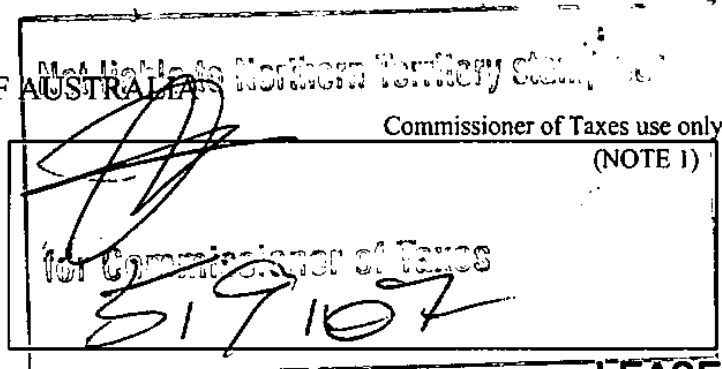


Form 31

Section 65

Land Title Act  
REGISTRAR GENERAL'S DIRECTIONS

Dealing Number: **662214** Lodged 13/12/2007 at 14:55:48  
 Dealing Type: **LS** By **CASH**  
 Volume **708** Folio **427** Fee \$ **135.00** Receipt **204915**

**LEASE**

The owner leases to the tenant the land described and the tenant accepts this lease of the land for the term and at the rent stipulated and subject to the covenants and conditions contained below or on the back of this document and acknowledges the amount payable or other consideration for the lease.

(NOTES 2  
- 3)

Register	Volume	Folio	Location	Lot Description	Plan	Unit
CUFT	708	427	Bathurst Island	NT Portion 1640 NT Portion 1644 NT Portion 3042	CP 004186	N/A

(NOTE 4)

## INTEREST BEING LEASED

That part of the Land described in Item 3 of the Schedule to this Lease and shown on the attached plan in Annexure 8 to this Lease being part of NT Portion 1640 administrative parcel 6948(A)

(NOTE 5)

## MARKET RENT UNDER THE LEASE

Refer clause 5 of this Lease	GST Amount	Refer clauses 5 and 14 of this Lease
------------------------------	------------	--------------------------------------

(NOTE 6)

## OTHER CONSIDERATION (Include Nil or Nominal Rent)

Refer clause 13 of this Lease	GST Amount	Refer clauses 13 and 14 of this Lease
-------------------------------	------------	---------------------------------------

## OWNER

Tiwi Aboriginal Land Trust

(NOTE 7)

## TENANT

Name: Executive Director of Township Leasing  
 Address: Centraplaza, 16 Bowes Street, Woden ACT 2606

(NOTE 8)

## TENANCY

Joint Tenants/Tenants in Common (Shareholding)

(NOTE 9)

## TERM OF LEASE

Commencing:	Expiring:	Right of Renewal:
30 August 2007	29 August 2106	No

(NOTE 10)

## CONSENTS

Nil

(NOTE 11)

SEE ATTACHED EXECUTION CLAUSE

SIGNED by the Owner

on (Date) .....

In the presence of:

Qualified Witness:

SEE ATTACHED EXECUTION CLAUSE

SIGNED by the Tenant

on (Date) .....

In the presence of:

Qualified Witness:



(NOTE 12)

Registered on 20/12/2007 At 8:29

**CONSENT OF INTEREST HOLDERS**

Instrument type: .....	Instrument type: .....
Instrument No: .....	Instrument No: .....
Name of Parties: .....	Name of Parties: .....
I the registered proprietor of the interest shown above consent to the registration of this instrument.	I the registered proprietor of the interest shown above consent to the registration of this instrument.
Signed: .....	Signed: .....
(Date): .....	(Date): .....
In the presence of: .....	In the presence of: .....
Name of Qualified Witness: .....	Name of Qualified Witness: .....
Address or Telephone No.: .....	Address or Telephone No.: .....

**COVENANTS**

It is hereby covenanted by and between the owner and the tenant as follows:

- ☐ To comply with the provisions contained in Memorandum of Common Provisions recorded in the Register as LTO No. ....
- ☒ The conditions and covenants implied by Sections 117 & 119 *Law of Property Act* shall not apply. (delete one)
- ☒ To comply with the provisions annexed to this lease.

**SCHEDULE OF NOTES**

1. A lease signed on or after 1 July 2006 is required to be stamped by the Commissioner of Taxes where (i) there is no consideration, or (ii) the consideration is nominal, or (iii) there is valuable consideration other than rent under the lease.
  2. This form may be lodged in triplicate. The original must be typed or completed in ink or biro. The duplicate and triplicate may be a copy of the original but the signatures of all parties and their witnesses must be in ink or biro on the original, duplicate and triplicate. If the words "owner" and "tenant" are considered in appropriate other words (lessor/lessee) may be used. Alterations to information entered on the form should be crossed out (not erased or obliterated by painting over) and initialled by the parties.
  3. If there is insufficient space in any panel use the space above or an annexure sheet (Form 95).
  4. Volume and Folio references must be given together with a description of the location, the lot number and unit plan number if applicable. If a certificate as to title has been issued it must be produced.
  5. Insert whole of the land or if part of a lot the instrument of lease must also include a sketch plan identifying the part of the lot drawn to a standard to the Registrar-General's satisfaction, if required by the Registrar-General, a plan of survey identifying the part of the lot, or if required by the *Planning Act*, consent under Part 5 of the *Planning Act*.
  6. Pursuant to Section 66 (1)(c) of the *Land Title Act* state whether the rent under the lease is market rent, or nil or nominal rent. Market rent means any rent that is not nominal. A lease for nil or nominal rent or other consideration must show the imprint of the Commissioner of Taxes. For the GST amount, if the lease is subject to the margin scheme and the GST amount is unknown insert "margin scheme" in the box provided. Show the words "Nil" or "Not applicable" if not subject to rent or other consideration.
  7. Insert full name. Address is not required.
  8. Insert full name and an address for the service of notices. The address can be a postal address.
  9. If two or more tenants, state whether as joint tenants or tenants in common. If tenants in common, specify shares. If no tenancy is stated, the Registrar-General must register the co-owners as tenants in common pursuant to Section 57(2) of the *Land Title Act*.
  10. Insert first day of the lease, last day of the lease and whether a right of renewal ("Yes" or "No").
  11. Consents by mortgagee should be provided. A lease or amendment of a lease executed after registration of a mortgage of a lot is valid against the mortgagee only if the mortgagee consents to the lease or amendment before its registration. A lease which has not been consented to by a prior mortgagee will not be protected in the event of the mortgagee exercising the power of sale.
  12. Persons who may witness this document are a Commissioner for Oaths, a member of the Legislative Assembly, a legal practitioner within the meaning of the *Legal Practitioners Act*, a person holding office under the *Supreme Court Act*, the *Justices Act*, the *Local Court Act* or the *Registration Act*, a member of the Police Force, a person licensed as a conveyancing agent or real estate agent under the *Agents Licensing Act*, a Notary Public and any other person approved by the Registrar-General.
- A witness to an instrument executed by an individual must first:
- take reasonable steps to ensure that the individual is the person entitled to sign the instrument;
  - have the individual execute the document in the presence of the witness;
  - not be a party to the instrument; and
  - if witnessing more than one signature, clearly state that he/she has witnessed more than one signature. (ie I have witnessed the two signatures appearing above).
- After signing, witnesses must legibly write, type or stamp their names and contact address or telephone number below their signature.
- For a corporation, an instrument must be executed in a way permitted by law or sealed with the corporation's seal in accordance with the *Law of Property Act*, Section 48.
- For witnessing of instruments executed outside the Northern Territory refer to Schedule 1 of the *Land Title Act* and the Registrar-General's Directions.

**PRIVACY STATEMENT – LAND REGISTER FORMS**

The Registrar-General's Office is authorised by the *Land Title Act* to collect the information on this form for the establishment and maintenance of the Land Register, which is made available for search by any person, anywhere, including through the Internet, upon payment of a fee. The information is regularly provided to other NT Government agencies, the Australian Valuation Office, local governments, the Australian Bureau of Statistics, the Australian Taxation Office or other Commonwealth Agencies as required or authorised by law, and some private sector organisations for conveyancing, local government, valuation, statistical, administrative and other purposes. The Department of Planning and Infrastructure also uses the information to prepare and sell or licence property sales reports to commercial organisations concerned with the development, sale or marketing of property.

Failure to provide the information in full or in part may prevent your application or transaction being completed.

Your personal information provided on this form can be subsequently accessed by you on request. If you have any queries please contact the Deputy Registrar-General on 8999 5318.

19. Dec. 2007 15:43

No. 0809 P. 1

*the leading lawyers to government*



Your ref.  
Our ref. 07077655

**Australian Government Solicitor**  
Level 3, 9-11 Cavenagh Street Darwin NT 0800  
GPO Box 4700 Darwin NT 0801  
T 08 8943 1444 F 08 8943 1420  
[www.ags.gov.au](http://www.ags.gov.au)

19 December 2007

Ms Helen Flea  
Land Titles Office

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

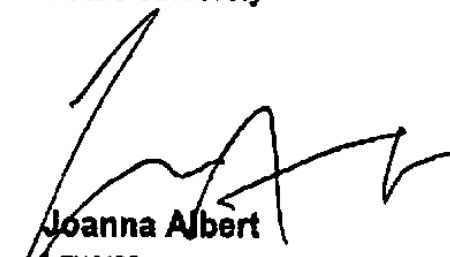
By Facsimile – (08) 89986239

Dear Ms Flea

**Registration of Lease between the Tiwi Aboriginal Land Trust and the Executive Director of Township Leasing**

1. We refer to our recent telephone conversations in relation to the Lease between the Tiwi Aboriginal Land Trust and the Executive Director of Township Leasing ("Executive Director").
2. We confirm that the Minister for Families, Community Services and Indigenous Affairs has consented to this Lease and we enclose a copy of that consent.
3. As discussed, We also confirm that the Executive Director is a statutory position created by the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (ALRA). Under the ALRA the Executive Director is authorised to enter into and administer township leases entered into in accordance with the ALRA. We confirm that the Lease between the Tiwi Aboriginal Land Trust and the Executive Director is a township lease. We enclose a copy of Mr Watson's appointment as the Acting Executive Director of Township Leasing.
4. We thank you for your assistance in this matter and we will await the receipt of the registered lease.
5. If you have any queries, please contact the writer.

Yours sincerely

  
Joanna Albert  
Lawyer  
T 08 8943 1444 F 08 8943 1420  
[joanna.albert@ags.gov.au](mailto:joanna.albert@ags.gov.au)

19. Dec. 2007 15:43

No. 0809 P. 4



**COMMONWEALTH OF AUSTRALIA**

***ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976***

**ACTING EXECUTIVE DIRECTOR OF TOWNSHIP LEASING**

**INSTRUMENT OF APPOINTMENT**

I, **MAL BROUGH**, Minister for Families, Community Services and Indigenous Affairs, in accordance with section 20J of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) appoint **PATRICK GREGORY WATSON** as the Acting Executive Director of Township Leasing on a full-time basis, from the beginning of 16 July 2007 until the end of 21 September 2007, or until an appointment is made under section 20D of the Act, whichever is the sooner.

Dated this 16<sup>th</sup> day of July 2007

A handwritten signature in black ink, appearing to read 'Mal Brough'.

**MAL BROUGH**  
Minister for Families, Community Services and Indigenous Affairs

19. Dec. 2007 15:43

No. 0809 P. 2

Commonwealth of Australia

*Aboriginal Land Rights (Northern Territory) Act 1976, paragraph 19A(1)(a)*

**CONSENT**

**GRANT OF THE NGUTU TOWNSHIP LEASE**

I, MALCOLM THOMAS BROUGH, Minister for Families, Community Services and Indigenous Affairs hereby consent, for the purpose of paragraph 19A(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, to the grant of the head lease (attached to this instrument) over the Ngutu township (NT portion 6798).

Dated 27<sup>th</sup> day of August 2007

  
MAL BROUGH

19. Dec. 2007 15:43

No. 0809 P. 3

Commonwealth of Australia

*Aboriginal Land Rights (Northern Territory) Act 1976, subsection 27(3)*

**APPROVAL**

**GRANT OF THE NGUJU TOWNSHIP LEASE**

I, MALCOLM THOMAS BROUGH, Minister for Families, Community Services and Indigenous Affairs, being satisfied that the Tiwi Land Council has complied with the duties imposed on it by subsection 23(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, approve for the purpose of subsection 27(3) the Tiwi Land Council entering, and permitting the Tiwi Aboriginal Land Trust to enter, the head lease (attached to this instrument) over the Nguju township (NT portion 6798).

Dated 27<sup>th</sup> day of August 2007

  
MAL BROUGH

**Head Lease**  
**Premises: Township of Nguju**

Tiwi Aboriginal Land Trust

and

Executive Director of Township Leasing

and

Tiwi Land Council

AB

hah

R T

CK

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## Head Lease

Date 30 August 2007

## Parties

1. **Tiwi Aboriginal Land Trust** established pursuant to section 4(1) of the Land Rights Act ("the Land Trust")
2. **Executive Director of Township Leasing** on behalf of the Commonwealth of Australia as 'approved entity' within the meaning of the Land Rights Act ("the LE")
3. **Tiwi Land Council** as established by notice dated 18 August 1978 under the Land Rights Act (or if the boundaries are varied so as to exclude the Township from its area, then the Land Council for the area of the Township established under the Land Rights Act) ("the Land Council")

(collectively referred to as "the Parties")

## Background

- A. The Land Trust is the registered proprietor of an estate in fee simple in the Land which includes the Township.
- B. The office of the LE was created pursuant to section 20B of the Land Rights Act.
- C. The Parties have agreed that the Township (including all Improvements and Services) will be leased to the LE by the Land Trust pursuant to subsection 19A(1) of the Land Rights Act.
- D. The Commonwealth and Walter Kerinaia (on behalf of the relevant traditional Aboriginal owners) are parties to a document titled 'Joint acknowledgement of agreement in principle' dated 17 May 2007 (**Memorandum**). The Memorandum by way of summary evidences certain matters which have been agreed in certain exchanges of correspondence (**Agreement**).
- E. The Parties acknowledge that this Lease will enable the LE to develop the Township, and improve the prosperity and wellbeing of its residents, whilst protecting those with existing rights, titles or other interests in the Township, and those who currently occupy or use land in the Township, with minimal disruption to existing arrangements.
- F. The Land Trust has received written consent from the Commonwealth Minister as required pursuant to paragraph 19A(1)(a) of the Land Rights Act for the grant of this Lease.
- G. The Land Trust has received written direction from the Land Council as required pursuant to paragraph 19A(1)(b) of the Land Rights Act for the grant of this Lease.
- H. The Land Council, pursuant to subsection 19A(2) of the Land Rights Act, is satisfied that:
  - (a) the traditional Aboriginal owners of the Land understand the nature and purpose of this Lease and, as a group, consent to it;

AB  
RT  
C/K

- (b) any Aboriginal community or group that may be affected by this Lease has been consulted and has had adequate opportunity to express its view to the Land Council; and
- (c) the terms and conditions of this Lease are reasonable.
- I. The LE is a body approved as an entity under the Land Rights Act capable of receiving a grant of a lease pursuant to section 19A of the Land Rights Act.
- J. Set out in Annexure 6 is the register of the traditional Aboriginal owners of the Township prepared in accordance with section 24 of the Land Rights Act.
- K. Outlined in Annexure 7 are various reservations contained in the Land Rights Act that apply to the Land and to which this Lease is subject.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Lease and in the background, unless the context requires otherwise:

**Aboriginal** means a person who is a member of the Aboriginal race of Australia;

**Aboriginal Areas Protection Authority** means the authority established under the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* and known as the Aboriginal Areas Protection Authority;

**Aboriginal and Torres Strait Islander Corporation** has the meaning given to that term in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*;

**Aboriginal Land Act** means the *Aboriginal Land Act 1978 (NT)*;

**Aboriginal Tradition** means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;

**Agreement** has the meaning given to that term in paragraph D of the background;

**Annexure** means an annexure to this Lease;

**Annual Payment** has the meaning given to that term in clause 5.1(b)(ii);

**Approval** means any permit, licence, consent, grant, certificate, sealing or other approval obtained or required to be obtained by the LE from a Government Agency or any other person in relation to the Township or the use and occupation of the Township and includes any Planning Approval and any requisition, condition or requirement from a Government Agency or any other person;

**Approved Entity** has the meaning given to that term in the Land Rights Act;

**Asbestos Legislation** means any Law relating to the removal, replacement, control, identification, sealing, enclosing or otherwise dealing with the existence of asbestos on land;

**Authority Certificate** means a certificate issued by the Aboriginal Areas Protection Authority under section 22(1) of the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*;

**Bonus Payment** has the meaning given to that term in clause 5.1(b)(i)(B);

**Building** includes:

- (a) a structure and part of a building or a structure;
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; or
- (c) a boat or a pontoon which is permanently moored or fixed to a building or land;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Darwin;

**Clean-Up Notice** means a notice served under any Law relating to Contamination in, on, under or emanating from the Township;

**Commencement Date** means the date specified in Item 4;

**Commercial Sublease** means a Township Sublease granted by the LE for the Permitted Use relating to commercial operations;

**Commonwealth Entity** has the meaning given to that term in the Land Rights Act;

**Community Benefit Organisation** means an organisation formed or created for the benefit of the Township community or whose principal objective is not the generation of profit but excludes any Government Agency or Housing Authority;

**Confidential Information** means:

- (a) Information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
- (b) all other Information belonging or relating to a Disclosing Party, or any Related Entity of that Disclosing Party, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Lease or which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any Related Entity of that Disclosing Party;

**Construct** includes reconstruct or make structural changes and the word **Construction** has a corresponding meaning;

**Consultative Forum** means the Consultative Forum established under clause 23.1;

**Consultative Forum Rules** means the rules set out in Annexure 3;

**Contamination** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the Environment unsafe, unfit or

harmful for habitation, use or occupation by any person or animal or is such that any part of the Environment does not satisfy the contamination criteria or standards published or adopted by the Relevant Authority from time to time and the word **Contaminant** has a corresponding meaning;

**Corporations Act** means the *Corporations Act 2001 (Cth)*;

**Criminal Code** means the *Criminal Code Act 1983 (NT)*;

**Cultural Heritage** means:

- (a) literary, artistic and performance works (including music, songs, dances, ceremonies, narratives, poetry, symbols and designs);
- (b) languages;
- (c) spiritual knowledge;
- (d) scientific, technical, agricultural and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna);
- (e) human genetic material (including DNA and tissues);
- (f) ancestral remains;
- (g) burial artefacts;
- (h) cultural environment resources (including indigenous sites of significance); and
- (i) representation of Aboriginal peoples in all media (including scientific and ethnographic research reports and papers, books, films, sound recordings, CD-ROM and other digital formats);

**Cure Period** means a reasonable period of time within which the LE must cure a Default Event (other than a Financial Default), in accordance with clause 25.1(c), including any extensions of that period under clause 25.4(c);

**Cure Plan** means a plan by a Party to remedy a Default Event which is proposed during the Cure Period and details a work plan setting out each task to be undertaken in order to rectify the material breach and the time for each task to be completed;

**Custodian** means an Aboriginal who, by Aboriginal Tradition, has responsibility for a Sacred Site;

**Default Event** means:

- (a) a Financial Default;
- (b) a persistent and material failure by the LE to comply with this Lease; or
- (c) a persistent failure by the LE to take all reasonable steps to enforce material provisions of any one or more Township Subleases; or
- (d) a persistent failure by the LE to take all reasonable steps to enforce material provisions of any one or more Township Licences;



**Default Notice** means a notice given under clause 25.1;

**Default Rate** means a rate equal to the Reference Index plus 2%;

**Designated General Access Areas** has the meaning given to that term in clause 16.1(a);

**Development** includes:

- (a) the Construction or exterior alteration or exterior decoration of a Building;
- (b) the demolition or removal of a Building or Works;
- (c) the Construction or carrying out of Works;
- (d) the subdivision or consolidation of land, including Buildings or airspace;
- (e) the placing or relocation of a Building or Works; and
- (f) the Construction or putting up for display of signs or hoardings;

**Disclosing Party** means the party to whom Information belongs or relates;

**Domestic Partner** means a person to whom a person is not married but with whom that person is living as a couple on a genuine domestic basis (irrespective of gender);

**Environment** includes the meaning given to that term at common law and in any Law in force in the Northern Territory, including any land, water, atmosphere, climate, sound, odours, tastes and the biological factors of animals and plants and the word **Environmental** has a corresponding meaning;

**Environmental Hazard** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics;

**Environmental Law** means any Law relating to the Environment, including any Law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating but not limited to the protection of the Environment, health or property;

**Existing Housing Authority** means the Housing Authorities set out in Item 5, and where the responsibilities of that authority have been transferred or are to be transferred to another body, that other body;

**Existing Improvements** means all Improvements erected on or attached to the Township as at the Commencement Date;

**existing right, title or other interest** means any right, title or other interest in the Township which existed immediately before the Commencement Date including where applicable and without limitation, those interests identified or described in Item 2 and Annexure 5;

**Existing Services** means all Services on or connected to the Township as at the Commencement Date;

**Existing Services Provider** means the service providers set out in Item 6 who use their occupation in the Township to provide Services to the Township, and where the responsibilities of a service provider have been transferred to another body, that other body;

**Final Lease Year** means the period starting on 1 July immediately before the expiry of the Term or earlier determination of this Lease and ending on the expiry of the Term or earlier determination of this Head Lease;

**Financial Default** means a failure by the LE to pay when due any money which the LE is obliged to pay to the Land Council under this Lease (including a failure to pay any Lease Payment when due);

**Foreshore** means the area between the high water mark and 50 metres landward from the high water mark;

**General Waste Disposal Facility** has the meaning given to that term in clause 19.7(c);

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**GST** has the meaning given to that term in the GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Hazardous Substance** means any substance that causes, or might reasonably be expected to cause, injury to any person exposed to that substance, including dangerous, inflammable, volatile or explosive substances or goods, and any emission from that substance;

**Housing Authority** means a body which provides community housing for residents of the Township;

**Housing Authority Sublease** means a Township Sublease granted by the LE to a Housing Authority;

**Improvements** means all Buildings, structures, fixtures, fittings, plants, equipment, partitions, signs or other materials or articles which are erected on or attached to the Township;

**Income** means:

- (a) the amount of:
  - (i) all payments received or receivable by the LE from the holders of existing rights, titles or other interests, or the holders of Rights of Occupation, in relation to their or any other person's occupation, use or enjoyment of or access to the Township, any part of the Township or any Improvements or Services within the Township;
  - (ii) all payments received or receivable by the LE from Township Sublessees, Township Licensees and other persons granted rights by the LE in relation to their or any other person's occupation, use or enjoyment of or access to the Township, any part of the Township or any Improvements or Services within the Township;

- (iii) all payments or amounts credited to the LE or received or receivable by the LE from any Government Agency in relation to their or any other person's occupation, use or enjoyment of or access to the Township, any part of the Township or any Improvements or Services within the Township,

and in the case of any pre-paid lease amount recognised as Income, it is to be recognised on a straight-line basis over the relevant term; and

- (b) any interest earned on an accruals basis by the LE on amounts under paragraph (a); but
- (c) for the avoidance of doubt, does not include:
  - (i) unless paid to the LE, the value of any Improvements or Services provided by the Commonwealth or any other person in the Township; or
  - (ii) money appropriated by the Commonwealth for the purposes of the LE, or otherwise provided by the Commonwealth for the use of the LE, other than payments referred to in paragraph (a)(iii);

**Industrial Waste** means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials that are potentially harmful to human beings or the Environment;

**Information** means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, research and development information, know-how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, names and details of agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this Lease;

**Insolvency Event** means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;

(f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or

(g) any analogous event or circumstance under the Laws of any jurisdiction,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

**Interest** means interest payable by the LE under clause 25.3;

**Introductory Payment** has the meaning given to that term in clause 5.1(b)(i)(A);

**Item** means an item to the Schedule;

**Land** means the land described in Item 1;

**Land Council's Agents** means the employees, contractors, agents and any other person appointed from time to time by the Land Council as agent of the Land Council;

**Land Rights Act** means the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*;

**Land Trust's Agents** means the employees, contractors, agents and any other person appointed from time to time by the Land Trust as agent of the Land Trust;

**Land Trust's Improvements** means all Improvements the property of the Land Trust as recognised in clause 8.1;

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations, ordinances or by-laws of the Commonwealth, a State, a Territory or any other Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or any other Government Agency that have the force of law;

**LE's Improvements** means all Improvements erected on or attached to the Township by:

- (a) the LE;
- (b) any Sublessee;
- (c) any Underlessee;
- (d) any Licensee; or
- (e) any Sublicensee,

after the Commencement Date;

**LE's Percentage** means the same percentage as the Township bears to the area of the Land to which an Outgoing applies, as determined by the Land Trust and notified to the LE;

**LE's Services** means all Services installed in or on the Township by the LE after the Commencement Date;

**LEADR** means Lawyers Engaged in Alternative Dispute Resolution;

**Lease** means this lease including the background, the Schedule and the Annexures;

**Lease Payments** has the meaning given to that term in clause 5.1(a);

**Lease Year** means the Preliminary Lease Year, each 12 month period expiring on 30 June in each year during the Term and the Final Lease Year;

**Licence Discretionary Terms** means all clauses other than Licence Mandatory Terms in the Template Licence, it being the agreement of the Parties that the LE may, but is not obliged to, include such clauses in a Township Licence;

**Licence Mandatory Terms** means clauses 2 to 20 in the Template Licence, and if provided for by the Maintenance Policy, clause 27.1 in the Template Licence;

**Licensee** means any person who has been granted a Township Licence from the LE;

**Maintenance Policy** means the policy (as amended from time to time) on the circumstances under which Sublessees and Licensees are to be required by the LE to maintain, repair or replace the Land Trust's Improvements, which is to be developed by agreement of the LE, the Land Trust and the Land Council in conjunction with the Consultative Forum after the Commencement Date;

**Non-Tiwi Permanent Resident** means a Permanent Resident who is a Non-Tiwi Person;

**Non-Tiwi Person** means a natural person who is not a Tiwi Person;

**Non-Vacant Land** means any land in the Township which is:

- (a) subject to an existing right, title or other interest other than this Lease;
- (b) subject to a Right of Occupation;
- (c) subject to a Township Sublease or Township Licence; or
- (d) fenced;

**Occupiers** has the meaning given to that term in clause 6.2(a) and the term **Occupier** has a corresponding meaning;

**Operating Expenses** means the costs of the LE in earning Income. This includes:

- (a) the costs of the LE undertaking functions, exercising powers and complying with its obligations under this Lease;
- (b) the costs of the LE complying with any other obligations under a Law in relation to the Township;
- (c) the costs of the LE in preparing land for, and negotiating, arranging, and granting, Township Subleases, Township Licences, and other rights in relation to occupation or use or enjoyment of or access to the Township; and

- (d) the costs of management of Township Subleases, Township Licences and other rights in relation to occupation or use or enjoyment of or access to the Township, and undertaking functions, exercising powers and complying with obligations under them,

provided that any expense the subject of paragraph (a), (b), (c) or (d) in connection to a matter which provides benefits or rights to the LE in or over future periods shall be allocated over the full duration of such periods and in the case of capital costs in each case recognised as an expense on a straight-line basis over the relevant term.

These costs include:

- (e) the direct costs of the LE in relation to the Township;
- (f) the proportion of administration and management costs of the LE, and wages of the LE and employees, and payments to contractors of the LE, directly incurred and attributable to the LE's activities in relation to the Township.

For the avoidance of doubt, these costs do not include:

- (g) depreciation on any Improvements in the Township;
- (h) costs incurred before the Commencement Date;
- (i) costs incurred by the LE or the Commonwealth pursuant to the Agreement;
- (j) without limitation to paragraph (h), any costs in relation to the establishment of the LE and this Lease; and
- (k) in respect of those items excluded from Income pursuant to paragraph (c)(i) of the definition of Income:
  - (i) the associated expenditure in relation to those items; and
  - (ii) a proportion of administration and management costs of the LE related to such items;

**Outgoings** means all existing and future amounts (including rates, duties and taxes):

- (a) which are properly imposed, charged or levied under statute or by a Government Agency on the Land Trust; or
  - (b) which a Government Agency properly requires the Land Trust to spend,
- and which are:
- (c) paid or payable by the Land Trust during a Lease Year;
  - (d) in relation to the Township or Improvements in the Township; and
  - (e) either capital or non-capital in nature;

**Permanent Resident** means a natural person who has resided in the Township for a period exceeding 12 months;

**Permit** means a permit granted under section 5 of the Aboriginal Land Act or under clause 7.2;

**Permitted Use** has the meaning given to that term in clause 15.1;

**Personal Injury** includes:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury including the resultant loss of consortium or services at any time;
- (b) false arrest, detention, false imprisonment, discrimination, malicious prosecution or humiliation, or breach of confidentiality;
- (c) wrongful entry or wrongful eviction or other invasion of the right to private occupancy; and
- (d) assault and/or battery not intentionally committed by or at the discretion of the insured unless so directed for the purpose of preventing or eliminating danger to property or persons;

**Planning Approval** means any Approval given under any Law and Planning Scheme or any Planning Scheme amendment approved and gazetted, from time to time, under any applicable Law;

**Planning Scheme** means any planning scheme under any applicable Law setting the framework for planning the use, development and protection of the Township or any part of the Township;

**Population Limitation** has the meaning given to that term in clause 10.5(a);

**Preliminary Lease Year** means the period starting on the Commencement Date and ending on the following 30 June;

**Premises Licence** means a licence granted by the Sublessee pursuant to clause 11 of the Sublease Mandatory Terms;

**Receiving Party** means the party to whom Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Disclosing Party;

**Reference Index** means:

- (a) the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for a relevant month (**90-Day Bank Bill Rate**); or
- (b) in the event that the 90-Day Bank Bill Rate is suspended or discontinued, the index benchmark that most nearly reflects the method of calculating the 90-Day Bank Bill Rate;

**Register** has the meaning given to that term in clause 10.5(c);

**Regulation** means the *Aboriginal Land Rights (Northern Territory) Regulations 2007* being a regulation pursuant to section 3AB of the Land Rights Act prescribing an area of land to be the Township;

**Related Entity** has the meaning given to that term in the Corporations Act;

**Relative** has the meaning given to that term in section 1207B of the *Social Security Act 1991 (Cth)* and includes a Domestic Partner;

**Relevant Authority** means any government, municipal, statutory, public or other authority or body having authority or jurisdiction over or in relation to the Township;

**Requirement** means any lawful present or future notices, orders, directions, requirements, statutes, ordinances, proclamations, regulations, schemes, permits, by-laws or other regulatory requirements affecting or relating to the Township or the use of the Township, irrespective of whether the Requirement is addressed to the LE, the Land Trust, the Land Council or any other person;

**Residential Sublease** means a Township Sublease granted by the LE for the Permitted Use of residential housing;

**Review** has the meaning given to that term in clause 28(a);

**Right of Occupation** has the meaning given to that term in clause 6.2(a);

**Sacred Site** means a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal Tradition, and includes any land that, under a law of the Northern Territory, is declared to be sacred to Aboriginals or of significance according to Aboriginal Tradition;

**Schedule** means the schedule to this Lease;

**Services** means all utilities and services on or connected to the Township including water, gas, electricity, lighting, sanitation, drainage, stormwater, computer services, communication and telecommunication systems, oil and any other source or type of energy or fuel and includes all wires, cables, pipes, ducts, conduits, tanks, electrical and mechanical plant and all other ancillary or associated parts and accessories;

**Sexual or Crime against Children Offence** includes:

- (a) an offence against Division 2 of Part V of the Criminal Code;
- (b) an offence against section 192, 192B or 201 of the Criminal Code;
- (c) an offence of:
  - (i) counselling or procuring;
  - (ii) aiding or abetting the commission of;
  - (iii) conspiring to commit;
  - (iv) attempting to commit; or
  - (v) being an accessory after the fact to,
 an offence referred to in this definition or an equivalent offence; or
- (d) any offence similar to paragraphs (a), (b) or (c) above in any jurisdiction;

**Sublease** has the same meaning given to that term in the Land Rights Act;



**Sublease Discretionary Terms** means all clauses other than Sublease Mandatory Terms in the Template Sublease, it being the agreement of the Parties that the LE may, but is not obliged to, include such clauses in a Township Sublease;

**Sublease Mandatory Terms** means clauses 2 to 20 in the Template Sublease, and if provided for by the Maintenance Policy, clause 27.1 in the Template Sublease;

**Sublessee** means any person who has been granted a Township Sublease from the LE;

**Sublicensee** means any person who has licensed any part of the Land from a Sublessee or a person deriving title or tenure from or through a Sublessee;

**Template Licence** means the licence template annexed to Annexure 2 (which contains both Licence Mandatory Terms and Licence Discretionary Terms) or such other amended or replaced form approved by the Consultative Forum in writing, from time to time;

**Template Sublease** means the sublease template annexed to Annexure 1 (which contains both Sublease Mandatory Terms and Sublease Discretionary Terms) or such other amended or replaced form approved by the Consultative Forum in writing, from time to time;

**Term** has the meaning given to that term in clause 2.1(a);

**Termination Event** means:

- (a) the occurrence of an Insolvency Event; or
- (b) the abandonment of the Township by the LE for a continuous period of not less than 1 month;

**Third Party** means a party other than a Party to this Lease;

**Tiwi Entity** means an:

- (a) Aboriginal and Torres Strait Island Corporation; or
- (b) other body,

that operates for the benefit of the Tiwi People;

**Tiwi Permanent Resident** means a Permanent Resident who is a Tiwi Person;

**Tiwi Person** means a natural person who:

- (a) is an Aboriginal from the Land; or
- (b) who practises the culture and traditions of the Tiwi people and is recognised by the traditional Aboriginal owners of the Land as a member of the Aboriginal community on the Land; or
- (c) a spouse or child of a person identified in paragraph (a) or (b) above,

and the expression **Tiwi People** has a corresponding meaning;

**Township** means that part of the Land described in Item 3 and set out in the Regulation as at the Commencement Date;

**Township Licence** means a licence granted by the LE pursuant to clause 11 in the form of the Template Licence;

**Township Sublease** means a Sublease granted by the LE pursuant to clause 10 in the form of the Template Sublease;

**traditional Aboriginal owners** has the same meaning as in the Land Rights Act;

**Underlease** means a lease granted to an Underlessee;

**Underlessee** means any person who has leased any part of the Land from a Sublessee or a person deriving title or tenure from or through a Sublessee;

**Vacant Land** means any land in the Township other than Non-Vacant Land;

**Works** includes any change to the natural or existing condition or topography of the Land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

## 1.2 Interpretation

In this Lease, unless the context requires otherwise:

- (a) the singular (including the singular of defined terms) includes the plural and vice versa;
- (b) reference to a right includes a remedy, authority or power;
- (c) the headings are used for convenience only and do not affect the interpretation of this Lease;
- (d) as far as possible all provisions must be construed so as not to be invalid, illegal or unenforceable;
- (e) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (f) reference to a thing is a reference to all or part of that thing;
- (g) unless the context requires or is otherwise stated in this Lease, a Party's obligations must be performed at that Party's own cost;
- (h) a gender includes the other genders;
- (i) other grammatical forms of defined words or expressions have corresponding meanings;
- (j) a reference to a document includes the document as modified from time to time and any document replacing it;
- (k) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

- (l) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (m) the word "month" means calendar month and the word "year" means 12 months;
- (n) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (o) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (p) a reference to a party includes a reference to the party's respective successors and permitted assigns;
- (q) money amounts are stated in Australian currency unless otherwise specified;
- (r) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body; and
- (s) reference in this Lease to a Sublessee or the holder of a Township Sublease is, where the Sublessee has granted a further estate or interest in the relevant area of the Township, to be taken to include a reference to an Underlessee or any person claiming an estate or interest in Land through such Sublessee.

### **1.3 Exercise of functions by Land Trust**

The Parties acknowledge that under paragraph 5(2) of the Land Rights Act:

- (a) the Land Trust will not exercise its functions in relation to the Township except in accordance with a direction given to it by the Land Council; and
- (b) where such a direction is given, the Land Trust will take action in accordance with that direction.

### **1.4 Delegation**

- (a) To the extent permitted by Law and subject to this clause 1.4, the Land Council may delegate any power, function or responsibility which the Land Council has under this Lease.
- (b) Any such delegation may be:
  - (i) revoked, changed or delegated; and
  - (ii) limited or may be subject to such conditions as the Land Council determines from time to time.
- (c) If the Land Council delegates any power, function or responsibility under this Lease to an individual, the Land Council must give notice of such delegation to the LE (including the identity and address of any person to whom such power, function or responsibility is delegated). Where such notice has been given by the

Land Council, the LE is entitled to rely upon such notice unless and until given notice of revocation of that delegation.

- (d) Where the Land Council has notified the LE of a delegation of power, function or responsibility pursuant to clause 1.4(c), the LE is entitled to request details of the delegation where a person purports to be acting under such a delegation. Once the LE obtains such details, it is entitled to rely on them unless and until given notice of revocation of that delegation.
- (e) Any person to whom a power, function or responsibility is delegated by the Land Council has, to the extent of that delegation and subject to compliance with the terms and conditions of that delegation, full power and authority to act for and on behalf of and to bind the Land Council under this Lease.

### **1.5 Transfer of functions**

- (a) The LE acknowledges that the Land Trust or the Land Council may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of the Land Trust or the Land Council (as applicable) may be transferred to or vested in another entity.
- (b) If the Land Trust or the Land Council is reconstituted, renamed or replaced or if some or all of its powers, functions or responsibilities are transferred to or vested in another entity, references in this Lease to the Land Trust or the Land Council (as applicable) must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to or vested in it those powers, functions or responsibilities.

### **1.6 Good faith**

The Parties must act reasonably and in good faith in performing their respective obligations under this Lease.

### **1.7 Survival**

In addition to this clause 1, the following clauses survive the expiration or earlier determination of this Lease: clauses 18, 19, 20, 22, 25, 26, 27, 31, 32 and 33.

## **2. Lease and reservations**

### **2.1 Grant of Lease**

- (a) The Land Trust grants to the LE a lease of the Township, subject to any existing rights, titles or other interests, commencing on the Commencement Date, for a term of 99 years (**Term**).
- (b) The LE accepts the grant of a lease of the Township upon these terms and otherwise subject to the provisions of this Lease.
- (c) For the avoidance of doubt, the lease of the Township includes a lease of all Existing Improvements and Existing Services.

## **2.2 Reservations in respect of adjoining sites**

Subject to clause 2.3, for the purpose of the Land Trust providing Services to, on, over, through or under Land which is adjacent to or near the Township, the Land Trust or the Land Council may:

- (a) install, maintain, use, repair, alter and replace pipes, ducts, conduits, cables, wires and poles through, on, over and under the Township;
- (b) hang cables and wires from the poles referred to in paragraph (a);
- (c) pass and run Services through the pipes, ducts, conduits, cables and wires; and
- (d) for the purpose of exercising its rights under paragraphs (a), (b), and (c) above, grant easements within the Township to, or enter into agreements with, any Government Agency or providers of Services.

