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Description automatically generated

**Introduction**

One of the ways local councils and other landowners, such as charities, support the delivery of affordable housing is through contributing land to an affordable housing project led by a community housing organisation (CHO). In many cases the third party landowner does not want to relinquish title to the land, and would prefer to provide a long-term lease to the CHO at a peppercorn rent.

Community Housing Industry Association of Victoria (CHIA Vic) engaged Moores to develop this resource to assist CHOs and landowners to draft a lease that works for both parties – one that enables the CHO to apply for funding and debt while protecting the interests of the landowner, the funder and the CHO.

CHIA Vic would like to thank the National Housing Finance and Investment Corporation (NHFIC) for funding this work.

**Feedback on this document**

If your organisation has used this template, CHIA Vic would greatly appreciate your feedback – what worked, what didn’t work and what changes you would recommend.

Please email your feedback to [admin@chiavic.com.au](mailto:admin@chiavic.com.au).

**Guide to using this head lease**

**What is this document?**

This lease is designed for use by Community Housing Organisations (**CHOs**)when developing housing on land owned by another party (often a local council), and provides for a long term lease following construction

The lease commences after the development of housing on the land on the date determined by the Agreement for Lease (**AFL**), two weeks after practical completion of the development.

**When should I start referring to this document?**

CHOs or landowners may wish to refer to this lease together with the AFL template when considering the development and delivery of the housing outcomes over the life of both agreements. The AFL will govern the development of the Improvements on the Land, and the Lease will manage the ongoing use of the Improvements and the Land over the agreed term.

A CHO may also wish to refer to this head lease independently of the AFL template where it intends to lease established dwellings from a third-party landlord. In this circumstance, we recommend legal advice is sought in relation to any appropriate amendments.

**How to use this document?**

This document comprises three sections:

*General Conditions*  - which are general terms which will apply in most lease arrangements.

*Schedule*  - which allows the parties to input variables unique to their commercial arrangement. We have highlighted in Green all variables which the parties will need to agree to and complete.

*Special conditions*  - which are a number of options conditions which the parties may wish to include in the agreement where they are appropriate. Delete all special conditions except those which the parties have expressly agreed to include.

**Note**: Yellow highlighted text, including drafting notes we have provided as guidance when referring to this lease, should be deleted from the final version of the document before execution.

**Key Assumptions**

We have made the following assumptions when preparing the general conditions of this lease:

* The land is situated in Victoria. This agreement is not suitable for use interstate without legal review and amendment.
* The default owner of the Improvements will be the CHO, and the CHO will therefore be responsible for the Improvements over the life of the lease.
* The lease will be for a long term (10-50 years), so as to maximise housing outcomes.
* This lease will be used together with the Moores template agreement for lease developed together with this document.
* The Land is not subject to a mortgage. Where the Land is subject to a mortgage, the parties will need to obtain the consent of the mortgagee to the lease.
* Where finance is obtained from a lender or through a government funding stream, we have assumed that the lender will require a direct-deed with the landlord to secure step-in rights in the event of a default by the CHO so the housing outcome is not lost.
* This lease does not contain a renewal mechanism, as it is intended that the term of the lease will be long enough that an extension should warrant the execution of a new lease document.
* Where the Improvements are owed by the Tenant, the Tenant will demolish the Improvements prior to end of lease.
* The Land has been provided by the Landlord for free or at a very low rent for the provision of affordable housing. As a result, no commercial rental provisions (e.g. rent reviews during the term, rent security by bank guarantee, etc) are required.
* The Landlord delivered the land either vacant or with buildings to be demolished, and expects to receive a vacant lot at the end of the lease.

|  |
| --- |
| **Head Lease**  **­­(for Social Housing Development)** |
|  |
| [insert landlord] |
| [insert tenant] |

**MOORES**

Level 1

5 Burwood Road

Hawthorn Vic 3122

Tel: (03) 9843 2100

Fax: (03) 9843 2102

Ref: **APB/EHA 211027**

**Moores MDP Pty Ltd**

ACN 625 708 689

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**THIS LEASE** is dated:

PARTIES

|  |  |
| --- | --- |
|  | **[INSERT LANDLORD NAME AND ABN OR ACN]**  of [insert landlord address]  (**Landlord**) |
|  | **[INSERT CHO NAME AND ABN or ACN]**  of [insert tenant address]  (**Tenant**) |

BACKGROUND

1. The Landlord owns the Land, or is otherwise entitled to enter grant this Lease.

The Landlord and the Tenant are parties to the Agreement for Lease.

In consideration for the performance of the Tenant’s obligations under the Agreement for Lease, the Landlord has agreed to lease the Premises to the Tenant on the terms of this Lease.

IT IS AGREED:

1. INTERPRETATION
   1. Definitions

In this Lease, unless the context otherwise requires:

**Address for Service** means the principal place of business or head office of the relevant party, which at the date of this agreement is set out in the Reference Schedule.

**Agreement for Lease** means the agreement between the Landlord and the Tenant dated [insert AFL date], authorising construction of the Improvements and the entering into this Lease.

**Approvals** means any consents, approvals, permits, licences and authorisations of any kind required under any Relevant Legislation, or by any Government Agency.

**Business Days** means weekdays, excluding public holidays in Victoria, and each Business Day concludes at 5:00 pm.

**Claim** includes any claim, proceeding, cause of action, action, demand or suit (including by way of contribution or indemnity):

* + 1. under, arising out of, or in connection with this Lease;
    2. arising out of, or in connection with, the Works; or
    3. otherwise at law or in equity including:
       1. by statute;
       2. in tort for negligence or otherwise, including negligent misrepresentation; or
       3. for quantum meruit or restitution, including restitution based on unjust enrichment.

**Commencement Date** means the commencement date of this Lease set out in Item 5 of the Reference Schedule.

**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 Victorian Environment Protection Authority from time to time. The word “**Contaminant”** has a corresponding meaning.

**Contractor** means the developer or building contractor engaged by the Tenant to carry out the Works under the Agreement for Lease.

**Dwellings** means the dwellings constructed on the Land under the Agreement for Lease.

**Environment** includes the meaning given to that term at common law and in any legislation in force in the State including any land, water, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, natural, man-made or modified features or structures and the social factors of aesthetics.

**Environmental Law** means any Law relating to the Environment including any Law relating to land use; planning; heritage items or values; pollution of air, water, soil or groundwater; flora and fauna; 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.

