

## **SCHEDULE OF NOTES REGARDING THE FRONT PAGE OF THIS LEASE**

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 (nor 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.

**OPERATIVE PROVISIONS  
OF LEASE.**

**SCHEDULE**

<p><b>ITEM 1: THAT PART OF THE LAND COMPRISING THE DEMISED PREMISES</b></p>	<p>The part of the airstrip and surrounding land located at Section 4617 Hundred of Strangways from Plan S2002/217 also known as 850 Bees Creek Road, Weddell, NT, that is specified by the plan annexed hereto and marked with the words "Plan or Description of Demised Premises".</p>
<p><b>ITEM 2: LESSOR'S FIXTURES AND FITTINGS</b></p>	
<p><b>ITEM 3: ENCUMBRANCES</b></p>	<p>As recorded in the Certificate of Title registered in the Northern Territory and referred to in Item 1 hereof.</p>
<p><b>ITEM 4: SECURITY DEPOSIT (Clause 5.15)</b></p>	<p>\$.....</p>
<p><b>ITEM 5: PERMITTED USE</b></p>	<p>1.1. The Demised Premises shall only be occupied by an aircraft registered to the Lessee and any ancillary items connected to the use of that aircraft.</p> <p>1.2. The Lessee and his/her guests will not use the Demised Premises for any social functions, sleeping or overnight camping without first obtaining the approval of the Lessor.</p> <p>1.3. Storage of containers of fuel for use in aircraft within the Demised Premises or airstrips is not permitted unless the fuel is stored in a manner that is consistent with relevant Australian</p>

	<p>Standards, CASA and any other relevant authority' Legislation and guidelines.</p> <p>1.4. Storage of something other than aircraft or motor vehicles (such as boat, caravans etc) is not permitted in the Demised Premises. This clause does not apply to motor vehicles parked in the Demised Premises in place of the aircraft while the pilot of the aircraft is using the aircraft.</p> <p>1.5. Aircraft must be left in a state capable of being moved so as not to block and access/egress path to another storage space.</p> <p>1.6. Where clause 3.9 (Lease which <u>is not</u> for a business) does not apply the following is also permitted:</p> <p>1.7. Where clause 3.9 (Lease which <u>is</u> for a business) applies the following is also permitted:</p>
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**ITEM 6:**  
**RENEWAL PERIOD**  
Eg: "3 years and a further 3 years", means that this lease can be renewed twice for 3 years each

time.	
<b>ITEM 7: Lessor:</b>	<b>Name:</b> Ralph Meyering <b>Address:</b> GPO Box 29, Darwin NT 0801 <b>Facsimile:</b> <b>Email:</b>
<b>Lessee:</b>	<b>Name:</b>  <b>Address:</b>  <b>Facsimile:</b>  <b>Email:</b>
<b>ITEM 8: GUARANTORS</b>	<b>Name:</b> <b>Address:</b> <b>Name:</b> <b>Address:</b>
<b>ITEM 9: SPECIAL CONDITIONS</b>	
<b>ITEM 10 PERCENTAGE OF OUTGOINGS TO BE PAID BY THE TENANT.</b>	0%



# 1 INTERPRETATION

## DEFINITIONS

In this Lease, except to the extent of the context otherwise requires:

- (a) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Darwin;
- (b) **“Commencement Day”** means the date specified next to the words “TERM OF LEASE”, beneath the word “Commencing” on the front page of this Lease;
- (c) **“Demised Premises”** means that part of the Land specified in **Item 1** of the Schedule.
- (d) **“Lessor’s fixtures”** means all the Lessor’s fixtures fittings appliances chattels and effects thereon and therein (non-exhaustive) specified in **Item 2** of the Schedule.
- (e) **“Expiration Date”** means midnight standard time in the Northern Territory on the date specified next to the words “TERM OF LEASE”, beneath the word “Expiring” on the front page of this Lease;
- (f) **“Land”** means the land described on the front page of this Lease;
- (g) **“Lease”** means the instrument of lease of which these Provisions of Lease form part, and includes all subsequent changes, departures, amendments, variations, waivers and modifications made in accordance with this Lease, notwithstanding any change in the identity of the parties;
- (h) **“Lessee”** means the person specified next to the heading “TENANT” on the front page of this Lease, and includes permitted successors and assigns, and where not repugnant to the context, includes the servants, agents, employees and invitees of the Lessee;
- (i) **“Lessor”** means the person specified next to the heading “OWNER” on the front page of this Lease and includes successors and assigns;
- (j) **“Prior Encumbrances”** means those encumbrances and interests specified in **Item 3** of the Schedule;
- (k) **“Rent”** means:
  - (1) during the first year under the lease, that amount specified in the front page to this lease next to the words **“Market Rent under the Lease Other Consideration”** on the front page of this Lease (which shall be a

- reference to the annual rent payable pursuant to this Lease) exclusive of GST;
- (2) during the second and subsequent years under the Lease the rent shall be determined in accordance with clause 5.14;
  - (3) where the rental is reviewed or varied hereunder, that amount as reviewed or varied from time to time;
- (k) **“Review Date”** means each calendar anniversary of the Commencement Date;
- (l) **“Review Period”** means each interval:
- (1) from the Commencement Date to (but not including) the first Review Date; and
  - (2) thereafter from each Review Date to (but not including) the next Review Date;
- (m) **“Schedule”** means the schedule attached hereto and labelled “Schedule”;
- (n) **“Security Deposit”** means the amount, if any, specified in **Item 4** of the Schedule;
- (o) **“Term”** means the period from the Commencement Date to the later of:
- (1) the Expiration Date inclusive, subject to any earlier determination in accordance with this Lease; and
  - (2) the expiry of any periods of renewal or extension of this Lease.

## **RULES OF CONSTRUCTION**

In this Lease except to the extent that the context otherwise requires:

- (a) a reference to currency means the lawful currency of the Commonwealth of Australia;
- (b) a reference to a clause, recital, schedule, exhibit or annexure, refers to a clause, recital, schedule, exhibit or annexure of this Lease and recitals, schedules, exhibits and annexures form part of this Lease;
- (c) headings used in this Lease are for convenience only, and shall not affect its construction, interpretation or meaning and do not form part of this Lease;
- (d) a reference to a party to the Lease shall be construed to include a reference to their successors and permitted assigns;

- (e) a reference to a statute shall be construed as including a reference to or citation of all enactments consolidating, amending, replacing or substituting the statute referred to, and includes all proclamations, Orders-in-Council, regulations, rules, by-laws, ordinances and other authorities made under the statute;
- (f) a reference to any thing (including, without limitation, any amount) includes a reference to the whole or any part of it and a reference to the whole or any part of it and a reference to a group of persons includes a reference to any one or more of them;
- (g) any word importing the singular number includes the plural and vice versa;
- (h) any word importing one gender includes the other genders.
- (i) a reference to a "person" shall be construed to include a reference to any person, firm, corporation, company, partnership (whether or not having corporate legal personality), government, governmental or statutory authority, state or agency of a state, association (whether incorporated or not) or any one or more of them together, and shall include a reference to the person's executors, administrators, successors, substitutes (including, without limitation, a person taking by novation) and permitted assigns;
- (j) a reference to "writing" shall be construed as including printing, typewriting, photocopy or any other mode of reproducing words in a visible form and in the English language and "written" has a corresponding meaning.
- (k) where two or more persons are named as a party to this Lease their liability is joint and several. Every covenant or agreement expressed or implied in this Lease in which two or more persons covenants and agree shall bind such persons and any two or more of them jointly and severally.
- (l) If any term, covenant or condition or part of a term, covenant or condition of this lease or the application of a term, covenant or condition to any person or circumstances is or becomes invalid or unenforceable, the remaining terms, covenants and conditions are not affected and each term, covenant and condition of this lease is valid and enforceable to the fullest extent permitted by law.
- (m) where the day on which an act, matter or thing is to be done under this Lease is not a Business Day, the act, matter or thing shall be done on the next day which is a Business Day.