## **2.3 Conditions on reservations**

- (a) The Land Trust must give the LE not less than 30 days notice that it or the Land Council proposes to undertake any Works or grant any easements in exercise of its rights under clause 2.2, except in the case of an emergency when no such notice is required.
- (b) The Land Trust must not, and must ensure that the Land Council does not, undertake any Works or grant any easements in exercise of its rights under clause 2.2 which would materially and adversely interfere with the on-going use or development of the Township by the LE for the Permitted Use, including by the holder of any existing right, title or other interest, Right of Occupation, Township Sublease and Township Licence.
- (c) If the Land Trust gives the LE notice under clause 2.3(a), the Land Trust, must as far as reasonably practicable, ensure that it or the Land Council (as applicable), puts arrangements and procedures into place to minimise any disruption to the LE's use of the Township for the Permitted Use, including by the holder of any existing right, title or other interest, Right of Occupation, Township Sublease and Township Licence, during the undertaking of the Works.
- (d) If the Land Trust gives the LE notice under clause 2.3(a), the LE must:
  - (i) assist the Land Trust and Land Council (as applicable) in ensuring, as far as reasonably practicable, that arrangements and procedures are put in place by the Land Trust or Land Council (as applicable) and the LE to minimise any disruption to the LE's use of the Township for or in connection with the Permitted Use, including by the holder of any existing right, title or other interest, Right of Occupation, Township Sublease and Township Licence, during the undertaking of the Works;
  - (ii) implement, as far as may be reasonably practicable, appropriate work practices during the undertaking of the Works to assist the Land Trust or Land Council (as applicable) in completing the Works in a timely and cost efficient manner;
  - (iii) give and procure that any Sublessee or Licensee gives the Land Trust or Land Council (as applicable) access to the Township when required by

Land Trust or the Land Council for the purpose of undertaking the Works;  
and

- (iv) use its best endeavours to mitigate any loss or damage suffered by the LE as a result of the Works.

## 2.4 Title to site

The Land Trust makes no representations and gives no warranties as to title and has no liability for any defect in title or right of occupation or usage that may exist either now or in the future.

## 2.5 Status of the Agreement

The Parties agree and declare that:

- (a) subject to clause 2.5(b), the Agreement is binding on the Commonwealth of Australia and the Land Trust; and
- (b) to the extent that there is any inconsistency between the terms of the Agreement and this Lease in respect of issues dealing with the same subject matter, the terms of this Lease will prevail to the extent of the inconsistency.

## 3. Mutual agreements and declarations

The Parties mutually agree and declare that:

- (a) the Land Trust may enter into a lease pursuant to section 19A of the Land Rights Act and exercise all the powers of a lessor under this Lease; and
- (b) the LE may enter into a lease pursuant to section 19A of the Land Rights Act and exercise all the powers of a lessee including granting Township Subleases.

## 4. Implied covenants

The covenants, powers and provisions implied in leases under any relevant legislation are hereby expressly excluded except to the extent that they are expressly embodied in this Lease or to the extent only that it would be unlawful to exclude any such covenant, power or provision.

## 5. Lease Payments

### 5.1 Lease Payment

- (a) The LE must pay the Land Council for the Land Trust the amounts specified in clause 5.1(b) (**Lease Payments**).
- (b) The Lease Payments are:
  - (i) for the period commencing on the Commencement Date and ending on the fifteenth anniversary of this Lease:
    - (A) a one time only payment of \$5 million (**Introductory Payment**); and

- (B) all Income generated by the LE under this Lease during such period in excess of the Introductory Payment less Operating Expenses of the Lease during such period (**Bonus Payment**);
- (ii) in relation to each year for the remainder of the Term or until the Lease is otherwise terminated, all Income generated by the LE under this Lease during such year less Operating Expenses of the Lease during such year (**Annual Payment**).
- (c) The Introductory Payment is a prepayment for this Lease.

## 5.2 How does the LE pay the Lease Payment?

- (a) The LE must pay the Introductory Payment on the Commencement Date free of all deductions and with no right of set-off.
- (b) The LE must pay the Bonus Payment:
  - (i) within 3 months after the fifteenth anniversary of the Commencement Date of this Lease;
  - (ii) free of all deductions and with no right of set-off; and
  - (iii) in accordance with the relevant provisions of the Land Rights Act to the Land Council for the Land Trust.
- (c) The LE must pay each Annual Payment:
  - (i) within 3 months after the relevant anniversary of this Lease;
  - (ii) free of all deductions and with no right of set-off; and
  - (iii) in accordance with the relevant provisions of the Land Rights Act to the Land Council for the Land Trust.

## 6. Transition from existing arrangements

### 6.1 Existing rights, titles or other interests

- (a) The Parties acknowledge that, in accordance with subsection 19A(10) of the Land Rights Act, any existing right, title or other interest is preserved as a right, title or interest in the Township under this Lease. Without limiting the operation of this clause, or seeking to limit the operation of subsection 19A(10) of the Land Rights Act, persons with existing rights, titles or other interests, and the nature of their right, title or other interest, are set out in Item 2 and Annexure 5. The Parties acknowledge that further rights, titles or other interests may exist and are to be dealt with in accordance with clause 6.1(b). Native title rights and interests, if any, are not listed in Item 2 and Annexure 5. Persons who were in occupation of land in the Township (other than having a right, title or other interest), without any lease or other interest, immediately before the Commencement Date are dealt with in clause 6.2.
- (b) If any Party becomes aware of any claim to an existing right, title or other interest which is not set out in Item 2 and Annexure 5, the Party must notify the LE. Where the LE agrees that a matter notified is an existing right, title or other

interest, the Parties will treat it as an existing right, title or other interest for the purposes of this Lease.

- (c) The LE must consult with the Consultative Forum before making a decision pursuant to clause 6.1(b) in relation to any claim to an existing right, title or other interest not set out in Item 2 and Annexure 5.
- (d) Where the LE rejects a claim to an existing right, title or other interest pursuant to clause 6.1(b), the notifying Party must institute the dispute resolution process in clause 31, before seeking any court assisted remedy.
- (e) The Parties acknowledge that, in accordance with subsection 19A(11) of the Land Rights Act, any existing right, title or other interest granted by the Land Trust takes effect after the Commencement Date as if it were granted by the LE. The Parties acknowledge that rent or any other money payable under or in connection with such an existing right, title or other interest to the Land Council is from the Commencement Date payable to the LE.
- (f) A person with an existing right, title or other interest may request the LE to formalise their right, title or other interest. If such a request is made, the LE must use its best endeavours to accommodate the grant of a Township Sublease on terms equivalent to the existing right, title or other interest. The LE must negotiate with the person in good faith in relation to the grant of such a Township Sublease.

## 6.2 Existing Occupiers

- (a) The Parties acknowledge that some persons (**Occupiers**) were in occupation of land in the Township, without any existing right, title or other interest, immediately before the Commencement Date. The Parties agree that such persons have the right to continue to occupy and use that land, and the Improvements on it, on the same terms as at the Commencement Date, but subject to the terms of this Lease (**Right of Occupation**).
- (b) The Parties acknowledge that any money in the nature of rent or licence fees payable to the Land Council under or in connection with the Right of Occupation is payable to the LE from the Commencement Date.

## 6.3 Existing Housing Authorities

- (a) The LE may give any Occupier of land in the Township that is an Existing Housing Authority notice that it wishes to formalise the Right of Occupation in relation to the provision of community housing by the grant of a Housing Authority Sublease.
- (b) At any time before the LE has issued a notice pursuant to clause 6.3(a), an Existing Housing Authority Occupier may request the grant of a Housing Authority Sublease from the LE.
- (c) Subject to clause 6.3(e), following the issue of a notice pursuant to clause 6.3(a) or a request for a Housing Authority Sublease pursuant to clause 6.3(b), the LE must use its best endeavours to accommodate the grant of a Township Sublease to a Housing Authority within 6 months after the notice or request (as the case may be).



- (d) Not limiting clauses 6.3(a) and 6.3(b), the LE may call for expressions of interest in relation to the grant of a Housing Authority Sublease over the land occupied by the relevant Existing Housing Authority Occupier.
- (e) The LE is required to consult the Consultative Forum in respect of the grant of any Housing Authority Sublease if the Consultative Forum has been established. The LE is taken to have consulted with the Consultative Forum if it provides at least 1 month for the Consultative Forum to provide comments, and takes into account any such comments.
- (f) Unless a Housing Authority Sublease is granted by the LE to an Existing Housing Authority or any other Housing Authority, and provided the LE has complied with clauses 6.3(a) to 6.3(e) to the extent reasonably possible, the LE may serve an Existing Housing Authority with a notice (**Housing Authority Termination Notice**) that its Right of Occupation under clause 6.2(a) will terminate on a date to be specified in the Housing Authority Termination Notice being not less than 2 months after service of the notice (**Housing Authority Termination Date**). Unless otherwise mutually agreed, an Existing Housing Authority's Right of Occupation will terminate at 5:00 pm (Darwin time) on the Housing Authority Termination Date.
- (g) The Housing Authority Termination Date:
  - (i) is automatically extended until the LE complies with clause 6.3(k); or
  - (ii) may be extended by notice from the LE.
- (h) The Housing Authority Termination Notice must include:
  - (i) full terms of a Housing Authority Sublease acceptable to the LE; and
  - (ii) the Consultative Forum's details.
- (i) Notwithstanding any notice served pursuant to clause 6.3(f), the LE and an Existing Housing Authority may continue to negotiate a Housing Authority Sublease until the Housing Authority Termination Date.
- (j) Where natural persons are in occupation of land in the Township under any arrangement or understanding with an Existing Housing Authority, the LE must issue any notice under clause 6.3(a) or 6.3(f) to the Existing Housing Authority, and not the natural person, and must negotiate a Housing Authority Sublease with the relevant Existing Housing Authority. The LE must not issue any equivalent notice under clause 6.6 to a natural person in occupation of land in the Township under any arrangement or understanding with an Existing Housing Authority.
- (k) Prior to and commencing from the Housing Authority Termination Date (under clause 6.3(f)) and until a Housing Authority Sublease is agreed with a new Housing Authority, the LE must grant all natural persons in occupation of land in the Township under any arrangement or understanding with an Existing Housing Authority, a licence to occupy that land on the same terms and conditions as their respective arrangements with the relevant Existing Housing Authority.
- (l) For the avoidance of doubt, nothing in this clause 6.3 requires the LE to grant a Housing Authority Sublease to an Existing Housing Authority.

#### **6.4 Tenants of Existing Housing Authorities**

- (a) A natural person in occupation of land in the Township under:
  - (i) any arrangement or understanding with a Housing Authority; or
  - (ii) a licence granted pursuant to clause 6.3(k),may at any time during the Term request the grant of a Township Sublease from the LE.
- (b) Following a request for a Township Sublease pursuant to clause 6.4(a), the LE must, subject to the provisions of this Lease, use its best endeavours to accommodate the grant of a Township Sublease to that natural person.
- (c) The LE must take all reasonable steps to ensure that any Existing Housing Authority:
  - (i) allows any of its tenants to seek and obtain a Township Sublease;
  - (ii) give assistance to a person seeking a Township Sublease pursuant to clause 6.4(a); and
  - (iii) execute any document required to facilitate the surrender of that tenancy, and the grant of a Township Sublease, as well as the transfer of any relevant Services.
- (d) The LE must ensure that any Housing Authority Sublease provides that the Housing Authority must:
  - (i) allow any of its tenants to seek and obtain a Township Sublease;
  - (ii) give assistance to a person seeking a Township Sublease; and
  - (iii) execute any document required to facilitate the surrender of that tenancy, and the grant of a Township Sublease, as well as the transfer of any relevant Services.

#### **6.5 Existing Services Providers**

- (a) The LE may give an Existing Services Provider notice that it wishes to formalise their Right of Occupation by the grant of a Commercial Sublease or Township Licence.
- (b) At any time before the LE has issued a notice pursuant to clause 6.5(a), an Existing Services Provider may request the grant of a Commercial Sublease or Township Licence from the LE.
- (c) Following the issue of a notice pursuant to clause 6.5(a) or a request for a Commercial Sublease or Township Licence pursuant to clause 6.5(b), the LE must use its best endeavours to accommodate the grant of such a Commercial Sublease or Township Licence within 6 months.
- (d) If a Commercial Sublease or Township Licence is not granted to the Existing Services Provider, the LE must use its best endeavours to accommodate the

grant of a Commercial Sublease or Township Licence to another person which is able to provide the relevant Services in the Township.

- (e) Unless a Commercial Sublease or Township Licence is granted by the LE to an Existing Services Provider, or some other agreement is reached with an Existing Services Provider, and provided the LE has complied with clauses 6.5(a) to 6.5(c) to the extent reasonably possible, the LE may serve an Existing Services Provider with a notice (**Services Provider Termination Notice**) that its Right of Occupation under clause 6.2(a) will terminate on a date to be specified in the Services Provider Termination Notice being not less than 2 months after service of the notice (**Services Provider Termination Date**). The Services Provider Termination Date may be extended by the LE by notice. Unless otherwise mutually agreed, an Existing Services Provider's Right of Occupation will terminate at 5:00 pm (Darwin time) on the Services Provider Termination Date.
- (f) The Services Provider Termination Notice must include:
  - (i) full terms of a Commercial Sublease or Township Licence acceptable to the LE; and
  - (ii) the Consultative Forum's details.

## 6.6 Other existing Occupiers

- (a) The LE may give any Occupier not dealt with by clauses 6.3 to 6.5 notice that it wishes to formalise their Right of Occupation by the grant of a Township Sublease. If such a request is made the LE must use its best endeavours to accommodate the grant of such a Township Sublease within 6 months of the request.
- (b) At any time before the LE has issued a notice pursuant to clause 6.6(a), an Occupier (not being a provider of Services or a Housing Authority seeking a Township Sublease) may request the grant of a Township Sublease from the LE.
- (c) Following the issue of a notice pursuant to clause 6.6(a) or a request for a Township Sublease pursuant to clause 6.6(b), the LE must use its best endeavours to accommodate the grant of such a Township Sublease within 6 months.
- (d) Unless a Township Sublease is granted by the LE to such an Occupier, and provided the LE has complied with clauses 6.6(a) to 6.6(c) to the extent reasonably possible, the LE may serve the Occupier with notice (**Occupier Termination Notice**) that its Right of Occupation under clause 6.2(a) will terminate on a date to be specified in the Occupier Termination Notice being not less than 2 months after service of notice (**Occupier Termination Date**). The **Occupier Termination Date** may be extended by the LE by notice. Unless otherwise mutually agreed, an Occupier's Right of Occupation will terminate at 5:00 pm (Darwin time) on the Termination Date.
- (e) The Occupier Termination Notice must include:
  - (i) full terms of a Township Sublease acceptable to the LE; and
  - (ii) the Consultative Forum's details.

## **7. Access**

### **7.1 General**

- (a) The Parties agree that any person wishing to enter the Township must have a Permit except to the extent either:
  - (i) such entry or access is otherwise permitted or authorised by or pursuant to the Land Rights Act; or
  - (ii) such person has a defence under the Land Rights Act to any allegation that such person improperly entered or remained in or on the Township.
- (b) The Parties undertake that they will do all things reasonably necessary to enable the LE to enjoy and exercise its rights and interests under this Lease.
- (c) The Parties undertake that they will do all things reasonably necessary to enable Sublessees, Licensees and Underlessees, to enjoy and exercise their rights, title and other interests under their Township Subleases, Township Licences and Underleases.
- (d) The Land Trust and Land Council agree to grant all necessary Permits to any persons requesting permits to enter the Land to gain access to the Township for any purposes related to the use or enjoyment of an estate or interest in land within the Township by the owner of the estate or interest, so as to allow those persons to pass across the Land to get to and from the Township (it being recognised that no such permit is required under subsection 70(2C) of the Land Rights Act to authorise a person to enter or remain in or on the Township for any purpose that is related to the use or enjoyment of an estate or interest in the whole or a part of the Township by the owner of the estate or interest).
- (e) For the avoidance of doubt, nothing in clauses 7.1(c), 7.1(d), 10 or 11 absolves any person from any obligation to obtain a Permit in accordance with or under the Land Rights Act or the Aboriginal Land Act.

### **7.2 Permit System**

- (a) In the event that access to the Land is not regulated by the Aboriginal Land Act, the Parties agree that any person wishing to enter the Township must have a Permit except to the extent either:
  - (i) such entry or access is otherwise permitted or authorised by or pursuant to the Land Rights Act; or
  - (ii) such person has a defence under the Land Rights Act to any allegation that such person improperly entered or remained in the Township.
- (b) If clause 7.2(a) is applicable, the provisions contained within Part 2 of the Aboriginal Land Act as at the Commencement Date will apply to the issuing of Permits under clause 7.2(a) as if such provisions were still in force (**Permit System**).
- (c) If the LE is aware of, or has been informed of a breach of this clause 7.2, then the LE must take all reasonable steps to remedy that breach, which may include informing the relevant authorities.

- (d) The LE must take all reasonable steps to prevent access to any person who refuses to comply with the Permit System outlined in this clause 7.2.

### **7.3 Land Trust and Land Council right of access**

- (a) In addition to clause 8.5(a), the Land Trust or the Land Council may so often as they reasonably require (at reasonable times and on reasonable notice) enter the Township to make reasonable investigations as the Land Trust or the Land Council may deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Lease.
- (b) In addition to their rights under clause 7.3(a), the Land Trust and Land Council are entitled to:
  - (i) enter and use all Designated General Access Areas in the Township; and
  - (ii) conduct their legitimate business (except that referred to in clause 7.3(a)) in the Township at any time, subject to any existing right, title or other interest, Right of Occupation, and to the rights of Township Sublessees and Licensees.

### **7.4 Access to Vacant Land**

Aboriginal people referred to in clause 16.1(a)(i) may pass and repass over any Vacant Land.

### **7.5 Use of Vacant Land for traditional purposes**

Aboriginal people who would be entitled to enter and use land in the Township but for this Lease may enter upon and use Vacant Land in accordance with Aboriginal Tradition governing the rights of those Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor.

### **7.6 Access to Sacred Sites**

- (a) Notwithstanding any other provision in this Lease, Aboriginals must have free access to Sacred Sites in accordance with Aboriginal Tradition.
- (b) Any person who has the express approval of the Custodian of a Sacred Site to enter that Sacred Site for a purpose permitted by Aboriginal Tradition, must be granted access to that Sacred Site by reasonable means and by the most direct practical route between a place of public access and the Sacred Site (or between Sacred Sites).
- (c) The LE undertakes to do all things necessary to enable those persons entitled to enjoy and exercise their rights and interests under this clause 7.6.

## **8. Improvements**

### **8.1 Existing Improvements**

- (a) Existing Improvements subject to an existing right, title or other interest will remain subject to the terms of that existing right, title or other interest, for the period of the existing right, title or other interest.
- (b) Existing Improvements to which sections 14 and 18 of the Land Rights Act apply will remain subject to those provisions, for the period those provisions apply.
- (c) Existing Improvements subject to a Right of Occupation are included in that Right of Occupation, for the period of that Right of Occupation.
- (d) Subject to clauses 8.1(a) to 8.1(c), and any other relevant Law, all Existing Improvements constructed by either the Commonwealth or the Territory, or a Commonwealth or Territory body, or with Commonwealth or Territory funding, is the property of the Land Trust and is the subject of this Lease. The LE must not take action which affects such Existing Improvements without consulting with the Commonwealth or Territory in relation to the proposed action.
- (e) Subject to clauses 8.1(a) to 8.1(c), and any other relevant Law, all Existing Improvements constructed by a Housing Authority or other non-government organisation, or with funding principally provided by a Housing Authority or other non-government organisation, is the property of the Land Trust and is the subject of this Lease. The LE must not take action which affects such Existing Improvements without using its best endeavours to consult with the Housing Authority or other non-government organisation in relation to that proposed action, where that body continues to exist. Where the responsibilities of the relevant Housing Authority or non-government organisation have been transferred to another body, the LE must use its best endeavours to consult with that other body.
- (f) Subject to clauses 8.1(a) to 8.1(c), and any other relevant Law, all Existing Improvements, other than those specified in clauses 8.1(d) and 8.1(e), are the property of the Land Trust and are the subject of this Lease.

### **8.2 LE's Improvements**

- (a) The Parties acknowledge that the construction and use of roads in the Township is necessary for the use and enjoyment of the Lease by the LE.
- (b) Subject to the Law, the Planning Scheme and the terms of this Lease, the LE may erect, install, alter, remove, refurbish and demolish LE's Improvements and LE's Services in, on or under the Township.
- (c) During the Term, all LE's Improvements and LE's Services will remain the property of the LE who is responsible for their maintenance, repair and replacement.

### **8.3 Maintenance of Land Trust's Improvements**

- (a) Subject to the Maintenance Policy, where appropriate after having regard to the condition of the Land Trust's Improvements at the time this Lease is granted, the LE must maintain, repair or replace those Land Trust's Improvements that are the

subject of a Township Sublease or Township Licence to the extent that the costs relating to such maintenance, repair or replacement are liable to be borne by the Sublessee, Licensee or any person claiming a right through them.

- (b) Notwithstanding clause 8.3(a), the LE will be under no obligation under this Lease to maintain, repair or replace any Land Trust Improvement that is not the subject of a Township Sublease or Township Licence or to compensate the Land Trust or any other person for damage or destruction to those Land Trust's Improvements.
- (c) The LE must give the Land Trust prompt notice in writing of any damage to or defect in the Land Trust's Improvements to which clause 8.3(b) applies and which is likely to cause any damage, deterioration, danger, risk or hazard to the structural parts of the Land Trust's Improvements.

#### **8.4 Other obligations**

- (a) Where any of the Services require regular servicing, maintenance and repair, the LE must:
  - (i) use its best endeavours to facilitate providers of Services to service, maintain and repair the Services; and
  - (ii) use its best endeavours to ensure that appropriate Service commitments are met.
- (b) The LE does not need to comply with clause 8.4(a)(i) to the extent any Services are the subject of a Township Sublease or a Township Licence in the Township and the relevant Sublessee or Licensee, maintains and repairs those Services or is required to do so.

#### **8.5 Land Trust rights**

- (a) The Land Trust reserves the right to carry out any Works in respect of the Land Trust's Improvements that may be required to comply with any applicable Law, Planning Scheme or Requirement which are not the responsibility of the LE or which are the responsibility of the LE but with which the LE fails to comply.
- (b) The Land Trust may exercise its rights under clause 8.5(a):
  - (i) on giving prior reasonable written notice (except in the case of an emergency when no notice will be required);
  - (ii) at reasonable times; and
  - (iii) if reasonably required by the LE, accompanied by a person appointed by the LE.

#### **8.6 Ownership of Improvements at the end of the Lease**

- (a) At the expiry or sooner determination of this Lease, all Improvements and Services (including LE's Improvements and LE's Services) but excluding any of the LE's Improvements required to be removed pursuant to clause 27.2(a) will, subject to any continuing right, title or other interest referred to in clauses 8.1(a) and 8.1(b), and any other relevant continuing right, title or other interest, be the

property of the Land Trust in consideration of the sum of \$1, if demanded by the LE.

- (b) Subject to any agreements in writing between the Land Trust and the LE, the Land Trust will not be required to further compensate the LE for the transfer of the Improvements.
- (c) The LE undertakes to do all things necessary, including procuring the agreement and cooperation of any Sublessee or Licensee, to enable the Land Trust to enjoy and exercise its rights and interests under this clause 8.6.

## **9. Respect for Tiwi Culture**

- (a) The LE acknowledges that:
  - (i) the traditional Aboriginal owners of the Land have a spiritual and custodial relationship with the Land and surrounding seas;
  - (ii) the traditional Aboriginal owners of the Land remain the custodians of the Cultural Heritage of the Land;
  - (iii) some knowledge belongs only to specific members of the Aboriginal community;
  - (iv) certain information is inaccessible to all except those deemed appropriate by the Aboriginal community;
  - (v) secret and sacred materials are items of special religious and spiritual significance to Tiwi People, and are usually associated with men's and women's private ceremonies.
- (b) In discharge of the LE's functions, the LE must be familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.

## **10. Township Subleases**

### **10.1 Grant of Township Sublease**

Subject to the provisions in this clause 10, the Land Trust acknowledges that the LE may grant Township Subleases provided that the LE ensures that:

- (a) the term of any Township Sublease (including any options) does not exceed the balance of the Term then remaining less 1 day;
- (b) subject to clause 27.4, the Township Sublease expires or determines automatically upon expiration or earlier determination of this Lease;
- (c) all Township Subleases contain terms in a form substantially similar to the Sublease Mandatory Terms;
- (d) any special conditions in a Township Sublease are not inconsistent with the Sublease Mandatory Terms and to that end such special condition will be void to the extent of any such inconsistency;



- (e) a Sublessee does not transfer, sublet, mortgage or surrender its Township Sublease where such action would result in a breach of this Lease or the terms of its Township Sublease;
- (f) otherwise, a Sublessee does not:
  - (i) part with or share possession of land or Improvements leased under its Township Sublease other than to or with a Relative; or
  - (ii) grant a licence to occupy or use, land or Improvements leased under its Township Sublease,
 without the prior written consent of the Land Trust (which consent will not be unreasonably withheld) and the LE;
- (g) any licence to occupy or use, and any parting or sharing of possession of, any land or Improvements leased under a Township Sublease or an Underlease is subject to a clause substantially in the form of clause 7 and the requirements under that clause to obtain a Permit;
- (h) each Sublessee observes and complies with its obligations under its Township Sublease; and
- (i) subject to clauses 10.7 and 10.14, all Township Subleases are granted on a commercial basis applying sound business principles, taking into account the general purpose of this Lease as set out in paragraph E of the background, and the specific purpose of the relevant Township Sublease.

## **10.2 Copy of Township Sublease and Underlease**

- (a) The LE must provide a copy of each Township Sublease to the Land Trust within 10 Business Days after execution or such other period as agreed by the Parties.
- (b) The LE must provide a copy of each Underlease received by the LE (pursuant to clause 10.2 of the Sublease Mandatory Terms) to the Land Trust within 10 Business Days of receipt or such other period as agreed by the Parties.
- (c) The LE must provide a copy of each Premises Licence received by the LE (pursuant to clause 11.2 of the Sublease Mandatory Terms) to the Land Trust within 10 Business Days of receipt or such other period as agreed by the Parties.

## **10.3 Interpretation**

If there is any inconsistency between the Sublease Mandatory Terms and the terms of any Township Sublease, the Sublease Mandatory Terms will take precedence to the extent of such inconsistency.

## **10.4 Amendments and termination**

The Land Trust may, by written direction to the LE, demand that the LE amend or terminate any Township Sublease not granted in accordance with this Lease. The LE must terminate or amend (as the case may be) any Township Sublease not granted in accordance with this Lease if directed to do so by the Land Trust.

### 10.5 Restrictions on the grant of Subleases to Non-Tiwis

- (a) The LE must not grant a Township Sublease, or vary a Township Sublease, which would directly result in the number of Non-Tiwi Permanent Residents of the Township exceeding 15% of the number of Permanent Residents in the Township at the time the Township Sublease is granted or varied (**Population Limitation**).
- (b) The Consultative Forum may vary the Population Limitation by notice to the LE provided that the Population Limitation is not less than 15%.
- (c) For the purpose of determining whether the Population Limitation is exceeded, the LE must diligently and in good faith compile and maintain a register of Permanent Residents (**Register**). The Register must:
  - (i) contain the following particulars:
    - (A) address of residence;
    - (B) the name of all Permanent Residents;
    - (C) a classification of each resident as either a Non-Tiwi Permanent Resident or a Tiwi Permanent Resident;
  - (ii) be updated at intervals not exceeding 1 year; and
  - (iii) be copied and given to the Land Trust on 30 June of each year of the Term.
- (d) The LE may request the assistance of the Land Council to compile and maintain the Register. If requested, the Land Council must provide all reasonable assistance to the LE to compile and maintain the Register. The LE must manage the Register in accordance with the advice provided by the Land Council.
- (e) The LE is not in breach of this clause 10.5 where it grants or varies a Township Sublease in reliance on the Register as last updated.
- (f) The LE is not in breach of this Lease if the number of Non-Tiwi Permanent Residents of the Township exceed the Population Limitation:
  - (i) following a notice given in accordance with this clause 10.5(b); or
  - (ii) due to ordinary increases in the number of Non-Tiwi Permanent Residents.

### 10.6 Fit and proper

- (a) The LE must not grant a Township Sublease to any person unless satisfied that the applicant is a fit and proper person to hold a Township Sublease.
- (b) A person is not a fit and proper person to hold a Township Sublease if that person has been convicted of a Sexual or Crime against Children Offence at any time and in any jurisdiction.
- (c) In making its decision as to whether a person is a fit and proper person to hold a Township Sublease, the LE must have due regard to any reasonable guidelines developed by the Consultative Forum, from time to time.

- (d) The LE must obtain, and may rely upon, a national police record check from the Relevant Authority to determine whether a person has been convicted of a Sexual or Crime against Children Offence.
- (e) References in this clause 10.6 to an applicant not being a fit and proper person to hold a Township Sublease are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

#### **10.7 Community Benefit Organisation**

- (a) Subject to clause 10.7(c), the LE may not grant a Township Sublease to any Community Benefit Organisation without having due regard to any Community Benefit Organisation sublease guidelines prepared by the Consultative Forum, from time to time (**Community Benefit Organisation Sublease Guidelines**).
- (b) The Community Benefit Organisation Sublease Guidelines prepared by the Consultative Forum may prescribe reasonable requirements and restrictions on the grant of a Township Sublease to Community Benefit Organisations. In preparing the Community Benefit Organisation Sublease Guidelines, the Consultative Forum may take into consideration:
  - (i) any special requirements of the traditional Aboriginal owners; and
  - (ii) any special circumstances of the Township.
- (c) The LE may grant a Township Sublease to any Community Benefit Organisation that, as at the Commencement Date, has an existing right, title or other interest without regard to the Community Benefit Organisation Sublease Guidelines.
- (d) The LE may, after consultation with the Consultative Forum and in accordance with any Community Benefit Organisation Guidelines prepared by the Consultative Forum, grant a Township Sublease to a Community Benefit Organisation on terms more favourable to the Community Benefit Organisation than normal commercial terms.

#### **10.8 Notification of proposed Commercial Sublease**

- (a) Before granting a Commercial Sublease, the LE must first notify the public of any proposal to grant a Commercial Sublease.
- (b) Notification under clause 10.8(a) requires the LE to place such notice in the local newspaper, other media as appropriate, on the local noticeboard or as otherwise reasonably appropriate in the circumstances to bring the proposed Commercial Sublease to the attention of the Township community. Such notice must include the following particulars:
  - (i) a description of the land to which the proposed Commercial Sublease relates;
  - (ii) the term of the proposed Commercial Sublease;
  - (iii) the proposed consideration (if any);
  - (iv) the Permitted Use contained within the proposed Commercial Sublease;

- (v) any special conditions; and
- (vi) where a copy of the proposed Commercial Sublease may be obtained.
- (c) Any person with a bona fide interest (**Interested Party**) in the proposed Commercial Sublease has 15 Business Days from the date of advertisement to notify the LE of an interest in the proposed Commercial Sublease.
- (d) Where required, an Interested Party may request up to 25 Business Days (or as otherwise agreed) in which to undertake due diligence (**Due Diligence Period**).
- (e) All Interested Parties may:
  - (i) where a request has been made under clause 10.8(d), by the end of the Due Diligence Period; or
  - (ii) otherwise within 20 Business Days of notification,
 apply for:
  - (iii) the proposed Commercial Sublease; or
  - (iv) a Commercial Sublease over land in the Township that incorporates the same Land as the proposed Commercial Sublease.
- (f) If there is more than one application for the grant of a Commercial Sublease pursuant to this clause 10.8, the LE must grant the Commercial Sublease to the most appropriate person having regard to the objectives set out in paragraph E of the background.
- (g) Nothing in this clause 10.8 will prevent the LE signing a Commercial Sublease conditional on compliance with this clause 10.8.

#### **10.9 Permitted Use**

- (a) The LE may only grant a Township Sublease for a Permitted Use.
- (b) In addition to complying with any applicable Law and Planning Scheme, the LE must notify the public of any proposal to vary the Permitted Use of a Township Sublease. Members of the public must have sufficient opportunity to comment or object to such variation.
- (c) Notification under clause 10.9(b) requires the LE to place such notice in the local newspaper, other media as appropriate, on the local noticeboard or as otherwise reasonably appropriate in the circumstances to bring the proposed variation of the Permitted Use specified in any Township Sublease to the attention of the Township community. The notice must include details of how any person may object to the variation.
- (d) If the LE receives any objection to the variation of a Permitted Use specified in any Township Sublease that would otherwise be permitted under the Planning Scheme or any Law, the LE in deciding whether or not to approve the variation of the Permitted Use must have due regard to any guidelines prepared by the Consultative Forum, from time to time.

**10.10 Respect for Tiwi Culture**

- (a) The LE must make reasonable efforts to ensure that all Sublessees are familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.
- (b) The LE will not be in breach of this clause 10.10:
  - (i) if the LE provides each Sublessee with written information developed in conjunction with the Consultative Forum and the Land Trust; and
  - (ii) the LE receives a written acknowledgment from each Sublessee stating that the Sublessee has read and understood the information provided.
- (c) References in this clause 10.10 to an applicant being familiar with and showing respect for Aboriginal Tradition are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate being familiar with and showing respect for Aboriginal Tradition.

**10.11 Housing Authority**

The LE must use its best endeavours to ensure that there is a Sublease in the Township to a Housing Authority to enable that Housing Authority to provide housing services to Aboriginals in the Township.

**10.12 Service providers**

The LE must use its best endeavours to ensure that there are Commercial Subleases, Township Licences or other arrangements with providers of Services to enable the provision of Services in the Township.

**10.13 Statutory compliance**

- (a) Where applicable:
  - (i) all Township Subleases must comply with the *Land Title Act 2000 (NT)* and any future legislation relating to leases in the Northern Territory;
  - (ii) all Commercial Subleases must comply with the *Business Tenancies (Fair Dealings) Act 2003 (NT)* and any future legislation relating to retail tenancies in the Northern Territory; and
  - (iii) all Residential Subleases must comply with the *Residential Tenancies Act 1999 (NT)* and any future legislation relating to residential tenancies in the Northern Territory.
- (b) To the extent that any inconsistency exists between any of the legislation referred to in this clause 10.13 and the relevant Township Sublease, the relevant legislation must apply to the extent of the inconsistency.

**10.14 Sacred Site**

- (a) The Parties agree that a Township Sublease for any area of land in the Township:
  - (i) on which a Sacred Site is located; or

- (ii) within a reasonable distance from a Sacred Site,

may only be granted to the Custodian of that Sacred Site or to an authority charged with its preservation.

- (b) Any Township Sublease granted to the Custodian of a Sacred Site or to an authority charged with its preservation may be on terms more favourable to the Custodian of a Sacred Site or to an authority charged with its preservation than normal commercial terms.

#### **10.15 No release of liability**

The LE acknowledges that the granting of a Township Sublease pursuant to this clause 10 will not release the LE from any of its obligations or liabilities under this Lease.

### **11. Township Licences**

#### **11.1 Grant of Township License**

Subject to clause 7 and the provisions in this clause 11, the Land Trust acknowledges that the LE may grant Township Licences provided that the LE ensures that:

- (a) the term of any Township Licence (including options) does not exceed the balance of the Term then remaining less 1 day;
- (b) subject to clause 27.4, the Township Licence expires or determines automatically upon expiration or earlier determination of this Lease;
- (c) all Township Licences contain terms in a form substantially similar to the Licence Mandatory Terms;
- (d) any special conditions in a Township Licence are not inconsistent with the Licence Mandatory Terms and to that end any special condition will be void to the extent of any such inconsistency;
- (e) Licensees only transfer, mortgage or surrender their Township Licence:
  - (i) with the consent of the LE which must not be unreasonably withheld; but
  - (ii) without the need for the LE or the Licensees to obtain the consent of the Land Trust as head lessor, the Land Council or the traditional Aboriginal owners;
- (f) otherwise, a Licensee does not:
  - (i) part with or share possession of land or Improvements licensed under a Township Licence other than to or with a Relative; or
  - (ii) grant a sublicense to occupy or use, land or Improvements licensed under a Township Licence,

without the prior written consent of the Land Trust (which consent will not be unreasonably withheld) and the LE;

- (g) any sublicense to occupy or use, and any parting or sharing of possession of, any land or Improvements licensed under a Township Licence is subject to a clause substantially in the form of clause 7 and the requirements under that clause to obtain a Permit;
- (h) each Licensee observes and complies with its obligations under its Township Licence; and
- (i) subject to clauses 11.7 and 11.9, all Township Licences are granted on a commercial basis applying sound business principles, taking into account the general purpose of this Lease, as set out in paragraph E of the background, and the specific purpose of the relevant Township Licence.

## **11.2 Copy of Township Licence**

- (a) The LE must provide a copy of each Township Licence to the Land Trust within 10 Business Days after execution.
- (b) The LE must provide a copy of each sublicense received by the LE (pursuant to clause 11.2 of the Licence Mandatory Terms) to the Land Trust within 10 Business Days of receipt or such other period as agreed by the Parties.

## **11.3 Interpretation**

If there is any inconsistency between the Licence Mandatory Terms and the terms of any Township Licence, the Licence Mandatory Terms take precedence to the extent of such inconsistency.

## **11.4 Amendments and termination**

The Land Trust may, by written direction to the LE, demand that the LE amend or terminate any Township Licence not granted in accordance with this Lease. The LE must terminate or amend (as the case may be) any Township Licence not granted in accordance with this Lease if directed to do so by the Land Trust.

## **11.5 Restrictions on the grant of Township Licences to Non-Tiwis**

The LE must not grant a Township Licence, or vary a Township Licence, which would directly result in the number of Non-Tiwi Permanent Residents of the Township exceeding the Population Limitation determined pursuant to clause 10.5 at the time the Township Licence is granted or varied.

## **11.6 Fit and proper**

- (a) The LE must not grant a Township Licence to any person unless satisfied that the applicant is a fit and proper person to hold a Township Licence.
- (b) A person is not a fit and proper person to hold a Township Licence if that person has been convicted of a Sexual or Crime against Children Offence at any time and in any jurisdiction.
- (c) In making its decision as to whether a person is a fit and proper person to hold a Township Licence, the LE must have due regard to any reasonable guidelines developed by the Consultative Forum, from time to time.

- (d) The LE must obtain, and may rely upon, a national police record check from the Relevant Authority to determine whether a person has been convicted of a Sexual or Crime against Children Offence.
- (e) References in this clause 11.6 to the applicant not being a fit and proper person to hold a Township Licence are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

### **11.7 Community Benefit Organisation**

- (a) Subject to clause 11.7(c), the LE may not grant a Township Licence to any Community Benefit Organisation without having due regard to any Community Benefit Organisation licence guidelines prepared by the Consultative Forum from time to time (**Community Benefit Organisation Licence Guidelines**).
- (b) The Community Benefit Organisation Licence Guidelines may prescribe reasonable requirements and restrictions on the grant of a Township Licence to Community Benefit Organisations. In preparing the Community Benefit Organisation Licence Guidelines, the Consultative Forum may take into consideration:
  - (i) any special requirements of the traditional Aboriginal owners; and
  - (ii) any special circumstances of the Township.
- (c) The LE may grant a Township Licence to any Community Benefit Organisation that, as at the Commencement Date, has an existing right, title or other interest without regard to the Community Benefit Organisation Licence Guidelines.

