

Ballardong People ILUA

Gnaala Karla Booja ILUA

South West Boojarah #2 ILUA

Wagyl Kaip & Southern Noongar ILUA

Whadjuk People ILUA

Yued ILUA

Property Transfer Deed and Funding Agreement Variation dated 9 August 2021
between

Perpetual Trustee Company Limited ACN 000 001 007 of Level 18, 123 Pitt Street, Sydney,
New South Wales as the Trustee of the Noongar Boodja Trust (**NBT Trustee**)

And

Noongar Boodja Land Sub Pty Ltd ACN 649 102 876 as the Trustee of the Land Sub of Level
29, 2 The Esplanade, Perth in the State of Western Australia (**Land Sub Trustee**)

And

Housing Authority, a statutory authority constituted under the *Housing Act 1980* (WA), of 5
Newman Court, Fremantle, Western Australia (**Authority**)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Document:

Agreements means:

- (a) the Ballardong People indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;

- (b) the Gnaala Karla Booja indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;
- (c) the South West Boojarah #2 indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;
- (d) the Wagyl Kaip & Southern Noongar indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015;
- (e) the Whadjuk People indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015; and
- (f) the Yued indigenous land use agreement between the Representative Parties, SWALSC, the State and the Government Parties (all as more fully described in the agreement) dated 8 June 2015.

Document means this document and the annexures to it.

Effective Date means the date on which this Document is executed by the Authority.

Parties means the parties to this Document.

1.2 Definitions in the Agreements

Terms which are defined in the Agreements also apply to this Document.

1.3 Rules for interpreting this Document

The rules of interpretation which apply to the Agreements also apply to this Document.

2. OPERATIVE PROVISIONS

2.1 Parties to this Document

Pursuant to clause 14(d) of Schedule 10 of the Agreements, the Authority, the NBT Trustee and the Land Sub Trustee have been authorised to execute this Document without reference to the other parties to the Agreements.

2.2 Variation of Agreements

- (a) On the Effective Date the Parties agree that:
 - (i) the document at Part 1 of Annexure P of Schedule 10 of the Agreements is amended in accordance with the document at Annexure A to this Document; and
 - (ii) the document at Annexure Q of Schedule 10 of the Agreements is amended in accordance with the document at Annexure B to this Document.

2.3 Costs

Each Party to this Document must each pay their own legal and other costs in connection with the preparation and signing of this Document.

2.4 Governing law

- (a) This Document is governed by the laws of Western Australia.
- (b) Each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

2.5 Counterparts

- (a) This Document may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Document by signing any counterpart.

Execution page

SIGNED in my presence for and on)
behalf of **PERPETUAL TRUSTEE**)
COMPANY LIMITED (ACN 000 001 007))
under the Power of Attorney dated 16)
September 2014 (Registration No.)
M801764) who are personally known to)
me and each of whom declare they have)
no notice of revocation of the Power of)
Attorney thereof:



Signature of Attorney

MARILYN HEARNE

Print Name

MANAGER

Title

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address



Signature of Attorney

DANZEL JOHN GALLACHER

Print Name

SENIOR ADVISER

Title

Witness

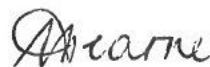
Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

SIGNED in my presence for and on)
behalf of **NOONGAR BOODJA LAND**)
SUB PTY LTD (ACN 649 102 876) under)
the Power of Attorney dated 31 March)
2021 (Registration No. 0700985) who are)
personally known to me and each of)
whom declare they have no notice of)
revocation of the Power of Attorney)
thereof:



Signature of Attorney

MARILYN HEARNE

Print Name

MANAGER

Title

Witness

Jai Wilson

Witness Name

3178 Hamilton St Bassendean WA
Witness Address



Signature of Attorney

TALIAH PAYNE

Print Name

SENIOR MANAGER

Title

Witness

Jai Wilson

Witness Name

3178 Hamilton St Bassendean WA
Witness Address

The Common Seal of the HOUSING
AUTHORITY is hereto affixed in the
presence of the Chief Executive Officer,
pursuant to regulation 5 of the Housing
Regulations 1980:)
)
)
)
)



[affix common seal here]

Michael Rowe
Chief Executive Officer

Signed 12:05pm 9 August 2021

Annexure A
Amended Property Transfer Deed

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Annexure A
Amended Property Transfer Deed

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

PROPERTY TRANSFER DEED

Housing Authority
5 Newman Court
FREMANTLE WA 6160

THIS DEED is made on

9 August

2021

BETWEEN Housing Authority, a statutory authority constituted under the *Housing Act 1980* (WA), of 5 Newman Court, Fremantle, Western Australia (**Authority**).

AND Perpetual Trustee Company Limited (ACN 000 001 007) as the Trustee of the Noongar Boodja Trust of Level 18, 123 Pitt Street, Sydney in the State of New South Wales (**NBT Trustee**)

AND Noongar Boodja Land Sub Pty Ltd ACN 649 102 876 as the Trustee of the Land Sub of Level 29, 2 The Esplanade, Perth in the State of Western Australia (**Land Sub Trustee**)

BACKGROUND

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

THE PARTIES AGREE AS FOLLOWS

1 DEFINED TERMS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the contrary intention appears:

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

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

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

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

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

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

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

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

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

Land Sub has the meaning given in the Settlement Terms;

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

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

NBT means the Noongar Boodja Trust established by the Trust Deed;

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

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

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

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

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

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

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

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

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

Settlement Terms means the settlement terms attached to the SW ILUAs at Schedule 9;

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

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

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

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

Trust Deed means trust deed establishing the NBT between William Michael Gerard Lawrie as Settlor and the NBT Trustee dated 29 March 2021.

