


THIS LEASE is made on

2008

RECITALS

- A.** Defence Housing Australia and the Landlord named in this Lease acknowledge that Defence Housing Australia enters into this Lease for the purpose of performing its statutory function of providing residential housing under the Defence Housing Australia Act 1987.
 - B.** Defence Housing Australia and the Landlord acknowledge that in order for Defence Housing Australia to perform its statutory function and given the nature of the practical arrangements governing the occupation of the Property this residential lease transaction incorporates features which are not identical to a standard form residential lease where the tenant is occupying the Property for private purposes.
 - C.** The parties have agreed that the arrangements set out in this Lease reflect the intentions of the parties and the particular nature of the transaction.
 - D.** The parties enter into this Lease in good faith and with a commitment to regulate this transaction in accordance with the arrangements specifically stipulated in this Lease. The parties declare that it is their intention to abide by the spirit and intent of the arrangements set out in this Lease.
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1. The Lease

This is a Lease by which

•

of _____ ("the Landlord")

leases to

• **DEFENCE HOUSING AUSTRALIA** of
26 Brisbane Avenue BARTON, ACT 2600

("DHA")

the property known as

•

the title reference for which is

•

("the Property")

2. Lease Term

The Lease is for a term of

•

("the Lease Term")

commencing on

•

("the Commencement Date")

and expiring on

•

("the Expiry Date")

DHA has the right to vary the Lease Term of this Lease or any renewal by

(a) reducing the Lease Term by a period up to but not exceeding twelve (12) months, or

(b) extending the Lease Term by a period up to but not exceeding twelve (12) months.

This right must be exercised in the manner set out in clause 8, and may be exercised only once during the Lease Term.

3. Option to Renew

(a) DHA has an option to renew the Lease for a further term of

•

("the Option Period")

(b) This option must be exercised in the manner set out in clause 9.

4. Rent

- (a) The commencing rent payable under this Lease is the sum of
 - per week.
- (b) The rent shall be subject to periodic review to market rent in the manner set out in clause 10.
- (c) The rent shall be paid by DHA monthly in advance, in the manner set out in clause 11.

5. Management/Maintenance

- (a) DHA has responsibility for
 - (i) management of the Property in accordance with the terms of this Lease, and
 - (ii) certain aspects (but not all) of repair and maintenance of the Property.
- (b) The nature and scope of these obligations are set out in clause 12 (Management) and clause 13 (Maintenance).
- (c) As consideration for assuming these obligations, DHA shall be entitled to a management/maintenance fee equivalent to per cent (.....%) of the rent (in this Lease referred to as the "Fee").
- (d) The Fee shall be paid by deduction from monthly rent payments during the term of this Lease, as set out in clause 11.

6. Further Terms and Conditions of Lease

- (a) This Lease is subject to the further terms and conditions set out in the ensuing clauses.
- (b) The terms and conditions of this Lease, as set out in this document
 - (i) constitute the entire agreement between the Landlord and DHA relating to the Lease, and
 - (ii) may be varied only by an instrument in writing signed by or on behalf of both the Landlord and DHA.

7. Interpretation

- (a) In this Lease unless the context otherwise requires
 - (i) "DHA" means the Defence Housing Australia, a statutory corporation established by the Defence Housing Australia Act 1987, and includes its substitutes and successors, and where the context permits its assignees,
 - (ii) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999,
 - (iii) "GST" and "taxable supply" have the meanings given to those terms in the GST Act,
 - (iv) "Occupant" means the Commonwealth of Australia and any other person to which DHA is empowered to provide accommodation under the DHA Act,
 - (v) "Lease" means the lease transaction recorded by this instrument,
 - (vi) "Landlord" means the party named as Landlord in clause 1 of this Lease, and includes the successors, personal representatives and assignees of that party,
 - (vii) "Property" means the real estate described in clause 1 of this Lease, and (where applicable) any fixtures, fittings, and other chattels which are the property of the Landlord and which are attached to or are located on the Property at the commencement of this Lease.

- (b) Where any other expressions are defined in the text of this Lease, those expressions shall have the meanings ascribed to them, unless the context precludes this.
- (c) The singular includes the plural and vice versa, and a reference to any gender includes all genders.
- (d) A reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, government, statutory entity or any other legal entity whatsoever, and vice versa.
- (e) A covenant, agreement or undertaking on the part of two or more parties shall bind those parties jointly and each of them severally.
- (f) A reference to a statute or ordinance includes all amendments made to that statute or ordinance, and to any statute or ordinance passed in substitution therefor, and all regulations made under any such statute or ordinance.
- (g) Where this Lease requires something to be done on a day which is a Saturday or Sunday or is a Public Holiday in the State or Territory in which the Property is situated, then that thing may be done on the next day which is not a Saturday, Sunday or Public Holiday.

8. Variation of Lease Term

- (a) If DHA wishes to exercise its right to vary the Lease Term pursuant to clause 2 it must do so by written notice to the Landlord.
- (b) The notice must specify
 - (i) the period by which the Lease Term is being reduced or extended, and
 - (ii) the new Expiry Date of the Lease Term.
- (c) The notice must be given
 - (i) in the case of a reduction of the Lease Term, at least three (3) months prior to the new Expiry Date, and
 - (ii) in the case of an extension of the Lease Term, at least three (3) months prior to the original Expiry Date specified in clause 2.

