DIVISION 4B - LAND RELATED BENEFITS

31. M2 DEVELOPMENT AREA

Notes:

(1) This clause 31 applies to the development of the M2 Development Area for agriculture.

(2) The areas referred to in this clause are depicted on Map 4 in Schedule 2.

(3) The M2 Development Area is partly over Ivanhoe Pastoral Lease and unallocated Crown Land. That part of Ivanhoe Pastoral Lease will be surrendered, and an interim grazing licence may be granted pending development of the M2 Development Area, in accordance with clause 54.

(4) The M2 Development Area is partly within the MG#1 Determination Area, and partly within the MG#4 Claim Area. Under the MG#1 Determination, native title does not exist in the M2 Extinguished Area (which is within the M2 Development Area).

(5) The M2 Development Area broadly corresponds with the M2 Acquisition Area (the area subject to the original section 29 notice) and the M2 Additional Acquisition Area (the area subject to a further section 29 notice), and the M2 Extinguished Area. However part of the M2 Acquisition Area now forms part of the New Conservation Areas, and accordingly is not part of the M2 Development Area.

(6) The M2 Development Area has been divided into the M2 Maximum Farm Area and the M2 Minimum Buffer Area. The M2 Maximum Farm Area consists of land which is intended to become Serviced Farm Lots plus land which will contain infrastructure such as roads, irrigation channels and drains known as infrastructure corridors. The precise extent of those infrastructure corridors will not be known until the infrastructure is developed. At that point, the Serviced Farm Lots and infrastructure corridors will form the M2 Farm Area and the remaining land will form the M2 Buffer Area.

(7) Within the M2 Maximum Farm Area and the M2 Minimum Buffer Area there are M2 Raw Materials Areas. There may also be Additional Raw Materials Areas. These are intended to be used for the extraction of raw materials. Once they are no longer required for the extraction of raw materials, they will become either M2 Buffer Area or M2 Farm Area.

(8) If the M2 Development Area is to be developed under this deed for agriculture then the process provided in this deed is as follows:

(a) Crosswalk's interests will be terminated in accordance with clause 54 in respect of those areas required for the M2 development;

(b) if the State wishes to proceed with the development of the M2 Development Area before the Registration Date, the State may compulsorily acquire native title in the M2 Maximum Farm Area and the M2 Raw Materials Area in accordance with the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord);

(c) if this deed is registered on the Register:

(i) any native title will be surrendered and extinguished upon the transfer of freehold or the grant of a lease in the M2 Maximum Farm Area (including transfer to LandCorp or an agent of the State), in accordance with clause 12.2 (dealing with Surrender of native titles for third party grants);

(ii) the non-extinguishment principle will apply to the creation of tenure (first a reserve, and later a freehold title) over the M2 Minimum Buffer Area, and to acts done in the M2 Buffer Area, in accordance with clause 14 (except as provided in clause 15 dealing with Taking Orders in Buffers), and

(iii) the non-extinguishment principle will apply to acts done in the M2 Raw Materials Area and Additional Raw Materials Areas in accordance with clause 14.6 except where they have been compulsorily acquired in accordance with the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord),

(d) if this deed is not registered on the Register and nine (9) months has passed since the Execution Date, the State may compulsorily acquire and extinguish any native title in the M2 Acquisition Area and the M2 Additional Acquisition Area (but not including land the subject of the New Conservation Areas) in accordance with the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord);

(e) as far as possible under the Environmental Approval for the M2 Development Area, the State will itself establish, or a Proponent will establish, an EME for the M2 Development Area, and the MG Corporation will have an interest and a role in the M2 EME in accordance with clause 31.6 (and see the definition of EME);

(f) the State will transfer freehold title to the M2 Buffer Freehold Area to the MG Corporation subject to a lease to the M2 EME and easements to the State to access the M2 Raw Material Areas and any Additional Raw Materials Areas, in accordance with clause 50. Raw Materials Areas in the M2 Buffer which are still required for raw materials will remain reserves until later incorporated into the M2 Buffer Freehold Area;

(g) the MG Corporation will be granted Serviced Farm Lots in the M2 Farm Area in accordance with clause 48; and

(h) the State, LandCorp or Proponents (as the case may be) will be required to develop and implement an Aboriginal Development Package in accordance with clause 49.

31.1 Requirements for development of M2 Development Area

(1) Unless the State and the MG Corporation otherwise agree in writing, the State must not:

(a) develop the M2 Development Area; or

(b) transfer or grant a freehold title or a lease in the M2 Development Area to LandCorp or a Proponent for the development of the M2 Development Area,

otherwise than in accordance with this clause 31.

(2) The State may at any time decide whether to proceed with the development of the M2 Development Area. The State may decide to do so:

(a) whether or not the development will proceed in the Northern Territory;

(b) in one or more stages; or

(c) itself or through LandCorp or some other government agency, or by one or more Proponents, or a combination of both.

(3) Nothing in this deed obliges the State to proceed with the development of the M2 Development Area or to provide funding or other support to a Proponent in respect of the development of the M2 Development Area.

(4) The MG Corporation, the MG#4 Claimants and the MG#1 PBC agree that they will not object to, challenge or oppose the development of the M2 Development Area in accordance with this clause, whether under any Commonwealth or State environmental or other legislation. This does not prevent those Parties making submissions or taking any other lawful steps under Commonwealth or State environmental legislation or otherwise to ensure that any proposed development including associated purposes is conducted in an environmentally appropriate manner having regard to the nature of the agriculture and industry best practice.

31.2 Development of M2 Maximum Farm Area by State or LandCorp

(1) If the State, LandCorp, or the State or LandCorp in a joint venture with a Proponent develop all or part of the M2 Maximum Farm Area, for sale or lease of Serviced Farm Lots to the public then the State or LandCorp (as the case may be) must comply with the obligations of a Developing Party under:

(a) clause 48 (dealing with 5% of Serviced Farm Lot Provisions) as if references in clause 48 to the "Maximum Farm Area" are references to the M2 Maximum Farm Area or the relevant part of the M2 Maximum Farm Area; and

(b) clause 49 (dealing with Aboriginal Development Package) as if references in clause 49 to the "Maximum Farm Area" are references to the M2 Maximum Farm Area or the relevant part of the M2 Maximum Farm Area.

(2) Clause 48 (dealing with 5% of Serviced Farm Lot Provisions) only applies to the first transfer of Serviced Farm Lots following development of the M2 Development Area.

31.3 Development of M2 Maximum Farm Area by Proponents

(1) This clause 31.3 applies if all or part of the M2 Maximum Farm Area, is to be developed by a Proponent, whether for their own purposes or for sale or lease to the public. However this clause 31.3 does not apply in respect of any development of infrastructure within the M2 Maximum Farm Area to which clause ~~31.4~~ 31.5 (dealing with Infrastructure in the M2 Maximum Farm Area) applies.

(2) The State must only grant a lease or freehold title to all or part of the M2 Maximum Farm Area, for the purpose of the development of the area, to a Proponent chosen in accordance with clause 47.

(3) ~~Subject to clause 31.4~~, tThe State must not grant a lease or transfer a freehold title to a Proponent in all or part of the M2 Maximum Farm for the development of the area, unless the Proponent has delivered to the MG Corporation or MG Entity an executed:

(a) Five Percent of Serviced Farm Lots Deed in accordance with clause 48; and

(b) Aboriginal Development Undertaking in accordance with clause 49.

(4) If the MG Corporation or MG Entity does not execute and deliver to the Proponent the:

(a) Five Percent of Serviced Farm Lots Deed within 15 Business Days of the delivery of the Deed in accordance with clause 48.2; or

(b) Aboriginal Development Package within 15 Business Days of the delivery of the Deed in accordance with clause 49.2,

then the Proponent is not obliged to comply with the obligations arising from those deeds.

31.4 Nomination of the final M2 Buffer and M2 Farm Area

(1) As soon as practicable following completion of the development of the M2 Farm Area, the Developing Party must notify the MG Corporation in writing as to which parts of the M2 Development Area shall be the final M2 Buffer Area and the final M2 Farm Area.

(2) The M2 Minimum Buffer Area must be included in the final M2 Buffer Area.

31.5 Infrastructure in the M2 Maximum Farm Area

(1) The State, the Commonwealth, LandCorp, a local Government and any agency instrumentality or statutory authority of the State or the Commonwealth may:

(a) if native title has been extinguished under this deed or the Deed of Compulsory Acquisition of Native Title Rights and Interests (Ord); or

(b) in accordance with this deed, including clauses 14.4 (dealing with Other acts within the ILUA (Surrender Third Party) Area) or clause 31.1 (dealing with Requirements for Development of the M2 Development Area),

develop and operate, or grant any interest to any person to develop or operate, infrastructure within the M2 Maximum Farm Area as an enterprise separate from the development of farm land within the M2 Maximum Farm Area, provided that the infrastructure relates substantially to the development and use of that farm land, and in which case the following clauses do not apply to any such development or grant:

(c) 31.2 (dealing with Development of M2 Maximum Farm Area by State of LandCorp);

(d) 31.3 (dealing with Development of M2 Maximum farm area by Proponents); and

(e) 49 (dealing with Aboriginal Development Package).

(2) If the State develops infrastructure within the M2 Maximum Farm Area in accordance with clause 31.5(1) then the State will comply with the Buy Local Policy.

(3) The State will use its reasonable endeavours to procure government trading enterprises (as defined in the Buy Local Policy) which develop infrastructure within the M2 Maximum Farm Area in accordance with clause 31.5(1) to comply with the Buy Local Policy.

31.6 M2 EME

(1) The State (which for the purposes of this clause 31.6 does not include the Minister for the Environment or any officer, agency, Department or Authority of the State which has a function or responsibility under the *Environmental Protection Act 1986* (WA)) must use its best endeavours to ensure that the Environmental Approval for the M2 Development Area includes a condition that an M2 EME be established.

(2) If the MG Corporation or its nominee has a seat on the board of directors or governing committee of the M2 EME by reason of the MG Corporation's ownership of the M2 Buffer Area then that director or member of the governing committee shall be deemed, for the purposes of this deed, to be the nominee of the MG People.

Note: In the definition of EME under this deed the MG Corporation may have a dual role in the EME by first, having a seat on the board or governing committee and by second, having a right to membership of the EME due to being an industry participant and the owner of freehold title to the buffer. This clause provides that the same MG Corporation representative shall perform both roles, namely as a board member and as a general member.

(3) Nothing in this deed obliges the State or LandCorp to provide funds to a Proponent or to an M2 EME to enable an M2 EME to be established or to perform its functions under the Environmental Approval.

31.7 M2 Buffer Area

(1) As soon as practicable after all of the following have occurred:

(a) this deed is registered on the Register, or nine (9) months have passed since the Execution Date;

(b) Crosswalk has surrendered the relevant parts of the Ivanhoe Pastoral Lease and any licence for grazing purposes over the M2 Development Area, in accordance with clause 54; and

(c) the State has commenced to develop some or all of the M2 Maximum Farm Area, or the State has transferred a freehold or leasehold title to some or all of the M2 Maximum Farm Area to LandCorp or a Proponent for the purpose of developing the area,

the State must establish a Buffer Area within the M2 Development Area in accordance with clause 50.

(2) If the M2 Maximum Farm Area is developed in stages and the Environmental Approval for the M2 Development Area allows for only part of the M2

Minimum Buffer Area to be established as a buffer area in respect of a particular stage of the development then the State must:

(a) establish a buffer area in the M2 Development Area in accordance with clause 50; or

(b) grant or maintain a licence under section 91 of the LAA to CPC for the purpose of grazing over that part of the M2 Minimum Buffer Area which is not required as a buffer for the time being.

