

**THE PREMIER, FOR AND ON BEHALF OF THE STATE OF WESTERN
AUSTRALIA**

AND

THE WESTERN AUSTRALIAN LAND AUTHORITY

AND

THE CONTRACTING PARTIES

**BURRUP AND MAITLAND INDUSTRIAL ESTATES
AGREEMENT**

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THIS DEED is made on the day of 2002

BETWEEN

THE PREMIER, FOR AND ON BEHALF OF THE STATE OF WESTERN AUSTRALIA ("State")

AND

THE WESTERN AUSTRALIAN LAND AUTHORITY, a body corporate established under the *Western Australian Land Authority Act 1992* (WA) ("LandCorp")

AND

THE CONTRACTING PARTIES, acting for and on behalf of themselves and all persons included in their respective native title claim groups ("Contracting Parties")

RECITALS

- A. On 14 January 2000, pursuant to section 29 of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued a notice of intention to take interests, including any native title rights and interests, in the Area.
- B. On 3 October 2000 and 30 August 2001, pursuant to sections 24MD(6A) and (6B) of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued notices of intention to take interests, including any native title rights and interests, in the Karratha Land.
- C. On 27 March 2002, pursuant to section 29 of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued notices of intention to take interests, including any native title rights and interests, in the Additional Land.
- D. On 15 January 2001, pursuant to sections 24MD(6A) and (6B) of the *Native Title Act* and section 170 of the *Land Administration Act* the State issued a notice of intention to take interests, including any native title rights and interests, in the Hearson Cove Land.
- E. The compulsory acquisition of the interests in the Area, the Additional Land, the Karratha Land, and the Hearson Cove Land including any native title rights and interests, is authorised by relevant orders of the Minister under section 165 of the *Land Administration Act*.
- F. The Native Title Parties are taken to have made to the Federal Court their respective native title claims each of which are described in Schedule 1. Each of the Native Title Parties' native title claim includes land within the Area, the Additional Land, the Karratha Land, the Hearson Cove Land and the Burrup Non-Industrial Land.
- G. The respective native title claims have been entered on the Register of Native Title Claims and, consequently, the Native Title Parties have been registered as the native title claimants at the relevant times in relation to their respective claim areas.

- H. If the compulsory acquisition of the interests in the Area and the Additional Land, including any native title rights and interests, affects native title, it will be a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the *Native Title Act* and the right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(iii) of the *Native Title Act*.
- I. If the compulsory acquisition of the interests in the Karratha Land and the Hearson Cove Land, including any native title rights and interests, affects native title, it will be a future act which passes the freehold test in Part 2 Division 3 of Subdivision M of the *Native Title Act* to which sections 24MD(6), (6A) and (6B) apply.
- J. In accordance with Part 2 Division 3 Subdivision P of the *Native Title Act*, negotiations in good faith in respect of the compulsory acquisition of any native title rights and interests in the Area and the Additional Land have been conducted between the State, Methanex and the Native Title Parties.
- K. In respect of the Burrup Fertiliser Land, the State and the Native Title Parties have entered into agreements under sections 28(1)(f) and 31(1)(b) of the *Native Title Act* in which the Native Title Parties consent to the compulsory acquisition of any and all native title interests in the Burrup Fertiliser Land upon Burrup Fertilisers Pty Ltd reaching Financial Close.
- L. In accordance with section 24MD(6B)(d) of the *Native Title Act*, objections to the compulsory acquisition of native title rights and interests in some of the Karratha Land and to the compulsory acquisition of native title rights and interests in the Hearson Cove Land have been lodged. Consequently, the relevant parties for the purposes of section 24MD have consulted the objectors in accordance with section 24MD(6B)(e) of the *Native Title Act*.
- M. The Contracting Parties agree to the compulsory acquisition of any and all of the native title rights and interests in the Area, the Additional Land, the Karratha Land and the Hearson Cove Land and the conferring of rights and interests in relation to the Area, the Additional Land, the Karratha Land and the Hearson Cove Land in accordance with this deed.
- N. The State has agreed to provide the Contracting Parties with benefits, including payments of money, freehold interest in the Burrup Non-Industrial Land, funding for education and land to the value of 5% of Developed Lots created in the Karratha Land, in accordance with this deed.
- O. Each Current Proponent is developing a proposed Industrial Project within the Industrial Estate, and in the case of Methanex also in De Witt Location 399, and for which the State may grant a Current Proponent Lease.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the contrary intention appears:

Aboriginal Contractors means members of the Contracting Claim Groups or bodies corporate controlled by any of them.

Acquisition Date means:

- (a) the date of the first taking order for any part of the Industrial Estate, excluding the Burrup Fertiliser Land;
- (b) if the grant of any lease to a Proponent, excluding a lease of the Burrup Fertiliser Land, occurs before the date of any taking order for any part of the Industrial Estate, excluding the Burrup Fertiliser Land, then the date of the first grant of a lease in the Industrial Estate to a Proponent; or
- (c) if a transfer of freehold title to any land within the Industrial Estate, excluding the Burrup Fertiliser Land, is made to any Purchaser before the date of any taking order for any part of the Industrial Estate, excluding the Burrup Fertiliser Land, then the date of that transfer.

Additional Land means the land shown in the map set out in Schedule 2 and referred to in the notice set out in Schedule 6.

Annual Payment means the amount determined in accordance with clause 10.2.

Approved Body Corporate means an incorporated association:

- (a) established under:
 - (i) the *Aboriginal Councils and Associations Act 1976* (Cth) (or any other Commonwealth legislation that replaces that Act); or
 - (ii) any other legislation as agreed by the parties; and
- (b) established in accordance with clause 17; and
- (c) that is registered for the purposes of the GST Act,

and includes any successor, reconstituted, amalgamated, merged or reconstructed body approved by the State from time to time.

approved determination of native title has the meaning given to that term under the *Native Title Act*.

arbitral body has the meaning given to that term under the *Native Title Act*.

Area means so much of the land referred to in the relevant notice set out in Schedule 6 as is shown on the maps set out in Schedule 3.

Australian Property Institute means the Australian Property Institute and includes any body corporate established for the same or substantially similar purpose if the Australian Property Institute ceases to exist.

Available Persons means members of the Contracting Claim Groups.

Burrup Fertiliser Land means the land described as De Witt Lot 564 shown on the map set out in Schedule 4 and being land within the notice for the Area set out in Schedule 6.

Burrup Non-Industrial Land means the land shown on the map set out in Schedule 5.

Burrup Non-Industrial Land Buildings means a building or buildings and associated infrastructure constructed for:

- (a) office and other facilities for the management of the Burrup Non-Industrial Land; and
- (b) a visitors and cultural centre for the purposes of:
 - (i) facilitating and promoting the cultural activities of the Contracting Parties; and
 - (ii) promoting the commercial enterprises and tourism activities of the Contracting Parties relating to the Burrup Non-Industrial Land.

Burrup Non-Industrial Land ILUA means an indigenous land use agreement for the Burrup Non-Industrial Land, described in clause 4.1 and to be concluded in the manner described in clause 4.3.

Burrup Non-Industrial Land Infrastructure means roads, tracks, trails, services and other infrastructure proposed to be constructed within the Burrup Non-Industrial Land but not including the infrastructure forming part of the Burrup Non-Industrial Land Buildings.

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

Buy Local Policy means the Buy Local Policy issued by the State, as amended by the State from time to time.

CALM means the Department of Conservation and Land Management or such other department responsible for the *Conservation and Land Management Act 1984* (WA).

compulsory acquisition means taking of interests under the *Native Title Act* and the *Land Administration Act*.

Conservation Commission means the Conservation Commission of Western Australia established by section 18 of the *Conservation and Land Management Act 1984* (WA).

Contracting Claim Group means the native title claim group of the Contracting Party.

Contracting Party means a Native Title Party who has entered into this deed and **Contracting Parties** means all of them.

CPI means the Consumer Price Index Number as published by the Australian Bureau of Statistics for Australia (All Groups).

Current Proponents means Australian Methanol Company Pty Ltd ACN 100 656 666, Dampier Nitrogen Pty Ltd ACN 100 366 865, Methanex Australia Pty Ltd ACN 092 470 105 and Japan DME Ltd and includes any lawful nominee or assignee of any of them.

Current Proponent Annual Payment means the payment determined in accordance with clause 9.3.

Current Proponent Lease means the lease or leases in respect of land within the Industrial Estate, and in the case of Methanex also on De Witt Location 399, which may be granted to the Current Proponent for the purposes of an Industrial Project.

Deed of Covenant means the proposed deed of covenant in respect of the Burrup Non-Industrial Land substantially in the form set out in Schedule 12.

Determination Date means:

- (a) subject to paragraph (b), the day which is 21 days after an approved determination of native title is made by a single Judge of the Federal Court in respect of the area of land the subject of the proceedings in the Federal Court of Australia matter WAG 6017 of 1996 and part WAG 127 of 1997 and part WAG 6256 of 1998; or
- (b) subject to paragraphs (c) and (d), if an appeal is lodged within the 21 days referred to in paragraph (a) above, then the day which is 28 days after judgment is delivered by the Full Federal Court; or
- (c) subject to paragraph (d), if an application for special leave to appeal to the High Court is lodged within the 28 days referred to in paragraph (b) above, the day the application for special leave to appeal is dismissed or the day judgment in the appeal is delivered by the High Court, whichever is the sooner; or
- (d) in the event that a judgement referred to in paragraphs (b) or (c) above results in the matter being remitted to a single Judge of the Federal Court or to the Full Federal Court, as the case may be, then paragraphs (a), (b) or (c) above shall again apply.

De Witt Location 399 means the area of land shown on the map in Schedule 13.

Employment Funding means the funding to be provided by the State under clause 15.4(a).

Employment Service Provider means the person appointed under clause 15.4.

Employment Statement means a statement provided to the Employment Service Provider and the State by a Proponent which contains the matters set out in clause 16.3(b).

Employment Strategy means a strategy for employment and training of local Aboriginal people developed by a Proponent in accordance with clause 16.2 and the objectives set out in Schedule 7.

Employment Undertaking means a promise contained in a deed of undertaking to which a Proponent and the State are parties:

- (a) which is expressed to be for the benefit of, and enforceable by:
 - (i) the Employment Service Provider;
 - (ii) the Contracting Parties for the period prior to the Ratification Date; and
 - (iii) the Approved Body Corporate for the period on and after the Ratification Date;
- (b) in which the Proponent agrees to comply with the terms of clause 16 of this deed; and
- (c) which requires the assumption of the obligations in the deed of undertaking by an assignee of the Proponent's lease.

Executive Director means the body corporate established under section 38 of the *Conservation and Land Management Act 1984 (WA)*.

Financial Close means the later of Financial Close as defined in the agreements:

- (a) between NY, the State and Burrup Fertilisers Pty Ltd; and
- (b) between WGT, the State and Burrup Fertilisers Pty Ltd

under section 31 of the *Native Title Act* in respect of the Burrup Fertiliser Land lodged with the National Native Title Tribunal on 27 May 2002.

future act has the meaning given to that term under the *Native Title Act*.

Future Proponent means a person, other than the Manager or a Current Proponent, who:

- (a) is granted a lease;
- (b) is assigned a lease from the Manager; or
- (c) is granted a sublease from the Manager,

of land within the Industrial Estate (and which land is not already the subject of an interest held by a Proponent) for the purposes of an Industrial Project.

GST has the meaning given to that term in the GST Act.

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

Hearson Cove Land means the land described as De Witt Location 479 shown on the map in Schedule 8 and referred to in the relevant notice set out in Schedule 6.

Heritage Policies means:

- (a) the policies and procedures determined by the Department responsible for the administration of the *Aboriginal Heritage Act 1972* (WA) from time to time in respect of Aboriginal heritage including, but not limited to:
 - (i) the Aboriginal Heritage Manual Version 1 (February 2002); and
 - (ii) Aboriginal Heritage and Development – Advice to Developers (April 1999); or
- (b) policies and procedures agreed between the State and the Contracting Parties in respect of Aboriginal heritage.

Independent Valuer means a person who:

- (a) is a member of the Australian Property Institute;
- (b) is licensed under the *Land Valuers Licensing Act 1978* (WA); and
- (c) has at least 5 years recent experience valuing the type of land use being valued in the Pilbara.

indigenous land use agreement has the meaning given to that term under the *Native Title Act*.

Industrial Estate means:

- (a) the Area and the Additional Land; but
- (b) does not include De Witt Location 399; and
- (c) if Burrup Fertilisers Pty Ltd does reach Financial Close, then, for the purposes of clauses 9, 10, 11, 15, 16 and 19 does not include the Burrup Fertiliser Land; and
- (d) does not include freehold land excluded under clause 11.2.

Industrial Project means a project for any of the following purposes (as the project may be varied, expanded or amended from time to time):

- (a) processing or refining or deriving products from minerals (minerals has the meaning given to that term under the *Mining Act 1978* (WA)) or petroleum (petroleum has the meaning given to that term under the *Petroleum Act 1967* (WA)) including, but not limited to, the production of methanol, ammonia, urea and dimethyl-ether and any downstream processing of derivatives of that processing or refining;
- (b) gas production or extraction including, but not limited to, production or extraction from the atmosphere for the purposes of on-sale;
- (c) water desalination, filtration or purification for the purposes of on-sale;
- (d) power generation for the purposes of on-sale; or
- (e) trade or commerce conducted on a lease which, or leases which in aggregate, exceed 10 hectares in area,

but does not include the mining or extraction of:

- (i) limestone, rock or gravel;
- (ii) shale;
- (iii) sand; and
- (iv) clay.

Karratha Land means the land shown on the maps in Schedule 9 and referred to in the relevant notices set out in Schedule 6.

Land Administration Act means the *Land Administration Act 1997* (WA), as amended from time to time.

Lease means the proposed lease in respect of the Burrup Non-Industrial Land substantially in the form set out in Schedule 10.

Levy means the amount calculated as follows:

$$\text{\$Levy} = (0.05 \times (\text{EW}/52) \times \$4,500) - (\text{AP} \times \$4,500)$$

Where:

EW means the aggregate number of weeks (or part thereof) worked by the full time equivalent employees employed on-site directly by the Proponent, any related company or its contractors or subcontractors for the operation of the Industrial Project in each Production Period but does not include any employees employed:

- (a) for the construction and commissioning of the Industrial Project;
- (b) for the construction and commissioning of any extension or addition to the Industrial Project; or
- (c) for major maintenance and repairs relating to the Industrial Project during a shutdown of the Industrial Project for a period of one (1) day or more.

