

Deed of Company Arrangement

between

**Martin Jones, Matthew Woods and Clint Joseph
(Administrators)**

and

**Terrace Gold Pty Ltd (administrators appointed)
ACN 072 608 952
(Company)**

and

**Orecchio Pty Ltd
ACN 684 518 723
(Proponent)**

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between **Martin Jones, Matthew Woods and Clint Joseph** of c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000
(Administrators)

and **Terrace Gold Pty Ltd (administrators appointed)** (ACN 072 608 952) of c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000
(Company)

and **Orecchio Pty Ltd** (ACN 684 518 723) of C/- Weston Woodley & Robertson, Level 12, 171 Clarence Street, Sydney NSW 2000
(Proponent)

Recitals

- A On 7 August 2024, the Company was placed into voluntary administration and the Administrators were appointed joint and several administrators of the Company.
- B At a meeting of the Company called by the Administrators pursuant to section 439A of the Act and held on 17 March 2025, the Creditors resolved that the Company execute a deed of company arrangement under Part 5.3A of the Act containing the terms set out in this Deed.
- C The Administrators have consented to be administrators of this Deed.
- D This Deed binds all Creditors of the Company pursuant to section 444D of the Act and all officers and members of the Company pursuant to section 444G of the Act.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this agreement, unless the context requires otherwise:

Act means the *Corporations Act 2001* (Cth);

Administration Balance means the net funds received and receivable by the Administrators in connection with the Company and the Business during the Administration Period, as determined by the Administrators, and includes without limitation the Cash and the Debtors;

Administration Costs means any remuneration, costs, disbursements, expenses and liabilities whatsoever incurred by the Administrators in the performance or exercise or the purported performance or exercise of any of the Administrators' functions:

- (i) first, as Administrators of the Company between the Appointment Date and the Commencement Date; and
- (ii) second, as the Administrators of this deed,

including the Deed Costs.

Administration Period means the period during which the Seller is under the external administration of the Administrators, being the period commencing on 7 August 2024 and continuing as at the date of this agreement;

Administrators means Martin Jones, Matthew Woods and Clint Joseph of KPMG (and any successors appointed under the Act) in their capacity as joint and several administrators of the Company and any subsequent capacity as deed administrators or liquidators of the Company;

Assets has the meaning defined in the SPA;

Business has the meaning defined in the SPA and further includes the business of the Company;

Business Day means a day on which the banks are open for business in Perth, Western Australia other than a Saturday, Sunday or public holiday in Perth, Western Australia;

Cash means any cash of the Company on hand, in a financial institution or otherwise on deposit;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this agreement and without limitation includes any debt or claim which would be provable in the winding up of the Company pursuant to section 553 of the Act;

Commencement Date means the date of this Deed;

Corporations Act means the *Corporations Act 2001* (Cth);

Creditors means any person whose claim would be admissible to prove in the winding up of the Company;

Creditors' Trust means a trust to be known as the "Nuheara Group Creditors' Trust" established in accordance with clause 11;

Debtors means all amounts owed to the Company in respect of the period up to Completion;

Deed means this document;

Deed Fund means all the moneys to be paid to or collected by the Administrators pursuant to clause 5.1 less any lawful deductions but including any accretions;

Deed Costs means all the legal costs, expenses and disbursements (on a lawyer and own client basis) incurred in the course of or in connection with the negotiating, preparing, drafting and implementing of this Deed;

Eligible Employee Claims means all Claims of the Eligible Employee Creditors;

Eligible Employee Creditors means a Creditor whose debt or claim would, in a winding up of the Company, be payable in priority to the other unsecured debts and claims in accordance with paragraph 556(1)(e), (g) or (h) or section 560 or 561 of the Act;

Excluded Creditor means:

- (a) any Related Entity of the Company; and
- (b) the Proponent and any Related Entity of the Proponent;

Guarantee means a deed poll by which one or more entities that are shareholders in the Proponent guarantee for the benefit of the Administrators and the Companies the discharge of the Proponent's obligations under this Deed on terms acceptable to the Administrators acting reasonably;

IPS means the Insolvency Practice Schedule (Corporations) in Schedule 2 of the Act;

NUH DOCA means a deed of company arrangement in respect of Nuheara Limited (administrators appointed) (ACN 125 167 133);

Nuheara IP DOCA means a deed of company arrangement in respect of Nuheara IP Pty Ltd (administrators appointed) (ACN 605 704 096);

Participating Creditors means all Creditors other than Excluded Creditors;

Participating Creditor Claims means all Claims of the Participating Creditors, which are admitted to prove under the terms of this deed by the Administrators, other than Eligible Employee Claims;

Payee means a person entitled to a payment or distribution under clause 5 or **Error! Reference source not found.** of this Deed.

