

**MICHAEL EVELEGH**

(“the Settlor”)

and

**PLAN B TRUSTEES LIMITED**  
**(ABN 90 054 737 156)**

(“the Trustee”)

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**DEED OF SETTLEMENT**

**WAGYL KAIP AND SOUTHERN NOONGAR NATIVE TITLE CHARITABLE TRUST**

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**THE WAGYL KAIP AND SOUTHERN NOONGAR NATIVE TITLE ABORIGINAL  
CHARITABLE TRUST**

THIS DEED OF SETTLEMENT is made on the 21<sup>st</sup> day of *April* 2008

**PARTIES:**

**MICHAEL EVELEGH** of RISC Pty Ltd whose registered offices are situated at Level 3 1118 Hay Street West Perth in the State of Western Australia ("the Settlor")

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AND

**PLAN B TRUSTEES LIMITED** (ABN 90 054 737 156) of Level 28 152-158 St Georges Terrace Perth in the State of Western Australia 6000

("the Trustee")

**RECITALS**

- A. The Settlor has paid or intends on execution of the Deed to pay to the Trustee the settled sum of \$5 (the "Settled Sum")
- B. The Trustee has agreed to be the Trustee of the Trust upon the trusts and subject to the terms and conditions set out in this Deed.
- C. The WAGYL KAIP AND SOUTHERN NOONGAR NATIVE TITLE CHARITABLE TRUST be established with the objects being substantially to provide relief from poverty, sickness, suffering, destitution, misfortune and helplessness to the Wagyl Kaip and Southern Noongar People and to support economic, social, health, educational, cultural and heritage benefits to the Wagyl Kaip and Southern Noongar People.
- D. Pioneer Nickel Limited is required under the terms of a Deed of Agreement between Pioneer Nickel Limited, Galaxy Resources Limited, *[name removed for cultural reasons]* and Aden Eades to make certain payments to the trustee to be used in furtherance of the objects of the trust as set out in the Agreement.

## TERMS AND CONDITIONS

### 1. DEFINITIONS & INTERPRETATION

#### 1.1 DEFINITIONS

In this Deed, unless the context indicates a contrary intention, the following terms shall have the following meanings:-

**“Accounting Period”** means any one of the following periods;

- (a) The period from the date of this Deed to 30 June next;
- (b) Each following period of twelve (12) months ending on 30 June in each year until 30 June immediately preceding the Vesting Day (if any);
- (c) The period from 1 July immediately preceding the Vesting Day (if any) to the Vesting Day

but the Trustee may determine in writing from time to time to alter the Accounting Period to become a period of twelve (12) months ending on any other date nominated by the Trustee and thereupon the references to 30 June and 1 July shall be altered accordingly.

**“Advisory Trustees”** means the advisory trustees appointed in accordance with the provisions of the Schedule to this Deed.

**“Agreement”** means an agreement made under the provisions of sub-clause 4.2;

**“Agreement Account”** means an account set up within the Trust Fund in accordance with the provisions of sub-clause 4.3;

**“Wagyl Kaip and Southern Noongar Claimants”** and **“Wagyl Kaip and Southern Noongar People”** means the biological and adopted descendants of the various couples and one individual listed in Schedule 2, together with the biological and adopted descendants of any other couples or individuals who may be listed in native title applications WC 96/109 on behalf of the Southern Noongar People and/or WC 98/70 on behalf of the Wagyl Kaip People, as amended from time to time, including by way of combination.

**“Business Day”** means a day which is not a Saturday Sunday or public or bank holiday in Perth in the state of Western Australia.

**“Capital”** means so much of the Trust Fund as does not constitute Income.

**“Charitable Objects”** means the objects of the Trust as set out in Recital C to this Deed that satisfy the requirements for endorsement of the Trust under Subdivision 50-B of the Income Tax Assessment Act 1997.

**“Income”** means the income of the Trust.

**“Organisation”** means any association, local authority, corporation, institution, person or entity and includes the trustee of a trust.

**“Settlor”** means MICHAEL EVELEGH

**“Tax”** includes:

- (a) all taxes levied imposed or assessed under the Income Tax Assessment Acts (1936) and (1997) or any other statute ordinance or law in Australia or elsewhere; and
- (b) taxes in the nature of goods and services tax, sales tax, consumption tax, value added tax, payroll tax, capital gains tax, group tax, PAYG, undistributed profits tax, fringe benefits tax, recoupment tax, withholding tax, land tax, water rates, municipal charges or impositions levied imposed or collected by any government body

together with any additional tax interest penalty charge fee or other amount of any kind assessed charged or imposed in relation to the non late or short payment of the same or the failure to file any return.

**“Trust”** means the Wagyl Kaip and Southern Noongar Native Title Charitable Trust established by this Deed.

**“Trustee”** means Plan B Trustees Limited being the trustee or trustees of the Trust for the time being and any substitute or additional person appointed under this Deed;

**“Trust Fund”** means all of the real and personal property held by the Trustee as Trustee for the Trust, and includes, without limitation:

- (a) The Settled Sum;
- (b) Any payment pursuant to any agreement or agreements which has or have been or which may be made pursuant to and in relation to the operation of the Native Title Act 1993 (Cth).
- (c) All of the current and accumulated Income of the Trust Fund;
- (d) All accretions to the Trust Fund; and
- (e) The investments from time to time made by the Trustee using all or any part of the Trust Fund and any other property representing all or any part of the Trust Fund.

## **1.2 INTERPRETATION**

Unless the context indicates a contrary intention, the following clauses will apply to the interpretation of this Deed:

- (a) Words denoting the singular include the plural and words denoting the plural include the singular. Words denoting any gender include all genders;

- (b) A reference to a body corporate includes a natural person and a reference to a natural person includes a body corporate;
- (c) A reference to a statute includes any regulation, by-law, requisition or order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order from time to time in force;
- (d) A reference to any other document, deed, agreement, instrument or contract as amended, supplemented or varied from time to time.
- (e) A reference to a clause is a reference to a clause in this Deed unless otherwise indicated.

