

# Consultancy Fee Agreement

**Oakhope Pty Ltd (The Vendors)**

**William Stanley Waterhouse (The Vendors)**

**Stanlight Investments Pty Ltd (the Vendors)**

**Swamer Investments Pty Ltd (SIPL)**

Date 30<sup>th</sup> August 2017

## Parties

**Oakhope Pty Ltd** ACN 066 331 682 of level 6, 73 Walker Street, North Sydney NSW 2060 (The Vendors)

**William Stanley Waterhouse** of level 6, 73 Walker street, North Sydney NSW 2060 (The Vendors)

**Stanlight Investments Pty Ltd** ACN 000 521 504 of level 6, 73 Walker Street, North Sydney NSW 2060 (The Vendors)

**Swamer Investments Pty Ltd** ACN 603 195 384 of Suite 3702, Level 37, MLC Centre, 19-29 Martin Place, Sydney NSW 2000 (**SIPL**)

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## Background

- A. SIPL has a business relationship with the Vendors and CGA in respect of the sale of the Properties.
- B. The Parties have agreed to work together under the operative provisions of this Document to effect the sale of the Properties from the Vendors to CGA or of its nominated entity.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this document:

**Greendale Property** means the property comprised in Lot 19 in DP 528902, being 711 Greendale Road, Greendale NSW 2745 and Lot 181 in DP 560518, being 527 Greendale Road, Greendale NSW 2745.

**Luddenham Property** means the property comprised in Lot 26 in DP 259698, being 435 Willowdene Avenue, Luddenham NSW 2745.

**Business Day** means a day which is not a Saturday, Sunday, or bank or public holiday in Sydney.

**Conditions Precedent** means FIRB Approval, and any other condition precedent to the sale of a Property under a Sale Agreement.

**FIRB Approval** means:

- (a) a written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) by or on behalf of the Treasurer stating that the Commonwealth Government does not object to the transactions contemplated by a Sale Agreement, either unconditionally or on terms that are acceptable to the purchaser under the Sale Agreement (**No Objections Notice**); or
- (b) an exemption notice under section 58 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) on terms acceptable to the purchaser under a Sale Agreement such that the purchaser under a Sale Agreement will not require a separate No Objections Notice for the transactions contemplated by that Sale Agreement.

**Negotiation Period** means, in respect of a Property, the period commencing on the date of this document and ending on the earlier of:

- (a) 2 years after the date of this document; or
- (b) The date of a Sale Agreement in respect of that Property.

**Properties** means the Greendale Property, the Luddenham Property and the Wallacia Property, and **Property** means either one and/or all of them as the context requires.

**Sale Agreement** means a binding agreement between the Vendors and Country Garden Australia Pty Ltd ("CGA") or a nominee of CGA in respect of the sale by the Vendors of a Property.

**Service Fee** means the service fee as per below table, plus GST payable by the Vendor for a Property or Properties under a Sale Agreement with CGA.

**Service fee table**

Combined Property Sale Price (in Millions)	%		Total
0-200	x 0.5	= 1.000	1.000
200-250	x 2.0	= 1.000	2.000
250-280	x 3.0	= 900	2.900

280-300	x 5.0	= 1.000	3.900
300-330	x 10.0	= 3.000	6.900
330-360	x 10.0	= 3.000	9.900
360-400	x 10.0	= 4.000	13.900

**SIPL Services** means the services described in clause 2.1.

**Vendors** means Oakhope Pty Ltd ACN 066 331 682, William Stanley Waterhouse and Stanlight Investments Pty Ltd ACN 000 521 504.

## 1.2 Interpretation

In this document:

- (a) a reference to this document means the agreements set out in this document or this document itself;
- (b) a reference to **clause, paragraph, subclause, attachment, annexure or schedule** means a clause, paragraph, subclause, attachment, annexure or schedule to this document;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a gender includes a reference to each gender;
- (e) **person** includes a natural person, firm, corporation, body corporation, unincorporated association or a government authority;
- (f) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this document, their substitutes and assigns;
- (g) an agreement on the part of, or in favour of, two or more persons binds them together and separately (jointly and severally);
- (h) a reference to a party means a person named as a party to, and bound by, this document;
- (i) **includes** means includes but without limitation;
- (j) where a word or expression has a defined meaning; its other grammatical forms have a corresponding meaning;
- (k) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (l) a heading is for reference only. It does not affect the meaning or interpretation of this document;
- (m) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule to this document;
- (n) a reference to dollars or \$ is to the Australian Currency.

