



F. The Land Trust has received the consent in writing of the Minister for Aboriginal and Torres Strait Islander Affairs  
dated the            day of            200    to the grant of this lease.

**G. NOW THIS AGREEMENT WITNESSES:**

That the Land Trust grants to the Territory a lease of that part of the Land described in item 5 of the First Schedule to this lease and shown and delineated on the plan at Annexure 1 to this lease (“the Park”) commencing on the date specified in Item 9 of the First Schedule, for the term as specified in item 6 of the First Schedule (“the term”) and for the rent specified in or determined in accordance with item 7 of the First Schedule which rent shall be paid by the Territory in accordance with the provisions of item 8 of the First Schedule, for the purpose of establishing, jointly managing and maintaining a park for the permitted uses specified in item 10 of the First Schedule and subject to and in accordance with the following encumbrances, reservations, provisions, obligations and conditions:

**PART I – RESERVATIONS**

**Reservation of Right of Entry and Inspection**

1. At all reasonable times the Land Trust, or any person authorised in writing by the land council may enter and inspect the Park and any improvements on the Park, subject to any reasonable constraints contained in the plan of management for reasons of safety, security, privacy or protection of the Park.

**Reservation of Traditional Rights to Use and Occupy**

2.

- (a) An Aboriginal or group of Aboriginals is entitled to enter the Park and use or occupy the Park to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor;
- (b) without limiting the generality of clause 2(a) the Land Trust reserves in favour of the relevant Aboriginals the following rights:
  - (i) the right to use any area of the Park for hunting or food gathering;
  - (ii) the right to use any area of the Park for ceremonial and religious purposes; and
  - (iii) the right to reside within the Park at such locations as may be specified in the plan of management, together with rights of access and residence for their families, employees, staff, invitees and agents;

- (c) the Land Trust reserves the right to request the Territory to sublet any reasonable part of the Park to a relevant Aboriginal Association;
- (d) the Territory must not unreasonably refuse to grant a sublease to a relevant Aboriginal Association where it is in accordance with the Act, the *Land Rights Act* and the Plan of Management;
- (e) without in any way limiting the reservation in clause 2(a) and (b) of this lease, the traditional Aboriginal owners of the Park are permitted to use the Park in accordance with the Joint Management Agreement.
- (f) the exercise of the rights conferred by this clause are subject to the Plan of Management, which may expressly modify this reservation, but only to the extent necessary and reasonable for environmental or safety reasons, or to the extent necessary and reasonable for visitor use of the Park.

## **PART II – PROVISIONS**

### **Definitions and Interpretation**

3. (a) In this lease and in the recitals:

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

“Aboriginal tradition” has the same meaning as in the *Land Rights Act*;

“Commission” means the Parks and Wildlife Commission of the Northern Territory established under the *Parks and Wildlife Commission Act*;

“Corporation” means the Conservation Land Corporation established under the *Parks and Wildlife Commission Act*;

“Joint Management Agreement” has the same meaning as in the *Parks and Reserves (Framework for the Future) Act*;

“Joint Management Partners” means the Territory and the traditional Aboriginal owners of the Park;

“Joint Management Schedule” means the second Schedule to this Lease;

“Land Council” means the Northern/Central Land Council, or if the boundaries of the Northern/Central Land Council are varied so as to exclude the park from its area, then the Land Council for the area of the Park established under the *Land Rights Act*;

“Land Rights Act” means the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth;

“person” includes a body corporate and any other entity recognised by law;

“Plan of Management” means the plan of management for the Park agreed by the Joint Management Partners in accordance with the Act as in force from time to time;

“Regional Joint Management Group” has the same meaning as in the Act;

“relevant Aboriginals” means Aboriginals entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission;

“relevant Aboriginal Association” means the xxxx ? Association and any other incorporated Aboriginal Association or group whose members are relevant Aboriginals;

“sacred site” has the same meaning as in the *Land Rights Act*;