## **2. ESTABLISHMENT OF THE TRUST FUND**

By executing this Deed, the Trustee acknowledges receipt of the payment by the Settlor to the Trustee of the Settled Sum. The Trustee acknowledges that it receives the Settled Sum as Trustee of the Trust.

## **3. DECLARATION OF TRUST**

- 3.1 The Settlor declares that the Trustee shall hold the Trust Fund upon the trusts contained in this Deed in accordance with the terms and conditions set out in this Deed.
- 3.2 The Trustee declares that it will hold the Trust Fund upon the trusts contained in this Deed in accordance with the terms and conditions set out in this Deed.
- 3.3 Subject to the terms of this Deed, the Trustee shall be responsible for:-
  - (i) the management of the Trust Fund and the Trust; and
  - (ii) applying the Trust Fund and its Income to the promotion of the Charitable Objects.

## **4. ADDITIONS TO THE TRUST FUND**

- 4.1 The Trustee may from time to time accept further money, or any other real or personal property from any person pursuant to agreements which have been or which may be made pursuant to or in relation to the operation of the *Native Title Act 1993* (Cth) or by way of contributions by any member of the public or Organisation, as Trustee of the Trust (whether as a gift or on such terms as may be agreed by the Trustee) and such money or other property shall form part of the Trust Fund.
- 4.2 The Trustee shall have power in its absolute discretion to accept any such money or any other property which may be transferred to it as Trustee under sub-clause 4.1 and to hold the same upon trust;-
  - (a) for one or more of the Charitable Objects; and

(b) on such other conditions (if any), as the transferor and the Trustee at the time of the transfer may by agreement ("the Agreement") specifically agree in writing.

4.3 Where an Agreement or Agreements are in place under sub-clause 4.2 the Trustee shall hold the funds the subject of each Agreement in a separate account (the "Agreement Account") within the Trust Fund upon and subject to the trusts and provisions of this Deed (deemed varied by the terms of the Agreement as if verified in accordance with clause 13) and shall use the funds contained in each Agreement Account only for the Charitable Object or Objects and on the conditions (if any) specified in the Agreement to which that Agreement Account relates but in all other respects the discretions and powers given to the Trustee under this Deed shall be exercised in accordance with this Deed (as so varied by the Agreement)

4.4 The Trustee may in its absolute discretion permit the Trust Fund to be held in the form in which it is received. The Trustee may at any time and from time to time, in its absolute discretion sell, call in or convert into money all or any part of the Trust Fund and the Trustee shall in its absolute discretion invest the money arising thereby in the name or under the control of the Trustee in any of the investments which the Trustee is authorised to make. The Trustee may at any time and from time to time and in its absolute discretion vary and exchange any of the investments it makes for any other investment which the Trustee is authorised to make.

## 5. TRUST FUND FOR CHARITABLE OBJECTS ONLY

5.1 Subject to the terms of this Deed, the Trust Fund shall be applied exclusively for the promotion of the Charitable Objects in accordance with the terms of this Deed **PROVIDED THAT** no payments of money may be distributed to or applied for the benefit of individual members or groups of individual members of the Wagyl Kaip and Southern Noongar Native Title Charitable Trust in this clause "monetary payments" without a prior written direction of the Advisory Trustees. For the avoidance of doubt, the Trustee must be satisfied that any monetary payments will be made to promote the Charitable Objects. It is not intended that significant amounts of money will be distributed as monetary payments directly to individual persons.

5.2 Clause 5.1 shall not prevent the payment in good faith of :-

- (i) remuneration to the Trustee for services provided by the Trustee as Trustee of the Trust;
- (ii) remuneration to any other person (including without limitation any officer, servant or shareholder of the Trustee) for any service provided to the Trustee as Trustee of the Trust;
- (iii) reasonable and proper rental for any real or personal property leased to the Trustee;
- (iv) the payment of all reasonable costs, charges and expenses incurred in connection with the administration of the Trust; and
- (v) the reimbursement to any person (including, without limitation, the Trustee or any officer, servant or shareholder of the trustee) for any out of pocket expense incurred in connection with the administration of the Trust.

## **6. APPLICATION OF THE CAPITAL AND INCOME OF THE TRUST FUND**

6.1 Subject to clauses 5.1 and 5.2 the Trustee may at any time and from time to time pay or apply the whole or any part of the Income of the Trust Fund towards the promotion of any one or more of the Charitable Objects (or in the case of an Agreement Account towards the promotion of the Charitable Object or Objects and on the conditions (if any specified in the relevant Agreement) as the Trustee shall from time to time in its absolute discretion determine.

6.2 The Trustee may accumulate as much of the Income of the Trust Fund as the Trustee in its absolute discretion determines. Subject to clause 7, any Income which the Trustee allows to accumulate shall be dealt with as an accretion to the Capital of the Trust Fund.

6.3 Subject to clauses 5.1 and 5.2 the Trustee may at any time and from time to time, as and when the Trustee in its absolute discretion thinks fit, pay or apply the whole or any part or parts of the Capital of the Trust Fund towards the promotion of one or more of the Charitable Objects (and in the case of an Agreement Account towards the promotion of the Object or Objects and on the conditions if any specified in the relevant Agreement) as the Trustee shall from time to time in its absolute discretion determine.

6.4 Without derogating from the Trustee's discretions set out in sub-paragraph 6.1 and 6.3 of this paragraph it is the intention of this Trust that a significant proportion of the Capital of the Trust be preserved within the Trust for the purpose of providing long term benefits for the Charitable Objects.

## **7. DISTRIBUTION OF INCOME**

7.1 At any time before the expiration of any Accounting Period, the Trustee may, with respect to all or any part of the net Income of the Trust Fund for that Accounting Period, determine:-

- (a) to pay, apply or set aside all or any part of the Income for any one or more of the Charitable Objects or in the case of Income within an Agreement Account for the Charitable Object or one or more of the Charitable Objects specified in the relevant Agreement; or
- (b) to accumulate all or any part of the Income.