## **2. GRANT OF LEASE**

The Lessor hereby leases to the Lessee the Demised Premises, and the Lessee accepts the lease of the Demised Premises, subject to the Prior Encumbrances.

### 3. LESSEE'S COVENANTS

THE LESSEE to the intent that the obligations herein created shall continue throughout the Term or any period thereafter during which the Lessee may be in occupation of the Demised Premises HEREBY COVENANTS AND AGREES WITH THE LESSOR as follows:

#### 3.1 RENT

The Lessee shall pay the Rent in advance and without demand by equal consecutive calendar monthly payments each equivalent to one twelfth of the Rent, the first of such payments to be made on the Commencement Date and subsequent payments on the same day of each calendar month thereafter during the Term, without any deduction whatsoever to the Lessor or such other person or persons bank or banks as the Lessor may from time to time direct.

#### 3.2 CHARGES, TAXES AND IMPOSITIONS

- (a) Subject to sub-clause (b), the Lessee shall pay to the Lessor on demand from time to time a proportion (being the proportion the area of the Demised Premises bears to the total lettable area of the premises erected on the Land) in accordance with the percentage amount as specified in **item 10** of the Schedule of any taxes assessments and other similar charges whether of an existing or novel nature as charged levied or assessed against or payable by the Lessor in respect of the land and buildings of the Lessor of which the Demised Premises may form part and any increase or increases made during the Term or any extension holding over or renewal thereof in taxes assessments and other similar charges whether of an existing or novel nature as charged levied or assessed against or payable by the Lessor in respect of the land and buildings of the Lessor of which the Demised Premises may form part.
- (b) Where this Lease, the demise hereunder or anything done or agreed to be done by the Lessor pursuant to this Lease (all such things being **"supply"**) attracts or creates a liability in the Lessor to pay, or remit amounts in respect of, GST (within the meaning of A New Tax System (Goods and Services Tax) Act 1999) (**"GST"**), any payment made or to be made or consideration given or to be given by the Lessee (including Rent) in respect of such supply shall be increased so that the Lessor obtains, after paying or remitting the GST, the same payment or consideration as it would in the absence of a GST, and the increase in the payment or consideration is sufficient to cover all of the GST payable in respect of such supply at such increased level of payment or consideration.

- (c) Without limiting sub-clause (b) *supply* includes the possession, occupation or use of the Demised Premises by the Lessee, including after the expiry of the Term.
- (d) Sub-clause (b) does not apply to Rent or other payment which is expressed to be or is calculated as being inclusive of GST, except to the extent that the rate of GST payable under A New Tax System (Goods and Services Tax) Act 1999 is increased above 10%.

### **3.3 OUTGOINGS**

- (a) Subject to this clause the Lessee shall from time to time and at all times hereafter during the Term pay promptly the following charges imposed in respect of the Demised Premises or the Land, or connected with incidental to or by reason of the Lessee's use or occupancy or the business conducted by the Lessee:
  - (1) gas and electricity (whether for lighting, power or otherwise) consumed upon the Demised Premises;
  - (2) water consumed upon or in respect of the Demised Premises including all levies, service rates and charges, sewage rates charges and all other like outgoings;
  - (3) telephone and other utilities and services used or charged upon, against or in respect of the Demised Premises;
  - (4) all local municipal and sewerage rates and taxes imposed or charged upon the Demises Premises or upon the Lessor in respect thereof.
  - (5) the clearance or garbage trade waste municipal cleansing and other cleansing charges in respect of the Demised Premises;
  - (6) where the Demised Premises forms part of the Land the Lessee shall (except where the Demised Premises has separate metering facilities installed or is charged separately, in which event the whole of the charge shall be paid by the Lessee) pay part of the above charges, such part to bear the same proportion to the total amount of all or any such charges as the area of the Demised Premises bears to the total lettable area of the Land;
  - (7) the cost of the provision of care taking and security services;
  - (8) reasonable management and administration costs relating to the common areas;

- (9) general repairs and maintenance of a non structural nature to the common areas including but not limited to removal of graffiti and repairs to damage caused by vandalism;
  - (10) fire brigade, fire line fee and fees for fire alarm monitoring, regular testing and maintenance of the fire alarm and sprinklers and extinguisher/hose reel service;
  - (11) cost of pest control for common areas;
  - (12) the cost of cleaning, maintaining, lighting, servicing and repairing the common areas including the cost of electricity or other sources of power consumed therein;
  - (13) the cost of maintaining, watering and nurturing of all of the landscaped areas of the Centre;
  - (14) premiums for insurance to an amount determined by the lessor in its sole discretion from time to time in respect of the Demised Premises for public liability insurance; and
- (b) The Lessee shall when required by the Lessor produce to the Lessor or its duly authorised agent receipts for the payment of the charges above from time to time.
  - (c) If any of the above charges are paid by the Lessor, the Lessee shall promptly upon demand reimburse the Lessor for the cost of the charges in accordance with the percentage amount as specified in **item 10** of the Schedule.

### **3.4 LEGAL COSTS**

- (a) The Lessee shall pay to the Lessor on demand the legal costs and expenses of the Lessor as between solicitor and client of and incidental to the negotiations preparation and execution of this lease and all of the costs of stamping and registration of this Lease and copies thereof and all architect's surveyor's consent registration and production fees in relation thereto and also to pay any and all legal costs and expenses as between solicitor and client incurred by the Lessor as the result of any breach by the Lessee of any of the terms hereof or in relation to any request act or negotiation by the Lessee, its solicitors agents or servants of or incidental to any matter appertaining to this Lease.
- (b) The Lessee's obligation to pay legal costs and expenses pursuant to clause 3.4(a) herein shall be limited to the legal costs and expenses of the Lessor. Any legal costs and expenses related to the outgoing tenant (outgoing Lessee) will not be the responsibility of the Lessee herein.

### **3.5 INTEREST ON OVERDUE MONEYS**

The Lessee shall pay to the Lessor on demand interest on any moneys from time to time due and payable by the Lessee to the Lessor under this Lease but overdue and unpaid calculated on daily rests at a rate of 2% higher than the reference rate of the Commonwealth Bank of Australia as at the time when such moneys became due and payable.

### **3.6 TRANSFER OF LEASE**

- (a) The Lessee shall not assign transfer demise sublet set over or in any manner part with dispose of or share possession of the Demised Premises or any part thereof of the Lessee's or interests therein without the prior written consent of the Lessor.
- (b) The consent of the Lessor shall not be unreasonably withheld but the Lessor may require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the consideration of, or giving of, such consent and such consent shall be subject to the Lessee supplying evidence to the satisfaction of the Lessor or its solicitors of the respectability and good financial standing of the proposed assignee or sublessee and the Lessor as a condition of giving such consent may require from the proposed assignee or sublessee:
  - (1) a covenant (to be prepared by the Lessor's solicitors at the expense of the Lessee) in such form as the Lessor shall require which shall bind the proposed assignee or sublessee to observe and perform all the Lessee's covenants and agreements hereunder whether expressed or implied; and
  - (2) if the proposed assignee or sublessee be a company the Lessor may also require of such of the directors and shareholders of that company as the Lessor thinks fit a guarantee and indemnity by him or them of the company's covenants as aforesaid such guarantees and indemnities to be prepared by the Lessor's solicitors at the expense of the Lessee.
- (c) Every application by the Lessee for a proposed assignment or sublease or for any other thing in respect of which the Lessor's prior written consent is necessary shall be made in writing and shall set out details of the Lessee's proposal and in case of a proposed assignment or sublease the application shall comprise at least the following particulars regarding the proposed assignee or sublessee:
  - (1) Full name and residential and business address;
  - (2) Qualifications suitability and experience of the proposed assignee or sublessee;
  - (3) Two character and business references from persons or companies of undoubted substance and integrity;

- (4) Authority of the proposed assignee or sublessee to its banker authorising it to furnish a financial reference to the Lessor's solicitors;
- (5) If the proposed assignee or sublessee shall be a company then a certified copy of the profit and loss account and balance sheet of the company for the financial year immediately preceding the date of application for such consent;

**PROVIDED HOWEVER** that if the Lessee being a company shall be desirous of assigning this Lease to a subsidiary company the Lessor will consent upon the proposed assignee entering into a covenant and providing guarantees and indemnities as aforesaid and the existing Lessee first entering into a guarantee and indemnity prepared by the Lessor's solicitors (upon such terms and conditions as the said solicitors may require) to be responsible for the payment of all monies payable hereunder and for the performance and observance of all the Lessee's covenants and agreements under this Lease and any extension or renewal hereof **PROVIDED HOWEVER** that no consent given by the Lessor to the assignment or sublease of this Lease by the Lessee pursuant to this clause shall be construed or operate as a release of the Lessee from its obligations pursuant to this Lease.