1.2 Interpretation

(a) In this document:

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

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

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

- (vii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement; and
- (viii) clause headings are for convenience only and will be ignored in the interpretation of this Deed.

2 TERM OF THIS DEED

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

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

3 Relationship with SW ILUAs

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

4 TRANSFER OF PROPERTY

4.1 The Properties

- (a) Subject to clause 3 and clause 5, the Authority agrees to transfer and the Land Sub Trustee agrees to accept an estate in fee simple in each of the Properties referred to in Schedule 1:
 - (i) on the terms and conditions in this Deed; and
 - (ii) without limiting paragraph (a) above, for no monetary consideration but as part of the Compensation.
- (b) If the Land Sub Trustee refuses to accept the Property then Schedule 1 is reduced by that one Property.

4.2 Time to Effect Transfer

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

4.3 Part of Transfer

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

5 SUBSTITUTE PROPERTY

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

6 PROPERTY SETTLEMENT

6.1 Nomination of Property Settlement Date

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

6.2 Property Settlement Process

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

6.3 Post Property Settlement

- (a) The Authority must lodge the Transfer and every other document required to enable Transfer to be registered at Landgate after the Property Settlement Date and the Authority must use its best endeavours to ensure that Transfer is registered as soon as possible.
- (b) If a requisition notice is issued by Landgate in relation to the registration of the Transfer or any other document which is lodged for registration with the Transfer, the Parties must immediately do everything reasonably necessary to satisfy the requirements of the requisition notice.
- (c) Where a requisition notice is issued by Landgate in respect of a document prepared by or on behalf of the Authority, the Authority will pay the fee required by Landgate in respect of that requisition notice.

7 POSSESSION AND RISK

7.1 Possession

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

7.2 Risk

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

8 TITLE

8.1 Inspection of Title

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

8.2 No Requisitions on Title

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

9 ERROR OR MISDESCRIPTION

9.1 Meaning of Error or Misdescription

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

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

9.2 No Termination or Delay in the Property Settlement

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

- (a) entitle the NBT Trustee or the Land Sub Trustee to terminate this Deed;
- (b) entitle the NBT Trustee or the Land Sub Trustee to a Substitute Property;
- (c) result in any deferment or delay in Property Settlement; or
- (d) entitle the NBT Trustee or the Land Sub Trustee to any compensation.

10 ENCUMBRANCES

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

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

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

11 DIVIDING FENCES

11.1 Boundaries

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

11.2 No claim for Dividing Fences

- (a) Both the NBT Trustee and the Land Sub Trustee acknowledge and accept the state and condition of any boundary fence or wall erected on each Property as is, and for the avoidance of doubt, the NBT Trustee and the Land Sub Trustee acknowledge that the Authority has no obligation to:
 - (i) erect a new boundary fence or wall if no boundary fence or wall is in place at Property Settlement; or
 - (ii) replace or repair any existing boundary fence or wall, unless the Authority has been notified in writing of a claim by an adjoining owner (other than the Land Sub), prior to transfer of a Property to the Land Sub, in which case:

- (A) the Authority undertakes to notify the NBT Trustee and the Land Sub Trustee in writing of that claim as soon as practicable after being notified of the claim; and
 - (B) the Authority agrees to complete the works required pursuant to that claim at its cost.
- (b) Neither the NBT Trustee nor the Land Sub Trustee may make any claim against the Authority pursuant to the *Dividing Fences Act 1961* (WA) or however else concerning:
 - (i) the construction of or contribution to the cost of construction of any dividing fences or walls;
 - (ii) the repair and maintenance of or contribution to the costs of repair and maintenance of any dividing fences or walls; or
 - (iii) any other liability in respect of a dividing fence or wall including any liability the Authority may have incurred to any adjoining owners.

11.3 Contribution from Adjoining Owners

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

12 RATES AND TAXES

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

13 NBT TRUSTEE'S AND LAND SUB TRUSTEE'S ACKNOWLEDGEMENTS

13.1 Property Transferred 'as is'

The NBT Trustee and the Land Sub Trustee acknowledge and agree:

- (a) that each Property is transferred 'as is, where is' and with all faults, defects and characteristics whether they are apparent or ascertainable on inspection or not,

and without any obligation on the Authority to disclose or particularise any faults, defects or characteristics known to the Authority;

- (b) no warranty or representation has been given or made to the NBT Trustee or the Land Sub Trustee by the Authority or any of its agents, employees or contractors or any other person on its behalf as to:
 - (i) the title to each Property;
 - (ii) any encumbrance, restriction or right in favour of any third party affecting each Property;
 - (iii) the condition or state of repair of each Property.
- (c) the Authority will not be liable under any circumstances to make any allowance or compensation to the NBT Trustee or the Land Sub Trustee by the exclusion of warranties or representations in the Deed or for any fault, defect or characteristic in each Property; and
- (d) the NBT Trustee and the Land Sub Trustee have thoroughly read and understood this Deed and had the opportunity to produce this Deed to professional advisors for the purpose of receiving independent legal and/or financial advice.

