



Business Plan

Proposal for the City of Karratha to consider the potential purchase of The Quarter HQ as an alternative investment vehicle for City Reserves.

Contents

1.	Introduction	3
2.	Background	5
2.1	Land	5
2.2	Proposal.....	5
2.2.1	<i>Phase One: Purchase.....</i>	<i>5</i>
2.2.2	<i>Phase Two: Leasing</i>	<i>5</i>
3.	Timeline	7
4.	Legal Structures	8
5.	Costs.....	9
5.1	Purchase.....	9
5.2	Outgoings.....	9
5.3	Return on Investment.....	9
6.	Council Financial Implications	11
6.1	Funding Source	11
6.2	Operational Costs	12
6.3	Depreciation.....	12
7.	Council Policy Implications	13
8.	Legislative Compliance	14
8.1	Legislative Provisions.....	14
8.2	Specific Requirements.....	14
9.	Risk Analysis.....	17
10.	Summary	19
	Attachment 1: Promotional Information	20
	Attachment 2: Draft Contract for Sale by Offer and Acceptance	21

1. Introduction

The City of Karratha (City) is proposing to enter into a Major Land Transaction involving acquisition from the West Australian Land Authority (LandCorp) of:

- Freehold Lot 7080 on Deposited Plan 401615 being the whole of the land in Certificate of Title Volume 2831 Folio 955 comprising The Quarter HQ building;
- Strata Lot 48 on proposed Strata Plan 67914 within Lot 7079 on Deposited Plan 401615 being the whole of the land in Certificate of Title Volume 2831 Folio 954 comprising 116 car bays; and
- Leasing of the tenancies.

The proposed transaction would involve the expenditure of approximately \$20M of City funds as an alternative to having Reserve funds invested in low interest term deposits. This expenditure would be offset over time through rental returns from leases.

This is not an opportunity where the City is required to assist in bringing a development to the market. This potential opportunity is predominantly focused on generating higher levels of investment returns than are currently available through fixed-term bank deposits, although it would also offer the following benefits:

- influence over the use of available floor space in terms of retail offering and commercial tenancies;
- potential capital growth;
- additional office space for City staff if it were ever required.

While the returns from the proposal are potentially very good, it does come with an elevated level of risk than more traditional local government investments in that the return on investment is not guaranteed, the Council's capital is less secure than when in bank deposits and the capital investment reduces the City's liquidity limiting the potential for other capital projects and investments. However the City does own approximately 100 properties within the district so investment in land and property is not an entirely new space for the City and the airport provides a number of examples of where the City has invested in commercial/industrial property with the explicit aim of generating a commercial return.

City Officers have discussed this matter informally with Councillors at Council Briefing Sessions and a formal report on the matter was considered at the February 2017 Ordinary Council Meeting. At that meeting Council resolved in part to:

DEVELOP a Local Government Act compliant Business Plan on the proposal for Council to purchase The Quarter HQ for consideration at the March 2017 Ordinary Council Meeting.

This Business Plan:

1. Provides the details of the proposal;
2. Outlines and responds to the legislative framework for the proposal;
3. Provides an analysis of the risks associated with the proposal (and potential mitigation strategies for those risks); and
4. Outlines the projected process and timeframes that would be used to undertake the proposal.

The Business Plan has been prepared in accordance with the provisions of the *Local Government Act (1995)* and the *Local Government (Functions and General Regulations)*

1996. It is intended to seek public comment on the Business Plan for a period of at least six (6) weeks. Council will consider all public feedback that is received on the Business Plan prior to determining whether to proceed with the proposal or not.

2. Background

2.1 Land

In 2015/16 LandCorp developed The Quarter at 20 Sharpe Avenue, Karratha. The site is in the Karratha City Centre and is zoned Town Centre under the City of Karratha Town Planning Scheme No 8. The site presents an impressive built form with quality public space and landscaping, and has capacity to encompass further development to complement and enhance the existing precinct.

The overall site comprises The Quarter HQ, 46 residential apartments, a four level strata car park providing 286 car bays, a 4,402sqm hotel site, and a 1,371sqm future office/retail site. The Quarter HQ comprises eight retail tenancies on the ground floor and three levels of office space as follows:

Floor	GLA (sqm)
Ground Floor - Retail	1,235.5
Level 1 - Office	1,758.0
Level 2 - Office	1,897.0
Level 3 - Office	1,215.0
Total	6,105.5

The 116 strata titled car bays are in a four storey multi-level car park at the rear of The Quarter HQ.

LandCorp has a put option arrangement in place where it can sell the building to Mirvac at valuation. Mirvac (in conjunction with CBRE) is marketing the property for sale on behalf of LandCorp. As such, there is potential that LandCorp may sell to another buyer. Promotional Information is included in Attachment 1.

There are currently three (3) tenancies occupying 356sqm (29%) of retail space and 1,897sqm (39%) of office space leased to the State Government for 15 years. With a further 123sqm of retail space and 115sqm of office space leased but not yet occupied, the total leased space represents 40.8% of the total GLA. Negotiations are well advanced for a further 600sqm of office space, which is expected to bring the total area leased to 3,091sqm (50.7%) before the end of the calendar year.

2.2 Proposal

The proposal involves two (2) separate phases. These phases, along with the proposed roles and responsibilities of the City in each Phase are outlined below:

2.2.1 Phase One: Purchase

Subject to public submissions and if approved by Council, the City would purchase The Quarter HQ building and 116 strata titled car bays. The purchase price is subject to negotiation however an indicative price in the order of \$20M is expected.

If the City were to proceed with the acquisition, this would become a standard private treaty land purchase. Appropriate steps will be undertaken to ensure that this potential purchase meets all legislative requirements of the *Local Government Act 1995* and the associated regulations

2.2.2 Phase Two: Leasing

Leasing of the property is well advanced however further work will be required with potential tenants to finalise leasing terms and conditions. Costs will be incurred to

attract, 'sign up' and retain lessees in accordance with normal commercial circumstances experienced in similar projects. Knight Frank and Ray White are currently contracted to attract tenants and negotiate lease agreements, however the purchaser can appoint its own agent/s.

3. Timeline

The indicative timeline for the project is tabled below.

Phase	Start Date	Completion Date
Consideration of draft Business Plan	March 2017	March 2017
Community Consultation	March 2017	May 2017
Consider Public Submissions	May 2017	May 2017
Purchase	June 2017	June 2017
Operation/Leasing	June 2017	Ongoing

Two STOP/GO points are proposed where Council can review the investment decision and elect to proceed or not proceed with the project. These are at:

1. Consideration of the Business Plan;
2. Consideration of public submissions.

While the above timeline demonstrates distinct start and finish dates for each phase, there will be some overlap in phases.

4. Legal Structures

To prepare for and undertake this proposed transaction there are two proposed legal agreements that will need to be entered into including:

Contract of Sale

If Council resolves to Purchase The Quarter HQ, Council would enter into a sales contract with LandCorp for the purchase of the land. The contract is a standard contract for sale of land or strata title by offer and acceptance. Attachment 2 includes template Offer & Acceptance documents indicative of the form of contract that would be required.

The sale contract would be on usual commercial terms and the purchase would be on a 'as is where is' basis with the City to undertake all relevant due diligence in relation to the condition of the building.

Commercial Leases

The sale would also be subject to all existing leases with the City to satisfy itself regarding the terms of the leases. Prospective new tenants would be offered commercial tenancy agreements. Each agreement would be subject to approval by the City.

5. Costs

5.1 Purchase

The purchase price is subject to negotiation however an indicative price in the order of \$20M is expected. The sale of the property is a supply of a 'going concern' (being a leasing enterprise) and as such the supply is GST free. Stamp duty would not apply as local government is exempt from stamp duty.

The potential sourcing of funding is outlined in Section 6: Council Financial Implications.

5.2 Outgoings

If the City proceeds with the purchase, the City will become responsible for all building outgoings which total approximately \$793,309 including rates, insurance, cleaning, security and strata fees. Variable outgoings are recoverable from tenants however until such time at the property reaches 100% occupancy, there will be a shortfall between the amount paid and the amount recovered. This has been factored into the ROI calculations below.

5.3 Return on Investment

The Council's Return on Investment for the project is dependent on three variables:

- The purchase price.
- The rental rates achieved for the 6,105.5sqm of lettable space.
- The percentage of the lettable space that is leased.

The table below illustrates the rate of return that would be generated from the building at various purchase price and various occupancy rates. These rates include outgoings and exclude depreciation. Rates marked **green** indicate those parameters that achieve greater than 2.6% ROI which is the average return currently being generated from Council's cash investments.

		% Occupancy							
		30%	40%	50%	60%	70%	80%	90%	100%
Purchase Price	\$18M	1.67	3.70	5.72	7.75	9.78	11.80	13.83	15.85
	\$19M	1.58	3.50	5.42	7.34	9.26	11.18	13.10	15.02
	\$20M	1.50	3.33	5.15	6.97	8.80	10.62	12.45	14.27
	\$21M	1.43	3.17	4.91	6.64	8.38	10.12	11.85	13.59
	\$22M	1.37	3.03	4.68	6.34	7.80	9.66	11.31	12.97

The table illustrates that, based on 6,105.5m² of lettable space, the rate of return varies between 1.37% and 15.85% depending on the rental rates and the occupancy rates.

While the rate of return shown is higher on 35 occasions (87.5%) as opposed to five occasions (12.5%) where the rate of return is lower, it should be noted that:

- Investing with cash investment in banks present a very low capital risk. There is a higher capital risk associated with a property investment of this nature;

- The rate of return changes depending on the purchase price. If the purchase price was negotiated at the higher end of the range (\$22M), the rate of return reduces to between 1.37% - 12.97%, however the rate of return only drops below 2.6% at 30% occupancy and the State Government lease is 31% of the total GLA.

Compared with current term deposit rates, which average 2.6%, the purchase has the capacity to generate a return in excess of 15% realising in excess of \$2m more than term deposit interest at current rates. By comparison, Council would need to increase rates by 1% to generate an additional \$0.4m from rates and an increase of almost 6% would be required to generate the additional income that could be realised from The Quarter HQ at full occupancy. Conversely, using returns generated income from investments such as The Quarter HQ, would provide Council with greater capacity to reduce reliance on rates.

6. Council Financial Implications

6.1 Funding Source

This proposal is currently not included within the City's 2016/17 Annual Budget and is not currently included within the City's Long Term Financial Plan.

While there is currently no specific budget for this project, the City currently has healthy financial reserves. In particular, as at 31 December 2016 the City's Infrastructure Reserve had a balance of \$41Million.

The stated purpose of the Infrastructure Reserve is to:

“Allow for the use of these reserve funds for the enhancement, replacement, refurbishment and purchase of infrastructure assets or project works of the City of Karratha inclusive of the associated repayment of borrowings on infrastructure. Project works funded from this Reserve may not necessarily belong to the City of Karratha but must be carried out for the benefit of the City of Karratha”

The purchase of The Quarter HQ is consistent with the reserve purpose.

In the past, the Infrastructure Reserve has contributed to funding significant community related capital works projects including:

- Karratha Leisureplex
- Dampier Community Hub
- Karratha Effluent Reuse Scheme
- Red Earth Arts Precinct (projected in 2016/17, 2017/18 and 2018/19)
- Wickham Hub (projected in 2017/18 and 2018/19)

NB. Airport, Waste and Major Plant items are not funded through the Infrastructure Reserve as Council has separate Reserve Accounts for these items.

A long standing financial practice for the City is to place additional revenue annually into the Infrastructure reserve. This revenue comes from:

- Airport: An annual return on asset value from the Karratha Airport is transferred to the Infrastructure Reserve. This amount is currently \$10.6M pa. Financial planning at the airport indicates a likely ability for this figure to be retained for the foreseeable future.
- Transient Workforce Accommodation (TWA Rates): Traditionally between 50-100% of the difference in the City's TWA Rate in the Dollar compared to the City's Commercial rate in the Dollar on TWA rated properties has been transferred to the Infrastructure Reserve. This amount has varied from year to year but has averaged out at \$2.96M pa over the past four years.
- Budget Surplus: On occasion, surpluses that have been identified in Council's quarterly budget reviews have been allocated to the Infrastructure Reserve.
- Interest: Interest generated from the Infrastructure Reserve is re-invested within the reserve.

While the City's capital expenditure program is projected to remain relatively high throughout 2016/17 and 2017/18, the City's Long Term Capital Works program shows a decreasing level of capital works expenditure being anticipated over following financial years. Over the same period, the annual return on asset from the Karratha Airport is proposed to remain stable whilst revenue from TWA rates differentials is likely to fall rapidly due to a diminishing number of operating TWAs.

The net impact of the above is that the Council's Infrastructure Reserve balance is projected to decrease over the next two years and increase post 2018/19.

While sufficient funds are likely to be available within the Reserve, there is an opportunity cost in this investment in that, if funds are spent on this proposal, there will be a lesser amount of Council funds available for other projects (including other investment opportunities). Having said that, financial modelling indicates that the Reserve would return to current levels within four years and it is anticipated that this purchase can be afforded without damaging the City's ability to deliver its current adopted 10-year capital works program.

The Long Term Financial Plan (including the long term Capital Works plan) is currently being revised and updated. If Council supports the public advertising of this Business Plan, the updated Long Term Financial Plan will include the expenditure and income projections included within this report. These detailed, updated financial projections will be considered in conjunction with community submissions that are received during the public comment period.

6.2 Operational Costs

Once the facility is built and in operation, the City will incur operational costs. These may include:

- Insurances
- Building and Grounds Maintenance expenditure
- Security
- Rates, Levies & Charges
- Lease management costs
- Strata fees.

Most of the approximately \$793,309 in operational costs will be recovered from tenants through standard commercial lease terms.

6.3 Depreciation

Once constructed, the building assets will depreciate at a rate of 2% p.a. meaning that this facility will incur an annual depreciation cost of approximately \$640,000. To ensure that the City's Asset Renewal Ratio is not adversely affected, the City will need to expend an additional \$576,000 p.a. (90% of Depreciation) on asset renewal activities. This issue will be considered in the review of the Long Term Financial Plan.

7. Council Policy Implications

Council's recently introduced a new policy entitled *Investment Policy: Property (CF4)*. The intent of this policy is to provide guidance on if and when Council will invest in Property. The adopted policy includes the following statements that are relevant to this matter:

When making decisions to invest in Property related investments one or more of the following criteria needs to be satisfied:

ii. Council may invest in Commercial/Industrial Property which gives continuous source of ongoing returns and also have capital growth potential.

This proposal is consistent with this policy provision.

8. Legislative Compliance

8.1 Legislative Provisions

Section 3.59 (3)(b) &(c) of the *Local Government Act 1995* (The Act) states:

Before it —

- (b) enters into a major land transaction; or*
 - (c) enters into a land transaction that is preparatory to entry into a major land transaction,*
- a local government is to prepare a business plan.*

The Act defines a major land transaction as:

A land transaction other than an exempt land transaction if the total value of —

- (a) the consideration under the transaction; and*
 - (b) anything done by the local government for achieving the purpose of the transaction,*
- is more, or is worth more, than the amount prescribed for the purposes of this definition.*

In the City of Karratha's circumstances, the prescribed amount for a transaction to be considered a major land transaction is \$10,000,000 or 10% of the operating expenditure incurred by the local government from its municipal fund in the last completed financial year. If progressed, the purchase of land and development of buildings by the City at The Quarter HQ would constitute a major land transaction.

The Act further stipulates key matters that must be addressed in the business plan. These matters are addressed in 8.2 below. The manner and length of public advertising and notice is also prescribed in the legislation. If adopted by Council, it is proposed to significantly exceed the minimum public notification requirement by doing a more comprehensive community consultation plan than the prescribed minimum requirements.

8.2 Specific Requirements

Section 3.59(3) of the Act specifies explicit information that must be included in a Local Government Business Plan (as a minimum). While many items are addressed elsewhere within this Business Plan, for completeness, each legislated item is addressed specifically below:

(a) The expected effect on the provision of facilities and services by the local government

At this stage, it is not anticipated that the development of the proposal will have any detrimental effect on the ability of the City to continue to fund City infrastructure and/or services in short, medium or longer term.

(b) The expected effect on other persons providing facilities and services in the district.

As The Quarter HQ is a going concern and is intended as an improved form of investment for City Reserves, the purchase is not expected to have any affect on other persons providing facilities and services in the district except to the extent that it has increased the supply of cost effective office and retail space therefore having a positive impact on the running cost for local businesses.

(c) The expected financial effect on the local government.

The financial projections of the project are detailed in Items 5 and 6 of this Business Plan.

At current occupancy (40%) the return on investment (including outgoings) would be in the order of 3% - 3.7%. With anticipated occupancy by the end of the calendar year at 50% the ROI would be in the order of 4.7% - 5.7%. These parameters are considered conservative yet achieve a higher rate of return than current investment strategies.