9. Option to Renew

- (a) Where clause 3 provides for an option to renew the Lease, if DHA wishes to exercise that option it must do so by a notice in writing to the Landlord, given not less than six (6) months prior to the Expiry Date.
- (b) Upon the option being exercised, the Landlord shall be deemed to have granted to DHA a Lease of the Property
 - (i) for the Option Period provided for in clause 3, with the Commencement Date and Expiry Date amended accordingly,
 - (ii) at a commencing rent determined in accordance with clause 10, and subject to annual review in accordance with that clause, and
 - (iii) on the terms and conditions set out in this Lease, with the exception of clause 3 and this clause 9.

10. Rent Review

- (a) As at each relevant "Review Date" (which will be 31 December in the year in which the Lease commences, or if the Commencement Date is later than 30 September in that year, then on 31 December in the following year, and each subsequent 31 December) the weekly rent for the period of twelve (12) months commencing on the day following each Review Date shall be reviewed to market rent in the manner set out in the ensuing provisions of this clause 10.

- (b) As at each Review Date, the weekly rent is to be varied to a figure equivalent to the market rent as at the Review Date, which figure shall be determined by an independent valuer, appointed by DHA for that purpose.
- (c) In respect of the first Review Date, if the review process produces a market rent figure which is less than the commencing rent then the rent shall not be varied and rent shall continue to be paid at the commencing rent until the next Review Date.
- (d) The valuer
 - (i) must be a member of the Australian Property Institute (in the relevant State or Territory), and
 - (ii) shall be appointed by DHA to assess the market rent in accordance with this clause 10.
- (e) The valuer shall be instructed to assess the market rent for the Property as at the Review Date having regard to the following criteria:
 - (i) the estimated amount for which the property should rent, as at the relevant date, between a willing lessor and a willing lessee in an arms length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion having regard to the usual market terms and conditions for leases of similar premises,
 - (ii) no account is to be taken of any higher rent which might be paid by a tenant with a special interest, or any lower rent which might be acceptable to a landlord with a special interest,
 - (iii) a proper consideration of the impact of fixtures, fittings, furnishing, landscaping and other such items on the rental value, and
 - (iv) such other factors as the valuer considers appropriate.
- (f) The market rent valuation
 - (i) must be in writing,
 - (ii) will be provided to the Landlord on request in the form of a valuation certificate, and
 - (iii) will be able to be substantiated by appropriate supporting evidence.
- (g) Subject to clause 10(i), the determination of the appointed valuer shall be final and binding on the Landlord and DHA.
- (h) The costs of the valuation process shall be paid by DHA.
- (i) If the Landlord is dissatisfied with a decision of the appointed valuer then the Landlord may elect to invoke the following secondary review process.
 - (i) The Landlord must, within thirty (30) days of service by DHA of notice of the outcome of the rent review process, serve on DHA a written notice which
 - (1) states that the Landlord wishes to invoke the secondary review process, and
 - (2) encloses a valuation by a valuer, retained and paid by the Landlord, and who must be a member of the Australian Property Institute (in the relevant State or Territory), which indicates a view of the market rent which exceeds that determined by the valuer appointed by DHA pursuant to clause 10(b).
 - (ii) The Landlord and DHA shall thereupon consult with the two valuers and seek to reach an agreement as to the proper market rent figure.
 - (iii) If no agreement is reached within thirty (30) days of the date of service of the Landlord's notice under clause 10(i)(i) then either party may invite the President of the local Division of the Australian Property Institute (in the relevant State or Territory) to appoint a valuer to determine the market rent, in accordance with the principles set out in clause 10(e). If there has been no such invitation to the President within a further period of seven (7) days then this

secondary review process shall lapse, and the determination of the appointed valuer under clause 10(g) shall be final and binding.

- (iv) The determination of the valuer appointed by the President pursuant to paragraph (iii) shall be final and binding on the Landlord and DHA.
- (v) The costs of the valuer appointed by the President shall be met by the Landlord and DHA equally.
- (j) If for any reason, including oversight or omission on the part of DHA or the Landlord, the rent review process has not been carried out or completed by any Review Date, then
 - (i) the review process may nevertheless be carried out and completed, and
 - (ii) DHA shall continue to pay rent at the rate applicable for the previous period until the review process has been completed and the new rent determined.
- (k) Any necessary adjustment of rent following a concluded rent review under this clause 10 shall be made between the Landlord and DHA, either by DHA paying the amount of any underpayment to the Landlord, or the Landlord refunding the amount of any overpayment to DHA, as may be necessary. Any such payment must be made within fourteen (14) days of the determination. In any case where the Landlord owes money to DHA, it is permissible for DHA to deduct such money from monthly rent payments.

11. Payment of Rent

- (a) Except for the first rent payment, the rent shall be paid monthly in advance on the first day of each calendar month. The first payment of rent shall be made on the first day of the month following that in which the Commencement Date occurs except where the Commencement Date occurs after the twenty third day of the month. Where the Commencement Date is after the twenty third day of the month, the first payment of rent shall be made within seven days of the first day of the following month. The first payment shall include a part month rent payment in arrears and the first full month rent payment in advance.
- (b)
 - (i) The monthly payments shall be calculated as follows
$$\text{monthly payment} = \text{weekly rent} \times 4.3482$$
 - (ii) If the Commencement Date falls otherwise than on the first day of a month, then
 - (1) the first part month payment, for the period from the Commencement Date to the last day of the month in which the Commencement Date falls, and
 - (2) the payment for the last rent period, from the first day of the month in which the Expiry Date occurs until the Expiry Date,

shall be calculated on a daily basis referable to the number of days covered by the rent payment as follows:

$$\text{daily rent} = \text{weekly rent} \times 0.1429$$
- (c) DHA may pay the rent either by cheque or by electronic funds transfer, as DHA in its discretion elects. The Landlord must make adequate arrangements to permit payment by electronic funds transfer if DHA notifies the Landlord that it proposes to pay the rent by that means.
- (d) DHA may deduct from monthly rent payments the Fee provided for in clause 5 and any other moneys due from the Landlord to DHA under this Lease or on any other account.