13.2 Own Enquiries

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

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

and shall be deemed to accept the transfer of an estate in fee simple in each Property in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement or representation whatsoever made or

alleged to have been made to the NBT Trustee or the Land Sub Trustee by the Authority or any of its employees, contractors or agents.

13.3 Planning acknowledgement

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

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

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

14 LIMITING OF LIABILITY

- (a) Neither the NBT Trustee nor the Land Sub Trustee will make any objection or requisition or claim against the Authority for compensation or to rescind this Deed and the Authority will not be liable to indemnify the NBT or the Land Sub whatsoever and howsoever arising by reason of:
 - (i) any Property being unsuitable for any particular purpose;
 - (ii) the area of any Property being different from the area indicated on any plan, brochure, material or other publication issued or published by the Authority or on the Authority's behalf or as indicated on the Certificate of Title to each Property;
 - (iii) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone or other services or connections to each Property, or in respect of the fact that any services or connections may be joint services to any other land, or because any facilities for services for any other land pass through any Property;
 - (iv) any encroachment onto any Property by any improvement which does not form part of that Property, or the encroachment onto adjoining land of any improvement which forms part of any Property;

- (v) the location of any sewerage, water or drainage pipes or services affecting each Property or that any sewer passes through, or penetrates any Property;
 - (vi) the presence of Asbestos on any Property; or
 - (vii) the fact that the current use of any Property may not be an authorised use under any applicable zoning or use law, scheme or regulation.
- (b) The NBT Trustee and the Land Sub Trustee both enter into the terms of this Deed only in the capacity of Trustee and in no other capacity and are entitled to the indemnities provided for in clause 22.7 of the Trust Deed, subject to the limitations specified in clause 22.8 of the Trust Deed.

15 ENVIRONMENTAL MATTERS

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

16 NBT AND LAND SUB INDEMNITY

- (a) The NBT Trustee and the Land Sub Trustee jointly and severally indemnify and will keep indemnified the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
- (i) a breach of this Deed by the NBT Trustee or the Land Sub Trustee;
 - (ii) any negligent or tortious act or omission of the NBT Trustee or the Land Sub Trustee arising out of or in connection with this Deed;
 - (iii) any breach by the NBT Trustee or the Land Sub Trustee of a State or Commonwealth law arising out of or in connection with this Deed; and
 - (iv) any third party claim arising out of or in connection with this Deed and only provided that risk in relation to the Properties has been transferred to the Land Sub in accordance with clause 7.2 of this Deed.
- (b) The NBT Trustee's or the Land Sub Trustee's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the Indemnified Parties or their officers, servants, agents, contractors, invitees and licensees.
- (c) The Parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of this indemnity.
- (d) To the fullest extent available at law, each of the NBT Trustee and the Land Sub Trustee release the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the NBT or the Land Sub may suffer or incur in respect of or in connection with any of the matters referred to in clauses 9, 10, 12, 13, 14 and 15.
- (e) The NBT Trustee and the Land Sub Trustee acknowledge and agree that sub-clause (d) may be pleaded as an absolute bar to any relief, compensation or claim sought by the NBT Trustee or the Land Sub Trustee against the Authority.
- (f) This clause is subject to clause 14(b) of this Deed.

17 DISPUTES AND MEDIATION

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Deed (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Deed has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute (**Notice of Dispute**).
- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties have not resolved the Dispute within a period of twenty (20) Business Days after receipt of the Notice of Dispute, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, twenty (20) Business Days after receipt of the Notice of Dispute, the Parties cannot agree on a particular mediator to be appointed, the Parties must request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within twenty (20) Business Days of participating in the first mediation with the mediator, or such other period of time as agreed by the Parties, then either Party is thereafter entitled to commence action to resolve the dispute in a court of competent jurisdiction or, if agreed to by the Parties by arbitration under the *Commercial Arbitration Act 2012* (WA).
- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

18 GST

- (a) Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Deed has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- (c) If GST is payable as a consequence of any supply made under or in connection with this Deed by a party making a supply (**Supplier**), the recipient of that supply must pay an additional amount for GST (**GST Amount**) to the Supplier.
- (d) The recipient must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated.

If the GST Amount is not calculated on consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.