**Funding Agreement** means any agreement with a person or body under which grants or funding is provided or made available to the Tenant for or in connection with construction and/or operation of the Housing Project.

**Government Agency** means a government or a governmental, semi governmental, judicial, municipal, statutory or public entity or authority, whether Commonwealth, State or Local, and also includes a self regulatory authority established under statute or a stock exchange (wherever created or located) and includes the Responsible Authority.

**Grants** means all grants and funding provided or made available to the Tenant by any Government Agency for or in connection with construction and/or operation of the Housing Project.

**GST** means any form of goods and services tax payable under the GST Law, and includes any applicable additional tax, penalty tax, fine, interest or other charge.

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

**Housing Act** means the *Housing Act 1983 (Vic)* as amended from time to time.

**Housing Project** means the development and the use of the Land as anticipated by the Agreement for Lease and this Lease.

**Improvements** has the meaning provided in clause 6.2(a).

**Insolvency Event** means any of the following:

* + 1. an application is made to a court for an order that the corporation be wound up and the corporation has not taken steps to set aside or to otherwise dispose of that application within 14 days of the application being made, or the application is not set aside, withdrawn or otherwise disposed of within 21 days of the application being made, or an order is made that the corporation be wound up;
    2. an application is made to a court for an order appointing a liquidator or provisional liquidator to the corporation and the corporation has not taken steps to set aside or to otherwise dispose of that application within 14 days of the application being made, or the application is not set aside, withdrawn or otherwise disposed of within 21 days of the application being made, or a liquidator or provisional liquidator is appointed, whether or not under that order, or the corporation resolves to appoint a liquidator or provisional liquidator;
    3. the corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so (except for the purposes of an amalgamating or reconstruction while solvent) or is otherwise would up or dissolved; and
    4. the corporation is or states that it is insolvent,

and the terms **Insolvent** and **Insolvency** have corresponding meanings.

**Insurances** means the insurances to be effected and maintained by the Tenant under clause 9.1.

**Intellectual Property Rights** means all copyright and similar rights which may subsist or may hereafter subsist in relation the Works and the design of the Works, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and designers.

**Lease** means this document together with annexures and schedules.

**Land** means the land described in Item 3 the Reference Schedule.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation and includes any Environmental Law.

**Liability** means any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Local Government Act 1989** means the *Local Government Act 1989* (Vic), as amended or replaced from time to time.

**Local Government Act 2020** means the *Local Government Act 2020* (Vic).

**Loss** means any Liability (including legal expenses) of any kind whatsoever (and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise).

**Major Damage** has the meaning given in clause 10.2(a).

**Major Damage Termination Notice** has the meaning given in clause 10.3(a).

**Notice of Intention to Terminate** has the meaning given in clause 0.

**Owner of the Improvements** means the party identified in Item 9 of the Reference Schedule (or if no party is identified in the Reference Schedule, the Landlord).

**Permitted Use** means the permitted use set out in Item 4 of the Reference Schedule.

**Pre-existing Contamination** means Contamination existing on, in or under the Land, as at the date of the Agreement for Lease.

**Premises** means the Land and all the Improvements.

**Rates and Taxes** means all municipal rates, water rates (including excess water rates), sewerage rates, drainage rates and other rates, taxes, assessments, charges, costs and expenses (including for the construction of any private street, channel, kerbing, flagging or paving of any footway or pathway abutting the Land) which may at any time be payable to any Government Agency with respect to the Land and the Premises (other than GST).

**Reference Schedule** means the schedule attached to this Lease.

**Reinstatement Works** has the meaning given in clause 10.4(a)(ii).

**Relevant Legislation** means all applicable Statutes, ordinances, regulations and by-laws issued thereunder, whether Federal, State or local.

**Rent** means the annual rent specified in Item 6 of the Reference Schedule.

**Responsible Authority** means the authority responsible for administering the planning scheme which applies to the Land.

**Services** means the water, gas, electricity lighting, sanitary, hot water, security, air conditioning and ventilation, lift and utility systems or services which are in, or are subsequently installed in, the Premises, and includes all wires, cables, pipes, ducts, conduits, tanks, cisterns, electrical and mechanical plant and all other parts, fittings and accessories.

**Tenant** means the tenant specified in Item 2 of the Reference Schedule.

**Tenant’s Property** means all facilities, installations and equipment (other than forming part of the Improvements) and all loose furniture, equipment and goods, which belong to the Tenant and are used by the Tenant for or in connection with the operation of the Premises for their intended purpose from time to time.

**Term** means the term specified in Item 7 the Reference Schedule, which commences on the Commencement Date.

**Utility Services** means all utility services required for the construction and operation of the Housing Project, including, but not limited to, electrical power, gas, communications, water supply, wastewater services, stormwater and drainage services.

**Works** means the design and construction of the Improvements on the Land.

* 1. Interpretation

In this Lease, unless the context clearly indicates otherwise:

* + 1. a reference to this Lease or another document means this Lease or that other document and any document which varies, supplements, replaces, assigns or novates this Lease or that other document;
    2. a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
    3. a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
    4. clause headings and the table of contents are inserted for convenience only and do not form part of this Lease;
    5. a reference to a natural person includes their personal representatives, successors and permitted assigns;
    6. a reference to a corporation includes its successors and permitted assigns;
    7. a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Lease;
    8. an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
    9. a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
    10. including and includes are not words of limitation;
    11. a word that is derived from a defined word has a corresponding meaning;
    12. the singular includes the plural and vice-versa; and
    13. a reference to a thing includes each part of that thing.
  1. Construction

Neither this Lease nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

1. GRANT OF Lease AND PAYMENT OF RENT
   1. Grant of Lease

The Landlord leases the Premises to the Tenant for the Term commencing on the Commencement Date.

* 1. Rent
     1. During each year of the Term, the Tenant must pay the Rent in the manner described in Item 8.
     2. The first instalment of Rent must be paid no later than the Commencement Date. Where the Term commences on a date that is not the first day of a calendar month, Rent for that month will be charged on a pro rata basis based on the number of days in the month.

