



Exploration Deed – Deed of Variation and Restatement

Ngaanyatjarra Land Council (Aboriginal Corporation)

ICN 715

and

Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation) RNTBC

ICN 4527

and

BHP Billiton Nickel West Pty Ltd (formerly WMC Resources Limited)

ACN 004 184 598

2012

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THIS DEED is made on

16 August 2012

2012

BETWEEN:

- (1) **Ngaanyatjarra Land Council (Aboriginal Corporation)** (ICN 715) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act 1976* (Cth) and having its principal office at 58 Head Street, Alice Springs in the Northern Territory of Australia (the "**Land Council**"); and
- (2) **Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation)** RNTBC (ICN 4527) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act 1976* (Cth) and having its principal office at 58 Head Street, Alice Springs in the Northern Territory of Australia (the "**PBC**"); and
- (3) **BHP Billiton Nickel West Pty Ltd** (ACN 004 184 598) (formerly WMC Resources Limited) (the "**Explorer**").

RECITALS

- (a) The Land Council and the Explorer have entered into the Exploration Deed, which was subsequently amended by the:
 - (i) Unsigned Supplementary Deed;
 - (ii) Signed Supplementary Deed;
 - (iii) Variation Deed;
 - (iv) Deed of Variation No. 3;
 - (v) Deed of Variation No. 4; and
 - (vi) Deed of Variation No. 5.
- (b) At the time that parties entered into the Variation Deed (which also affirmed the Unsigned Supplementary Deed), the Deed of Variation No. 3, the Deed of Variation No. 4 and the Deed of Variation No. 5 the parties were unaware of the terms of the Signed Supplementary Deed. Having now become aware of the Signed Supplementary Deed, the parties wish to terminate it and treat it as if it had never come into effect.
- (c) The parties to this deed are also parties to the Ngaanyatjarra Lands Indigenous Land Use Agreement (Body Corporate Agreement) No. 1 (**ILUA**) registered on 9 March 2006.
- (d) Under the ILUA, the PBC agreed to comply and be bound by the Exploration Deed as if it was expressly named as the Land Council in the Exploration Deed.
- (e) The Explorer wishes to confirm that the Exploration Deed (as varied) applies to the New Exploration Licences.
- (f) The Explorer and the Land Council also wish to further vary the Exploration Deed in the manner set out in this deed.
- (g) By this deed the Explorer and the Land Council confirm for the avoidance of doubt:
 - (i) the terms of the Exploration Deed (as varied);

- (ii) that the ILUA continues to bind the parties in relation to the Exploration Deed (as amended by this deed).

OPERATIVE PROVISIONS

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

Deed of Variation No. 3 means the deed of agreement entered into between the Land Council and the Explorer dated 16 February 2005. A copy of Deed of Variation No. 3 is attached as Annexure C to this deed.

Deed of Variation No. 4 means the deed of agreement entered into between the Land Council and the Explorer dated 14 June 2005. A copy of Deed of Variation No. 4 is attached as Annexure D to this deed.

Deed of Variation No. 5 means the deed of agreement entered into between the Land Council and the Explorer dated 3 December 2009. A copy of Deed of Variation No. 5 is attached as Annexure E to this deed.

Existing Mining Leases means mining leases numbered 69/72, 69/73, 69/74 and 69/75.

Exploration Deed means the deed of agreement entered into between the Land Council and the Explorer on 14 July 1997 in respect of the Exploration Licences referred to in that deed located in Western Australia on Reserve number 17614 occupied by the Land Council pursuant to a lease dated 29 November 1988, as amended by the Supplementary Deed, the Variation Deed, Deed of Variation No. 3, Deed of Variation No. 4 and Deed of Variation No. 5. A copy of the Exploration Deed as originally executed is attached as Annexure A to this deed.

New Exploration Licences means E69/2201 and E69/2338.

Restated Exploration Deed means the document in Schedule 1.

Signed Supplementary Deed means the supplementary deed of agreement entered into between the Land Council and the Explorer dated 16 March 2000. A copy of the Signed Supplementary Deed is attached as Annexure F to this deed.

Unsigned Supplementary Deed means the document annexed to the Variation Deed.

Variation Deed means the Exploration Deed entered into between the Land Council and the Explorer dated 19 November 2003. A copy of the Variation Deed is attached as Annexure B to this deed.

1.2 Defined terms in the Exploration Deed

Any term defined in this deed has the same meaning as it is given in the Exploration Deed, unless otherwise stated.

1.3 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

2. FURTHER VARIATION OF EXPLORATION DEED

- (a) With effect from the date of execution of this deed, the Exploration Deed is varied such that its terms shall be the same as in the Restated Exploration Deed.
- (b) For the avoidance of doubt, the parties acknowledge and agree that:
 - (i) as at the date of execution of this deed:
 - (A) the Exploration Licences to which the Exploration Deed (as varied in accordance with this document) applies are those listed in Annexure C to the Restated Exploration Deed (which includes the New Exploration Licences); and
 - (B) the Exploration Deed (as varied in accordance with this document) applies in respect of the Existing Mining Leases; and
 - (ii) the only payments the Explorer is required to make to the Land Council for the New Exploration Licences are the payments referred to in Annexure A to the Exploration Deed (as varied in accordance with this document).
- (c) Also for the avoidance of doubt, the parties acknowledge and agree that:
 - (i) the ILUA continues to apply in accordance with its terms;

- (ii) with effect from the date of execution of this deed, references in the ILUA to the "Exploration Agreement" are references to the Exploration Deed as varied in accordance with this document;
- (iii) there are no longer any "Additional Exploration Licences" (as defined in the ILUA) in force as at the date of execution of this document; and
- (iv) In relation to the "Agreement Exploration Licences" (as defined in the ILUA):
 - (A) only 69/1505 and 69/1530 remain in force as at the date of execution of this document; and
 - (B) the ILUA and the Exploration Deed as varied in accordance with this document continue to apply in respect of 69/1505 and 69/1530.

3. MUTUAL RELEASE

3.1 Discharge of the Signed Supplementary Deed

- (a) The Parties agree that the Signed Supplementary Deed is terminated and is to be taken never to have come into effect.
- (b) Without limiting clause 3.1(a), each party releases and discharges the other party, its officers, employees, agents, successors and assigns from any and all actions, proceedings, claims and demands which they have or may have in respect of, arising from under or in relation to, any breach or non-compliance with the Signed Supplementary Deed.

3.2 Exploration Deed

- (a) Subject to clause 3.2(b), each party releases and discharges the other party, its officers, employees, agents, successors and assigns from any and all actions, proceedings, claims and demands which they have or may have in respect of, arising from under or in relation to, any breach or non-compliance with the Exploration Deed that pre-dates the date of this deed.
- (b) Nothing in clause 3.2(a) affects the obligations of the Explorer:
 - (i) to make payments under clause 25 and Annexure A of the Exploration Deed in respect of the period between 1 July 2011 and the date of this deed; nor
 - (ii) under clause 9 of the Exploration Deed in respect of Exploration Operations undertaken prior to the date of this deed.

4. AMENDMENT AND ASSIGNMENT

4.1 Amendment

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties, or in the case of a waiver, waived by another document signed by the party whose rights are waived.

4.2 Assignment

A party's rights and obligations under this deed can only be assigned in accordance with clause 21 of the Exploration Deed.

5. **GENERAL**

5.1 **Governing law**

- (a) This document is governed by the law in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

5.2 **Liability for expenses**

- (a) The Explorer shall pay to the Council, its reasonable legal costs and disbursements incidental to the negotiation and execution of this deed. Such reasonable costs shall be calculated at the hourly rate previously agreed upon in writing by the parties.
- (b) The Explorer must pay the amount of any duty that is payable on or in relation to this deed.

5.3 **Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

5.4 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

5.5 **Counterparts**

This document may be executed in counterparts.

SCHEDULE 1
Restated Exploration Deed

Confidential

**NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION)**

AND

**BHP BILLITON NICKEL WEST PTY LTD (FORMERLY WMC RESOURCES LIMITED)
ACN 004 184 598**

DEED OF AGREEMENT

WEST MUSGRAVES EXPLORATION AREA

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THIS DEED is made the 14 day of July 1997

BETWEEN

NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION) a body incorporated pursuant to the provisions of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth) and having its principal office at Alice Springs in the Northern Territory of Australia ("**the Land Council**") of the one part

And

BHP BILLITON NICKEL WEST PTY LTD (ACN 004 184 598) a company incorporated or deemed to have been incorporated pursuant to the provisions of the *Corporations Act 2001* (Commonwealth) ("**the Explorer**") having its principal office at Level 33 Central Park, 152-158 St Georges Terrace, Perth WA 6000

WHEREAS:-

- A. The Land Council is the Lessee of the Lands (as hereinafter defined) pursuant to a 99 year lease dated the 29th day of November 1988 ("**the Lease**").
- B. The Land Council is entitled to occupation of the Lands, subject to the provisions of the Lease.
- C. The Land Council has as its responsibility under its Rules and the Lease the protection of the Ngaanyatjarra ways of life, culture and tradition.
- D. The Land Council, pursuant to its Rules and the Lease, is authorised to negotiate with the Explorer in relation to its use, occupation and access to the Lands and has agreed to facilitate such use, occupation and access upon the terms and conditions set out hereunder.
- E. The Explorer or a party in joint venture with the Explorer has been granted Exploration Licences by the Department of Mines and Petroleum (Western Australia) over the Exploration Area (as hereinafter defined).
- F. In 2001 the Explorer was also granted Mining Leases 69/72, 69/73, 69/74 and 69/75 within the Exploration Area.
- G. The Exploration Area is situated within the Lands.
- H. The Department of Mines and Petroleum has sought a recommendation of the Minister for Aboriginal Affairs pursuant to the provisions of section 24 (7) of the Mining Act 1978 ("**the Mining Act**").
- I. The Minister for Aboriginal Affairs has sought the views of the Land Council in relation to the application prior to providing the recommendation referred to in recital H herein.
- J. The Minister for Aboriginal Affairs has consulted with the Aboriginal Lands Trust and has sought the view of the Land Council prior to making a decision pursuant to Section 31 of the Aboriginal Affairs Planning Authority Act 1972 ("**the AAPA Act**") and Regulation 8 of the Aboriginal Affairs Planning Authority Act Regulations, 1972-1978 ("**the AAPA Regulations**").
- K. The Land Council has in accordance with its Rules and the Lease resolved to co-operate with the Explorer in carrying out of Exploration Operations in the Exploration Area (including on the Mining Leases referred to in recital F herein) on and subject to the terms and conditions hereinafter set forth.

- L. In the event that the Explorer wishes to conduct Mining Operations on the existing Mining Leases referred to in recital F herein, or on any additional Mining Leases granted in accordance with this Deed, the parties will, in accordance with the processes set out in this Deed, enter into a Mining Agreement under which compensation will be payable in respect of those Mining Operations..
- M. Ngaanyatjarra Council (Aboriginal Corporation) ("**the Ngaanyatjarra Council**") is a body incorporated pursuant to the provisions of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth).
- N. The Ngaanyatjarra Council represents the members of the Land Council who are native title holders in respect of the whole of the land comprising the Exploration Area, as recognised in *Stanley Mervyn, Adrian Young, and Livingston West and Others on behalf of the Peoples of the Ngaanyatjarra Lands v State of Western Australia* [2005] FCA 831.
- O. The Land Council has consulted with the Traditional Owners and is authorised to act on their behalf in entering into this Deed.
- P. The Land Council and the Explorer have agreed upon the terms herein.

NOW THIS DEED WITNESSETH as follows:-

1A. DEFINITIONS

In this Deed, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"the AAPA Act"	means the Aboriginal Affairs Planning Authority Act 1972 together with any regulations made thereunder.
"Aboriginal"	means a person who is a member of the Aboriginal race of Australia.
"Aboriginal Traditions"	means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions and observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.
"Access Road"	means any road on the Lands which is used or constructed by the Explorer for the purpose of gaining access to or egress from the Exploration Area in accordance with this Deed.
"the Advisory Committee"	means the Advisory Committee constituted under Clause 11 hereof.
"Areas of Significance"	means an area of land which according to Aboriginal tradition is of cultural, social or spiritual significance to Aboriginal persons and includes any land that, under a law of the Commonwealth or Western Australia is registered or declared as being of cultural, social or spiritual significance to Aboriginal persons according to Aboriginal tradition.
"Authorisation"	means any authorisation, lease, licence, permit, approval, certificate, consent, direction or notice from any government or governmental or other competent authority which is necessary or desirable for carrying out of the Project excluding the Exploration Licence and Entry Permit.

"Best Practicable Technology"	<p>means that technology from time to time relevant to the Project which produces the minimum contamination with a harmful substance and has the minimum Environmental Impact that can reasonably be achieved having regard to:-</p> <ul style="list-style-type: none"> (a) the level of effluent control achieved and the extent to which contamination by harmful substances is prevented and environmental Impact minimised in the mineral exploration industry anywhere in the world; (b) the total cost of the application or adoption of that technology relative to the environmental protection to be achieved by its application or adoption; (c) evidence of detriment, or of lack of detriment, to the environment after the commencement of the Project; (d) the physical location of the Project; and (e) social factors including Aboriginal social, cultural and economic perspectives and possibly adverse social effects of introducing new technology.
"the Council"	means the Ngaanyatjarra Council (Aboriginal Corporation).
"Entry Permit"	means the permission granted or sought to be granted by the Minister for Aboriginal Affairs pursuant to Regulation 8 of the AAPA Regulations authorising the Explorer to enter and remain upon the Exploration Area for purposes associated with their compliance with obligations under the Licence.
"Environmental Assessment"	<p>means a written report:-</p> <ul style="list-style-type: none"> (a) evaluating and/or assessing the potential impact upon the environment likely to result from any proposal to recover minerals from any part of the Exploration Area; and (b) identifying measures and alternative measures, safeguards and standards for the protection of the environment and/or minimizing the potential impact of the proposal to recover minerals.
"Environmental Impact"	means a change (whether a temporary or permanent) to the environment or to the appearance of the environment resulting from the Project or any activities relating to the Project including all Exploration.
"Environmental Procedures"	means the procedures agreed to and defined in Annexure B.
"Exploration"	<p>means all modes of searching for or evaluating deposits of minerals within the Exploration Area and includes such operations and works as are necessary for that purpose including:-</p> <ul style="list-style-type: none"> (a) entering and re-entering the Exploration Area with

such agents, employees, vehicles, machinery and equipment as may be necessary for the proper and efficient exploration for minerals;

- (b) digging pits, trenches and holes, and sinking bores and tunnels in, on or under the Exploration Area or ascertaining the quality, quantity or extent of ore and other material by drilling or other methods;
- (c) the sampling, extraction and removal for analysis and testing of an amount of ore, material or other substance reasonably necessary to determine its mineral bearing quality; and
- (d) taking or diverting water from any natural springs, lake, pool or stream situated on or flowing through the Exploration Area and to sink a well or bore on the Exploration Area and take water therefrom and to use the water so taken or diverted for domestic use and for any purpose in connection with exploring for minerals on the Exploration Area.

"the Explorer"

means BHP Billiton Nickel West Pty Ltd and any other person or body corporate who enters into a Deed of Covenant in accordance with Clause 21 and includes the successors in title and assigns of BHP Billiton Nickel West Pty Ltd and of such other person or body corporate.

"Exploration Area"

means:

- (a) that area of land on the Lease delineated in blue on the plan contained in Annexure F; and
- (b) includes any additional area of land on the Lease the subject of an Exploration Licence which the parties agree is to be subject to this Deed, but only for the purposes of the application of this Deed to that particular Exploration Licence during its term (including any extension).

"Exploration Expenditure"

means the amounts reported or required to be reported to the Department of Mines and Petroleum pursuant to section 82(1) of the Mining Act 1978 (WA) and Regulation 32 of the Mining Regulations 1981 insofar as it relates to Exploration with respect to a Mining Lease.

"Exploration Licences"

means:

- (a) the exploration licences granted by the Minister of Mines and Petroleum, Western Australia and referred to in Annexure C hereto; and
- (b) any other exploration licences which are granted to or applied for by the Explorer within the Exploration Area and which are notified in writing to the Land Council by the Explorer; and
- (c) any other exploration licences which are granted to or applied for by the Explorer and which the Explorer and the Land Council agree in writing are subject to this Deed.

"Exploration Operations"	include, but are not limited to: <ul style="list-style-type: none"> (a) geological, geophysical and geochemical surveying and mapping, aerial reconnaissance and mineral exploration, drilling excavating and testing; (b) taking samples and removing and retaining the same for the purpose of analysing, testing or evaluation; (c) taking onto the Exploration Area such plant machinery, tools, equipment and other chattels, and subject to the provisions of this Deed, erecting such buildings and structures as it thinks fit for effectively carrying out Exploration.
"Financial Year"	means the 12 month period commencing on 1 July of one calendar year and ending on 30 June in the following calendar year.
"Force Majeure"	means, to the extent that the Party affected could not reasonably have been expected to foresee or prevent or control the same, any act, event or cause which is beyond the reasonable control of the Party concerned and shall include but not be limited to an act of God, strike, lockout, act of the public enemy, war, blockade, revolution, riot, insurrection, civil commotion, lightning, fire, storms, flood, explosion, governmental restraint or restrictions, embargoes, unavailability of equipment, laws, rules, regulations or directions of a governing body having jurisdiction over the Exploration Area, funeral, religious or ceremonial activities of Traditional Owners and any other cause (other than a shortage or unavailability of funds) which is not reasonably within the control of the Party claiming the benefit of Clause 20 of this Deed.
"Improvement"	includes:- <ul style="list-style-type: none"> (a) fixture; (b) house, stores, stable, hut or other building or structure; (c) fence; (d) well, dam, tank, trough, pump or other apparatus for raising or storing water; or (e) garden, plantation or cultivation.
"Index Rate"	means the consumer price index (all groups) Perth as published by the Australian Bureau of Statistics for the quarter ending prior to the date on which the index rate is to be applied, divided by the consumer price index (all groups) Perth as published by the Australian Bureau of Statistics for the quarter ending 30 June 2010. Where the Commonwealth ceases to publish the consumer price index (all groups) Perth, the Index Rate will be determined by a person agreed upon by the Parties and in

	the absence of such agreement by a person nominated by the President for the time being of the Australian Institute of Chartered Accountants, being a person having appropriate qualifications and experience, who will make the determination acting as an expert.
"Interest Rate"	means the Average Daily Prime Commercial Rate plus two percentum (2%) where the Average Daily Prime Commercial Rate means the weighted arithmetic of the rates of interest charged on each day during the relevant period by Westpac Banking Corporation to its best corporate customers on overdrafts of more than \$100,000.00 granted within Australia.
"the Land Council"	means the Ngaanyatjarra Land Council (Aboriginal Corporation) and includes its successors in title and assigns.
"the Lands"	means those lands in respect of which a 99 year lease or a 50 year lease or sub-lease has been granted to the Land Council.
"the Lease"	means the Lease dated the 29th day of November 1988 of Reserve No. 17614 for a period of 99 years from the Aboriginal Lands Trust, the Minister for Aboriginal Affairs and the Aboriginal Affairs Planning Authority to the Land Council.
"Liquor"	means a beverage that contains more than 1.15% by volume of ethyl alcohol.
"Mineral"	is defined in Section 8 of the Mining Act.
"Mineral Exploration Report"	means a report pursuant to section 63(a) of the Mining Act.
"Mining Act"	means the Mining Act 1978 (Western Australia) as amended together with any regulations and subordinate legislation made thereunder.
"Mining Lease"	means a mining lease granted to the Explorer pursuant to the Mining Act within the Exploration Area.
"Mining Operations"	has the same meaning as in the Mining Act.
"Mining Proposal"	means the definition as set out in Clause 19.6.
"Ngaanyatjarra"	means any Ngaanyatjarra, Pitjantjatjara or Pintubi person who in accordance with Aboriginal tradition has social, economic and spiritual affiliations with and responsibilities for the Lands or any part of them.
"Operations Report"	means a report pursuant to section 68(3) and regulation 22 of the Mining Act.
"the Project"	means the Explorer's proposals for Exploration as outlined in approved Notifications of Operations pursuant to clause 3 of this Deed and in accordance with the other clauses and Annexure of this Deed.
"Project Officer"	means a project geologist or surveyor employed by the

	Explorer, to whom reference is made in sub-clause 8.7 of this Deed.
"Relevant Year"	is defined in Annexure A.
"Scouting Team"	means the persons referred to in sub-clause 8.5 hereof.
"Traditional Owner"	means in relation to any land an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic and spiritual affiliations with and responsibilities for that land or any part of it.
"Work Area"	means the specific individual locations in the Exploration Area or elsewhere within the Lands at or under which the Explorer pursuant to the terms of this Deed proposes or may at any time propose to locate or undertake Exploration Operations.
"Work Site"	means any camp sites, airstrips, water bore site, exploration, exploration drill sites, excavation pits or any other work areas which the Explorer proposes under the terms of this Deed to locate in the Exploration Area.

1B. INTERPRETATION

For the purposes of this Deed except to the extent that the subject matter or context may otherwise require:

- Expressions indicating the singular number shall be capable of indicating the plural number and vice versa;
- Expressions indicating the masculine gender shall also be capable of indicating and including the feminine and neuter genders;
- Expressions indicating natural persons shall also be capable of indicating bodies corporate and vice versa;
- Unless otherwise indicated references to any statutory enactment are to enactments of the State of Western Australia and includes any Regulations thereunder;
- References to any statutory enactment of the Commonwealth of Australia or any State or Territory thereof shall mean the statutory enactment as amended modified or re-enacted (in a similar form) from time to time; and
- Headings shall not form part of this Deed and shall not be relevant to the construction hereof.

1C. NGAANYATJARRA COUNCIL MAY ACT AS AGENT

Unless and except to the extent that the Explorer has from time to time been notified in writing to the contrary, where:

- (1) anything under this Deed is to or may be done by the Land Council:
 - (a) the thing may be done by Ngaanyatjarra Council as the agent of the Land Council;
 - (b) the doing of the thing by Ngaanyatjarra Council is a valid discharge of the obligation, or a valid exercise of the right (as the case may be), of the Land Council under this Deed; but

- (c) the Land Council remain liable for any failure to perform any of its obligations under this Deed;
- (2) under this Deed the Explorer is required to consult or reach agreement with or obtain a document from, or give notice or provide a document to, the Land Council:
 - (a) the Explorer may consult or reach agreement with or obtain the document from, or give notice or provide the document to (as the case may be), Ngaanyatjarra Council; and
 - (b) doing so will, to the extent it is otherwise in accordance with this Deed, validly discharge the Explorer's obligation.

2A. ACTS TO WHICH THIS DEED APPLIES

The acts that can be done from time to time in accordance with this Deed are:

- (a) the grant of Exploration Licences to the Explorer to the extent they are within the Exploration Area, and the exercise by the Explorer of the rights under the Exploration Licences within the Exploration Area; and
- (b) the grant of Mining Leases to the Explorer to the extent they are within the Exploration Area and, subject to clause 19, the exercise by the Explorer of the rights under the Mining Leases within the Exploration Area.

2B. CONDITIONS ON EXPLORATION LICENCES AND ENTRY PERMITS

In consideration of the Land Council entering into this Deed and agreeing to undertake the obligations hereunder set out, the Explorer hereby covenants that - :

- 2B.1 The Explorer will accept an offer by the Minister for Aboriginal Affairs to grant an Entry Permit to the Explorer in relation to an Exploration Licence or Mining Lease to which this Deed applies subject to the conditions set out in Annexure D hereof and any other conditions acceptable to the Explorer and the Land Council.
- 2B.2 The Explorer will agree to an Exploration Licence or Mining Lease being granted subject to the conditions set out in Annexure D hereof and to any other conditions acceptable to the Explorer and the Land Council.
- 2B.3 The Explorer shall not at time during the currency of this Deed seek or accept a variation to any conditions contained in the grant of the Exploration Licences or Entry Permits which may be contrary to this Deed without the written consent of the Land Council, except that conditions relating to expenditure commitments of the Exploration Licence will not subject to the consent of the Land Council.

3. NOTIFICATION OF OPERATIONS

- 3.1 The Explorer shall from time to time provide the Land Council at least 30 days in advance of all Exploration Operations a written notice of its intentions to conduct Exploration Operations on the Exploration Area.
- 3.2 The Explorer shall not undertake any Exploration Operations on any part of the Exploration Area or Lands unless:
 - (a) a Notification of Operations relating to such Exploration Operations has been approved by the Land Council in accordance with this Clause 3; and
 - (b) the Land Council has performed its obligations under Clause 8 to such parts of the Exploration Area that are subject to the intended Exploration Operations.

- 3.3 A Notification of Operations provided under Clause 3.1 shall include specific written particulars (including maps, plans and photographs where appropriate). Without limiting the generality of the foregoing, the Notification of Operations will include particulars of:-
- 3.3.1 Proposed means of access and location of access roads and routes for personnel and equipment, both into and within the Exploration Area including the amount of vehicular and airborne traffic and details of any proposals to construct new or upgrade existing roads, landing strips or any other access facilities.
 - 3.3.2 The location where Exploration Operations will be conducted and the estimated time scale for the performance of such activity together with details of the nature, scope, techniques and objectives of the activity.
 - 3.3.3 The major items of equipment proposed to be used.
 - 3.3.4 The proposed site and nature of any buildings or structures to be erected.
 - 3.3.5 Any other aspect of the operational programme which may have an adverse impact or cause disturbance to any part of the Lands or the Ngaanyatjarra people or their way of life.
 - 3.3.6 The identity of any contractors and sub-contractors (if known at the time) engaged or likely to be engaged and the minimum and maximum number of personnel likely to be on the Exploration Area taking part in the Exploration Operations from time to time and their roles in undertaking this work.
 - 3.3.7 Any water, timber or other resources proposed to be obtained from the Lands.
- 3.4 If the Land Council is not reasonably satisfied with the particulars of the proposed Exploration Operations given pursuant to sub-clause 3.3 hereof, the Land Council shall request in writing within 14 days of receipt of the particulars that the Explorer provide and the Explorer shall provide further particulars of such proposed operations.
- 3.5 The Explorer shall also give notice to the Land Council if the Explorer at any time proposes:
- 3.5.1 To cause an intensive acceleration in any existing operational programme; and
 - 3.5.2 To implement a substantial modification or alteration in the operational programme.
- 3.6 A notice of an intensive acceleration or of a substantial modification or alteration in an operational programme shall specify the particulars of the acceleration, modification or alteration and the Explorer shall not proceed with any acceleration, modification or alteration on any part of the Exploration Area or Lands unless:
- 3.6.1 The Land Council has approved the acceleration, modification or alteration; and
 - 3.6.2 The Land Council has performed its obligations under Clause 8 to such parts of the Exploration Area that are subject to the acceleration, modification or alteration to an operational programme.
- 3.7 If the Land Council is not reasonably satisfied with the particulars of any proposed acceleration modification or alteration to a work programme given pursuant to sub-clause 3.6 hereof, the Land Council shall request in writing within 14 days of receipt of the particulars that the Explorer provide further particulars of such proposed acceleration, modification or alteration.
- 3.8 In the event that the Land Council has a specific objection to any part of the particulars of the Exploration Operations supplied by the Explorer under sub-clause 3.3 or to any intensive acceleration or substantial modification or alteration therein of which notice has been given under sub-clause 3.6 the Land Council shall notify the Explorer of such objection within twenty-one (21) days of receipt of a notice served pursuant to sub-clause 3.3 or 3.6 respectively or within twenty- one (21) days of receipt of such further information

provided pursuant to sub-clause 3.4 or 3.7 respectively. If no such specific objection is raised within the said twenty-one (21) day period, the Land Council shall be deemed to have consented to the proposed Exploration Operations, subject to Clause 8 and subject to the further provisions of this Deed.

- 3.9 Should the Explorer wish to dispute any objection which the Land Council has raised pursuant to Clause 3.8 then subject to the requirements of Clause 27.1 the Explorer shall refer the matter to the Advisory Committee within 30 days of being notified of such objection and that part of the existing, intensified modified or altered Exploration Operations to which objection is taken shall not be proceeded with until the Advisory Committee has reached a unanimous decision.

