

**PART 1 - GENERAL PROVISIONS**

**2. DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

In this deed, unless the contrary intention appears:

**Aboriginal Development Package** means a deed of agreement between the MG Corporation and a Developing Party which addresses each of the matters in Schedule 3

**Aboriginal Development Undertaking** means a deed between a Proponent and the MG Corporation in which:

- (a) the Proponent undertakes to comply with clause 49 (Aboriginal Development Package), as if references in clause 49 to the Developing Party are references to the Proponent; and
- (b) the MG Corporation agrees to comply with this deed as if the Proponent were a Party to this deed.

**Aboriginal Heritage Reports** means any reports commissioned pursuant to the Ord Global Negotiations Heritage Agreement dated 23 July 2004.

**Aboriginal Heritage Survey Areas** means the areas the subject of Aboriginal heritage surveys conducted in accordance with the Ord Global Negotiations Heritage Agreement dated 23 July 2004, as generally depicted on Map 15 in Schedule 2.

**Aboriginal Site** means:

- (a) a site as defined in the *Aboriginal Heritage Act 1972* (WA); or
- (b) an area as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); or
- (c) an area to which the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) applies by reason of the occupation or use of the area by Aboriginal people; or
- (d) an area to which the *Heritage of Western Australia Act 1990* (WA) applies by reason of the occupation or use of the area by Aboriginal people; and
- (e) includes the areas identified as Aboriginal sites in the Aboriginal Heritage Reports

*Note: The Aboriginal Heritage Surveys identified certain areas of significance to the MG People. However, by agreement between the State and the MG People some of these areas of significance have not been identified as Aboriginal sites in the Aboriginal Heritage Reports but have instead been incorporated into Buffer Areas. This means that the State and the MG People are aware that there may exist some sites in both the M2 and Ord West Bank Buffer Areas.*

**Additional Raw Materials Areas** means:

- (a) any additional areas within the M2 Acquisition Area, the Mantinea Acquisition Area, the Ord West Bank Acquisition Area, the Ord East Bank Acquisition

Area and the Packsaddle Acquisition Area to be used for the extraction of raw materials; and

- (b) any additional areas to be used for the extraction of raw materials within the Aboriginal Heritage Survey Areas depicted on Map 15 in Schedule 2.

**Additional Section 29 Notice** means the notice of intention to take interests including native title rights and interests pursuant to section 29 of the NIA and section 170 of the LAA, a copy of which appears in Schedule 15.

*Note: This comprises the:*

- *Green Swamp Additional Acquisition Area; and*
- *M2 Additional Acquisition Area,*

*as generally depicted on Map 1 in Schedule 2.*

**Administration Balance Payment** has the meaning in clause 22.1(2)(b);

**Administration Budget** has the meaning in clause 22.8(2)(a);

**Administration Payment** has the meaning in clause 22.7(1)(a);

**Administration Payment Purpose** means the application or expenditure of moneys for the administration of the MG Corporation and any MG Entity and any other relevant expenses (but not including MG Charitable Trustees Pty Ltd), so as to prioritise the performance of the MG Corporation's functions in clauses 20.2(1) (dealing with compliance with obligations under this deed), 20.2(2) (dealing with holding land and money); and 20.2(5) (dealing with assistance to registered bodies corporate);

**Agreed Interest** means a right or interest in the land, or any part of it, the subject of Reserve 31165 granted or agreed to by the Water and Rivers Commission in accordance with the LAA.

**Aquaculture Reserve** has the meaning in clause 41.3.

**Aquaculture Site** means a single site of an area no greater than 1 square kilometre to be used for the purpose of aquaculture operations

**Archaeological Site** means those archaeological sites identified in the Aboriginal Heritage Reports.

**ASEIA Report** means the report entitled "Ord Stage 1 Fix the Past Move to the Future An Aboriginal Social and Economic Impact Assessment of the Ord River Irrigation Project Stage 1" prepared by the KLC dated March 2004.

**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.

**Baines River** means Baines River Cattle Co Pty Ltd (ACN 009 603 516), which is one of the Parties to this deed.

**Bell Springs CLA** means the land shown on Deposited Plan 35250, as generally located on Map 13 in Schedule 2.

**Buffer Additional Freehold Area** has the meaning in clause 50.4(2).

**Buffer Area** has the meaning in clause 50.1.

**Buffer Freehold Area** means the Buffer Original Freehold Area and any Buffer Additional Freehold Areas.

**Buffer Original Freehold Area** has the meaning in clause 50.3(1)(b).

**Buffer Reserve** has the meaning in clause 50.2.

**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 Supply Commission or other Department or agency of the State, as amended from time to time.

**Carlton Hill** means Carlton Hill Pty Ltd (ACN 009 624 159), which is one of the CPC Parties.

**Carlton Hill Pastoral Lease** means pastoral lease 3114/1176.

**CALM** means the Executive Director of the Department of Conservation and Land Management under the *Conservation and Land Management Act 1984* (WA).

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**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).

**Community Living Areas** means the areas referred to in clause 43.2(1).

**Contribution Period** means the First Payment Period and the following 9 Financial Years thereafter and being no more than 10 years in total.

**Contribution Period Financial Year** means:

- (a) the first Financial Year commencing on 1 July next following the Satisfaction Date; and
- (b) the eight subsequent Financial Years.

**CPC** means Consolidated Pastoral Company Pty Ltd (ACN 010 080 654), which is one of the CPC Parties.

**CPC Acquisition Area** means part lot 709 (about 14,771 hectares), and part of the portion of lot 710 which adjoins the eastern boundary of reserve 1061 (about 950 hectares), and reserve 1166 (258.9 hectares), on Deposited Plan 40687, and part of lot 710 adjacent to the Ord River on Deposited Plan 40683 (about 303 hectares), as generally depicted on Map 14B in Schedule 2.

**CPC Freehold Area** means the land the subject of the freehold title to be granted to the CPC Parties under the Land Exchange Agreement, as generally depicted on Map 14B in Schedule 2.

**CPC Freehold Surrender Area** means the area of land depicted on Map 14A in Schedule 2.

**Crosswalk** means Crosswalk Pty Ltd (ACN 009 448 739), which is one of the CPC Parties.

**Dawang** means the country of the local (or estate) groups within the broader country of the MG People.

***Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord)*** means a deed dated [@@@] on or about 6 October 2005 entered into by the State of Western Australia, the Minister for Planning and Infrastructure, the MG#1 PBC, Ben Ward, Kim Aldus, Frank Chulung, Sheba Dignari, Maggie John, Chocolate Thomas, Danny Wallace, Carol Hapke, Nancy Dilyai, Pamela Simon, Jerry Moore And Paddy Carlton (Miriuwung Gajerrong No.4 Claimants), West Australian Land Authority, Consolidated Pastoral Company Pty Ltd (ACN 010 080 654), Carlton Hill Pty Ltd (ACN 009 624 159), Crosswalk Pty Ltd (ACN 009 448 739), Ord River District Cooperative Ltd (ABN 16 026 785 781) and JJ McDonald and Sons Engineering Pty Ltd (ACN 061 012 691).

***Deferred Payments*** has the meaning in clauses 22.9(2) (deferral relating to budget approval), 24.4(2) (deferral relating to Non-Compliance Event), ~~24.7(1)~~ 24.7(2) (deferral due to ACAA Non-Compliance), 24.9(6) (deferral due to MGC Default) and 25 (dealing with Payment of Deferred Payments).

***Developed Lot*** means a lot which is supplied with services (such as roads, power, gas, telecommunications, water reticulation, sewerage and drainage), and with other infrastructure on land adjoining or in the vicinity of the lot that are available for use by or for the benefit of the lot, and with Merged Improvements. Developed Lot does not include any lot which has been identified by the Developing Party or on an approved plan of subdivision to be required for a public work within the meaning of the Public Works Act 1902 (WA) or a purpose other than residential, commercial or industrial purposes or agriculture.

***Developing Party*** means:

- (a) if a particular person is nominated in this deed as a Developing Party - that person;
- (b) otherwise, if the relevant land is being developed:
  - (i) by the State – the State;
  - (ii) by LandCorp – LandCorp; or
  - (iii) by one or more Proponents – that Proponent or those Proponents.

***Development Cost*** means the cost to the Developing Party to complete the development phase of the Project, as estimated at the date the MG Corporation proposes to acquire equity in the Project. For the avoidance of doubt, any subsidy or other financial assistance from the State, the Northern Territory or the Commonwealth in relation to the development does not form part of the cost to the Developing Party to complete the development.

