



## CONTRACT OF SALE

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Level 6 Wesfarmers House	Postal Address
40 The Esplanade	Locked Bag 5
Perth WA 6000	T: (08) 9482 7499
Australia	F: (08) 9481 0861
	<a href="http://www.landcorp.com.au">www.landcorp.com.au</a>

## CONTRACT OF SALE

BETWEEN **WESTERN AUSTRALIAN LAND AUTHORITY** trading as LandCorp of Level 6, 40 The Esplanade, Perth, Western Australia ("**LandCorp**").

AND City of Karratha  
(Name)

[insert] [insert]  
(Contact Telephone Number) (Facsimile Number)

[insert]  
(Email)

[insert] ("**Buyer**")  
(Address)

LandCorp agrees to sell and the Buyer agrees to purchase the Land specified in the Schedule for an estate in fee simple for the Purchase Price and on the terms specified in the Schedule and subject to the LandCorp Standard Industrial and Commercial/Mixed Use Conditions ("**the Conditions**") as attached.

### SCHEDULE

#### **Description of Land**

Lot 7078 on Deposited Plan 401615 and being the whole of the land in Certificate of Title Volume.2831 Folio...953...and known as 22 Sharpe Avenue, Karratha

AND

Lot 47 on Strata Plan 67914 (together with a share in any common property as set out on the strata plan) and being the whole of the land in Certificate of Title Volume 2927 Folio 462 comprising 101 car parking bays

#### **Settlement Date**

20 Business Days after the Contract Date.

#### **Purchase Price (inclusive of GST)**

\$1.00 together with the payment mentioned in Special Condition 7

#### **Deposit**

Not applicable

### **Development/Design Guidelines**

The development is required to be consistent (and comply) with all State and Local Planning Schemes and Policies

### **Approved Purpose**

Phase 1 - The development and operation of a 4 star hotel as determined in accordance with the criteria published by the Australian Tourism Industry Council (**Hotel**) comprising four stories and a minimum of 100 guest rooms on the Land (**Phase 1 Development**).

Phase 2 – The development of a food and beverage offering (of a nature and quality consistent with a 4 star hotel) on the Land as indicated on the sketch plan attached (**Phase 2 Development**).

### **Latest Date for Commencement of Construction of Development**

Phase 1 Development - Within twelve (12) months of the Settlement Date.

Phase 2 Development – not applicable

### **Latest Date for Practical Completion of Development**

Phase 1 Development - Within thirty six (36) months of the Settlement Date.

Phase 2 Development – not applicable

### **Latest Date for Issue of Title**

Not applicable.

### **Latest Date for Loan Approval**

Not applicable

### **Minimum Amount of Loan**

Not applicable

### **Special Conditions**

#### **1. Sale of strata lot**

The Buyer acknowledges that:

- (a) it has entered into this Contract having received a full copy of this Contract including the annexures listed below:
  - (i) Disclosure Statement – Form 28 and Form 29;
  - (ii) standard By-laws;
  - (iii) Strata Plan 67914;
  - (iv) Management Statement;
  - (v) Strata Management Agreement; and
  - (vi) strata company budget or proposed budget;
- (b) it has read and understood the information contained in this Contract and the Disclosure Statement prior to entering into this Contract; and
- (c) the Management Statement has been registered with Landgate and the Strata Company has adopted the By-laws.

## **2. Buyer's warranties**

2.1 The Buyer represents and warrants to the Seller that, as at the Contract Date and at Settlement:

- (a) it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Contract;
- (b) Without limiting paragraph (a) the Buyer has satisfied all the requirements (as the local government) under the Local Government Act 1995 (Act ) ,including but not limited to those requirements relating to “ Commercial enterprises by local governments” under section 3.59 of the Act
- (c) all conditions and things required by law to be fulfilled or done in order to enable it lawfully to enter into, and exercise its rights and perform its obligations under this Contract have been fulfilled or done;
- (d) this Contract constitutes valid and legally binding obligations, enforceable against the Buyer in accordance with its terms; and
- (e) neither the Buyer's execution of, nor its exercise of rights or performance of its obligations under, this Contract does or will:
  - (i) contravene any law to which it or any of its property is subject;

- (ii) contravene any approval, authorisation, consent or exemption required by any applicable statute or law; or
- (iii) contravene any undertaking or instrument binding on it or any of its property.