- (d) Where the Lessee is a corporation having shares not listed on a stock exchange in Australia the following circumstances shall constitute an assignment of this Lease:
  - (1) any sale transfer or other disposition whatsoever of the shares in the capital of the Lessee or any issue or allotment of any new shares in the capital of the Lessee or the happening of any other matter or event whatsoever the effect of which is to transfer directly or indirectly the effective ownership management and control of the Lessee; or
  - (2) if any of the events referred to in the preceding subclause occur to any holding company (as defined in the Corporations Law) of the Lessee not having shares listed on a stock exchange in Australia or any ultimate holding company of the Lessee not having shares listed on a stock exchange in Australia.

### **3.7 MORTGAGE OF LEASE**

The Lessee shall not mortgage charge encumber or pledge this Lease or any estate or interest herein without the prior written consent of the Lessor which consent shall not be unreasonably withheld.

### **3.8 PERMITTED USE**

- (a) The Lessee shall not use or permit the Demised Premises or any part thereof to be used other than as for the purposes specified in **Item 5** of the Schedule nor carry on nor permit to be carried on upon the Demised Premises or any part thereof any illegal noisome immoral dangerous or offensive trade business purpose or process nor without the consent of the Lessor and subject to this Lease do or suffer to be done anything which may render the Lessor liable to pay in respect of the Demised Premises or any part thereof more than the ordinary or present rate of premium for insurance against fire or which may make void or voidable and policy of insurance nor commit or allow any wilful or negligent act whereby the Demised Premises shall be damaged or destroyed or any nuisance be created.
- (b) The Lessee will ensure that the permitted use of the Demised Premises complies with the Planning Act.
- (c) The Lessor does not warrant that the permitted use of the Demised Premises is permitted pursuant to the Planning Act.

### **3.9 LESSEE'S BUSINESS**

- (a) This clause is only applicable if the Lessee is running a business from the Demised Premises.
- (b) The Lessee shall use its best endeavours to develop extend and improve the business and not to do or suffer to be done anything to injure the connections or goodwill of the said business.
- (c) The Lessee shall carry on, promote and operate the said business in an efficient and businesslike manner and to the reasonable satisfaction of the Lessor.
- (d) The Lessee shall not change or alter the nature of the said business without prior written consent of the Lessor, which consent shall not be unreasonably withheld.

### **3.10 MAINTENANCE**

- (c) The Lessee shall keep repair and maintain the Demised Premises and all alterations additions drains pipes sanitary and water apparatus doors windows latches keys locks furniture glass light bulbs fluorescent tubes and sashcords appertaining to the Demised Premises and upon vacating to deliver up to the Demised Premises in good and tenantable repair fair wear and tear and damage by accidental fire storm flood or tempest or any Act of God or riot civil commotion or act of or act in resisting Australia's enemies excepted providing however that the Lessee shall not be required to carry out any work of a structural nature on the Demised Premises unless such structural work is required by reason of the number of or sexes of the persons employed by the Lessee or whom the Lessee permits in or upon

the Demised Premises or by reason of the use to which the Demised Premises are put by the Lessee.

- (d) The Lessee shall be responsible for the maintenance of the bitumen yard and shall not allow any road train or excessively heavy machinery access to the Land.

### **3.11 GLASS**

The Lessee shall promptly and as its own expense repair or replace all broken cracked or damaged glass in or about the Demised Premises.

### **3.12 CLEANLINESS**

The Lessee shall keep at all times the Demised Premises (including any lawns and gardens) and any areas over which the Lessee might now or hereafter have rights of access in a thoroughly clean tidy and sanitary state.

### **3.13 LESSOR'S ACCESS & REMEDY DEFAULT**

The Lessee shall permit the Lessor its agent or contractor with or without employees and others at all reasonable times and upon a minimum of 48 hours notice except in cases of emergency to enter upon and view the condition of the Demised Premises and to do any act or thing at the sole expense of the Lessee which the Lessee by the terms hereof or otherwise is required to do and has failed so to do.

### **3.14 STRUCTURAL ALTERATIONS**

The Lessee shall not alter damage or add to the Demised Premises nor make any attachment to the walls or floors nor add any fitting or fixtures without the prior written consent of the Lessor.

### **3.15 WATER APPARATUS**

The Lessee shall not use the water closets and other water apparatus for any purpose other than that for which they were constructed and in particular not to throw or place therein nor in any drains sinks basins or baths any tea leaves sweepings rubbish rags ashes or other unsuitable substances nor throw anything out of the windows or doors or down the passageways or stairways or any building or which the Demised Premises may form part or which may form part of the Demised Premises.

### **3.16 SIGNS**

The Lessee shall not erect affix place or display on any outside part of the Demised Premises any structure object sign notice announcement including illuminated signs or advertisement or display on or in any window of the Demised Premises any sign announcement notice or advertisement without the prior written consent of the Lessor and any consent required from any competent authority and at the expiration or sooner determination of this Lease the Lessee shall remove or paint over any such sign or advertisement and reinstate the Demised

Premises to the same condition as existed before such erection affixing placement or display. The Lessee shall not place a sandwich board on any part of the common area of the complex upon which the demised premises is located without the prior written consent of the lessor and any consent required from any competent authority.

### **3.17 PAINTING**

The Lessee shall paint the interior of any office area of the Demised Premises in a proper and workmanlike manner with good quality paint within a period of three months prior to the vacation of the Demised Premises by the Lessee, in colours approved of and in a manner approved of by the Lessor.

### **3.18 STATUTES**

The Lessee shall duly and punctually comply with and observe at the expense of the Lessee all statutes now or hereafter in force and all ordinances regulations and by-laws thereunder relating to the Demised Premises or to the business or activities of the Lessee carried on thereon and all requirements notices and orders of any competent authority with reference to the use (including sanitation) of the Demised Premises and notwithstanding to whomsoever any notice may be addressed or directed providing however that the Lessee shall not be required to carry out work of a structural nature on the Demised Premises unless such structural work is required by reason of the number or sexes of the persons employed by the Lessee or whom the Lessee permits in or upon the Demised Premises or by reason of the use to which the Demised Premises are put by the Lessee.

### **3.19 CLEAR ACCESS**

If the Demised Premises shall form part of other premises, the Lessee shall not obstruct in any way the yard pavement passageways pathways or stairways of those other premises nor use them for any purposes other than for ingress or egress to and from the Demised Premises. This clause shall not be construed to give the Lessee any greater rights of use or of access than those otherwise granted to the Lessee in this Lease.

### **3.20 LESSOR'S RISK**

The Lessee shall not do or omit to do or permit or suffer to be done or omitted to be done anything in or about the Demised Premises or any premises used for the purpose of but not comprised in the Demised Premises whereby the Lessor may become exposed to the liability to pay any penalty damages compensation cost charge or expense and to keep the Lessor indemnified against all such liabilities. This covenant by the Lessee shall be read in aid of and not in derogation of any of the other covenants or agreements on the part of the Lessee hereunder.