### **11.8 Permitted Use**

- (a) The LE may only grant a Township Licence for a Permitted Use.
- (b) In addition to complying with any applicable Law and Planning Scheme, the LE must notify the public of any proposal to vary the Permitted Use of a Township Licence. Members of the public must have sufficient opportunity to comment or object to such variation.
- (c) Notification under clause 11.8(b) requires the LE to place such notice in the local newspaper, other media as appropriate, on the local noticeboard or as otherwise reasonably appropriate in the circumstances to bring the proposed variation of the Permitted Use specified in any Township Licence to the attention of the Township community. The notice must include details of how any person may object to the variation.
- (d) If the LE receives any objection to the variation of Permitted Use specified in any Township Licence that would otherwise be permitted under any Law or the Planning Scheme, the LE in deciding whether or not to approve the variation of Permitted Use must have due regard to any guidelines prepared by the Consultative Forum, from time to time.



### 11.9 Respect for Tiwi Culture

- (a) The LE must make reasonable efforts to ensure that all licensees are familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.
- (b) The LE will not be in breach of this clause 11.9:
  - (i) if the LE provides each Licensee with written information developed in conjunction with the Consultative Forum and the Land Trust; and
  - (ii) the LE receives a written acknowledgment from each Licensee stating that the licensee has read and understood the information provided.
- (c) References in this clause 11.9 to an applicant being familiar with and showing respect for Aboriginal Tradition are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate being familiar with and showing respect for Aboriginal Tradition.

### 11.10 Sacred Site

- (a) The Parties agree that a Township Licence for any area of land in the Township:
  - (i) on which a Sacred Site is located; or
  - (ii) within a reasonable distance from a Sacred Site,
 may only be granted to the Custodian of that Sacred Site or to an authority charged with its preservation.
- (b) Any Township Licence granted to the Custodian of a Sacred Site or to an authority charged with its preservation may be on terms more favourable to the Custodian of a Sacred Site or to an authority charged with its preservation than normal commercial terms.

### 11.11 No release of liability

The LE acknowledges that the granting of a Township Licence pursuant to this clause 11 will not release the LE from any of its obligations or liabilities under this Lease.

## 12. Third Party Occupier act or omission

The Parties acknowledge and agree that:

- (a) any act or omission by any Sublessee, Licensee, Underlessee or Sublicensee on or in connection with the Township or any Improvements or part of the Township (**Third Party Occupier**) that would constitute a breach of this Lease if committed by the LE is, for the purposes of this Lease, deemed to be the act or omission by the LE;
- (b) the grant of any right to any Third Party Occupier in connection with the Township or any Improvements or part of the Township does not release the LE from its obligations under this Head Lease including (but not limited to) the grant of any Township Sublease, Township Licence or any other right, whether authorised by this Lease or not; and

- (c) nothing in this Lease releases the LE from the acts or omissions of any Third Party Occupier on or in connection with the Township or the Improvements.

### **13. Rates, Taxes and Charges**

#### **13.1 Outgoings**

- (a) The LE must pay on time any Outgoing (or in the Preliminary Lease Year or Final Lease Year, the appropriate part of any Outgoing) which:
  - (i) is imposed by a Government Agency or other providers of Services directly on the Township; or
  - (ii) relates solely to the Township,
 whether issued against the Land Trust, the Land Council or the LE.
- (b) The LE must pay the amounts under this clause 13.1 direct to any Government Agency or other person imposing the charge on time, or, at the Land Trust's request, to the Land Council in time for the Land Council to make the payment on time.
- (c) If the Township is not separately assessed for an Outgoing, the LE must pay the LE's Percentage of the Outgoing to the Land Council within 7 Business Days of demand.
- (d) The LE must give the Land Council receipts for any Outgoings paid by the LE within 7 Business Days of request by the Land Trust.

#### **13.2 Charges for Services**

- (a) Neither the Land Trust nor the Land Council is liable for:
  - (i) the cost of any Services supplied, metered, consumed or connected to the Township except where the Services are for the benefit of the Land Trust or Land Council; or
  - (ii) the cost of installing separate meters for any Services capable of being separately metered.
- (b) The LE must pay on time any amounts charged or levied directly upon the Land Council relating to the use or supply of Services (except where the Services are for the benefit of the Land Trust or Land Council) direct to any Government Agency or other person imposing the charge, or, at the Land Trust's request, to the Land Council in time for the Land Council to make the payment on time.

#### **13.3 Costs of Lease**

- (a) The LE must pay to the Land Council on demand:
  - (i) the Land Trust and Land Council's legal costs and disbursements on a full indemnity basis for:
    - (A) the exercise of any discretion or consent required to be given under this Lease not otherwise met by a Sublessee, Licensee, any person

claiming a right through the Sublessee or Licensee, or from funding provided from the Aboriginals Benefit Account under the Land Rights Act or otherwise by the Commonwealth; and

- (B) any default by the LE under this Lease;
  - (ii) all other costs of any default by the LE under this Lease;
  - (iii) Interest on any Lease Payments or other money payable to the Land Council under this Lease which has not been paid by the due date for payment; and
  - (iv) charges for all Works carried out by the Land Trust under clause 8.5(a) in circumstances where the LE is obliged to carry out the Works but has failed to do so.
- (b) The right of the Land Council (whether on its own behalf or on behalf of the Land Trust) to require the LE to pay interest is in addition to, and does not affect, any other right or remedy of the Land Council or the Land Trust in respect of the LE's failure to pay any monies under this Lease by the due date for payment.

#### 13.4 Stamp duty

For the avoidance of doubt, the LE must pay any stamp duty assessed on this Lease.

#### 13.5 Shared Services

Where the infrastructure which provides or supplies any of the Services provides or supplies those Services not only to the Township but also to other parts of the Land, the LE must pay or reimburse the Land Council a proportion of any costs charged or levied by the provider of the Services in respect of the repair or maintenance of that infrastructure, such proportion to be calculated as follows:

- (a) in respect of the infrastructure relating to a Service (except drainage), the proportion will be the proportion which the number of outlets for the relevant Service within the Township serviced by that infrastructure bears to the total number of outlets for that Service within the total area of the Land which is serviced by that infrastructure; and
- (b) in respect of drainage, the proportion will be the proportion which the area of that part of the Township which is serviced by the relevant drain bears to the total area of the Land which is serviced by that drain.

### 14. GST

#### 14.1 Definitions

In this clause 14:

- (a) the expressions **Consideration**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- (b) **Supplier** means any party treated by the GST Act as making a Supply under this Lease.

## 14.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Lease are exclusive of GST.

## 14.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Lease, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Lease.

## 14.4 Reimbursement of expenses

If this Lease requires a party (the **First Party**) to pay for, reimburse, set-off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set-off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

## 15. Use of Township

### 15.1 Permitted Use

- (a) The LE must only use, and permit the use of, the Township for any use consistent with the use of the Township as a township (**Permitted Use**).
- (b) Notwithstanding clause 15.1(a), the Township must only be used for those purposes which are permitted under the Planning Scheme and any Law.

### 15.2 No warranty as to use

The LE acknowledges that none of the Land Trust, the Land Council and any Third Party has made any representation, given any advice or given any warranty as to:

- (a) how the Township may be used;
- (b) the suitability of the Township for use for or in connection with the Permitted Use including any necessary rights and easements benefiting the Township;
- (c) any prohibitions and restrictions relating to the Township;

- (d) the condition of the Township; or
- (e) the compliance or otherwise of the Township with any applicable Laws or Approvals.

### **15.3 The LE's acknowledgments**

- (a) The LE acknowledges that it has not relied on any representation, advice or warranty from the Land Trust, the Land Council or any Third Party in respect of the matters listed in clause 15.2.
- (b) The LE acknowledges that it is aware of and has made its own appraisal of the matters listed in clause 15.2.
- (c) Subject to clause 7 and 19.7, the LE acknowledges that nothing in this Lease requires the Land Trust to grant access to any of the Land other than the Township.

### **15.4 Compliance with Laws and Planning Scheme**

The LE must at its sole cost and expense comply with all Laws and any Planning Scheme which affect or relate to the Township and the use or occupation of the Township and its Improvements regardless of whether the Law or Planning Scheme requires compliance by either or both of the LE and the Land Trust or any Third Party except to the extent that such compliance requires the LE to undertake structural alterations or additions to the Land Trust Improvements, unless such structural alterations or additions are occasioned or required by reason of:

- (a) the nature of the particular business conducted by the LE in the Township; or
- (b) any negligence or default of the LE.

### **15.5 Compliance with alcohol management plans**

Notwithstanding clause 15.4 and for the avoidance of doubt, the LE must comply with any alcohol management plan or other alcohol related initiative implemented in relation to the Township.

### **15.6 Sacred Sites**

- (a) The Parties acknowledge that the register of Sacred Sites maintained by the Aboriginal Areas Protection Authority may not contain all Sacred Sites in the Township.
- (b) Before dealing in any way with a Sacred Site, the LE must consult the Custodian of that Sacred Site.
- (c) All Work on and use of the land in the Township must be carried out in accordance with an Authority Certificate.
- (d) The LE can rely upon and will not otherwise be in breach of this clause 15.6 if it undertakes any Works permitted by, and in accordance with, an Authority Certificate.

- (e) If the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* is repealed or amended to the extent that no Government Agency is responsible for regulating Work on, or any use of the land that that may affect, damage or interfere with Sacred Sites, then the LE must:
  - (i) consult with the Custodians of Sacred Sites on or in the vicinity of the land that may be affected by the proposed use or Work; and
  - (ii) complete any Work and use the land with respect and consideration to any Sacred Sites that may be affected,
 so as to prevent any harm or damage to, or interference with those Sacred Sites.
- (f) The Parties acknowledge that all Information relating to Sacred Sites is Confidential Information and may only be disclosed with the express permission of the Custodian for that Sacred Site.

### **15.7 Approvals**

The LE must at its sole cost and expense obtain, maintain and comply with all Approvals which from time to time may be necessary or appropriate for the Township or the use or occupation of the Township regardless of whether the Approval requires compliance by either or both of the LE and the Land Trust or any Third Party.

### **15.8 Compliance with notices**

The LE must at its sole cost and expense comply with all notices, orders and directions issued or given by a Government Agency which affect or relate to the Township or the use or occupation of the Township regardless of whether the notice, order or direction is addressed to or requires compliance by either or both of the LE and the Land Trust or any Third Party except:

- (a) to the extent that the Land Trust is required to comply with any Law pursuant to clause 18.1; or
- (b) to the extent that such compliance requires the LE to undertake structural alterations or additions to the Land Trust Improvements, unless such structural alterations or additions are occasioned or required by reason of:
  - (i) the nature of the particular business conducted by the LE in or on the Township; or
  - (ii) any negligence or default of the LE.

### **15.9 Notices**

A Party which receives a notice, order or direction from a Government Agency which affects or relates to the Township or the use or occupation of the Township must promptly give a copy of that notice, order or direction to the other Parties.

### **15.10 Roads**

The Parties acknowledge that the general Laws of the Northern Territory, or a local government body of the Northern Territory, in relation to the use of public roads should

apply to all roads in the Township (except private roads), and will make no objection or claim to compensation if those Laws do apply.

### 15.11 Signage

Any signage placed in or on the Township by or on behalf of the LE must:

- (a) comply with all applicable Laws;
- (b) comply with voluntary codes of conduct established by the advertising industry;
- (c) not depict political, religious or other subject matter which is contentious; and
- (d) not depict subject matter which is considered offensive to the general Tiwi community.

### 15.12 Nuisances

- (a) The LE must not at any time during the Term:
  - (i) use, exercise, carry on or permit or suffer to be used, exercised or carried on in or on the Township any noxious or offensive act, trade, business, occupation or calling; or
  - (ii) do or omit or permit or suffer to be done or omitted any act, matter or thing in, on or about the Township which is or may become an annoyance, nuisance, grievance or disturbance to any other occupier or owner of adjacent property.
- (b) The Parties agree that the proper use of the Township for the Permitted Use will not be a breach of this clause 15.12.

## 16. Designated General Access Areas

### 16.1 Classification of Land as a Designated General Access Area

- (a) The Parties agree that for the purposes of access and Township amenity, subject to clause 16.1(d), some areas of land in the Township must be classified as designated general access areas (**Designated General Access Areas**). The classification of an area of land in the Township as a Designated General Access Area entitles:
  - (i) Aboriginal people who would be entitled to enter and use land in the Township but for this Lease; and
  - (ii) other persons who are lawfully in the Township,
 to enter and use that Designated General Access Area subject to clause 16.4.
- (b) The LE must ensure the reasonable provision of Designated General Access Areas in the following categories:
  - (i) primary roads; and
  - (ii) parks.

- (c) The LE must ensure all land in the Township in the following categories are classified Designated General Access Areas:
  - (i) the Foreshore; and
  - (ii) cemeteries.
- (d) The following areas of land in the Township must not be classified as a Designated General Access Area:
  - (i) any area of land in the Township that is the subject of an existing right, title or other interest either listed in Item 2 or agreed to be an existing right, title or other interest pursuant to clause 6.1(b) unless:
    - (A) the right, title or other interest is consistent with the area being a Designated General Access Area; or
    - (B) the holder of the existing right, title or other interest agrees that the area of the land in the Township subject to the existing right, title or other interest is a Designated General Access Area;
  - (ii) any area of land in the Township the Parties have acknowledged is occupied by some person and have agreed (pursuant to clause 6.2) that person has a continuing Right of Occupation unless:
    - (A) the Right of Occupation is consistent with the area being a Designated General Access Area; or
    - (B) the relevant Occupier agrees that the area of the land in the Township subject to the Right of Occupation is a Designated General Access Area;
  - (iii) any area of land that is the subject of a Township Sublease unless:
    - (A) the Township Sublease is consistent with the area being a Designated General Access Area; or
    - (B) the Sublessee agrees that the area of the land in the Township subject to the Township Sublease is a Designated General Access Area;
  - (iv) any area of Land that is the subject of a Township Licence unless:
    - (A) the Township Licence is consistent with the area being a Designated General Access Area; or
    - (B) the Licensee agrees that the area of the land in the Township subject to the Township Licence is a Designated General Access Area; or
  - (v) Sacred Sites.
- (e) The Designated General Access Areas as at the Commencement Date are set out in Annexure 4.



**16.2 Amendments to Designated General Access Areas**

The LE may only amend the Designated General Access Areas after consultation with the Consultative Forum.

**16.3 Township Sublease and Township Licence of Designated General Access Areas**

The Parties acknowledge that clauses 16.1 and 16.2 do not prevent the:

- (a) subleasing of Designated General Access Areas to appropriate bodies in accordance with clause 10, provided the Township Sublease allows the area of the land in the Township to be a Designated General Access Area;
- (b) licensing of Designated General Access Areas to appropriate bodies in accordance with clause 11, provided the Township Licence allows the area of the land to be a Designated General Access Area; or
- (c) the management and regulation of the Designated General Access areas and their use.

**16.4 Rules for use of Designated General Access Areas**

- (a) Without limiting the powers of the LE under clause 16.3(c), the LE may make rules about the use of all or any Designated General Access Areas. Such rules may:
  - (i) restrict access to a Designated General Access Area where the LE reasonably considers it necessary to do so for reasons of public amenity, health or safety;
  - (ii) proscribe or limit any use of a Designated General Access Area where the LE reasonably considers that use interferes, or might interfere, with the use and enjoyment of the Designated General Access Area by other persons permitted to use that area in accordance with this Lease; and
  - (iii) reflect the general Laws of the Northern Territory, or a local government body of the Northern Territory, in relation to use of public roads, parks, foreshores and other areas even where those general Laws do not apply to these areas of the Township.
- (b) The LE must consult with the Consultative Forum before making any rules referred to in clause 16.4(a). The LE must ensure that any such rules are advertised or otherwise published in the Township so as to bring the rules to the public attention.

**17. Planning****17.1 Northern Territory Planning Scheme and Law to apply**

- (a) Subject to clause 17.2, the LE is not permitted to undertake any Development or Construction of any Building other than in accordance with the Planning Scheme and any applicable Laws.

- (b) Where no Planning Scheme applies to the Township, the LE must have due regard to any planning guidelines or directions developed by the Consultative Forum, from time to time, for any Development in the Township.

## **17.2 Limit on Development**

- (a) Subject to 17.2(b) and notwithstanding clause 17.1 the LE is not permitted to undertake or allow any Development or Construction of any Building:
  - (i) in excess of 2 storeys in height; or
  - (ii) on any Foreshore,
 without the consent of the Consultative Forum.
- (b) The LE may undertake repair, replace or reconstruct the existing wharf servicing the Township.

## **17.3 Subdivision and consolidation**

- (a) The LE may only:
  - (i) subdivide any area of land in the Township; or
  - (ii) consolidate any areas of land in the Township,
 in accordance with the Planning Scheme and any applicable Laws.
- (b) Where no Planning Scheme applies to the Township, the LE must have due regard to any subdivision or consolidation guidelines developed by the Consultative Forum, from time to time, for:
  - (i) the subdivision of any area of land in the Township; or
  - (ii) the consolidation of any areas of land in the Township.

## **18. Contamination**

### **18.1 Clean-Up Notice**

If a Clean-Up Notice relating to Contamination existing in, on or under the Township or which has emanated or is emanating from the Township is served during the Term then:

- (a) if received by the LE, the LE must promptly provide the Land Council with a copy of the Clean-Up Notice;
- (b) if received by the Land Council or Land Trust, the Land Council or Land Trust must promptly provide the LE with a copy of the Clean-Up Notice; and
- (c) the LE will at its sole cost and expense be responsible for complying with the Clean-Up Notice.

**18.2 LE's indemnity**

Without limiting the generality of clause 20.2, the LE indemnifies and will keep indemnified the Land Trust and the Land Council from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind arising from a failure by the LE to comply with its obligations under clause 18.1(c) except to the extent that the failure was caused or contributed to by a wilful or negligent act or omission of the Land Trust or the Land Council.

**19. Environmental compliance, garbage, asbestos and stormwater****19.1 Environmental**

During the Term the LE covenants:

- (a) not to:
  - (i) bring, store, abandon or dump any Industrial Waste or potentially Hazardous Substance in or on the Township in a way that contravenes any applicable Environmental Law; or
  - (ii) discharge any Industrial Waste, Hazardous Substance or any offensive matter on to the Land; or
  - (iii) handle any Industrial Waste or potentially Hazardous Substance in a manner likely to create an Environmental Hazard; or
  - (iv) use the Township or allow the Township to be used so that:
    - (A) any Industrial Waste or potentially Hazardous Substance is abandoned or dumped on the Land; or
    - (B) any Industrial Waste or potentially Hazardous Substance is handled in a manner which is likely to cause an Environmental Hazard; and
  - (v) subject to clause 19.7, discharge any general waste in public access areas on to the Land;
- (b) not to install any underground Industrial Waste or potentially Hazardous Substance pipes or storage tanks within the ground of the Township or reinstate the use of any abandoned or unused underground pipes or underground storage tanks within the Township without prior written consent of the Land Trust (which will not be unreasonably withheld); and
- (c) without limiting the generality of clause 15.4, to:
  - (i) comply with all Environmental Laws; and
  - (ii) obtain and maintain in full force and effect all permits and licences; and
  - (iii) comply with the terms of all permits and licences,

required in order to release or emit anything from the Township into the air or water or on the ground or otherwise into the Environment or in order to release or emit any substantial noise.

**19.2 Asbestos**

- (a) Without limiting the generality of clause 15.4, the LE covenants that during the Term it will at its own cost comply with or procure compliance with all Asbestos Legislation (including all notices and orders served pursuant to any Asbestos Legislation) which relates to any repairs, improvements, demolition or other structural work undertaken by the LE.
- (b) The LE acknowledges that it will not be entitled to claim any damages, costs or compensation from the Land Trust or the Land Council as a result of asbestos being present on the Land or located in any Improvement.

**19.3 Contamination**

The LE acknowledges that it will not be entitled to claim any damages, costs or compensation from the Land Trust or the Land Council as a result of Contamination being present on the Land or located in any Improvement.

**19.4 Stormwater Contamination**

Without limiting the generality of clause 15.4, the LE covenants that during the Term it will, at its own cost, comply with all Environmental Laws (including all notices and orders served pursuant to Environmental Laws) which relate to stormwater leaving the Township.

**19.5 Water**

The LE must not cause Contamination or otherwise pollute water naturally on the Land including all water in springs, soaks or underground streams and all water in any surface streams and the banks and the beds of such springs, soaks and streams.

**19.6 Introduction of fauna and flora**

The LE must comply with any quarantine policy adopted by the Land Council or Land Trust from time to time and must not, without the previous written consent of the Land Council, introduce to the Land:

- (a) any seed, cutting, plant, root, bulb, tuber, rhizome, stolon or spore of any form of vegetation or flora, other than:
  - (i) native vegetation or flora;
  - (ii) regular food merchandise; and
  - (iii) other items approved by the Consultative Forum; or
- (b) any fauna other than:
  - (i) native fauna; or
  - (ii) animal species approved by the Consultative Forum.

## 19.7 Garbage

- (a) The LE agrees to use its best endeavours to minimise and remove from the Township all general waste produced by it from the Township.
- (b) The LE will have the right to use any existing general waste disposal facility on the same terms as access is currently provided to others in respect of those facilities until such facilities are closed, decommissioned or otherwise unavailable.
- (c) Where the general waste disposal facility used on the Commencement Date is closed, decommissioned or otherwise unavailable, the Land Trust will use its best endeavours to find a suitable location on the Land but outside the Township to enable the LE or another person to Construct a general waste disposal facility (**General Waste Disposal Facility**).
- (d) The Land Trust will grant the LE a non-exclusive licence, on reasonable commercial terms consistent with the Lease, to:
  - (i) enter, occupy and use the General Waste Disposal Facility; and
  - (ii) use designated roads for the sole purpose of gaining access to and from the General Waste Disposal Facility,
 to the extent as is reasonably necessary for the exercise of the LE's rights and the carrying out of the LE's obligations under this Lease.
- (e) Any General Waste Disposal Facility Constructed on the Land by the LE must:
  - (i) comply with all Environmental Law; and
  - (ii) conform to environmental best practice.
- (f) Where a suitable location on the Land cannot be found for the General Waste Disposal Facility, the LE must use its best endeavours to arrange for the removal of all general waste created in the Township from the Land and liaise with the Land Trust regarding the appropriate removal of such waste.

## 20. LE's indemnity

### 20.1 Risk

The LE:

- (a) uses and occupies the Township;
- (b) uses the Land Trust Improvements; and
- (c) all Services,

at the LE's own risk.

### 20.2 The LE indemnifies the Land Trust

- (a) Subject to the terms of this Lease, the LE must indemnify and keep indemnified the Land Trust against all actions, claims, losses, demands, damages, liabilities,

suits, costs and expenses whatsoever (including legal costs on a full indemnity basis) resulting from:

- (i) any damage or loss of property; and
- (ii) the death of or injury to any person,

which is or may be suffered or sustained in or near the Township, whether occupied by the LE or not, in circumstances which relate in any way to the use and occupation of the Township.

- (b) This indemnity will not apply to the extent that the action, claim, loss, demand, damage, liability, suit, cost or expense is caused directly by a deliberate or negligent act or omission of the Land Trust or the Land Council.
- (c) The benefit of the indemnity in clause 20.2(a) will extend to the Land Council to the extent of its statutory role in relation to the Land Trust.

### **20.3 The LE releases the Land Trust**

- (a) The LE releases the Land Trust and the Land Trust's Agents to the full extent permitted by Law from all claims, liabilities, actions, suits, demands, costs and expenses of every kind resulting from any:
  - (i) loss of or damage to any property in or near the Township;
  - (ii) death or injury of any person occurring on any part of or near the Township;
  - (iii) act or omission of the Land Trust or the Land Trust's Agents in or near the Township; and
  - (iv) failure of any of the Services.
- (b) The LE releases and forever discharges the Land Trust from any and all liability arising from any disruption to the LE's use of the Township including but not limited to any claim for the Land Trust's breach of the covenant of quiet enjoyment arising from Works undertaken pursuant to clause 2.2.
- (c) This release will not apply to the extent that any claim, liability, action, suit, demand, cost or expense is caused directly by a deliberate or negligent act or omission of the Land Trust or the Land Council.
- (d) The benefit of the release in clause 20.3(a) will extend to the Land Council and the Land Council's Agents to the extent of its statutory role in relation to the Land Trust.

## **21. Insurance**

### **21.1 Obligation to insure Township**

Subject to clause 21.10, the LE must effect and maintain insurance to cover the Township:

- (a) against loss destruction or damage for the higher of:

- (i) \$54,000,000 (such amount to be adjusted every 5 years after the Commencement Date in line with any changes to the Consumer Price Index for Northern Territory - (All Groups) published by the Australian Bureau of Statistics (CPI) over the relevant 5 year period or, if the CPI ceases to be published or is replaced, the index that most nearly reflects the method of calculating the CPI); and
  - (ii) such amount for which a reasonable person would prudently elect to insure the Township against such risks after having regard to all relevant circumstances including without limitation any Improvements within the Township from time to time,
- for any one occurrence; and
- (b) with cover which extends to include claim contingencies covering removal of debris or demolition costs and professional fees of not less than \$5 million for any one occurrence.

## **21.2 Obligation to insure for public liability**

Subject to clause 21.10, the LE must effect and maintain insurance with a limit of not less than \$100 million for any one occurrence to cover:

- (a) Personal Injury; and
- (b) loss destruction or damage to any property.

## **21.3 Obligation to insure for workers compensation**

Subject to clause 21.10 the LE:

- (a) must effect and maintain workers compensation insurance covering any liability, loss, claim or proceedings whatsoever, whether arising by virtue of any statute relating to workers compensation, accident compensation legislation, employer's liability, or at common law, by any person employed by the LE;
- (b) may fulfil its obligation under this clause 21.3 by self-insuring for workers compensation insurance where the LE provides evidence to the Land Trust that it is legally entitled to self-insure; and
- (c) give written notice to the Land Trust immediately in the event it is not entitled to self-insure, in which event, the LE must comply with clause 21.3.

## **21.4 Periods of insurance**

Subject to clause 21.10, the Insurances referred to in this clause 21 must be:

- (a) in force at the Commencement Date;
- (b) maintained effective until the expiration or earlier determination of this Lease; and
- (c) maintained for the whole of the Township for the LE's duration of occupation of the Township.

## 21.5 Insurers and policies

Subject to clause 21.10:

- (a) The LE must effect or procure and maintain or procure the maintenance of the insurances required under this clause 21:
  - (i) with an insurer or insurers who at the time of commencement of each policy and at all times thereafter are rated or classified by Standard and Poors as A- or better, or in the absence of any Standard and Poors rating or classification then to an equivalent rating or classification of such other rating agency as the Parties may agree. If the Parties cannot agree, then either Party may refer the matter for determination under clause 31. In the event of the rating dropping below A- the LE must immediately notify the Land Trust and must effect insurance with another insurer with A- or better Standard and Poors rating by the next renewal date of the policy; and
  - (ii) in full force and effect for the relevant periods described in clause 21.4;
- (b) The LE must, in relation to each of the insurances required under this clause 21:
  - (i) deposit with the Land Trust, from the Commencement Date, certificates evidencing the currency of the required insurances and, if required by the Land Trust, certified copies of the policy documents; and
  - (ii) for any insurance subject to renewal or extension throughout the Term, deposit with the Land Trust a certificate of currency evidencing renewal or extension of the relevant insurance policy, not later than 30 days after the renewal or extension has been effected.
- (c) If the LE fails to comply with clause 21.5(a) or 21.5(b);
  - (i) the Land Trust may give notice of default allowing the LE 15 days to remedy the default;
  - (ii) the Land Trust may effect a 15 day interim policy of insurance to which such failure relates; and
  - (iii) if it transpires that the LE fails to effect the required insurance;
    - (A) the premiums payable for the interim policy effected under clause 21.5(c)(ii) will be recoverable as a debt due by the LE to the Land Trust on demand; and
    - (B) if the LE has not effected the required insurance or has failed to respond to a notice issued under clause 21.5(c)(i) by the end of the 15 day default period referred to in clause 21.5(c) (i), the Land Trust may effect a policy of insurance to which such failure relates and the premium payable for the policy will be recoverable as a debt due by the LE to the Land Trust on demand.
- (d) The LE must:
  - (i) not alter any insurance policy required under this clause 21 during the Term to the extent such alteration results in the insurance not complying with this clause 21; and



- (ii) give immediate notice to the Land Trust of any cancellation of any policy.
- (e) The Land Trust reserves the right to require the LE to effect and maintain additional insurance or to increase the amount of existing insurance from time to time during the Term where a reasonable requirement to do so can be demonstrated and such insurance is available in the commercial insurance market on commercially reasonable terms and conditions.
- (f) All policies of insurance (other than the insurances required under clause 21.3) must note the interest of the Land Trust as owner of the Land.

#### **21.6 LE to satisfy itself**

The LE must take responsibility itself for deciding whether to insure any risks which have not been covered by the policies referred to in this clause 21 or to cover any exclusions, conditions or excesses in the policies which it may wish to insure against or cover.

#### **21.7 Insurance policies to waive rights of subrogation**

The LE must ensure that each policy of insurance effected and maintained pursuant to this clause 21, other than the insurance referred to in clause 21.3, provides that the insurer waives all rights remedies or relief to which it might become entitled by way of subrogation to the LE as against the Land Trust, the Land Council and their successors.

#### **21.8 No limitation**

This clause 21 does not detract from any of the LE's obligations under this Lease.

#### **21.9 LE must apply proceeds**

The LE must apply all proceeds of the insurance referred to in clause 21.1 to the cost of repair and replacement of the Township.

#### **21.10 Provision not to apply while LE is a Commonwealth Entity**

The LE, while it is the Commonwealth or a Commonwealth authority which self-insures, or the Northern Territory or a Northern Territory authority which self-insures does not need to comply with this clause 21.

### **22. Reinstatement**

#### **22.1 LE to reinstate**

- (a) None of the Land Council, the Land Trust and the LE has any obligation to reinstate the Township if at any time during the Term any part of a Township is wholly or partly damaged or destroyed or becomes unfit for, or incapable of use or occupation.
- (b) The LE must apply all proceeds of the insurance referred to in clause 21 towards the cost of reinstatement or repair or otherwise as agreed in writing by the Land Trust.

**22.2 No right to damages**

The LE will not have any right, action or claim for loss, damage or compensation against the Land Trust as a result of damage to or destruction of any part of a Township except to the extent that the damage or destruction is caused or contributed to by a wilful or negligent act or omission of the Land Trust or the Land Trust's Agents.

**23. Consultative Forum****23.1 Establishment of the Consultative Forum**

- (a) Immediately after the execution of this Lease, the Land Trust and the LE must establish a Consultative Forum comprising nominees of both the Land Trust and the LE with a majority of the members being nominated by the Land Trust.
- (b) Nominees of the Land Trust must be endorsed by the land trustee representing the land owning group for the Township.

**23.2 Purpose of the Consultative Forum**

The purpose of the Consultative Forum is to:

- (a) facilitate communications and to discuss land use and other issues arising in relation to the performance of this Lease having regard to the interests of the Land Trust, the traditional Aboriginal owners and other legitimate community interests;
- (b) to undertake other functions as provided under this Lease; and
- (c) perform other functions as agreed by the Parties from time to time.

**23.3 Land Trust members to consult with traditional Aboriginal owners**

The members of the Consultative Forum who are nominees of the Land Trust will consult with traditional Aboriginal owners of the Township and other residents of the Township in relation to the business of the Consultative Forum.

**23.4 Power to bind the Parties**

- (a) Unless expressly provided for in this Lease, the Consultative Forum does not have the power to bind the Parties to this Lease.
- (b) A member of the Consultative Forum does not have the power to bind the Party who appointed him or her.

**23.5 Regard to Consultative Forum**

The LE must have due regard to any recommendation of the Consultative Forum unless the LE is expressly required to adopt the position or recommendation of the Consultative Forum.

**23.6 Conduct of the Consultative Forum**

- (a) Meetings of the Consultative Forum are to be convened and conducted in accordance with the Consultative Forum Rules (as amended from time to time by the Consultative Forum).
- (b) The costs of the Consultative Forum will be born by the LE as Operating Expenses.

**23.7 Consultative Forum can assist resolution of disputes**

- (a) If requested, the Consultative Forum may assist the Parties to resolve any dispute by any reasonable means.
- (b) The Consultative Forum may, or may not agree to assist the Parties in its absolute discretion and does not need to provide a reason if it declines to assist.
- (c) The Consultative Forum may decide, in its absolute discretion, how it may assist the Parties resolve a dispute referred to the Consultative Forum pursuant to this clause 23.7.
- (d) Either Party to a dispute can notify the Consultative Forum that its assistance in resolving a dispute is no longer required. Following receipt of such notice, the Consultative Forum must cease assisting the Parties under this clause 23.7 and has no further obligation in relation to the dispute.

**24. Land Trust's obligations****24.1 Quiet enjoyment**

If the LE makes Lease Payments under this Lease and does not otherwise breach the terms of this Lease, the LE may, subject to any existing right, title or other interest, peaceably hold and quietly enjoy the Township during the Term without disturbance or interruption from or by the Land Trust or the Land Council or any other person or persons claiming under the Land Trust or the Land Council during the Term.

**24.2 Produce certificates**

The Land Council and the Land Trust will promptly produce all necessary certificates as to title upon demand by the LE to facilitate the registration of this Lease, any Township Sublease and any Township Licence granted by the LE or any transfer, variation, mortgage, underlease, surrender or other dealing with or involving a Township Sublease or Township Licence.

**25. Default****25.1 Occurrence of Default Event**

If a Default Event occurs the Land Trust may give the LE a notice in writing:

- (a) specifying that a Default Event has occurred;
- (b) setting out reasonable details of the event or circumstance constituting the Default Event; and

- (c) in the case of a Default Event other than a Financial Default, specifying the Cure Period.

## **25.2 Financial Default**

If the LE commits a Financial Default and fails to remedy the breach within 60 days after receiving the Default Notice, the Land Trust may terminate this Lease immediately by notice to the LE.

## **25.3 Interest payable by LE**

- (a) Notwithstanding clause 25.2, the LE must pay to the Land Council Interest on any amount which is the subject of a Financial Default until that amount is paid to the Land Council.
- (b) Interest payable pursuant to this Lease:
  - (i) is to be calculated daily on the amount owing by the LE from the due date for payment;
  - (ii) is to accrue from the due date for payment;
  - (iii) will continue to accrue until the overdue money (and all Interest accrued on it) is paid in full;
  - (iv) is payable at the Default Rate; and
  - (v) will be capitalised on the last day of each month if not paid.
- (c) The right to require payment of Interest under this clause 25.3 is without prejudice to any other rights and remedies of the Land Trust in respect of the Financial Default.
- (d) If a liability under this Lease becomes merged in an order or judgment of a court of competent jurisdiction, the LE must pay Interest to the Land Council on the amount of that liability as an independent obligation. This Interest accrues from the date the liability becomes due for payment (or at the time of the order or judgment) until it is paid, at a rate that is the higher of the rate payable under the order or judgment and the Default Rate.

## **25.4 Remedies for other Default Events**

- (a) If the LE commits a Default Event, other than a Financial Default, then within 7 days of receipt of the Default Notice, the LE must provide to the Land Trust a Cure Plan in respect of that Default Event. The Land Trust must not unreasonably refuse a request by the LE for an extension of time to prepare the Cure Plan.
- (b) Following receipt of a Default Notice, the LE will be permitted to cure the Default Event within the Cure Period and, if applicable, in accordance with the Cure Plan.
- (c) If the LE requires an extension to the Cure Period it may, not later than the expiration of the current Cure Period, provide to the Land Trust:
  - (i) a revised Cure Plan; and

- (ii) evidence that:
  - (A) the LE has diligently pursued and is continuing to diligently pursue a feasible and practicable programme of rectification; and
  - (B) the Default Event cannot be (or could not have been), with reasonable diligence, cured within the current Cure Period.
- (d) The Land Trust must not unreasonably refuse to grant an extension of the Cure Period.
- (e) If the LE commits a Default Event in relation to the Township and the Default Event is not cured within the Cure Period then the Land Trust may terminate the Lease immediately by written notice to the LE.
- (f) The provisions of this clause 25.4 does not limit or reduce the rights of the Land Trust to claim damages for breach of this Lease.

### **25.5 Remedies for Termination Event**

If a Termination Event occurs, then the Land Trust will be entitled to:

- (a) terminate this Lease immediately by written notice to the LE; and
- (b) exercise all legal and equitable rights and remedies available to the Land Trust (whether under this Lease or otherwise).

### **25.6 Waiver**

If this Lease, or the LE's right to occupy the Township is terminated for any reason, the LE waives any rights it might otherwise have to pursue a claim of restitution of any kind including, without limitation, a claim of unjust enrichment.

### **25.7 Consequences of termination**

Upon termination of this Lease, or the LE's right to occupy the Township (whether through default or expiry or otherwise), the rights and obligations of the Parties will cease except for:

- (a) any obligations arising or rights accrued as a result of an existing breach of this Lease; and
- (b) any obligations which are expressed to continue in accordance with the terms of this Lease.

## **26. Overholding**

If the LE remains in occupation of the Township without objection by the Land Trust following the expiration or earlier determination of this Lease, then:

- (a) the LE will be deemed to be a biannual tenant upon the same terms and conditions as are contained in this Lease so far as they are applicable to such a tenancy; and

- (b) such a tenancy will be determinable by either Party on 6 month's prior written notice.

## **27. Obligations on expiration or termination**

### **27.1 Return of Township**

The LE must return the Township to the Land Trust at the expiration, surrender or earlier determination of the LE's occupancy of the Township in a condition consistent with its obligations under this Lease.

### **27.2 Removal of the LE's Improvements**

- (a) The LE must, if so required by the Land Trust acting reasonably, at or prior to the expiration, surrender or earlier determination of the LE's occupancy of the Township take, remove and carry away from the Township all of the LE's Improvements other than Improvements for the ongoing use of the Township as a township.
- (b) The LE must immediately make good any damage to the Township caused by the removal of the LE's Improvements and must remove all rubbish and leave the Township in a clean state and condition.
- (c) The Land Trust may at the LE's cost, remove or dispose of any of the LE's Improvements not removed on or prior to the expiration, surrender or earlier determination of the LE's occupancy of the Township as required by the Land Trust in accordance with clause 27.2(a).
- (d) The LE must not remove any Improvements or Services which are liable to become the property of the Land Trust pursuant to clause 8.6(a).

### **27.3 Novation of agreements**

- (a) Subject to clause 27.4, upon the expiration or earlier determination of this Lease the LE must (at its cost), upon the request of the Land Trust, use all reasonable endeavours to novate or assign to the Land Trust or the Land Trust's nominee without payment:
  - (i) any service or maintenance agreement relating to the Township, Improvements or Services (or any part of it) or the benefit of any such agreement; and
  - (ii) any other agreement solely relating to the Township (or any part of it) or the benefit of any such agreement.
- (b) Nothing in this clause 27.3 requires the Land Trust to request the novation or assignment of any agreement.