Prescribed Provisions means the prescribed provisions in Schedule 8A of the Regulations;

Regulations means the *Corporations Regulations 2001* (Cth);

Related Body Corporate has the meaning given to that expression in the Act;

SPA means the Business Sale and Purchase Agreement between the Administrators, the Company, Nuheara IP and the Proponent dated 20 February 2025;

Transferring Employees has the meaning defined in the SPA.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this agreement and references to this agreement include any recital, schedule or annexure;
 - (iv) any contract (including this agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
 - (ix) a body which has been reconstituted or merged must be taken to be to the body as reconstituted or merged, and a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be to that other body;
 - (x) time is a reference to the time in Perth, Western Australia;

- (xi) a reference to a day or a month means a calendar day or calendar month;
 - (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency; and
 - (xiii) any thing (including any amount or any provision of this agreement) is a reference to the whole and each part of it;
- (b) no party enters into this agreement as agent for any other person (or otherwise on their behalf or for their benefit);
 - (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
 - (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
 - (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - (f) headings and the table of contents are for convenience only and do not form part of this agreement or affect its interpretation;
 - (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (h) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
 - (i) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day; and
 - (j) a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement.

2 Commencement and operation of this Deed

- 2.1 The operation of this Deed will commence from the time when each of the following is satisfied:
- (a) this instrument and the Nuheara IP DOCA each become effective as a deed of company arrangement pursuant to section 444B(6) of the Act;
 - (b) the NUH DOCA commences to operate; and
 - (c) the executed Guarantee is provided to the Administrators,
- and will continue until terminated pursuant to clause 14.

3 Appointment of Deed Administrators

- 3.1 The Administrators are appointed as joint and several administrators of this Deed and accept this appointment.
- 3.2 The Administrators:
- (a) act as agent for and on behalf of the Company; and
 - (b) are not personally liable for any debts or liabilities incurred,

in exercising the powers conferred by and carrying out the duties arising under this Deed.

4 Payment of Deed Contribution

- 4.1 Without limiting the Proponent's obligations under the SPA, the Proponent must pay the Deed Contribution to the Administrators within 14 days of the Administrators notifying the amount of the Deed Contribution calculated by them under clause 4.2.
- 4.2 The Deed Contribution will be the amount notified by the Administrators to the Proponent as being needed in addition to the Administration Balance to enable the Administrators to pay the amounts under paragraphs 5.3(a) to 5.3(c).

5 Application of the Deed Fund

- 5.1 The Deed Fund comprises:
- (a) the Administration Balance; and
 - (b) the Deed Contribution.
- 5.2 The Assets and the Business will be excluded from the Deed Fund and will not form part of the property available to meet the Claims of the Creditors under this Deed.
- 5.3 The Deed Fund will be applied and distributed by the Administrators in the following order of Priority:
- (a) first, in payment of the Administration Costs;
 - (b) second, in payment of the Eligible Employee Claims;
 - (c) third, in payment of the Participating Creditor Claims *pari passu* at a rate of 30c/dollar; and
 - (d) fourth, the surplus (if any) to the Proponent.
- 5.4 The Administrators shall distribute the Deed Fund in accordance with the terms of this Deed at such times as the Administrators consider appropriate and feasible.

6 How payments will be made

- 6.1 The Administrators will pay the amounts which they are required to make under this Deed by:
- (a) cheque, by sending such payment by ordinary prepaid post to the last address of the Payee known to the Administrators; or
 - (b) electronic funds transfer, to the bank account of the Payee in accordance with any instruction from the payee to the Administrators.
- 6.2 A Payee is deemed to have received payment of its entitlement once the Administrators send the cheque payable to that Payee by prepaid post, or upon the Administrators making the relevant electronic funds transfer, as the case may be.

7 Ascertainment of debts of Participating Creditors

- 7.1 Subdivisions A and B of division 6 of Part 5.6 of the Act and regulations 5.6.39 to 5.6.56 of the Regulations apply to this deed with such modifications as are necessary and as if the references wherever appearing to "Liquidator", "Creditor" and the "Fixed Date" were

references to "Administrators", "Participating Creditor" and the "Appointment Date" respectively of this deed.