AP means the aggregate number of local Aboriginal persons employed by the Proponent, any related company or its contractors or subcontractors for the Industrial Project in each Production Period.

Listed Aboriginal Contractors means Aboriginal Contractors who are identified on the list referred to in clause 15.1.

Listed Available Persons means Available Persons who are identified on the list referred to in clause 15.1.

Lump Sum Amount means the following sums specified for each Current Proponent:

- (a) for Methanex, \$500,000;
- (b) for Japan DME Ltd, \$650,000;
- (c) for Dampier Nitrogen Pty Ltd, \$650,000; and
- (d) for Australian Methanol Company Pty Ltd, \$500,000.

Management Agreement means the proposed agreement for the management of the Burrup Non-Industrial Land substantially in the form set out in Schedule 11.

Manager means LandCorp or any other person who is responsible for the management or administration of the Industrial Estate on behalf of the State or LandCorp.

Market Rental means the rental on the basis of the unimproved value of the relevant land within the Industrial Estate determined in accordance with clause 29.

Methanex means Methanex Australia Pty Ltd, ACN 092 470 105 of Level 8, QV1 Building, 250 St Georges Terrace, Perth, Western Australia.

Minister for Environment and Heritage means the Minister for the time being responsible for the administration of the *Conservation and Land Management Act 1984* (WA).

Minister for Indigenous Affairs means the Minister for the time being responsible for the administration of the *Aboriginal Heritage Act 1972* (WA).

native title has the meaning given to that term under the *Native Title Act*.

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

native title claim means the relevant native title determination application taken to have been made by the relevant Native Title Party to the Federal Court under Part 3 of the *Native Title Act* described in Schedule 1.

native title claim group has the meaning given to that term under the *Native Title Act*.

Native Title Party means each of NY, YM and WGT and **Native Title Parties** means all of them.

non extinguishment principle has the meaning given to that term under the *Native Title Act*.

NY means the Registered Native Title Claimants in respect of the Ngarluma Yindjibarndi claim referred to in Item 1.1 of Schedule 1.

party means a party to this deed and **parties** means all of them.

Payment Undertaking means a promise contained in a deed of undertaking to which a Proponent and the State are parties:

- (a) which is expressed to be for the benefit of, and enforceable by:
 - (i) the Contracting Parties for the period prior to the Ratification Date; and
 - (ii) the Approved Body Corporate for the period on and after the Ratification Date;
- (b) in which the Proponent agrees to pay the Lump Sum Payment in accordance with clause 9.2, or the Current Proponent Annual Payment in accordance with clause 9.3, or the Annual Payment in accordance with clause 10.2, or any of them, as the case may be; and
- (c) which requires the assumption of the obligations in the deed of undertaking by an assignee of the Proponent's lease.

Prescribed Body Corporate has the meaning given to that term under the *Native Title Act*.

Production Date means, in relation to an Industrial Project, the date on which product is first shipped, transported or transferred from the area of the lease or leases for that Industrial Project.

Production Period means the twelve (12) month period commencing on the Production Date and thereafter, the twelve (12) month period commencing on each anniversary of the Production Date.

Proponent means a Current Proponent or a Future Proponent or any lawful assignee of either, as the context requires.

Purchase Value means the amount equal to the unimproved value for the relevant land within the Industrial Estate determined in accordance with clause 29.

Purchaser means any person acquiring a freehold title to land within the Industrial Estate other than the Manager.

Ratification Date means the date the Approved Body Corporate executes the Ratification Deed.

Ratification Deed means the deed to be entered into by the Approved Body Corporate and the State as provided in clause 17.7.

Register of Native Title Claims has the meaning given to that term under the *Native Title Act*.

registered native title claimant has the meaning given to that term under the *Native Title Act*.

related company has the meaning given to that term under the *Corporations Act 2001* (Cth).

representative body has the meaning given to that term under the *Native Title Act*.

Satisfaction Date means the date referred to in clause 2.1.

Schedule means a schedule to this deed.

State means the Crown in right of the State of Western Australia and for the purposes of this deed, references in this deed to the State do not include LandCorp.

Undertaking means a Payment Undertaking or an Employment Undertaking or both, as the case may be.

Valuation Principles means the principles of valuation set out in clause 29.6.

WGT means the Registered Native Title Claimants in respect of the Wong-Goo-tt-oo claim referred to in Item 1.3 of Schedule 1.

written law has the meaning given to that term under the *Interpretation Act 1984* (WA).

YM means the Registered Native Title Claimants in respect of the Yaburara Mardudhunera claim referred to in Item 1.2 of Schedule 1.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to this deed include its recitals, schedules and annexures (if any);
- (c) headings are inserted for ease of reference only and are to be ignored in construing this deed;
- (d) the word person includes a firm, body corporate, statutory corporation, an unincorporated association or an authority or government department and a reference to a gender includes each other gender;
- (e) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation), transferees and assigns;
- (g) an obligation, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (i) a reference to a grant of any right or interest includes the exercise of the rights or the discharge of obligations by the parties in respect of such grant;
- (j) no rule of construction applies to the disadvantage of a party on the basis that that party put forward this deed or any part of this deed;
- (k) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (l) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (m) a reference to any statutory authority, government body (corporate or unincorporate) or person established under any written law includes a reference to any person or body (corporate or unincorporate) established or continued to perform the same or substantially similar function;

- (n) references to time are to local time in Perth, Western Australia; and
- (o) where time is to be reckoned from a day or event, that day or the day of that event is excluded.

2. EXECUTION AND WHEN THIS DEED TAKES EFFECT

2.1 Satisfaction Date

Other than clause 2.2, this deed shall have no force or effect unless and until all of the following events have occurred ("**Satisfaction Date**"):

- (a) the Premier has executed this deed for and on behalf of the State;
- (b) LandCorp has executed this deed; and
- (c) whichever is the earlier of:
 - (i) two (2) Native Title Parties, one of which is the NY, have provided the State with an executed counterpart or counterparts of this deed and 30 days has passed since the executed counterpart or counterparts were so provided to the State; or
 - (ii) the State has been provided with an executed counterpart or counterparts of this deed by each of the NY, the YM and the WGT.

2.2 Eligibility to be Contracting Party

If WGT do not enter into this deed within the 30 days referred to in clause 2.1(c)(i), then the WGT are not eligible to be a Contracting Party and the Parties agree that, subject to clause 2.1, this deed shall have full force and effect notwithstanding that the WGT have not executed this deed.

2.3 Survival of this Deed

- (a) The State and LandCorp acknowledge and agree that the Contracting Parties' promises under this deed constitute valuable consideration.
- (b) The Parties acknowledge and agree that, subject to clauses 2.4 and 28, this deed and the rights and obligations of the Parties under it will survive, to the fullest extent permitted by law,:
 - (i) the Determination Date; and
 - (ii) any determination by an arbitral body under section 35 of the *Native Title Act* in relation to the Area and the Additional Land; and
 - (iii) any determination by an independent person or body under section 24MD(6B) of the *Native Title Act* in relation to the Karratha Land and the Hearson Cove Land.

2.4 Termination

- (a) In this clause:

Acceptable Current Proponent Conditions means conditions which, in the State's reasonable opinion, do not materially detract from the financial viability of the Industrial Project to be conducted by a Current Proponent on a Current Proponent Lease.

Acceptable Industrial Estate Conditions means conditions which, in the State's reasonable opinion, do not materially detract from the economic or financial viability or efficient management of the Industrial Estate.

Current Proponent acts means the compulsory acquisition of any native title rights and interests sufficient to enable the State to validly grant Current Proponent Leases to each of the Current Proponents.

Future Act Determination means a determination under section 38 of the *Native Title Act* made by an arbitral body or any order of a court of competent jurisdiction varying or substituting such a determination. The determination shall be taken to have been made:

- (i) subject to paragraph (ii) below, 29 days after the date the arbitral body makes a determination; or
 - (ii) if any appeal or other application is lodged in which orders are sought from a court of competent jurisdiction to set aside or vary any determination, then 29 days after orders are made in any such appeal or other application.
- (b) If, before the Acquisition Date, but fifteen (15) months after the Satisfaction Date:
- (i) any of NY, YM or WGT have not entered into this deed or otherwise agreed to the compulsory acquisition of any native title rights and interests in accordance with sections 28(1)(f) and 31(1)(b) of the *Native Title Act* sufficient to enable the State to validly grant a Current Proponent Lease to each of the Current Proponents; and
 - (ii) it is not the case that there is a Future Act Determination that the Current Proponent acts may be done, or may be done subject to Acceptable Current Proponent Conditions; and
 - (iii) it is not the case that the Determination Date has passed and there is an approved determination of native title that:
 - (A) native title does not exist; or

(B) native title exists and is held only by one or more of the Contracting Parties,

in respect of any of the land over which the State wishes to grant Current Proponent Leases to the Current Proponents,

then the State may, by notice to the Contracting Parties, terminate this deed.

(c) If at any time after the Satisfaction Date:

- (i) the agreement of a Native Title Party for the purposes of sections 28(1)(f) and 31(1)(b) of the *Native Title Act* contained in clause 7 of this deed or contained in any other document, in relation to any part of the Industrial Estate, is declared by a court of competent jurisdiction to be void or voidable or otherwise unenforceable; or
- (ii) a Future Act Determination that native title in respect of any part of the Industrial Estate may be compulsorily acquired ("the act") is set aside or varied such that there is no longer a determination that the act may be done or may be done subject to Acceptable Industrial Estate Conditions; or
- (iii) any taking order issued, or any lease or other interest granted, in accordance with this deed in respect of the Industrial Estate is invalid by reason of a failure to comply with the provisions of the *Native Title Act*,

then the State may, by notice to the Contracting Parties, terminate this deed.

(d) If this deed is terminated in accordance with this clause then:

- (i) other than this clause 2.4, clauses 6.10, 14, 23.2 and 27, and to the extent provided in this clause 2.4, this deed ceases to have any force or effect on and from the date of termination;
- (ii) any compulsory acquisition of native title, and the grant of any interest in the Industrial Estate, Karratha Land or Hearson Cove Land is, to the extent permitted by law, valid;
- (iii) the payment in clause 8.1 and any interest in land transferred under this deed, may be retained by the payee or transferee, as the case may be;
- (iv) if a freehold title was validly transferred in respect of any land the subject of this deed before the termination of this deed, then any obligation under this deed which accrued before the date of termination in relation to that freehold title shall remain binding and enforceable. For the avoidance of any doubt, if the freehold title to the Burrup Non-Industrial Land is transferred under clause 4 of this deed, the State's financial obligations under clause 4 survive the termination of this deed;

- (v) subject to clause 2.4(d)(vi), if a lease was validly granted in respect of any land the subject of this deed before the termination of this deed, then any obligation under this deed or under any Undertaking in relation to that lease which accrued before the date of termination shall remain binding and enforceable;
- (vi) clause 2.4(d)(v) only applies if and for so long as, in the reasonable opinion of the State, the Proponent may use and enjoy the lease in a manner that does not materially detract from the financial viability of the Industrial Project to be conducted by the Proponent on the lease; and
- (vii) subject to paragraphs (iii) to (vi) above, any monies paid to the Contracting Parties or the Approved Body Corporate shall become a debt immediately due and payable by the Contracting Parties or the Approved Body Corporate, as the case may be, to the person or persons who paid the monies, and any monies held on trust in accordance with clause 21.1(a) shall be repaid to the person or persons who paid the monies and the Contracting Parties hereby so direct.

3. AUTHORITY TO ENTER INTO DEED

3.1 Warranties

Each Contracting Party represents and warrants that:

- (a) all necessary authorisations have been obtained to enter into this deed; and
- (b) this deed is valid, binding and enforceable in accordance with its terms against each Contracting Party and all persons included in their respective native title claim group.

3.2 Reliance

The Contracting Parties acknowledge and agree that, but for the representations and warranties in clause 3.1, neither the State nor LandCorp would have entered into this deed.

4. BURRUP NON-INDUSTRIAL LAND

4.1 Acknowledgment of Proposed Effect of the Burrup Non-Industrial Land ILUA

The State and the Contracting Parties acknowledge that the proposed effect of the Burrup Non-Industrial Land ILUA is to enable the transfer of freehold title to the Burrup Non-Industrial Land to the Transferee referred to in clause 4.4(a) under section 83 of the *Land Administration Act* and to give effect to the matters set out in this clause 4.

4.2 Intentions of State and Contracting Parties

The State and the Contracting Parties agree that this clause 4 is intended to apply as follows:

- (a) a study will be conducted for the preparation of a draft management plan in accordance with clause 4.5;
- (b) a management plan will be agreed in accordance with clause 4.5;
- (c) the Burrup Non-Industrial Land ILUA will be entered into, unless native title has been determined not to exist in respect of all of the Burrup Non-Industrial Land, in accordance with clause 4.3;
- (d) the Management Agreement will be entered into in accordance with clause 4.4(b)(iv) or clause 4.4A(b)(iv), as the case may be;
- (e) the Lease will be entered into in accordance with clause 4.4(b)(iii) or clause 4.4A(b)(iii), as the case may be;
- (f) the Deed of Covenant will be entered into in accordance with clause 4.4(b)(ii) or will not be entered into, if clause 4.4A applies; and
- (g) freehold title to the Burrup Non-Industrial Land will be transferred in accordance with clause 4.4 or clause 4.4A.