4. LAND ENTRY AND OCCUPATION

- 4.1 Upon the granting to the Explorer of the Exploration Licence or Licences and until termination of this Deed or earlier cessation or completion of Exploration Operations, and subject to the Minister for Aboriginal Affairs granting an Entry Permit, the Explorer, their contractors, sub-contractors, employees, agents and servants may in accordance with the terms and conditions of this Deed enter upon the Exploration Area for the purposes authorised by this Deed and proceed with Exploration Operations in the Exploration Area necessary to enable the Explorer to carry out their duties under the Licence or Licences in a satisfactory and efficient manner;
- 4.2 The Explorer shall issue to their contractors, sub-contractors, employees, agents and servants an identification card showing the name (and including, where practicable, a photograph of the person,) stating the nature of the work which the person has been engaged to perform on behalf of the Explorer, and signed by the Exploration Manager or his nominee. The identification card shall state that it should be kept available while on the Exploration Area or the Lands at all times for production to an authorised representative or employee of the Land Council within a reasonable time of being requested to do so.
- 4.3 The Explorer shall forthwith notify the Land Council of the names of all persons who have been issued with an identification card pursuant to Clause 4.2 and such notice shall state the nature of the work which each person has been engaged to perform on behalf of the Explorer.
- 4.4 For the purpose of ensuring entry to the Exploration Area pursuant to Clause 4.1 the Land Council shall, without undue delay, issue to each person whose name is provided pursuant to Clause 4.2 a permit to enter upon the Exploration Area to carry out Exploration Operations.
- 4.5 Permits issued pursuant to Clause 4.4 are issued subject to conditions either expressly or by necessary implication contained within this Deed and without limiting the generality of the foregoing the following conditions apply to each permit:-
- 4.5.1 The permit shall only be issued for such period of time as, in the opinion of the Explorer is necessary for the person holding such permit (the "permittee") to complete the work they have been engaged to perform;
- 4.5.2 The permit shall expire when the person holding the permit ("the permittee") no longer requires access to the Exploration Area for the purposes of Clause 4.1 having regard to the nature of the work which the permittee was engaged to perform;
- 4.5.3 The permittee shall not photograph, video or by any other means make any picture or representation of any cave paintings, sacred sites, sacred objects, or Aboriginal ceremony, and shall not photograph or video record any Aboriginal person unless such Aboriginal person has given his or her consent;
- 4.5.4 The permittee shall comply with the rules for employees established by the Land Council in consultation with the Explorer from time to time;

- 4.5.5 The permittee shall gain access to and egress from the Exploration Area via the cleared access road in accordance with Clause 9 of this Deed;
 - 4.5.6 The permittee shall not enter upon, damage or interfere with an area of significance contrary to the terms of this Deed;
 - 4.5.7 The permittee shall comply with Clause 5 (Liquor and Guns); and
 - 4.5.8 Every permittee shall behave with respect towards and not give offence to Traditional Owners in respect of the Lands, in their culture or tradition.
- 4.6 The Explorer shall notify the Land Council within seven (7) days of the termination of any contract, sub-contract or employment of any person holding a permit issued pursuant to Clause 4.4 and of the permanent departure from the Exploration Area of any person holding a permit and so far as is practicable shall return such permit to the Land Council.
- 4.7 If a person is not able to produce his or her identification card or permit or is otherwise unable to satisfy the Land Council or a duly authorized member of the Land Council as to the lawfulness of his or her presence on the Lands or is a person or within a class of persons to whom sub-clause 4.9 relates, the Land Council shall be entitled to cause such person to be removed therefrom.
- 4.8 The Explorer shall inform all of their contractors, employees, agents and visitors, of the obligation upon them to remain within access road corridors or Work Areas which have been screened and cleared in accordance with Clause 8 of this Deed and to comply with those conditions consistent with this Deed and set out on the identification cards or permits.
- 4.9 The Land Council or any member of the Land Council possessing written authority for such purposes from the Land Council may specify in writing, upon reasonable grounds, that a person or class of persons may not be permitted access to the Exploration Area and the Explorer shall ensure that, as far as is within their power, such person or persons shall not enter upon the Exploration Area.
- 4.10 The Explorer shall ensure that a person to whom a permit is issued pursuant to Clause 4.4 is made aware of his rights and obligations as a permit holder under this Deed.
- 4.11 The Explorer shall, immediately it is aware, advise the Land Council if any person to whom a permit is issued pursuant to Clause 4.4 breaches any of the conditions of his or her permit.
- 4.12 The Land Council may:-
- 4.12.1 revoke a permit issued pursuant to Clause 4.4 upon breach of a condition of the permit; and
 - 4.12.2 refuse to issue a permit pursuant to Clause 4.4 where the proposed permittee has committed an act which would have been a breach of the proposed permit conditions;
- and shall forthwith advise the Explorer of the revocation or refusal and the reason for the revocation or refusal.
- 4.13 The Explorer shall, as soon as practicable after receiving advice from the Land Council pursuant to Clause 4.12, secure the prompt removal from the Exploration Area and take all reasonable steps to ensure the removal from the Lands of any person whose permit has been revoked pursuant to that Clause.
- 4.14 In the event of the Explorer disputing that a person has acted in a manner justifying removal from the Exploration Area the matter shall be referred to the Advisory Committee for determination.

- 4.15 The Explorer shall advise the Land Council in writing not less than two (2) business days prior to the proposed entry of any person pursuant to this Deed and shall include in such notice the names time, place and purpose of such proposed entry.

5. CONTROL OF LIQUOR AND GUNS

- 5.1 The Explorer acknowledges that it is an offence for any person while on any part of the Lands to bring, be in possession of or consume any liquor or to give, sell or otherwise provide or supply any liquor to any other person.
- 5.2 The Explorer shall take all steps practicable in the circumstances to bring this prohibition to the attention of all their contractors, employees, agents and visitors.
- 5.3 The Explorer shall immediately notify the Land Council of any breach of any of the prohibitions with respect to liquor set out in Clause 5.1.
- 5.4 The Explorer shall undertake all practicable steps to ensure that except with the written consent of the Land Council (which shall not be unreasonably withheld) no gun or firearm is brought onto the Exploration Area or the Lands except for security purposes.
- 5.5 The Explorer shall ensure that except with the written consent of the Land Council no animal is hunted or slain on the Exploration Area or Lands and shall undertake to notify its agents, contractors, sub contractors and employees of this prohibition.

6. REMOVAL OF EMPLOYEES

- 6.1 Unless the Land Council otherwise agrees, the Explorer shall take all reasonable steps to ensure immediate removal from the Lands of any contractor, employee, agent, or visitor of any of the Explorer, who;
- 6.1.1 has recklessly or wilfully trespassed on or in any way interfered with any Area of Significance;
- 6.1.2 has recklessly or wilfully moved outside any access road or Work Area cleared in accordance with Clause 8 of this Deed;
- 6.1.3 has violated any of the conditions set out on the contractor's, employee's, agent's or visitor's identification card or permit;
- 6.1.4 has brought onto or been in possession of or consumed liquor on the Lands, or has, on or outside the Lands, supplied liquor to residents of the Lands otherwise than for consumption on licensed premises outside the Lands;
- 6.1.5 has behaved in a manner demonstrating disrespect for Ngaanyatjarra culture and tradition or in a manner offensive to the Ngaanyatjarra people, in circumstances in which the person knew or ought reasonably to have known such behaviour to be disrespectful or offensive.
- 6.2 In the event of a dispute between the Land Council and the Explorer as to whether a person has acted in a manner justifying removal from the Lands the matter shall be referred to the Advisory Committee for determination.

7. INSTRUCTION IN ABORIGINAL CULTURE

- 7.1 The Explorer shall promote among non-Aborigines employed in Exploration Operations, a knowledge, understanding and respect for the traditions, language and culture of the Ngaanyatjarra people.
- 7.2 The Explorer shall ensure that:-

- 7.2.1 All non-Aboriginal employees and personnel are given appropriate instruction on aspects of Ngaanyatjarra traditions, history and culture by way of background and orientation; and
- 7.2.2 All "on-site" supervisory staff are given an initial course and periodic refresher courses of a more comprehensive and advanced nature than the instructions envisaged in paragraph 7.2.1 above.
- 7.3 The Land Council and Explorer shall co-operate in formulating an appropriate instruction course and shall co-operate in the presentation of the instruction to employees and personnel.
- 7.4 The Explorer shall reimburse the Land Council for all reasonable expenses incurred by it in relation to performing its functions pursuant to Clause 7.3.

8. SCREENING AND CLEARANCE

- 8.1 The parties acknowledge that this Deed is made for the purpose, inter alia, of providing a workable and effective arrangement to avoid disputes and differences in relation to Areas of Significance and to assist the Explorer to comply with the provisions of the *Aboriginal Heritage Act 1972 (WA)*.
- 8.2 In order to protect Areas of Significance, the Explorer shall with the particulars supplied, or in the notice given, under Clause 3 hereof, request clearance from the Land Council before proceeding with any Exploration Operations in a Work Area which has not already been screened and cleared by the Land Council pursuant to this Deed.
- 8.3 Upon receipt of the aforesaid particulars of notice, the Land Council shall in conjunction with the Explorer undertake at the expense of the Explorer (subject to sub-clause 8.6) the organisation and implementation of a screening programme by the Scouting Team of all Work Areas not already screened and cleared in accordance with this Deed on a regular work schedule and in accordance with a budgetary estimate of the cost of the screening programme agreed to between the Land Council and the Explorer.
- 8.4 Subject to funeral, religious and/or ceremonial obligations of members of the Land Council, and any other unavoidable delay, the task of the Scouting Team shall be:
 - 8.4.1 To determine whether proposed Exploration Operations, access roads or Work Areas are likely to damage, disturb, encroach upon or interfere with Areas of Significance;
 - 8.4.2 To give advance warning to the Explorer's Project Geologist to enable that person to relocate parts of access roads or Work Areas in order to avoid Areas of Significance;
 - 8.4.3 To show reasonable diligence in preparing for and carrying out such work, while the Explorer meets its obligations pursuant to this Deed;
 - 8.4.4 To make every reasonable endeavour to proceed with its work at a rate that will avoid any standby.
- 8.5 The Scouting Team shall consist of no more than:-
 - 8.5.1 Two anthropologists employed or engaged by the Land Council, and agreed to by the Explorer;
 - 8.5.2 A liaison officer engaged by the Land Council and referred to in paragraph 8.16;
 - 8.5.3 Traditional Owners in two groups being a male and a female group (there shall not be more than four (4) in each group) with responsibility for Areas of Significance within the Exploration area;

The supervising anthropologists shall be responsible for co-ordination of the Scouting Team operation.

- 8.6 The Explorer shall appoint a Project Geologist to be attached to the Scouting Team, whose duties, as the representative of the Explorer to the Scouting Team, shall include:-
- 8.6.1 accompanying the members of the Scouting Team to the proposed Work Areas (except where otherwise directed by the Scouting Team);
- 8.6.2 being responsible:-
- (a) for identifying the location/position of the proposed access roads and the other proposed Work Areas (except where otherwise directed by the Scouting Team);
 - (b) for the preparation of three sets of maps showing the location of the proposed Work Areas for use by the male and female Scouting teams and the Explorer;
 - (c) for relocating proposed access roads or other proposed Work Area where advance warning has been given by the Scouting Team in accordance with Paragraph 8.4.2 and a suitable alternative track or other Work Areas has been screened and cleared by the Scouting Team.
 - (d) for communicating with the supervising anthropologist while on the Exploration Licences.
- 8.7 The Land Council shall nominate a supervising anthropologist whose responsibilities shall be:-
- (a) identifying the Traditional Owners to accompany the Scouting Teams;
 - (b) coordinating the work of the Scouting Teams in undertaking the screening of the work areas to determine whether any of the proposed exploration operations are likely to damage, disturb, or encroach upon any Areas of Significance;
 - (c) mark all sets of maps produced by the Explorer in accordance with 8.6.2(b) so that work areas cleared or not cleared are designated and signed by all participants; and
 - (d) to be the contact point for the Explorer's Project Geologist.
- 8.8. Where appropriate the Scouting Team and the Explorer will discuss methods by which the Explorer may proceed with Exploration Operations without interfering with any Area of Significance.
- 8.9 In the event that the Explorer wishes to make minor modifications or additions to any part of a programme of Exploration Operations previously notified to the Land Council, or to locate any Work Areas more than 200 metres from an existing cleared access road, or to use an existing water source, the Explorer shall immediately notify the supervising anthropologist or such other person nominated by the supervising anthropologist and request that the Scouting Team screens such proposed modifications, additions, Work Area or water source in accordance with the provisions of this Deed. In such case the Land Council shall as soon as possible, and in any event not later than fourteen (14) days after receipt of such request, either notify the Explorer in writing of its consent to such modifications, additions, Work Area or water source, or ensure the commencement by the Scouting Team of the screening of those areas as requested by the Explorer, or refer such notification to the Advisory Committee for its determination and advice.

- 8.10 The Explorer shall not refer any requests for modification referred to in sub-clause 8.9 to any person not specifically nominated by the Land Council to receive such requests, who, at first instance, shall be the supervising anthropologists.
- 8.11 The Explorer shall follow the mapped and cleared access roads and any deviation beyond an access road corridor shall require a further scouting exercise.
- 8.12 Upon screening and clearance of a Work Area or any part thereof by the Scouting Team, and notification by the Land Council pursuant to sub-clause 8.13, the Explorer shall (subject to Clause 11) be entitled to commence Exploration Operations without being required to obtain any further clearance except as otherwise provided in sub-clause 8.9 hereof. Where a Work Area or any part thereof has been screened and cleared subject to compliance with conditions specified by the Land Council, the Explorer may only conduct Exploration Operations thereon in accordance with such conditions.
- 8.13 Within seven (7) days of the completion of each scouting tour, the Land Council will notify the Explorer in writing by providing maps indicating the Scouting Team's decisions concerning the acceptability or otherwise of proposed locations of the Explorer's access roads and other Work Areas, such maps to be countersigned by the Explorer's Project Geologist. The notification will specify the proposed locations which have been screened and cleared for use by the Explorer and the conditions attached to that use.
- 8.14 The Explorer shall not carry out Exploration Operations on any part of .the Lands except:-
- (a) within a Work Area which has been screened and cleared by the Scouting Team;
 - (b) in respect of which a notification of such screening and clearance has been received by the Explorer pursuant to paragraph 8.13; and
 - (c) in accordance with the conditions (if any) included in the notification pursuant to paragraph 8.13.
- 8.15 The Explorer shall be absolutely entitled to rely on clearances notified by the Land Council pursuant to sub-clause 8.13 and Exploration Operations conducted in accordance with such clearances as notified by the Land Council shall foreclose any future claims that such operations interfered with any Area of Significance.
- 8.16 During the term of this Deed, the Land Council may from time to time engage the services of a liaison officer whose duties and functions shall include:
- (a) subject to acceptable arrangements made with the Land Council's supervising anthropologist liaising between the Land Council, the Traditional Owners and the Explorer with respect to such matters as the parties may from time to time agree;
 - (b) co-ordinating those Traditional Owners from time to time forming part of the Scouting Team; and
 - (c) visit the Exploration Area from time to time between scouting tours while the Explorer is engaged in Exploration Operations in the Exploration Area.
- 8.17 The liaison officer is to be supervised by the supervising anthropologist or person nominated by him .
- 8.18 Neither the Land Council nor any member of the Scouting Team shall be required to disclose to the Explorer the location of Areas of Significance or any cultural information in relation to any Area of Significance.
- 8.19 The Explorer shall reimburse the reasonable costs and expenses of the Land Council incurred in carrying out its obligations under Clause 8 in accordance with the following provisions:-

- 8.19.1 The Land Council and the Explorer shall from time to time prepare and agree a detailed programme and budget which will show the activities to be undertaken by the Land Council pursuant to this Deed, indicate the likely number of personnel to be involved and set out the funds required to undertake the activities on a monthly basis.
- 8.19.2 At least seven (7) days prior to the beginning of any month in which such activities are to be undertaken the Explorer will advance to the Land Council the monies anticipated to be necessary for that month's activities. At the end of each month the Land Council will prepare and dispatch to the Explorer an invoice describing the activities undertaken and monies actually spent and the amount due to or by the Land Council will be paid by way of adjustment to the next month's advance. The Land Council will obtain and supply to the Explorer all applicable receipts and invoices to evidence the actual disbursements of funds, and will not disburse the funds except against such receipts and invoices.
- 8.19.3 When activities under an approved programme are completed, the Land Council will ensure the Explorer is supplied with full accounts showing all monies received as paid in accordance with these provisions. Such accounts are to be supplied within ninety (90) days of the completion of such activities.
- 8.19.4 The Explorer is entitled to audit such accounts and the Land Council will make all necessary information available to the Explorer to enable such audit to take place.
- 8.19.5 Payments to the Land Council under this clause 8 are to be paid by the Explorer by electronic funds transfer to an Australian bank account in the name of the Land Council nominated by the Land Council from time to time.
- 8.20 The Explorer acknowledges that the "reasonable costs" pursuant to this Clause will include the costs in Annexure E.
- 8.21 Notwithstanding any other term of this Deed, the Explorer acknowledges and agrees that Exploration Operations are not permitted within three (3) kilometres of the community known as Mantamaru.

9. ENVIRONMENTAL PROTECTION AND REHABILITATION

- 9.1 (1) The Explorer shall whilst conducting Exploration Operations on the Exploration Area use its best endeavours to conduct the Project so as to:-
- (a) preserve and protect the Environment;
 - (b) preserve natural hydrological systems;
 - (c) disturb the least amount of soil and vegetation possible;
 - (d) minimize pollution;
 - (e) accord with the Best Practicable Technology;
 - (f) prevent the introduction of exotic fauna and noxious plants into the area as a result of its activities.
- (2) Without limiting the generality of Clause 9.1(1), the Explorer shall, in implementing the Project:
- (a) comply with the Environmental Procedures at Annexure B;
 - (b) limit its use of vehicular traffic on the Lands to established roads wherever possible;
 - (c) take all reasonable precautions to prevent the occurrence of wild fires;

- (d) keep each site of activity to the minimum area necessary to efficiently conduct the Project and keep such sites clean and tidy and free from rubbish and debris;
 - (e) separately retain adjacent to each such area all vegetation cut or removed from an area for the purposes of the Project;
 - (f) remove and separately stockpile the topsoil from each area it wishes to excavate for the purposes of the Project;
 - (g) take reasonable safeguards against stock and wildlife being injured, in particular, by reason of holes drilled or trenches dug; and
 - (h) take all reasonable care to prevent erosion and, without limiting the generality of this obligation, the Explorer shall take such protective action as is reasonably prudent having regard to the Explorer's requirements for future access or use for the purposes of the Project and the Environmental Impact which may result should rehabilitation or protective action not be undertaken at that time.
- (3) The Explorer shall comply with any reasonable requirement of the Land Council for the purposes of Clauses 9.1(1) and (2) including the provision of a written report detailing the Explorer's rehabilitation plans and Environmental Assessment report referred to in sub-clause 19.6(b) and giving the Land Council access to rehabilitated areas to inspect progress of those plans, so long as it does not unreasonably increase the cost of Exploration to the Explorer. Such requirements may specify, but shall not be limited to, the location and manner of construction of any roads that may be necessary for the Project, and any erosion control measures, the sole costs of which shall be borne by the Explorer. The Explorer shall not be deemed to be in breach of its obligations under Clause 9.1(1) or (2) hereof by reason of its compliance with a request of the Land Council hereunder.
- 9.2 (1) The Explorer shall use its reasonable endeavours to repair any damage to the environment by progressively rehabilitating and revegetating those parts of the Exploration Area where the soil or vegetation are disturbed by it, using plant species indigenous to the area disturbed but excepting one or more of the following circumstances in which instance the Explorer will not be required to carry out further repairs to any environmental damage.
- (a) Any area disturbed at the request of the Land Council pursuant to Clause 9.1(3);
 - (b) any area upon which improvements exist which have been acquired by the Land Council pursuant to Clause 17;
 - (c) to the extent that the Land Council requests the Explorer in writing not to rehabilitate or revegetate any area; or
 - (d) where future Exploration Operations may occur.
- (2) Without limiting the generality of Clause 9.2(1) the Explorer shall:-
- (a) progressively seal all drill holes and trenches (except where the Land Council requests the Explorer not to seal a drill hole, in which case the Explorer will be indemnified and held harmless by the Land Council for any further damage such drill hole may cause);
 - (b) leave the surface in a safe condition and in a reasonable contour having regard to the state of the surface area prior to the activity;

- (c) wherever possible and if required by the local community or the Land Council ensure that all soil which is removed from any areas, for purposes such as a drill rig site, is stockpiled and upon the cessation of Exploration in respect of that area is respread over the area so that the approximate contours of that area are reinstated but having regard to the overall landscape of the area;
 - (d) wherever possible, ensure that all vegetation cut or removed in the course of Exploration, such as clearing for drill rig sites, is kept and upon the respraying of soil in a disturbed area is distributed over the respread soil for the purposes of aiding revegetation;
 - (e) whenever possible rehabilitate disturbed areas as soon as reasonably practicable after the Explorer no longer requires access to the area for the purposes of the Project;
 - (f) whenever possible satisfy revegetation targets including those revegetation targets outlined in Annexure B.
- (3) The Explorer shall, in addition to the requirements specified in Clauses 9.2(1) and (2), rehabilitate disturbed areas in accordance with the reasonable requirements of the Land Council and such requirements may include:-
- (a) deep-ripping;
 - (b) replacing topsoil; and
 - (c) removing all rubbish and debris.
- (4) The Land Council shall use its best endeavours to advise the Explorer of its requirements in relation to the restoration of Work Areas prior to the Explorer vacating the site so that the Explorer may utilise the services of its contractors or agents still on the site or in the immediate area.
- (5) Notwithstanding anything to the contrary in this Deed or otherwise, unless the Explorer is released in writing by the Land Council from its obligations under this Clause 9.2, the Parties agree that the rights and obligations granted and imposed pursuant to this Clause 9.2 shall continue in respect of each area of the Lands disturbed for the purposes of the Project until six (6) months after the date the Explorer terminates Exploration Operations on that part of the Exploration Area PROVIDED THAT the Explorer's obligations under this Clause 9.2 shall cease in relation to any land which has been or is being rehabilitated by the Explorer which is damaged by the activities of the holder of a subsequent exploration licence or other lease or licence over that land or by any other person on that land.
- 9.3 (1) If the conduct of the Project contravenes any provisions of this Clause 9, the Land Council may serve notice on the Explorer requiring it to take, within a reasonable time specified in the notice, such reasonable steps as are necessary (which steps may be specified by the Land Council) to remedy any contravention of such provision and to prevent any continued or repeated contravention of such provision and the Explorer shall forthwith comply with the notice.
- (2) If the Explorer fails to comply with a notice given pursuant to Clause 9.3(1), the Land Council may, provided it has first given the Explorer fourteen (14) days notice of its intention to do so, take such steps as are reasonably required to remedy any contravention or to prevent any continued or repeated contravention of such provision as referred to in the said notice and may engage such consultants or contractors as it may consider necessary for this purpose.
- (3) If the Land Council takes any steps pursuant to Clause 9.3(2) to remedy any contravention or to prevent any continued or repeated contravention of the

provisions of this Clause 9, all reasonable costs and expenses incurred by the Land Council in so doing shall become a debt due and payable by the Explorer on demand.

- (4) If the Explorer does not agree with the notice under Clause 9.3(1) then either Party can refer the matter to arbitration in accordance with Clause 27.
- (5) A dispute under Clause 9.3(4) will not prevent the Project from proceeding nor will it prevent the Land Council from continuing to take any steps pursuant to Clause 9.3(2) if the Land Council perceive that there is a real threat to the environment at that time.

9.4 The Explorer agrees that it will establish, as early as practicable for Environmental Assessments and Feasibility Studies, programmes to monitor biota, water, sediments, soils, air, and other aspects of the environment and such further programmes as may reasonably be requested by the Land Council, except where such request:-

- (a) would unreasonably increase the cost of the programme to the company;
- (b) is unsound according to generally accepted environmental engineering mining or geological principles; or
- (c) is inconsistent with or beyond the requirements of Best Practicable Technology.

9.5 With respect to sub-surface water which is encountered during drilling, the Explorer shall:-

- (a) report and describe the encounter to the Land Council with a general indication as to flow and quality if that information is available to the Explorer;
- (b) if the Land Council requests, allow the Land Council, without any material inconvenience to the Explorer, to sample and test the water (at its own cost) to ascertain its potential for domestic use, livestock or other purposes and if it desires, to develop the drill hole at its own cost; and
- (c) allow the Land Council a reasonable opportunity to consult Traditional Aboriginal Owners and to make a request pursuant to Clause 9.2(2)(a).

10. LAND COUNCIL EXPENSES

10.1 The Explorer shall pay all or any stamp duties payable by reason of the execution of this Deed.

10.2 The Explorer shall pay the Land Council the amounts determined in accordance with paragraph D of Annexure A in consideration of the Land Council's costs of administering this Deed and in consideration of the Land Council:

- (a) generally liaising with the Explorer regarding implementation of the terms and condition of this Deed;
- (b) providing appropriate accounting and other assistance as and when required;
- (c) assisting Land Council members in assessing compliance with any proposed assignee within the provisions of Clause 21;
- (d) participating in the membership of the Advisory Committee;
- (e) assisting, as required Traditional Owners to understand the written Notification of Operations referred to in Clause 3;
- (f) provide appropriate environmental advice as and when required by Traditional Owners for the purposes of Clause 9; and

- (g) generally provide appropriate assistance and advice as and when required by the Traditional Owners in respect of any matter arising under the Deed.

10.3 The amounts payable under this clause shall be paid in accordance with clause 25.5.

11. ADVISORY COMMITTEE

11.1 In order to provide for the smooth working of this Deed and the continuous co-operation of the parties thereto, the parties shall form an Advisory Committee, as follows:

11.1.1 The Advisory Committee shall consist of one (1) member appointed by the Land Council who shall be the person responsible from time to time for the day to day administration of this Deed on behalf of the Land Council, two (2) members appointed by the Explorer and one (1) other member appointed by the Land Council.

11.1.2 Each member shall have the right to appoint a proxy to attend on his or her behalf and each member or proxy in attendance shall be entitled to one vote.

11.1.3 A reasonable number of non-members may attend the committee meetings having regard to matters under discussion.

11.1.4 The Advisory Committee shall meet at such times as may be agreed between the parties.

11.1.5 Meetings shall be convened on the Lands or at Alice Springs, or at any other location, to be agreed from time to time between the parties.

11.1.6 The Explorer shall keep minutes which shall be supplied to the Land Council.

11.1.7 Unless otherwise specified, the majority decision of the Advisory Committee shall be the determination of the Committee. In the event of a deadlock the matter will be resolved as a dispute in accordance with Clause 27 and the decision of an arbitrator pursuant to Clause 27 shall become the determination of the Advisory Committee.

11.2 The functions of the Advisory Committee shall include:-

11.2.1 Maintaining liaison between the Explorer and local Ngaanyatjarra people;

11.2.2 Reviewing the working of this Deed and the progress of Exploration Operations hereunder;

11.2.3 Causing the effect of Exploration Operations hereunder on the environment to be monitored and reviewing the results of such monitoring;

11.2.4 Making any determinations under this Deed;

11.2.5 Receiving and hearing any specific objection or complaint relating to any part of the Exploration Operations;

11.2.6 Making recommendations to the Explorer in relation to the employment and appropriate training of Ngaanyatjarra people and the use of Aboriginal contractors by the Explorer pursuant to Clause 12; and

11.2.7 Preserving racial harmony between the Ngaanyatjarra people and other people entering the Exploration Area for the purposes of the Exploration Operations, and in particular, using its best endeavours to ensure that no incidents occur which degrade, prejudice or besmirch the customs, lifestyle, race or character of the Ngaanyatjarra people.

- 11.3 The parties agree that the Advisory Committee, in the carrying out of its functions, will at all times use its best endeavours to facilitate compliance with the provisions of this Deed (apart from this Clause) so that Exploration Operations may be conducted efficiently and with adequate regard to the aspirations and welfare of the Ngaanyatjarra people affected by the Exploration Operations.
12. **[DELETED]**
13. **INFORMATION**
- 13.1 With respect to the Project, the Explorer shall provide the Land Council with copies of all:-
- 13.1.1 reports, advice, letters and information concerning any program for work upon the Exploration Area which may be lodged, deposited, sent or submitted by the Explorer to any government or governmental or other competent authority at the same time as it is lodged, deposited, sent or submitted, including any notice relinquishing or surrendering any part of its rights under an Exploration Licence (together with appropriate maps);
- 13.1.2 applications or requests made by the Explorer to any government or governmental or other competent authority at the same time as making any such application or requests, including any application for a Mining Lease over any part of the Exploration Area; and
- 13.1.3 Authorisations given to the Explorer within five (5) business days of such an Authorisation being received.
- 13.2 The Explorer shall annually, within 30 days of the end of each Financial Year, provide the Land Council with a copy of all of the Mineral Exploration Reports and Operations Reports filed with the Department of Mines and Petroleum or provided to the Minister for Mines and Petroleum during the previous Financial Year.
14. **UNDERTAKINGS**
- 14.1 **[Deleted]**
- 14.2 The Explorer shall:-
- 14.2.1 only undertake such activities on the Exploration Area as are good exploration industry practice and are necessary for the proper and efficient implementation of the Project;
- 14.2.2 only make such use of the Access Road and such private roads as it is permitted to use on the Lands outside the Exploration Area as is necessary for the proper and efficient implementation of the Project; and
- 14.2.3 carry out the Project in accordance with:-
- 14.2.3.1 the terms of this Deed;
- 14.2.3.2 the Work Programmes approved from time to time;
- 14.2.3.3 Applicable laws subject to the terms of this Deed.
- 14.3 The Explorer agrees that, during the term of this Deed and notwithstanding the termination, expiration or suspension of the Exploration Licence or any other mining interest or the termination or suspension of the Project, for so long as they are entitled to enter upon or occupy any part of the Exploration Area, whether pursuant to this Deed or by reason of any statutory right they shall observe and perform all of the covenants and obligations given or undertaken by them hereunder and otherwise comply with the requirements of this Deed to the extent to which such observance, performance and compliance is not prohibited or prevented by the provisions of this Deed or by law.

- 14.4 The Explorer shall promptly provide the Land Council with a copy of any notice (provided to a Government or Governmental Authority) relinquishing or surrendering any part of the Exploration Licence or Licences or reducing the Exploration Area and a map identifying the area relinquished or reduced shall be included in the said notice.

