



[INSERT SPV LOGO]

CITY OF KARRATHA

(ABN 83 812 049 708)

("the Lessor")

and

[INSERT QUARTER HOTEL SPV NAME]

(ABN XXXXXXXX)

("the Lessee")

DRAFT LEASE AGREEMENT

PART LOT 7078 SHARPE AVENUE, KARRATHA

AND

STRATA LOT 47 ON STRATA PLAN 67914 WITHIN LOT 7079 SHARPE AVENUE, KARRATHA

(2018)

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DRAFT

Contents

PARTIES	5
BACKGROUND	5
AGREED TERMS	5
DEFINED TERMS AND INTERPRETATION	5
2 GRANTS OF LEASE, FUNDING AND SECURITY INTEREST	10
LESSEE'S RIGHTS AND OBLIGATIONS	11
3 QUIET ENJOYMENT	11
4 RENT AND OTHER PAYMENTS	11
5 INSURANCE AND INDEMNITY	13
6 PERMITTED USE	16
7 MAINTENANCE, REPAIR AND CLEANING	18
8 LESSEE'S ACKNOWLEDGEMENT	19
9 REPORTING	20
10 ASSIGNMENT, SUB-LETTING AND CHARGING	21
11 NO CAVEAT OR OTHER INTEREST	22
12 STATUTORY OBLIGATIONS	23
13 EMERGENCY MANAGEMENT	23
14 END OF TERM	23
15 TO YIELD UP	24
LESSOR'S RIGHTS AND OBLIGATIONS	24
16 LESSOR'S RIGHT OF ENTRY	24
17 LIMIT OF LESSOR'S LIABILITY	25
18 INSURANCE	25
MUTUAL AGREEMENTS	25
19 REGISTRATION	25
20 DEFAULT	26
21 NO FETTER	28
22 DISPUTE RESOLUTION	28
23 CONDITIONS PRECEDENT	29
24 GOODS AND SERVICES TAX	30
25 NOTICE	31
26 VARIATION	32
27 WAIVER	32
28 ACTS BY AGENT	32
29 STATUTORY POWERS	32

30	FURTHER ASSURANCE	32
31	SEVERANCE	32
32	MORATORIUM	32
33	GOVERNING LAW AND JURISDICTION	33
34	SPECIAL CONDITIONS	33
35	CONSENTS	33
36	PRIOR BREACHES	33
37	TIME IS OF THE ESSENCE	33
38	CONFIDENTIALITY AND MEDIA	34
39	COUNTERPARTS	34
	SPECIAL CONDITIONS	35
1	WARRANTIES OF LESSEE	35
2	WARRANTIES OF LESSOR	35
3	CONSTRUCTION OF BUILDING	36
4	IMPACT ON THE PUBLIC	36
5	FIT-OUT FUNDING	37
6	OPTION TO PURCHASE	37
7	ABORIGINAL ENGAGEMENT	38
8	MARKETING SPEND	38
	SCHEDULE	39
	SIGNING PAGE	44
	ANNEXURES	45

PARTIES

The **CITY OF KARRATHA** (ABN 83 812 049 708)

of

Welcome Road, Karratha 6714 (Post Office Box 219, Karratha) in the State of Western Australia ("Lessor")

AND

[INSERT SPV NAME]

of

(ABN XXXXXXXXXXXXX)

of

[insert SPV Address] ("Lessee")

BACKGROUND

- A. On 20 December 2017 the Lessor and Pacifica Developments Pty Ltd (Pacifica) entered into a Memorandum of Understanding regarding the development and operation of The Quarter Hotel
- B. Following a Request for Proposals, LandCorp offered Pacifica and the Lessor an exclusive working period to finalise a Hotel Development Agreement.
- C. On 22 May 2018 the Lessor released for public comment a Business Plan (the Plan) which proposes that the Lessor becoming proprietor of the Land and lease it out for the purpose of the Lessee developing and operating a 100 room four storey four-star branded hotel on the Land.
- D. It was proposed in the Plan that the Lessor will invest up to ten million dollars (\$10,000,000) towards the fit-out of the hotel.
- E. Subject to public submissions on the Plan and Council of the Lessor adopting the Plan, the Lessor will become the proprietor of the Land and enter into this Lease with the Lessee.
- F. The Lessee proposes to construct the Building on the Land. The development, control and management of the Building will be the responsibility of the Lessee.
- G. Subject to the satisfaction of the conditions precedent set out in clause 24 of this Lease, the Lessor has agreed to grant, and the Lessee has agreed to accept, a lease of the Land on the terms and conditions in this Lease.

AGREED TERMS

DEFINED TERMS AND INTERPRETATION

Definitions

In this Lease, unless otherwise required by the context or subject matter:

"Amounts Payable" means the Rent set out in **Item 6** of the Schedule to this Lease, Outgoings specified in **Item 8** of the Schedule to this Lease, and any other money payable by the Lessee under this Lease;

"Building" means the hotel to be constructed on the Land, and described in **Item 1** of the Schedule to this Lease;

"Business Day" means between the hours of 8am and 5pm on each day except Saturdays, Sundays and gazetted public holidays in Karratha, Western Australia;

"Commencement Date" means the date of commencement of the Term specified in **Item 2** of the Schedule to this Lease;

"Control Event" means an event as described at clause **20.2**;

"Date of Practical Completion" means the date as certified by the Lessor or Lessor's Agent on which the Development and Fit-Out of the Building is fully completed;

"Development" means the development of the Building by the Lessee;

"Drawings" means the plans or drawings of the Building to be constructed on the Land as part of the Development and which detail the works required to complete the Development as approved by the Lessor and included at **Annexure C**;

"Encumbrance" means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

"Event of Default" means an event as described at clause **20.1**;

"Financial Statement" means:

- (a) a profit and loss statement;
- (b) a balance sheet; and
- (c) a statement of cash flows

together with any notes to those documents and any other necessary information to give a true and fair view of the financial status of the Lessee.

"Fit-Out" means any property of the Lessee that has been financed by the Principal and

- (a) is a fixture or furnishing of the Building; or
- (b) is intended to become a fixture or furnishing of the Building.

"Indemnified Parties" means the Lessor and all officers, servants, agents, contractors, and invitees of the Lessor;

"Land" means the land described in **Item 1** of the Schedule;

"Lease" means this deed as supplemented, amended or varied from time to time;

"Lessee's Agent" means –

- (a) an agent, employee, sublessee, contractor, licensee, customer or invitee of the Lessee; and
- (b) any person visiting the Premises with the express or implied consent of the Lessee or any person mentioned in paragraph (a);

“Lessee’s Asset” or “Lessee’s Assets” means all the Lessee’s present and after-acquired property. It includes anything in respect of which the Lessee has at any time a sufficient right, interest or power to grant a security interest;

“Lessee’s Business” means the business carried on, in or from the Premises in accordance with the Permitted Purpose;

“Lessee’s Obligations” means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by any person other than the Lessor;

“Lessor’s Agent” means –

- (a) an agent, employee, contractor, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the consent or implied consent of the Lessor or any person mentioned in paragraph (a);

“Lessor’s Obligations” means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessor;

“Map” means the Map of the Land contained at **Annexure A** of this Lease as is current at the date of execution of the Lease and as will be replaced by deed of variation upon completion of the Works;

“Notice” means each notice, demand, consent or authority given or made to any person under the Lease;

“Party” means the Lessor or Lessee according to the context;

“Permitted Use” is described in **Item 12** of the Schedule;

“Plan” means the Business Plan for the purchase of the Land by the Lessor and development and operation of a hotel thereon by the Lessee, as was released for public comment on 22 May 2018;

“PPSA” means the *Personal Properties Security Act 2009* (Cth)

“Premises” means the Land and any buildings and any other fixtures, chattels, structures and other improvements on the Land, or any buildings, structures or improvements proposed to be constructed on the Land, as specified in **Item 1** of the Schedule;

“Progress Payment” means any payment of an instalment of the Principal by the Lessor to the Lessee pursuant to the terms of this Lease.

“Progress Payment Claim” means a request submitted by the Lessee to the Lessor for payment of an instalment of the Principal;

“Project” means:

- (a) undertaking and financing the Works;
- (b) the operation of the Building for the Term;
- (c) the undertaking of the Permitted Use and the related commercial activities for the Term; and
- (d) the handover of the Building (if applicable);

"Principal" means the total investment value of no more than ten million dollars (\$10,000,000) contributed by the Lessor to the Lessee as a contribution towards the Fit-Out of the Building, and is the amount used as the basis for the calculation of Rent payable in Item 6 of the Schedule;

"Progress Payment" means the payment of an instalment of the Principal by the Lessor to the Lessee.