### **3.21 WATER DAMAGE**

The Lessee shall indemnify the Lessor against all loss or damage whatsoever whether direct or consequential occasioned by the use (whether negligent or not) misuse or abuse of the water supplied to the Demised Premises or to the building of which the Demised Premises may form part or which may form part of the Demised Premises including the use (whether negligent or not) misuse or abuse of the water or other fittings or fixtures by the Lessee or by any person claiming under the Lessee or by any servant agent customer invitee or other person and to pay compensation for all such loss or damage.

### **3.22 LESSEE'S RISK**

The Lessee shall occupy use and keep the Demised Premises at the risk of the Lessee and at all times indemnify the Lessor against all damages costs charges expenses actions claims and demands which may be sustained suffered recovered or made against the Lessor by any person for any damage to property death or injury any person may sustain when using entering or being near any part of the Demised Premises arising as a result of any cause or reason whatsoever whether arising naturally negligently or otherwise howsoever (including but without limiting the foregoing in any way whatsoever arising directly or indirectly from rain or other water or liquids flowing or leaking into the Demised Premises) except to the extent caused by a wilful or negligent act of the Lessor or its employees.

### **3.23 NON-SURRENDER**

If the Demised Premises are not surrendered and vacant possession given at the termination of this Lease, the Lessee shall reimburse the lessor for all damages costs and expenses the Lessor may suffer by reason thereof and indemnify the Lessor against all claims by any succeeding lessee arising as a result of the Lessee delaying in delivering up possession of the Demised Premises or otherwise.

### **3.24 AIR CONDITIONING**

- (a) Notwithstanding and without prejudice to the provisions of this Lease under the heading "Maintenance", the Lessee shall not interfere with the air conditioning and refrigeration equipment now or hereafter situated on or forming part of the Demised Premises ("the Equipment") or permit it to be interfered with in any manner howsoever save that the Lessee shall on every month during the Term clean the air conditioning filters to the Equipment or cause the same to be cleaned and shall comply with all directions of the Lessor in respect thereof.
- (b) The Lessee at all times during the Term have in force a service contract in respect of the Equipment with a reputable air conditioning and refrigeration service company approved of by the Lessor and on such terms as the Lessor may require from time to time and will deliver to the Lessor as soon as they are available a copy of any such contract and any reports provided by that service company from time to time. The

Lessee shall pay all costs payable under and pursuant to the said service contract at the due time for payment of the same.

- (c) The Lessor shall not under any circumstances be liable to the Lessee for any inconvenience damage or loss which the Lessee may suffer by reason of any shutting off or faulty operation or breakdown of the Equipment.
- (d) The Lessor shall replace the air conditioning equipment only for significant wear as and when is necessary having regard to the serviceability of the air conditioning equipment unless such replacement arises as a result of act of neglect or damage or default in service on the part of the lessee.
- (e) This clause is only applicable to the extent that it applies to property that is owned by the Lessor.

**3.25** The Lessee shall indemnify the Lessor against all loss or damage whatsoever whether direct or consequential occasioned by the use (whether negligent or not) misuse or abuse of the bitumen paving on the land but shall not be responsible for fair wear and tear to the said paving.

#### **4. LESSOR'S COVENANTS**

THE LESSOR HEREBY COVENANTS AND AGREES WITH THE LESSEE as follows:

##### **4.1 PEACEFUL POSSESSION**

If the Lessee shall pay the Rent and perform and comply with the obligations on it herein it shall peacefully hold and enjoy the Demised Premises during the Term without any interruption by the Lessor or any persons rightfully claiming under or in trust for it.

##### **4.2 STATUTORY CHARGES**

The Lessor shall (subject as otherwise provided herein) pay and discharge all local municipal and sewerage rates and taxes imposed or charged upon the Demises Premises or upon the Lessor in respect thereof.

##### **4.3 LESSEE'S FIXTURES**

- a) Any fixtures or fitting which may be installed by the Lessee on the Demised Premises may (provided that there shall not be any existing or unsatisfied breach of any conditions or covenants on the part of the Lessee herein contained) be taken down and removed from the Demised Premises by the Lessee for its own benefit at any time prior to the expiration of the Term or any extension or renewal thereof the Lessee doing as little damage as possible to the Demised Premises and making good any damage which may be done in the course of such taking down and removal to the satisfaction of the Lessor or an architect nominated by the Lessor

and any architect's fees in this connection shall be payable by the Lessee.

- b) The Lessee's fixtures shall be deemed to include any structure of any description whatsoever built on the Land by the Lessee at the Lessee's expense or owned by the Lessee through the purchase of the Fixture by the Lessee.
- c) If any law in the Northern Territory of Australia or any law of the Commonwealth of Australia or any case law states that this clause is to be struck from this agreement or read down to exclude any fixture in any way whatsoever and the Lessee is unable to sell the said fixture for a reasonable price then the Lessor agrees to allow the lessee to remove the fixture from the Land at the Lessee's expense.

#### **4.4 ACCESS**

The Lessee its agents and servants customers and invitees in common with other authorised persons shall be entitled to 24 hour access to and from the Demised Premises from the street frontage.

#### **5. MUTUAL COVENANTS**

THE LESSOR AND THE LESSEE MUTUALLY COVENANT AND AGREE as follows:

##### **5.1 DEFAULT REPUDIATION AND TERMINATION**

- (a) If any of the following events occur:
  - (1) the Rent or any part thereof shall be in arrears for fourteen (14) days after the same shall have fallen due whether demanded by the Lessor or not;
  - (2) the Lessee shall breach or not observe any of the following covenants more fully set forth above:
    - (A) the covenant not assign this Lease
    - (B) the covenant not to encumber this Lease
    - (C) the covenant as to use of the Demised Premises
    - (D) the covenant to keep the Demised Premises open for carrying on business
    - (E) the covenant to keep repair and maintain the Demised Premises
    - (F) the covenant not to alter damage or add to the Demised Premises

(G) the covenant to comply with statutes and notices thereunder,

and shall fail to remedy any such breach or non observance (if the same shall be capable of remedy) within fourteen (14) days (which period shall be deemed to be a reasonable period in which to remedy any breach or non observance hereunder) after service upon the Lessee of a notice in writing requiring remedy of the breach or non observance, that failure to pay the Rent or remedy such breach or non observance shall be deemed to be a breach of an essential term of this Lease amounting to a repudiation hereof by the Lessee and the Lessor may without notice accept that repudiation and terminate this Lease but without prejudice to any other remedy right or power which the Lessor may have pursuant hereto.

(b) The following events are Events of Default:

- (1) the Lessee carries on, or threatens to carry on, any matter or business which is illegal or causes nuisance to the Lessor or to occupiers of neighbouring premises;
- (2) if the Lessee is a company, an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation);
- (3) the Lessee makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts as and when they fall due, within the meaning of the Corporations Law;
- (4) execution is levied against the Lessee and not discharged within thirty (30) days;
- (5) a provisional liquidator, receiver or official manager is appointed of the Lessee or any of its property;
- (6) the Lessee ceases or threatens to cease to carry on business;
- (7) if the Lessee is or are individual, a creditor's petition in bankruptcy is presented by or against the Lessee or any event referred to in section 40 of the Bankruptcy Act occurs, which with the occurrence or failure of any subsequent event therein referred to would result in the commission by the Lessee of an act of bankruptcy;
- (8) if the Lessee is or are individual, any document, the execution of which by the Lessee would result in the commission by the Lessee of an act of bankruptcy, or any deed of assignment, deed of arrangement or deed of

composition is prepared by or for or presented to the Lessee for execution by the Lessee,

- (c) If an Event of Default occurs, the Lessor may forthwith or at any time thereafter:
- (1) serve a notice to quit on the Lessee requiring the Lessee to quit and deliver up the Demised Premises to the Lessor or to the Lessor's servants or agents at the expiration of fourteen (14) days from the date of the said notice;
  - (2) determine the Lease by notice in writing to the Lessee; and/or
  - (3) re-enter upon the Demised Premises or any part thereof in the name of the whole and thereupon this Lease and the estate of the Lessee shall absolutely cease and determine,
  - (4) but without prejudice to any other remedy right or power which the Lessor may have pursuant to law or this Lease.