## 2. Appointment of SIPL

### 2.1 Appointment

- (a) The Vendors appoints SIPL to facilitate the sale of the Properties from the Vendors to CGA or its nominee, and provide consultancy services to the Vendors in respect of the Properties for the Negotiation Period (**SIPL Services**).
- (b) SIPL must:
  - (i) use its best endeavours to perform the SIPL Services including exercising its best efforts to negotiate with the CGA on behalf of the Vendors to secure a Sale Agreement for each of the Properties for a price and on terms acceptable to the Vendors or the sale price of those properties collectively at least shall not be less than \$256 million Australian dollars; and
  - (ii) to act in the best interest of the Vendors in performing the SIPL Services;
  - (iii) comply with all laws in performing the SIPL Services.

## 2.2 Communications with the CGA

During the Negotiation Period:

- (a) all written and verbal communications between the Vendors and CGA about the Properties must be through or facilitated by SIPL;
- (b) The Vendors must not make direct communication with CGA in respect of each Property, unless the Vendors can not contact or reach SIPL's principal or its representative for at least 24 hours.

## 3. Fees

### 3.1 Service Fee

The Vendors must pay the Service fee in respect of the sale of the Property to SIPL in accordance with the following payment schedule:

First payment - 50% of the total service fee after exchange and FiRB approval and upon the first tranche of 30% (the 30% is inclusive of the 10% deposit paid by CGA at contract exchange and held in solicitor's trust account on behalf of the Vendors) is released by CGA or CGA's solicitor to the Vendors or Vendor's solicitor; and

Second Payment - 25% of the total service fee upon the second tranche of 30% is paid by CGA or CGA's solicitor to the Vendors or Vendor's solicitor; and

Third Payment - 25% of the total service fee upon the third tranche of 40% is paid by CGA or CGA's solicitor to the Vendors or Vendor's solicitor.

## 4. Termination

This document may be terminated by agreement between the Vendors and SIPL. In the event that the sale of the Property has already been transacted between the Vendors and CGA, such termination will not affect Clause 3. In any other event Clause 6 is still survive after termination of this Agreement.

## 5. GST

- (a) Unless otherwise stated in this document, amounts payable, and consideration to be provided, under any other provision of this document exclude GST.
- (b) The supplier must give a tax invoice to the recipient no later than the time when the recipient is required to pay or provide any part of the consideration for the supply.

## 6. Confidentiality

### 6.1 Confidentiality

Each party agrees not to disclose information provided by any other party (including the existence or contents of the Agreement) except:

- (a) information that is publicly available;
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this document;
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the parties;
- (d) to any party to this document or any Related Entity of any of them, provided the recipient agrees to act consistently with this clause;
- (e) to any party providing or proposing to provide finance to a party to this document;
- (f) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (g) any disclosure the disclosing party reasonably believes is required by any law, securities exchange or rating agency.

Each party consents to disclosures made in accordance with this clause.

### 6.2 Preserve Confidentiality

Where disclosure of information is permitted under clauses 6.1(c) to 6.1(e) (inclusive), the disclosing party must use all reasonable endeavours to:

- (a) preserve the confidentiality of the information; and
- (b) ensure that the person to whom the information is disclosed retains the confidentiality of the information.

## **7. General**

### **7.1 Notices**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing.

### **7.2 Variation and waiver**

A Provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### **7.3 Consents, approvals or waivers**

By giving any approval, consent or waiver, a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **7.4 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **7.5 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### **7.6 Remedies cumulative**

The rights, powers and remedies of a party in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

### **7.7 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

### **7.8 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **7.9 Counterparts**

This document may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

## **7.10 Representations and undertakings continue**

Each representation, warranty and undertaking in this document is a continuing obligation.

## **7.11 Entire agreement**

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **7.12 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

## **7.13 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it.

## **7.14 Governing law and jurisdiction**

The law in force in New South Wales governs this document and, to the extent the law permits, all matters in connection with this document including any non-contractual matter. The parties submit to the non-exclusive jurisdiction of the courts of that place. To the extent the law permits, the law of the Commonwealth as it applies in that jurisdiction governs a security interest arising under this document.

Execution page

EXECUTED AS AN AGREEMENT

Signed by Oakhope Pty Ltd  
ACN 066 331 682:

\_\_\_\_\_  
Signature of director/company  
Secretary

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature of director/company  
Secretary

\_\_\_\_\_  
Print name

Signed by William Stanley Waterhouse:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Signed by Stanlight Investments Pty Ltd  
ACN 000 521 504:

\_\_\_\_\_  
Signature of director/company  
Secretary

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature of director/company  
Secretary

\_\_\_\_\_  
Print name

Execution page continue

Signed by Swamer Investments Pty Ltd  
ACN 603 195 384:

\_\_\_\_\_  
Signature of sole director/company  
Secretary

\_\_\_\_\_  
Print name