“the Act” means the *Territory Parks and Wildlife Conservation Act*, and

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

- (b) all provisions of this Lease shall so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect, but if any provision on its true interpretation is illegal, invalid or unenforceable, that provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character. If any such provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired;
- (c)
  - (i) a right of the Commission in relation to the Park whether arising under this lease or a law may, subject to this lease, be exercised by the Territory;
  - (ii) the Territory must ensure that a duty of the Commission in relation to the Park whether arising under this lease or a law is carried out.
- (d) expressions that are used in this Lease and defined in the Act have the meaning given in that Act except where the expression is otherwise defined in this Lease;
- (e) a reference in this Lease to an Act or regulation includes any amendment to that Act or regulation for the time being in force and also to any Act or regulation passed in substitution therefore; and
- (f) the contents of the Joint Management Schedule have effect as terms of this Lease.

## PART III – OBLIGATIONS AND CONDITIONS

### Amendment of Act Constitutes Breach

4. (a) The Parties agree that:
- (i) the enactment of an act;
  - (ii) the making of any regulations or By-laws;
  - (iii) the coming into operation of a Plan of Management;
  - (iv) the making of or entry into an arrangement under section 91 of the Act; or
  - (v) the delegation of the Territory's powers and functions (whether under section 7 or 23 of the *Parks and Wildlife Commission Act* or otherwise),
- which is or are inconsistent with this lease and substantially detrimental to the interests of the Land Trust or relevant Aboriginals in relation to the Park shall be deemed to be a fundamental breach of this lease for which the Land Trust (subject to the provisions of this clause) may terminate the Lease. In addition, a transfer, assignment, subletting or parting with possession of the Park or any part of the Park by the Territory without the Land Trust's consent shall be deemed to be a fundamental breach of this lease for which the Land Trust (subject to the provisions of this clause) may terminate the lease;
- (b) at any time after the occurrence of an event referred to in clause 4(a) the Land Trust may serve a notice on the Territory specifying the alleged breach;
  - (c) within thirty (30) days after the service of a notice pursuant to clause 4(b), the parties will meet in Darwin/Alice Springs or such other place as they may agree to seek to agree whether there is a breach and if there is, to seek to agree on a remedy for the breach (remedy in this context may include an amendment to the terms of this lease);
  - (d) where a meeting referred to in clause 4(b) and any further meetings as are agreed to between the parties does not result in a cure or agreement that there is no breach, or where the Land Trust is ready, willing and able to meet but there is no meeting, the Land Trust may give notice of the breach to the Territory ("notice of intention to terminate");
  - (e) upon receipt of a notice of intention to terminate under Clause 4(d) the Territory will have eighteen months (18) to remedy the breach;
  - (f) if at the expiry of the notice period referred to in clause 4(e) the breach has not been remedied, the Land Trust may issue a termination notice which will take effect on the expiry of twenty-eight (28) days; and

- (g) upon issue of a termination notice, the Land Trust, representatives of the Land Council and the Territory must meet within twenty eight (28) days to negotiate in good faith for the grant of a new lease.
- (h) Clause 11 (resolution of disputes) does not apply in relation to disputes or matters covered by this clause.

### **Mutual Agreements and Declarations**

5. The Parties mutually agree and declare that:

- (a) the Territory is authorised to and will declare the Park as a park under the Act;
- (b) the Park shall be subject to administration, management and control in accordance with this lease, the Plan of Management that is, and by laws that are, from time to time in force in relation to the Park pursuant to the Act, and in accordance with the principles described in the Act and Schedule 2 as amended from time to time;
- (c) the Territory, to the extent of its powers and functions shall use its best endeavours to ensure that the flora, fauna, cultural heritage and natural environment of the Park shall be preserved, managed and maintained according to the best comparable management practices established for national parks anywhere in the world;
- (d) the Territory may, at any time during the term of the lease surrender any part of the Park which the Territory no longer requires for the purpose of this lease;
- (e) the Parties may from time to time by agreement in writing add to, substitute for, cancel or vary any of the provisions of this lease;
- (f) the Territory shall at least once every ten (10) years meet with the representatives of the Land Trust and the Land Council to review the provisions of this lease (other than the provisions concerning term and rent) and if the Land Trust and the Territory agree upon a variation to the lease, the Land Council will direct the Land Trust to execute any or all of the documents necessary or desirable to give full effect to the variation;
- (g) all improvements constructed on the Park for any of the purposes set out in Item 10 of the First Schedule shall not be Land Trust's fixtures, and the Territory shall be entitled to demolish or remove any such improvements at any time during the lease term, subject to the Joint Management Schedule;
- (h) if any native title exists in respect of the Park and the grant of this lease would validly affect it in some way, then the grant of this lease is, to the extent necessary to give effect to this lease, inconsistent with the native title, but it is intended that (without in any way affecting any of the Territory's rights during the term of the grant):