The ROI could be reinvested in the Infrastructure Reserve for further capital projects, or could be included as operating income and applied to other services, thereby offering an alternative source of income to rates.

(d) The expected effect on matters referred to in the local government's current plan prepared under Section 5.56 of the Local Government Act (Plan for the Future)

This proposal has very clear Linkages to the City of Karratha's approved Strategic Community Plan 2016-2026 and Corporate Business Plan 2016-2021.

In particular, the following extracts relate to this matter:

Our Vision: Australia's Most Liveable Regional City.

Theme 4: Our Leadership – Responsive and Accountable

Our Goal: To provide accessible, transparent and responsive leadership

Our Outcomes: Financial Sustainability

Our Response: A suite of sustainable revenue sources funding Council activities

(e) The ability of the local government to manage the undertaking or the performance of the transaction;

As the transaction is a property purchase, the City has sufficient experience and skills in-house to manage the transaction.

(F&G Reg 10) Joint venturer details

(b)(i) the identity of each joint venturer other than the local government.

WESTERN AUSTRALIAN LAND AUTHORITY (trading as LandCorp)

ABN: 34 868 192 835

Address:

Level 6, 40 The Esplanade

Perth, Western Australia

(b) (ii) the ownership of, and any other interests in, property that is involved in, or acquired in the course of, the joint venture.

The proposed Major Land Transaction involves the City acquiring Freehold Lot 7080 on Deposited Plan 401615 being the whole of the land in Certificate of Title Volume 2831 Folio 955 comprising The Quarter HQ building; and Strata Lot 48 on proposed Strata Plan 67914 within Lot 7079 on Deposited Plan 401615 being the whole of the land in Certificate of Title Volume 2831 Folio 954 comprising 116 car bays; located at 20 Sharpe Avenue, Karratha, Western Australia. This land is proposed to be acquired from LandCorp at a yet to be agreed price, but likely to be at or around \$20M.

(b) (iii) Any benefit to which a joint venturer other than the local government may become entitled under or as a result of the joint venture;

There is no joint venture relationship associated with the transaction.

(b) (iv) Anything to which the local government may become liable under or as a result of the joint venture.

Once complete, the City would own an asset in the form of land and buildings. While it is anticipated that this asset will generate a return to Council, there are operational costs, depreciation expense and insurances that would need to be maintained.

9. Risk Analysis

A risk analysis for the proposal has been undertaken. The analysis has been undertaken using the risk matrix approach. A total of six (6) potential risks have been identified with three (3) risks being rated as low risk and three (3) risks being rated as moderate risk. No high or extreme risks have been identified. Mitigation strategies for all identified risks have been listed.

The tables below indicate the rating scales that were used in the risk analysis.

RISK MATRIX

Consequence		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost Certain	5	5	10	15	20	25
Likely	4	4	8	12	16	20
Possible	3	3	6	9	12	15
Unlikely	2	2	4	6	8	10
Rare	1	1	2	3	4	5

RISK ACCEPTANCE CRITERIA

LEVEL OF RISK	DESCRIPTOR	DESCRIPTION	CRITERIA FOR RISK ACCEPTANCE	RESPONSIBILITY
1 – 4	LOW	Acceptable	Risk acceptable with adequate controls, managed by routine procedures and subject to annual monitoring.	Operational Manager
5 – 9	MODERATE	Monitor	Risk acceptable with adequate controls, managed by specific procedures and subject to semi-annual monitoring.	Operational Manager
10 – 16	HIGH	Urgent Attention Required	Management attention is required. Risk treatment plan is required to reduce risk exposure to an acceptable level. Regular reporting is required.	CEO / Director
17 - 25	EXTREME	Unacceptable	Urgent and active management required. Risk treatment plan must be implemented immediately to reduce risk exposure to an acceptable level. Regular reporting required.	CEO

PROJECT RISK MATRIX

Item	Likelihood	Consequence	Rating	Mitigation Strategies
<i>Financial Risks</i>				
City pays too much for the purchase of the property	1	3	3	Council would not purchase the property unless an appropriate purchase price can be negotiated.
Investment in this project means that other Community projects cannot proceed.	1	4	4	The purchase will not proceed if it was determined that project funding negatively impacted on Council's ability to fund it's 10 year Long Term Capital Works programs.
<i>Operational Risks</i>				
Inability to attract tenants	2	3	6	<ul style="list-style-type: none"> • Occupancy rate is already at 40% with negotiations advanced for further tenants. • State Government has a 15 year lease for 31% of the property.
Facility maintenance impacts on City's ability to undertake 'core functions' of the Local Government	1	4	4	<ul style="list-style-type: none"> • Majority of maintenance responsibilities likely to be tenant responsibility. • Likelihood is minimal as Council already owns, operates and maintains many facilities.
<i>Other Risks</i>				
Reputational issues: Lack of community support identified through public consultation regarding the Business Plan	3	3	9	Council can consider whether to proceed with the project or not after feedback on the draft business plan.
LandCorp sells the property to another buyer	3	3	9	Council could consider whether it considered the financial returns warranted negotiating a higher price if another buyer is found.

10. Summary

Initial estimates indicate that total (rental) revenues will exceed total expenses including opportunity cost of utilising reserve capital, lost interest on cash reserves, rates and charges, insurance and maintenance costs and depreciation and asset renewal provisions. As such this is a cash flow positive investment for the Council which can provide an alternative source of revenue.

This page is intentionally blank.

Attachment 1: Promotional Information

This page is intentionally blank.



THE
QUARTER

KARRATHA'S MOST EXCITING DESTINATION IS NOW OPEN FOR BUSINESS

The Quarter is an urban oasis nestled in the heart of Karratha. A place for dining and leisure, vibrant corporate and community activity characterised by a bustling city square and a rich street culture.



Multiple food
and beverage
options



A new
shopping
destination



A range
of new
businesses



Home to 46
one bedroom
apartments



Centrally
located in
the heart of
Karratha

For enquiries please contact
Ray White Karratha 9185 2444
karrathaquarter.com.au

Ray White.

Realising WA's Potential.



LANDCORP



THE
QUARTER
HQ



COMMERCIAL AND RETAIL LEASING OPPORTUNITIES IN THE HEART OF KARRATHA

Outstanding
staff amenity
in a premium
City Centre
location

Retail space
from
60sqm and
\$473 per sqm
including GST

Office space
from
150sqm and
\$495 per sqm
including GST

For enquiries please contact
Bret Madden from Knight Frank 9225 2407
karrathaquarter.com.au

Realising WA's Potential.

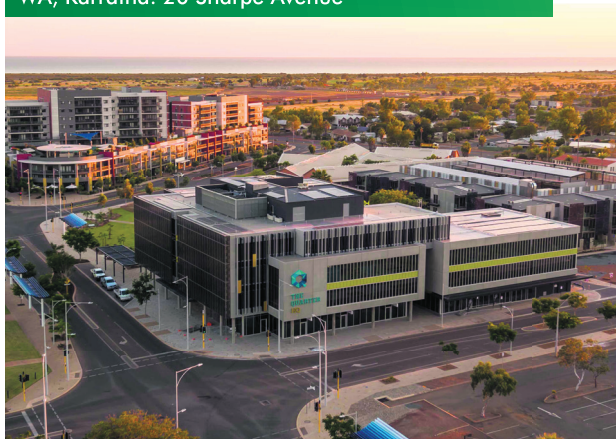


LANDCORP

FOR SALE

STRIKING NEW OFFICE BUILDING

WA, Karratha: 20 Sharpe Avenue



STRONG LEASE PROFILE WITH FUTURE GROWTH POTENTIAL

- + 6,100sqm* 4 storey building with 116 car bays in the heart of Karratha township
- + 15-year government lease to the Minister of Works plus other significant long term leases
- + Forecast Net Income of \$1,090,619 pa* (50% leased) with 3-4% annual rental increases
- + Building completed in April 2016 providing significant depreciation benefits

**FOR SALE VIA EXPRESSION OF INTEREST
CLOSING WEDNESDAY 12TH APRIL 2017
AT 2.00PM WST (UNLESS SOLD PRIOR)**

BEN YOUNGER

0410 533 679

LLOYD JENKINS

0418 630 678

CBRE

property.cbre.com.au

CBRE (C) Pty Ltd (ACN 003 205 552) are acting on behalf of lead agent Mirvac Real Estate Pty Ltd (ACN 003 342 452) | *approx

This page is intentionally blank.

Attachment 2: Draft Contract for Sale by Offer and Acceptance

This page is intentionally blank.

CONTRACT FOR SALE OF LAND OR STRATA TITLE BY OFFER AND ACCEPTANCE

NOTICE: Contracts must be lodged with the Office of State Revenue for duty assessment within two (2) months of the date the last person executes the Contract

TO:

CBRE Pty Ltd (ACN 057 373 574)
Level 2, 216 St Georges Terrace
PERTH WA 6000

As Agent for the Seller / Buyer

THE BUYER (FULL NAME AND ADDRESS) **[insert]**

OFFERS TO PURCHASE (as joint tenants/tenants in common specifying the undivided shares) the Land and Property Chattels set out in the Schedule ("the Property") with vacant possession unless stated otherwise in the Special Conditions at the Purchase Price on the terms set out in the Schedule, the Conditions and the Special Conditions.

SCHEDULE

The Property at:

20 Sharpe Avenue, Karratha, Western Australia

Lot 7080 Deposited/Survey/Strata/Diagram/Plan 401615 Whole/Part Vol 2831 Folio 955

A deposit of **\$(insert)** of which **\$(insert)** is paid now and **\$(insert)** to be paid within days of acceptance

To be held by **CBRE Pty Ltd**
("the Deposit Holder").

Purchase Price **\$(insert)**

Settlement Date: **See Annexure A**

Property Chattels including **N/A**

FINANCE CLAUSE **IS** APPLICABLE

LENDER

LATEST TIME: 4pm on:

AMOUNT OF LOAN:

SIGNATURE OF BUYER:

FINANCE CLAUSE IS **NOT** APPLICABLE

Signature of the Buyer if Finance Clause **IS NOT** applicable

.....

.....

SPECIAL CONDITIONS

Annexure A and Annexure B form part of this Contract

.....

.....

.....

.....

.....

.....

.....

NOTE: IF THIS DOCUMENT IS ON SEPARATE PAGES OR IS TO BE FAXED THEN ALL PARTIES SHOULD SIGN ALL PAGES

CONDITIONS

1. SUBJECT TO FINANCE

If the Buyer signs the "Finance Clause IS NOT Applicable" box in the Schedule then this clause 1 does not apply to the Contract.

If any information is completed in or the Buyer signs the "Finance Clause IS Applicable" box in the Schedule then this clause 1 applies to the Contract.

1.1 Buyer's Obligation to Apply for Finance and Give Notice to the Seller

- (a) The Buyer must:
 - (1) immediately after the Contract Date make an application for Finance Approval to the Lender using, if required by the Lender, the Property as security; and
 - (2) use all best endeavours in good faith to obtain Finance Approval.
- (b) If the Buyer does not comply with clause 1.1(a) or 1.1(c)(1) then the Contract will not come to an end under clause 1.2 and the Buyer may not terminate the Contract under clause 1.3. The rights of the Seller under this Clause 1.1 will not be affected if the Buyer does not comply with Clause 1.1.
- (c) The Buyer must immediately give to the Seller or Seller Agent:
 - (1) an Approval Notice if the Buyer obtains Finance Approval; or
 - (2) a Non Approval Notice if Finance Approval is rejected at any time while the Contract is in force and effect.

1.2 No Finance Approval by the Latest Time: Non Approval Notice Given

This Contract will come to an end without further action by either Party if on or before the Latest Time:

- (a) written Finance Approval has not been obtained; and
- (b) the Buyer gives a Non Approval Notice to the Seller or Seller Agent.

1.3 No Finance Approval by the Latest Time: No Notice Given

If by the Latest Time:

- (a) the Buyer has not given an Approval Notice to the Seller or Seller Agent; and
 - (b) the Buyer has not given a Non Approval Notice to the Seller or Seller Agent;
- then this Contract will be in full force and effect unless and until either the Seller gives written Notice of termination to the Buyer or the Buyer terminates this Contract by giving a Non-Approval Notice to the Seller or Seller Agent.

1.4 Finance Approval: Approval Notice Given

If by the Latest Time, or if clause 1.5 applies, before the Contract is terminated:

- (a) written Finance Approval has been obtained; and
 - (b) the Buyer has given an Approval Notice to the Seller or Seller Agent;
- then this Clause 1 is satisfied and this Contract is in full force and effect.

1.5 Notice Not Given by Latest Time: Seller's Right to Terminate

If by the Latest Time the Buyer has not given an Approval Notice or a Non Approval Notice to the Seller or Seller Agent then at any time until an Approval Notice is given, the Seller may terminate this Contract by written Notice to the Buyer.

1.6 Buyer Must Keep Seller Informed: Evidence

- (a) If requested in writing by the Seller or Seller Agent the Buyer must advise the Seller or Seller Agent of:
 - (1) the progress of the Finance Application; and
 - (2) provide evidence in writing of the making of a Finance Application, in accordance with clause 1.1(a) and of any loan offer made, or any rejection; and
 - (3) if applicable the reasons for the Buyer not accepting any loan offer.
- (b) If the Buyer does not comply with the request within 2 Business Days then the Buyer authorises the Seller or Seller Agent to obtain from the Lender the information referred to in 1.6(a).

2. Acceptance of this offer will be sufficiently communicated to the Buyer if verbal or written notification is given by the Seller or Seller's Agent to the Buyer that the acceptance has been signed by the Seller.
3. The 2011 General Conditions are incorporated into this Contract so far as they are not varied by or inconsistent with the Conditions or Special Conditions of this Contract.
4. If GST is applicable to this transaction then the relevant GST provision should be outlined in the Special Conditions or in an attached GST Annexure, which forms part of this Contract.

BUYER [If a corporation, then the Buyer executes this Contract pursuant to s.127 of the Corporations Act]

	Witness	Date
See Annexure A...../...../.....
...../...../.....

THE SELLER (FULL NAME AND ADDRESS) ACCEPTS the Buyer's offer

See Annexure A.....

[If a corporation, then the Seller executes this Contract pursuant to s.127 of the Corporations Act]

	Witness	Date
...../...../.....
...../...../.....

JOINT FORM A true copy of this document has been received by each of the Parties – together with a copy of the 2011 General Conditions.

STRATA DISCLOSURES If the Property is a Strata Lot, then the Buyer acknowledges having received the Form 28 Disclosure Statement before signing this Contract.

CONVEYANCER The parties nominate their Representative below to act on their behalf and consent to Notices being served to that Representative's facsimile number.

<u>BUYER'S REPRESENTATIVE</u>	<u>SELLER'S REPRESENTATIVE</u>
Name	Lavan
Signature

COPYRIGHT

The copyright of this Contract by Offer and Acceptance is the property of the Real Estate Institute of Western Australia (Inc.) ("REIWA") and neither the form nor any part of it may be used or reproduced by any method whatsoever or incorporated by reference or in any manner whatsoever in any other document without the consent of REIWA. **02/11**

1 Definitions and interpretation

Definitions

1.1 In this Contract the following definitions apply:

Accession Deed	means the deeds referred to in clause 5.1.
Actual Settlement Date	means the date when Settlement is effected.
Adjustment Date	means the date 30 days after the date Settlement is effected.
Adjustment Note	has the meaning given in the GST Act and includes any document or records treated by the Commissioner of Taxation as an adjustment note.
Approval	includes any development approval, consent, permit or authority.
Authority	means a Federal or State government, or government department, instrumentality or agency, any tribunal or official acting under any Law and any local authority in whose area the Property is located.
Bank Guarantee	means any bank guarantee described in Schedule 1.
Building	means the building known as Building 2 which has been constructed on the Property.
Building Contract	means the building contract between the Seller and Doric Contractors Pty Ltd ACN 080 922 498 for the construction of the Building.
Business Day	means a day other than a Saturday, Sunday or public holiday in Western Australia.
Buyer's Proportion	means the amount of Rents referred to in clause 7.1.3.
Buyer's Solicitors	means [insert]
Car Park Area	means the property the subject of the Car Park Contract.
Car Park Contract	means the contract between the Buyer and the Seller entered into in respect of car parking bays to be utilised by the Building substantially in the form of that in Schedule 7.
Claim	means, in relation to any person, a claim, action, proceeding, demand, damage, loss, cost, expense or liability incurred by, or made or recovered against, the person however arising and whether present, unascertained, immediate, future or contingent (and any amount for GST on it, except to the extent that the person can obtain an input tax credit for that GST).