7.2 The Trustee may create one or more separate Income accounts (the "attributive Income accounts") in respect of a particular nature, type, character or source of income, whether dividends, capital gain or net capital gain or otherwise, and upon receipt of that particular nature, type, character or source of income, pay it into the attributive Income account created for that purpose. At any time before the expiration of any Accounting Period, the Trustee may determine with respect to all or any part of such attributive Income account for that Accounting Period:-

- (a) to pay, apply or set aside all or any part of the attributive Income account for any one or more of the Charitable Objects or in the case of Income within an Agreement Account for one or more of the Charitable Objects specified in the relevant Agreements; or
- (b) to accumulate all or any part of the attributive Income account.

The payment, application or setting aside may be either part of the determination provided for in Clause 7.1 or in a separate determination and shall be deemed for all purposes, to be paid, applied or set aside from that account only.

7.3 In making any determination to pay, apply or set aside any amount (including an amount of a particular nature or from a particular source), the Trustee may:-

- (a) treat as Income of the Trust Fund any profit, gain or receipt which is assessable income for the purposes of the Income Tax Assessment Act 1997 (Cth);
- (b) treat as expenditure against Income of the Trust Fund:
  - (i) any expenditure, payment or loss which is an allowable deduction for the purposes of the Income Tax Assessment Act 1997 (Cth) ; or
  - (ii) any sum which is a capital loss for the purposes of the Income Tax Assessment Act 1997 (Cth);
- (c) distinguish between income of a particular nature or from a particular source as defined or referred to in the Income Tax Assessment Act 1997 (Cth) and deal with each in a particular manner irrespective of the manner in which any other income of a particular nature or from a particular source is dealt with; and
- (d) determine the income (within the meaning given in this clause) against which any loss (including, without limitation, any capital loss or any net capital loss), outgoing, expenditure or payment which is a deduction for the purposes of the Income Tax Assessment Act 1997 (Cth) shall be set off.

7.4 A determination to pay, apply or set aside any Income may be effectually made and satisfied by any one of the following methods:-

- (a) by placing the amount to the credit of the relevant Charitable Object in the books of account of the Trust;
- (b) by paying the amount to such person or persons in furtherance of the relevant Charitable Object as the Trustee thinks fit in such manner as the Trustee thinks fit;
- (c) by a resolution of the Trustee that a sum out of or a portion of the net Income of the Trust Fund or the net Income as defined by the Income Tax Assessment Act 1997 (Cth) of the Trust Fund for the Accounting Period be paid, applied or set aside for the relevant Charitable Object or otherwise dealt with in furtherance of the Charitable Object and any resolution of the Trustee as provided in this paragraph shall be irrevocable; or
- (d) notwithstanding any other provision of this Deed, by an oral declaration, written statement or a resolution of the Trustee whether or not published to any person.

A certificate by the Trustee as to any determination shall be *prima facie* evidence that the determination was made as and when set out in the certificate.

7.5 The Trustee may exclude any Charitable Object from any determination to pay, apply or set aside any amount (including an amount of a particular nature or from a particular source or any attributive Income account) and may determine to pay, apply or set aside the amount for any one Charitable Object, or divide it among any two or more of the Charitable Objects (and in the case of Income within an Agreement Account for the Charitable Object or any two or more of the Charitable Objects specified in the relevant Agreement) in such proportions and in such manner as the Trustee thinks fit.

7.6 (a) The Trustee may, pursuant to Clause 7.1(a) set aside a sum, which in the opinion of the Trustee may be sufficient to meet the obligation of the Trustee for income tax on that amount pursuant to any law which imposes income tax on the Trustee;

(b) To the extent that any sum so set aside is inadequate to meet the tax actually assessed, the Trustee may without prejudice to any other rights given by law or by this Deed resort to the Income of the Trust Fund for any subsequent Accounting Period or may recover the amount of the inadequacy from any money in the Trustee's hands.

(c) If and whenever it appears to the Trustee that any provision so made was excessive, the amount of the excess shall be credited in the books of account of the Trust Fund to the Charitable Object in respect of which the provision was made and shall be treated as though it had been set aside for that Charitable Object in the Accounting Period in which the provision was first made;

(d) Nothing in this sub-clause shall oblige the Trustee to set aside any sum or affect any rights of the Trustee in the event of any assessment of tax being made against the Trustee in respect of any amount so paid, applied or set aside.

7.7 If in relation to any Accounting Period, the Trustee has made no effective determination pursuant to the preceding provisions of this clause in respect to any part of the Income of that Accounting Period immediately prior to the end of the last day of that Accounting Period, then the Trustee shall hold that Income as an accretion to the Capital of the Trust Fund.

7.8 If at the end of any Accounting Period the amounts in respect of which determinations have been made pursuant to the preceding provisions of this clause exceed the net Income of the Trust Fund for that Accounting Period, the amount of the excess shall be deducted from the amounts which the Trustee has determined to accumulate and only the balance of the amounts shall be accumulated and if any deficiency remains then the Trustee shall be deemed to have applied the Capital of the Trust Fund to the extent of the deficiency.

7.9 The validity of any determination to accumulate Income shall be conditional upon the law in force in relation to this Deed permitting the accumulation at the end of the Accounting Period to which the determination relates and shall be irrevocable.

7.10 Any Income which the Trustee accumulates shall during the Accounting Period be dealt with as an accretion to the Capital of the Trust Fund but the Trustee may resort to that amount and pay or apply the whole or any part of that amount as if it had not been accumulated but was current Income of the Trust Fund.

7.11 Any amount set aside for any Charitable Object and any amount held by the Trustee in trust for any Charitable Object under this clause shall cease to form part of the Trust Fund and shall be held by the Trustee as a separate trust fund on trust for that Charitable Object absolutely with power to the Trustee pending payment for the Charitable Object to invest, apply or deal with the whole or any part of the fund or any resulting income.

## 8. ADVANCEMENT OF CAPITAL AND BENEFITS

8.1 Provided it is for the purpose of promoting any one or more of the Charitable Objects and in the case of an Agreement Account for the purpose of promoting the Charitable Object or one or more of the Charitable Objects specified in the Agreement, the Trustee may subject to clauses 5.1 and 5.2 at any time or times perform any one or more of the following actions:.