### **27.4 Novation of Township Subleases and Township Licences**

Upon the early determination of this Lease the LE must (at its cost), upon the request of the Land Trust, use all reasonable endeavours to novate or assign all Township Subleases and Township Licences to the Land Trust's nominated Approved Entity without payment.

**27.5 Power of attorney**

The LE, for the purposes of executing any novation or assignment under clause 27.3 or 27.4, irrevocably appoints the Land Trust as its attorney with full power and authority to execute any such novation or assignment, and to do any such act or thing, on behalf of and in the name of the LE.

**28. Review of Lease**

- (a) The Parties agree that the Consultative Forum will review the operation of this Lease (**Review**) on:
  - (i) the 5th anniversary of the Commencement Date;
  - (ii) every 10th anniversary of the Commencement Date; and
  - (iii) as otherwise determined by the Consultative Forum, from time to time.
- (b) As part of the Review, the Consultative Forum may make recommendations to the Parties relating to changes to the Lease.
- (c) The Parties agree to give due consideration to any recommendation of the Consultative Forum made in accordance with clause 28(b).

**29. Transfer of Land Trust's interest in Lease**

Subject to clause 33.9:

- (a) The Land Trust may only transfer the whole of its estate or interest in the Land or any part of the Land in accordance with the Land Rights Act.
- (b) Any right, title or other interest in the Township (including this Lease) existing immediately before such a transfer is preserved as a right, title or interest in the Township after the transfer.
- (c) Any agreement in respect of the Township which was entered into by the Land Trust and that was in force immediately before such a transfer, takes effect after the transfer, as if it had been entered into by the transferee.

**30. Further Term**

The Parties agree to negotiate in good faith for the renewal of the Term not later than the end of the 67th year of the Term.

**31. Dispute resolution****31.1 Procedure to resolve disputes**

- (a) If there is a dispute between the parties relating to or arising out of this Lease, the Parties must use reasonable endeavours acting in good faith to settle the dispute as soon as practicable.
- (b) The procedure that is to be followed to settle a dispute arising under this Lease is as follows:

- (i) first, negotiation of the dispute under clause 31.2; and
- (ii) second, mediation of the dispute under clause 31.3 (if agreed),

unless the Parties agree that the dispute is best resolved by an independent expert in accordance with clause 31.4 or clause 31.4 otherwise applies.

- (c) A Party may not commence court proceedings in relation to a dispute arising in connection with this Lease until it has exhausted the procedures in this clause 31 unless the Party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

### **31.2 Negotiation**

- (a) If there is a dispute between the Parties relating to or arising out of this Lease (other than a dispute to which clause 31.4 applies), then within 10 Business Days (or such longer period agreed between the Parties) of a Party notifying the other Party of a dispute, each Party to the dispute will nominate in writing a senior representative authorised to settle the dispute on its behalf.
- (b) The Parties must ensure that during the 25 Business Day period after a notice is given under clause 31.2(a) (or such longer period agreed between the Parties), their representatives must use reasonable endeavours acting in good faith to resolve the dispute by joint discussions.
- (c) To assist the Parties in negotiating a resolution to the dispute, the Parties may agree on:
  - (i) the selection and payment of any Third Party to be engaged by the Parties;
  - (ii) a timetable to resolve the dispute;
  - (iii) any exchange or relevant information and documents; and
  - (iv) the place, date and time where meetings will be held.
- (d) The role of any Third Party will be to assist in negotiating a resolution to the dispute. A Third Party may not make a decision that is binding on a Party unless that Party's representative has so agreed in writing.
- (e) Any information or documents disclosed by a representative under this clause 31.2 must be kept confidential and may not be used except to attempt to settle the dispute.
- (f) Each Party must bear its own costs of resolving a dispute under clause 31.2 and the Parties must bear equally the costs of any Third Party engaged.

### **31.3 Mediation**

If a dispute relating to or arising under this Lease is not resolved within 25 Business Days (or such longer period as agreed between the Parties) of notification of the dispute under clause 31.2, the Parties will, if mutually agreed, submit the matter to mediation on the following terms:



- (a) the mediator will be chosen by the Parties within 10 Business Days (or such longer period agreed between the Parties) of agreeing to use mediation to resolve the dispute under this clause 31.2 and appointed within a further 5 Business Days (or such longer period agreed between the Parties);
- (b) in the absence of agreement by the Parties as to the mediator, either Party may apply to the President of LEADR to appoint a mediator who must be appointed within 10 Business Days (or such longer period agreed between the Parties) of the application;
- (c) the Parties must endeavour to procure that a mediator appointed under paragraph 31.3(a) or 31.3(b):
  - (i) assists the Parties to reach a resolution of the dispute by agreement;
  - (ii) acts impartially and ensures that each Party has a clear understanding of the other Party's points of view to enable proposals to be formulated for settlement of the dispute;
  - (iii) does not make his or her personal or professional views known to the Parties or give any professional advice to a Party;
  - (iv) is entitled to terminate the mediation if, after consultation with the Parties, the mediator forms the view that the mediation process is exhausted; and
  - (v) does not impose a solution on the Parties and any suggestion made during the course of the mediation by the mediator will not be binding on a Party;
- (d) each Party may appoint a person, including a legally qualified person, to represent it or assist it in the mediation;
- (e) each Party will bear its own costs relating to the preparation for and attendance at the mediation;
- (f) the costs of the mediator will be borne equally between the Parties; and
- (g) the mediation process will cease if the dispute has not been settled within 20 Business Days of the mediator being appointed, or such longer time as may be agreed by the Parties.

#### **31.4 Independent expert**

- (a) Where this Lease expressly provides for a dispute to be resolved in accordance with this clause 31.4, or the Parties otherwise agree that a dispute is best resolved by an independent expert, the Parties will submit to the following procedure to resolve the dispute:
  - (i) the Parties will choose and appoint an independent expert;
  - (ii) in the absence of agreement by the Parties as to the independent expert within 10 Business Days (or such longer period agreed between the Parties) of notice of a dispute, the independent expert will be appointed on the application of either Party by:

- (A) in respect of a dispute under clauses 5, 13, 17 and 19, the National President or other senior office bearer for the time being of the Australian Property Institute (Inc);
- (B) in all other cases, unless otherwise agreed, the President or other senior office bearer for the time being of the Institute of Arbitrators and Mediators Australia;
- (iii) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 15 Business Days, or such longer period as may be agreed between the Parties;
- (iv) the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit provided that he or she must not proceed with any inquiries in the nature of judicial inquiries or allow any oral hearing or adversarial process to take place;
- (v) the independent expert's determination will be final and binding on the Parties, provided that if a Party believes there is a manifest error in the expert's determination that Party may within 2 Business Days (or such longer period agreed between the Parties) of receipt of the determination, advise the expert and the other Party in writing that it considers there is a manifest error. If the expert agrees there is a manifest error it must issue an amended determination within a further 5 Business Days (or such longer period agreed between the Parties). If the expert does not agree that the initial determination contained a manifest error, and the Party still considers there is a manifest error, that Party may refer the question of whether there is a manifest error to a different independent expert in accordance with this clause 31.4 and if the second expert determines that there is no manifest error, the determination of the first expert is final and binding but if the second expert determines that there is a manifest error the second expert must make a determination de novo based on the materials submitted to the first expert (and such other materials the second expert calls for) and in the absence of manifest error, the second independent expert's decision will be final and binding on the Parties;
- (vi) the parties may make written submissions to the expert, and the expert may discuss the submissions with the Parties;
- (vii) the provisions of the *Commercial Arbitration Act 1985 (NT)* do not apply; and
- (viii) the costs of the independent expert will be borne by the Parties equally or as the independent expert may otherwise determine and each Party will bear its own costs relating to the independent expert's decision.

### **31.5 Continue to perform**

Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under this Lease.

## **32. Confidentiality**

### **32.1 Obligations of confidentiality**

Subject to clauses 32.2 and 32.3, the Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) only use the Confidential Information for the purposes of performing, and to the extent necessary to perform, its obligations under this Lease;
- (d) not memorise, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Lease; and
- (e) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 32.3 complies at all times with the terms of this clause 32 as if that person were the Receiving Party.

### **32.2 Exceptions**

The obligations of confidentiality under clause 32.1 does not apply to:

- (a) any Confidential Information that:
  - (i) is disclosed to the Receiving Party by a Third Party entitled to do so, whether before or after the date of this Lease;
  - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
  - (iii) is generally available to the public at the date of this Lease or subsequently becomes so available other than by reason of a breach of this Lease;
- (b) any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order, Law, or the applicable rules of any financial market (as defined in the Corporations Act) if, to the extent practicable and as soon as reasonably possible, the Receiving Party:
  - (i) notifies the Disclosing Party of the proposed disclosure;
  - (ii) consults with the Disclosing Party as to its content; and
  - (iii) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

### 32.3 Authorised disclosure

- (a) Subject to the later provisions of this clause 32.3, a Receiving Party may disclose Confidential Information to any Related Entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure:
  - (i) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed;
  - (ii) either:
    - (A) the Recipient is subject to a professional duty to maintain the Confidential Information; or
    - (B) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 32 as if the Recipient were the Receiving Party in relation to the Confidential Information to be disclosed to the Recipient; and
  - (iii) if requested to do so by the Disclosing Party, the Recipient signs an undertaking or deed in a form acceptable to the Disclosing Party (and for the benefit of the Disclosing Party) agreeing to be bound by the obligations in this clause 32 as if it were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.
- (b) The obligation of confidentiality imposed by the earlier provisions of this clause 32.3 do not apply to the Commonwealth in respect of disclosures to any employee or officer of the Commonwealth.

### 32.4 Disclosure to Commonwealth or Minister

For the avoidance of doubt, a Receiving Party may disclose Confidential Information to:

- (a) the Minister with responsibility for Indigenous Affairs;
- (b) any officer working for the person referred to in paragraph (a) above, the relevant department or Director of Township Leasing;
- (c) the Parliament of Australia in response to a request by:
  - (i) the House of Representatives;
  - (ii) the Senate; or
  - (iii) a Committee of the Parliament of Australia
 (each a **Recipient**).

### 32.5 Return or destruction of Confidential Information

Subject to any statutory requirements, immediately on the written request of the Disclosing Party or on the termination of this Lease for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any Related Entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) subject to any statutory requirements, for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

### **32.6 Warranties**

The Disclosing Party warrants to the Receiving Party that:

- (a) it has the right to disclose Confidential Information to the Receiving Party and to authorise the Receiving Party to use the Confidential Information as permitted by this Lease; and
- (b) the use of the Confidential Information as permitted by this Lease does not breach the intellectual property rights of any other person.

### **32.7 Liability for breach by Recipient**

The Receiving Party is liable for any breach of this clause 32 by a Recipient as if the Recipient were the Receiving Party in relation to the Confidential Information disclosed to the Recipient.

## **33. General**

### **33.1 Amendments**

Subject to the Land Rights Act, the Parties may from time to time by agreement in writing, amend or vary the provisions of this Lease.

### **33.2 Nature of obligations**

- (a) Any provision in this Lease which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a Party by this Lease in favour of another is a separate obligation.

### **33.3 Entire understanding**

- (a) Subject to clause 2.5, this Lease contains the entire understanding between the Parties concerning the subject matter of the Lease and supersedes all prior communications between the Parties.
- (b) Each Party acknowledges that, except as expressly stated in this Lease, that Party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other Party in relation to the subject matter of this Lease.

**33.4 No adverse construction**

This Lease is not to be construed to the disadvantage of a Party because that Party was responsible for its preparation.

**33.5 Further assurances**

A Party, at its own expense and within a reasonable time of being requested by another Party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Lease.

**33.6 No waiver**

- (a) A failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on the Party by this Lease does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Lease.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

**33.7 Severability**

Any provision of this Lease which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Lease in any other case,

without invalidating or affecting the remaining provisions of this Lease or the validity of that provision in any other jurisdiction.

**33.8 Successors and assigns**

This Lease binds and benefits the Parties and their respective successors and permitted assigns under clause 33.9.

**33.9 No assignment**

Subject to the Land Rights Act, a Party cannot assign or otherwise transfer the benefit of this Lease without the prior written consent of each other Party.

**33.10 Consents and approvals**

Where anything depends on the consent or approval of a Party then, unless this Lease provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that Party.

**33.11 Costs**

Each Party must pay its own legal costs of and incidental to the preparation and completion of this Lease.

**33.12 Duty**

- (a) Any duty (including related interest or penalties) payable in respect of this Lease or any instrument created in connection with it must be paid by the LE.
- (b) The LE undertakes to keep the Land Trust and the Land Council indemnified against all liability relating to the duty, fines and penalties.

**33.13 Governing law and jurisdiction**

- (a) This Lease is governed by and must be construed in accordance with the laws in force in the Northern Territory.
- (b) The Parties submit to the exclusive jurisdiction of the courts of that Territory and the Commonwealth of Australia in respect of all matters arising out of or relating to this Lease, its performance or subject matter.

**33.14 Notices**

Any notice or other communication to or by a Party under this Lease:

- (a) may be given by personal service, pre-paid registered post or facsimile;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) as set out in Item 7 or to any other address last notified by the Party to the sender by notice given in accordance with this clause;
- (c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, 2 Business Days (or 6 Business Days, if posted outside Australia) after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

- (e) Anything required or permitted to be done by the Land Trust in relation to this Lease may be done by the Land Council on behalf of the Land Trust. All rights and entitlements of the Land Trust concerning this Lease (including entitlement to receive payments from the LE) will be exercisable by the Land Council on behalf of and in the name of the Land Trust, and the Land Trust appoints the Land Council to act on its behalf and in its name.

### **33.15 Counterparts**

If this Lease consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

### **33.16 Conflicting provisions**

If there is any conflict between the main body of this Lease and any schedules or annexures comprising it, then the provisions of the main body of this Lease prevail.

### **33.17 Non merger**

A term or condition of, or act done in connection with, this Lease does not operate as a merger of any of the rights or remedies of the Parties under this Lease and those rights and remedies continue unchanged.

### **33.18 Operation of indemnities**

Unless this Lease expressly provides otherwise:

- (a) each indemnity in this Lease survives the expiry or termination of this Lease; and
- (b) a Party may recover a payment under an indemnity in this Lease before it makes the payment in respect of which the indemnity is given.

### **33.19 No right of set-off**

Unless this Lease expressly provides otherwise, a Party has no right of set-off against a payment due to another Party. For the avoidance of doubt, this clause does not affect the application of the meaning given to the term Operating Expenses for the purposes of the Lease Payments.

### **33.20 Relationship of Parties**

Unless this Lease expressly provides otherwise, nothing in this Lease may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.



**Schedule - Lease particulars**

Item:	Particulars:
1. <b>Land</b> (clause 1.1)	As described in the Certificate of Title Volume 708 Folio 427.
2. <b>Existing rights, titles or other interests</b> (clause 6.1)	As described in Annexure 5.
3. <b>Township</b>	That part of the Land described as 67984 on the Survey Plan S2007/183 copy of which is annexed to Annexure 8.
4. <b>Commencement Date</b> (clause 1.1)	The date on which the last of the Parties to this Lease signs this Lease.
5. <b>Existing Housing Authorities</b> (clause 1.1)	(a) The Bathurst Island Housing Association Inc Registration No. 00230C (N.T.); and (b) Tiwi Island Local Government being a local government constituted under the <i>Local Government Act 1994 (NT)</i> .
6. <b>Existing Services Providers</b> (clause 1.1)	(a) Telstra – land line telephone, mobile telephone, internet (b) Power And Water Authority – water, sewerage, electricity (c) Nguju Ullintjinni Association – bottled gas (d) Austar – pay television
7. <b>Notices</b> (clause 33.14)	If to the Land Trust:  The Chairman  PO Box 38545  Winnellie NT 0821  (Armidale Street, Stuart Park NT 0820, for hand deliveries)  Telephone: 08-8981-4898  Facsimile: 08-8981-4282

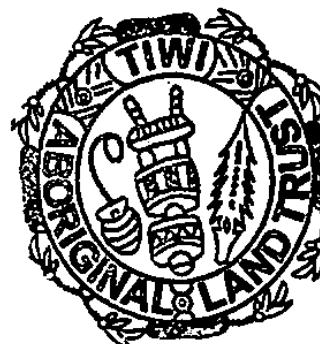


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	<p>If to the LE:</p> <p>The Executive Director of Township Leasing</p> <p>Centraplaza</p> <p>16 Bowes Street</p> <p>WODEN ACT 2606</p> <p>Telephone: 02-6121-4028</p> <p>Facsimile: 02-6121-4150</p> <p>If to the Land Council:</p> <p>The Chairman</p> <p>PO Box 38545</p> <p>Winnellie NT 0821</p> <p>(Armidale Street, Stuart Park NT 0820, for hand deliveries)</p> <p>Telephone: 08-8981-4898</p> <p>Facsimile: 08-8981-4282</p>
--	---

Executed as a deed.

The Common Seal of Tiwi Aboriginal Land Trust was hereunto affixed by a duly authorised member of the staff of the Tiwi Land Council pursuant to section 4(5) of the *Aboriginal Land Rights (Northern Territory) Act 1976* upon written authority of the Tiwi Aboriginal Land Trust dated the 30th AUGUST day of 2007 and signed by:



Walter Zick  
Signature of member

Robert J. J. J. J. J.  
Signature of Chairman

WALTER KERINAIKK (Jnr)  
Name (please print)

ANDREW BUSH.  
Name (please print)

DM Lee  
Signature of member

DANNY MUNKARA.  
Name (please print)

being respectively the Chairman and two(2) other members of the **Tiwi Aboriginal Land Trust**

Executed by the Executive Director of Township Leasing for and on behalf of the Commonwealth of Australia as an 'approved entity' within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* in the presence of:

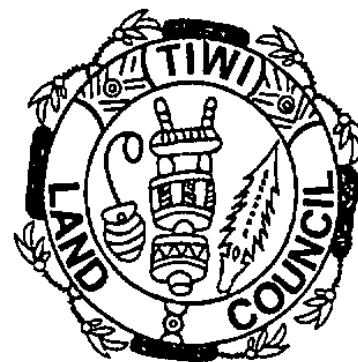
[Signature]  
Signature of witness

[Signature]  
Signature of Executive Director of Township Leasing

HELGA JOHNSON  
Name of witness (please print)  
Solicitor  
(02) 6121 4231

PAT WATSON  
Name (please print)

The Common Seal of Tiwi Land Council was )  
 hereunto affixed upon the Tiwi Land Council )  
 being satisfied of the requirements contained in )  
 sub-section 19A(2) of the *Aboriginal Land )  
 Rights (Northern Territory) Act 1976*. The Tiwi )  
 Land Council directs the Tiwi Aboriginal Land )  
 Trust to enter this deed. Given under the )  
 Common Seal of the Tiwi Land Council by )  
 authority of a resolution of the Tiwi Land Council )  
 in the presence of: )



*[Signature]*  
 .....  
 Signature of witness

*John S. HENK*  
 .....  
 Name of witness (please print)

*Robert Tipukcwuti*  
 .....  
 Signature of Chairman

*ROBERT TIPUKCWUTI*  
 .....  
 Name (please print)

*[Signature]*  
 .....  
 Signature of Executive Member

*CYRIL KALIPPA.*  
 .....  
 Name (please print)

**Annexure 1 - Template Sublease (clauses 1.1 and 10.1(c))**

**TOWNSHIP SUBLEASE**

Premises: *[insert premises]*

Executive Director of Township Leasing

and

Sublessee

AB  
[Signature]  
RT  
CK

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## Township Sublease

**Date** 2007

### Parties

1. **Executive Director of Township Leasing** on behalf of the Commonwealth of Australia as 'Approved Entity' within the meaning of the Land Rights Act (**LE**)
2. The party specified in Item 2 (**Sublessee**)

### Background

- A. The Land Trust is the registered proprietor of an estate in fee simple in the Land which includes the Township.
- B. The LE was created pursuant to section 20B of the Land Rights Act.
- C. The Land Trust leases the Township (including all Improvements and Services) to the LE pursuant to subsection 19A(1) of the Land Rights Act.
- D. The Land Trust has received written consent from the Commonwealth Minister and written direction from the Land Council as required pursuant to paragraphs 19A(1)(a) and (b) of the Land Rights Act for the grant of the Head Lease.
- E. The LE is a body approved as an entity capable of receiving a grant of the Head Lease pursuant to section 19A of the Land Rights Act.
- F. The LE and the Sublessee have agreed to enter into this Sublease on the terms set out in this Sublease.

### Agreed terms

#### 1. Definitions and interpretation

##### 1.1 Definitions

In this Sublease and in the background, unless the context requires otherwise:

**Aboriginal** means a person who is a member of the Aboriginal race of Australia;

**Aboriginal and Torres Strait Islander Corporation** has the meaning given to that term in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*;

**Aboriginal Areas Protection Authority** means the authority established under the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* and known as the Aboriginal Areas Protection Authority;

**Aboriginal Land Act** means the *Aboriginal Land Act 1978 (NT)*;

**Aboriginal Tradition** means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;

**Annexure** means an annexure to this Sublease;

**Approval** means any permit, licence, consent, grant, certificate, sealing or other approval obtained or required to be obtained by the Sublessee from a Government Agency or any other person in relation to the Premises or the use and occupation of the Premises;

**Approved Entity** has the meaning given to that term in the Land Rights Act;

**Asbestos Legislation** means any Law relating to the removal, replacement, control, identification, sealing, enclosing or otherwise dealing with the existence of asbestos on land;

**Authority Certificate** means a certificate issued by the Aboriginal Areas Protection Authority under section 22(1) of the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*;

**Building** includes

- (a) a structure and part of a building or a structure;
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; or
- (c) a boat or a pontoon which is permanently moored or fixed to a building or land;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Darwin;

**Clean-Up Notice** means a notice served under any Law relating to Contamination in, on, under or emanating from the Township;

**Condition Report** means the condition report prepared by the LE and annexed to this Sublease;

**Commencement Date** means the date specified in Item 5;

**Community Benefit Organisation** means an organisation formed or created for the benefit of the Township community or whose principal objective is not the generation of profit but excludes any Government Agency or a body which provides community housing for residents of the Township;

**Construct** includes reconstruct or make structural changes and the word **Construction** has a corresponding meaning;

**Consultative Forum** means the Consultative Forum established under the Head Lease;

**Contamination** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the Environment unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the Environment does not satisfy the contamination criteria or standards published or adopted by the Relevant Authority from time to time and the word **Contaminant** has a corresponding meaning;

**Corporations Act** means the *Corporations Act 2001 (Cth)*;

**Criminal Code** means the *Criminal Code Act 1983 (NT)*;

**Cultural Heritage** means:

- (a) literary, artistic and performance works (including music, song, dance, ceremonies, narratives, poetry, symbols and designs);
- (b) languages;
- (c) spiritual knowledge;
- (d) scientific, technical, agricultural and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna);
- (e) human genetic material (including DNA and tissues);
- (f) ancestral remains;
- (g) burial artefacts;
- (h) cultural environment resources (including Indigenous sites of significance); and
- (i) representation of Aboriginal peoples in all media (including scientific and ethnographic research reports and papers, books, films, sound recordings, CD-ROM and other digital formats);

**Cure Period** means a reasonable period of time within which the Sublessee must cure a Default Event (other than a Financial Default), in accordance with clause 38.1(c), including any extensions of that period under clause 38.4(c);

**Cure Plan** means a plan by the Sublessee to remedy a Default Event which is proposed during the Cure Period and details a work plan setting out each task to be undertaken in order to rectify the material breach and the time for each task to be completed;

**Custodian** means an Aboriginal who, by Aboriginal Tradition, has responsibility for a Sacred Site;

**Default Rate** means a rate equal to the Reference Index plus 2%;

**Default Event** means:

- (a) a Financial Default; or
- (b) a persistent and material failure by the Sublessee to comply with this Sublease;

**Default Notice** means a notice given under clause 38.1;

**Designated General Access Areas** has the meaning given to that term in clause 15.1(a);

**Development** includes:

- (a) the Construction or exterior alteration or exterior decoration of a Building;
- (b) the demolition or removal of a Building or Works;

- (c) the Construction or carrying out of Works;
- (d) the subdivision or consolidation of land, including buildings or airspace;
- (e) the placing or relocation of a Building or Works; and
- (f) the Construction or putting up for display of signs or hoardings;

**Domestic Partner** means a person to whom a person is not married but with whom that person is living as a couple on a genuine domestic basis (irrespective of gender);

**Environment** includes the meaning given to that term at common law and in any Law in force in the Northern Territory, including any land, water, atmosphere, climate, sound, odours, tastes and the biological factors of animals and plants and the word **Environmental** has a corresponding meaning;

**Environmental Hazard** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics;

**Environmental Law** means any Law relating to the Environment, including any Law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property;

**Existing Improvements** means all Improvements erected on or attached to the Premises as at the Commencement Date;

**existing right, title or other interest** means any right, title or other interest in the Township which existed immediately before the Commencement Date;

**Existing Services** means all Services on or connected to the Premises as at the Commencement Date;

**Final Lease Year** means the period starting on 1 July immediately before the expiry of the Term or earlier determination of this Sublease and ending on the expiry of the Term or earlier determination of this Sublease;

**Financial Default** means a failure by the Sublessee to pay when due any money which the Sublessee is obliged to pay to the LE under this Sublease (including a failure to pay any Sublease Amount when due);

**Foreshore** means the area between the high water mark and 50 metres landward from the high water mark;

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**GST** has the meaning given to that term in the GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Hazardous Substance** means any substance that causes, or might reasonably be expected to cause, injury to any person exposed to that substance, including dangerous, inflammable, volatile or explosive substances or goods, and any emission from that substance;

**Head Lease** means the Head Lease signed by the Land Trust, the Land Council and the LE dated [*insert date*];

**Improvements** means all Buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles which are erected on or attached to the land on which the Premises are located;

**Incorporated Aboriginal Association** means an Aboriginal or Torres Strait Island corporation incorporated under the *Aboriginal and Torres Strait Islands Act 2005 (Cth)*;

**Industrial Waste** means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials that are potentially harmful to human beings or the Environment;

**Information** means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, research and development information, know-how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, names and details of agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this Sublease;

**Insolvency Event** means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (g) any analogous event or circumstance under the laws of any jurisdiction,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

**Interest** means interest payable by the Sublessee under clause 38.3;

**Item** means an item in the Schedule;

**Land Council** means the Tiwi Land Council as established by notice dated 18 August 1978 under the Land Rights Act, or if the boundaries are varied so as to exclude the Township from its area, then the Land Council for the area of the Township established under the Land Rights Act, and its delegate;

**Land Council's Agents** means the employees, contractors, agents and any other person appointed from time to time by the Land Council as agent of the Land Council;

**Land** means the land described in Item 3;

**Land Rights Act** means the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*;

**Land Trust** means the Tiwi Aboriginal Land Trust established pursuant to section 4(1) of the Land Rights Act;

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations, ordinances or by-laws of the Commonwealth, a State, a Territory or any other Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or any other Government Agency that have the force of law;

**LE's Improvements** means all Improvements vested in the LE;

**LEADR** means Lawyers Engaged in Alternative Dispute Resolution;

**Lease Year** means the Preliminary Lease Year, each 12 month period expiring on 30 June in each year during the Term and the Final Lease Year;

**Licence Mandatory Terms** means clauses (with the necessary changes) equivalent to clauses 10.5 to 10.11 (inclusive) as if each reference to each of the following terms was replaced with the specified term:

- (a) replace "Sublessee" with "Licensee";
- (b) replace "Sublease" with "Premises Licence";
- (c) replace "Underlease" with "sublicence"; and
- (d) replace "Underlessees" with "sublicensees";

**Licensee** means any person who has been granted a Premises Licence from the Sublessee;

**Non-Tiwi Permanent Resident** means a Permanent Resident who is a Non-Tiwi Person;

**Non-Tiwi Person** means a natural person who is not a Tiwi Person;

**Outgoings** means all existing and future amounts (including rates, duties and taxes):

- (a) which are properly imposed, charged or levied under statute or by a Government Agency on the Land Council or the LE; or
- (b) which a Government Agency properly requires the Land Trust or the LE to spend, and which are:
- (c) paid or payable by the Land Trust or the LE during a Lease Year;
- (d) in relation to the Premises or Improvements in the Premises; and
- (e) either capital or non-capital in nature;

**Permanent Resident** means a natural person who has resided in the Township for a period exceeding 12 months;

**Permit** means a permit granted under section 5 of the Aboriginal Land Act or under clause 6.2;

**Permitted Use** means the permitted use stated in Item 6;

**Personal Injury** includes:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury including the resultant loss of consortium or services at any time;
- (b) false arrest, detention, false imprisonment, discrimination, malicious prosecution or humiliation, or breach of confidentiality;
- (c) wrongful entry or wrongful eviction or other invasion of the right to private occupancy; and
- (d) assault and/or battery not intentionally committed by or at the discretion of the insured unless so directed for the purpose of preventing or eliminating danger to property or persons;

**Planning Scheme** means any planning scheme under any applicable Law setting the framework for planning the use, development and protection of the Township or any part of the Township;

**Population Limitation** has the meaning given to that term in clause 10.5;

**Preliminary Lease Year** means the period starting on the Commencement Date and ending on the following 30 June;

**Premises** means the premises described in Item 2;

**Premises Licence** means a licence granted by the Sublessee pursuant to clause 11;



**Reference Index** means:

- (a) the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for a relevant month (**90-Day Bank Bill Rate**); or
- (b) in the event that the 90-Day Bank Bill Rate is suspended or discontinued, the index benchmark that most nearly reflects the method of calculating the 90-Day Bank Bill Rate;

**Regulation** means the *Aboriginal Land Rights (Northern Territory) Regulations 2007* being a regulation pursuant to section 3AB of the Land Rights Act prescribing an area of land to be a township;

**Related Entity** has the meaning given to that term in the Corporations Act;

**Relative** has the meaning given to that term in section 1207B of the *Social Security Act 1991 (Cth)* and includes a Domestic Partner;

**Relevant Authority** means any government, municipal, statutory, public or other authority or body having authority or jurisdiction over or in relation to the Premises;

**Requirement** means any lawful present or future notices, orders, directions, requirements, statutes, ordinances, proclamations, regulations, schemes, permits, by-laws or other regulatory requirements affecting or relating to the Premises or the use of the Premises, irrespective of whether the Requirement is addressed to the Sublessee, the LE, the Land Trust, the Land Council or any other person;

**Resident** means a natural person who resides in the Township;

**Sacred Site** means a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal Tradition, and includes any land that, under a law of the Northern Territory, is declared to be sacred to Aboriginals or of significance according to Aboriginal Tradition;

**Schedule** means the schedule to this Sublease;

**Services** means all utilities and services on or connected to the Premises including water, gas, electricity, lighting, sanitation, drainage, stormwater, computer services, communication and telecommunication systems, oil and any other source or type of energy or fuel and includes all wires, cables, pipes, ducts, conduits, tanks, electrical and mechanical plant and all other ancillary or associated parts and accessories;

**Sexual or Crime against Children Offence** includes:

- (a) an offence against Division 2 of Part V of the Criminal Code;
- (b) an offence against section 192, 192B or 201 of the Criminal Code;
- (c) an offence of:
  - (i) counselling or procuring;
  - (ii) aiding or abetting the commission of;
  - (iii) conspiring to commit;

- (iv) attempting to commit; or
- (v) being an accessory after the fact to,  
an offence referred to in this definition or an equivalent offence; or
- (d) any offence similar to paragraphs (a), (b) or (c) above in any jurisdiction;

**Special Conditions** means the special conditions (if any) in Annexure 1;

**Sublease** means this sublease including the background, the Schedule and any Annexures;

**Sublease Amount** means the amount specified in Item 8;

**Sublease Amount Payments** means the manner in which the Sublease Amount is to be paid as specified in Item 9;

**Sublessee's Improvements** means all Improvements erected on or attached to the land in the Premises by:

- (a) the Sublessee;
- (b) any Underlessee;
- (c) any Licensee; or
- (d) any sublicensee;

**Sublease Mandatory Terms** means the terms contained within Part A of this Sublease and where applicable includes clause 27.1 relating to the maintenance, repair or replacement of the Land Trust's Improvements;

**Sublessee's Percentage** means the same percentage as the Premises bears to the area of the land to which an Outgoing applies, as determined by the LE and notified to the Sublessee;

**Sublessee's Services** means all Services installed in or on the Premises by:

- (a) the Sublessee;
- (b) Underlessee;
- (c) Licensee; or
- (d) sublicensee;

**Term** means the term specified in Item 7 starting on the Commencement Date with a maximum term equal to the term remaining under the Head Lease less 1 day;

**Termination Event** means:

- (a) the occurrence of an Insolvency Event; or
- (b) the abandonment of the Premises by the Sublessee for a continuous period of not less than 1 month;

**Third Party** means a party other than a party to this Sublease;

**Tiwi Person** means a natural person who:

- (a) is an Aboriginal from the Land; or
- (b) who practices the culture and traditions of the Tiwi people and is recognised by the traditional Aboriginal owners of the Land as a member of the Aboriginal community on the Land; or
- (c) a spouse or child of a person identified in paragraph (a) or (b) above,

and the expression **Tiwi People** has a corresponding meaning;

**Township** means that part of the Land described in Item 4 and set out in the Regulation as at the Commencement Date including the Premises;

**Underlease** means a lease granted to an Underlessee;

**Underlessee** means any person who has leased any part of the Premises from the Sublessee or a person deriving title or tenure from or through the Sublessee; and

**Works** includes any change to the natural or existing condition or topography of the Land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

## 1.2 Interpretation

In this Sublease, unless the context requires otherwise:

- (a) the singular (including the singular of defined terms) includes the plural and vice versa;
- (b) reference to a right includes a remedy, authority or power;
- (c) the headings are used for convenience only and do not affect the interpretation of this Sublease;
- (d) as far as possible all provisions must be construed so as not to be invalid, illegal or unenforceable;
- (e) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (f) reference to a thing is a reference to all or part of that thing;
- (g) unless the context requires or is otherwise stated in this Sublease, a party's obligations must be performed at that party's own cost;
- (h) a gender includes the other genders;
- (i) other grammatical forms of defined words or expressions have corresponding meanings;
- (j) a reference to a document includes the document as modified from time to time and any document replacing it;

- (k) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (l) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (m) the word "month" means calendar month and the word "year" means 12 months;
- (n) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (o) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (p) a reference to a party includes a reference to the party's respective successors and permitted assigns;
- (q) money amounts are stated in Australian currency unless otherwise specified; and
- (r) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

## **Part A: Sublease Mandatory Terms**

### **2. Transfer of functions**

- (a) The Sublessee acknowledges that the Land Trust or the Land Council may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of the Land Trust or the Land Council (as applicable) may be transferred to or vested in another entity.
- (b) If the Land Trust or the Land Council is reconstituted, renamed or replaced or if some or all of its powers, functions or responsibilities are transferred to or vested in another entity, references in this Sublease to the Land Trust or the Land Council (as applicable) must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to or vested in it those powers, functions or responsibilities.

### **3. Reservations in respect of adjoining sites**

Subject to clause 4, the Sublessee acknowledges that for the purpose of the Land Trust providing Services to, on, over, through or under land which is adjacent to or near the Premises, the Land Trust or the Land Council may:

- (a) install, maintain, use, repair, alter and replace pipes, ducts, conduits, cables, wires and poles through, on, over and under the Township;
- (b) hang cables and wires from the poles referred to in paragraph (a);
- (c) pass and run Services through the pipes, ducts, conduits, cables and wires; and
- (d) for the purpose of exercising its rights under paragraphs (a), (b), and (c) above, grant easements within the Township to, or enter into agreements with any Government Agency or providers of Services.

### **4. Conditions on reservations**

- (a) The LE must give the Sublessee not less than 14 days notice that the Land Trust or the Land Council proposes to undertake any Works or grant any easements in exercise of its rights under clause 3, except in the case of an emergency when no such notice is required.
- (b) If the LE gives the Sublessee notice under clause 4(a), the LE, must as far as reasonably practicable, ensure that the Land Trust or the Land Council (as applicable), put arrangements and procedures in place to minimise any disruption to the Sublessee's use of the Premises for the Permitted Use during the undertaking of the Works.
- (c) If the LE gives the Sublessee notice under clause 4(a), the Sublessee must:
  - (i) assist the LE, the Land Trust and Land Council (as applicable) in ensuring, as far as reasonably practicable, that arrangements and procedures are put in place by the Land Trust or Land Council (as applicable) and the Sublessee to minimise any disruption to the Sublessee's use of the Premises for or in connection with the Permitted Use during the undertaking of the Works;

- (ii) implement, as far as may be reasonably practicable, appropriate work practices during the undertaking of the Works to assist the Land Trust or Land Council (as applicable) in completing the Works in a timely and cost efficient manner;
- (iii) give the Land Trust or Land Council (as applicable) access to the Premises when required by Land Trust or the Land Council for the purpose of undertaking the Works; and
- (iv) use best endeavours to mitigate any loss or damage suffered by the Sublessee as a result of the Works.

## **5. Existing rights, titles or other interests**

The parties acknowledge that, in accordance with subsection 19A(10) of the Land Rights Act, any existing right, title or other interest is preserved as a right, title or interest in the Township under the Head Lease.

## **6. Access**

### **6.1 General**

The parties agree that any person wishing to enter the Township must have a Permit except to the extent either:

- (a) such entry or access is otherwise permitted or authorised by or pursuant to the Land Rights Act; or
- (b) such person has a defence under the Land Rights Act to any allegation that such person improperly entered or remained on the Township.

### **6.2 Permit System**

- (a) In the event that access to the Land is not regulated by the Aboriginal Land Act, the parties agree that any person wishing to enter the Township must have a Permit except to the extent either:
  - (i) such entry or access is otherwise permitted or authorised by or pursuant to the Land Rights Act; or
  - (ii) such person has a defence under the Land Rights Act to any allegation that such person improperly entered or remained in the Township.
- (b) If clause 6.2(a) is applicable, the provisions contained within Part 2 of the Aboriginal Land Act as at the Commencement Date will apply to the issuing of permits under clause 6.2(a) as if such provisions were still in force (**Permit System**).
- (c) The Sublessee acknowledges that the LE may prevent access to any person who refuses to comply with the Permit System outlined in this clause 6.2.

### **6.3 Land Trust and Land Council right of access**

In addition to any other rights of access, the Sublessee acknowledges that the LE, the Land Trust or the Land Council may so often as they reasonably require (at reasonable

times and on reasonable notice) enter the Premises to make reasonable investigations as the LE, the Land Trust or the Land Council may deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Sublease.

#### **6.4 Access to Sacred Sites**

- (a) Notwithstanding any other provision in this Sublease, the Sublessee acknowledges that Aboriginals must have free access to Sacred Sites in accordance with Aboriginal Tradition.
- (b) Any person who has the express approval of the Custodian of a Sacred Site to enter that Sacred Site for a purpose permitted by Aboriginal Tradition, must be granted access to that Sacred Site by reasonable means and by the most direct practical route between a place of public access and the Sacred Site (or between Sacred Sites).