Contaminated	has the same meaning as given to that term in the <i>Contaminated Sites Act 2003</i> (WA) and “Contamination” has a corresponding meaning
Contract Date	means the date of this Contract.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Encumbrance	means a mortgage, security, charge, bill of sale, lien, pledge, easement, restrictive covenant, building condition, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest of any Third Party affecting the Property or any part of the Property.
Environment	means all of the physical surroundings of humans including: <ul style="list-style-type: none"> (a) land, water, atmosphere, climate, sound, odour and taste; (b) the biological factors of animals and plants; and (c) the social factors of aesthetics affecting any human.
Existing Leases	means the lease and licence documentation which establishes or evidences the tenancies specified in Schedule 2 and includes: <ul style="list-style-type: none"> (a) any franchise occupation licence documentation entered into by a Tenant in respect of the leased premises and consented to by the Landlord, and being as specified in Schedule 2; (b) any security granted by a Tenant in respect of the Tenant's operations at the leased premises and consented to by the Landlord, and being as specified in Schedule 2; (c) any deeds of assignment, variation or extension applicable to each tenancy specified in Schedule 2, executed on or prior to the Contract Date.
Expert	means an expert appointed pursuant to clause 14.
General Conditions	means the Law Society of Western Australia and Real Estate Institute of Western Australia Joint Form of General Conditions for the Sale Of Land 2011 Revision together with the Law Society of Western Australia and Real Estate Institute of Western Australia Electronic Conveyancing Annexure, copies of which are contained in Schedule 8.
GST	has the same meaning as in the GST Act and includes any replacement or subsequent similar tax, and any amount payable by an Australian government agency as a notional liability for GST.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Incentive	means the entitlement of a Tenant (or a proposed Tenant) to a benefit of any kind, as an inducement to enter into a tenancy, for periods before or

after the date of Settlement including:

- (a) cash incentives;
- (b) free or partially free fit-out or other works;
- (c) rent reductions or rent-free periods;
- (d) outgoings-reductions or outgoings-free periods; or
- (e) reimbursement or payment of fees payable by a Tenant (or a proposed Tenant) for its advisors or other persons.

Independent

means a person who:

- (a) is not an employee of the Seller, the Buyer, or any related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of any of them;
- (b) is not an officer of the Seller or the Buyer;
- (c) is not currently involved in business dealings, or in any professional capacity (whether in his or her own right or as an employee, director, partner or shareholder of any entity) with the Seller or the Buyer;
- (d) does not have a material interest in the Seller or the Buyer; and
- (e) is not a relative or a de facto spouse of a person who has a material interest in the Seller or the Buyer.

Intellectual Property

means all trade marks, business names and domain names used by the Seller in relation to the Property and all intellectual property rights which are owned by the Seller in relation to the Service Contracts.

Landgate

means the Western Australian Land Information Authority established under the *Western Australian Land Authority Act 1992* (WA).

Landlord

means, as the case may be, the landlord or the licensor under the Leases.

Law

includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future and whether State, Federal, local or otherwise.

Lease

means:

- (a) the Existing Leases;
- (b) every agreement to lease, agreement to license, lease, license, deed of assignment, variation, extension or other occupancy right or any personal right entered into or arising

after the Contract Date in respect of any part of the Property as specified in or contemplated by this Contract,

but does not include any such document or arrangement which has expired or otherwise ended.

Object	means to make any Claim against the Seller (before or after Settlement), raise any objection or requisition, rescind or terminate this Contract or delay Settlement.
Plant and Equipment	means the plant and equipment specified in Schedule 3 and excludes any plant and equipment fixtures, fittings and effects owned by a Tenant or a Tenant's financier or which a Tenant or a Tenant's financier is entitled to remove.
Property	means the property at 20 Sharpe Avenue, Karratha, Western Australia, more particularly described as Lot 7080 on Deposited Plan 401615, being the whole of the land in Certificate of Title Volume 2831 Folio 955, together with all improvements on that land.
Purchase Price	[insert]
Related Body Corporate	has the meaning given to it in the Corporations Act.
Rent	<p>means all rent, levies, fees and other money which under the terms of the Leases a Tenant is liable to pay the Seller as Landlord, whether payable before or after Settlement:</p> <ul style="list-style-type: none"> (a) including any licence fee or fee payable for car parking spaces; and (b) not including money payable as deposits, bonds, promotional or marketing levies, sinking fund contributions or other similar payments.
Security Deposits	means the security deposits listed in Schedule 1.
Seller's Proportion	means the amount of the Rents referred to in clause 7.1.1.
Seller's Solicitors	means Lavan of Level 20, 1 William Street, Perth, Western Australia.
Service Contracts	means the Seller's interest in all maintenance and service contracts and other agreements and arrangements listed in Schedule 4 to the extent that they are in existence at Settlement.
Settlement	means completion of the sale and purchase of the Property in accordance with this Contract.
Settlement Date	means the date which is [insert] days after the Contract Date but not later than 31 May 2017 or such other date as the Parties may in writing agree.

Specified Encumbrances	means those Encumbrances specified in clause 3.1.
Strata Company	means the strata company formed on the registration of Strata Plan 67914.
Strata Lots	has the same meaning as ‘Lots’ in Schedule 5 of the Car Park Contract and includes the Car Park Area.
Supply	has the same meaning as in the GST Act.
Tax Invoice	has the meaning given in the GST Act and includes any document or record treated by the Commissioner of Taxation as a tax invoice.
Tenant	means a person who is a tenant or lessee under a Lease.
Third Party	means any person or entity who is not a party to this Contract.

Interpretation

- 1.2 In this Contract, unless the context otherwise requires:
- 1.2.1 Headings or subheadings are for convenience only and do not affect the interpretation of any provision of this contract.
 - 1.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
 - 1.2.3 The singular includes the plural and vice versa.
 - 1.2.4 Words expressed in one gender include the other gender.
 - 1.2.5 A “person” includes an individual, partnership, firm, company, government, joint venture, association, authority, corporation or other body corporate.
 - 1.2.6 References to the parties, background, parts, clauses, schedules and annexures are references to the parties, background, parts, clauses, schedules and annexures to this contract.
 - 1.2.7 The expression “this Contract” includes the agreement, arrangement, understanding or transaction recorded in this contract.
 - 1.2.8 References to a Party to this contract include that Party’s executors, administrators, substitutes, successors and permitted assigns.
 - 1.2.9 A reference to a group of people is a reference to all of them collectively and to each of them individually.
 - 1.2.10 A reference to an amount or thing is a reference to the whole or any part of that amount or thing.
 - 1.2.11 References to time are to time in Perth, Western Australia.

- 1.2.12 If the date on or by which any act must be done under this contract is not a Business Day, the act must be done on or by the next Business Day.
 - 1.2.13 A covenant or agreement made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.
 - 1.2.14 A reference to any Law contained in this contract includes any amendment, re-enactment or consolidation of the Law.
 - 1.2.15 "\$" or "dollars" is a reference to Australian currency.
 - 1.2.16 Unless clearly indicated otherwise, terms that are defined in the General Conditions have the same meanings when used in this Contract.
-

2 Car Park Contract

Condition

- 2.1 This Contract is subject to, and conditional upon, the Buyer entering into the Car Park Contract on or about the same time as this Contract.

Consequences if condition not met

- 2.2 The condition in clause 2.1 cannot be waived by either party.
- 2.3 If the condition referred to in clause 2.1 is not satisfied or waived or deemed not to have been satisfied or waived on or before the date specified in clause 2.1, then:
 - 2.3.1 this Contract (other than this clause and the rights of the parties that have accrued before that date) is terminated;
 - 2.3.2 the Deposit must be refunded to the Buyer within 5 Business Days of this Contract being terminated for any reason other than due to a breach of this Contract by the Buyer; and
 - 2.3.3 subject to clause 2.3.1, neither Party shall have any Claim whatsoever against the other or any of its Related Body Corporates.

Termination of Car Park Contract

- 2.4 If at any time the Car Park Contract is terminated for any reason, this Contract will automatically terminate at the same time without the requirement for either Party to give notice to the other.

3 Encumbrances

Specified Encumbrances

- 3.1 The Property is sold subject to:
- 3.1.1 the Leases and all rights created under the Leases, whether or not registered on the certificate of title for the Property;
 - 3.1.2 subject to clause 3.2, all limitations, interests, encumbrances and notifications registered on the certificate of title for the Property as at the Contract Date;
 - 3.1.3 any subject to claim caveat registered against the Property to protect the interest of a Tenant under a Lease; and
 - 3.1.4 any Encumbrance:
 - (a) required in relation to any Approval of any Authority; or
 - (b) that does not adversely impact the use of the Building as a commercial building.
- 3.2 With the exception of the matters set out in clause 3.1, the Property is sold free from Encumbrances.
-

4 Settlement

Condition precedent

- 4.1 Settlement under this Contract:
- 4.1.1 is conditional upon settlement under the Car Park Contract; and
 - 4.1.2 must be contemporaneous with settlement under the Car Park Contract.

Settlement Date

- 4.2 Subject to clause 4.1, the Settlement Date will be the same date as settlement of the sale and purchase of the Car Park Area under the Car Park Contract.

Place for Settlement

- 4.3 Settlement will take place at the office of the Buyer's Solicitors or at such other place agreed between the parties, acting reasonably.

Transfer

- 4.4 The Buyer will, at the Buyer's cost, prepare and deliver to the Seller a transfer in respect of the Property, properly executed by the Buyer, which will not be subject to any Encumbrances except for the Specified Encumbrances, no later than 14 days before the Settlement Date.
- 4.5 The transfer referred to in clause 4.4 will comply with the requirements of Landgate, except that the Buyer is not required to have the transfer endorsed with duty at that time.
- 4.6 The Seller will execute the transfer referred to in clause 4.4 and return this to the Buyer no later than 7 days before the Settlement Date to enable the Buyer to attend to endorsement of duty on the transfer (and for no other purpose).
- 4.7 Unless the parties agree otherwise, the Buyer will deliver the endorsed transfer referred to in clause 4.4 to the Seller before Settlement.

Procedure at Settlement

- 4.8 At Settlement, subject to performance by the Seller of all of its obligations under this Contract (and in particular clause 4.9.1), the Buyer will make the payment of the Purchase Price.
- 4.9 At Settlement, subject to performance by the Buyer of all of its obligations under this Contract:
- 4.9.1 Without limiting clause 4.17, the Buyer will be entitled to possession of the Property (subject to the Leases and the interests of each Tenant) immediately after Settlement.
- 4.9.2 The Seller will, as a condition precedent to Settlement (for the sole benefit of the Buyer), deliver or cause to be delivered to the Buyer (if it has not already done so):
- (a) the transfer (endorsed with duty) referred to in clauses 4.4 to 4.6 (which, for the avoidance of doubt, will not be subject to any Encumbrances except for the Specified Encumbrances);
 - (b) the duplicate certificate of title (if any) relating to the Property;
 - (c) a discharge of any mortgage over the Property and the relevant Landgate fee for this;
 - (d) a deed of release for any security interested registered on the Personal Property Security Register over the assets of the Seller, to the extent the security interest may apply to the Property;
 - (e) any other document, properly signed and endorsed with duty (if necessary), required to remove or discharge any Encumbrance over the Property, other than the Specified Encumbrances, and the relevant lodgement or registration fee for this;

- (f) all relevant transfers and supporting documentation to effect the transfer or assignment, in a manner satisfactory to the Buyer (acting reasonably), of the Intellectual Property (subject to the Buyer delivering to the Seller not less than 5 Business Days before the Settlement Date the relevant transfers and supporting documentation to effect the transfer or assignment);
- (g) notices, previously prepared by the Buyer in a form reasonably acceptable to the Seller, from the Seller to the Tenants, signed by the Seller, directing the Tenants to pay (after the Settlement Date) all Rents to the Buyer or as the Buyer directs;
- (h) the Leases and all related documents (the Buyer will accept a true copy if an original is not available together with an explanation acceptable to the Buyer acting reasonably as to why the original is not available);
- (i) the Service Contracts and all related documents;
- (j) all certificates of registration or inspection relating to the Plant and Equipment in the possession of the Seller or under its control;
- (k) all plans, drawings, specifications and similar items relating to the Property that are in the Seller's possession or under its control;
- (l) all operational manuals, warranty forms or certificates, permits, licences and authorities and similar items relating to the Property that are in the Seller's possession or under its control;
- (m) all keys and security devices relating to the Property that are in the Seller's possession or under its control;
- (n) all of the payments and/or the documents referred to in clause 4.11;
- (o) all of the documents referred to in clause 4.15;
- (p) all Bank Guarantees and other forms of security under the Leases;
- (q) for the purposes of depositing any retention monies paid to the Buyer's Solicitors pursuant to this Contract out of the balance of the Purchase Price, the Seller's tax file number; and
- (r) all other evidence, documents and things required by this Contract to be delivered by the Seller to the Buyer at Settlement.

4.10 The Seller is not required to provide the items listed in clauses 4.9.2(h) to 4.9.2(p) to the Buyer if those items have prior to Settlement:

4.10.1 been delivered to the Buyer's managing agent; or

4.10.2 left in the management office of the Property.

Payment by Seller – Security Deposits etc

4.11 On Settlement, the Seller will:

4.11.1 pay to the Buyer, or otherwise vest in the Buyer, all funds representing the Security Deposits, promotional or marketing levies, sinking fund contributions and other similar payments by the Tenant (to the extent to which such payments have not been expended); and

4.11.2 provide the Buyer with a reconciliation of all claims and payments made in respect of the funds referred to in clause 4.11.1.

4.12 Clause 6.2 applies in relation to the Security Deposits referred to in clause 4.11.

Bank Guarantees

4.13 On Settlement, the Seller will deliver to the Buyer:

4.13.1 all of the Bank Guarantees in connection with the Leases; and

4.13.2 a reconciliation of all claims made in respect of the Bank Guarantees.

4.14 Clause 6.6 applies in relation to the Bank Guarantees referred to in clause 4.13.

Incomplete Leases

4.15 Without limiting clause 5, if on Settlement the Seller has entered into negotiations for an agreement in connection with the use or occupation of the Property (whether or not they are completed in accordance with this Contract but there are no executed documents, then:

4.15.1 the Seller will give the Buyer all correspondence and draft documents that do not form part of this Contract relevant to the negotiations, which the Seller has in its possession; and

4.15.2 both parties will comply with the Seller's obligations in connection with the negotiations and any agreement in connection with them.

Rents

4.16 The Seller will pay to the Buyer at Settlement (by way of an adjustment to the Purchase Price in favour of the Buyer) that part of the Rents it has received and which represents the Buyer's Proportion of those Rents.

Failure to settle

4.17 If the Parties fail to complete Settlement under this Contract and the Contract is terminated as a result:

4.17.1 the Buyer's entitlement to possession of the Property will immediately cease;

- 4.17.2 the Seller is immediately entitled to possession of the Property; and
 - 4.17.3 the Seller will be entitled to the benefit of all Rent from the date that the Contract is terminated.
-

5 Leases

- 5.1 Where the Landlord is so obliged under a Lease the Seller must procure the relevant Tenant to execute, and the Seller and the Buyer must promptly execute, any necessary Accession Deed:
 - 5.1.1 in a form prescribed by the Lease or otherwise as reasonably agreed by both the Seller and the Buyer; and
 - 5.1.2 which complies with the terms of the relevant Lease, under which the Buyer agrees to observe and perform the obligations of the Landlord under the Lease.
- 5.2 Subject to the terms of any Lease, the parties will use reasonable endeavours to complete the Accession Deeds prior to the Settlement Date.
- 5.3 The Seller and the Buyer must pay their own legal costs in relation to the preparation and completion of the Accession Deeds.
- 5.4 If any Tenant's costs in respect of an Accession Deed are recoverable from the Landlord under a Lease, the Seller must pay those costs.

Management of Property and Leases

- 5.5 The Seller will, until and including the date Settlement is effected, manage the Property and the Leases in accordance with the standard of management in place as at the Contract Date.

Warranty as to Leases

- 5.6 The Seller represents and warrants that as at the Contract Date, to the best of its information, knowledge and belief, the Seller is not aware of any material unremedied breaches of the Leases.
- 5.7 If, at any time between the Contract Date and the Settlement Date, the Seller becomes aware of any fact or circumstance which affects the validity or enforceability of any of the Leases, the Seller will promptly notify the Buyer of that fact or circumstance.

Property subject to Leases

- 5.8 The Buyer acknowledges that:
 - 5.8.1 it takes title to the Property subject to the Leases;

- 5.8.2 it has inspected and satisfied itself in all respects about the Leases;
- 5.8.3 the Seller is not required to take any action to enforce a Lease; and
- 5.8.4 the Buyer is not entitled to Object or make any requisition in respect of the Leases or raise any alleged deficiencies in the Leases or Object to the right of any Tenant to remove the Tenant's fixtures.

