

## DEFENCE HOUSING AUTHORITY - LEASE 96 - EDITION 3

### 1. The Lease

This is a Lease by which



of

("the Landlord")

leases to



Defence Housing Authority 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 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**

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



("the Option Period")

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

### **4. Rent**

The commencing rent payable under this Lease is the sum of



per week,

The rent shall be subject to periodic review to "market rent" in the manner set out in clause 10.

The rent shall be paid by DHA monthly in advance, in the manner set out in clause 11.

### **5. Management/Maintenance**

DHA has responsibility for



management of the Property, and



certain aspects (but not all) of repair and maintenance of the Property.

The nature and scope of these obligations are set out in clauses 12 (Management) and 13 (Maintenance).

As consideration for assuming these obligations, DHA shall be entitled to a management/maintenance fee equivalent to



Fifteen per cent (15%)

of the Annual Rent.

This fee shall be paid by deduction from monthly rent payments, as set out in clause 11.

## 6. Terms and Conditions of Lease

This Lease is subject to the further terms and conditions set out in the ensuing clauses.

The terms and conditions of this Lease, as set out in this document

- 👉 constitute the entire agreement between the Landlord and DHA relating to the Lease, and
- 👉 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:

- 👉 "DHA" means the Defence Housing Authority, an Authority established by the Defence Housing Authority Act, 1987, and includes its substitutes and successors, and where the context permits its assignees.
- 👉 "Lease" means the lease transaction recorded by this instrument.
- 👉 "Landlord" means the party named as Landlord in clause 1 of this lease, and the successors, personal representatives and assignees of that party.
- 👉 "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 -
  - 👉 the period by which the Lease Term is being reduced or extended, and
  - 👉 the new Expiry Date of the Lease Term.
- (c) The notice must be given -
  - 👉 in the case of a reduction of the Lease Term, at least three (3) months prior to the new Expiry Date; and
  - 👉 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.

- 👍 for the option Period provided for in clause 3, with the Commencement Date and Expiry Date amended accordingly,
- 👍 at a commencing rent determined in accordance with clause 10, and subject to annual review in accordance with that clause, and
- 👍 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 from

- 👍 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 on each subsequent 31 December

("Review Date"), the weekly rent for the period of twelve (12) months commencing on the day following each Review Date shall be reviewed to market value 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 a 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 appointed valuer

- 👍 must be a member of The Australian Institute of Valuers and Land Economists (in the relevant State or Territory), and
- 👍 shall be appointed by DHA not earlier than three (3) months nor later than one (1) month prior to each Review Date.

- (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:
  - (1) 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;
  - (2) 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;
  - (3) a proper consideration of the impact of fixtures, fittings, furnishing, landscaping and other such items on the rental value; and
  - (4) such other factors as the valuer considers appropriate.
- (f) The valuation must be in writing, and must ascribe reasons for the value ascribed to the market rent.
- (g) Subject to sub-clause (i) of this clause 10, 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:
  - (1) 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
    - 👉 states that the Landlord wishes to invoke the secondary review process, and

- 👉 encloses a valuation by a valuer, retained and paid by the Landlord, and who must be member of the Australian Institute of Valuers and Land Economists (in the relevant State or Territory branch), which indicates a view of the "market rent" which exceeds that determined by the valuer appointed by DHA pursuant to sub-clause (c).
- (2) The Landlord and DHA shall thereupon consult with the two valuers and seek to reach an agreement as to the proper "market rent" figure.
- (3) If no agreement is reached within thirty (30) days of the date of service of the Landlord's notice under sub-clause (c)(1), then either party may invite the President of the local Division of the Australian Institute of Valuers and Land Economists to appoint a valuer to determine the "market rent", in accordance with the principles set out in sub-clause (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 sub-clause (g) shall be final and binding.
- (4) The determination of the valuer appointed by the President pursuant to paragraph (3) shall be final and binding on the Landlord and DHA.
- (5) The costs of the appointed valuer 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 -
  - 👉 the review process may nevertheless be carried out and completed, and
  - 👉 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.

At that point, any necessary adjustment of rent shall immediately 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 future rental payments.

## 11. Payment of Rent

(a) The rent shall be paid monthly in advance on the 1st day of each calendar month. If the Commencement Date is not the 1st day of a month, then the first payment of rent shall be 1st day of the month following that in which the Commencement Date occurs.

(b) The monthly payments shall be calculated as follows:

$$\text{monthly payment} = \text{weekly rent} \times 4.3482$$

If the Commencement Date falls otherwise than on the first day of a month, then:

☞ the first payment, for the period from the Commencement Date to be to the last day of the month following that in which the Commencement Date occurs; and