#### **7. Ownership of Improvements at the end of this Sublease**

- (a) At the expiry or sooner determination of this Sublease, all Improvements and Services (including the Sublessee's Improvements and the Sublessee's Services) but excluding any of the Sublessee's Improvements required to be removed pursuant to any other clause in this Sublease, subject to any continuing right, title or other interest referred to in clause 5, and any other relevant continuing right, title or other interest, will as between the LE and the Sublessee be the property of the LE in consideration of the sum of \$1, if demanded by the Sublessee.
- (b) Subject to any agreements in writing between the LE and the Sublessee, the LE will not be required to further compensate the Sublessee for the transfer of the Improvements.

#### **8. Respect for Tiwi Culture**

- (a) The Sublessee acknowledges that:
  - (i) the traditional Aboriginal owners of the Land have a spiritual and custodial relationship with the Land and surrounding seas;
  - (ii) the traditional Aboriginal owners of the Land remain the custodians of the Cultural Heritage of the Land;
  - (iii) some knowledge belongs only to specific members of the Aboriginal community;
  - (iv) certain information is inaccessible to all except those deemed appropriate by the Aboriginal community;
  - (v) secret and sacred materials are items of special religious and spiritual significance to Tiwi People, and are usually associated with men's and women's private ceremonies.
- (b) In discharge of the Sublessee's rights and obligations under this Sublease, the Sublessee must be familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.

## 9. Dealings with this Sublease

The Sublessee may not:

- (a) transfer, sublet, mortgage or surrender this Sublease where such action would result in a breach of this Sublease; or
  - (b) otherwise:
    - (i) part with or share possession of land or Improvements leased under this Sublease other than to or with a Relative; or
    - (ii) grant a Premises Licence,
- without the prior written consent of the Land Trust and the LE (whose consent in both instances will not be unreasonably withheld).

## 10. Underleases and assignment

### 10.1 Grant of Underlease

Subject to the provisions in this clause 10, the Sublessee may grant an Underlease provided that the Sublessee ensures that:

- (a) the term of any Underlease (including any options) does not exceed the balance of the Term then remaining less 1 day;
- (b) subject to clause 19, the Underlease expires or determines automatically upon expiration or early determination of this Sublease;
- (c) all Underleases contain the Sublease Mandatory Terms with the necessary changes;
- (d) any special conditions contained in an Underlease are not inconsistent with the Sublease Mandatory Terms contained in this Sublease and to that end, any special condition is void to the extent of the inconsistency;
- (e) an Underlessee does not transfer, sublet, mortgage or surrender its Underlease where such action would result in a breach of this Sublease or the terms of the Underlease;
- (f) otherwise, an Underlessee does not:
  - (i) part with or share possession of land or Improvements leased under its Underlease other than to or with a Relative; or
  - (ii) grant a licence to occupy or use, land or Improvements leased under its Underlease,

without the prior written consent of the LE and Land Trust (whose consent in both instances will not be unreasonably withheld);
- (g) any licence to occupy or use, and any parting or sharing of possession of, any land or Improvements leased under an Underlease is subject to clause 6 and the requirements under that clause to obtain a Permit; and



- (h) each Underlessee observes and complies with its obligations under its Underlease.

## **10.2 Copy of Underlease**

The Sublessee must provide a copy of each Underlease to the LE within 10 Business Days after execution or such other period as agreed by the parties.

## **10.3 Interpretation**

If there is any inconsistency between the Sublease Mandatory Terms and the terms of any Underlease, the Sublease Mandatory Terms will take precedence to the extent of such inconsistency.

## **10.4 Amendments and termination**

The LE may, by written direction to the Sublessee, demand that the Sublessee amend or terminate an Underlease not granted in accordance with this Sublease. The Sublessee must terminate or amend (as the case may be) any Underlease not granted in accordance with this Sublease if directed to do so by the LE.

## **10.5 Restrictions on the grant to Non-Tiwis**

The Sublessee must not assign this Sublease, which would directly result in the number of Non-Tiwi Permanent Residents of the Township exceeding 15% of the number of Permanent Residents in the Township (**Population Limitation**) at the time this Sublease is assigned or an Underlease is granted or such other percentage notified by the LE to the Sublessee.

## **10.6 Fit and proper**

- (a) The Sublessee must not assign this Sublease or grant an Underlease to any person unless satisfied that the applicant is a fit and proper person to accept an assignment of this Sublease or hold an Underlease.
- (b) A person is not a fit and proper person if that person has been convicted of a Sexual or Crime against Children Offence at any time and in any jurisdiction.
- (c) In making its decision to assign this Sublease or grant an Underlease, the Sublessee must have due regard to any reasonable guidelines developed by the Consultative Forum, from time to time.
- (d) The Sublessee must obtain, and may rely upon, a national police record check from the Relevant Authority (copy of which must be supplied to the LE) to determine whether a person has been convicted of a Sexual or Crime against Children Offence.
- (e) References in this clause 10.6 to an applicant not being a fit and proper person are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

### 10.7 Community Benefit Organisation

- (a) The Sublessee must not assign this Sublease or grant an Underlease to any Community Benefit Organisation without having due regard to any Community Benefit sublease guidelines prepared by the Consultative Forum, from time to time (**Community Benefit Organisation Sublease Guidelines**).
- (b) The Sublessee acknowledges that the Consultative Forum may prepare Community Benefit Organisation Sublease Guidelines that prescribe reasonable requirements and restrictions on the assignment of this Sublease or grant of an Underlease to Community Benefit Organisations.

### 10.8 Permitted Use

- (a) The Sublessee may only grant an Underlease for the Permitted Use.
- (b) In addition to complying with any applicable Law and Planning Scheme, the Sublessee must notify the LE and the public of any proposal to vary the Permitted Use of an Underlease. Members of the public must have sufficient opportunity to comment or object to such variation.
- (c) Notification under clause 10.8(b) requires the Sublessee to place such notice in the local newspaper, other media as appropriate, on the local noticeboard or as otherwise reasonably appropriate in the circumstances to bring the proposed variation of the Permitted Use specified in the Underlease to the attention of the Township community. The notice must include details of how any person may object.
- (d) If the Sublessee receives any objection to the variation of a Permitted Use specified in any Underlease that would otherwise be permitted under the Planning Scheme or any Law, the LE in deciding whether or not to approve the variation of the Permitted Use must have due regard to any guidelines prepared by the Consultative Forum, from time to time.

### 10.9 Respect for Tiwi Culture

- (a) The Sublessee must make reasonable efforts to ensure that all Underlessees are familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.
- (b) The Sublessee will not be in breach of this clause 10.9:
  - (i) if the Sublessee provides each Underlessee with written information developed in conjunction with the Consultative Forum and the Land Trust; and
  - (ii) the Sublessee receives a written acknowledgment from each Underlessee stating that the Underlessee has read and understood the information provided.
- (c) References in this clause 10.9 to an applicant being familiar with and showing respect for Aboriginal Tradition are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate being familiar with and showing respect for Aboriginal Tradition.

**10.10 Sacred Site**

- (a) The Sublessee acknowledges that an assignment of this Sublease or granting of an Underlease for any part of the Premises:
  - (i) on which a Sacred Site is located; or
  - (ii) within a reasonable distance from a Sacred Site,
 may only be granted to the Custodian of that Sacred Site or to an authority charged with its preservation.
- (b) Any Underlease granted to the Custodian of a Sacred Site or to an authority charged with its preservation may be on terms more favourable to the Custodian of a Sacred Site or to an authority charged with its preservation than commercial terms.

**10.11 No release of liability**

The Sublessee acknowledges that an assignment of this Sublease or the granting of an Underlease pursuant to this clause 10 will not release the Sublessee from any of its obligations or liabilities under this Sublease.

**11. Premises Licences****11.1 Grant of Premises Licence**

Subject to clause 6, clause 9(b) and the provisions in this clause 11, the LE acknowledges that the Sublessee may grant Premises Licences provided that the Sublessee ensures that:

- (a) the term of any Premises Licence (including options) does not exceed the balance of the Term then remaining less 1 day;
- (b) subject to clause 19, the Premises Licence expires or determines automatically upon expiration or earlier determination of this Sublease;
- (c) all Premises Licences contain the Licence Mandatory Terms;
- (d) any special conditions in a Premises Licence are not inconsistent with the Licence Mandatory Terms and to that end any special condition will be void to the extent of any such inconsistency;
- (e) Licensees do not:
  - (i) transfer, mortgage or surrender their Premises Licence;
  - (ii) part with or share possession of any part of the Premises or Improvements licensed under their Premises Licence other than to or with a Relative; or
  - (iii) grant a sublicense to occupy or use, any part of the Premises or Improvements licensed under their Premises Licence,

without the prior written consent of the Land Trust and the LE (whose consent in both instances will not be unreasonably withheld);

- (f) any sublicense to occupy or use, and any parting or sharing of possession of, any part of the Premises or Improvements licensed under a Premises Licence is subject to clause 6 and the requirements under that clause to obtain a Permit; and
- (g) each Licensee observes and complies with its obligations under its Premises Licence.

### **11.2 Copy of Premises Licence**

The Sublessee must provide a copy of each Premises Licence to the LE within 10 Business Days after execution.

### **11.3 Interpretation**

If there is any inconsistency between the Licence Mandatory Terms and the terms of any Premises Licence, the Licence Mandatory Terms take precedence to the extent of such inconsistency.

### **11.4 Amendments and termination**

The Land Trust may, by written direction to the Sublessee, demand that the Sublessee amend or terminate any Premises Licence not granted in accordance with this Sublease. The Sublessee must terminate or amend (as the case may be) any Premises Licence not granted in accordance with this Sublease if directed to do so by the LE.

## **12. Restrictions on the grant to Non-Tiwis**

The Sublessee must not grant an Underlease or Premises Licence, or vary an Underlease or Premises Licence, which would directly result in the number of Non-Tiwi Permanent Residents of the Township exceeding the Population Limitation at the time the Underlease or Premises Licence is granted or varied.

## **13. Third Party Occupier acts or omissions**

The parties acknowledge and agree that:

- (a) any act or omission by any Underlessee, Licensee or sublicensee on or in connection with the Premises or any Improvements or part of the Premises (**Third Party Occupier**) that would constitute a breach of this Sublease if committed by the Sublessee is, for the purposes of this Sublease, deemed to be a breach of the Sublease;
- (b) the grant of any right to any Third Party Occupier in connection with the Premises or any Improvements or part of the Premises does not release the Sublessee from its obligations under this Sublease, including but not limited to, the grant of any Underlease, Premises Licence or any other right, whether authorised by this Sublease or not; and
- (c) nothing in this Sublease releases the Sublessee from the acts or omissions of any Third Party Occupier on or in connection with the Premises or the Improvements.

## **14. Use of Premises**

### **14.1 Permitted Use**

The Sublessee must only use the Premises for the Permitted Use.

### **14.2 Compliance with Laws and Planning Scheme**

The Sublessee must at its sole cost and expense comply with all Laws and any Planning Scheme which affect or relate to the Premises and the use or occupation of the Premises and its Improvements regardless of whether the Law or Planning Scheme requires compliance by either or both of the Sublessee and the LE or any Third Party except to the extent that such compliance requires the Sublessee to undertake structural alterations or additions to the LE's Improvements, unless such structural alterations or additions are occasioned or required by reason of:

- (a) the nature of the particular business conducted by the Sublessee on the Premises; or
- (b) any negligence or default of the Sublessee.

### **14.3 Compliance with alcohol management plans**

Notwithstanding clause 14.2 and for the avoidance of doubt, the Sublessee must comply with any alcohol management plan or other alcohol related initiative implemented in relation to the Township.

### **14.4 Sacred Sites**

- (a) The parties acknowledge that the register of Sacred Sites maintained by the Aboriginal Areas Protection Authority may not contain all Sacred Sites in the Township.
- (b) If the Premises is a Sacred Site, before dealing in any way with the Premises, the Sublessee must consult the Custodian of that Sacred Site.
- (c) All Work on and use of the land in the Premises must be carried out in accordance with an Authority Certificate.
- (d) The Sublessee can rely upon and will not otherwise be in breach of this clause 14.4 if it undertakes any Works permitted by, and in accordance with an Authority Certificate.
- (e) If the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* is repealed or amended to the extent that no Government Agency is responsible for regulating Work on, or any use of the Land that that may affect, damage or interfere with Sacred Sites, then the Sublessee must:
  - (i) consult with the Custodians of Sacred Sites on or in the vicinity of the land that may be affected by the proposed use or Work; and
  - (ii) complete any Work and use the land with respect and consideration to any Sacred Sites that may be affected,

so as to prevent any harm or damage to, or interference with those Sacred Sites.

- (f) The parties acknowledge that all information relating to Sacred Sites is confidential information and may only be disclosed with the express permission of the Custodian for that Sacred Site.

#### **14.5 Signage**

Any signage placed on the Premises by or on behalf of the Sublessee must:

- (a) comply with all applicable Laws;
- (b) comply with voluntary codes of conduct established by the advertising industry;
- (c) not depict political, religious or other subject matter which is contentious; and
- (d) not depict subject matter which is considered offensive to the general Tiwi community.

#### **14.6 Nuisances**

- (a) The Sublessee must not at any time during the Term:
  - (i) use, exercise, carry on or permit or suffer to be used, exercised or carried on the Premises any noxious or offensive act, trade, business, occupation or calling; or
  - (ii) do or omit or permit or suffer to be done or omitted any act, matter or thing in, on or about the Premises which is or may become an annoyance, nuisance, grievance or disturbance to any other occupier or owner of adjacent property.
- (b) The parties agree that the proper use of the Premises for the Permitted Use will not be a breach of this clause 14.6.

### **15. Designated General Access Areas**

#### **15.1 Classification of land as a Designated General Access Area**

- (a) The parties agree that for the purposes of access and Township amenity, some areas of land in the Township, which may include the Premises, must be classified as a designated general access area (**Designated General Access Area**). The classification of an area of land in the Township as a Designated General Access Area entitles:
  - (i) Aboriginal people who would be entitled to enter and use land in the Township but for this Sublease; and
  - (ii) other persons who are lawfully in the Township,to enter and use that Designated General Access Area.

#### **15.2 Rules for use of a Designated General Access Area**

The Sublessee agrees to comply with rules made by the LE about the use of all or any Designated General Access Area.

## **16. Planning**

### **16.1 Northern Territory Planning Scheme and Laws to apply**

- (a) Subject to clause 16.2, the Sublessee is not permitted to undertake any Development or Construction of any Building other than in accordance with the Planning Scheme, any applicable Laws and with the LE's prior written consent.
- (b) Where no Planning Scheme applies to the Township, the Sublessee must have due regard to any planning guidelines or directions developed by the Consultative Forum, from time to time, for any Development in the Township.

### **16.2 Limit on Development**

Notwithstanding clause 16.1, the Sublessee is not permitted to undertake or allow any Development or Construction of any Building:

- (a) in excess of 2 storeys in height; or
- (b) on any Foreshore,

without the consent of the Consultative Forum and the LE.

## **17. Environmental compliance, garbage, asbestos and stormwater**

### **17.1 Environmental**

During the Term the Sublessee covenants:

- (a) not to:
  - (i) bring, store, abandon or dump any Industrial Waste or potentially Hazardous Substance on the Premises in a way that contravenes any applicable Environmental Law; or
  - (ii) discharge any Industrial Waste, Hazardous Substance or any offensive matter on to the Premises; or
  - (iii) handle any Industrial Waste or potentially Hazardous Substance in a manner likely to create an Environmental Hazard; or
  - (iv) use the Premises or allow the Premises to be used so that:
    - (A) any Industrial Waste or potentially Hazardous Substance is abandoned or dumped on the Premises; or
    - (B) any Industrial Waste or potentially Hazardous Substance is handled in a manner which is likely to cause an Environmental Hazard;
  - (v) subject to clause 17.7, discharge any general waste on to public access areas or the Premises;
- (b) not to install any underground Industrial Waste or potentially Hazardous Substance pipes or storage tanks within the ground of the Premises or reinstate

the use of any abandoned or unused underground pipes or underground storage tanks within the Premises without prior written consent of the LE; and

- (c) without limiting the generality of clause 14.2, to:
  - (i) comply with all Environmental Laws; and
  - (ii) obtain and maintain in full force and effect all permits and licences; and
  - (iii) comply with the terms of all permits and licences,

required in order to release or emit anything from the Premises into the air or water or on the ground or otherwise into the Environment or in order to release or emit any substantial noise.

## **17.2 Asbestos**

- (a) Without limiting the generality of clause 14.2, the Sublessee covenants that during the Term it will at its own cost comply with or procure compliance with all Asbestos Legislation (including all notices and orders served pursuant to any Asbestos Legislation) which relates to any repairs, improvements, demolition or other structural work undertaken by the Sublessee.
- (b) The Sublessee acknowledges that it will not be entitled to claim any damages, costs or compensation from the LE as a result of asbestos being present on the Premises or the Land or located in any Improvement.

## **17.3 Contamination**

The Sublessee acknowledges that it will not be entitled to claim any damages, costs or compensation from the LE as a result of Contamination being present on the Premises or the Land or located in any Improvement.

## **17.4 Stormwater Contamination**

Without limiting the generality of clause 14.2, the Sublessee covenants that during the Term it will, at its own cost, comply with all Environmental Laws (including all notices and orders served pursuant to Environmental Laws) which relate to stormwater leaving the Premises.

## **17.5 Water**

The Sublessee must not Contaminate or otherwise pollute water naturally on the Premises including all water in springs, soaks or underground streams and all water in any surface streams and the banks and the beds of such springs, soaks and streams.

## **17.6 Introduction of fauna and flora**

The Sublessee must comply with any quarantine policy adopted by the Land Council or Land Trust, from time to time, and must not, without the previous written consent of the Land Council, introduce to the Premises:

- (a) any seed, cutting, plant, root, bulb, tuber, rhizome, stolon or spore of any form of vegetation or flora, other than:



- (i) native vegetation or flora;
  - (ii) regular food merchandise; and
  - (iii) other items approved by the Consultative Forum; or
- (b) any fauna other than:
  - (i) native fauna; or
  - (ii) animal species approved by the Consultative Forum.

### **17.7 Garbage**

- (a) The Sublessee agrees to use its best endeavours to minimise and remove from the Premises all general waste produced by it from the Premises.
- (b) Where the general waste disposal facility used on the Commencement Date is closed, decommissioned or otherwise unavailable, the Sublessee must dispose of waste in such manner as directed by the LE.

## **18. Land Trust's rights**

### **18.1 Notices**

- (a) The Sublessee must notify both the LE and the Land Trust of any notice the Sublessee receives relating to the LE, the Land Trust or the Premises.
- (b) The Sublessee must give notice to the Land Trust in all circumstances where the Sublessee is required to give notice to the LE under this Sublease.
- (c) The Sublessee must give the LE a copy of any notice from the Land Trust.

### **18.2 LE and the Land Trust may enter the Premises in some circumstances**

The Sublessee must allow the LE and the Land Trust to have access to the Premises to:

- (a) inspect the Premises;
- (b) do any work to the Premises required or permitted by this Sublease; and
- (c) exercise any rights and comply with any obligations under the Head Lease concerning the Premises.

### **18.3 Compliance with Sublease**

The Sublessee must comply with the terms of the Sublease if requested to do so by the Land Trust.

### **18.4 Termination or amendment of Sublease**

- (a) The Sublessee acknowledges and agrees that this Sublease may be terminated or amended by written notice by the LE (at the direction of the Land Trust) where this Sublease has not been granted strictly in accordance with the requirements under the Head Lease.

- (b) Any termination of the Sublease does not affect any rights that the Sublessee may have against the LE as a result of a breach of any warranty given by the LE.

**19. Novation of Sublease or Licence**

Upon the early determination of this Sublease the Sublessee must (at its cost), upon the request of the LE, use all reasonable endeavours to novate or assign all Underleases and Premises Licences to the LE or a party nominated by the LE without payment.

**20. Sublease ends if Head Lease ends**

This Sublease will automatically end if the Head Lease ends for any reason and this Sublease is not novated or assigned pursuant to clause 27.4 of the Head Lease. If this Sublease ends under this clause, this does not affect rights that arise before, or because of, the ending of this Sublease.

**Part B: Sublease Discretionary Terms****21. Good faith**

The parties must act reasonably and in good faith in performing their respective obligations under this Sublease.

**22. Survival**

In addition to this clause 22, the following clauses survive the expiration or earlier determination of this Sublease: clauses 32, 17, 33, 35, 37, 38.8, 42, 19 and 43.

**23. Grant of Sublease**

- (a) The LE grants to the Sublessee a lease of the Premises, subject to any existing rights, titles or other interests, for the Term.
- (b) The Sublessee accepts the grant of a sublease of the Premises upon these terms and otherwise subject to the provisions of this Sublease.
- (c) For the avoidance of doubt, the sublease of the Premises includes a lease of all Existing Improvements and Existing Services.
- (d) The LE warrants to the Sublessee that the LE has the requisite power to grant this Sublease.

**24. Implied covenants**

The covenants, powers and provisions implied in leases under any relevant legislation are hereby expressly excluded, except to the extent that they are expressly embodied in this Sublease or to the extent only that it would be unlawful to exclude any such covenant, power or provision.

**25. Sublease Amount**

The Sublessee must pay the LE the Sublease Amount in the manner specified in Item 9 without deduction or right of set-off.

**26. Condition Report****26.1 Content of Condition Report**

The LE has carried out an inspection of the Premises prior to the Commencement Date and the results of that inspection are set out in the Condition Report.

**26.2 Resident to carry out inspection**

The Sublessee must, within 3 days after the Commencement Date:

- (a) inspect the Premises;
- (b) indicate on the Condition Report the Sublessee's agreement or disagreement with its contents; and

- (c) provide the completed Condition Report to the LE.

### **26.3 Failure to return Condition Report**

If the Sublessee fails to complete and return the Condition Report in accordance with clause 26.2, the Sublessee will be taken for the purposes of this Sublease to agree with the contents of the Condition Report annexed to this Sublease.

## **27. Improvements**

### **27.1 Maintenance of Land Trust's Improvements**

- (a) Having regard to the condition of the Land Trust's Improvements on the Commencement Date, the Sublessee must maintain, repair or replace Land Trust's Improvements on the Premises.
- (b) The Sublessee must give the LE prompt notice in writing of any damage to or defect in the Land Trust's Improvements or anything which is likely to cause any damage, deterioration, danger, risk or hazard to the structural parts of the Land Trust's Improvements.

### **27.2 Existing Improvements**

Existing Improvements subject to an existing right, title or other interest will remain subject to the terms of that existing right, title or other interest, for the period of the existing right, title or other interest.

### **27.3 Other obligations**

Where any of the Services require regular servicing, maintenance and repair, the Sublessee must:

- (a) enter into and maintain service contracts with reputable persons for the management, operation, servicing, maintenance and repair of the Services; and
- (b) ensure that appropriate Service commitments are met.

### **27.4 LE's rights**

- (a) The LE reserves the right to:
  - (i) carry out, or procure the carrying out of, any Works that may be required to comply with any applicable Law, Planning Scheme or Requirement which are not the responsibility of the Sublessee or which are the responsibility of the Sublessee but with which the Sublessee fails to comply;
  - (ii) enter the Premises for the purposes of maintenance, use, repair or replacement of any Services provided by the LE or the Land Trust; and
  - (iii) enter the Premises for the purposes of maintenance, repair or replacement of any of LE's or the Land Trust's Improvements.
- (b) The LE may exercise its rights under clause 27.4(a):

- (i) on giving prior reasonable written notice (except in the case of an emergency when no notice will be required);
- (ii) at reasonable times; and
- (iii) if reasonably required by the Sublessee, accompanied by a person appointed by the Sublessee.

## 28. Repairs

- (a) The Sublessee must, throughout the Term and at the Sublessee's expense, maintain the Premises and all fixtures and fittings on the Premises in as good and substantial repair, order and condition as the same were at the Commencement Date.
- (b) The Sublessee must upon the termination of this Sublease yield up the Premises together with all fixtures, fittings, furniture and chattels belonging to the LE in a clean and sanitary condition and in as good repair and condition as the same were in at the Commencement Date, fair wear and tear excepted.
- (c) At least 7 days prior to the expiry or earlier termination of this Sublease, the LE will enter and inspect the Premises and assess the condition of the Premises against the Condition Report completed and returned by the Sublessee under clause 26.2 or, where the Sublessee has not completed and returned the Condition Report, the Condition Report annexed to this Sublease.
- (d) If the Sublessee fails to fulfil the obligations under clauses 28(a) and 28(b) (as disclosed by the inspection carried out by the LE under clause 28(c)), the LE may arrange for any necessary repairs or cleaning to be carried out and the reasonable cost thereof will be payable by the Sublessee as a debt due to the LE.
- (e) The LE may during the Term give the Sublessee a notice requiring the Sublessee to:
  - (i) replace any missing furniture, chattels, fixtures and fittings which belong to the LE; or
  - (ii) repair any defects in the Premises, not being defects the result of fair wear and tear, storm, tempest, lightning, flood, earthquake, fire or other act of God (excepting fire caused by the negligence or deliberate act of the Sublessee or any other person on the Premises).
- (f) The Sublessee must comply with such a notice within 30 days of receipt or such longer period as may be allowed by the LE and, if the Sublessee fails to so comply, the LE may, at its option, make any necessary repairs and the cost of same will be payable by the Sublessee on demand as a debt due to the LE.
- (g) The LE will carry out such repairs and maintenance of a nature not covered by the Sublessee's obligations under this Sublease as are required to ensure that the Premises remain in a fit condition for the Permitted Use.
- (h) Without prejudice to any other remedy available to the LE in respect of a breach of this Sublease, where a breach by the Sublessee of this clause results in further damage to the Premises that would not have occurred if the Sublessee had

complied with this clause, the cost of repair of that further damage will be payable by the Sublessee on demand as a debt due to the LE.

## **29. Rates, taxes and charges**

### **29.1 Outgoings**

- (a) The Sublessee must pay on time any Outgoing (or in the Preliminary Lease Year or Final Lease Year, the appropriate part of any Outgoing) which:
  - (i) is imposed by a Government Agency or other Service provider directly on the Premises; or
  - (ii) relates solely to the Premises,
 whether issued against the Land Trust, the Land Council, the LE, or the Sublessee.
- (b) The Sublessee must pay the amounts under this clause 29.1 direct to any Government Agency or other person imposing the charge on time, or, at the LE's request, to the LE in time for the LE to make the payment on time.
- (c) If the Premises is not separately assessed for an Outgoing, the Sublessee must pay the Sublessee's Percentage of the Outgoing to the LE within 7 Business Days of demand.
- (d) The Sublessee must give the LE receipts for any Outgoings paid by the Sublessee within 7 Business Days of request by the LE.

### **29.2 Charges for Services**

- (a) The LE, the Land Trust and the Land Council are not liable for:
  - (i) the cost of any Services supplied, metered, consumed or connected to the Premises; or
  - (ii) the cost of installing separate meters for any Services capable of being separately metered.
- (b) The Sublessee must pay on time any amounts charged or levied directly upon the LE or the Land Trust relating to the use or supply of Services (except where the Services are for the benefit of the Land Trust or Land Council) direct to any Government Agency or other person imposing the charge, or, at the LE's request, to the LE in time for the LE to make the payment on time.
- (c) If required by the LE, the Sublessee must pay for the cost of installing separate meters to measure the cost of the Services.

### **29.3 Costs of Sublease**

- (a) The Sublessee must pay to the LE on demand:
  - (i) the LE's legal costs and disbursements on a full indemnity basis for:

- (A) the exercise of any discretion or consent required to be given under this Sublease; and
- (B) any default by the Sublessee under this Sublease;
- (ii) all other costs of any default by the Sublessee under this Sublease;
- (iii) Interest on any Sublease Amount or other money payable to the LE under this Sublease which has not been paid by the due date for payment; and
- (iv) charges for all Works carried out by the LE or the Land Trust under clause 27.4(a) in circumstances where the Sublessee is obliged to carry out works but has failed to do so.
- (b) The right of the LE to require the Sublessee to pay interest is in addition to, and does not affect, any other right or remedy of the LE in respect of the Sublessee's failure to pay any moneys under this Sublease by the due date for payment.

#### **29.4 Stamp duty**

For the avoidance of doubt, the Sublessee must pay any stamp duty assessed on this Sublease.

#### **29.5 Shared Services**

Where the infrastructure which provides or supplies any of the Services provides or supplies those Services not only to the Premises but also to other parts of the Township, the Sublessee must pay or reimburse the LE a proportion of any costs charged or levied by the Services provider in respect of the repair or maintenance of that infrastructure, such proportion to be calculated as follows:

- (a) in respect of the infrastructure relating to a Service (except drainage), the proportion will be the proportion which the number of outlets for the relevant Service within the Premises serviced by that infrastructure bears to the total number of outlets for that Service within the total area of the Land which is serviced by that infrastructure; and
- (b) in respect of drainage, the proportion will be the proportion which the area of that part of the Premises which is serviced by the relevant drain bears to the total area of the Land which is serviced by that drain.

### **30. GST**

#### **30.1 Definitions**

In this clause 30:

- (a) the expressions **Consideration**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- (b) **Supplier** means any party treated by the GST Act as making a Supply under this Sublease.

### 30.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Sublease are exclusive of GST.

### 30.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Sublease, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Sublease.

### 30.4 Reimbursement of expenses

If this Sublease requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

## 31. Use of Premises

### 31.1 No warranty as to use

The Sublessee acknowledges that none of the LE, the Land Trust, the Land Council and any Third Party has made any representation, given any advice or given any warranty as to:

- (a) how the Premises may be used;
- (b) the suitability of the Premises for use for, or in connection with, the Permitted Use including any necessary rights and easements benefiting the Premises;
- (c) any prohibitions and restrictions relating to the Premises;
- (d) the condition of the Premises; or
- (e) the compliance or otherwise of the Premises with any applicable Laws or Approvals.



**31.2 Sublessee's acknowledgments**

- (a) The Sublessee acknowledges that it has not relied on any representation, advice or warranty from the LE, the Land Trust, the Land Council or any Third Party in respect of the matters listed in clause 31.1.
- (b) The Sublessee acknowledges that it is aware of and has made its own appraisal of the matters listed in clause 31.1.
- (c) The Sublessee acknowledges that nothing in this Sublease requires the LE to grant access to any Land other than the Premises.

**31.3 Approvals**

The Sublessee must at its sole cost and expense obtain, maintain and comply with all Approvals which from time to time may be necessary or appropriate for the Premises or the use or occupation of the Premises regardless of whether the Approval requires compliance by either or both of the Sublessee and the LE or any Third Party.

**31.4 Compliance with notices**

The Sublessee must at its sole cost and expense comply with all notices, orders and directions issued or given by a Government Agency which affect or relate to the Premises or the use or occupation of the Premises regardless of whether the notice, order or direction is addressed to or requires compliance by either or both of the Sublessee and the LE or any Third Party except:

- (a) to the extent that the LE is required to comply with any Law pursuant to clause 32.1; or
- (b) to the extent that such compliance requires the Sublessee to undertake structural alterations or additions to the LE's Improvements, unless such structural alterations or additions are occasioned or required by reason of:
  - (i) the nature of the particular business conducted by the Sublessee on the Premises; or
  - (ii) any negligence or default of the Sublessee.

**31.5 Notices**

A party which receives a notice, order or direction from a Government Agency which affects or relates to the Premises or the use or occupation of the Premises must promptly give a copy of that notice, order or direction to the other party.

**32. Contamination****32.1 Clean-Up Notice**

If a Clean-Up Notice relating to Contamination existing in, on or under the Premises or which has emanated or is emanating from the Premises is served during the Term then:

- (a) if received by the Sublessee, the Sublessee must promptly provide the LE with a copy of the Clean-Up Notice;

- (b) if received by the LE, the LE must promptly provide the Sublessee with a copy of the Clean-Up Notice; and
- (c) the Sublessee will at its sole cost and expense be responsible for complying with the Clean-Up Notice.

### **32.2 Indemnity by the Sublessee**

Without limiting the generality of clause 33.2, the Sublessee indemnifies and will keep indemnified the LE, Land Trust and the Land Council from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind arising from a failure by the Sublessee to comply with its obligations under clause 32.1(c) except to the extent that the failure was caused or contributed to by a wilful or negligent act or omission of the LE, Land Trust or the Land Council.

## **33. Sublessee's indemnity**

### **33.1 Risk**

The Sublessee:

- (a) uses and occupies the Premises;
- (b) uses the Improvements (if any); and
- (c) all Services,

at the Sublessee's own risk.

### **33.2 Sublessee indemnifies the LE**

- (a) Subject to the terms of this Sublease, the Sublessee must indemnify and keep indemnified the LE against all actions, claims, losses, demands, damages, liabilities, suits, costs and expenses whatsoever (including legal costs on a full indemnity basis) resulting from:
  - (i) any damage or loss of property; and
  - (ii) the death of or injury to any person,

which is or may be suffered or sustained in or near the Premises, whether occupied by the Sublessee or not, in circumstances which relate in any way to the use and occupation of the Premises.
- (b) This indemnity will not apply to the extent that the action, claim, loss, demand, damage, liability, suit, cost or expense is caused directly by a deliberate or negligent act or omission of the LE.

### **33.3 Sublessee releases the LE**

- (a) The Sublessee releases the LE and the LE's Agents to the full extent permitted by Law from all claims, liabilities, actions, suits, demands, costs and expenses of every kind resulting from any:
  - (i) loss of or damage to any property in or near the Premises;

- (ii) death or injury of any person occurring on any part of or near the Premises;
  - (iii) act or omission of the LE or the LE's Agents in or near the Township; and
  - (iv) failure of any of the Services.
- (b) The Sublessee releases and forever discharges the LE from any and all liability arising from any disruption to the Sublessee's use of the Premises including but not limited to any claim for the LE's breach of the covenant of quiet enjoyment arising from Works undertaken pursuant to clause 3.
- (c) This release will not apply to the extent that any claim, liability, action, suit, demand, cost or expense is caused directly by a deliberate or negligent act or omission of the LE.

## **34. Insurance**

### **34.1 Obligation to insure Premises**

The Sublessee must effect and maintain insurance to cover the Premises:

- (a) against loss destruction or damage for not less than [*insert amount*] for any one occurrence; and
- (b) with cover which extends to include claim contingencies covering removal of debris or demolition costs and professional fees of not less than \$5 million for any one occurrence.

### **34.2 Obligation to insure for public liability**

The Sublessee must effect and maintain insurance with a limit of not less than \$20 million for any one occurrence to cover:

- (a) Personal Injury; and
- (b) loss destruction or damage to any property.

### **34.3 Obligation to insure for workers compensation**

The Sublessee must effect and maintain workers compensation insurance covering any liability, loss, claim or proceedings whatsoever, whether arising by virtue of any statute relating to workers compensation, accident compensation legislation, employer's liability, or at common law, by any person employed by the Sublessee.

### **34.4 Periods of insurance**

The Insurances referred to in this clause 34 must be:

- (a) in force at the Commencement Date;
- (b) maintained effective until the expiration or earlier determination of this Sublease;
- (c) maintained for the whole of the Premises for the Sublessee's duration of occupation of the Premises; and

- (d) with an insurer approved by the LE.

### **34.5 Insurers and policies**

- (a) The Sublessee must:
  - (i) not alter any insurance policy required under this clause 34 during the Term to the extent such alteration results in the insurance not complying with this clause 34; and
  - (ii) give immediate notice to the LE of any cancellation of any policy.
- (b) The LE reserves the right to require the Sublessee to effect and maintain additional insurance or to increase the amount of existing insurance from time to time during the Term where a reasonable requirement to do so can be demonstrated and such insurance is available in the commercial insurance market on commercially reasonable terms and conditions.
- (c) All policies of insurance (other than the insurances required under clause 34.3) must note the interest of the LE.

### **34.6 Sublessee to satisfy itself**

The Sublessee must take responsibility itself for deciding whether to insure any risks which have not been covered by the policies referred to in this clause 34 or to cover any exclusions, conditions or excesses in the policies which it may wish to insure against or cover.

### **34.7 Insurance policies to waive rights of subrogation**

The Sublessee must ensure that each policy of insurance effected and maintained pursuant to this clause 34, other than the insurance referred to in clause 34.3, provides that the insurer waives all rights remedies or relief to which it might become entitled by way of subrogation to the Sublessee as against the LE, the Land Trust, the Land Council and their successors.

### **34.8 No limitation**

This clause 34 does not detract from any of the Sublessee's obligations under this Sublease.

### **34.9 Sublessee must apply proceeds**

The Sublessee must apply all proceeds of the insurance referred to in clause 34.1 to the cost of repair and replacement of the Premises.

## **35. Reinstatement**

### **35.1 Sublessee to reinstate**

- (a) None of the Land Council, the Land Trust and the LE have any obligation to reinstate the Premises if at any time during the Term any part of a Premises is wholly or partly damaged or destroyed or becomes unfit for, or incapable of use or occupation.

- (b) The Sublessee must apply all proceeds of the insurance referred to in clause 34 towards the cost of reinstatement or repair or otherwise as agreed in writing by the LE.

### **35.2 No right to damages**

The Sublessee will not have any right, action or claim for loss, damage or compensation against the LE as a result of damage to or destruction of any part of a Premises except to the extent that the damage or destruction is caused or contributed to by a wilful or negligent act or omission of the LE or the LE's Agents.

## **36. LE's obligations**

### **36.1 Quiet enjoyment**

If the Sublessee makes Sublease Amount Payments under this Sublease and does not otherwise breach the terms of this Sublease, the Sublessee may, subject to any existing right, title or other interest, peaceably hold and quietly enjoy the Premises during the Term without disturbance or interruption from or by the LE or any other person or persons claiming under LE during the Term.

## **37. Consent**

The LE may impose conditions on its consent to any matter requiring consent under this Sublease.

## **38. Default**

### **38.1 Occurrence of Default Event**

Without prejudice to the LE's rights pursuant to clause 38.8, if a Default Event occurs, the LE may (but is not obliged) give the Sublessee a notice in writing:

- (a) specifying that a Default Event has occurred;
- (b) setting out reasonable details of the event or circumstance constituting the Default Event; and
- (c) in the case of a Default Event other than a Financial Default, specifying the Cure Period.

### **38.2 Financial Default**

If the Sublessee commits a Financial Default and fails to remedy the breach within 30 days after receiving the Default Notice (should one be served), the LE may terminate this Sublease immediately by notice to the Sublessee.

### **38.3 Interest payable by Sublessee**

- (a) Notwithstanding clause 38.2, the Sublessee must pay to the LE Interest on any amount which is the subject of a Financial Default until that amount is paid to the LE.
- (b) Interest payable pursuant to this Sublease:

- (i) is to be calculated daily on the amount owing by the Sublessee from the due date for payment;
  - (ii) is to accrue from the due date for payment;
  - (iii) will continue to accrue until the overdue money (and all Interest accrued on it) is paid in full;
  - (iv) is payable at the Default Rate; and
  - (v) will be capitalised on the last day of each month if not paid.
- (c) The right to require payment of Interest under this clause 38.3 is without prejudice to any other rights and remedies of the LE in respect of the Financial Default.
  - (d) If a liability under this Sublease becomes merged in an order or judgment of a court of competent jurisdiction, the Sublessee must pay Interest to the LE on the amount of that liability as an independent obligation. This Interest accrues from the date the liability becomes due for payment (or at the time of the order or judgment) until it is paid, at a rate that is the higher of the rate payable under the order or judgment and the Default Rate.