1. Tenant obligations
   1. Fit for Permitted Use
      1. The Tenant must maintain all accreditation, competencies, and registrations, including but not limited to its status as a registered housing agency under the Housing Act, so that it may continue to manage the Housing Project in a manner consistent with the Permitted Use.
      2. Within 5 days of it becoming aware of any breach of its obligations under clause 5.1(a), the Tenant must notify the Landlord of the breach and provide details as to:
         1. how the breach may be remedied; and
         2. the impacts of the breach on the Permitted Use.
2. ENVIRONMENTAL obligations
   1. Contamination

The Tenant:

* + 1. accepts the condition of the Premises at the Commencement Date;
    2. will not make any claims for compensation, set off, damages or otherwise in respect of the condition of the Premises at the Commencement Date;
    3. releases the Landlord in all of its capacities and its officers and agents in relation to any Claim by the Tenant arising out of or in respect of:
       1. any Contaminant in, on, under or which has or in the future does emanate from the Premises; and
       2. any Contaminant in, on or under the Premises to the extent that it is caused, contributed to or exacerbated in a material way by the Tenant or its servants, agents, employees or contractors ; and
    4. indemnifies the Landlord, officers and agents against any Claim arising out of or in respect of:
       1. any Contamination in, on, under or which has or does in the future emanate from the Premises (excluding Pre-existing Contamination); and
       2. any injury, loss or damage suffered by any occupier, user or visitor to the Premises as a result of or in connection with any Contamination in, on or under the Land (excluding Pre-existing Contamination).

*[****Drafting note:*** *tenant should already have had the opportunity to inspect the condition of the land on the terms of the AFL. Any Improvements developed on the land will have been built by the Tenant or its developer].*

* 1. General Environmental Compliance
     1. The Tenant must, in its use and occupation of the Premises, comply with all Environmental Laws and obtain and maintain in full force and effect, and at all times comply with, the terms of all Approvals required in order to release or emit any Contaminant from the Premises into the air or water or on to the ground or otherwise into the Environment or to emit any substantial noise.
     2. The Tenant indemnifies the Landlord in respect of all Claims for which the Landlord is or may become liable in respect of or arising from the Tenant’s breach of any of the Tenant’s obligations under this clause 4.

1. RATES, TAXES AND utility services
   1. Rates and taxes
      1. Where Rates and Taxes are separately assessed in relation to the Land, the Tenant must pay the relevant Government Agency when due or reimburse to the Landlord on demand if paid by the Landlord, all such Rates and Taxes.
      2. If any Rates and Taxes are not separately assessed in relation to the Land, the Tenant must reimburse to the Landlord on demand a proportion of the Rates and Taxes equal to the area that the Land bears to the total area included in the assessment.
   2. Charges for Utility Services

The Tenant must pay, when due, all charges (including service charges) for Utility Services to or from the Land, together with any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure which provides or supplies those services to the Land.

* 1. Separate metering

If no separate meter exists for recording or metering of any of the Utility Services or utilities provided or supplied to, or consumed from the Premises, the Tenant must install, or arrange for the installation of, meters at its own cost and expense.

* 1. Payment by the Landlord

If the Tenant defaults in the payment of any Rates and Taxes under clause 5.1 or any of the costs or charges referred to in clause 5.2, the Landlord may (without limiting any other rights and remedies of the Landlord) pay the Rates and Taxes or the costs or charges and the Tenant must, on demand, reimburse the Landlord the amount so paid.

1. PREMISES
   1. Permitted Use
      1. The Tenant must not use or allow the Premises to be used for any purpose other than the Permitted Use.
      2. The Permitted Use may be changed or amended by written agreement between the parties.
   2. Improvements
      1. The Improvements are all buildings (including the Dwellings), earthworks and landscaping constructed on the Land by the Contractor as part of the Works prior to the Commencement Date, and includes all alterations and additions made by or on behalf of the Tenant during the Term, as well as any new or replacement improvements constructed during the Term.
      2. The parties acknowledge and agree that as at the Commencement Date, ownership of the Improvements is vested in the Owner of the Improvements and all Improvements made after the Commencement Date will be vested in the Owner of the Improvements.
      3. The parties acknowledge that this clause 6.2 does not limit the operation of clause 15.
   3. No Warranty as to Suitability

The Tenant acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the Landlord regarding the suitability of the Land or the Improvements for the Permitted Use.

* 1. Compliance with Statutory Requirements

The Tenant must at its own expense in all respects observe and comply with all Approvals, Laws and all directions, notices and requirements of any Government Agency relating to the use and occupation of the Premises.

* 1. No Unlawful Acts

The Tenant must not do anything, or allow its servants or agents to do anything at the Premises or adjacent to the Premises, which is unlawful or would result in a breach of Law.

* 1. Operation of Dwellings

The Tenant must at all times:

* + 1. comply with all conditions and requirements of any and all Grants or Funding Agreements; and
    2. operate the Dwellings in compliance with all relevant Laws.

1. ASSIGNMENT AND SUBLETTING
   1. Assignment or grant of interest

The Tenant must not:

* + 1. assign any of its rights or obligations under this Lease; or
    2. grant any charge, interest, or other encumbrance over any of its rights under this Lease,

without the prior written consent of the Landlord, which must not be unreasonably withheld or delayed.

* 1. Consent not to unreasonably be withheld

The Landlord's consent to an assignment under clause 7.1 will not be unreasonably withheld if:

* + 1. the Tenant has requested consent to the assignment by notice in writing to the Landlord not less than 90 days before the assignment is proposed to take effect, and in such notice provided the full name and address of the proposed assignee (“Proposed Assignee”);
    2. the Tenant has provided the Landlord with all such information and material as the Landlord reasonably requires in order to assess and satisfy itself that the Proposed Assignee is a suitable operator, having regard to the matters set out in clause 7.2(c);
    3. having had a reasonable time to consider the information and material provided under clause 7.2(b), the Landlord is satisfied that the Proposed Assignee is a suitable operator, having regard to:

its experience and reputation as an operator of facilities similar to the Premises;