- (i) the native title in the Park should nevertheless continue to exist and not be extinguished by the grant of this lease or the exercise of the rights granted hereunder;
- (ii) the native title should never have effect upon or in relation to this lease or any act or right of the Territory;
- (iii) the persons who are entitled in accordance with any traditional laws and customs, as applying from time to time, to possess the native title should continue to be native title holders;
- (iv) if this lease or any act done under this lease ceases to have effect to any extent, the native title rights and interests should again have effect to that extent; and
- (v) if the lease or its effects are wholly removed or otherwise wholly cease to operate, the native title rights and interests again have full effect,
- (i) the Parties will comply with their respective obligations as set out in Schedule 2 hereof; and
- (j) the grant of part of the Park as an Aboriginal community living area. under section 46(1A) of the Lands Acquisition Act, and in accordance with the Joint Management Agreement, is permitted.

### **Territory's Obligations**

6. The Territory agrees:
- (a) to comply with and take all practicable steps to ensure compliance by all persons with the Act, regulations under the Act, this lease and the plan of management;
  - (b) not to transfer, assign, sublet or part with the possession of the Park, or any part of the Park without the consent in writing of the Land Trust and then only in accordance with the Plan of Management;
  - (c) to pay all rates and taxes which may at any time become due in respect of the Park;
  - (d) to carry all of the risk as self-insurer in respect of any of the improvements in the Park which may be damaged or destroyed without the consent of the Land Trust, being improvements existing at the date of the commencement of this lease and such other improvements as may be made;
  - (e) to carry all of the risk as self-insurer as occupier of the Park as regards any liability to any third person;
  - (f) as far as is practicable, to repair any damage to the Park (other than improvements) being damage caused by the Territory or by its respective servants, agents or invitees except where the damage to the Park occurred with the consent of the Land Trust or of the Joint Management Partners;

- (g) to comply with all Acts, regulations and other laws otherwise applicable to the Park;
- (h) to have regard in the performance of its functions in relation to the Park, to such priorities in allocating financial and other resources as are provided in the Plan of Management or determined from time to time by the Joint Management Partners;
- (i) to promote and protect the interests of relevant Aboriginals as a group;
- (j) to respect and to promote the protection of sacred sites, cultural heritage and other areas and things of significance to relevant Aboriginals, and the enforcement of the provisions of the *Northern Territory Aboriginal Sacred Sites Act*;
- (k) to encourage the maintenance of the Aboriginal tradition of relevant Aboriginals;
- (l) to take all practicable steps to promote Aboriginal involvement in the administration, management and control of the Park;
- (m) subject to the Plan of Management, to engage as many relevant Aboriginals as is practicable to provide services in and in relation to the Park, including but not limited to the utilisation of the traditional skills of Aboriginal individuals and groups in the management of the Park;
- (n) subject to the Plan of Management, to encourage Aboriginal business and commercial initiatives and enterprises within the Park;
- (o) subject to the Plan of Management, to permit an officer or officers of the Land Council to enter and move freely in the Park for the purpose of performing on behalf of the Land Council the statutory powers or functions of the Land Council;
- (p) to use its best endeavours to promote among visitors to, employees and commercial operators in the Park a knowledge and understanding of and respect for the traditions, languages, culture, customs and skills of relevant Aboriginals and to arrange for appropriate instruction in connection with such matters to be given, to the extent it is reasonably practicable, by Aboriginals engaged for the purpose; and
- (q) to consult and have regard to the views of the Joint Management Partners before exercising any powers over liquor distribution or consumption in the Park”.