31.8 Access to enclosed buffer areas

(1) The State must not grant one or more leases within the M2 Maximum Farm Area which wholly enclose any part of the M2 Minimum Buffer Area unless at least one of the leases contains a condition that, subject to the exceptions and conditions in clause 31 8(3), the lessee shall provide for access over a defined portion of the lease to the enclosed parts of the M2 Minimum Buffer Area for:

(a) MG People in order to exercise MG Culture; and

(b) the M2 EME by its officers servants and contractors to exercise the rights and obligations of the M2 EME in respect of the M2 Minimum Buffer Area.

(2) The State must not transfer freehold titles within the M2 Maximum Farm Area which wholly enclose any part of the M2 Minimum Buffer Area unless at least one of the freehold titles is subject to an easement which, subject to the exceptions and conditions in clause 31 8(3), provides for access over a defined portion of the freehold to the enclosed parts of the M2 Minimum Buffer Area for:

(a) MG People in order to exercise MG Culture; and

(b) the M2 EME by its officers servants and contractors to exercise the rights and obligations of the M2 EME in respect of the M2 Minimum Buffer Area.

(3) The condition in a lease, and the easement, referred to in this clause 31 8(1) and 31.8(2) may provide that access to the enclosed part of the M2 Minimum Buffer Area is subject to the following exceptions and conditions:

(a) temporary denial of access by the lessee or registered proprietor of the freehold (as the case may be) on the grounds of health and safety (including, without limitation, by reason of construction, burning or spraying activity being undertaken by the lessee or registered proprietor), provided the lessee or registered proprietor gives written notice to the MG Corporation and the M2 EME of the time and duration and reason for the denial of access within a reasonable period of time (having regard to the requirements of the lessee or registered proprietor, and the requirements of the MG People) prior to the denial of access;

(b) persons passing or repassing in accordance with the condition or easement must take reasonable care not to damage the land, including without limitation not to render any existing tracks impassable;

(c) the MG Corporation must indemnify the lessee or the registered proprietor of the freehold (as the case may be) in respect of:

(i) any damage to the land the subject of the lease or the freehold title (as the case may be) which is caused by any officer, member or nominee of the MG Corporation in the exercise or purported exercise of the right conferred by the condition or easement; and

(ii) any loss or damage suffered by the lessee or registered proprietor (as the case may be) by reason of the exercise or purported exercise by any officer, member or nominee of the MG Corporation of the right conferred by the condition or easement; and

(d) the M2 EME must indemnify the lessee or the registered proprietor of the freehold (as the case may be) in respect of:

(i) any damage to the land the subject of the lease or the freehold title (as the case may be) which is caused by any officer, servant or contractor of the M2 EME in the exercise or purported exercise of the right conferred by the condition or easement; and

(ii) any loss or damage suffered by the lessee or registered proprietor (as the case may be) by reason of the exercise or purported exercise by any officer, servant or contractor of the M2 EME of the right conferred by the condition or easement

31.9 Mining etc in the M2 Development Area

(1) Notwithstanding any other provision of this clause 31, the State may grant any mining or petroleum tenement or petroleum pipeline licence or easement in the M2 Development Area in accordance with applicable laws of the State and the Commonwealth (including the NTA).

(2) For the avoidance of doubt, nothing in clause 31.9(1) derogates from clause 14.5(3).

31.10 Proponents undertaking joint and separate developments

(1) If more than one Proponent develops the M2 Maximum Farm Area separately then the area developed by each Proponent shall be considered a separate stage and this clause 31 applies separately to each stage.

(2) If the M2 Maximum Farm Area is developed by more than one Proponent as part of a joint development (for example, as a partnership or joint venture) then a reference in this clause 31 to a Proponent is a reference to those Proponents jointly.

32. MANTINEA DEVELOPMENT AREA

Notes

(1) This clause 32 applies to the Mantinea Development Area

(2) The areas referred to in this clause are depicted on Map 5 in Schedule 2.

(3) The Mantinea Development Area is over part of Ivanhoe Pastoral Lease, part of Reserve 1061 and all Reserve 18810. That part of Ivanhoe Pastoral Lease will be surrendered, and an interim grazing licence may be granted pending development of the Mantinea Development Area, in accordance with clause 54.

(4) The Mantinea Development Area is partly within the MG#1 Determination Area, and partly within the MG#4 Claim Area.

(5) The Mantinea Development Area comprises the Mantinea Acquisition Area (the area subject to a section 29 notice) and part of Reserve 1061 and all of Reserve 18810. Under the MG#1 Determination, native title does not exist in Reserves 1061 and 18810.

(6) The Mantinea Development Area will contain a farm area, a buffer area and an 'other' area (for residential, rural residential, commercial and industrial purposes). The Mantinea Farm Area and the Mantinea Buffer Area and the Mantinea Other Area have not been defined (unlike with the M2 Development Area which has a maximum farm area and minimum buffer area). These areas will be nominated by the State at a later date.

(7) The Mantinea Farm Area will consist of Serviced Farm Lots plus land which will contain infrastructure such as roads, irrigation channels and drains, known as infrastructure corridors. The precise extent of those infrastructure corridors will not be known until the infrastructure is developed. At that point, the Serviced Farm Lots and infrastructure corridors will form the Mantinea Farm Area, and the remaining land will form the Mantinea Buffer Area and the Mantinea Other Area.

(8) Within the Mantinea Development Area there may be Additional Raw Materials Areas. These would be used for the extraction of raw materials. Once those Additional Raw Materials Areas (if any) are no longer required for the extraction of raw materials, they will become either Mantinea Buffer Area, Mantinea Farm Area or Mantinea Other Area.

(9) If the Mantinea Development Area is to be developed under this deed for agriculture and residential, rural residential, commercial and industrial purposes then the process provided in this deed is as follows:

(a) Crosswalk's interests will be terminated in accordance with clause 54 in respect of those areas required for the Mantinea development;

(b) if this deed is registered on the Register:

(i) any native title will be surrendered and extinguished upon the transfer of freehold or the grant of a lease in the Mantinea Development Area (not including the area of Reserves 1061 and 18810) (including transfer to LandCorp or an agent of the

State), in accordance with clause 12.2 (dealing with Surrender of native title for third party grants),

(ii) the non-extinguishment principle will apply to the creation of tenure (first a reserve, and later a freehold title) over the Mantinea Buffer Area, and to acts done in the Mantinea Buffer Area, in accordance with clause 14 (except as provided in clause 15 dealing with taking orders in buffers), and

(iii) the non-extinguishment principle will apply to acts done in the Additional Raw Materials Area (if any) in accordance with clause 14.6;

(c) if this deed is not registered on the Register and nine (9) months has passed since the Execution Date, the State may compulsorily acquire and extinguish any native title in the Mantinea Acquisition Area in accordance with the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord);

(d) as far as possible under the Environmental Approval for the Mantinea Development Area, the State will itself establish, or a Proponent will establish, an EME for the Mantinea Development Area and the MG Corporation will have an interest and a role in the Mantinea EME in accordance with clause 32.8 (and see the definition of EME),

(e) the State will transfer freehold title to the Mantinea Buffer Freehold Area to the MG Corporation subject to a lease to the Mantinea EME and easements to the State to access the Additional Raw Materials Areas, in accordance with clause 50. Mantinea Raw Materials Areas which are still required for raw materials will remain reserves until later incorporated into the Mantinea Buffer Freehold Area;

(f) the MG Corporation will be granted Serviced Farm Lots in the Mantinea Farm Area in accordance with clause 48;

(g) the State, LandCorp or Proponents (as the case may be) will be required to develop and implement an Aboriginal Development Package in accordance with clause 49;

(h) if the same Proponent develops both the Mantinea Farm Area and the Mantinea Other Area the Proponent must be chosen in accordance with clause 47;

(i) if different Proponents develop the Mantinea Farm Area and the Mantinea Other Area then

(i) the Proponent for the Mantinea Other Area need not be chosen in accordance with clause 47; and

(ii) clause 51.2 (dealing with the sale of Undeveloped Land by the State or LandCorp) will apply to the Mantinea Other Area

32.1 Requirements for development of Mantinea Development Area

(1) Unless the State and the MG Corporation otherwise agree in writing, the State must not:

(a) develop the Mantinea Development Area; or

(b) transfer or grant a freehold title or a lease in the Mantinea Development Area to LandCorp or a Proponent for the development of the Mantinea Development Area,

otherwise than in accordance with this clause 32.

(2) The State may at any time decide whether to proceed with the development of the Mantinea Development Area. The State may decide to do so:

(a) whether or not the M2, Ord East or Ord West developments will proceed;

(b) in one or more stages; or

(c) itself or through LandCorp or some other government agency, or by one or more Proponents, or a combination of both.

(3) Nothing in this deed obliges the State to proceed with the development of the Mantinea Development Area, nor to provide funding or other support to a Proponent in respect of the development of the Mantinea Development Area.

(4) The MG Corporation, the MG#4 Claimants and the MG#1 PBC agree that they will not object to, challenge or oppose the development of the Mantinea Development Area in accordance with this clause, whether under any Commonwealth or State environmental or other legislation. This does not prevent those Parties making submissions or taking any other lawful steps under Commonwealth or State environmental legislation or otherwise to ensure that any proposed agriculture including associated purposes or residential, rural residential, commercial or industrial development is conducted in an environmentally appropriate manner having regard to the nature of the proposed development and industry best practice.

32.2 Notification of Mantinea Conservation Excision and Farm Extension

Prior to commencement of development of the Mantinea Development Area, the State may by notice in writing to the MG Corporation:

(a) excise some or all of the Mantinea Conservation Excision from the Mantinea Development Area; and

(b) include the Mantinea Farm Extension in the Mantinea Development Area.

32.3 Development of Mantinea Farm Area by State or LandCorp

(1) If the State, LandCorp or the State or LandCorp in a joint venture with a Proponent, develop the Mantinea Farm Area for sale or lease of Serviced Farm Lots to the public then the State or LandCorp (as the case may be) must comply with the obligations of a Developing Party under:

(a) clause 48 (dealing with 5% of Serviced Farm Lot Provisions) as if references in clause 48 to the "Farm Area" are references to the Mantinea Farm Area or the relevant part of the Mantinea Farm Area; and

(b) clause 49 (dealing with Aboriginal Development Package) as if references in clause 49 to the "Farm Area" are references to the Mantinea Farm Area or the relevant part of the Mantinea Farm Area.

(2) Clause 48 (dealing with 5% of Serviced Farm Lot Provisions) only applies to the first transfer of Serviced Farm Lots following development of the Mantinea Development Area.

32.4 Development of Mantinea Farm Area by Proponents

(1) This clause 32.4 applies if all or part of the Mantinea Farm Area is to be developed by a Proponent, whether for their own purposes or for sale or lease to the public. However this clause 32.4 does not apply in respect of any development of infrastructure within the Mantinea Farm Area to which clause ~~32.5~~ 32.7 (dealing with Infrastructure in the Mantinea Farm Area) applies.

(2) The State must only grant a lease or freehold title in all or part of the Mantinea Farm Area, for the purpose of the development of the area, to a Proponent chosen in accordance with clause 47.

(3) The State must not grant a lease or transfer a freehold title to a Proponent in all or part of the Mantinea Farm Area for the development of the area, unless the Proponent has delivered to the MG Corporation or MG Entity an executed:

(a) Five Percent of Serviced Farm Lots Deed in accordance with clause 48; and

(b) Aboriginal Development Undertaking in accordance with clause 49.

(4) If the MG Corporation or MG Entity does not execute and deliver to the Proponent the:

(a) Five Percent of Serviced Farm Lots Deed within 15 Business Days of the delivery of the Deed in accordance with clause 48.2; or

(b) Aboriginal Development Package within 15 Business Days of the delivery of the Deed in accordance with clause 49.2,

then the Proponent is not obliged to comply with the obligations arising from those deeds.