* + - 1. its philosophy and approach to the management and operation of similar to the Premises;
      2. the experience and qualifications of its staff, and the availability of sufficient staff for the proper management and operation of the Premises;
      3. whether it holds the necessary license and permits to operate the Premises;
      4. its financial resources; and
      5. its capacity and ability generally to perform the obligations of the Tenant under this Lease for the balance of the Term;
    1. the Proposed Assignee has, or has agreed to, execute a deed in a form reasonably required by the Landlord under which the Proposed Assignee covenants with the Landlord to perform all of the obligations of the Tenant under this Lease;
    2. the Tenant has remedied any default specified in a Default Notice that has been issued at the date the request is made and as at the date the proposed assignment is to take effect, or the Landlord's rights arising out of such default have been waived in writing by the Landlord; and
    3. the Tenant and the Proposed Assignee comply with all other reasonable requirements of the Landlord.
  1. Release upon assignment
     1. If the Landlord does consent to an assignment under clause 7.2, the Tenant is released from its obligations under this Lease from the date the assignment takes effect, but without prejudice to any existing breaches and outstanding obligations up to that time.
     2. If the Landlord consents to an assignment under clause 7.2, then the Landlord is released from all Claims and Liability which it may have to the Tenant as at the date such assignment takes effect, with the exception of any Claims and Liability which have been specified and detailed by the Tenant, in writing, prior to the Landlord providing its consent to such assignment.
  2. Sub-Letting and Licensing
     1. The Tenant may, subject to clause 7.4(b), grant sub-leases and/or licences in relation to the Dwellings, subject to and in accordance with the following provisions:

the use or purpose permitted under the proposed sub-lease or licence must be consistent with the Permitted Use;

* + - 1. the sub-lease or licence must comply with all Laws; and
      2. the sub-lease or licence must be consistent with the terms and conditions of this Lease.
    1. The Tenant may not grant a sub-lease or licence with respect to the whole of the Premises, or any part of the Premises containing multiple Dwellings, without the prior written consent of the Landlord and the Landlord must deal with the consent request as if clause 7.2 applies to that request.

1. MAINTENANCE, REPAIR & ALTERATIONS
   1. Structural Repair Obligations
      1. The Owner of the Improvements is responsible (at its cost) for the maintenance and repair of the Improvements to the extent that the maintenance and repair works are of a capital or structural nature.

[***Drafting note:*** *The Owner of the Improvements will typically be the party funded to deliver the housing outcome on the Land. Any capital or structural maintenance works should therefore be funded through the same funding stream.*]

* + 1. Where the Landlord is the Owner of the Improvements, it will not be responsible for maintenance and repair of the Improvements to the extent that such works:
       1. are required to be rectified by the Contractor under the building contract for the Works; or

[***Drafting note:*** *Landlord receives the benefit of the Contractor’s warranty for the Works. The building contract will require the Contractor to rectify defects within the liability period]*.

* + - 1. result from the Tenant’s breach of this Lease or the Agreement for Lease or the Tenant’s negligent act or omission.
  1. Tenant’s General Repair Obligations

Except to the extent that clause 8.1 makes the Landlord responsible, the Tenant will be responsible for:

* + 1. keeping the Improvements and Land in good and tenantable repair, condition and appearance at all times; and
    2. maintaining the Tenant’s Property in a functioning and safe condition, and in good appearance at all times.
  1. Tenant to Advise Landlord of Notices

The Tenant must give the Landlord a copy of any notice (other than rates notices) which the Tenant receives from any Government Agency and which does or may have an impact on the interest of either the Landlord or the Tenant as soon as practical, but in any case not later than 14 days after receiving it.

1. Insurance and indemnity
   1. Insurances
      1. The Owner of the Improvements must, at its own cost, effect and maintain throughout the Term industrial special risks insurance covering the Land, Premises and Improvements against the risks of loss, damage or destruction by all insurable risks (being risks of a type usually insured against) for the full replacement or reinstatement value (including consultant's fees and removal of debris).
      2. The Tenant must, at its own cost, effect and maintain throughout the Term the following insurances in the name of the Tenant (and noting the interest of the Landlord):
         1. industrial special risks insurance covering the Tenant’s Property against the risks of loss, damage or destruction by all insurable risks (being risks of a type usually insured against by companies with the risk profile of the Tenant in the worldwide insurance market with reputable insurers) to the reasonable satisfaction of the Landlord for the full replacement or reinstatement value;
         2. public liability insurance to cover personal injury to, or the accidental death of any person and any injury, loss or damage caused by accident to any property which occurs or is suffered on or at the Premises for a sum of not less than $20 million for any one occurrence (and unlimited in the aggregate); and
         3. insurance for the sum required by Law against any loss, cost, damage or liability suffered or incurred by any person employed by the Tenant in its use and operation of the Premises (whether arising by virtue of any Law relating to workers' or accident compensation or employers' liability or at common law).
   2. Duty to maintain insurance

Any party required to take out and maintain Insurances under this Lease must not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any of the Insurances and, if necessary, rectify anything which might prejudice any of the Insurances.

* 1. Tenant Indemnifies against Damage

The Tenant must indemnify and keep indemnified the Landlord against any Claim or Liability:

* + 1. for any injury, loss or damage to any property (real or personal); or
    2. arising under any statute or at common law for personal injury to or death of any person,

which is caused by the performance or non-performance of the Tenant’s obligations under this Lease, except to the extent that the injury, loss or damage is caused by a default or wrongful or negligent act or omission of the Landlord or its employees, consultants or agents.

1. DAMAGE AND DESTRUCTION
   1. No Abatement of Rates and Taxes

The Tenant acknowledges and agrees that should the Premises be damaged or destroyed, this Lease shall continue in force (except to the extent of those obligations which are directly affected by the damage or destruction), unless terminated under clause 10.5, and the Tenant will not be relieved of its obligations to pay Rates and Taxes or any other amount due under this Lease, or to perform any of its other obligations under this Lease (except those directly affected by the damage or destruction).