**2.2 Without limiting the rights of LandCorp, a breach of any of the warranties in Special Condition 2.1 shall amount to a breach of this contract and entitle LandCorp to exercise its option to repurchase.**

### **3. Lease to developer**

- (a) LandCorp acknowledges that the Buyer intends to enter into an agreement with Pacifica Developments Pty Ltd (ACN 154 388 860) (**Pacifica**) or a company controlled by Pacifica to construct the Development.
- (b) The Buyer may grant a lease of the Land to Pacifica (or such other developer as may be approved by LandCorp in writing) for the purposes of constructing the Development (**Development Lease**), prior to the commencement of development subject to obtaining LandCorp's prior written approval to the form of the Development Lease which form of document must be provided to LandCorp within 3 months after Settlement.
- (c) The Development Lease must include back-to-back obligations on Pacifica (or other approved developer) to ensure that it carries out and completes the Development in compliance with the terms of this Contract.
- (d) The Buyer must obtain LandCorp's consent to:
  - (i) vary the Development Lease; or
  - (ii) consent to an assignment or transfer of the Development Lease.

### **4. Public access over Phase 2 Land**

At all times prior to Commencement of Construction of the Phase 2 Development, the Buyer must:

- (a) keep clear that part of the Land on which the Phase 2 Development is to be constructed;
- (b) maintain all grassed areas on that part of the Land on which the Phase 2 Development is to be constructed in a condition consistent with other open spaces and parks maintained by the Buyer; and
- (c) allow public access to that part of the Land.

### **5. Aboriginal Engagement**

The Buyer shall promptly after Settlement prepare an Aboriginal Training and Employment Strategy (ATES) relating to the engagement of aboriginal persons in the development and operation of the hotel. The ATES is subject to approval by LandCorp. Once approved by

LandCorp, the ATES is to be implemented and remain in operation for a period of 5 years from the date of Practical Completion of the hotel

6. Hotel use

- (a) The Buyer covenants and agrees with LandCorp that:
- (i) the Phase 1 Development on the Land will be used as a Hotel for a duration of not less than 15 years after Practical Completion (**Designated Period**) (or such longer period as the parties may agree);
  - (ii) prior to Practical Completion of the Phase 1 Development, the Developer must enter into a Branding and Management Agreement in relation to the Hotel (**Hotel Agreement**) with a hotel operator for the Designated Period;
  - (iii) The Buyer must obtain LandCorp's prior written approval to:
    - (A) a proposed operator of the Hotel, which approval will not be unreasonably withheld if the Buyer demonstrates to LandCorp's satisfaction that the proposed operator is a reputable, internationally recognised at least four star (or equivalent) hotel chain classified as a premium brand hotel by STR Global (or a similar organisation); and
    - (B) the form of Hotel Agreement, which approval will not be unreasonably withheld if the proposed agreement is on terms and conditions which are usual in the industry for such type of agreement;
  - (iv) the Hotel Agreement will not be assigned to another hotel operator during the Designated Period without LandCorp's prior written consent, such consent not to be unreasonably withheld if, in LandCorp's opinion, the assignee is a reputable, internationally recognised at least four star (or equivalent) hotel chain classified as a premium brand hotel by STR Global (or a similar organisation); and
  - (v) if the Hotel Agreement is terminated for any reason during the Designated Period, the Buyer must enter into another Hotel Agreement in respect of the Hotel with a hotel operator which is a reputable, internationally recognised at least four star (or equivalent) hotel chain classified as a premium brand hotel by STR Global (or a similar organisation) within three (3) months of the date on which the Hotel Agreement was terminated.
- (b) The Buyer must not transfer, assign or dispose of the Hotel or the Land during the Designated Period unless the transferee, assignee or disponent executes a deed of covenant with LandCorp to be bound by this special condition 6.
- (c) The parties acknowledge that LandCorp will lodge a restrictive covenant over the certificate of title for the Land so as to record the obligations of the Buyer under special condition 6(a)(i) (**Restrictive Covenant**). The Buyer will provide an executed Restrictive Covenant to LandCorp at Settlement.
- (d) LandCorp must, upon expiration of the Designated Period, lodge with Landgate a removal of the Restrictive Covenant.