12. Management Function

- (a) The Landlord and DHA agree that DHA will perform the functions described in clause 12(b) as part of the tenancy arrangements between DHA and the Landlord during the Lease Term. In implementing the arrangements in clause 12 and clause 13 DHA will not be deemed to be acting as a real estate agent.

- (b) The management functions comprise the following
 - (i) payment on behalf of the Landlord of outgoings in respect of the Property (unless the Landlord elects to assume this responsibility),
 - (ii) paying property insurance premiums on behalf of the Landlord (unless the Landlord elects to assume this responsibility),
 - (iii) arranging for compliance, at the Landlord's cost, with any repair and maintenance obligations of the Landlord arising from clause 13(d) and clause 13(e),
 - (iv) itemising monthly rent receipts and outgoings and other expenses (other than those covered by the Fee) paid on the Landlord's behalf and if required by the Landlord providing relevant information on an annual basis, and
 - (v) carrying out inspections of the Property at periodic intervals to identify repair and maintenance needs.
- (c) DHA's obligation to pay outgoings under clause 12(b)(i) and clause 12(b)(ii) is subject to the Landlord giving or directing rate notices and other debit notes for such outgoings to DHA in sufficient time to enable payment by the due date.
- (d) DHA may deduct any moneys paid on the Landlord's account pursuant to this clause 12 from monthly rent payments. Otherwise the Landlord must reimburse DHA on demand for any money paid by DHA for or on behalf of the Landlord within fourteen (14) days of demand.

13. Repair and Maintenance Function

- (a) The intent of this Lease is that, except for those items which are specifically excluded from the area of DHA's responsibility by clause 13(d), DHA will carry out at its expense, in consideration of the Fee
 - (i) all repair and maintenance requirements for the Property, and
 - (ii) repair, and replacement where necessary, of fixed appliances forming part of the Property, such replacements to be of a standard no lower than the original item.
- (b) The Landlord and DHA agree that it is desirable that the Property be maintained, both internally and externally, at a standard which is reflective of contemporary community standards, both generally as to community standards of amenity, and specifically as to the standards of the locality in which the Property is situated. DHA, in performing its obligations under clause 13(a), may carry out such works as it considers appropriate to maintain the Property to this standard (excepting any work covered by clause 13(c)) without reference to the Landlord.
- (c) Where DHA proposes to carry out any work
 - (i) which will significantly change the appearance of the Property, or
 - (ii) which involves structural alteration or additions

then DHA will consult with the Landlord before undertaking such work, and will not carry out such work without the prior consent of the Landlord, which consent will not be unreasonably withheld.
- (d) DHA's responsibilities under clause 13(a) shall not include the following
 - (i) repair of structural defects,
 - (ii) repair of structural damage, unless the primary cause of the damage is a negligent or malicious act by DHA or its employees or agents or any occupant of the Property who is an occupant pursuant to clause 16(b) or a DHA sub-tenant pursuant to clause 16(c) and clause 16(d),
 - (iii) landscaping work of a major, non-recurring maintenance nature, such as large tree removals and replacement of fencing and retaining walls,
 - (iv) work covered by any warranty held by the Landlord,

- (v) work which is or would be covered by any insurance which the Landlord is required to effect pursuant to clause 19(a) of this Lease,
 - (vi) work which is the obligation (at law or by resolution or agreement) of a body corporate or similar entity or some other third party at the Commencement Date of the initial term of this Lease or which becomes an obligation of this type at any time during the Lease Term,
 - (vii) maintenance of swimming pools and associated equipment, including recurrent and structural maintenance,
 - (viii) work which is the consequence of any damage by fire, lightning, flood, storm, tempest or any other factor outside the control of DHA,
 - (ix) work, repairs and maintenance arising from subsidence of any nature, or
 - (x) pest inspection programs or treatments required to protect the Property or to treat infestation of the Property or which are undertaken for the purpose of producing or maintaining pest control certificates.
- (e) It shall be the responsibility of the Landlord, subject to clause 14, to carry out at his expense any repair and maintenance work of the nature described in clause 13(d). If the Landlord fails to carry out any such work within a reasonable period of time, then DHA may carry out such work, and recoup the cost of the work from the Landlord as a debt due, and/or offset that cost against monthly rent payments.
 - (f) In respect of work which is covered by any warranty or is the responsibility of a third party, DHA may provide such assistance as may reasonably be provided and as mutually agreed by the Landlord and DHA to facilitate the enforcement of the rights of the Landlord against the third party and the Landlord agrees to sign such documents and attend to such matters as may be necessary to achieve the object of this clause 13(f).
 - (g) In respect of work which is covered by an insurance policy, the Landlord agrees that DHA may provide assistance as mutually agreed by the Landlord and DHA to facilitate the recovery of the cost of the work under the terms of the policy and the Landlord agrees to sign such documents and attend to such matters as may be necessary to achieve the object of this clause 13(g).
 - (h) The Landlord shall be responsible for any excess applying to his insurance policy and DHA's exemption from responsibility under clause 13(d)(v) shall not be affected by any such excess applying to the Landlord's insurance policy.
 - (i) In respect of emergency repair work which is covered by the Landlord's insurance or is the Landlord's responsibility under clause 13, DHA may carry out such work as is necessary to preserve the Property and/or protect the health, safety and security of the occupants and DHA will be entitled to recoup the cost of such work from the Landlord and may deduct it from the monthly rent payments.
 - (j) The parties expressly agree that where any applicable legislation requires notice to be given in respect of repairs and maintenance by either party in a specified manner then, provided that the repairs and maintenance fall within the ambit of clause 13(a) and the repairs and maintenance are undertaken by DHA as required by clause 13(a) or clause 13(b), the parties will be deemed to have given the requisite notices and undertaken the repairs and maintenance in the manner provided for by applicable legislation.