***Development Notice*** has the meaning in clause 51.3(1).

***Disputed Town Lots*** means those lots identified in an Election and Valuation Notice for which the MG Corporation considers the List Price is not the Market Value.

***East Kununurra Additional Area*** means the land immediately south of the East Kununurra Area, between the East Kununurra Area and the Victoria Highway (but not including Janama Springs CLA and Yuna Springs CLA), as generally depicted on Map 10 in Schedule 2.

***East Kununurra Area*** means reserve 1063 (but not including Janama Springs CLA and Yuna Springs CLA), as generally depicted on Map 10 in schedule 2.

**EDU Balance Payment** has the meaning in clause 22.1(2)(a);

**EDU Budget** has the meaning in clause 22.8(2)(b);

**EDU Payment** has the meaning in clause 22.7(1)(b);

**EDU Payment Purpose** means the expenditure of moneys for the costs associated with operating the Economic Development Unit and the administration of MG Charitable Trustees Pty Ltd, including payment of fees to the Independent Directors of MG Charitable Trustees Pty Ltd and any other relevant expenses.

**Election Notice** means a written notice in response to an option within a Development Notice, electing the Town Lots to be transferred to the MG Corporation under that option.

**Election and Valuation Notice** means a written notice, in response to a Development Notice, specifying:

- (a) Town Lots to be transferred to the MG Corporation; and
- (b) in respect of those Town Lots for which the MG Corporation considers the List Price is not the Market Value ("**Disputed Town Lots**"):
  - (i) the MG Corporation's estimate of the Market Value of the Town Lots; and
  - (ii) the reasons why the MG Corporation considers the List Price is not the Market Value.

**EME** means an Environmental Management Entity, being a body corporate with:

- (a) perpetual succession and a common seal;
- (b) a membership which includes (if it chooses to join as a member) the person who holds freehold title to the M2 Buffer Area or the Mantinea Buffer Area or the Ord West Bank Buffer Area (as the case may be);
- (c) a board of directors or governing committee at least one seat on which is reserved for a nominee of the MG Corporation on behalf of the MG People and see clauses 31.6(2), 32.8(2) and 33.6(2); and
- (d) obligations to comply with conditions under the Environmental Approval for the M2 Development Area or the Mantinea Development Area or the Ord West Bank Development Area (as the case may be) as the Entity specified in an Environmental Approval relating to the conduct of agriculture and associated operations on the M2 Farm Area or the Mantinea Farm Area or the Ord West Bank Farm Area (as the case may be) and to the management of the M2 Buffer Area or the Mantinea Buffer Area or the Ord West Bank Buffer Area (as the case may be).

*Note. The EME is derived from the expectation that the environmental approvals will adopt a self managed and self resourcing Environmental Management Framework expressed through the creation of an Environmental Management Entity. It is envisaged that the EME will be a corporation with shares held by entities such as the owner of the irrigation and drainage infrastructure and supplier of irrigation water, the owners/operators of the farmland and the core industry asset owners.*

**Encumbrances** means any:

- (a) security for the payment of money or performance of obligations (including a mortgage, charge, lien, pledge, trust or power to retain title);
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (c) personal equity, legal or equitable interest or writ of execution; or
- (d) other right or interest of any Party other than the registered proprietor or lessee (as the case may be) of the land.

**Environmental Approval** means any approval to implement a proposal under the *Environmental Protection Act 1986* (WA), the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), and any other legislation of the State, the Northern Territory and the Commonwealth dealing with the protection of the environment.

**Estimated Developed Value** has the meaning given in the Valuation Principles in clauses 52.6(3) and 52.6(4).

~~**Excluded Financial Year** has the meaning in clause 24.9(4)(b).~~

**Execution Date** means the day on which this deed has been executed by all Parties

**Executive Director for Fisheries** has the meaning in section 10 of the *Fish Resources Management Act 1994* (WA).

**Existing Conservation Areas** means:

- (a) Mirima National Park (reserve 37883);
- (b) Parry Lagoons Nature Reserve (reserve 42155);
- (c) Point Springs Nature Reserve (reserve 34585); and
- (d) Ord River Nature Reserve (reserve 31967)

**Existing Mining Tenements** means any tenement under the *Mining Act 1978* (WA) or any application for such a tenement which is in force at the date the State grants freehold title to the New Conservation Areas, the M2 Buffer Area, the Mantinea Buffer Area, the Ord West Bank Buffer Area, the Community Living Areas or Yardungarrl (as the case may be).

**Farm Area** has the meaning in clause 50.1.

**Final Approval Date** means the date upon which the State or LandCorp give written notice to the MG Corporation that either of the following has occurred:

- (a) the State has approved a Developing Party's Project; or
- (b) the State or LandCorp formally offers to transfer or grant a lease or freehold title to the Developing Party for the purposes of undertaking the Project

**Financial Year** means the period commencing on 1 July in a calendar year and ending on 30 June in the following calendar year.

**First Administration Budget** has the meaning in clause 22.2(2)

**First Administration Payment** has the meaning in clause 22.1(1)(a).

**First EDU Budget** has the meaning in clause 22.2(2)(b).

**First EDU Payment** has the meaning in clause 22.1(1)(b).

**First Payment Period** means the period between the Satisfaction Date and 30 June next following the Satisfaction Date.

**Five Percent of Serviced Farm Lots Deed** has the meaning in clause 48 (5% of Serviced Farm Lot Provisions).

**Further Election Notice** has the meaning in clause 51.6(4).

**Future Conservation Area** has the meaning in clause 36.2.

**Geeboowama CLA** means the land shown on Deposited Plan 35249, as generally located on Map 13 in Schedule 2.

**Goose Hill CLA** means the land shown on Deposited Plan 35244, as generally located on Map 13 in Schedule 2.

**Government** means the Crown in right of the State of Western Australia, LandCorp, the Conservation Commission and any minister, officer, employee, agent, body corporate or statutory authority of the Crown in right of the State of Western Australia (including, without limitation, CALM and the Water and Rivers Commission).

**Government Entity** has the meaning in clause 51.1(4).

**Government Land Acquisition Area** means those parts of lot 711 on Deposited Plan 40684 which are adjacent to Victoria Highway, Fish Farm Road and Crossing Falls Road (about 541 hectares), as generally depicted on Map 1 in Schedule 2.

**Green Swamp Acquisition Area** means King location 825 as generally depicted on Map 1 in Schedule 2.

**Green Swamp Additional Acquisition Area** means Lot 680 and Lot 681 on Deposited Plan 216944, as generally depicted on Map 1 in Schedule 2.

**Green Swamp Extinguished Area** means King location 424 and road number 18488 located on the western side of location 825 as generally depicted on Map 1A in Schedule 2.

**Green Swamp Protection Area** means the area depicted as such on Map 15 in Schedule 2.

**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.

**ILUA** means an Indigenous Land Use Agreement (Area Agreement) under the NTA.

**ILUA Area** means the land and waters which are comprised within the:

- (a) ILUA (Previous Compensable Act) Area;
- (b) ILUA (Non-extinguishment) Area;
- (c) ILUA (Surrender - Third Party) Area; and
- (d) ILUA (Surrender - MG) Area,

as generally depicted on Map 3 in Schedule 2;

~~**ILUA (Previous Compensable Act) Area** means the area subject to any Previous Compensable Act depicted as such on Map 2D in Schedule 2.~~

**ILUA (Previous Compensable Act) Area** means the area depicted as such on Map 2D in Schedule 2.

**ILUA (Non-extinguishment) Area** means the land and waters the subject of the following areas:

- (a) M2 Development Area (not including the M2 Extinguished Area);
- (b) Mantinea Development Area (not including Reserves 1061 and 18810);
- (c) Mantinea Foreshore Reserve Area;
- (d) Ord West Bank Development Area;
- (e) Ord West Bank Foreshore Reserve Area;
- (f) Packsaddle Creek Reserve Area;
- (g) Raw Materials Areas and M2 Raw Materials Areas;
- (h) New Conservation Areas;
- (i) Ord Irrigation Scheme Area;
- (j) easement access to Bell Springs CLA and Bell Springs CLA on Deposited Plan 35250, Lot 930;
- (k) easement access to Geeboowama CLA and Geeboowama CLA on Deposited Plan 35249, Lot 923;
- (l) easement access to Janama Springs CLA (to the extent it is not within reserve 1063) and Janama Springs CLA (to the extent it is not within reserve 1063) on Deposited Plan 35248, Lot 925;
- (m) easement access to Yuna Springs CLA (to the extent it is not within reserve 1063) and Yuna Springs CLA (to the extent it is not within reserve 1063) on Deposited Plan 35248, Lot 926;
- (n) easement access to Munthanmar CLA and Munthanmar CLA on Deposited Plan 35949, Lot 928;
- (o) easement access to Jimbilum CLA and Jimbilum CLA on Deposited Plan 26369, Lot 859;
- (p) easement access to Yirrallalem 1 CLA and Yirrallalem 1 CLA on Deposited Plan 35245, Lot 936; and
- (q) easement access to Yirrallalem 2 CLA and Yirrallalem 2 CLA on Deposited Plan 35246, Lot 937.