* 1. Major Damage
     1. If the Premises are destroyed, or the nature or extent of any damage to the Premises is such that, in order to continue to use the Premises for the Permitted Use, it is necessary to rebuild, or demolish and rebuild, the whole of the Premises or a major part of the Premises, then for the purposes of this clause 10.2, the Premises will be taken to have suffered Major Damage.
     2. Where the Premises suffer Major Damage, the Owner of the Improvements may elect to either:
        1. reinstate the Premises in accordance with clause 10.4; or
        2. terminate this Lease in accordance with clause 10.5.
  2. Major Damage Notice
     1. If the Premises suffer Major Damage, the Tenant must give the Landlord a written notice to that effect not later than 10 Business Days after the destruction or damage occurs (**Major Damage Notice**).
     2. If, following receipt of a Major Damage Notice, the Landlord does not agree that the damage specified in the notice constitutes Major Damage, then it must advise the Tenant, in writing, not later than 14 days after receipt of that notice. The parties must then consult in good faith, with a view to agreeing on whether or not the relevant damage constitutes Major Damage.
     3. If, following such consultation, the parties still do not agree whether the damage constitutes Major Damage, then either party may refer that particular matter for expert determination in accordance with clause 18.3.
  3. Reinstatement of Major Damage
     1. If the Premises suffer Major Damage and the Owner of the Improvements proposes to reinstate that damage, it must:
        1. give written notice to the other party to that effect within 40 Business Days following the date the Major Damage occurs; and
        2. unless otherwise agreed, reinstate the Premises to the condition in which they were immediately prior to the damage occurring.
     2. The Owner of the Improvements may, with the consent of the other party (which must not be unreasonably withheld), in reinstating the damage change the Improvements, or construct works which differ from those which existed prior to the damage (**Reinstatement Works**).
     3. The parties must agree on a program for carrying out the Reinstatement Works. If the parties cannot agree on such program, within a reasonable time, then the program for carrying out the Reinstatement Works (which must be a reasonable program in all circumstances) will be specified by the Owner of the Improvements.
     4. The Reinstatement Works must be:
        1. designed in a proper and professional manner; and
        2. carried out:

in accordance with all Approvals and Laws;

in a good and workmanlike manner and by reputable, experienced and competent builders; and

in accordance with the program specified under clause 10.4(c).

* + 1. Unless otherwise agreed, this Lease will continue to apply in all respects to the Premises as reinstated or modified by the Reinstatement Works, save for the obligation to use the Premises for the Permitted Use, which obligation is suspended to the extent necessary for the duration of the Reinstatement Works.
  1. Termination by the Owner
     1. If the Owner of the Improvements has not elected to reinstate Major Damage within 40 Business Days following the date the Major Damage occurred then either party may, by giving written notice to the other party, terminate this Lease.

[***Drafting note:*** *Where Improvements are funded by a lender or government grant, the finance/funding agreement will typically be conditional on a direct deed with the landlord, and requiring certain step-in rights where Major Damage occurs].*

* + 1. If the Tenant is the Owner of the Improvements and the Lease is terminated in accordance with clause 10.5(a), the Tenant must demolish the Improvements and return the Land to the Landlord as a vacant lot (**Demolition Works**).

[***Drafting note:*** *Demolition by the tenant is assumed because it provides grounds under the Residential Tenancies Act to terminate any sub-tenancy agreements, allows the tenant to budget for demolition during lease term, and provides the land back to the landlord without an aged asset which may require substantial repairs]*

* + 1. The Demolition Works must be carried out:
       1. in accordance with all Approvals and Laws;
       2. in a good and workmanlike manner and by reputable, experienced and competent builders; and
       3. in a timely manner.

1. Tenant’s INDEMNITY AND RELEASE
   1. Indemnity

The Tenant indemnifies and agrees to keep the Landlord indemnified against all Claims and Liability in respect of or arising from:

* + 1. the occupation and use of the Premises;
    2. any default by the Tenant under this Lease;
    3. the negligent use or misuse by the Tenant of any Utility Services and other services and facilities of the Premises;
    4. any overflow or leakage of water (including rain water) in or from the Premises caused or contributed to by the Tenant’s act, default, breach or negligence; and
    5. loss, damage or injury to property or persons caused or contributed to by the Tenant’s act, breach, default or negligence.
  1. Release
     1. The Tenant:
        1. occupies, uses and keeps the Premises at the risk of the Tenant in all things; and
        2. subject to clause 11.2(b), releases to the extent permitted by Law, the Landlord, its servants and agents, and all persons claiming through or under the Landlord from all Claims and Liability resulting from any accident, damage, loss, death or injury occurring in or outside the Premises.
     2. The release under clause 11.2(a)(ii) does not extend to any accident, damage, loss, death or injury which is caused by the Landlord's negligence or wilful act.

1. ALTERATIONS DURING THE TERM

The Tenant may carry out alterations or additions to the Improvements during the Term in accordance with and subject to the following provisions:

* + 1. The alterations and/or additions must:
       1. be designed by professional and appropriately experienced and qualified designers;
       2. be consistent with the permitted use, design, quality and appearance of the Improvements; and
       3. comply in all respects with all relevant Approvals and Laws; and

*[****Drafting note:*** *Where tenant owns Improvements, alterations do not require consent as the building will not be handed back to the landlord. However, works should still be of a standard to ensure housing outcome and Land is protected.]*

* + 1. Where the Landlord is the Owner of the Improvements, any alterations and/or additions works must not be commenced or carried out unless the Landlord has given its written consent to the proposed works (such consent not to be unreasonably withheld and the Landlord may request reasonable additional information from the Tenant when considering granting its consent).

1. Quiet Enjoyment
   * 1. The Tenant and all those claiming through and under the Tenant will be entitled to quiet enjoyment of the Premises upon and subject to the terms and conditions set out in this Lease.
     2. The Landlord will take all reasonable steps to ensure that any contractor or person engaged by the Landlord in relation to the Housing Project is adequately insured in respect of liability arising out of damage caused to the Improvements or the Tenant’s Property.
2. DEFAULT and Termination
   1. Default Notice
      1. If a party defaults in the performance of any obligation under this Lease (**Defaulting Party**), which is capable of remedy, then the other party (**Terminating Party**)may (but is not obliged to) give the Defaulting Party a written notice (**Default Notice**) specifying:
         1. the default complained of; and
         2. the period in which the Terminating Party requires the Defaulting Party to remedy that default, being a period which is reasonable in the circumstances, but not less than 20 Business Days.
      2. If the Defaulting Party defaults in the performance of an obligation under this Lease, which is not capable of remedy, the Terminating Party may (but is not obliged to) give the Defaulting Party a Default Notice specifying:
         1. the default complained of;
         2. the compensation which the Terminating Party requires the Defaulting Party to pay for loss and damage suffered by the Terminating Party as a consequence of such default; and
         3. the period in which the Terminating Party requires the Defaulting Party to pay the compensation, being a period which is reasonable in the circumstances, but not less than 20 Business Days.
   2. Re-entry and Termination

[**Drafting note:** Where the Housing Project is funded by a lender or government grant, the finance/funding agreement will typically be conditional on a direct deed with the landlord, and requiring certain step-in rights where a default event occurs and prior to enforcement action by the Terminating Party].