15. RIGHTS OF TRADITIONAL OWNERS

- 15.1 The Explorer acknowledges that members of the Land Council and any other Traditional Owners have the right except where their presence may cause danger to health and safety, or where their presence may interfere with the conduct of efficient Exploration Operations:
- 15.1.1 To move freely throughout the Exploration Area including all roads thereon;
- 15.1.2 To establish residence in any place in the Exploration Area; and
- 15.1.3 To pursue customary and traditional activities within the Exploration Area.
- 15.2 The Land Council, its members and agents shall be permitted the use of all roads constructed for the purpose of Exploration Operations provided such use does not interfere with the conduct of efficient Exploration Operations and may with the consent in writing of the Explorer be permitted to use all other facilities and infrastructure constructed by or on behalf of the Explorer for the purpose of Exploration Operations not otherwise directly and exclusively used in such operations.
- 15.3 The use of roads, facilities and infrastructure in accordance with this Clause shall be subject to reasonable control by the Explorer for the purposes of safety and to priority of use by the Explorer for the purposes of Exploration Operations.
- 15.4 The Explorer shall be indemnified by the Land Council for all injuries suffered by the Traditional Owners arising out of their use of roads, facilities and infrastructure in accordance with Clause 15 except where such injury is caused by the negligence of the Explorer.

16. ROADS, MATERIALS AND WATER

- 16.1 The Explorer shall, until termination of the Project maintain at their own expense all roads used or established by them for the purposes of the Project.
- 16.2 Except with the prior consent of the Land Council, the Explorer shall not be entitled to take, direct or use timber or surface water other than as is reasonably required for cooking and drinking use at temporary tent campsites.

17. REVERSION OF INFRASTRUCTURE

- 17.1 Within a period of three (3) calendar months after the Explorer ceases to have a right to conduct operations under the Mining Act in the Exploration Area, the Explorer shall, subject to Sub-Clause 17.5, remove from the Exploration Area all infrastructure or facilities constructed for the purposes of Exploration Operations, which are capable of removal other than those which the Land Council agrees in writing may remain thereon.
- 17.2 Any infrastructure or facilities which the Land Council agrees in accordance with sub-clause 17.1 may remain in the Exploration Area ("free infrastructure") shall upon the expiry of the said period of three (3) calendar months (or upon such earlier date as shall be agreed between the parties) become the property of the Land Council without any payment or assumption of any mortgage, lien or charge therefore on the part of the Land Council. The Explorer shall not be liable for the state or condition of repair of any free infrastructure. The Land Council hereby waives and releases the Explorer from any claims, demands, costs or expenses made or incurred by the Land Council in respect of such free infrastructure and will indemnify the Explorer against any claims, demands, suits and proceedings of any third party arising out of the state or condition of repair of such free

infrastructure after the said period of three (3) calendar months (or such earlier date as aforesaid).

- 17.3 Where infrastructure or facilities are not removed by the Explorer pursuant to Clause 17.1 the Land Council may with such assistance as it considers necessary remove the infrastructure or facilities and the costs incurred by the Land Council shall be a debt due and payable by the Explorer to the Land Council.
- 17.4 Unless the Land Council agrees otherwise in writing the Explorer shall maintain all infrastructure and facilities referred to in Clause 17.1 for so long as they remain the property of the Explorer or until expiration of the three (3) month period referred to in Clause 19.1 whichever first occurs.
- 17.5 Subject to sub-clauses 17.1 and 17.2, if at any time during the term hereof the Explorer are desirous of disposing of their interest in any property or equipment used within the Exploration Area in connection with the Exploration Operations, the Explorer shall give to the Land Council the right of the first refusal to purchase the said property or equipment or any part thereof subject to the following terms and conditions:-
- 17.5.1 the Explorer shall give notice in writing to the Land Council of the Explorer' intention to dispose of any such property or equipment. The notice shall constitute an offer by the Explorer to sell any such property or equipment to the Land Council and shall specify the consideration required by the Explorer from the Land Council for the purchase by the Land Council of the Explorer' interest therein, which consideration shall not impose any more onerous obligation or duty upon the Land Council or require the Land Council to pay any greater pecuniary sum than the Explorer would impose upon or require from a purchaser other than the Land Council;
- 17.5.2 within fourteen (14) days after the Explorer gives the said notice the Land Council shall give notice in writing to the Explorer of the Land Council's acceptance or rejection of the Explorer's offer to sell. In the event of the Land Council giving notice of acceptance there shall be deemed to be a binding contract for sale by the Explorer and purchase by the Land Council of the Explorer's interest in the said property or equipment for the consideration stated in the Explorer's notice; and
- 17.5.3 the purchase price shall be paid within thirty (30) days from the date on which the Land Council gives notice of acceptance to the Explorer and, if the Land Council shall make default in payment of the purchase price or any part thereof, it shall be lawful for the Explorer at their option and, without prejudice to any other legal rights or remedies that the Explorer may have, upon giving fourteen (14) days notice in writing to the Land Council, to rescind the contract constituted pursuant to paragraph 17.5.2 and thereupon to resell the said property or equipment by public auction or private contract and any deficiency on resale together with all outgoing costs and expenses of and incidental to resale shall immediately thereafter be made good by the Land Council to the Explorer. In the event that the Land Council fails to give notice of acceptance pursuant to paragraph 17.5.2, or gives notice of rejection thereunder, the Explorer shall then be at liberty to sell the said property or equipment by private contract to any other person for a pecuniary sum being not less than that specified in the notice in writing given pursuant to paragraph 17.5.1 or by public auction.

18. INDEMNITY

The Land Council and its employees, agents and contractors shall be indemnified by the Explorer in respect of all actions, suits, claims, demands, or costs of third parties arising out of or in connection with any act or omission on the Lands on the part of the Explorer, their contractors, employees, agents or visitors, except where such action, suit, claim demand or cost arises out of the negligence or wilful act or omission of the Land Council, its employees, agents or contractors.

19. MINING PROPOSAL

- 19.1 The Explorer may, at any time prior to requesting the consent of the Minister for Mines and Petroleum to develop a mine on the Exploration Area, being an activity to which the provisions of Section 24 (7) of the Mining Act apply, or within 30 days of submitting such a request, give written Notice to the Land Council requesting consultations with the Land Council concerning the proposed activity in order that a Mining Agreement can be entered into by the parties. A Mining Proposal as defined by Clause 19.6 shall accompany the Notice.
- 19.2 Unless commenced earlier by mutual agreement, promptly after receipt by the Land Council of a relevant Mining Proposal, the parties shall commence bona fide negotiations for the purpose of endeavouring to reach agreement on the terms and condition of a Mining Agreement.
- 19.3 Subject to prior agreement by the parties the Explorer shall meet the reasonable costs and expenses incurred by the Land Council in negotiating any Mining Agreement including:
- (a) travel and accommodation expenses relating to travel within Australia;
 - (b) the cost and expenses of consulting relevant Aboriginals; and
 - (c) cost and expenses (at prevailing Australian rates) of any consultants which the Land Council reasonably requires in order to properly consider and negotiate such an agreement which costs and expenses shall be forward budgeted and substantiated to the Explorer in advance.
- 19.4 The Explorer acknowledges that each of the provisions of this Clause 19 is fundamental to this Deed.
- 19.5 In the event that following negotiations pursuant to this Clause, the parties fail to reach agreement for any reason on the terms, conditions and covenants of the Mining Agreement, the matter shall be referred to arbitration pursuant to Clause 27 and the determination of the arbitrator as to the applicable terms, conditions and covenants shall be final and binding on the parties.
- 19.6 The "Mining Proposal" means a written report comprising:-
- (a) details of the following as far as they are known to the Explorer in relation to the recovery of minerals from any part of the Exploration Area:-
 - (i) the (each) mineral deposit and a comprehensive report thereon which shall include the details of the grade and quantity of the proven, probable and possible ore reserves and the estimated rate and overall recovery of ore and minerals;
 - (ii) mining and plant proposals and designs;
 - (iii) recovery tests;
 - (iv) the area the subject of (or to be the subject of) an application for a mining interest under this Clause;
 - (v) the nature, size and location of all infrastructure including power lines, roads, camps, offices and transport, storage, maintenance and treatment facilities and how it is proposed to construct the infrastructure on land owned or leased by the Land Council that is not the subject of the Exploration Licences;
 - (vi) the method of ore treatment and estimating requirements for energy, chemicals, water, sand, gravel, soil, fill, clay and other materials;

- (vii) an indicative timetable of construction and an estimation of investment costs (including working capital) and cash outlays;
 - (viii) the ancillary facilities and services required, including supply of various utilities (electric power, fuel, steam, air, etc) supply or production and storage of sulphuric acid and/or other solvents, and the nature, size and location of all offices and industrial buildings required including warehouses and storage facilities for solvents and explosives and maintenance facilities; and
 - (ix) estimated future workforce (employment and contract) requirements and, in particular the opportunities for the engagement of Aboriginals; and
- (b) an Environmental Assessment;
 - (c) a detailed program for the reclamation and rehabilitation of areas expected to be disturbed and for the minimisation, control and monitoring of the effects of the operation on the environment and on the Aboriginal owners; and
 - (d) the mining proposal under section 74(1)(ca)(i), or section 82A(2) and regulation 32A, of the Mining Act provided to the Department of Mines and Petroleum.
- 19.7 The Explorer shall be at liberty to delete from the Mining Proposal those provisions relating to pricing, predictions and marketing arrangements, any technical information which is exclusive to the Explorer and is not in the public domain, and any other confidential provisions the release of which would result in the Explorer being in breach of legally binding obligations of confidence to third parties where such obligations arise by virtue of bona fide commercial arms length agreements but further provided that the Explorer shall still be obliged to provide a summary in general terms of any such deleted provisions.
- 19.8 Within 45 days after the Explorer gives Notice to the Land Council under Clause 19.1, or such other time as agreed to by the parties or determined by arbitration pursuant to Clause 27, the Land Council and the Explorer shall agree on compensation payable to the Land Council or to its nominee during mining under the Mining Agreement. The compensation may include some or all of the following categories of compensation and any other categories agreed upon by the Explorer and the Land Council from time to time:-
- (a) compensation for use of the land and inconvenience and disruption of the lifestyles of members of the Ngaanyatjarra Council, the Land Council and Traditional Owners in respect of the Lands being a percentage of the rental payments which may be payable to the State of Western Australia for any mining tenement held by the Explorer for the purposes of undertaking Mining Operations during the relevant period;
 - (b) employment and training of Aboriginal residents and custodians;
 - (c) education scholarships and support for Aboriginal residents and custodians and their children;
 - (d) the provision and upgrading of roads and telecommunication services within the land leased by the Land Council;
 - (e) the provision and upgrading of health services within Land Council communities;
 - (f) the support of cultural activities and facilities within Land Council communities;
 - (g) the support and provision of other services and facilities owned by the Land Council which the Land Council may from time to time seek;
 - (h) the right of the Land Council and/or its nominees to have an equity of up to 10%, and/or a percentage payment of royalties;

- (i) the protection and rehabilitation of the environment;
- (j) the protection of Sacred sites and Sacred objects;
- (k) dispute resolution;
- (l) the establishment of a Liaison Committee.

At the date of this Deed the Land Council acknowledges that nothing herein shall be construed as the Explorer agreeing to the inclusion of any of the above in any agreement between the parties in the future.

- 19.9 Compensation payable pursuant to Clause 19.8 shall be reduced by an amount equal to the amount of compensation to be paid (if any) by the Explorer to the Traditional Owners of the area subject to the relevant Mining Lease pursuant to any claim based on their Native Title rights as defined in the Native Title Act 1993 (Clth) to the Exploration Area.
- 19.10 The Explorer shall not commence a Mining Operation or any construction on any land within the Exploration Area until a Mining Agreement and compensation for such mining has been agreed to or arbitrated (as the case may be) pursuant to this Clause or Clause 27.

20. FORCE MAJEURE

- 20.1 In the event that the performance of this Deed by either party is prevented or delayed in whole or in part by Force Majeure this Deed shall nevertheless continue and remain in full force and effect but that party shall not be in default hereunder for as long as it continues to be prevented or delayed as aforesaid by such Force Majeure and the time within which such party is required to perform any work to satisfy any obligation hereunder shall be extended by a period equivalent to that during which such prevention or delay continues provided that:
 - 20.1.1 the cause of the Force Majeure as far as possible shall be remedied with all reasonable despatch by such party;
 - 20.1.2 neither party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory; and
 - 20.1.3 the party affected by any event of Force Majeure as aforesaid shall forthwith give notice thereof to the others of the occurrence of such event and of the cessation thereof.

21. ASSIGNMENTS

21.1 Assignments and Encumbrances of Individual Interests

21.1.1 The Explorer may:

- 21.1.1.1 assign, encumber, declare itself trustee of, or otherwise dispose of or suffer to exist an encumbrance over (referred to in this clause as an "Assignment") the whole or any fractional or constituent part of its interests, rights or obligations under this Deed, or under the Exploration Licences or Mining Leases (in this Clause 21 collectively referred to as its "Individual Interests") to any person or corporation whatsoever; and/or
- 21.1.1.2 enter into any contract, arrangement or understanding by which it disposes of all or any of the costs incurred by the Explorer in the Exploration Operations to any person or corporation whatsoever (also an "Assignment"),

provided:

21.1.1.3 that person or corporation ("Assignee") is a Reputable Corporation;
and

21.1.1.4 the conditions of Assignment in clause 21.4 have been satisfied.

21.2 Release of Explorer

In the case of an Assignment other than an encumbrance or an Assignment to which clause 21.1.1.2 applies, the Explorer will be released from its obligations under this Deed:

- (a) when the conditions of Assignment in clause 21.4 have been satisfied; and
- (b) to the extent those obligations have been assumed by the Assignee in accordance with clause 21.4.3.

21.3 Reputable Corporation

For the purposes of this Clause 21, a Reputable Corporation is any person or corporation which is financially sound, other than a person or corporation which has, by itself, its directors, its employees, or its duly authorised agents, made any public statement or taken any action which, in the reasonable opinion of the Land Council, reflects a current view or attitude of that corporation or its directors and is derogatory of either of the following:-

- (a) Aboriginal culture; or
- (b) any Aboriginal traditions.

21.4 Conditions of Assignment

Prior to any Assignment pursuant to Clause 21.1, the Explorer shall:-

- 21.4.1 obtain all necessary Government or other approvals or consents to such Assignment which may be required and upon request produce the same to the Land Council; and
- 21.4.2 forward to the Land Council, who shall treat such material in a confidential manner, a written certificate executed by both the Explorer and the proposed Assignee notifying of the proposed Assignment at least thirty (30) days prior to the proposed Assignment, and there shall be a meeting of the Advisory Committee within twenty-eight (28) days of the Land Council receiving the written certificate and the Advisory Committee shall determine what instruction the proposed Assignee shall receive pursuant to Clause 7; and
- 21.4.3 procure the Assignee to execute and deliver to the Land Council a deed in which the Assignee:
 - (a) in the case of an encumbrance, will not take possession of the Individual Interests or dispose of the Individual Interests to another person without first complying with this Clause 21 as if the taking of possession or disposal were an Assignment by the Explorer;
 - (b) in any other case, covenants to comply with this Deed as if references in this Deed to the Explorer were references to the Assignee, severally to the extent of the Assignee's Individual Interests (if applicable).

22. CONFIDENTIALITY

22.1 Subject to Clause 22.2, the following shall be treated by the Parties as confidential:

- 22.1.1 the terms and conditions of this Deed;

- 22.1.2 information given to the Land Council pursuant to Clause 13 (Information), or otherwise in respect of the Exploration under this Deed which the Explorer requests the Land Council to treat as confidential; and
 - 22.1.3 information furnished in or pursuant to this Deed or in the course of negotiating this Deed by or on behalf of the Traditional Owners to the Explorer which the Land Council requests the Explorer to treat as confidential.
- 22.2 Notwithstanding Clause 22.1 and Clause 13 (Information), a Party may divulge information to a third party:
- 22.2.1 with the prior consent of the other Parties (which consent shall not be unreasonably withheld);
 - 22.2.2 to the extent required by law or to obtain an Authorisation;
 - 22.2.3 to the extent expressly permitted under this Deed or required to enforce its rights under this Deed, including disclosure to potential assignees of any part of the Explorer's interests, rights or obligations under the Exploration Licence, any Mining Lease or this Deed;
 - 22.2.4 to the extent that such information is already or becomes in the public domain otherwise than by breach of this clause 22;
 - 22.2.5 to a financier of, or holding company, or wholly owned subsidiary of the Party;
 - 22.2.6 to the extent required to comply with the Official Listing Rules of the Australian Stock Exchange; or
 - 22.2.7 to the Traditional Owners.
- 22.3 Each Party shall take all steps reasonably necessary to ensure that the information and data referred to in Clause 22.1 is known only to such persons (including any employees of that Party) as may reasonably require knowledge thereof in the course of their duties or functions and, notwithstanding the provisions of Clause 22.2, each Party shall, to the extent permitted by law, require any person (other than Traditional Owners) to whom it intends to disclose such information or data (who is not under a statutory, professional or contractual duty to keep such information or data confidential) to give a written undertaking to keep such information or data confidential in accordance with Clause 22.1.
- 22.4 Notwithstanding termination of the rest of the Deed but subject to Clause 22.2, the Explorer shall continue to treat as confidential all information obtained by it pursuant to this Deed or in the course of carrying out the Project with respect to the locations of and traditions associated with sacred sites and sacred objects and, to the extent that it is capable of being delivered, shall deliver all of such information to the Land Council as soon as it is no longer required for the purposes of the Project.

23. TERMINATION

- 23.1 The Land Council may terminate this Deed by giving to the Explorer three (3) months notice in writing only on the following conditions:
- 23.1.1 In the event that the Explorer fail to pay any monies due to the Land Council and such default continues for more than twenty-eight (28) days after receipt of notice of failure to pay, except in the case where a bona fide dispute exists as to the liability or amount of monies payable;
 - 23.1.2 If the Explorer is in breach of any essential term or condition of this Deed and, if such breach is not capable of being remedied by decision of the Advisory Committee or the Explorer fails to remedy or commence to remedy such breach

within twenty-eight (28) days after receipt of notice given by the Land Council in writing of such breach.

- 23.2 Either the Land Council or the Explorer may terminate this Deed by giving notice to the other expiring at any time during the term hereof in the event of the Explorer ceasing to hold an Exploration Licence or Mining Lease in respect of any part of the Exploration Area.

24. CONSEQUENCES OF TERMINATION

Upon termination of this Deed pursuant to Clause 23:-

- 24.1 The rights of the Explorer hereunder shall thereupon cease without prejudice to any liability in respect of any antecedent breach or default under this Deed;
- 24.2 The Explorer shall, without prejudice to any continuing obligations under Clauses 9 and 19 hereof, be relieved of all obligations under this Deed except those obligations which arose prior to the date of such termination.
- 24.3 Subject to sub-clause 24.2, the Explorer shall within 28 days of the date of termination withdraw from the Exploration Area and refrain thereafter from having access thereto without the written consent in writing of the Land Council.

25. PAYMENTS TO ABORIGINAL OWNERS FOR EXPLORATION ACTIVITIES

25.1 Compensation in respect of exploration activities

The Explorer shall make payments to the Land Council in accordance with paragraphs B and C of Annexure A.

25.2 No additional compensation in respect of grant

- (1) Except as provided in this Deed, the Explorer shall not be obliged to make payments to the Land Council or the Traditional Owners in consideration of the Land Council's consent to the grant of an Exploration Licence or Mining Lease.
- (2) To avoid doubt, nothing in this clause limits the compensation that may be negotiated or determined in accordance with clauses 19 and 27 in respect of a Mining Lease.

25.3 Goods or services in lieu of payments of money

- (1) The Land Council may, in writing, request that the Explorer:
- (a) supply goods, services or improvements, or
 - (b) provide labour or materials, to or for the benefit or use of Traditional Aboriginal Owners
- in lieu of any payment or part of any payment required to be made by the Explorer to the Land Council pursuant to the terms of this Deed.
- (2) The Explorer agrees to use its best endeavours to comply with reasonable requests made by the Land Council under Clause 25.3(1).
- (3) The Parties acknowledge that for the purposes of this Clause 25.3 the value of any goods, services or improvements to be supplied or labour or materials to be provided in lieu of payment shall be calculated on the basis of the actual cost at the particular location to the Explorer.
- (4) Compliance with a request under this Clause 25.3 shall be a proper full or part discharge of the Explorer's obligation under Clause 25.1 according to the value attributed to the compliance.

25.4 Distribution

- (1) Except as otherwise provided in this Deed, the Land Council shall distribute sums paid to the Land Council pursuant to paragraphs B and C of Annexure A to this Deed to or for the benefit or use of or at the direction of the Traditional Owners in respect of the relevant Exploration Licence or Mining Lease to which the payment relates.
- (2) Notwithstanding any other provision of this Deed, if:
 - (a) the Explorer makes a payment to the Land Council purportedly under or in accordance with this Deed; and
 - (b) the payment or part of the payment is in excess of the amount actually due and payable under this Deed; and
 - (c) the Land Council distributes the payment or any part of the payment in good faith to Traditional Owners without actual knowledge or belief that the payment was in excess of the amount actually due and payable under this Deed,then:
 - (d) the whole of the payment shall be taken to have been made under and in accordance with this Deed; and
 - (e) the Explorer is not entitled to recover the payment or any part of the payment from the Land Council or the Traditional Owners, nor to set off the payment or any part of the payment against any other payment then due or in the future due to be paid by the Explorer under this Deed; and
 - (f) the Explorer releases and indemnifies the Land Council in respect of any claim by the Explorer against the Land Council arising out of the distribution of the payment or part of the payment by the Land Council.

25.5 Manner of making Payments

- (1) Within 42 days after the end of each:
 - (a) Relevant Year (where the end of the Relevant Year falls within the Financial Year ending 30 June 2013 or any subsequent Financial Year), the Explorer must give the Land Council written notice of the payments it considers are due under paragraphs B and C of Annexure A. Such notice must separately identify the payments due under paragraphs B and C of Annexure A in respect of each Exploration Licence and Mining Lease; and
 - (b) Financial Year (commencing with the Financial Year ending 30 June 2012), the Explorer must give the Land Council written notice of the payment it considers is due under paragraph D of Annexure A..
- (2) Following receipt of a notice under clause 25.5(1), or at any time after the date such notice is due, the Land Council may issue a tax invoice in respect of the payments it considers are due under paragraphs B, C and D of Annexure A.
- (3) Monies payable under this Deed (except for the cost of undertaking the screening and clearance work referred to in Clause 8) by the Explorer to the Land Council shall be paid within 30 days of the receipt by the Explorer of a tax invoice therefore with appropriate supporting documentary evidence from the Land Council.
- (4) In the event of any cost item or amount specified in any tax invoice being disputed by the Explorer, the Explorer may only withhold the disputed amount, and shall pay the undisputed amount within the said period of 30 days.

- (5) Payments to the Land Council under this Deed are to be paid by the Explorer by electronic funds transfer to an Australian bank account in the name of the Land Council nominated by the Land Council from time to time.

26. MISCELLANEOUS

- 26.1 This Deed shall be construed in accordance with and governed by the laws of the State of Western Australia except insofar as laws of another jurisdiction necessarily apply.
- 26.2 In giving effect to this Deed, the parties must comply with all laws in force in Western Australia, including laws dealing with anti-corruption measures.

27. ARBITRATION

- 27.1 Subject to the AAPA Act, if any dispute or difference arises between the Explorer and the Land Council in connection with this Deed, or the rights, duties or obligations of any party hereunder, except as to the terms and conditions of a Mining Agreement and/or compensation payable to the Land Council or its nominee under clause 19, the parties shall meet to discuss the dispute or difference and endeavour to amicably resolve such dispute or difference by themselves.
- 27.2 If after discussions the parties are unable to resolve such dispute or difference, the matter shall be referred to arbitration in accordance with the provisions of the Commercial Arbitrations Act 1985 of the State of Western Australia for the time being in force.
- 27.2A Subject to clauses 27.3 and 27.4, the Arbitrator shall be agreed upon between the parties hereto, and failing agreement within one month of one party giving notice of intention to arbitrate to the other, shall be nominated by the President for the time being of the Law Society of Western Australia.
- 27.3 If after the period for negotiations pursuant to sub-clause 19.8, the parties cannot agree on the terms and conditions of compensation payable to the Land Council or to its nominee, the Arbitrator appointed by agreement of the parties or nominated in accordance with this clause 27 shall determine the dispute.
- 27.4 Where an Arbitrator is to be appointed pursuant to clause 27.3 or clause 19.5 the President of the Institute of Arbitrators and Mediators Australia shall be requested to submit the names of three persons having the following qualifications:
- (a) a legal practitioner of at least 15 years standing; or
 - (b) a fellow of the Institute of Arbitrators and Mediators Australia; or
 - (c) a person who held office as a judge of the Federal Court of Australia;
- to both parties for their approval. Should approval not be reached within 30 days, the President of the Institute of Arbitrators and Mediators Australia shall appoint the Arbitrator from the list of names.
- 27.4A Arbitration conducted under this Deed will:
- (a) be conducted as expeditiously as is reasonably possible;
 - (b) take place at the times and venues in Perth nominated by the Arbitrator from time to time;
 - (c) be conducted in English in accordance with the UNCITRAL Rules in force at the date of referral to arbitration.
- 27.4B Subject to clause 27.5, the determination of the Arbitrator shall be final subject to any other laws and binding upon the Parties and enforceable in any court of competent jurisdiction in the same manner as a judgement or order of the Supreme Court of Western Australia.
- 27.5 In making a determination pursuant to clause 27.3 or 19.5, the Arbitrator must take into account the following:-

- (a) the effect of the proposed Mining Operations on;-
 - (i) any Native Title rights as defined by the Native Title Act 1993 and interests as may exist at the date of the appointment of the Arbitrator;
 - (ii) the way of life, culture and traditions of any Traditional Owner;
 - (iii) the development of the social, cultural and economic structures of any Traditional Owner;
 - (iv) the freedom of access by any Traditional Owner to the proposed area to be included into the Mining Operations and their freedom to carry out rites, ceremonies or other activities of cultural significance on the proposed area to be included into the Mining Operations in accordance with their traditions;
 - (v) any area or site on the proposed area to be included into the Mining Operations of particular significance to any Traditional Owners in accordance with their traditions; and
 - (vi) the natural environment of the proposed area to be included into the Mining Operations;
 - (b) any assessment that has been made regarding the effect of the proposed action on the natural environment of the proposed area to be included into the Mining Operations;
 - (c) the interests, proposals, opinions or wishes of the Traditional Owners in relation to the management, use or control of the proposed area to be included into the Mining Operations;
 - (d) the impact of the foregoing on the economic viability of the proposed Mining Operations; and
 - (e) any other matter that the Arbitrator considers relevant,
- and the determination of the Arbitrator shall be:
- (f) final subject to any other laws; and
 - (g) binding upon the Parties and enforceable as terms of the Mining Agreement between the Land Council and the Explorer in respect of the relevant Mining Lease to which this Deed applies and which is the subject of the Mining Proposal.

27.6 Any question of law arising in the course of the arbitration or out of determination may be referred to an appropriate court for determination at the request of the Land Council or the Explorer and, if required, the Arbitrator shall consent to such referral.

28. DURATION OF DEED

This Deed shall commence on the date hereof or on such other date as the parties may agree and, subject to Clause 23, shall continue for the duration of any Exploration Licence or Mining Lease held by the Explorer in respect of the Exploration Area.

29. VARIATION

The parties may from time to time by Deed in writing add to, substitute for, cancel or vary any of the provisions of this Deed for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Deed.

30. FURTHER ASSURANCE

Each of the parties hereto will sign, execute, make and do all such assurances, documents, acts and things as may be necessary for effectually carrying out the terms of this Deed.

31. NOTICES

Any notice request or other demand or writing required or permitted to be given hereunder may be duly served or, at the option of the party giving the notice may be validly and sufficiently given if sent by facsimile, telex, telegram or post addressed to:-

31.1 In the case of the Explorer to:

BHP Billiton – Land Assist Level 33 Central Park, 152-158 St Georges Terrace,
PERTH WA 6000
Telephone (08) 6274 1331
Facsimile (08) 9380 1331

31.2 In the case of the Land Council to:-

NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION)
58 Head Street
ALICE SPRINGS N.T. 0870.
Telephone: (08) 8950 1711
Facsimile: (08) 89531 892

32. NOTIFICATION

The parties agree to notify the Minister of Aboriginal Affairs and the Aboriginal Lands Trust of the terms and conditions of this Deed forthwith.

33. GST

33.1 Definitions

In this clause:

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Recipient means an entity to which a supply is made.

Supplier means the entity that makes a supply.

Tax means any income, withholding or other tax (but not GST), levy, charge, duty, fee, deduction, compulsory loan which is assessed, levied, imposed or collected by any government agency and includes but is not limited to any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

33.2 Same meaning as GST Law

Words defined in the GST Law have the same meaning in this clause, unless it is clear that a different meaning is intended.

33.3 GST

If a party makes a supply under or in connection with this Deed, then in addition to paying the consideration (which is exclusive of GST), the Recipient must:

- (a) pay to the Supplier an amount equal to any GST payable for anything provided or supplied by the Supplier; and

- (b) make that payment as and when the consideration or part of it must be paid or provided, except that the Recipient need not pay unless the Recipient has received a tax invoice (or an adjustment note) for that supply.

33.4 Tax invoice

The Supplier must issue a tax invoice (or an adjustment note) to the Recipient for any supply for which the Supplier may recover GST from the Recipient under this Deed.

33.5 Overpayment of GST

The Supplier must refund to the Recipient any overpayment by the Recipient for GST within 14 days of the Supplier becoming aware of the overpayment.

33.6 Costs to include GST

If a party has a claim for a cost on which the party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).

33.7 Australian Business Number

The Land Council must provide to the Explorer:

- (a) their Australian Business Number; or
- (b) satisfactory evidence that they do not have to quote an Australian Business Number.

Until the Land Council has provided its Australian Business Number or satisfactory evidence that an Australian Business Number does not have to be quoted to the Explorer, the Explorer is entitled to withhold from any payment made to the Land Council such amounts as are required for the Explorer to comply with the provisions of the *Taxation Administration Act 1953* (Cth) and related legislation.