*Note: Many of these areas overlap with each other. The areas are separately listed because different acts to which the non-extinguishment principle applies may be done in each area. The ILUA (Non-extinguishment) Area also overlaps with some areas where native title may be surrendered.*

~~**ILUA (Surrender – Third Party) Area** means the areas referred to in clauses 12.1 and 12.4.~~



**ILUA (Surrender - Third Party) Area** means the areas referred to in clauses 12.2 (dealing with surrender of native title for third party grants) and 12.4 (dealing with surrender of native title in the Packsaddle Road Area).

*Note: These areas are:*

- ~~M2 Maximum Farm Area (not including the M2 Extinguished Area);~~
- ~~Green Swamp Acquisition Area and Green Swamp Additional Acquisition Area;~~
- ~~Ord West Bank Farm Area;~~
- ~~Ord East Bank Acquisition Area;~~
- ~~Mantina Development Area (not including Reserves 1061 and 18810);~~
- ~~Kununurra Additional Acquisition Area;~~
- ~~Government Land Acquisition Area;~~
- ~~CPC Freehold Area;~~
- ~~Packsaddle Road Area; and~~
- ~~Packsaddle Agriculture Area.~~

**ILUA (Surrender - MG) Area** means the areas referred to in clause 12.3.

*Note: These areas are:*

- Packsaddle Freehold Area;
- East Kununurra Additional Area; and
- Portion of Former Kununurra Lot 239.

**Indemnified Amount** has the meaning in clause 8.1(1).

**Independent Director** means a person who:

- (a) is not:
  - (i) one of the MG People;
  - (ii) a lineal descendant of, or first cousin of, one of the MG People;
  - (iii) married to or in a de facto relationship with one of the MG People;
  - (iv) a parent or sibling of a person who is married to or in a de facto relationship with one of the MG People; or
  - (v) currently, and has not within the period of 3 years prior to their appointment as an Independent Director been:
    - (I) an employee, director, consultant or advisor to the MG Corporation or an MG Entity; nor
    - (II) an employee or director of a company, or partner in a partnership, which is a consultant or advisor to the MG Corporation or an MG Entity; and

- (b) has expertise (whether by qualification or experience) in one or more of the following areas:
  - (i) financial management;
  - (ii) legal practice;
  - (iii) accounting;
  - (iv) business development; or
  - (v) community development.

***Independent Expert*** means a person who:

- (a) would be considered by a reasonable person to be independent of the State, the relevant Developing Party and the MG People;
- (b) has at least 5 years recent experience in accounting, economics, business administration, merchant banking or other similar fields which has included giving advice in relation to the development or operation of agricultural projects; and
- (c) is available to provide advice at or within a reasonable time of being requested to do so, and at a reasonable cost having regard to relevant industry standards.

***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);
- (c) has at least 5 years recent experience valuing the type of land use being valued in the Kimberley; and
- (d) is available to provide a valuation at or within a reasonable time of being requested to provide the relevant valuation, and at a reasonable cost having regard to relevant industry standards.

***Ivanhoe Pastoral Lease*** means pastoral lease 3114/640.

***Janama Springs CLA*** means the area shown on Deposited Plan 35248, as generally located on Map 13 in Schedule 2.

***Jimbitum CLA*** means the land shown on Deposited Plan 26369, as generally located on Map 13 in Schedule 2.

***Kununurra Additional Acquisition Area*** means the Kununurra Additional 29 Acquisition Area and the Kununurra Additional 24MD(6B) Acquisition Area.

*Note. Under the MG#1 Determination, there is no native title on some land in and around Kununurra. The Kununurra Additional Acquisition Area comprises additional areas (i.e. additional to areas where native title has already been extinguished) in and around Kununurra which are required for residential, commercial and industrial purposes and in respect of which native title does or may exist (and therefore needs to be acquired by the State). That Kununurra land where native title does not exist is not dealt with in this deed, except that some of that land is the subject of the Aboriginal Heritage Surveys.*

***Kununurra Additional 29 Acquisition Area*** means:

- (a) those parts of lot 711 on Deposited Plan 40684, not including the Government Land Acquisition Area (about 11.5 hectares); and
- (b) the following lots or part lots on Deposited Plan 40681 (about 137 hectares):

Lot number	Area (hectares)
part lot 875	about 106
part lot 711	about 31

as generally depicted on Map 1 in Schedule 2.

***Kununurra Additional 24MD(6B) Acquisition Area*** means:

- (a) the following lots or part lots on Deposited Plan 40681 (about 38.76 hectares):

Lot number	Area (hectares)
part lot 2483	about 25
part lot 2485	about 2
part lot 2486	about 2.5
2321	0.265
2322	0.2855
2323	0.3220
2324	0.321
2325	0.2543
2326	0.2299
2327	0.2074
2328	0.21
2329	0.27
2331	0.2
2332	0.2
2333	0.2
2334	0.435
2335	0.2425
2336	0.2279
2337	0.2288
2342	0.25
2343	0.2250
2345	0.25

2346	0.2
2347	0.1952
2351	0.3750
2352	0.22
2353	0.2
2354	0.2
2355	0.2
2356	0.325
2357	0.2261
2358	0.3960
2359	0.2558
2360	0.2198
2361	0.2208
2362	0.2582
2363	0.1990
2364	0.1950
2365	0.1999
2366	0.17
2367	0.18

- (b) part Lot 2484 (about 26.5 hectares) and part Lot 2462 (about 14 hectares) on Deposited Plan 40677,

as generally depicted on Map 1 in Schedule 2.

*LAA* means the *Land Administration Act 1997* (WA).

*Lake Argyle Area* means that area of Lake Argyle as bounded to the north and the west by the maximum flood level (being 109 AHD) and to the south and east by the boundary of reserve 31165, as generally depicted on Map 11 in Schedule 2, but not including any part of Lake Argyle the subject of any reservation, lease, easement, licence or other encumbrance in existence at the Execution Date.

*Land Exchange Agreement* means the Land Exchange Agreement between the State and the CPC Parties undated but stamped 12 April 2002.

*List Price* means:

- (a) the price at which a Town Lot will be advertised for sale by private treaty, or the reserve price for sale of the Town Lot by auction (which for the avoidance of doubt includes GST); or
- (b) where there is a Revised List Price, that Revised List Price

**Livistona Area** means the area (approximately 70,050 hectares) as generally depicted on Map 8 in Schedule 2.

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

**Lot Payment** means the sum of money equal to 5% of the Lot Payment Gross Amount.

**Lot Payment Advice** means a written statement containing:

- (a) a copy of the registered transfer form for a Town Lot; and
- (b) the date upon which the Developing Party and the Third Party Purchaser entered into a legally enforceable contract for the sale of the Town Lot; and
- (c) if the Developing Party considers that the Sale Price is less than the Market Value of the Town Lot, then a statement to that effect and the Developing Party's estimate of the Market Value of the Town Lot

**Lot Payment Gross Amount** means:

- (a) the Sale Price of a Town Lot, less GST; or
- (b) if the Developing Party considers that the Sale Price of a Town Lot is less than the Market Value of the Town Lot, then the Developing Party's estimate of the Market Value of the Town Lot, less GST; or
- (c) if there is a Revised List Price, then the greater of:
  - (i) the Sale Price of a Town Lot, less GST;
  - (ii) the Revised List Price, less GST.

**M2 Additional Acquisition Area** means part Lot 350 (about 15.5 hectares) on Deposited Plan 44592, being an area of approximately 5 metres between the M2 Acquisition Area and the Western Australia / Northern Territory border.