32.5 Nomination of Mantinea Other Area

As soon as practicable following finalisation or approval by the State of the design of the Mantinea Development Area, the State must notify the MG Corporation in writing as to which parts of the Mantinea Development Area form the Mantinea Other Area.

32.6 Nomination of the Mantinea Buffer and Mantinea Farm Area

As soon as practicable following completion of the development of the Mantinea Farm Area, the Developing Party must notify the MG Corporation in writing as to which parts of the Mantinea Development Area shall be the Mantinea Buffer Area and the Mantinea Farm Area.

32.7 Infrastructure in the Mantinea Farm Area

(1) The State, the Commonwealth, LandCorp, a local Government and any agency, instrumentality or statutory authority of the State or the Commonwealth may:

(a) if native title has been extinguished under this deed or the Deed of Compulsory Acquisition of Native Title Rights and Interests (Ord); or

(b) in accordance with this deed, including clauses 14.4 (dealing with Other acts within the ILUA (Surrender Third Party) Area) and 32.1 (dealing with Requirements for Development of the Mantinea Farm Area),

develop and operate, or grant any interest to any other person to develop or operate, infrastructure within the Mantinea Farm Area as an enterprise separate from the development of farm land within the Mantinea Farm Area, provided that the infrastructure relates substantially to the development and use of that farm land, and in which case the following clauses do not apply to any such development or grant:

(c) 32.3 (dealing with Development of Mantinea Farm Area by State of LandCorp);

(d) 32.4 (dealing with Development of Mantinea Farm Area by Proponents); and

(e) 49 (dealing with Aboriginal Development Package).

(2) If the State develops infrastructure within the Mantinea Farm Area in accordance with clause 32.7(1) then the State will comply with the Buy Local Policy.

(3) The State will use its reasonable endeavours to procure government trading enterprises (as defined in the Buy Local Policy) which develop infrastructure within the Mantinea Farm Area in accordance with clause 32.7(1) to comply with the Buy Local Policy.

32.8 Mantinea EME

(1) The State (which for the purposes of this clause 32.8 does not include the Minister for the Environment or any officer, agency, Department or Authority of the State which has a function or responsibility under the *Environmental Protection Act 1986* (WA)) must use its best endeavours to ensure that the Environmental Approval for the Mantinea Development Area includes a condition that an Mantinea EME be established.

(2) If the MG Corporation or its nominee has a seat on the board of directors or governing committee of the Mantinea EME by reason of the MG Corporation's ownership of the Mantinea Buffer Area then that director or member of the governing committee shall be deemed, for the purposes of this deed, to be the nominee of the MG People.

(3) Nothing in this deed obliges the State or LandCorp to provide funds to a Proponent or to an Mantinea EME to enable an Mantinea EME to be established or to perform its functions under the Environmental Approval.

32.9 Mantinea Buffer Area

(1) As soon as practicable after all of the following have occurred:

(a) this deed is registered on the Register, or nine (9) months have passed since the Execution Date;

(b) Crosswalk has surrendered the relevant parts of the Ivanhoe Pastoral Lease and any licence for grazing purposes over the Mantinea Development Area, in accordance with clause 54; and

(c) the State has commenced to develop some or all of the Mantinea Farm Area, or the State has transferred a freehold or leasehold title to some or all of the Mantinea Farm Area to LandCorp for the development of the area, or the State has transferred a freehold or leasehold title to some or

all of the Mantinea Farm Area to a Proponent for the purpose of the Proponent developing the area,

the State must establish a Buffer Area within the Mantinea Development Area in accordance with clause 50.

(2) If the Mantinea Farm Area is developed in stages and the Environmental Approval for the Mantinea Development Area allows for only part of the Mantinea Buffer Area to be established as a buffer area in respect of a particular stage of the development then the State must:

(a) establish a buffer area in the Mantinea Development Area in accordance with clause 50; or

(b) grant or maintain a licence under section 91 of the LAA to CPC for the purpose of grazing over that part of the Mantinea Buffer Area which is not required as a buffer for the time being.

32.10 Access to enclosed buffer areas

(1) The State must not grant one or more leases within the Mantinea Farm Area which wholly enclose any part of the Mantinea Buffer Area unless at least one of the leases contains a condition that, subject to the exceptions and conditions in clause 32.10(3), the lease shall provide for access over a defined portion of the lease to the enclosed parts of the Mantinea Buffer Area for:

(a) MG People in order to exercise MG Culture; and

(b) the Mantinea EME by its officers servants and contractors to exercise the rights and obligations of the Mantinea EME in respect of the Mantinea Buffer Area.

(2) The State must not transfer freehold titles within the Mantinea Farm Area which wholly enclose any part of the Mantinea Buffer Area unless at least one of the freehold titles is subject to an easement which, subject to the exceptions and conditions in clause 32.10(3), provides for access over a defined portion of the freehold to the enclosed parts of the Mantinea Buffer Area for:

(a) MG People in order to exercise MG Culture; and

(b) the Mantinea EME by its officers servants and contractors to exercise the rights and obligations of the Mantinea EME in respect of the Mantinea Buffer Area.

(3) The condition in a lease, and the easement, referred to in this clause 32.10(1) and 32.10(2) may provide that access to the enclosed part of the Mantinea Buffer Area is subject to the following exceptions and conditions:

(a) temporary denial of access by the lessee or registered proprietor of the freehold (as the case may be) on the grounds of health and safety (including, without limitation, by reason of construction, burning or spraying activity being undertaken by the lessee or registered proprietor), provided the lessee or registered proprietor gives written notice to the MG Corporation and the Mantinea EME of the time and duration and reason for the denial of access within a reasonable period of time (having regard to the requirements of the lessee or registered proprietor, and the requirements of the MG People) prior to the denial of access;

(b) persons passing or repassing in accordance with the condition or easement must take reasonable care not to damage the land, including without limitation not to render any existing tracks impassable;

(c) the MG Corporation must indemnify the lessee or the registered proprietor of the freehold (as the case may be) in respect of:

(i) any damage to the land the subject of the lease or the freehold title (as the case may be) which is caused by any officer, member or nominee of the MG Corporation in the exercise or purported exercise of the right conferred by the condition or easement; and

(ii) any loss or damage suffered by the lessee or registered proprietor (as the case may be) by reason of the exercise or purported exercise by any officer, member or nominee of the MG Corporation of the right conferred by the condition or easement; and

(d) the Mantinea EME must indemnify the lessee or the registered proprietor of the freehold (as the case may be) in respect of:

(i) any damage to the land the subject of the lease or the freehold title (as the case may be) which is caused by any officer, servant or contractor of the Mantinea EME in the exercise or purported exercise of the right conferred by the condition or easement; and

(ii) any loss or damage suffered by the lessee or registered proprietor (as the case may be) by reason of the exercise or purported exercise by any officer, servant or contractor of the Mantinea EME of the right conferred by the condition or easement.

32.11 Mining etc in the Mantinea Development Area

(1) Notwithstanding any other provision of this clause 32, the State may grant any mining or petroleum tenement or petroleum pipeline licence or easement in the Mantinea Development Area in accordance with applicable laws of the State and the Commonwealth (including the NTA).

(2) For the avoidance of doubt, nothing in clause 32.11(1) derogates from clause 14.5(3) (dealing with Other Acts within Buffer Areas).

32.12 Proponents undertaking joint and separate developments

(1) If more than one Proponent develops the Mantinea Farm Area separately then the area developed by each Proponent shall be considered a separate stage and this clause 32 applies separately to each stage.

(2) If the Mantinea Farm Area is developed by more than one Proponent as part of a joint development (for example, as a partnership or joint venture) then a reference in this clause 32 to a Proponent is a reference to those Proponents jointly.

32.13 State and LandCorp dealings with the Mantinea Other Area

(1) Subject to clause 32.14, clauses 51 (dealing with 5% of Town Land Provisions) and 52 (dealing with Valuations) apply to the Mantinea Other Area.

32.14 Development of Mantinea Other Area by Proponents

If:

(1) the State transfers freehold title to Undeveloped Land within the Mantinea Other Area to a Proponent for the purposes of the development of that Undeveloped Land by the Proponent for residential, commercial or industrial purposes and the sale of Developed Lots to the public; and

(2) the Proponent and the MG Corporation enter into a deed of covenant under which the Proponent and the MG Corporation agree that they will comply with clauses 51 (dealing with 5% of Town Land Provisions) and 52 (dealing with Valuations) of this deed as if references in clauses 51 and 52 (and in terms defined in clause 2 which are used in those clauses) to:

(a) "Town Land" are a reference to an area of land within the Mantinea Other Area containing:

(i) two or more lots identified by the Proponent as forming a single subdivision development for residential, commercial or industrial purposes; or

(ii) a lot or lots the subject of a direct transfer by way of public sale or private treaty (other than for the purposes of a subdivision development) for residential, commercial or industrial purposes; and

(b) a "Town Lot" is a reference to a Developed Lot; and

(c) LandCorp are references to the Proponent,

then clause 32.13 does not apply.

33. ORD WEST BANK DEVELOPMENT AREA

Notes

(1) This clause 33 applies to the Ord West Bank Development Area.

(2) The areas referred to in this clause are depicted on Map 6 in Schedule 2

(3) The Ord West Bank Development Area is over part of Ivanhoe Pastoral Lease, part of Reserve 1062 and all of Reserve 20679. That part of Ivanhoe Pastoral Lease will be surrendered, and the State may grant a grazing licence to Crosswalk pending development of the Ord West Bank Development Area, in accordance with clause 54.

(4) The Ord West Bank Development Area is partly within the MG#1 Determination Area where native title exists and partly within the MG#4 Claim Area.

(5) The Ord West Bank Development Area broadly corresponds with the Ord West Bank Acquisition Area (the area subject to a section 29 notice) except that parts of the Ord West Bank Acquisition Area now form part of the Livistona New Conservation Area and the Ord West Bank Foreshore Reserve Area.

(6) The Ord West Bank Development Area will be divided into the Ord West Bank Farm Area and the Ord West Bank Buffer Area. The Ord West Bank Farm Area will consist of Serviced Farm Lots plus land containing infrastructure such as roads, irrigation channels and drains known as infrastructure corridors. The precise extent of those infrastructure corridors will not be known until the infrastructure is developed.

(7) Within the Ord West Development Area there are two Raw Materials Areas. The northern Raw Material Area extends partly over the Ord West Bank Development Area and partly over Ivanhoe Pastoral Lease. The southern Raw Materials Area extends partly over the Ord West Bank Development Area, partly over Ivanhoe Pastoral Lease. There may also be Additional Raw Materials Areas. These Raw Material Areas and Additional Raw Materials Areas are intended to be used for the extraction of raw materials. Once the Raw Materials Areas and Additional Raw Materials Areas are no longer required for the extraction of raw materials, they will become part of Ord West Bank Buffer Area, Ord West Bank Farm Area or the Livistona New Conservation Area.