- (a) Subject to the terms of this Deed and to any Agreement pay any sum out of the Capital of the Trust Fund or transfer in specie the whole or any part of the Trust Fund to any person in such manner and subject to such terms and conditions as the Trustee thinks fit (any sums or property so paid, transferred or applied shall cease to form part of the Trust Fund);
- (b) Where the whole or any part of the Capital or Income or accumulated Income has been set aside for a particular Charitable Object (whether absolutely or contingently) pay or apply to or for the benefit of any person (in furtherance of that particular Charitable Object) the whole or any part of such Capital or Income or accumulated Income notwithstanding that such Capital or Income or accumulated Income is liable to be defeated or diminished) in such manner and subject to such terms and conditions as the Trustee thinks fit;
- (c) Lend any sum out of the Trust Fund and any money held in trust under this Deed to any person either with or without security and upon such terms and conditions as to repayment and with or without interest as the Trustee thinks fit;
- (d) Allow any person to occupy, have custody of or use any property forming part of the Trust Fund with or without payment of rent or other return and on such terms or conditions as the Trustee thinks fit.

## 9. DISTRIBUTION ON THE WINDING UP OF THE TRUST

If the Trust is dissolved and wound up, the amount which remains after such dissolution and winding up and the satisfaction of all debts and liabilities shall be paid applied by the Trustee subject to and in accordance with a prior direction of the Advisory Trustees to any organization which has objects which are similar to the Charitable Objects and which has rules prohibiting the distribution of its assets and Income to its members and which has been endorsed or named in Division 30 or regulations made for the purposes of Division 30 of the Income Tax Assessment Act 1997.

## **10. TRUST IRREVOCABLE**

10.1 Except as provided in clause 10.2, the Trust shall be irrevocable.

10.2 Where there are no substantial funds in the Trust and no reasonable basis to expect that the Trust will receive further significant funds the Trustee may subject to and in accordance with a prior direction of the Advisory Trustee by deed terminate or revoke the trusts created by this Deed. Any Trust Funds remaining in the Trust as the time of termination or revocation after satisfaction of all debts and liabilities shall be paid and applied in accordance with clause 9 of this Deed.

## **11. INVESTMENT OF THE TRUST FUND**

11.1 The Trustee may:-

- (a) invest the Trust Fund in any form of investment; and
- (b) at any time vary an investment or realise an investment of Trust Funds and reinvest money resulting from the realisation in any form of investment.

11.2 The Trustee may exercise the power to invest the Trust Fund or vary an investment without the need to comply with any rule and principle of law or equity including:

- (a) a duty to exercise the powers of a Trustee in the best interests of all present and future members of the Wagyl Kaip and Southern Noongar People;
- (b) a duty to invest the Trust Fund in investments which are not speculative, hazardous or involving waste; and
- (c) a duty to act impartially towards members of the Wagyl Kaip and Southern Noongar People and between different classes of members of the Wagyl Kaip and Southern Noongar People.

For the purposes of this and the next sub-clause, the expressions “vary an investment” and “varying an investment” includes realising an investment or a change to a term or condition of an investment.

11.3 In exercising the power of investment, the Trustee may, but is not required to do either or both of the following:

- (a) obtain and consider independent and impartial advice for the investment of the Trust Fund, varying an investment or the management of the investment, from a person whom the Trustee reasonably believes to be competent to give the advice; and
- (b) pay out of the Trust Fund the reasonable costs of obtaining the advice.

For the purposes of this and the next sub-clause, the expressions “vary an investment” and “varying an investment” includes realizing an investment or a change to a term or condition of an investment.

## 12. POWERS OF TRUSTEE

12.1 In addition to and without limiting the generality of any of the powers vested in the Trustee by any of the provisions of this Deed or by law or equity for the purpose of promoting the Charitable Objects, the Trustee shall, subject to any express provision to the contrary herein contained, have the following powers.

- (a) To accept any gift of real or personal property by way of contributions by any member of the public or Organisation whether subject to any special trust or not, for any one or more of the Charitable Objects. If the Trustee accepts or holds any property which may be subject to any trusts, then the Trustee shall only deal with the same in such manner as is allowed by law having regard to such trusts.
- (b) To make any payment to any person, the power to accept payment from any person, and the power to give and receive receipts in relation to any payment.
- (c) To apply and invest the whole or any part of the Trust Fund in any investments anywhere in the world whether involving liabilities or not or upon personal credit with or without security and upon such terms and conditions as the Trustee thinks fit including without limitation the subscription for, the taking up on allotment and the purchase of any units, shares, stocks, bonds, mortgages, debentures, obligations or securities of any government, authority or company and the taking up and the purchase or acquisition of the whole or any part of share (including a minority part or share) in any business or partnership or any real or personal property and notwithstanding that the investment may not be income producing or may be wasting or speculative.
- (d) To make or purchase any investments for cash or in consideration of an annuity or otherwise and upon such terms and conditions as the Trustee thinks fit and the Trustee may make or purchase any investments for a sum greater than the amount of the Trust Fund for the time being and the Trustee may agree to pay for the investments wholly or in part from any future property which may come into the hands of the Trustee.
- (e) To deal with, manage, vary, transpose and realise any property constituting the Trust Fund or any property comprised in any security as the Trustee thinks fit and the Trustee shall not be accountable in any way for any loss arising out of the making or management of or the failure to realise any investment.
- (f) To sell or dispose of the whole or part of or share or interest in any property of the Trust Fund and to join with any other co-owner or partner in selling or disposing of the property by public auction, tender or private treaty at such price and whether for cash or on terms and generally upon such terms and conditions as the Trustee thinks fit.
- (g) To borrow or raise money from any person (including the Trustee) on current account or otherwise at such rate of interest and whether to be capitalized or not and on such terms and conditions as the Trustee thinks fit and as security therefore or for the purpose of securing or joining in securing any money to sign and execute mortgages, bills of sale, negotiable instruments and other securities in such form as the Trustee thinks fit over all or any part of the Trust Fund. No person lending money to the Trustee or taking any securities for any money shall be concerned to see to or enquire as to the proper application of any money lent or as to the power of the Trustee to give or join in any

giving any security. The Trustee is expressly empowered to join with any person in executing any mortgage, bill of sale, negotiable instrument or other security for the purpose of securing the payment of money by the Trustee jointly with any person or for the purpose of securing the payment of money to any person.