33.8 Other taxes

The Land Council acknowledges that all liability for Tax on any payment made by the Explorer to or on behalf of the Land Council is to be met by the Land Council. The Land Council authorises the Explorer if and when required by any governmental agency or any statute to retain from time to time any amount of Tax out of any money which is payable to the Land Council by the Explorer under this Deed and to pay the amount retained to the appropriate governmental agency. The Land Council agree that if any such deduction or payment of Tax is valid, the Land Council will not seek to recover damages from the Explorer.

34. WITHHOLDING TAX

The Explorer is responsible for paying, in respect of the compensation payments referred to in Annexure A, all tax as required pursuant to the provisions of the *Income Tax Assessment (Mining Withholding Tax) Act 1979* (Cth).

35. NO BREACH IN CERTAIN CIRCUMSTANCES

Where a provision of this Deed requires the cooperation and engagement of both parties to enable one or both of them to comply with their obligations in this Deed, a party who does not or cannot comply with an such obligation (**Affected Party**) as a result of the other party's inaction or inability to engage with the Affected Party does not breach this Deed to the extent the Affected Party does not or cannot comply because of the other party's inaction or inability.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of)
NGAANYATJARRA LAND COUNCIL)
(ABORIGINAL CORPORATION) was)
hereunto affixed by the authority of a)
resolution of its Governing Committee)
in the presence of:)

CHAIRMAN

GOVERNING COMMITTEE
MEMBER

GOVERNING COMMITTEE
MEMBER

Signed for and on behalf of **WMC**)
RESOURCES LTD by David Berrie in)
the presence of:)

SIGNATURE OF WITNESS

NAME OF WITNESS
(please print)

ANNEXURE A
COMPENSATION

A. Interpretation

In this Annexure A:

Minimum Expenditure Amount means 5% of the minimum expenditure required to be made on the Relevant Exploration Licence under section 62 and regulation 21 of the Mining Act, or which would have been required to be made had an exemption not been granted or had the Exploration Licence not had retention status, in respect of the Relevant Year.

Minimum Exploration Payment means:

- (a) in respect of each of Exploration Licences 69/2201 and 69/2338 – the greater of \$25,000 and the Minimum Expenditure Amount;
- (b) in respect of each of Exploration Licences 69/1505 and 69/1530 – the greater of \$5,000 and the Minimum Expenditure Amount; and
- (c) in respect of any other Relevant Exploration Licence - the Minimum Expenditure Amount.

Relevant Exploration Licence means an Exploration Licence to which this Deed applies or applied at any time during a Financial Year.

Relevant Mining Lease means a Mining Lease to which this Deed applies or applied at any time during a Financial Year.

Relevant Year means the 12 month period ending immediately before the anniversary of the grant of the Relevant Exploration Licence or Relevant Mining Lease (as the case may be), where the last day of that 12 month period falls within the relevant Financial Year.

B. 5% of expenditure on Relevant Exploration Licences

In respect of each Relevant Exploration Licence, the Explorer will pay annually to the Land Council a sum of money equal to the greater of:

- (a) 5% of the total expenditure on the Relevant Exploration Licence as reported in, or as required to be reported in, or as would have been required to be reported in but for the granting of an extension of time within which to file, the Operations Report in respect of the Relevant Year; and
- (b) the Minimum Exploration Payment.

C. 5% of exploration expenditure on Relevant Mining Leases

In respect of each Relevant Mining Lease, the Explorer will pay annually to the Land Council a sum of money equal to the greater of:

- (a) 5% of the total Exploration Expenditure in respect of the Relevant Mining Lease in respect of the Relevant Year; and
- (b) 5% of the minimum expenditure required to be made on the Relevant Mining Lease under section 82(1)(c) and regulation 31 of the Mining Act, or which would have been required to be made had an exemption not been granted, in respect of the Relevant Year.

D. Administration payments

- (a) The Explorer will pay annually to the Land Council the sum of \$1,500 for each Relevant Exploration Licence and Relevant Mining Lease that is live during any part of a Financial Year, provided that if the aggregate amount payable on any occasion is less than \$2,500 then on any such occasion the Explorer will pay \$2,500.
- (b) The payment due under sub-paragraph (a) above will be adjusted annually by multiplying each sum of \$1,500 or \$2,500 (as the case may be) by the Index Rate.

ANNEXURE B
(See Clause 9)

A. GENERAL

1. Where practicable, the available topsoil shall be removed from excavated or cleared areas. Stockpile shall be created not greater than (2) metres in height, located out of drainage lines. The topsoil shall be redistributed evenly over distributed areas because where revegetation requires active seeding (when the soil seed-store is inadequate), certified weed-free seed and local tree and shrub species, shall be used in revegetation operations.
2. Foreign by-products of the excavation work shall be removed from site or buried.
3. Trees and shrubs cleared from the areas shall not be burned but stockpiled and spread over the cleared areas at the cessation of activity to help control erosion, provide seeds, traps, prevent vehicle access and provide animal habitats.
4. Material shall not be removed from the vicinity of creek banks where it is likely to erode and result in destruction of the water course.
5. Where excavation takes place in a stream bed the Explorer will use its best endeavours not to disturb trees or clumps of trees or create an erosion hazard that may lead to destruction of trees.
6. Where practicable, vehicle access is to be achieved across the natural ground surface.

B. ACCESS ROADS AND TRACKS

7. LOCATION

- 7.1 Proposed road locations should be identified on the ground and, where necessary, checked by interpretation of aerial photographs prior to finalising their positions.
- 7.2 Natural topographic features should be considered when locating the roads. Site factors such as erodability, soil "trafficability" and vegetation density are correlated with these natural features such as ridges, drainage depressions and plains. By locating roads along suitable natural features, both the cost of construction and the Environmental Impact of the road is reduced.
- 7.3 Wherever possible roads should ascend or descend along ridges and be located along the contour when traversing slopes.
- 7.4 Wherever possible, roads should be kept out of drainage lines.
- 7.5 Use of existing roads should be made wherever possible, subject to their location and condition being satisfactory to the Parties.
- 7.6 Except in exceptional circumstances and where a second access road is necessary for the conduct of the Project, no more than one access road shall be constructed to each site and all transport operations shall be confined to this access road.

C. CAMP, WORK AND DRILL SITES

8. CONSTRUCTION

- 8.1 An area sufficient in size for all operations at the drill site or camp site should be clearly marked on the ground and disturbance restricted to this area.
- 8.2 Clearing of the area should leave trees wherever possible to act as shade during the occupation of the site and as seed sources following rehabilitation of the site.
- 8.3 Cleared timber and scrub should be stockpiled and respread following soil return.

- 8.4 Where topsoil has to be moved, it should be blade-pushed to the perimeter of the defined area. In areas where appreciable run-off from upslope catchment is expected, the topsoil should be pushed to the upslope perimeter to form a water diversion bank.
- 8.5 Felled timber from cleared helicopter pads should be stockpiled.
9. REHABILITATION
- 9.1 Costeans, test pits and drilling sumps will be backfilled at the completion of activity at each site.
- 9.2 Reasonable precautions should be taken to avoid contamination of streams and drainage lines from oil and fuel spillage.
- 9.3 Where it is practicable, empty drums should be removed from site to approved dumping grounds.
- 9.4 Where it is impractical to remove drums, empty drums should be crushed and buried in sump pits. Adequate depth of compacted soil and topsoil should be used to cover these pits at least to a depth of .05 metres.
- 9.5 On completion of the operations of the site, the stockpiled topsoil should be spread over the site. The ground should then be ripped by a grader along the contours to incorporate the respread topsoil with the compacted soil and topsoil with the compacted working surface.
- 9.6 Rehabilitation of areas no longer required should be completed no later than the end of each field season and, where prudent, such rehabilitative or protective action in respect of other areas as is reasonably required prior to the end of each field season should be undertaken having regard to the Explorer's requirements for future access and the Environmental Impact which is likely to result should not such action be undertaken.
- 9.7 In cases where the site has been operated for over a year, initial stabilization of the rehabilitated site may be necessary, using introduced pasture species and local and tree and shrub species.
- D. SPECIFICATION FOR EFFECTIVE REHABILITATION OF BORROW PITS**
10. The Explorer shall be responsible for ensuring its contractors obey the Environmental Procedures.

**ANNEXURE C
(See Clause 1)**

The following Exploration Licences are subject of this Deed:

69/1505

69/1530

69/2201

69/2313

69/2338

**ANNEXURE D
(See Clause 2)**

EXPLORATION LICENCE

It is a condition of this Licence that the Licensee shall comply with the terms, conditions, covenants and other provisions on its part contained in:

- (i) the Deed of Agreement between Ngaanyatjarra Land Council (Aboriginal Corporation) and the Licensee dated 14 July 1997 (as amended).

MINING LEASE

It is a condition of this Lease that the Lessee shall comply with the terms, conditions, covenants and other provisions on its part contained in:

- (i) the Deed of Agreement between Ngaanyatjarra Land Council (Aboriginal Corporation) and the Licensee dated 14 July 1997 (as amended).

PERMIT

It is a condition of this Permit that the Permit shall comply with the terms, conditions, covenants and other provisions on its part contained in:

- (i) the Deed of Agreement between Ngaanyatjarra Land Council (Aboriginal Corporation) and the Permit dated 14 July 1997 (as amended); and
- (ii) Following termination of the Deed of Agreement pursuant to clause 23 thereof, this permit shall expire and cease to have effect Twenty eight (28) days after such termination other than strictly for the purposes of the Permittee's compliance with clauses 9 and 19 thereof.

ANNEXURE E
(See Clause 8.20)

[Note: All hourly rates are applicable to reasonable travelling time in addition to Clearance Program work.]

1. For the Principal Anthropologist

\$150 per hour (subject to a maximum of \$1,200 per day) plus reasonable disbursements (including costs of travel, accommodation and sustenance).

2. For any other anthropologist

(a) Where the anthropologist is an employee of the Land Council or Ngaanyatjarra Council Aboriginal Corporation: \$100 per hour (subject to a maximum of \$850 per day) plus reasonable disbursements (including costs of travel, accommodation and meals).

(b) Where the anthropologist is not an employee of the Land Council or Ngaanyatjarra Council Aboriginal Corporation: A reasonable hourly rate not exceeding \$150 per hour (subject to a maximum of \$1,200 per day) plus reasonable disbursements (including costs of travel, accommodation and meals).

3. For each Traditional Owner

\$500 per day (or part thereof) plus:

(a) where the Traditional Owner must travel further than 80km from his/her residence to the site for the relevant Clearance Survey or Work Location, travel expenses of \$1.20 per kilometre (where neither the Explorer nor the Land Council provides transport); and

(b) where sustenance is not provide by the Explorer, a sustenance allowance of \$50 per day (or part thereof).

4. For the Indigenous Liaison Officer

\$500 per day (or part thereof) plus:

(a) where the Indigenous Liaison Officer must travel further than 80km from his/her residence to the site for the relevant Clearance Survey or Work Location, travel expenses of \$1.20 per kilometre (where neither the Explorer nor the Land Council provides transport); and

(b) where sustenance is not provided by the Explorer, a sustenance allowance of \$50 per day (or part thereof).

5. For the use of a Council vehicle

Where a vehicle is supplied by the Land Council and used by the Traditional Owners and Indigenous Liaison Officer for a Clearance Survey or monitoring:

(a) Where the vehicle used is owned or leased on a long term basis by the Land Council or Ngaanyatjarra Council Aboriginal Corporation: two dollars (\$2) per kilometre per vehicle;

(b) Where the vehicle used is hired by the Land Council for the purposes of the Clearance Survey or monitoring: The reasonable hire fees (and related charges) paid to the hirer.

6. For administering payments to external parties

A fee equivalent to 17.5% of each disbursement (excluding GST) made by the Land Council to an external party for any goods or services to which the payments in items 1 to 5 of this Annexure apply.

7. Annual adjustment of rates

On 1 July of each year, each of the rates set in items 1 to 5 of this Annexure will be adjusted by multiplying such rate or amount by the Index Rate.

8. Interpretation

In this Annexure:

"External Party" means a person or entity that is none of the following:

- (a) the Land Council, Ngaanyatjarra Council Aboriginal Corporation or Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation);
- (b) a Ngaanyatjarra Entity;
- (c) a Ngaanyatjarra Person;
- (d) a related body corporate (as defined in the Corporations Act) of any of the persons and entities described in parts (a) (b) and (c) of this definition; and
- (e) an officer or employee of any of the persons or entities described in parts (a) (b) (c) and (d) of this definition.

"Ngaanyatjarra Entity" means an incorporated body which is a wholly- or partially- owned subsidiary of the Land Council or Ngaanyatjarra Council Aboriginal Corporation or a related body corporate of the Land Council or Ngaanyatjarra Council Aboriginal Corporation (within the meaning of the *Corporations Act 2001* (Cth)) or in which Ngaanyatjarra People hold significant equity.

ANNEXURE F
Exploration Area

EXECUTED as a deed.

THE COMMON SEAL OF
NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION) ICN
715, was affixed by the authority of a
resolution of its Governing Committee in
the presence of:



Cyril Duncan
Signature of Governing Committee
Member

Cyril Duncan.
Name

[Signature]
Signature Governing Committee Member

Chris Reid
Name

[Signature]
Signature of Chairman

Bruce Smith
Name

Signature of Chairman

Name

**THE COMMON SEAL OF YARNANGU
NGAANYATJARRAKU PARRA
(ABORIGINAL CORPORATION) RNTBC
ICN 4527**, was affixed by the authority of
a resolution of its Governing Committee in
the presence of:



Cyril Duncan
Signature of Governing Committee Member

[Signature]
Signature of Chairman

Cyril Duncan
Name

Bruce Smith
Name

[Signature]
Signature Governing Committee Member

Signature of Chairman

Chris Reid
Name

Name

**EXECUTED BY BHP BILLITON NICKEL
WEST PTY LTD ACN 004 184 598**, in
accordance with s127(1) of the
Corporations Act 2001 (Cth):

[Signature]
Signature of director/secretary

[Signature]
Signature of director/secretary

ROBIN BRIAN LEES
Name

PAUL JOHN HARVEY
Name

ANNEXURE A
Exploration Deed

can write on

WEST MUSGRAVE ACCESS

AGREEMENT.

WMCR 4701

Confidential

**NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION)**

AND

WMC RESOURCES LIMITED

DEED OF AGREEMENT

EXPLORATION LICENCES

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THIS DEED is made the14..... day ofJULY..... 1996
BETWEEN NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION) a body incorporated pursuant to the provisions of the Aboriginal Councils and Associations Act 1975 (Commonwealth) and having its principal office at Alice Springs in the Northern Territory of Australia ("the Land Council") of the one part
and _____ a company incorporated or deemed to have been incorporated pursuant to the provisions of the Corporations Law ("the Explorer") having its principal office at _____

WHEREAS:-

- A. The Land Council is the Lessee of the Lands (as hereinafter defined) pursuant to a 99 year lease dated the 29th day of November 1988 ("the Lease").
- B. The Land Council is entitled to occupation of the Lands, subject to the provisions of the Lease.
- C. The Land Council has as its responsibility under its Rules and the Lease the protection of the Ngaanyatjarra ways of life, culture and tradition.
- D. The Land Council, pursuant to its Rules and the Lease, is authorised to negotiate with the Explorer in relation to its use, occupation and access to the Lands and has agreed to facilitate such use, occupation and access upon the terms and conditions set out hereunder.
- E. The Explorer or a party in joint venture with the Explorer has been granted Exploration Licences _____ by the Department of Minerals and Energy (Western Australia) over the Exploration Area (as hereinafter defined)
- F. The Exploration Area is situated within the Lands.
- G. The Department of Minerals and Energy has sought a recommendation of the Minister for Aboriginal Affairs pursuant to the provisions of section 24 (7) of the Mining Act 1978 ("the Mining Act").
- H. The Minister for Aboriginal Affairs has sought the views of the Land Council in relation to the application prior to providing the recommendation referred to in recital G herein.
- I. The Minister for Aboriginal Affairs has consulted with the Aboriginal Lands Trust and has sought the view of the Land Council prior to making a decision pursuant to Section 31 of the Aboriginal Affairs Planning Authority

ESTATE OFFICER
30 APR 2004 W A
FINE \$384-00

Act 1972 ("the AAPA Act") and Regulation 8 of the Aboriginal Affairs Planning Authority Act Regulations, 1972-1978 ("the AAPA Regulations").

- J. The Land Council has in accordance with its Rules and the Lease resolved to co-operate with the Explorer in carrying out of Exploration Operations in the Exploration Area on and subject to the terms and conditions hereinafter set forth.
- K. Ngaanyatjarra Council (Aboriginal Corporation) ("the Ngaanyatjarra Council") is a body incorporated pursuant to the provisions of the Aboriginal Councils and Associations Act 1975 (Commonwealth).
- L. The Ngaanyatjarra Council represents the members of the Land Council who have lodged a claimant Application for a Native Title Determination WC ("the claim") part of the claim covers the whole of the land comprising the Exploration Area.
- M. The Land Council has consulted with the Traditional Owners and is authorised to act on their behalf in entering into this Agreement.
- N. The Land Council and the Explorer have agreed upon the terms herein.

NOW THIS AGREEMENT WITNESSETH as follows:-

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

- "the AAPA Act" means the Aboriginal Affairs Planning Authority Act 1972 together with any regulations made thereunder.
- "Aboriginal" means a person who is a member of the Aboriginal race of Australia.
- "Aboriginal Traditions" means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions and observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.
- "Access Road" means any road on the Lands which is used or constructed by the Explorer for the purpose of gaining access egress from the Exploration Area in accordance with this Agreement.

"the Advisory Committee"

means the Advisory Committee constituted under Clause 11 hereof.

"Areas of Significance"

means an area of land which according to Aboriginal tradition is of cultural, social or spiritual significance to Aboriginal persons and includes any land that, under a law of the Commonwealth or Western Australia is registered or declared as being of cultural, social or spiritual significance to Aboriginal persons according to Aboriginal tradition.

"Authorisation"

means any authorisation, lease, licence, permit, approval, certificate, consent, direction or notice from any government or governmental or other competent authority which is necessary or desirable for carrying out of the Project excluding the Exploration Licence and Entry Permit.

"Best Practicable Technology"

means that technology from time to time relevant to the Project which produces the minimum contamination with a harmful substance and has the minimum Environmental Impact that can reasonably be achieved having regard to:-

- (a) the level of effluent control achieved and the extent to which contamination by harmful substances is prevented and environmental impact minimised in the mineral exploration industry anywhere in the world;
- (b) the total cost of the application or adoption of that technology relative to the environmental protection to be achieved by its application or adoption;
- (c) evidence of detriment, or of lack of detriment, to the environment after the commencement of the Project;
- (d) the physical location of the Project; and

	(e) social factors including Aboriginal social, cultural and economic perspectives and possibly adverse social effects of introducing new technology.
"the Council"	means the Ngaanyatjarra Council (Aboriginal Corporation).
"Entry Permit"	means the permission granted or sought to be granted by the Minister for Aboriginal Affairs pursuant to Regulation 8 of the AAPA Regulations authorising the Explorer to enter and remain upon the Exploration Area for purposes associated with their compliance with obligations under the Licence.
"Environmental Assessment"	means a written report:- <ul style="list-style-type: none"> (a) evaluating and/or assessing the potential impact upon the environment likely to result from any proposal to recover minerals from any part of the original exploration area; and (b) identifying measures and alternative measures, safeguards and standards for the protection of the environment and/or minimizing the potential impact of the proposal to recover minerals.
"Environmental Impact"	means a change (whether a temporary or permanent) to the environment or to the appearance of the environment resulting from the project of any activities relating to the project including all exploration.
"Environmental Procedures"	means the procedures agreed to and defined in Annexure B.
"Exploration"	means all modes of searching for or evaluating deposits of minerals and includes such operations and works as are necessary for that purpose including:- <ul style="list-style-type: none"> (a) entering and re-entering the Exploration Area with such agents, employees,

vehicles, machinery and equipment as may be necessary for the proper and efficient exploration for minerals;

- (b) digging pits, trenches and holes, and sinking bores and tunnels in, on or under the Exploration Area or ascertaining the quality, quantity or extent of ore and other material by drilling or other methods;
- (c) the sampling, extraction and removal for analysis and testing of an amount of ore, material or other substance reasonably necessary to determine its mineral bearing quality; and
- (d) taking or diverting water from any natural springs, lake, pool or stream situated on or flowing through the Licence Area and to sink a well or bore on the Licence Area and take water therefrom and to use the water so taken or diverted for domestic use and for any purpose in connection with exploring for minerals on the Licence Area.

"the Explorer"

means and any other person or body corporate who enters into a Deed of Covenant in accordance with Clause 21 and includes the successors in title and assigns of and of such other person or body corporate.

"Exploration Area"

means that area of land on the Ngaanyatjarra Land Council (Aboriginal Corporation) Lease covered by the Exploration Licences from time to time and delineated in blue on the plan contained in Annexure C.

"Exploration Expenditure"

means - the amounts reported to the Department of Minerals and Energy pursuant to sections 68(3) and 82(1) Mining Act 1978 (WA) and Regulations 22 and 32 Mining Act Regulations 1981 together with any rent paid pursuant to s108 of the Act.

"Exploration Licences"

means the Exploration Licences granted by the Minister of Minerals and Energy, Western Australia and referred to in Annexure C hereto, and shall include any substituted, variation or successor mining tenement granted or applied for within the area of the Exploration Licences.

"Exploration Operations"

means Exploration Operations will include, but not be limited to:

- (a) geological, geophysical and geochemical surveying and mapping, aerial reconnaissance and mineral exploration, drilling excavating and testing;
- (b) taking samples and removing and retaining the same for the purpose of analysing, testing for evaluation;
- (c) taking onto the Exploration Area such plant machinery, tools, equipment and other chattels, and subject to the provisions of this Deed, erecting such buildings and structures as it thinks fit for effectively carrying out Exploration Operations.

"Force Majeure"

means, to the extent that the Party affected could not reasonably have been expected to foresee or prevent or control the same, any act, event or cause which is beyond the reasonable control of the Party concerned and shall include but not be limited to an act of God, strike, lockout, act of the public enemy, war, blockade, revolution, riot, insurrection, civil commotion, lightning, fire, storms, flood, explosion, governmental restraint or restrictions, embargoes, unavailability of equipment, laws, rules, regulations or directions of a governing body having jurisdiction over the Licence Area, funeral, religious or ceremonial activities of Traditional Owners and any other cause (other than a shortage or unavailability of funds) which is not reasonably within the control

"Improvement"

of the Party claiming the benefit of Clause 20 of this Agreement.

includes:-

- (a) fixture;
- (b) house, stores, stable, hut or other building or structure;
- (c) fence;
- (d) well, dam, tank, trough, pump or other apparatus for raising or storing water; or
- (e) garden, plantation or cultivation.

"Index Rate"

means the consumer price index (all groups) Weighted Average of 8 capital cities as published by the Australian Bureau of Statistics for the quarter ending prior to the date on which the index rate is to be applied, divided by the consumer price index (all groups) weighted Average of 8 capital cities as published by the Australian Bureau of Statistics for the quarter ending immediately prior to the date of this Deed.

Where the Commonwealth ceases to publish the consumer price index (all groups) weighted average of 8 capital cities, the Index Rate will be determined by a person agreed upon by the Parties and in the absence of such agreement by a person nominated by the President for the time being of the Australian Institute of Chartered Accountants, being a person having appropriate qualifications and experience, who will make the determination acting as an expert.

"Interest Rate"

means the Average Daily Prime Commercial Rate plus two per centum (2%) where the Average Daily Prime Commercial Rate means the weighted arithmetic of the rates of interest charged on each day during the relevant period by Westpac Banking Corporation to its best

	corporate customers on overdrafts of more than \$100,000.00 granted within Australia.
"the Land Council"	means the Ngaanyatjarra Land Council (Aboriginal Corporation) and includes its successors in title and assigns.
"the Lands"	means those Lands in respect of which a 99 year lease or a 50 year lease or sub-lease has been granted to the Land Council.
"the Lease"	means the Lease dated the 29th day of November 1988 of Reserve No. 17614 for a period of 99 years from the Aboriginal Lands Trust, the Minister for Aboriginal Affairs and the Aboriginal Affairs Planning Authority to the Land Council.
"Liquor"	means a beverage that contains more than 1.15% by volume of ethyl alcohol.
"Mineral"	as is defined in Section 8 of the Mining Act 1978 (WA).
"Mining Act"	means the Mining Act 1978 (Western Australia) as amended together with any regulations and subordinate legislation made thereunder.
"Mining Lease"	means a Mining Lease granted pursuant to the Mining Act over the Exploration Area or any part thereof.
"Mining Proposal"	means the definition as set out in Clause 19.6.
"Ngaanyatjarra"	means any Ngaanyatjarra, Pitjantjatjara or Pintubi person who in accordance with Aboriginal tradition has social, economic and spiritual affiliations with and responsibilities for the Lands or any part of them.
"the Project"	means the Explorer proposals for Exploration as outlined in approved Notification of Operations pursuant to Clause 3 of this Agreement subject to such further Clauses and Annexures of this Agreement for the exploration of minerals on the Exploration Area and recovery of minerals discovered.

"Project Officer"	means a project geologist or surveyor employed by the Explorer, to whom reference is made in sub-clause 8.7 of this Agreement.
"Scouting Team"	means the persons referred to in sub-clause 8.5 hereof.
"Traditional Owner"	means in relation to any land an Aboriginal person who has, in accordance with Aboriginal tradition, social, economic and spiritual affiliations with and responsibilities for that land or any part of it.
"Work Area"	means the specific individual locations in the Exploration Area or elsewhere within the Lands at or under which the Explorer pursuant to the terms of this Agreement proposes or may at any time propose to locate or undertake Works.
"Work Report"	means a Work Report which conforms with Clause 14.
"Work Site"	means any camp sites, airstrips, water bore site, exploration, exploration drill sites, excavation pits or any other work areas which the Explorer proposes under the terms of this Deed to locate in the Exploration Area.

For the purposes of this Agreement except to the extent that the subject matter or context may otherwise require:

- Expressions indicating the singular number shall be capable of indicating the plural number and vice versa;
- Expressions indicating the masculine gender shall also be capable of indicating and including the feminine and neuter genders;
- Expressions indicating natural persons shall also be capable of indicating bodies corporate and vice versa;
- Unless otherwise indicated references to any statutory enactment are to enactments of the State of Western Australia and includes any Regulations thereunder;

- References to any statutory enactment of the Commonwealth of Australia or any State or Territory thereof shall mean the statutory enactment as amended modified or re-enacted (in a similar form) from time to time; and
- Headings shall not form part of this Agreement and shall not be relevant to the construction hereof.

CLAUSE 2 CONDITION PRECEDENT

2. In consideration of the Land Council entering into this Deed and agreeing to undertake the obligations hereunder set out, the Explorer hereby covenants that - :

2.1 It will accept an offer by the Minister for Aboriginal Affairs to grant an Entry Permit to the Explorer in relation to the Exploration area covering Exploration Licences 69/996, 69/999, 69/1008, 69/1063, 69/1149, 69/1150, 69/1151, 69/1153, ~~69/1154~~ and 69/1160 subject to the conditions set out in of Annexure D hereof and any other conditions acceptable to the Explorer and the Land Council.

*69/1159
Deed 03-07-97*

2.2 In the first three (3) months of 1998 the Explorer will approach the Land Council in writing and request that the Land Council make written recommendations to the Minister for Aboriginal Affairs to grant the Explorer an Entry Permit in relation to the following Exploration Licences within the Exploration Area,

69/1139, 69/1140, 69/1141, 69/1148, 69/1152, 69/1154, ~~69/1151~~, 69/1155, 69/1156, 69/1202, 69/1203 and 69/1204,

*Deed
03-07-97*

subject to the conditions set out in Annexure D hereof and to any other conditions acceptable to the Explorer and the Land Council.

2.3

The Explorer shall not at time during the currency of this Deed seek or accept a variation to any conditions contained in the grant of the Exploration Licences or Entry Permits which may be contrary to this Deed without the written consent of the Land Council, except that conditions relating to expenditure commitments of the Exploration Licence will not subject to the consent of the Land Council.

3. NOTIFICATION OF OPERATIONS

3.1 The Explorer shall from time to time provide the Land Council at least thirty days in advance of all Exploration Operations a written notice of its intentions to conduct Exploration Operations on the Exploration Area..

3.2 The Explorer shall not undertake any Exploration Operations on any part of the Exploration Area or Lands unless:

- (a) a Notification of Operations relating to such Exploration Operations has been approved by the Land Council in accordance with this Clause 3; and
- (b) the Land Council has performed its obligations under Clause 8 to such parts of the Exploration Area that are subject to the intended Exploration Operations.

3.3 A Notification of Operations provided under Clause 3.1 shall include specific written particulars (including maps, plans and photographs where appropriate). Without limiting the generality of the foregoing, the Notification of Operations will include particulars of:-

3.3.1 Proposed means of access and location of access roads and routes for personnel and equipment, both into and within the Exploration Area including the amount of vehicular and airborne traffic and details of any proposals to construct new or upgrade existing roads, landing strips or any other access facilities.

3.3.2 The location where Exploration Operations will be conducted and the estimated time scale for the performance of such activity together with details of the nature, scope, techniques and objectives of the activity.

3.3.3 The major items of equipment proposed to be used.

3.3.4 The proposed site and nature of any buildings or structures to be erected.

3.3.5 Any other aspect of the operational programme which may have an adverse impact or cause disturbance to any part of the Lands or the Ngaanyatjarra people or their way of life.