- (e) For the avoidance of doubt, if a GST Amount is payable on any taxable supply that is made for a period or on a progressive basis and the consideration for the taxable supply is to be provided on a progressive or periodic basis, the recipient must pay the GST Amount, subject to the receipt of a Tax Invoice.
- (f) If at any time an adjustment is made or required to be made between the Supplier or any other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made under or in connection with this Contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and any payment necessary to give effect to the adjustment must be made.
- (g) The recipient must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- (h) As a condition precedent to payment of any GST Amount or any amount including any GST Amount, the Supplier must provide to the recipient a Tax Invoice complying with the GST Act.
- (i) If one of the Parties to this Deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Deed, then the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.
- (j) In the event that non-monetary consideration is provided under this Deed, the Parties to this Deed will seek to agree upon the GST-exclusive market value of the non-monetary consideration and where appropriate, the Parties must apply clauses 18(b) to 18(h) (inclusive) in respect of any non-monetary consideration that is treated as a taxable supply.
- (k) Notwithstanding Clause 18(h), where non-monetary consideration is provided under this Deed, the Parties agree to issue a Tax Invoice to each other in respect of the non-monetary consideration that complies with the GST Act and where appropriate, the Tax Invoice must show any GST Amount payable.
- (l) Where the Parties agree to apply the margin scheme, the margin scheme will be applied to calculate the amount of GST on the sale of the Property by the Authority under this Deed. The purchaser acknowledges that it will not be entitled to an input tax credit for the acquisition of the Property under this Deed. Where any GST is payable under the margin scheme, clause 18(c) will apply.

19 COSTS AND DUTY

19.1 Legal and Other Costs

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

19.2 Transfer Duty and Registration Fee

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

20 NOTICES

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

21 CONFIDENTIALITY

- (a) In this clause 21 **Confidential Information** means all information provided by any of the Parties under or for the purposes of this Deed:
 - (i) during negotiations preparatory to the execution of this Deed; and
 - (ii) during the term of this Deed,that is identified as confidential by the Party providing the information including the addresses of any Properties that are intended for or are transferred by the Authority to the Land Sub, and details of past or current tenants of any of those Properties.
- (b) Subject to the remainder of this clause 21, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in sub-clause (c).
- (c) Subject to sub-clause (d), a Party receiving Confidential Information may disclose such information in any of the following circumstances:
 - (i) if it has the prior written consent of the Party from whom it received the Confidential Information;
 - (ii) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;
 - (iii) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information;
 - (iv) to the extent that the disclosure of the information is reasonably necessary for any processes or applications under any law or related to any approvals;

- (v) in processes for resolving, settling or progressing any dispute or litigation concerning this Agreement and its subject matter;
 - (vi) to the receiving Party's officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
 - (vii) to a Regional Corporation (as defined in the SW ILUAs);
 - (viii) to SWALSC, and when appointed by the NBT, the Central Services Corporation (as defined in the SW ILUAs);
 - (ix) to the legislative or executive arms of the Government of Western Australia;
 - (x) to the extent required by law;
 - (xi) to a Court or tribunal of competent jurisdiction; and
 - (xii) as otherwise permitted or required by this Deed.
- (d) Before making any disclosure to a person under sub-clause (c), a Party (**Disclosing Party**) must:
- (i) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Deed;
 - (ii) before making any disclosure (other than under sub-clauses (c) (ix), (x) and (xi), and only if it is reasonably practicable and lawful to do so, notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
 - (iii) in the case of a disclosure to a person or entity under sub-clause (c) (vi), (vii) and (viii), procure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 21 other than where the person or entity is under a statutory obligation of confidentiality.
- (e) Each Party acknowledges that:
- (i) it is aware that any breach of this clause 21 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy; and
 - (ii) in the event of a suspected or actual breach of this clause 21, or of any obligation of confidentiality under this Deed, any aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 21; and
 - (iii) clause 17 of this Deed does not apply to this sub-clause (e).
- (f) Disclosure of Confidential Information in connection with this Deed does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

22 GENERAL PROVISIONS

22.1 Assignment and Encumbrances

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

22.2 Entire Agreement

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

22.3 Governing Law and Jurisdiction

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

22.4 Severance

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

22.5 Waiver

A right or power under this Deed shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;
- (b) a waiver of a right or power on one or more occasion by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

22.6 No Merger

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

22.7 Counterparts

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

22.8 Further action

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

22.9 Survival

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

EXECUTED by the Parties as a deed

The Common Seal of the HOUSING)
AUTHORITY is hereto affixed in the)
presence of the Chief Executive Officer,)
pursuant to regulation 5 of the Housing)
Regulations 1980:)



[affix common seal here]

Michael Rowe
Chief Executive Officer

Signed 12:05pm 9 August 2021

SIGNED in my presence for and on behalf)
of PERPETUAL TRUSTEE COMPANY)
LIMITED (ACN 000 001 007) under the)
Power of Attorney dated 16 September)
2014 (Registration No. M801764) who are)
personally known to me and each of whom)
declare they have no notice of revocation)
of the Power of Attorney thereof:)

Mearne

Signature of Attorney

MARILYN HEARNE

Print Name

MANAGER

Title

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

[Signature]

Signature of Attorney

DANIEL SEAN GALLACHER

Print Name

SENIOR ADVISER.