- (h) To advance and lend all or any moneys for the time being part of the Trust Fund to any person, with or without interest, with or without security and upon such terms and conditions as the Trustee shall in its absolute discretion think proper. The Trustee is expressly empowered to join with any other person in executing any mortgage, bill of sale or other document for the purpose of securing the payment of money to the Trustee jointly with any person or for the purpose of securing the payment of money to any other person.
- (i) To invest the whole or any part of the Trust Fund in a mixed contributory mortgage secured over any property through the agency or in the name of nominees acting as such for the contributors to the mortgage.
- (j) To give any guarantee or indemnity or both for the payment of money or the performance of any contract, obligation or undertaking by any person and to secure by mortgage, charge or security or otherwise that obligation or to secure by mortgage, charge or security or otherwise any obligation of any person.
- (k) The power to discharge any liabilities affecting property real or personal including but not limited to affecting leasehold or other property of a wasting or onerous nature.
- (l) To purchase, take on lease or in exchange, hire or otherwise acquire, hold, use, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property.
- (m) To establish, promote or acquire any company either alone or jointly or join in the promotion, establishment or acquisition of any company.
- (n) To remunerate any person who is at any time in the employ of the Trustee on such terms as the Trustee thinks fit.
- (o) To open any account with any bank, building society, credit union or other institution and to operate by all usual ways the account and to delegate to any person the authority to sign cheques or other documents and operate upon the account without that person being liable or responsible for any resulting loss.
- (p) To give effectual receipts and discharges for any money received by or on behalf of the Trustee or otherwise relating to anything provided for in this Deed.
- (q) To permit any property of the Trust Fund to be held or registered in the name of any nominee of the Trustee and to deposit securities and other documents belonging or relating to the Trust Fund with any person.

- (r) To draw, make, accept, endorse, discount, execute and issue cheques, commercial bills, promissory notes, bills of exchange and other negotiable instruments.
- (s) To enter into agreements to take on lease, hire or bailment any property and to enter into "floor-plan" or dealer agreements.
- (t) To grant options of any nature in respect of any real or personal property of the Trust Fund to any person.
- (u) To purchase or acquire any reversionary or deferred property or rights of any description or any life, life endowment, sinking-fund, term or other policy of insurance of any nature and at any premium whether single or payable periodically and upon any terms and conditions and to pay out of the Income or Capital of the Trust Fund all sums payable from time to time for premiums or otherwise for the making or maintenance of any policy of insurance (whether owned by the Trustee or otherwise).
- (v) To grant an annuity to any person and to cancel or redeem the whole or any part of the annuity.
- (w) To exercise all rights and privileges and perform all duties and do all such acts matters and things appertaining to any shares, stock, units, debentures or investments (in this provision, called "the investments") in any company, unit trust, partnership or other entity (in this provision, called the "entity") in which any part of the Trust Fund is invested or in which the Trustee is otherwise interested and in particular without limitation:-
  - (i) to pay all calls on all or any part of any investments or to permit the whole or any part of any investments of the entity to be forfeited and sold;
  - (ii) to take up the whole or any part of any new issues or purchase any further investments of the entity;
  - (iii) to lend money to the entity with or without security and at such rate of interest and upon such terms as the Trustee thinks fit;
  - (iv) to hold any investments for as long as the Trustee thinks fit;
  - (v) to sell any investments at such price (whether or not the price is less than the sum that appears from the accounts of the entity to be the value of the investments) and upon such terms with or without security as the Trustee thinks fit;
  - (vi) to assent to or join in any arrangement relating to the sale, transfer or exchange of the whole or any part of the investments or modifying any rights or privileges in relation to the whole or any part of the investments and to agree to any scheme or arrangement for the increase or reductions of the value or amounts of the whole or any part of any investments or of the capital of the company or by which the whole or any part of the investments are substituted or given in exchange either wholly or partly for other investments whether in the same entity or not and for that purpose to deposit, surrender or exchange any certificate or document of title relating to the

whole or any part of the investment and to pay any contribution or incur any necessary expense in connection with the scheme or arrangement;

- (vii) to agree in respect of a winding up of the entity with the liquidator or any member of the entity or any other person for the division or partition in kind of the property of the entity and to accept any of the property in payment or satisfaction of any interest in the entity with power to pay any money by way of equality of division or partition; and
- (viii) to become a director of the entity or to appoint any person to act as its director and to receive the remuneration attached to that office without accounting to the Trust for the remuneration.

(x) To pay out of the Trust Fund or its Income all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion contained in this Deed or in carrying out or performing the trusts of this Deed which the Trustee may at any time incur including all income tax or other taxes payable in respect of the Trust Fund, costs of the preparation and execution of this Deed and all money which the Trustee may be required to pay as stamp or revenue duties in respect of the Trust Fund or on this Deed.

(y) The power to insure against loss or damage by fire or from any other risks any property for the time being comprised in the Trust Fund to any amount and to pay the premiums for such insurance out of the Income or Capital of the Trust Fund or the property itself and any money received by the Trustees under such a policy shall be treated as if it were the proceeds of sale of the property insured.

(z) To allow any person to have custody of or use any property forming part of the Trust Fund with or without payment of interest, rent or other return and on such terms or conditions as the Trustee thinks fit.

(aa) To partition or agree to the partition of or to subdivide or agree to the subdivision of the whole or any part of any land or other property which or any interest in which, may for the time being be subject to the trusts of this Deed and to pay any money by way of equality of partition.

