless the Authority has been notified in writing of a claim by an adjoining owner (other than the Land Sub), prior to transfer of a Property to the Land Sub, in which case:
 - (A) the Authority undertakes to notify the NBT and the Land Sub in writing of that claim as soon as practicable after being notified of the claim; and
 - (B) the Authority agrees to complete the works required pursuant to that claim at its cost.

- (c) Neither the NBT nor the Land Sub may make any claim against the Authority pursuant to the *Dividing Fences Act 1961 (WA)* or however else concerning:
 - (i) the construction of or contribution to the cost of construction of any dividing fences or walls;
 - (ii) the repair and maintenance of or contribution to the costs of repair and maintenance of any dividing fences or walls; or
 - (iii) any other liability in respect of a dividing fence or wall including any liability the Authority may have incurred to any adjoining owners.

11.3 Contribution from adjoining owners

Where the Authority is entitled under the *Dividing Fences Act 1961 (WA)* to recover from an adjoining land owner part of the costs of erecting or repairing a boundary fence or wall on the Properties but has not done so on or before Property Settlement, both the NBT and the Land Sub must assist or facilitate the Authority's recovery of such costs as required by the Authority after Property Settlement.

12 RATES AND TAXES

- (a) If each Property is separately rated by the Relevant Authority before Property Settlement then the outgoings payable by the Parties shall be apportioned on Property Settlement.
- (b) If each Property is not separately rated by the Relevant Authority before Property Settlement, then the applicable outgoing will be adjusted at the Authority's election, either:
 - (i) at Property Settlement by calculating the outgoings in a manner that the Authority considers fair and reasonable including having regard to the area of each Property and the area of the land to which the assessment of the Relevant Authority relates; or
 - (ii) after Property Settlement when the relevant information becomes available from the Relevant Authority.
- (c) The Authority will pay each outgoing payable up to and including the date of Property Settlement and the Land Sub will pay each outgoing payable after Property Settlement.

13 NBT'S AND LAND SUB'S ACKNOWLEDGEMENTS

13.1 Property transferred 'as is'

The NBT and the Land Sub acknowledge and agree:

- (a) that each Property is transferred 'as is, where is' and with all faults, defects and characteristics whether they are apparent or ascertainable on inspection or not, and without any obligation on the Authority to disclose or particularise any faults, defects or characteristics known to the Authority;
- (b) no warranty or representation has been given or made to the NBT or the Land Sub by the Authority or any of its agents, employees or contractors or any other person on its behalf as to:

- (i) the title to each Property;
 - (ii) any encumbrance, restriction or right in favour of any third party affecting each Property;
 - (iii) the condition or state of repair of each Property.
- (c) the Authority will not be liable under any circumstances to make any allowance or compensation to the NBT or the Land Sub by the exclusion of warranties or representations in the Deed or for any fault, defect or characteristic in each Property; and
- (d) the NBT and the Land Sub have thoroughly read and understood this Deed and had the opportunity to produce this Deed to professional advisors for the purpose of receiving independent legal and/or financial advice.

13.2 Own enquiries

The NBT and the Land Sub acknowledge that by the Land Sub accepting a transfer of an estate in fee simple in each Property and entering into this Deed each of them will be taken to have satisfied themselves:

- (a) by physical examination and inspection and all other necessary enquiries and relying on the opinion or advice of such experts as it may wish to consult as to the state, condition, quality and quantity of each Property;
- (b) by enquiry of all Relevant Authorities as to the zoning of each Property and the use to which each Property or any other land adjoining or in the vicinity of each Property may be put;
- (c) as to the easements, restrictive covenants, notifications, memorials or other contracts or encumbrances to which each Property may be or become subject;
- (d) as to the requirements of each and every authority, body or government department which has control or jurisdiction over each Property and the current and prospective use and development of each Property;
- (e) by independent valuations or reports as to the value of each Property provided by the Authority and as to the present and future feasibility, liability and economic return that may be derived from each Property; and
- (f) by survey and physical examination as to the area including the boundaries of each Property and not relying on the position of any pegs purporting to mark the boundary,

and shall be deemed to accept the transfer of an estate in fee simple in each Property in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement or representation whatsoever made or alleged to have been made to the NBT or the Land Sub by the Authority or any of its employees, contractors or agents.