3.3.6 The identity of any contractors and sub-contractors (if known at the time) engaged or likely to be engaged and the minimum and maximum number of personnel likely to

be on the Exploration Area taking part in the Exploration Operations from time to time and their roles in undertaking this work.

- 3.3.7 Any water, timber or other resources proposed to be obtained from the Lands.
- 3.4 If the Land Council is not reasonably satisfied with the particulars of the proposed Exploration Operations given pursuant to sub-clause 3.3 hereof, the Land Council shall request in writing within 14 days of receipt of the particulars that the Explorer provide and the Explorer shall provide further particulars of such proposed operations.
- 3.5 The Explorer shall also give notice to the Land Council if the Explorer at any time proposes:
- 3.5.1 To cause an intensive acceleration in any existing operational programme; and
- 3.5.2 To implement a substantial modification or alteration in the operational programme.
- 3.6 A notice of an intensive acceleration or of a substantial modification or alteration in an operational programme shall specify the particulars of the acceleration, modification or alteration and the Explorer shall not proceed with any acceleration, modification or alteration on any part of the Exploration Area or Lands unless:
- 3.6.1 The Land Council has approved the acceleration, modification or alteration; and
- 3.6.2 The Land Council has performed its obligations under Clause 8 to such parts of the Exploration Area that are subject to the acceleration, modification or alteration to an operational programme.
- 3.7 If the Land Council is not reasonably satisfied with the particulars of any proposed acceleration modification or alteration to a work programme given pursuant to sub-clause 3.6 hereof, the Land Council shall request in writing within 14 days of receipt of the particulars that the Explorer provide further particulars of such proposed acceleration, modification or acceleration.
- 3.8 In the event that the Land Council has a specific objection to any part of the particulars of the Exploration Operations supplied by the Explorer under sub-clause 3.3 or to any intensive acceleration or substantial modification or alteration therein of which notice has been

given under sub-clause 3.6 the Land Council shall notify the Explorer of such objection within twenty-one (21) days of receipt of a notice served pursuant to sub-clause 3.3 or 3.6 respectively or within twenty-one (21) days of receipt of such further information provided pursuant to sub-clause 3.4 or 3.7 respectively. If no such specific objection is raised within the said twenty-one (21) day period, the Land Council shall be deemed to have consented to the proposed Exploration Operations, subject to Clause 8 and subject to the further provisions of this Deed.

- 3.9 Should the Explorer wish to dispute any objection which the Land Council has raised pursuant to Clause 3.8 then subject to the requirements of Clause 27.1 the Explorer shall refer the matter to the Advisory Committee within 30 days of being notified of such objection and that part of the existing, intensified modified or altered Exploration Operations to which objection is taken shall not be proceeded with until the Advisory Committee has reached a unanimous decision.

4. LAND ENTRY AND OCCUPATION

4.1 Upon the granting to the Explorer of the Exploration Licence or Licences and until termination of this Deed or earlier cessation or completion of Exploration Operations, and subject to the Minister for Aboriginal Affairs granting an Entry Permit, the Explorer, their contractors, sub-contractors, employees, agents and servants may in accordance with the terms and conditions of this Deed enter upon the Exploration Area for the purposes authorised by this Deed and proceed with Exploration Operations in the Exploration Area necessary to enable the Explorer to carry out their duties under the Licence or Licences in a satisfactory and efficient manner;

4.2 The Explorer shall issue to their contractors, sub-contractors, employees, agents and servants an identification card showing the name (and including, where practicable, a photograph of the person,) stating the nature of the work which the person has been engaged to perform on behalf of the Explorer, and signed by the Exploration Manager or his nominee. The identification card shall state that it should be kept available while on the Exploration Area or the Lands at all times for production to an authorised representative or employee of the Land Council within a reasonable time of being requested to do so.

4.3 The Explorer shall forthwith notify the Land Council of the names of all persons who have been issued with an identification card pursuant to Clause 4.2 and such notice shall state the nature of the work which each person has been engaged to perform on behalf of the Explorer.

4.4 For the purpose of ensuring entry to the Exploration Area pursuant to Clause 4.1 the Land Council shall, without undue delay, issue to each person whose name is provided pursuant to Clause 4.2 a permit to enter upon the Exploration Area to carry out Exploration Operations.

4.5 Permits issued pursuant to Clause 4.4 are issued subject to conditions either expressly or by necessary implication contained within this Deed and without limiting the generality of the foregoing the following conditions apply to each permit:-

4.5.1 The permit shall only be issued for such period of time as, in the opinion of the Explorer is necessary for the person

- holding such permit (the "permittee") to complete the work they have been engaged to perform;
- 4.5.2 The permit shall expire when the person holding the permit ("the permittee") no longer requires access to the Exploration Area for the purposes of Clause 4.1 having regard to the nature of the work which the permittee was engaged to perform;
- 4.5.3 The permittee shall not photograph, video or by any other means make any picture or representation of any cave paintings, sacred sites, sacred objects, or Aboriginal ceremony, and shall not photograph or video record any Aboriginal person unless such Aboriginal person has given his or her consent;
- 4.5.4 The permittee shall comply with the rules for employees established by the Land Council in consultation with the Exploration Company from time to time;
- 4.5.5 The permittee shall gain access to and egress from the Exploration Area via the cleared access road in accordance with Clause 9 of this Deed;
- 4.5.6 The permittee shall not enter upon, damage or interfere with an area of significance contrary to the terms of this Deed;
- 4.5.7 The permittee shall comply with Clause 5 (Liquor and Guns); and
- 4.5.8 Every permittee shall behave with respect towards and not give offence to Traditional Owners, in their culture or tradition.
- 4.6 The Explorer shall notify the Land Council within seven (7) days of the termination of any contract, sub-contract or employment of any person holding a permit issued pursuant to Clause 4.4 and of the permanent departure from the Exploration Area of any person holding a permit and so far as is practicable shall return such permit to the Land Council.
- 4.7 If a person is not able to produce his or her identification card or permit or is otherwise unable to satisfy the Land Council or a duly authorized member of the Land Council as to the lawfulness of his or her presence on the Lands or is a person or within a class of persons

to whom sub-clause 4.9 relates, the Land Council shall be entitled to cause such person to be removed therefrom.

- 4.8 The Explorer shall inform all of their contractors, employees, agents and visitors, of the obligation upon them to remain within access road corridors or Work Areas which have been screened and cleared in accordance with Clause 8 of this Deed and to comply with those conditions consistent with this Deed and set out on the identification cards or permits.
- 4.9 The Land Council or any member of the Land Council possessing written authority for such purposes from the Land Council may specify in writing, upon reasonable grounds, that a person or class of persons may not be permitted access to the Exploration Area and the Explorer shall ensure that, as far as is within their power, such person or persons shall not enter upon the Exploration Area.
- 4.10 The Explorer shall ensure that a person to whom a permit is issued pursuant to Clause 4.4 is made aware of his rights and obligations as a permit holder under this Deed.
- 4.11 The Explorer shall, immediately it is aware, advise the Land Council if any person to whom a permit is issued pursuant to Clause 4.4 breaches any of the conditions of his or her permit.
- 4.12 The Land Council may:-
- 4.12.1 revoke a permit issued pursuant to Clause 4.4 upon breach of a condition of the permit; and
 - 4.12.2 refuse to issue a permit pursuant to Clause 4.4 where the proposed permittee has committed an act which would have been a breach of the proposed permit conditions;
- and shall forthwith advise the Explorer of the revocation or refusal and the reason for the revocation or refusal.
- 4.13 The Explorer shall, as soon as practicable after receiving advice from the Land Council pursuant to Clause 4.12, secure the prompt removal from the Exploration Area and take all reasonable steps to ensure the removal from the Lands of any person whose permit has been revoked pursuant to that Clause.
- 4.14 In the event of the Explorer disputing that a person has acted in a manner justifying removal from the Exploration Area the matter shall be referred to the Advisory Committee for determination.

4.15 The Explorer shall advise the Land Council in writing not less than two (2) business days prior to the proposed entry of any person pursuant to this Deed and shall include in such notice the names time, place and purpose of such proposed entry.

5. CONTROL OF LIQUOR AND GUNS

- 5.1 The Explorer acknowledges that it is an offence for any person while on any part of the Lands to bring, be in possession of or consume any liquor or to give, sell or otherwise provide or supply any liquor to any other person.
- 5.2 The Explorer shall take all steps practicable in the circumstances to bring this prohibition to the attention of all their contractors, employees, agents and visitors.
- 5.3 The Explorer shall immediately notify the Land Council of any breach of any of the prohibitions with respect to liquor set out in Clause 5.1.
- 5.4 The Explorer shall undertake all practicable steps to ensure that except with the written consent of the Land Council (which shall not be unreasonably withheld) no gun or firearm is brought onto the Exploration Area or the Lands except for security purposes.
- 5.5 The Explorer shall ensure that except with the written consent of the Land Council no animal is hunted or slain on the Exploration Area or Lands and shall undertake to notify its agents, contractors, sub contractors and employees of this prohibition.

6. REMOVAL OF EMPLOYEES

6.1 Unless the Land Council otherwise agrees, the Explorer shall take all reasonable steps to ensure immediate removal from the Lands of any contractor, employee, agent, or visitor of any of the Explorer, who;

6.1.1 has recklessly or wilfully trespassed on or in any way interfered with any Area of Significance;

6.1.2 has recklessly or wilfully moved outside any access road or Work Area cleared in accordance with Clause 8 of this Deed;

6.1.3 has violated any of the conditions set out on the contractor's, employee's, agent's or visitor's identification card or permit;

6.1.4 has brought onto or been in possession of or consumed liquor on the Lands, or has, on or outside the Lands, supplied liquor to residents of the Lands otherwise than for consumption on licensed premises outside the Lands;

6.1.5 has behaved in a manner demonstrating disrespect for Ngaanyatjarra culture and tradition or in a manner offensive to the Ngaanyatjarra people, in circumstances in which the person knew or ought reasonably to have known such behaviour to be disrespectful or offensive.

6.2 In the event of a dispute between the Land Council and the Explorer as to whether a person has acted in a manner justifying removal from the Lands the matter shall be referred to the Advisory Committee for determination.

7. INSTRUCTION IN ABORIGINAL CULTURE

7.1 The Explorer shall promote among non-Aborigines employed in Exploration Operations, a knowledge, understanding and respect for the traditions, language and culture of the Ngaanyatjarra people.

7.2 The Explorer shall ensure that:-

7.2.1 All non-Aboriginal employees and personnel are given appropriate instruction on aspects of Ngaanyatjarra traditions, history and culture by way of background and orientation; and

7.2.2 All "on-site" supervisory staff are given an initial course and periodic refresher courses of a more comprehensive and advanced nature than the instructions envisaged in paragraph 7.2.1 above.

7.3 The Land Council and Explorer shall co-operate in formulating an appropriate instruction course and shall co-operate in the presentation of the instruction to employees and personnel.

7.4 The Explorer shall reimburse the Land Council for all reasonable expenses incurred by it in relation to performing its functions pursuant to Clause 7.3.

8. SCREENING AND CLEARANCE

8.1 The parties acknowledge that this Deed is made for the purpose, inter alia, of providing a workable and effective arrangement to avoid disputes and differences in relation to Areas of Significance and to assist the Explorer to comply with the provisions of the Aboriginal Heritage Act 1972-1980 of Western Australia.

8.2 In order to protect Areas of Significance, the Explorer shall with the particulars supplied, or in the notice given, under Clause 3 hereof, request clearance from the Land Council before proceeding with any Exploration Operations in a Work Area which has not already been screened and cleared by the Land Council pursuant to this Deed.

✓ 8.3 Upon receipt of the aforesaid particulars of notice, the Land Council shall in conjunction with the Explorer undertake at the expense of the Explorer (subject to sub-clause 8.6) the organisation and implementation of a screening programme by the Scouting Team of all Work Areas not already screened and cleared in accordance with this Deed on a regular work schedule and in accordance with a budgetary estimate of the cost of the screening programme agreed to between the Land Council and the Explorer.

8.4 Subject to funeral, religious and/or ceremonial obligations of members of the Land Council, and any other unavoidable delay, the task of the Scouting Team shall be:

8.4.1 To determine whether proposed Exploration Operations, access roads or Work Areas are likely to damage, disturb, encroach upon or interfere with Areas of Significance;

8.4.2 To give advance warning to the Explorer's Project Geologist to enable that person to relocate parts of access roads or Work Areas in order to avoid Areas of Significance;

8.4.3 To show reasonable diligence in preparing for and carrying out such work, while the Explorer meets its obligations pursuant to this Deed;

8.4.4 To make every reasonable endeavour to proceed with its work at a rate that will avoid any standby.

8.5 The Scouting Team shall consist of no more than:-

8.5.1 Two anthropologists employed or engaged by the Land Council, and agreed to by the Explorer;

8.5.2 A liaison officer engaged by the Land Council and referred to in paragraph 8.16;

8.5.3 Traditional owners in two groups being a male and a female group (there shall not be more than four (4) in each group) with responsibility for Areas of Significance within the Exploration area;

The supervising anthropologists shall be responsible for co-ordination of the Scouting Team operation.

8.6 The Explorer shall appoint a Project Geologist to be attached to the Scouting Team, whose duties, as the representative of the Explorer to the Scouting Team, shall include:-

8.6.1 accompanying the members of the Scouting Team to the proposed Work Areas (except where otherwise directed by the Scouting Team);

8.6.2 being responsible:-

(a) for identifying the location/position of the proposed access roads and the other proposed Work Areas (except where otherwise directed by the Scouting Team);

(b) for the preparation of three sets of maps showing the location of the proposed Work Areas for use by the male and female Scouting teams and the Explorer;

(c) for relocating proposed access roads or other proposed Work Area where advance warning has been given by the Scouting Team in accordance with Paragraph 8.4.2 and a suitable alternative track or other Work Areas has been screened and cleared by the Scouting Team.

(d) for communicating with the supervising anthropologist while on the Exploration Licences.

8.7 The Land Council shall nominate a supervising anthropologist whose responsibilities shall be:-

(a) identifying the Traditional Owners to accompany the Scouting Teams;

- (b) coordinating the work of the Scouting Teams in undertaking the screening of the work areas to determine whether any of the proposed exploration operations are likely to damage, disturb, or encroach upon any Areas of Significance;
- (c) mark all sets of maps produced by the Explorer in accordance with 8.6.2(b) so that work areas cleared or not cleared are designated and signed by all participants, and
- (d) be the contact point for the Explorer's Project Geologist.
- 8.8. Where appropriate the Scouting Team and the Explorer will discuss methods by which the Explorer may proceed with Exploration Operations without interfering with any Area of Significance.
- 8.9 In the event that the Explorer wishes to make minor modifications or additions to any part of a programme of Exploration Operations previously notified to the Land Council, or to locate any Work Areas more than 200 metres from an existing cleared access road, or to use an existing water source, the Explorer shall immediately notify the supervising anthropologist or such other person nominated by the supervising anthropologist and request that the Scouting Team screens such proposed modifications, additions, Work Area or water source in accordance with the provisions of this Deed. In such case the Land Council shall as soon as possible, and in any event not later than fourteen (14) days after receipt of such request, either notify the Explorer in writing of its consent to such modifications, additions, Work Area or water source, or ensure the commencement by the Scouting Team of the screening of those areas as requested by the Explorer, or refer such notification to the Advisory Committee for its determination and advice.
- 8.10 The Explorer shall not refer any requests for modification referred to in sub-clause 8.9 to any person not specifically nominated by the Land Council to receive such requests, who, at first instance, shall be the supervising anthropologists.
- 8.11 The Explorer shall follow the mapped and cleared access roads and any deviation beyond an access road corridor shall require a further scouting exercise.
- 8.12 Upon screening and clearance of a Work Area or any part thereof by the Scouting Team, and notification by the Land Council pursuant to

sub-clause 8.13, the Explorer shall (subject to Clause 11) be entitled to commence Exploration Operations without being required to obtain any further clearance except as otherwise provided in sub-clause 8.9 hereof. Where a Work Area or any part thereof has been screened and cleared subject to compliance with conditions specified by the Land Council, the Explorer may only conduct Exploration Operations thereon in accordance with such conditions.

8.13 Within seven (7) days of the completion of each scouting tour, the Land Council will notify the Explorer in writing by providing maps indicating the Scouting Team's decisions concerning the acceptability or otherwise of proposed locations of the Explorer's access roads and other Work Areas, such maps to be countersigned by the Explorer's Project Geologist. The notification will specify the proposed locations which have been screened and cleared for use by the Explorer and the conditions attached to that use.

8.14 The Explorer shall not carry out Exploration Operations on any part of the Lands except:-

- (a) within a Work Area which has been screened and cleared by the Scouting Team;
- (b) in respect of which a notification of such screening and clearance has been received by the Explorer pursuant to paragraph 8.13; and
- (c) in accordance with the conditions (if any) included in the notification pursuant to paragraph 8.13.

8.15 The Explorer shall be absolutely entitled to rely on clearances notified by the Land Council pursuant to sub-clause 8.13 and Exploration Operations conducted in accordance with such clearances as notified by the Land Council shall foreclose any future claims that such operations interfered with any Area of Significance.

8.16 During the term of this Deed, the Land Council may from time to time engage the services of a liaison officer whose duties and functions shall include:

- (a) subject to acceptable arrangements made with the Land Council's supervising anthropologist liaising between the Land Council, the traditional owners and the Explorer with respect to such matters as the parties may from time to time agree;

- (b) co-ordinating those traditional owners from time to time forming part of the Scouting Team; and
- (c) visit the Exploration Area from time to time between scouting tours while the Explorer is engaged in Exploration Operations in the Exploration Area.

8.17 The liaison officer is to be supervised by the supervising anthropologist or person nominated by him .

8.18 Neither the Land Council nor any member of the Scouting Team shall be required to disclose to the Explorer the location of Areas of Significance or any cultural information in relation to any Area of Significance.

8.19 The Explorer shall reimburse the reasonable costs and expenses of the Land Council incurred in carrying out its obligations under Clause 8 in accordance with the following provisions:-

8.19.1 The Land Council and the Explorer shall from time to time prepare and agree a detailed programme and budget which will show the activities to be undertaken by the Land Council pursuant to this Deed, indicate the likely number of personnel to be involved and set out the funds required to undertake the activities on a monthly basis.

8.19.2 At least seven (7) days prior to the beginning of any month in which such activities are to be undertaken the Explorer will advance to the Land Council the monies anticipated to be necessary for that month's activities. At the end of each month the Land Council will prepare and dispatch to the Explorer an invoice describing the activities undertaken and monies actually spent and the amount due to or by the Land Council will be paid by way of adjustment to the next month's advance. The Land Council will obtain and supply to the Explorer all applicable receipts and invoices to evidence the actual disbursements of funds, and will not disburse the funds except against such receipts and invoices.

8.19.3 When activities under an approved programme are completed, the Land Council will ensure the Explorer is supplied with full accounts showing all monies received as paid in accordance with these provisions. Such accounts

are to be supplied within ninety (90) days of the completion of such activities.

The Explorer is entitled to audit such accounts and the Land Council will make all necessary information available to the Explorer to enable such audit to take place.

8.20

The Explorer acknowledges that the "reasonable costs" pursuant to this Clause will include the following:-

- (a) a payment of four hundred dollars (\$450.00) per day to reimburse the Land Council for the cost of engaging the anthropologist to undertake the work described in this Deed, plus the cost of the anthropologist in travelling from Perth to the tenement, such costs to be doubled should the Land Council be required to engage both a male and a female anthropologist;
- (b) a payment of one hundred dollars (\$100.00) per day for each traditional owner who is a member of the Scouting Team and engaged in clearance and screening work pursuant to this Clause;
- (c) a payment of one hundred and fifty dollars (\$150.00) per day for each vehicle supplied by the land Council and used by the scouting team for the purposes of this Clause plus the costs of fuel and repairs to tyres while each vehicle is used on the tenement, such vehicles to be supplied by the Land Council and used by the Scouting Team for the purpose of this Clause;
- (d) a meal allowance of thirty-five dollars (\$35.00) per day for each member of the Scouting Team while engaged in clearance and screening work pursuant to this Clause; and
- (e) a payment of one hundred and fifty dollars (\$150.00) per day to the liaison officer while he or she is engaged in the work referred to in sub-clause 8.16.

9. ENVIRONMENTAL PROTECTION AND REHABILITATION

9.1 (1) The Explorers shall whilst conducting Exploration Operations on the Exploration Area use its best endeavours to conduct the Project so as to:-

- (a) preserve and protect the Environment;**
- (b) preserve natural hydrological systems;**
- (c) disturb the least amount of soil and vegetation possible;**
- (d) minimize pollution;**
- (e) accord with the Best Practicable Technology;**
- (f) prevent the introduction of exotic fauna and noxious plants into the area as a result of its activities.**

(2) Without limiting the generality of Clause 9.1(1), the Explorer shall, in implementing the Project:

- (a) comply with the Environmental Procedures at Annexure B;**
- (b) limit its use of vehicular traffic on the Lands to established roads wherever possible;**
- (c) take all reasonable precautions to prevent the occurrence of wild fires;**
- (d) keep each site of activity to the minimum area necessary to efficiently conduct the Project and keep such sites clean and tidy and free from rubbish and debris;**
- (e) separately retain adjacent to each such area all vegetation cut or removed from an area for the purposes of the Project;**
- (f) remove and separately stockpile the topsoil from each area it wishes to excavate for the purposes of the Project;**
- (g) take reasonable safeguards against stock and wildlife being injured, in particular, by reason of holes drilled or trenches dug; and**
- (h) take all reasonable care to prevent erosion and, without limiting the generality of this obligation, the Explorer shall take such protective action as is reasonably prudent having regard to the Explorer's requirements for future access or use for the purposes of the Project and the Environmental Impact which may result should rehabilitation or protective action not be undertaken at that time.**

(3) The Explorer shall comply with any reasonable requirement of the Land Council for the purposes of Clauses 9.1(1) and (2)

including the provisions of a written report detailing the Explorer's rehabilitation plans and Environmental Assessment Report referred to in sub-clause 9.1(1)(d) and giving the Land Councils access to rehabilitated areas to inspect progress of those plans, so long as it does not unreasonably increase the cost of Exploration to the Explorer. Such requirements may specify, but shall not be limited to, the location and manner of construction of any roads that may be necessary for the Project, and any erosion control measures, the sole costs of which shall be borne by the Explorer. The Explorer shall not be deemed to be in breach of its obligations under Clause 9.1(1) or (2) hereof by reason of its compliance with a request of the Land Council hereunder.

- 9.2 (1) The Explorer shall use its reasonable endeavours to repair any damage to the environment by progressively rehabilitating and revegetating those parts of the Exploration Area where the soil or vegetation are disturbed by it, using plant species indigenous to the area disturbed by it, excepting one or more of the following circumstances in which instance the Explorer will not be required to carry out further repairs to any environmental damage.
- (a) Any area disturbed at the request of the Land Council pursuant to Clause 9(1)(3);
 - (b) any area upon which improvements exist which have been acquired by the Land Council pursuant to Clause 17;
 - (c) to the extent that the Land Council requests the Explorer in writing not to rehabilitate or revegetate any area; or
 - (d) where future Explorer operations may occur.
- (2) Without limiting the generality of Clause 9.2(1) the Explorer shall:-
- (a) progressively seal all drill holes and trenches (except where the Land Council requests the Explorer not to seal a drill hole, the Explorer will be indemnified and held harmless by the Land Council for any further damage such drill hole may cause);

- (b) leave the surface in a safe condition and in a reasonable contour having regard to the state of the surface area prior to the activity;
 - (c) wherever possible and if required by the local community or the Land Council ensure that all soil which is removed from any areas, for purposes such as a drill rig site, is stockpiled and upon the cessation of Exploration in respect of that area is respread over the area so that the approximate contours of that area are reinstated but having regard to the overall landscape of the area;
 - (d) wherever possible, ensure that all vegetation cut or removed in the course of Exploration, such as clearing for drill rig sites, is kept and upon the respreading of soil in a disturbed area is distributed over the respread soil for the purposes of aiding revegetation;
 - (e) whenever possible rehabilitate disturbed areas as soon as reasonably practicable after the Explorer no longer requires access to the area for the purposes of the Project;
 - (f) whenever possible satisfy revegetation targets including those revegetation targets outlined in Annexure B.
- (3) The Explorer shall, in addition to the requirements specified in Clauses 9.2(1) and (2), rehabilitate disturbed areas in accordance with the reasonable requirements of the Land Council and such requirements may include:-
- (a) deep-ripping;
 - (b) replacing topsoil; and
 - (c) removing all rubbish and debris.
- (4) The Land Council shall use its best endeavours to advise the Explorer of its requirements in relation to the restoration of work areas prior to the Explorer vacating the site so that the Explorer may utilise the services of its contractors or agents still on the site or in the immediate area.
- (5) Notwithstanding anything to the contrary in this Deed or otherwise, unless the Explorer is released in writing by the Land Council from its obligations under this Clause 9.2, the Parties agree that the rights and obligations granted and imposed pursuant to this Clause 9.2 shall continue in respect of each

area of the Land Council disturbed for the purposes of the Project until six (6) months after the date the Explorer terminates Exploration Operations on that part of the Exploration Area PROVIDED THAT the Explorer's obligations under this Clause 9.2 shall cease in relation to any land which has been or is being rehabilitated by the Explorer which is damaged by the activities of the holder of a subsequent exploration licence or other lease or licence over that land or by any other person on that land.

- 9.3 (1) If the conduct of the Project contravenes any provisions of this Clause 9, the Land Council may serve notice on the Explorer requiring it to take, within a reasonable time specified in the notice, such reasonable steps as are necessary (which steps may be specified by the Land Council) to remedy any contravention of such provision and to prevent any continued or repeated contravention of such provision and the Explorer shall forthwith comply with the notice.
- (2) If the Explorer fails to comply with a notice given pursuant to Clause 9.3(1), the Land Council may, provided it has first given the Explorer fourteen (14) days notice of its intention to do so, take such steps as are reasonably required to remedy any contravention or to prevent any continued or repeated contravention of such provision as referred to in the said notice and may engage such consultants or contractors as it may consider necessary for this purpose.
- (3) If the Land Council takes any steps pursuant to Clause 9.3(2) to remedy any contravention or to prevent any continued or repeated contravention of the provisions of this Clause 9, all reasonable costs and expenses incurred by the Land Council in so doing shall become a debt due and payable by the Exploration Company on demand.
- (4) If the Explorer does not agree with the notice under Clause 9.3(1) then either Party can refer the matter to arbitration in accordance with Article 28.
- (5) A dispute under Clause 9.3(4) will not prevent the Project from proceeding nor will it prevent the Land Council from continuing to take any steps pursuant to Clause 9.3(2) if the Land Council

perceive that there is a real threat to the environment at that time.

9.4 The Explorer agrees that it will establish, as early as practicable for Environmental Assessments and Feasibility Studies, programmes to monitor biota, water, sediments, soils, air, and other aspects of the environment and such further programmes as may reasonably be requested by the Land Council, except where such request:-

- (a) would unreasonably increase the cost of the programme to the company;
- (b) is unsound according to generally accepted environmental engineering mining or geological principles; or
- (c) is inconsistent with or beyond the requirements of Best Practicable Technology.

9.5 With respect to sub-surface water which is encountered during drilling, the Explorer shall:-

- (a) report and describe the encounter to the Land Council with a general indication as to flow and quality if that information is available to the Explorer;
- (b) if the Land Council requests, allow the Land Council, without any material inconvenience to the Explorer, to sample and test the water (at its own cost) to ascertain its potential for domestic use, livestock or other purposes and if it desires, to develop the drill hole at its own cost; and
- (c) allow the Land Council a reasonable opportunity to consult Traditional Aboriginal Owners and to make a request pursuant to Clause 9.2(2)(a).

10. LAND COUNCIL EXPENSES

✓ 10.1 The Explorer shall pay all or any stamp duties payable by reason of the execution of this Deed.

✓ 10.3. The Explorer shall pay the Land Council the sum of \$3,500 (three thousand and five hundred dollars) within seven (7) days of the date of the issue of the first Entry Permit in relation to the Exploration Licences towards the Land Councils costs of administering this Deed and in consideration of the Land Council:

- (a) generally liaising with the Explorer regarding implementation of the terms and condition of this Deed;
- (b) providing appropriate accounting and other assistance as and when required;
- (c) assisting Land Council members in assessing compliance with any proposed assignee within the provisions of Clause 21;
- (d) participating in the membership of the Advisory Committee;
- (e) assisting, as required traditional owners to understand the written Notice of Exploration Operations referred to in Clause 3;
- (f) provide appropriate environmental advice as and when required by Traditional Owners for the purposes of Clause 9; and
- (g) generally provide appropriate assistance and advice as and when required by the Traditional Owners in respect of any matter arising under the Deed.

✓ 10.4. Upon each annual anniversary of the date of the issue of the first Entry Permit by the Minister, the Explorer shall pay to the Land Council until this Deed is terminated an amount determined by multiplying the sum of \$3,500.00 by the index rate.

11. ADVISORY COMMITTEE

11.1 In order to provide for the smooth working of this Deed and the continuous co-operation of the parties thereto, the parties shall form an Advisory Committee, consisting of one (1) member appointed by the Land Council who shall be the person responsible from time to time for the day to day administration of this Deed on behalf of the Council, two (2) members appointed by the Explorer and one (1) other member appointed by the Land Council. Each member shall have the right to appoint a proxy to attend on his or her behalf and each member or proxy in attendance shall be entitled to one vote. A reasonable number of non-members may attend the committee meetings having regard to matters under discussion. The Advisory Committee shall meet on a regular basis (and in any event not less than twice annually). The first meeting of the Committee shall take place within six (6) months of the date of this Deed and this meeting and subsequent meetings shall be convened on the Lands or at Alice Springs, at a location to be agreed from time to time between the parties, and keep minutes which shall be supplied to the Explorer and the Land Council. Unless otherwise specified, the majority decision of the Advisory Committee shall be the determination of the Committee. In the event of a deadlock the matter will be resolved as a dispute in accordance with Clause 27 and the decision of an arbitrator pursuant to Clause 27 shall become the determination of the Advisory Committee.