Assignment of benefit of Leases

5.9 From Settlement:

- 5.9.1 the Seller is deemed to have assigned to the Buyer, and the Buyer is deemed to have taken an assignment of, the Leases (subject to all necessary approvals having been obtained) and the benefit of all guarantees and indemnities in, or which relate to, the Leases; and
- 5.9.2 the Buyer will comply with all the terms of the Leases to be complied with by the Landlord.

Seller's dealings with the leases

5.10 Subject to clauses 5.11 and 5.16, the Seller must not do any of the following after the Contract Date without the prior written consent of the Buyer:

- 5.10.1 negotiate or enter into any lease or licence in respect of the Property;
- 5.10.2 consent to any assignment of any Lease or any sublease of a Lease;
- 5.10.3 vary any Lease;
- 5.10.4 terminate any Lease;
- 5.10.5 accept a surrender of any Lease;
- 5.10.6 negotiate or carry out a rent review under any Lease; or
- 5.10.7 give any other consent at the request of a Tenant.

General administration

5.11 The Seller does not have to obtain the Buyer's consent under clause 5.10:

- 5.11.1 in respect of clause 5.10.1 only, a Lease that is based on the form of the lease in Schedule 5 agreed by the Parties in respect of a retail premises or commercial premises in the Building (as the case may be) and complies with the leasing guidelines set out in Schedule 6;
- 5.11.2 to deal generally with Tenants and other interested parties in relation to any Lease;
- 5.11.3 to do anything referred to in clause 6.1;
- 5.11.4 to do anything referred to in clause 6.4;

- 5.11.5 to do anything which the Seller is obliged to do in respect of a Lease;
- 5.11.6 where the commitment or action will not bind the Buyer after the Settlement Date or may be terminated by the Buyer immediately after Settlement at no cost to the Buyer and will not adversely affect the Property after the date Settlement is effected;
- 5.11.7 where the commitment or action is necessary for the preservation of the Property; and
- 5.11.8 the Seller is bound by the terms of any Lease to make the commitment or take the action (including without limitation the grant of an extension of the term of a Lease where there has been a valid exercise of an option of renewal by a Tenant).

Buyer's consent

- 5.12 If the Seller requests the Buyer's consent to anything referred to in clause 5.10, the Buyer:
 - 5.12.1 will consider the matter and provide the Seller with its response as soon as reasonably possible;
 - 5.12.2 will act in good faith and not unreasonably withhold its consent; and
 - 5.12.3 is regarded as having consented if the Seller does not receive any response from the Buyer within 5 days after the Seller's request is delivered by the Buyer.

Buyer's objections

- 5.13 The Buyer may not object to any proposed action by the Seller except on reasonable grounds (including without limitation prudent and proper management of the Property) in the context of the then current market conditions.
- 5.14 The Seller will not carry out any proposed action to which the Buyer objects by a notice given under this clause unless the Buyer waives the objection in writing.
- 5.15 The Buyer indemnifies the Seller against any loss suffered or incurred by the Seller being prevented from taking any action in respect of a Lease except by an objection validity made by the Buyer.

Prior agreements

- 5.16 Clause 5.10 does not apply to any action by the Seller to give effect to an agreement with any person entered into before the Contract Date where the agreement has been disclosed to the Buyer.

Seller to notify Buyer of Claims

- 5.17 If the Seller receives, or becomes aware, of any Claim by a Tenant, or if any action of any kind is commenced against the Seller in respect of any alleged failure by the

Seller to perform any of its obligations under any of the Leases up to and including Settlement, the Seller will:

- 5.17.1 notify the buyer as soon as reasonably possible of the Claim or action; and
- 5.17.2 not settle or compromise the Claim or action without the Buyer's prior written consent, which will not be unreasonably withheld.

Indemnities in relation to Leases

5.18 Subject to Settlement taking place:

- 5.18.1 the Seller indemnifies the Buyer against any Claim against the Buyer as a result of any failure by the Seller to perform any of its obligations under any Lease up to, and including, Settlement; and
- 5.18.2 the Buyer indemnifies the Seller against any Claim against the Seller as a result of any failure by the Buyer to perform any of its obligations under any Lease after Settlement.

Subtenancies

5.19 The Seller warrants that:

- 5.19.1 there are no subtenancies under any of the Leases as at the Contract Date; and
- 5.19.2 there will not be any subtenancies under any of the Leases as at Settlement.

Incomplete tenancy documents

5.20 The Seller will use reasonable endeavours before Settlement to have all Leases:

- 5.20.1 executed by all parties;
- 5.20.2 endorsed for duty (if applicable); and
- 5.20.3 subject to clauses 5.1 and 5.3, registered, if this will be done because of an agreement between the Seller and a Tenant.

6 Security Deposits and Bank Guarantees

Security Deposits

- 6.1 Before Settlement, the Seller may draw on the Security Deposits without the consent of the Buyer.
- 6.2 On and from Settlement, in respect of the Security Deposits under the Leases which the Seller delivers to the Buyer under clause 4.11:

- 6.2.1 to the extent assignment is permitted and effective, the Seller assigns all of its rights in the Security Deposits to the Buyer; or
 - 6.2.2 to the extent assignment is not permitted or is ineffective, the Seller holds its rights in the Security Deposits for the benefit of the Buyer and will do whatever is reasonable to enable the Buyer to enjoy those rights.
- 6.3 The Seller will:
- 6.3.1 as soon as reasonably practicable sign and return to the Buyer, any assignment or other document;
 - 6.3.2 provide assistance to the Buyer; and
 - 6.3.3 do all other things,
- as requested by the Buyer, acting reasonably, to give effect to clause 6.2.

Bank Guarantees

- 6.4 Before Settlement, the Seller may call on the Bank Guarantees in accordance with the terms of the Bank Guarantees without the consent of the Buyer.
- 6.5 On and from Settlement, in respect of the Bank Guarantees which the Seller delivers to the Buyer under clause 4.13:
- 6.5.1 the Seller will hold the benefit of the Bank Guarantees for the benefit of, and on behalf of, the Buyer; and
 - 6.5.2 if requested by the Buyer, the Seller will exercise the Seller's rights under the Bank Guarantees on the Buyer's behalf.
- 6.6 The Seller will at the reasonable cost of the Buyer:
- 6.6.1 as soon as reasonably practicable sign and return to the Buyer, any document;
 - 6.6.2 provide assistance to the Buyer; and
 - 6.6.3 do all other things,
- as requested by the Buyer, acting reasonably, in order to give effect to clause 6.5.

7 Rents and Incentives

Apportionment of Rents

- 7.1 Subject to clause 4.17, Rents will be apportioned as at the Settlement Date as follows:

- 7.1.1 the Seller is entitled to all Rents accruing up to, and including, the Actual Settlement Date;
- 7.1.2 the Seller is also entitled to receive any arrears of Rent payable by a Tenant to the Landlord in respect of the period prior to Settlement (the Seller is responsible for collection of any arrears to which this clause applies, but to the extent the Buyer receives any arrears to which this clause applies attributable to a period prior to Settlement it will account to the Seller accordingly without delay);
- 7.1.3 the Buyer is entitled to all Rents accruing after the Actual Settlement Date;
- 7.1.4 if a Tenant owes Rent to the Seller for the period before and including the Actual Settlement Date (including any amounts referred to in clause 7.1.2), the amount owing must not be adjusted on the Actual Settlement Date;
- 7.1.5 except for moneys the subject of clause 7.1.2, if a Tenant has paid to the Seller any Rent that applies to a period after the Actual Settlement Date, the Seller must credit the Buyer with the amount applying to that period;
- 7.1.6 the Seller will pay to the Buyer at Settlement that part of the Rent received by the Landlord and which represents the Buyer's Proportion of the Rent for the month or year in which Settlement occurs;
- 7.1.7 any Rent received by the Buyer from a Tenant after Settlement and which is not identified by the Tenant as applying to a particular amount payable under the terms of the Lease will be treated as paid:
 - (a) first, towards any amount owing by the Tenant to the Buyer; and
 - (b) second, in relation to any arrears owing by that Tenant to the Seller (the Buyer must receive the payment in trust for the Seller and account to the Seller for it within 5 Business Days of receipt).
- 7.2 For the purposes of this clause 7, all Rents are deemed to accrue from day to day.
- 7.3 Unless otherwise agreed by the Seller and the Buyer, the Rent will be adjusted by the Seller's managing agent in accordance with the requirements of this Contract.

Outstanding Rents

- 7.4 To the extent that any Rents are due but unpaid at Settlement, or become due and payable after Settlement:
 - 7.4.1 except as provided in clause 7.6, no allowance by way of credit or debit will be made in respect of arrears of Rent at Settlement;
 - 7.4.2 the Seller must provide the Buyer a list of all arrears as at the Settlement Date and any corresponding documentation reasonably required by the Buyer from time to time;
 - 7.4.3 the Buyer will use reasonable endeavours in the ordinary course of tenancy management as the new landlord to collect arrears of Rent from the

Tenants on behalf of the Seller (but not to the extent of becoming a party to legal proceedings against a Tenant if the Buyer does not wish to), provided that the Seller's liability for costs will not exceed the amount recoverable as the Seller's Proportion;

- 7.4.4 to the extent that arrears of Rent have not been paid in full to the Seller by the Adjustment Date, the Seller may thereafter take such lawful action as the Seller sees fit to recover the arrears from the Tenant (however nothing in this subclause entitles the Seller or obliges the Buyer to terminate any Lease because of the Tenant's default under the Lease);
- 7.4.5 the Buyer will promptly pay to the Seller that part of any money the Buyer receives (after deduction of the reasonable and proper costs incurred in collection of the money) which represents the Seller's Proportion of that money which the Seller is entitled to under this Contract;
- 7.4.6 the Seller will promptly pay to the Buyer that part of any money the Seller receives (after deduction of the reasonable and proper costs incurred in collection of the money) which represents the Buyer's Proportion of that money to which the Buyer is entitled to under this Contract;
- 7.4.7 where Rent under a Lease is increased (whether before or after the Settlement Date) for any period that is payable to the Seller, then the Buyer must:
 - (a) upon determination of any such reviewed Rent advise the Seller of the amount of the Rent so determined; and
 - (b) upon the receipt of such increased Rent from the Tenant account and pay to the Seller the Seller's Proportion of that amount within 5 Business Days of receipt.

Adjustment of Rents with Tenants

- 7.5 Clause 7.6 of this Contract applies if on any adjustment of Rents between the Buyer and a Tenant under the terms of a Lease:
 - 7.5.1 the Buyer as Landlord becomes liable to refund any money to the Tenant; or
 - 7.5.2 the Buyer as Landlord becomes entitled to receive further money from the Tenant,
- 7.6 If the whole or any part of an amount refundable to or receivable from a Tenant under clause 7.5 is required to be apportioned between the Seller and the Buyer in accordance with this clause 7 then:
 - 7.6.1 the Buyer will, as soon as reasonably possible after the adjustment takes place, give notice to the Seller of the adjustment and of the total amount due to, or from, each Tenant and the proportion payable by, or to, the Seller;

- 7.6.2 if the notice referred to in clause 7.6.1 specifies an amount to be paid by the Seller, the Seller will pay that amount to the Buyer within 14 days after receipt of the notice; and
- 7.6.3 if the notice referred to in clause 7.6.1 specifies an amount to be paid to the Seller, the Buyer will pay that amount to the Seller within 14 days after receipt of that amount from the Tenant.

Incentives

- 7.7 At Settlement, the Purchase Price must be reduced by an amount equivalent to all Incentives that the Seller is presently, or contingently, required to pay to a Tenant (but only to the extent such Incentives have not already been paid to a Tenant by the Seller).
-

8 Service Contracts

Assignment of Service Contracts

- 8.1 On Settlement, the Seller assigns to the Buyer, and the Buyer is deemed to have taken an assignment of, the Service Contracts which have previously been approved by the Buyer, subject to:
 - 8.1.1 if requested by the Buyer and not less than 5 Business Days prior to the Settlement Date, the Seller terminating any Service Contract as soon as the Seller is able to do so without penalty having regard to the requirements of clause 13.2;
 - 8.1.2 the Service Contracts (other than those referred to in clause 8.1.1) being capable of being assigned; and
 - 8.1.3 any necessary consent or approval being obtained prior to Settlement.
- 8.2 As soon as reasonably possible after Settlement, each Party will do everything reasonably necessary to complete the assignment of the Service Contracts.

Contract not assignable

- 8.3 If any Service Contracts is not capable of assignment or if any necessary consent or approval is required, then the Seller will terminate that Service Contract as soon as the Seller is able to do so without penalty and, until that termination, the Seller will:
 - 8.3.1 hold the benefit of that Service Contract on behalf of the Buyer; and
 - 8.3.2 if requested by the Buyer, exercise the Seller's rights under that Service Contract on the Buyer's behalf.
- 8.4 The Buyer indemnifies the Seller against any Claim arising from any action taken by the Seller under a Service Contract at the request of the Buyer.

Service Contracts Payments

- 8.5 The Seller will pay all charges, fees and all other moneys payable under the Service Contracts up to, and including, the Actual Settlement Date.
- 8.6 After the Actual Settlement Date, the Buyer will pay the charges, fees and other moneys under any of the Service Contracts assigned to it under this clause 8.

Indemnity

- 8.7 Subject to Settlement taking place:
- 8.7.1 the Seller indemnifies the Buyer against any other Claim arising from, or in connection with, any breach of non-performance by the Seller on or before Settlement of any provision of the Service Contracts; and
 - 8.7.2 the Buyer indemnifies the Seller against any other Claim arising from, or in connection with, any breach or non-performance after Settlement by the Buyer of any provision of any Service Contract assigned to it under this clause 8.

9 Seller's warranties

- 9.1 Subject to any other express provisions of this Contract, the Seller continually represents and warrants to the Buyer that:
- 9.1.1 the Seller has full authority and all necessary authorisations and power to pass the full legal and beneficial title in the Property to the Buyer in accordance with this Contract;
 - 9.1.2 on Settlement, and subject to the Buyer complying with this Contract, the Buyer will acquire the full legal and beneficial interest of the Property free from all Encumbrances, other than the Specified Encumbrances; and
 - 9.1.3 the Seller is not aware of any adverse possession of the Property, or of a claim by any person to any part of the Property by adverse possession; and
 - 9.1.4 to the best of the Seller's knowledge after making due enquiry, as at the Contract Date:
 - (a) the Seller has not received notice in writing of any proposal by any Authority to resume or acquire any part of the Property or for the realignment, widening or alteration of any road adjoining the Property;
 - (b) no notices, requirements or demands in writing in relation to the Property have been received by the Seller under the provisions of any Law or by any Authority which have not been complied with;

- (c) the Seller is not a party to any litigation or arbitration, whether as plaintiff or defendant, which will, or would reasonably be likely to, have a material adverse effect in respect of any part or all of the Property or the Leases which would prevent the Seller from performing its obligations under this Contract;
 - (d) no litigation, arbitration or Claim against the Seller in respect of the Property (or any part of the Property) is pending or has been threatened in writing; and
 - (e) there are no disputes in progress which will, or would reasonably be likely to, give rise to any litigation, arbitration or Claim against the Seller in respect of the Property or the Leases.
-

10 Risk

Property at the risk of Buyer

- 10.1 Despite any rule of law or equity to the contrary, the Property is at the risk of the Buyer on and from the time Settlement actually occurs and remains with the Seller until then.

Property destroyed or damaged before Settlement

- 10.2 If the Property includes a Building, any part of which is destroyed or damaged prior to the risk passing to the Buyer, the following applies:
- 10.2.1 if the Building is destroyed or made substantially unusable for the uses current as at the Contract Date, then either Party may, by notice in writing to the other given within 20 Business Days of the occurrence of the event of destruction or damage, terminate this Contract in which case:
 - (a) this Contract will be at an end;
 - (b) neither Party will have a Claim against the other arising out of the termination exception in relation to any Claim which arose prior to the termination of this Contract; and
 - (c) the Deposit and any interest on the Deposit will promptly be returned to the Buyer.
- 10.3 If:
- 10.3.1 neither Party gives notice of termination under clause 10.2.1; or
 - 10.3.2 the Building is damaged prior to the risk passing to the Buyer but not so as to be destroyed or made substantially unusable for the uses current at the date of this Contract,
- 10.4 then:

- 10.4.1 this Contract will proceed but the Purchase Price will be reduced by an amount equal to the reduction in value of the Property caused by the destruction or damage; and
 - 10.4.2 if the amount of the reduction is not mutually agreed, the issue is to be settled in the manner set out in clause 14.
-

11 Environmental

Liability

- 11.1 Until and including the Actual Settlement Date, the Seller will be responsible for management of any Contamination in or on the Property;
- 11.2 Without limiting clause 11.3, from, but not including, the Actual Settlement Date the Buyer will be responsible for management of any Contamination in or on the Property.