**M2 Acquisition Area** means part lot 711 (about 26859 hectares) and part lot 1011 (about 12609 hectares) on Deposited Plan 40686, as generally depicted on Map 1 in Schedule 2.

**M2 Buffer Area** means the Buffer Area within the M2 Development Area.

**M2 Development Area** means the M2 Acquisition Area and the M2 Additional Acquisition Area and the M2 Extinguished Area, but not including the New Conservation Areas.

**M2 EME** means the EME for the M2 Development Area.

**M2 Extinguished Area** means those parts of the land and waters the subject of the MG#1 Determination in respect of which native title does not exist and which are located adjacent to and are surrounded by the M2 Acquisition Area, as generally depicted on Map 1 in Schedule 2.

**M2 Maximum Farm Area** means those parts of the M2 Development Area depicted as such on Map 1A in Schedule 2.

**M2 Minimum Buffer Area** means those parts of the M2 Development Area depicted as such on Map 4 in Schedule 2.

**M2 Raw Materials Areas** means those parts of the M2 Development Area depicted as such on Maps 1A in Schedule 2.

**Mantinea Acquisition Area** means part of lot 710 on Deposited Plan 40687 (about 3316 hectares) as generally depicted on Map 1B in Schedule 2.

**Mantinea Buffer Area** means those parts of the Mantinea Development Area to be nominated by the State to the MG Corporation in accordance with clause 32.9 as required for buffer and infrastructure, including but not limited to irrigation, drainage, road and power infrastructure, flood protection levees, provision of construction material and land for the maintenance of biodiversity and protection of Aboriginal heritage.

**Mantinea CPC Water Points** means the dams at Yellow Waterhole, and Bend of the Ord Bore, as depicted on Map 14B in Schedule 2.

**Mantinea Conservation Excision** means the land depicted as such on Map 5 in Schedule 2.

**Mantinea Development Area** means:

- (a) the following areas:
  - (i) the Mantinea Acquisition Area; and
  - (ii) reserve 18810; and
  - (iii) part of reserve 1061 (being the part south of the Ord River, but not including the CPC Freehold Area); but
  - (iv) not including the Mantinea Foreshore Reserve Area;as generally depicted on Map 5 in Schedule 2; and
- (b) may include land within the Mantinea Farm Extension and exclude land within the Mantinea Conservation Excision, in accordance with clause 32.2.

**Mantinea EME** means an EME for the Mantinea Development Area (which, for the avoidance of doubt, may also be an EME for another area).

**Mantinea Farm Area** means those parts of the Mantinea Development Area to be nominated by the State Developing Party to the MG Corporation in accordance with ~~clause 32.3~~ clause 32.6 (dealing with Nomination of the Mantinea Buffer and Mantinea Farm Area) as required for:

- (a) agriculture; and
- (b) irrigation, drainage, road and power infrastructure and flood protection levies ancillary to or associated with Serviced Farm Lots.

**Mantinea Farm Extension** means some or all of the land within that part of Parry Lagoons Nature Reserve (reserve 42155) depicted on Map 5 in Schedule 2 as Mantinea Farm Extension, to be identified in the written notice referred to in clause 32.2.

**Mantinea Foreshore Reserve Area** means the land depicted as such on Map 2A in Schedule 2 as Mantinea Foreshore Reserve Area (which does not include land within reserve 1061 or reserve 18810).

**Mantinae Other Area** means those parts of the Mantinea Development Area to be nominated by the State to the MG Corporation in accordance with clause 32.5 as required for:

- (a) residential, rural residential, commercial or industrial purposes; and
- (b) irrigation, drainage, road and power infrastructure and flood protection levies ancillary to or associated with residential, rural residential, commercial or industrial Developed Lots.

**Market Value** means the value, in Australian dollars, of land if determined in accordance with the applicable Valuation Principles in clause 52.6(1) and 52.6(2).

**McKenna Springs CLA** means the land shown on Deposited Plan 36329, as generally located on Map 13 in Schedule 2.

**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.

**MG#1 Claimants** means the registered native title claimants in respect of Federal Court of Australia native title determination application WAG 6001 of 1995.

**MG#1 Determination** means the determination of native title made on 9 December 2003 by the Full Court of the Federal Court by consent of the Parties in proceedings WAG 6293, 6292, 6294, 6295 and 6296 of 1998.

**MG#1 Native Title Holders** means Aboriginal persons who are the common law holders under the MG#1 Determination, but not including those persons who are common law holders solely on the basis that they identify themselves as Balangarra (as defined in the MG#1 Determination) in relation to their native title interests in Lacrosse Island and who are so identified by other members of the Balangarra group.

**MG#4 Claim** means Federal Court of Australia native title determination application WAD 124 of 2004, or if such application is discontinued dismissed or struck out, any other application which replaces application WAD 124 of 2004.

**MG#4 Claim Area** means the land and waters the subject of the MG#4 Claim.

**MG#4 Native Title Claim Group** means Aboriginal persons who are members of the native title claim group (as that term is defined in the NTA) for the MG#4 Claim.

**MG Charitable Trustees Pty Ltd** has the meaning in clause 26.1(2).

**MG Corporation** has the meaning in clause 20.1.

**MG Culture** means the living body of traditions, observances, customs, beliefs and cultural practices of the MG People, as evidenced by but not limited to:

- (a) the use of land and waters in accordance with the traditional laws acknowledged and traditional customs observed by the MG People; and
- (b) the native title rights and interests of the MG People.

**MG Entity** has the meaning in clause 19.2.

**MG People** means:

- (a) MG#1 Native Title Holders and, where the context requires, the MG#1 PBC; and
- (b) the MG#4 Native Title Claim Group; and any other persons who hold native title in the MG#4 Claim Area.

*Note: "MG People" is a defined term for the purposes of this deed.*

**MG Trust Suspension Notice** has the meaning in clause 27 2(2).

**MGC Ratification Deed** has the meaning in clause 20.12.

**MGC Suspension Notice** has the meaning in clause ~~24.9(1)~~: 24.9(2).

**MGCT Ratification Deed** has the meaning in clause 26.7.

**Mining Future Act** means the grant or creation of a lease, licence, permit or authority to mine, extract or explore for minerals (as defined in the *Mining Act 1978 (WA)*) or petroleum (as defined in the *Petroleum Act 1967 (WA)*), but does not include anything which is a *Quarrying Future Act*.

**Minister for Fisheries** has the meaning in section 9(1) of the *Fish Resources Management Act 1994 (WA)*.

**Munthanmar CLA** means the land shown on Deposited Plan 35949, as generally located on Map 13 in Schedule 2.

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

**New Conservation Areas** means:

- (a) Packsaddle Swamp Area;
- (b) Pincombe Area;
- (c) Zimmerman Area;
- (d) Weaber Area;
- (e) Ningbing West Area; and
- (f) Livistona Area.

**New Conservation Original Freehold Areas** has the meaning in clause 37.1(1)(b)(ii).

**Ningbing CPC Water Point** means the water point depicted on Map 14B in Schedule 2.

**Ningbing East Area** means the area of approximately 31,420 hectares within Carlton Hill pastoral lease 3114/1176 east of the Ningbing Road, as generally depicted on Map 8 in Schedule 2.

**Ningbing West Area** means the area (approximately 24,989 hectares) as generally depicted on Map 8 in Schedule 2.

**Old Station Billabong Buffer Area** means that area depicted as such on Map 6 Schedule 2.

**Ord East Bank Acquisition Area** means those parts of lot 1012 (about 214 hectares), lot 1013 (about 59 hectares) and lot 420 (about 4 hectares) on Deposited Plan 40683 to the east of the Ord River, as generally depicted on Map 1 in Schedule 2.

**Ord Irrigation Scheme Area** means the area delineated as such on Map 2A in Schedule 2.



**Ord West Bank Acquisition Area** means part of lot 1013 (about 168 hectares) and part of lot 710 (about 2190 hectares), and lot 202 (about 139.7961 hectares), on Deposited Plan 40683 to the west of the Ord River, as generally depicted on Map 1 in Schedule 2.

**Ord West Bank Buffer Area** means:

- (a) Ord West Bank Special Buffer Area A, Ord West Bank Special Buffer Area B and Old Station Billabong Buffer Area; and
- (b) that part of the Ord West Bank Development Area to be nominated by the State to the MG Corporation in accordance with clause 33.4 as required for buffer and infrastructure, including but not limited to irrigation, drainage, road and power infrastructure, flood protection levees, provision of construction material and land for the maintenance of biodiversity and protection of Aboriginal heritage.