11.2 The functions of the Advisory Committee shall include:-

- 11.2.1 Maintaining liaison between the Explorer and local Ngaanyatjarra people;
- 11.2.2 Reviewing the working of this Deed and the progress of Exploration Operations hereunder;
- 11.2.3 Causing the effect of Exploration Operations hereunder on the environment to be monitored and reviewing the results of such monitoring;
- 11.2.4 Making any determinations under this Deed;
- 11.2.5 Receiving and hearing any specific objection or complaint relating to any part of the Exploration Operations;
- 11.2.6 Making recommendations to the Explorer in relation to the employment and appropriate training of Ngaanyatjarra

people and the use of Aboriginal contractors by the Explorer pursuant to Clause 12; and

11.2.7 Preserving racial harmony between the Ngaanyatjarra people and other people entering the Exploration Area for the purposes of the Exploration Operations, and in particular, using its best endeavours to ensure that no incidents occur which degrade, prejudice or besmirch the customs, lifestyle, race or character of the Ngaanyatjarra people.

11.3 The parties agree that the Advisory Committee, in the carrying out of its functions, will at all times use its best endeavours to facilitate compliance with the provisions of this Deed (apart from this Clause) so that Exploration Operations may be conducted efficiently and with adequate regard to the aspirations and welfare of the Ngaanyatjarra people affected by the Exploration Operations.

12. EMPLOYMENT AND TRAINING OF ABORIGINAL CONTRACTORS

12.1 The Explorer shall give employment and contract preference to Aboriginal or incorporated Aboriginal bodies or groups owned by Aboriginals and shall ensure that as many Aboriginals or incorporated bodies or groups owned by Aboriginals as is practicable are employed or contracted where they are capable of carrying out in a satisfactory and cost effective manner the particular work required.

12.2 Without limiting the generality of sub-clause 13.1, the Explorer shall:-

12.2.1 actively seek to engage local Aboriginals in the positions identified as available for employment in the Exploration Operations and any other Works, ancillary thereto;

12.2.2 ensure that all contractors and sub-contractors engaged by it actively seek to engage Aboriginals and will encourage its contractors and sub-contractors to give employment preference to Aboriginals where vacancies exist or arise in their work on Exploration Operations or works ancillary thereto;

12.2.3 to such extent as is practicable, give on-the-job training to Aboriginals employed on Exploration Operations who demonstrate a desire and capacity to receive same with a view to increasing the job skills of those Aboriginals;

12.2.4 where Aboriginals who reside other than at nearby Communities or Homelands are employed in any position or contracted to do any work:-

12.2.4.1 offer those Aboriginals accommodation of an equivalent standard to that provided to other employees of the Explorer engaged in the Exploration Operations; and

12.2.4.2 ensure that those Aboriginals accommodated by the Explorer are subject to the same rules and regulations applying to all other employees so accommodated;

12.2.5 provide a suitably qualified employee, or a consultant agreeable to both parties, to assist the Land Council to identify areas in which an Aboriginal or incorporated bodies owned by Aboriginals might successfully contract for the supply of goods and services which employee or

consultant will assist such person or bodies in the preparation and organisation of their tenders;

12.2.6 give to the Land Council, the Advisory Committee, and to any other Aboriginal persons or incorporated Aboriginal bodies nominated by the Land Council, 14 days advance notice of its intention to let or call tenders for a contract for the supply of the types of goods or services which the Council has previously given notice to the Explorer it is capable of supplying; and

12.2.7 give to any person or body to whom notice has been given in accordance with paragraph 12.2.6 a preference where that person or body's quoted or tendered prices are competitive with any other third party.

12.3. Through joint consultations between the Explorer and the Land Council and the appropriate trade unions (if any) the Explorer and the Land Council will take all reasonable and practicable steps to ensure that working hours and conditions are adjusted to suit the cultural and social needs of Aboriginal employees where needs arise by virtue of their being Aboriginal.

12.4 In pursuance of Clause 12.1 the Explorer shall:-

12.4.1 in respect of a vacancy for a job of more than 7 days duration, notify the Land Council, and any bodies or person nominated by the Land Council, of any employment vacancy with respect to Exploration Operations of which it is aware or ought to be aware or of which it receives notice whether from its own employees or from any contractor or sub-contractor and of the minimum qualifications, training and skills required therefore and shall notify the Land Council of any contract requirement which occurs with respect to the Exploration Operations and of the minimum capabilities and experience required therefore; and

12.4.2 in respect of a vacancy for a job of less than 7 days duration, liaise with the Land Council nominee on the Advisory Committee concerning the possibility of engaging an Aboriginal or incorporated body or group owned by Aboriginals to that job.

12.5 Where an Aboriginal or incorporated body or group owned by
Aboriginals applies or tenders for any position or contract and the
Explorer or a contractor or sub-contractors (as the case may be) does
not engage him or it, then the Explorer shall advise the Land Council
and, at the request of the Land Council, give reasons why that person
or body was not engaged in order to enable the Land Council to
explain to the relevant Aboriginal or incorporated body or group
owned by Aboriginals why he or it was unsuccessful.

12.6 The Explorer shall notify the Land Council and give reasons for the
dismissal of any Aboriginal employee or of the premature termination
of any contract let to an Aboriginal or an incorporated body or group
owned by Aboriginals within seven (7) days after such dismissal or
termination.

13. INFORMATION

13.1 With respect to the Project, the Exploration Company shall provide the Land Council with copies of all:-

13.1.1 reports, advice, letters and information concerning any program for work upon the Exploration Area which may be lodged, deposited, sent or submitted by the Explorer to any government or governmental or other competent authority at the same time as it is lodged, deposited, sent or submitted, including any notice relinquishing or surrendering any part of its rights under the Exploration Licence or reducing the Exploration Area (together with appropriate maps);

13.1.2 applications or requests made by the Exploration Company to any government or governmental or other competent authority at the same time as making any such application or requests, including any application for a Mining Licence over any part of the Licence Area; and

13.1.3 All authorisations given to the Exploration Company within five (5) business days of such an Authorisation being received.

13.2 The Explorer shall annually, within thirty (30) days of furnishing the Department of Minerals and Energy with Mineral Exploration Reports and/or Operations Reports as required under the provisions of the Mining Act or guidelines issued by that Department, provide the Land Council with a Work Report, together with the mineral exploration reports and operations report for the previous twelve (12) months, such Work Report to comply with the Public Disclosure obligations upon the Explorer pursuant to the Mining Act and Corporations Law.

13.3 A Work Report provided under Clause 13.2 or under Clause 13.4 shall include specific particulars, (including maps, plans and photographs, where appropriate) of the Exploration by means of which the Project has, pursuant to Work Programmes, been implemented and the effects of the Project upon the environment and, in particular, the Traditional Owners, including particulars of:-

13.3.1 the nature, scope and location of each work program and the date and by whom the exploration was undertaken;

13.3.2 any incidents which affected or may affect the environment, such as fuel spills and fires;

13.3.3 any modification or alteration to a Work Programme; and

13.3.4 the rehabilitative activities and methods undertaken and proposed to be undertaken.

13.4 The Explorer shall, within three (3) months after the termination of this Deed furnish the Land Council with a final Work Report for the period extending from the date of this Deed until its termination.

14. UNDERTAKINGS

14.1 On the execution of this Deed the Land Council shall on behalf of its members who have lodged a claimant Application for Native Title Determination sign a Deed of Agreement with the State of Western Australia and the Minister for Mines for the purpose of recognizing the validity of the grant of the Exploration Licences pursuant to the Native Title Act 1993 (Cth)

14.2 The Explorer shall:-

14.2.1 only undertake such activities on the Exploration Area as are good exploration industry practice and are necessary for the proper and efficient implementation of the Project;

14.2.2 only make such use of the Access Road and such private roads as it is permitted to use on the Lands outside the Exploration Area as is necessary for the proper and efficient implementation of the Project; and

14.2.3 carry out the Project in accordance with:-

14.2.3.1 the terms of this Deed;

14.2.3.2 the Work Programmes approved from time to time;

14.2.3.3 Applicable laws subject to the terms of this Deed.

14.3 The Explorer agrees that, during the term of this Deed and notwithstanding the termination, expiration or suspension of the Exploration Licence or any other mining interest or the termination or suspension of the Project, for so long as they are entitled to enter upon or occupy any part of the Exploration Area, whether pursuant to this Deed or by reason of any statutory right they shall observe and perform all of the covenants and obligations given or undertaken by them hereunder and otherwise comply with the requirements of this Deed to the extent to which such observance, performance and compliance is not prohibited or prevented by the provisions of this Deed or by law.

14.4 The Explorer shall promptly provide the Land Council with a copy of any notice (provided to a Government or Governmental Authority) relinquishing or surrendering any part of the Exploration Licence or Licences or reducing the Exploration Area and a map identifying the area relinquished or reduced shall be included in the said notice.

15. RIGHTS OF TRADITIONAL OWNERS

15.1 The Explorer acknowledges that members of the Land Council have the right except where their presence may cause danger to health and safety, or where their presence may interfere with the conduct of efficient Exploration Operations:

15.1.1 To move freely throughout the Exploration Area including all roads thereon;

15.1.2 To establish residence in any place in the Exploration Area; and

15.1.3 To pursue customary and traditional activities within the Exploration Area.

15.2 The Land Council, its members and agents shall be permitted the use of all roads constructed for the purpose of Exploration Operations provided such use does not interfere with the conduct of efficient Exploration Operations and may with the consent in writing of the Explorer be permitted to use all other facilities and infrastructure constructed by or on behalf of the Explorer for the purpose of Exploration Operations not otherwise directly and exclusively used in such operations.

15.3 The use of roads, facilities and infrastructure in accordance with this Clause shall be subject to reasonable control by the Explorer for the purposes of safety and to priority of use by the Explorer for the purposes of Exploration Operations.

15.4 The Explorer shall be indemnified by the Land Council for all injuries suffered by the Traditional Owners arising out of their use of roads, facilities and infrastructure in accordance with Clause 15 except where such injury is caused by the negligence of the Explorer.

16. ROADS, MATERIALS AND WATER

16.1 The Explorer shall, until termination of the Project:-

✓ 16.1.1 maintain at their own expense all roads used or established by them for the purposes of the Project, and

✓ 16.1.2 contribute to the maintenance of all such other roads as it uses for the purposes of the Project in accordance with Clause 16.2.

✓ 16.2 With respect to the roads referred to in Sub-Clause 16.1.2, the Exploration Company shall pay to the Land Council the sum of three thousand dollars (\$3,000.00) within fourteen (14) days of the date of the issue of the first Entry Permit in respect of the Exploration Licences and, the sum of three thousand dollars (\$3,000.00) within six (6) weeks of each anniversary of the date of the first payment.

→ 16.3 The Land Council shall pay each of the payments it receives under this Clause 16 to a fund established or maintained for the purpose of maintaining the relevant roads, it being understood that in the event that any payments into such fund which are not used for the purpose of maintaining the relevant roads within twelve (12) months of being paid to the Land Council shall, promptly upon receipt by the Land Council of a request from the Explorer, be re-paid (exclusive of any interest earned) to the Explorer.

✓ 16.4 The payments required to be paid under Sub-Clause 16.2 shall be reviewed by the Parties within one (1) month of the date of biennial anniversaries of this Deed and, if the Parties fail to agree on the amount of the payments for that year, then any Party may request the Western Australian Minister for Transport and Works to appoint a nominee to assess the amount and such nominee shall determine the proper payment to be made having regard to:-

16.4.1 the use to which the relevant roads have and are likely to be put for the purposes of the Project and the affects and likely effects of the Project on the relevant roads and in the vicinity thereof;

16.4.2 the use to which the relevant roads have been and are likely to be put by persons other than the Explorer;

16.4.3 the availability of funds other than those payable by the Exploration Company for the purposes of maintaining the relevant roads during that year;

- 16.4.4 general economic inflation; and
- 16.4.5 any increase in the Consumer Price Index for Perth (all groups) or any substitute therefore from the date of this Deed.

And it is agreed that the said nominee shall act as an expert and not as an arbitrator and that his decision shall be final and binding on the Parties and the Parties shall bear equally the fees and expenses of and incidental to the determination by such nominee.

- 16.5 Except with the prior consent of the Land Council, the Exploration Company shall not be entitled to take, direct or use timber or surface water other than as is reasonably required for cooking and drinking use at temporary tent campsites.

17. REVERSION OF INFRASTRUCTURE

17.1 Within a period of three (3) calendar months after the Explorer ceases to have a right to conduct operations under the Mining Act in the Exploration Area, the Explorer shall, subject to Sub-Clause 17.5, remove from the Exploration Area all infrastructure or facilities constructed for the purposes of Exploration Operations, which are capable of removal other than those which the Land Council agrees in writing may remain thereon.

17.2 Any infrastructure or facilities which the Land Council agrees in accordance with sub-clause 17.1 may remain in the Exploration Area ("free infrastructure") shall upon the expiry of the said period of three (3) calendar months (or upon such earlier date as shall be agreed between the parties) become the property of the Land Council without any payment or assumption of any mortgage, lien or charge therefor on the part of the Land Council. The Explorer shall not be liable for the state or condition of repair of any free infrastructure. The Land Council hereby waives and releases the Explorer from any claims, demands, costs or expenses made or incurred by the Land Council in respect of such free infrastructure and will indemnify the Explorer against any claims, demands, suits and proceedings of any third party arising out of the state or condition of repair of such free infrastructure after the said period of three (3) calendar months (or such earlier date as aforesaid).

X 17.3 Where infrastructure or facilities are not removed by the Explorer pursuant to Clause 17.1 the Land Council may with such assistance as it considers necessary remove the infrastructure or facilities and the costs incurred by the Land Council shall be a debt due and payable by the Explorer to the Land Council.

17.4 Unless the Land Council agrees otherwise in writing the Explorer shall maintain all infrastructure and facilities referred to in Clause 17.1 for so long as they remain the property of the Explorer or until expiration of the three (3) month period referred to in Clause 19.1 whichever first occurs.

17.5 Subject to sub-clauses 17.1 and 17.2, if at any time during the term hereof the Explorer are desirous of disposing of their interest in any property or equipment used within the Exploration Area in connection with the Exploration Operations, the Explorer shall give to the Land

Council the right of the first refusal to purchase the said property or equipment or any part thereof subject to the following terms and conditions:-

- 17.5.1 the Explorer shall give notice in writing to the Land Council of the Explorer' intention to dispose of any such property or equipment. The notice shall constitute an offer by the Explorer to sell any such property or equipment to the Land Council and shall specify the consideration required by the Explorer from the Land Council for the purchase by the Land Council of the Explorer' interest therein, which consideration shall not impose any more onerous obligation or duty upon the Land Council or require the Land Council to pay any greater pecuniary sum than the Explorer would impose upon or require from a purchaser other than the Land Council;
- 17.5.2 within fourteen (14) days after the Explorer give the said notice the Land Council shall give notice in writing to the Explorer of the Land Council's acceptance or rejection of the Explorer's offer to sell. In the event of the Land Council giving notice of acceptance there shall be deemed to be a binding contract for sale by the Explorer and purchase by the Land Council of the Explorer's interest in the said property or equipment for the consideration stated in the Explorer's notice; and
- 17.5.3 the purchase price shall be paid within thirty (30) days from the date on which the Land Council gives notice of acceptance to the Explorer and, if the Land Council shall make default in payment of the purchase price or any part thereof, it shall be lawful for the Explorer at their option and, without prejudice to any other legal rights or remedies that the Explorer may have, upon giving fourteen (14) days notice in writing to the Land Council, to rescind the contract constituted pursuant to paragraph 17.5.2 and thereupon to resell the said property or equipment by public auction or private contract and any deficiency on resale together with all outgoing costs and expenses of and incidental to resale shall immediately thereafter be made good by the Land

Council to the Explorer. In the event that the Land Council fails to give notice of acceptance pursuant to paragraph 17.5.2, or gives notice of rejection thereunder, the Explorer shall then be at liberty to sell the said property or equipment by private contract to any other person for a pecuniary sum being not less than that specified in the notice in writing given pursuant to paragraph 17.5.1 or by public auction.

18. INDEMNITY

The Land Council and its employees, agents and contractors shall be indemnified by the Explorer in respect of all actions, suits, claims, demands, or costs of third parties arising out of or in connection with any act or omission on the Lands on the part of the Explorer, their contractors, employees, agents or visitors, except where such action, suit, claim demand or cost arises out of the negligence or wilful act or omission of the Land Council, its employees, agents or contractors.

19. MINING PROPOSAL

19.1 The Explorer may, at any time prior to requesting the consent of the Minister for Mines to develop a mine on the Exploration Area, being an activity to which the provisions of Section 24 (7) of the Mining Act apply, or within 30 days of submitting such a request, give written Notice to the Land Council requesting consultations with the Land Council concerning the proposed activity in order that a Mining Agreement can be entered into by the parties. A Mining Proposal as defined by Clause 19.6 shall accompany the Notice.

19.2 Unless commenced earlier by mutual agreement, promptly after receipt by the Land Council of a relevant Mining Proposal, the parties shall commence bona fide negotiations for the purpose of endeavouring to reach agreement on the terms and condition of a Mining Agreement.

19.3 Subject to prior agreement by the parties the Explorer shall meet the reasonable costs and expenses incurred by the Land Council in negotiating any Mining Agreement including;

- (a) travel and accommodation expenses relating to travel within Australia;
- (b) the cost and expenses of consulting relevant Aboriginals; and
- (c) cost and expenses (at prevailing Australian rates) of any consultants which the Land Council reasonably requires in order to properly consider and negotiate such an agreement which costs and expenses shall be forward budgeted and substantiated to the Explorer in advance.

19.4 The Explorer acknowledges that each of the provisions of this Clause 19 is fundamental to this Deed.

19.5 In the event that following negotiations pursuant to this Clause, the parties fail to reach agreement for any reason on the terms, conditions and covenants of the Mining Agreement, the matter shall be referred to arbitration pursuant to Clause 27 and the determination of the arbitrator as to the applicable terms, conditions and covenants shall be final and binding on the parties.

19.6 The "Mining Proposal" means a written report comprising:-

- (a) details of the following as far as they are known to the Explorer in relation to the recovery of minerals from any part of the Exploration Area:-
 - (i) the (each) mineral deposit and a comprehensive report thereon which shall include the details of the grade and quantity of the proven, probable and possible ore reserves and the estimated rate and overall recovery of ore and minerals;
 - (ii) mining and plant proposals and designs;
 - (iii) recovery tests;
 - (iv) the area the subject of (or to be the subject of) an application for a mining interest under this Clause;
 - (v) the nature, size and location of all infra-structure including power lines, roads, camps, offices and transports, storage, maintenance and treatment facilities and how it is proposed to construct the infrastructure on land owned or leased by the Land Council that is not the subject of the Exploration Licences;
 - (vi) the method of ore treatment and estimating requirements for energy, chemicals, water, sand, gravel, soil, fill, clay and other materials;
 - (vii) an indicative timetable of construction and an estimation of investment costs (including working capital) and cash outlays;
 - (viii) the ancillary facilities and services required, including supply of various utilities (electric power, fuel, steam, air, etc) supply or production and storage of sulphuric acid and/or other

solvents, and the nature, size and location of all offices and industrial buildings required including warehouses and storage facilities for solvents and explosives and maintenance facilities; and

(ix) estimated future workforce (employment and contract) requirements and, in particular the opportunities for the engagement of Aboriginals; and

(b) an Environmental Assessment;

(c) a detailed program for the reclamation and rehabilitation of areas expected to be disturbed and for the minimisation, control and monitoring of the effects of the operation on the environment and on the Aboriginal owners; and

(d) the Notice Of Intent to undertake mining operations provided to the Department of Minerals and Energy.

19.7 The Explorer shall be at liberty to delete from the Mining Report those provisions relating to pricing, predictions and marketing arrangements, any technical information which is exclusive to the Explorer and is not in the public domain, and any other confidential provisions the release of which would result in the Explorer being in breach of legally binding obligations of confidence to third parties where such obligations arise by virtue of bona fide commercial arms length agreements but further provided that the Explorer shall still be obliged to provide a summary in general terms of any such deleted provisions.

19.8 Within 45 days after the Explorer gives Notice to the Land Council under Clause 19.1, or such other time as agreed to by the parties or determined by arbitration pursuant to Clause 27, the Land Council and the Explorer shall agree on compensation payable to the Land Council or to its nominee during mining. The compensation may include some or all of the following categories of compensation and any other categories agreed upon by the Explorer and the Land Council from time to time:-

(a) compensation for use of the land and inconvenience and disruption of the lifestyles of members of the Ngaanyatjarra

- Council and Traditional Owners being a percentage of the rental payments which may be payable to the State of Western Australia for any mining tenement held by the Explorer for the purposes of undertaking mining operations during the relevant period;
- (b) employment and training of Aboriginal residents and custodians;
 - (c) education scholarships and support for Aboriginal residents and custodians and their children;
 - (d) the provision and upgrading of roads and telecommunication services within the land leased by the Land Council;
 - (e) the provision and upgrading of health services within Land Council communities;
 - (f) the support of cultural activities and facilities within Land Council communities;
 - (g) the support and provision of other services and facilities owned by the Land Council which the Land Council may from time to time seek;
 - (h) the right of the Land Council and/or its nominees to have an equity of up to 10%, and/or a percentage payment of royalties;
 - (i) the protection and rehabilitation of the environment;
 - (j) the protection of Sacred sites and Sacred objects;
 - (k) dispute resolution;
 - (l) the establishment of a Liaison Committee.

At the date of this Agreement the Land Council acknowledges that nothing herein shall be construed as the Explorer agreeing to the inclusion of any of the above in any agreement between the parties in the future.

19.9 Compensation payable pursuant to Clause 19.8 shall be reduced by an amount equal to the amount of compensation to be paid (if any) by the Explorer to the Traditional Owners of the area subject to the Exploration Licence or Licences pursuant to any claim based on their

Native Title rights as defined in the Native Title Act 1993 (Clth) to the Exploration Area.

19.10 The Explorer shall not commence a Mining Operation or any construction on any land within the Exploration Licence Area until a Mining Agreement has been agreed to or arbitrated (as the case may be) pursuant to this Clause.

20. FORCE MAJEURE

20.1 In the event that the performance of this Deed by either party is prevented or delayed in whole or in part by Force Majeure this Deed shall nevertheless continue and remain in full force and effect but that party shall not be in default hereunder for as long as it continues to be prevented or delayed as aforesaid by such Force Majeure and the time within which such party is required to perform any work to satisfy any obligation hereunder shall be extended by a period equivalent to that during which such prevention or delay continues provided that:

20.1.1 the cause of the Force Majeure as far as possible shall be remedied with all reasonable despatch by such party;

20.1.2 neither party shall be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.

20.2 The party affected by any event of Force Majeure as aforesaid shall forthwith give notice thereof to the others of the occurrence of such event and of the cessation thereof.

21. ASSIGNMENTS

Assignments and Encumbrances of Individual Interests

21.1.1 Except as otherwise provided in this Clause 21, the Explorer shall not at any time without the prior written approval of the Land Council and such approval not to be unreasonably withheld assign, encumber, declare itself trustee of, or otherwise dispose of or suffer to exist an encumbrance over the whole or any part of its interests, rights or obligations under this Deed, or under the Exploration Licence or Licences in respect of the whole or any part of the Exploration Area (in this Clause 21 collectively referred to as its "Individual Interests") or any fractional or constituent part thereof to any person or corporation whatsoever, nor shall it enter into any contract, arrangement or understanding by which it disposes of all or any of the costs incurred by the Exploration Company in the Exploration Operations.

21.1.2 The Land Council shall not unreasonably withhold its consent in writing to the Explorer entering into a Joint Venture Agreement with a third party if the third party executes an agreement to observe all the obligations upon the Explorer as set out in this Deed, and the Explorer remains the exploration operator or manager of the Exploration Operations.

21.2 Assignments to Related Body Corporate

21.2.1 The Explorer may assign the whole or part of its Individual Interest to a financially sound Reputable Corporation which is:-

21.2.1.1 a Related Body Corporate (as defined in the Corporations Law); or

21.2.1.2 a corporation of which that corporation's Ultimate Holding Company (as defined in the Corporations Law) is the Ultimate Holding Company of the Exploration Company; or

21.2.1.3 a Related Body Corporate of that Ultimate Holding Company;

(referred to in this Clause 21 as the "Assignee") subject to the Explorer (referred to in this Clause 21 as "the Assignor") first obtaining any necessary government or

other approvals or consents to such assignments and upon request produce the same to the Land Council.

21.3 Reputable Corporation

For the purposes of this Clause 21, a Reputable Corporation does not include a person or corporation which has, by itself, its directors, its employees, or its duly authorised agents, made any public statement or taken any action which, in the reasonable opinion of the Land Council, reflects a current view or attitude of that corporation or its directors and is derogatory of either of the following:-

- (a) Aboriginal culture; or
- (b) any Aboriginal traditions.

21.4 Conditions of Assignment

Prior to any assignment pursuant to Clause 21, the Assignor shall:-

- 21.4.1 obtain all necessary Government or other approvals or consents to such assignment which may be required;
- 21.4.2 forward to the Land Council, who shall treat such material in a confidential manner, a written certificate executed by both the Assignor and the proposed Assignee notifying of the proposed assignment thirty (30) days prior to the proposed assignment and should the Land Council agree to the assignment there shall be a meeting of the Advisory Committee within twenty-eight (28) days of the Land Council giving written notification of its acceptance and the Advisory Committee shall determine what instruction the proposed Assignor shall receive pursuant to Clause 7;
- 21.4.3 obtain the consent in writing of the Land Council to such an assignment, and if there are no reasonable grounds for withholding such consent, then such consent shall be provided in writing within 45 days. It shall be reasonable for the Land Council to withhold its consent, inter alia, if the proposed Assignee is not a Reputable Corporation within the meaning of Clause 21. If the Land Council withholds its consents such withholding must be accompanied by a notice stating in detail the reason thereof. Such notice shall be given in writing within 45 days. Failure to provide notice will constitute consent.

22. CONFIDENTIALITY

22.1 Subject to Clause 22.2, the following shall be treated by the Parties as confidential;

22.1.1 the terms and conditions of this Deed;

22.1.2 information given to the Land Council pursuant to Clause 13 (Inspection), Clause 14 (Information), or otherwise in respect of the Exploration under this Deed which the Explorer requests the Land Council to treat as confidential; and

22.1.3 information furnished in or pursuant to this Deed or in the course of negotiating this Deed by or on behalf of the Traditional Owners to the Explorer which the Land Council requests the Explorer to treat as confidential.

22.2 Notwithstanding Clause 22.1, Clause 13 (Inspection), Clause 14 (Information), a Party may divulge information to a third party;

22.2.1 with the prior consent of the other Parties (which consent shall not be unreasonably withheld);

22.2.2 to the extent required by law or to obtain an Authorisation;

22.2.3 to the extent expressly permitted under this Deed or required to enforce its rights under this Deed, including disclosure to potential assignees of any part of the Explorer interests, rights or obligations under the Exploration Licence or this Deed;

22.2.4 to the extent that such information is already or becomes in the public domain otherwise than by breach of this Article 22;

22.2.5 to a financier of, or holding company, or wholly owned subsidiary of the Party;

22.2.6 to the extent required to comply with the Official Listing Rules of the Australian Stock Exchange; or

22.2.7 to the Traditional Owners.

22.3 Each Party shall take all steps reasonably necessary to ensure that the information and data referred to in Clause 22.1 is known only to such persons (including any employees of that Party) as may reasonably require knowledge thereof in the course of their duties or functions and, notwithstanding the provisions of Clause 22.2, each Party shall, to the extent permitted by law, require any person (other

than Traditional Owners) to whom it intends to disclose such information or data (who is not under a statutory, professional or contractual duty to keep such information or data confidential) to give a written undertaking to keep such information or data confidential in accordance with Clause 22.1.

22.4 Notwithstanding termination of the rest of the Deed but subject to Clause 22.2, the Explorer shall continue to treat as confidential all information obtained by it pursuant to this Deed or in the course of carrying out the Project with respect to the locations of and traditions associated with sacred sites and sacred objects and, to the extent that it is capable of being delivered, shall deliver all of such information to the Land Council as soon as it is no longer required for the purposes of the Project.

23. TERMINATION

23.1 The Land Council may terminate this Deed by giving to the Explorer three (3) months notice in writing only on the following conditions:

23.1.1 In the event that the Explorer fail to pay any monies due to the Land Council and such default continues for more than twenty-eight (28) days after receipt of notice of failure to pay, except in the case where a bona fide dispute exists as to the liability or amount of monies payable;

23.1.2 If the Explorer is in breach of any essential term or condition of this Deed and, if such breach is not capable of being remedied by decision of the Advisory Committee or the Explorer fails to remedy or commence to remedy such breach within twenty-eight (28) days after receipt of notice given by the Land Council in writing of such breach.

23.2 Either the Land Council or the Explorer may terminate this Deed by giving notice to the other expiring at any time during the term hereof in the event of the Explorer ceasing to hold a Licence in respect of any part of the Exploration Area.