4.3 Process for transfer of freehold title

- (a) The State will provide to the Contracting Parties a draft Burrup Non-Industrial Land ILUA before the expiry of twelve (12) months after the Satisfaction Date. The draft Burrup Non-Industrial Land ILUA need only contain terms necessary to give effect to the transfer of freehold title to, and the creation of public roads identified in the management plan within, the Burrup Non-Industrial Land in accordance with clause 4.4.
- (b) The State and the Contracting Parties will negotiate in good faith the terms of the Burrup Non-Industrial Land ILUA from the date the draft Burrup Non-Industrial Land ILUA is provided under clause 4.3(a).
- (c) The Contracting Parties and the State acknowledge that no transfer of freehold title will be made under clause 4.4 or clause 4.4A, and clause 4.6 shall have no force or effect, unless and until one of the following events occur:
 - (i) prior to the Determination Date the State enters into the Burrup Non-Industrial Land ILUA with all of the Native Title Parties and the Burrup Non-Industrial Land ILUA is registered under the *Native Title Act*;
 - (ii) after the Determination Date and native title has been determined to exist in respect of any part of the Burrup Non-Industrial Land, the

State enters into the Burrup Non-Industrial Land ILUA with the Prescribed Body Corporate and the Burrup Non-Industrial Land ILUA is registered under the *Native Title Act*; or

- (iii) after the Determination Date, native title has been determined not to exist in respect of all of the Burrup Non-Industrial Land.
- (d) Nothing in this clause 4.3 requires the State to compulsorily acquire any native title rights and interests or any other interests in the Burrup Non-Industrial Land for the purposes of facilitating the transfer of the freehold title to the Burrup Non-Industrial Land.
- (e) Nothing in this clause 4.3 requires the State to pay consideration in addition to the State's financial obligations in this deed.
- (f) For the avoidance of doubt, if the event referred to in clause 4.3(c)(iii) occurs, then subject to clauses 4.3(g) to 4.3(j), clauses 4.4 to 4.7 apply.
- (g) If, after thirty six (36) months of the Determination Date or such other time as may be agreed in writing between the State and the Contracting Parties ("**End Date**"), the Burrup Non-Industrial Land has not been transferred to the Transferee under clause 4.4 or clause 4.4A and:
 - (i) the event in clause 4.3(c)(iii) has occurred; or
 - (ii) the event in clause 4.3(c)(iii) has not occurred, and
 - (A) the Burrup Non-Industrial Land ILUA has not been agreed because of an unreasonable act or omission by the State; or
 - (B) the Burrup Non-Industrial Land ILUA has not been registered because of an unreasonable act or omission by the State,

then the Contracting Parties may elect by notice to the State that clause 4.3(h) applies.

- (h) If the State receives notice from the Contracting Parties under clause 4.3(g), then the State must (in the State's discretion) either:
 - (i) transfer the freehold title to the Burrup Non-Industrial Land in accordance with clause 4.4 or clause 4.4A; or
 - (ii) pay \$10,000,000 to the Contracting Parties,within eighteen (18) months from the date of the receipt of the notice.
- (i) If the State makes the payment under clause 4.3(h) to the Contracting Parties, the parties agree that clauses 4.4 to 4.7 do not apply.

- (j) If on the End Date the Burrup Non-Industrial Land has not been transferred to the Transferee under clause 4.4 or clause 4.4A and clauses 4.3(g) or 4.3(h) do not apply, then:
 - (A) the State will notify the Contracting Parties of the reasons why, in the State's opinion, the Burrup Non-Industrial Land has not been transferred (including, if appropriate, why the Burrup Non-Industrial Land ILUA has not been agreed or registered);
 - (B) the Contracting Parties shall have two (2) months from the date of the State's notice referred to in clause 4.3(j)(A) to respond to the State in writing; and
 - (C) if within nine (9) months after the State's notice referred to in clause 4.3(j)(A), the Burrup Non-Industrial Land has not been transferred to the Transferee under clause 4.4 or clause 4.4A, then clauses 4.4 to 4.7 do not apply and the State will pay the Contracting Parties the sum of \$3,400,000 as follows:
 - (1) \$1,400,000 within thirty (30) days after the end of the nine (9) month period referred to in clause 4.3(j)(C); and
 - (2) \$1,000,000 per annum for two (2) years, with the first payment on the first anniversary of the payment in clause 4.3(j)(C)(1) and the second payment on the second anniversary of the payment in clause 4.3(j)(C)(1).

4.4 Freehold Title

- (a) Subject to clause 4.3, the State will ensure that:
 - (i) if the event in clause 4.3(c)(iii) occurs, the freehold title to the Burrup Non-Industrial Land is transferred to the Approved Body Corporate in accordance with this clause 4.4; or
 - (ii) if the Burrup Non-Industrial Land ILUA is agreed under clause 4.3(c)(i) or 4.3(c)(ii), the freehold title to the Burrup Non-Industrial Land is transferred to:
 - (A) the Approved Body Corporate ; or
 - (B) another body corporate nominated under the Burrup Non Industrial Land ILUA,

in accordance with this clause 4.4 and the Burrup Non-Industrial Land ILUA.

For the purposes of this clause 4, "Transferee" means the person to whom the freehold title is to be transferred under clause 4.4(a).

- (b) The State and the Contracting Parties agree that the obligation to transfer the freehold title to the Burrup Non-Industrial Land will be in respect of that area as defined by the cadastral survey referred to in clause 4.6(a) and will be subject to the following:
- (i) the freehold title to the Burrup Non-Industrial Land will be subject to existing easements and other interests in respect of the Burrup Non-Industrial Land;
 - (ii) the freehold title to the Burrup Non-Industrial Land will be subject to the Deed of Covenant and the Transferee must execute the Deed of Covenant prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land and such Deed of Covenant must be registered and take effect immediately on the date of transfer subject only to the interests referred to in clause 4.4(b)(i);
 - (iii) the Transferee must execute the Lease prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land and such Lease must be registered and take effect immediately on the date of transfer subject only to the interests referred to in clauses 4.4(b)(i) and 4.4(b)(ii);
 - (iv) the management plan must be agreed or determined in accordance with clause 4.5;
 - (v) the Transferee must execute the Management Agreement prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land to take effect on the date of the transfer of the Burrup Non-Industrial Land;
 - (vi) the Transferee agrees not to assign, transfer, mortgage, charge, lease, part with possession (except under the Lease or the Management Agreement) or otherwise deal in any way with its interests in the Burrup Non-Industrial Land or any part of it, with any person (other than the State) ("**Third Party**") unless and until the Third Party executes such document or documents necessary in which the Third Party agrees to be bound by the terms of the Management Agreement; and
 - (vii) in respect of any area within the Burrup Non-Industrial Land identified under the management plan under clause 4.5 for the reservation, dedication and use as a public road ("**reserved area**"), then:
 - (A) the reserved area will be excluded from the land to be transferred; and
 - (B) if the event in clause 4.3(c)(iii) has not occurred, the Contracting Parties or the Prescribed Body Corporate, as the case may be, and the State, will by way of an indigenous land use agreement, agree that the public roads

in the reserved areas can be created notwithstanding any effect on the native title rights and interests, if any, and the non-extinguishment principle shall apply, or

- (viii) if the management plan is amended after the date of transfer of the freehold to the Burrup Non-Industrial Land, then:
 - (A) the reserved area will be surrendered from the Lease and the freehold title; and
 - (B) if the event in clause 4.3(c)(iii) has not occurred, the Contracting Parties or the Prescribed Body Corporate, as the case may be, and the State, will by way of an indigenous land use agreement, agree that the public roads in the reserved areas can be created notwithstanding any effect on the native title rights and interests, if any, and the non-extinguishment principle shall apply; and
- (ix) no compensation shall be payable by the State or any other person to the Contracting Parties, the Prescribed Body Corporate or the Transferee whatsoever in respect of clauses 4.4(b)(vii) and 4.4(b)(viii).
- (c) The State will pay all fees and any stamp duty associated with the transfer of the freehold title.

4.4A State's Election

- (a) In the event that the State is required to transfer the freehold title to the Burrup Non-Industrial Land to the Contracting Parties under clause 4.4, the Contracting Parties and the State agree that the State may (in the State's discretion) by notice to the Contracting Parties elect that this clause 4.4A shall apply.
- (b) If the State elects that this clause 4.4A shall apply then the State and the Contracting Parties agree that:
 - (i) clauses 4.4(a) and 4.4(c) apply;
 - (ii) clauses 4.4(b)(iv) and 4.4(b)(vii) to (ix) apply but otherwise clause 4.4(b) does not apply;
 - (iii) the freehold title to the Burrup Non-Industrial Land will be subject to existing easements and other interests in respect of the Burrup Non-Industrial Land;
 - (iv) the Transferee must execute the Lease (except clause 13 of the Lease will not apply and reference to the Deed of Covenant in the Lease shall be amended to be a reference to the conditions in clause 4.4A(vi)) prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land and such Lease must be registered and

take effect immediately on the date of transfer subject only to the interests referred to in clause 4.4A(b)(iii);

- (v) the Transferee must execute the Management Agreement (except that reference to the Deed of Covenant in the Management Agreement shall be amended to be a reference to the conditions in clause 4.4A(vi)) prior to the date of transfer of the freehold title to the Burrup Non-Industrial Land to take effect on the date of the transfer of the Burrup Non-Industrial Land; and
- (vi) the State and the Contracting Parties agree that the obligation to transfer the freehold title to the Burrup Non-Industrial Land will be in respect of that area as defined by the cadastral survey referred to in clause 4.6(a) and the freehold title will be subject to, at the State's discretion, one or more of the following conditions:
 - (A) the Transferee must not assign, transfer, mortgage, charge, lease, part with possession or deal in any way with its interests in the Burrup Non-Industrial Land or any part of it (except under the Lease or the Management Agreement) without the prior written consent of the Minister for Lands which may be given or withheld in the Minister's discretion and if given, subject to any such conditions that the Minister determines;
 - (B) the Burrup Non-Industrial Land must be used, or permitted to be used, only in a manner that is not inconsistent with the management plan determined under clause 4.5, or as amended from time to time:
 - (1) in accordance with the Management Agreement; or
 - (2) if there is no Management Agreement, by agreement in writing between the Transferee and the Minister for Lands,but the Transferee may take such steps as are reasonably necessary (for example, closing off the Burrup Non-Industrial Land or any part of it to the general public for one day a year) to ensure that the Burrup Non-Industrial Land, or any part of it, is not dedicated to the public use at common law, under any written law or in any other manner whatsoever;
 - (C) the management plan referred to in paragraph (B) above, as amended from time to time, must be registered on the certificate of title to the Burrup Non-Industrial Land;
 - (D) where a part of the boundary of the Burrup Non-Industrial Land is defined by the High Water Mark, no building may

occur on the Burrup Non-Industrial Land between the High Water Mark and:

- (1) where the coastline is rocky coastline – the line being 100 metres inland from the cliff line occurring nearest that boundary; or
- (2) where the coastline is sandy coastline – the line being 150 metres inland from the High Water Mark nearest that boundary,

except for recreational purposes, which may include the construction, operation and maintenance of roads, carparks, and low impact public facilities such as showers, toilets, shaded picnic tables and boat ramps.

For the purposes of this clause 4.4A, **High Water Mark** has the same meaning as that term is defined in the *Land Administration Act*.

4.5 Management Plan

- (a) The State will expend an amount of \$500,000 for the preparation of the draft management plan in accordance with this clause 4.5 (including the costs of the Consultant). The State and the Contracting Parties agree that Mr Stephen Szabo (or if Mr Szabo is unavailable, another person agreed between the State and the Contracting Parties) will be engaged by the State, as soon as practicable, in consultation with the Contracting Parties, as an independent consultant to prepare a draft management plan intended to be the first management plan under the Management Agreement ("**Consultant**").
- (b) The State and the Contracting Parties agree that the Consultant will be required to:
 - (i) prepare a draft management plan in accordance with clause 4.5(c);
 - (ii) consult with the State, the Native Title Parties, the community, the relevant local government and any other relevant authorities including, but not limited to, the Conservation Commission;
 - (iii) provide an opportunity for the views of the State, the Native Title Parties, the community, the relevant local government and any other relevant authorities including, but not limited to, the Conservation Commission, to be formally submitted to the Consultant for his consideration;
 - (iv) in the preparation of the draft management plan, take into account the views of the State, the Native Title Parties, the community, the relevant local government and any other relevant authorities including, but not limited to, the Conservation Commission;

- (v) have regard to the views of the members of the advisory committee established under clause 4.5(d); and
 - (vi) do all things reasonably necessary to allow the advisory committee established under clause 4.5(d) to perform its functions.
- (c) The State and the Contracting Parties agree that the draft management plan will provide for the following matters having regard to any national and international heritage and environmental agreements which bind the State, treaties which bind the State, all laws and Government policies, the terms of the Lease, and the Deed of Covenant or the conditions referred to in clause 4.4A(b)(vi), as the case may be:
- (i) the preservation and promotion of the Aboriginal cultural and heritage values of the Burrup Non-Industrial Land;
 - (ii) the preservation and promotion of the natural and environmental values of the Burrup Non-Industrial Land, including indigenous flora and fauna;
 - (iii) the preservation and promotion of the archaeological values of the Burrup Non-Industrial Land;
 - (iv) the provision of public recreational facilities and the facilitation of recreational activities on the Burrup Non-Industrial Land, to fulfil so much of the demand for recreation by members of the public as is fitting taking account of the matters set out in clauses 4.5(c)(i), (ii), (iii) and (vi);
 - (v) the regulation of public access having regard to the matters set out in clauses 4.5(c)(i), (ii), (iii) (iv) and (vi);
 - (vi) the use of the Burrup Non-Industrial Land by the Approved Body Corporate and its members from time to time in accordance with traditional laws and customs acknowledged and observed by the members of the Approved Body Corporate;
 - (vii) the use of the Burrup Non-Industrial Land by the Approved Body Corporate and its members from time to time consistent with the matters set out in clauses 4.5(c)(i) to (v);
 - (viii) employment and training opportunities for the Approved Body Corporate and its members within and in relation to the Burrup Non-Industrial Land;
 - (ix) commercial opportunities for the Approved Body Corporate and its members within the Burrup Non-Industrial Land;
 - (x) the provision and construction of the Burrup Non-Industrial Land Buildings and the Burrup Non-Industrial Land Infrastructure;

- (xi) provision of fencing;
 - (xii) creation of vehicular tracks and roads, and walking and cycling trails and pathways;
 - (xiii) provision of firebreaks, fire control and carrying out of prescribed burning;
 - (xiv) erection of signage;
 - (xv) construction of public conveniences and other public facilities;
 - (xvi) weed and feral animal control;
 - (xvii) restriction or prohibition of access for protection of culturally significant sites, or for safety, cultural or conservation purposes;
 - (xviii) the intended term of the management plan which may include provisions relating to the renewal or extension of the term;
 - (xix) the periodical review of the management plan;
 - (xx) the identification of management strategies relating to the use and management of the Burrup Non-Industrial Land;
 - (xxi) the respective management roles of the Approved Body Corporate and CALM in relation to the Burrup Non-Industrial Land in accordance with the principles of joint management as set out in the Management Agreement; and
 - (xxii) such other matters as the Contracting Parties and CALM may agree.
- (d) The State must establish an advisory committee within forty-five (45) days after the engagement of the Consultant under clause 4.5(a), in accordance with this clause
- (i) the advisory committee will consist of members as agreed between the State and the Contracting Parties;
 - (ii) the members of the advisory committee will have the following functions:
 - (A) review all information provided by the Consultant in relation to the draft management plan;
 - (B) provide the advisory committee members' views to the Consultant in respect of the information provided by the Consultant and in respect of such other matters as the advisory committee members consider relevant; and

- (C) assist the Consultant in the preparation of the draft management plan;
 - (iii) each member is entitled to provide his or her views to the Consultant and no consensus is required;
 - (iv) no quorum is required for any meeting of the members of the advisory committee; and
 - (v) the advisory committee must meet with the Consultant from time to time but not less than once every three (3) months.
- (e) Unless the State and the Contracting Parties otherwise agree, the draft management plan must be completed and provided to the State and the Contracting Parties within eighteen (18) months of the date of appointment of the Consultant.
 - (f) The State and the Contracting Parties shall endeavour to agree the terms of a management plan based on the draft management plan prepared by the Consultant.
 - (g) If the State and the Contracting Parties are unable to agree the terms of the management plan within three (3) months of the date the draft management plan is provided in accordance with clause 4.5(e), then the Minister for Environment and Heritage shall, in consultation with the Minister for Indigenous Affairs, determine the terms of the management plan.