"Rent" means the Rent payable in accordance with Clause 4 and Schedule Item 6 of this Lease.

"Rent Commencement Date" means the Rent Commencement Date set out in Item 5 of the Schedule.

"Rent Accrual Period" means the period of time between the Date of Practical Completion and the Rent Commencement Date and, as set out in Item 4 of the Schedule.

"Revolving Asset" means any Lessee's Asset:

- (a) which is:
 - (i) inventory;
 - (ii) a negotiable instrument;
 - (iii) machinery, plant or equipment which is not inventory and has a value of less than [\$5,000];
 - (iv) money, including money withdrawn or transferred to a third party from an account of the Lessee with a bank or other financial institution; and
- (b) in relation to which no Control Event has occurred, subject to clause 20.4.

"Schedule" means the Schedule to this Lease.

"Services" means the services (including gas, electricity, water, sewerage, drainage, communications, and all plant and equipment in connection with them) to or of the Premises, supplied by any authority, the Lessor or any person the Lessor authorises.

"Structural Work" means

- (a) repairing or replacing the Building's façade or any external or internal load bearing structures essential for the stability or strength of the Building, including foundations, columns, walls, floors and beams;
- (b) repairs and replacements necessary to keep the Building structurally sound and weatherproof; and
- (c) replacing any Service or a substantial component of any Service.

"Term" means the total duration of the Lease from Commencement Date to Termination Date.

"Termination" means the expiry by effluxion of time or sooner determination of the Term or any period of holding over.

"Termination Date" means the last day of the Term.

“Works” means the whole of the work to be carried out for Fit-Out of the Building, including but not limited to the provision of finance, management, materials, goods, and labour.

1.2 Interpretation

Unless expressed by the contrary:

- (a) words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender include each gender;
- (b) a reference to:
 - (i) a natural person includes a body corporate, firm, unincorporated association, corporation, government or statutory body or authority;
 - (ii) a body corporate, firm, incorporated association, corporation and government or statutory body or authority includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) a Party includes its legal personal representatives, successors or assigns and a Party that comprises two or more persons, the legal personal representatives, successors or assigns of each of those persons;
 - (v) a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, by-law, local law, requisition, order or other statutory instruments under any of them and a reference to any of them, whether or not by name, includes any amendments to or re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) this Lease or provisions or terms of this Lease or another deed, document, agreement, contract, understanding or arrangement include a reference to both expressed and implied provisions and terms, and that other deed, document, agreement, contract, understanding or arrangement as varied, supplemented, replaced or amended, and notwithstanding any change in the identity of the Parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions and emails;
 - (x) reference to a sum of money refers to Australian dollars, unless explicitly stated otherwise;
 - (xi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

- (c) If a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them.
- (d) The obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (i) covenants not to permit that act or thing to be done or omitted to be done by a Lessee's Agent; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done.
- (e) References to the "Shire" or "Shire of Roebourne" within this Lease or on any accompanying attachments, orders, certificates, appendices, annexures, maps, etc. are to be read as "City" or "City of Karratha" respectively, unless otherwise stated. The City of Karratha was formed on 1 July 2014 after the Shire of Roebourne was designated city status by Governor's Orders and advertised in the WA Gazette on 3 June 2014.

1.3 Headings

Headings do not affect the interpretation of this Lease.

1.4 Inconsistency

To the extent that there is an inconsistency between a provision in any of the parts of this Lease specified in clause 1.4(b) and another provision in any of them or between a provision in any of them and a provision in any other document referred to in any of them:

- (a) a specific provision takes precedence over a general provision; and
- (b) otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
 - (i) a Schedule;
 - (ii) an Annexure;
 - (iii) the terms and conditions contained in the clauses of this Lease; and
 - (iv) a document incorporated by reference, if any.

2 GRANTS OF LEASE, FUNDING AND SECURITY INTEREST

2.1 Grant of Lease

- (a) Subject to Clause 23 of this Lease, the Lessor leases to the Lessee the Premises for the Term commencing on the Commencement Date and expiring on the Termination Date, subject to:
 - (i) all Encumbrances
 - (ii) the payment of the Amounts Payable;
 - (iii) use of the Premises only for the Permitted Use; and
 - (iv) the performance and observance of the Lessee's Obligations.
- (b) The Lessee accepts the grant of the Lease made under this clause and acknowledges the rights reserved by the Lessor.

2.2 Grant of Funding

Subject to the terms and conditions of this Lease, the Lessor agrees to make and the Lessee agrees to accept Progress Payments in respect of the Principal as more particularly set forth in Special Condition

5.

2.3 Grant of Security Interest

- (a) The Lessee grants a security interest in the Building and the Lessee's Assets to secure repayment of the Principal.
- (b) This security interest is a floating charge over all Revolving Assets and a fixed charge over all other Lessee's Assets.

LESSEE'S RIGHTS AND OBLIGATIONS

3 QUIET ENJOYMENT

Subject to the reasonable performance and observance of the Lessee's Obligations the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor except as permitted by this Lease or by law.

4 RENT AND OTHER PAYMENTS

4.1 Rent

The Lessee agrees

- (a) to pay Rent to the Lessor in the manner set out at **Item 6** of the Schedule clear of any deductions.
- (b) that Rent is payable from the Rent Commencement Date until the expiry of the Term by passage of time or earlier determination thereof in accordance with this Lease.

4.2 Rent Accrual Period

Despite any provision to the contrary expressed or implied in this Lease, the Lessee is not obliged to pay Rent during that part of the Term identified in **Item 4** of the Schedule as the Rent Accrual Period however the yield on the Principal for this period will be capitalised into the Principal until payments commence at the end of the Rent Accrual Period.

4.3 Outgoings

- (a) The Lessee shall for the entirety of the Term punctually pay on demand and clear of any deductions whatsoever:
 - (i) all of the Outgoings as specified in **Item 8** of the Schedule; and
 - (ii) all rates, taxes, charges and imposts imposed directly on the Lessee's Business or related to the Lessee's occupation of the Premises.
- (b) If the Premises or any part thereof are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **Item 8** of the Schedule being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

4.4 Costs

- (a) Each Party must bear its own costs of and incidental to the negotiation, settlement, preparation and execution of this Lease.
- (b) The Lessee agrees to pay the Lessor on demand:
 - (i) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes on or in connection with this Lease;
 - (ii) all fees relating to the registration of this Lease; and
 - (iii) legal costs of and incidental to the preparation, execution and stamping of this Lease and all copies.
- (c) The Lessee agrees to pay to the Lessor all costs, legal fees, disbursements and payments reasonably incurred by or for which the Lessor is liable in connection with or incidental to:
 - (i) attempting to obtain payment of the Amounts Payable under this Lease;
 - (ii) any breach of an obligation or agreement by the Lessee or a Lessee's Agent;
 - (iii) any work undertaken at the Lessee's request; and
 - (iv) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.4** or any matter arising out of this Lease.

4.5 Payment of Money

Any moneys payable by the Lessee under this Lease must be paid

- (a) to the Lessor at the address appearing in this Lease or as otherwise directed by the Lessor by notice in writing from time to time;
- (b) without demand unless this lease says demand must be made;
- (c) without set-off, counter claim, withholding or deduction; and
- (d) by any method the Lessor reasonably requires.

4.6 Payment of Interest

If the Lessee does not pay an amount when it is due, it must pay interest on that amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on daily balances at the rate per annum set out in the published Local Government Fees and Charges for each financial year, and is capitalised if unpaid.

4.7 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

4.8 Payments not affected

The Lessee's obligations to make payments under this Lease for periods before termination of this lease are not affected by termination of this Lease.