- 7.2 Section 563B of the Act and regulation 5.6.70A of the Regulations do not apply and are expressly excluded from the operation of or application of this Deed.

8 Making Claims

Subdivisions A, B, C and D of division 6 of Part 5.6 of the Act and the Regulations apply to Claims under this deed as if references to "Liquidator" and "Relevant Date" were respectively references to "Administrators" and "Appointment Date" as defined in this deed.

9 Debt moratorium

- 9.1 Between the Commencement Date and the date of termination of this deed, section 444D of the Act will apply to bind all Creditors in relation to Claims against the Company as at the Appointment Date.
- 9.2 This deed may be pleaded by the Company against any Creditor in bar of any debt or Claim not admitted or established under this deed and a Creditor (whether the Creditor's Claim is or is not admitted or established under this deed) must not before the termination of this deed:
- (a) make or continue an application to wind up the Company;
 - (b) institute or prosecute any legal proceedings against the Company in relation to any debt incurred or alleged to have been incurred by the Company before the Appointment Date in accordance with section 444E of the Act;
 - (c) take any steps (including steps by way of legal or equitable execution) in any proceedings pending against the Company as at the Commencement Date; or
 - (d) commence or continue any enforcement process against the Company's property.
- 9.3 Nothing in this clause modifies or restricts the effect or operation of section 444D(3) of the Act.

10 Compromise of debts and release

10.1 Discharge of debts

The Creditors must accept their entitlements under this Deed in full satisfaction and complete discharge of all debts or Claims that they have or claim to have against the Company as at the Appointment Date and each of them will, if called upon to do so, execute and deliver to the Company such forms of release of any such Claim as the Administrators require.

10.2 Claims extinguished

Upon the Administrators making the payments and distributions under clauses 5 and **Error! Reference source not found.**, all debts or Claims, demands, proceedings, causes of action in relation to or in connection with the debts or Claims of Creditors whether present or future, actual or contingent, due or which may become due by the Company as a result of anything done or omitted by or on behalf of the Company before the Appointment Date and each Claim by a Creditor against the Company before the Appointment Date are extinguished.

11 Creditors' trust

The Administrators shall establish the Creditors' Trust at the earliest time that the Administrators consider appropriate and feasible and in any case prior to 30 June 2025 as follows:

- (a) the Administrators will be the trustees of the Creditors' Trust and will administer it;
- (b) upon execution of the trust deed for the Creditors' Trust, all Creditor Claims against the Company will be transferred to the Creditors' Trust and the Company will be released from those Claims; and
- (c) upon the execution of the trust deed for Deed Fund will be paid to the trustees of the Creditors' Trust to be administered and dealt with in accordance with the terms of the trust deed.

12 Proponent to continue trading

The Proponent undertakes to continue trading the Business:

- (a) using the Assets acquired under the SPA;
- (b) by continuing to employ the Transferring Employees;
- (c) to the fullest extent practicable, using goods and services supplied by the Participating Creditors; and
- (d) by remaining domiciled in Australia and maintaining its head office and senior management in Australia,

for a period of no less than 18 months following the Commencement Date, unless the Business or all or substantially all of the Assets are sold prior to this time.

13 Powers, indemnity and remuneration of the Administrators

13.1 Powers

For the purpose of the administration of this Deed, the Administrators will have:

- (a) each of the powers set out in section 2 of the Prescribed Provisions; and
- (b) all the powers as the director of the Company for the purpose of effectuating this Deed.

13.2 Remuneration

The remuneration of the Administrators will be paid in accordance with remuneration that has been approved in accordance with Division 60 of the IPS.

13.3 Indemnity

- (a) Subject to any contrary provision in Part 5.3A of the Act, the Administrators will be indemnified by the Company against any cost, expense or liability arising from the administration of the Company and of this deed other than such cost, expense or liability arising in respect of any negligence, default, breach of duty or breach of trust of which the Administrators may be guilty. This indemnity extends to and includes indemnification against any liability incurred by the Administrators in defending any criminal proceedings in which judgment is given in the Administrators' favour or in which the Administrators are acquitted.