4.6 Financial Contribution by State

- (a) The State will expend \$50,000 for a cadastral survey of the Burrup Non-Industrial Land for registration purposes. The State will provide a copy of the completed cadastral survey to the Contracting Parties.
- (b) The State has no obligation under clause 4.6(c) unless and until the transfer of freehold title has occurred in accordance with clause 4.4 or clause 4.4A.
- (c) The State will provide:
 - (i) \$450,000 per annum for five (5) years (with the first payment commencing on the date of the Management Agreement and thereafter on the first, second, third and fourth anniversaries of that date) for the management of the Burrup Non-Industrial Land in accordance with the terms of the Management Agreement;
 - (ii) \$5,500,000 within the five (5) year period commencing on the date of the transfer of freehold title, for the purposes of construction of the Burrup Non-Industrial Land Buildings; and

- (iii) \$2,500,000 within the five (5) year period commencing on the date of the transfer of freehold title, for the purposes of construction of the Burrup Non-Industrial Land Infrastructure.

4.7 Implementation of State's Financial Contribution for the Burrup Non-Industrial Land Infrastructure

The State may satisfy its obligations under clauses 4.6(c)(ii) and (iii) by the engagement of the relevant contractor (as determined by the State and subject to clause 15.2) for the construction of the Burrup Non-Industrial Land Buildings and the Burrup Non-Industrial Land Infrastructure.

4.8 No Objections

On and from the Satisfaction Date, the Contracting Parties agree that the Contracting Parties will not, in their capacity as owners of the Burrup Non-Industrial Land, lodge or cause to be lodged any objection to development proposals intended to occur on land within the Industrial Estate.

5. COMPULSORY ACQUISITION OF HEARSON COVE LAND

5.1 Withdrawal of Objection

Each Contracting Party hereby withdraws its objection made under section 24MD(6A) and (6B) of the *Native Title Act* and any objection made by it under the *Land Administration Act* in respect of the Hearson Cove Land.

5.2 Consent to Compulsory Acquisition

The Contracting Parties hereby agree to the compulsory acquisition and consequent extinguishment by the State of any and all native title rights and interests in the Hearson Cove Land in accordance with this deed.

5.3 Entitlement to Compulsorily Acquire

The Contracting Parties hereby agree that, subject to this deed, the State is entitled to compulsorily acquire all native title and rights and interests in the Hearson Cove Land in accordance with the *Land Administration Act* and the *Native Title Act* and thereby extinguish all native title rights and interests in respect of the Hearson Cove Land.

6. COMPULSORY ACQUISITION OF KARRATHA LAND

6.1 Withdrawal of Objection

Each Contracting Party hereby withdraws its objection made under section 24MD(6A) and (6B) of the *Native Act* and any objection made under the *Land Administration Act* in respect of the Karratha Land.

6.2 Consent to Compulsory Acquisition

The Contracting Parties hereby agree to the compulsory acquisition and consequent extinguishment by the State of any and all native title rights and interests in the Karratha Land in accordance with this deed.

6.3 Entitlement to Compulsorily Acquire

The Contracting Parties hereby agree that, subject to this deed, the State is entitled to compulsorily acquire all native title and rights and interests in the Karratha Land in accordance with the *Land Administration Act* and the *Native Title Act* and thereby extinguish all native title rights and interests in respect of the Karratha Land.

6.4 Definitions for this Clause

In this clause 6 and clause 29:

Developed Lots means all lots within a Parcel other than Public Purpose Lots or Temporary Workers' Accommodation Lots.

lot has the meaning given to that term under the *Town Planning and Development Act 1928* (WA).

Lot Payment means the amount that is equal to 5% of the Value of all Developed Lots within a Parcel.

Parcel means:

- (a) a lot or number of lots within the Karratha Land identified for the purpose (as determined by the State) of a subdivision development; or
- (b) a lot or lots the subject of a direct transfer by way of public sale or private treaty to the Registered Proprietor other than for the purpose of a subdivision development.

Public Purpose Lot means any lot in the Karratha Land which has been identified by the State or on an approved plan of subdivision to be required for a public work within the meaning of the *Public Works Act 1902* (WA).

Registered Proprietor means the registered proprietor of the Parcel.

Staged Subdivision Development means a subdivision development in respect of a Parcel which is conducted in Stages.

Stages means the stage or stages in which the subdivision development is conducted.

Strata Lot has the meaning given to that term in clause 29.

Survey- Strata Lot has the meaning given to that term in clause 29.

subdivision development means a subdivision development which is intended to create more than three (3) lots and which includes:

- (a) subdivision developments for residential, commercial and light industrial purposes; and
- (b) strata title developments.

Temporary Workers' Accommodation Lot means land used for the purposes of the construction and use of temporary dwellings for the accommodation of workers.

transfer means the transfer of the fee simple estate in land subject to encumbrances, if any.

Transferable Lots means Developed Lots within a Parcel other than:

- (a) a Developed Lot which has a Value greater than 5% of the Value of the total Developed Lots within the Parcel;
- (b) any Strata Lot or Survey Strata Lot;
- (c) any lot which is proposed to be transferred to a person for the purpose of the creation of Strata Lots;
- (d) any Developed Lot that the State is satisfied will be used by the Registered Proprietor in the bona fide operations of its business and who does not intend to directly transfer it by way of public sale or private treaty for a minimum period of three (3) years or until all of the other Developed Lots have been sold, whichever occurs first (for example, a Developed Lot used for a display home or sales office); and
- (e) any Developed Lot required for one of the following purposes:
 - (i) caravan park;
 - (ii) park home; or
 - (iii) retirement village.

Value means the value determined for the relevant Developed Lot in the Karratha Land in accordance with clause 29.

6.5 Lot Payment where no Transferable Lots or no Approved Body Corporate

- (a) If there are no Transferable Lots available within a Parcel, then the State must pay the Lot Payment to the Contracting Parties within thirty (30) days after the first transfer of a Developed Lot within that Parcel by the Registered Proprietor.
- (b) If clause 6.6 or 6.7 would have applied if there was an Approved Body Corporate, but at the time a valuation is obtained for the Developed Lots

within the Parcel no Approved Body Corporate exists or the Approved Body Corporate exists but it has not executed the Ratification Deed, then the State must pay the Lot Payment to the Contracting Parties within thirty (30) days after the first transfer of a Developed Lot within the Parcel by the Registered Proprietor. If this clause applies, then the State has no obligation to transfer Transferable Lots under clause 6.6 or 6.7, as the case may be, in respect of those Developed Lots.

6.6 Principles for Transfer where there are Transferable Lots with an Aggregate Value of more than 5% of the Value of the Developed Lots within a Parcel

- (a) This clause 6.6 applies if there are Transferable Lots within a Parcel with an aggregate Value of more than 5% of the Value of the Developed Lots within the Parcel.
- (b) Prior to the transfer of any Developed Lot within a Parcel by the Registered Proprietor to any person:
 - (i) The State must ensure that Transferable Lots as close as possible to 5% of the Value of the Developed Lots within the Parcel will be transferred to the Approved Body Corporate in accordance with this clause 6.6. The State may do so by procuring from a person to whom the State proposes to transfer a Parcel, a promise by deed that the person will transfer to the Approved Body Corporate Transferable Lots in accordance with this clause 6.
 - (ii) When the Value of the Developed Lots has been determined, the State must notify the Approved Body Corporate and the Registered Proprietor of the following matters:
 - (A) the location and Value for each Developed Lot;
 - (B) the location and Value for each Transferable Lot; and
 - (C) the location of each Public Purpose Lot and Temporary Workers' Accommodation Lot, and a description of the purpose for which that lot is to be used,("Parcel Notice").
 - (iia) Any Developed Lot not identified in the Parcel Notice as a Transferable Lot may be transferred or otherwise dealt with by the Registered Proprietor.
 - (iii) Within thirty-five (35) days after receipt of the Parcel Notice, each of the Approved Body Corporate and the Registered Proprietor may by notice to each other and to the State, separately identify those Transferable Lots as close as possible to (but not exceeding) 5% of the Value of the Developed Lots within the Parcel ("**Transferable Lot Nomination Notices**") which each of the Approved Body

Corporate and the Registered Proprietor nominate for transfer to the Approved Body Corporate under clause 6.6(b).

- (iv) If both the Approved Body Corporate and the Registered Proprietor fail to give a Transferable Lot Nomination Notice, then the State must elect the Transferable Lots to be transferred to the Approved Body Corporate under clause 6.6(b)(i).
- (v) If only the Approved Body Corporate or only the Registered Proprietor gives a Transferable Lot Nomination Notice, then the Transferable Lots identified in that Transferable Lot Nomination Notice will be transferred to the Approved Body Corporate. If the Transferable Lots identified in the Transferable Lot Nomination Notice are less than 5% of the Value of the Developed Lots within the Parcel, the State must ensure that an amount equal to the balance between the Value of the Transferable Lots to be transferred and 5% of the Value of the Developed Lots within the Parcel is paid to the Approved Body Corporate on the date of transfer.
- (vi) If both the Approved Body Corporate and the Registered Proprietor give a Transferable Lot Nomination Notice, and the State, the Approved Body Corporate and the Registered Proprietor are unable to reach agreement as to the Transferable Lots to be transferred under clause 6.6(b)(i) within sixty-five (65) days after receipt of the Parcel Notice, then:
 - (A) those Transferable Lots which have been agreed between the Approved Body Corporate, the Registered Proprietor and the State will be transferred to the Approved Body Corporate;
 - (B) those Transferable Lots not identified in the Transferable Lot Nomination Notices may be transferred or otherwise dealt with by the Registered Proprietor;
 - (C) those Transferable Lots identified in the Transferable Lot Nomination Notices but not agreed under paragraph (A), will be placed in a ballot;
 - (D) the ballot will be conducted within forty-five (45) days after the expiry of the sixty-five (65) day period referred to in clause 6.6(b)(vi) by a person authorised by the State;
 - (E) Transferable Lots will be randomly drawn from the ballot until the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot is at least 4.5% of the Value of the Developed Lots within the Parcel and, subject to paragraph (I) below, there will be no further draws from the ballot;

(F) if on the last draw of the ballot, the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot equals or exceeds 5.5% of the Value of the Developed Lots within the Parcel, then the Approved Body Corporate may elect:

(1) to accept a transfer of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot, and agree to pay to the Registered Proprietor the difference between:

(a) the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot; and

(b) 5.5% of the Value of the Developed Lots within the Parcel,

("Excess Amount"), in which case paragraph (G) below will apply; or

(2) to accept a transfer of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot but not including the last draw of the ballot, and accept a payment equal to the difference between:

(a) the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those lots drawn from the ballot but not including the last draw of the ballot; and

(b) 5% of the Value of the Developed Lots within the Parcel,

("Deficit Amount"), in which case paragraph (H) below will apply; or

(3) for a further draw from the ballot, in which case paragraph (I) will apply.

If the Approved Body Corporate does not make an election then it shall be deemed to have made an election in accordance with paragraph (F)(3) above;

(G) if the Approved Body Corporate makes the election in paragraph (F)(1) above, then the State will ensure that all of the Transferable Lots drawn from the ballot will be transferred to the Approved Body Corporate, and the Approved Body Corporate must pay the Excess Amount to

the Registered Proprietor on the date of the transfer of the Transferable Lots;

(H) if the Approved Body Corporate makes the election in paragraph (F)(2) above then the State will ensure that all of the Transferable Lots drawn from the ballot but not including the last draw of the ballot are transferred to the Approved Body Corporate, and the State will ensure that the Deficit Amount is paid to the Approved Body Corporate on the date of the transfer of the Transferable Lots;

(I) if the Approved Body Corporate makes, or is deemed to have made, the election in paragraph (F)(3) above then:

(1) the last draw of the ballot shall be disregarded and another draw shall be made from the ballot;

(2) if on the draw of the ballot referred to in paragraph (I)(1) above, the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot, again exceeds 5.5% of the Value of the Developed Lots within the Parcel, then clause 6.6(b)(vi)(F) shall again apply; and

(3) if there are no further Transferable Lots to be drawn from the ballot in accordance with paragraph (I)(1) above then paragraph (H) above shall apply as if the Approved Body Corporate so elected;

(J) if on the last draw of the ballot, the aggregate Value of the Transferable Lots agreed under paragraph (A) above and those drawn from the ballot is less than 5% of the Value of the Developed Lots within the Parcel, then the State will ensure that all of the Transferable Lots drawn from the ballot will be transferred to the Approved Body Corporate, without any amount payable by the Registered Proprietor or the State to the Approved Body Corporate whatsoever; and

(K) the Transferable Lots drawn from the ballot, or in the case where paragraph (I) applies the Transferable Lots drawn from the ballot but not including the last draw from the ballot, must be transferred to the Approved Body Corporate.

6.7 Principles for Transfer where there are Transferable Lots with an aggregate Value equal to or less than 5% of the Value of the Developed Lots within a Parcel

If there are Transferable Lots within a Parcel with an aggregate Value equal to or less than 5% of the Value of the Developed Lots within the Parcel, then the State must ensure that prior to the transfer of any Developed Lot within the Parcel:

- (a) all the Transferable Lots are transferred to the Approved Body Corporate; and
- (b) an amount equal to the balance, if any, between the Value of the Transferable Lots to be transferred and 5% of the Value of the Developed Lots within the Parcel must be paid to the Approved Body Corporate on the date of the transfer of the Transferable Lots.