14. Damage to the Property

- (a) In this clause 14, the expression "damage" means damage of a nature such that the rectification work is, under clause 13, the responsibility of the Landlord. This clause does not apply in the case of damage which DHA is responsible to repair.
- (b) If the Property is damaged so that it cannot reasonably be used in the manner contemplated by clause 15, then DHA is not liable to pay rent for the period for which the Property cannot be used.
- (c) If the Landlord gives DHA notice that the damage is such that repairing it is impractical or undesirable, then either the Landlord or DHA may terminate the Lease by giving not less than seven (7) days notice to the other. No compensation shall be payable in respect of such termination.

- (d) If the Landlord does not repair the damage within a reasonable time (and DHA shall have the right to nominate the reasonable time) after DHA gives the Landlord a notice asking it to do so, then DHA may terminate this Lease by giving seven (7) days notice to the Landlord.
- (e) If damage of the type contemplated by clause 14(b) occurs within the last year of the Lease Term then DHA may elect by notice in writing to the Landlord to terminate the Lease.

15. Use of the Property

- (a) DHA will use and permit the Property to be used only as a private dwelling, and for other purposes as may be approved by DHA and permitted by the relevant local authority.
- (b) DHA will not use or permit the Property to be used in any manner which
 - (i) is illegal,
 - (ii) causes a nuisance, or
 - (iii) interferes with the reasonable peace, comfort or privacy of the neighbours.
- (c) The Landlord undertakes that DHA and occupants in possession pursuant to clause 16(b) and sub-tenants pursuant to clause 16(c) and 16(d) may occupy the Property during the Lease Term without interference by the Landlord, subject only to clause 15(d).
- (d) The Landlord may, subject to prior arrangements having been made with DHA, have access to the Property
 - (i) to carry out any repairs and work which are the responsibility of the Landlord, provided that this right must be exercised in a manner which minimises inconvenience to the occupants of the Property,
 - (ii) as necessary for the purposes of a sale during the Lease Term, provided again that this right must be exercised in a manner which minimises inconvenience to the occupants (and in this regard DHA shall be entitled to specify the nature and frequency of access, so as to keep inconvenience to the occupants within reasonable bounds), and
 - (iii) to inspect the Property. Inspections may be carried out at any time when the Property is unoccupied, and otherwise not more frequently than once a year, or otherwise as allowed by any applicable legislation.
- (e) The Landlord acknowledges that prior to entering into this Lease, he has satisfied himself as to the state and condition of the Property and as to its fitness to be leased to DHA for use for residential purposes.
- (f) The Landlord agrees that the Occupant shall be at liberty to keep domestic pets, of a nature which is appropriate in the circumstances, on the Property, except where the keeping of pets or particular categories of pets is expressly prohibited by the by-laws of a strata scheme, community title scheme or similar scheme, or by any statutory or local government rules or regulations. DHA must use its reasonable endeavours to direct occupants of the Property to ensure that pets are restrained so as to prevent damage to the Property and landscaping and to avoid causing a nuisance to neighbouring residents.

16. Subletting and Assignment

- (a) The Landlord acknowledges that he is aware that this Lease has been drawn so as to enable DHA to perform its statutory function.
- (b) The Landlord unconditionally consents to DHA sub-letting the Property and DHA entering into tenancy agreements in respect of the Property.
- (c) During any period for which DHA does not need the Property, the Landlord hereby unconditionally consents to DHA either
 - (i) leaving the Property vacant, or

- (ii) sub-letting the Property into the private rental market.
- (d) If the Property becomes surplus to DHA's requirements, DHA may give written notice of that fact to the Landlord. The Landlord may at any time within thirty (30) days of receipt of that notice elect, by notice in writing to DHA, to accept a surrender of this Lease. If the Landlord does not elect to accept a surrender of this Lease, then the Landlord hereby unconditionally consents to DHA subletting the Property until expiry of the Lease Term.
- (e) Where the Landlord's consent to sublet is required by any applicable law the Landlord hereby grants the consents referred to in clause 16(c) and clause 16(d) of this Lease. These clauses shall constitute the written consent of the Landlord to sublet the Property in the circumstances referred to in clause 16(c) and clause 16(d) and may be relied upon by DHA as consent to sublet for the purposes of any applicable laws.

17. Expiry of the Lease Term

- (a) On the expiry or earlier termination of the Lease Term (including any option or holdover period) DHA will surrender possession of the Property to the Landlord, and will leave the Property in good and substantial repair, order and condition, subject to fair wear and tear and having regard to the age of the Property and its condition on the Commencement Date, but subject to the following provisions of this clause 17.
- (b) DHA will
 - (i) ensure that all appliances are clean and in good working order,
 - (ii) ensure that floors and window fittings are clean, and
 - (iii) ensure that the grounds and landscaping are in a neat and tidy condition.
- (c) If the total Lease Term (including any option or holdover period) is six (6) years or more, then DHA will also on expiry of the term repaint the Property internally.
- (d) If the total Lease Term (including any option or holdover period) is nine (9) years or more, then DHA will also on expiry of the term
 - (i) recarpet previously carpeted areas of the Property and replace vinyl on floors previously covered with vinyl to a similar standard and toning as existed at the Commencement Date,
 - (ii) repolish any previously polished timber floors to a similar standard to that which existed at the Commencement Date, and
 - (iii) repaint external surfaces, except where external painting is the obligation of a strata title body corporate or similar entity.
- (e) DHA's obligations under clause 17(c) and clause 17(d) shall not be affected by any reduction in the Lease Term effected in accordance with clause 8.
- (f) If DHA continues to occupy the Property after the Expiry Date, it will do so as a tenant from month to month, and that tenancy can be terminated by no less than one month's notice from one party to the other with effect from the termination date specified in the notice. The terms and conditions of this Lease will apply to the tenancy so far as they may be applicable.
- (g) On vacating the Property DHA may, and if requested by the Landlord will, remove fixtures and fittings in the nature of trade or tenant's fixtures which DHA has brought onto the Property. If DHA removes the fixtures and fittings it must repair any damage caused by the removal of these items. If DHA chooses, with the agreement of the Landlord, not to remove those fittings and fixtures the Landlord will not make any claim or seek compensation in respect of those fittings and fixtures left in the Property.