☞ 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 management/ maintenance 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 engages DHA to perform, during the Lease Term, the management functions described in sub-clause (b) of this clause 12.
- (b) The management functions comprise the following:
  - (1) Payment on behalf of the Landlord of outgoings in respect of the Property;
  - (2) Effecting insurance cover for the Property and paying insurance premiums on behalf of the Landlord (unless the Landlord elects to assume these responsibilities);
  - (3) Arranging for compliance, at the Landlord's cost, with any repair and maintenance obligations of the Landlord under this Lease, including where feasible the enforcement of the Landlord's rights against insurance companies and other third parties.
  - (4) Preparation of monthly and annual statements itemising rent receipts and outgoings and other expenses paid on the Landlord's behalf; and
  - (5) Carrying out inspections of the Property at not less than annual intervals to identify repair and maintenance needs.
- (c) DHA's obligation to pay outgoings under sub-clause (b)(1) 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 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 DHA will carry out at its expense, in consideration of the fee provided for in clause 5,
  - 👉 all repair and maintenance requirements for the property, and
  - 👉 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, and

👉 all work required to comply with the requirements of any legislation and any orders, notices and other requirements of statutory and local authorities relating to the Property, to the extent that such legislation and requirements are binding on DHA,

other than items which are specifically excluded from the area of DHA'S responsibility by sub-clause (d) of this clause 13.

(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 may, in performing its obligations under sub-clause (a) of this clause 13, carry out such works as it considers appropriate to maintain the property to this standard.

(c) Where DHA proposes to carry out any work

👉 which will significantly change the appearance of the Property, or

👉 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 sub-clause (a) shall not include the following:

(1) Repair of structural defects;

(2) 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(d).

- (3) Landscaping work of a major, non-recurring maintenance nature, such as large tree removals and replacement of fencing and retaining walls;
  - (4) Work covered by any warranty held by the Landlord;
  - (5) Work which is covered by any property protection insurance policy held in respect of the Property;
  - (6) Work which is the responsibility of a body corporate or similar entity or some other third party;
  - (7) Maintenance of swimming pools and associated equipment, including recurrent and structural maintenance;
  - (8) Work which is the consequence of any damage by fire, lightning, flood, storm, tempest or Act of God, or any other factor outside the control of DHA;
  - (9) Work, repairs and maintenance arising from subsidence of any nature; or
  - (10) Pest inspection programs required to protect or treat infestation which threaten the structure of the building 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 sub-clause (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 off set that cost against rent payments.
- (f) In respect of work which is covered by any warranty or is the responsibility of a third party, the Landlord hereby authorises DHA, in the name and on behalf of the Landlord, to take such steps, short of litigation, as DHA may consider desirable to enforce the rights of the Landlord against the third party.

- (g) In respect of work which is covered by an insurance policy, the Landlord authorises DHA, in the name and on behalf of the Landlord, to take such steps, short of litigation, as DHA may consider desirable to secure the payment of the cost of the work under the terms of the policy.

#### **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 (that is, normal occupation and use by a family unit), 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 the damage 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 house, and for such other purposes as may be approved by DHA and is permitted by the relevant local authority.
- (b) DHA will not use or permit the Property to be used in any manner which
  - (1) is illegal,
  - (2) causes a nuisance, or
  - (3) 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(d) may occupy the Property during the Lease Term without interference by the Landlord, subject only to sub-clause (d) of this clause 15.
- (d) The Landlord may, subject to prior arrangements having been made with DHA, have access to the Property:
  - (1) 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;
  - (2) 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
  - (3) 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 required by any applicable legislation.
- (e) If the exercise by the Landlord of the right conferred by sub-clause (d)(1) requires DHA to remove and relocate the occupants of the Property, then the removal and relocation costs shall be reimbursed by the Landlord to DHA.
- (f) 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.
- (g) The Landlord agrees that Defence Personnel (as defined in clause 16(a)(2)) who occupy the property 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:
  - (1) he is aware that in the performance of its function, DHA has a statutory obligation to endeavour at all times to act in accordance with sound commercial practice, and this lease has been drawn to be of a commercial nature and not residential; and
  - (2) this Lease is entered into to provide accommodation to the Commonwealth of Australia for occupation by personnel of the Australian Defence Force and the Department of Defence ("Defence Personnel").
- (b) The Landlord unconditionally consents to:
  - (1) DHA sub-letting the Property to the Commonwealth in pursuance of arrangements between DHA and the Commonwealth covering the function referred to in sub-clause (a) of this clause 16; and
  - (2) The Commonwealth entering into tenancy agreements in respect of the Property with Defence Personnel.
- (c) During any period for which the Commonwealth does not need the property, DHA may either
  - (1) leave the Property vacant, or
  - (2) sub-let the Property into the private rental market.
- (d) If the property becomes permanently superfluous to the Commonwealth's requirements, the 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 make that election, then DHA may sublet the Property until expiry of the Lease Term.

- (e) In subletting the Property, DHA must comply with any laws relating to the letting of residential premises which are binding on DHA.

## **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:
  - (1) ensure that all appliances are clean and in good working order:
  - (2) ensure that floors and window fittings are clean; and
  - (3) 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
  - (1) 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
  - (1) recarpet previously carpeted areas of the property to a similar standard and toning as existed at the commencement date; and
  - (2) repaint external surfaces, except where external painting is the obligation of a strata title body corporate or similar entity.
- (e) DHA's obligations under sub-clauses (c) and (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 must be terminated by one month's notice from one party to the other. 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 remove fixtures and fittings in the nature of trade or tenant's fixtures which DHA has brought onto the Property. DHA must repair any damage caused by the removal of these items.