#### **38.4 Remedies for other Default Events**

- (a) If the Sublessee commits a Default Event, other than a Financial Default, then within 7 days of receipt of the Default Notice (should one be served), the Sublessee must provide to the LE a Cure Plan in respect of that Default Event. The LE must not unreasonably refuse a request by the Sublessee for an extension of time to prepare the Cure Plan.
- (b) Following receipt of a Default Notice, the Sublessee will be permitted to cure the Default Event within the Cure Period and, if applicable, in accordance with the Cure Plan.
- (c) If the Sublessee requires an extension to the Cure Period it may, not later than the expiration of the current Cure Period, provide to the LE:
  - (i) a revised Cure Plan; and
  - (ii) evidence that:
    - (A) the Sublessee has diligently pursued and is continuing to diligently pursue a feasible and practicable programme of rectification; and
    - (B) the Default Event cannot be (or could not have been), with reasonable diligence, cured within the current Cure Period.
- (d) The LE must not unreasonably refuse to grant an extension of the Cure Period.
- (e) If the Sublessee commits a Default Event in relation to the Premises and the Default Event is not cured within the Cure Period then the LE may terminate the Sublease immediately by notice to the Sublessee.
- (f) The provisions of this clause 38.4 do not limit or reduce the rights of the LE to claim damages for breach of this Sublease.

**38.5 Remedies for Termination Event**

If a Termination Event occurs, then the LE will be entitled to:

- (a) terminate this Sublease immediately by written notice to the Sublessee; and
- (b) exercise all legal and equitable rights and remedies available to the LE (whether under this Sublease or otherwise).

**38.6 Waiver**

If this Sublease, or the Sublessee's right to occupy the Premises is terminated for any reason, the Sublessee waives any rights it might otherwise have to pursue a claim of restitution of any kind including, without limitation, a claim of unjust enrichment.

**38.7 Consequences of termination**

Upon termination of this Sublease, or the Sublessee's right to occupy the Premises (whether through default or expiry or otherwise), the rights and obligations of the parties will cease except for:

- (a) any obligations arising or rights accrued as a result of an existing breach of this Sublease; and
- (b) any obligations which are expressed to continue in accordance with the terms of this Sublease.

**38.8 Re-Entry**

Despite anything to the contrary in this Sublease, if any Sublease Amount is 2 weeks or more in arrears (whether such Sublease Amount will have been legally demanded or not) or if any term, condition or undertaking contained in this Sublease is not observed or performed by the Sublessee, the LE may re-enter the Premises or any part thereof in the name of the whole and this Sublease will thereupon determine but without prejudice to any claim which the LE may have in respect of the breach of any term, condition or undertaking of this Sublease.

**39. Damage to Sublessee's furniture and effects**

The LE will not in any way be liable for any loss or damage to the Sublessee's fittings, furniture and effects arising from any cause whatsoever, except as a result of negligence of the LE, its employees, agents or contractors.

**40. Sublessee's fittings and fixtures**

The Sublessee authorises the LE to remove and dispose of, in any manner the LE sees fit, any property left by the Sublessee when vacating the Premises or to place any property so left in storage. All reasonable costs involved in the disposal or storage of such property will be payable by the Sublessee and may be recovered as a debt due to the LE. If the LE has disposed of the property by sale, the costs of such sale, together with any other amount owed by the Sublessee to the LE however incurred, will be a debt due to the LE and may be deducted from the proceeds of such sale and the balance paid to the Sublessee.

## **41. Overholding**

If the Sublessee remains in occupation of the Premises without objection by the LE following the expiration or earlier determination of the Term, then:

- (a) the Sublessee will be deemed to be a monthly tenant upon the same terms and conditions as are contained in this Sublease so far as they are applicable to such a tenancy; and
- (b) such a tenancy will be determinable by either party on 30 days prior written notice, which notice may be given to expire at any time.

## **42. Obligations on expiration or termination**

### **42.1 Return of Premises**

The Sublessee must return the Premises to the LE at the expiration, surrender or earlier determination of the Sublessee's occupancy of the Premises in a condition consistent with its obligations under this Sublease.

### **42.2 Removal of the Sublessee's Improvements**

- (a) The Sublessee must, if so required by the LE acting reasonably, at or prior to the expiration, surrender or earlier determination of the Sublessee's occupancy of the Premises take, remove and carry away from the Premises all of the Sublessee's Improvements other than Improvements for the ongoing use of the Township as a township.
- (b) The Sublessee must immediately make good any damage to the Premises caused by the removal of the Sublessee's Improvements and must remove all rubbish and leave the Premises in a clean state and condition.
- (c) The LE may at the Sublessee's cost, remove or dispose of any of the Sublessee's Improvements not removed on or prior to the expiration, surrender or earlier determination of the Sublessee's occupancy of the Premises as required by the LE in accordance with clause 42.2(a).
- (d) The Sublessee must not remove any Improvements or Services which are liable to become the property of the LE pursuant to clause 7.

## **43. General**

### **43.1 Amendments**

Subject to the Land Rights Act, the parties may from time to time by agreement in writing, amend or vary the provisions of this Sublease.

### **43.2 Nature of obligations**

- (a) Any provision in this Sublease which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Sublease in favour of another is a separate obligation.



**43.3 Entire understanding**

- (a) This Sublease contains the entire understanding between the parties concerning the subject matter of the Sublease and supersedes all prior communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Sublease, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Sublease.

**43.4 No adverse construction**

This Sublease is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

**43.5 Further assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Sublease.

**43.6 No waiver**

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Sublease does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Sublease.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

**43.7 Severability**

Any provision of this Sublease which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Sublease in any other case,

without invalidating or affecting the remaining provisions of this Sublease or the validity of that provision in any other jurisdiction.

**43.8 Successors and assigns**

This Sublease binds and benefits the parties and their respective successors and permitted assigns under clause 43.9.

**43.9 No assignment**

Subject to the Land Rights Act, a party cannot assign or otherwise transfer the benefit of this Sublease without the prior written consent of each other party.

**43.10 Consents and approvals**

Where anything depends on the consent or approval of a party then, unless this Sublease provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

**43.11 Costs**

Each party must pay its own legal costs of and incidental to the preparation and completion of this Sublease.

**43.12 Duty**

- (a) Any duty (including related interest or penalties) payable in respect of this Sublease or any instrument created in connection with it must be paid by the Sublessee.
- (b) The Sublessee undertakes to keep the LE and the Land Council indemnified against all liability relating to the duty, fines and penalties.

**43.13 Governing law and jurisdiction**

- (a) This Sublease is governed by and must be construed in accordance with the laws in force in the Northern Territory.
- (b) The parties submit to the exclusive jurisdiction of the courts of that Territory and the Commonwealth of Australia in respect of all matters arising out of or relating to this Sublease, its performance or subject matter.

**43.14 Notices**

Any notice or other communication to or by a party under this Sublease:

- (a) may be given by personal service, pre-paid registered post or facsimile;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) as set out in Item 10 or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, 2 Business Days (or 6 Business Days, if posted outside Australia) after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form

to the facsimile number of the addressee notified for the purposes of this clause,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

#### **43.15 Counterparts**

If this Sublease consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

#### **43.16 Conflicting provisions**

If there is any conflict between the main body of this Sublease and any schedules or annexures comprising it, then the provisions of the main body of this Sublease prevail.

#### **43.17 Non merger**

A term or condition of, or act done in connection with, this Sublease does not operate as a merger of any of the rights or remedies of the parties under this Sublease and those rights and remedies continue unchanged.

#### **43.18 Operation of indemnities**

Unless this Sublease expressly provides otherwise:

- (a) each indemnity in this Sublease survives the expiry or termination of this Sublease; and
- (b) a party may recover a payment under an indemnity in this Sublease before it makes the payment in respect of which the indemnity is given.

#### **43.19 No right of set-off**

Unless this Sublease expressly provides otherwise, a party has no right of set-off against a payment due to another party.

#### **43.20 Relationship of parties**

Unless this Sublease expressly provides otherwise, nothing in this Sublease may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

#### **43.21 Special Conditions**

- (a) This Sublease is subject to the Special Conditions.
- (b) Where any of the Special Conditions are contrary to or inconsistent with the terms of this Sublease, the terms of this Sublease prevail.

**Schedule: Sublease Particulars**

<b>Item</b>	<b>Particulars</b>
<b>1. Sublessee</b> (page 1)	[insert]
<b>2. Premises</b> (clause 1.1)	[insert]
<b>3. Land</b> (clause 1.1)	As described in the Certificate of Title Volume 708 Folio 427
<b>4. Township</b> (clause 1.1)	That part of the Land described as 6798 on the Survey Plan S2007/183 copy of which is annexed to Annexure 2.
<b>5. Commencement Date</b> (clause 1.1)	[insert]
<b>6. Permitted Use</b> (clauses 1.1 and 14.1)	[insert]
<b>7. Term</b> (clause 1.1)	[insert]
<b>8. Sublease Amount</b> (clause 1.1)	\$(insert)
<b>9. Sublease Amount payments</b> (clause 1.1)	[insert]
<b>10. Notices</b> (clause 43.14)	<p>If to the LE:  The Executive Director of Township Leasing  Centraplaza  16 Bowes Street  WODEN ACT 2606</p> <p>Telephone:  (02) 6121 4028</p> <p>Facsimile:  (02) 6121 4150</p> <p>If to the Sublessee :  [insert]</p> <p>Telephone:</p>

	<p>[insert]</p> <p>Facsimile:</p> <p>[insert]</p>
--	---

**Executed** as a deed.

**Executed** by the **Executive Director of** )  
**Township Leasing** for and on behalf of the )  
Commonwealth of Australia as an 'approved )  
entity' within the meaning of the Aboriginal Land )  
Rights (Northern Territory) Act 1976 (Cth) in the )  
presence of: )

.....  
Signature of witness

.....  
Signature of Executive Director of Township  
Leasing

.....  
Name of witness (please print)

.....  
Name (please print)

**[insert execution clauses of the Sublessee]**

**Annexure 1 – Special Conditions (clauses 1.1 and 43.21)**

**Annexure 2 – Township (clause 1.1 and Item 4)**



**Annexure 3 – Condition Report (clause 26)**

**Annexure 2 - Template Licence (clauses 1.1 and 11.1(c))**

**TOWNSHIP LICENCE**

Premises: *[insert premises]*

Executive Director of Township Leasing

and

Licensee

AB

*[Handwritten signature]*

RT

*[Handwritten signature]*

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AB  
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## Township Licence

**Date** 2007

### Parties

1. **Executive Director of Township Leasing** on behalf of the Commonwealth of Australia as 'Approved Entity' within the meaning of the Land Rights Act (**LE**)
2. The party specified in Item 2 (**Licensee**)

### Background

- A. The Land Trust is the registered proprietor of an estate in fee simple in the Land which includes the Township.
- B. The LE was created pursuant to section 20B of the Land Rights Act.
- C. The Land Trust leases the Township (including all Improvements and Services) to the LE pursuant to subsection 19A(1) of the Land Rights Act.
- D. The Land Trust has received written consent from the Commonwealth Minister and written direction from the Land Council as required pursuant to paragraphs 19A(1)(a) and (b) of the Land Rights Act for the grant of the Head Lease.
- E. The LE is a body approved as an entity capable of receiving a grant of the Head Lease pursuant to section 19A of the Land Rights Act.
- F. The LE and the Licensee have agreed to enter into this Township Licence on the terms set out in this Township Licence.

### Agreed terms

#### 1. Definitions and interpretation

##### 1.1 Definitions

In this Township Licence and in the background, unless the context requires otherwise:

**Aboriginal** means a person who is a member of the Aboriginal race of Australia;

**Aboriginal and Torres Strait Islander Corporation** has the meaning given to that term in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*;

**Aboriginal Areas Protection Authority** means the authority established under the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* and known as the Aboriginal Areas Protection Authority;

**Aboriginal Land Act** means the *Aboriginal Land Act 1978 (NT)*;

**Aboriginal Tradition** means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships;

**Annexure** means an annexure to this Township Licence;

**Approval** means any permit, licence, consent, grant, certificate, sealing or other approval obtained or required to be obtained by the Licensee from a Government Agency or any other person in relation to the Premises or the use and occupation of the Premises;

**Approved Entity** has the meaning given to that term in the Land Rights Act;

**Asbestos Legislation** means any Law relating to the removal, replacement, control, identification, sealing, enclosing or otherwise dealing with the existence of asbestos on land;

**Authority Certificate** means a certificate issued by the Aboriginal Areas Protection Authority under section 22(1) of the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*;

**Building** includes

- (a) a structure and part of a building or a structure;
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building; or
- (c) a boat or a pontoon which is permanently moored or fixed to a building or land;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Darwin;

**Clean-Up Notice** means a notice served under any Law relating to Contamination in, on, under or emanating from the Township;

**Condition Report** means the condition report prepared by the LE and annexed to this Township Licence;

**Commencement Date** means the date specified in Item 5;

**Community Benefit Organisation** means an organisation formed or created for the benefit of the Township community or whose principal objective is not the generation of profit but excludes any Government Agency or a body which provides community housing for residents of the Township;

**Construct** includes reconstruct or make structural changes and the word **Construction** has a corresponding meaning;

**Consultative Forum** means the Consultative Forum established under the Head Lease;

**Contamination** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the Environment unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the Environment does not satisfy the contamination criteria or standards published or adopted by the Relevant Authority from time to time and the word **Contaminant** has a corresponding meaning;

**Corporations Act** means the *Corporations Act 2001 (Cth)*;



**Criminal Code** means the *Criminal Code Act 1983 (NT)*;

**Cultural Heritage** means:

- (a) literary, artistic and performance works (including music, song, dance, ceremonies, narratives, poetry, symbols and designs);
- (b) languages;
- (c) spiritual knowledge;
- (d) scientific, technical, agricultural and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna);
- (e) human genetic material (including DNA and tissues);
- (f) ancestral remains;
- (g) burial artefacts;
- (h) cultural environment resources (including Indigenous sites of significance); and
- (i) representation of Aboriginal peoples in all media (including scientific and ethnographic research reports and papers, books, films, sound recordings, CD-ROM and other digital formats);

**Cure Period** means a reasonable period of time within which the Licensee must cure a Default Event (other than a Financial Default), in accordance with clause 37.1(c), including any extensions of that period under clause 37.4(c);

**Cure Plan** means a plan by the Licensee to remedy a Default Event which is proposed during the Cure Period and details a work plan setting out each task to be undertaken in order to rectify the material breach and the time for each task to be completed;

**Custodian** means an Aboriginal who, by Aboriginal Tradition, has responsibility for a Sacred Site;

**Default Rate** means a rate equal to the Reference Index plus 2%;

**Default Event** means:

- (a) a Financial Default; or
- (b) a persistent and material failure by the Licensee to comply with this Township Licence;

**Default Notice** means a notice given under clause 37.1;

**Designated General Access Areas** has the meaning given to that term in clause 14.1(a);

**Development** includes:

- (a) the Construction or exterior alteration or exterior decoration of a Building;
- (b) the demolition or removal of a Building or Works;

- (c) the Construction or carrying out of Works;
- (d) the subdivision or consolidation of land, including buildings or airspace;
- (e) the placing or relocation of a Building or Works; and
- (f) the Construction or putting up for display of signs or hoardings;

**Domestic Partner** means a person to whom a person is not married but with whom that person is living as a couple on a genuine domestic basis (irrespective of gender);

**Environment** includes the meaning given to that term at common law and in any Law in force in the Northern Territory, including any land, water, atmosphere, climate, sound, odours, tastes and the biological factors of animals and plants and the word **Environmental** has a corresponding meaning;

**Environmental Hazard** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics;

**Environmental Law** means any Law relating to the Environment, including any Law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property;

**Existing Improvements** means all Improvements erected on or attached to the Premises as at the Commencement Date;

**existing right, title or other interest** means any right, title or other interest in the Township which existed immediately before the Commencement Date;

**Existing Services** means all Services on or connected to the Premises as at the Commencement Date;

**Final Licence Year** means the period starting on 1 July immediately before the expiry of the Term or earlier determination of this Township Licence and ending on the expiry of the Term or earlier determination of this Township Licence;

**Financial Default** means a failure by the Licensee to pay when due any money which the Licensee is obliged to pay to the LE under this Township Licence (including a failure to pay any Township Licence Amount when due);

**Foreshore** means the area between the high water mark and 50 metres landward from the high water mark;

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**GST** has the meaning given to that term in the GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Hazardous Substance** means any substance that causes, or might reasonably be expected to cause, injury to any person exposed to that substance, including dangerous, inflammable, volatile or explosive substances or goods, and any emission from that substance;

**Head Lease** means the Head Lease signed by the Land Trust, the Land Council and the LE dated *[insert date]*;

**Improvements** means all Buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles which are erected on or attached to the land on which the Premises are located;

**Incorporated Aboriginal Association** means an Aboriginal or Torres Strait Island corporation incorporated under the *Aboriginal and Torres Strait Islands Act 2005 (Cth)*;

**Industrial Waste** means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials that are potentially harmful to human beings or the Environment;

**Information** means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, research and development information, know-how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, names and details of agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this Township Licence;

**Insolvency Event** means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (g) any analogous event or circumstance under the laws of any jurisdiction,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party;

**Interest** means interest payable by the Licensee under clause 37.3;

**Item** means an item in the Schedule;

**Land Council** means the Tiwi Land Council as established by notice dated 18 August 1978 under the Land Rights Act, or if the boundaries are varied so as to exclude the Township from its area, then the Land Council for the area of the Township established under the Land Rights Act, and its delegate;

**Land Council's Agents** means the employees, contractors, agents and any other person appointed from time to time by the Land Council as agent of the Land Council;

**Land** means the land described in Item 3;

**Land Rights Act** means the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*;

**Land Trust** means the Tiwi Aboriginal Land Trust established pursuant to section 4(1) of the Land Rights Act;

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations, ordinances or by-laws of the Commonwealth, a State, a Territory or any other Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or any other Government Agency that have the force of law;

**LE's Improvements** means all Improvements vested in the LE;

**LEADR** means Lawyers Engaged in Alternative Dispute Resolution;

**Licence Year** means the Preliminary Licence Year, each 12 month period expiring on 30 June in each year during the Term and the Final Licence Year;

**Licensee's Improvements** means all Improvements erected on or attached to the land in the Premises by:

- (a) the Licensee; or
- (b) any Sublicensee;

**Licensee's Percentage** means the same percentage as the Premises bears to the area of the land to which an Outgoing applies, as determined by the LE and notified to the Licensee;

**Licensee's Services** means all Services installed in or on the Premises by the Licensee or Sublicensee after the Commencement Date;

**Non-Tiwi Permanent Resident** means a Permanent Resident who is a Non-Tiwi Person;

**Non-Tiwi Person** means a natural person who is not a Tiwi Person;

**Outgoings** means all existing and future amounts (including rates, duties and taxes):

- (a) which are properly imposed, charged or levied under statute or by a Government Agency on the Land Council or the LE; or
- (b) which a Government Agency properly requires the Land Trust or the LE to spend, and which are:
- (c) paid or payable by the Land Trust or the LE during a Licence Year;
- (d) in relation to the Premises or Improvements in the Premises; and
- (e) either capital or non-capital in nature;

**Permanent Resident** means a natural person who has resided in the Township for a period exceeding 12 months;

**Permit** means a permit granted under section 5 of the Aboriginal Land Act or under clause 6.2;

**Permitted Use** means the permitted use stated in Item 6;

**Personal Injury** includes:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury including the resultant loss of consortium or services at any time;
- (b) false arrest, detention, false imprisonment, discrimination, malicious prosecution or humiliation, or breach of confidentiality;
- (c) wrongful entry or wrongful eviction or other invasion of the right to private occupancy; and
- (d) assault and/or battery not intentionally committed by or at the discretion of the insured unless so directed for the purpose of preventing or eliminating danger to property or persons;

**Planning Scheme** means any planning scheme under any applicable Law setting the framework for planning the use, development and protection of the Township or any part of the Township;

**Population Limitation** has the meaning given to that term in clause 10.5;

**Preliminary Licence Year** means the period starting on the Commencement Date and ending on the following 30 June;

**Premises** means the premises described in Item 2;

**Reference Index** means:

- (a) the monthly average yield of 90-day bank accepted bills published by the Reserve Bank of Australia for a relevant month (**90-Day Bank Bill Rate**); or

- (b) in the event that the 90-Day Bank Bill Rate is suspended or discontinued, the index benchmark that most nearly reflects the method of calculating the 90-Day Bank Bill Rate;

**Regulation** means the *Aboriginal Land Rights (Northern Territory) Regulations 2007* being a regulation pursuant to section 3AB of the Land Rights Act prescribing an area of land to be a township;

**Related Entity** has the meaning given to that term in the Corporations Act;

**Relative** has the meaning given to that term in section 1207B of the *Social Security Act 1991 (Cth)* and includes a Domestic Partner;

**Relevant Authority** means any government, municipal, statutory, public or other authority or body having authority or jurisdiction over or in relation to the Premises;

**Requirement** means any lawful present or future notices, orders, directions, requirements, statutes, ordinances, proclamations, regulations, schemes, permits, by-laws or other regulatory requirements affecting or relating to the Premises or the use of the Premises, irrespective of whether the Requirement is addressed to the Licensee, the LE, the Land Trust, the Land Council or any other person;

**Resident** means a natural person who resides in the Township;

**Sacred Site** means a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal Tradition, and includes any land that, under a law of the Northern Territory, is declared to be sacred to Aboriginals or of significance according to Aboriginal Tradition;

**Schedule** means the schedule to this Township Licence;

**Services** means all utilities and services on or connected to the Premises including water, gas, electricity, lighting, sanitation, drainage, stormwater, computer services, communication and telecommunication systems, oil and any other source or type of energy or fuel and includes all wires, cables, pipes, ducts, conduits, tanks, electrical and mechanical plant and all other ancillary or associated parts and accessories;

**Sexual or Crime against Children Offence** includes:

- (a) an offence against Division 2 of Part V of the Criminal Code;
- (b) an offence against section 192, 192B or 201 of the Criminal Code;
- (c) an offence of:
  - (i) counselling or procuring;
  - (ii) aiding or abetting the commission of;
  - (iii) conspiring to commit;
  - (iv) attempting to commit; or
  - (v) being an accessory after the fact to,
 an offence referred to in this definition or an equivalent offence; or

(d) any offence similar to paragraphs (a), (b) or (c) above in any jurisdiction;

**Special Conditions** means the special conditions (if any) in Annexure 1;

**Sublicence** means a sublicence granted to a Sublicensee;

**Sublicensee** means any person who has taken a licence to use or occupy any part of the Premises from the Licensee or a person deriving possession from or through the Licensee; and

**Term** means the term specified in Item 7 starting on the Commencement Date with a maximum term equal to the term remaining under the Head Lease less 1 day;

**Termination Event** means:

- (a) the occurrence of an Insolvency Event; or
- (b) the abandonment of the Premises by the Licensee for a continuous period of not less than 1 month;

**Third Party** means a party other than a party to this Township Licence;

**Tiwi Person** means a natural person who:

- (a) is an Aboriginal from the Land; or
- (b) who practices the culture and traditions of the Tiwi people and is recognised by the traditional Aboriginal owners of the Land as a member of the Aboriginal community on the Land; or
- (c) a spouse or child of a person identified in paragraph (a) or (b) above,

and the expression **Tiwi People** has a corresponding meaning;

**Township** means that part of the Land described in Item 4 and set out in the Regulation as at the Commencement Date including the Premises;

**Township Licence** means this licence including the background, the Schedule and any Annexures;

**Township Licence Amount** means the amount specified in Item 8;

**Township Licence Amount Payments** means the manner in which the Township Licence Amount is to be paid as specified in Item 9;

**Township Licence Mandatory Terms** means the terms contained within Part A of this Township Licence and where applicable includes clause 27.1 relating to the maintenance, repair or replacement of the Land Trust's Improvements;

**Works** includes any change to the natural or existing condition or topography of the Land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

## 1.2 Interpretation

In this Township Licence, unless the context requires otherwise:

- (a) the singular (including the singular of defined terms) includes the plural and vice versa;
- (b) reference to a right includes a remedy, authority or power;
- (c) the headings are used for convenience only and do not affect the interpretation of this Township Licence;
- (d) as far as possible all provisions must be construed so as not to be invalid, illegal or unenforceable;
- (e) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (f) reference to a thing is a reference to all or part of that thing;
- (g) unless the context requires or is otherwise stated in this Township Licence, a party's obligations must be performed at that party's own cost;
- (h) a gender includes the other genders;
- (i) other grammatical forms of defined words or expressions have corresponding meanings;
- (j) a reference to a document includes the document as modified from time to time and any document replacing it;
- (k) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (l) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (m) the word "month" means calendar month and the word "year" means 12 months;
- (n) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (o) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (p) a reference to a party includes a reference to the party's respective successors and permitted assigns;
- (q) money amounts are stated in Australian currency unless otherwise specified; and
- (r) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.



## **Part A: Township Licence Mandatory Terms**

### **2. Transfer of functions**

- (a) The Licensee acknowledges that the Land Trust or the Land Council may be reconstituted, renamed or replaced and that some or all of the powers, functions or responsibilities of the Land Trust or the Land Council (as applicable) may be transferred to or vested in another entity.
- (b) If the Land Trust or the Land Council is reconstituted, renamed or replaced or if some or all of its powers, functions or responsibilities are transferred to or vested in another entity, references in this Township Licence to the Land Trust or the Land Council (as applicable) must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to or vested in it those powers, functions or responsibilities.

### **3. Reservations in respect of adjoining sites**

Subject to clause 4, the Licensee acknowledges that for the purpose of the Land Trust providing Services to, on, over, through or under land which is adjacent to or near the Premises, the Land Trust or the Land Council may:

- (a) install, maintain, use, repair, alter and replace pipes, ducts, conduits, cables, wires and poles through, on, over and under the Township;
- (b) hang cables and wires from the poles referred to in paragraph (a);
- (c) pass and run Services through the pipes, ducts, conduits, cables and wires; and
- (d) for the purpose of exercising its rights under paragraphs (a), (b), and (c) above, grant easements within the Township to, or enter into agreements with any Government Agency or providers of Services.

### **4. Conditions on reservations**

- (a) The LE must give the Licensee not less than 14 days notice that the Land Trust or the Land Council proposes to undertake any Works or grant any easements in exercise of its rights under clause 3, except in the case of an emergency when no such notice is required.
- (b) If the LE gives the Licensee notice under clause 4(a), the LE, must as far as reasonably practicable, ensure that the Land Trust or the Land Council (as applicable), put arrangements and procedures in place to minimise any disruption to the Licensee's use of the Premises for the Permitted Use during the undertaking of the Works.
- (c) If the LE gives the Licensee notice under clause 4(a), the Licensee must:
  - (i) assist the LE, the Land Trust and Land Council (as applicable) in ensuring, as far as reasonably practicable, that arrangements and procedures are put in place by the Land Trust or Land Council (as applicable) and the Licensee to minimise any disruption to the Licensee's use of the Premises for or in connection with the Permitted Use during the undertaking of the Works;

- (ii) implement, as far as may be reasonably practicable, appropriate work practices during the undertaking of the Works to assist the Land Trust or Land Council (as applicable) in completing the Works in a timely and cost efficient manner;
- (iii) give the Land Trust or Land Council (as applicable) access to the Premises when required by Land Trust or the Land Council for the purpose of undertaking the Works; and
- (iv) use best endeavours to mitigate any loss or damage suffered by the Licensee as a result of the Works.

## **5. Existing rights, titles or other interests**

The parties acknowledge that, in accordance with subsection 19A(10) of the Land Rights Act, any existing right, title or other interest is preserved as a right, title or interest in the Township under the Head Lease.

## **6. Access**

### **6.1 General**

The parties agree that any person wishing to enter the Township must have a Permit except to the extent either:

- (a) such entry or access is otherwise permitted or authorised by or pursuant to the Land Rights Act; or
- (b) such person has a defence under the Land Rights Act to any allegation that such person improperly entered or remained on the Township.

### **6.2 Permit System**

- (a) In the event that access to the Land is not regulated by the Aboriginal Land Act, the parties agree that any person wishing to enter the Township must have a Permit except to the extent either:
  - (i) such entry or access is otherwise permitted or authorised by or pursuant to the Land Rights Act; or
  - (ii) such person has a defence under the Land Rights Act to any allegation that such person improperly entered or remained in the Township.
- (b) If clause 6.2(a) is applicable, the provisions contained within Part 2 of the Aboriginal Land Act as at the Commencement Date will apply to the issuing of permits under clause 6.2(a) as if such provisions were still in force (**Permit System**).
- (c) The Licensee acknowledges that the LE may prevent access to any person who refuses to comply with the Permit System outlined in this clause 6.2.

### **6.3 Land Trust and Land Council right of access**

In addition to any other rights of access, the Licensee acknowledges that the LE, the Land Trust or the Land Council may so often as they reasonably require (at reasonable

times and on reasonable notice), enter the Premises to make reasonable investigations as the LE, the Land Trust or the Land Council may deem necessary for the purpose of ascertaining whether or not there has been any breach of any of the terms, covenants or conditions expressed or implied in this Township Licence.

#### **6.4 Access to Sacred Sites**

- (a) Notwithstanding any other provision in this Township Licence, the Licensee acknowledges that Aboriginals must have free access to Sacred Sites in accordance with Aboriginal Tradition.
- (b) Any person who has the express approval of the Custodian of a Sacred Site to enter that Sacred Site for a purpose permitted by Aboriginal Tradition, must be granted access to that Sacred Site by reasonable means and by the most direct practical route between a place of public access and the Sacred Site (or between Sacred Sites).

### **7. Ownership of Improvements at the end of this Township Licence**

- (a) At the expiry or sooner determination of this Township Licence, all Improvements and Services (including the Licensee's Improvements and the Licensee's Services) but excluding any of the Licensee's Improvements required to be removed pursuant to any other clause of this Township Licence, subject to any continuing right, title or other interest referred to in clause 5, and any other relevant continuing right, title or other interest, will as between the LE and the Licensee be the property of the LE in consideration of the sum of \$1, if demanded by the Licensee.
- (b) Subject to any agreements in writing between the LE and the Licensee, the LE will not be required to further compensate the Licensee for the transfer of the Improvements.

### **8. Respect for Tiwi Culture**

- (a) The Licensee acknowledges that:
  - (i) the traditional Aboriginal owners of the Land have a spiritual and custodial relationship with the Land and surrounding seas;
  - (ii) the traditional Aboriginal owners of the Land remain the custodians of the Cultural Heritage of the Land;
  - (iii) some knowledge belongs only to specific members of the Aboriginal community;
  - (iv) certain information is inaccessible to all except those deemed appropriate by the Aboriginal community; and
  - (v) secret and sacred materials are items of special religious and spiritual significance to Tiwi People, and are usually associated with men's and women's private ceremonies.
- (b) In discharge of the Licensee's rights and obligations under this Township Licence, the Licensee must be familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.

## **9. Dealings with this Township Licence**

The Licensee may:

- (a) transfer, mortgage or surrender this Township Licence with the consent of the LE (which must not be unreasonably withheld); and
- (b) otherwise may not:
  - (i) part with or share possession of land or Improvements licensed under this Township Licence other than to or with a Relative; or
  - (ii) grant a sublicence,

without the prior written consent of the Land Trust and the LE (whose consent in both instances will not be unreasonably withheld);

## **10. Sublicences and assignment**

### **10.1 Grant of Sublicence**

Subject to clause 6, clause 9(b) and the provisions in this clause 10, the Licensee may grant a Sublicence provided that the Licensee ensures that:

- (a) the term of any Sublicence (including any options) does not exceed the balance of the Term then remaining less 1 day;
- (b) subject to clause 18, the Sublicence expires or determines automatically upon expiration or early determination of this Township Licence;
- (c) all Sublicences contain the Township Licence Mandatory Terms with the necessary changes;
- (d) any special conditions contained in a Sublicence are not inconsistent with the Township Licence Mandatory Terms contained in this Township Licence and to that end, any special condition is void to the extent of the inconsistency;
- (e) a Sublicensee does not
  - (i) transfer, mortgage or surrender its Sublicence;
  - (ii) part with or share possession of land or Improvements licensed under its Sublicence other than to or with a Relative; or
  - (iii) grant a licence to occupy or use, land or Improvements licensed under its Sublicence,

without the prior written consent of the LE and Land Trust (which consent will not be unreasonably withheld);
- (f) any sublicence to occupy or use, and any parting or sharing of possession of, any land or Improvements licensed under a Sublicence is subject to clause 6 and the requirements under that clause to obtain a Permit; and

- (g) each Sublicensee observes and complies with its obligations under its Sublicence.

## **10.2 Copy of Sublicence**

The Licensee must provide a copy of each Sublicence to the LE within 10 Business Days after execution or such other period as agreed by the parties.

## **10.3 Interpretation**

If there is any inconsistency between the Township Licence Mandatory Terms and the terms of any Sublicence, the Township Licence Mandatory Terms will take precedence to the extent of such inconsistency.

## **10.4 Amendments and termination**

The LE may, by written direction to the Licensee, demand that the Licensee amend or terminate a Sublicence not granted in accordance with this Township Licence. The Licensee must terminate or amend (as the case may be) any Sublicence not granted in accordance with this Township Licence if directed to do so by the LE.

## **10.5 Restrictions on the grant to Non-Tiwis**

The Licensee must not assign this Township Licence, which would directly result in the number of Non-Tiwi Permanent Residents of the Township exceeding 15% of the number of Permanent Residents in the Township (**Population Limitation**) at the time this Township Licence is assigned or an Sublicence is granted or such other percentage notified by the LE to the Licensee.

## **10.6 Fit and proper**

- (a) The Licensee must not assign this Township Licence or grant a Sublicence to any person unless satisfied that the applicant is a fit and proper person to accept an assignment of this Township Licence or hold a Sublicence.
- (b) A person is not a fit and proper person if that person has been convicted of a Sexual or Crime against Children Offence at any time and in any jurisdiction.
- (c) In making its decision to assign this Township Licence or grant a Sublicence, the Licensee must have due regard to any reasonable guidelines developed by the Consultative Forum, from time to time.
- (d) The Licensee must obtain, and may rely upon, a national police record check from the Relevant Authority (copy of which must be supplied to the LE) to determine whether a person has been convicted of a Sexual or Crime against Children Offence.
- (e) References in this clause 10.6 to an applicant not being a fit and proper person are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate not being a fit and proper person.

### 10.7 Community Benefit Organisation

- (a) The Licensee must not assign this Township Licence or grant a Sublicence to any Community Benefit Organisation without having due regard to any Community Benefit sublicence guidelines prepared by the Consultative Forum, from time to time (**Community Benefit Organisation Township Licence Guidelines**).
- (b) The Licensee acknowledges that the Consultative Forum may prepare Community Benefit Organisation Township Licence Guidelines that prescribe reasonable requirements and restrictions on the assignment of this Township Licence or grant of a Sublicence to Community Benefit Organisations.

### 10.8 Permitted Use

- (a) The Licensee may only grant a Sublicence for the Permitted Use.
- (b) In addition to complying with any applicable Law and Planning Scheme, the Licensee must notify the LE and the public of any proposal to vary the Permitted Use of a Sublicence. Members of the public must have sufficient opportunity to comment or object to such variation.
- (c) Notification under clause 10.8(b) requires the Licensee to place such notice in the local newspaper, other media as appropriate, on the local noticeboard or as otherwise reasonably appropriate in the circumstances to bring the proposed variation of the Permitted Use specified in the Sublicence to the attention of the Township community. The notice must include details of how any person may object.
- (d) If the Licensee receives any objection to the variation of a Permitted Use specified in any Sublicence that would otherwise be permitted under the Planning Scheme or any Law, the LE in deciding whether or not to approve the variation of the Permitted Use must have due regard to any guidelines prepared by the Consultative Forum, from time to time.

### 10.9 Respect for Tiwi Culture

- (a) The Licensee must make reasonable efforts to ensure that all Sublicensees are familiar with, and show respect for, Aboriginal Tradition as it applies to the Land.
- (b) The Licensee will not be in breach of this clause 10.9:
  - (i) if the Licensee provides each Sublicensee with written information developed in conjunction with the Consultative Forum and the Land Trust; and
  - (ii) the Licensee receives a written acknowledgment from each Sublicensee stating that the Sublicensee has read and understood the information provided.
- (c) References in this clause 10.9 to an applicant being familiar with and showing respect for Aboriginal Tradition are, where the applicant is a body corporate, references to any director or other person concerned in the management of the body corporate being familiar with and showing respect for Aboriginal Tradition.

**10.10 Sacred Site**

- (a) The Licensee acknowledges that an assignment of this Township Licence or granting of an Sublicence for any part of the Premises:
  - (i) on which a Sacred Site is located; or
  - (ii) within a reasonable distance from a Sacred Site,
 may only be granted to the Custodian of that Sacred Site or to an authority charged with its preservation.
- (b) Any Sublicence granted to the Custodian of a Sacred Site or to an authority charged with its preservation may be on terms more favourable to the Custodian of a Sacred Site or to an authority charged with its preservation than commercial terms.

**10.11 No release of liability**

The Licensee acknowledges that an assignment of this Township Licence or the granting of a Sublicence pursuant to this clause 10 will not release the Licensee from any of its obligations or liabilities under this Township Licence.

**11. Restrictions on the grant to Non-Tiwis**

The Licensee must not grant a Sublicence or vary a Sublicence, which would directly result in the number of Non-Tiwi Permanent Residents of the Township exceeding the Population Limitation at the time the Sublicence is granted or varied.

**12. Third Party Occupier acts or omissions**

The parties acknowledge and agree that:

- (a) any act or omission by any Sublicensee on or in connection with the Premises or any Improvements or part of the Premises (**Third Party Occupier**) that would constitute a breach of this Township Licence if committed by the Licensee is, for the purposes of this Township Licence, deemed to be a breach of the Township Licence;
- (b) the grant of any right to any Third Party Occupier in connection with the Premises or any Improvements or part of the Premises does not release the Licensee from its obligations under this Township Licence, including but not limited to, the grant of any Sublicence or any other right, whether authorised by this Township Licence or not; and
- (c) nothing in this Township Licence releases the Licensee from the acts or omissions of any Third Party Occupier on or in connection with the Premises or the Improvements.

**13. Use of Premises****13.1 Permitted Use**

The Licensee must only use the Premises for the Permitted Use.

### 13.2 Compliance with Laws and Planning Scheme

The Licensee must at its sole cost and expense comply with all Laws and any Planning Scheme which affect or relate to the Premises and the use or occupation of the Premises and its Improvements regardless of whether the Law or Planning Scheme requires compliance by either or both of the Licensee and the LE or any Third Party except to the extent that such compliance requires the Licensee to undertake structural alterations or additions to the LE's Improvements, unless such structural alterations or additions are occasioned or required by reason of:

- (a) the nature of the particular business conducted by the Licensee on the Premises;  
or
- (b) any negligence or default of the Licensee.