18. Sale of the Property

- (a) If this Lease is unregistered, the Landlord must not sell or dispose of the Property or any interest in it ("Property Interest") unless, as a condition precedent to any such sale or disposal, the Landlord procures the execution by the purchaser or transferee of an agreement with DHA to be bound by this Lease. The

agreement must be in a form reasonably acceptable to DHA, and must be delivered to DHA duly executed and stamped.

- (b) Where the Property is to be submitted for sale by auction then the auction must not be held on or adjacent to the Property.
- (c) Inspections for the purpose of sale may be conducted only if prior appointments are made with DHA, and no "open house" inspections may be held.
- (d) The Landlord must give DHA not less than seven day's notice of his intention to list the Property for sale.
- (e) The Landlord will not affix or erect any "For Sale" signage on the Property or adjacent to the Property.

19. Landlord's Insurance Obligations

- (a) The Landlord must take out and maintain insurance cover which
 - (i) covers the Property and all fixtures and fittings and chattels owned by the Landlord for their full insurable value, but without duplication of any property protection insurance required by law to be held by the relevant strata or community title scheme or similar as referred to in clause 22(a),
 - (ii) includes accidental damage to the Property and all fixtures and fittings owned by the Landlord,
 - (iii) covers damage by fire, storm, tempest, explosion, impact damage and other such factors outside the control of the Landlord or DHA,
 - (iv) includes public liability cover in respect of the Landlord's exposure in relation to the Property and this Lease for not less than \$10,000,000, and
 - (v) is placed with a reputable insurance company.
- (b) The Landlord must produce to DHA when so requested a copy of the relevant insurance policy or certificate of currency and evidence of payment of the current premium.
- (c) If the Landlord elects to not take out insurance cover for flood, the Landlord agrees that he bears the risk associated with not taking insurance cover for flood and he indemnifies DHA for any loss or damage to the Landlord's Property and the Landlord's fixtures, fittings and chattels therein caused by flood.
- (d) The Landlord may choose to take out insurance cover in the event that rent ceases to be payable pursuant to this Lease. The Landlord agrees to bear the risk associated with not taking out such cover.

20. DHA's Insurance Obligations

- (a) DHA must effect and maintain during the term of this Lease public liability insurance, in respect of its public liability exposure in respect of the Property and this Lease, for not less than \$10,000,000 with a reputable insurance company.
- (b) For so long as Defence Housing Australia is the tenant under the Lease, the obligation created by this clause shall be satisfied if DHA includes the Property in its general insurance policy for premises owned or leased by DHA, provided that the level of cover under that policy meets the requirements of this clause.

21. Rates and Charges

- (a) The Landlord will promptly pay
 - (i) all Local Government rates and charges,
 - (ii) all rates and charges relating to the provision of water and sewerage services (except for charges for metered water consumption),

- (iii) all other statutory and municipal rates, taxes and other charges levied or assessed in respect of the Property or the Landlord, except such charges as are made the responsibility of DHA under clause 21(b), and
 - (iv) all levies and charges payable in respect of the Property under any strata title, community title or similar legislation.
- (b) DHA shall be responsible for paying, or procuring its subtenants to pay, all accounts for excess water, or water usage or water consumption and for the supply of gas, electricity, telephone and other such services to the Property.

22. Strata Title/Community Title

- (a) The arrangements in this clause 22 apply where the Property comprises a lot or lots however described in a registered strata plan, building units plan, group titles plan or neighbourhood plan or a similar strata or community title scheme.
- (b) Subject to any applicable legislation
- (i) if DHA so requires at any time during the currency of this Lease the Landlord must appoint, in compliance with relevant statutory requirements, DHA or a person who is an employee or authorised representative of DHA and who is nominated in writing by DHA to be the Landlord's proxy to attend and vote (on the Landlord's behalf and/or to give effect to DHA's rights under clause 22(h)) at all general meetings and annual general meetings of the body corporate or other governing body of such scheme, and at any adjournments of those meetings held during the term of this Lease, or
 - (ii) if DHA elects not to exercise its right to be nominated as the Landlord's proxy then, the Landlord agrees that if DHA requires he will appoint DHA or a person who is an employee or authorised representative of DHA and who is nominated in writing by DHA to act as his attorney solely in respect of matters
 - pertaining to the Landlord's rights to attend and vote at all meetings of the body corporate or other governing body of such scheme and at any adjournments of those meetings held during the term of this Lease; and/or
 - required to give effect to DHA's rights under clause 22(h).
 - (iii) if DHA exercises its rights under clause 22(b)(i) or clause 22(b)(ii) the Landlord must on or before the Commencement Date or within fourteen days of being requested to do so by DHA execute a form of proxy or power of attorney (as the case may be) in favour of DHA or its nominee and will renew the proxy or power of attorney where necessary to comply with relevant legislation. DHA may change the identity of its nominee from time to time, and in such case the Landlord must cancel the previous proxy or power of attorney and execute a new instrument of proxy or power of attorney in favour of the substituted nominee.
- (c) DHA and its nominee are not entitled to exercise the proxy or power of attorney to ratify or approve any resolution of the relevant body which would
- (i) impose any financial obligations or liability on the Landlord, other than in respect of contributions for the purpose of meeting normal operating costs, or
 - (ii) adversely affect the value or amenity of the Property
- without the prior consent of the Landlord. The Landlord must not unreasonably withhold consent to any such resolution the passage of which is necessary to preserve the amenity of the Property and/or the building of which the Property forms part.
- (d) Any proxy or power of attorney required to be given by the Landlord under this clause will be in or to the effect of any form prescribed by legislation, amended as necessary to reflect the provisions of this clause. Except as specified in clause 22(b)(iii), any proxy is irrevocable during the term of this Lease.