13.3 Planning acknowledgement

The NBT and the Land Sub acknowledge that each Property is transferred subject to the following as at the Property Settlement Date:

- (a) the provisions of any town planning scheme, zoning by-laws and other laws affecting each Property;
- (b) any orders or requisitions affecting each Property;
- (c) any proposal or scheme for the widening, realignment, closure, setting or alteration of the level of any road or right of way adjacent to or in the vicinity of each Property by any competent authority or person;
- (d) any resumption or proposal to resume each Property or any adjoining or other land; and
- (e) any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance mentioned in clause 10 affecting each Property or which shall affect each Property on registration of the Transfer of each Property to the Land Sub,

and the Land Sub will take title subject to the above and shall not be entitled to make any objection, requisition or claim for compensation, in respect of any matter mentioned in this Deed.

14 LIMITING OF LIABILITY

Neither the NBT nor the Land Sub will make any objection or requisition or claim against the Authority for compensation or to rescind this Deed and the Authority will not be liable to indemnify the NBT or the Land Sub whatsoever and howsoever arising by reason of:

- (a) any Property being unsuitable for any particular purpose;
- (b) the area of any Property being different from the area indicated on any plan, brochure, material or other publication issued or published by the Authority or on the Authority's behalf or as indicated on the Certificate of Title to each Property;
- (c) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone or other services or connections to each Property, 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 any Property;
- (d) any encroachment onto any Property by any improvement which does not form part of that Property, or the encroachment onto adjoining land of any improvement which forms part of any Property;
- (e) the location of any sewerage, water or drainage pipes or services affecting each Property or that any sewer passes through, or penetrates any Property;
- (f) the presence of Asbestos on any Property; or
- (g) the fact that the current use of any Property may not be an authorised use under any applicable zoning or use law, scheme or regulation.

15 ENVIRONMENTAL MATTERS

- (a) Notwithstanding any other provision contained in this Deed, the Parties mutually acknowledge and agree that some or all of the Properties contain Asbestos and that on and from Property Settlement the Land Sub bears all risk arising from and

responsibility for dealing with such Asbestos. For the avoidance of doubt, risk and responsibility arising from the existence of Asbestos in any Property prior to Property Settlement remains with the Authority.

- (b) Unless the Authority otherwise notifies the NBT in writing prior to Property Settlement, the Authority is not aware of the existence of any Contamination (except for the presence of Asbestos) in on or under each Property that would materially adversely affect the proposed use of each Property and the NBT and the Land Sub acknowledge and agree that on and from Property Settlement, the Land Sub will bear the risk and responsibility of dealing with any Contamination (pre-existing or otherwise) that may subsequently arise in on or under each Property in accordance with the terms of the *Contaminated Sites Act 2003* (WA).
- (c) The NBT and the Land Sub acknowledge and agree that:
 - (i) each of them shall be taken to have satisfied themselves by physical examination and inspection and all other necessary enquiries and by relying on the advice and opinions of such experts as the NBT and the Land Sub may wish to consult as to the geotechnical condition of each Property and each and every part of each Property; and
 - (ii) neither the NBT nor the Land Sub shall have any claim whatsoever against the Authority and the Authority will not indemnify the NBT or the Land Sub in respect of any geotechnical matter which may relate to the suitability of each Property for building purposes (including the compaction of soil or any fill) or any additional costs, losses or expenses that may be incurred by the NBT or the Land Sub in relation to its use or intended use of each Property as a result of the geotechnical condition of each Property.

16 NBT AND LAND SUB INDEMNITY

- (a) The NBT and the Land Sub jointly and severally indemnify and will keep indemnified the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
 - (i) a breach of this Deed by the NBT or the Land Sub;
 - (ii) any negligent or tortious act or omission of the NBT or the Land Sub arising out of or in connection with this Deed;
 - (iii) any breach by the NBT or the Land Sub of a State or Commonwealth law arising out of or in connection with this Deed; and
 - (iv) any third party claim arising out of or in connection with this Deed and only provided that risk in relation to the Properties has been transferred to the Land Sub in accordance with clause 7.2 of this Deed.