Indemnity

- 11.3 Subject to Settlement taking place and without limiting the rights of the Buyer arising out of the *Contaminated Sites Act 2003* (WA), the Seller remains liable for, is fully responsible for and indemnifies the Buyer against any Claim arising from:
 - 11.3.1 the presence of Contamination; or
 - 11.3.2 the management by the Seller of any Contamination,in or on the Property before the Actual Settlement Date.

For the avoidance of doubt, the indemnity in clause 11.3 will not apply in relation to the extent that the Buyer causes or contributes to any further Contamination beyond the Contamination in or on the Property as at the Actual Settlement Date.

Section 68 Contaminated Sites Act

- 11.4 If the Seller is required to issue the Buyer with a land owner's disclosure statement (Form 6) pursuant to section 68 of the *Contaminated Sites Act 2003* (WA) before Settlement, the Settlement Date will (if necessary) be extended to the date that will allow the Seller to comply with section 68 of the *Contaminated Sites Act 2003* (WA).
 - 11.5 The Buyer is not entitled to Object in relation to any matter arising out of clause 11.4.
-

12 Building defects

- 12.1 The Seller will be responsible (at the Seller's cost) for ensuring that all workmanship defects in respect of the Building arising within:

- 12.1.1 12 months after the date practical completion of the Building is achieved under the Building Contract; and
- 12.1.2 any further or separate defects liability period which the Seller is entitled to under the Building Contract,

(**Defects Liability Period**), are remedied.

Defects Notice given by the Buyer

- 12.2 The Buyer may during the Defects Liability Period give a notice (**Defects Notice**) to the Seller of any defects (if any) which in the reasonable opinion of the Buyer are required to be made good.
- 12.3 Any Defects Notice must identify the defect and state a date by which the Seller must complete the rectification work. The dates specified in the Defects Notice must be reasonable having regard to the relevant defect.

Obligations of Seller

- 12.4 The Seller must:
 - 12.4.1 promptly make good the defect specified in the Defects Notice within the relevant time specified in the Defects Notice;
 - 12.4.2 promptly make good any defect of which it becomes aware during the Defects Liability Period; and
 - 12.4.3 give notice to the Buyer when, in the Seller's opinion, all defects specified in the Defects Notice have been made good.

Buyer may rectify Defects

- 12.5 If:
 - 12.5.1 the Seller does not complete the rectification work by the date specified in the Defects Notice; or
 - 12.5.2 in the case of an emergency,

the Buyer may have the rectification work carried out without prejudice to any other rights that the Buyer may have against the Seller in connection with the defect.
- 12.6 The reasonable cost of the rectification work incurred by the Buyer is a debt due from the Seller to the Buyer payable on demand.

Licence to enter

- 12.7 The Buyer grants to the Seller a licence for the Seller (and the Seller's employees and contractors) to enter the Property to remedy the workmanship defects in accordance with this clause 12.
- 12.8 Each of the following applies to the licence referred to in clause 12.7:

- 12.8.1 The licence will remain in effect until the Seller's obligations under clause 12.1 have been discharged in full.
 - 12.8.2 The Seller must give the Buyer not less than 2 Business Days notice prior to entering the Property to remedy any defect.
 - 12.8.3 The Seller must ensure that its employees and contractors cause as little disruption to the enjoyment of the Property by those persons entitled to be on the Property as is reasonably possible and the Seller must make good any damage caused to the Property.
- 12.9 The Seller will retain all retention moneys and/or security, and the benefit of all documents securing such moneys and/or security, held by the Seller under the Building Contract.

Subsequent buyer

- 12.10 If the Buyer sells the Property to a Third Party prior to the expiry of the Defects Liability Period, the Seller agrees to enter into a deed with the Third Party under which the Seller and the Third Party agree to comply with this clause 11 until the expiry of the Defects Liability Period.

13 GST

Going concern

- 13.1 The parties agree that:
- 13.1.1 all amounts and payments specified in this Contract are exclusive of GST; and
 - 13.1.2 for the purposes of s38-325 of the GST Act, the sale of the Property is a supply of a going concern (being a leasing enterprise) and that the parties intend that such supply will be GST free under s38-325 of the GST Act.
- 13.2 The Seller warrants that:
- 13.2.1 it is registered for GST and will be so registered at Settlement;
 - 13.2.2 it will continue to conduct its leasing enterprise on the Property in the same manner and as a going concern until Settlement; and
 - 13.2.3 it will supply to the Buyer at Settlement all of the things necessary for the continued operation of the Seller's leasing enterprise, the subject of this Contract.
- 13.3 If for any reason attributable to the Buyer the sale of the Property is not accepted by the Commissioner of Taxation or a Court or Tribunal as a GST-free supply of a going concern pursuant to clauses 13.1 and 13.2, the Buyer must pay to the Seller any penalties or interest imposed by the Commissioner of Taxation in respect of the sale.

Recovery of GST

- 13.4 If for any reason the Property or any part of the Property cannot be sold as a going concern and GST is, or will be, imposed on any Supply made by a Party under, or in connection with, this Contract (including costs required to be reimbursed or indemnified under this Contract), the supplier may, to the extent that the consideration otherwise provided for that Supply under this Contract is not stated to already include an amount in respect of GST on the Supply:
- 13.4.1 increase the consideration otherwise provided for that Supply under this Contract by the amount of that GST; or
 - 13.4.2 otherwise recover from the recipient the amount of that GST.

Invoices required

- 13.5 The recovery of any amount in respect of GST by the supplier under this Contract on a Supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- 13.6 Subject to any other provision of this Contract, the recipient of a Supply will pay any amount in respect of GST within 7 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

Reimbursements

- 13.7 Despite clause 13.5, if a Party is entitled under this Contract to be reimbursed or indemnified by the other Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment will not include any GST component of the cost or expense for which an input tax credit may be claimed by the Party entitled to be reimbursed or indemnified.

Value of Taxable Supplies

- 13.8 Where the consideration for a Supply under this Contract is not expressed or is not expressed as an amount of money, the Party making the Supply will provide the recipient a Tax Invoice for that Supply based on the GST inclusive market value of the consideration as determined in good faith by the Party making the Supply.

Invoice

- 13.9 Without affecting the obligations of the parties under this Contract, this Contract and supporting material is not a document notifying an obligation to make payment and is not an invoice under the GST Act.

Adjustments

- 13.10 If an adjustment of GST is required as a result of an adjustment event in respect of a supply made pursuant to this Contract, then:
- 13.10.1 a corresponding adjustment of GST payable under this Contract must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable, and

- 13.10.2 the supplier, if obligated to do so under the GST law, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.
-

14 Expert

Referral of disputes to an Expert

- 14.1 If any dispute or difference arises between the Parties under This Contract, either Party may by notice in writing to the other, specify the nature of the dispute and call for submission of the dispute to an Independent Expert.

Nomination of Expert

- 14.2 The Expert to be appointed shall be as agreed between the parties or failing agreement within 7 days after receipt of the notice referred to in clause 14.1, determined by the President of the Law Society of Western Australia at the request of either of the Parties.
- 14.3 In making his or her determination, the President of the Law Society of Western Australia must be instructed to take into account the criteria in clauses 14.4 and 14.5.
- 14.4 The Parties agree as follows:
- 14.4.1 if the dispute concerns a matter of Law, then a lawyer shall be appointed the Expert;
 - 14.4.2 if the dispute concerns a valuation, then a valuer shall be appointed the Expert;
 - 14.4.3 if the dispute concerns an accounting matter, then an accountant shall be appointed the Expert; and
 - 14.4.4 if the dispute concerns any other matters, the Expert will be determined by the President of the Law Society of Western Australia.

Expert to have appropriate experience

- 14.5 The Expert shall be required to have reasonable commercial, technical and practical experience of at least 10 years in the area of dispute and shall be required to undertake to keep confidential matters coming to his or her knowledge by reason of his appointment and carrying it out.

Powers of Expert

- 14.6 The Expert shall have each of the following powers:
- 14.6.1 to inform himself or herself independently as to the facts and if necessary technical matters to which the dispute relates;

14.6.2 to receive written submissions sworn and unsworn written statements and photocopy documents and to act upon the same; and

14.6.3 to take such measures as he or she thinks fit to expedite the completion of the dispute resolution including finding adversely to any Party who fails to comply with a timetable reasonably set by him or her.

14.7 The Parties shall do all things reasonably required by the Expert to assist the Expert in reaching its determination.

Venue

14.8 The dispute resolution shall be held in Perth, Western Australia unless the Parties otherwise agree.

Expert not an arbitrator

14.9 The Expert shall act as an expert and not an arbitrator. The determination of the Expert shall be final and binding on the Parties.

Procedures

14.10 Unless the parties otherwise agree, the Expert shall be required to accept submissions from the each Party as to the subject matter of the dispute within 20 Business Days of his or her appointment and shall be required to state his or her determination in writing within 40 Business Days of his or her appointment.

Costs of Expert

All costs of the Expert appointed pursuant to this clause shall be borne by the parties as determined by the Expert.

15 General

Variation

15.1 This Contract, including the schedules, can only be varied by the parties in writing, signed by all of the Parties.

Waiver

15.2 The fact that a Party fails to do, or delays in doing, something that Party is entitled to do under this Contract does not amount to a waiver of that party's right to do it.

15.3 A waiver by a Party is only effective if it is in writing.

15.4 A written waiver by a Party is:

15.4.1 only effective in relation to the particular obligation or breach in respect of which it is given; and

15.4.2 is not to be taken as an implied waiver of:

- (a) any other obligation or breach; or
- (b) that obligation or breach in relation to any other occasion.

Entire agreement

15.5 This Contract contains everything that the Parties have agreed on in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party (or a director, officer, agent or employee of that Party), before this Contract was executed.

Severability

15.6 If:

- 15.6.1 a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way;
- 15.6.2 any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Contract, but the rest of this Contract is not affected; and
- 15.6.3 the removal of a clause or part of a clause under clause 15.6.2 materially alters the commercial allocation of benefit and risk (or management of risk) under this Contract, the parties agree to negotiate in good faith to amend or modify the terms of the document as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

Further cooperation

15.7 Each Party must do anything (including executing a document) another Party reasonably requires in writing to give full effect to this Contract.

Relationship of the parties

- 15.8 This Contract does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties.
- 15.9 No Party is liable for an act or omission of another party, except to the extent set out in this Contract.

Governing Law and jurisdiction

15.10 This Contract is governed by the Law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Execution of separate documents

- 15.11 This Contract is properly executed if each Party executes this Contract or an identical document. In the former case, this Contract takes effect when the last Party executes this Contract. In the latter case, this Contract takes effect when the last of the identical documents is executed.
- 15.12 Evidence of execution of this Contract by a Party may be shown by fax, email or a PDF copy of this Contract.

No merger

- 15.13 The provisions of this Contract do not merge with any action performed or document executed by any Party for the performance of this Contract.

Assignment

- 15.14 Except as expressly permitted by this Contract, a Party must not assign any of its rights under this Contract without the prior written consent of the other Parties. That consent may be given or withheld at a Party's absolute discretion.

Third Party rights

- 15.15 A person who is not a Party to this Contract does not have any rights under or in connection with it.

Exclusion of contrary legislation

- 15.16 To the full extent permitted by Law, any legislation that adversely affects a right, remedy or obligation of a Party, under or relating to this Contract is excluded.

Duty

- 15.17 The Buyer must pay:
- 15.17.1 all duty payable under the *Duties Act 2008* (WA) in respect of the subject matter that this Contract effects or records; and
 - 15.17.2 any penalty or interest payable in respect of any duty the subject of clause 15.17.1 to the extent that the Buyer is responsible for such penalty or interest.

Costs

- 15.18 Except as otherwise agreed by the Parties in writing, each Party must pay its own costs in relation to preparing, negotiating and executing this Contract and any document related to this Contract.

Interest on late payment

- 15.19 If a Party does not make a payment to the other Party as required under this Contract, the defaulting Party must pay to the other Party interest calculated at the Prescribed Rate in respect of the outstanding amount, calculated from and including



the date the payment should have been made up to and including the date it is actually paid.



Execution

Executed as a deed

Date:

Seller

The Common Seal of the)
Western Australian Land Authority)
was hereunto affixed with the)
authority of its Board in the)
presence of:)

Chief Executive Officer Signature

Chief Executive Officer Name

Board Member Signature

Board Member Name

Buyer

Executed on behalf of)
[insert])
ACN [insert])
in accordance with section 127 of)
the *Corporations Act 2001* (Cth) by:)

Signature of Director

Signature of *Director/*Secretary

Print name of Director

Print name of *Director/*Secretary

**delete that which does not apply*



Schedule 1

Bank Guarantees and Security Deposits

Bank Guarantees

Item	Premises	Tenant	Amount of bank guarantee
1	[insert]		

Security Deposits

Item	Premises	Tenant	Amount of Security Deposit stated in Lease	Actual amount of Security Deposit held by the Seller
1	[insert]			



Schedule 2

Leases



Schedule 3

Plant and Equipment

Item	Asset Code	Description
[insert]		



Schedule 4

Service Contracts



Schedule 5

Proforma lease



Schedule 6

Leasing guidelines



Schedule 7

Car Park Contract



Schedule 8

General Conditions

FOREIGN RESIDENT WITHHOLDING

This annexure contains additional special conditions to the Contract for the Sale of Land or Strata Title by Offer and Acceptance for the property at

20 Sharpe Avenue, Karratha WA 6714, more particularly described in Annexure A

1. Foreign Resident Withholding

- (a) This special condition 1 applies (despite any other provision of the Contract) if:
 - 1) the market value of the Land is \$2 million or more and the Seller does not provide a Clearance Certificate to the Buyer at least 2 Business Days before Settlement; or
 - 2) for any other reason the Buyer is obliged to pay a Withholding Amount to the Commissioner.
- (b) If this special condition 1 applies:
 - 1) the Buyer must deduct the Withholding Amount from the Purchase Price and pay the Withholding Amount to the Commissioner by no later than Settlement; or
 - 2) if the Buyer provides to the Seller at Settlement:
 - (A) evidence from the Commissioner or the Australian Taxation Office that the Withholding Amount has been paid to the Commissioner; or
 - (B) a written undertaking from the Buyer Representative to pay the Withholding Amount to the Commissioner immediately following Settlement; or
 - (C) any other evidence relating to the payment of the Withholding Amount that is acceptable to the Seller,
 the Buyer is not required to pay that part of the Purchase Price to the Seller.
- (c) If special condition 1(b)(2)(B) applies, the Buyer will be treated as having given an irrevocable authority and direction to the Buyer Representative to pay the Withholding Amount to the Commissioner immediately following Settlement.
- (d) Any Variation Notice not provided to the Buyer at least 2 Business Days before Settlement is to be disregarded for the purposes of determining the Withholding Amount.
- (e) In this special condition 1:

Clearance Certificate means a current certificate issued by the Commissioner of Taxation under section 14-220 of Schedule 1 to the Tax Administration Act that applies to the Seller (and if the Seller consists of more than one person, to each person who comprises the Seller) in respect of the sale of the Property.

Commissioner has the meaning given in the Tax Administration Act 1953.

Tax Administration Act means the Tax Administration Act 1953 (Cth).

Variation Notice means a written notice issued by the Commissioner under section 14-235 of the Tax Administration Act to vary the amount otherwise payable by the Buyer under section 14-200 of the Tax Administration Act.

Withholding Amount means the amount which the Buyer is required by section 14-200 of Schedule 1 to the Tax Administration Act to pay to the Commissioner in respect of the purchase of the Property.

Seller

Dated

Seller

Dated

Buyer

Dated

Buyer

Dated

This page is intentionally blank.

CONTRACT FOR SALE OF LAND OR STRATA TITLE BY OFFER AND ACCEPTANCE

NOTICE: Contracts must be lodged with the Office of State Revenue for duty assessment within two (2) months of the date the last person executes the Contract

TO:

CBRE Pty Ltd (ACN 057 373 574)
Level 2, 216 St Georges Terrace
PERTH WA 6000

As Agent for the Seller / Buyer

THE BUYER (FULL NAME AND ADDRESS) **[insert]**

OFFERS TO PURCHASE (as joint tenants/tenants in common specifying the undivided shares) the Land and Property Chattels set out in the Schedule ("the Property") with vacant possession unless stated otherwise in the Special Conditions at the Purchase Price on the terms set out in the Schedule, the Conditions and the Special Conditions.

SCHEDULE

The Property at:

See Annexure A

Lot Deposited/Survey/Strata/Diagram/Plan..... Whole/Part Vol Folio.....