#### **Land Trust's Obligations**

- 7. (a) During the term of the lease the Land Trust:
  - i. shall permit Territorians and visitors to the Territory to enter the Park without an entry permit;
  - ii. agrees that it will not charge the public a fee for entry to the Park; and

- iii. agrees that the Plan of Management shall not make any provision for the Land Trust to charge such a fee or require such a permit.
- (b) If the Territory pays the rent and does not breach the lease, it may during the whole of the term, subject to the reservation in clause 2, quietly enjoy the Park without any interruption or disturbance from the Land Trust or any person claiming by, from, under or in trust for the Land Trust, subject to the provisions of the lease and the Land Trust's rights under it.

### **Territory's Indemnity**

- 8. (a) The Territory shall indemnify the Land Trust, its servants, agents or invitees (to the extent that the Land Trust, and its servants, agents or invitees, is not or are not negligent) against all actions and claims whatsoever that may be brought, made or prosecuted against the Land Trust its servants, agents or invitees in respect of any action or claim arising out of any action or omission (whether negligent or otherwise) of the Territory, its servants, agents or invitees in or in relation to the Park; and
- (b) The indemnity will extend to the Land Council, its servants and agents to the extent of its statutory role in relation to the Land Trust.

### **Termination**

- 9. (a) During its term the lease may be terminated in writing at any time with the agreement of the Land Trust, the Land Council and the Territory.
- (b) If the Territory continues to occupy the Park after the expiry of the term of this lease or any extension thereof with the consent of the Land Trust, the Territory shall be deemed to be a yearly tenant only on the same terms and conditions (other than any term of condition relating to extension or renewal of this lease) as are contained in this lease and either party may terminate such tenancy by one year's notice in writing to the other.

### **Parties to Negotiate Five (5) years Before Expiry**

- 10. The Land Trust agrees to negotiate in good faith for the renewal or extension of the term of this lease not later than five (5) years before it expires, at the option of the Territory.

### **Resolution of Disputes**

- 11. (a) Except where expressly provided otherwise, a party shall not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute concerning any clause of this lease (a 'Dispute') unless it has complied with this clause;
- (b) a party claiming that a Dispute has arisen shall notify the other party to the Dispute;

- (c) within ten (10) days after a notice is given under subclause (b) each party to the Dispute shall nominate in writing a representative authorised to settle the Dispute on its behalf;
- (d) the parties shall ensure that during the forty five (45) day period after a notice is given under subclause (b) (or longer period agreed between the parties), their representatives shall use their best endeavours, with the other representatives:
  - (i) to resolve the Dispute; or
  - (ii) to agree on:
    - (A) process to resolve all or at least part of the Dispute without arbitration or court proceedings (for example, mediation, conciliation, executive appraisal or independent expert determination);
    - (B) the selection and payment of any third party to be engaged by the parties and the involvement of any dispute resolution organisation;
    - (C) any procedural rules;
    - (D) a timetable;
    - (E) any exchange or relevant information and documents; and
    - (F) the place, date and time where meetings will be held,
- (e) the role of any third party will be to assist in negotiating a resolution of the Dispute. A third party may not make a decision that is binding on a party unless that party's representative has so agreed in writing.
- (f) any information or documents disclosed by a representative under this clause:
  - (i) must be kept confidential; and
  - (ii) may not be used except to attempt to settle the Dispute,
- (g) each party must bear its own costs of resolving a Dispute under this clause and the parties must bear equally the costs of any third party engaged;
- (h) after the forty-five (45) day period referred to in subclause (d) (or longer period agreed between the representatives), a party that has complied with subclauses (b) to (d) may terminate the dispute resolution process by giving notice to the other parties to the Dispute;
- (i) if a party to a Dispute does not comply with any provision of subclauses (a) to (d) the other party to the Dispute will not be bound by subclause (a) to (d).