5 INSURANCE AND INDEMNITY

5.1 Insurance Required

- (a) Noting that insurance requirements will be informed by commercially available terms for asset class, during the Term and any holding over period the Lessee must effect and maintain the following policies of insurance with a reputable and solvent insurer (with a Standard and Poor's or equivalent body's rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company:
- (i) adequate public liability insurance for a sum of no less than twenty million (\$20,000,000) (or any amount the Lessor reasonably requires) in respect of any one occurrence; and
 - (ii) adequate product liability insurance for a sum of no less than twenty million (\$20,000,000) (or any amount the Lessor reasonably requires) in respect of any one occurrence and in the aggregate; and
 - (iii) adequate Workers Compensation cover for employees of the Lessee;
 - (iv) building replacement insurance for the full replacement value of the Building;
 - (v) adequate contract works insurance for works in progress up to the value of the contract for construction of the Building, including all plant and equipment to be installed on site, including third-party liability up to an amount of twenty million (\$20,000,000); and
 - (vi) other insurances required by law or that the Lessor reasonably requires for at least the amounts the Lessor reasonably requires, as may be requested in writing by the Lessor from time to time.
- (b) Each policy that the Lessee takes out under this **clause 5** must:
- (i) be in the name of the Lessee with the interest of the Lessor noted;
 - (ii) have no limit on the claims that can be made under it; and
 - (iii) cover events occurring during the policy's currency regardless of when claims are made.
- (c) The Lessee must deliver to the Lessor within one week of execution of this Lease and on an annual basis thereafter (and at any other time reasonably requested by the Lessor) a copy of all certificates of currency relating to each class of insurance required under **5.1(a)** of this Lease.
- (d) The Lessee must not at any time reduce the level of insurance cover below that stated in **clause 5.1**.
- (e) The Lessee must promptly pay all premiums and comply with the requirements of the insurer relating to all insurance policies and to the Premises and must not cancel or vary any insurance policy without the prior written approval of the Lessor.
- (f) It is the responsibility of the Lessee to notify the Lessor immediately
- (i) if a policy is cancelled; or
 - (ii) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance.
- (g) The Lessee must use the insurances for the Premises for the reinstatement of the Building, where applicable.
- (h) The Lessee agrees that it shall be responsible to pay any excess payable in connection with the insurances referred to in this **clause 5.1**.

5.2 Not to Invalidate

The Lessee must:

- (a) not do or omit to do any act or thing that may cause any insurance premium to be increased or that may cause any insurance to be prejudiced or become liable to be cancelled or voided or whereby any claim on any insurance policy may be or become liable to be reduced; and
- (b) comply in all respects with any provisions contained in policies of insurance between the Lessor or the Lessee and their respective insurers from time to time relating to the Premises and the use of the same; and
- (c) pay the amount of any insurance increase to the Lessor on demand, if the Lessee does anything that increases the premium of any insurance the Lessor has in connection with the Premises.

5.3 No Liability for Damage to Merchandise or Property

The Lessee acknowledges that in the event any of any damage and/or loss to the Lessee's merchandise or property in or on the Premises during the Term no part of the loss or damage occasioned thereby shall be borne by the Lessor.

5.4 Indemnity

The Lessee indemnifies, and shall keep indemnified, the Indemnified Parties from and against all actions, claims, costs, proceedings, judgments, damages, expenses, (including legal costs of defending or settling any action, claim or proceeding), losses, suits and demands whatsoever which may at any time be incurred or suffered by any of the Indemnified Parties, or brought, maintained or made against any of the Indemnified Parties, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing (including the Premises and the property of third parties); and
- (c) the death of, or injury or illness sustained by, any person or any animal;

caused by, contributed to or arising out of, or in connection with, whether directly or indirectly:

- (i) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
- (ii) any work carried out by or on behalf of the Lessee;
- (iii) the Lessee's activities, operations, business or other use of any kind;
- (iv) the presence of any contamination, pollution or environmental harm affecting the Premises caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (v) any default by the Lessee or the Lessee's Agents in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (vi) any negligent or other tortious act or omission of the Lessee or the Lessee's Agents.

- (d) The Lessee indemnifies and must keep indemnified the Indemnified Parties from and against all claims, proceedings, suits, writs, demands and expenses relating to, or in respect of, the remediation of contamination, pollution or environmental harm required under any environmental notice, by any law or by any governmental agency as a result of any contamination, pollution or environmental harm emanating on, or from, the Premises as a result of, or relating to, the use or occupation of the Premises by the Lessee.
- (e) The obligations of the Lessee under this clause:
 - (i) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount; and
 - (ii) continue after the termination, expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring before the termination, expiration or earlier determination of this Lease.

5.5 Release

- (a) The Lessee:
 - (i) agrees to develop, occupy and use the Premises at the risk of the Lessee;
 - (ii) releases the Lessor and the Lessor's Agents to the full extent permitted by law from any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's development, use or occupation of the Premises; and
 - (iii) releases the Lessor from liability relating to loss of or damage to the Premises or personal property of the Lessee.

5.6 No indemnity for Lessor's negligence

The Parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor or the Lessor's Agents.

6 PERMITTED USE

6.1 Restrictions on Use

(a) Generally

The Lessee must not and must not permit a person to:

- (i) use the Premises or any part of it for any purpose other than for the Permitted Use specified in **Item 12** of the Schedule;
- (ii) use the portion of the Premises contained in Strata Lot 47 on Strata Plan 67914 in a manner which is not permitted by the applicable Strata Management Statement or Strata Bylaws;
- (iii) keep animals at the Premises without first obtaining the express written permission of the Lessor; or
- (iv) use the Premises for any purpose which is not permitted under any local or town planning scheme, local law, Act, statute or any other law.

(b) No offensive or illegal acts

The Lessee must not do or carry out, or permit to be carried out, on the Premises any harmful, offensive or illegal act, matter or thing.

(c) No nuisance

The Lessee must not do or carry out on the Premises any thing or act other than the Permitted Use which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

(d) No dangerous substances

The Lessee must not store any dangerous compounds or substance in or on the Premises otherwise than is necessary to carry out the Permitted Use and

- (i) any such storage must comply with all relevant statutory provisions; and
- (ii) all applications for the approval of the renewal of any licence necessary for such storage must be first referred to the Lessor; and
- (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance in or on the Premises; and
- (iv) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored in or on the Premises.

(e) No harm or stress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(f) No signs

- (i) The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.
- (ii) The Lessee shall before the expiration of the Term, remove all signs and notices and to repair and make good all damage on the Premises caused by such removal.

(g) Removal of Rubbish

The Lessee must keep the Premises free from rubbish and store and keep all trade waste and garbage in proper receptacles.

(h) No pollution

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(i) Limited service of food or beverages

The Lessee must limit the service of food or beverages to the minimum level required to achieve and maintain a 4-star rating.

6.2 No Warranty as to Use

The Lessor gives no warranty of any kind that the Premises is suitable for any use proposed by the Lessee.

6.3 Residential Use Prohibited

The Lessee shall not use the Premises as a place of permanent residence. This Lease shall not be deemed to be a Residential Tenancies Agreement and the *Residential Tenancies Act* shall not apply to this Lease.

6.4 Access by Others

The Lessor acknowledges that the Lessee may grant access to the Land and the Building to any builder, operator, contractor or subcontractor and any of their employees, servants, agents and contractors) for the achievement of the Permitted Use.

6.5 Authorisations

The Lessee must obtain and comply with all authorisations necessary in connection with the Building, including those necessary for the use and occupation of the Building in accordance with the Permitted Use.

7 MAINTENANCE, REPAIR AND CLEANING

7.1 Maintenance and Cleaning of the Premises

- (a) The Lessor has no responsibility or liability whatsoever for maintenance or repair of the Premises under this Lease.
- (b) The Lessee agrees during the Term and for so long as the Lessee remains in possession or occupation of the Premises to at all times, and at the Lessee's expense maintain, clean, and repair the Premises and property of the Lessee in or on the Premises, including the Services to the Premises, in good order repair and condition, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required.
- (c) The Lessee in carrying out any maintenance work on the Building under this clause 7 shall use only licensed tradespersons.
- (d) The Lessee shall abide by the requirements of the Management Statement and By-Laws applicable to the Strata Lot 47 on Strata Plan 67914.
- (e) The Lessee must at all times during the Term:
 - (i) maintain and clean the Premises to a standard that fulfils the standards required to operate in accordance with the Permitted Use of the Premises under this Lease;
 - (ii) keep the Premises clean, tidy, unobstructed and free from rubbish;
 - (iii) keep the Premises free of pests, vermin and noxious weeds and comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to disease management, weed control and the prevention of soil erosion;
 - (iv) take such reasonable action as is necessary to prevent the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises;
 - (v) rectify the effects of erosion, drift or movement of sand, soil or dust or water on or from the Premises if it has occurred as a result of the Lessee's use of the Premises;
 - (vi) take such reasonable action as is necessary to prevent contamination of the Premises or adjacent land resulting from the Lessee's use of the Premises; and
 - (vii) rectify the effects of contamination of the Premises or adjacent land if it has occurred as a result of the Lessee's use of the Premises.
- (f) For the avoidance of doubt, unless expressly stated otherwise all work undertaken by the Lessee under this clause 7 will be carried out at the Lessee's expense.