- (b) The indemnity granted under clause 13.3(a) will not be affected, limited or prejudiced in any way by any irregularity, defect, or invalidity in the appointment of the Administrators and will extend to all actions, suits, proceedings, accounts, liabilities, Claims and demands arising in any way out of any defect in the appointment of the Administrators or the approval and execution of this deed.
- (c) The indemnity set out in clause 13.3(a) will take effect on and from the Appointment Date and will be without limitation as to time and will enure for the benefit of the Administrators' respective legal personal representatives notwithstanding, the removal of the Administrators or the appointment of a new Administrator of this deed or the termination of this deed for any reason whatsoever.

13.4 Lien

The Administrators are entitled to a lien on the assets of the Company and the Deed Fund to secure the remuneration of the Administrators and the payment of those debts or liabilities specified in clause 13.3.

14 Period of deed and termination

14.1 Events of termination

- (a) This Deed comes into effect upon the Commencement Date and it will operate until the Administrators have made all payments and distributions in accordance with clauses 5 and **Error! Reference source not found.** and have executed a notice of termination of the Deed in accordance with section 445FA of the Act.
- (b) The operation of this Deed will be terminated if any of the following events occur:
 - (i) if an event specified in section 445C(a) or (b) of the Act occurs; or
 - (ii) otherwise in accordance with the Prescribed Provisions.

14.2 Validity of acts before termination

Upon termination of this Deed, the provisions of this Deed shall cease to have effect provided always that the termination of this Deed will not affect the validity of any act or thing done pursuant to the provisions of this Deed during its operation.

14.3 Rights of Administrators after termination

Upon the termination of this Deed, the rights, powers and duties of the Administrators in respect of the Company (except for any right, power, or duty that may have arisen if the Administrators are deemed to have been appointed Liquidators of the Company pursuant to section 446A of the Act), will wholly cease.

14.4 Termination or variation of Deed where arrangement fails

Without limiting the generality of clauses 13.1 and 14.1, if the Administrators determine that it is no longer practicable or desirable to implement this deed or the Company defaults in performance of any of its covenants or obligations pursuant to this Deed, the Administrators:

- (a) must summon a meeting of the Creditors for the purpose of considering a resolution under section 445(C)(b) of the Act; and
- (b) must forward to each Creditor (not less than 14 days prior to that meeting) an up-to-date report as to the position of the Company accompanied by a such financial statements as the Administrators think fit together with a statement saying that the Administrators not think it practicable to continue this Deed and that this Deed will be terminated if the Creditors so resolve.

14.5 **Rights of the Creditors upon termination**

Notwithstanding the provisions of clause 10.1, the Claims of a Participating Creditor will, in the case of the termination of this deed prior to the payment to such Participating Creditor of its full entitlement under this deed, be extinguished only to the extent of the payment actually made by the Administrators to such Participating Creditor.

14.6 **Application of Deed Fund after termination**

Upon termination of this deed other than in accordance with clause 14.1(a), the Deed Contribution will (to the extent that it has not already been distributed and subject to the Administrators' rights of indemnity and lien in respect of their costs expenses and remuneration as set out in clause 11) be returned to the Proponent and will not be available for distribution to the Creditors in any subsequent winding-up, administration or deed of company arrangement in respect of the Company.

14.7 **Administrators to become Liquidators upon termination**

The parties agree that if this Deed is terminated the Company will be wound up pursuant to section 446A of the Act and the Administrators will be appointed as joint and several liquidators of the Company.

15 **Variation**

In accordance with section 445A of the Act, this deed may only be varied by a resolution passed at a meeting of Creditors convened in accordance with section 75-10 of the IPS but only if the variation is not materially different from a proposed variation set out in a notice of meeting.

16 **Meetings**

- 16.1 The Administrators may convene a meeting of Creditors at any time in accordance with section 75-10 of the IPS and will be required to convene such a meeting when required to do so under sections 75 – 15 and 75 – 20 of the IPS.
- 16.2 The Insolvency Practice Rules (Corporations 2016), the IPS and the Regulations applicable to creditors meetings in liquidation will apply to any such meeting with such modifications as are necessary.

17 **Prescribed Provisions**

Except to the extent they are inconsistent with the terms of this deed, the Prescribed Provisions apply to this deed.

18 **Notices and other communications**

18.1 **Notices**

- (a) In this Deed, a **Notice** means:
- (i) a notice; or
 - (ii) a consent, approval or other communication required to be in writing, under this Deed.