Title

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

SIGNED in my presence for and on behalf)
of NOONGAR BOODJA LAND SUB PTY)
LTD (ACN 649 102 876) under the Power)
of Attorney dated 31 March 2021)
(Registration No. O700985) who are)
personally known to me and each of whom)
declare they have no notice of revocation)
of the Power of Attorney thereof:)

M. Hearne

Signature of Attorney

MARILYN HEARNE

Print Name

MANAGER

Title

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

T. Payne

Signature of Attorney

TALIAH PAYNE

Print Name

SENIOR MANAGER

Title

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

SCHEDULE 1

Certificate of Title Details				

[illegible]

Annexure B
Amended Funding Agreement

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

FUNDING AGREEMENT

Housing Authority
5 Newman Court
FREMANTLE WA 6160

THIS AGREEMENT is made on

9 August

2021

BETWEEN HOUSING AUTHORITY, a statutory authority constituted under the *Housing Act 1980* (WA), of 5 Newman Court, Fremantle, Western Australia (**Authority**)

AND Perpetual Trustee Company Limited (ACN 000 001 007) as the Trustee of the Noongar Boodja Trust of Level 18, 123 Pitt Street, Sydney in the State of New South Wales (**NBT Trustee**)

AND Noongar Boodja Land Sub Pty Ltd ACN 649 102 876 as the Trustee of the Land Sub of Level 29, 2 The Esplanade, Perth in the State of Western Australia (**Land Sub Trustee**)

BACKGROUND

- A. This Agreement is entered into pursuant to the SW ILUAs.
- B. The Parties have entered into the Property Transfer Deed which identifies the Properties and details the timing and process for their transfer.
- C. The Parties acknowledge that as part of the transfer of each Property, the Authority will make available to the NBT Trustee payment from the Fund to be applied towards the Project Works.
- D. The NBT Trustee shall decide upon, manage, administer, undertake and be responsible for Project Works for any of the Properties on behalf of the Land Sub Trustee.
- E. The Authority will make payments from the Fund to the NBT Trustee for the Project Works in accordance with the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this funding agreement, including its recitals, the Schedule and annexures (if any);

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

Auditor General means the Auditor General for the State of Western Australia;

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

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

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

Fund means the amount specified in Item 1 of the Schedule;

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

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

Land Sub has the meaning given in the Settlement Terms;

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

NBT means the Noongar Boodja Trust established by the Trust Deed;

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

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

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

Party means each of the Authority or the NBT Trustee or the Land Sub Trustee as the context requires and **Parties** means all of them;

Property Transfer Deed means the agreement of even date entered into between the Parties to govern the transfer of the Properties;

Project Works means either the:

- (a) refurbishment, upgrade or repair work on any of the Properties to bring an existing dwelling to a good and tenable condition that is ready for occupation; or
- (b) demolition of a Property,

as determined by the NBT Trustee in accordance with clause 6;

Property or Properties has the meaning given in the Property Transfer Deed between the Authority, the NBT Trustee and the Land Sub Trustee;

Practical Completion means the completion of Project Works on any of the Properties such that the Property is ready for occupation or that any improvements on a Property have been demolished;

Schedule means the schedule to this Agreement;

Schedule of Project Works means a description of activities undertaken for the Project Works and referred to in Item 2 of the Schedule;

Settlement Terms means the settlement terms attached to the SW ILUAs at Schedule 9;

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

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

Trust Deed means trust deed establishing the NBT between William Michael Gerard Lawrie as Settlor and the NBT Trustee dated 29 March 2021.

1.2 Interpretation

(a) In this document:

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

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

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

- (vii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement; and
- (viii) clause headings are for convenience only and will be ignored in the interpretation of this Agreement.

2. Term of this Agreement

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

- (a) 12 months after the last Property is transferred to the Land Sub pursuant to the Property Transfer Deed; or
- (b) the Fund is expended; or
- (c) the termination date of the last SW ILUAs; or
- (d) a date fixed by written agreement between the Parties.

3. Relationship with SW ILUAs

- (a) The Parties acknowledge and accept the terms of clauses 9.6, 9.7 and 10 of the SW ILUAs and how the operation of those clauses may affect this Agreement
- (b) Where any one or more of clauses 9.6, 9.7 and 10 applies in any one or more SW ILUAs this Deed will not apply and no funding will be provided in relation to any transferred Property that is located in any area that is covered by that or those SW ILUAs unless the Authority agrees otherwise in writing.

4. Authority to establish the Fund

As soon as reasonably practicable after the Commencement Date the Authority will establish the Fund.

5. Refurbishment Recommendations

- (a) As part of the transfer of each Property the Authority will provide the NBT Trustee with a BCA for the Property except where the Property comprises vacant land.
- (b) The BCA will contain recommendations that either:
 - (i) no refurbishment of the existing dwelling be required; or
 - (ii) the existing dwelling be refurbished or repaired, in which case the BCA will also provide details of the works recommended to be undertaken to bring the dwelling to a tenantable standard; or
 - (iii) the existing dwelling be demolished.
- (c) The NBT Trustee is under no obligation to the Authority to comply with the recommendations in the BCA, either as to whether to refurbish or demolish,

or as to the details of the works that will be undertaken with respect to any particular Property.

- (d) For the avoidance of doubt, both the NBT Trustee and the Land Sub Trustee acknowledge that the Authority will have no responsibility or liability in respect of any recommendation made in the BCA.

6. Project Works

6.1. NBT Trustee represents the Land Sub

The Parties acknowledge that the NBT Trustee will undertake the Project Works for and on behalf of the Land Sub.

6.2. Risk

- (a) The NBT Trustee accepts liability for all risks in respect of or arising from any Project Works undertaken by the NBT Trustee.
- (b) To the fullest extent available at law, each of the NBT Trustee and the Land Sub Trustee release the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the NBT Trustee or the Land Sub Trustee may suffer or incur in respect of or in connection with the Project Works.