(8)

(a) If this deed is registered on the Register:

(i) Crosswalk must surrender to the State those parts of the Ivanhoe Pastoral Lease which are within the Ord West Bank Development Area in accordance with clause 54;

(ii) any native title will be surrendered and extinguished upon the transfer of freehold or the grant of a lease in the Ord West Bank Farm Area (including transfer to LandCorp or an agent of the State), in accordance with clause 12.2,

(iii) the non-extinguishment principle will apply to the creation of tenure (first a reserve, and later a freehold title) over the Ord West

Bank Buffer Area, and to acts done in the Ord West Bank Buffer Area, in accordance with clause 14 (except as provided in clause 15 dealing with taking orders in Buffer Areas);

(v) the non-extinguishment principle will apply to acts done in the Raw Materials Area and Additional Raw Materials Areas in accordance with clause 14.6;

(b) if this deed is not registered on the Register and nine (9) months has passed since the Execution Date, the State may compulsorily acquire and extinguish any native title in the Ord West Bank Acquisition Area (but not including land the subject of the New Conservation Areas) in accordance with the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord),

(c) as far as possible under the Environmental Approval for the Ord West Bank Development Area, the State will itself establish, or a Proponent will establish, an EME for the Ord West Bank Development Area; and the MG Corporation will have an interest and a role in the Ord West Bank EME in accordance with clause 33.6 (and see the definition of EME),

(d) the State will transfer freehold title to the Ord West Bank Buffer Freehold Area to the MG Corporation subject to a lease to the Ord West Bank EME and easements to the State to access the Ord West Bank Raw Material Areas and any Additional Raw Materials Areas, in accordance with clause 50. Raw Materials Areas which are still required for raw materials will remain reserves until later incorporated into the Ord West Bank Buffer Freehold Area;

(e) the MG Corporation will be granted Serviced Farm Lots in the Ord West Bank Farm Area in accordance with clause 48; and

(f) the State, LandCorp or Proponents (as the case may be) will be required to develop and implement an Aboriginal Development Package in accordance with clause 49.

33.1 Requirements for development of Ord West Bank Development Area

(1) Unless the State and the MG Corporation otherwise agree in writing, the State must not:

(a) develop the Ord West Bank Development Area or the Ord East Bank Acquisition Area; or

(b) transfer or grant a freehold title or a lease in the Ord West Bank Development Area or the Ord East Bank Acquisition Area to LandCorp or a Proponent,

otherwise than in accordance with this clause 33.

(2) The State may at any time decide whether to proceed with the development of the Ord West Bank Development Area. The State may decide to do so:

(a) by developing either of the Ord West Bank Development Area or the Ord East Bank Acquisition Area but not both, or by developing both but at different times;

(b) whether or not the M2 or Mantinea developments will proceed;

(c) in one or more stages; or

(d) itself or through LandCorp or some other government agency, or by one or more Proponents, or a combination of both.

(3) Nothing in this deed obliges the State to proceed with the development of the Ord West Bank Development Area or the Ord East Bank Acquisition Area or to provide funding or other support to a Proponent in respect of the development of the Ord West Bank Development Area or the Ord East Bank Acquisition Area.

(4) The MG Corporation, the MG#4 Claimants and the MG#1 PBC agree that they will not object to, challenge or oppose the development of the Ord West Bank Development Area and the Ord East Bank Acquisition Area in accordance with this deed, whether under any Commonwealth or State environmental or other legislation. This does not prevent those Parties making submissions or taking any other lawful steps under Commonwealth or State environmental legislation or otherwise to ensure that any proposed agriculture including associated purposes, is conducted in an environmentally appropriate manner having regard to the nature of the agriculture and industry best practice.

33.2 Development of Ord West Bank Farm Area by State or LandCorp

(1) If the State, LandCorp or State or LandCorp as part of a joint venture with a Proponent, develop the Ord West Bank Farm Area for sale or lease of Serviced Farm Lots to the public then the State or LandCorp (as the case may be) must comply with the obligations of a Developing Party under:

(a) clause 48 (dealing with 5% of Serviced Farm Lot Provisions) as if references in clause 48 to the "Farm Area" are references to the Ord West Bank Farm Area or the relevant part of the Ord West Bank Farm Area; and

(b) clause 49 (dealing with Aboriginal Development Package) as if references in clause 49 to the "Farm Area" are references to the Ord West Bank Farm Area or the relevant part of the Ord West Bank Farm Area.

(2) Clause 48 (dealing with 5% of Serviced Farm Lot Provisions) only applies to the first transfer of Serviced Farm Lots following development of the Ord West Bank Development Area.

33.3 Development of Ord West Bank Farm Area by Proponents

(1) This clause 33.3 applies if all or part of the Ord West Bank Farm Area, is to be developed by a Proponent, whether for their own purposes or for sale or lease to the public. However this clause 33.3 does not apply in respect of any development of infrastructure within the Ord West Bank Farm Area to which clause ~~33.4~~ 33.5 (dealing with Infrastructure in the Ord West Bank Farm Area) applies.

(2) The State must only grant a lease or freehold title in all or part of the Ord West Bank Farm Area, for the purpose of the development of the area, to a Proponent chosen in accordance with clause 47.

(3) The State must not grant a lease or transfer a freehold title to a Proponent in all or part of the Ord West Bank Farm Area, for the development of the area,

unless the Proponent has delivered to the MG Corporation or an MG Entity an executed:

(a) Five Percent of Serviced Farm Lots Deed in accordance with clause 48; and

(b) Aboriginal Development Undertaking in accordance with clause 49.

(4) If the MG Corporation or MG Entity does not execute and deliver to the Proponent the:

(a) Five Percent of Serviced Farm Lots Deed within 15 Business Days of the delivery of the Deed in accordance with clause 48.2; or

(b) Aboriginal Development Package within 15 Business Days of the delivery of the Deed in accordance with clause 49.2,

then the Proponent is not obliged to comply with the obligations arising from those deeds.

33.4 Nomination of the Ord West Bank Buffer and Ord West Bank Farm Area

(1) As soon as practicable following completion of the development of the Ord West Bank Farm Area, the Developing Party must notify the MG Corporation in writing as to which parts of the Ord West Bank Development Area shall be the Ord West Bank Buffer Area and the Ord West Bank Farm Area.

(2) The area nominated by the ~~Proponent~~ Developing Party as the Ord West Bank Buffer Area must include the Ord West Bank Special Buffer Area A, Ord West Bank Special Buffer Area B and Old Station Billabong Buffer Area.

33.5 Infrastructure in the Ord West Bank Farm Area

(1) The State, the Commonwealth, LandCorp, a local Government and any agency, instrumentality or statutory authority of the State or the Commonwealth may:

(a) if native title has been extinguished under this deed or the Deed of Compulsory Acquisition of Native Title Rights and Interests (Ord); or

(b) in accordance with this deed, including clauses 14.4 (dealing with Other acts within the ILUA (Surrender Third Party) Area) and 33.1 (dealing with Requirements for development of the Ord West Bank Farm Area),

develop and operate, or grant any interest to any other person to develop or operate, infrastructure within the Ord West Bank Farm Area as an enterprise separate from the development of farm land within the Ord West Bank Farm Area, provided that the infrastructure relates substantially to the development and use of that farm land, and in which case the following clauses do not apply to any such development or grant:

(c) 33.2 (dealing with Development of Ord West Bank Farm Area by the State or LandCorp);

(d) 33.3 (dealing with Development of Ord West Bank Farm Area by Proponent); and

(e) 49 (dealing with Aboriginal Development Package).

(2) If the State develops infrastructure within the Ord West Bank Farm Area in accordance with clause 33.5(1) then the State will comply with the Buy Local Policy.

(3) The State will use its reasonable endeavours to procure government trading enterprises (as defined in the Buy Local Policy) which develop infrastructure within the Ord West Bank Farm Area in accordance with clause 33.5(1) to comply with the Buy Local Policy.

33.6 Ord West Bank EME

(1) The State (which for the purposes of this clause 33.6 does not include the Minister for the Environment or any officer, agency, Department or Authority of the State which has a function or responsibility under the *Environmental Protection Act 1986* (WA)) must use its best endeavours to ensure that the Environmental Approval for the Ord West Bank Development Area includes a condition that an Ord West Bank EME be established.

(2) If the MG Corporation or its nominee has a seat on the board of directors or governing committee of the Ord West Bank EME by reason of the MG Corporation's ownership of the Ord West Bank Buffer Area then that director or member of the governing committee shall be deemed, for the purposes of this deed, to be the nominee of the MG People.

(3) Nothing in this deed obliges the State or LandCorp to provide funds to a Proponent or to an Ord West Bank EME to enable an Ord West Bank EME to be established or to perform its functions under the Environmental Approval.

33.7 Ord West Bank Buffer Area

(1) As soon as practicable after all of the following have occurred:

(a) this deed is registered on the Register, or nine (9) months have passed since the Execution Date;

(b) Crosswalk has surrendered the relevant parts of the Ivanhoe Pastoral Lease and any licence for grazing purposes over the Ord West Bank Development Area, in accordance with clause 54; and

(c) the State has commenced to develop some or all of the Ord West Bank Farm Area, or the State has transferred a freehold or leasehold title to some or all of the Ord West Bank Farm Area to LandCorp or a Proponent for the purpose of developing the area,

the State must establish a Buffer Area within the Ord West Bank Development Area in accordance with clause 50.

(2) If the Ord West Bank Farm Area is developed in stages and the Environmental Approval for the Ord West Bank Development Area allows for only part of the Ord West Bank Buffer Area to be established as a buffer area in respect of a particular stage of the development then the State must:

(a) establish a buffer area in the Ord West Bank Development Area in accordance with clause 50; or

(b) grant or maintain a licence under section 91 of the LAA to CPC for the purpose of grazing over that part of the Ord West Bank Buffer Area which is not required as a buffer for the time being.

33.8 Access to enclosed buffer areas

(1) The State must not grant one or more leases within the Ord West Bank Farm Area which wholly enclose any part of the Ord West Bank Buffer Area unless at least one of the leases contains a condition that, subject to the exceptions and conditions in clause 33.8(3), the lessee shall provide for access over a defined portion of the lease to the enclosed parts of the Ord West Bank Buffer Area for:

(a) MG People in order to exercise MG Culture; and

(b) the Ord West Bank EME by its officers servants and contractors to exercise the rights and obligations of the Ord West Bank EME in respect of the Ord West Bank Buffer Area.

(2) The State must not transfer freehold titles within the Ord West Bank Farm Area which wholly enclose any part of the Ord West Bank Buffer Area unless at least one of the freehold titles is subject to an easement which, subject to the exceptions and conditions in clause 33 8(3), provides for access over a defined portion of the freehold to the enclosed parts of the Ord West Bank Buffer Area for:

(a) MG People in order to exercise MG Culture; and

(b) the Ord West Bank EME by its officers servants and contractors to exercise the rights and obligations of the Ord West Bank EME in respect of the Ord West Bank Buffer Area.

(3) The condition in a lease, and the easement, referred to in this clause 33.8(1) and 33.8(2) may provide that access to the enclosed part of the Ord West Bank Buffer Area is subject to the following exceptions and conditions:

(a) temporary denial of access by the lessee or registered proprietor of the freehold (as the case may be) on the grounds of health and safety (including, without limitation, by reason of construction, burning or spraying activity being undertaken by the lessee or registered proprietor), provided the lessee or registered proprietor gives written notice to the MG Corporation of the time and duration and reason for the denial of access within a reasonable period of time (having regard to the requirements of the lessee or registered proprietor, and the requirements of the MG People) prior to the denial of access;

(b) persons passing or repassing in accordance with the condition or easement must take reasonable care not to damage the land, including without limitation not to render any existing tracks impassable;

(c) the MG Corporation must indemnify the lessee or the registered proprietor of the freehold (as the case may be) in respect of:

(i) any damage to the land the subject of the lease or the freehold title (as the case may be) which is caused by any officer, member or nominee of the MG Corporation in the exercise or purported exercise of the right conferred by the condition or easement; and

(ii) any loss or damage suffered by the lessee or registered proprietor (as the case may be) by reason of the exercise or purported exercise by any officer, member or nominee of the MG Corporation of the right conferred by the condition or easement; and

(d) the Ord West Bank EME must indemnify the lessee or the registered proprietor of the freehold (as the case may be) in respect of:

(i) any damage to the land the subject of the lease or the freehold title (as the case may be) which is caused by any officer, servant or contractor of the Ord West Bank EME in the exercise or purported exercise of the right conferred by the condition or easement; and

(ii) any loss or damage suffered by the lessee or registered proprietor (as the case may be) by reason of the exercise or purported exercise by any officer, servant or contractor of the Ord West Bank EME of the right conferred by the condition or easement.