### 13.3 Compliance with alcohol management plans

Notwithstanding clause 13.2 and for the avoidance of doubt, the Licensee must comply with any alcohol management plan or other alcohol related initiative implemented in relation to the Township.

### 13.4 Sacred Sites

- (a) The parties acknowledge that the register of Sacred Sites maintained by the Aboriginal Areas Protection Authority may not contain all Sacred Sites in the Township.
- (b) If the Premises is a Sacred Site, before dealing in any way with the Premises, the Licensee must consult the Custodian of that Sacred Site.
- (c) All Work on and use of the land in the Premises must be carried out in accordance with an Authority Certificate.
- (d) The Licensee can rely upon and will not otherwise be in breach of this clause 13.4 if it undertakes any Works permitted by, and in accordance with an Authority Certificate.
- (e) If the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* is repealed or amended to the extent that no Government Agency is responsible for regulating Work on, or any use of the Land that that may affect, damage or interfere with Sacred Sites, then the Licensee must:
  - (i) consult with the Custodians of Sacred Sites on or in the vicinity of the land that may be affected by the proposed use or Work; and
  - (ii) complete any Work and use the land with respect and consideration to any Sacred Sites that may be affected,
 so as to prevent any harm or damage to, or interference with those Sacred Sites.
- (f) The parties acknowledge that all information relating to Sacred Sites is confidential information and may only be disclosed with the express permission of the Custodian for that Sacred Site.



### 13.5 Signage

Any signage placed on the Premises by or on behalf of the Licensee must:

- (a) comply with all applicable Laws;
- (b) comply with voluntary codes of conduct established by the advertising industry;
- (c) not depict political, religious or other subject matter which is contentious; and
- (d) not depict subject matter which is considered offensive to the general Tiwi community.

### 13.6 Nuisances

- (a) The Licensee must not at any time during the Term:
  - (i) use, exercise, carry on or permit or suffer to be used, exercised or carried on the Premises any noxious or offensive act, trade, business, occupation or calling; or
  - (ii) do or omit or permit or suffer to be done or omitted any act, matter or thing in, on or about the Premises which is or may become an annoyance, nuisance, grievance or disturbance to any other occupier or owner of adjacent property.
- (b) The parties agree that the proper use of the Premises for the Permitted Use will not be a breach of this clause 13.6.

## 14. Designated General Access Areas

### 14.1 Classification of land as a Designated General Access Area

- (a) The parties agree that for the purposes of access and Township amenity, some areas of land in the Township, which may include the Premises, must be classified as a designated general access area (**Designated General Access Area**). The classification of an area of land in the Township as a Designated General Access Area entitles:
  - (i) Aboriginal people who would be entitled to enter and use land in the Township but for this Township Licence; and
  - (ii) other persons who are lawfully in the Township,to enter and use that Designated General Access Area.

### 14.2 Rules for use of a Designated General Access Area

The Licensee agrees to comply with rules made by the LE about the use of all or any Designated General Access Area.

## **15. Planning**

### **15.1 Northern Territory Planning Scheme and Laws to apply**

- (a) Subject to clause 15.2, the Licensee is not permitted to undertake any Development or Construction of any Building other than in accordance with the Planning Scheme, any applicable Laws and with the LE's prior written consent.
- (b) Where no Planning Scheme applies to the Township, the Licensee must have due regard to any planning guidelines or directions developed by the Consultative Forum, from time to time, for any Development in the Township.

### **15.2 Limit on Development**

Notwithstanding clause 15.1, the Licensee is not permitted to undertake or allow any Development or Construction of any Building:

- (a) in excess of 2 storeys in height; or
- (b) on any Foreshore,

without the consent of the Consultative Forum and the LE.

## **16. Environmental compliance, garbage, asbestos and stormwater**

### **16.1 Environmental**

During the Term the Licensee covenants:

- (a) not to:
  - (i) bring, store, abandon or dump any Industrial Waste or potentially Hazardous Substance on the Premises in a way that contravenes any applicable Environmental Law; or
  - (ii) discharge any Industrial Waste, Hazardous Substance or any offensive matter on to the Premises; or
  - (iii) handle any Industrial Waste or potentially Hazardous Substance in a manner likely to create an Environmental Hazard; or
  - (iv) use the Premises or allow the Premises to be used so that:
    - (A) any Industrial Waste or potentially Hazardous Substance is abandoned or dumped on the Premises; or
    - (B) any Industrial Waste or potentially Hazardous Substance is handled in a manner which is likely to cause an Environmental Hazard;
  - (v) subject to clause 16.7, discharge any general waste on to public access areas or the Premises;
- (b) not to install any underground Industrial Waste or potentially Hazardous Substance pipes or storage tanks within the ground of the Premises or reinstate

the use of any abandoned or unused underground pipes or underground storage tanks within the Premises without prior written consent of the LE; and

- (c) without limiting the generality of clause 13.2, to:
  - (i) comply with all Environmental Laws; and
  - (ii) obtain and maintain in full force and effect all permits and licences; and
  - (iii) comply with the terms of all permits and licences,

required in order to release or emit anything from the Premises into the air or water or on the ground or otherwise into the Environment or in order to release or emit any substantial noise.

## **16.2 Asbestos**

- (a) Without limiting the generality of clause 13.2, the Licensee covenants that during the Term it will at its own cost comply with or procure compliance with all Asbestos Legislation (including all notices and orders served pursuant to any Asbestos Legislation) which relates to any repairs, improvements, demolition or other structural work undertaken by the Licensee.
- (b) The Licensee acknowledges that it will not be entitled to claim any damages, costs or compensation from the LE as a result of asbestos being present on the Premises or the Land or located in any Improvement.

## **16.3 Contamination**

The Licensee acknowledges that it will not be entitled to claim any damages, costs or compensation from the LE as a result of Contamination being present on the Premises or the Land or located in any Improvement.

## **16.4 Stormwater Contamination**

Without limiting the generality of clause 13.2, the Licensee covenants that during the Term it will, at its own cost, comply with all Environmental Laws (including all notices and orders served pursuant to Environmental Laws) which relate to stormwater leaving the Premises.

## **16.5 Water**

The Licensee must not Contaminate or otherwise pollute water naturally on the Premises including all water in springs, soaks or underground streams and all water in any surface streams and the banks and the beds of such springs, soaks and streams.

## **16.6 Introduction of fauna and flora**

The Licensee must comply with any quarantine policy adopted by the Land Council or Land Trust, from time to time, and must not, without the previous written consent of the Land Council, introduce to the Premises:

- (a) any seed, cutting, plant, root, bulb, tuber, rhizome, stolon or spore of any form of vegetation or flora, other than:

- (i) native vegetation or flora;
  - (ii) regular food merchandise; and
  - (iii) other items approved by the Consultative Forum; or
- (b) any fauna other than:
  - (i) native fauna; or
  - (ii) animal species approved by the Consultative Forum.

### **16.7 Garbage**

- (a) The Licensee agrees to use its best endeavours to minimise and remove from the Premises all general waste produced by it from the Premises.
- (b) Where the general waste disposal facility used on the Commencement Date is closed, decommissioned or otherwise unavailable, the Licensee must dispose of waste in such manner as directed by the LE.

## **17. Land Trust's rights**

### **17.1 Notices**

- (a) The Licensee must notify both the LE and the Land Trust of any notice the Licensee receives relating to the LE, the Land Trust or the Premises.
- (b) The Licensee must give notice to the Land Trust in all circumstances where the Licensee is required to give notice to the LE under this Township Licence.
- (c) The Licensee must give the LE a copy of any notice from the Land Trust.

### **17.2 LE and the Land Trust may enter the Premises in some circumstances**

The Licensee must allow the LE and the Land Trust to have access to the Premises to:

- (a) inspect the Premises;
- (b) do any work to the Premises required or permitted by this Township Licence; and
- (c) exercise any rights and comply with any obligations under the Head Lease concerning the Premises.

### **17.3 Compliance with Township Licence**

The Licensee must comply with the terms of the Township Licence if requested to do so by the Land Trust.

### **17.4 Termination or amendment of Township Licence**

- (a) The Licensee acknowledges and agrees that this Township Licence may be terminated or amended by written notice by the LE (at the direction of the Land Trust) where this Township Licence has not been granted strictly in accordance with the requirements under the Head Lease.

- (b) Any termination of the Township Licence does not affect any rights that the Licensee may have against the LE as a result of a breach of any warranty given by the LE.

## **18. Novation of Township Licence**

Upon the early determination of this Township Licence the Licensee must (at its cost), upon the request of the LE, use all reasonable endeavours to novate or assign all Sublicences to the LE or a party nominated by the LE without payment.

## **19. Township Licence ends if Head Lease ends**

This Township Licence will automatically end if the Head Lease ends for any reason and this Township Licence is not novated or assigned pursuant to clause 27.4 of the Head Lease. If this Township Licence ends under this clause, this does not affect rights that arise before, or because of, the ending of this Township Licence.

## **20. Grant of licence only**

The Licensee agrees with the LE that:

- (a) the Licensee is not entitled to exclusive occupation of the Premises;
- (b) the LE may use, or permit other parties to use, the Premises;
- (c) this Township Licence does not create any estate or interest in the Premises, other than a contractual right;
- (d) this Township Licence does not constitute a lease at law and the Licensee will not claim before a court or tribunal that this Township Licence constitutes a lease at law; and
- (e) in the event that a court or tribunal determines that this Township Licence is a lease at law, the LE may, at its option, terminate this Township Licence by written notice to the Licensee.

**Part B: Township Licence Discretionary Terms****21. Good faith**

The parties must act reasonably and in good faith in performing their respective obligations under this Township Licence.

**22. Survival**

In addition to this clause 22, the following clauses survive the expiration or earlier determination of this Township Licence: clauses 32, 16, 33, 35, 36, 37.8, 41, 18 and 42.

**23. Grant of Township Licence**

- (a) The LE grants to the Licensee a licence of the Premises, subject to any existing rights, titles or other interests, for the Term.
- (b) The Licensee accepts the grant of a licence of the Premises upon these terms and otherwise subject to the provisions of this Township Licence.
- (c) For the avoidance of doubt, the licence of the Premises includes a licence of all Existing Improvements and Existing Services.
- (d) The LE warrants to the Licensee that the LE has the requisite power to grant this Township Licence.

**24. Implied covenants**

The covenants, powers and provisions implied in licences under any relevant legislation are hereby expressly excluded, except to the extent that they are expressly embodied in this Township Licence or to the extent only that it would be unlawful to exclude any such covenant, power or provision.

**25. Township Licence Amount**

The Licensee must pay the LE the Township Licence Amount in the manner specified in Item 9 without deduction or right of set-off.

**26. Condition Report****26.1 Content of Condition Report**

The LE has carried out an inspection of the Premises prior to the Commencement Date and the results of that inspection are set out in the Condition Report.

**26.2 Resident to carry out inspection**

The Licensee must, within 3 days after the Commencement Date:

- (a) inspect the Premises;
- (b) indicate on the Condition Report the Licensee's agreement or disagreement with its contents; and

- (c) provide the completed Condition Report to the LE.

### **26.3 Failure to return Condition Report**

If the Licensee fails to complete and return the Condition Report in accordance with clause 26.2, the Licensee will be taken for the purposes of this Township Licence to agree with the contents of the Condition Report annexed to this Township Licence.

## **27. Improvements**

### **27.1 Maintenance of Land Trust's Improvements**

- (a) Having regard to the condition of the Land Trust's Improvements on the Commencement Date, the Licensee must maintain, repair or replace Land Trust's Improvements in the Premises.
- (b) The Licensee must give the LE prompt notice in writing of any damage to or defect in the Land Trust's Improvements or anything which is likely to cause any damage, deterioration, danger, risk or hazard to the structural parts of the Land Trust's Improvements.

### **27.2 Existing Improvements**

Existing Improvements subject to an existing right, title or other interest will remain subject to the terms of that existing right, title or other interest, for the period of the existing right, title or other interest.

### **27.3 Other obligations**

Where any of the Services require regular servicing, maintenance and repair, the Licensee must:

- (a) enter into and maintain service contracts with reputable persons for the management, operation, servicing, maintenance and repair of the Services; and
- (b) ensure that appropriate Service commitments are met.

### **27.4 LE's rights**

- (a) The LE reserves the right to:
  - (i) carry out, or procure the carrying out of, any Works that may be required to comply with any applicable Law, Planning Scheme or Requirement which are not the responsibility of the Licensee or which are the responsibility of the Licensee but with which the Licensee fails to comply;
  - (ii) enter the Premises for the purposes of maintenance, use, repair or replacement of any Services provided by the LE or the Land Trust; and
  - (iii) enter the Premises for the purposes of maintenance, repair or replacement of any of LE's or the Land Trust's Improvements.
- (b) The LE may exercise its rights under clause 27.4(a):

- (i) on giving prior reasonable written notice (except in the case of an emergency when no notice will be required);
- (ii) at reasonable times; and
- (iii) if reasonably required by the Licensee, accompanied by a person appointed by the Licensee.

## 28. Repairs

- (a) The Licensee must, throughout the Term and at the Licensee's expense, maintain the Premises and all fixtures and fittings on the Premises in as good and substantial repair, order and condition as the same were at the Commencement Date.
- (b) The Licensee must upon the termination of this Township Licence yield up the Premises together with all fixtures, fittings, furniture and chattels belonging to the LE in a clean and sanitary condition and in as good repair and condition as the same were in at the Commencement Date, fair wear and tear excepted.
- (c) At least 7 days prior to the expiry or earlier termination of this Township Licence, the LE will enter and inspect the Premises and assess the condition of the Premises against the Condition Report completed and returned by the Licensee under clause 26.2 or, where the Licensee has not completed and returned the Condition Report, the Condition Report annexed to this Township Licence.
- (d) If the Licensee fails to fulfil the obligations under clauses 28(a) and 28(b) (as disclosed by the inspection carried out by the LE under clause 28(c)), the LE may arrange for any necessary repairs or cleaning to be carried out and the reasonable cost thereof will be payable by the Licensee as a debt due to the LE.
- (e) The LE may during the Term give the Licensee a notice requiring the Licensee to:
  - (i) replace any missing furniture, chattels, fixtures and fittings which belong to the LE; or
  - (ii) repair any defects in the Premises, not being defects the result of fair wear and tear, storm, tempest, lightning, flood, earthquake, fire or other act of God (excepting fire caused by the negligence or deliberate act of the Licensee or any other person on the Premises).
- (f) The Licensee must comply with such a notice within 30 days of receipt or such longer period as may be allowed by the LE and, if the Licensee fails to so comply, the LE may, at its option, make any necessary repairs and the cost of same will be payable by the Licensee on demand as a debt due to the LE.
- (g) The LE will carry out such repairs and maintenance of a nature not covered by the Licensee's obligations under this Township Licence as are required to ensure that the Premises remain in a fit condition for the Permitted Use.
- (h) Without prejudice to any other remedy available to the LE in respect of a breach of this Township Licence, where a breach by the Licensee of this clause results in further damage to the Premises that would not have occurred if the Licensee had complied with this clause, the cost of repair of that further damage will be payable by the Licensee on demand as a debt due to the LE.



## **29. Rates, taxes and charges**

### **29.1 Outgoings**

- (a) The Licensee must pay on time any Outgoing (or in the Preliminary Licence Year or Final Licence Year, the appropriate part of any Outgoing) which:
  - (i) is imposed by a Government Agency or other Service provider directly on the Premises; or
  - (ii) relates solely to the Premises,
 whether issued against the Land Trust, the Land Council, the LE, or the Licensee.
- (b) The Licensee must pay the amounts under this clause 29.1 direct to any Government Agency or other person imposing the charge on time, or, at the LE's request, to the LE in time for the LE to make the payment on time.
- (c) If the Premises is not separately assessed for an Outgoing, the Licensee must pay the Licensee's Percentage of the Outgoing to the LE within 7 Business Days of demand.
- (d) The Licensee must give the LE receipts for any Outgoings paid by the Licensee within 7 Business Days of request by the LE.

### **29.2 Charges for Services**

- (a) The LE, the Land Trust and the Land Council are not liable for:
  - (i) the cost of any Services supplied, metered, consumed or connected to the Premises; or
  - (ii) the cost of installing separate meters for any Services capable of being separately metered.
- (b) The Licensee must pay on time any amounts charged or levied directly upon the LE or the Land Trust relating to the use or supply of Services (except where the Services are for the benefit of the Land Trust or Land Council) direct to any Government Agency or other person imposing the charge, or, at the LE's request, to the LE in time for the LE to make the payment on time.
- (c) If required by the LE, the Licensee must pay for the cost of installing separate meters to measure the cost of the Services.

### **29.3 Costs of Township Licence**

- (a) The Licensee must pay to the LE on demand:
  - (i) the LE's legal costs and disbursements on a full indemnity basis for:
    - (A) the exercise of any discretion or consent required to be given under this Township Licence; and
    - (B) any default by the Licensee under this Township Licence;

- (ii) all other costs of any default by the Licensee under this Township Licence;
  - (iii) Interest on any Township Licence Amount or other money payable to the LE under this Township Licence which has not been paid by the due date for payment; and
  - (iv) charges for all Works carried out by the LE or the Land Trust under clause 27.4(a) in circumstances where the Licensee is obliged to carry out works but has failed to do so.
- (b) The right of the LE to require the Licensee to pay interest is in addition to, and does not affect, any other right or remedy of the LE in respect of the Licensee's failure to pay any moneys under this Township Licence by the due date for payment.

#### **29.4 Stamp duty**

For the avoidance of doubt, the Licensee must pay any stamp duty assessed on this Township Licence.

#### **29.5 Shared Services**

Where the infrastructure which provides or supplies any of the Services provides or supplies those Services not only to the Premises but also to other parts of the Township, the Licensee must pay or reimburse the LE a proportion of any costs charged or levied by the Services provider in respect of the repair or maintenance of that infrastructure, such proportion to be calculated as follows:

- (a) in respect of the infrastructure relating to a Service (except drainage), the proportion will be the proportion which the number of outlets for the relevant Service within the Premises serviced by that infrastructure bears to the total number of outlets for that Service within the total area of the Land which is serviced by that infrastructure; and
- (b) in respect of drainage, the proportion will be the proportion which the area of that part of the Premises which is serviced by the relevant drain bears to the total area of the Land which is serviced by that drain.

### **30. GST**

#### **30.1 Definitions**

In this clause 30:

- (a) the expressions **Consideration**, **Input Tax Credit**, **Recipient**, **Supply**, **Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- (b) **Supplier** means any party treated by the GST Act as making a Supply under this Township Licence.

#### **30.2 Consideration is GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Township Licence are exclusive of GST.

### 30.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Township Licence, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Township Licence.

### 30.4 Reimbursement of expenses

If this Township Licence requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

## 31. Use of Premises

### 31.1 No warranty as to use

The Licensee acknowledges that none of the LE, the Land Trust, the Land Council and any Third Party has made any representation, given any advice or given any warranty as to:

- (a) how the Premises may be used;
- (b) the suitability of the Premises for use for, or in connection with, the Permitted Use including any necessary rights and easements benefiting the Premises;
- (c) any prohibitions and restrictions relating to the Premises;
- (d) the condition of the Premises; or
- (e) the compliance or otherwise of the Premises with any applicable Laws or Approvals.

### 31.2 Licensee's acknowledgments

- (a) The Licensee acknowledges that it has not relied on any representation, advice or warranty from the LE, the Land Trust, the Land Council or any Third Party in respect of the matters listed in clause 31.1.

- (b) The Licensee acknowledges that it is aware of and has made its own appraisal of the matters listed in clause 31.1.
- (c) The Licensee acknowledges that nothing in this Township Licence requires the LE to grant access to any Land other than the Premises.

### **31.3 Approvals**

The Licensee must at its sole cost and expense obtain, maintain and comply with all Approvals which from time to time may be necessary or appropriate for the Premises or the use or occupation of the Premises regardless of whether the Approval requires compliance by either or both of the Licensee and the LE or any Third Party.

### **31.4 Compliance with notices**

The Licensee must at its sole cost and expense comply with all notices, orders and directions issued or given by a Government Agency which affect or relate to the Premises or the use or occupation of the Premises regardless of whether the notice, order or direction is addressed to or requires compliance by either or both of the Licensee and the LE or any Third Party except:

- (a) to the extent that the LE is required to comply with any Law pursuant to clause 32.1; or
- (b) to the extent that such compliance requires the Licensee to undertake structural alterations or additions to the LE's Improvements, unless such structural alterations or additions are occasioned or required by reason of:
  - (i) the nature of the particular business conducted by the Licensee on the Premises; or
  - (ii) any negligence or default of the Licensee.

### **31.5 Notices**

A party which receives a notice, order or direction from a Government Agency which affects or relates to the Premises or the use or occupation of the Premises must promptly give a copy of that notice, order or direction to the other party.

## **32. Contamination**

### **32.1 Clean-Up Notice**

If a Clean-Up Notice relating to Contamination existing in, on or under the Premises or which has emanated or is emanating from the Premises is served during the Term then:

- (a) if received by the Licensee, the Licensee must promptly provide the LE with a copy of the Clean-Up Notice;
- (b) if received by the LE, the LE must promptly provide the Licensee with a copy of the Clean-Up Notice; and
- (c) the Licensee will at its sole cost and expense be responsible for complying with the Clean-Up Notice.

**32.2 Indemnity by the Licensee**

Without limiting the generality of clause 33.2, the Licensee indemnifies and will keep indemnified the LE, Land Trust and the Land Council from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind arising from a failure by the Licensee to comply with its obligations under clause 32.1(c) except to the extent that the failure was caused or contributed to by a wilful or negligent act or omission of the LE, Land Trust or the Land Council.

**33. Licensee's indemnity****33.1 Risk**

The Licensee:

- (a) uses and occupies the Premises;
- (b) uses the Improvements (if any); and
- (c) all Services,

at the Licensee's own risk.

**33.2 Licensee indemnifies the LE**

- (a) Subject to the terms of this Township Licence, the Licensee must indemnify and keep indemnified the LE against all actions, claims, losses, demands, damages, liabilities, suits, costs and expenses whatsoever (including legal costs on a full indemnity basis) resulting from:

- (i) any damage or loss of property; and
- (ii) the death of or injury to any person,

which is or may be suffered or sustained in or near the Premises, whether occupied by the Licensee or not, in circumstances which relate in any way to the use and occupation of the Premises.

- (b) This indemnity will not apply to the extent that the action, claim, loss, demand, damage, liability, suit, cost or expense is caused directly by a deliberate or negligent act or omission of the LE.

**33.3 Licensee releases the LE**

- (a) The Licensee releases the LE and the LE's Agents to the full extent permitted by Law from all claims, liabilities, actions, suits, demands, costs and expenses of every kind resulting from any:
  - (i) loss of or damage to any property in or near the Premises;
  - (ii) death or injury of any person occurring on any part of or near the Premises;
  - (iii) act or omission of the LE or the LE's Agents in or near the Township; and

- (iv) failure of any of the Services.
- (b) The Licensee releases and forever discharges the LE from any and all liability arising from any disruption to the Licensee's use of the Premises including but not limited to any claim for the LE's breach of the covenant of quiet enjoyment arising from Works undertaken pursuant to clause 3.
- (c) This release will not apply to the extent that any claim, liability, action, suit, demand, cost or expense is caused directly by a deliberate or negligent act or omission of the LE.

## **34. Insurance**

### **34.1 Obligation to insure Premises**

The Licensee must effect and maintain insurance to cover the Premises:

- (a) against loss destruction or damage for not less than [*insert amount*] for any one occurrence; and
- (b) with cover which extends to include claim contingencies covering removal of debris or demolition costs and professional fees of not less than \$5 million for any one occurrence.

### **34.2 Obligation to insure for public liability**

The Licensee must effect and maintain insurance with a limit of not less than \$20 million for any one occurrence to cover:

- (a) Personal Injury; and
- (b) loss destruction or damage to any property.

### **34.3 Obligation to insure for workers compensation**

The Licensee must effect and maintain workers compensation insurance covering any liability, loss, claim or proceedings whatsoever, whether arising by virtue of any statute relating to workers compensation, accident compensation legislation, employer's liability, or at common law, by any person employed by the Licensee.

### **34.4 Periods of insurance**

The Insurances referred to in this clause 34 must be:

- (a) in force at the Commencement Date;
- (b) maintained effective until the expiration or earlier determination of this Township Licence;
- (c) maintained for the whole of the Premises for the Licensee's duration of occupation of the Premises; and
- (d) with an insurer approved by the LE.

**34.5 Insurers and policies**

- (a) The Licensee must:
  - (i) not alter any insurance policy required under this clause 34 during the Term to the extent such alteration results in the insurance not complying with this clause 34; and
  - (ii) give immediate notice to the LE of any cancellation of any policy.
- (b) The LE reserves the right to require the Licensee to effect and maintain additional insurance or to increase the amount of existing insurance from time to time during the Term where a reasonable requirement to do so can be demonstrated and such insurance is available in the commercial insurance market on commercially reasonable terms and conditions.
- (c) All policies of insurance (other than the insurances required under clause 34.3) must note the interest of the LE.

**34.6 Licensee to satisfy itself**

The Licensee must take responsibility itself for deciding whether to insure any risks which have not been covered by the policies referred to in this clause 34 or to cover any exclusions, conditions or excesses in the policies which it may wish to insure against or cover.

**34.7 Insurance policies to waive rights of subrogation**

The Licensee must ensure that each policy of insurance effected and maintained pursuant to this clause 34, other than the insurance referred to in clause 34.3, provides that the insurer waives all rights remedies or relief to which it might become entitled by way of subrogation to the Licensee as against the LE, the Land Trust, the Land Council and their successors.

**34.8 No limitation**

This clause 34 does not detract from any of the Licensee's obligations under this Township Licence.

**34.9 Licensee must apply proceeds**

The Licensee must apply all proceeds of the insurance referred to in clause 34.1 to the cost of repair and replacement of the Premises.

**35. Reinstatement****35.1 Licensee to reinstate**

- (a) None of the Land Council, the Land Trust and the LE have any obligation to reinstate the Premises if at any time during the Term any part of a Premises is wholly or partly damaged or destroyed or becomes unfit for, or incapable of use or occupation.

- (b) The Licensee must apply all proceeds of the insurance referred to in clause 34 towards the cost of reinstatement or repair or otherwise as agreed in writing by the LE.

### **35.2 No right to damages**

The Licensee will not have any right, action or claim for loss, damage or compensation against the LE as a result of damage to or destruction of any part of a Premises except to the extent that the damage or destruction is caused or contributed to by a wilful or negligent act or omission of the LE or the LE's Agents.

## **36. Consent**

The LE may impose conditions on its consent to any matter requiring consent under this Township Licence.

## **37. Default**

### **37.1 Occurrence of Default Event**

Without prejudice to the LE's rights pursuant to clause 37.8, if a Default Event occurs, the LE may (but is not obliged) give the Licensee a notice in writing:

- (a) specifying that a Default Event has occurred;
- (b) setting out reasonable details of the event or circumstance constituting the Default Event; and
- (c) in the case of a Default Event other than a Financial Default, specifying the Cure Period.

### **37.2 Financial Default**

If the Licensee commits a Financial Default and fails to remedy the breach within 30 days after receiving the Default Notice (should one be served), the LE may terminate this Township Licence immediately by notice to the Licensee.

### **37.3 Interest payable by Licensee**

- (a) Notwithstanding clause 37.2, the Licensee must pay to the LE Interest on any amount which is the subject of a Financial Default until that amount is paid to the LE.
- (b) Interest payable pursuant to this Township Licence:
  - (i) is to be calculated daily on the amount owing by the Licensee from the due date for payment;
  - (ii) is to accrue from the due date for payment;
  - (iii) will continue to accrue until the overdue money (and all Interest accrued on it) is paid in full;
  - (iv) is payable at the Default Rate; and



- (v) will be capitalised on the last day of each month if not paid.
- (c) The right to require payment of Interest under this clause 37.3 is without prejudice to any other rights and remedies of the LE in respect of the Financial Default.
- (d) If a liability under this Township Licence becomes merged in an order or judgment of a court of competent jurisdiction, the Licensee must pay Interest to the LE on the amount of that liability as an independent obligation. This Interest accrues from the date the liability becomes due for payment (or at the time of the order or judgment) until it is paid, at a rate that is the higher of the rate payable under the order or judgment and the Default Rate.

#### **37.4 Remedies for other Default Events**

- (a) If the Licensee commits a Default Event, other than a Financial Default, then within 7 days of receipt of the Default Notice (should one be served), the Licensee must provide to the LE a Cure Plan in respect of that Default Event. The LE must not unreasonably refuse a request by the Licensee for an extension of time to prepare the Cure Plan.
- (b) Following receipt of a Default Notice, the Licensee will be permitted to cure the Default Event within the Cure Period and, if applicable, in accordance with the Cure Plan.
- (c) If the Licensee requires an extension to the Cure Period it may, not later than the expiration of the current Cure Period, provide to the LE:
  - (i) a revised Cure Plan; and
  - (ii) evidence that:
    - (A) the Licensee has diligently pursued and is continuing to diligently pursue a feasible and practicable programme of rectification; and
    - (B) the Default Event cannot be (or could not have been), with reasonable diligence, cured within the current Cure Period.
- (d) The LE must not unreasonably refuse to grant an extension of the Cure Period.
- (e) If the Licensee commits a Default Event in relation to the Premises and the Default Event is not cured within the Cure Period then the LE may terminate the Township Licence immediately by notice to the Licensee.
- (f) The provisions of this clause 37.4 do not limit or reduce the rights of the LE to claim damages for breach of this Township Licence.

#### **37.5 Remedies for Termination Event**

If a Termination Event occurs, then the LE will be entitled to:

- (a) terminate this Township Licence immediately by written notice to the Licensee; and
- (b) exercise all legal and equitable rights and remedies available to the LE (whether under this Township Licence or otherwise).

**37.6 Waiver**

If this Township Licence, or the Licensee's right to occupy the Premises is terminated for any reason, the Licensee waives any rights it might otherwise have to pursue a claim of restitution of any kind including, without limitation, a claim of unjust enrichment.

**37.7 Consequences of termination**

Upon termination of this Township Licence, or the Licensee's right to occupy the Premises (whether through default or expiry or otherwise), the rights and obligations of the parties will cease except for:

- (a) any obligations arising or rights accrued as a result of an existing breach of this Township Licence; and
- (b) any obligations which are expressed to continue in accordance with the terms of this Township Licence.

**37.8 Re-Entry**

Despite anything to the contrary in this Township Licence, if any Township Licence Amount is 2 weeks or more in arrears (whether such Township Licence Amount will have been legally demanded or not) or if any term, condition or undertaking contained in this Township Licence is not observed or performed by the Licensee, the LE may re-enter the Premises or any part thereof in the name of the whole and this Township Licence will thereupon determine but without prejudice to any claim which the LE may have in respect of the breach of any term, condition or undertaking of this Township Licence.

**38. Damage to Licensee's furniture and effects**

The LE will not in any way be liable for any loss or damage to the Licensee's fittings, furniture and effects arising from any cause whatsoever, except as a result of negligence of the LE, its employees, agents or contractors.

**39. Licensee's fittings and fixtures**

The Licensee authorises the LE to remove and dispose of, in any manner the LE sees fit, any property left by the Licensee when vacating the Premises or to place any property so left in storage. All reasonable costs involved in the disposal or storage of such property will be payable by the Licensee and may be recovered as a debt due to the LE. If the LE has disposed of the property by sale, the costs of such sale, together with any other amount owed by the Licensee to the LE however incurred, will be a debt due to the LE and may be deducted from the proceeds of such sale and the balance paid to the Licensee.

**40. Overholding**

If the Licensee remains in occupation of the Premises without objection by the LE following the expiration or earlier determination of the Term, then:

- (a) the Licensee will be deemed to be a monthly licensee upon the same terms and conditions as are contained in this Township Licence so far as they are applicable to such a licence; and

- (b) such a licence will be determinable by either party on 30 days prior written notice, which notice may be given to expire at any time.

## **41. Obligations on expiration or termination**

### **41.1 Return of Premises**

The Licensee must return the Premises to the LE at the expiration, surrender or earlier determination of the Licensee's occupancy of the Premises in a condition consistent with its obligations under this Township Licence.

### **41.2 Removal of the Licensee's Improvements**

- (a) The Licensee must, if so required by the LE acting reasonably, at or prior to the expiration, surrender or earlier determination of the Licensee's occupancy of the Premises take, remove and carry away from the Premises all of the Licensee's Improvements other than Improvements for the ongoing use of the Township as a township.
- (b) The Licensee must immediately make good any damage to the Premises caused by the removal of the Licensee's Improvements and must remove all rubbish and leave the Premises in a clean state and condition.
- (c) The LE may at the Licensee's cost, remove or dispose of any of the Licensee's Improvements not removed on or prior to the expiration, surrender or earlier determination of the Licensee's occupancy of the Premises as required by the LE in accordance with clause 41.2(a).
- (d) The Licensee must not remove any Improvements or Services which are liable to become the property of the LE pursuant to clause 7.

## **42. General**

### **42.1 Amendments**

Subject to the Land Rights Act, the parties may from time to time by agreement in writing, amend or vary the provisions of this Township Licence.

### **42.2 Nature of obligations**

- (a) Any provision in this Township Licence which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Township Licence in favour of another is a separate obligation.

### **42.3 Entire understanding**

- (a) This Township Licence contains the entire understanding between the parties concerning the subject matter of the Township Licence and supersedes all prior communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Township Licence, that party has not relied on any representation, warranty or undertaking

of any kind made by or on behalf of the other party in relation to the subject matter of this Township Licence.

#### **42.4 No adverse construction**

This Township Licence is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

#### **42.5 Further assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Township Licence.

#### **42.6 No waiver**

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Township Licence does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Township Licence.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

#### **42.7 Severability**

Any provision of this Township Licence which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Township Licence in any other case,

without invalidating or affecting the remaining provisions of this Township Licence or the validity of that provision in any other jurisdiction.

#### **42.8 Successors and assigns**

This Township Licence binds and benefits the parties and their respective successors and permitted assigns under clause 42.9.

#### **42.9 No assignment**

Subject to the Land Rights Act, a party cannot assign or otherwise transfer the benefit of this Township Licence without the prior written consent of each other party.

#### **42.10 Consents and approvals**

Where anything depends on the consent or approval of a party then, unless this Township Licence provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

**42.11 Costs**

Each party must pay its own legal costs of and incidental to the preparation and completion of this Township Licence.

**42.12 Duty**

- (a) Any duty (including related interest or penalties) payable in respect of this Township Licence or any instrument created in connection with it must be paid by the Licensee.
- (b) The Licensee undertakes to keep the LE and the Land Council indemnified against all liability relating to the duty, fines and penalties.

**42.13 Governing law and jurisdiction**

- (a) This Township Licence is governed by and must be construed in accordance with the laws in force in the Northern Territory.
- (b) The parties submit to the exclusive jurisdiction of the courts of that Territory and the Commonwealth of Australia in respect of all matters arising out of or relating to this Township Licence, its performance or subject matter.

**42.14 Notices**

Any notice or other communication to or by a party under this Township Licence:

- (a) may be given by personal service, pre-paid registered post or facsimile;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) as set out in Item 10 or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, 2 Business Days (or 6 Business Days, if posted outside Australia) after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

#### **42.15 Counterparts**

If this Township Licence consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

#### **42.16 Conflicting provisions**

If there is any conflict between the main body of this Township Licence and any schedules or annexures comprising it, then the provisions of the main body of this Township Licence prevail.

#### **42.17 Non merger**

A term or condition of, or act done in connection with, this Township Licence does not operate as a merger of any of the rights or remedies of the parties under this Township Licence and those rights and remedies continue unchanged.

#### **42.18 Operation of indemnities**

Unless this Township Licence expressly provides otherwise:

- (a) each indemnity in this Township Licence survives the expiry or termination of this Township Licence; and
- (b) a party may recover a payment under an indemnity in this Township Licence before it makes the payment in respect of which the indemnity is given.

#### **42.19 No right of set-off**

Unless this Township Licence expressly provides otherwise, a party has no right of set-off against a payment due to another party.

#### **42.20 Relationship of parties**

Unless this Township Licence expressly provides otherwise, nothing in this Township Licence may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

#### **42.21 Special Conditions**

- (a) This Township Licence is subject to the Special Conditions.
- (b) Where any of the Special Conditions are contrary to or inconsistent with the terms of this Township Licence, the terms of this Township Licence prevail.

**Schedule: Township Licence Particulars**

<b>Item</b>	<b>Particulars</b>
<b>1. Licensee</b> (page 1)	[insert]
<b>2. Premises</b> (clause 1.1)	[insert]
<b>3. Land</b> (clause 1.1)	As described in the Certificate of Title Volume 708 Folio 427
<b>4. Township</b> (clause 1.1)	That part of the Land described as 6798 on the Survey Plan S2007/183 copy of which is annexed to Annexure 2.
<b>5. Commencement Date</b> (clause 1.1)	[insert]
<b>6. Permitted Use</b> (clauses 1.1 and 13.1)	[insert]
<b>7. Term</b> (clause 1.1)	[insert]
<b>8. Township Licence Amount</b> (clause 1.1)	\$(insert)
<b>9. Township Licence Amount payments</b> (clause 1.1)	[insert]
<b>10. Notices</b> (clause 42.14)	<p>If to the LE:  The Executive Director of Township Leasing  Centraplaza  16 Bowes Street  WODEN ACT 2606</p> <p>Telephone:  (02) 6121 4028</p> <p>Facsimile:  (02) 6121 4150</p> <p>If to the Licensee :  [insert]</p>

	Telephone: [insert]  Facsimile: [insert]
--	--



**Executed as a deed.**

**[insert execution clauses of parties]**

**Annexure 1 – Special Conditions (clauses 1.1 and 42.21)**

**Annexure 2 – Township (clause 1.1 and Item 4)**

**Annexure 3 – Condition Report (clause 26)**

### **Annexure 3 - Consultative Forum Rules (clauses 1.1 and 23.6)**

#### **RULES FOR CONVENING AND CONDUCTING MEETINGS OF THE CONSULTATIVE FORUM**

The Consultative Forum is an initiative of the Tiwi Aboriginal Land Trust (**Land Trust**) and the Executive Director of Township Leasing (**LE**) to advise the parties of the 99 year Head Lease signed in respect to the Township of Nguuu (**Head Lease**).

The following rules are made by both the Land Trust and the LE to govern the operation and function of the Consultative Forum.