7.2 Repair Damage

The Lessee agrees, at the Lessee's expense, to promptly repair and make good any damage to the Premises or Services to the Premises and in default to pay to the Lessor the costs and expenses incurred by the Lessor in repairing and making good such defects.

7.3 Access ways to remain clear

The Lessee shall at all times:

- (a) keep surrounding roadways and entranceways clear of any obstructions for vehicular access to the Land;
- (b) keep access ways and right of ways clear of any obstructions for vehicular access to the adjoining land including any parking of vehicles on the access way; and
- (c) keep access ways, pathways, and roadways within the Land clear of any obstructions for vehicular or pedestrian movements, as appropriate.

7.4 Trees Clay Sand Rocks

The Lessee agrees, at the Lessee's expense:

- (a) to water, tend and properly maintain all grass, trees, shrubs, or other plants which are from time to time planted on the Land;
- (b) to replace any such trees, shrubs, and other plants in the event that they die or are destroyed;
- (c) not without the previous consent in writing of the Lessor cut down, fell, injure, remove or otherwise dispose of any growing shrubs or plants or living timber except for the purpose of pruning;
- (d) to not without previous written consent of the Lessor dispose of or remove any clay, sand, rocks, gravel, timber or other materials from the Land; and
- (e) to not introduce any tree or plant or shrub which may cause damage to the Land.

7.5 Comply with all reasonable conditions

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

7.6 Structural Work

The Lessee must carry out any Structural Work to the Building where necessary.

7.7 Not to Alter or Damage

The Lessee agrees:

- (a) not to make or permit or erect or allow to be erected any building or structure on the Land without the prior written consent of the Lessor;
- (b) not to make or permit any other alteration to be made to any building or structure on the Land without the prior written consent of the Lessor;
- (c) the written consent of the Lessor shall:
 - (i) be subject to the requirements of any statute in force from time to time, the insurer and the Insurance Council of Australia; and
 - (ii) be subject to any condition imposed by the Lessor.

8 LESSEE'S ACKNOWLEDGEMENT

The Lessee acknowledges that any services or business undertaken or provided by the Lessee or any sub lease arrangement from the Land and Premises is strictly the Lessee's responsibility. It is further acknowledged that the Lessor has no role or responsibility in providing or otherwise in respect of the services or business undertaken or provided from the Land or Premises in any circumstances, other than if the Term is determined early in accordance with clause 21.

9 REPORTING

9.1 Emergency Contact Information

The Parties must provide each other with at least one 24-hour contact name, address, telephone number and email address to use in emergencies and keep each other informed of any changes to this information.

9.2 General Reporting to the Lessor

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or incident on or near the Land which is likely to involve or become the subject of a report or complaint to the Police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances on or near the Land which might reasonably be expected to cause on the Land any pollution of the environment;
- (c) all notices, orders and summonses received by the Lessee and which affect the Land and immediately deliver them to the Lessor; and
- (d) any accident to or defect or want of repair in the Land known to the Lessee that may be or may cause a risk or hazard to the Land or to any person on the Land.

9.3 Reporting Danger or Damage

The Parties must report to each other in writing promptly and in an emergency verbally in respect of any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

9.4 Audit and Inspection

Upon reasonable notice the Lessee must provide the Lessor or Lessor's Agent with access to all areas of the Premises, financial records relevant to this Lease, and other documents relevant to this Lease, for the purpose of audit and inspection by the Lessor or Lessor's Agent.

9.5 Financial Reporting

- (a) Within 5 Business Days of execution of this Lease by all Parties the Lessee must provide to the Lessor a bank statement and Statutory Declaration evidencing that the Lessee has a minimum of ten million dollars (\$10,000,000) in a trust account under its name and solely allocated to the construction of the Building.
- (b) The Lessee must provide the Lessor with
 - (i) biannual Financial Statements; and
 - (ii) annual audited Financial Statements for the duration of this lease agreement.
- (c) The first biannual Financial Statement is to be submitted no more than seven months after the Commencement Date of this Lease, and biannually thereafter.
- (d) The first annual audited Financial Statement is to be submitted no more than fourteen (14) months after the Commencement Date of this Lease, and annually thereafter.

10 ASSIGNMENT, SUB-LETTING AND CHARGING

10.1 Generally

- (a) The Lessee is not to assign, sublet, mortgage, charge, or part with possession of the Land or Premises without obtaining the prior written consent of the Lessor.
- (b) Any sublease or assignment that is approved by the Lessor must be consistent with the Permitted Use set aside for the Land as specified in this Lease.
- (c) Any sublease or assignment will require the Lessee to ensure that such terms and conditions imposed on the sublessee or assignee are not inconsistent with this Lease in respect to Amounts Payable, Permitted Use, tenure, insurances, indemnity, and maintenance.
- (d) Section 80 and Section 82 of the *Property Law Act 1969* as amended are excluded from and shall not apply to this Lease.
- (e) The Lessee must not lodge any caveats in connection with the Premises or the Land.
- (f) The Lessee must not mortgage nor charge:
 - (i) the Land; or
 - (ii) the leasehold interests in the Land.

10.2 Assignment

- (a) An assignment by the Lessee will only be considered by the Lessor if
 - (i) the request for consideration of the proposed sublease or assignment is submitted in writing to the Lessor no less than three (3) months prior to the proposed sublease or assignment date;
 - (ii) the Lessee is not in breach of or default under any provision of this Lease or any such breach or default under this Lease has been remedied by the Lessee or waived by the Lessor; and
 - (iii) the Lessee satisfies the Lessor that the proposed new lessee is financially sound and capable of complying with the Lessee's obligations to pay the Amounts Payable under this Lease, and is respectable and appropriately experienced and skilled to meet the requirements of this Lease, and does not propose to use the Premises for any purpose other than the Permitted Use.
- (b) The Lessee and the proposed new lessee must enter into a deed with the Lessor in a form reasonably required by the Lessor including:
 - (i) a promise by the proposed new lessee to be bound by this Lease as if the proposed new lessee was the Lessee; and
 - (ii) a release of the Lessor by the Lessee from the Lessor's obligations to the Lessee on and from the date that the transfer takes place.
- (c) The proposed new lessee must give any bank guarantee, bond or guarantee and indemnity by a third person or other security that the Lessor reasonably requires.

10.3 Subleases or licences

- (a) The Lessor acknowledges that the Lessee may seek to enter into sub-leases or licence arrangements which further the objectives of the Lessee in connection with the Permitted Use.
- (b) The Lessee is entitled to sub-lease or otherwise share possession of part of the Building, without requiring the approval of the Landlord if the proposed arrangement is one which falls within the core business of the Lessee, the Permitted Use of the Premises, and the Plan.
- (c) If the Lessee wishes to sub-leases or share possession of part of the Premises for a purpose which falls outside clause 10.3 (b), then the Lessee must, prior to entering into any such arrangement, obtain the prior approval of the Lessor, which may be granted by the Lessor subject to reasonable conditions.

11 NO CAVEAT OR OTHER INTEREST

11.1 Restricted Dealings

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat, subject to claim or create or allow any other interest over the Lessee's Assets, the Land or Premises or part thereof, without the prior written consent of the Lessor, unless it is permitted to do so by clause 11.2.

11.2 Permitted Dealings

The Lessee may do any of the following in the ordinary course of the Lessee's ordinary business:

- (a) create or allow another interest in, or dispose or part with possession of, any Lessee's Asset which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

11.3 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally -

- (a) for the Term;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination of this Lease,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate-

- (a) a withdrawal of any absolute caveat or other interest lodged by or on behalf of the Lessee;
- (b) a withdrawal of any caveat or other interest lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (c) a surrender of the estate granted by this Lease.

11.4 Costs of Removal, Indemnity and Ratification

- (a) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause 11.
- (b) The Lessee indemnifies the Lessor against any loss arising from any act done under this clause 11.