6.8 Application of Clauses 6.4 to 6.7

In respect of clauses 6.4 to 6.7 ("**Transfer of 5% Clauses**"):

- (a) the Transfer of 5% Clauses do not apply at the time land within the Karratha Land is transferred to a person for the purposes of undertaking a subdivision development;
- (b) in respect of a lot or number of lots within the Karratha Land provided for the purpose of a subdivision development (paragraph (a) of the definition of Parcel), the Transfer of 5% Clauses apply prior to the first sale of the Developed Lots within the Parcel;
- (c) in respect of a lot or lots the subject of a direct transfer by way of public sale or private treaty other than for the purpose of a subdivision development (paragraph (b) of the definition of Parcel), the Transfer of 5% Clauses apply prior to the transfer of each lot;
- (d) subject to clause 6.8(e), the obligation to transfer the Transferable Lots (and to pay an amount equal to the balance of the Value of 5% of the Developed Lots within the Parcel or the Deficit Amount) or to pay the Lot Payment can only occur once in respect of land within the Karratha Land;
- (e) if within 10 years of the creation of a Public Purpose Lot, any land within the Public Purpose Lot ceases to be for the original public purposes or for any other public purpose specified in the definition of Public Purpose Lot, then that land will be treated as a Parcel and the Transfer of 5% Clauses and this clause 6.8 (except for this paragraph (e)) will apply;
- (f) any land which ceases to be within a Temporary Workers' Accommodation Lot may be treated as a Parcel or a Developed Lot, as the case may be;
- (g) the Transfer of 5% Clauses apply separately and independently to each Parcel acquired by a person in different transactions;

- (h) any transfer to be made under the Transfer of 5% Clauses:
 - (i) may be made to the Approved Body Corporate or its nominee approved by State; and
 - (ii) must occur within thirty (30) days after:
 - (A) the time the obligation arises if there is a certificate of title for the relevant land to be transferred at the time the obligation arises; or
 - (B) the date the relevant certificate of title is issued if there is no certificate title for the relevant land to be transferred at the time the obligation arises; and
- (i) if a Parcel is the subject of a Staged Subdivision Development, the Transfer of 5% Clauses apply to each Stage as though the land in each Stage was land within a separate Parcel.

6.9 Contracting Out

The State, the Registered Proprietor and the Approved Body Corporate may agree to vary or amend or not apply any of, or parts of, the Transfer of 5% Clauses ("**variation**") subject to the State being released by the Approved Body Corporate from any and all liability arising from any thing done or not done as a consequence of the variation.

6.10 Failure to Comply

- (a) The Contracting Parties acknowledge and agree that, for the purposes of paragraph (d) of the definition of Transferable Lot in clause 6.4, the State may rely on information provided by the Registered Proprietor and the State will not be liable whatsoever if a Developed Lot which has been excluded from the definition of Transferable Lot in paragraph (d) of the definition of Transferable Lot is transferred other than within either of the periods referred to in that definition.
- (b) The Contracting Parties acknowledge and agree that, notwithstanding any failure by the State or the Registered Proprietor to comply with the Transfer of 5% Clauses, the transfer or intended transfer of any freehold title in a Developed Lot to any person will be valid for all purposes and the Contracting Parties and the Approved Body Corporate will not bring any proceedings challenging any transfer or intended transfer whatsoever and this clause 6.10(b) may be pleaded by the State as a bar to any such proceedings.
- (c) The Contracting Parties acknowledge and agree that the only remedies available against the State for failing to comply with the Transfer of 5% Clauses are in damages and, where either the State or LandCorp is the Registered Proprietor, specific performance.

- (d) The Contracting Parties acknowledge and agree that the State may satisfy any liability the State may have for failing to comply with the Transfer of 5% Clauses by transferring other land to the Contracting Parties as reasonably agreed by the Contracting Parties.

7. COMPULSORY ACQUISITION OF INDUSTRIAL ESTATE

7.1 Consent to Compulsory Acquisition

The Contracting Parties hereby agree to the compulsory acquisition and consequent extinguishment by the State of any and all native title rights and interests in the Industrial Estate, in accordance with this deed.

7.2 Entitlement to Compulsorily Acquire

The Contracting Parties hereby agree that, subject to this deed, the State is entitled to compulsorily acquire any and all native title rights and interests in the Industrial Estate in accordance with the *Land Administration Act* and the *Native Title Act* and thereby extinguish any and all native title rights and interests in respect of the Industrial Estate.

7.3 Specific Acknowledgments

Without limiting the effect of clause 7.1, the Contracting Parties:

- (a) agree to the transfer of freehold title to the Industrial Estate by the State to the Manager or any other person;
- (b) agree to the grant of the Current Proponent Leases and leases to Future Proponents; and
- (c) agree to the creation and transfer of any interests in the Industrial Estate including, but not limited to, leases, easements, rights of access, encumbrances, licences, road reserves and restrictive covenants.

7.4 Sections 28 and 31 of the *Native Title Act*

The Contracting Parties acknowledge that this deed is an agreement with each of them for the purposes of section 28(1)(f) and section 31(1)(b) of the *Native Title Act*.

7.5 Withdrawal of objections under *Land Administration Act*

Each Contracting Party hereby withdraws any objection made by it under the *Land Administration Act* in relation to the taking of land or interests in land within the Industrial Estate.

8. UP FRONT PAYMENT BY STATE

8.1 Payment on Satisfaction Date

On the Satisfaction Date, the State must pay \$1,500,000 to the Contracting Parties.

8.2 Payment on Acquisition Date

On the Acquisition Date, the State must pay \$2,000,000 to the Contracting Parties.

9. CURRENT PROPONENT LEASES

9.1 Current Proponent Commitments

- (a) Prior to the grant of each Current Proponent Lease, the State will procure the relevant Current Proponent to give an Employment Undertaking.
- (b) In respect of each Current Proponent, the State must pay the Lump Sum Payment and Current Proponent Annual Payment in clauses 9.2 and 9.3 except to the extent that the Current Proponent gives a Payment Undertaking that the Current Proponent will pay the Lump Sum Payment in accordance with clause 9.2 or Current Proponent Annual Payment in accordance with clause 9.3, or both, as the case may be.
- (c) If a Current Proponent gives the Payment Undertaking referred to in clause 9.1(b), then the Contracting Parties agree that the State is released from its obligation under clause 9.1(b) to pay the Lump Sum Payment in accordance with clause 9.2 or Current Proponent Annual Payment in accordance with clause 9.3, or both, as the case may be, in respect of that Current Proponent, on and from the date of the Payment Undertaking.
- (d) A Current Proponent may give the Payment Undertaking referred to in clause 9.1(b) prior to, or after the grant of the Current Proponent Lease.
- (e) The State must ensure that if a Current Proponent gives a Payment Undertaking or an Employment Undertaking under this clause 9, an original executed Payment Undertaking or Employment Undertaking, or both, as the case may be, is delivered to the Contracting Parties as soon as practicable after the date of the Payment Undertaking or Employment Undertaking.

9.2 Lump Sum Payments

In respect of each Current Proponent, the Contracting Parties will be paid an amount equal to the Lump Sum Amount for the relevant Current Proponent, to be paid by way of two equal instalments as follows:

- (a) the first instalment - within 20 Business Days after the date of the commencement of the relevant Current Proponent Lease; and
- (b) the second instalment - within 20 Business Days after the relevant Production Date.

9.3 Payment of the Current Proponent Annual Payment

For each Current Proponent, the Current Proponent Annual Payment will be paid to the Contracting Parties as follows:

- (a) subject to clause 9.3(c), \$700 per hectare or part thereof of land within the Industrial Estate the subject of the Current Proponent Lease per annum for each of the first five (5) years following the grant of the relevant Current Proponent Lease;
- (b) subject to clause 9.3(c), on and from the end of the 6th year, the Current Proponent Annual Payment will be determined as follows:

$$\text{\$Current Proponent Annual Payment} = (\text{AP} + (\text{AP} \times (\text{CPI} + 2\%))) \times \text{H}$$

AP means the amount per hectare paid in the previous year (and for the purposes of the 6th year, means \$700)

CPI means the percentage change of annual CPI for the previous twelve (12) month period calculated at the end of the quarter immediately preceding the date on which the calculation is to be made

H means the number of hectares or part thereof of land within the Industrial Estate the subject of the Current Proponent Lease; and

- (c) the Current Proponent Annual Payment must be paid:
 - (i) per annum for each year of the Current Proponent Lease, or pro rated for part thereof;
 - (ii) in arrears on each anniversary of the commencement date of the relevant Current Proponent Lease; and
 - (iii) for so long as the Current Proponent holds the Current Proponent Lease.

10. FUTURE PROPONENTS

10.1 Future Proponent Commitments

- (a) Prior to the grant of each lease to a Future Proponent, the State will procure the relevant Future Proponent to give an Employment Undertaking.
- (b) In respect of each lease to a Future Proponent, the State must pay the Annual Payment in accordance with clause 10.2 unless the Future Proponent gives a Payment Undertaking that the Future Proponent will pay the Annual Payment in clause 10.2.
- (c) If a Future Proponent gives the Payment Undertaking referred to in clause 10.1(b), then the Contracting Parties agree that the State is released from its obligation under clause 10.1(b) to pay the Annual Payment in clause 10.2 in respect of that Future Proponent lease, on and from the date of the Payment Undertaking.

- (d) A Future Proponent may give the Payment Undertaking referred to in clause 10.1(b) prior to, or after the grant of the lease to the Future Proponent.
- (e) The State must ensure that if a Future Proponent gives a Payment Undertaking or an Employment Undertaking under this clause 10, an original executed Payment Undertaking or Employment Undertaking, or both, as the case may be, is delivered to the Contracting Parties as soon as practicable after the date of the Payment Undertaking or Employment Undertaking.

10.2 Annual Payment

- (a) Following the grant of a lease to a Future Proponent, the Contracting Parties will be paid an Annual Payment being an amount equal to:

$$\text{\$Annual Payment} = (0.5 \times \text{MR}) \times \text{H}$$

Where:

MR means the Market Rental per hectare determined in accordance with clause 29 at the time of the grant of lease to the Future Proponent

H means the number of hectares or part thereof of land within the Industrial Estate the subject of the lease to the Future Proponent

- (b) The Annual Payment will be subject to the escalation and review in accordance with clauses 10.2(c) and 10.2(d) and must be paid:
 - (i) per annum for each year of the lease to the Future Proponent, or pro rated for part thereof;
 - (ii) in arrears on each anniversary of the commencement date of the lease to the Future Proponent; and
 - (iii) for so long as the Future Proponent holds the relevant lease.

- (c) The Annual Payment will be escalated for each year a payment falls due other than a year in which a Review Date occurs, as follows:

$$\text{\$Annual Payment} = (\text{AP} + (\text{AP} \times \text{CPI})) \times \text{H}$$

AP means the amount per hectare payable in the previous year

CPI means the percentage change of annual CPI for the previous twelve (12) month period calculated at the end of the quarter immediately preceding the date on which the calculation is to be made

H means the number of hectares or part thereof of land within the Industrial Estate the subject of the lease to the Future Proponent

- (d) The Annual Payment will be reviewed on the 7th anniversary of the commencement date of the lease to the Future Proponent and every seven (7) years thereafter ("**Review Date**"), as follows:

$$\text{\$Annual Payment} = (0.5 \times \text{MR}) \times \text{H}$$

Where:

MR means the Market Rental per hectare determined in accordance with clause 29 at the time of the Review Date

H means the number of hectares or part thereof of land within the Industrial Estate the subject of the lease to the Future Proponent

11. FREEHOLD

11.1 Purchase Value to be paid by State

Prior to the first transfer of a freehold interest in land within the Industrial Estate to a Purchaser, the State must pay the Purchase Value to the Contracting Parties.

11.2 Obligations Cease

If a freehold interest in land within the Industrial Estate is transferred under clause 11.1 ("**Freehold Land**") then the Freehold Land ceases to be land within the Industrial Estate.

12. EXCLUSION AND VARIATION

12.1 Proponents May Exclude Prior to Grant

- (a) Any obligation under clause 9.2, 9.3, 10.2 or 16, or under any Payment Undertaking or Employment Undertaking may be excluded or varied (in whole or in part) in respect of a particular Current Proponent Lease or a particular lease to a Future Proponent by agreement in writing between the Proponent, the State and the Contracting Parties, before the grant of lease to the Proponent, in accordance with this clause 12.
- (b) The Contracting Parties acknowledge that the State may require a Proponent to indemnify the State in respect for all losses and damages arising from any claim, action or proceeding by the Contracting Parties or the Approved Body Corporate, or both of them, in relation to, or arising from, any matter or thing done or not done by the State in reliance upon the agreement referred to in clause 12.1(a).

12.2 Proponents May Vary After Grant

- (a) Any obligation under clause 9.2, 9.3, 10.2 or 16, or under any Payment Undertaking or Employment Undertaking may be varied (in whole or in part) in respect of a particular Current Proponent Lease or a particular lease to a Future Proponent by agreement in writing between the Proponent, the

State and the Contracting Parties, after the grant of lease to the Proponent, in accordance with this clause 12.

- (b) The Contracting Parties acknowledge that the State may require a Proponent to indemnify the State in respect for all losses and damages arising from any claim, action or proceeding by the Contracting Parties or the Approved Body Corporate, or both of them, in relation to, or arising from, any matter or thing done or not done by the State in reliance upon the agreement referred to in clause 12.2(a).

12.3 Release by Contracting Parties

The Contracting Parties hereby release the State in respect of all losses and damages arising from any claim, action or proceeding by the Contracting Parties or the Approved Body Corporate, or both them, in relation to, or arising from, any matter or thing done or not done by the State in reliance upon any exclusion or variation under clause 12.1 or clause 12.2.

12.4 State may Exclude or Vary

- (a) Subject to clause 12.4(b), the Contracting Parties and the State may agree in writing to vary or exclude any obligation under clauses 9.2, 9.3, 10.2 or 16 in respect of a particular Current Proponent lease or a particular lease to a Future proponent, and any such variation shall apply to any Employment Undertaking or Payment Undertaking entered into after the date of the exclusion or variation in respect of that lease.
- (b) If a Proponent has given an Employment Undertaking or a Payment Undertaking, or both, as the case may be, then this clause 12.4 does not apply.

13. LANDCORP MAY PERFORM STATE OBLIGATIONS

The Contracting Parties agree that any obligation on the part of the State under this deed may be performed by LandCorp and such performance by LandCorp shall be deemed to have been performance by the State.