6.3. Procuring Project Works

The NBT Trustee has sole responsibility for the engagement of any consultant, project manager, builders and tradespersons to undertake or oversee any Project Works.

6.4. Obtaining consents and approvals

In undertaking any Project Works, the NBT Trustee must obtain all necessary consents, approval and permits, including but not limited to:

- (a) any consent or other approval required for demolition of any existing building or structure on the Property; and
- (b) any building approval or licence including those which are required to be obtained from planning and/or local government in relation to the Project Works.

6.5. Competence of contractors engaged to undertake Project Works

The NBT Trustee must ensure that the contractors engaged to undertake any Project Works are appropriately qualified and are compliant with all requisite licensing, registration or approval requirements, including but not limited to requirements for works or demolition where Asbestos may be present.

6.6. Insurance of contractors engaged to undertake Project Works

The NBT Trustee must ensure that the contractors engaged to undertake any Project Works are adequately insured.

6.7. NBT Trustee to comply with Government policies

In carrying out the Project Works the NBT Trustee must comply with the following State Government policies as if it was a State public authority, namely:

- Value for Money.
- Probity and Accountability
- Open and Effective Competition
- Buy local
- Priority Start Building

details of which can be obtained at this website:

<http://www.finance.wa.gov.au/cms/content.aspx?id=3699>

7. Payments from the Fund

- (a) An initial payment of \$500,000 (five hundred thousand dollars) (**Float**) will be released by the Authority to the NBT Trustee from the Fund not later than twenty (20) Business Days after the date of the transfer of the first Property by the Authority to the Land Sub.
- (b) The NBT Trustee will use the Float to make payments toward the costs of any Project Works undertaken in accordance with the requirements of this Agreement (**Payments**).
- (c) The Authority will reimburse the NBT Trustee from the Fund for the Payments (**Reimbursement**) subject to the Float comprising a total of no more than \$500,000 (five hundred thousand dollars) at all times.
- (d) Reimbursements must be based on valid tax invoices provided by the NBT Trustee to the Authority and will be subject to:
 - (i) the NBT Trustee having first submitted to the Authority a Schedule of Project Works in respect of a Property, and providing any amended Schedule of Works where the anticipated works changes; and
 - (ii) compliance with the Schedule of Project Works or any amended Schedule of Project Works from time to time for that Property.
- (e) Notwithstanding any other provision contained in this Agreement, unless the Parties agree otherwise in writing, the total Reimbursement from the Fund is capped at a maximum of \$2,000,000 (two million dollars) for each financial year of the term of this Agreement commencing from the Commencement Date.
- (f) Once the Fund is exhausted, the balance of the Float must be used by the NBT Trustee to pay the costs of any Project Works and accounted for in accordance with clause 7(d), except that no Reimbursements will be made.

- (g) The NBT Trustee must repay to the Authority on demand any funds that the Authority has paid which are not used in accordance with this Agreement unless there has been written agreement otherwise between the Parties.
- (h) If the cost of all of the Project Works is less than the Fund, the remaining balance of the Fund will be retained by the Authority.
- (i) If the cost of all of the Project Works exceeds the value of the Fund, the NBT Trustee will be responsible for any difference.
- (j) The NBT Trustee must provide the Authority with an annual audited statement of income received from the Fund, including the Float, and expenditure on the Project Works (**Audited Statement**) within three (3) months of the end of each financial year for the term of this Agreement.
- (k) If the Audited Statement is not provided to the Authority in accordance with clause 7(j), then notwithstanding any other provision contained in this Agreement no further payments will be made from the Fund until clause 7(j) is first complied with.

8. Obligations of the NBT Trustee and the Land Sub Trustee

8.1. Use of Disbursement Payment

The NBT Trustee must use all payments from the Fund solely to meet or reimburse the cost of any Project Works undertaken.

8.2. Accounts

The NBT Trustee must keep proper financial records in accordance with generally accepted accounting principles and practices in respect of the Project Works.

8.3. Request for Information and Access

- (a) The NBT Trustee must provide the Authority with any documents or information relating to this Agreement or to any Project Works anticipated or undertaken, including any progress reports, evaluation reports, contracts and financial records, within ten (10) Business Days of receiving a request from the Authority.
- (b) Upon reasonable notice, the NBT Trustee must also provide the Authority, the Auditor General or their respective agents, with access at any reasonable time and from time to time to the NBT Trustee's premises, including any of the Properties, financial records, other documents including contracts, equipment and other property for the purpose of audit and inspection by the Authority or the Auditor General in order to verify compliance by the NBT Trustee with this Agreement.
- (c) The NBT Trustee must ensure that all contracts with contractors in respect of Project Works contain similar provisions which would require any contractor to provide similar access to the Authority and the Auditor General and their respective agents when requested.

8.4. General Undertaking of NBT Trustee /Land Sub Trustee

The NBT Trustee and the Land Sub Trustee must:

- (a) at all times duly perform and observe its obligations under this Agreement and will promptly inform the Authority of any occurrence which might adversely affect its ability to do so in a material way;
- (b) undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) comply with all State and Commonwealth laws, rules, regulations and by-laws; and
- (d) cooperate fully with the Authority in the administration of this Agreement.