- (b) The NBT's or the Land Sub's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the Indemnified Parties or their officers, servants, agents, contractors, invitees and licensees.
- (c) The Parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of this indemnity.
- (d) To the fullest extent available at law, each of the NBT and the Land Sub release the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the NBT or the Land Sub may suffer or incur in respect of or in connection with any of the matters referred to in clauses 9, 10, 12, 13, 14 and 15.
- (e) The NBT and the Land Sub acknowledge and agree that sub-clause (d) may be pleaded as an absolute bar to any relief, compensation or claim sought by the NBT or the Land Sub against the Authority.

17 DISPUTES AND MEDIATION

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Deed (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Deed has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute (**Notice of Dispute**).
- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties have not resolved the Dispute within a period of twenty (20) Business Days after receipt of the Notice of Dispute, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, twenty (20) Business Days after receipt of the Notice of Dispute, the Parties cannot agree on a particular mediator to be appointed, the Parties must request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within twenty (20) Business Days of participating in the first mediation with the mediator, or such other period of time as agreed by the Parties, then either Party is thereafter entitled to commence action to resolve the dispute in a court of competent

jurisdiction or, if agreed to by the Parties by arbitration under the *Commercial Arbitration Act 2012 (WA)*.

- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

18 GST

- (a) Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Deed has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- (c) If GST is payable as a consequence of any supply made under or in connection with this Deed by a party making a supply (**Supplier**), the recipient of that supply must pay an additional amount for GST (**GST Amount**) to the Supplier.
- (d) The recipient must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.
- (e) For the avoidance of doubt, if a GST Amount is payable on any taxable supply that is made for a period or on a progressive basis and the consideration for the taxable supply is to be provided on a progressive or periodic basis, the recipient must pay the GST Amount, subject to the receipt of a Tax Invoice.
- (f) If at any time an adjustment is made or required to be made between the Supplier or any other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made under or in connection with this Contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and any payment necessary to give effect to the adjustment must be made.
- (g) The recipient must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- (h) As a condition precedent to payment of any GST Amount or any amount including any GST Amount, the Supplier must provide to the recipient a Tax Invoice complying with the GST Act.
- (i) If one of the Parties to this Deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Deed, then the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

- (j) In the event that non-monetary consideration is provided under this Deed, the Parties to this Deed will seek to agree upon the GST-exclusive market value of the non-monetary consideration and where appropriate, the Parties must apply clauses 18(b) to 18(h) (inclusive) in respect of any non-monetary consideration that is treated as a taxable supply.
- (k) Notwithstanding Clause 18(h), where non-monetary consideration is provided under this Deed, the Parties agree to issue a Tax Invoice to each other in respect of the non-monetary consideration that complies with the GST Act and where appropriate, the Tax Invoice must show any GST Amount payable.
- (l) Where the Parties agree to apply the margin scheme, the margin scheme will be applied to calculate the amount of GST on the sale of the Property by the Authority under this Deed. The purchaser acknowledges that it will not be entitled to an input tax credit for the acquisition of the Property under this Deed. Where any GST is payable under the margin scheme, clause 18(c) will apply.

19 COSTS AND DUTY

19.1 Legal and other costs

Each Party must bear its own legal costs in connection with the preparation, negotiation, execution and completion of this Deed.

19.2 Transfer duty and registration fee

- (a) Either the NBT or the Land Sub must pay (unless otherwise exempt) all duty payable under the *Duties Act 2008 (WA)* on this Deed and the Transfer.
- (b) The Authority must pay the cost of the preparation of the Transfer and the registration fee payable to Landgate on the Transfer.

20 NOTICES

- (a) Any notice or other communication which is required to be given or served under this Deed (**Notice**) is duly given or served if in writing signed by a person duly authorised by the sender and delivered by hand or sent by prepaid post or facsimile transmission addressed to the other Party.
- (b) Subject to paragraph (c), Notice is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of facsimile, on the date of transmission; and
- (c) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

21 CONFIDENTIALITY

- (a) In this clause 21 **Confidential Information** means all information provided by any of the Parties under or for the purposes of this Deed:
 - (i) during negotiations preparatory to the execution of this Deed; and
 - (ii) during the term of this Deed,

that is identified as confidential by the Party providing the information including the addresses of any Properties that are intended for or are transferred by the Authority to the Land Sub, and details of past or current tenants of any of those Properties.