**Ord West Bank Development Area** means the Ord West Bank Acquisition Area, but not including:

- (a) the New Conservation Areas; and
- (b) the Ord West Bank Foreshore Reserve Area

*Note: The Ord West Bank Development Area will comprise the Ord West Bank Farm Area, the Ord West Bank Buffer Area and Raw Materials Areas*

**Ord West Bank EME** means the EME for the Ord West Bank Development Area (which, for the avoidance of doubt, may also be an EME for another area).

**Ord West Bank Farm Area** means those parts of the Ord West Bank Development Area to be nominated by the State to the MG Corporation in accordance with clause 33.4 as required for:

- (a) agriculture; and
- (b) irrigation, drainage, road and power infrastructure and flood protection levies ancillary to or associated with Serviced Farm Lots.

**Ord West Bank Foreshore Reserve Area** means the area depicted as such on Map 2A in Schedule 2.

**Ord West Bank Special Buffer Area A** means that part of the Ord West Bank Buffer Area which is marked "A" on Map 6 in Schedule 2.

**Ord West Bank Special Buffer Area B** means that part of the Ord West Bank Buffer Area which is marked "B" on Map 6 in Schedule 2.

**Packsaddle Acquisition Area** means part lot 512 on Deposited Plan 40680 (about 1600 hectares), as generally depicted as such on Map 1 in Schedule 2

**Packsaddle Agriculture Area** means the Packsaddle Acquisition Area, not including the Packsaddle Freehold Area and the road corridor within the Packsaddle Road Area and the Packsaddle Creek Reserve Area.

**Packsaddle Creek Reserve Area** means the land and waters depicted as such on Map 10 in Schedule 2

**Packsaddle Freehold Area** means approximately 774 hectares of land (not including the Packsaddle Creek Reserve Area nor Jimbilum, Yirrallelem 1 and Yirrallelem 2 CLAs), as generally depicted on Map 10 in Schedule 2.

**Packsaddle Freehold ILUA Area** means that part of the Packsaddle Freehold Area which is outside the Packsaddle Acquisition Area, as depicted on Map 10 in Schedule 2.

**Packsaddle Road Area** means the land and waters depicted as such on Map 10 in Schedule 2.

**Packsaddle Swamp Area** means Lot 959 on Deposited Plan 31611 and excludes any infrastructure (drains and channels) or the land necessary and incidental to that infrastructure established prior to the Execution Date within the area depicted on Map 8 Schedule 2.

**Parties** means the Parties which have executed this deed, but in the case of the MG#4 Claimants and the ~~MG#1 PBC~~ MG#4 PBC has the meaning in clause 4; and Party means any one of them.

**PBC** means a prescribed body corporate which is, or satisfies the requirements to be, a registered native title body corporate under the NTA.

**Pincombe Area** means the area (approximately 14,123 hectares) depicted as such on Map 8 in Schedule 2.

**Portion of Former Kununurra Lot 239** means that part being approximately 0.7500 hectares (subject to survey) of former Kununurra Lot 239 to be excised from Reserve 29728 as depicted in Schedule 20 and Map 2C in Schedule 2.

**Practical Completion Date** means the earliest date upon which the Developing Party (or an assignee of the Developing Party):

- (a) commences farming operations on all of the land the subject of the Project; or
- (b) makes Serviced Farm Lots available for sale to the public.

**Preferred Proponent** has the meaning in clause 47 2(4).

**Previous Compensable Act** means any act validly done including by reason of being validated under the NTA and the Titles (Validation) and *Native Title (Effect of Past Acts) Act 1995* (WA).

**Project** means a Developing Party's proposal to:

- (a) develop some or all of the M2 Development Area, Mantinea Development Area or Ord West Bank Development Area, as the case may be; and
- (b) to the extent it is part of the Developing Party's proposal, conduct agricultural or other operations on the land once it is developed.

**Proponent** means a person (not including the State or LandCorp) who proposes to develop some or all of:

- (a) the M2 Development Area for agriculture; or
- (b) the Mantinea Development Area for agriculture or for residential, rural residential, commercial or industrial purposes; or
- (c) the Ord East Bank Acquisition Area for agriculture; or

- (d) the Ord West Bank Development Area for agriculture; or
- (e) the Kununurra Additional Acquisition Area for residential, commercial or industrial purposes,

(as the case may be) for their own purposes or for sale to the public

**Quarrying Future Act** means a lease, licence, permit or authority to mine, extract or explore for soil, limestone, rock, gravel, shale (other than oil shale), sand (other than mineral sand, silica sand or garnet sand), clay (other than kaolin, bentonite, attapulgitite or montmorillonite) or shingle (including river shingle).

**Ratification Date** means the date upon which both:

- (a) the MG Corporation has executed the MGC Ratification Deed; and
- (b) the MG Charitable Trustees Pty Ltd has executed the MGCTI Ratification Deed.

**Raw Materials** means soil, limestone, rock, gravel, shale (other than oil shale), sand (other than mineral sand, silica sand or garnet sand), clay (other than kaolin, bentonite, attapulgitite or montmorillonite) or shingle (including river shingle).

**Raw Materials Areas** means the areas used for the extraction of raw materials depicted as such on Map 2A in Schedule 2.

**Register** means the Register of Indigenous Land Use Agreements under the NTA.

**Registrar** means the Native Title Registrar under the NTA.

**Registration Date** means the date this deed is entered on the Register.

**Relevant Dawang** means the Dawang which cover (in whole or in part) any of the land and waters the subject of this deed.

**Revised List Price** means the deemed List Price as revised under clauses 51.6(2) and 51.6(3).

**Sale Price** means the consideration shown on a transfer form for a Town Lot.

**Satisfaction Date** has the meaning in clause 21.1.

**Section 29 Notice** means the notice of intention to take interests including native title rights and interests, a copy of which appears in Schedule 15.

**Section 24MD(6B) Notice** means the notice of intention to take interests including native title rights and interests in respect of the Kununurra Additional 24MD(6B) Acquisition Area pursuant to section 24MD(6B)(c) of the NTA and section 170 of the *Land Administration Act* dated 15 February 2004, a copy of which appears in Schedule 15.

**Serviced lot** means:

- (a) in relation to the Kununurra Additional Acquisition Area, land serviced to the boundary of the lot with road access, power, water and sewerage but does not include any lot nominated by the State or shown on an approved plan of subdivision to be required for a public work within the meaning of that term in the *Public Works Act 1902* (WA) or for government or public purposes; and
- (b) in relation to the Mantinea Other Area, land serviced to the boundary of the lot with road access, power and where appropriate, water, but does not include any lot nominated by the State or shown on an approved plan of subdivision to be

required for a public work within the meaning of that term in the *Public Works Act 1902* (WA) or for government or public purposes.

**Serviced Farm Lot** means land serviced to the boundary of the lot with roads and irrigation infrastructure and, where appropriate, power but does not include any lot nominated by the State or shown on an approved plan of subdivision to be required for a public work within the meaning of that term in the *Public Works Act 1902* (WA) or for government or public purposes.

**State Contribution** has the meaning in clause 26.6.

**State Contribution Period** means the period of time commencing on the Satisfaction Date and ending:

- (a) 9 years after the Satisfaction Date; or
- (b) if MGCT Suspension Notices have been issued then 9 years after the Satisfaction Date plus the aggregate of the periods during which the MGCT Suspension Notices have been operative.

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

**Strata Survey 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.

**Third Party Purchaser** means any person other than the State, LandCorp or any agent of the State acting on behalf of the State.

**Town Land** has the meaning in clause 51.1.

**Town Lot** has the meaning in clause 51.1.

**Town Lot Entitlement** means 5% of the aggregate List Prices of all Town Lots the subject of the Development Notice

**Transfer Costs** means the fees and charges ordinarily payable to Departments, agencies or authorities of the State in respect of a transfer of land.

**Undervalue Notice** has the meaning in clause 51.7(4).

**Undervalue Payment** means  $0.05 \times ((\text{the Market Value of the Town Lot, less GST}) \text{ less (the Lot Payment Gross Amount)})$ .