A deposit of **\$(insert)** of which **\$(insert)** is paid now and **\$(insert)** to be paid within days of acceptance.

To be held by **CBRE Pty Ltd**
("the Deposit Holder").

Purchase Price **\$(insert)**

Settlement Date: **See Annexure A**

Property Chattels including **N/A**

FINANCE CLAUSE **IS** APPLICABLE

LENDER

LATEST TIME: 4pm on:

AMOUNT OF LOAN:

SIGNATURE OF BUYER:

FINANCE CLAUSE IS **NOT** APPLICABLE

Signature of the Buyer if Finance Clause **IS NOT** applicable

.....

.....

SPECIAL CONDITIONS

Annexure A and Annexure B form part of this Contract.....

.....

.....

.....

.....

.....

.....

.....

NOTE: IF THIS DOCUMENT IS ON SEPARATE PAGES OR IS TO BE FAXED THEN ALL PARTIES SHOULD SIGN ALL PAGES

CONDITIONS

1. SUBJECT TO FINANCE

If the Buyer signs the "Finance Clause IS NOT Applicable" box in the Schedule then this clause 1 does not apply to the Contract.

If any information is completed in or the Buyer signs the "Finance Clause IS Applicable" box in the Schedule then this clause 1 applies to the Contract.

1.1 Buyer's Obligation to Apply for Finance and Give Notice to the Seller

- (a) The Buyer must:
- (1) immediately after the Contract Date make an application for Finance Approval to the Lender using, if required by the Lender, the Property as security; and
 - (2) use all best endeavours in good faith to obtain Finance Approval.
- (b) If the Buyer does not comply with clause 1.1(a) or 1.1(c)(1) then the Contract will not come to an end under clause 1.2 and the Buyer may not terminate the Contract under clause 1.3. The rights of the Seller under this Clause 1.1 will not be affected if the Buyer does not comply with Clause 1.1.
- (c) The Buyer must immediately give to the Seller or Seller Agent:
- (1) an Approval Notice if the Buyer obtains Finance Approval; or
 - (2) a Non Approval Notice if Finance Approval is rejected at any time while the Contract is in force and effect.

1.2 No Finance Approval by the Latest Time: Non Approval Notice Given

This Contract will come to an end without further action by either Party if on or before the Latest Time:

- (a) written Finance Approval has not been obtained; and
- (b) the Buyer gives a Non Approval Notice to the Seller or Seller Agent.

1.3 No Finance Approval by the Latest Time: No Notice Given

If by the Latest Time:

- (a) the Buyer has not given an Approval Notice to the Seller or Seller Agent; and
 - (b) the Buyer has not given a Non Approval Notice to the Seller or Seller Agent;
- then this Contract will be in full force and effect unless and until either the Seller gives written Notice of termination to the Buyer or the Buyer terminates this Contract by giving a Non-Approval Notice to the Seller or Seller Agent.

1.4 Finance Approval: Approval Notice Given

If by the Latest Time, or if clause 1.5 applies, before the Contract is terminated:

- (a) written Finance Approval has been obtained; and
 - (b) the Buyer has given an Approval Notice to the Seller or Seller Agent;
- then this Clause 1 is satisfied and this Contract is in full force and effect.

1.5 Notice Not Given by Latest Time: Seller's Right to Terminate

If by the Latest Time the Buyer has not given an Approval Notice or a Non Approval Notice to the Seller or Seller Agent then at any time until an Approval Notice is given, the Seller may terminate this Contract by written Notice to the Buyer.

1.6 Buyer Must Keep Seller Informed: Evidence

- (a) If requested in writing by the Seller or Seller Agent the Buyer must advise the Seller or Seller Agent of:
- (1) the progress of the Finance Application; and
 - (2) provide evidence in writing of the making of a Finance Application, in accordance with clause 1.1(a) and of any loan offer made, or any rejection; and
 - (3) if applicable the reasons for the Buyer not accepting any loan offer.
- (b) If the Buyer does not comply with the request within 2 Business Days then the Buyer authorises the Seller or Seller Agent to obtain from the Lender the information referred to in 1.6(a).

2. Acceptance of this offer will be sufficiently communicated to the Buyer if verbal or written notification is given by the Seller or Seller's Agent to the Buyer that the acceptance has been signed by the Seller.
3. The 2011 General Conditions are incorporated into this Contract so far as they are not varied by or inconsistent with the Conditions or Special Conditions of this Contract.
4. If GST is applicable to this transaction then the relevant GST provision should be outlined in the Special Conditions or in an attached GST Annexure, which forms part of this Contract.

BUYER [If a corporation, then the Buyer executes this Contract pursuant to s.127 of the Corporations Act]

	Witness	Date
See Annexure A...../...../.....
...../...../.....

THE SELLER (FULL NAME AND ADDRESS) ACCEPTS the Buyer's offer

See Annexure A.....

.....

[If a corporation, then the Seller executes this Contract pursuant to s.127 of the Corporations Act]

	Witness	Date
...../...../.....
...../...../.....

JOINT FORM A true copy of this document has been received by each of the Parties – together with a copy of the 2011 General Conditions.

STRATA DISCLOSURES If the Property is a Strata Lot, then the Buyer acknowledges having received the Form 28 Disclosure Statement before signing this Contract.

CONVEYANCER The parties nominate their Representative below to act on their behalf and consent to Notices being served to that Representative's facsimile number.

<u>BUYER'S REPRESENTATIVE</u>	<u>SELLER'S REPRESENTATIVE</u>
Name	Lavan
Signature

COPYRIGHT

The copyright of this Contract by Offer and Acceptance is the property of the Real Estate Institute of Western Australia (Inc.) ("REIWA") and neither the form nor any part of it may be used or reproduced by any method whatsoever or incorporated by reference or in any manner whatsoever in any other document without the consent of REIWA. **02/11**

Contract Schedule	4
1 Background	5
2 Definitions and interpretation	5
Definitions	5
Interpretation	6
3 Acknowledgment	7
Acknowledgement regarding this Contract	7
Notifiable information	7
Legal and financial advice	7
4 General Conditions	8
Application of General Conditions	8
5 Strata Titles Act to prevail	8
Strata Titles Act to prevail	8
6 Sale and purchase	8
7 Purchase Price	8
8 Building 2 Contract	8
Condition	8
Consequences if condition not met	8
9 Settlement	9
Condition precedent	9
Settlement Date	9
Settlement notice	9
Settlement Date	9
Outgoings	9
Failure to settle	9
Form 6	9
10 Conditions	10
Registration	10
Termination of Building 2 Contract	10
Effect of termination	10
Section 70(4) of the Act	10
11 Completion of the Property	10
Property details	10
12 Amendments to Strata Plan	10
Seller may amend Strata Plan	10
Buyer's rights regarding amendments to Strata Plan	11
Seller not obliged to agree on any amendments	11
13 Encumbrances	11
Property subject to encumbrances	11
Further encumbrances	12
14 Mortgage	12
Existing Mortgage	12
Further Mortgages	12
Discharge	12
15 Management Statement	12
Management Statement	12

16	Exclusive use areas	13
	Seller may grant exclusive use rights	13
17	Strata Company Meetings	13
	Seller's rights	13
	Seller may amend agreements	14
18	Proxy	14
	Buyer's appointment	14
	Appointment document	14
	Seller's nomination	14
	Buyer not to interfere	14
	Rectification and confirmation	14
19	Defects	15
	Defects Notice given by the Buyer	15
	Obligations of Seller	15
	Buyer may rectify Defects	15
	Licence to enter	15
	Subsequent buyer	16
20	Proposed Budget	16
	Proposed Budget	16
21	Other termination rights	16
	Seller's right to terminate	16
22	Assignment and dealings	16
	Seller's right to assign	16
	Seller may assign proxy	16
	Buyer's obligations if Seller assigns	16
	Restriction on on-sales	17
23	Caveats	17
	No Caveat by Buyer	17
24	Requisitions on title	17
	No requisitions	17
25	Land Tax	17
	Land Tax	17
	Delays to Settlement	18
26	GST	18
	Reimbursements	18
	Tax invoice	18
	Adjustments	18
27	Warranties and representations	19
	Warranties and representations	19
28	General	19
	Entire agreement	19
	Execution of separate documents	19
	Further acts	20
	Governing law and jurisdiction	20
	Severance	20
	Time for action	20
	Variation	20
	Waiver	20

Exclusion of laws	20
Survival of terms	20
Interest on late payment	21
Execution	22
Schedule 1 - General Conditions	24
Schedule 2 – Strata Plan and Schedule of Unit Entitlements	25
Schedule 3 – Form 28	26
Schedule 4 – Form 29	27
Schedule 5 – Management Statement	28
Schedule 6 – Proxy Form	29
Definitions	29
Interpretation	30

Contract Schedule

Item 1	Buyer	[insert]
Item 2	Seller	Western Australian Land Authority ABN 34 868 192 835, a statutory body corporate established under the Western Australian Land Authority Act 1992, of Level 3, 40 The Esplanade, Perth, Western Australia
Item 3	Property	Proposed Lot 2 on the Strata Plan.
Item 4	Purchase Price	[insert]

1 Background

- 1.1 The Seller is, or is entitled to become, the registered proprietor of the Land.
- 1.2 The Seller has agreed to sell, and the Buyer has agreed to buy, the Property, on the terms and conditions of this Contract.

2 Definitions and interpretation

Definitions

- 2.1 In this Contract the following definitions apply:

Approval means any approval, consent or certificate of a federal, state or local government authority (including the WAPC) or consent body relating to the Development;

Building 2 Contract means the contract between the Buyer and the Seller for the sale and purchase of the property at Karratha Terrace, Karratha, Western Australia more particularly described as Lot 7080 on Deposited Plan 401615, the whole of the land in Certificate of Title Volume 2831 Folio 955;

Building Contract means the building contract between the Seller and Doric Contractors Pty Ltd ACN 080 922 498 for the construction of the car park which includes the Property.

Business Day means a day which is not a Saturday, Sunday or a public holiday in Western Australia;

Buyer means the persons and/or entities identified in Item 1 of the Contract Schedule;

By-Laws means the by-laws contained in the Management Statement;

Common Property means common property for the Strata Scheme;

Contract Date means the day when both of the parties have received a fully executed original (or copy) of this Contract;

Contract Schedule means the contract schedule at the beginning of this Contract;

Development means the development of the Land in accordance with this Contract to create the Property;

Form 28 means the form attached as Schedule 3;

Form 29 means the form attached as Schedule 4;

General Conditions means mean the Law Society of Western Australia and Real Estate Institute of Western Australia Joint Form of General Conditions for the Sale Of Land 2011 Revision together with the Law Society of Western Australia and Real Estate Institute of Western Australia Electronic Conveyancing Annexure, copies of which are contained in Schedule 1;

GST has the same meaning as in the GST Act and includes any amount payable by an Australian government agency as a notional liability for GST;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or an Act imposing, or relating to the imposition or administration of, a value added or consumption tax;

Land means Lot 7079 on Deposited Plan 401615, being the whole of the land in Certificate of Title Volume 2831 Folio 954;

Latest Date means 31 August 2018;

Lot means a lot on the Strata Plan and includes, where the context permits, the Property;

Management Statement means the management statement attached as Schedule 5;

Mortgage means a mortgage, charge or other encumbrance granting a security interest;

Objection means any objection, requisition, claim (for compensation or otherwise), withholding of all or part of the Purchase Price, refusal to complete Settlement, delay in completing Settlement or termination of this Contract;

Property means the Lot described in item 3 of the Contract Schedule;

Proposed Budget means the budget information contained in the Form 28;

Proxy Form means the document attached as Schedule 6 appointing the Seller as the Buyer's proxy pursuant to Sale Condition 18;

Purchase Price means the amount specified in Item 4 of the Contract Schedule;

Registration means registration of the Strata Plan as a strata plan at Landgate and the creation and issue of a separate indefeasible title for the Property;

Sale Conditions means the sale conditions that make up this document;

Seller means the person or persons identified in Item 2 of the Contract Schedule;

Settlement Date means the date specified in Sale Condition 9.5;

Strata Company means the strata company of the Strata Scheme;

Strata Management Agreement means the draft management agreement attached or otherwise referred to in the Form 28 (if any);

Strata Plan means the plan attached as Schedule 2;

Strata Scheme means the strata scheme established upon registration of the Strata Plan;

Supply has the same meaning as in the GST Act;

Tax Invoice has the same meaning as in the GST Act; and

Third Party means any person or entity who is not a party to this Contract.

Interpretation

2.2 In this Contract, unless the context otherwise requires:

- 2.2.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued pursuant to that legislation or legislative provision;
- 2.2.2 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 2.2.3 a reference to a Sale Condition, part, schedule or attachment is a reference to a Sale Condition, part, schedule or attachment of or to this Contract unless otherwise stated;
- 2.2.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 2.2.5 if the day on which any act, matter or thing is to be done pursuant to this document is not a Business Day, that act, matter or thing may be done on the next Business Day;
- 2.2.6 an agreement on the part of 2 or more persons binds them jointly and severally;

- 2.2.7 an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- 2.2.8 a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more of them collectively and to each of them individually;
- 2.2.9 references to time are to time in Perth, Western Australia;
- 2.2.10 references to money and the sign '\$' are references to the currency of Australia;
- 2.2.11 a reference to the singular includes the plural and vice versa;
- 2.2.12 reference to 'including' means 'including, without limitation';
- 2.2.13 terms that are defined in the General Conditions will have the same meaning when used in this Contract;
- 2.2.14 a reference of a range of Sale Conditions includes all of the Sale Conditions in that range; and
- 2.2.15 grammatical derivations of a defined term have a corresponding meaning.

3 Acknowledgment

Acknowledgement regarding this Contract

- 3.1 This Contract incorporates the following:
 - 3.1.1 these Sale Conditions;
 - 3.1.2 subject to Sale Condition 4, the General Conditions;
 - 3.1.3 the Strata Plan;
 - 3.1.4 the Form 28;
 - 3.1.5 the Strata Management Agreement;
 - 3.1.6 the Proposed Budget;
 - 3.1.7 the Form 29;
 - 3.1.8 the Management Statement;
 - 3.1.9 the Proxy Form.
- 3.2 The Buyer acknowledges that it has read and understood this Contract in its entirety before entering into this Contract.

Notifiable information

- 3.3 The Buyer confirms that it has received all of the 'notifiable information' for the purposes of section 69 of the *Strata Titles Act 1985* (WA).

Legal and financial advice

- 3.4 The Buyer acknowledges that:
 - 3.4.1 it has been given the opportunity to obtain independent legal and financial advice in respect of this Contract; and
 - 3.4.2 it has obtained all independent legal and financial advice in respect of this Contract that it considers necessary.

4 General Conditions

Application of General Conditions

- 4.1 The General Conditions form part of this Contract except that:
 - 4.1.1 these Sale Conditions will override the General Conditions to the extent of any inconsistency; and
 - 4.1.2 General Conditions 7.3 - 7.6; 9; 10.1 - 10.4; 11; 12; 13 and 16 are excluded from this Contract.

5 Strata Titles Act to prevail

Strata Titles Act to prevail

- 5.1 If at any time and for so long as:
 - 5.1.1 the *Strata Titles Act 1985* (WA) applies to this Contract;
 - 5.1.2 a provision of the *Strata Titles Act 1985* (WA) conflicts with a provision of this Contract; and
 - 5.1.3 under the *Strata Titles Act 1985* (WA), that provision of the *Strata Titles Act 1985* (WA) prevails,then each conflicting provision of this Contract is deemed to be amended or deleted, as the case may be, to the extent necessary to enable this Contract to comply with the prevailing provision of the *Strata Titles Act 1985* (WA).

6 Sale and purchase

- 6.1 The Seller agrees to sell the Property to the Buyer on the terms and conditions of this Contract.
- 6.2 The Buyer agrees to buy the Property from the Seller on the terms and conditions of this Contract.

7 Purchase Price

- 7.1 The Buyer will pay the Purchase Price to the Seller (or as the Seller may in writing direct) at Settlement.

8 Building 2 Contract

Condition

- 8.1 This Contract is subject to and conditional upon the Buyer entering into the Building 2 Contract on or about the same time as this Contract.

Consequences if condition not met

- 8.2 The condition in Sale Condition 8.1 cannot be waived by either Party.
- 8.3 If the condition referred to in Sale Condition 8.1 is not satisfied or waived or deemed not to have been satisfied or waived on or before the date specified in Sale Condition 8.1, then:
 - 8.3.1 this Contract (other than this Sale Condition and the rights of the parties that have accrued before that date) is terminated;
 - 8.3.2 the Deposit must be refunded to the Buyer within 5 Business Days of this Contract being terminated for any reason other than due to a breach of this Contract by the Buyer; and

- 8.3.3 subject to Sale Condition 8.3.1, neither Party shall have any Claim whatsoever against the other or any of its related bodies corporate.