(4) The State must ensure that upon completion of the development of the Ord West Bank Development Area:

(a) Ord West Bank Special Buffer Area A is accessible by a public road or track;

(b) Ord West Bank Special Buffer Area B is accessible to MG People and the Ord West Bank EME by its officers servants and contractors, by way of an easement within the Ord West Bank Foreshore Reserve Area; and

(c) Old Station Billabong Buffer Area is accessible to the MG People and the Ord West Bank EME by its officers, servants and contractors.

33.9 Heritage covenants and conditions

The State must not grant a lease or a freehold title over the Ord West Bank Special Buffer Area A, the Ord West Bank Special Buffer Area B or Old Station Billabong Buffer Area unless the lease or freehold title (as the case may be) contains a condition that no ground disturbing activity is to be conducted in those areas.

33.10 Mining etc in the Ord West Bank Development Area

(1) Notwithstanding any other provision of this clause 33, the State may grant any mining or petroleum tenement or petroleum pipeline licence or easement in the Ord West Bank Development Area in accordance with applicable laws of the State and the Commonwealth (including the NTA).

(2) For the avoidance of doubt, nothing in this clause 33.10 derogates from clause 14.5(3) (dealing with Other acts within the buffer areas).

33.11 Proponents undertaking joint and separate developments

(1) If more than one Proponent develops the Ord West Bank Farm Area separately then the area developed by each Proponent shall be considered a separate stage and this clause 33 applies separately to each stage.

(2) If the Ord West Bank Farm Area is developed by more than one Proponent as part of a joint development (for example, as a partnership or joint venture) then a reference in this clause 33 to a Proponent is a reference to those Proponents jointly.

34. ORD EAST BANK ACQUISITION AREA

Notes

(1) The Ord East Bank Acquisition area is partly over Reserve 1062, partly over unallocated Crown Land and part of reserve 32851. These areas are within the MG#1 Determination Area where native title exists.

(2) All of the Ord East Bank Acquisition Area consists of land which is intended to become Serviced Farm Lots. There are no Buffer nor Raw Material Areas within the Ord East Bank Acquisition Area.

(3) If the Ord East Bank Acquisition Area is to be developed under this deed for agriculture then the process provided in this deed is as follows:

(a) if this deed is registered on the Register any native title will be surrendered and extinguished upon the transfer of freehold or the grant of a lease in the Ord East Bank Acquisition Area (including transfer to LandCorp or an agent of the State), in accordance with clause 12.2 (dealing with surrender of native title for third party grants);

(b) if this deed is not registered on the Register and nine (9) months has passed since the Execution Date, the State may compulsorily acquire and extinguish any native title in the Ord East Bank Acquisition Area in accordance with the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord); and

(c) there will be no requirement to develop and implement an Aboriginal Development Package in accordance with clause 49 in relation to the Ord East Bank Acquisition Area.

34.1 Requirements for development of Ord East Bank Development Area

(1) Unless the State and the MG Corporation otherwise agree in writing, the State must not:

(a) develop the Ord East Bank Acquisition Area; or

(b) transfer or grant a freehold title or a lease in the Ord East Bank Acquisition Area to LandCorp or a Proponent,

otherwise than in accordance with this clause 34.

(2) The State may at any time decide whether to proceed with the development of the Ord East Bank Acquisition Area. The State may decide to do so:

(a) by developing either of the Ord West Bank Development Area or the Ord East Bank Acquisition Area but not both, or by developing both but at different times;

(b) whether or not the M2 or Mantinea developments will proceed;

(c) in one or more stages; or

(d) itself or through LandCorp or some other government agency, or by one or more Proponents, or a combination of both.

(3) Nothing in this deed obliges the State to proceed with the development of the Ord West Bank Development Area or the Ord East Bank Acquisition Area or to provide funding or other support to a Proponent in respect of the development

of the Ord West Bank Development Area or the Ord East Bank Acquisition Area.

(4) The MG Corporation, the MG#4 Claimants and the MG#1 PBC agree that they will not object to, challenge or oppose the development of the Ord East Bank Acquisition Area in accordance with this deed, whether under any Commonwealth or State environmental or other legislation. This does not prevent those Parties making submissions or taking any other lawful steps under Commonwealth or State environmental legislation or otherwise to ensure that any proposed agriculture including associated purposes, is conducted in an environmentally appropriate manner having regard to the nature of the agriculture and industry best practice.

34.2 Development of Ord East Bank Acquisition Area

(1) Clauses 51 (dealing with 5% of Town Lands Provisions) and 52 (dealing with Valuations) apply to the Ord East Bank Acquisition Area.

(2) The State must ensure that, as soon as practicable after native title is extinguished under this deed in respect of the Ord East Bank Acquisition Area, there is an easement, right of way or public access reservation, granted or created, over corridors of land up to 30 metres wide which allows public access through the Ord East Bank Acquisition Area from the proposed extension of River Farm Road and Sandpiper Road as shown on Deposited Plans 218574 and 218575 respectively.

35. KUNUNURRA ADDITIONAL ACQUISITION AREA

(1) Clauses 51 (dealing with 5% of Town Land Provisions) and 52 (dealing with Valuations) apply to the Kununurra Additional Acquisition Area.

36. EXISTING CONSERVATION AREAS

Note. Existing Conservation Areas are depicted on Map 7 in Schedule 2

36.1 Joint management of Existing Conservation Areas

(1) This clause 36.1 applies if and when CALM has (in its reasonable opinion) sufficient funding to enable it to carry out its responsibilities under this clause 36.1.

(2) As soon as practicable after this clause 36.1 applies, the MG Corporation, the State, the Conservation Commission and CALM must execute a Management Agreement under section 33(1)(f) of the CALM Act in, or substantially in, the form in Schedule 10 in respect of the Existing Conservation Areas.

36.2 Addition of future conservation areas

(1) This clause 36.2 applies if:

(a) in future a new conservation park (apart from the New Conservation Areas) is created within the area of the MG#1 Determination or the area of the MG#4 Claim ("***Future Conservation Area***"); and

(b) CALM, in its reasonable opinion, has sufficient funding to enable it to carry out its responsibilities under this clause 36.2.

(2) As soon as practicable after this clause 36.2 applies, the MG Corporation, the State, the Conservation Commission and CALM must execute a Management Agreement under section 33(1)(f) of the CALM Act in, or substantially in, the form in Schedule 10 in respect of the Future Conservation Area.

37. NEW CONSERVATION AREAS

Notes:

(1) New Conservation Areas are depicted on Map 8 in Schedule 2.

(2) Five of the six New Conservation Areas are over Ivanhoe Pastoral Lease and Carlton Hill Pastoral Lease and are within the MG#4 Claim Area. Packsaddle Swamp Area was part of the MG#1 Determination Area and was an area where native title does not exist.

37.1 Reserves over New Conservation Areas pending transfer of freehold

(1) As soon as practicable after the surrender of Zimmerman Area, Weaber Area, Ningbing West Area, Livistona Area and Pincombe Area in accordance with clause 54.1, the State must:

(a) notify the MG Corporation in writing as to any parts of the New Conservation Areas which are the subject of Existing Mining Tenements; and

(b) at its own cost, undertake the preparation of suitable Deposited Plans (and surveys if required) for the New Conservation Areas to enable the:

(i) creation of reserves in accordance with clause 37.1(2)(a); and

(ii) transfer of freehold title of those parts of the New Conservation Areas that are not subject to the Existing Mining Tenements (***"New Conservation Original Freehold Areas"***) in accordance with clause 37.2.

Note: On 9 May 2005 the Minister for Mines issued an order under section 19 of the Mining Act 1978 declaring that land including the New Conservation Areas is not open for applications for mining tenements.

(2) As soon as practicable after clause 37.1(1) has been satisfied the State must:

(a) create reserves over the New Conservation Areas for the purpose of "conservation and traditional Aboriginal uses" under section 41 of the LAA;

(b) place the care, control and management of the reserves created under clause 37.1(2)(a) with the Conservation Commission under section 5(1)(h) of the CALM Act; and

(c) grant to CPC licences, easements or rights of way in accordance with clause 54.3.

(3) At the same time as creating the reserves under clause 37.1(2)(a):

(a) the State, the Conservation Commission and the MG Corporation must execute a Management Agreement with CALM under section 33(1)(f) of the CALM Act in or substantially in the form in Schedule 6; and

(b) the State must, subject to advice to the contrary from the MG Corporation, seek the relevant approvals to have the names of the New Conservation Areas changed:

(i) from Ningbing West to Mijing;

(ii) from Livistona to Ngamoowalem;

(iii) from Zimmerman to Barrbem;

(iv) from Packsaddle Swamp to Darram;

(v) from Pincombe to Goomig; and

(vi) from Weaber to Jemandi-Winingim.

37.2 Transfer of freehold over the New Conservation Areas

(1) As soon as practicable after the completion of the preparation of suitable Deposited Plans (and surveys if required) of the New Conservation Original Freehold Areas in accordance with clause 37.1(1)(b) the State must:

(a) amend the boundaries of the reserves created in accordance with 37.1(2)(a) under section 51 of the LAA to exclude the New Conservation Original Freehold Areas;

(b) subject to clause 37.2(3), transfer freehold title to the New Conservation Original Freehold Areas to the MG Corporation or its nominee under section 74 or 75 of the LAA in the State's absolute discretion and:

(i) in the case of a grant under section 74 of the LAA, subject to a covenant under section 15 of the LAA in, or substantially in, the form in Schedule 9; or

(ii) in the case of a grant under section 75 of the LAA, subject to a memorial under section 16 of the LAA to ensure due performance of conditions consistent with the covenant referred to in clause 37.2(1)(b)(i).

(2) The MG Corporation must pay the stamp duty and Transfer Costs in respect of the transfer in clause 37.2(1)(b).

(3) At the same time as the transfer of the freehold under clause 37.2(1)(b) the State and MG Corporation must:

(a) grant to CPC one or more licences, easements or rights of way in accordance with clause 54.3; and

(b) execute a lease of the New Conservation Original Freehold Areas to the State:

(i) in the case of the transfer under section 74 of the LAA, in or substantially in, the form in Schedule 7; or

(ii) in the case of the transfer under section 75 of the LAA, in or substantially in, the form in Schedule 7 except that the reference to covenant shall be a reference to the memorial in accordance with clause 37.2(1)(b)(ii).

(4) At the same time as executing the transfer of the freehold under clause 37.2(1)(b) the State, the Conservation Commission, CALM and MG Corporation must execute a Management Agreement with CALM under sections 16 and 33(1)(f) of the CALM Act in, or substantially in, the form in Schedule 8.

37.3 Future freehold transfers subject to management agreement

(1) If part of the New Conservation Areas was excluded from the New Conservation Original Freehold Areas because it was the subject of an Existing Mining Tenement and that Existing Mining Tenement is:

(a) surrendered or withdrawn, except when surrendered or withdrawn in pursuance of a right to the grant of another mining tenement over the area of the Existing Mining Tenement; or

(b) has expired,

the State must give written notice to the MG Corporation:

(c) identifying that part of the New Conservation Areas that is no longer the subject of an existing Mining Tenement; and

(d) giving the MG Corporation at least four (4) months in which to request a transfer of freehold title.

(2) If the State receives a request pursuant to clause 37.3(1) the State must transfer freehold title to the area specified in the request to the MG Corporation or its nominee under section 74 or 75 of the LAA and subject to the same conditions, covenants or memorials provided in clause 37.2(1)(b).

(3) At the same time as the transfer of the freehold under clause 37.3(2) the State and the MG Corporation must:

(a) grant to CPC one or more licences, easements or rights of way in accordance with clause 54.3; and

(b) execute a lease to the State of the relevant part of the New Conservation Areas that was excluded from the New Conservation Original Freehold Areas because it was the subject of an Existing Mining Tenement, in, or substantially in, the form in Schedule 7 save that the term of the lease to the State will expire on the same date as the term of the leases already granted to the State in respect of the New Conservation Original Freehold Areas.