## **5.2 WAIVER**

- (a) No waiver by the Lessor of any breach or non observance by the Lessee of any of the Lessee's covenants conditions or agreements herein contained shall be or be construed to be a general waiver and such waiver shall have effect only as to the particular breach or non observance in respect of which is made.
- (b) Without limiting the generality of the foregoing any waiver of a continuing breach shall not be construed as a general waiver of that breach so as to allow it to continue during the Term hereof or any part of the Term other than that which precedes that waiver.

## **5.3 NOTICE TO QUIT PERIOD**

The period fixed by this Lease of any Notice to Quit in respect of the Demised Premises given by the Lessor to the Lessee shall be fourteen (14) days.

## **5.4 DAMAGES**

If the Lessee conducts itself in such a fashion that the Lessor shall be entitled to terminate this Lease or that this Lease terminates for any reason (including by operation of law) consequent upon default or non compliance by the Lessee the Lessor shall whether it has or has not re-entered or taken possession of the Demised Premises be entitled to take action against the Lessee for damages consequent upon that conduct default or non compliance and shall be entitled to recover damages therefore which damages shall include damages for any

antecedent breach or non compliance and damages for the loss of the entire Term and of the Lessor's bargain.

## **5.5 DAMAGE OR DESTRUCTION OF PREMISES**

- (a) If the Demised Premises or any part thereof shall at any time during the Term hereof be destroyed or damaged by earthquake fire storm flood tempest Act of God inevitable accident riot civil commotion enemy action or incidental to resisting or preparing to resist enemy action so as to render the Demised Premises wholly or partially unfit for occupation or use then the Rent or a fair and just proportion thereof according to the damage sustained shall be suspended and cease to be payable so long as the Demised Premises shall be unfit for occupation or use by reason of such damage.
- (b) Subject to sub-clause (c), in the event that the Lessor and the Lessee within fourteen (14) days of such destruction or damage be unable to agree as to the amount of Rent payable hereunder then either party may request the then President of the Northern Territory Group of the South Australian Division of the Australian Property Institute Inc ( or the principal officer of any successor organisation) to appoint a Northern Territory member of that organisation to determine a fair Rent and which member's determination shall be made as an expert and shall be final and binding on the Lessor and Lessee.
- (c) If the Demised Premises shall be destroyed or so damaged as aforesaid to the extent that the Demised Premises shall be wholly or substantially unfit for occupation or use by the Lessee for the purposes of carrying on its business and if the Lessor shall not within two (2) calendar months after such destruction or damage commence to reinstate the same then the Lessor or the Lessee may by notice in writing to the other of them terminate this Lease but without prejudice to any rights which might have accrued to either party prior to such termination.

## **5.6 HOLDING OVER**

If on the expiration of the Term or any extension or renewal thereof, the Lessee, with the consent of the Lessor, continues in possession of the Demised Premises it shall hold the same from the Lessor as a tenant from month to month at the same Rent as was payable hereunder immediately prior to commencement of the said monthly tenancy or any other Rent as may be agreed upon from time to time (such Rent to be payable in advance) and upon the terms and conditions of these presents so far as they are applicable to a monthly tenancy and such tenancy may be determined by one month's notice in writing which notice may expire at any time and the Lessee shall not in any circumstances hold as a tenant from year to year on the expiration of the Term or on the expiration of any extension or renewal thereof.

## **5.7 POWER OF ATTORNEY**

The Lessee to secure the interests of the Lessor hereunder hereby irrevocably appoints the Lessor its successors or assigns substitute or substitutes to be the attorney of the Lessee to do at the expense of the Lessee all such things in its name and as its act and deed as shall be necessary or desirable to remedy any breach or non-compliance on the part of the Lessee hereunder and on the expiration or sooner determination hereof to execute a surrender of this Lease and procure the registration of that surrender under the provisions of the Land Title Act as amended or any other similar enactment in amendment modification or substitution thereof.

## 5.8 INSURANCE

- (a) Without prejudice to any other remedy of the Lessor hereunder the Lessee shall from time to time on demand by the Lessor pay to the Lessor any extra or excess premium for insurances on the Demised Premises incurred on account of any extra risk caused by the use to which the Demised Premises are put or allowed to be put by the Lessee.
- (b) The Lessee shall from the commencement of the Term take put and maintain in force at all times during the Term of this Lease the following insurances in respect of the Demised Premises and the business conducted thereon by the Lessee:
  - (1) An insurance policy in accordance with the terms of the Work Health Act for its full liability under that Act.
  - (2) A Public Risk (Occupiers Liability) insurance policy extended to include "goods sold" cover the total amount covered in each case being not less than **TWENTY MILLION DOLLARS** (\$20,000,000.00) or such other sum as the Lessor may from time to time require in the joint names of the Lessor and the Lessee.
  - (3) An insurance policy in the name of the Lessor and the Lessee against breakage of all plate glass on the Demised Premises to the full insurable value thereof.
  - (4) An insurance policy in respect of all plant furniture and equipment utilised by the Lessee in and upon the Demised Premises to the full insurable value thereof including damage against mechanical breakdown and fusion.
- (c) The Lessee further covenants that it will pay all premiums in respect of the said insurance and will produce to the Lessor upon demand the policies of insurance receipts for every payment of premium and/or certificates of currency in respect of the policies.
- (d) This clause is only applicable to the extent that it applies to property that is used by the Lessee pursuant to clause 3.9.

## 5.9 RULES & REGULATIONS

The Lessor may make such rules and regulations not inconsistent with the rights of the Lessee under the terms hereof as in its judgement are from time to time needful for the safety care and cleanliness of the Demised Premises and for the preservation of good order therein and the Lessee acknowledges and agrees that failure of the Lessee to keep any such rules and regulations as may from time to time be in force shall constitute a breach of the terms of this Lease in the same manner as if the rules and regulations were contained herein as covenants by the Lessee with the Lessor.

## 5.10 RENEWAL

- (a) The Lessor offers the Lessee a renewal or renewals of this Lease as specified in **Item 6** of the Schedule commencing on the day after the date of expiry of the Term hereof and subject hereto containing identical covenants to the covenants of this Lease (excepting this clause in the last renewal term offered). The initial Rent for the renewed term shall be calculated in accordance with the rent review provisions of this Lease as though the first day of the renewed term were a Review Date.
- (b) The Lessee may only accept this offer if the Rent shall have been duly and punctually paid and the covenants contained in this Lease have been complied with throughout the Term hereof and the Lessee shall have served on the Lessor notice that he accepts this offer of a renewed term during a period commencing six (6) months and ending three (3) months before the date of expiry of the Term hereof.

## 5.11 TIME

Unless the contrary intention appears wherever a period of time is herein limited for the performance of any obligation by either party or for any other purpose that period shall commence at 0900 hours on any relevant commencement date or at 0900 hours on the day after any relevant notice has been served or given or relevant default act event or omission has occurred and expire at 1600 hours on the last day of that period **PROVIDED THAT** should the last day of any period fall on a non-business day the period shall be extended to 1600 hours on the next succeeding Business Day.

## 5.12 NOTICES

- (a) All notices, approvals, consents, demands or other communications required or permitted to be given under this Lease shall be in writing and shall be served personally or by prepaid certified post or facsimile transmission at the address of the party indicated below or at such other address as any such party may have substituted for it by notice to the other party and in the case of the Lessee by service at the Demised Premises.