14. VALIDITY OF GRANTS

- (a) The Contracting Parties acknowledge and agree that, notwithstanding any failure by the State or any Proponent to comply with the terms of this deed or any Undertaking, the grant or transfer of any interest in:
 - (i) land the subject of this deed; and
 - (ii) De Witt Location 399,will be valid for all purposes.
- (b) Subject to clause 14(a), in the event of any failure by the State or any Proponent to comply with the terms of this deed or any Undertaking,

nothing in this deed prevents the Contracting Parties from enforcing their rights against the State or any Proponent including, but not limited to, any right to recover damages or to seek specific performance against the State or any Proponent.

- (c) The parties agree that this clause may be pleaded by the State as a bar to any proceedings by the Contracting Parties challenging the validity of any grant or the transfer of any interest in land the subject of this deed.

15. STATE'S OBLIGATIONS FOR ABORIGINAL EMPLOYMENT AND ENTERPRISE

15.1 List of Available Persons and Aboriginal Contractors

The State and the Contracting Parties agree that the Employment Service Provider will be required to ensure that up to date lists are prepared, maintained and available containing details of:

- (a) Available Persons who have nominated themselves to the Employment Service Provider and their work experience and qualifications; and
- (b) Aboriginal Contractors who have nominated themselves to the Employment Service Provider and the services offered by, work experience of and qualifications of those Aboriginal Contractors.

15.2 Buy Local

The State must comply with the Buy Local Policy in respect of works conducted by or on behalf of the State in the Industrial Estate, the Karratha Land and the Burrup Non-Industrial Land. For the avoidance of any doubt, references to the State do not include government trading enterprises.

15.3 Government Trading Enterprises

The State will use its reasonable endeavours to procure government trading enterprises (as they are defined in the Buy Local Policy) to comply with the Buy Local Policy in respect of works conducted by or on behalf of the government trading enterprises in the Industrial Estate, the Karratha Land and the Burrup Non-Industrial Land. For the avoidance of any doubt, the parties acknowledge that nothing in this clause 15.3:

- (a) requires the State to incur any financial obligation; or
- (b) fetters or purports to fetter the exercise of any discretion under any legislation relating to government trading enterprises.

15.4 Employment Service Provider

- (a) As soon as practicable after the Satisfaction Date, the State and the Contracting Parties will agree to the appointment of the Employment Service Provider, who must operate or be based in Roebourne and must be

registered for the purposes of the GST Act. If the State and the Contracting Parties are unable to reach agreement, then clause 15.4(f) applies. The State agrees to provide \$200,000 per annum for three (3) years to the Employment Service Provider to perform its functions in accordance with clause 15, with the first payment to be made on the date the Employment Service Provider enters into the agreement referred to in clause 15.4(b) and thereafter on the first and second anniversaries of that date.

- (b) The State and the Contracting Parties will, in good faith, negotiate a tripartite agreement between the State, the Contracting Parties and the person nominated to be the Employment Service Provider to:
 - (i) give effect to this clause 15.4 and clause 15.1;
 - (ii) determine the fees of the Employment Service Provider, if any, and the terms and conditions in respect of the financial administration of the Employment Funding and the Levy; and
 - (iii) determine the terms for the termination of the Employment Service Provider.

- (c) The Employment Service Provider must:
 - (i) conduct an audit of the skills of Available Persons and Aboriginal Contractors. This will require the Employment Service Provider to:
 - (A) identify the Available Persons and Aboriginal Contractors who are seeking employment;
 - (B) conduct an appropriate analysis of the experience and qualification of the Available Persons and Aboriginal Contractors;
 - (C) prepare appropriate lists and documentation; and
 - (D) assist Available Persons to nominate themselves for the purposes of clause 15.1;
 - (ii) conduct an analysis of the needs of the Available Persons and Aboriginal Contractors in respect of:
 - (A) desired employment outcomes; and
 - (B) desired enterprise outcomes;
 - (iii) conduct an analysis of the opportunities for employment and enterprise that exist within a 100 kilometre radius from Roebourne;
 - (iv) assist Available Persons and Aboriginal Contractors to achieve their desired employment and enterprise outcomes by:

- (A) assisting Available Persons and Aboriginal Contractors to access appropriate resources;
 - (B) promoting employment and enterprise opportunities for Available Persons and Aboriginal Contractors; and
 - (C) assisting Available Persons and Aboriginal Contractors to access appropriate training;
- (v) perform the functions of the Employment Service Provider described in clauses 16.1 and 16.2;
 - (vi) provide an annual written report to the State and the Contracting Parties regarding the performance of its functions under this clause 15.4(c) during the previous year;
 - (vii) provide the Contracting Parties with a copy of each Employment Statement within ten (10) Business Days after its receipt; and
 - (viii) provide the Contracting Parties with a copy of each report provided to it under clause 16.1(f).
- (d) The Employment Service Provider may provide assistance in the same manner as provided in clause 15.4(c), to local Aboriginal persons to achieve their desired employment and enterprise outcomes.
 - (e) Subject to clause 15.4(f), the Employment Funding and the Levy will be paid by the State to the Employment Service Provider for the purposes of performing the functions in clauses 15.4(c) and (d).
 - (f) The State will hold and apply the Employment Funding and Levy for the purposes of, and shall carry out the functions in place of, the Employment Service Provider if:
 - (i) the State and the Contracting Parties are unable to reach agreement under clause 15.4(a);
 - (ii) the State, the Contracting Parties and the nominated Employment Service Provider are unable to reach agreement under clause 15.4(b); or
 - (iii) the Employment Service Provider breaches the terms of the agreement under clause 15.4(b) or ceases to exist and a replacement Employment Service Provider is not appointed in the same manner under clause 15.4(a).

16. PROPONENTS OBLIGATIONS FOR ABORIGINAL EMPLOYMENT AND ENTERPRISE

16.1 Employment and Enterprise Obligations

For so long as a Proponent holds a lease in land in the Industrial Estate the Proponent must use reasonable endeavours to promote direct or indirect employment of local Aboriginal persons in accordance with the following:

- (a) the Proponent must comply with the Employment Strategy developed by the Proponent and lodged with the Employment Service Provider under clause 16.2;
- (b) the Proponent will use reasonable endeavours to ensure that, where work is contracted by the Proponent to a contractor, the Proponent's contractor will comply with any relevant requirements of the Proponent's Employment Strategy;
- (c) the Proponent must give consideration to sponsoring employment opportunities for Available Persons not directly related to the Proponent's Industrial Project that are deemed important by the Contracting Parties and notified to the Proponent by the Employment Service Provider;
- (d) the Proponent must give consideration to sponsoring programs that have social and community outcomes that are considered a priority by the Contracting Parties and the Roebourne Aboriginal Community (for example recreation for youth, cultural exploration, oral history projects) and notified to the Proponent by the Employment Service Provider;
- (e) the Proponent must give consideration to providing employment based training opportunities to Available Persons that are notified to the Proponent by the Employment Service Provider;
- (f) the Proponent must provide a six (6) monthly report (with the first report to be provided six (6) months after the date of the Employment Strategy) to the Employment Service Provider in respect of the Proponent's obligations under this clause 16.1;
- (g) the Proponent must offer interviews to qualified local Aboriginal persons who have applied for an employment opportunity referred to in clause 16.1(h);
- (h) as soon as possible after the Proponent has provided the Employment Strategy to the Employment Service Provider, the Proponent must provide the Employment Service Provider with information in respect of potential tenders for goods and services, employment positions (including provisions of the description of employment positions, including tenure, status, selection criteria and required qualifications and experience as well as career progression opportunities) and contracting opportunities for local Aboriginal persons where it reasonably considers, based on information provided by the Employment Service Provider, that local Aboriginal persons may have the

capacity to provide the goods or services, fulfil the employment position or to undertake the contracting opportunities, to the Proponent;

- (i) if there is any material change to the information provided by the Proponent under clause 16.1(h), the Proponent must provide the Employment Service Provider with that information; and
- (j) the Proponent must liaise with the Employment Service Provider in respect of the implementation of the Employment Strategy.

16.2 Employment Strategy

Each Proponent must develop an Employment Strategy in consultation with the Employment Service Provider and in accordance with this clause:

- (a) within three (3) months of the commencement date of the relevant Proponent's lease or within three (3) months before the commencement of construction of the Proponent's Industrial Project, whichever is the earlier, the Proponent must prepare and provide a written Employment Strategy for available employment and training opportunities in relation to the construction and commissioning of the Proponent's Industrial Project, to the Employment Service Provider and the Contracting Parties;
- (b) at least six (6) months prior to the estimated Production Date of the Proponent's Industrial Project, the Proponent must prepare and provide Employment Strategy for available employment and training opportunities in relation to the operation of the Proponent's Industrial Project, to the Employment Service Provider and the Contracting Parties;
- (c) nothing in this clause 16.2 prevents the Proponent amending or varying the Proponent's Employment Strategy in consultation with the Employment Service Provider. If a Proponent amends or varies the Proponent's Employment Strategy, that Proponent must provide a copy of the amended or varied Proponent's Employment Strategy to the Employment Service Provider and the Contracting Parties within ten (10) Business Days after the amendment or variation;
- (d) for the purposes of clauses 16.2(a) and (b), the Proponent must notify the Employment Service Provider of the Proponent's estimated date of commencement of construction of the Proponent's Industrial Project and the estimated Production Date of the Proponent's Industrial Project as early as possible before those dates, and in any event, no later than six (6) months prior to those dates; and
- (e) nothing in clause 16.2(d) prevents the Proponent from changing the Proponent's estimated date of commencement of construction of the Proponent's Industrial Project or the estimated Production Date of the Proponent's Industrial Project, as the case may be. In such case, the Proponent must notify the Employment Service Provider of such change as soon as the Proponent becomes aware of such change.

16.3 Levy Payable after the Production Date

- (a) On and from the Production Date, Proponents must pay the Levy:
 - (i) to the State;
 - (ii) at the same time the Proponent is required to provide the Employment Statement under clause 16.3(b); and
 - (iii) for so long as the Proponent holds the relevant lease,

provided that where the Levy calculated in accordance with this clause for a Proponent in any year would be a negative amount, that amount may be set off against the Levy that would otherwise be payable by that Proponent in any subsequent year.

- (b) Each Proponent must provide to the State and the Employment Service Provider, within twenty (20) Business Days after the Production Date and thereafter, after each anniversary of the Production Date, a statement certified by the Proponent setting out the following details for the preceding Production Period:

- (i) the number of full time equivalent employees who have been employed on site directly by the Proponent, any related company or its contractors and subcontractors but not including any persons employed or engaged:
 - (A) for the construction and commissioning of the Industrial Project or the Proponent's business, as the case may be; or
 - (B) for the construction and commissioning of any extension or addition to the Industrial Project or the Proponent's business, as the case may be; or
 - (C) for major maintenance and repairs relating to the Industrial Project during a shutdown of the Industrial Project for a period of one (1) day or more.
- (ii) the number of local Aboriginal persons who have been employed directly by the Proponent, any related company or its contractors and subcontractors; and
- (iii) the Levy payable by the Proponent.

17. APPROVED BODY CORPORATE

17.1 Establishment of Approved Body Corporate

The Contracting Parties must incorporate the Approved Body Corporate in accordance with this clause 17 as soon as possible after the Satisfaction Date and

agree with each other to do so in accordance with the process set out in clauses 17.3(b) and 17.4.

17.2 Appointment of ABC Consultant

(a) The State will provide funding up to \$150,000 for the engagement of a consultant, nominated by the State after consultation with the Contracting Parties ("**ABC Consultant**").

(b) The ABC Consultant will be engaged by the State:

(i) to establish and incorporate the Approved Body Corporate for and on behalf of the Contracting Parties in accordance with this clause 17; and

(ii) as soon as practicable after the Satisfaction Date,

and the State will ensure that the terms of the appointment of the ABC Consultant require the ABC Consultant to comply with the process set out in clauses 17.3(b) and 17.4.

17.3 Membership of Approved Body Corporate

(a) Membership of the Approved Body Corporate must:

(i) be open to all members of the Contracting Claim Groups who are 18 years or over ("**Eligible Persons**"); and

(ii) consist only of members who are Eligible Persons.

(b) The ABC Consultant must, at the commencement of the consultancy:

(i) request from each Contracting Party a list of names, addresses and telephone numbers of all Eligible Persons belonging to the Contracting Claim Group of the Contracting Party;

(ii) establish a list of the Eligible Persons of each Contracting Claim Group and provide copies of that list to each Contracting Party; and

(iii) convene a meeting to be attended by as many Eligible Persons as possible to:

(A) resolve any dispute raised by a Contracting Party as to the entitlement of any person to be an Eligible Person; and

(B) determine whether future meetings to be convened for the purposes of establishing the Approved Body Corporate can be convened with representatives of the Eligible Persons.

17.4 Process for Establishment of Approved Body Corporate

- (a) The ABC Consultant shall be responsible for the establishment and incorporation of the Approved Body Corporate for and on behalf of the Contracting Claim Groups.
- (b) In incorporating the Approved Body Corporate, the ABC Consultant must consult with, and obtain the approval of, the Eligible Persons to establish the procedure for determining:
 - (i) the rules and objects of the Approved Body Corporate; and
 - (ii) the appointment of the first governing committee of the Approved Body Corporate.
- (c) If no procedure is established under clause 17.4(b), the matters in clauses 17.4(b)(i) and (ii) will be determined by the agreement of the simple majority of all Eligible Persons, or of their representatives, as the case may be.
- (d) Notice of all meetings must be in writing and received by the Eligible Persons, or their representatives, as the case may be, not less than ten (10) Business Days prior to the meeting or such other period as approved by a simple majority of the Eligible Persons.
- (e) All meetings will be conducted in Roebourne unless otherwise approved by a simple majority of the Eligible Persons.