(4) The MG Corporation must pay the stamp duty and Transfer Costs in respect of a transfer under clause 37.3(2).

(5) At the same time as executing the transfer of the freehold under clause 37.3(2) the State, the Conservation Commission, CALM and the MG Corporation must execute a Management Agreement with CALM under sections 16 and 33(1)(f) of the CALM Act in, or substantially in, the form in Schedule 8.

(6) If in the future there is applicable legislation allowing the transfer of inalienable freehold title to the New Conservation Areas then the State and the MG Corporation may by deed executed by those two Parties:

(a) agree to the surrender of the existing freehold held by the MG Corporation or its nominee in respect of the New Conservation Areas and the transferring of an inalienable freehold in its place; and

(b) vary the terms of this deed insofar as it relates to the transfer of freehold title to the New Conservation Areas to the MG Corporation and the leasing of the New Conservation Areas to the State.

37.4 No abandonment of native title

(1) For the avoidance of doubt, to the extent (if any) that any native title right in relation to the New Conservation Areas is prevailed over or has no effect as a result of the execution of this deed, the arrangements contemplated by this deed or the doing of any act pursuant to this deed or those arrangements during the respective terms of those arrangements, the MG People are not to be taken to have abandoned such native title right, and such native title right is not to be taken to have expired.

(2) The Parties must not rely on the execution of this deed, the arrangements contemplated by this deed or the doing of any act pursuant to this deed or those arrangements to contend in any court, mediation or arbitration that any native title right of the MG People has been abandoned or has expired.

(3) If, at any time after the Execution Date, any other person, in any proceeding in any court, mediation or arbitration in which a Party to this deed is also Party, seeks to rely on the execution of this deed, the arrangements contemplated by this deed or the doing of any act pursuant to this deed or those arrangements to contend that any native title right of the MG People has been abandoned or has expired, the Party will contend to the contrary.

Note: Packsaddle Swamp Area is within the MG#1 Determination area and, under that Determination, is an area where native title does not exist. The non-extinguishment principle applies to all other New Conservation Areas.

37.5 Compulsory acquisition of native title within the New Conservation Areas freehold areas

(1) If:

(a) freehold has been transferred to the MG Corporation or its nominee in respect of the New Conservation Areas under clause 37.2(1)(b) or 37.3(2); and

(b) the State subsequently issues a taking order under the LAA in respect of any part of the New Conservations Areas referred to in clause 37.5(1)(a) where native title rights and interests exist and:

(i) takes the freehold title; and

(ii) extinguishes native title in the land the subject of the taking order,

then the MG#1 PBC and the MG#4 Claimants covenant that any compensation payable by the State to the MG Corporation or its nominee in respect of the taking of freehold title (other than compensation for improvements and other matters unrelated to native title) shall be taken into account and set off against any compensation payable to the native title holders in respect of the taking of native title.

Note: Part 2 Division 3 Subdivision P of the NTA (the 'Right to Negotiate') will apply to the issuing of a taking order to extinguish native title in the New Conservation Areas. That is not an act authorised by this deed

37.6 Funding for development of joint management within the New Conservation Areas

(1) As soon as practicable after the Execution Date, the State must provide one million dollars ($1,000,000) to CALM:

(a) to facilitate the transfer of freehold title to the New Conservation Areas to the MG Corporation under clause 37.2(1)(b); and

(b) for the development of plans of management and joint management structures (including a Regional Park Council and Park Sub-Councils) for the New Conservation Areas that are consistent with the Management Agreement to be entered into under clause 37.1(3).

(2) The plans of management and joint management structures referred to in clause 37.6(1) must be developed by CALM in conjunction with the MG Corporation.

(3) Within 45 days of the Execution Date, CALM must convene a meeting with those persons nominated by the MG Corporation as representatives of the MG People for the purposes of commencing the development of the plans of management and joint management structures referred to in clause 37.6(1).

Note: Under clause 20.13, the KLC will undertake this responsibility prior to the Ratification Date.

37.7 Funding within the New Conservation Areas after Registration Date

(1) As soon as practicable after the Registration Date the State must provide one million dollars ($1,000,000) to CALM for the development of infrastructure for the New Conservation Areas that is consistent with the Management Agreement in Schedule 6 and the approved Management Plans developed by the Regional Park Council thereunder.

(2) As soon as practicable after the creation of the reserves under clause 37.1(2) the State must provide one million dollars ($1,000,000) per year to CALM for four years for the management of the New Conservation Areas in accordance with the Management Agreement and approved management plans for the New Conservation Areas.

37.8 Funding accountability and review

(1) As soon as practicable after the expiration of twelve months following the Execution Date and every twelve months for the next three years thereafter, or until the end of the funding period provided for under clause 37.7 (whichever is later), the State must provide to the MG Corporation a statement detailing monies paid to CALM under clauses 37.6 and 37.7, and the expenditure of that money by CALM.

(2) Six (6) months prior to the expiration of the four year period commencing on the Registration Date the Minister for the Environment for the State must conduct a review of the funding of the joint management of the New Conservation Areas.

37.9 Ningbing East Area

(1) If the State and Carlton Hill enter into an agreement under section 16A of the CALM Act in respect of the Ningbing East Area then the State and the MG Corporation will negotiate in good faith with a view to reaching an agreement

about the involvement of the MG People in the management of the Ningbing East Area.

(2) The agreement referred to in clause 37.9(1) may provide for some of the funding referred to in clauses 37.6 and 37.7 to be applied to the East Ningbing Area.

38. RESERVE 31165

Notes:

(1) Reserve 31165 is depicted on Map 9 in Schedule 2.

(2) Reserve 31165 is within the MG#1 Determination area and, under that Determination, is an area where native title does not exist

38.1 Creation of reserve and management order

(1) As soon as practicable after the Satisfaction Date, the State must:

(a) amend the purpose of Reserve 31165 under section 51 of the LAA to:

(i) the protection of the water resource values of Lake Argyle and the Ord River Dam;

(ii) the protection of Lake Argyle's wetland values; and

(iii) the maintenance and enhancement of the traditional culture of the MG People; and

(b) place the care, control and management of Reserve 31165 jointly in the MG Corporation and the Water and Rivers Commission, subject to the condition that any "***Referred Business***" (as defined in the management agreement referred to in clause 38.1(2)) is to be determined by the Minister for Lands pursuant to section 46 of the LAA, by way of a new management order in or substantially in the form in Schedule 17.

(2) At the same time as placing the care, control and management of Reserve 31165 jointly in the MG Corporation and the Water and Rivers Commission under clause 38.1(1), the MG Corporation and the Water and Rivers Commission must execute a management agreement in or substantially in the form in Schedule 14.

38.2 Funding of joint management

(1) Upon performance of clause 38.1 the Water and Rivers Commission and the MG Corporation will be the management body for Reserve 31165 ("***Management Body***").

(2) All monies paid to the Management Body in relation to an Agreed Interest must be used solely for the purpose of joint management of Reserve 31165 in accordance with the management agreement referred to in clause 38.1(2).

(3) Promptly after Satisfaction Date, the State shall provide $119,700 over 4 years to the Water and Rivers Commission for:

(a) the joint management of Reserve 31165 by the MG Corporation and the Waters and Rivers Commission; and

(b) the production of a management plan for Reserve 31165,

in accordance with the management agreement referred to in clause 38.1(2).

(4) After the funds provided under clause 38.2(3) have been expended, the Water and Rivers Commission must use its best endeavours to obtain additional funding for the purpose of joint management of Reserve 31165 in accordance with the management agreement referred to in clause 38.1(2).

38.3 Lease to Baines River

(1) If the Satisfaction Date occurs before 1 November 2006 then, as soon as practicable after the Satisfaction Date:

(a) Baines River must surrender the existing lease over that land;

(b) the State shall procure that the Water and Rivers Commission accepts that surrender;

(c) the Water and Rivers Commission, the Minister for Lands, the MG Corporation and Baines River must execute a lease of that part of Reserve 31165 identified in Schedule 18 in the form in Schedule 18; and

(d) the Minister for Lands will consent to that lease.

(2) If the Satisfaction Date has not occurred before 1 November 2006 then, on 1 November 2006:

(a) the Water and Rivers Commission and Baines River must execute a lease of that part of Reserve 31165 identified in Schedule 19 in the form in schedule 19 and the lease having deemed effect from 1 November 2006; and

(b) the Minister for Lands will consent to that lease.

39. PACKSADDLE FREEHOLD AREA

Note

(1) The areas referred to in this clause are depicted on Map 10 in Schedule 2.

(2) The Packsaddle Freehold Area is over unallocated Crown Land and Reserve 35289

(3) The Packsaddle Freehold Area is within the MG#1 Determination area and is an area where native title exists.

(4) The Packsaddle Freehold Area is the southern of the two Packsaddle Acquisition Areas which were the subject of a section 29 notice shown on Map 1 (not including the Packsaddle Creek Reserve Area nor Packsaddle CLAs being Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs), reserve 35289, and some additional land on the south east corner.

(5) The Packsaddle Freehold Area will be transferred to the MG Corporation after Registration

(6) If Registration does not occur within 2 years of Execution, the lesser area which does not include the additional land on the south east corner will be transferred to the MG Corporation

39.1 Freehold title over Packsaddle Freehold Area

(1) As soon as practicable after the Execution Date, the State must:

(a) undertake the preparation of suitable deposited plans (and surveys if required) of the boundaries of the Packsaddle Freehold Area;

(b) ensure that reserve 35289, insofar as it covers the same land and waters as the Packsaddle Freehold Area, is cancelled; and

(c) determine a corridor up to 40 metres wide within the Packsaddle Road Area for the construction of the road and crossings referred to in clauses 39.4(1)(c) and 39.4(1)(d).

(2) Subject to clauses 39.1(3) and 39.2, as soon as practicable after the later of:

(a) the completion of the things referred to in clause 39.1(1); and

(b) the Registration Date,

the State must transfer freehold title pursuant to section 74 of the LAA over the Packsaddle Freehold Area (but not including the corridor determined in accordance with clause 39.1(1)(c)) to the MG Corporation.

(3) The MG Corporation must pay all stamp duty and Transfer Costs in respect of the transfer of freehold title to the Packsaddle Freehold Area.

39.2 Failure to register as an ILUA

(1) If the Registration Date has not occurred within 2 years of the Execution Date, then clause 39.1 shall apply as if:

(a) a reference in clause 39.1 to the Execution Date is a reference to the date 2 years after the Execution Date; and

(b) a reference in clause 39.1 to the Packsaddle Freehold Area is a reference to that part of the Packsaddle Freehold Area which does not include the Packsaddle Freehold ILUA Area.

(2) If:

(a) the Registration Date occurs at any time later than 2 years after the Execution Date; and

(b) the State has granted freehold title over that part of the Packsaddle Freehold Area which is within the Packsaddle Acquisition Area, in accordance with clause 39.1 and this clause 39.2,

then clause 39.1 shall again apply as if a reference to the Packsaddle Freehold Area is a reference to the Packsaddle Freehold ILUA Area

39.3 Packsaddle freehold funding

Prior to the transfer of freehold title in accordance with clause 39.1(2), the State must pay to the MG Corporation $60,000 less the costs of undertaking the preparation of suitable deposited plans (and surveys if required) of the boundaries of the Packsaddle Freehold Area.