9 Settlement

Condition precedent

- 9.1 Settlement under this Contract:
- 9.1.1 is conditional upon settlement under the Building 2 Contract; and
 - 9.1.2 must be contemporaneous with settlement under the Building 2 Contract.

Settlement Date

- 9.2 Subject to Sale Condition 9.1, the Settlement Date will be the same date as settlement under the Building 2 Contract.

Settlement notice

- 9.3 Subject to Sale Conditions 9.1, 9.5 and 9.8, the Seller will give the Buyer a notice (at a time determined by the Seller) after Registration has been effected.
- 9.4 Subject to Sale Conditions 9.5 and 9.8, the notice referred to in Sale Condition 9.3 will:
- 9.4.1 call for Settlement; and
 - 9.4.2 specify the Settlement Date.

Settlement Date

- 9.5 For the purposes of Sale Conditions 9.3 and 9.4 but subject to Sale Conditions 9.1 and 9.8 the Settlement Date will be the later of:
- 9.5.1 the date that is 7 days after the certificate of title for the Property has issued; and
 - 9.5.2 the date that is 45 days from the Contract Date.
- but in any event not later than 31 May 2017 or such other date as the Parties may in writing agree.

Outgoings

- 9.6 On being granted possession of the Property, the Buyer is responsible for the payment of all Outgoings in respect of the Property (subject to the obligations of any person with respect to the use of the Property with respect to the payment of Outgoings).

Failure to settle

- 9.7 If the Parties fail to complete Settlement under this Contract and the Contract is terminated as a result:
- 9.7.1 the Buyer's entitlement to possession of the Property will immediately cease; and
 - 9.7.2 the Seller is immediately entitled to possession of the Property.

Form 6

- 9.8 If the Seller is required to issue the Buyer with a land owner's disclosure statement (Form 6) pursuant to section 68 of the *Contaminated Sites Act 2003* (WA) before Settlement, the Settlement Date will (if necessary) be extended to the date that will

allow the Seller to comply with section 68 of the *Contaminated Sites Act 2003* (WA), but the date must not be more than 14 days after the proposed Settlement Date.

- 9.9 The Buyer is not entitled to make any Objection in relation to any matter arising out of Sale Condition 9.8.

10 Conditions

- 10.1 Settlement under this Contract:

10.1.1 is conditional upon settlement under the Building 2 Contract; and

10.1.2 must be contemporaneous with settlement under the Building 2 Contract.

Registration

- 10.2 The sale and purchase of the Property pursuant to this Contract is conditional on Registration being effected by the Latest Date.

- 10.3 If the condition in Sale Condition 10.2 is not satisfied, the Buyer can terminate this Contract, by giving a notice of this to the Seller, at any time after the Latest Date.

Termination of Building 2 Contract

- 10.4 If at any time the Building 2 Contract is terminated for any reason, this Contract will automatically terminate at the same time without the requirement for either Party to give notice to the other.

Effect of termination

- 10.5 If this Contract is terminated pursuant to any of Sale Conditions 10.3 or 10.4:

10.5.1 this Contract will be at an end;

10.5.2 neither Party will have any further rights or obligations under this Contract, except for any rights or obligations:

(a) arising out of a breach of this Contract before the date of termination ;
or

(b) which are expressed or implied to survive termination.

Section 70(4) of the Act

- 10.6 The Buyer and the Seller agree that the preceding provisions of this Sale Condition 10 are a valid agreement in relation to Registration for the purposes of section 70(4)(a) of the *Strata Titles Act 1985* (WA).

11 Completion of the Property

Property details

- 11.1 The Seller will cause the Property to be completed as set out in this Sale Condition 11.

- 11.2 Subject to Sale Condition 12.1, the area and dimensions of the Property will be in accordance with those shown in the Strata Plan.

12 Amendments to Strata Plan

Seller may amend Strata Plan

- 12.1 Although the Seller does not intend to make any amendments to the Strata Plan at the Contract Date, amendments to the Strata Plan may be required as a result of the construction, approval or Seller's planning and design process. Therefore, without limiting Sale Conditions 12.3 – 12.4, the Seller may change the total number of Lots, change the configuration, dimensions, or position of the Lots (other than the Property), change the unit entitlement and the aggregate unit entitlement of the Lots, change the configuration, dimensions, position or area of the Common Property and

convert a Lot (or part of it) to Common Property subject to the change not materially prejudicing the rights or interests of the Buyer (unless the Seller obtains the consent of the Buyer to the change).

- 12.2 Without limiting Sale Condition 12.1, the Buyer acknowledges and agrees that as the project manager appointed in relation to the Development, it is in a position to make an informed decision regarding the purchase of the Property notwithstanding the scope of variations that the Seller is entitled to, and may be required to, make under Sale Condition 12.1.

Buyer's rights regarding amendments to Strata Plan

- 12.3 Subject to Sale Condition 12.4, if any amendment made by the Seller pursuant to Sale Condition 12.1 results in a reduction in the floor area of the Property of not more than 10% from the floor area of the Property shown in the Strata Plan (being the Strata Plan as at the Contract Date):
- 12.3.1 the Buyer will, by virtue of Sale Condition 12.1, be regarded as having received notice of that amendment for the purposes of section 69C(4) of the *Strata Titles Act 1985* (WA) before entering into this Contract; and
- 12.3.2 the Buyer is not entitled to make any Objection in relation to the amendment.
- 12.4 The Seller cannot make any amendment pursuant to Sale Condition 12.1 if it results in a reduction in the floor area of the Property of more than 10% from the floor area of the Property shown in the Strata Plan (being the Strata Plan as at the Contract Date) or in a reduction in the number of car parking bays which comprise the Property as shown on the Strata Plan (being the Strata Plan as at the Contract Date), unless the Seller obtains the prior consent of the Buyer.

Seller not obliged to agree on any amendments

- 12.5 The Buyer acknowledges that the Seller is not obliged to enter into any negotiation, agreement or arrangement with the Buyer to vary the Property.

13 Encumbrances

Property subject to encumbrances

- 13.1 The Property is sold subject to:
- 13.1.1 the provisions of the *Strata Titles Act 1985* (WA);
- 13.1.2 the provisions of the *Transfer of Land Act 1893* (WA);
- 13.1.3 the unit entitlement of each Lot and all other matters contained in or endorsed upon the Strata Plan;
- 13.1.4 all restrictions on use, easements of access, support, shelter and services expressed or implied in favour of, or against, the owner of any Lot or the strata company as shown on the Strata Plan or created or implied by the *Strata Titles Act 1985* (WA) including, without limitation, the public access easement in favour of the local government as detailed on the Strata Plan;
- 13.1.5 the By-Laws (including any By-Laws relating to re-subdivision of the Strata Scheme);
- 13.1.6 all laws affecting the Property;
- 13.1.7 all other requisitions, orders, notices, notifications and memorials issued by any competent authority in relation to the Property including any of the following:
- (a) any notification registered against the title to the Property pursuant to section 70A of the *Transfer of Land Act 1893* (WA);

- (b) any restrictive covenant registered against the title to the Property pursuant to sections 129BA or 136D of the *Transfer of Land Act 1893* (WA) or section 150 of the *Planning and Development Act 2005* (WA); and
- (c) any notification registered against the title to the Property pursuant to section 165 of the *Planning and Development Act 2005* (WA).

13.1.8 all of the matters referred to in Sale Condition 13.4.

13.2 Subject to Sale Condition 19, the Buyer is not entitled to make any Objection to any of the matters referred to in Sale Condition 13.1.

Further encumbrances

13.3 Without limiting Sale Condition 13.1, the Buyer acknowledges that, at the Contract Date, the Seller may not have:

- 13.3.1 granted, created or identified all the easements, leases, restrictions on use, notifications and covenants;
- 13.3.2 entered into all agreements, leases, licenses, authorisations and other arrangements;
- 13.3.3 granted all the rights and privileges;
- 13.3.4 dedicated all the land; and/or
- 13.3.5 created the roads or any services,

which may be considered necessary or desirable for the Seller or the Strata Company to create, enter into, grant or dedicate.

13.4 So long as the further encumbrance does not materially adversely affect the Buyer's use and enjoyment of the Property, the Seller is entitled to give effect to any matter referred in Sale Condition 13.3 and the Buyer is not entitled to make any Objection to this.

14 Mortgage

Existing Mortgage

14.1 The Buyer acknowledges that either or both the Land or the Property may be subject to a Mortgage.

Further Mortgages

14.2 Subject to Sale Condition 14.3, the Buyer consents to the Seller further encumbering either or both the Land or the Property by granting one or more further Mortgages over the whole or any part of the Land (including the Property).

Discharge

14.3 For the purposes of section 14 of the *Sale of Land Act 1970* (WA), the Seller will discharge any Mortgage over the Property (or provide the Buyer with a registrable discharge of Mortgage) on or before Settlement.

15 Management Statement

Management Statement

- 15.1 The Seller intends to register the Management Statement.
- 15.2 The Management Statement is provisional only.
- 15.3 The Seller may amend the Management Statement in any manner prior to Settlement subject to the amendment not materially prejudicing the rights or interests of the Buyer (unless the Seller obtains the consent of the Buyer to the amendment).

- 15.4 The Buyer is not entitled to make any Objection to the Seller exercising its rights pursuant to Sale Condition 15.3.

16 Exclusive use areas

Seller may grant exclusive use rights

- 16.1 The Seller may cause the Strata Company pursuant to any of Sale Conditions 17 - 18 to do any or all of the following:
- 16.1.1 grant exclusive use rights over the Common Property in relation to any Lot;
 - 16.1.2 grant an approval for improvements on the Common Property that are for the benefit of any Lot; or
 - 16.1.3 impose conditions on the relevant owner of the benefited Lot regarding the maintenance, repair and running costs of either or both the Common Property or the improvements,
- provided that the rights and interests of the Buyer under this Contract are not materially prejudiced.
- 16.2 The Buyer is not entitled to make any Objection to:
- 16.2.1 the Seller exercising its rights pursuant to Sale Condition 16.1; or
 - 16.2.2 the Seller granting exclusive use or special privileges to the owners of other Lots for car spaces, storage spaces or for any other purpose provided that the rights and interests of the Buyer under this Contract are not materially prejudiced.

17 Strata Company Meetings

Seller's rights

- 17.1 Subject to the provisions of the *Strata Titles Act 1985* (WA), following Registration, the Seller may, as sole proprietor or as the Buyer's proxy pursuant to Sale Condition 18, cause the Strata Company to:
- 17.1.1 for the purpose of section 47(2)(e) of the *Strata Titles Act 1985* (WA), adopt the Proposed Budget as the budget for the Strata Company;
 - 17.1.2 enter into an agreement with any person for the appointment of a strata managing agent of the Strata Company substantially on the terms and conditions contained in the Strata Management Agreement;
 - 17.1.3 enter into a supply or asset agreement or similar type of agreement with any energy provider (including a gas supplier) or asset manager to install equipment, supply energy or manage energy assets for the Strata Scheme in the form as generally required by the energy provider or asset manager; and
 - 17.1.4 enter into any other agreement appointing a caretaker, facilities manager or strata manager for the Strata Scheme or any other agreement contemplated in the Management Statement such as an accommodation management agreement.
- 17.2 For the avoidance of doubt, the Seller is not obliged to do any of the things specified in Sale Condition 17.1.
- 17.3 The Buyer is not entitled to make any Objection to the Seller exercising its rights pursuant to Sale Condition 17.1.

Seller may amend agreements

- 17.4 If the Seller has not caused the Strata Company to enter into any of the agreements referred to in Sale Condition 17.1 prior to the first annual general meeting of the Strata Company, then (and without limiting the Seller's rights pursuant to Sale Condition 18) if requested by the Seller, the Buyer will vote in favour of or against a resolution relating to one or more of the agreements referred to in that Sale Condition at the first annual general meeting, as required by the Seller.
- 17.5 The Buyer is not entitled to make any Objection to the Seller exercising its rights pursuant to Sale Condition 17.4.

18 Proxy

Buyer's appointment

- 18.1 The Buyer, for valuable consideration, irrevocably appoints the Seller as the Buyer's proxy for the purposes of all meetings of the Strata Company and/or the strata council for the Strata Company regarding the matters referred to in Sale Condition 18.2.
- 18.2 The Buyer appoints the Seller as the Buyer's proxy to vote in relation to:
- 18.2.1 the Strata Company entering into any agreement for the provision of amenities or services to the Strata Scheme, including entering into any strata management agreement;
 - 18.2.2 for the period of 12 months after the Settlement Date, on any matter, including, without limitation, the amending or repealing any of the by-laws of the Strata Scheme from time to time as required by the Seller; and
 - 18.2.3 anything necessary or incidental to the exercise of the Seller's rights under Sale Conditions 15 - 17.
- 18.3 The appointment of the proxy pursuant to Sale Condition 18.1 will, except as provided in Sale Condition 18.2.2 be for the period commencing on the Settlement Date and ending 12 months after the Settlement Date.

Appointment document

- 18.4 Without limiting Sale Condition 18.1, the Buyer will, on signing this Contract, deliver to the Seller the Proxy Form, signed by the Buyer.
- 18.5 The Buyer authorises the Seller to date and complete any blank spaces in the Proxy Form following execution by the Buyer.
- 18.6 Without limiting Sale Conditions 18.1 - 18.5, the Seller is entitled to act as the Buyer's proxy on all matters relating to Sale Condition 17.

Seller's nomination

- 18.7 If requested by the Seller, the Buyer will sign and deliver a fresh proxy form to the Seller in favour of a person nominated by the Seller.

Buyer not to interfere

- 18.8 While the appointment pursuant to this Sale Condition 18 is in force in favour of the Seller or it's nominee, the Buyer will not:
- 18.8.1 exercise a vote on a matter which the proxy seeks to vote on;
 - 18.8.2 revoke the proxy; or
 - 18.8.3 grant any other proxy to any other person dealing with the same matters in this Sale Condition 18.

Rectification and confirmation

- 18.9 The Buyer agrees to ratify and confirm all things which the proxy lawfully does pursuant to Sale Condition 18.

19 Defects

- 19.1 The Seller will be responsible (at the Seller's cost) for ensuring that all workmanship defects in respect of the Property arising within:
- 19.1.1 12 months after the date practical completion of the Property is achieved under the Building Contract; and
 - 19.1.2 any further or separate defects liability period which the Seller is entitled to under the Building Contract,
- (**Defects Liability Period**), are remedied.

Defects Notice given by the Buyer

- 19.2 The Buyer may at any time during the Defects Liability Period give a notice (**Defects Notice**) to the Seller of any defects (if any) which in the reasonable opinion of the Buyer are required to be made good.
- 19.3 Any Defects Notice must identify the defect and state a date by which the Seller must complete the rectification work. The dates specified in the Defects Notice must be reasonable having regard to the relevant defect.

Obligations of Seller

- 19.4 The Seller must:
- 19.4.1 promptly make good the defect specified in the Defects Notice within the relevant time specified in the Defects Notice;
 - 19.4.2 promptly make good any defect of which it becomes aware during the Defects Liability Period; and
 - 19.4.3 give notice to the Buyer when, in the Seller's opinion, all defects specified in the Defects Notice have been made good.

Buyer may rectify Defects

- 19.5 If:
- 19.5.1 the Seller does not complete the rectification work by the date specified in the Defects Notice; or
 - 19.5.2 in the case of an emergency,
- the Buyer may have the rectification work carried out without prejudice to any other rights that the Buyer may have against the Seller in connection with the defect.
- 19.6 The reasonable cost of the rectification work incurred by the Buyer is a debt due from the Seller to the Buyer payable on demand.

Licence to enter

- 19.7 The Buyer grants to the Seller a licence for the Seller (and the Seller's employees and contractors) to enter the Property to remedy the workmanship defects in accordance with this Sale Condition 19.
- 19.8 Each of the following applies to the licence referred to in Sale Condition 19.7:
- 19.8.1 The licence will remain in effect until the Seller's obligations under Sale Condition 19.1 have been discharged in full.
 - 19.8.2 The Seller must give the Buyer not less than 2 Business Days notice prior to entering the Property to remedy any defect.
 - 19.8.3 The Seller must ensure that its employees and contractors cause as little disruption to the enjoyment of the Property by those persons entitled to be on the Property as is reasonably possible and the Seller must make good any damage caused to the Property.

- 19.8.4 The Seller will retain all retention moneys and/or security, and the benefit of all documents securing such moneys and/or security, held by the Seller under the Building Contract.