- (b) A notice under this Deed must be in writing and signed by or on behalf of the sender addressed to the recipient and:
- (i) delivered by personal service;
 - (ii) sent by pre-paid mail; or
 - (iii) transmitted by email,
- to the recipient's address set out in this agreement.
- (c) A notice given to a person in accordance with this clause is treated as having been given and received:
- (i) if delivered in person, on the day of delivery;
 - (ii) if sent by pre-paid mail within Australia, on the third Business Day after posting; and
 - (iii) if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting; and
 - (iv) if transmitted by email, on the day of transmission, provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.
- (d) A party may change its address for service by giving notice of that change to each other party.
- (e) The provisions of this clause 18.1 are in addition to any other mode of service permitted by law.
- (f) If a notice is sent by any method other than pre-paid mail, and that notice is received:
- (i) on a day which is not a Business Day; or
 - (ii) after 5pm on a Business Day,
- that notice is deemed to be received at 9am on the next Business Day.
- (g) A notice sent or delivered in a manner provided by clause 18.1 must be treated as validly given to and received by the party to which it is addressed even if the addressee has been liquidated or deregistered or is absent from the place at which the notice is delivered or to which it is sent.
- (h) If the party to which a notice is intended to be given consists of more than one person then the notice must be treated as given to that party if given to any of those persons

18.2 Administrators' address

Name:	Martin Jones, Matthew Woods and Clint Joseph as administrators of Terrace Gold Pty Ltd (administrators appointed) (ACN 072 608 952)
Address:	c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000
Email address:	martinjones@kpmg.com.au
	Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

18.3 Company's address

Name: Terrace Gold Pty Ltd (administrators appointed) (ACN 072 608 952)

Attention: Martin Jones, Matthew Woods and Clint Joseph

Address: c/- KPMG, Level 8, 235 St George's Terrace, Perth WA 6000

Email address: martinjones@kpmg.com.au

Cc: kchu2@kpmg.com.au ; mflower1@kpmg.com.au

18.4 Proponent's address

Name: Orecchio Pty Ltd ACN 684 518 723

Attention: Tim Robertson

Address: C/- Fredrick Jordan Chambers, 53 Martin Place, Sydney NSW 2000

Email address: trobertson@fjc.net.au

19 General

19.1 Legal and other costs

Except as expressly stated otherwise in this Deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Deed.

19.2 Governing law and jurisdiction

- (a) This Deed is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

19.3 Severability

- (a) Subject to clause 19.3(b), if a provision of this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Deed.
- (b) Clause 19.3(a) does not apply if severing the provision:
 - (i) materially alters the scope and nature of this Deed or the relative commercial or financial positions of the parties; or

- (ii) would be contrary to public policy.

19.4 Further assurance

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Deed and to perform its obligations under it.

19.5 Consents

Except as expressly stated otherwise in this Deed, a party may conditionally or unconditionally give or withhold consent to be given under this agreement and is not obliged to give reasons for doing so.

19.6 Rights, powers and remedies

- (a) Except as expressly stated otherwise in this Deed, the rights of a party under this Deed are cumulative and are in addition to any other rights of that party.
- (b) A party's failure or delay to exercise a right, power or remedy does not operate as a waiver of that right, power or remedy.
- (c) A single or partial exercise or waiver by a party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (d) A party may exercise a right, power or remedy (including giving or withholding its approval or consent) entirely at its discretion (including by imposing conditions).
- (e) In exercising, or deciding not to exercise, a right, power or remedy, a party is not required to take into account any adverse effect on another party.
- (f) Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.
- (g) Waiver of a right, power or remedy is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- (h) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

19.7 Assignment

- (a) A party must not:
 - (i) assign;
 - (ii) create or allow to exist any third party interest over; or
 - (iii) or deal with,
 any right under this Deed without the prior written consent of the other parties.
- (b) Any purported dealing in breach of clause 19.7 is ineffective.

19.8 Counterparts and electronic execution

This Deed may be executed electronically and may be executed in counterparts, and if so, the counterparts taken together constitute one agreement. Without limitation, the parties agree that their communication of an offer or acceptance of this Deed, including exchanging counterparts, may be by any electronic method that evidences that party's execution of this Deed.

19.9 Entire understanding

- (a) This Deed and the SPA contains the entire understanding between the parties as to the subject matter of this Deed.
- (b) If there is any inconsistency between this Deed and the SPA, this Deed will prevail over the SPA.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

[SIGNING PAGE TO BE INSERTED]