



## **FIVE YEAR CABIN SITE LICENCE**

North Beach Tourist Park, Wallaroo

*lifestyle location of choice*

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## DATE

## PARTIES

**District Council of the Copper Coast** of 51 Taylor Street, Kadina SA 5554 (**Council**)

The party detailed in Item 2 of the Schedule (**Licensee**)

## BACKGROUND

- A. The Council is the registered proprietor of, or has the care, control and management of, the land on which the Wallaroo North Beach Tourist Park is located.
- B. The Licensee has requested a licence to occupy and use a site at the Park, which the Council has agreed to grant on the terms set out in this licence agreement.
- C. The Council and Licensee now wish to record the terms of their agreement.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this licence:

**Agreed Consideration** means the Licence Fee, Outgoings Contribution and all other consideration (whether in money or otherwise) to be paid or provided by the Licensee for any supply or use of the Site and any goods, services or other things provided by the Council under this licence (other than tax payable under clause 19).

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Adelaide.

**Cabin** means a small, simply constructed structure comprising a room or a number of rooms which provides living and sleeping accommodation for one or more persons.

**Commencement Date** means the commencement date described in Item 5 of Schedule 1.

**Common Areas** means all areas of the Land which are not leased or licensed and which are for common use by lessees or licensees of the Park and their invitees and customers including driveways, car parks, walkways, washrooms, toilets and stairways.

**Cost Limit** means the amount set out in Item 11.

**Council** means the party described as 'Council' in this licence and where the context permits includes the employees, contractors, agents and other invitees of the Council.

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**Council's Equipment** means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Site and available for use by the Licensee.

**CPI** means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide) or the index which replaces it under clause 6.2.

**Current CPI** means for a CPI Review Date, the CPI number for the quarter ending immediately before that Review Date.

**Default Rate** means 10% per annum.

**Expiry Date** means the expiry date defined in Item 5 of Schedule 1.

**GST** has the meaning given to that term in the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any ancillary or similar legislation.

**GST Rate** means 10% or the rate of GST imposed from time to time under the GST Legislation.

**Initial Term** means the initial term of this licence commencing on the Commencement Date for the period described as the "Initial Term" in Item 5.

**Land** means the land described in Item 4 of Schedule 1 and includes any part of the Land.

**Legislation** includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

**Licence Fee** means the fee described in Item 7 of Schedule 1.

**Licensee** means the party described as 'Licensee' in this licence and where the context permits includes the employees, contractors, agents and other invitees of the Licensee.

**Licensee's Equipment** means any and all fixtures and fittings and other equipment installed in or brought on to or kept in the Site by the Licensee.

**Outgoings Contribution** means the amount set out in **Error! Reference source not found.** of Schedule 1 being a contribution toward the total costs of the operation, management and ownership of the Park, including but not limited to the costs of power, water, sewerage, rubbish and recycling storage and removal and cleaning.

**Park** means the caravan and tourist park described in Item 4 of Schedule 1.

**Payment Date** means the Commencement Date and the first day of each month during the Term.

**Policy** means the policy forming Annexure C to this licence.

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**Previous CPI** means, for a CPI Review Date, the CPI number for the quarter ending immediately before the last Review Date (or if there has not been a review, the Commencement Date).

**Renewal Term** means the period of any permitted renewal or extension of the licence described as the “Renewal Term” in Item 5.

**Review Date** means each date described in Item 9 of Schedule 1.

**Review Method** means the relevant method of Licence Fee review in Item 9 of Schedule 1 for any Review Date.

**Services** includes all services (including gas, electricity, water, sewerage, lifts, escalators, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in connection with them) to or of any premises in or on the Land or the Land or any part of it supplied by any authority, the Council or any person the Council authorises.

**Statutory Authorities** means any government or authorities created by or under any relevant Legislation.

**Site** means the site within the Park detailed in Item 3 of Schedule 1.

**Statutory Requirements** means all relevant Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authorities.

**Term** means the Initial Term, the Renewal Term and any period during which the Licensee holds over or remains in occupation of the Site.

**Nights of Use** means the number of nights set out in Item 6 of Schedule 1.

## 1.2 Interpretation

In this licence, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this licence includes any schedules and annexures to this licence;
- 1.2.7 a reference to any document (including this licence) is to that document as varied, novated, ratified or replaced from time to time;

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- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
  - 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
  - 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
  - 1.2.11 a provision is not construed against a party only because that party drafted it;
  - 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this licence continues in force;
  - 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

### **1.3 Background**

The Background forms part of this licence and is correct.

## **2. GRANT OF LICENCE**

- 2.1 The Council grants and the Licensee accepts a licence of the Site for the Term for the Number of Nights as set out in this licence.
- 2.2 The Council agrees that the Licensee may allow a Cabin to be situated on the Site at all times during the Term provided that such Cabin is only used by the Licensee for the Number of Nights.
- 2.3 The rights conferred by this licence rest in contract only and do not confer on the Licensee any tenancy, estate or interest in the Site or the Land. The rights of the Licensee under this licence are those of a licensee only.

## **3. LICENCE FEE**

### **3.1 Payment of Licence Fee**

The Licensee must pay the Licence Fee by equal instalments in advance on each Payment Date.

### **3.2 Instalment**

If a Licence Fee instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

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## 4. UTILITIES

### 4.1 Separate Meter

If a service or utility used on or from the Site has a separate meter, then Licensee must pay, when due, all costs for the consumption of electricity, gas, and any and all other services and utilities supplied to or used from the Site.