* + 1. If the Defaulting Party fails to comply with a Default Notice, the Terminating Party may (but is not obliged to), at any time thereafter (unless the Defaulting Party complies with the Default Notice in the meantime) issue a further written notice to the Defaulting Party (**Notice of Intention to Terminate**) specifying:
       1. the Default Notice which has not been complied with;
       2. the period in which the Terminating Party requires the Defaulting Party to comply with that Default Notice, being a further period not less than 20 Business Days; and
       3. that the Terminating Party reserves the right to re-enter the Premises and terminate this Lease if the Notice of Intention to Terminate is not complied with within the further period stated, without further notice to the Defaulting Party.
    2. If:
       1. an Insolvency Event occurs with respect to the Defaulting Party; or
       2. the Defaulting Party has:

defaulted in the performance of any of its obligations under this Lease; and

failed to comply with the Default Notice; and

failed to comply with a Notice of Intention to Terminate,

then the Terminating Party may (but is not obliged to), at any time thereafter (unless the Defaulting Party complies with the Notice of Intention to Terminate in the meantime) terminate this Lease by written notice to the Defaulting Party.

* + 1. A power of the Terminating Party to terminate this Lease under clause 14.2(b), or the exercise of that power, does not prejudice or limit any rights at law or in equity, in relation to or as a consequence of any default by the Defaulting Party in the performance of its obligations under this Lease or any other conduct on the part of the Defaulting Party.

1. RIGHTS AND OBLIGATIONS ON EXPIRY OR TERMINATION
   1. Removal of Improvements

The Tenant must not demolish or remove the Improvements or any part of them, unless it is entitled to do so as part of reinstatement works:

* + 1. under this clause 15;
    2. under clause 10.4;
    3. as part of demolition works under clause 10.5(b); or
    4. with the prior written consent of the Landlord.
  1. Delivery up of Premises
     1. If the Landlord is the Owner of the Improvements, then:
        1. Upon expiry of the Term, or in the case of early termination, then within 15 Business Days after such termination, the Tenant must deliver up the Premises in a condition which is consistent with performance by the Tenant of its obligations under this Lease with regard to repair and maintenance thereof, fair wear and tear excepted.
        2. If the Tenant fails to comply with these obligations within that time, then the Landlord may, at its option, and without having to give any notice or advice to the Tenant, remove all or any of those items and dispose of them in any manner it thinks fit, without any responsibility to the Tenant or liability to account for the proceeds of disposal, and thereafter the Landlord may recover any costs incurred in so doing from the Tenant as a debt due and payable.
     2. If the Tenant is the Owner of the Improvements, then the Tenant must demolish the Improvements and return the Land to the Landlord as a vacant lot before the end of the Term (**Demolition Works**).

*[****Drafting note:*** *Demolition by the tenant is assumed as it provides grounds under the Residential Tenancies Act to terminate any sub-tenancy agreements, allows the tenant to budget for demolition during lease term, and provides the land back to the landlord without an aged asset which may require substantial repairs. Other options for returning the land to the Landlord with an asset owned by the Tenant require either the Landlord to manage the sub-tenancy agreements, find alternate grounds for terminating the sub-tenancy agreements, and/or receive an aged asset from the tenant.]*

* + 1. The Demolition Works must be carried out:
       1. in accordance with all Approvals and Laws;
       2. in a good and workmanlike manner and by reputable, experienced and competent builders; and
       3. in a timely manner.
  1. Intellectual Property

To the extent that it hold sufficient rights to do so, the Tenant grants to the Landlord an irrevocable, non-exclusive, perpetual transferable, royalty-free licence (including the right to sub-licence) to use and exercise all the Intellectual Property Rights (whether owned by the Tenant or not) in or used in:

* + 1. the design of the Improvements;
    2. methods of working and materials used in the construction and commissioning of the Improvements; and
    3. the Improvements themselves,

for the purpose of extending, modifying or re-building the Improvements.

[***Drafting note:*** *where Improvements are to be returned to the Landlord at the end of the lease, this licence will be necessary to ensure ongoing maintenance and repairs to the Improvements]*

1. RESUMPTION

If the Premises are resumed or taken for any public purpose by any competent Government Agency, either party may, by written notice to the other, terminate this Lease without prejudice to the rights of either party with respect to any previous breach, matter or thing and without prejudice to either party's rights to compensation from the relevant competent Government Agency.

1. Holding Over
   * 1. Should the Tenant with the Landlord's consent continue to occupy the Premises beyond the end of the Term, the Tenant may do so under this Lease on and subject to the covenants, terms, conditions and agreements of this Lease insofar as they are relevant and applicable to a monthly occupancy.
     2. The tenancy referred to in clause 17(a) is determinable by either the Landlord or the Tenant giving written notice to the other at any time specifying a date of determination not less than six months from the giving of the notice. The tenancy will determine on the date specified in the notice unless sooner determined by agreement of the parties or under the terms of this Lease.
     3. This clause 17 does not apply where the term of this Lease, as extended in accordance with clause 17(a), would be inconsistent with any Relevant Legislation.
2. Dispute Resolution
   1. Negotiation

If there is a dispute between any of the parties relating to or arising out of this Lease (other than a dispute to which clause 18.3 applies), then within 5 Business Days after a party provides written notice of that dispute to the other party, senior representatives of the parties must meet and use their reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions.

* 1. Urgent Relief

Nothing in this clause 18 will prevent or limit the right of either party to apply to call for injunctive or urgent relief.