17.5 Rules and Objects

The Approved Body Corporate must be established on such terms and conditions as first approved by the State, which approval must not be unreasonably withheld, and the rules and objects of the Approved Body Corporate must:

- (a) include a power to grant, and for the exercise of, a power of attorney for the completion, execution and registration of instruments and other documents against the certificate of title for land held by the Approved Body Corporate;
- (b) provide for the Approved Body Corporate to conduct an audit of its financial records at least once each year;
- (c) provide for the Approved Body Corporate to operate for purposes including the following:
 - (i) carrying out the rights and obligations of the Contracting Parties in accordance with the Ratification Deed;
 - (ii) taking the transfer of the freehold title to the Burrup Non-Industrial Land;

- (iii) receiving, holding, managing, and investing on trust for the Contracting Claim Groups the moneys payable under this deed and any Undertakings and any income thereof;
 - (iv) at its discretion, allocating and distributing moneys for the general welfare of the Contracting Claim Groups for matters including:
 - (A) cultural development activities;
 - (B) education (including, bursaries, scholarships for secondary and tertiary studies);
 - (C) transportation, relief housing and resettlement of members of the Contracting Claim Groups in their traditional country;
 - (D) housing of members of the Contracting Claim Groups who are aged, sick or in need of special assistance;
 - (E) medical assistance and health related issues;
 - (F) sporting assistance;
 - (G) relief of poverty;
 - (H) child care and care for the aged and disabled;
 - (I) provision of community and social infrastructure;
 - (J) business development or participation in local or regional contracting opportunities; and
 - (K) assisting the members of the Contracting Claim Groups to carry out their rights and responsibilities under this deed;
 - (v) encouraging the development of projects consistent with the purposes in clause 17.5(a)(iv) by members of the Contracting Claim Groups by providing, at its discretion and without limitation, loans, grants, goods or services; and
 - (vi) ensuring that the benefits arising from this deed are used and distributed equitably amongst the members of the Contracting Claim Groups having regard to the needs and priorities of those members both individually and collectively; and
- (d) not be amended in a manner inconsistent with this clause 17 without the prior approval of the State, which approval must not be unreasonably withheld.

17.6 Provision of Funding

- (a) The State will provide, subject to the provision of a tax invoice that complies with the GST Act, \$100,000 per annum for four (4) years to the Approved Body Corporate for the operation of the corporation:
 - (i) to be paid on the Ratification Date; and
 - (ii) thereafter on the first, second and third anniversaries of the Ratification Date.
- (b) Any unspent portion of the amount referred to in clause 17.2(a) shall be paid to the Approved Body Corporate on the first anniversary of the Ratification Date.

17.7 Ratification Deed

- (a) As soon as possible after the Approved Body Corporate is established, the Contracting Parties shall procure the Approved Body Corporate to enter into a deed with the State in which:
 - (i) on and from the date of the deed, the Approved Body Corporate agrees to have the same rights, and owe the same obligations as the Contracting Parties as if references in this deed to the Contracting Parties were references to the Approved Body Corporate;
 - (ii) on and from the date of the deed, the State shall have the same rights, and owe the same obligations to, the Approved Body Corporate as if references in this deed to the Contracting Parties were references to the Approved Body Corporate; and
 - (iii) on and from the date of the deed, the Approved Body Corporate shall have the rights of and owe the obligations of the Approved Body Corporate in accordance with the terms of this deed.
- (b) The Contracting Parties agree that, on and from the Ratification Date:
 - (i) the State, LandCorp, a Proponent or any other person referred to under this deed or under an Undertaking ceases to owe any obligation to the Contracting Parties; and
 - (ii) the Contracting Parties will not commence any proceedings against the State, LandCorp or a Proponent in respect of anything done or not done by the State, LandCorp or the Proponent, as the case may be, under this deed or under an Undertaking and this deed may be pleaded as a bar to any such proceedings.

17.8 GST

- (a) The Approved Body Corporate must, prior to the Ratification Date, register for GST purposes and be capable of issuing tax invoices.

- (b) The Contracting Parties agree that the Approved Body Corporate will be their agent, including for GST purposes, in relation to this deed.

18. EDUCATION

The State will pay \$75,000 per annum for two (2) years, with the first payment on the Ratification Date and the second payment on the first anniversary of the Ratification Date, to the Approved Body Corporate for the following purposes:

- (a) support of students to realise school, vocational education and training and tertiary education ambitions;
- (b) creation of a cohesive pathway between primary, secondary, vocational education and training and tertiary sectors; and
- (c) introduction of cultural matters as appropriate.

19. ABORIGINAL HERITAGE

19.1 Notification

Prior to:

- (a) the grant of a lease to a Proponent or the transfer of freehold title to a Purchaser within the Industrial Estate; or
- (b) the development of any Parcel (as defined under clause 6.4) or in respect of any development of a Public Purpose Lot (as defined under clause 6.4), within the Karratha Land by any person ("**Developer**"),

the State will, in respect of the land the subject of the lease, freehold or development, as the case may be:

- (i) advise the Proponent, Purchaser or the Developer in writing of the obligations under the *Aboriginal Heritage Act 1972* (WA);
- (ii) subject to confidentiality obligations and all laws, provide the Proponent, Purchaser or the Developer with copies of relevant reports of surveys in respect of Aboriginal sites within the Industrial Estate or the Karratha Land, as the case may be, performed after September 2001 and in the possession of the State; and
- (iii) refer the Proponent or the Developer to the Heritage Policies.

19.2 Ground Disturbing Activities by State

If the State:

- (a) is planning a development in the Karratha Land; or

- (b) intends to conduct ground disturbing works in the Industrial Estate or the Karratha Land,

then the State must comply with the Heritage Policies.

20. CONDITIONS

20.1 Section 41 Conditions

Clauses 7, 14, 17.7, 21.2, 23, 24, 25, 26 and 27 of this deed constitute conditions for the purposes of sections 41(1) and 41(2) of the *Native Title Act*, and all persons in the native title claim group are taken to be parties in respect of those clauses.

20.2 Contractual Terms

The terms of this deed are contractual terms between the parties and are not conditions precedent nor conditions subsequent to the agreement of the Contracting Parties to anything under clauses 5, 6.1, 6.2, 6.3 and 7.

21. MANNER OF PAYMENT

21.1 To Whom Payment is Made

Subject to clause 21.2, any payment under this deed expressed to be made or expressed to be payable by any person to the Contracting Parties or the Approved Body Corporate:

- (a) if the Approved Body Corporate has not been incorporated at the time the relevant payment is due or the Approved Body Corporate has been incorporated and the Ratification Date has not occurred, must be held on trust:

- (i) for and on behalf of the Contracting Parties; and
- (ii) in an interest bearing trust account held by the Department of Treasury and Finance,

and the Contracting Parties hereby direct:

- (iii) where GST is or becomes payable by any or all of the Contracting Parties in relation to any supply made under or in connection with or resulting from this deed and each of the Contracting Parties with a GST liability provides to the Department of Treasury and Finance a copy of its completed Business Activity Statement in the form, and satisfying the requirements, as specified by the Commissioner of Taxation to establish the amount of GST liability, the Department of Treasury and Finance to pay that part of the funds equivalent to the GST liability as specified in the Business Activity Statements of the Contracting Parties directly to the Australian Taxation Office; and

- (iv) the remaining funds to be paid to the Approved Body Corporate within twenty (20) Business Days after the Ratification Date;
- (b) if the Approved Body Corporate has been formed at the time the relevant payment is due and the Ratification Date has occurred, then subject to the provision of a tax invoice that complies with the GST Act, must be paid to the Approved Body Corporate; and
- (c) if the Approved Body Corporate has been formed at the time the relevant payment is due and the Ratification Date has occurred, then payment need not be made until the person required to make the payment has been provided with a tax invoice that complies with the GST Act.

21.2 Ratification by Approved Body Corporate

The State and the Contracting Parties agree that no payments are required to be made to the Approved Body Corporate under clause 21.1 unless and until the Approved Body Corporate has entered into the Ratification Deed.

21.3 Unspent Portions of Payments

- (a) In respect of the State's financial obligations in relation the Burrup Non-Industrial Land, if any maximum amounts specified in this deed have not been expended by the State within the periods specified, the unspent portions will be applied for the management of the Burrup Non-Industrial Land under the Management Agreement.
- (b) In respect of the State's financial obligations in relation to the Industrial Estate, if any maximum amounts specified in this deed have not been expended by the State within the periods specified, the unspent or uncommitted portions will be paid to the Approved Body Corporate on the expiry of the relevant period.

22. NO ACKNOWLEDGMENT OF NATIVE TITLE

By entering into this deed neither the State nor LandCorp acknowledge the existence of native title to the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land and the Burrup Non-Industrial Land.

23. NO FURTHER COMPENSATION

23.1 Full and Final Settlement

- (a) The Contracting Parties agree that the monetary payments and other benefits provided by the State, Current Proponents or any Future Proponents under:
 - (i) this deed;
 - (ii) the ILUA referred to under clause 4;

- (iii) any Undertaking; and
- (iv) the agreements for the purposes of section 31 of the *Native Title Act* in relation to the Burrup Fertiliser Land,

constitute full and final settlement of any claim for compensation in respect of the extinguishment or impairment, as the case may be, of the Contracting Parties' native title rights or interests in the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land and the Burrup Non-Industrial Land.

- (b) The NY and YM release the State from any liability for any compensation payable in respect of the extinguishment or impairment of those parties' native title rights and interests in De Witt Location 399.
- (c) The WGT release the State and Methanex from any liability for any compensation payable in respect of the extinguishment or impairment of the WGT's native title rights and interests in De Witt Location 399 by reason of any act done by the State or Methanex under this deed. For the avoidance of doubt, this clause 23.1(c) does not derogate from or otherwise affect any rights the WGT may have in relation to any act done on or in relation to De Witt Location 399 prior to this deed.

23.2 Indemnity

- (a) If:
 - (i) native title is determined to exist in any land within the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land; and
 - (ii) the native title holders are, or include, persons other than persons in the Contracting Claim Groups,

then subject to clauses 23.2(b) and 23.2(c), the Contracting Parties hereby indemnify the State and LandCorp ("**Relevant Parties**") in respect of any determination of compensation for loss or impairment of native title payable by the State, made by a court of competent jurisdiction or otherwise agreed with the consent of the Contracting Parties arising from any claim for compensation by the native title holders in respect of the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land ("**Indemnified Amount**").

- (b) If any Relevant Party is entitled to any Indemnified Amount then upon notice by the Relevant Party to the Contracting Parties:
 - (i) the Contracting Parties hereby direct to the Relevant Party any payments to be made by any Proponent to the Contracting Parties or the Approved Body Corporate, as the case may be, and assign to the State the rights of the Contracting Parties or the Approved Body Corporate, as the case may be, in respect of the Karratha Land

under this deed to the State, to the extent of the Indemnified Amount; and

- (ii) the Contracting Parties, hereby agree that the Relevant Party may set off against the Indemnified Amount any amount payable by the State under clause 8.2 and any amounts payable in respect of Proponents and Purchasers.
- (c) To the extent to which the State has paid any monies under clause 8.2 or in respect of any Proponent or Purchaser, the State may recover the Indemnified Amount from the Contracting Parties as a debt owing from the Contracting Parties to the State.
- (d) The Relevant Parties agree that their rights in respect of the Indemnified Amount are limited to the rights specified under clauses 23.2(b) and 23.2(c).
- (e) The Contracting Parties hereby release the State in respect of any loss or damage suffered or incurred by the Contracting Parties or the Approved Body Corporate, or both of them, arising from any claim for compensation for loss or impairment of native title rights and interests by the native title holders in respect of the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land, the Hearson Cove Land or the Burrup Non-Industrial Land.

24. STATE NOT LIABLE

Each Contracting Party acknowledges and agrees that, except as provided in clauses 9 and 10, neither the State, LandCorp, nor their officers, employees or agents have any obligations or liability whatsoever in connection with the rights and obligations of the Contracting Parties or the Approved Body Corporate under:

- (a) any Undertaking; or
- (b) any agreement between a Contracting Party and a Proponent.

25. VALIDITY OF NOTICES

Each Contracting Party:

- (a) acknowledges that the notices issued under the *Native Title Act* and the *Land Administration Act* in relation to land including the Area, the Additional Land, the Burrup Fertiliser Land, the Karratha Land and the Hearson Cove Land are valid; and
- (b) agrees that this clause may be pleaded by the State as a bar to any proceedings by the Contracting Parties challenging the validity of the notices referred to in paragraph (a) above or the validity or enforceability of this deed in respect of those notices.

26. **INDEPENDENT ADVICE**

Each Contracting Party severally represents and warrants to the State:

- (a) that the Contracting Party has received independent legal advice in relation to the terms and conditions of this deed; and
- (b) that the Contracting Party has not, in entering this deed, relied on any statement made by the State, its officers, agents or employees in relation to any of the terms and conditions of this deed.

27. **PROCEEDINGS UNDER THE NATIVE TITLE ACT**

27.1 **Acknowledgment of Good Faith Negotiations for the Industrial Estate**

The Contracting Parties acknowledge and agree that, in accordance with Part 2 Division 3 Subdivision P of the *Native Title Act*, negotiations in good faith in respect of the compulsory acquisition of native title rights and interests in the Industrial Estate have been conducted between the State, LandCorp, Methanex and the Contracting Parties.

27.2 **State May Apply under Section 35**

If this deed has not been entered into by each of the NY, the YM and the WGT, then the Contracting Parties acknowledge and agree that:

- (a) the State, in respect of the Industrial Estate, or either the State or Methanex, in respect of the Additional Land, may apply for a determination by the arbitral body under section 35 of the *Native Title Act* ("**Section 35 Proceedings**");
- (b) this deed and evidence of negotiations in respect of this deed and matters contemplated under this deed will be used in the Section 35 Proceedings;
- (c) the Contracting Parties will not allege in any Section 35 Proceedings that the State or Methanex have failed to negotiate in good faith in respect of the compulsory acquisition of any native title rights and interests in the Industrial Estate and that this deed can be pleaded as a bar to any such allegations;
- (d) the Contracting Parties will, in any Section 35 Proceedings, consent to the future act being done without any conditions; and
- (e) the Contracting Parties will (subject to payment by the State of their reasonable costs and expenses including legal costs) support the State or Methanex or both of them, as the case requires, in respect of any challenge in the Section 35 Proceedings brought on the grounds that the State or Methanex or both of them, have failed to negotiate in good faith.

27.3 Acknowledgment of Consultation in respect of Karratha Land and Hearson Cove Land

The Contracting Parties acknowledge that, in accordance with section 24MD(6B)(e) of the *Native Title Act*, consultation required under that section has been conducted in respect of the Karratha Land and the Hearson Cove Land.

27.4 Proceedings under Section 24MD(6B)

If this deed has not been entered into by each of the NY, the YM and the WGT, then the Contracting Parties acknowledge and agree that:

- (a) on the request of the State, the Contracting Parties will refer the objections for hearing by the Independent Person under section 24MD(6B) ("**Section 24MD Proceedings**");
- (b) the State may refer the objections for hearing by the Independent Person under section 24MD(6B);
- (c) this deed and evidence of negotiations in respect of this deed and matters contemplated under this deed will be used in the Section 24MD Proceedings;
- (d) the Contracting Parties will not allege in any Section 24MD Proceedings that the relevant parties for the purposes of section 24MD have failed to consult and that this deed can be pleaded as a bar to any such allegations;
- (e) the Contracting Parties will, in any Section 24MD Proceedings, consent to the future act being done without any conditions; and
- (f) the Contracting Parties will (subject to payment by the State of their reasonable costs and expenses including legal costs) support the State in respect of any challenge in the Section 24MD Proceedings brought on the grounds that the relevant parties under section 24MD have failed to consult.