- (e) DHA must comply with the provisions of the legislation covering the relevant title scheme, and any by-laws or rules of the body corporate or other governing body which relate to or affect the Property and/or the land and buildings where the Property is located.
- (f) Where the Landlord is exercising any voting rights he must, and where DHA is exercising any voting rights by proxy or power of attorney it may, vote in such a manner as will give effect to clause 15(f) (allowing the keeping of domestic pets) and other provisions of this Lease.
- (g) Where the Landlord is exercising any voting rights he must
- (i) not vote in favour of any resolution which will have the effect of there not being a body corporate manager or strata manager to manage the body corporate unless DHA agrees,
 - (ii) not vote in favour of any resolution which will restrict, derogate from or otherwise adversely affect any of the rights of DHA under this Lease,
 - (iii) not vote in favour of any resolution which will adversely effect or impose any additional restrictions or requirements on the use of the Property and the common areas by DHA or the occupants of the Property, and
 - (iv) consult with DHA in a spirit of good faith in respect of resolutions or actions proposed and take into account DHA's reasonable requirements in respect of those resolutions or proposed actions.
- (h) If a body corporate
- (i) passes a resolution or takes other action that will have the effect of imposing unreasonable restrictions or requirements on the use of the Property or the common property by DHA or the occupants pursuant to this Lease, or
 - (ii) fails to maintain all public liability insurances required by any applicable legislation, or
 - (iii) takes or fails to take any action that has the result of placing at risk the health, safety or security of the occupants pursuant to this Lease, or the safety, security or amenity of the Property or the common property and
- those actions or omissions have the effect that DHA is no longer able to use the Property as contemplated by clause 15 and clause 16(a) then the parties agree to co-operate with each other and to negotiate in good faith to reach a mutually satisfactory resolution. If agreement is not reached within ninety (90) days DHA may elect to terminate this Lease upon giving the Landlord thirty (30) days notice in writing and at the expiration of that period the Lease will determine but without prejudice to any prior claim which either party may have against the other.
- (i) Notwithstanding anything contained in this Lease, if DHA elects to terminate the Lease pursuant to this clause 22(h), DHA shall not be liable to pay any compensation, damages or otherwise to the Landlord for early termination.
- (j) If a body corporate manager fails to
- comply on time with relevant laws, codes of practice and applicable standards,
 - diligently give effect to resolutions passed,
 - diligently enforce all warranties and insurance rights of the body corporate,
 - diligently undertake repairs and maintenance
- then the parties agree to co-operate with each other and to negotiate in good faith with the body corporate manager to reach a mutually satisfactory resolution. If agreement is not reached within ninety (90) days DHA may elect to initiate the process for dismissal of the body corporate manager.

23. Default and Termination

- (a) (i) In the event that DHA at any time

- (1) fails to duly perform or observe any covenant, term or condition in this Lease (including the covenant to pay rent), and
 - (2) fails to rectify such failure, in the manner provided in clause 23(b), after service by the Landlord of a notice in writing specifying the failure to perform or observe and calling for its rectification,
- then, unless that failure is waived by the Landlord the Landlord may give DHA not less than fourteen (14) days notice in writing that he intends to terminate the Lease.
- (ii) If the Landlord elects to terminate the Lease, neither party will be released from liability for any prior breach of the Lease, and other remedies available in respect of any such breaches will not be prejudiced.
 - (iii) It is expressly agreed by the parties that for the purposes of the Landlord exercising his rights under clause 23(a)(i) or under any applicable legislation DHA will not be in default unless it has failed to rectify the failure to perform the relevant covenant, term or condition in this Lease in the manner provided in clause 23(b), after service by the Landlord of a notice in writing specifying the breach and calling for its rectification.
- (b) An instance of default may be rectified in the following manner
- (i) in the case of a default rectifiable by the payment of money, if DHA pays the money required to rectify the default within thirty (30) days of service of the Landlord's notice,
 - (ii) in the case of a default rectifiable other than by the payment of money, if DHA
 - (1) gives the Landlord, within thirty (30) days of service of the Landlord's notice, a written undertaking to rectify the default, and
 - (2) rectifies the default within a reasonable time of service of the Landlord's notice, having regard to the nature and extent of the default, but in any event within ninety (90) days of the date of the undertaking.
 - (iii) In the case of a default which cannot be rectified, if DHA
 - (1) gives the Landlord within thirty (30) days of service a written undertaking to pay reasonable compensation for such default, in an amount to be mutually agreed or in the absence of agreement determined in accordance with the provisions of clause 24, and
 - (2) pays that compensation within thirty (30) days of the amount being agreed or determined.
- (c) An instance of default rectified in accordance with these procedures will be deemed to have been waived by the Landlord.
- (d) Demand or acceptance of rent by the Landlord after an instance of default by DHA will not prejudice the exercise by the Landlord of the rights conferred upon him by this clause 23 or any other provision of the Lease.
- (e) If DHA fails to rectify a monetary default in the manner provided in clause 23(b)(i), then DHA must pay the Landlord interest on the money due computed from the date being thirty (30) days from the date of service of the Landlord's notice, at a rate of interest being two per centum (2%) above the Commonwealth Bank of Australia's Indicator Rate as at that date.
- (f) (i) In the event that the Landlord at any time
- (1) fails to duly perform or observe any covenant, term or condition in this Lease, and
 - (2) fails to rectify such failure, in the manner provided in clause 23(f), after service by DHA of a notice in writing specifying the failure to perform or observe and calling for its rectification,