23.3 This Deed is conditional upon the grant to the Explorer, in accordance with paragraph 3.1.1 hereof, of the Exploration Licence or Licenses and the Entry Permit subject to conditions which satisfy requirements set out in paragraphs 2.1.1 and 2.1.2 and shall automatically determine upon the expiry of the period of ninety (90) days from the date hereof (or within such longer period as may be agreed in writing between the parties prior to the expiry of the said ninety (90) day period) in the event that offers satisfying the requirements of sub-paragraphs 3.1.1.1 and 3.1.1.2 are not made within the said period of ninety (90) days (or within such longer period as aforesaid), but so that such determination shall be without prejudice to any liability or obligation incurred prior to the date of such determination.

23.4 Notwithstanding sub-clause 23.3, in the event that offers satisfying the requirements of sub-paragraph 2.1.1.1 and 2.1.1.2 are not made within the said period of ninety (90) days (or within such longer period as aforesaid) the parties agree to engage in further negotiations in good faith with a view to a Deed on terms and conditions which are no less favourable to each of the parties as those set out herein and,

in default of such Deed being reached within a further period of ninety (90) days, then upon such terms and conditions as aforesaid determined by an arbitrator in accordance with Clause 23 hereof.

24. CONSEQUENCES OF TERMINATION

Upon termination of this Deed pursuant to Clause 24, without prejudice to the continuing effect of sub-clause 24.5 and the proviso to paragraph 3.1.1 (where relevant):-

- 24.1 The rights of the Explorer hereunder shall thereupon cease without prejudice to any liability in respect of any antecedent breach or default under this Deed;
- 24.2 The Explorer shall, without prejudice to any continuing obligations under Clauses 9 and 19 hereof, be relieved of all obligations under this Deed except those obligations which arose prior to the date of such termination.
- 24.3 Subject to sub-clause 24.2, the Explorer shall within 28 days of the date of termination withdraw from the Exploration Area and refrain thereafter from having access thereto without the written consent in writing of the Land Council.

25. PAYMENTS TO ABORIGINAL OWNERS FOR EXPLORATION ACTIVITIES

25.1 The Exploration Company shall make payments to the Land Council in accordance with Annexure A.

25.2 Except as provided in this Deed, the Explorer shall not be obliged to make payments to the Land Council or the Traditional Aboriginal Owners in consideration of the Land Council's consent to the grant of the Exploration Licence.

25.3 (1) The Land Council may, in writing, request that the Explorer:

- (a) supply goods, services or improvements, or
- (b) provide labour or materials, to or for the benefit or use of Traditional Aboriginal Owners in lieu of any payment or part of any payment required to be made by the Explorer to the Land Council pursuant to the terms of this Deed.

(2) The Explorer agrees to use its best endeavours to comply with reasonable requests made by the Land Council under Clause 25.3(1).

(3) The Parties acknowledge that for the purposes of this Clause 25.3 the value of any goods, services or improvements to be supplied or labour or materials to be provided in lieu of payment shall be calculated on the basis of the actual cost at the particular location to the Explorer.

(4) Compliance with a request under this Clause 25.3 shall be a proper full or part discharge of the Explorer's obligation under Clause 25.1 according to the value attributed to the compliance.

25.4 Except as otherwise provided in this Deed, the Land Council acknowledges its intention to distribute sums paid to it pursuant to this Deed to or for the benefit or use of or at the direction of the Traditional Owners.

25.5 Payments

Monies payable hereunder (except for the cost of undertaking the screening and clearance work referred to in Clause 8) by the Explorer to the Land Council shall be paid within 30 days of the receipt by the Explorer of an invoice therefore with appropriate supporting documentary evidence from the Land Council. In the event of any cost item being disputed by the Explorer, the Explorer may only withhold the disputed amount, and shall pay the undisputed amount within the said period of 30 days.

26. PROPER LAW

26.1 This Deed shall be construed in accordance with and governed by the laws of the State of Western Australia except insofar as laws of another jurisdiction necessarily apply.

27. DISPUTES

- 27.1 Subject to the Act, if any dispute or difference arises between the Explorer and the Land Council in connection with this Deed, or the rights, duties or obligations of any party hereunder, the parties shall meet to discuss the dispute or difference and endeavour to amicably resolve such dispute or difference by themselves.
- 27.2 If after discussions the parties are unable to resolve such dispute or difference, the matter shall be referred to arbitration in accordance with the provisions of the Commercial Arbitrations Act 1985 of the State of Western Australia for the time being in force. The Arbitrator shall be agreed upon between the parties hereto, and failing Agreement within one month of one party giving notice of intention to arbitrate to the other, shall be nominated by the President for the time being of the Law Society of Western Australia.
- 27.3 If after the forty-five (45) day period for negotiations pursuant to sub-clause 19.8, the parties cannot agree on the terms and conditions of compensation payable to the Land Council or to its nominee, the Arbitrator appointed by agreement by the parties or nominated by the President for the time being of the Law Society of Western Australia shall determine the dispute within forty-five (45) days of his appointment.
- 27.4 Where an Arbitrator is to be appointed pursuant to Clause 27 the President of the Institute of Arbitrators Australia shall be requested to submit the names of three persons having the following qualifications:
- (a) a legal practitioner of at least 15 years standing; or
 - (b) a fellow of the Institute of Arbitrators Australia; or
 - (c) a person who held office as a judge of the Federal Court of Australia;
- to both parties for their approval. Should approval not be reached within 30 days, the President of the Institute of Arbitrators Australia shall appoint the Arbitrator from the list of names.
- 27.5 In making his determination, the Arbitrator must take into account the following:-
- (a) the effect of the proposed Mining Operations on;-
 - (i) any Native Title rights as defined by the Native Title Act 1993 and interests as may exist at the date of the appointment of the Arbitrator;

- (ii) the way of life, culture and traditions of any Traditional Owner;
 - (iii) the development of the social, cultural and economic structures of any Traditional Owner;
 - (iv) the freedom of access by any Traditional Owner to the proposed area to be included into the mining operations and their freedom to carry out rites, ceremonies or other activities of cultural significance on the proposed area to be included into the mining operations in accordance with their traditions;
 - (v) any area or site on the proposed area to be included into the mining operations of particular significance to any Traditional Owners in accordance with their traditions; and
 - (vi) the natural environment of the proposed area to be included into the mining operations;
- (b) any assessment that has been made regarding the effect of the proposed action on the natural environment of the proposed area to be included into the mining operations;
 - (c) the interests, proposals, opinions or wishes of the Traditional Owners in relation to the management, use or control of the proposed area to be included into the mining operations;
 - (d) the impact of the foregoing on the economic viability of the proposed Mining Operations; and
 - (e) any other matter that the Arbitrator considers relevant,

and the determination of the Arbitrator shall be final subject to any other laws and binding upon the Parties and enforceable in any court of competent jurisdiction in the same manner as a judgement or order of the Supreme Court of Western Australia.

27.6 Any question of law arising in the course of the arbitration or out of determination may be referred to an appropriate court for determination at the request of the Land Council or the Explorer and, if required, the Arbitrator shall consent to such referral.

28. DURATION OF DEED

This Deed shall commence on the date hereof or on such other date as the parties may agree and, subject to Clause 23, shall continue for the duration of any Exploration Licence or Licences held by the Explorer in respect of the Exploration Area and any derivative title in respect thereof.

29. VARIATION

The parties may from time to time by Deed in writing add to, substitute for, cancel or vary any of the provisions of this Deed for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Deed.

30. FURTHER ASSURANCE

Each of the parties hereto will sign, execute, make and do all such assurances, documents, acts and things as may be necessary for effectually carrying out the terms of this Deed.

31. NOTICES

Any notice request or other demand or writing required or permitted to be given hereunder may be duly served or, at the option of the party giving the notice may be validly and sufficiently given if sent by facsimile, telex, telegram or post addressed to:-

31.1 In the case of the Explorer to:-

WMC EXPLORATION
191 Great Eastern Highway,
BELMONT WA 6104
Telephone (09) 479 8400
Facsimile (09) 479 8451

31.2 In the case of the Land Council to:-

NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION)
P.O. Box 644
ALICE SPRINGS N.T. 0871.
Telephone: (08) 8953 4955
Facsimile: (08) 89531 892

WMC. Deed Of Agreement

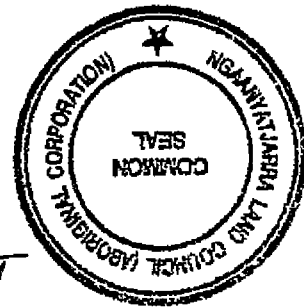
96/27R

32. NOTIFICATION

The parties agree to notify the Minister of Aboriginal Affairs and the Aboriginal Lands Trust of the terms and conditions of this Deed forthwith.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of
NGAANYATJARRA LAND
COUNCIL (ABORIGINAL
CORPORATION) was
hereunto affixed by
the authority of a
resolution of its
Governing Committee
in the presence of:



) *Lucretia West*

) *Donny Robinson*

) *Conrad ...*

CHAIRMAN

GOVERNING COMMITTEE MEMBER

GOVERNING COMMITTEE MEMBER

~~THE COMMON SEAL of~~
~~WMC RESOURCES LTD~~
Signed for and on behalf of
WMC Resources Ltd by its ~~duly~~
DAVID BERRIE
~~authorized attorneys~~ in the presence of

) *DBerrie*

SIGNATURE OF ATTORNEY

SIGNATURE OF WITNESS *K.M. Smart*

NAME OF ATTORNEY
(Please Print)

NAME OF WITNESS *KAREN SMART*
(Please Print)

SIGNATURE OF ATTORNEY

SIGNATURE OF WITNESS

NAME OF ATTORNEY
(Please Print)

NAME OF WITNESS
(Please Print)

ANNEXURE A

**NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION)
and WMC RESOURCES LTD
COMPENSATION**

- A. WMC shall pay \$35,000.00 within ten (10) days of the granting of the Entry Permits for the Exploration Licences to be accessed in 1997 (Exploration Licences 69/996, 69/999, 69/1008, 69/1063, 69/1149, 69/1150, 69/1151, 69/1153, 69/1159 and 69/1160).
- B. WMC is to pay \$40,000.00 within ten (10) days of the issue of the Entry Permits for the Exploration Licences to be accessed in 1998 (Exploration Licences 69/1139, 69/1140, 69/1141, 69/1148, 69/1152, 69/1154, 69/1155, 69/1156, 69/1202, 69/1203, 69/1204).
- C. That in the second year of the Exploration Licences accessed in 1997 WMC is to pay 5% of Exploration Expenditure committed to those Exploration Licences.
- D. From 1999 onwards there is to be a minimum payment of \$40,000.00 for all Exploration Licences adjusted upwards should 5% of Exploration Expenditure exceed \$40,000.00.

ANNEXURE B

(See Clause 9)

**NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION)
and**

A. GENERAL

1. Where practicable, the available topsoil shall be removed from excavated or cleared areas. Stockpile shall be created not greater than (2) metres in height, located out of drainage lines. The topsoil shall be redistributed evenly over distributed areas because where revegetation requires active seeding (when the soil seed-store is inadequate), certified weed-free seed and local tree and shrub species, shall be used in revegetation operations.
2. Foreign by-products of the excavation work shall be removed from site or buried.
3. Trees and shrubs cleared from the areas shall not be burned but stockpiled and spread over the cleared areas at the cessation of activity to help control erosion, provide seeds, traps, prevent vehicle access and provide animal habitats.
4. Material shall not be removed from the vicinity of creek banks where it is likely to erode and result in destruction of the water course.
5. Where excavation takes place in a stream bed the Explorer will use its best endeavours not to disturb trees or clumps of trees or create an erosion hazard that may lead to destruction of trees.
6. Where practicable, vehicle access is to be achieved across the natural ground surface.

B. ACCESS ROADS AND TRACKS

1. LOCATION

- 1.1 Proposed road locations should be identified on the ground and, where necessary, checked by

interpretation of aerial photographs prior to finalising their positions.

1.2 Natural topographic features should be considered when locating the roads. Site factors such as erodability, soil "trafficability" and vegetation density are correlated with these natural features such as ridges, drainage depressions and plains. By locating roads along suitable natural features, both the cost of construction and the Environmental Impact of the road is reduced.

1.3 Wherever possible roads should ascend or descend along ridges and be located along the contour when traversing slopes.

1.4 Wherever possible, roads should be kept out of drainage lines.

1.5 Use of existing roads should be made wherever possible, subject to their location and condition being satisfactory to the Parties.

1.6 Except in exceptional circumstances and where a second access road is necessary for the conduct of the Project, no more than one access road shall be constructed to each site and all transport operations shall be confined to this access road.

C. CAMP, WORK AND DRILL SITES

2. CONSTRUCTION

2.1 An area sufficient in size for all operations at the drill site or camp site should be clearly marked on the ground and disturbance restricted to this area.

2.2 Clearing of the area should leave trees wherever possible to act as shade during the occupation of the site and as seed sources following rehabilitation of the site.

2.3 Cleared timber and scrub should be stockpiled and respread following soil return.

2.4 Where topsoil has to be moved, it should be blade-pushed to the perimeter of the defined area. In areas where appreciable run-off from upslope catchment is expected, the topsoil should be pushed to the upslope perimeter to form a water diversion bank.

2.5 Felled timber from cleared helicopter pads should be stockpiled.

3. REHABILITATION

3.1 Costeans, test pits and drilling sumps will be backfilled at the completion of activity at each site.

3.2 Reasonable precautions should be taken to avoid contamination of streams and drainage lines from oil and fuel spillage.

3.3 Where it is practicable, empty drums should be removed from site to approved dumping grounds.

3.4 Where it is impractical to remove drums, empty drums should be crushed and buried in sump pits. Adequate depth of compacted soil and topsoil should be used to cover these pits at least to a depth of .05 metres.

3.5 On completion of the operations of the site, the stockpiled topsoil should be spread over the site. The ground should then be ripped by a grader along the contours to incorporate the respread topsoil with the compacted soil and topsoil with the compacted working surface.

3.6 Rehabilitation of areas no longer required should be completed no later than the end of each field season and, where prudent, such rehabilitative or protective action in respect of other areas as is reasonably required prior to the end of each field season should be undertaken having regard to the Explorer's requirements for future access and the Environmental Impact which is likely to result should not such action be undertaken.

3.7 In cases where the site has been operated for over a year, initial stabilization of the rehabilitated site may be necessary, using introduced pasture species and local and tree and shrub species.

D. SPECIFICATION FOR EFFECTIVE REHABILITATION OF BORROW PITS

4. The Exploration Company shall be responsible for ensuring its contractors obey the Environmental Procedures.

ANNEXURE C
(See Clause 1)
NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION)
and
WMC RESOURCES LTD.

The following Exploration Licences are subject of this Agreement:

- 69-1008 ✓
- 69-1063 ✓
- 69-1139 ✓
- 69-1140 ✓
- 69-1141 ✓
- 69-1148 ✓
- 69-1149 ✓
- 69-1150 ✓
- 69-1151 ✓
- 69-1152 ✓
- 69-1153 ✓
- 69-1154 ✓
- 69-1155 ✓
- 69-1156 ✓
- 69-1159 ✓
- 69-1160 ✓
- 69-1202 ✓
- 69-1203 ✓
- 69-1204 ✓
- 69-996 ✓
- 69-999 ✓

National topographical map series - - Rawlinson

ANNEXURE D
(See Clause 2)

NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION)

and

LICENCE

It is a condition of this Licence that the Licensee shall comply with the terms, conditions, covenants and other provisions on its part contained in -

- (i) the Deed of Agreement between Ngaanyatjarra Land Council (Aboriginal Corporation) and the Licensee dated the day of 1996.

II. PERMIT

It is a condition of this Permit that the Permit shall comply with the terms, conditions, covenants and other provisions on its part contained in -

- (i) the Deed of Agreement between Ngaanyatjarra Land Council (Aboriginal Corporation) and the Permit dated the day of 1997; and
- (ii) Following termination of the Deed of Agreement pursuant to clause 23 thereof, this permit shall expire and cease to have effect Twenty eight (28) days after such termination other than strictly for the purposes of the Permittee's compliance with clauses 9 and 19 thereof.

ANNEXURE B
Variation Deed

BLAKE DAWSON WALDRON

L A W Y E R S

Deed

Ngaanyatjarra Land Council (Aboriginal Corporation)

WMC Resources Limited

Level 19, Forrest Centre
221 St George's Terrace
Perth WA 6000
Telephone: (08) 9366 8000
Fax: (08) 9366 8111

Ref: GSG:KXW:09-1301-2149

VARIATION DEED

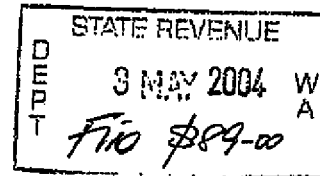
Sup deed

DEED OF VARIATION

DATE

19 NOVEMBER

2003



BETWEEN:

Ngaanyatjarra Land Council (Aboriginal Corporation) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act (1976)* (Cth) and having its principal office at 54 Head Street, Alice Springs in the Northern Territory of Australia (Land Council); and

WMC Resources Limited (ACN 004 184 698) of 191 Great Eastern Highway, Belmont, Western Australia (Explorer)

RECITALS

- A. The Land Council and the Explorer entered into the Deed of Agreement.
- B. The Land Council and the Explorer wish to affirm the operation of the Supplementary Deed.
- C. The Explorer wishes to expand its Exploration Operations onto additional exploration licences described as 69/1505, 69/1530, 69/1531 and 69/1532.
- D. The Land Council and the Explorer agree to affirm the Supplementary Deed, extend the application of the Deed of Agreement to the additional exploration licences and to otherwise vary the Deed of Agreement in the manner set out in this deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

"Deed of Agreement" means the deed of agreement entered into between the Land Council and the Explorer on 14 July 1997 in respect of exploration licences located in Western Australia on Reserve number 17614 occupied by the Land Council pursuant to a lease dated 29 November 1988.

"Supplementary Deed" means the document attached to this deed in Annexure A.

1.2 Defined Terms in the Deed of Agreement

Any term defined in the Deed of Agreement and used in this deed or the Supplementary Deed will have the same meaning in this deed or the Supplementary Deed as it is given in the Deed of Agreement.

1.3 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed or the Supplementary Deed, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (ii) a party to this deed or to any other document or agreement, includes a permitted substitute or a permitted assign of that party;
- (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (iv) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) If a word is defined, another part of speech has a corresponding meaning.

2. AFFIRMATION OF SUPPLEMENTARY DEED

With effect from the date of execution of this deed, the parties affirm the Supplementary Deed.

3. VARIATION OF DEED OF AGREEMENT

With effect from the date of execution of this deed, the Deed of Agreement is varied and amended as follows:

(a) Clause 8 (Screening and Clearance) is amended by:

- (i) in clause 8.20(a), replacing "four hundred dollars (\$450.00)" with "\$600" and replacing "Perth" with "within Australia";
- (ii) in clause 8.20(b), replacing "one hundred dollars (\$100.00)" with "\$200";
- (iii) in clause 8.20 (c), replacing "one hundred and fifty dollars (\$150.00)" with "\$200";
- (iv) in clause 8.20(e), replacing "one hundred and fifty dollars (\$150.00)" with "\$220"; and
- (v) inserting a new clause 8.20 (f) as follows

"a payment of \$200 per day to the Land Council for the vehicle supplied by the Land Council and used by the liaison officer when performing the duties and functions specified in clause 8.16."

(b) Clause 33 is inserted as follows:

"33. **GST**

33.1 **Definitions**

In this clause:

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Recipient means the entity to which a supply is made.

Supplier means the entity that makes a supply.

Tax means any income, withholding or other tax (but not GST), levy, charge, duty, fee, deduction, compulsory loan which is assessed, levied, imposed or collected by any governmental agency and includes but is not limited to any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

33.2 **Same meaning as GST Law**

Words defined in the GST Law have the same meaning in this clause, unless it is clear that a different meaning is intended.

33.3 **GST**

If a party makes a supply under or in connection with this Agreement, then in addition to paying the consideration (which is exclusive of GST), the Recipient must:

- (a) pay to the Supplier an amount equal to any GST payable for anything provided or supplied by the Supplier; and
- (b) make that payment as and when the consideration or part of it must be paid or provided, except that the Recipient need not pay unless the Recipient has received a tax invoice (or an adjustment note) for that supply.

33.4 **Tax invoice**

The Supplier must issue a tax invoice (or an adjustment note) to the Recipient for any supply for which the Supplier may recover GST from the Recipient under this Agreement.

33.5 Overpayment of GST

The Supplier must refund to the Recipient any overpayment by the Recipient for GST within 14 days of the Supplier becoming aware of the overpayment.

33.6 Costs to include GST

If a party has a claim for a cost on which the party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).

33.7 Australian Business Number

The Land Council must provide to the Explorer:

- (a) their Australian Business Number; or
- (b) satisfactory evidence that they do not have to quote an Australian Business Number.

Until the Land Council has provided its Australian Business Number or satisfactory evidence that an Australian Business Number does not have to be quoted to the Explorer, the Explorer is entitled to withhold from any payment made to the Land Council such amounts as are required for the Explorer to comply with the provisions of the *Taxation Administration Act 1953 (Cth)* and related legislation.

33.8 Other Taxes

The Land Council acknowledges that all liability for Tax on any payments made by the Explorer to or on behalf of the Land Council is to be met by the Land Council. The Land Council authorises the Explorer if and when required by any governmental agency or any statute to retain from time to time any amount of Tax out of any money which is payable to the Land Council by the Explorer under this Agreement and to pay the amount retained to the appropriate governmental agency. The Land Council agree that if any such deduction or payment of Tax is valid, the Land Council will not seek to recover damages from the Explorer."

(c) Annexure A is amended by:

- (i) In paragraph D, inserting "(except Exploration Licences 69/1505, 69/1530, 69/1531 and 69/1532)" after "the Exploration Licences as listed in Annexure C";
- (ii) Inserting paragraph F as follows:

"If , on or before 15 November 2003, the Land Council notifies the Explorer, in accordance with clause 8.13, that the parts of Exploration

Licence 69/1532 the subject of the intended Exploration Operations on Exploration Licence 69/1532 notified by the Explorer to the Land Council on 26 February 2003 have been screened and cleared so that the Explorer is satisfied it can conduct the intended Exploration Operations:

- (i) the Explorer must on or before 25 November 2003 pay \$40,000 as compensation for access to and land disturbance caused by Exploration Operations on Exploration Licences 69/1505, 69/1530, 69/1531 and 69/1532 during the 12 month period commencing 15 November 2003; and
 - (ii) the Traditional Owners must in consultation with the Explorer identify one or more community projects, to a maximum value of \$90,000 and the Explorer must, unless otherwise agreed, pay the supplier(s) of the goods and services associated with that project(s), within 30 days of receipt of an invoice, not more than \$90,000 for those goods and services."
- (iii) Inserting paragraph G as follows:

"If notice is given by the Land Council under paragraph F on or before 15 November 2003, for each consecutive 12 month period commencing 25 November 2004, the Explorer must pay the sum of \$5,000 in respect of each of Exploration Licences 69/1505, 69/1530, 69/1531 and 69/1532 that is held by the Explorer at the commencement of each such period as compensation for access to and land disturbance caused by Exploration Operations on each Exploration Licence."

- (iv) Inserting paragraph H as follows:

"Within one month of lodging with the Department of Industry and Resources its mineral exploration (form 5) report for any or all of Exploration Licences 69/1505, 69/1530, 69/1531 and 69/1532 ("the 4 Exploration Licences"), the Explorer shall pay the amount, if any, calculated by reference to 5% of that part of the Exploration Expenditure on the 4 Exploration Licences for the 12 month period expiring on 15 November the previous year that is greater than:

- (i) \$400,000 where the 4 Exploration Licences are held;
- (ii) \$300,000 where any 3 of the 4 Exploration Licences are held;
- (iii) \$200,000 where any 2 of the 4 Exploration Licences are held; and
- (iv) \$100,000 where any 1 of the 4 Exploration Licences is held;

by the Explorer at the commencement of each 12 month period described in paragraph G."

(v) Inserting paragraph I as follows:

"Whenever WMC is conducting Exploration Operations on any of Exploration Licences 69/1505, 69/1530, 69/1531 and 69/1532 it agrees to the extent permitted by law and subject to availability and reasonable cost and quality to give preference to the Blackstone community store when purchasing food and fuel supplies required for those Exploration Operations."

(d) Annexure C is amended by inserting the following Exploration Licences:

69/1505

69/1530

69/1531

69/1532

4. AMENDMENT AND ASSIGNMENT

4.1 Amendment

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties, or in the case of a waiver, waived by another document signed by the party whose rights are waived.

4.2 Assignment

A party's rights and obligations under this deed may only be assigned in accordance with clause 21 of the Deed of Agreement.

5. GENERAL

5.1 Governing law

- (a) This deed is governed by the law in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

5.2 Liability for expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing this deed.
- (b) The Explorer must pay the amount of any stamp duty that is payable on or in relation to this deed.

5.3 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

5.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

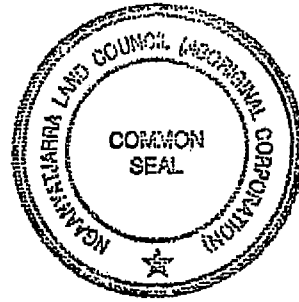
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

5.5 Counterparts

This deed may be executed in counterparts.

EXECUTED as a deed.

THE COMMON SEAL of
NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION),
was affixed by the authority of a resolution
of its Governing Committee in the
presence of :



Harry Murray
Signature of Governing Committee Member
MURRAY MURRAY
Name

Ian Newberry
Signature of Chairman
Ian Newberry
Name

Winston Mitchell
Signature of Governing Committee Member
WINSTON MITCHELL
Name

SIGNED FOR AND ON BEHALF of
WMC Resources Ltd (ABN 76 004 184 598)
by its duly appointed attorneys in the
presence of:

[Signature]
Signature of Attorney
GREG TRAVERS
Name of Attorney

[Signature]
Witness
Joanne Rinkovec
Name of Witness

P. Horton
Signature of Attorney
P. Horton
Name of Attorney

[Signature]
Witness
Joanne Rinkovec
Name of Attorney

6.4.99

DRAFT

**NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION)**

and

○ **WMC RESOURCES LTD. (ACN 004 184 698)**

SUPPLEMENTARY DEED OF AGREEMENT

○ **CAESAR HILL and ROUND HILL
EXPLORATION PROJECT**

RESERVE No. 17614

THIS DEED is made the day of 1999

BETWEEN NGAANYATJARRA LAND COUNCIL (ABORIGINAL CORPORATION) a body incorporated pursuant to the provisions of the Aboriginal Councils and Associations Act 1976 (Commonwealth) and having its principal office at 54 Head Street, Alice Springs in the Northern Territory of Australia ("the Land Council") of the one part

AND

WMC RESOURCES LIMITED (ACN 004 184 698) a company incorporated or deemed to have been incorporated pursuant to the provisions of the Corporations Law and having an office at 191 Great Eastern Highway, Belmont in the State of Western Australia ("the Explorer") of the second part

WHEREAS:-

- A. The Land Council and the Explorer have executed and sealed a Deed of Agreement on 14th July 1997 in respect of a number of Exploration Licences located in Western Australia on Reserve No. 17614 occupied by the Land Council pursuant to a Lease dated 29th November 1988.
- B. The Explorer has been carrying out Exploration Operations as defined by the Mining Act 1978 (W.A.) and the Deed of Agreement on the Exploration Licences, such operations are described as the Caesar Hill and Round Hill Exploration Project.
- C. The Explorer wishes to expand the Exploration Operations onto five additional Exploration Licences described as 69/1256, 69/11257, 69/1258, 69/1259 and 69/1260.
- D. The Land Council having consulted with the Aboriginal Traditional Owners of the land covered by the five additional Exploration Licences has agreed to advise the Aboriginal Land Trust (W.A.) that Entry Permits be issued to the Explorer pursuant to the Aboriginal Affairs Planning Authority Act 1972 (W.A.), and to request that the Minister for

Minerals and Energy approve the undertaking of "Mining Operations" as defined in the Mining Act 1978 (W.A.) on the Exploration Licences.

- E. Both the Land Council and the Explorer agree that any Exploration Operations undertaken on the five additional Exploration Licences are subject to the same terms and conditions as set out in the Deed of Agreement dated 14th July 1997 subject to the following amendments:
1. Clause 8 (Screening and Clearance) be amended by the inclusion of the following Sub-clause;

Sub-Clause 8.21

The Explorer acknowledges and agrees that Exploration Operations as defined are not permitted within three kilometres of the Community known as Mantamaru which is located within the boundaries of the area covered by Exploration Licence 69/1258

2. Annexure A (Compensation) is amended by:

2.1 Replacing paragraph C with the following:

- C. On or before 11th December 1998, the Explorer shall pay the sum of \$25,000 as compensation for access to and land disturbance caused by Exploration operations on Exploration Licences 69/1256, 69/1257, 69/1258, 69/1259 and 69/1260 during the twelve months commencing the 1st January 1999.