#### **1. Convening a Meeting of the Consultative Forum**

- 1.1 The Consultative Forum must meet annually and may hold such other meetings as are necessary to perform its functions under the Head Lease.
- 1.2 The Chairperson of the Consultative Forum may at any time convene a meeting of the Consultative Forum for the efficient conduct of its affairs.
- 1.3 The Chairperson must convene a meeting of the Consultative Forum at the request of at least 30% of the members of the Consultative Forum.
- 1.4 When convening a meeting of the Consultative Forum, the Chairperson should take into account any proposals or agreements by the Consultative Forum for future meetings and should ensure that the time and place of the meeting is convenient for as many members as possible.
- 1.5 A written notice of meeting is to be sent to every Consultative Forum member at least 14 days prior to such meeting.
- 1.6 The notice of a meeting must:
  - (a) specify the place, date and time for the meeting; and
  - (b) state the general nature of the business to be transacted at the meeting.
- 1.7 A meeting, or any proceeding at such a meeting is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any member of notice of the meeting.
- 1.8 The members of the Consultative Forum may waive the requirement of written notice of meeting by unanimous resolution of all members of the Consultative Forum.
- 1.9 Where the meeting of the Consultative Forum is convened by requisition of members, the notice convening such meeting must specify the business to be transacted at that meeting, and no other business other than that so specified may be transacted at such special meeting.

#### **2. Agenda**

- 2.1 The Agenda should be prepared by the LE in consultation with the Chairperson of the Consultative Forum.

- 2.2 Any member may request further Agenda items subject to the prior approval of the Chair.
- 2.3 The LE should arrange for the collation of Agenda papers and all supporting documentation and, subject to the clearance by the Chairperson of the Consultative Forum circulate to all members at least seven days before meetings.

### **3. The Chair**

- 3.1 The members must elect any member of the Consultative Forum to chair meetings of the Consultative Forum.
- 3.2 Where a general meeting is held and:
  - (a) a Chairperson has not been elected by the Directors as provided by paragraph 3.1; or
  - (b) the Chairperson declines to act; or
  - (c) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting,

the members of the Consultative Forum present must elect one of their number to be Chairperson of the meeting or part of the meeting (as the case may be).

### **4. Quorum**

- 4.1 No business of the Consultative Forum shall be transacted at a meeting of the Consultative Forum unless a quorum of members is present at the time when the meeting proceeds to business.
- 4.2 The quorum for a meeting of a Consultative Forum is such number of members that is equal to 50% of the members of the Consultative Forum for the time being and must include at least one member nominated by the Land Trust and one member nominated by the LE.
- 4.3 If a quorum of the Consultative Forum's Members is not present within half an hour after the time appointed for the meeting in the notice:
  - (a) the meeting must be dissolved if the meeting was convened on the requisition of members; or
  - (b) in any other case:
    - (i) the meeting will be adjourned to the date, time and place that the Chairperson specifies (or if the Chairperson does not specify such details, the meeting is adjourned to the same day in the next week at the same time and place) except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and
    - (ii) if at a meeting resumed under item 4.3(b)(i) a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.
- 4.4 A quorum must be present throughout a meeting of the Consultative Forum.

## **5. Conduct of Meeting**

- 5.1 Meeting procedure shall be determined by the Chairperson of the meeting.
- 5.2 If the Chairperson at a meeting of the Consultative Forum deems a matter to be of a confidential nature, that matter shall be considered by the Consultative Forum towards the end of the meeting or upon the ruling of the Chairperson. The Chairperson may request all visitors and observers to leave the meeting while confidential matters are discussed.
- 5.3 The Chairperson may take part in a discussion upon any question before the Consultative Forum.
- 5.4 Members present shall, in respect of any motion before a meeting, have the right to have their dissention, abstention, or vote recorded in the minutes.
- 5.5 When any matter before the Consultative Forum consists of more than one resolution, such resolutions shall be put in sequence if a majority of members present so require.
- 5.6 The Chairperson or the Consultative Forum by resolution may, on motion without debate, order that a complicated question be divided and put in the form of several motions.
- 5.7 Members must respect the authority of the Chairperson at all times.
- 5.8 Members must address their remarks to the Chairperson, must use restrained and courteous language, and must speak relevantly to the matter under discussion.
- 5.9 The Chairperson must maintain order. If a meeting of the Consultative Forum has become unduly disorderly, the meeting may be adjourned for such period as the Chairperson thinks fit.
- 5.10 The Consultative Forum, can expel a member by a Point of Order. A Point of Order is made by a member of the meeting under the following circumstances:
  - (a) the Chairperson must call a "Point Of Order" for misconduct or unacceptable behaviour by another member. The "Point Of Order" must be endorsed by the Consultative Forum in the presence of the offending member. The offending member cannot vote in the matter;  
  
(Note: Misconduct or unacceptable behaviour may include breaking the rules of debate, using abusive language, being intoxicated, violence or other such disruptive behaviour.)
  - (b) after a third "Point Of Order" against a member for misconduct or unacceptable behaviour is endorsed by the Consultative Forum, the Chairperson must remove the member from the meeting for a period of not less than fifteen minutes; and
  - (c) after the offending member returns to the meeting, if the member continues their misconduct or unacceptable behaviour, and another "Point Of Order" is endorsed by the Consultative Forum, the Chairperson must remove the offending member for the rest of the meeting.

## **6. Conflicts Of Interest**

- 6.1 Subject to the law:

- (a) any member of the Consultative Forum who has a material personal interest in any contract or arrangement made or proposed to be made under the Head Lease shall disclose their interest at the first meeting of the Consultative Forum at which the contract or arrangement is first taken into consideration if their interest then exists, or in any other case at the first meeting of the Consultative Forum after the acquisition of their interest. If they become interested in a contract or arrangement after it is made or entered into they shall disclose this interest at the first meeting of the Consultative Forum after they become so interested; and
- (b) no member of the Consultative Forum shall remain present at any meeting of the Consultative Forum during consideration or discussion of, or the taking of any vote on any question with respect to any contract or arrangement in which they have a material personal interest, and they shall disclose that interest at the first meeting of the Consultative Forum after they become so interested.

## **7. Admission of Observers and Visitors**

- 7.1 Subject to any direction of the Chairperson, the Consultative Forum may extend a standing invitation to attend Consultative Forum meetings as observers to any persons or categories of persons, as it thinks fit.
- 7.2 Subject to any direction of the Chairperson, a member may bring consultants to Consultative Forum meetings who may address the Consultative Forum and the Consultative Forum itself may call upon any person to address the Consultative Forum.
- 7.3 The Chairperson of a meeting of the Consultative Forum or the Consultative Forum by resolution may decide not to admit observers or any group of observers, visitors or consultants to any meeting or part of a meeting of the Council and may require any observer, visitor or consultant to leave the meeting place at any time.

## **8. Adjournment**

- 8.1 The Chairperson, by resolution, may at any time during the course of a meeting, adjourn any meeting (at which a quorum is present) from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. Notice of an adjourned meeting need not be given unless a meeting is adjourned for more than 30 days.
- 8.2 Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- 8.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

## **9. Voting**

- 9.1 A resolution put to the vote at a meeting of the Consultative Forum must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
  - (a) by the Chair; or
  - (b) by at least 3 members.
- 9.2 The demand for a poll may be withdrawn.



- 9.3 On a show of hands, a declaration by the Chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.
- 9.4 If a poll is duly demanded it shall be taken in such manner as the Chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- 9.5 A poll demanded on the election of the Chairperson or on a question of adjournment must be taken immediately.
- 9.6 All questions arising at a meeting of the Consultative Forum are to be decided by a majority of the votes of members present and voting.
- 9.7 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded has a casting vote (in addition to any vote that the Chairperson may have had as a member).
- 9.8 Each member may only vote in person at a meeting of the Consultative Forum, and each member has:
- (a) on a show of hands, one vote; and
  - (b) on a poll, one vote.
- 9.9 The demand for a poll does not prevent a meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

## **10. Minutes**

- 10.1 The LE must cause minutes to be made of:
- (a) the names of the members present at each meeting of the Consultative Forum;
  - (b) all orders made by the members;
  - (c) all declarations made or notices given by any member (either generally or specifically) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
  - (d) all resolutions and proceedings of meetings of members,
- and retain the minutes in a minute book for the term of the Head Lease.
- 10.2 Minutes of proceedings of every meeting of the Consultative Forum shall be recorded and subsequently presented at the next ordinary meeting of the Consultative Forum, and, if approved as correct, shall be signed by the Chairperson of that meeting as being confirmed. Any such minutes bearing the signature of the Chairperson shall be prima facie evidence of the proceedings of the meeting.
- 10.3 The LE must provide a copy of the minutes to the Land Trust, whether confirmed or otherwise, within 1 month after the meeting. If the minutes provided to the Land Trust

are not approved, the LE must provide a copy of the confirmed minutes to the Land Trust within 7 days of being approved by the Consultative Forum.

- 10.4 No motion or discussion shall be allowed upon the minutes submitted for confirmation except as to their accuracy as a record of the business of the Consultative Forum and any objection upon the ground of inaccuracy must be made by a motion or amendment prior to their confirmation.
- 10.5 A motion directing attention to alleged inaccuracy in the minutes of proceedings need not be made in writing.
- 10.6 In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 10 is evidence of the matters shown in the minute.

**Annexure 4 - Designated General Access Areas (clauses 1.1 and 16.1(e))**

AR  
10/11  
RT  
C/L



**Annexure 5 - Existing rights, titles or other interests (clauses 1.1 and 6.1)**

**EXISTING LEASES OVER MANTIYUPWI LEND;**

**NGUIU COMMUNITY; BATHURST ISLEND.**

**AT 1<sup>ST</sup>. MARCH 2007.**

**1. Lot 703; And Lot 703A - Nguiu Police Complex.**

- Lessee: Northern Territory Government.
- Commencement Date: 1 September 1998.
- Term: 10 years.
- Expires: 31 August 2008.
- Sub-lessee. Tiwi Islands Local Government.
- Rental to Land Council and Landowners. \$100.00 per annum.
- Rental paid by NT Government to sub-lessee TILG, Initial rental \$33,333.33 thence \$40,000 per annum adjusted to CPI.

**2. Mission Hill; Telstra 5,710 Sq. Metres**

- Lessee: Telstra (transferred from Commonwealth Government)
- Commencement Date: 1 July 1980.
- Term: 99 years.
- Expires 30 June 2079.
- Rent: \$100 per annum to 1985, thereafter \$500 per annum increasing by 10% every three years. Rent paid at 30 June 2006 \$981.67.

**3. Lot 726a; Nguiu Airfield**

- Lessee: Tiwi Island Local Government
- Commencement Date: 1 July 1998.
- Term: 21 years.

AB  
BW  
RT  
CH

- Expires: 30 June 2019.
- Option: ten years with rental to be agreed at that time.
- Rent: 10% of gross income received from user levies and charges. Payable in quarterly instalments.
- Payments received for 1998; 1999 and 2000 totalling approx \$11,000.
- Last payment 22 October 2001. Six years in arrears.
- There are unsubstantiated reports that current annual levies accruing to TILG exceed \$150,000 per annum.
- The collection Authority is AVDATA Australia at P.O. Box 117 DICKSON ACT. 2602.

4. **Lots 394;395;432;693 And Hospital Block Bounded By Blocks 465 And 469**

- Lessee: Tiwi Health Board (in voluntary liquidation). Lease and entitlements transferred to the Tiwi Land Council 30 June 2003
- Commencement Date: 1 January 2001.
- Term: 30 years.
- Option: 30 years.
- Rent: \$170 with market reviews 2003; 2008; 2013; 2018; 2023 and 2028.

5. **Lot 737; Health Centre**

- Lessee: Northern Territory Department of Health and Community Services.
- Term: 20 year lease.
- Comment: Lease documents supplied to Lessee for execution on 15 June 2004 however there is no evidence that the Lease has been executed.

6. **Lot 135 Approx 0.25 Hectares**

- Lessee: Tiwi Islands Training And Employment Board.
- Commencement Date: 1 July 2002.
- Term: 21 years.
- Expires 30 June 2023.
- Rent: \$100 per annum.
- Rent review: market review 1 July 2009.

7. **Lot 397 Bima Wear Complex**

- Lessee: Tiwi Island Local Government
- Commencement Date: 1 July 2004.
- Term 20 years.
- Expires: 30 June 2024.
- Option: Nil.
- Rent: \$200 per annum to 30 June 2009.
- Rent review: market review 1 July 2009.

8. **Lot 567 Centrelink Manager's House**

- Lessee: Commonwealth Government.
- Commencement Date: 1 August 2004.
- Term: 9 years.
- Rent: \$200 plus CPI

9. **A Licence For The Royal College Of General Practitioners Medical Student Accommodation;**

- Requested a Licence to accommodate Medical Students 11 December 2000.
- Correspondence suggests this has not been proceeded with.

10. **A Licence To Tiwi Islands Community Trust And Tiwi Tours For House And Cabins And Tourist Operations At Nguiu.**

- Licensee: Tiwi Islands Community Trust And Tiwi Tours
- Commencement Date: 1 July 1989.
- Term: 30 years.
- Expires: 30 June 2017.
- Rent: \$15 per tourist head per annum.

### Annexure 6 - Register of traditional Aboriginal owners (paragraph J of the background and clause 1.1)

Subject to change and updating from time to time in accordance with traditional custom and previous Tiwi Land Council practice.

Surname	Other Surname	Given Names	Birth Date	Age as of 1/1/08
Kerinaiaua		Walter Benedict	17.8.47	60
Kerinaiaua		Cyril James	7.9.66	41
Kerinaiaua		Walter Joseph	3.7.70	37
Kerinaiaua		Elsie Mary	20.4.72	35
Kerinaiaua		Cheryl Anne	1.3.75	32
Kerinaiaua		Margaret Renee	24.8.78	29
Kerinaiaua		Pauletta	1.4.1982	25
Kerinaiaua		Greg Francis	19.11.1984	23
Kerinaiaua		Vivian Richards	13.10.1985	22
Kerinaiaua	Pilakui	John Ross	29.3.1983	24
Kerinaiaua	Pilakui	Wayne Joseph	1.3.1989	18
Kerinaiaua	Fernando	Peter Robin	7.5.1974	33
Kerinaiaua	Fernando	Terry Joseph	28. 7. 1994	13
Kerinaiaua		Ian	2.11.1955	52
Kerinaiaua		Alan Gerard	16. 2. 2000	7
Kerinaiaua		Ian Ross	8. 8. 2004	3
Kerinaiaua		Russell	5.7.1980	27
Kerinaiaua		Ainsley Gerard	22.11.1980	27
Kerinaiaua		Cyril Martin	7.6.1953	54
Kerinaiaua		Micheal Joseph	13.6.1969	38
Kerinaiaua		Bartholomew	24.11.1986	21
Kerinaiaua		Cameron James	5.8.1987	20
Kerinaiaua		Matthias	12. 6. 2006	1
Kerinaiaua		Micheal (Larry)	15.11.1984	23
Kerinaiaua		Francis John Aloysius	5.2.1965	42
Kerinaiaua		Cyril Martin Joe	5.5.1989	18
Kerinaiaua		Lillian	22.9.1959	48
Kerinaiaua	Mungatopi	Katrina	25.11.1961	46
Kerinaiaua	Black	Nina Mary Claire	12.8.1958	49
Kerinaiaua		Viola	23.9.1965	42
Kerinaiaua		Raelene Liddy	1.9.1962	45
Kerinaiaua		Dymphna	15.9.1960	47
Kerinaiaua		Marie Camel	20.6.1965	42
Kerinaiaua		Geraldine	13.11.1966	41
Kerinaiaua		Laura	2.4.1966	41
Kerinaiaua	Alimankinni	Jacinta Mary	13. 4. 1973	34
Kerinaiaua		Cecelia	22.11.1967	40
Kerinaiaua		Keisia	16.5.1982	25
Kerinaiaua		Monica	8.7.1974	33
Kerinaiaua		Nancy	25. 11. 1991	16
Kerinaiaua		Neil James	16.11.1983	24
Kerinaiaua		Dylan James	25.2.1989	18
Kerinaiaua		Amber	25.6.1996	11
Kerinaiaua		Debbie	19. 3. 2003	4
Kerinaiaua		Deborah	16.2.1984	23

AB  
OK RT



Surname	Other Surname	Given Names	Birth Date	Age as of 1/1/08
Kerinaiaua		Samantha	20.5.1982	25
Kerinaiaua		Melinda	28.5.1975	32
Kerinaiaua		Maggie May	17.5.1977	30
Kerinaiaua		Ronald	1. 7. 1981	26
Kerinaiaua		Marlene	5.11.1984	23
Kerinaiaua		Maggie May	4. 6. 1991	16
Kerinaiaua		Masodora	1. 6. 1993	14
Kerinaiaua		Dean Martin	9.9.1995	12
Kerinaiaua	Warlapinni	James	19. 9. 1983	24
Kerinaiaua		Kaitlan	9.4.1993	14
Kerinaiaua		Teresina	Child	1
Kerinaiaua		Nancy	25. 11. 1991	16
Kerinaiaua		Clement	29. 9. 1993	14
Kerinaiaua		Urban	26. 6. 1995	12
Kerinaiaua		Virgil	13. 12. 1998	9
Kerinaiaua		Una Therese	16. 10. 2003	4
Kerinaiaua	Johnson	Cyril	2. 9. 1970	37
Kerinaiaua	Johnson	Samuel	12. 7. 1968	39
Kerinaiaua		Racheal	18. 3. 1971	36
Kerinaiaua		Mandolin	14.12.1978	29
Kerinaiaua	Driver	Alec	1958	49
Kerinaiaua	Jibu	Sandra	1957	50
Kerinaiaua	Warlapinni	Vivian Douglas	19.9.1983	24
Kerinaiaua	Driver	Wilma	Adult	40
Kerinaiaua	Driver	Simon	Adult	40
Kerinaiaua	Wilson	Cabrina	15.5.1969	38
Kerinaiaua 1		Sarah Anne	25.10.1968	39
Kerinaiaua 1	Dixon	Daniel John	11.2. 1995	12
Kerinaiaua 1	Dixon	Brenton Sheldon	10. 1. 1997	10
Kerinaiaua 1	Dixon	Sheree Ann	1. 7. 1998	9
Kerinaiaua 1		Tammy	31. 5. 1986	21
Kerinaiaua 1	Dixon	Tristan	27.8.00	7
Kerinaiaua 1		Mavis	7.1.1971	36
Kerinaiaua 1	Winston	Craig	Child	17
Kerinaiaua 1		Michael Austin	15.6.1976	31
Kerinaiaua 1		KerryAnne	16.9.1960	47
Kerinaiaua 1		Leah	22.4.1962	45
Kerinaiaua 1		Fiona	15.7.1966	41
Kerinaiaua 1		Alan John	6.9.1964	43
Ullungura	Tipungwuti	Marietta	8. 10. 1940	67
Ullungura		Brian	1. 4. 1950	57
Ullungura		Therese Marie (Robyn)	9. 6. 1963	44
Ullungura		Paul	29. 8. 1965	42
Ullungura		Barry Martin	5. 8. 1966	41
Ullungura	Clancy	Jennifer Carol	25. 1. 1971	36
Ullungura		Katie	2. 1. 1972	35
Ullungura		Marie Therese	29.7.1993	14
Ullungura		Sally Anne	4. 2. 1972	35
Ullungura		Mary Machaeline	9. 4. 1973	34
Ullungura		Jaslyn	1.6.1998	9

Surname	Other Surname	Given Names	Birth Date	Age as of 1/1/08
Ullungura		Catherine	28. 4. 1975	32
Ullungura		Cyprian	22. 1. 1978	29
Ullungura		Benedict (Taylor)	16. 4. 1980	27
Ullungura		Romeo	13. 3. 1983	24
Ullungura		Ruth Margaret	15. 4. 1984	23
Ullungura		Berince	21. 4. 1986	21
Ullungura		Les Morris	10. 5. 1988	19
Ullungura		Felicia Frances	26. 1. 1990	17
Ullungura		Banita Louise	18. 8. 1990	17
Ullungura		Barry Cyprian	11.5. 1994	13
Ullungura		Ben Morrison	10. 7. 1997	10
Ullungura		Rocshell	28. 4. 1996	11
Ullungura		Shania	23. 3. 1997	10
Ullungura		Columkil	2. 9. 1999	8
Ullungura		Eithan Matthias	15. 9. 2001	6
Ullungura		Charmaine	17. 8. 1985	22
Ullungura	Woody	Michelle	17.7.1972	35
Orsto	Tipungwuti	Millicent (Milly)	19. 5. 1944	63
Orsto	Narjic	Michaeline	14. 4. 1947	60
Orsto	Narjic	John Gerard	3. 9. 1981	26
Orsto	Narjic	James	16. 8. 1975	32
Orsto	Narjic	Ignatius	4. 12. 1979	28
Orsto		Ireanaeus	9. 6. 1951	56
Orsto	Tipiloura	Doreen	9. 3. 1951	56
Orsto	Tipiloura	Bernadetta	14. 6. 1955	52
Orsto		Maxine	8. 7. 1960	47
Orsto		Juan Gerard	15. 5. 1960	47
Orsto		Gregory Jules	21. 4. 1964	43
Orsto		Gregory John (Peter)	21. 4. 1964	43
Orsto		Delores	16. 9. 1968	39
Orsto	Tipiloura	Antoinette Agnes	17. 1. 1953	54
Orsto		Concetta	24. 10. 1967	40
Orsto		Irene Rose	31. 1. 1972	35
Orsto		Patricia	26. 6. 1973	34
Orsto		Roslyn	12. 8. 1979	28
Orsto		Marie Louise	1. 12. 1980	27
Orsto		Kristelle Jane	15. 8. 1980	27
Orsto		Rosanna Therese	20. 7. 1984	23
Orsto		Juan James	10. 9. 1990	17
Orsto		Trevor James	5. 2. 1988	19
Orsto		Peter	6. 6. 2002	5
Orsto		Tanya Angelino	30. 11. 2005	2
Orsto		Angelo	10. 8. 1985	22
Orsto		James Gregory	29. 1. 1983	24
Orsto		Jules Francis	21. 2. 1985	22
Orsto		Inez	2. 5. 1976	31
Orsto		John Elis	30. 4. 1978	29
Orsto		Harry John	23. 11. 1976	31

Surname	Other Surname	Given Names	Birth Date	Age as of 1/1/08
Orsto		Malcolm	17. 12. 1997	10
Orsto	Kantilla	Julie	18. 4. 1975	32
Orsto		Damascene Dereck	28. 9. 1978	29
Orsto		Irene Rose	31. 1. 1972	32
Orsto		Noel Jules	7. 11. 1984	23
Orsto		Peter Ignatius	4. 4. 1984	23
Orsto	Kantilla	Stellestina	16. 12. 1990	17
Orsto	Tipakilippa	Grace	8. 1. 1982	25
Orsto	Kantilla	Juliesina	25. 6. 1997	10
Orsto	Kantilla	Katherine	6. 6. 1995	12
Orsto	Kantilla	Vera	16. 6. 1993	14
Orsto		Andrew Jules	26. 9. 1970	37
Orsto		Francis	21.2.1985	22
Orsto		Wayne	22.12.2006	1
Orsto		John Gerard	16.8.2000	7
Orsto		Mathew Dalton	13.11.2002	5
Ilontaminni	Farmer	Gibson James	23. 6. 1958	49
Ilontaminni	Farmer	Brian	9. 1. 1961	46
Ilontaminni	Farmer	Glen	19. 9. 1971	36
Ilontaminni	Farmer	Phyllis	31. 5. 1962	45
Ilontaminni	Farmer	Roy	19. 4. 1990	17
Ilontaminni	Farmer	Wilhelmina	8. 3. 1983	24
Ilontaminni	Farmer	Terencina	8. 11. 1987	20
Ilontaminni	Farmer	Glenda	29. 5. 1989	18
Ilontaminni	Farmer	Chantal	17. 3. 1993	14
Ilontaminni	Farmer	Terrianne	26. 8. 1991	16
Ilontaminni	Farmer	James	10. 12. 1998	9
Ilontaminni	Farmer	Anthony	1. 12. 1994	13
Ilontaminni	Farmer	Brenda	11. 7. 1952	55
Ilontaminni	Marego	Isabelle	21. 11. 1960	47
Ilontaminni	Marego	Tam	1970	37
Ilontaminni	Marego	William	28. 8. 1967	40
Ilontaminni	Marego	Norman Jr	15. 3. 1966	41
Ilontaminni	Marego	Mona	1966	41
Ilontaminni	Marego	Albert	1966	41
Ilontaminni	Marego	Anita	21. 3. 1965	42
Ilontaminni	Patlas	Phillip	16. 6. 1956	51
Ilontaminni	Patlas	Veronica	15. 8. 1982	25
Ilontaminni	Patlas	Tina	24. 12. 1968	39
Ilontaminni	Patlas	Joan	1982	25
Ilontaminni	Patlas	Patrick	2. 2. 1979	28
Ilontaminni	Patlas	James (Jimmy)	6. 6. 1967	40
Ilontaminni	Gregory	Leon John	25.5.1948	59
Timaepatua		Raymond	23. 1. 1937	70
Timaepatua		Cyril Christopher	21. 2. 1942	67
Timaepatua		Terry	3. 10. 1952	55
Timaepatua		Isaac Louis	13. 3. 1952	55
Timaepatua		Raymond John	27. 6. 1957	50
Timaepatua		Savio	25. 3. 1960	47
Timaepatua		Ian	18. 12. 1966	41
Timaepatua		Richard	31. 1. 1972	35

Surname	Other Surname	Given Names	Birth Date	Age as of 1/1/08
Timaepatua		Bonaventure	15. 1. 1971	36
Timaepatua		Lydieanne	19. 8. 2002	5
Timaepatua		Finton John	24. 3. 1959	48
Timaepatua		Derek	9. 10. 1972	35
Timaepatua		Dominic	1. 7. 1977	30
Timaepatua		Dominica	19. 7. 1995	12
Timaepatua		Mechtilde	6. 2. 1998	9
Timaepatua		Luke	19. 12. 2003	4
Timaepatua		Campion	28. 9. 1967	40
Timaepatua		Anthony Francis	1. 4. 1989	18
Timaepatua		James Damascene	15. 4. 1989	18
Timaepatua		Noel Francis	7. 7. 1983	24
Timaepatua		Cletus Abraham	27. 4. 1990	17
Timaepatua		Mary Agnes	17. 4. 1961	46
Timaepatua		Rita Mary	4. 5. 1967	40
Timaepatua		Viviana	11. 2. 1982	25
Timaepatua	Dulla	Raelene	11.10.1973	34
Timaepatua		Kalina Mary	22.10.1964	43
Timaepatua		Berna Carmen	14. 9. 1965	42
Timaepatua		Bon Francis	11.8.1988	19
Timaepatua		Miriam Rose	1. 9. 1962	45
Timaepatua		Francine	16. 4. 1954	53
Timaepatua		Teresita	8. 9. 1951	56
Timaepatua		Jessiah	19. 11. 1994	13
Timaepatua	Wilson	Christine	7.3.1956	51
Timaepatua		Bon Gerard	30. 1. 1992	15
Timaepatua	McCormack	Elizaberth	28. 8. 1957	50
Timaepatua	Tipiloura	Jeannie	22. 4. 1970	37
Timaepatua		Nolita May	20. 7. 1977	30
Timaepatua	Kerinaiaua/Pongirr ijimi	Albert	2.5.1986	21
Timaepatua	Black/Kerinaiaua	Jocelyn	12.11.1970	37
Timaepatua	Kerinaiaua/Pongirr ijimi	Francina	1.11.72	35
Timaepatua	Kerinaiaua/Pongirr ijimi	Jeremaias	29.10.1978	29
Timaepatua	Kerinaiaua/Pongirr ijimi	Heilda	18. 10. 2002	5
Timaepatua	Kerinaiaua/Pongirr ijimi	Alberta	14.11.1975	32
Timaepatua	Kerinaiaua/Pongirr ijimi	Leotina	30.12.1983	24
Tiparui		John Bernard	15. 4. 1949	58
Tiparui		Aileen	18. 4. 1975	32
Tiparui		Justina	17. 11. 1977	30
Tiparui		Terence John	14. 2. 1980	27
Tiparui	Kelantumama	Trent	25. 6. 2003	4
Pupangamirri		Gordon John	26. 10. 1963	44
Pupangamirri		Linda Marie	20. 7. 1966	41
Pupangamirri		Timothy Pius	3. 9. 1968	39
Pupangamirri		Rebecca	22. 10. 1971	36

Surname	Other Surname	Given Names	Birth Date	Age as of 1/1/08
Pupangamirri		Annunciata Therese	11. 5. 1972	35
Pupangamirri		Dean	22. 7. 1975	32
Pupangamirri		Ron	11. 6. 1977	30
Pupangamirri		Rupert	14. 5. 1986	21
Pupangamirri		Reno Timone	31. 5. 98	9
Pupangamirri		Ronita	23. 2. 1995	12
Pupangamirri		John Abraham	9. 10. 1998	9
Pupangamirri		Lincoln	20. 5. 2000	7
Pupangamirri	Stanislaus	Stan	Adult	50
Pupangamirri	Stanislaus	Carol	Adult	30
Pupangamirri	Stanislaus	Lorna	Adult	30
Pupangamirri	Stanislaus	Leanne	Adult	30
Pupangamirri	Stanislaus	Brian	Adult	30
Porkalari	Parker	Gregoriana	12. 9. 1957	50
Porkalari	Parker	Stacey	2.3.1976	31
Porkalari	Kerinaiaua	Della Magdalen	3. 1. 1968	39
Porkalari	Parker	Tiffany	26. 2. 1987	20
Porkalari	Parker	Claire	20. 11. 1991	16
Porkalari	Henry	Edwina	15.4.1961	43
Porkalari	Henry	Merle	3.4.1966	41
Porkalari	Henry	Dolly	12.5.1975	32
Porkalari	Henry	David	11.9.1973	34
Porkalari	Henry	Owen	10.9.71	36
Wilson		Bruno	1941	66
Wilson		Beverly Anne	14. 6. 1972	35
Wilson		Emmanuel Robert	22. 6. 1978	29
Wilson	Wilson	Miria	17.3.1981	26
Wilson		Robert James (Robbie)	5. 10. 1985	22
Wilson		Deano (Dino)	26. 11. 1983	24

## **Annexure 7 - Reservations in Land Rights Act (paragraph K of the background and clause 1.1)**

The Land Rights Act contains provision for the following reservations to apply to grants of land made under the Land Rights Act as at the Commencement Date:

- (a) access to estates;
- (b) construction of roads;
- (c) minerals (including water);
- (d) miner's rights;
- (e) land occupied by the Crown at the time of the grant;
- (f) land occupied by a "mission" at the time of the grant; and
- (g) roads which existed as public rights of way at the time of the grant.

The following table contains further detail, including references to the relevant sections of the Land Rights Act.

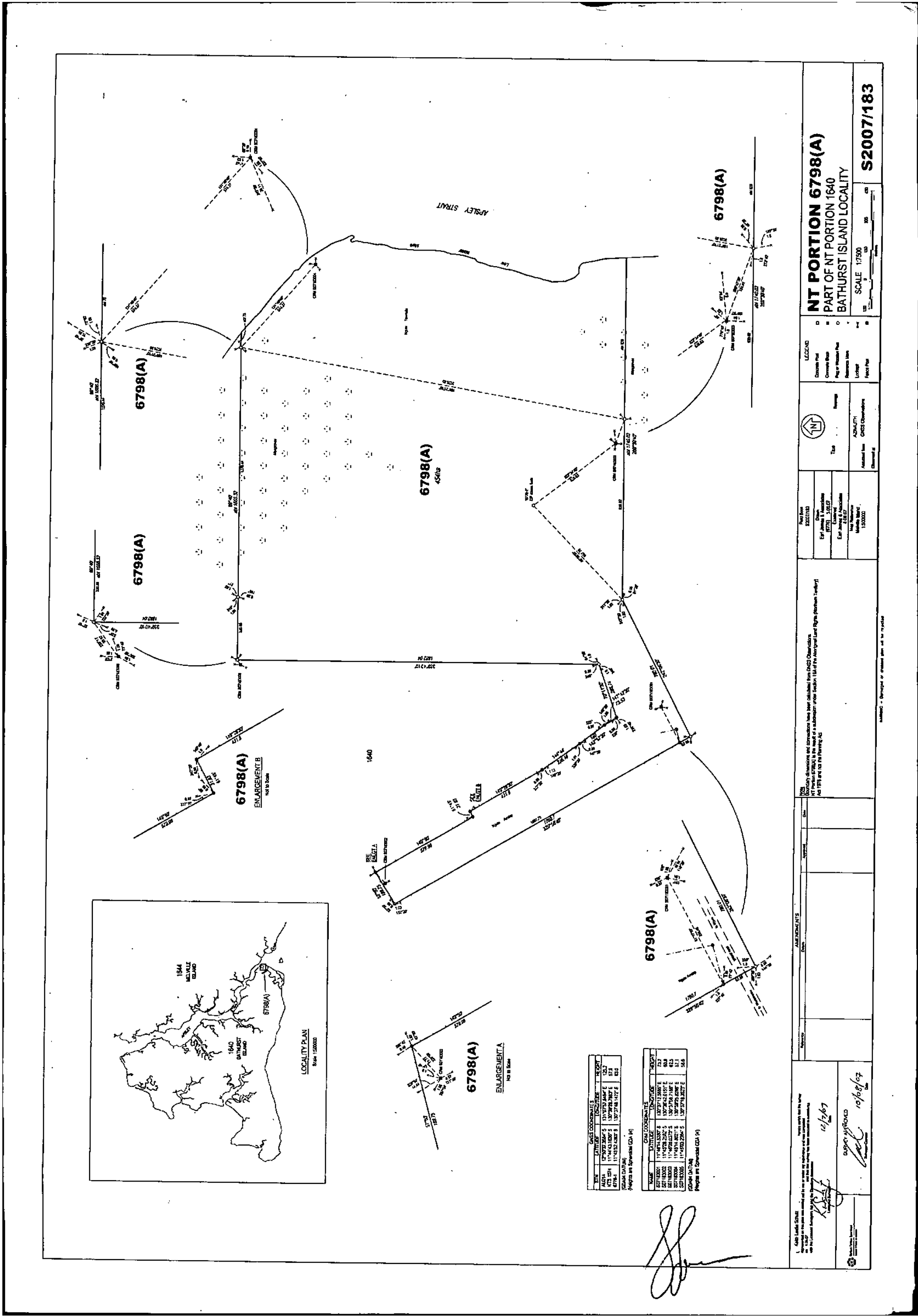
<b>Subject Matter of Reservation</b>		<b>Sections of Land Rights Act</b>
Access to estates		<ul style="list-style-type: none"> <li>■ Section 70 - Entry etc. on Aboriginal land</li> </ul>
Construction of roads		Section 68 - Road over Aboriginal land
Land occupied by a "mission" at the time of the grant		<ul style="list-style-type: none"> <li>■ Section 3 - Interpretation</li> <li>■ Section 18 -Termination of appointment of members of Land Trusts</li> </ul>
Land occupied by the Crown at the time of the grant;		<ul style="list-style-type: none"> <li>■ Section 3 - Interpretation</li> <li>■ Section 14 - Occupation etc. by the Crown etc. of Aboriginal land vested in Land Trust</li> </ul>

Subject Matter of Reservation		Sections of Land Rights Act
Minerals (includes water)		<ul style="list-style-type: none"> <li>■ Section 3 - Interpretation</li> <li>■ Section 12(2) - Grants of land to Land Trusts</li> <li>■ Section 12(2AAA) - Additional grant to Tiwi Land Trust</li> </ul>
Miner's rights		<ul style="list-style-type: none"> <li>■ Section 3 - Interpretation</li> <li>■ Section 75 - Application of miner's right in relation to Aboriginal land</li> </ul>
Roads		<ul style="list-style-type: none"> <li>■ Section 3 - Interpretation</li> <li>■ Sections 12(3) and 12(3A) - Grants of land to Land Trusts</li> <li>■ Section 12AA - Agreements with respect to roads on land described in Schedule 1</li> <li>■ Section 12AB - Declaratory orders with respect to roads on land described in Schedule 1</li> <li>■ Section 12AC - Effect of agreement or order</li> </ul>

**Annexure 8 - Township (Item 3)**

AB *[Signature]*  
C/L R T





<b>NT PORTION 6798(A)</b> PART OF NT PORTION 1640 BATHURST ISLAND LOCALITY		<b>S2007/183</b>	
<b>LEGEND</b>		<b>SCALE 1:7500</b>	
<input type="checkbox"/> Obsolete Point	<input type="checkbox"/> Obsolete Line	<input type="checkbox"/> Obsolete Sound	<input type="checkbox"/> Obsolete Depth
<input type="checkbox"/> Obsolete Light	<input type="checkbox"/> Obsolete Buoy	<input type="checkbox"/> Obsolete Beacon	<input type="checkbox"/> Obsolete Marker
<input type="checkbox"/> Obsolete Tower	<input type="checkbox"/> Obsolete Mast	<input type="checkbox"/> Obsolete Flag	<input type="checkbox"/> Obsolete Flag
<input type="checkbox"/> Obsolete Flag	<input type="checkbox"/> Obsolete Flag	<input type="checkbox"/> Obsolete Flag	<input type="checkbox"/> Obsolete Flag
<b>ADDITIONAL INFORMATION</b>		<b>ADDITIONAL INFORMATION</b>	
Project Name: S2007/183		Project Name: S2007/183	
Project Number: 183		Project Number: 183	
Project Date: 12/18/07		Project Date: 12/18/07	
Project Status: In Progress		Project Status: In Progress	
Project Manager: [Signature]		Project Manager: [Signature]	
Project Engineer: [Signature]		Project Engineer: [Signature]	
Project Surveyor: [Signature]		Project Surveyor: [Signature]	
Project Drafter: [Signature]		Project Drafter: [Signature]	
Project Checker: [Signature]		Project Checker: [Signature]	
Project Approver: [Signature]		Project Approver: [Signature]	
Project Date: 12/18/07		Project Date: 12/18/07	
Project Status: In Progress		Project Status: In Progress	
Project Manager: [Signature]		Project Manager: [Signature]	
Project Engineer: [Signature]		Project Engineer: [Signature]	
Project Surveyor: [Signature]		Project Surveyor: [Signature]	
Project Drafter: [Signature]		Project Drafter: [Signature]	
Project Checker: [Signature]		Project Checker: [Signature]	
Project Approver: [Signature]		Project Approver: [Signature]	

00204915

DEPARTMENT OF JUSTICE (ABN 84 085 734 992)  
 REGISTRAR-GENERAL'S OFFICE  
 NICHOLS PLACE  
 GPO BOX 3021  
 DARWIN NT 0801  
 Enquiries : 8999 6252

1 OF 1

Priority of Lodgement

**TAX INVOICE (RECEIPT) - OFFICE COPY**

Lodging Party:  
 AUSTRALIAN GOVERNMENT SOLICITO  
 GPO BOX 4700  
 DARWIN 0801

Date of Issue 10/09/2007  
 at 10:49  
 by NLO  
 Application # 00126664

Customer Code: AGSA  
 Self Assessing Code: N

Document Delivery:  
 AUSTRALIAN GOVERNMENT SOLICITO  
 GPO BOX 4700  
 DARWIN 0801

Registered #

662214

If paper title exists enter

Volume \_\_\_\_\_

Folio \_\_\_\_\_

Description	GST Incl Amount
LEASE (LOT 1640 BATHURST ISLAND)	135.00

Total Cost excl GST	\$135.00
Total GST	\$0.00
Total Invoice	\$135.00

## Payment Details

CHEQUE (019236 RBA CANBERRA (092009))

2/4/3/07