**Undeveloped Land** means land which does not consist of:

- (a) Developed Lots;
- (b) Serviced Farm Lots; or
- (c) any lot which has been identified by the Developing Party or on an approved plan of subdivision to be required for a public work within the meaning of the *Public Works Act 1902* (WA) or a purpose other than residential, commercial or industrial purposes or agriculture.

**Undeveloped Town Land** has the meaning in clause 51.2(1)(a).

**Undeveloped Town Land Transferor** has the meaning in clause 51.2(1).

**Unimproved Value** has the meaning given in the Valuation Principles.

**Valuation Principles** means the principles by which land is to be valued for the purposes of this deed, as set out in clause 52.6.

**Water and Rivers Commission** means the body corporate established under section 4(1) of the *Water and Rivers Commission Act 1995* (WA).

**Weaber Area** means the area (approximately 29,151 hectares) depicted as such on Map 8 in Schedule 2.

**Weighting Criteria** means criteria according to which proposals to develop all or part of the Farm Area will be assessed, where one of the criteria having a minimum weight of ten percent (10%) is the value to the MG People of a Proponent's draft Aboriginal Development Package.

**Wesley Springs CLA** means the land shown on Deposited Plan 36331, as generally located on Map 13 in Schedule 2.

**Yardungarrl** means the area depicted on Deposited Plan 37024 as King Locations 994, 995 and 996, being approximately 50,000 hectares, as generally depicted on Map 12 in Schedule 2, and excludes:

- (a) subject to clause 42(2)(b) all or part of the areas covered by mining leases M80/227, M80/576 and M80/175, exploration licence E80/3169, and prospecting licence P80/1337;
- (b) dedicated roads being Victoria Highway and Lake Argyle Road as generally depicted on Map 12 in Schedule 2;
- (c) Reserves 40978 (about 1200 square metres) as shown on Deposited Plan 91756 and 42710 (about 46 hectares) as shown on Deposited Plan ~~19116~~ 19116;
- (d) King Location 997 shown on Deposited Plan 37024; and
- (e) King Locations 998, 999, 1000, 1001 and 1002 shown on Deposited Plan 37024.

**Yirrallelem 1 CLA** means the land shown on Deposited Plan 35245, as generally located on Map 13 in Schedule 2.

**Yirrallelem 2 CLA** means the land shown on Deposited Plan 35246, as generally located on Map 13 in Schedule 2.

**Yuna Springs CLA** means the area shown on Deposited Plan 35248, as generally located on Map 13 in Schedule 2.

**Zimmerman Area** means the area (approximately 14,317 hectares) generally depicted as such on Map 8 in Schedule 2.

## 2.2 General principles of interpretation

In this deed, unless the contrary intention appears:

- (1) words in this deed shall have the same meaning as those words have under the NTA;
- (2) a reference to a lease includes any instrument described (including in a law of the State or the Commonwealth) as a lease, and includes a conditional purchase lease under the LAA, but does not include a mining lease under the *Mining Act 1978* (WA);
- (3) a reference to agriculture includes irrigated agriculture, horticulture, aquaculture and forestry, and associated purposes (including but not limited to the processing of agricultural produce);

- (4) a reference to associated purposes includes purposes ancillary or associated with the stated purposes including but not limited to irrigation, drainage, road and power infrastructure, flood protection levies, provision of construction materials and land for the management of biodiversity and protection of Aboriginal heritage;
- (5) a reference to commercial purposes includes tourism, and a reference to residential purposes includes rural residential;
- (6) the singular includes the plural, and vice versa;
- (7) the word person includes a firm, body corporate, statutory corporation, an unincorporated association or an authority or government department or agent of the State and 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;
- (8) a reference to gender includes each other gender;
- (9) a reference to the grant of any right or interest includes the exercise of the rights or the discharge of the obligations by the Parties in respect of such grant;
- (10) 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;
- (11) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;
- (12) nothing in this deed is to be interpreted against a Party solely on the ground that the Party put forward this deed or any part of it;
- (13) headings and notes may be used to assist in the interpretation of this deed where there is ambiguity in a clause or clauses of this deed, but may not be used to add to vary or contradict a clause or clauses of this deed;
- (14) a reference to a clause, subclause or schedule is a reference to a clause, subclause or schedule of this deed;
- (15) a reference to dollars or \$ is to Australian currency;
- (16) references to time are to local time in Perth, Western Australia; and
- (17) where time is to be reckoned from a day or event, that day or the day of that event is excluded.

### **2.3 Sale or lease of land to the public**

References in this deed to a sale or lease of land to the public includes the transfer of freehold title or the granting of a lease:

- (a) to a particular person or class of persons;
- (b) to the Commonwealth, the State or a Commonwealth or State agency or statutory authority, or to a local government body, other than for the purpose of:

- (i) a public work as defined in the *Public Works Act 1902* (WA); or
- (ii) sale, or development and sale, of the land by that body, agency or authority to the public; or
- (c) for no consideration or at less than Market Value.

**2.4 Purpose for which an act is done**

- (1) An act done by the State is done for a purpose provided in this deed if, at the time it is done, that purpose is the bona fide dominant purpose of the State (whether or not the purpose is apparent on the face of any instrument by which the act is done).
- (2) For the avoidance of doubt, if native title is extinguished by an act done under or in accordance with this deed then, unless this deed expressly provides otherwise, nothing in this deed prevents any person from dealing with any right, title or interest created by the act or with the land the subject of the act in accordance with the laws of the State and the Commonwealth (including the common law).

### **3. PERFORMANCE AND BREACH**

*Note. Performance of obligations in Part 4 are linked to the Satisfaction Date see clause 21.1*

#### **3.1 No fetter on statutory powers of discretions**

Notwithstanding any reference in this deed to an obligation that the State must do an act or ensure that an act is done, the Parties acknowledge and agree that:

- (1) nothing in this deed can fetter or control the exercise by any person (including a Minister of the Crown) of a statutory power or discretion otherwise than in accordance with the statute;
- (2) specific performance of any clause of this deed which involves or requires the exercise by any person (including a Minister of the Crown) of a statutory power or discretion is not available; and
- (3) a Party to this deed may be entitled to damages for the failure of the State to do an act or ensure that an act is done as required by this deed.

#### **3.2 Breach of agreement**

- (1) If any Party breaches a term of this deed then any other Party affected by such breach may serve notice of the breach on the firstmentioned Party ("**Notice of Breach**"):
  - (a) identifying the term allegedly breached and the conduct alleged to constitute the breach; and
  - (b) giving the other Party not less than 10 Business Days within which to remedy the breach.
- (2) A Party must not commence proceedings in any court or tribunal claiming damages for breach of this deed unless and until the Party has issued a Notice of Breach in accordance with clause 3.2(1) and the time stated in that Notice of Breach within which the alleged breach was to be remedied has expired.
- (3) A breach of this agreement by any party shall not nullify the consent of the Parties to the future acts in Part 2.
- (4) Subject to clause 3.3 in the event of a breach of this agreement by any party, the aggrieved Party may exercise any right available to them (including but not limited to the right to specifically enforce compliance with this agreement, to restrain any threatened, actual or continuing breach of this agreement and to recover damages for any breach of this agreement) except for the right to terminate or repudiate in respect of such breach.

#### **3.3 Remedies for failure to comply with land transfer obligations**

- (1) The MG#1 PBC, the MG#4 Claimants and the MG Corporation acknowledge and agree that, notwithstanding any failure by the State or LandCorp or any other Developing Party to comply with clause 48 (dealing with 5% of Serviced Farm Lots) or clause 51 (dealing with 5% of Town Lot Provisions):
  - (a) a transfer or executed agreement for the sale of a Developed Lot, Serviced Farm Lot or Undeveloped Town Land is valid for all purposes;



- (b) except in the circumstances referred to in clause 3.3(1)(c)(i), the MG#1 PBC, the MG#4 Claimants and the MG Corporation shall not bring any proceedings challenging any transfer or intended transfer of a Developed Lot, or Serviced Farm Lot or Undeveloped Town Land (whether by way of declaration, injunction or otherwise), and this clause 3.3 may be pleaded by the State or LandCorp or any other Developing Party (as the case may be) as a bar to any such proceedings; and
- (c) the only remedies available against the State or LandCorp or any other Developing Party for failing to comply with clauses 48 (dealing with 5% of Serviced Farm Lots Provisions) or 51 (dealing with 5% of Town Land Provisions) are:
  - (i) in a case where the State or LandCorp or any other Developing Party (as the case may be) is the registered proprietor of a Developed Lot or a Serviced Farm Lot and a sales contract is deemed to have been entered into under this deed for the transfer of the Developed Lot or Serviced Farm Lot to the MG Corporation - damages or specific performance; and
  - (ii) otherwise, damages only.