39.4 Packsaddle road

(1) As soon as practicable after the Registration Date, the State must enter into an agreement with:

(a) the Shire of Wyndham/East Kimberley; or

(b) if agreement cannot be reached with the Shire - a contractor nominated by the MG Corporation and approved by the State,

to construct the following:

(c) crossings over Packsaddle Creek and drain DP1 within the Packsaddle Road Area;

(d) a road within the Packsaddle Road Area from the existing Packsaddle Road to Packsaddle Creek;

(e) fencing and a gate on the boundary of the Packsaddle Freehold Area to control access to Barbeque Hill, and fencing and a gate on the boundary of the Packsaddle Freehold Area on the western side of the Packsaddle Creek crossing to control access to the Community Living Areas within the Packsaddle Freehold Area; and

(f) upgrading of existing gravel access tracks to Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs within the Packsaddle Freehold Area, on the western side of Packsaddle Creek.

(2) The State will pay up to $700,000 to the person referred to in clause 39.4(1) to undertake the work in accordance with the agreement referred to in clause 39.4(1).

(3) The agreement referred to in clause 39.4(1) must provide that, if the funding under clause 39.4(2) is insufficient for all of the works referred to in that clause, then the works are to be undertaken in the order of priority referred to in that clause (that is, clause 39.4(1)(c) is the highest priority and clause 39.4(1)(f) is the lowest priority).

(4) The balance of the funds (if any) not paid in accordance with clause 39.4(2) must be paid to the MG Corporation.

(5) The State must consult with the MG Corporation about the performance of the works in accordance with the agreement referred to in clause 39.4(1).

39.5 Packsaddle Creek reserve

(1) As soon as practicable after the transfer of freehold title over the Packsaddle Freehold Area to the MG Corporation, the State must:

(a) create a reserve over the Packsaddle Creek Reserve Area under section 46 of the LAA for the purposes of recreation and watercourse protection;

(b) if the Shire of Wyndham/East Kimberley consents - place the care, control and management of the reserve with the Shire; and

(c) otherwise, manage the reserve.

(2) If the care control and management of the reserve over the Packsaddle Creek Reserve Area is placed with the Shire of Wyndham/East Kimberley then the State will place a condition on the management order that, if the Carr Boyd Ranges adjacent to the Packsaddle Freehold Area are in the future made the subject of a national park or conservation park then the Shire must consult with CALM to determine whether the Executive Director or the Conservation Commission or some other body should become the management body for the reserve over the Packsaddle Creek Reserve Area.

40. EAST KUNUNURRA FREEHOLD AREA

Notes

(1) The areas referred to in this clause are depicted in Map 10 in Schedule 2.

(2) The East Kununurra Area is over Reserve 1063.

(3) The East Kununurra Area is within the MG#1 Determination and is an area where no native title exists.

(4) The East Kununurra Additional Area is within Ivanhoe Pastoral Lease and is within the MG#4 Claim Area.

(5) If this deed is on the Register Crosswalk's interests will be terminated in accordance with clause 54.1 (dealing with the surrender of pastoral leases).

40.1 Freehold title over East Kununurra Area

(1) As soon as practicable after the Execution Date, the State must:

(a) undertake the preparation of suitable deposited plans (and surveys if required) of the boundaries of the East Kununurra Area; and

(b) ensure that reserve 1063 is cancelled.

(2) Subject to clause 40.1(3), as soon as practicable after the completion of the things referred to in clause 40.1(1) the State must transfer freehold title pursuant to section 74 of the LAA over the East Kununurra Area to the MG Corporation.

(3) The MG Corporation must pay all stamp duty and Transfer Costs in respect of the transfer of freehold title to the East Kununurra Area.

40.2 Freehold title over East Kununurra Additional Area

(1) As soon as practicable after the Registration Date, the State must undertake the preparation of suitable deposited plans (and surveys if required) of the boundaries of the East Kununurra Additional Area.

(2) Within 2 months of being notified by the State that the East Kununurra Additional Area has been surveyed, Crosswalk must surrender that part of the Ivanhoe Pastoral Lease which is within the East Kununurra Additional Area.

(3) As soon as practicable following the surrender of that part of Ivanhoe Pastoral Lease over the East Kununurra Additional Area in accordance with clause 40.2(2), the State must transfer freehold title pursuant to section 74 of the LAA over the East Kununurra Additional Area to the MG Corporation.

(4) The MG Corporation must pay all stamp duty and Transfer Costs in respect of the transfer of freehold title to the East Kununurra Additional Area.

(5) For the avoidance of doubt, the State may transfer a single freehold title over the East Kununurra Area and the East Kununurra Additional Area.

40.3 Funding

Upon the Satisfaction Date the State must pay to the MG Corporation, $60,000 less the costs of undertaking the preparation of suitable deposited plans (and surveys if required) of the boundaries of the East Kununurra Area and the East Kununurra Additional Area.

41. LAKE ARGYLE AQUACULTURE LEASE

41.1 Site for aquaculture operations

(1) The MG Corporation may, within two (2) years from the Execution Date, nominate to the State in writing an Aquaculture Site within the Lake Argyle Area for the purpose of future aquaculture operations

Note: The Lake Argyle Area is depicted on Map 11 in Schedule 2

(2) At the time of making a nomination under clauses 41.1(1) or as soon as practicable after that time, the MG Corporation must provide to the Minister for Fisheries, care of the Executive Director for Fisheries, the information listed in Schedule 13 in the form set out in schedule 13.

41.2 Priority of applications

(1) The State may grant any interest for the purpose of aquaculture in any part of the Lake Argyle Area that is the subject of a bona fide application received by the State prior to the Execution Date.

(2) Subject to clause 41.2(1), for a period of six (6) months after the Execution Date the State must not grant any interest for the purpose of aquaculture over any part of the Lake Argyle Area that may be the subject of a nomination under clause 41.1(1).

(3) If a bona fide aquaculture licence or aquaculture lease application is received by the Executive Director for Fisheries or the Minister for Fisheries from any person after the date six (6) months after the Execution Date but before a nomination under clause 41.1(1) is received the Executive Director for Fisheries shall advise the MG Corporation of the area the subject of the aquaculture licence or aquaculture lease application, in writing, as soon as practicable thereafter.

(4) The State shall not create an Aquaculture Reserve over any area the subject of an application under clauses 41.2(1) and 41.2(3) unless and until the application under clauses 41.2(1) and 41.2(3) is either withdrawn or:

(a) the application is refused by the Executive Director for Fisheries or the Minister for Fisheries, as the case may be; and

(b) any appeal against the refusal to grant the application has been dismissed by the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* (WA) or other court or body with competent jurisdiction.

41.3 Reserve and management order

(1) Subject to clause 41.2, within six (6) months of the State receiving notification of an Aquaculture Site in accordance with clause 41.1(1), the State must create a reserve over the Aquaculture Site for the purpose of "aquaculture" under section 41 of the LAA and place the care, control and management of that reserve ("***Aquaculture Reserve***") in the Minister for Fisheries pursuant to section 46 of the LAA.

41.4 Aquaculture lease

(1) As soon as practicable after the creation of the Aquaculture Reserve and receipt of the information referred to in clause 41.1(2), the Minister for Fisheries must

grant to the MG Corporation an aquaculture lease over the Aquaculture Reserve, for a term nominated by the MG Corporation of up to 21 years, pursuant to section 97 of the *Fish Resources Management Act 1994* on such terms, covenants, and conditions as the Minister for Fisheries sees fit.

(2) In determining the terms, covenants and conditions of the aquaculture lease in clause 41.4(1) the Minister for Fisheries must take into account the following:

(a) the recitals to this Agreement;

(b) the MG Corporation may not be in a position to produce a competent aquaculture licence application under section 92 of the *Fish Resources Management Act 1994* for some time;

(c) the grant of an aquaculture lease over the Aquaculture Reserve is intended to secure an area for the MG Corporation while it develops the capacity to produce a competent aquaculture licence application under section 92 of the *Fish Resources Management Act 1994* in order to carry out aquaculture activities in the Aquaculture Reserve;

(d) the MG Corporation will not derive income from the aquaculture lease unless and until an aquaculture licence is granted; and

(e) it may be necessary for the MG Corporation to enter into a partnership or joint venture arrangement in order for the MG Corporation to attain the capacity to produce a competent aquaculture licence application and or carry out aquaculture activities under an aquaculture licence.

41.5 Aquaculture licence

(1) Subject to the MG Corporation submitting a competent application for an aquaculture licence over the Aquaculture Reserve to the Executive Director for Fisheries pursuant to section 92 of the *Fish Resources Management Act 1994* within 10 years of the Execution Date, the State must use its best endeavours to ensure that the Executive Director for Fisheries grants an aquaculture licence to the MG Corporation in respect of the Aquaculture Reserve on such conditions as the Executive Director for Fisheries sees fit.

(2) The MG Corporation shall be responsible for the production of a competent application for an aquaculture licence, including:

(a) satisfying all commercial, environmental and other requirements necessary for obtaining an aquaculture licence under section 92 of the *Fish Resources Management Act 1994*; and

(b) all costs incurred by the development and operation of the aquaculture lease and aquaculture licence on the Aquaculture Reserve.

41.6 No warranty

The MG Corporation acknowledges that nothing done under this clause 41, nor any assistance provided by the State with respect to any actions taken by the Parties under this clause 41, shall be taken to constitute a warranty by the State or any Minister, officer, agent or statutory authority of the State as to the commercial viability of any aquaculture operations undertaken on any Aquaculture Site nominated under this clause 41.

42. YARDUNGARRL

Note: This clause 42 applies to Yardungarrl depicted on Map 12 in Schedule 2. Yardungarrl is within the MG#1 Determination Area and, under that Determination, is an area where native title does not exist.

(1) As soon as practicable after the Execution Date, the State must ensure that suitable deposited plans (and surveys if required) of the boundaries of Yardungarrl are prepared. The State will pay the costs of preparing such deposited plans and surveys.

(2) Without prejudice to the exercise by the Minister for Mines of any discretion or power under the *Mining Act 1978* (WA), the State shall:

(a) grant easements over the areas of existing tracks to the holders of exploration licence 80/3169, prospecting licence 80/1337 and mining leases 80/175, 80/227 and 80/576 to provide access to those tenements; and

(b) provide reasonable assistance to the MG Corporation and to the holders of exploration licence 80/3169, prospecting licence 80/1337 and mining leases 80/175, 80/227 and 80/576 to ensure that those mining tenements are surrendered or withdrawn.

(3) Within 12 months of the Execution Date the State must transfer freehold title pursuant to section 74 of the LAA over Yardungarrl to the MG Corporation provided that the MG Corporation:

(a) pay all stamp duty and Transfer Costs in respect of the transfer of freehold title to Yardungarrl; and

(b) has ensured that exploration licences 80/3169, prospecting licence 80/1337 and mining leases 80/175, 80/227 and 80/576 under the Mining Act 1978 (WA) have been surrendered or withdrawn.

Note: Notwithstanding this clause, clause 21.2 provides that the land will not be transferred until the Satisfaction Date; and clause 3.4 may affect the performance of this obligation.

(4) If:

(a) 12 months has passed since the Execution Date; and

(b) the State is ready and able to transfer freehold title in accordance with this clause 42 but cannot do so only because any or all of exploration licence 80/3169, prospecting licence 80/1337 and mining leases 80/175, 80/227 and 80/576 under the Mining Act 1978 (WA) have not been surrendered or withdrawn,

then:

(c) subject to the preparation of suitable deposited plans (and surveys if required), the State must transfer freehold title pursuant to section 74 of the LAA to Yardungarrl, but not including those parts which are still the subject of exploration licence 80/3169, prospecting licence 80/1337 and mining leases 80/175, 80/227 and 80/576 under the Mining Act 1978 (WA), to the MG Corporation; and

(d) when an Existing Mining Tenement is:

(i) surrendered or withdrawn, except when surrendered or withdrawn in pursuance of a right to the grant of another mining tenement over the area of the Existing Mining Tenement; or

(ii) has expired,

the State must give written notice to the MG Corporation identifying that part of the Existing Mining Tenement that may be granted as freehold and giving the MG Corporation at least four (4) months in which to request a transfer of freehold title pursuant to section 74 of the LAA over those parts of Yardungarri which have not already been transferred as freehold.