(bb) To appropriate (and Section 30(1)(k) of the Trustees Act 1962 shall not be applicable) any part of the Trust Fund in its then actual condition or state of investment in or towards the promotion of any one of the Charitable Objects. In making that appropriation to conclusively determine the value of the Trust Fund or any part in such manner as the Trustee thinks fit or to employ such persons to make such valuations as the Trustee thinks fit without obtaining any consents otherwise required by law. Every appropriation so made shall bind all persons interested in the Trust Fund notwithstanding that they may be not yet in existence or be under a legal disability.

(cc) To exercise or concur in exercising all powers and discretions by this Deed or by law given to the Trustee or such of them as by their nature are capable of being so exercised jointly or as tenants in common or as partner with any other person or for the common or several purposes of this and any other trust of which the Trustee or any other person may be trustee.

### **13. POWERS TO VARY THE TRUST DEED**

13.1 For the purpose of furthering the promotion of the Charitable Objects, the Trustee may modify or vary the trusts and powers hereby declared if and insofar as the same may be required for the purpose of maintaining or obtaining any exemption from any tax or duty which would otherwise be payable by the Trust, including, without limitation, an exemption from taxation for the Income of the Trust Fund.

13.2 The Trustee may supplement or alter or amend the administrative provisions of this Deed to the extent that it appears to the Trustee that:-

- (i) as a result of a change in the law affecting the administration of charities or trusts; or
- (ii) as a result of changes in social or political conditions; or
- (iii) as a result of any defect or omission in the provisions of this Deed; or
- (iv) to attract additional funding; or
- (v) for the more effectual execution of the trusts

such changes will generally benefit the Charitable Objects. Nothing in the clause shall authorize or be deemed to authorize any departure or modification of the trusts declared in this Trust Deed. For the avoidance of doubt this power to vary includes the power to limit the power to vary the Trust in accordance with this clause.

### **14. DELEGATION AND USE OF ADVISERS**

14.1 The Trustee may delegate the exercise of all or any of the powers or discretionary authorities hereby conferred upon the Trustee and may execute any powers of attorney or other instruments necessary to for such delegation.

14.2 The Trustee shall be at full liberty to act through managers or to employ any adviser, consultant, contractor, manager, solicitor, accountant, counsel, clerk, workmen, employee, servant or agent to transact all or any business of any nature required to be done in relation to the Trust including the receipt and payment of money. The Trustee shall decide the remuneration to be allowed and paid including all charges and expenses so incurred.

14.3 The Trustee may take and act upon the opinion (given in writing) of any professional or other advisers (including, without limitation, legal advisers) practicing in any jurisdiction where the Trust Fund or any part thereof may for the time being be invested in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Trust without being liable to any of the persons beneficially interested in respect of any act done by the Trustee in accordance with such opinion.  
The Trustee may at any time apply to the Court for directions.

## **15. TRUSTEE'S ABSOLUTE DISCRETION**

15.1 Subject always to any express provision to the contrary herein contained, every discretion vested in the Trustee shall be absolute and uncontrolled and every power vested in the Trustee shall be exercisable at the Trustee's absolute discretion. The Trustee shall have absolute and uncontrolled discretion in deciding whether or not to exercise any such power.

15.2 The Trustee shall determine whether any real or personal property or any increase or decrease in amount or number or value of any property or holdings or any receipts or payments, gains or losses from or in connection with any real or personal property shall be treated as credited or debited to the Capital or Income and generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the trusts and powers of this Deed. Every determination of the Trustee in relation to these matters whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund shall bind all parties interested therein and shall not be objected to or questioned on any ground whatsoever.

## **16. TRUSTEE'S RECEIPT**

The Trustee is authorised to receive Capital and other moneys and to give a valid and effectual receipt therefore for all purposes and in particular for the purposes of any statutory enactments including the receipt of capital moneys which may or may be deemed to be capital moneys for the purposes of any statute. The receipt of any officer of the Trustee shall be sufficient to discharge the Trustee for any payment made to or on behalf of Trustee.

## **17. EXERCISE OF POWERS BY TRUSTEE**

The Trustee may exercise any power, discretion or authority conferred by this Deed in relation to which a method of exercise is not otherwise expressly provided herein by any of the following methods:

- (a) by a resolution duly passed at a meeting of the Trustee;
- (b) by written resolution signed by the authorised representatives of the Trustee; or
- (c) a resolution of the directors of the Trustee, a written memorandum of a duly appointed representative of the Trustee or by an ordinary resolution of the Trustee.

## **18. TRUSTEE'S LIABILITY**

18.1 The Trustee's liability in respect of the management and administration of the Trust Fund and the Trust shall be governed by the provisions of the Trustees Act 1962 (WA).

## **19. TRUSTEE'S INDEMNITY**

### **19.1 INDEMNITY**

- (a) the Trustee is entitled to be indemnified out of the Trust Fund against all claims damages losses actions liabilities debts obligations costs expenses fees Taxes duties and impositions suffered or incurred by the Trustee in carrying out administering and

discharging the Trust and in exercising any power discretion or authority conferred upon the Trustee by this document or by law except to the extent that the same arises from the Trustee's own dishonesty fraud or breach of Trust.

- (b) the Trustee does not lose its right of indemnity in relation to a cost or expense properly incurred by the Trustee merely because the Trustee is not entitled to be indemnified in relation to a cost or expense which has not been properly incurred. A default by the Trustee in relation to one transaction does not prejudice the Trustee's right of indemnity in relation to a transaction in relation to which the Trustee is not in default.
- (c) the Trustee may apply the Trust Fund to satisfy the rights of reimbursement or indemnity to which it may be entitled under this document or by law.

## **19.2 NO LIABILITY FOR LEGALLY RESTRAINED ACTS**

The Trustee is not liable to any person in respect of:

- (a) doing or performing any act or thing which the Trustee is required to do or perform; or
- (b) failing to do or perform any act or thing which the Trustee is hindered; prevented or forbidden from doing or performing

by reason of any provision of any present or future law or decree order or judgment of any court of competent jurisdiction.