**3.4 Obligations to grant or transfer freehold title**

- (1) Except as expressly provided in this deed, a reference in this deed to the transfer of freehold title includes:
  - (a) a transfer of a fee simple absolute, a conditional fee simple or a conditional purchase lease under sections 74, 75 or 80 (as the case may be) of the LAA; and
  - (b) a transfer subject to a covenant or an Encumbrance.

*Note: The Minister for Lands may transfer fee simple absolute under section 74 of the LAA.*

**4. MG#4 CLAIMANTS**

**4.1 New MG#4 registered native title claimants and MG#4 PBC ratification**

- (1) As soon as practicable after any change to the registered native title claimants in respect of the MG#4 Claim, or after there is a registered native title body corporate in respect of the MG#4 Claim, the KLC and the MG#4 Claimants who have executed this deed must ensure that the new registered native title claimants or the registered native title body corporate (as the case may be) execute and deliver to the State, LandCorp, the Conservation Commission, the Green Swamp Parties and the CPC Parties a deed to which the State, LandCorp, the Green Swamp Parties and the CPC Parties may be Parties in which, on and from the date of the deed:
  - (a) the State, LandCorp, Conservation Commission, the Green Swamp Parties and the CPC Parties shall have the same rights against, and shall owe the same obligations to, the new registered native title claimants or the registered native title body corporate (as the case may be) as if the new registered native title claimants or the registered native title body corporate (as the case may be) were a Party to this deed;
  - (b) the new registered native title claimants or the registered native title body corporate (as the case may be) shall have the rights of and owe the obligations of the MG#4 Claimants in accordance with the terms of this deed; and
  - (c) any reference in clauses 5 (dealing with Variation), 6 (dealing with Termination), 9.2 (dealing with If Deed is not Registered) and 11.6 (dealing with Further Assurances) to the MG#4 Claimants (including a reference to the Parties which includes the MG#4 Claimants) shall be taken to be (as the case may be) a reference to:
    - (i) the registered native title claimants; or
    - (ii) the registered native title body corporate.

## **5. VARIATION**

### **5.1 Variation by all Parties**

Subject to clause 5.2, this deed may only be varied by a deed executed by all the Parties

### **5.2 Variation of Part 4**

- (1) Without limiting clause 5.1, Part 4 of this deed (including any schedules referred to in Part 4 and any corresponding definitions in clause 2.1 insofar as they apply to Part 4), other than Part 4 Division 4D (dealing with CPC Provisions) and clause 38.3 (dealing with Lease to Baines River) may be varied by a deed executed by the State, LandCorp, the Conservation Commission, MG#1 PBC and the MG#4 Claimants.
- (2) Clause 54 (dealing with CPC Obligations and Benefits) except clause 54.2 may be varied by a deed executed by the CPC Parties and the State.
- (3) Clauses 54.2 and 55 (dealing with CPC commitments), may be varied by a deed executed by the State, the CPC Parties, MG#1 PBC and the MG#4 Claimants.
- (4) Clause 38.3 (dealing with Lease to Baines River) may be varied by a deed executed by the State, Baines River, MG#1 PBC and the MG#4 Claimants.
- (5) Except as provided in clauses 5.2(1), 5.2(2), 5.2(3) and 5.2(4), the Parties irrevocably waive any rights they may have as Parties to this deed with respect to the variation of Part 4 of this deed.

### **5.3 Variation of ILUA**

Notwithstanding clauses 5.1 and 5.2, if details of this deed are entered on the Register, then any variation of this deed which amends the details on the Register only takes effect upon the entry of those amended details on the Register.

## **6. TERMINATION**

### **6.1 No termination of deed**

Subject to the following subclauses of this clause 6, no Party is entitled to terminate this deed for any reason, including by reason of any breach or repudiation of this deed by any other Party.

### **6.2 Agreement to terminate deed**

- (1) This deed may be terminated by agreement in writing of the State, LandCorp, Conservation Commission, the CPC Parties, the Green Swamp Parties, Baines River, the MG#1 PBC and the MG#4 Claimants.
- (2) Unless otherwise agreed in writing by all Parties, if this deed is terminated in accordance with clause 6.2(1) then:
  - (a) any act done under or in accordance with this deed shall remain valid; and
  - (b) all rights and obligations which accrued before or on the date of termination of the deed shall remain binding and enforceable by or against each Party (as the case may be).
- (3) If this deed is terminated in accordance with clause 6.2(1) then all Parties must advise the Registrar in writing in accordance with section 199C(1)(c)(ii) of the NTA.

### **6.3 Rule against perpetuities**

- (1) 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 Execution Date.
- (2) If under a written law the perpetuity period is extended to be greater than eighty (80) years, then the State and the MG Corporation may agree to vary the reference in clause 6.3(1) from eighty (80) years to the period of years specified in that written law as the perpetuity period.

## **7. AUTHORISATION AND WARRANTIES**

### **7.1 Warranty by MG#1 PBC**

- (1) The MG#1 PBC warrants that:
  - (a) all necessary authorisations have been obtained from the MG#1 Native Title Holders to enter into this deed as trustee for and on behalf of the MG#1 Native Title Holders; and
  - (b) this deed is valid, binding and enforceable in accordance with its terms against the MG#1 PBC and the MG#1 Native Title Holders.
- (2) The MG#1 PBC acknowledges and agrees that, but for the representations and warranties in clause 7.1(1), neither the State nor LandCorp would have entered into this deed.

### **7.2 Warranty by MG#4 Claimants**

- (1) The MG#4 Claimants warrant 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 of the MG#4 Claimants and all persons included in the MG#4 Native Title Claim Group.
- (2) The MG#4 Claimants acknowledge and agree that, but for the representations and warranties in clause 7.2(1), neither the State nor LandCorp would have entered into this deed.

### **7.3 Warranty by KLC**

- (1) The KLC warrants that:
  - (a) the KLC has made all reasonable efforts to ensure that all persons who hold or may hold native title in relation to land or waters in the ILUA Area have been identified;
  - (b) all such persons are either MG#1 Native Title Holders or members of the MG#4 Native Title Claim Group; and
  - (c) all such persons have authorised the making of this deed in accordance with section 251A of the NTA.
- (2) The KLC acknowledges and agrees that, but for the representations and warranties in clause 7.3(1), neither the State nor LandCorp would have entered into this deed.

### **7.4 Deed binding on the State**

- (1) This deed is binding on the Crown in right of the State of Western Australia, which:
  - (a) includes all Departments, ministers, officers, employees, commissions and agents of the State; but

- (b) unless expressly provided under this deed, does not include any statutory authority or body corporate established under a law of the State (other than a body corporate which is an agent or commission of the State).
- (2) For the avoidance of doubt, this deed is binding on the Water and Rivers Commission and CALM

## 8. INDEMNITY AND RELEASE IN RESPECT OF OTHER NATIVE TITLE HOLDERS

### 8.1 Indemnity

- (1) If:
- (a) there is an approved determination of native title or a revised approved determination of native title under which native title is determined to exist or to have existed in the ILUA Area; and
  - (b) the native title holders are, or include, persons other than the MG#1 Native Title Holders and the MG#4 Native Title Claim Group,
- then, subject to clause 8.1(2), the MG#1 PBC, the MG#4 Claimants, the MG Corporation and MG Charitable Trustees Pty Ltd as trustee for the MG Charitable Trust severally indemnify the State, the Conservation Commission and LandCorp in respect of any determinations of compensation for loss or impairment of native title ("*Indemnified Amount*") payable by the State (including any minister, officer, employee, agent, body corporate or statutory authority of the Crown in right of the State of Western Australia), the Conservation Commission or LandCorp (as the case may be):
- (c) made by a court of competent jurisdiction; or
  - (d) otherwise agreed with the consent of the MG Corporation,
- arising from any claim for compensation by the native title holders in respect of Previous Compensable Acts dealt with or future acts done under this deed.
- (2) The rights of the State, LandCorp and the Conservation Commission in respect of an Indemnified Amount are limited to taking the actions in clauses 8.1(3) and 8.1(4).
- (3) If the State, LandCorp or the Conservation Commission is entitled to any Indemnified Amount then upon notice by the State, the Conservation Commission or LandCorp (as the case may be) to the MG Corporation or MG Charitable Trustees Pty Ltd (as the case may be):
- (a) notwithstanding any nomination of an MG Entity to receive a benefit under clause 28.1 (dealing with Nomination of MG Entity), the MG Corporation or MG Charitable Trustees Pty Ltd (as the case may be) hereby directs to the State, the Conservation Commission or LandCorp (as the case may be) any payments or land transfers to be made by any Proponent to the MG Corporation or MG Charitable Trustees Pty Ltd (as the case may be) and assigns to the State, the Conservation Commission or LandCorp (as the case may be) the rights of the MG Corporation or MG Charitable Trustees (as the case may be) in respect of such payments or land transfers under this deed, to the extent of the Indemnified Amount; and
  - (b) the MG Corporation and MG Charitable Trustees Pty Ltd agrees that the State, the Conservation Commission or LandCorp (as the case may be) may set off against the Indemnified Amount any amount payable or land transferable or other obligation to be performed by the State, the

Conservation Commission or LandCorp (as the case may be) under this deed.