**Service of Notices, etc.**

- 12 (a) Any notice, request, consent, approval or other communication (in this clause called a "communication") to be given under this lease shall be in writing addressed as follows:

**If to the Land Trust:**

Aboriginal Land Trust  
C/- Norther /Central Land Council  
33 Stuart Highway  
ALICE SPRINGS NT 0870

Telephone: 08 89xxx xxx  
Facsimile: 08 89xxx xxx

**If to the Territory:**

Northern Territory of Australia  
C/- P.O. Box 496  
PALMERSTON NT 0831

Telephone: 08 89xxx xxx  
Facsimile: 08 89xxx xxx

**If to the Land Council:**

Northern/Central Land Council

Telephone: 08 89xxx xxx  
Facsimile: 08 89xxx xxx

- (b) each communication shall be delivered by hand, or mailed by pre-paid registered post, or sent by email or facsimile transmission, to the address of the party or body to which it is being given and shall be deemed to have been given:
- (i) if received before 4.00 pm on a business day – when it is received; and
  - (ii) if received at any other time – on the business day next following the day of receipt;
- (c) where the Land Trust is to or may make any communication:
- (i) the Land Council shall, for the purposes of considering the proposed communication, arrange such consultations with the traditional Aboriginal owners and other Aboriginals interested in the Park it considers appropriate in the circumstances; and

- (i) such communication may only be made by the Land Council,

and the Territory agrees that:

- (iii) any communication which is to be or may be made by the Land Trust which is made by the Land Council shall be deemed to have been made by the Land Trust; and
- (iv) it shall, in relation thereto, act as if the communication had been made by the Land Trust;
- (d) any act, matter or thing required or permitted to be done by the Land Trust under or otherwise in relation to this lease may be done by the Land Council on behalf of and in the name of the Land Trust and all rights and entitlements of the Land Trust under or concerning this lease (including the entitlement to receive payments from the Territory or to terminate this lease) shall be exercisable by the Land Council on behalf of and in the name of the Land Trust, including the service of notices and the commencement and defence of legal proceedings in relation to or concerning this lease; and, for the purposes of the foregoing and without limiting its generality, the Land Trust hereby irrevocably appoints the Land Council:
  - (i) to act on its behalf and in its name, and
  - (ii) as its agent for the purposes of applicable statutes.

### 13. Calculation of Rental

- (a) Notwithstanding any other provision in this lease, for the period from commencement of this lease until 30 June 2010, the rental shall be nil [with the exception of Parks listed in Schedule 5 of the *Parks and Reserves (Framework for the Future) Act* where the traditional owners of the Park are different from those who are gaining the benefit of the ALRA grant for adjacent land – for those Parks the rental from the period from commencement of the lease until 30 June 2010 shall be the Australian Valuation Office valuation as annual current market rent for the lease, adjusted by CPI for each year];
- (b) prior to 1 July 2010, the parties shall engage (at the Territory's cost) the Australian Valuation Office to determine the annual current market rent for the lease to commence from 1 July 2010. The parties agree that the amount so determined shall not fall below the annual rental determined by the Australian Valuation Office in 2004 as specified in item 7 of Schedule 1;
- (c) for the balance of the term of the lease the rental shall be reviewed at the end of each ten (10) years after 1 July 2010. The rental shall be reviewed by the parties engaging (at the Territory's cost) the Australian Valuation Office to determine the annual

current market rent for the lease for the following ten (10) year period. The parties agree that, as a result of a ten (10) yearly review by the Australian Valuation Office, the annual rental shall not fall below the annual rental determined by the Australian Valuation Office at the previous review;

- (d) in addition to the rental as determined above, the Territory shall pay to the Land Trust an amount equal to fifty per cent (50%) of all income received in respect of the Park, excluding any reasonable administrative charges.
- (e) For each year other than a year which the rental has been determined by the Australian Valuation Office, the annual rental for that year shall be the annual rental for the previous year, adjusted in accordance with the following formula:

$$AR = PR \times CPI(2) \div CPI(1)$$

where:

AR is the annual rental for that year;

PR is the annual rental for the previous year;

CPI(2) is the Consumer Price Index (all groups) weighted average of the eight capital cities of Australia as published quarterly by the Australian Bureau of Statistics, being the last such index published before the date on which the calculation of annual rental is made; and

CPI(1) is the Consumer Price Index (all groups) weighted average of the eight capital cities of Australia as published quarterly by the Australian Bureau of Statistics as published for the quarter immediately preceding 1 July for the previous calendar year;

provided that, if AR is less than PR, then PR shall be the annual rental for the year;

- (g) If the name of the Australian Valuation Office is changed, then a reference in this agreement to the Australian Valuation Office means a reference to the office or person replacing the Australian Valuation Office;
- (h) If there is no person, officer, office or body having the powers or functions of the Australian Valuation Office, a reference in this agreement to the Australian Valuation Office shall mean such other person or office as agreed between the Parties that then exercises the powers and functions of the Australian Valuation Office as contemplated by this lease.