12 STATUTORY OBLIGATIONS

The Lessee must, at the expense of the Lessee

- (a) at all times and without cost to the Lessor in any respect, use and occupy the Land in accordance with, and shall fully and promptly comply with, the provisions of all or any statutes, ordinances, rules, regulation and local laws presently or hereafter in force;
- (b) comply promptly with all statutes from time to time in force relating to Permitted Use of the Premises under this Lease;
- (c) promptly apply for and obtain all consents, authorities, licences, permits and approvals required for the proposed Building, additions or construction of buildings or improvements on the Land, or use of the Premises permitted by this Lease;
- (d) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises;
- (e) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Land or Premises or to the business the Lessee carries on at the Premises; and
- (f) carry out and perform in a thorough and workmanlike manner all construction, alterations and improvements with may be required in order to comply with the provisions of this clause

12.

13 EMERGENCY MANAGEMENT

13.1 Emergency Readiness

The Lessee shall at the expense of the Lessee take all actions to ensure emergency readiness on and in respect of the Premises, and any person on or in the Premises, as may from time to time be

- (a) required under any Statute now or hereafter in force, or
- (b) required by any authorised body having jurisdiction in relation thereto, or
- (c) reasonably requested by the Lessor.

13.2 Emergency Management Plan

The Lessee shall at the expense of the Lessee have and maintain and communicate as appropriate an Emergency Management Plan and, upon request in writing by the Lessor, shall promptly produce a copy of the Emergency Management Plan.

14 END OF TERM

14.1 Termination

This Lease will automatically terminate on the expiration of the Term, and otherwise may only be terminated in accordance with the provisions of this clause 14 or clause 20 of this Lease.

14.2 Holding Over

- (a) In the event that there is not a transfer of ownership of the Land from the Lessor to the Lessee upon expiration of the Term of payment of all Amounts Payable due, the Lessee may remain in occupation of the Land under a monthly lease at monthly rental as determined by an independent market valuation and agreed upon by the Parties, and otherwise on the same terms and conditions, so far as applicable, as this Lease.
- (b) The lease created in accordance with this **clause 14.2** is determinable by either party on 20 Business Days notice to the other party.

15 TO YIELD UP

In the event of determination of the Lease on or prior to the Termination Date, and subject to ownership of the Premises not transferring to the Lessee in accordance with **Special Condition 6**, the Lessee acknowledges that;

- (a) the Lessee must quietly deliver up possession of the Premises to the Lessor in good tenable and operational repair and condition, and in strict accordance with the Lessee's obligations under this document;
- (b) the Lessor shall become the sole registered proprietor of the Building and all structures and all additions to the Building and fixtures and fittings on or in the Building;
- (c) the Lessee shall provide to the Lessor all keys, security cards, access codes, remote controls and manuals required for the continued operation of the Premises in accordance with the Permitted Use;
- (d) the Lessee shall provide to the Lessor all documentation, contractual information, contact details, financial information and training necessary to facilitate the transfer of the Building in a manner that enables continuance of operation;
- (e) the Lessee shall take all actions necessary to facilitate the Lessor becoming the registered proprietor of the Building, at the cost of the Lessee unless otherwise agreed between the Parties in writing.

LESSOR'S RIGHTS AND OBLIGATIONS

16 LESSOR'S RIGHT OF ENTRY

16.1 Entry on reasonable notice

The Lessor may after providing reasonable notice to the Lessee, or, in an emergency, without notice, enter the Premises with or without workmen and with or without plant, equipment, machinery and materials for the following purposes or any one of them:

- (a) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
- (b) to carry out surveys or work which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such surveys or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
- (c) to comply with the Lessor's obligations under any notice or order of any authority in respect of the Land or the Premises for which the Lessor is liable; or
- (d) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

16.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at Clause 16.1(d) together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

17 LIMIT OF LESSOR'S LIABILITY

17.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person, animal or property in or about the Premises however occurring.

17.2 Limit on Liability for Breach of Lessor's obligations

- (a) The Lessor is only liable for breaches of the Lessor's Obligations set out in this Lease which occur while the Lessor is the registered proprietor of the Land.
- (b) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Obligations due to any cause beyond the Lessor's control.

18 INSURANCE

The Lessor shall effect and keep effected policies of insurance in relation to any risk relating to the Lessor's ownership of the Land or interest in the Premises.

MUTUAL AGREEMENTS

19 REGISTRATION

19.1 Registration with Landgate

The Lessee must lodge the Lease for registration at Landgate within 30 Business Days of the Lease being executed by both Parties, and the Parties must do all things reasonably required of them to facilitate the registration of this Lease.

19.2 Appointment of nominee for PPSA registration

For the purposes of section 153 of the PPSA, the Lessee appoints the Lessor as its nominee, and authorises the Lessee to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Lessor which is perfected by registration under the PPSA and transferred to the Lessor under this document. The Lessee must do all things reasonably required of them to facilitate any such registration.

20 DEFAULT

20.1 Events of Default

An Event of Default occurs if:

- (a) any Amounts Payable remain unpaid for one month;
- (b) the Lessee is in substantial breach of any of the Lessee's Obligations, other than the obligation to pay the Amounts Payable, for 20 Business Days after written notice has been given to the Lessee to rectify the breach;
- (c) the Lessee fails to complete construction of the Building in accordance with the Timetable for Completion at Annexure B;
- (d) the Lessee fails to operate and maintain the hotel to the agreed standards and in accordance with the Permitted Use;
- (e) the Premises is vacant for over 4 months;
- (f) an order is made or a resolution is passed to wind up the Lessee; or
- (g) the Lessee goes into liquidation or an application is made to a court for an order appointing a liquidator to the Lessee.

20.2 Control Event

A Control Event means:

- (a) In respect of any Lessee's Asset that is, or would have been, a Revolving Asset:
 - (i) the Lessee breaches or attempts to breach clause 11.2 in respect of the Lessee's Asset or takes any step which would result in it doing so; or
 - (ii) a person takes a step (including signing a notice or direction) which may result in taxes, or an amount owing to an authority, ranking ahead of the security interest in the Lessee's Assets under this Lease; or
 - (iii) a judgment, order or Security is enforced or a creditor takes any steps to enforce a judgment, order or Security, over the Lessee's Assets; or
 - (iv) the Lessor gives a notice to the Lessee that the Lessee's Asset is not a Revolving Asset. However, the Lessor may only give a notice the Lessor reasonably considers that it is necessary to do so to protect its rights under this Lease or if an Event of Default is continuing; or
- (b) in respect of all Lessee's Assets that are or would have been Revolving Assets:
 - (i) a liquidator is appointed in respect of the Lessee or the winding up of the Lessee begins; or
 - (ii) something having a substantially similar effect to paragraph (i) occurs.

20.3 Revolving Assets

If a Control Event occurs in respect of any Lessee's Assets then automatically:

- (a) that Lessee's Asset is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Lessee's Asset immediately operates as a fixed charge; and
- (c) the Lessee may no longer deal with the Lessee's Asset under clause 11.2.

20.4 Conversion to Revolving Assets

If any Lessee's Asset is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this **clause 20**, the Lessor may give the Lessee a notice stating that, from a date specified in the notice, the Lessee's Asset specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Lessee. This may occur any number of times.

20.5 Occurrence of Event of Default

If an Event of Default occurs and the Lessee does not within 45 Business Days after receiving Notice of the Lessee's Event of Default rectify that default, then the Lessor may do any one or more of the following without affecting any pre-existing rights of a Party:

- (a) re-enter and take possession of the Premises, and have the Lessee yield up the Premises in accordance with **clause 15**, and ownership of the Building and all Lessee's Assets shall pass from the Lessee to the Lessor;
- (b) by Notice to the Lessee, terminate this Lease and have the Lessee yield up the Premises in accordance with **clause 15**, and ownership of the Building and all Lessee's Assets shall pass from the Lessee to the Lessor; and
- (c) exercise any of its other legal rights.

20.6 Lessor may Remedy Lessee's Breach

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Obligations,

then the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost of remedying each breach or default.

20.7 Entitlement to Recover Damages

The Lessor's entitlement to recover damages shall not be affected or limited in the event that:

- (a) the Lessee abandons or vacates the Land and Premises;
- (b) the Lessee commits fraud, wilful default, gross negligence or breach of trust;
- (c) the Lessor elects to re-enter or to terminate the Lease;
- (d) the Lessor accepts the Lessee's repudiation; or
- (e) the Lessor's and Lessee's conduct constitutes a surrender by operation of law.