- (4) To the extent that the State, the Conservation Commission or LandCorp has paid any monies to the MG Corporation or MG Charitable Trustees Pty Ltd under this deed then the State, the Conservation Commission or LandCorp (as the case may be) may recover the Indemnified Amount from the MG Corporation or MG Charitable Trustees Pty Ltd (as the case may be) as a debt owing by the MG Corporation or MG Charitable Trustees Pty Ltd to the State, the Conservation Commission or LandCorp (as the case may be).

## **8.2 Release**

The MG#1 PBC, the MG#4 Claimants, MG Corporation and MG Charitable Trustees Pty Ltd release the State and LandCorp in respect of any loss or damage suffered or incurred by any one or more 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 Previous Compensable Acts dealt with or future acts done under this deed.



## **9. APPLICATION FOR REGISTRATION OF ILUA**

### **9.1 Application for Registration of ILUA**

- (1) The Parties agree to the State applying in writing to the Registrar for this deed to be registered on the Register as an Indigenous Land Use Agreement Area Agreement under sections 24CA to 24CL (inclusive) of the NTA and regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth).
- (2) At the same time as executing this deed, the KLC must certify this deed in accordance with sections 24CG(3)(a) and 203BE(6) of the NTA by executing an authorisation certificate in or substantially in the form of Schedule 4.
- (3) As soon as practicable after the Execution Date, the State must apply in writing to the Registrar for this deed to be registered on the Register, which application must be in or substantially in the form in Schedule 5.
- (4) All Parties must, at their own expense, take all reasonable steps to ensure that this deed is registered on the Register within nine (9) months of the Execution Date.
- (5) Without limiting clause 9.1(4), the Parties must not object to the registration of this deed on the Register. If any Party becomes aware of an objection having been lodged in relation to the registration of this deed on the Register then that Party must notify the other Parties and the Parties must do all things within their power and necessary and incidental to ensure that the objection is withdrawn.
- (6) The Parties agree that they must not, without the consent in writing of each of the other Parties, make any application to revoke or vary the registration of this deed on the Register.

### **9.2 If deed is not registered**

- (1) If this deed is not registered on the Register in accordance with clause 9.1 after 18 months after the Execution Date, the Parties must use their best endeavours and must do all things and give all consents necessary to ensure that by way of an agreement, undertaking or commitment, all of the:
  - (a) future acts covered by this deed can be validly done in accordance with the NTA;
  - (b) commitments given by the MG#1 PBC and the MG#4 Native Title Claim Group in relation to compensation for future acts and Previous Compensable Acts under this deed extend to each and every member of the MG People and are given full force and effect under the NTA; andthe Parties agree that any agreement, undertaking or commitment given or made under this clause, must provide that compensation and benefits provided in this deed for the MG People must be the compensation and benefits in relation to future acts done under clause 9.2(1)(a) and the commitments given in relation to the Previous Compensable Acts under clause 9.2(1)(b).
- (2) For the avoidance of doubt, any future act done in accordance with clause 9.2(1)(a) may not be subject to the non-extinguishment principle.

**10. NOTICES**

- (1) A notice, nomination or other communication in connection with this deed:
  - (a) must be in writing;
  - (b) may be given by an authorised officer on behalf of a Party; and
  - (c) must be given to a Party in either of the following ways:
    - (i) 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
    - (ii) 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.
- (2) Notices to be given to the State in respect of the various clauses set out in item 1.3 of Schedule 1 must be sent to the relevant addressee in respect of the clause concerned. The State may vary the addressee for particular clauses from time to time by notice to the other Parties.
- (3) 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:
  - (a) in the case of a letter sent by post, on the fifth Business Day after posting;
  - (b) 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
  - (c) if received after 5.00 pm, is taken to be received on the next Business Day.

## **11. MISCELLANEOUS**

### **11.1 Severance**

If any clause of this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

### **11.2 Waiver**

- (1) Waiver of any right arising from a breach of this deed or of any power arising upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the Party granting the waiver.
- (2) A failure or delay in exercise, or partial exercise, of:
  - (a) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (b) a power created or arising upon default under this agreement or upon the occurrence of an Event of Default,does not result in a waiver of that right or power.
- (3) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this deed or on a default under this deed or on the occurrence of an event of default as constituting a waiver of that right or power.
- (4) A Party may not rely on any conduct of another Party as a defence to the exercise of a right or power by that other Party.
- (5) This clause may not itself be waived except by writing.

### **11.3 Assignment**

- (1) Subject to clauses 4, 8 and 28, the MG#4 Claimants, the MG#1 PBC and the MG Corporation must not assign any right, title or interest in any benefit to be provided by the State, LandCorp or the CPC Parties under this deed without the prior consent of the State, LandCorp or the CPC Parties (as the case may be).
- (2) For the avoidance of doubt, nothing in this clause 11.3 affects the right of the MG Corporation to transfer, lease or otherwise deal with any property transferred or granted to it under or in accordance with this deed.

### **11.4 No acknowledgment of native title**

By entering into this deed the State, LandCorp, Conservation Commission, Green Swamp Parties and CPC Parties shall not be taken to acknowledge the existence or otherwise of native title in relation to any of the land or waters the subject of this deed, except in accordance with the MG#1 Determination and clause 44 (dealing with the MG#4 Claim).

### **11.5 Extent of State and LandCorp liability**

The Parties acknowledge and agree that, except as provided in clauses 31, 32, 33 and 34, 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 MG Corporation under any Aboriginal Development Package or any Aboriginal Development Undertaking.

**11.6 Further assurances**

Each Party must do all things and execute all further documents necessary to give full effect to this agreement.

**11.7 Entire agreement and previous agreements**

- (1) Subject to clause 11.7(2), this deed supersedes the Ord Global Negotiations Memorandum of Understanding dated 12 November 2004 and all previous agreements between any of the Parties in respect of its subject matter, and embodies the entire agreement between the Parties in respect of its subject matter.
- (2) This deed does not terminate or replace the Land Exchange Agreement. However, this deed varies the Land Exchange Agreement in relation to:
  - (a) the way in which the State acquires native title rights and interests;
  - (b) the grants to CPC or CPC's nominees of any licence, easement or right of way in accordance with clauses 2.3(b) and 2.3(c) of the Land Exchange Agreement; and
  - (c) the timing of the transfer of freehold title to CPC,and to that extent the provisions of this deed prevail over the Land Exchange Agreement.

**11.8 Other agreements**

Nothing in clause 16 (dealing with Compensation) affects the obligations of:

- (1) the State under the Lakeside (Area 95P) Lot Payment Deed dated 9 December 2003 or under the Packsaddle and Riverfarm Road Lot Payment Deed dated 9 December 2003; or
- (2) any other person under any other agreement entered into before the Execution Date.

**11.9 Counterparts**

If the Parties agree in writing, this deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this deed by signing any counterpart.

**11.10 Confidentiality**

The existence and terms of this deed are not subject to any confidentiality provisions.

**11.11 Costs and stamp duty**

- (1) Each Party is responsible for its own legal and other costs and expenses in connection with this deed.
- (2) The State must pay any stamp duty on this deed.
- (3) Any stamp duty payable on instruments created in accordance with this deed is payable in accordance with the *Stamp Act 1921* (WA).

**11.12 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 the State of Western Australia in relation to any matter involving this deed.