## FIRST SCHEDULE

- ITEM 1**      **Land Trust**
- ITEM 2**      **Address of Territory**
- ITEM 3**      **The Land**
- ITEM 4**      **Encumbrances, liens and interests**  
Nil, other than as described on the Certificate of Title
- ITEM 5**      **The Park**  
That part of the Land described as NT Portion \_\_\_\_\_ on Survey Plan \_\_\_\_\_
- ITEM 6**      **Term**  
Ninety nine (99) years
- ITEM 7**      **Annual Rental**  
[For immediate rent parks insert figure] and otherwise as calculated in accordance with clause 13 of this lease
- ITEM 8**      **Manner of Payment of Rent**  
yearly in advance
- ITEM 9**      **Commencement Date**  
The lease shall commence on **[insert date]**.
- ITEM 10**     **Permitted Uses of Park**  
Establishment, joint management, maintenance and use of the Park as a park:
- to serve visitor and community needs for education and enjoyment;
  - to protect biological diversity;
  - for the appropriate use and enjoyment by relevant Aboriginals according to Aboriginal tradition (including establishing and maintaining living areas, hunting and use of resources in accordance with the Plan of Management); and
  - ancillary and related uses.

**IN WITNESS WHEREOF** this Lease was executed by the parties on the date first hereinbefore written.

The **COMMON SEAL** of the \_\_\_\_\_ )  
**ABORIGINAL LAND TRUST** was hereunto )  
affixed this        day of                200 )  
by a duly authorised member of the staff of )  
the Central Land Council pursuant to )  
sub-section 4(4) of the *Aboriginal Land* )  
*Rights (Northern Territory) Act 1976* upon )  
written authority of the xxxxxx        Land )  
Trust in the presence of: )

.....

**IN WITNESS** whereof the Common Seal of the )  
**NORTHERN/CENTRAL LAND COUNCIL** was )  
hereunto affixed this        day of                200 )  
upon the **NORTHERN/CENTRAL LAND COUNCIL** )  
being satisfied of the requirements contained in )  
sub-section 19(4A) of the *Aboriginal Land Rights* )  
*(Northern Territory) Act 1976*. )

The **NORTHERN/CENTRAL** )  
**LAND COUNCIL** directs the \_\_\_\_\_ )  
Aboriginal Land Trust to enter into this Deed. )

**GIVEN under the Common Seal of the NORTHERN** )  
**LAND COUNCIL** by authority of a resolution of the )  
said Land Council in the presence of: )

**SIGNED** by )  
for and on behalf of the **NORTHERN** )  
**TERRITORY OF AUSTRALIA** )  
pursuant to a delegation under )  
the *Contracts Act* in the presence of: )

.....

The **COMMON SEAL** of the )  
**NORTHERN/CENTRAL LAND COUNCIL** )  
was hereunto affixed in accordance with )  
a resolution of the Board of Directors )  
in the presence of: )

.....  
Chairman

.....  
Executive Member

**ABORIGINAL LAND TRUST**

("the Land Trust")

**AND:**

**NORTHERN TERRITORY OF  
AUSTRALIA**

("the Territory")

**AND:**

**NORTHERN/CENTRAL LAND  
COUNCIL ("the Land  
Council")**

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**LEASE**

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Solicitor for the Northern Territory  
45 Mitchell Street  
DARWIN NT 0800

Telephone: (08) 8999 6543

Facsimile: (08) 8999 6316

Ref: COM2002-229 ASL:ASL

ALRA Lease

15 February 2005