- (b) A notice, approval, consent, demand or other communication sent by-
- (1) prepaid certified post is to be taken to be received on the 3<sup>rd</sup> (7<sup>th</sup>, if outside Australia) day after posting.
  - (2) facsimile transmission, is to be taken to be received, upon production of a transmission report from the facsimile machine of the sender, if produced before 5:00 pm on a Business Day otherwise on the next Business Day, and which shows that the transmission was sent in its entirety and to the facsimile number shown for the recipient below.
- (c) for the purposes of this clause the initial addresses for service of the parties shall be that specified in **Item 7** of the Schedule.

### **5.13 GOVERNING LAW**

This Lease shall be governed by and construed in accordance with the laws of the Northern Territory of Australia and each party agrees to submit to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia at Darwin.

### **5.14 RENT REVIEW**

- (a) The Rent shall be reviewed on Review Date of the each anniversary of the Commencement Day in accordance with clause 5.14A for all anniversaries of the Commencement Date except as specified in clause 5.14(b).
- (b) The Rent shall be reviewed on Review Date of the anniversary of the Commencement Day in accordance with clause 5.14B when and only when any renewal option is taken up by the Lessee.

#### **5.14A RENT REVIEW (CPI)**

- (a) When the rent is to be reviewed in accordance with clause 5.14A, the Rent shall be reviewed on each applicable Review Date in accordance with the following formula:-  
$$R=A+(A \times B)$$

Where ---  
R is the annual Rent for that part of the Term to the next ensuing Review Date.  
B is the percentage increase in the All Groups Consumer Price Index for the City of Darwin (or at the option of the Lessor any Index or calculation replacing the same and having substantially the same purpose and basis) between the end of the quarter immediately preceding the commencement of the Term or the last Review Date whichever is the later and the end of the quarter immediately preceding the Review Date.

A is the annual Rent payable immediately prior to the Review Date.

- (b) If there shall be a percentage decrease in the relevant Consumer Price Index or the relevant replacement thereof during a Review Period Rent shall not be reviewed.
- (c) If the relevant Consumer Price Index or the relevant replacement thereof is not published prior to any Review Date the Lessee shall continue to pay Rent in the amount which was payable immediately prior to that Review Date until that Index is published whereupon within twenty one (21) days from the date of such publication the Lessee shall adjust and pay the amount due to the Lessor as Rent from the Review Date.
- (d) Should the Consumer Price Index cease to be published and no replacement thereof be opted for by the Lessor as aforesaid subsequent rent reviews shall, or should the method of compiling or character of that Index be so substantially altered as to in the opinion of the Lessor make it no longer suitable for the purpose of calculating rent reviews under this Lease the Lessor may, by notice in writing to the Lessee in any Review Period require that subsequent rent reviews shall be carried out in the following manner:
  - (1) The Lessor may at any time during a Review Period or within sixty (60) days prior to a Review Date by notice in writing to the Lessee advise its assessment of the current market rent of the Demised Premises and require payment of that rent for that Review Period or prospective Review Period respectively.
  - (2) The Lessee may within twenty one (21) days after service of the notice aforesaid object to or dispute that assessment. If the Lessee does not object to or dispute that assessment within that twenty one (21) day period by service of a notice in writing stating that objection or dispute (and in this respect time is of the essence) the Rent for the relevant Review Period shall be that amount required by the Lessor pursuant to the aforesaid notice.
  - (3) Reviewed rents shall be payable from the Review Date and if the same is not ascertained until after that date the Lessee shall continue to pay Rent in the amount which was payable immediately prior to that Review Date and within twenty one (21) days of the reviewed rent being ascertained as herein provided the Lessee shall adjust and pay the amount due to the Lessor as Rent from the Review Date.
  - (4) If the Lessee shall object to or dispute the Lessor's assessment as aforesaid the current market rent for the relevant Review Period shall be assessed in accordance with the following provisions:
  - (5) "Current market rent" means the best rent that can be reasonably obtained for the Demised Premises for a Term and on the terms and conditions (including any option) as are contained in this Lease.

- (6) Either party may request the then President of the Northern Territory Group of the South Australian division of the Australian Property Institute Inc (or the principal officer of any successor organisation) to appoint a Northern Territory member of that organisation to determine the current market rent of the Demised Premises for the relevant Review Period.
  - (7) The appointee shall act as an expert not an arbitrator and his or her determination shall be final and binding on the Lessor and Lessee.
  - (8) The appointee shall make his or her determination and inform the Lessor and Lessee of that determination within twenty eight (28) days after having accepted his or her appointment.
  - (9) Notwithstanding anything herein contained if the appointee determines that the current market rent is less than that payable immediately prior to the Review Date then the rent payable shall remain as that which was payable.
  - (10) If the appointee:
    - (A) fails to accept the appointment
    - (B) fails to make a determination within twenty eight (28) days of appointment
    - (C) becomes incapacitate or dies
    - (D) resigns, then the Lessor or the Lessee may request the appointment of a substitute.
  - (11) The Lessor and the Lessee shall bear the costs of any determination equally.
- (e) Until the Rent is determined as above, the Lessee shall on the due dates pay to the Lessor on account of Rent amounts equal to the Rent payable in the year immediately preceding the Review Date and shall within one (1) calendar month from the date the Rent is determined as above, pay the arrears (if any) to the Lessor.
  - (f) Notwithstanding anything contained herein to the contrary, the Rent for the year following the Review Date shall not be less than the Rent for the year immediately preceding the Review Date.

#### **5.14B RENT REVIEW (MARKET)**

- (a) When the rent is to be reviewed in accordance with clause 5.14B, the Rent shall be reviewed on each applicable Review Date in accordance with the following method:-
- (b) At any time being no more than 6 months before the Review Date the Lessor shall give notice in writing to the Lessee setting out the amount which the Lessor assesses to be a Current market rent for the Demised Premises for the year immediately following the Review Date having regard to the Lessor's

assessment of the Current market rent of the Demised Premises then current and of all matters then relevant to the determination of such annual Current market rent and unless within one month from the date on which the Lessor gives the said notice to the Lessee the Lessee notifies the Lessor by notice in writing that the Lessee disputes such assessment then the Current market rent shall be varied to the amount set out in such notice and such variation shall take effect on and from the Review Date.

- (c) "Current market rent" means the best rent that can be reasonably obtained for the Demised Premises for a Term and on the terms and conditions (including any option) as are contained in this Lease.
- (d) Either party may request the then President of the Northern Territory Group of the South Australian division of the Australian Property Institute Inc (or the principal officer of any successor organisation) to appoint a Northern Territory member of that organisation to determine the current market rent of the Demised Premises for the relevant Review Period.
- (e) The appointee shall act as an expert not an arbitrator and his or her determination shall be final and binding on the Lessor and Lessee.
- (f) The appointee shall make his or her determination and inform the Lessor and Lessee of that determination within twenty eight (28) days after having accepted his or her appointment.
- (g) Notwithstanding anything herein contained if the appointee determines that the current market rent is less than that payable immediately prior to the Review Date then the rent payable shall remain as that which was payable.
- (h) If the appointee:
  - (i) fails to accept the appointment
  - (j) fails to make a determination within twenty eight (28) days of appointment
  - (k) becomes incapacitate or dies
  - (l) resigns, then the Lessor or the Lessee may request the appointment of a substitute.
- (m) The Lessor and the Lessee shall bear the costs of any determination equally.
- (n) Until the Rent is determined as above, the Lessee shall on the due dates pay to the Lessor on account of Rent amounts equal to the Rent payable in the year immediately preceding the Review Date and shall within one (1) calendar month from the

date the Rent is determined as above, pay the arrears (if any) to the Lessor.

- (o) Notwithstanding anything contained herein to the contrary, the Rent for the year following the Review Date shall not be less than the Rent for the year immediately preceding the Review Date.