20.8 Legal Proceedings

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Lease Term, including the periods before and after the Lessee had vacated the Land and Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law, whether the proceedings are instituted either before or after such conduct.

20.9 Essential Terms

Each of the Lessee's Obligations which is specified in the following clauses is an essential term of the Lease:

- (a) Clause 4 Rent and Other Payments
- (b) Clause 5 Insurance and Indemnity
- (c) Clause 6 Permitted Use
- (d) Clause 14 End of Term
- (e) Clause 15 To Yield Up

but this clause does not mean or imply that there are no other essential terms in this Lease.

21 NO FETTER

The Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for approvals having regard to statutes governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

22 DISPUTE RESOLUTION

22.1 Notice of Dispute

If there is a dispute between the Lessor and the Lessee in connection with this Lease or any matter this Lease deals with, either of the Parties must give the other party a notice in writing of dispute adequately identifying and detailing the dispute.

22.2 Attempt to Resolve Dispute

- (a) Officers of the Parties will meet within 15 Business Days of the dispute arising and discuss the dispute and attempt to resolve the dispute.
- (b) If the dispute cannot be resolved under clause 22.2(a), then the dispute must be referred to the Lessor's Director Corporate Services and the Lessee's Director or their respective authorised representatives who will meet within 15 Business Days of a referral under this clause, and attempt to resolve the dispute.
- (c) If the dispute cannot be resolved in accordance with clause 22.2(b), then the dispute will be escalated to the Lessor's Chief Executive Officer and the Lessee's Managing Director or their authorised representatives, who will meet within 15 Business Days of a referral under this clause and attempt to resolve the dispute.

22.3 Engage in Mediation

- (a) If the Parties are unable to resolve the dispute by following the process set out in clause 22.2 or if a Party fails to attend any meeting they are required to attend pursuant to those clauses, then the Parties must engage in mediation within a reasonable timeframe.
- (b) The mediator must be an independent mediator who is agreed to by both Parties. If the Parties are unable to agree on a mediator, then the mediator shall be a person nominated by Resolution Institute, who accepts appointment as mediator.
- (c) If mediation does not resolve the dispute, then the Parties may seek to resolve the dispute in accordance with any other lawful means.
- (d) If mediation in accordance with this clause 22 is unsuccessful in resolving the dispute, or any part of the dispute, a Party may commence court or other legal proceedings to resolve the dispute or any unresolved part of a dispute.

22.4 Generally

- (a) At all levels, the Parties must attempt to resolve the dispute on a basis consistent with a desire to retain a good working relationship, without prejudice and in a confidential manner.
- (b) If not agreed otherwise between the Parties, the Lessor and the Lessee must each pay one half of the costs of engaging a mediator, and otherwise bear their own costs with regard to their efforts to resolve the dispute.
- (c) Nothing in this clause 22 prevents a Party from seeking urgent interlocutory relief from a court of law at any point.
- (d) Notwithstanding any ongoing dispute resolution or mediation processes, the Parties must continue pay the Amounts Payable and Funds without deduction, and continue to meet all obligations under the Lease, until the dispute is resolved, unless otherwise agreed by the Parties.
- (e) If any money paid by the Parties is deemed to not be required to be paid as a result of the dispute resolution process or by any agreement between the Lessor and the Lessee then any excess monies paid will be refunded back to the date of notice of dispute or another date as agreed by the Parties.

23 CONDITIONS PRECEDENT

23.1 Planning and Development Act 2005

This Lease is made expressly subject to and conditional on the granting of any consent required from the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005* (as may be amended from time to time) and its subsidiary legislation.

23.2 Consultation Process

This Lease is made expressly subject to and conditional on

- (a) the favourable consideration by the Lessor of any submissions made in response to the public advertisement of the Plan and the terms of the Lease;
- (b) the Council of the Lessor subsequently resolving to proceed with this Lease and development of the Land in accordance with the Local Government Act 1995; and
- (c) the approval of LandCorp.

23.3 Transfer of Land

This Lease is made expressly subject to and conditional on the transfer to the City in freehold of:

- (a) Lot 7078 on Deposited Plan 401615 and being the whole of the land in Certificate of Title Volume 2831 Folio 953; and
- (b) Lot 47 on Strata Plan 67914 and being the whole of the land in Certificate of Title Volume 2927 Folio 462.

24 GOODS AND SERVICES TAX

24.1 Definitions

Unless the contrary intention appears in this clause:

- (a) "**Act**" means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation, and any legislation substituted for, replacing or amending that Act;
- (b) "**Consideration**" means the Amounts Payable and any other money payable to the Lessor by the Lessee or vice versa under this Lease other than money payable under this clause, and includes an indemnity payment pursuant to Clause 5.5;
- (c) "**GST**" means a tax under the Commonwealth Government's goods and services tax legislation while that legislation or analogous legislation remains in force, as amended from time to time, and includes any similar tax levied under Western Australian legislation; and
- (d) "**Supply**" has the same meaning as it has in the GST legislation.

24.2 Parties to Pay GST

- (a) If GST is or becomes payable on any Supply under this Lease, the Parties shall pay such GST in addition to the Consideration; and
- (b) The Parties must pay the GST at the same time and in the same manner as the Parties are required to pay the Consideration.

24.3 Consideration in Kind

If consideration in kind is accepted by the Parties for any Supply made under this Lease the GST amount payable to the recipient Party in respect of the consideration in kind will be calculated by using the consideration in kind's prevailing market value as reasonably determined by the Lessor and multiplying it by the GST.

24.4 Payments to Third Parties

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services, and benefits of any kind the Lessee is not entitled to any contribution from the Lessor for any GST payable by any person.

24.5 Statement of GST Paid as Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

24.6 Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

24.7 Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

25 NOTICE

25.1 Form of Delivery

A Notice under this Lease is only effective if it is:

- (c) in writing, signed by or on behalf of the Party giving it;
- (d) addressed to the Party to whom it is to be given; and either:
 - (i) delivered or sent by prepaid post to that Party's address specified in **Item 17** of the Schedule; or
 - (ii) hand delivered to the Party at the address specified in **Item 17** of the Schedule; or
 - (iii) sent by email to that Party's email address specified in **Item 17** of the Schedule.

25.2 Service of Notice

A Notice to a person is deemed to be given or made:

- (a) if by leaving the Notice at the address specified by the Parties for hand delivery, at the time of leaving the Notice provided the Notice is left during normal business hours;
- (b) if by post to an address specified by the Parties in **Item 17** of the Schedule, on the fifth Business Day following the date of posting of the Notice; and
- (c) if by email to an address specified by the Parties at **Item 17** of the Schedule, at the time
 - (i) the sender of the notice receives a "read receipt" or other acknowledgement of receipt by email from the recipient; or
 - (ii) on the next Business Day after sending this email; and
 - (iii) If the sender receives an "out of office" response or other notification of failure of delivery of the email, the service of notice has not been successful and the sender must re-send the notice by post or personal delivery.

25.3 Signing of Notice

A Notice to a person may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

25.4 Address for provision of Notice

Subject to this **clause 25**, a Notice under this Lease will be validly given if it is addressed to the relevant addressee as set out in **Item 17** of the Schedule or to such addressee details that may be updated and notified in writing by one Party to the other from time to time:

26 VARIATION

This Lease may be varied only by deed executed by the Parties subject to such consents as are required by this Lease or at law and the approval of LandCorp.

27 WAIVER

27.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

27.2 Partial exercise or waiver of right power or privilege

- (a) A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.
- (b) A waiver or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

28 ACTS BY AGENT

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, or a Lessor's Agent.

29 STATUTORY POWERS

The powers confirmed on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in the lease, in addition to the powers conferred on the Lessor in this Lease.

30 FURTHER ASSURANCE

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

31 SEVERANCE

If any part of this Lease is, or becomes, void or unenforceable that part is or will be, severed from this Lease to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

32 MORATORIUM

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

33 GOVERNING LAW AND JURISDICTION

- (a) This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and where applicable the law of the Commonwealth of Australia.
- (b) Each Party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Lease; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 33(b)(i).

34 SPECIAL CONDITIONS

The Lessor and the Lessee agree that the special conditions set out in the Lease shall apply and agree with each other to observe and perform the obligations on the part of each of them set out in the Special Conditions.