then unless the failure is waived by DHA, DHA may give the Landlord not less than fourteen (14) days notice in writing that it intends to terminate the Lease.

- (ii) If DHA elects to terminate the Lease, neither party will be released from liability for any prior breach of the Lease, and other remedies available in respect of any such breaches will not be prejudiced.
- (iii) An instance of default by the Landlord may be rectified in the manner set out in clause 23(b), as if the references to "Landlord" and "DHA" therein were reversed.

24. Dispute Resolution

- (a) The parties mutually undertake that they will negotiate in the utmost good faith in seeking to resolve any disputes which may arise under this Lease.
- (b) If this negotiation process fails to resolve a dispute, then the parties agree that, subject to clause 24(c), they will, prior to embarking on any formal arbitration or litigation process, consult with a view to dealing with the dispute through an alternative dispute resolution procedure.
- (c) Any dispute of a technical nature, and in particular disputes arising under clause 13 or clause 23(b)(iii)(1) shall, unless the parties agree to the contrary or unless applicable legislation otherwise requires and subject to clause 26, be referred for determination to a person with appropriate expertise in the relevant field appointed by the President of the Institute of Arbitrators and Mediators in the State or Territory in which the Property is situated. Any finding by such an expert shall be final and binding on the parties. The costs of any such reference shall be met jointly by the parties.

25. General Provisions

- (a) No waiver

A failure by a party to exercise any right arising under this Lease shall not disentitle that party from exercising any of their rights.

- (b) Legal costs

Legal costs in relation to this Lease will be paid as follows

- (i) the Landlord and DHA will each pay their own legal costs in relation to the preparation, execution of this Lease and performance of their obligations under this Lease. This Lease must be registered, and the Landlord will attend to registration and pay any registration fees. If the Landlord fails to attend to registration within a reasonable time, DHA may attend to registration and the registration fee may be deducted from monthly rent payments. If DHA ceases to be exempt from stamp duty then the Landlord will pay any applicable stamp duty,
- (ii) all costs of obtaining a mortgagee's consent must be paid by the Landlord, and
- (iii) if a party breaches this Lease it will pay to the other party all reasonable costs and expenses incurred by the other party in relation to the breach of this Lease, and the exercise or attempted exercise of any right, power or remedy in respect of the breach conferred by this Lease.

- (c) Mortgagee's consent

If the Property is subject to a mortgage which includes a provision to the effect that the Landlord must not lease the Property without the consent of the mortgagee, then the Landlord must obtain the consent of the mortgagee.

- (d) No merger

None of the terms and conditions of this Lease or of any other agreement between the parties, nor any act, matter or thing done in relation to this Lease or any other agreement, will operate as a merger of any of the rights and remedies of the parties in or under this Lease or any other agreement, all of which will continue in full force and effect.

(e) No partnership

Nothing in this Lease is to be interpreted so as to create a relationship of partnership, principal and agent and/or joint venturers between the parties. The only relationship created is that of Landlord and Tenant.

(f) Notices

All notices required to be given under this Lease must be in writing, and may be served on a party by being left at or posted to that party's registered office or principal place of business in the State or Territory in which the Property is located, or in the case of an individual at his principal place of residence. Any notice may be signed by the party giving it, or on behalf of that party by its manager, secretary, other authorised officer or by its solicitors.

(g) Good Faith

The parties mutually undertake and agree that they will exercise good faith in their dealings with each other in relation to this Lease, and will each use all reasonable endeavours to establish and maintain a cordial commercial relationship during the Lease Term.

(h) Severance

All provisions of this Lease shall so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect.

If any provision of this Lease is held by a court or tribunal of competent jurisdiction to be invalid or unenforceable, that provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character.

If any such provision or part of it cannot be read down pursuant to this clause 25(h), such provision or part shall be deemed to be void and severable and shall not affect the legality and validity of the other provisions.

(i) GST

(i) The Fee is expressed as a GST inclusive amount.

(ii) DHA will be responsible for any GST incurred by it in connection with the performance of its obligations under clause 12, clause 13(a) and clause 13(b) as a consequence of a taxable supply to DHA from a person other than the Landlord.

(iii) If a taxable supply is made in the conduct of the rent review process under clause 10

(1) DHA will be responsible for any GST incurred by DHA on

- a taxable supply by DHA, or
- a taxable supply to DHA from a person other than the Landlord, and

(2) the Landlord will be responsible for any GST incurred by the Landlord on

- a taxable supply by the Landlord, or
- a taxable supply to the Landlord by a person other than DHA.

(iv) DHA will be responsible for any GST incurred by DHA for any taxable supply by DHA to the Landlord under clause 13(d), clause 13(e), clause 13(f), clause 13(g), clause 13(i), clause 14, clause 22 or Attachment A, provided that if DHA incurs any GST on a taxable supply made to it in connection with DHA exercising its rights under the provisions specified in this clause 25(i)(iv) the Landlord must reimburse DHA for any GST incurred by DHA.