## 7. Value Uplift Payment

- (a) If:
- (i) the Buyer sells the Land (with or without the Hotel Lease and to the lessee under the Hotel Lease or a third party) (**Hotel Sale**) within the period of four (4) years after Practical Completion of the Stage 1 Development ; and
  - (ii) the GST-exclusive sale price of the Hotel Sale (**Sale Price**) exceeds \$30 million or
  - (iii) LandCorp obtains a sworn valuation to the effect that the current market value of the hotel is greater than \$30 million within four (4) years of Practical Completion of the Stage 1 Development
- (b) whichever period is the later ( Value Uplift Period )
- then on the date of settlement of the Hotel Sale or within 30 days of the valuation being provided to the Buyer (as applicable) the Buyer must pay to LandCorp a value uplift payment in the amount calculated by the following formula:
- $$\text{VUP} = 20\% \times (\text{SP} - \$30 \text{ million}) \text{ per } 7(a)(ii); \text{ or}$$
- $$20\% \times (\text{current market value} - \$30 \text{ million}) \text{ per } 7(a)(iii)$$
- where:
- VUP = value uplift payment payable by the Buyer;
- SP = Sale Price; and
- (c) The Buyer must provide LandCorp (and its consultants and advisors) all information necessary for determination of the current market value upon request.
- (d) With reference to condition 7 of the Conditions, the Buyer acknowledges and agrees that LandCorp will be entitled to lodge and keep registered an absolute caveat over the Land to secure payment of the VUP and will withdraw such absolute caveat on the earlier of:
- (i) settlement of the Hotel Sale; and
  - (ii) the expiration of the Value Uplift Period ,
- subject to completion of all of the other Buyer's Obligations as determined by LandCorp.

## 8. Non-resident CGT withholding

- (a) The Buyer acknowledges that LandCorp has provided to the Buyer a valid Clearance Certificate covering the date on which Settlement occurs.

- (b) The Buyer agrees that it must not withhold any amount from the Purchase Price pursuant to Schedule 1 of the TAA.
- (c) In this special condition:
  - (i) **Clearance Certificate** means a certificate from the Commissioner as described in Section 14-220 of Schedule 1 of the TAA;
  - (ii) **Commissioner** has the meaning ascribed to it in the TAA; and
  - (iii) **TAA** means the *Taxation Administration Act 1953* (Cth).

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The Buyer(s) acknowledges that:

- (a) they have read and understood this Contract and the Conditions and agree to be bound by all of these terms; and
- (b) the Conditions are necessary and desirable to enhance and create the subdivision of which the Land is part.

If an individual/individuals:

SIGNED by the Buyer.....Witness..... Date.....

SIGNED by the Buyer.....Witness..... Date.....

OR if a company:

**EXECUTED by** )  
)  
(ACN )  
in accordance with section 127 of the )  
Corporations Act by or in the presence of: )

.....  
Director/Sole Director

.....  
Director/Secretary

.....  
Name of Director/Sole Director (print)

.....  
Name of Director/ Secretary (print)

.....  
Date

SIGNED on behalf of the **WESTERN AUSTRALIAN LAND AUTHORITY** by person(s) authorised by its Board in accordance with Section 45(2)(b) of the Western Australian Land Authority Act 1992.

.....  
Authorised Officer

.....  
Authorised Officer

.....  
..... Date

The Buyer appoints the solicitor or settlement agent named below to act on their behalf in relation to this transaction.

**Buyer(s) solicitor/settlement agent:**

..... **Phone:**

.....

**Fax:** .....

**Email:** .....

Signed by the  
Buyer(s):.....

A true copy of this document has been received by each of the signatories to this document.

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# Annexure A

## Disclosure statement – Form 28

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Annexure to Contract of Sale for Strata Titled Lot

[to be inserted]

# Attachment 1

## Form 29 – Buying and selling a strata titled lot

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Attachment to Annexure A Disclosure Statement – Form 28

[to be inserted]

# Attachment 2

## Strata Plan and unit entitlement

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Attachment to Annexure A Disclosure Statement – Form 28

[to be inserted]

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# Attachment 3

## Management statement

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Attachment to Annexure A Disclosure Statement – Form 28

[to be inserted]



# Attachment 4

## Strata company management agreement

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Attachment to Annexure A Disclosure Statement – Form 28

[to be inserted]

# Attachment 5

Strata company's budget or proposed budget

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Attachment to Annexure A Disclosure Statement – Form 28