## **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; and
- (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.

## **19. Landlord's Insurance Obligations**

- (a) The Landlord must take out and maintain property protection insurance cover which
  - 👍 covers the Property and all fixtures and fittings and chattels owned by the Landlord for their full insurable value,
  - 👍 includes accidental damage to the Property and all fixtures and fittings owned by the Landlord,



- 👉 covers damage by fire, flood, storm, tempest, explosion, impact damage by aircraft, and Acts of God and other such factors outside the control of the Landlord,
- 👉 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
- 👉 is placed with a reputable insurance company.

The Landlord must produce to DHA when so requested a copy of the relevant insurance policy and evidence of payment of the current premium.

- (b) By way of complying with his obligations under subclause (a), the Landlord may elect to utilise the "DHA Master Policy for Leased Property" in force from time to time.

## **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 Authority is the tenant under the Lease, the obligation created by this clause shall be satisfied if the Authority includes the Property in its general insurance policy for premises owned or leased by the Authority, 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:
  - (1) all Local Government rates and charges
  - (2) all rates and charges relating to the provision of water and sewerage services (except excess water, water usage and water consumption charges);

- (3) 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 sub-clause (b), and
  - (4) 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) Where the Property comprises a lot or lots in a registered strata plan, building units plan, group titles plan or neighbourhood plan or a similar strata or community title scheme, it is a condition of this Lease that the Landlord must appoint, in compliance with relevant statutory requirements, DHA or a person nominated in writing by DHA to be the Landlord's proxy to attend and vote on the Landlord's behalf 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.
- (b) The Landlord must on or before the Commencement Date execute a form of proxy in favour of DHA or its nominee. DHA may change the identity of its nominee from time to time, and in such case the Landlord must cancel the previous proxy and execute a new instrument of proxy in favour of the substituted nominee.
- (c) DHA and its nominee are not entitled to exercise the proxy to ratify or approve any resolution of the relevant body which would:
  - (1) impose any financial obligations or liability on the Landlord, other than in respect of contributions for the purpose of meeting normal operating costs; or
  - (2) 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 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), 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 on 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 it may, vote in such a manner as will give effect to clause 15(g) and other provisions of this Lease.

### **23. Default and Termination**

- (a) In the event that DHA is at any time
  - 👉 in default in the due performance or observance of any covenant, term or condition in this Lease (including the covenant to pay rent), and
  - 👉 fails to rectify such default, in the manner provided in sub-clause (b) of this clause 23, after service by the Landlord of a notice in writing specifying the breach and calling for its rectification,then, unless that default is waived by the Landlord, he may either
  - 👉 give DHA not less than fourteen (14) days notice in writing that he intends to terminate the Lease, or
  - 👉 subject to giving DHA fourteen (14) days notice in writing of his intention to do so, re-enter the Property and eject DHA and all other persons from the Property.

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.

- (b) An instance of default may be rectified in the following manner:
- (1) 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;
  - (2) In the case of a default rectifiable other than by the payment of money, if DHA
    - 👉 give the landlord, within thirty (30) days of service of the Landlord's notice, a written undertaking to rectify the default, and
    - 👉 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;
  - (3) In the case of a default which cannot be rectified, if DHA
    - 👉 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
    - 👉 pays that compensation within thirty (30) days of the amount being agreed or determined.

An instance of default rectified in accordance with these procedures will be deemed to have been waived by the Landlord.

- (c) 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.

(d) If DHA fails to rectify a monetary fault in the manner provided in sub-clause (b)(1), 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.

(e) In the event that the Landlord is at any time

👉 in default in the due performance or observance of any covenant, term or condition in this Lease, and

👉 fails to rectify such default, in the manner provided in sub-clause (f) of this clause 23, after service by DHA of a notice in writing specifying the breach and calling for its rectification,

then DHA must notify the Landlord that it is terminating the Lease.

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.

(f) An instance of default by the Landlord may be rectified in the manner set out in sub-clause (b) of this clause 23, 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 sub-clause (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)(3) shall, unless the parties agree to the contrary, be referred for determination to a person with appropriate expertise in the relevant field appointed by the President of the Institute of Arbitrators 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:

- (1) The Landlord and DHA will each pay their own legal costs in relation to the preparation and execution of the Lease. If the lease is required by law to be registered, or if either party at any time requires the preparation of a lease in registrable form and such a lease is prepared, then the landlord will attend to registration and pay any registration fees. If DHA ceases to be exempt from stamp duty then the Landlord will pay any applicable stamp duty.
  - (2) All costs of obtaining a mortgagee's consent must be paid by the Landlord.
  - (3) Each party must pay to the other all reasonable costs and expenses incurred by the other in relation to any breach of this Lease, and in relation to the exercise or attempted exercise of any right, power or remedy conferred by this Lease.
- (c) 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.

**\*26. Special Conditions**

This Lease incorporates the special conditions set out in Attachment "A" to this Lease.

*\* Delete if there are no Special Conditions*

**ATTACHMENT "A"** to Lease from  
to Defence Housing Authority ("DHA") dated

("Landlord")

- (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].<sup>1</sup>***
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