(v) Subject to clause 25(i)(i) to clause 25(i)(iv) inclusive

- (1) the Landlord will be responsible for any GST incurred by the Landlord in respect of
 - any taxable supply by the Landlord under this Lease, and
 - any taxable supply to the Landlord by a person other than DHA, and
- (2) DHA will be responsible for any GST incurred by DHA in respect of
 - any taxable supply by DHA under this Lease, and
 - any taxable supply to DHA by a person other than the Landlord.
- (vi) The Landlord agrees that any GST reimbursable by the Landlord to DHA will be paid by DHA deducting the appropriate GST amount from the monthly rent payments.
- (vii) If following termination of this Lease any money is owing from the Landlord to DHA as a consequence of GST obligations it shall be paid by the Landlord within fourteen (14) days of demand.

26. Federal, State and Territory Laws

The parties expressly agree that

- (a) where there is Federal State or Territory legislation which is binding on DHA and which applies to this Lease, and
- (b) that legislation contains provisions which are mandatory for a tenancy of the type contemplated by this Lease, and
- (c) those mandatory provisions
 - (i) are inconsistent with any of the terms of this Lease, or
 - (ii) cannot by their terms operate in conjunction with any of the terms of this Lease, or
 - (iii) are not fully satisfied by the relevant terms of this Lease, or
 - (iv) require the inclusion of additional terms

then the mandatory provisions of that legislation will apply and will be deemed to be incorporated into this Lease and will take precedence over the terms of this Lease to the extent necessary to remove the inconsistency or to enable this Lease to comply with that legislation.

- (d) The parties agree that the terms of this Lease as contained in this document reflect the intention of the parties and the provisions of this Lease and any applicable legislation shall be construed and given the interpretation which resolves any ambiguity, discrepancy or inconsistency consistent with the terms of this Lease so as to give efficacy to the terms of this Lease to the extent possible. If the relevant legislation permits the terms of this Lease to operate validly then the terms of the Lease shall take precedence over any inconsistent provisions in the legislation and any additional provisions in the legislation which are not required by law to form part of the Lease shall not apply.
- (e) No rule of construction shall apply to the disadvantage of one party on the basis that that party put forward the document.
- (f) If this Lease or an essential provision of this Lease (including but not limited to the provisions of this Lease dealing with DHA's management function) is or are held by a court or tribunal of competent jurisdiction to be void, invalid, illegal or unenforceable, then the parties agree to negotiate in good faith to reach agreement on an alternative and mutually agreeable arrangement to replace the provision/s found to be void, invalid, illegal or unenforceable. If mutual agreement is not reached within thirty (30) days of the decision of the relevant court or tribunal, and if the Lease has not been held to be void in its entirety, then DHA may by notice terminate this Lease and this Lease shall thereupon terminate on the date specified in DHA's notice and Landlord shall not be entitled to make any claim or seek compensation in respect of such termination.

27. Special Conditions

This Lease incorporates the special conditions set out in Attachments and Annexures to this Lease.

Attachment C will be used to attach a copy of the prescribed statutory form of lease where the legislation requires it to form part of the document to be executed by the parties.

ATTACHMENT A

Attachment "A" to Lease from

("Landlord")

to

Defence Housing Australia ("DHA") dated.....

- (a) It is a condition of this Lease that the Landlord must, at his own expense, carry out the following works on the Property
 - (i) Within months from the date of this Lease, replace the following items

Where an item is to be replaced, the replacement must be new, and of the following quality and type

- (ii) Within months from the date of this Lease, undertake the following maintenance works
- (iii) If the item(s) of plant or equipment listed hereunder fail or break down during the term of the Lease, replace these items
- (b) Where the Landlord is required to undertake maintenance works, those works must be carried out by an appropriately licensed or accredited tradesman or contractor, and in a good proper and workmanlike manner and to professional standards.
- (c) If the Landlord has not complied with any of his obligations under this condition at the expiration of ninety (90) days from expiry of the period for compliance expressed in sub-clause (a), DHA may issue to the Landlord a notice requiring the outstanding works to be completed within a period of thirty (30) days from the date of service of such notice.
- (d) If the Landlord fails to comply with a notice issued by DHA under sub-clause (c) then DHA shall have the right (without being under any obligation so to do) to carry out and complete the outstanding work at the cost of the Landlord, and may deduct the cost so incurred from any money payable to the Landlord under this Lease.
- (e) It shall be open to DHA and the Landlord to agree to vary the time frames for completion of work prescribed in sub-clause (a), so as to coincide with the timing of a changeover of occupants of the Property, or for such other reasons as may be agreed.
- (f) The Landlord may at his discretion give DHA written authority to undertake on his behalf and at his cost all or any of the works described in sub-clause (a). In such an eventuality DHA may carry out and complete the works on behalf of the Landlord, and may deduct the costs so incurred from any moneys payable to the Landlord under this Lease.

[Instructions for use of this Attachment:

1. *If there are no works to be done by the Landlord after commencement of the Lease, then the Attachment need not be used and can be detached.*
2. *If there are works to be done by the Landlord, then paragraphs (i), (ii) and (iii) of sub-clause (a) should be completed as appropriate. If only one of these paragraphs is relevant, then it should be completed and the other paragraph deleted].¹*

ATTACHMENT B
MORTGAGEE'S CONSENT

ATTACHMENT C

Note: Attachment C will be used where legislation requires the prescribed statutory form of lease to form part of the document to be executed by the parties.

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