2.2 Replacing paragraph D with the following:

- D. **Access, Exploration Costs and Expenditure.**

The Explorer shall pay to the Land Council the following amounts in compensation for anticipated land disturbance caused by exploration operations on that portion of the land leased by the Ngaanyatjarra Land Council (Aboriginal Corporation) covered by the Exploration Licences as listed in Annexure C, and for access to those Exploration Licences. to:

- (i) On 1st July 1999 or on a prior date agreed to in writing by the parties, the sum of \$20,000;
- (ii) On 15th December 1999 or on a prior date agreed to in writing by the parties, the sum of \$20,000 or an amount equal to 5% of Exploration Expenditure as calculated as from 14th July 1998 until the 15th December 1999, should that amount be greater than \$40,000;
- (iii) On 1st July 2000, or on a prior date agreed to in writing by the parties, the sum of \$25,000;
- (iv) On 15th December 2000, or on a prior date agreed to in writing by the parties, the sum of \$25,000 or an amount equal to 5% of Exploration Expenditure calculated for the twelve months commencing 1st January 2000 should that amount be greater than \$50,000.
- (v) On 1st July 2001 the sum of \$25,000;
- (vi) On 15th December 2001 or on a prior date agreed to in writing by the parties, the sum of \$25,000 or an amount equal to 5% of Exploration Expenditure for the twelve months commencing 1st January 2001 if that amount is greater than \$50,000; and
- (vii) Six monthly payments calculated as per Paragraphs D(v) and D(vi) commencing on 1st July 2002 and continuing thereafter until the Explorer has relinquished all the Exploration Licences referred to in Annexure C.

2.3 There shall be an inclusion in Annexure A of paragraph E in the following terms:

- E. If at any time the Explorer suspends Exploration Operations so that there is no Exploration Expenditure beyond an amount required to retain the Exploration Licences but not to undertake Exploration Operations then the Explorer may request in writing

that the Land Council agree to suspend Annexure A hereof and such agreement will be given on the condition that:

- i) The Explorer paying the sum of \$12,000 for each twelve months Exploration Operations are suspended and if the suspension is for a period of less than twelve months \$1,000 per month;
- ii) That on the recommencement of Exploration Operations the Explorer shall agree to recommence paying the compensation for land disturbance as per the provisions in Annexure A.

2.4 The Explorer shall be responsible for deducting from the above-mentioned compensation payments referred to in paragraphs A, B, C and D, all tax as required pursuant to the provisions of the Income Tax Assessment (Mining Withholding Tax) Act 1979.

2.5 Annexure C (Exploration Licences) is amended by the inclusion of the following Exploration Licences:

69/1256
69/1257
69/1258
69/1259
69/1260

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of)
NGAANYATJARRA LAND)
COUNCIL (ABORIGINAL)
CORPORATION) was)
hereunto affixed by)
the authority of a)
resolution of its)
Governing Committee)
In the presence of:)

CHAIRMAN

GOVERNING COMMITTEE MEMBER

GOVERNING COMMITTEE MEMBER

Signed for and on behalf of)
WMC Resources Ltd by)
DAVID BERRIE)
in the presence of:)

WITNESS

ANNEXURE C
Deed of Variation No. 3

BLAKE DAWSON WALDRON

L A W Y E R S

Exploration Agreement Deed of Variation No.3

Ngaanyatjarra Land Council (Aboriginal Corporation)

WMC Resources Limited

Level 19, Forrest Centre
221 St George's Terrace
Perth WA 6000
Telephone: (08) 9366 8000
Fax: (08) 9366 8111

Ref: GSG:CEW:09-1301-2149

© Blake Dawson Waldron 2005

EXPLORATION AGREEMENT DEED OF VARIATION No.3

DATE 16 FEBRUARY 2005

BETWEEN:

Ngaanyatjarra Land Council (Aboriginal Corporation) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act (1976)* (Cth) and having its principal office at 54 Head Street, Alice Springs in the Northern Territory of Australia (Land Council); and

WMC Resources Limited (ACN 004 184 698) of 191 Great Eastern Highway, Belmont, Western Australia (Explorer).

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RECITALS

- A. The Land Council and the Explorer have entered into the:
 - (i) Deed of Agreement;
 - (ii) Supplementary Deed; and
 - (iii) Variation Deed.
- C. The Explorer wishes to expand its Exploration Operations onto additional exploration licences numbered 69/1884, 69/1847 and 69/1929 within Reserves numbered 17614 and 21471.
69/2313
- D. The Land Council and the Explorer agree to extend the application of the Deed of Agreement to the additional exploration licences and to otherwise vary the Deed of Agreement in the manner set out in this deed.

OPERATIVE PROVISIONS

2. INTERPRETATION

2.1 Definitions

The following definitions apply in this deed:

"Deed of Agreement" means the deed of agreement entered into between the Land Council and the Explorer on 14 July 1997 in respect of exploration licences located in Western Australia on Reserve number 17614 occupied by the Land Council pursuant to a lease dated 29 November 1988.

"Supplementary Deed" means the document attached to the Variation Deed as Annexure A.

"Variation Deed" means the deed of agreement entered into between the Land Council and the Explorer on 19 November 2003 in respect of exploration licences 69/1505, 69/1530, 69/1531 and 69/1532.

2.2 Defined Terms in the Deed of Agreement

Any term defined in the Deed of Agreement and used in this deed will have the same meaning in this deed as it is given in the Deed of Agreement.

2.3 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (ii) a party to this deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) If a word is defined, another part of speech has a corresponding meaning.

3. GRANT OF EXPLORATION LICENCE 69/1929

- 3.1 The Land Council consents to the grant of exploration licence 69/1929 and must procure that any consents or approvals to be given or made by Aboriginal people in order to enable that exploration licence to be granted in accordance with the *Native Title Act 1993* are given or made within 21 days after the date of this deed.
- 3.2 If the Explorer's application for exploration licence 69/1929 has not been determined by the date of execution of this deed, the Land Council agrees that each reference to Exploration Licence 69/1929 in this deed and the Deed of Agreement as varied and amended is a reference to Exploration Licence 69/1929 once granted.

4. VARIATION OF DEED OF AGREEMENT

With effect from the date of execution of this deed, the Deed of Agreement is varied and amended as follows:

- 4.1 Annexure A is amended by:
 - (a) In paragraph D:

After the words "(except Exploration Licences 69/1505, 69/1530, 69/1531 and 69/1532" inserting ", 69/1884, 69/1847 and Exploration Licence Application 69/1929" and replacing the word "and" before 69/1532 with ",".

(b) Inserting new paragraph J:

"On or before 17 February 2005, the Explorer will pay to the Land Council the sum of \$45,000 as compensation for access to and land disturbance caused by Exploration Operations on Exploration Licences 69/1884, 69/1847 and 69/1929 during the 12 month period commencing 17 February 2005."

(c) Inserting new paragraph K:

"On or after 17 February 2005, the Traditional Owners must in consultation with the Explorer identify one or more community projects to a maximum value of \$67,500, and the Explorer must, unless otherwise agreed, pay the supplier(s) of the goods and services associated with that community project(s), within 30 days of receipt of an invoice, not more than \$67,500 for those goods and services."

(d) Inserting new paragraph L:

"Within one month of lodging with the Department of Industry and Resources its mineral exploration (Form 5) report for any or all of Exploration Licences 69/1884, 69/1847 and 69/1929, the Explorer shall pay to the Land Council the amount, if any, calculated by reference to 5% of that part of the Exploration Expenditure that exceeds \$600,000 on those three Exploration Licences for the preceding 12 month period ending on 17 February."

(e) Inserting new paragraph M:

"The Explorer shall pay \$30,000 to the Land Council on each anniversary of 17 February 2005 until the last of Exploration Licences 69/1884, 69/1847 and 69/1929 expires, is surrendered or is otherwise disposed of."

4.2 The Explorer will be responsible for paying, in respect of the compensation payments referred to in paragraphs J, K, L and M, all tax as required pursuant to the provisions of the *Income Tax Assessment (Mining Withholding Tax) Act 1979* (Cth).

4.3 Annexure C is amended by inserting the following Exploration Licences:

69/1884

69/1847

69/1929

5. AMENDMENT AND ASSIGNMENT

5.1 Amendment

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties, or in the case of a waiver, waived by another document signed by the party whose rights are waived.

5.2 Assignment

A party's rights and obligations under this deed may only be assigned in accordance with clause 21 of the Deed of Agreement.

6. GENERAL

6.1 Governing law

- (a) This deed is governed by the law in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

6.2 Liability for expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing this deed.
- (b) The Explorer must pay the amount of any stamp duty that is payable on or in relation to this deed.

6.3 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

6.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

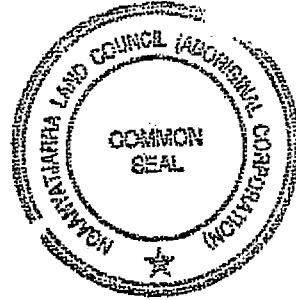
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

6.5 Counterparts

This deed may be executed in counterparts.

EXECUTED as a deed.

THE COMMON SEAL of
NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION),
was affixed by the authority of a resolution
of its Governing Committee in the presence
of:



Adam Richards

Signature of Governing Committee Member

ADAM RICHARDS

Name

Harvey Murray

Signature of Governing Committee Member

HARVEY MURRAY

Name

SIGNED FOR AND ON BEHALF of
WMC Resources Ltd
(ABN 76 004 184 598) by its duly
appointed attorneys in the presence of:

P. Horton

Signature of Attorney

P. HORTON

Name of Attorney

AG Mironowski

Signature of Attorney

AG MIRONOWSKI

Name of Attorney

Louise M. Durack

Witness

LOUISE M. DURACK

Name of Witness

Heather Grierson

Witness

HEATHER GRIERSON

Name of Witness

ANNEXURE D
Deed of Variation No. 4

WMCR 8021

BLAKE DAWSON WALDRON
LAWYERS

Exploration Agreement Deed of Variation No. 4

Ngaanyatjarra Land Council (Aboriginal Corporation)

WMC Resources Limited

Level 19, Forrest Centre
221 St George's Terrace
PERTH WA 6000
Telephone: (08) 9366 8000
Fax: (08) 9366 8111

Ref: GSG SYM 09 1301 2149

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Exploration Agreement Deed of Variation No. 4

DATE 14 June 2005

PARTIES

Ngaanyatjarra Land Council (Aboriginal Corporation) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act 1976 (Cth)* and having its principal office at 54 Head Street, Alice Springs in the Northern Territory of Australia (Land Council)

WMC Resources Limited ABN 76 004 184 598 of 191 Great Eastern Highway, Belmont, Western Australia (Explorer)

RECITALS

A. The Land Council and the Explorer have entered into the Exploration Deed, which was subsequently amended by the:

(a) Supplementary Deed;

(b) Variation Deed; and

(c) Deed of Variation No. 3. + Deed of Variation No. 4

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B. The Exploration Deed applies to among others, the Existing Exploration Licences and includes mining tenements granted or applied for within the area of the Existing Exploration Licence in substitution for or as successors to the Existing Exploration Licences.

C. The Explorer has made the Mining Lease Applications, which cover areas within the area the subject of the Existing Exploration Licences.

D. When the *Mining Act Amendment Act 2004 (WA)* is proclaimed, the Explorer intends to apply for the Replacement Exploration Licences in substitution for the Existing Exploration Licences.

E. By this Deed the Explorer and the Land Council confirm for the avoidance of doubt:

(a) that the Exploration Deed (as varied) applies to the Replacement Exploration Licences (when granted) in substitution for the Existing Exploration Licences; and

(b) the obligations of the Explorer to make payments for access to the Replacement Exploration Licences in accordance with the Exploration Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Deed of Variation No. 3 means the deed of agreement entered into between the Land Council and the Explorer on 16 February 2005 in respect of exploration licences 69/1884, 69/1847 and 69/1929.

Existing Exploration Licences means E69/1259, E69/1202, E69/1152, E69/1258, E69/1156, E69/1505, E69/1155 and E69/1154.

Exploration Deed means the deed of agreement entered into between the Land Council and the Explorer on 14 July 1997 in respect of the Exploration Licences referred to in that deed located in Western Australia on Reserve number 17614 occupied by the Land Council pursuant to a lease dated 29 November 1988, as amended by the Supplementary Deed, the Variation Deed and the Deed of Variation No. 3.

Mining Lease Applications means applications for mining leases listed in Annexure A made by the Explorer under section 67 of the *Mining Act 1978* (WA) which cover areas within the corresponding Existing Exploration Licence/s listed in Annexure A.

Replacement Exploration Licences means exploration licences applied for by the Explorer after the *Mining Act Amendment Act 2004* (WA) commences in respect of areas that are the subject of the Mining Lease Applications.

Supplementary Deed means the document attached to the Variation Deed as Annexure A.

Variation Deed means the Exploration Deed entered into between the Land Council and the Explorer on 19 November 2003 in respect of exploration licences 69/1505, 69/1530, 69/1531 and 69/1532.

1.2 Defined terms in the Exploration Deed

Any term defined in the Exploration Deed and used in this deed has the same meaning in this deed as it is given in the Exploration Deed.

1.3 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

-
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
 - (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

E69/2313

2. **APPLICATION OF EXPLORATION DEED TO REPLACEMENT EXPLORATION LICENCES**

The Land Council and the Explorer agree, for the avoidance of doubt, that:

- (a) the Replacement Exploration Licences, once granted, will be Exploration Licences as that term is defined in and for the purposes of the Exploration Deed;
- (b) any reference to Exploration Licences in the Exploration Deed, including in Annexure A, will include the Replacement Exploration Licences, once granted;
- (c) the payment obligations set out in Annexure A of the Exploration Deed will apply to the Replacement Exploration Licences, once granted, as if the references to the Existing Exploration Licences were references in each instance to that part of a Replacement Exploration Licence that covers the area previously the subject of each relevant Existing Exploration Licence; and
- (d) the Explorer will separately account for the Exploration Expenditure with respect to that part of the Replacement Exploration Licence/s which cover any part of the area that is currently E69/1505 for the purposes of calculating any payment to be made in accordance with Paragraph H of Annexure A.

3. **GRANT OF REPLACEMENT EXPLORATION LICENCES**

For the avoidance of doubt, the Land Council confirms its agreement (and that of the Aboriginal people it represents) to the grant of the Replacement Exploration Licences.

4. **AMENDMENT AND ASSIGNMENT**

4.1 **Amendment**

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties, or in the case of a waiver, waived by another document signed by the party whose rights are waived.

4.2 Assignment

A party's rights and obligations under this deed can only be assigned in accordance with clause 21 of the Exploration Deed.

5. GENERAL

5.1 Governing law

- (a) This document is governed by the law in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

5.2 Liability for expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing this deed.
- (b) The Explorer must pay the amount of any stamp duty that is payable on or in relation to this deed.

5.3 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

5.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

5.5 Counterparts

This document may be executed in counterparts.

EXECUTED as a deed.



THE COMMON SEAL of
NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION), was
affixed by the authority of a resolution of
its Governing Committee in the presence
of:

IAN WARD
Signature of Governing Committee Member

Signature of Chairman

IAN WARD
Name

Name

Adam Richards
Signature of Governing Committee Member
ADAM RICHARDS

W. Mitchell
Name
CHAIRMAN
WINSTON MITCHELL

The Common Seal of
SIGNED for WMC Resources Ltd ABN
76 004 184 598, by its duly authorised was *affixed*
agent, in the presence of:

P. Horton

Signature of witness *director/secretary*

P. Horton

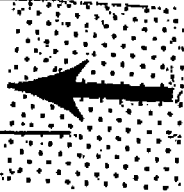
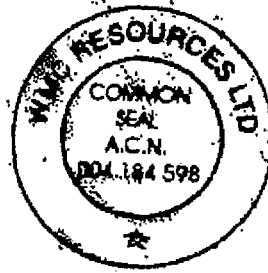
Name

Chris Campbell

Signature of agent *director/secretary*

C. CAMPBELL

Name



ANNEXURE A

Mining Lease Application	Exploration Licence/s
M69/91	E69/1259
M69/92	E69/1259
M69/93	E69/1259
M69/94	E69/1202, E69/1259
M69/95	E69/1202, E69/1259
M69/96	E69/1202
M69/97	E69/1202, E69/1259
M69/98	E69/1202, E69/1259
M69/99	E69/1152
M69/100	E69/1152, E69/1258
M69/101	E69/1156, E69/1258
M69/102	E69/1156
M69/103	E69/1156
M69/104	E69/1156
M69/105	E69/1156
M69/106	E69/1156
M69/107	E69/1156
M69/108	E69/1156
M69/109	E69/1156
M69/110	E69/1156
M69/111	E69/1156, E69/1505
M69/112	E69/1156, E69/1505

Mining Lease Application	Exploration Licence/s
M69/113	E69/1505
M69/114	E69/1505
M69/115	E69/1505
M69/116	E69/1156
M69/117	E69/1156
M69/118	E69/1155, E69/1156
M69/119	E69/1155, E69/1156
M69/120	E69/1155
M69/121	E69/1155
M69/122	E69/1155
M69/123	E69/1155
M69/124	E69/1155
M69/125	E69/1155
M69/126	E69/1155
M69/127	E69/1155
M69/128	E69/1155
M69/129	E69/1154, E69/1155
M69/130	E69/1154, E69/1155
M69/131	E69/1154, E69/1155
M69/132	E69/1154
M69/133	E69/1154
M69/134	E69/1154
M69/135	E69/1154
M69/136	E69/1154

Mining Lease Application	Exploration Licence/s
M69/137	E69/1154
M69/138	E69/1154
M69/139	E69/1154

ANNEXURE E
Deed of Variation No 5

Exploration Agreement Deed of Variation No.5

**Ngaanyatjarra Land Council (Aboriginal
Corporation)**

ICN 715

**Yarnangu Ngaanyatjarraku Parna
(Aboriginal Corporation)**

ICN 4527

**BHP Billiton Nickel West Pty Ltd (formerly
WMC Resources Limited)**

ACN 004 184 598

Blake Dawson

Level 32, Exchange Plaza
2 The Esplanade
Perth WA 6000
Australia
T 61 2 9366 8000
F 61 2 9366 8111

Reference
GSG 08-2011-7376

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4.4	Waiver of rights	4
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Exploration Agreement Deed of Variation No.5

DATE 3 December 2009

PARTIES

Ngaanyatjarra Land Council (Aboriginal Corporation) (ICN 715) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act (1976)* (Cth) and having its principal office at 58 Head Street, Alice Springs in the Northern Territory of Australia (**Land Council**);

Yarnangu Ngaanyatjarraku Pama (Aboriginal Corporation) (ICN 4527) a body incorporated pursuant to the provisions of the *Aboriginal Councils and Associations Act (1976)* (Cth) and having its principal office at 58 Head Street, Alice Springs in the Northern Territory of Australia (**PBC**); and

BHP Billiton Nickel West Pty Ltd (ACN 004 184 598) (formerly WMC Resources Limited) (**Explorer**)

RECITALS

- A. The Land Council and the Explorer have entered into the Exploration Deed, which was subsequently amended by the:
 - (a) Supplementary Deed;
 - (b) Variation Deed;
 - (c) Deed of Variation No. 3; and
 - (d) Deed of Variation No. 4.
- B. The parties to this deed are also parties to the Ngaanyatjarra Lands Indigenous Land Use Agreement (Body Corporate Agreement) No. 1 (ILUA) registered on 9 March 2006.
- C. Under the ILUA, the PBC agreed to comply and be bound by the Exploration Deed as if it was expressly named as the Land Council in the Exploration Agreement.
- D. The Explorer wishes to expand its Exploration Operations onto exploration licence 69/2313.
- E. The Land Council and the Explorer agree to extend the application of the Exploration Deed to E69/2313 and to otherwise vary the Exploration Deed in the manner set out in this deed.
- F. By this deed the Explorer and the Land Council confirm for the avoidance of doubt that:
 - (a) the Exploration Deed (as varied) applies to E69/2313; and
 - (b) the obligations of the Explorer to make payments for access to E69/2313 in accordance with the Exploration Deed.

OPERATIVE PROVISIONS**1. INTERPRETATION**

1.1 Definitions

The following definitions apply in this document.

Deed of Variation No. 3 means the deed of agreement entered into between the Land Council and the Explorer on 16 February 2005.

Deed of Variation No. 4 means the deed of agreement entered into between the Land Council and the Explorer on 14 June 2005.

E69/2313 means the exploration licence numbered 69/2313.

Exploration Deed means the deed of agreement entered into between the Land Council and the Explorer on 14 July 1997 in respect of the Exploration Licences referred to in that deed located in Western Australia on Reserve number 17614 occupied by the Land Council pursuant to a lease dated 29 November 1988, as amended by the Supplementary Deed, the Variation Deed, Deed of Variation No. 3 and Deed of Variation No. 4.

Supplementary Deed means the document attached to the Variation Deed as Annexure A.

Variation Deed means the Exploration Deed entered into between the Land Council and the Explorer on 19 November 2003.

1.2 Defined terms in the Exploration Deed

Any term defined in the Exploration Deed and used in this deed has the same meaning in this deed as it is given in the Exploration Deed.

1.3 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.

- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.

If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

2. VARIATION OF DEED OF AGREEMENT

With effect from the date of execution of this deed, the Exploration Deed is varied and amended as follows:

- (a) Annexure A is amended in paragraph D by:

- (i) Replacing the words at the commencement of that paragraph:

"The Explorer shall pay to the Land Council the following amounts in compensation for anticipated land disturbance caused by exploration operations on that portion of the land leased by the Ngaanyatjarra Land Council (Aboriginal Corporation) covered by the Exploration Licences as listed in Annexure C (except Exploration Licences 69/1505, 69/1530, 69/1531, 69/1532, 69/1884, 69/1847 and Exploration Licence Application 69/1929), and for access to those Exploration Licences. to:"

With the words:

"The Explorer shall pay to the Land Council the following amounts in compensation for anticipated land disturbance caused by exploration operations on that portion of the land leased by the Ngaanyatjarra Land Council (Aboriginal Corporation) covered by the Exploration Licences as listed in Annexure C (except Exploration Licences 69/1505, 69/1530, 69/1531, 69/1532, 69/1884, 69/1847, 69/2313 and Exploration Licence Application 69/1929), and for access to those Exploration Licences, to:"

- (ii) Inserting paragraph N as follows:

"Within one month of lodging with the Department of Mines and Petroleum its mineral exploration (form 5) report for Exploration licence 69/2313, the Explorer shall pay to the Land Council the amount equal to 5% of that part of the Exploration Expenditure specified on the form 5 for Exploration licence 69/2313."

- (b) The Explorer will be responsible for paying, in respect of the compensation payments referred to in paragraph N of Annexure A to the Exploration Deed all tax as required pursuant to the provisions of the *Income Tax Assessment (Mining Withholding Tax) Act 1979* (Cth).
 - (c) Annexure C is amended by inserting Exploration Licence E69/2313.
 - (d) To avoid doubt, the only payments that the Explorer is required to make to the Land Council for Exploration Licence 69/2313 are the payments referred to in paragraph N of Annexure A to the Exploration Deed.

3. AMENDMENT AND ASSIGNMENT

3.1 Amendment

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties, or in the case of a waiver, waived by another document signed by the party whose rights are waived.

3.2 Assignment

A party's rights and obligations under this deed can only be assigned in accordance with clause 21 of the Exploration Deed.

4. GENERAL

4.1 Governing law

This document is governed by the law in force in Western Australia.

- (a) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

4.2 Liability for expenses

- (a) The Explorer shall pay to the Council, its reasonable legal costs and disbursements incidental to the negotiation and execution of this deed. Such reasonable costs shall be calculated at the hourly rate previously agreed upon in writing by the parties.
- (b) The Explorer must pay the amount of any stamp duty that is payable on or in relation to this deed.

4.3 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

4.4 Waiver of rights

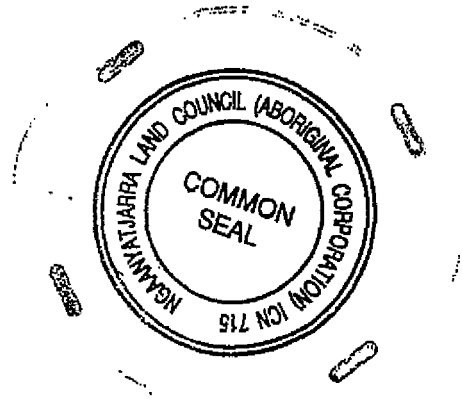
- (a) A right may only be waived in writing, signed by the party giving the waiver, and:
- (b) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (c) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (d) the exercise of a right does not prevent any further exercise of that right or of any other right.

4.5 Counterparts

This document may be executed in counterparts.

EXECUTED AS A DEED.

THE COMMON SEAL OF
NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION) ICN 715,
was affixed by the authority of a resolution
of its Governing Committee in the
presence of:



Janice Scott Janice A Scott
Signature of Governing Committee
Member

[Signature]
Signature of Chairman

JANICE SCOTT
Name

WILTON FOSTER
Name

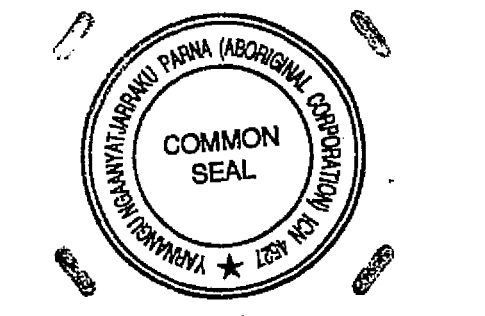
[Signature]
Signature Governing Committee Member

[Signature]
Signature of Chairman

PRESTON THOMAS
Name

[Signature]
Name

THE COMMON SEAL OF YARNANGU
NGAANYATJARRAKU PARNA
(ABORIGINAL CORPORATION) ICN
4527, was affixed by the authority of a
resolution of its Governing Committee in
the presence of:



Janice A Scott
Signature of Governing Committee
Member
JANICE A SCOTT

[Signature]
Signature of Chairman
WILTON FOSTER

[Signature]
Name
PRESTON THOMAS

[Signature]
Name

Signature Governing Committee Member

Signature of Chairman

Name

Name

**THE COMMON SEAL OF BHP BILLITON
NICKEL WEST PTY LTD ACN 004 184
598, was affixed in the presence of:**

Signature of director/secretary

Signature of director/secretary

Name

Name

ANNEXURE F
Signed Supplementary Deed

**NGAANYATJARRA LAND COUNCIL
(ABORIGINAL CORPORATION)**

and

WMC RESOURCES LTD (ACN 004 184 698)

SUPPLEMENTARY DEED OF AGREEMENT

**CAESAR HILL and ROUND HILL
EXPLORATION PROJECT**

RESERVE No. 17614

This Deed is made the16th..... day ofMarch.....2000.

BETWEEN Ngaanyatjarra Land Council (Aboriginal Corporation) a body incorporated pursuant to the provisions of the Aboriginal Councils and Associations Act 1976 (Commonwealth) and having its principal office at 54 Head Street, Alice Springs in the Northern Territory of Australia ("the Land Council" of the one part

AND

WMC Resources Limited (ACN 004 184 698) a company incorporated or deemed to have been incorporated pursuant to the provisions of the Corporations Law and having an office at 191 Great Eastern Highway, Belmont in the State of Western Australia ("the Explorer") of the second part

WHEREAS:

- A. The Land Council and the Explorer have executed and sealed a Deed of Agreement on 14 July 1997 in respect of a number of Exploration Licenses located in Western Australia on Reserve No. 17614 occupied by the Land Council pursuant to a Lease dated 29 November 1988.
- B. The Explorer has been carrying out Exploration Operations as defined by the Mining Act 1978 (WA) and the Deed of Agreement on the Exploration Licenses, such operations are described as the Caesar Hill and Round Hill Exploration Project.
- C. The Explorer wishes to expand the Exploration Operations onto five additional Exploration Licenses described as 69/1256, 69/1257, 69/1258, 69/1259 and 69/1260.
- D. The Land Council having consulted with the Aboriginal Traditional Owners of the land covered by the five additional Exploration Licenses has agreed to advise the Aboriginal Land Trust (WA) that Entry Permits be issued to the Explorer pursuant to the Aboriginal Affairs Planning Authority Act 1972 (WA), and to request that the Minister for Minerals and Energy to approve the undertaking of "Mining Operations" as defined in the Mining Act 1978 (WA) on the Exploration Licenses.
- E. Both the Land Council and the Explorer agree that any Exploration Operations undertaken on the five additional Exploration Licenses are subject to the same terms and conditions as set out in the Deed of Agreement dated 14 July 1997 subject to the following amendments:
 1. Clause 8 (Screening and Clearance) be amended by the inclusion of the following Sub-clause:

Sub-Clause 8.21

The Explorer acknowledges and agrees that Exploration Operations as defined are not permitted within three kilometres of the Community known as Mantamaru which is located with the boundaries of the area covered by Exploration Licence 69/1258.

2. Annexure A (Compensation) be amended by:
 - 2.1 Replacing paragraph D with the following terms:
 - D. From 1999 onwards there is to be a minimum payment of \$50,000.00 per annum for all granted exploration licences (as at 01.01.2000) adjusted upwards should 5% of exploration costs exceed \$50,000.00.
 - 2.2 Including a new paragraph E in the following terms:
 - E. The Exploration Licences referred to in D above are 69/1139, 1140, 1141, 1150, 1152, 1153, 1154, 1155, 1156, 1160, 1202, 1203, 1204, 1256, 1257, 1258, 1259 and 1260.
 - 2.3 Including a new paragraph F in the following terms:
 - F. If at any time the Explorer suspends Exploration Operations so that there is no Exploration Expenditure beyond an amount required to retain the Exploration Licences but not to undertake Exploration Operations then the Explorer may request in writing that the Land Council agree to suspend Annexure A hereof and such agreement will be given on the condition that:
 - (i) The explorer paying the sum of \$12,000.00 for each twelve months Exploration Operations are suspended and if the suspension is for a period of less than twelve months \$1,000.00 per month;
 - (ii) That on the recommencement of Exploration Operations the Explorer shall agree to recommence paying the compensation for land disturbances as per the provisions in Annexure A.
 - 2.4 Including a new paragraph G in the following terms:
 - G. The explorer shall be responsible for deducting from the above mentioned compensation payments referred to in paragraphs D and F above, all tax as required as against the provisions of the Income Tax Assessment (Mining Withholding Tax) Act 1979.