Subsequent buyer

- 19.9 If the Buyer sells the Property to a Third Party prior to the expiry of the Defects Liability Period, the Seller agrees to enter into a deed with the Third Party under which the Seller and the Third Party agree to comply with this Sale Condition 19 until the expiry of the Defects Liability Period.

20 Proposed Budget

Proposed Budget

- 20.1 An estimate of the costs of the management and administration of the Strata Company for the first year after Registration is contained in the Proposed Budget.
- 20.2 The Proposed Budget is an estimate only and the Buyer is not entitled to make any Objection in relation to any difference in the actual budget or contributions levied by the Strata Company, or in relation to the Seller adopting the Proposed Budget (as varied) as the budget for the Strata Company under Sale Condition 17.1.1.

21 Other termination rights

Seller's right to terminate

- 21.1 Without prejudice to any other rights which the Seller may have, if the Buyer, being a company:
- 21.1.1 becomes an externally administered body as defined in the *Corporations Act 2001* (Cth); or
 - 21.1.2 a 'controller' (as defined in the *Corporations Act 2001* (Cth)) is appointed to any of the Buyer's property or any steps are taken for the appointment of such a person,
- the Seller will be entitled to terminate this Contract, without any requirement for the Seller to comply with General Conditions 1, 23 and 24.

22 Assignment and dealings

Seller's right to assign

- 22.1 In addition to the Seller's unrestricted right to sell the Lots, the Seller may assign any or all of its interests, rights and obligations in any or all of:
- 22.1.1 this Contract;
 - 22.1.2 the Land (or the relevant parcel); or
 - 22.1.3 the Property,
- to an assignee who signs a written agreement in the Buyer's favour to be bound by this Contract in place of the Seller.
- 22.2 The Seller will be released from any obligations in this Contract that are assigned pursuant to Sale Condition 22.1.

Seller may assign proxy

- 22.3 To the extent it is able to do so at law, the Seller may assign and its right to act as proxy for the Buyer pursuant to Sale Condition 18.

Buyer's obligations if Seller assigns

- 22.4 The Buyer agrees in favour of any assignee pursuant to Sale Condition 22.1 to observe this Contract as if the assignee was the Party originally named in this

Contract as the Seller, and the Buyer will do anything that the Seller or the assignee reasonably requires to secure the assignee's rights in this Contract including:

- 22.4.1 signing any deed of covenant the Seller considers necessary; and
- 22.4.2 without limiting Sale Conditions 18.7, signing a new proxy form pursuant to this Contract in favour of the assignee.

Restriction on on-sales

- 22.5 Unless the Buyer has obtained the prior written consent of the Seller to do so, the Buyer is not permitted to, and will not, sell or transfer, or agree to sell or transfer, the Property while the proxy pursuant to Sale Condition 18 remains in effect unless the Buyer, as a condition of that sale, transfer, assignment:
 - 22.5.1 ensures that the purchaser, transferee, assignee (if applicable) first agrees to appoint the Seller as its and proxy in accordance with Sale Condition 18;
 - 22.5.2 obtains the same covenant from any further purchaser, transferee or assignee contained in this Sale Condition 22.5;
- in a manner satisfactory to the Seller (acting reasonably).

23 Caveats

No Caveat by Buyer

- 23.1 The Buyer will not, before Registration, lodge any caveat against the title to the Land or the Property to protect the Buyer's interest in this Contract.

24 Requisitions on title

No requisitions

- 24.1 The Buyer is:
 - 24.1.1 deemed to have accepted unconditionally the Seller's title to the Land and the Property;
 - 24.1.2 not entitled to deliver or make any requisitions in relation to the Seller's title to the Land or the Property; and
 - 24.1.3 is deemed to have unconditionally waived its right to deliver or make any such requisition.

25 Land Tax

Land Tax

- 25.1 If, at Settlement, there is a separate assessment for Land Tax in relation to the Property, Land Tax will be apportioned as an Outgoing.
- 25.2 If, at Settlement, there is no separate assessment for Land Tax for the Property, Land Tax will be apportioned at Settlement on the basis that the amount of Land Tax applicable to the Property is equal to **A** in the following formula:

$$\mathbf{A = B \times (C/D)}$$

where:

- A** = the amount of Land Tax applicable to the Property;
- B** = the amount of Land Tax applicable to the Land on the basis that at midnight on the previous 30 June, the Seller owned no land other than the Land, disregarding any exemption or concession that may or would otherwise have been granted to an individual or corporation owning land in Western Australia

(but if there is no separate assessment, this will be the amount reasonably determined by the Seller);

C = the unit entitlement of the Property; and

D = the aggregate unit entitlement for the Land.

25.3 If the Buyer is unable to obtain a Land Tax clearance for either or both the Property or the Land:

25.3.1 the Buyer will still complete this Contract; and

25.3.2 the Buyer is not entitled to make any Objection to this.

25.4 If Sale Condition 25.3 applies, the Buyer accepts the Seller's undertaking, which is now given, to pay the applicable charge referred to in that Sale Condition when due (but Land Tax will still be adjusted between the Buyer and the Seller as set out in this Sale Condition 25.2).

25.5 The Buyer will be responsible for any Land Tax assessed against the Property for the period after Settlement.

Delays to Settlement

25.6 If:

25.6.1 the Settlement Date is before or on 30 June in a particular year; and

25.6.2 Settlement does not occur before 5pm on 30 June in that particular year for a reason attributable to the Buyer,

the Buyer will pay to the Seller, as an adjustment to the Purchase Price:

25.6.3 the full amount of any Land Tax assessed in respect of the Property as at midnight on 30 June for that particular year (i.e. for the following financial year); and

25.6.4 its share of Land Tax for the previous financial year (calculated as if Settlement had occurred on the relevant date in the previous financial year).

26 GST

26.1 The parties agree that for the purposes of the GST Act, the Purchase Price excludes GST and the Supply of the Property is not made under the Margin Scheme.

26.2 If a Party makes a supply pursuant to this Contract, and GST is payable on that supply, the consideration for the supply (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made, except where the recipient of the supply is liable under the GST law to pay the GST on that supply.

Reimbursements

26.3 If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by an amount equal to any input tax credit the other Party is entitled to in respect of the loss, cost or expense, and then increased in accordance with Sale Condition 26.2 where applicable.

Tax invoice

26.4 A Party need not make a payment for a taxable supply made pursuant to this Contract until it receives a tax invoice for the supply to which the payment relates.

Adjustments

26.5 If an adjustment of GST is required as a result of an adjustment event in respect of a supply made pursuant to this Contract, then:

- 26.5.1 a corresponding adjustment of GST payable under this Agreement must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable, and
- 26.5.2 the supplier, if obligated to do so under the GST law, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.

27 Warranties and representations

Warranties and representations

- 27.1 The Buyer acknowledges, agrees and is deemed to have satisfied itself that:
 - 27.1.1 by enquiry of the appropriate authorities as to the use to which the Property may be put, its zoning, the manner in which the Development may be carried out and of all restrictions relating to the Property, the Strata Scheme and the Development;
 - 27.1.2 by enquiry and survey as to the location of the boundaries of the Property including as to whether the Property encroaches on adjoining land or whether the Property is encroached on by adjoining property;
 - 27.1.3 by the Buyer's own independent valuation and reports, as to the value of the Property;
 - 27.1.4 by the Buyer's own physical examination and enquiry as to the fitness and suitability of the Property for any particular purpose;
 - 27.1.5 by the Buyer's own physical examination and enquiry as to the nature and extent of contamination on the Land and/or the Property; and
 - 27.1.6 by enquiry, inspection and review as to the level of income, expenses or income producing potential of the Property.
- 27.2 The Buyer is deemed to enter into this Contract in reliance solely on the examinations, inspections, enquiries and perusals referred to in Sale Condition 27.1.
- 27.3 Without limiting Sale Conditions 27.1 and 27.2, the Buyer acknowledges and agrees that as the development manager appointed in relation to the Development, it is in a position to make an informed decision regarding the purchase of the Property based on its own enquiries.

28 General

Entire agreement

- 28.1 This Contract contains everything the parties have agreed on in relation to the matters it deals with.
- 28.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Contract was executed, save as permitted by law.

Execution of separate documents

- 28.3 This Contract is properly executed if each Party executes either this Contract or an identical Contract.
- 28.4 In the latter case, this Contract takes effect when the separately executed Contracts are exchanged between the parties.
- 28.5 This Contract may be exchanged by email or facsimile.

Further acts

- 28.6 The Buyer will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Contract.

Governing law and jurisdiction

- 28.7 This Contract is governed by the law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts.
- 28.8 The parties will not object to the exercise of jurisdiction by those courts on any basis.

Severance

- 28.9 If a Sale Condition or part of a Sale Condition can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it will be read in the latter way. If any Sale Condition or part of a Sale Condition is illegal, unenforceable or invalid, that Sale Condition or part is to be treated as removed from this Contract, but the rest of this Contract is not affected.
- 28.10 If the removal of a Sale Condition or part of a Sale Condition pursuant to Sale Condition 28.9 materially alters the commercial allocation of benefit and risk (or management of risk) in this Contract, the parties agree to negotiate in good faith to amend or modify the terms of this Contract as may be necessary or desirable having regard to the original terms of the sale and the prevailing circumstances.

Time for action

- 28.11 If the day on or by which something is required to be done or may be done is not a Business Day, that thing will be done on or by the next Business Day.

Variation

- 28.12 No variation of this Contract will be of any force or effect unless it is in writing and signed by the parties to this Contract.
- 28.13 For the avoidance of doubt, the Buyer agrees that no real estate agent or other consultant appointed by the Seller has authority to change or waive any term of this Contract, except the Seller and the Seller's solicitors.

Waiver

- 28.14 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do pursuant to this Contract, does not amount to a waiver of any obligation of, or breach of obligation by, another Party .
- 28.15 A waiver by a Party is only effective if it is in writing.
- 28.16 A written waiver by a Party :
- 28.16.1 is only effective in relation to the particular obligation or breach in respect of which it is given; and
- 28.16.2 is not to be taken as an implied waiver of:
- (a) that obligation or breach in relation to any other occasion; or
- (b) any other obligation or breach.

Exclusion of laws

- 28.17 To the extent permitted by law, any warranties implied by law on the Seller are excluded from this Contract.

Survival of terms

- 28.18 The obligations, warranties and covenants contained in this Contract will, to the extent they have not been fully performed and discharged:
- 28.18.1 continue and survive; and
- 28.18.2 not merge with or be extinguished by,

Settlement.

Interest on late payment

- 28.19 If a Party does not make a payment to the other Party as required under this Contract, the defaulting Party must pay to the other Party interest calculated at the Prescribed Rate in respect of the outstanding amount, calculated from and including the date the payment should have been made up to and including the date it is actually paid.

Execution

Executed as a deed

Seller

The Common Seal of the)
Western Australian Land Authority)
was hereunto affixed with the)
authority of its Board in the)
presence of:)

Chief Executive Officer Signature

Chief Executive Officer Name

Board Member Signature

Board Member Name

Buyer

Signed for and on behalf of)
[insert])
ACN [insert])
by authority of its directors in)
accordance with section 127 of)
the Corporations Act)

Signature of Director

Signature of *Director/*Secretary

Print name of Director
**delete that which does not apply*

Print name of *Director/*Secretary

Schedule 1 - General Conditions

Schedule 2 – Strata Plan and Schedule of Unit Entitlements

Note: those areas of the Strata Plan which relate especially to the Property have been highlighted.

Schedule 3 – Form 28

Schedule 4 – Form 29

Schedule 5 – Management Statement

Schedule 6 – Proxy Form

PROXY APPOINTMENT FORM – STRATA PLAN No 67914

1 I/We:

[insert]

(Appointor name)

being the owner/s of Lot 2 on Strata Plan No 67914 , irrevocably and exclusively appoint:

1.1 Western Australian Land Authority ABN 34 868 192 835;

1.2 each of their Chief Financial Officer, Chief Executive Officer and Chief Operating Officer, jointly and severally; and

1.3 any of their assignees or nominees,

as the Appointor's proxy for the purposes specified in clause 2 of this form.

2 Subject to section 50A of the *Strata Titles Act* 1985 (WA), this form authorises the Proxy to:

2.1 attend all meetings of the Strata Company and/or the strata council on the Appointor's behalf; and

2.2 vote on all motions of the Strata Company and/or the strata council on the Appointor's behalf in relation to:

2.2.1 the Strata Company entering into any agreement for the provision of amenities or services to the Strata Scheme, including entering into any strata management agreement;

2.2.2 amending or repealing any of the by-laws of the Strata Scheme from time to time as required by the Proxy, subject to the amendment not prejudicing the rights or interests of the Appointor (unless the Proxy obtains the consent of the Appointor to the amendment); and

2.2.3 anything necessary or incidental to the exercise of the Proxy's rights under sale conditions 15 – 17 of the car park purchase contract between the parties,

for the period commencing on the date of this form and ending 12 months after the Settlement Date.

3 Subject to section 50A of the *Strata Titles Act* 1985 (WA), during the period referred to in clause 2 of this form, the Appointor will not:

3.1 exercise a vote on a matter which the Proxy seeks to vote on;

3.2 revoke the proxy; or

3.3 grant any other proxy to any other person dealing with the same matters in this form.

4 The Appointor agrees to ratify and confirm all things which the proxy lawfully does under this form.

Definitions

5 In this document:

Appointor means the persons referred to in clause 1 as the appointor;

Proxy means the persons referred to in clause 1 as the proxy;

Strata Company means the strata company for Strata Plan No 67914; and

Settlement Date means the date that settlement of the sale and purchase of the Lot referred to in clause 1, from the Proxy to the Appointer, occurs.

Interpretation

6 In this document, unless the context otherwise requires:

- 6.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 6.2 a reference to any agreement or document is a reference to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 6.3 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;
- 6.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 6.5 an agreement on the part of 2 or more persons binds them jointly and severally;
- 6.6 an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- 6.7 a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to 2 or more of them collectively and to each of them individually;
- 6.8 references to time are to time in Perth, Western Australia; and
- 6.9 references to money and the sign '\$' are references to the currency of Australia.

Date:

EXECUTED AS A DEED

APPOINTOR:

Signed for and on behalf of

[insert]

ACN [insert]

by the authority of its directors in
accordance with section 127 of
the *Corporations Act* 2001 (Cth)

)
)
)
)
)
)

Signature of Director

Signature of *Director/*Secretary

Print name of Director

Print name of *Director/*Secretary

**delete that which does not apply*

FOREIGN RESIDENT WITHHOLDING

This annexure contains additional special conditions to the Contract for the Sale of Land or Strata Title by Offer and Acceptance for the property at

See Annexure A

1. Foreign Resident Withholding

- (a) This special condition 1 applies (despite any other provision of the Contract) if:
 - 1) the market value of the Land is \$2 million or more and the Seller does not provide a Clearance Certificate to the Buyer at least 2 Business Days before Settlement; or
 - 2) for any other reason the Buyer is obliged to pay a Withholding Amount to the Commissioner.
- (b) If this special condition 1 applies:
 - 1) the Buyer must deduct the Withholding Amount from the Purchase Price and pay the Withholding Amount to the Commissioner by no later than Settlement; or
 - 2) if the Buyer provides to the Seller at Settlement:
 - (A) evidence from the Commissioner or the Australian Taxation Office that the Withholding Amount has been paid to the Commissioner; or
 - (B) a written undertaking from the Buyer Representative to pay the Withholding Amount to the Commissioner immediately following Settlement; or
 - (C) any other evidence relating to the payment of the Withholding Amount that is acceptable to the Seller,
 the Buyer is not required to pay that part of the Purchase Price to the Seller.
- (c) If special condition 1(b)(2)(B) applies, the Buyer will be treated as having given an irrevocable authority and direction to the Buyer Representative to pay the Withholding Amount to the Commissioner immediately following Settlement.
- (d) Any Variation Notice not provided to the Buyer at least 2 Business Days before Settlement is to be disregarded for the purposes of determining the Withholding Amount.
- (e) In this special condition 1:

Clearance Certificate means a current certificate issued by the Commissioner of Taxation under section 14-220 of Schedule 1 to the Tax Administration Act that applies to the Seller (and if the Seller consists of more than one person, to each person who comprises the Seller) in respect of the sale of the Property.

Commissioner has the meaning given in the Tax Administration Act 1953.

Tax Administration Act means the Tax Administration Act 1953 (Cth).

Variation Notice means a written notice issued by the Commissioner under section 14-235 of the Tax Administration Act to vary the amount otherwise payable by the Buyer under section 14-200 of the Tax Administration Act.

Withholding Amount means the amount which the Buyer is required by section 14-200 of Schedule 1 to the Tax Administration Act to pay to the Commissioner in respect of the purchase of the Property.

Seller

Dated

Seller

Dated

Buyer

Dated

Buyer

Dated