9. Limitation of Liability

- (a) The Authority does not accept any responsibility or liability for the success or otherwise of any Project Works anticipated or undertaken and is not liable for any losses which may be suffered by the NBT Trustee or the Land Sub Trustee in undertaking the Project Works.
- (b) The NBT Trustee and the Land Sub Trustee both enter into the terms of this Deed only in the capacity of Trustee and in no other capacity and are entitled to the indemnities provided for in clause 22.7 of the Trust Deed, subject to the limitations specified in clause 22.8 of the Trust Deed.

10. Default and Termination

10.1. Event of Default

An event of default (**Event of Default**) occurs if the:

- (a) NBT Trustee or the Land Sub Trustee breaches any of its obligations under this Agreement which continues without remedy for ten (10) Business Days after notice in writing has been served on the NBT Trustee by the Authority;
- (b) NBT Trustee or the Land Sub Trustee breaches an obligation under this Agreement which is incapable of being remedied;
- (c) NBT Trustee or the Land Sub Trustee becomes insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth);
- (d) Authority has reasonable grounds to believe that the NBT Trustee or the Land Sub Trustee is unwilling or unable to comply with its obligations under this Agreement and remains of that belief despite notice in writing having been served by the Authority on the NBT Trustee to comply with the NBT Trustee's or Land Sub Trustee's obligations; or
- (e) Property Transfer Deed is terminated.

10.2. Effect of Event of Default

If an Event of Default occurs, the Authority may:

- (a) terminate this Agreement and recover any funds already paid but not expended on Project Works whether in whole or in part; or
- (b) suspend payments from the Fund.

10.3. Recommencement of Disbursement Payments

Where payments from the Fund have been suspended in accordance with clause 10.2(b), the Authority may, in its absolute discretion, recommence payments if and when the NBT Trustee or Land Sub Trustee has remedied the Event of Default.

11. Disputes and Mediation

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Agreement (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Agreement has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute (**Notice of Dispute**).
- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties have not resolved the Dispute within a period of twenty (20) Business Days after receipt of the Notice of Dispute, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, twenty (20) Business Days after receipt of the Notice of Dispute, the Parties cannot agree on a particular mediator to be appointed, the Parties must request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within twenty (20) Business Days of participating in the first mediation with the mediator, or such other period of time as agreed by the Parties, then either Party is thereafter entitled to commence action to resolve the dispute in a court of competent jurisdiction or, if agreed to by the Parties by arbitration under the *Commercial Arbitration Act 2012* (WA).
- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

12. NBT Trustee /Land Sub Trustee Indemnity

- (a) The NBT Trustee and the Land Sub Trustee jointly and severally indemnify and will keep indemnified the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
 - (i) a breach of this Agreement by the NBT Trustee or the Land Sub Trustee;
 - (ii) any negligent or tortious act or omission of the NBT Trustee or the Land Sub Trustee arising out of or in connection with this Agreement;
 - (iii) any breach by the NBT Trustee or the Land Sub Trustee of a State or Commonwealth law arising out of or in connection with this Agreement; and
 - (iv) any third party claim arising out of or in connection with this Agreement or the Project Works.
- (b) The NBT Trustee's or the Land Sub Trustee's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the Indemnified Parties or their officers, servants, agents, contractors, invitees and licensees.
- (c) The Parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of this indemnity.

13. Goods and Services Tax (GST)

- (a) Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- (c) If GST is payable as a consequence of any supply made under or in connection with this Agreement by a party making a supply (Supplier), the recipient of that supply must pay an additional amount for GST (GST Amount) to the Supplier.
- (d) The recipient must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount

is calculated. If the GST Amount is not calculated on consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.

- (e) For the avoidance of doubt, if a GST Amount is payable on any taxable supply that is made for a period or on a progressive basis and the consideration for the taxable supply is to be provided on a progressive or periodic basis, the recipient must pay the GST Amount, subject to the receipt of a Tax Invoice.
- (f) If at any time an adjustment is made or required to be made between the Supplier or any other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made under or in connection with this Contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and any payment necessary to give effect to the adjustment must be made.
- (g) The recipient must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- (h) As a condition precedent to payment of any GST Amount or any amount including any GST Amount, the Supplier must provide to the recipient a Tax Invoice complying with the GST Act.
- (i) If one of the Parties to this Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

14. Notices

- (a) Any notice or other communication which is required to be given or served under this Agreement (**Notice**) is duly given or served if in writing signed by a person duly authorised by the sender and delivered by hand or sent by prepaid post or facsimile transmission addressed to the other Party referred to in Item 3 of the Schedule.
- (b) Subject to paragraph (c), Notice is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of facsimile, on the date of transmission; and
- (c) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

15. Confidentiality

- (a) In this clause 15 **Confidential Information** means all information provided by any of the Parties under or for the purposes of this Agreement:

- (i) during negotiations preparatory to the execution of this Agreement; and
 - (ii) during the term of this Agreement,
- that is identified as confidential by the Party providing the information including the addresses of any Properties that are intended for or are transferred by the Authority to the Land Sub, and details of past or current tenants of any of those Properties.
- (b) Subject to the remainder of this clause 15, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in sub-clause (c).
 - (c) Subject to sub-clause (d), a Party receiving Confidential Information may disclose such information in any of the following circumstances:
 - (i) if it has the prior written consent of the Party from whom it received the Confidential Information;
 - (ii) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;
 - (iii) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information
 - (iv) to the extent that the disclosure of the information is reasonably necessary for any processes or applications under any law or related to any approvals;
 - (v) in processes for resolving, settling or progressing any dispute or litigation concerning this Agreement and its subject matter;
 - (vi) to the receiving Party's officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
 - (vii) to a Regional Corporation (as defined in the SW ILUAs);
 - (viii) to SWALSC, and when appointed by the NBT Trustee, the Central Services Corporation (as defined in the SW ILUAs);
 - (ix) to the legislative or executive arms of the Government of Western Australia;
 - (x) to the extent required by law;
 - (xi) to a Court or tribunal of competent jurisdiction; and
 - (xii) as otherwise permitted or required by this Agreement.
 - (d) Before making any disclosure to a person under sub-clause (c), a Party (**Disclosing Party**) must:
 - (i) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Agreement;

- (ii) before making any disclosure (other than under sub-clauses (c) (ix), (x) and (xi)), and only if it is reasonably practicable and lawful to do so, notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
 - (iii) in the case of a disclosure to a person or entity under sub-clause (c)(vi), (vii) and (viii), procure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 15 other than where the person or entity is under a statutory obligation of confidentiality.
- (e) Each Party acknowledges that:
 - (i) it is aware that any breach of this clause 15 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy;
 - (ii) in the event of a suspected or actual breach of this clause 15 or of any obligation of confidentiality under this Agreement, any aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 15; and
 - (iii) clause 11 of this Agreement does not apply to this sub-clause (e).
- (f) Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

16. General Provisions

16.1. Legal and other costs

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

16.2. Assignment and Encumbrances

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

16.3. Entire agreement

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

16.4. Governing law and jurisdiction

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

16.5. Severance

If any provisions of this Agreement 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 Agreement to the extent necessary unless it would materially change the intended effect and objectives of this Agreement.

16.6. Waiver

A right or power under this Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

16.7. No merger

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

16.8. Counterparts

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

16.9. Further action

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

16.10. Survival

Clauses 1, 7, 8, 9, 10.2, 12, 13, 14, 15 and 16 survive termination of this Agreement.

Executed by the Parties as an agreement

The Common Seal of the **HOUSING**)
AUTHORITY is hereto affixed in the)
presence of the Chief Executive Officer,)
pursuant to regulation 5 of the *Housing*)
Regulations 1980:)



[affix common seal here]

Michael Rowe
Chief Executive Officer

Signed 12:05pm 9 August 2021

SIGNED in my presence for and on behalf)
of **PERPETUAL TRUSTEE COMPANY**)
LIMITED (ACN 000 001 007) under the)
Power of Attorney dated 16 September)
2014 (Registration No. M801764) who are)
personally known to me and each of whom)
declare they have no notice of revocation)
of the Power of Attorney thereof:)
)
)

Hearne

Signature of Attorney

MARILYN HEARNE

Print Name

MANAGER

Title

J. Wilson

Witness

Jai Wilson

Witness Name

3178 Hamilton St Bassendean WA

Witness Address

[Signature]

Signature of Attorney

DANIEL JOHN GACCHER

Print Name

SENIOR ADVISER

Title

J. Wilson

Witness

Jai Wilson

Witness Name

3178 Hamilton St Bassendean WA

Witness Address

SIGNED in my presence for and on behalf)
of **NOONGAR BOODJA LAND SUB PTY**)
LTD (ACN 649 102 876) under the Power)
of Attorney dated 31 March 2021)
(Registration No. 0700985) who are)
personally known to me and each of whom)
declare they have no notice of revocation)
of the Power of Attorney thereof:)
)
)

Mearne

Signature of Attorney

MARILYN HEARNE

Print Name

MANAGER

Title

[Signature]

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

Payne

Signature of Attorney

TALIAH PAYNE

Print Name

SENIOR MANAGER

Title

[Signature]

Witness

Jai Wilson

Witness Name

3/78 Hamilton St Bassendean WA

Witness Address

SCHEDULE

Item 1: Fund

\$10,000,000 (ten million dollars).

Item 2: Schedule of Project Works

The following table should accompany all Tax Invoices.

Schedule of Project Works as at [Insert Date]				
Property Details		Project Works	BCA Ref Number	Expenses
Lot No.	Street Address	Description of activities undertaken		\$
Total Expenses for the Period				\$

Item 3: Notice Addresses for Service

(a) Authority

Contact Person:	Carol Cheney
Address for Service:	5 Newman Court, Fremantle WA 6160
Telephone No:	0432 839 346
Facsimile No:	

(b) NBT Trustee

Contact Person:	Jai Wilson
Address for Service:	Perpetual, 2 The Esplanade, Perth, Western Australia, 6000
Telephone No:	(08) 9224 4456
Facsimile No:	

(c) Land Sub Trustee

Contact Person:	Jai Wilson
Address for Service:	Perpetual, 2 The Esplanade, Perth, Western Australia, 6000
Telephone No:	(08) 9224 4456
Facsimile No:	