## **19.3 NO LIABILITY FOR TAXES PAID**

The Trustee is not liable to account the members of the **Wagyl Kaip and Southern Noongar People** for any payments made by the Trustee in good faith to any duly empowered fiscal authority for Taxes imposts or other charges made upon or in respect of the Trust or with respect to any transaction involving the Trust even if any such payment ought or need not have been made except to the extent that such payments are attributable to the Trustee's own dishonesty fraud or breach of trust.

## **19.4 TRUSTEE'S ADVISERS**

The Trustee may act upon:

- (a) information provided by the Advisory Trustees on behalf of the **Wagyl Kaip and Southern Noongar People**;
- (b) the opinion or advice of or information provided by any lawyer banker accountant valuer adviser expert or other person provided they are independent of the Trustee and the Trustee believes in good faith that they are competent in relation to the matters upon which they are consulted

and the Trustee is not liable to any person for anything done or suffered by the Trustee in good faith in reliance upon any information opinion or advice (even if the same proves to be incorrect) provided.

#### **19.5 TRUSTEE NOT LIABLE FOR ADVISER'S MISTAKES**

The Trustee is not liable to any person for any misconduct mistake error of judgment or want of prudence on the part of any auditor actuary valuer attorney banker receiver and manager barrister solicitor agent expert or other person acting as agent of or adviser to the Trustee except to the extent that the loss is attributable to the Trustee's own dishonesty fraud or breach of trust.

#### **19.6 TRUSTEE MAY RELY ON DOCUMENTS**

The Trustee is not liable to any person for any action taken or thing suffered by the Trustee in reliance upon any notice resolution direction consent certificate receipt affidavit statement certificate for stock plan of re-organisation application or other document reasonably believed by the Trustee to be genuine and to have been possessed produced passed signed or endorsed by the proper parties where liability would attach by reason solely that such paper or document was not in fact genuine or so possessed produced passed signed or endorsed.

### **20. DISCLOSURE**

Without prejudice to any right of the Trustee under the general law to refuse disclosure of any document, the Trustee shall not be bound to disclose to any person any information or document concerning:-

- (i) any deliberations of the Trustee relating to the manner in which the Trustee should or might exercise any power or discretion conferred on the Trustee by this Deed;
- (ii) the reasons for any particular exercise or non-exercise of any such power or any such discretion; or
- (iii) the material upon which such reasons shall be or might have been based.

### **21. ACCOUNTS AND AUDIT**

The Trustee shall cause true and proper accounts of the Trust to be kept and cause such accounts to be audited annually by a qualified accountant appointed from time to time by the Trustee and whose fees shall be paid from the Trust Fund. The Trustee shall furnish to such accountants whatever information such accountant may require for the proper performance of the annual audit of the Trust. The Trustee shall make such audited accounts available for inspection by the Advisory Trustees but the Trustees shall not be obliged to provide information in relation to the accounts to any other persons.

## **22. APPOINTMENT OF NEW TRUSTEE**

The Power of Appointment of new trustees shall vest in the Trustee **PROVIDED ALWAYS** that any Trustee (other than an Advisory Trustee) appointed either under this provision or by operation of law shall be a trustee corporation as defined in S6 (1) Trustees Act 1962 (WA) approved by a prior unanimous decision of the Advisory Trustees at the time of the appointment.

## **23. CHARGING**

### **23.1 TRUSTEE'S FEES**

The Trustee is entitled to charge and be paid out of the Trust Fund:

- (a) an acceptance fee of 0.50% of any money or of the value of any property and assets at any time paid or transferred to the Trust;
- (b) an annual responsibility fee of 0.25% of the gross value of the Trust Fund calculated on the daily balance.
- (c) an hourly charge of Two Hundred and Twenty Five Dollars (\$225) for any business transacted, time expended or acts done by the Trustee in relation to the administration of the trust as provided in S98(5) of the trustee act (1962).

**PROVIDED ALWAYS** that the above fee structure can be varied by the Trustee with the prior unanimous consent of the Advisory Trustees.

### **23.2 COSTS AND EXPENSES**

The Trustee may pay or reimburse itself for all costs and expenses properly incurred in carrying out administering and discharging the Trust and in exercising any power discretion or authority conferred upon the Trustee by this document or by law out of the Trust Fund (either from Capital or Income as the Trustee may determine).

## **24. PROPER LAW**

This Trust is established under the laws of Western Australia. The rights of all parties and the construction and effect of the provisions hereof shall be subject to the exclusive jurisdiction of and construed and regulated according to the laws of Western Australia and the Commonwealth of Australia.

## **25. NOTICES**

### **25.1 GENERAL**

A notice demand certification process or other communication relating to this document is to be written in English and may be given by an agent of the sender.

## **25.2 METHOD OF SERVICE**

In addition to any lawful means a communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia by pre-paid air mail; or
- (d) facsimile to the party's current number for service.

## **25.3 SERVICE**

If a communication is given by:

- (a) post it is taken to be received if posted within Australia to an Australian address three (3) Business Days after posting and in any other case seven (7) Business Days after posting; or
- (b) facsimile and the sender's facsimile machine produces a transmission confirmation report indicating that the facsimile was sent to the addressee's facsimile the report is *prima facie* evidence that the facsimile was received by the addressee at the time indicated on that report.