28. RULE AGAINST PERPETUITIES

If any thing to be done under this deed offends the rule against perpetuities, then to the extent necessary so as to not offend that rule, the parties agree that the relevant provisions in this deed shall be deemed to expire eighty (80) years from the Satisfaction Date.

29. VALUATIONS UNDER THIS DEED

29.1 Application of this Clause

This clause applies to all valuations required under this deed.

29.2 Principles for Obtaining Valuation

Valuations under this deed will be:

- (a) subject to clause 29.2(b), the valuation determined by the Valuer General of Western Australia in accordance with the Valuation Principles and as notified by the State to the Contracting Parties; or
- (b) if within fifteen (15) Business Days after the receipt of the valuation referred to in clause 29.2(a), the Contracting Parties give notice that they require clause 29.3 to apply, then subject to clause 29.2(c) and clause 29.3(b), the valuation will be the amount equivalent to the mean of the valuations of:
 - (i) the valuation determined by the Valuer General of Western Australia in accordance with clause 29.2(a); and
 - (ii) the valuation determined by an Independent Valuer appointed in accordance with clause 29.3(a),
 in accordance with the relevant Valuation Principles; and
- (c) if the difference between the valuations referred to in clause 29.2(b) exceeds 10% of the valuation under clause 29.2(a), then the State or the Contracting Parties may give notice to the other, within fifteen (15) Business Days after receipt of the valuation referred to in clause 29.2(b)(ii), that this clause 29.2(c) is to apply. If such notice is given then:
 - (i) the party who gave the notice must request the President for the time being of the Australian Property Institute to nominate a second Independent Valuer;
 - (ii) the party who gave the notice must appoint the second Independent Valuer so nominated within fifteen (15) Business Days of that party receiving the nomination;
 - (iii) the valuation shall be the amount determined by the second Independent Valuer appointed in accordance with clause 29.2(c)(ii);
 - (iv) the second Independent Valuer referred to in this clause 29.2(c) must determine the valuation in accordance with the Valuation Principles and take into account the valuations referred to in clause 29.2(b); and
 - (v) the valuation by the second Independent Valuer shall be final; but
 - (vi) if the second Independent Valuer is not appointed within the fifteen (15) Business Days referred to in clause 29.2(c)(ii), or if clause 29.4 is not satisfied, then the valuation shall be the valuation under clause 29.2(b).

29.3 Principles for Appointing Independent Valuer under clause 29.2(b)

- (a) The Contracting Parties must appoint an Independent Valuer for the purposes of clause 29.2(b) and give notice to the State of that appointment within fifteen (15) Business Days after the Contracting Parties's notice referred to in clause 29.2(b).
- (b) If:
 - (i) the Contracting Parties fail to appoint and give the notice referred to in clause 29.3(a); or
 - (ii) clause 29.4 is not satisfied in respect of the valuation to be carried out under clause 29.2(b)(ii),

then the valuation will be the valuation determined under clause 29.2(a).

29.4 Conduct of Valuations

All valuations conducted by an Independent Valuer under this clause must be concluded and a copy provided to the State and the Approved Body Corporate within thirty five (35) Business Days after the date of the Independent Valuer's appointment.

29.5 Costs of Valuations

- (a) In respect of valuations conducted by an Independent Valuer for land within the Industrial Estate, the State shall bear the reasonable costs of the valuation.
- (b) In respect of the valuations conducted by an Independent Valuer for land within the Karratha Land:
 - (i) the Contracting Parties shall bear the costs of the first Independent Valuer, or indemnify the State in respect of such costs if the State elects to pay the costs of the Independent Valuer;
 - (ii) if the valuation conducted by the Valuer General of Western Australia is less than or greater than the valuation conducted by the second Independent Valuer by more than 10% of the valuation by the second Independent Valuer, the State shall bear the costs of the second Independent Valuer. If the Contracting Parties have paid the costs of the second Independent Valuer then the State indemnifies the Contracting Parties in respect of the reasonable costs of the second Independent Valuer;
 - (iii) if the valuation conducted by the first Independent Valuer appointed by the Approved Body Corporate is less than or greater than the valuation conducted by the second Independent Valuer by more than 10% of the valuation by the second Independent valuer, the Contracting Parties shall bear the costs of the second Independent Valuer. If the State has paid the costs of the second

Independent Valuer then the Contracting Parties indemnify the State in respect of the reasonable costs of the second Independent Valuer; and

- (iv) if both the valuation by the Valuer General and the first Independent Valuer is less than or greater than the valuation conducted by the second Independent Valuer by more than 10% of the valuation by the second Independent Valuer, the State and the Contracting Parties shall share equally the costs of the second Independent Valuer, and the State and the Contracting Parties indemnify each other to the extent of an equal share of the reasonable costs of the second Independent Valuer.

29.6 Principles of Valuation

- (a) In respect of valuations for the Industrial Estate, valuations will be the **unimproved value** of the land, determined in accordance with the following principles:
 - (i) it will be the unimproved market value of the land in its natural or virgin state but taking into account existing surrounding services, facilities off the land and amenities including any potential utility or detriments inherent with the location, but excluding any improvements to the land including existing facilities or clearing, levelling, drainage, contour or retaining walls;
 - (ii) the market value will be determined by the amount for which the land would sell if it was unencumbered freehold land, sold at the specific date on the open market, where both buyer and seller were informed of all factors affecting the land value and negotiations were carried out at arms' length, in a prudent and business like manner and inclusive of GST;
 - (iii) taking into account the purpose for which the land is intended to be used; and
 - (iv) where valuation of the market rental is required, it will be capitalised at a rate to be determined by the valuer; but
 - (v) not taking into account the obligations under this deed or any Undertaking to pay the Contracting Parties or the Approved Body Corporate, as the case may be, in respect of leases granted to Proponents and freehold title transferred to Purchasers.
- (b) In respect of valuations for Developed Lots in the Karratha Land, valuations will be the **site value** of the land as an estate in fee simple, determined in accordance with the following principles:
 - (i) assuming it is vacant, unencumbered and sold at the specific date on the open market, where both buyer and seller were informed of

all factors affecting the land, and negotiations were carried out at arms' length, in a prudent and business like manner;

- (ii) no improvements have been made to the Developed Lot, other than Merged Improvements. **Merged Improvements** means any works in the nature of draining, filling, excavation, grading or levelling of the land, retaining walls or other structures or works for that purpose, the removal of rocks, stone, soil and the clearing of timber, scrub or other vegetation;
- (iii) assuming the Developed Lot may be used for the highest and best use for which it is permitted to be used under any relevant town planning scheme or other written law;
- (iv) assuming the subdivision development of the Parcel or Stage, as the case may be, of which the Developed Lot forms part has been completed;
- (v) taking into account the services (including roads, power, gas, telecommunications, water reticulation, sewerage and drainage) and other infrastructure on land adjoining or in the vicinity of the Developed Lot that are available for use by or for the benefit of the Developed Lot;
- (vi) where the Developed Lot is being developed for residential purposes, exclusive of GST; and
- (vii) where the Developed Lot is being developed for any purpose other than residential, inclusive of GST; but
- (viii) not taking into account the State's obligations under this deed for land in the Karratha Land to be transferred or to make payments in respect of the Karratha Land; and
- (ix) in respect of valuations for a Developed Lot that is further subdivided, by the same Registered Proprietor as part of the subdivision development under the *Strata Titles Act 1985* (WA) into:
 - (A) Strata Lots, then the land the subject of the strata plan will be valued as a whole according to its **site value**, as an estate in fee simple in the land in the manner provided for in paragraphs (i) to (viii) above but also:
 - (1) assuming the strata plan is registered; and
 - (2) taking into account any services and infrastructure on any common property in the strata scheme; and

(B) Survey-Strata Lots, each Survey-Strata Lot will be valued as a separate parcel according to the **site value** of that Survey-Strata Lot as an estate in fee simple in the land in the manner provided for in paragraphs (i) to (viii) above but also:

- (1) assuming the survey-strata plan is registered; and
- (2) taking into account any services and infrastructure on any Common Property Lot.

In this clause:

Common Property Lot means any lot shown as common property on a survey-strata plan or proposed survey-strata plan under the *Strata Titles Act 1985 (WA)*.

Strata Lot means a lot in relation to a strata scheme, as defined under the *Strata Titles Act 1985 (WA)*.

Survey-Strata Lot means a lot in relation to a survey-strata scheme, as defined under the *Strata Titles Act 1985 (WA)*, and any Common Property Lot.

30. GENERAL

30.1 Further Assurance

Each party agrees at its own expense (except as otherwise provided under this deed) to do everything reasonably necessary to give effect to this deed and the matters contemplated by it.

30.2 Notices

- (a) A notice or other communication in connection with this deed:
- (i) must be in writing;
 - (ii) in respect of notices by the State or LandCorp, may be given by an authorised officer on behalf of the State or LandCorp, as the case may be; and
 - (iii) must be:
 - (A) sent by prepaid ordinary post to, or left at the address of, the addressee at the address set out in Schedule 1, or such other address as varied by a party from time to time by notice to the other parties; or

- (B) sent by facsimile to the facsimile number of the addressee set out in Schedule 1, or such other number as varied by a party from time to time by notice to the other parties.
- (b) A notice takes effect from the time it is received, unless a later time is specified in the notice. For the purposes of this clause a letter or facsimile is taken to be received:
 - (i) in the case of a letter sent by post, on the third Business Day after posting;
 - (ii) in the case of a facsimile, on the day the facsimile machine from which the notice was sent produces a transmission report which shows that the entire facsimile was sent to the facsimile number of the addressee set out in Schedule 1; and
 - (iii) if received after 5.00 pm, is taken to be received on the next Business Day.
- (c) Any notice to be given by the Contracting Parties under this deed may only be given by their authorised representative set out in Schedule 1, or such other address as varied by notice to the other parties.

30.3 No Right to Terminate

The parties agree that, subject to clause 2.4, no breach of the terms of this deed will give to any other party the right to terminate or rescind this deed, but that party may exercise any right or remedy otherwise available to it in respect of such breach.

30.4 Assignment

Subject to clause 23.2(b)(i), the Contracting Parties may not assign any right, title or interest arising from any matter under this deed without the prior consent of the State.

30.5 Waiver

- (a) No right under this deed shall be deemed to be waived except by notice in writing signed by the party waiving the right.
- (b) The waiver of a right by a party will not prejudice that party's other rights or future rights in respect of the right waived.
- (c) Subject to clause 30.5(a), any failure by a party to enforce any right under this deed, or any forbearance, delay or indulgence granted by one party to another party will not be construed as a waiver of rights under this deed.

30.6 Variation

No modification, amendment or other variation of this deed shall be valid or binding on a party unless made in writing duly executed by that party.

30.7 Entire Agreement

This deed contains the entire agreement between the parties relating to the matters contemplated under this deed, and supersedes any and all previous negotiations, representations, warranties, undertakings, proposals, understandings and agreements whether written or oral, and may only be added to, varied or amended by written agreement signed by the parties concerned.

30.8 Severability

- (a) Subject to clauses 2.4 and 30.8(b), if any provision of this deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.
- (b) If for any reason clause 6.1 of this deed is void, voidable by any Party, unenforceable or illegal then the provisions of clause 6 shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.

30.9 Governing Law

This deed is governed by the law in force in the State of Western Australia and the Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the appeal courts from those courts.

30.10 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

31. GST

31.1 Interpretation

In this clause 31:

Recipient has the meaning in clause 31.3

Supplier has the meaning in clause 31.3

Any terms used in this clause 31 that are defined in the GST Act have their respective meanings given to each of those terms in Section 195 of the GST Act or elsewhere in the GST Act.

31.2 Amounts Exclusive of GST

All prices or other amounts fixed or determined under, or referred to in, this deed are exclusive of GST, except where expressly provided to the contrary in a particular provision of this deed.

31.3 GST Payable

If GST is or becomes payable by a supplier in relation to any supply that it makes under, in connection with or resulting from this deed, the parties agree that, in addition to any consideration provided by a party to this deed ("**Recipient**") for a supply from another party ("**Supplier**"), the Recipient must pay to the Supplier:

- (a) at the same time as the relevant consideration or any part of it is provided; or
- (b) if the Supplier is required under the GST Act to pay GST prior to receiving the relevant consideration for the supply, then within two (2) Business Days of the Supplier's due date for payment of the GST liability as notified by the Supplier to the Recipient in writing,

the amount of any GST for which the supplier is liable in relation to that supply ("**additional amount**"), subject to the following:

- (c) the obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of that additional amount, subject to any agreement in writing between the Recipient and the Supplier for the Recipient to issue a recipient created tax invoice in accordance with the GST Act; and
- (d) if a Recipient is required under this deed to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

31.4 Supply of Land

- (a) For the supply of land by the Supplier under, in connection with or resulting from this deed (including the Burrup Non-Industrial Land), the Supplier may in its absolute discretion elect to apply the margin scheme to that supply.
- (b) Where the Recipient of a supply of land requests that the supply be made under the margin scheme, the Supplier will consider the application of the margin scheme to the supply and advise the Recipient whether the margin scheme will be applied to the supply.

31.5 Tax Applications

If, at any time, a party ("**Applicant**") wishes to obtain a tax ruling or exemption from, or make any application to, the Commissioner of Taxation as to the application of

any provision of the GST Act to a supply made under, in connection with or resulting from this deed, the Applicant may so apply and the following provisions apply:

- (a) the application will be made by the Applicant at its sole cost;
- (b) the other parties will provide such assistance as the Applicant reasonably requires:
 - (i) subject to the Applicant paying the other parties' reasonable costs and expenses for providing that assistance (including legal costs and expenses); and
 - (ii) provided that the other party is not of the opinion (reasonably formed) that the effect of the ruling, exemption or other application, if successful or granted, would have materially adverse GST consequences for the other party; and
- (c) the Applicant may or may not accept the tax ruling, or decision of the Commissioner of Taxation in relation to the application, or may appeal from it, as the Applicant decides in its absolute discretion.

31.6 Cooperation

Each party agrees to use its best endeavours so that:

- (a) the other parties are not subject to disadvantage in respect of GST; and
- (b) GST is paid in a manner that is equitable to all parties,

having regard to the GST Act.