(5) As soon as practicable after the State receives a request in writing from the MG Corporation in accordance with clause 42(4)(d), the State must transfer freehold title pursuant to section 74 of the LAA to that part of the Existing Mining Tenement identified in the State's notice under clause 42(4)(d) to the MG Corporation or its nominee on the same terms as set out in clause 42(3).

(6) The MG Corporation must pay the Transfer Costs, and the costs of preparation of suitable deposited plans (and surveys if required), in respect of any transfer of freehold title under clause 42(5).

43. COMMUNITY LIVING AREAS

Notes

(1) Notwithstanding anything else in this clause, clause 21.2 has the effect that freehold titles will not be transferred before the Satisfaction Date.

(2) The location of each of the Community Living Areas is shown on Map 13 in Schedule 2.

(3) Two of the Community Living Areas, Goose Hill and McKenna Springs are within the MG#1 Determination Area and, under that Determination, are areas where no native exists. The other 8 Community Living Areas are within the MG#1 Determination area and are areas where native title exists. Part of Yuna Springs CLA and Janama Springs CLA is in the MG#4 Claim Area. Wesley Springs Community Living Area is over an area that is not subject to a native title claim.

43.1 Election by the MG Corporation

(1) As soon as practicable after the Execution Date but no later than 5 years from the Execution Date, the MG Corporation shall nominate, by notice in writing to the State, whether the grant of freehold title in relation to each of the Community Living Areas shall be in:

(a) fee simple absolute pursuant to section 74 of the LAA; or

(b) conditional fee simple pursuant to section 75 of the LAA subject to the condition that it be used for the purpose of "Aboriginal Community Living Area".

(2) If the MG Corporation fails to make a nomination under clause 43.1(1) then the nomination shall be deemed to be a conditional fee simple pursuant to section 75 of the LAA subject to the condition that it be used for the purpose of Aboriginal Community Living Area.

(3) The purpose of "***Aboriginal Community Living Area***" means:

(a) living and residing;

(b) social and cultural activities in accordance with MG Culture;

(c) economic activities, including commerce and agriculture, to the extent not inconsistent with clauses 43.1(3)(a) and 43.1(3)(b); and

(d) granting leases and subleases to persons in relation to clauses 43.1(3)(a), 43.1(3)(b) and 43.1(3)(c).

(4) The State shall comply with the administrative obligations and bear the costs of carrying out those obligations under clause 43.2 to the extent consistent with a grant of conditional fee simple under section 75 of the LAA.

(5) If the MG Corporation nominates for the grant of fee simple absolute under section 74 of the LAA then the State must provide appropriate administrative assistance to enable the MG Corporation to provide appropriate road access to each of the areas to be the subject of a grant and any additional costs necessary for the grant of fee simple absolute shall be borne by the MG Corporation.

43.2 Administrative arrangements

(1) As soon as practicable after the Execution Date:

(a) the State must ensure that suitable deposited plans (and surveys if required) of the boundaries of the following community living areas ("***Community Living Areas***") are prepared:

(i) Bell Springs CLA;

(ii) Geeboowama CLA;

(iii) Goose Hill CLA;

(iv) Janama Springs CLA;

(v) McKenna Springs CLA;

(vi) Munthanmar CLA;

(vii) Jimbilum CLA;

(viii) Yirrallelem 1 CLA;

(ix) Yirrallelem 2 CLA;

(x) Wesley Springs CLA; and

(xi) Yuna Springs CLA;

(b) the State must amend the following reserves to exclude the following areas:

(i) Reserve 42155 to the extent of the Goose Hill CLA;

(ii) Reserve 31165 to the extent of the McKenna Springs CLA;

(iii) Reserve 1063 to the extent of the Janama Springs and Yuna Springs CLA; and

(iv) Reserve 35289 to the extent of Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs;

(c) the State must use its best endeavours to obtain the necessary consents to create easements including over the following:

(i) Lease J104027 in relation to Geeboowama CLA, Munthanmar CLA and Bell Springs CLA;

(ii) Lease GE1/54304 in relation to Wesley Springs CLA (subject to clause 43.8 of this deed) and McKenna Springs CLA; and

(iii) pastoral lease 3114/1001 in relation to McKenna Springs CLA;

(d) the State (which for the purposes of this clause 43.2(1)(d) does not include the Minister with responsibility for the *Mining Act 1978* (WA)) must use its best endeavours to ensure that any Existing Mining Tenements Wesley Springs CLA have been surrendered or withdrawn.

(2) The State must pay the costs of preparing such deposited plans and surveys.

(3) If requested in writing to do so, the State must provide reasonable assistance to the MG Corporation to locate an available and appropriate alternative to the Wesley Springs CLA for the purposes of clause 43.8(2).

43.3 Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the earlier of the Registration Date and nine (9) months after the Execution Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs have been prepared; and

(c) Reserve 35289 has been amended to exclude Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs,

the State must transfer separate freehold titles to each of Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs to the MG Corporation.

43.4 Janama Springs CLA and Yuna Springs CLA

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the Registration Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of the Janama Springs CLA and the Yuna Springs CLA have been prepared; and

(c) reserve 1063 has been amended to exclude the Janama Springs CLA and Yuna Springs CLA,

the State must transfer separate freehold titles to the Janama Springs CLA and the Yuna Springs CLA to the MG Corporation.

43.5 Goose Hill CLA

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the Execution Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of the Goose Hill CLA have been prepared; and

(c) reserve 42155 has been amended to exclude the Goose Hill CLA,

the State must transfer freehold title to the Goose Hill CLA to the MG Corporation.

43.6 McKenna Springs CLA

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the Execution Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of the McKenna Springs CLA have been prepared;

(c) pastoral lease 3114/01001 has been surrendered to the extent of McKenna Springs CLA;

(d) reserve 31165 has been amended to exclude the McKenna Springs CLA; and

(e) an easement can be created over lease GE1/54304 and grazing lease 3114/1001 to provide access to McKenna Springs CLA,

the State must transfer freehold title to the McKenna Springs CLA to the MG Corporation.

43.7 Geeboowama CLA and Munthamar CLA

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the Registration Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of the Geeboowama CLA and the Munthamar CLA have been prepared; and

(c) an easement can be created over lease J104027 to provide access to Geeboowama CLA and the Munthamar CLA,

the State must transfer freehold titles over each of Geeboowama CLA and the Munthamar CLA to the MG Corporation.

43.8 Wesley Springs CLA

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the Execution Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of the Wesley Springs CLA have been prepared; and

(c) all other interests in the Wesley Springs CLA have been surrendered or cancelled, and there is no impediment to do so,

the State must transfer freehold title to the Wesley Springs CLA to the MG Corporation.

(2) The MG Corporation may at any time within 80 years of the Execution Date request the transfer of freehold title over an alternative area of essentially the same size as the Wesley Springs CLA (subject to that alternative areas being available and appropriate), instead of a transfer of freehold title to the Wesley Springs CLA.

(3) The State will provide reasonable assistance in the identification of this alternative area.

(4) The obligation to transfer freehold title to Wesley Springs CLA will cease upon the State agreeing to transfer freehold title to an alternative area

43.9 Bell Springs CLA

(1) Subject to clause 43.10 (dealing with Stamp Duty and Transfer Costs), as soon as practicable after:

(a) the Registration Date;

(b) suitable deposited plans (and surveys if required) of the boundaries of the Bell Springs CLA have been prepared; and

(c) an easement can be created over lease J104027 to provide access to Bell Springs CLA,

the State must transfer freehold title over the Bell Springs CLA to the Wirrum Aboriginal Corporation

43.10 Stamp duty and transfer costs

The MG Corporation must pay all stamp duty and Transfer Costs in respect of the transfers of freehold title to the Community Living Areas under this clause 43

44. MG#4 CLAIM

(1) The State acknowledges that members of the MG#4 Native Title Claim Group have continued to acknowledge and observe traditional laws and customs in respect of the MG#4 Claim Area, and by those laws and customs have maintained a connection with the MG#4 Claim Area, within the meaning in section 223(1) of the NTA.

(2) The State must negotiate in good faith with the MG#4 Claimants, and with other Parties to the MG#4 Claim, with a view to agreeing a consent determination of native title under section 87 of the NTA in respect of the MG#4 Claim as soon as practicable after the Execution Date.

(3) Nothing in this clause 44 prejudices the right of the State to negotiate about:

(a) the description of the native title rights and interests that exist within the MG#4 Claim Area; and

(b) the extinguishment of native title in the MG#4 Claim Area.

45. PORTION OF FORMER KUNUNURRA LOT 239

45.1 Administrative arrangements

As soon as practicable after the Execution Date the State must:

(1) ensure that suitable deposited plans (and surveys if required) of the boundaries of Portion of Former Kununurra Lot 239, are prepared;

(2) amend Reserve 29728 to exclude Portion of Former Kununurra Lot 239; and

(3) transfer a freehold title in Portion of Former Kununurra Lot 239 to the MG Corporation under section 74 of the LAA.

45.2 Remediation

(1) The State will undertake an assessment of Portion of Former Kununurra Lot 239 to determine the existence of any contamination of, or related to, Portion of Former Kununurra Lot 239 and will carry out any remediation in relation to identified contamination that is necessary to enable Former Kununurra Lot 239 to be used for:

(a) offices and cultural centre purposes; and

(b) any other commercial, non-residential purposes that are like the purposes in clause 45.2(1)(a),

that are consistent with the zoning of Former Kununurra Lot 239 as "town centre" under the Shire of Wyndham East Kimberley Town Planning Scheme No. 7.

(2) The State shall bear all costs in performing its obligations under clause 45.2(1).

45.3 Stamp duty and transfer costs

The MG Corporation must pay all stamp duty and transfer costs in respect of the transfer of freehold title in Portion of Former Kununurra Lot 239 to the MG Corporation

46. OTHER LAND AREAS

Notes.

(1) There are two portions of the Packsaddle Acquisition Area. The Packsaddle Agriculture Area is the whole of the northern portion of the Packsaddle Acquisition Area and the northern part of the southern portion of the Packsaddle Acquisition Area The Packsaddle Agriculture Area does not include the Packsaddle Freehold Area, the Packsaddle Creek Reserve Area and the section of the Packsaddle Road Area that overlays the Packsaddle Freehold Area, all of which are located in the southern portion of the Packsaddle Acquisition Area.

(2) The location of the Packsaddle Acquisition Area, the Green Swamp Acquisition Area, the Green Swamp Additional Acquisition Area and the Government Land Acquisition Area is shown on Map 1 in Schedule 2.

(3) The Packsaddle Agriculture Area and the Green Swamp Acquisition Area are within the MG#1 Determination Area and, under that Determination, are areas where native title exists.

(4) The Government Land Acquisition Area is within the MG#4 Claim Area.

(5) The Green Swamp Additional Acquisition Area is not within the MG#1 Determination Area nor within the MG#4 Claim Area.

(6) Green Swamp Acquisition Area, the Green Swamp Additional Acquisition Area and the Government Land Acquisition Area are "priority areas" whereby native title rights and interest in the land may be acquired under the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord) at any time following the execution of that Deed.

(7) If not acquired under the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord) native title rights and interest in that land and the Packsaddle Agricultural Area may be acquired under this deed.

(8) There are no development requirements in relation to any of these areas under this deed.

For the avoidance of doubt, nothing in Part 4 of this deed affects the following areas (except insofar as clause 56 (dealing with Aboriginal Heritage) applies to those areas):

(1) Green Swamp Acquisition Area and Green Swamp Additional Acquisition Area;

(2) Government Land Acquisition Area; and

(3) Packsaddle Agricultural Area