- (b) Subject to the remainder of this clause 21, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in sub-clause (c).
- (c) Subject to sub-clause (d), a Party receiving Confidential Information may disclose such information in any of the following circumstances:
 - (i) if it has the prior written consent of the Party from whom it received the Confidential Information;
 - (ii) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;
 - (iii) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information;
 - (iv) to the extent that the disclosure of the information is reasonably necessary for any processes or applications under any law or related to any approvals;
 - (v) in processes for resolving, settling or progressing any dispute or litigation concerning this Agreement and its subject matter;
 - (vi) to the receiving Party's officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
 - (vii) to a Regional Corporation (as defined in the SW ILUAs);
 - (viii) to SWALSC, and when appointed by the NBT, the Central Services Corporation (as defined in the SW ILUAs);
 - (ix) to the legislative or executive arms of the Government of Western Australia;
 - (x) to the extent required by law;
 - (xi) to a Court or tribunal of competent jurisdiction; and
 - (xii) as otherwise permitted or required by this Deed.
- (d) Before making any disclosure to a person under sub-clause (c), a Party (**Disclosing Party**) must:
 - (i) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Deed;
 - (ii) before making any disclosure (other than under sub-clauses (c)(ix), (x) and (xi)), and only if it is reasonably practicable and lawful to do so, notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that

that Party considers necessary to protect the confidentiality of that information; and

- (iii) in the case of a disclosure to a person or entity under sub-clause (c) (vi), (vii) and (viii), procure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 21 other than where the person or entity is under a statutory obligation of confidentiality.
- (e) Each Party acknowledges that:
- (i) it is aware that any breach of this clause 21 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy; and
 - (ii) in the event of a suspected or actual breach of this clause 21, or of any obligation of confidentiality under this Deed, any aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 21; and
 - (iii) clause 17 of this Deed does not apply to this sub-clause (e).
- (f) Disclosure of Confidential Information in connection with this Deed does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

22 GENERAL PROVISIONS

22.1 Assignment and Encumbrances

- (a) No Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Deed in any circumstances.
- (b) The NBT and the Land Sub must not grant any encumbrance, mortgage or charge in respect of the whole or any part of its rights, title, obligations and interests under this Deed in any circumstances.

22.2 Entire agreement

This Deed and the documents referenced herein constitute the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

22.3 Governing law and jurisdiction

- (a) This Deed is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia.

22.4 Severance

If any provisions of this Deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.

22.5 Waiver

A right or power under this Deed shall 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 occasion 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.

22.6 No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed.

22.7 Counterparts

This Deed may be executed in a number of counterparts. All counterparts together will be taken to constitute the one instrument. If this Deed is to be executed in counterparts the Parties must execute sufficient numbers for each of them to retain one instrument (as constituted by the counterparts).

22.8 Further action

Each Party must use its best efforts to do all things necessary or desirable to give full effect to this Deed and the matters contemplated by it.

22.9 Survival

Clauses 1, 9, 11, 12, 14, 15, 16, 18, 19.2 20, 21 and 22 survive termination of this Deed.

EXECUTED by the Parties as a deed on the _____ day of _____ 2014

The common seal of)
the **Housing Authority**)
was hereunto affixed in)
the presence of the)
DIRECTOR GENERAL)

Grahame John Searle

THE COMMON SEAL of the)
Noongar Boodja Trust (Insert)
ACN) was hereunto affixed in the)
presence of:)

**We will need the correct
execution clause for
the NBT**

.....
Signature of Authorised Person

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Signature of Authorised Person

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Name of Authorised Person in full (block
letters)

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Name of Authorised Person in full
(block letters)

THE COMMON SEAL of **Land Sub**)
ABN ## was hereunto affixed in the)
presence of:)

**We will need the correct
execution clause for
the Land Sub**

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Signature of Authorised Person

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Signature of Authorised Person

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Name of Authorised Person in full (block
letters)

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Name of Authorised Person in full
(block letters)

SCHEDULE 1

Certificate of Title Details					
	Lot No.	Deposited Plan No.	Volume No.	Folio No.	Portion of Land
1					Whole
2					Whole
3					Whole
4					Whole
5					Whole
6					Whole
7					Whole
8					Whole
9					Whole
10					Whole
11					Whole
12					Whole
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