#### **5.15 SECURITY DEPOSIT**

- (a) This clause shall apply if **Item 4** of the Schedule has been completed.
- (b) The Lessee shall pay to the Lessor on or before the execution hereof the Security Deposit as a security bond in earnest of performance of the Lessee's obligations herein.
- (c) The Lessor shall deposit the Security Deposit with a recognised bank pursuant to the Banking Act in the Lessor's name for the duration of this Lease.
- (d) In the event of the Lessee defaulting in the payment of Rent or in the due performance or observance of any of the covenants terms and conditions on the part of the Lessee to be observed or performed (including covenants and conditions of a negative character) the Lessor shall be entitled to forfeit the Security Deposit and to apply it and any interest towards payment of Rent, or the expenses of the Lessor in rectifying any breach or damages for breach of the covenant term or condition, as the case may be.
- (e) The Lessor shall be entitled to recover the Rent and expenses and damages as herein provided without being limited to the Security Deposit and when making any claim the Lessor shall credit the Lessee with the Security Deposit and interest (if any) so forfeited and applied.
- (f) Subject to sub-clause (d) hereof the Lessor shall repay to the Lessee the Security Deposit on the expiry or termination of this Lease.

#### **5.16 GUARANTEE AND INDEMNITY**

- (a) **THE PERSONS NAMED** in **Item 8** of the Schedule (hereinafter jointly and severally called "the Guarantor") in consideration of the Lessor agreeing at the request of the Guarantor to let the Lessee the Demised Premises and these presents the Guarantor hereby unconditionally guarantees to the Lessor the due and punctual observance and performance by the Lessee of the covenants obligations and conditions of this lease contained referred to or implied on the Lessee's part to be performed to the intent that should the Lessee make default in the due and punctual payment of any sum of money payable pursuant to this lease the Guarantor will pay the same

immediately on demand to the Lessor and further the Guarantor indemnifies and holds safe the Lessor against any loss or expense whatsoever and howsoever arising in connection with this lease and the Guarantor will immediately upon demand by the Lessor make good any default or defaults by the Lessee.

- (b) The liability of the Guarantor hereunder shall not be abrogated prejudiced or affected by:
  - (1) the granting of time credit or any indulgence or concession to the Lessee or any person or by any compounding compromise release abandonment waiver variation relinquishment assignment or renewal or any documents of title or rights of the Lessor against the Lessee or any person or by any neglect or omission or by any other dealing matter or thing which but for this provision could or might operate to abrogate prejudice or affect this guarantee, it being the intent of the parties hereto that the guarantee and the obligations of the Guarantor hereunder shall be absolute and unconditional in any and all circumstances;
  - (2) The bankruptcy or the winding up or any steps taken towards the winding up of the Lessee;
  - (3) The registration or non-registration of this Lease.
- (c) This guarantee is a continuing guarantee and shall be irrevocable and shall remain in full force and effect until all moneys owing under or by virtue of this Lease shall have been paid or satisfied.
- (d) All moneys received by the Lessor in reduction of the Lessee's indebtedness including any dividends upon the winding up or bankruptcy of the Lessee or from any other source shall be regarded as payment in gross without any right on the part of the Guarantor to stand in the place of or claim the benefits of any moneys so received as against the Lessor until the whole of the moneys payable under this lease have been paid or satisfied.
- (e) This guarantee shall be a principal obligation and shall not be treated as ancillary to or collateral with any other obligations howsoever created to the intent that this guarantee shall be enforceable without taking any steps or proceedings against the Lessee notwithstanding the loss by the Lessor of any security by any laches acts or omissions on the part of the Lessor.
- (f) In the event of the winding up or bankruptcy of the Lessee the Guarantor will not prove in competition with the Lessor and the Guarantor hereby authorises the Lessor to prove for all moneys which are payable hereunder and to retain and to carry to a suspense account and appropriate at the discretion of the Lessor any amounts received until the Lessor shall with the aid

thereof have been paid one hundred cents in the dollar in respect of the indebtedness of the Lessee and any other person estate and assets so far as necessary to give effect to anything in this lease contained.

- (g) A statement of the account of the Lessee with the Lessor, signed by the Lessor or some person duly authorised by him, or any account stated or settled by or between the Lessee and the Lessor shall be prima facie evidence of the state of accounts between the Lessee and the Lessor.
- (h) This guarantee shall not prejudicially affect or be prejudicially affected by any other security or guarantee now or hereafter held by the Lessor for any moneys intended to be payable pursuant to this lease but such other security shall be deemed to be collateral hereto.
- (i) The Guarantor in respect of any sum paid by him under and in respect of any other right which may have accrued howsoever to him shall not attempt to recover the same from the Lessee or to enforce the payment of the same until all moneys payable to the Lessor under or by virtue of this guarantee and this lease have been fully paid and satisfied.
- (j) In the event of the avoidance for any reason at all and whether by statute or otherwise of any payment made by the Lessee or the Guarantor to the Lessor under or pursuant to this lease or this guarantee and irrespective of whether such avoidance operated from the time of such payment or from any later date the liability (contingent or actual) of the Guarantor and the rights and remedies of the Lessor against the Guarantor shall be the same as if no such payment had been made.
- (k) This guarantee shall be binding upon the Guarantor jointly and severally if more than one and upon each as soon as he shall have signed the same and notwithstanding that it shall not then or thereafter be signed by all or any of the others of them and notwithstanding any antecedent or contemporaneous statement or representation of any kind made by any person whomsoever.
- (l) This guarantee shall not be determined by any change (if any) which may subsequently take place in the constitution of the Lessor (whether by reconstruction or amalgamation with any persons firms or corporation or otherwise) and whether such amalgamation shall or shall not involve the purchase and sale of assets by and to the Lessor and the formation of a new company to carry on the present name of the Lessor some new name and in the event of any such reconstruction or amalgamation taking place as aforesaid this guarantee shall operate as though it had been originally given to such new reconstructed or amalgamated company and as if the liability of the Guarantor hereunder had commenced at the date of such amalgamation or reconstruction.

- (m) Any notice or demand to be given or made by the Lessor to or on the Guarantor shall be deemed to have been given or made if sent to the Guarantor at his or her place of residence or office last known to the Lessor and any notice or demand so sent by post shall be deemed to have been delivered and made on the day following the posting thereof and any such notice or demand may be under the hand of the solicitor manager or secretary of the Lessor for the time being and the Guarantor shall not be entitled to question the authority of such person to give any such notice or demand on behalf of the Lessor.
- (n) Notwithstanding the payment by the Guarantor of all or any part of the moneys hereby guaranteed the Guarantor shall not be entitled to call on the Lessor to transfer or assign to him or them any security taken by the Lessor from the Lessee in respect of the moneys hereby guaranteed.
- (o) Where the Lessor or the Lessee is a partnership no change in the constitution of the partnership shall affect, impair or discharge the liability of the Guarantor pursuant to this guarantee whether past, present or future notwithstanding the provisions of Section 22 of the Partnership Act (Northern Territory) as amended or any other similar enactment in amendment modification or substitution thereof.
- (p) The Guarantor and the Lessor hereby appoint their respective solicitors as agents for the purposes of delivery and acceptance of this guarantee and indemnity to the others of them.

#### **5.17 ENTIRE AGREEMENT**

The covenants and provisions contained in this Lease and in any statutory provisions relating hereto are expressly agreed by the parties to cover and comprise the whole of the agreement between them and the existence of any implied collateral or other agreement warranty or representation relating hereto is hereby negated **AND IT IS FURTHER AGREED** that no variation of this agreement shall be made otherwise than in writing and signed by both parties.