35 CONSENTS

- (a) A consent or approval required under this lease from a party may be given or withheld.
- (b) If a Party's consent or approval is required, the requested Party:
 - (i) must consider and respond to the request promptly;
 - (ii) must not unreasonably withhold or delay the consent or approval;
 - (iii) may require the requesting Party to comply with reasonable conditions before giving its consent or approval;
 - (iv) must not impose conditions in giving consent or approval which would have the effect of being inconsistent with this Lease.
- (c) A consent or approval is not effective unless it is in writing.

36 PRIOR BREACHES

Rights in connection with a breach of this Lease are not affected by termination or expiry of this Lease.

37 TIME IS OF THE ESSENCE

Time is of the essence in respect of the performance and observance by the Lessee of the provisions of this Lease.

38 CONFIDENTIALITY AND MEDIA

- (a) The Lessor acknowledges that the activities of the Lessee in the Premises are confidential and agrees that it will not disclose to a third party information which comes into its possession pursuant to or as a result of or in the performance of any obligation or right under this Lease, whether that information relates to the Lessee's Business or any person dealing with the lessee or otherwise.
- (b) The Parties must keep confidential and must not disclose, use, or rely on information, opinion, admissions, documents or other material that arise during the course of dispute resolution for a purpose other than resolving the dispute.
- (c) This clause does not apply to disclosures to professional advisors for the purposes of the Lessor administering this Lease provided that the Lessor first ensures the professional advisors are bound by the same confidentiality requirements as are contained in this Lease.
- (d) This clause does not apply to disclosures made to ensure compliance with a statutory requirement.
- (e) Neither Party shall make any disclosure through any communications media in relation to the contents of this Lease without first obtaining the written approval of the other Party, which shall not be unreasonably withheld.
- (f) The operation of this clause survives the termination or expiry of this Lease.

39 COUNTERPARTS

This Lease may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

SPECIAL CONDITIONS

1 WARRANTIES OF LESSEE

The Lessee represents and warrants in relation to itself that:

- (a) it has been incorporated as a Special Purpose Vehicle company for the sole purpose of conducting the Project;
- (b) it has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has the power and authority to carry on its business as it is now being conducted and as is proposed under this Lease;
- (c) at the date of execution of this lease it has a minimum ten million dollars (\$10,000,000) in a trust account under its name, which will be solely used for the purpose of the construction of the Building;
- (d) the Lessee shall provide a bank statement and a Statutory Declaration to the Lessor confirming the items in Special Conditions 1(a), (b) and (c) within 5 Business Days of execution of the Lease by both Parties;
- (e) it has in full force and effect the authorisations necessary for it to enter into this Lease and any related documents to which it is a Party;
- (f) the obligations, transactions and requirements of this Lease and any related documents do not contravene its constituent documents or any law or obligation by which it is bound or to which any of the Lessee's Assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (g) all Financial Statements provided to the Lessor are a true and fair statement of its financial position as at the date they are prepared and disclose or reflect all its actual and contingent liabilities as at that date;
- (h) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (i) it is not in breach of a law or obligation affecting it or the Lessee's in a way which is, or is likely to cause, an Event of Default or Control Event;
- (j) there is no pending or threatened proceeding relating to an amount of greater than one hundred thousand dollars (\$100,000) affecting it or any of its assets before a court, authority, commission or arbitrator which may adversely affect its ability to perform its the Lessee's obligations under this Lease or any related document;
- (k) it has satisfied itself in all respects in connection with the suitability of the Premises for its Permitted Purpose;
- (l) it is aware of all prohibitions or restrictions on the use of the Premises under this Lease and any laws; and
- (m) it is satisfied with the Timetable for Completion set out at Annexure B of this Lease.

2 WARRANTIES OF LESSOR

The Lessor represents and warrants in relation to itself that:

- (a) It is legally entitled and has all statutory power to enter into and perform its obligations under this Lease, to carry out the transactions contemplated by this Lease, and the entry into of this Lease is a proper exercise of its power.
- (b) It has sufficient title to the Land to enter into and perform its obligations under this Lease.
- (c) Bank guarantee?

3 CONSTRUCTION OF BUILDING

- (a) The Lessee and the Lessor entered into this Lease to facilitate the construction of the Building by the Lessee in accordance with the Permitted Use set out **Item 12** of the Schedule, and provisions of this Lease.
- (b) Unless otherwise expressly provided, the Lessee must supply at the Lessee's cost and expense everything necessary for the proper completion of the construction of the Building;
- (c) The Lessee agrees
 - (i) to engage a suitably qualified and licensed contractor to construct the Building;
 - (ii) to ensure that the work is carried out in accordance with the *Occupational Safety and Health Act 1984* and its subsidiary legislation;
 - (iii) to ensure construction of the Building is executed in an appropriate and skilled way and with reasonable care in accordance with the Plans and Specifications as agreed by the Lessor and in accordance with all relevant laws, statutory requirements, Australian Standards, and requirements of relevant authorities, so that the Building constructed is of high quality and suitable for the Permitted Use;
 - (iv) to ensure the Building is constructed to a high standard, using high quality materials, contain high quality finishes and be constructed in a style that is sympathetic to other developments at the Quarter precinct recognising that operational and brand requirements will take precedence over other requirements;
 - (v) to reach practical completion on or prior to the dates set out in the Timetable for Completion set out in Annexure B;
 - (vi) where economically feasible, to source labour and supplies for construction and operation of the Building locally;
 - (vii) to actively pursue the engagement of local aboriginal persons and businesses in the construction and operation of the Building;
 - (viii) to obtain and maintain all insurances relevant to the construction of the Building during the construction phase.

4 IMPACT ON THE PUBLIC

The Lessee must take all reasonable measures to ensure that the construction of the Building does not disturb others, and to minimise any disruption to the public where it is unavoidable.

5 FIT-OUT FUNDING

- (a) The Lessor has committed to pay the Principal to the Lessee, for the purpose of funding the Fit-Out of the Building.
- (b) The Principal will be payable by the Lessor to the Lessee in Progress Payments.
- (c) The Lessee agrees that the Lessee shall use the Progress Payments to pay or reimburse itself for Fit-Out costs actually incurred in connection with the development of the Building to the extent that such costs are reflected in the development budget, subject to reallocation as may be agreed in writing from time to time between the Parties.
- (d) The Lessee is entitled to submit a Progress Payment Claim on the last day of each month for Works done to the second last day of that month.
- (e) Each Progress Payment claim shall be notified in writing to the Lessor and shall include independent certification of the value of the Works done, a tax invoice for the approved value contained in the progress certificate together with a Statutory Declaration that all subcontractors involved in the Works being claimed in the Progress Payment have been paid in full.
- (f) The Lessor shall, within 14 Business Days after receiving such a Progress Payment Claim, either
 - (i) pay the claim in full; or
 - (ii) advise the Lessee of areas of the claim that are not approved and provide reasons and request submission of a revised claim; or
 - (iii) refuse the claim in full.
- (g) The Lessor may, acting reasonably, withhold a claimed Progress Payment if it is not satisfied with the standard of completion, until the relevant stage is completed to the satisfaction of the Lessor.
- (h) The Lessor does not warranty or guarantee that the Principal will be sufficient for completion of full Fit-Out.
- (i) Other than the commitment to provide the Principal in Progress Payments as set out in this Lease, the Lessor will have no further obligation to provide any additional amounts or any additional services or things to the Lessee.

6 OPTION TO PURCHASE

- (a) Subject to
 - (i) the Rent due up to date and the unpaid balance of the fit out contribution being paid in full by the Lessee to the Lessor;
 - (ii) the Lessee not being in breach of or in default under any provision of this Lease;
 - (iii) the Lessee not being in any arrears with regard to any Amounts Payable; and
 - (iv) any breach or default under this Lease by the Lessee having been remedied by the Lessee or waived by the Lessor,
- the Lessor acknowledges that the Lessee shall have the option to purchase the Land at the expiration of the Term for the consideration of \$1 or such higher amount as paid by the City to LandCorp in accordance with the Value Uplift provisions of the Contract of Sale between LandCorp and the Lessor.

- (b) The Lessee must provide to the Lessor written notice of their intention to exercise the option to purchase no less than 1 year prior to the expiration of the Term. The Lessor must review the request with regard to the conditions of this Special Condition 6, and may not decline the request without reasonable cause.
- (c) If the Lessor is satisfied that the conditions of this Special Condition 6 are met or will be met by the date of the proposed purchase, the Lessor shall take all actions necessary to facilitate the Lessee becoming the registered proprietor of the Land.
- (d) If the Lessor is not satisfied that the conditions of this Special Condition 6 are met or will be met by the date of the proposed purchase, the Lessor shall respond to the Lessee in writing outlining any and all reasons for declining the proposed purchase, and setting out actions required for satisfaction of this Special Condition 6.
- (e) All costs relating to any transfer of ownership of the Land from the Lessor to the Lessee shall be borne by the Lessee.