* 1. Expert Determination

If this Lease expressly provides for a dispute to be resolved in accordance with this clause 18.3 or the parties otherwise agree that a dispute should be resolved by an independent expert, then the parties will submit to the following procedure to resolve the dispute:

* + 1. The parties will liaise and consult, in good faith, with a view to agreeing on an independent expert to resolve the relevant dispute, and the parties will jointly appoint that person for the purposes of resolving the relevant dispute under this clause 18.3.
    2. In the absence of appointment of an independent expert in accordance with clause 18.3(a) within 10 Business Days after written notice of a dispute to which this clause 18.3 applies, the independent expert will be appointed on the application of either party by, unless otherwise agreed, the chairperson or other senior office bearer for the time being of the Institute of Resolution Institute (Victoria).
    3. The independent expert must:
       1. have reasonable qualifications and commercial and practical experience in the area of the dispute;
       2. have no interest or duty which conflicts or may conflict with his or her functions as an independent expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and
       3. not be an employee or former employee of the Landlord or the Tenant.
    4. The independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit, including as to:
       1. fixing a time and place or receiving submissions or information from the Landlord, the Tenant or any other person; and
       2. the form of any submissions or information required by the independent expert from the Landlord, the Tenant or any other person.
    5. The independent expert will have the following powers:
       1. to inform himself or herself independently as to all matters relevant to the dispute;
       2. to request and receive submissions (whether oral or in writing) or other information from the Landlord or the Tenant; and
       3. to consult with any other persons as the independent expert in his or her absolute discretion thinks fit in relation to resolving the dispute provided that such person provides to the Landlord and the Tenant an undertaking to keep confidential all matters coming to the person's knowledge by reason of his or her consultation with the independent expert.
    6. The Landlord and the Tenant must cooperate fully with the independent expert and promptly give the independent expert all of the information, submissions and assistance which they may reasonably require.
    7. The independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 30 Business Days after the date of the independent expert's acceptance in writing of his or her appointment or such longer period as may be agreed between the parties.
    8. The independent expert's decision will be final and binding on the parties.
    9. The independent expert will be required to undertake to the Landlord and the Tenant to keep confidential all matters coming to the independent expert's knowledge by reason of his or her appointment, the performance of his or her duties and the exercise of his or her powers.
    10. The costs of the independent expert will be borne by the parties equally and each party will bear its own costs relating to the independent expert's determination.
  1. Amalgamation of Disputes

The parties may by agreement permit a dispute being dealt with under clause 18.3 to be amalgamated with any other dispute or disputes between the parties.

* 1. Continue to Perform

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

1. GST
   1. Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

* 1. Consideration is GST-exclusive

Unless otherwise specified, all amounts payable under this Lease are exclusive of GST and must be calculated without regard to GST.

* 1. GST payable on taxable supply
     1. If a supply made under this Lease is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
     2. The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
     3. If there is an adjustment to a taxable supply made under this Lease then the Supplier must provide an adjustment note to the Recipient.
     4. The amount of a party’s entitlement under this Lease to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

1. CONFIDENTIAL INFORMATION
   1. Obligation

Subject to this clause, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.

* 1. Exceptions to confidentiality

A party (**Recipient**) may reveal Confidential Information of another party (**Provider**):

* + 1. if required by law or by any stock exchange to disclose, in which case the Recipient must immediately notify the Provider of the requirement and must take lawful steps and permit the Provider to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
    2. if the Confidential Information is in or enters the public domain for reasons other than a breach of this Lease;
    3. if the Confidential Information is disclosed to the Recipient by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to the Provider; or
    4. to its professional advisers to obtain professional advice.
  1. Survival of clause

This clause 20 will survive the termination of this Lease.

1. WARRANTIES OF CAPACITY
   1. General warranties

Each party warrants to each other party that:

* + 1. it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Lease;
    2. all conditions and things required by applicable Law to be fulfilled or done (including the obtaining of any necessary Approvals) in order:
       1. to enable it lawfully to enter into, and exercise its rights and perform its obligations under this Lease; and
       2. to make this Lease admissible in evidence in court,

have been fulfilled or done;

* + 1. this Lease creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
    2. unless otherwise stated, it has not entered into this Lease in the capacity of trustee of any trust.
  1. Power of attorney

If an attorney executes this Lease on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

1. GENERAL PROVISIONS
   1. Entire agreement

This Lease constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

* 1. Variation

This Lease must not be varied except by a later written document executed by all parties.

* 1. Waiver

A right created by this Lease cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

* 1. Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Lease.

* 1. Time for doing acts
     1. If:
        1. the time for doing any act or thing required to be done; or
        2. a notice period specified in this Lease,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

* + 1. If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.
  1. Governing law and jurisdiction
     1. The laws applicable in the state of Victoria govern this Lease.
     2. The parties submit to the non-exclusive jurisdiction of the courts of the Victoria and any courts competent to hear appeals from those courts.
  2. Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Lease without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

* 1. Preservation of existing rights

The expiration or termination of this Lease does not affect any right that has accrued to a party before the expiration or termination date.

* 1. No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Lease for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

* 1. Special conditions

The special conditions set out in Annexure C form part of this agreement and will prevail to the extent of any inconsistency with the general conditions.

* 1. Relationship of parties

Unless otherwise stated:

* + 1. nothing in this Lease creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
    2. no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party’s credit.
  1. Legal expenses
     1. Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Lease.
     2. The Tenant must pay, when due, all stamp duty and registration fees incurred, due or payable on or in connection with this Lease.
  2. No fetter

Nothing in this Lease will fetter or prejudice the exercise by the Landlord of any discretion or right it has under any Law.

* 1. Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this Lease must be in writing and must be given to the recipient at its Address for Service by being:

* + 1. hand delivered;
    2. sent by email;
    3. sent by prepaid ordinary mail within Australia; or
    4. sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is given if:

* + 1. hand delivered, on the date of delivery;
    2. sent by email, on the date the date the email enters an information system which is under the control of the intended recipient;
    3. sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
    4. sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.
  1. Electronic execution
     1. A party may electronically sign a soft copy of this agreement and by doing so:
        1. will bind itself to this agreement: and
        2. satisfy any statutory or other requirements for this agreement to be in writing and signed by that party.
     2. Each party warrants that immediately prior to entering into this agreement, it has unconditionally consented to:
        1. the requirement for a signature under any law being met; and
        2. any other party to this deed executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

* + 1. A soft copy of this agreement signed by all parties will constitute an executed original counterpart and if that document is printed with the parties’ electronic signatures appearing that print-out will also constitute an executed original counterpart.
    2. This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.
    3. Without limitation, the parties agree that this agreement may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this agreement, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