#### **6. DEMOLITION**

Notwithstanding anything else stated elsewhere in this Lease, in the event that the Lessor shall wish to carry out a demolition of the building the Demised Premises or to carry out substantial repair, renovation or reconstruction of the said building during the term of this Lease or any extension or renewal thereof (hereinafter called "the Redevelopment") which cannot be carried practically without vacant possession of the Premises then the Lessor shall have right from time to time and at any time to require the Lessee to vacate and/or cease to use the Premises and to terminate the Lease PROVIDED ALWAYS that if:-

- (e) The Lessor shall provide to the Lessee details of the proposed Redevelopment sufficient to indicate a genuine proposal to demolish or substantially repair, renovate or reconstruct the

building within a reasonably practicable time after the Lease is to be terminated under this clause; then

- (b) The Lessor may subject as hereinafter provided terminate this Lease with effect from any time on giving not less than six (6) months notice to the Lessee ("the initial notice") specifying the date on which the premises are so required and by which the Lessee must vacate the premises PROVIDED THAT after the expiry of three (3) months from the service of the initial notice the Lessor shall give to the Lessee not less than three (3) months notice ("the second notice") in writing confirming the date of termination of the Lease and the date upon which the premises are so required ("the termination date") and by which the Lessee must vacate the premises PROVIDED HOWEVER THAT the second notice cannot be given until the Lessor has obtained all necessary approvals for the Redevelopment from the Development Consent Authority (or any other authority replacing the same) and prior to the giving of the second notice the Lessor shall make every reasonable endeavour to assist the Lessee in finding alternative temporary premises within the same general area at reasonable costs to the Lessee.

And if the Lessor gives such notices then

- (c) This Lease shall automatically and without the necessity for any further notice terminate on the termination date.
- (d) Not less than fourteen (14) days prior to the termination date the Lessee shall execute and deliver to the Lessor a surrender of this Lease by mutual consent and without the payment of any monetary or other consideration which surrender shall be prepared by or on behalf of the Lessor in registrable form and shall take effect from the termination date and (if this Lease is registered) then each of the parties shall do all such things and execute all such documents as are necessary to stamp and register the surrender;
- (e) The cost of preparation and registration of the surrender shall be paid by the Lessor.
- (f) On the termination date the Lessee shall vacate the premises in all respects and in compliance with the terms of this Lease;
- (g) If this Lease is terminated pursuant to this clause 6 the Lessor shall:
  - (i) If the *Business Tenancies (Fair Dealings) Act 2003* applies to this Lease pay to the Lessee compensation for the fit out of the premises if the Lessee is required under the Lease to fit out the premises but the Lessee shall not be entitled to any other compensation or damages from the Lessor by reason of such termination; and

- (ii) If the *Business Tenancies (Fair Dealings) Act 2003* does not apply to this Lease the Lessee shall not be entitled to any compensation or damages whatsoever from the Lessor by reason of such termination.

PROVIDED ALWAYS that the Lessee may terminate this Lease by giving to the Lessor not less than seven days notice of termination at any time within six (6) months before the termination date ("Lessee's termination date") and if the Lessee gives such notice then the provisions of Clauses 6 (c) to 6 (d) (inclusive) shall apply mutatis mutandis as if the words "Lessee's termination date" was substituted for the words "termination date".

- (h) Alternate Premise Option: At the time of giving the initial notice specified in 6(b) the Lessor shall grant to the Lessee the option of the first choice of alternative premises within the Redevelopment, once completed, with such alternative premises having:-

- Prominent Street frontage;
- Its location as near as practicable to the present location of the Premises;
- Total area if at least the same square metreage as the existing premises with similar standards services and facilities.

- (i) Costs: All costs of and incidental to the demolition of the Premises and Redevelopment of the Alternate Premises are to be borne by the Lessor save that the costs of stripping, storing and re-installing the Lessee's fitout of the leased premises and alternate premises shall be borne by the Lessee; and

- (j) Lease for Alternate Premises: The lease in respect of the alternative premises shall be on the same terms and conditions as the current lease for the Premises save and except for:-

- (i) The location and area of the premises

- (ii) the term of the lease which shall be for a minimum term of two (2) years commencing on the day the Lessor notifies the Lessee in writing that the alternative premise is available to the Lessee for occupation, which notice can not be given until the Lessor has obtained all statutory approvals that may be required for the alternative premises to be lawfully occupied ("the commencement date") and the new lease shall include one further right for the leasee to renew such lease with such right of renewal being for a further term of two (2) years upon the same terms and conditions as the then existing lease with the rental under such lease being reviewed at the commencement of each year of the lease in accordance with clause 5.14A other than at the commencement of the first year of the uptake of the option by the Lessee when the rental shall be reviewed in accordance with clause 5.14B;

- (iii) The rental of the first year of the lease shall be the then current market rent determined by a licensed valuer who is suitably experienced in the commercial market, the identity of whom shall be agreed by the parties and failing agreement, appointed by the then Chairman of the Australian Property Institute (Northern Territory Division, or its successor. For the purposes of this clause “current market rent” means the best rent that can be reasonably obtained as at the relevant date between a willing lessor and a willing lessee in an arms length transaction, wherein the parties have each acted knowledgeably, prudently and without compulsion and having regard to the usual terms and conditions from leases of comparable premises in the locality; and
  - (iv) The proportion of outgoings payable, which shall be adjusted to the percentage of the Lessee’s net internal lettable area; and
  - (v) Director’s guarantees in accordance with **item 8** of the Schedule, which, if the Lessee is a company, the Lessee will procure.
  - (vi) The Lessor agrees that it shall also be a term of the lease for the alternative premises that the Lessee shall not pay any rent for eight (8) weeks from the commencement date of the lease of the alternative premises,
- (k) Hand Over of Alternative Premises: The Lessor shall no later than twenty four (24) calendar months from the date of commencement of construction of the redevelopment hand over the alternative premises to the Lessee. In the event that the Lessor does not hand over the alternative premises to the Lessee within the aforesaid twenty four (24) months, the Lessor shall from the date that the Lessee is required to commence paying rent pursuant to the lease for the alternative premises grant the Lessee a rent free period equivalent to the number of months (or part thereof) that elapse after the aforesaid twenty four (24) months to the date that the lessor actually hands over the alternative premises to the Lessee,
- (l) Statutory Approvals: For the purpose of clause 6 (k) “hand over the alternative premises to the Lessee” shall occur when the Lessor notifies the Lessee in writing that the alternative premises is available to Lessee. In the event that all statutory approvals for the alternative premises are not available at the date of such notification, the Lessor shall obtain all such approvals within eight (8) weeks after the date of such notification, failing which the Lessee shall be granted an additional one week rent free (in addition to clause 6 (j) (vi) above) for every week or part thereof delay in receipt of all such approvals,

- (m) Commencement of Construction: For the purposes of clause 6(k) “the date of commencement of construction of the redevelopment’ is the date being one calendar month after the date that the Lessee is required to vacate the premises pursuant to the notices given under clause 6 (b) of this lease.
- (n) AND PROVIDED FURTHER THAT an exercise by the Lessor of its rights under this clause shall not constitute a breach by the Lessor of any of its covenants under this Lease.

## **7. SPECIAL CONDITIONS**

Where **Item 9** of the Schedule has been completed and that clause is inconstant with any other provision of this Lease then the Special Condition in **Item 9** shall prevail.

### **OPERATIVE PROVISIONS OF LICENSE.**

## **8. ACCESS TO THE DEMISED PREMISES**

The Demised Premises is within the boundaries of the whole of the land as described on the front page of this Lease and does not have street frontage. Access to the Demised Premises, the airstrip and taxiways to operate an aircraft and gain access to the Demised Premises is required by the Lessee therefore the Lessor grants to the Lessee a license to access the aforementioned in accordance with the terms and conditions as stated in the License agreement as well as but not limited to any documents posted on the internet under the Top End Flying Club website any other terms and conditions that may be reasonably required from time to time to ensure the safe and orderly use of the whole of the land.

**DATED:**

**BETWEEN**

**RALPH MEYERING**

*Lessor*

**AND**

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.....

*Lessee*

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**LEASE / LICENSE**

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