7 ABORIGINAL ENGAGEMENT

- (a) The Lessee must, in performing its obligations under this Lease, make all reasonable efforts to engage Aboriginal persons and businesses while having regard to any implications for their budget or ability to meet the Timeline for Completion.
- (b) The Lessee shall within 20 Business Days of the Commencement Date prepare and submit to the Lessor an *Aboriginal Training and Employment Strategy (ATES)* relating to the engagement of Aboriginal persons in the development and operation of the hotel.
- (c) The ATES is subject to approval by the Lessor and LandCorp.
- (d) The ATES shall remain in place for the duration of this Lease.

8 MARKETING SPEND

From the Date of Practical Completion until the termination of this Lease the Lessee shall spend a minimum of 4% of total revenue per annum on marketing, exclusive of any applicable brand fees.

SCHEDULE

Item 1 Premises**Land:****Part of**

- (a) that piece of land identified as Volume 2831 Folio 953 on Deposited Plan 401615 and forming part of Lot 7078 on Sharpe Avenue, Karratha, and
- (b) Strata Lot 47 on Strata Plan 67914 within Lot 7079 on Deposited Plan 401615 comprising 101 car bays (together with a share in any common property as set out on the strata plan), as indicated for the purposes of identification on the Map set out in Annexure A hereto,

being approximately [insert sqm] lettable area subject to survey in accordance with the applicable Property Council of Australia Methods of Measurement method which will be undertaken by the Lessor at the Lessor's cost upon Practical Completion of the Building.

Building:

The branded Hotel with a minimum rating of four star to be constructed on the Land, in accordance with the Drawings at Annexure C and the criteria published by the Australian Tourism Industry Council, comprising four stories and a minimum of 100 guest rooms, and any additions or amendments that may occur during the Term following receipt of the written approval of the Lessor and, if applicable, LandCorp.

Item 2 Commencement Date

[insert date once known]

Item 3 Term

The period from Commencement Date to Practical Completion plus twenty (20) years which may be extended to thirty (30) years if minimum levels are not achieved

Item 4 Rent Accrual Period

The Date of Practical Completion until four years after the Date of Practical Completion

Item 5 Rent Commencement Date

Four years and one day after the Date of Practical Completion

Item 6 Rent

- (a) Rent is calculated on the basis of Principal plus 3.5% yield plus GST. The 3.5% yield is calculated on the reducing Principal.
- (b) Post payment of the final instalment of the Principal to the Lessee the yield is capitalised into the outstanding balance until payment of the final instalment of Rent.
- (c) Rent is to be divided into equal monthly payments spread over twenty (20) years, with payments commencing on the Rent Commencement Date. An Indicative Schedule of Payments is provided below.
- (d) Rent is due from the Rent Commencement Date until the full amount of the Rent due as calculated in accordance with this Item 6 has been paid.
- (e) Rent is payable by the Lessee to the Lessor in advance in equal monthly instalments to the bank account details advised by the Lessor to the Lessee or as otherwise requested in writing by the Lessor.
- (f) Once the Date of Practical Completion is known the Indicative Schedule of Payments shall be replaced with a Final Schedule of Rent Payments reflecting any variance in dates and amounts of Rent payable.
- (g) The Lessee can request in writing to the Lessor at any time after the Rent Commencement Date to make a lump sum payment of all Rent that would otherwise have been payable over the course of the Term in full and final settlement of Rent. The Lessor shall not unreasonably refuse such a request and shall provide a response in writing to the Lessee no more than 40 Business Days after receipt of the request confirming the settlement date and Rent amount due on the settlement date.

[Insert Indicative Schedule of Rent Payments]

Item 7 Latest Payment Date
14 days after the Lessor's demand

Item 8 Outgoings
The Lessee shall be responsible for, and promptly pay, all outgoings and charges which are assessed or incurred in respect of the Premises, including but not limited to:

- (a) local government rates, taxes, fees and charges and including but not limited to charges for rubbish and garbage removal and any fire and emergency services levy;
- (b) trade waste removal costs;
- (c) all water rates and charges, including rates and charges for meter rent, water consumption, and excess water charges;
- (d) all telephone, internet, electricity, gas and other power and light fees, charges, rentals and installation cost, including the cost of installation of any meter, wiring or connection, and the Lessee shall ensure where possible that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
- (e) costs associated with the registration of this Lease;
- (f) any fees or charges relating to their occupancy of the strata including strata levies;
- (g) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises;
- (h) Council's penalty interest charges on overdue balances at the rate adopted by Council in accordance with the provisions of the *Local Government Act 1995* (WA) and its subsidiary legislation; and
- (i) any charges or costs incurred by the Lessor where debt collection is necessary due to failure of the Lessee to promptly pay Outgoings.

Item 9 Principal

The amount, totalling no more than ten million dollars (\$10,000,000) excluding GST, invested by the Lessor in the Fit-Out of the Building.

Item 10 Market Review Dates

Not applicable

Item 11 CPI Review Dates

Not applicable

Item 12 Permitted Use

The Permitted Use of the Premises is for the

- (a) development, construction, management and operation of an at least four-star branded hotel development comprising of four stories and a minimum of 100 guest rooms on the Land by the Lessee. Branding must be affiliated with a reputable, internationally recognised hotel chain classified as a premium brand hotel by STR Global (or a similar organisation); and
- (b) the use of car-parking on the Land in a manner consistent with the Management Statement and By-Laws for Strata Plan No. 67914.

Item 13 Insurance

Public and Product Liability \$20,000,000

Worker's Compensation

Building Replacement Insurance for full replacement value of the Building

Item 14 Address for service of notices**Lessor**

Name: City of Karratha

Role: [Insert]

Postal Address: PO Box 219, Karratha, WA 6714

Hand Delivery: Lot 1083 Welcome Rd, Karratha, WA 6714

Email: enquires@karratha.wa.gov.au

Lessee

Name: [Insert]

Role: [Insert]

Postal Address: [Insert]

Hand Delivery: [Insert]

Email: [Insert]

Item 15 Responsibility for Property**(A) By Lessee**

For purposes of clarity, the attached list is, at the commencement of this Lease, a record of all buildings, fixtures, fittings, structures, chattels that is the responsibility of the Lessee to ensure are adequately insured and maintained whilst it is located on the Land for the duration of this Lease.

Ref No.	Description
1	All buildings, fixtures, fittings, structures and chattels on the Land

(B) By Lessor

For purposes of clarity, the attached list is, at the commencement of this Lease, a record of all buildings, fixtures fittings, structures, chattels that are the responsibility of the Lessor.

Ref No.	Description
1	Nil

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SIGNING PAGE

EXECUTED by the parties as a Deed dated _____ 2018

LESSOR:

EXECUTED on behalf of the **CITY OF KARRATHA** (ABN 83 812 049 708) in the presence of:

Signature of Authorised Officer

Witness

Full Name of Authorised Officer

Full Name of Witness

Position of Authorised Officer

Position of Witness

LESSEE:

The common seal of

[INSERT SPV NAME]

(ABN **[INSERT ABN]**)

is affixed hereto in accordance with s.127 of the *Corporations Act 2001* in the presence of each of the undersigned each of who declares by the **EXECUTION** of this document that he or she holds the office in the Lessee indicated under his or her name:

Signature of Office Holder

Signature of Office Holder

Full Name of Office Holder

Full Name of Office Holder

Position of Office Holder

Position of Office Holder

ANNEXURES

Annexure A

The Map

Part Lot 7078 Sharpe Avenue, Karratha - Volume 2831 Folio 953 on Deposited Plan 401615 and Strata Lot 47 on Strata Plan 67914 within Lot 7079 on Deposited Plan 401615 comprising 101 car bays, as indicated on the below Map which outlines the location of the Building in yellow, the car-park in blue and the possible future Phase 2 Development in red.

[insert appropriate map]

Annexure B

Timetable

[To be inserted]

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Annexure C

Plans

[To be inserted]

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Annexure D

Stata Bylaws

[INSERT Bylaws]

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