REFERNCE SCHEDULE

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Subject** | **Particulars** | |
|  | **Landlord** | Name | [insert]. |
| Address | [insert]. |
| Email | [insert]. |
| Principal contact | [insert]. |
|  | **Tenant** | Name | [insert]. |
| Address | [insert]. |
| Email | [insert]. |
| Principal contact | [insert]. |
|  | **Premises** | Land: the land contained in certificate(s) of title volume [insert] folio [insert].  Dwellings: [insert street address of each Dwelling] | |
|  | **Permitted Use** | The provision of social/affordable housing to [insert Target Group, if applicable].  [***Drafting note:*** *parties may wish to use different wording or allow for a broader or more restricted permitted use.]* | |
|  | **Commencement Date** | [insert date as determined by the AFL]  [***Drafting note:*** *commencement date should only be inserted once practical completion of Works is complete and a firm date for commencement of the lease can be specified.]* | |
|  | **Rent** | [insert annual rent amount exclusive of GST (where payable)] | |
|  | **Term** | [insert] | |
|  | **Rent installations** | **\****For peppercorn/nominal rent*  Payable on each anniversary of the Commencement Date.  *\*For substantial/commercial rent*  Payable monthly in advance to a bank account nominated by the landlord form time to time, on or before the first day of each calendar month during the Term. | |
|  | **Owner of the Improvements** | [insert]  [***Drafting note:*** *We have allowed for the possibility that either the Tenant or the Landlord will own the Improvements, so as to provide for a broader range of transactions.]* | |

**EXECUTED** as a Deed.

**Execution by the Landlord**

**Execution by the Tenant**

*\*Sample common seal execution*

|  |  |  |
| --- | --- | --- |
| The **COMMON SEAL** of **[INSERT ORGANISATION NAME AND ABN/ACN]** was hereto affixed in the presence of: | )  )  ) |  |
|  |  |  |
|  |  |  |
|  |  |  |
| [insert signatory position] |  | Full name |
|  |  |  |
|  |  |  |
|  |  |  |
| [insert signatory position] |  | Full name |

*\*Sample corporations act execution*

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **[INSERT COMPANY NAME AND ACN]** in accordance with section 127 of the *Corporations Act 2001* (Cth): | )  )  ) |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Director |  | Full name |
|  |  |  |
|  |  |  |
| Usual address |  |  |
|  |  |  |
|  |  |  |
| Director/Secretary |  | Full name |
|  |  |  |
|  |  |  |
| Usual address |  |  |

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| annexure A |
| Plan of Premises  ***[Drafting Note:*** *a detailed plan of the entire Land and Improvements should be inserted]* |

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| annexure B |
| Special Conditions |

\**Use where Landlord is a local council*

1. Role, authority and powers of The Landlord
   1. The Landlord’s authority

The Tenant acknowledges that the Landlord enters into this Lease in accordance with its powers and obligations under the Local Government Act. Without limiting the warranties given by the Landlord in clause 21, if and to the extent to which any obligation of or undertaking by The Landlord is not authorised or permitted by the terms of the Local Government Act, that obligation or undertaking will be void as against the Landlord, will be severed from the remaining provisions of this Lease and will be of no force or effect.

* 1. Reservation of executive capacity of The Landlord

This Lease does not fetter or restrict the powers or discretions of the Landlord in relation to any powers or obligations the Landlord has under any Act, regulation, local law or by-law that may apply to the subject matter of this Lease or to any party to this Lease.

* 1. Reasonable endeavours

If there is any statement in this Lease to the effect that the Landlord must use reasonable endeavours in relation to any obligation, objective or other matter, or if there is any such obligation implied by law, the Landlord is not obliged to:

* + 1. interfere with or influence the exercise of any statutory power or discretion by any body, including a governmental agency;
    2. exercise a power or discretion in a manner that promotes the objectives and expected outcomes of this Lease if the Landlord regards that exercise as not in the public interest;
    3. develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of this Lease;
    4. procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this Lease; or
    5. act in any other way that the Landlord regards as not in the public interest.
  1. The Landlord consents and approvals

Where, in this Lease, the Tenant is required to obtain or apply for the consent or approval of the Landlord and, under the relevant provision of this Lease, the Landlord is expressly required to act reasonably in considering any such application, or not to unreasonably withhold any such consent or approval, the Landlord may grant any such consent or approval subject to conditions which the Landlord considers, in good faith, are reasonable.

* 1. In the public interest

The Landlord considers that it is in the public interest to enter into this Lease on the terms and conditions contained herein.

*\*For use where the Land is provided for the purpose of housing a Target Group*

1. target groups
   1. Tenant may only let to Target Group

Notwithstanding the general consent provided by the Landlord in clause 7.4(a), the Tenant may only enter into a sub-lease for the Premises or any part of the Premises with persons who satisfy the criteria set out in this special condition (**Target Group**).

* 1. Target Group Criteria

A person will form part of the Target Group where each of the following criteria are met:

* + 1. [Insert criteria];
  1. Eligibility Assessment

Prior to making an offer to lease to a prospective sub-tenant, the Tenant must reasonably satisfy itself that any prospective sub-tenant satisfies the criteria for the Target Group.

\**For use where the Landlord requires ongoing reporting by the Tenant*

1. Reporting
   * 1. During the Term, the Landlord may require periodic reporting from the Tenant regarding:
        1. the management of subtenancy agreements (including any damage to the Premises caused by a sub-tenant or other default of a sub-tenancy agreement);
        2. the operation of the Housing Project;
        3. [Insert any additional reporting obligations criteria. Some examples might include:
           1. The number of evictions
           2. Length of, and reason for, ongoing vacancies
           3. average length of occupancy by sub-tenants
           4. compliance reporting regarding accommodation of the target group
           5. community engagement of sub-tenants
           6. summary of building and infrastructure conditions];
     2. The Tenant must comply with any the Landlord request for a report within the timeframe specified by the Landlord at the date of the request.

*\*For use where Tenant owns the Improvements, and the Landlord agrees to take ownership of them at the end of the Term.*

1. Transfer of improvements
   1. Landlord to accept Improvements
      1. Clauses 15.2(b) and 15.2(c) are deleted.
      2. The parties agree that upon the expiry of this Lease, ownership of the Improvements vests in the Landlord in their condition as at the expiry of the Term.
      3. The vesting of ownership of the Improvements will be effective from the day after the expiry of this lease.
   2. Tenant to provide vacant possession
      1. The Tenant must, at the end of the Term, provide the Landlord with vacant possession of the Land.
      2. The Tenant must take all reasonable steps to end any sub-tenancy arrangements which have a term exceeding the end of the Term, or which are ongoing, prior to the end of the Term.

*[****Drafting note:*** *may not be possible to terminate subtenancy agreements under current RTA provisions without demolition or sale of the land.]*