## SCHEDULE 1

1. Section 14 of the Trustees Act 1962 reads:

**“Advisory Trustees may be appointed to assist responsible Trustee”**

- (a) In the administration of any trust property any trustee may act, to the extent in this section provided, with an Advisory Trustee or Advisory Trustees.
- (b) An Advisory Trustee or Advisory Trustees may be appointed in respect of all or any part of the trust property: --
  - (i) by the testator, settlor or other creator of the trust, in the instrument creating the trust;
  - (ii) by order of the Court made on the application of any beneficiary or trustee or of any person on whose application the court would have power to appoint a new Trustee; or
  - (iii) by any person having power to appoint a new Trustee.
- (c) Where a Trustee acts with an Advisory Trustee or Advisory Trustees, the trust property shall be vested in, the first mentioned Trustee (in this section referred to as “the responsible Trustee”), who shall have the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee, and in any such case: --
  - (i) the responsible Trustee may consult the Advisory Trustees on any matter relating to the Trusts or the estate;
  - (ii) the Advisory Trustees may advise the responsible Trustee on any matter relating to the trusts or the estate, but shall not be Trustees in respect of the Trust;
  - (iii) where any advice or direction is tendered or given by the Advisory Trustees, the responsible Trustee may follow and act on that advice or direction without being liable for anything done or omitted by him by reason of his following that advice or direction;
  - (iv) where, the responsible Trustee is of opinion that any advice or direction of any Advisory Trustee conflicts with the trusts or any rule of law, or exposes him to any liability, or is otherwise objectionable, he may apply to the Court for directions in the matter, and any decision and order therein shall be final and shall bind the responsible Trustee and the Advisory Trustee, and the Court may make such order as to costs as appears proper; but nothing in this section makes it necessary for the responsible Trustee to apply to the Court for any such directions; and
  - (v) where Advisory Trustees are not unanimous, and tender to the responsible Trustee conflicting advice or directions, the responsible Trustee may apply to

the Court for directions in like manner and with like effect as provided by paragraph (iv) of this subsection.”

- (d) A person dealing with the responsible Trustee in relation to any Trust property shall not be concerned to inquire as to the concurrence or otherwise of the Advisory Trustees or be affected by notice of the fact that the Advisory Trustees have not concurred.
- (e) Subject to the provisions of the instrument (if any) creating the Trust and to any order made by the Court, where remuneration is payable to the Trustee of any Trust property, remuneration or commission may be paid to both the responsible Trustee and the Advisory Trustees, and subject as aforesaid the amount thereof shall be: –
- (f) as regards the responsible Trustee, where the responsible Trustee is the Public Trustee, as prescribed under the Public Trustee Act 1941; and
- (g) in any other case, as may be determined by the responsible Trustee if he is entitled to fix his own remuneration or by the Court.

2. The provisions of Section 14 of the Trustees Act 1962 shall apply to this Deed subject to the following modifications:-

- (a) There shall at all times be a minimum of 5 and a maximum of 7 Advisory Trustees. The initial Advisory Trustees shall be appointed by the Trustee following the execution of this Deed. All subsequent Advisory Trustees shall be appointed by the Trustee in accordance with the provisions of sub paragraphs (b) to (d) below
- (b) The Trustee may at the direction of the Advisory Trustees appoint one Advisory Trustee who is not a member of the **Wagyl Kaip and Southern Noongar People**.
- (c) The appointment of each Advisory Trustee shall be for a period of one (1) year but he or she shall be eligible for reappointment by the Trustee. Any casual vacancies arising during the year shall be filled by appointment by the Trustee in its sole discretion (subject to the provisions of sub paragraph (b) above).
- (d) Nominations for the position of Advisory Trustees in each year shall be made in writing to the Trustee at least one (1) month prior to each anniversary date of this Trust Deed provided always that if more nominations are received by the Trustee than positions available then the Trustee shall have full discretion as to which of the nominees shall be appointed **PROVIDED THAT** apart from the Independent Advisory Trustee the Trustee shall give priority to nominations recommended by any body or corporation that from time to time may, in the opinion of the Trustee represent the majority of the Claimants.
- (e) The Advisory Trustees:-
  - (i) shall hold meetings not less than one (1) time in every calendar year approximately once every twelve (12) months. A special meeting at any time may be summoned

by any two Advisory Trustees upon fourteen (14) days notice to the other Advisory Trustees of the business to be transacted or discussed. Meeting may be held by telephone or video link-up;

- (ii) may from time to time appoint any one of their number to be their chairperson;
- (iii) shall cause minutes of the proceedings to be taken at meetings and shall keep the property accounts;
- (iv) subject to what is contained in this Deed the Advisory Trustees may from time to time make rules out of their meetings and conduct of their business and otherwise for the management of the meetings as they shall deem fit.

(f) Any decision by the Advisory Trustees and any advice or directions given to the Trustee shall be by majority of the Advisory Trustees and shall take the form of a signed minute given to the Trustee.

(g) Any Advisory Trustee being a person engaged in any profession or business is entitled to charge and be paid out of the Trust Fund all usual professional or business charges for business transacted, time expended, and acts done by him in connection with the Trust, including acts that a Trustee not being in any profession or business would have done personally.

## SCHEDULE 2

- Billy Colbung + Clara Brockman + Nina Bayla Brockman;
- Helen Williams + Bill Woods;
- Sarah Yettung James + Jack Woods;
- Sammy 'Jimmy' Miller + Polly, from Gnowangerup;
- Alice Davidson + Alice Williams + Henry Woods;
- Charles or Peter Eades + Lucy Coyne;
- William Hayward + Minnie Knapp;
- Emily Coyne + William 'Peg' Farmer;
- Fred Coyne + Margaret Davidson;
- Johnny Penny + Margaret 'Maggie' Piggott (Starlight);
- Charles Williams + Ellen Nelly Foot;
- Elijah Quartermaine + Mary 'Wartum';
- Ah-Lee + Mary Bateman;
- Peerup Roberts + Monkey + Emily (Mudah) D'Abb;
- Edward Smith + Sarah Punch;
- Ernie or George Moir or Muir + Aboriginal woman named Karlbyirt;
- Eddie 'Womber' Williams + Lily 'Tjorlian' Burchell;
- George 'Bordriditch' Riley + Elizabeth Smith;
- Jack Mindum

**EXECUTED BY THE PARTIES AS A DEED**

SIGNED as a Deed by MICHAEL EVELEGH)

*M. Evelegh* )  
..... )  
..... )

in the presence of:-

*P. Bush*

Signature of Witness

*Phillip Eric Williams*

Please print full names

71A Camberwell St East Victoria Park  
State Address

Trust Officer  
Occupation

The COMMON SEAL of )  
PLAN B TRUSTEES LTD )  
(ABN 054 737 156) )  
was hereunto affixed by )  
authority of the Directors )  
in the presence of: )

*Mark Pearce*  
\_\_\_\_\_  
Director



*Mark Pearce*  
\_\_\_\_\_  
Director/Secretary

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