### 4.2 No-Separate Meter

If there is no separate meter for a service or utility used on or from the Site, then the amount of the Outgoing's Contribution payable by the Licensee will include an amount which is a contribution to the overall cost of that service or utility for the Park.

### 4.3 Installation of Meter

If there is no separate meter for a service or utility used on or from the Site, the Licensee may, with the Council's prior consent, install the meter at its own cost.

## 5. OUTGOINGS CONTRIBUTION

The Licensee must pay the Outgoings Contribution by equal instalments in advance on each Payment Date.

## 6. LICENCE FEE AND OUTGOINGS CONTRIBUTION REVIEWS

For each Review Date, the Licence Fee and the Outgoings Contribution will each be reviewed by CPI Review in accordance with the following:

### 6.1 CPI review – Licence Fee

The Licence Fee on and from that Review Date is calculated as follows:

$$LF_2 = LF_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

$LF_2$  is the Licence Fee on and from the Review Date; and

$LF_1$  is the Licence Fee immediately before the Review Date (disregarding any abatements incentives or reductions).

### 6.2 CPI Review – Outgoings Contribution

The Outgoings Contribution on and from that Review Date is calculated as follows:

$$OC_2 = OC_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

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OC<sub>2</sub> is the Outgoings Contribution and from the Review Date; and

OC<sub>1</sub> is the Outgoings Contribution immediately before the Review Date (disregarding any abatements incentives or reductions).

### **6.3 Change to CPI**

If the CPI is no longer published, either party may ask the President of the South Australian Property Institute (South Australian Division) to nominate an index which reflects the rate of price change in the area and group for the CPI and 'CPI' then means that index. Each party must pay one half of the President's costs for nominating an index.

### **6.4 Licence Fee and Outgoings Contribution pending determination**

6.4.1 The Licence Fee and/or the Outgoings Contribution may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.

6.4.2 If the Licence Fee and/or the Outgoings Contribution to apply on and from a Review Date is not agreed or determined by that Review Date, the Licensee must continue to pay instalments of the Licence Fee and/or the Outgoings Contribution (whichever is the relevant payment or both if both are relevant) at the rate that applied before the relevant Review Date until the Licence Fee and/or the Outgoings Contribution is determined.

### **6.5 Adjustment once Licence Fee and Outgoings Contribution determined**

Once the Licence Fee and the Outgoings Contribution to apply on and from a Review Date is agreed or determined, the Licensee must pay any shortfall.

### **6.6 No decrease in Licence Fee or Outgoings Contribution**

The Licence Fee and the Outgoings Contribution will not decrease on a Review Date.

### **6.7 Other review**

The Council and Licensee may negotiate and agree a Licence Fee and/or an Outgoings Contribution to apply from a Review Date without following this clause.

## **7. USE OF THE SITE AND THE PARK**

### **7.1 Permitted Use**

7.1.1 The Licensee may use the Site only for the purpose of accommodation.

7.1.2 The Licensee must not use the Site for residential purposes within the meaning of the *Residential Parks Act 2007*.

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## 7.2 **Number of Nights**

- 7.2.1 The Licensee must only use the Site each calendar year during the Term up to the maximum Number of Nights.
- 7.2.2 If the Term does not commence on 1 January, the maximum Number of Nights that apply to the first and last calendar years of the Term are to be determined on a pro rata basis.

## 7.3 **Offensive activities**

The Licensee must:

- 7.3.1 not carry on any offensive or dangerous activities on or from the Site;
- 7.3.2 not create a nuisance or disturbance for the Council or for other users of the Park; and
- 7.3.3 ensure at all times that activities conducted on or from the Site do not discredit the Council or the Park.

## 7.4 **Use of facilities**

- 7.4.1 The Licensee must ensure that the Services are used carefully and responsibly and in accordance with any directions given by the Council from time to time.
- 7.4.2 The Licensee must pay the Council's costs of repairing or correcting any damage or malfunction which results from any misuse or abuse of the Services by the Licensee.

## 7.5 **Park rules**

- 7.5.1 The Council may from time to time, adopt, vary, revoke and replace rules which apply to the use of the Park by all users, including the Licensee (**Park Rules**).
- 7.5.2 The Licensee must comply with all Park Rules in force from time to time.
- 7.5.3 As at the Commencement Date, the Park Rules in force are those forming Annexure B to this licence.

## 7.6 **Statutory Requirements**

The Licensee must comply with all Statutory Requirements relating to the Licensee's use and occupation of the Site.

## 7.7 **Signs**

The Licensee must not place any sign or advertisement on the outside or inside (if they can be seen from outside) of the Site except for a sign or advertisement for the sale of a Cabin on the Site which is approved by the Council (acting reasonably).

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## 7.8 **Dangerous equipment and installations**

7.8.1 The Licensee may only install or use within the Site equipment and facilities which are reasonably necessary for and normally used in connection with the use of the site for accommodation and must not install or bring onto the Site:

7.8.1.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard (unless approved by the Council in writing);

7.8.1.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard (unless approved by the Council in writing).

## 7.9 **Fire precautions**

The Licensee must comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building works which are required as a consequence of the Licensee's use of the Site.

## 7.10 **No warranty**

The Council makes no warranty or representation regarding the suitability of the Site (structural or otherwise) for use for accommodation or any other purpose.

# 8. **REPAIR AND CLEANING**

## 8.1 **Repair**

If the Council so requires, the Licensee must promptly repair any damage to the Site or the Park caused or contributed to by the act, omission, negligence or default of the Licensee or its invitees.

## 8.2 **Cleaning**

The Licensee must keep the Site clean and tidy at all times and must not cause the Common Areas to be left untidy or in an unclean state or condition.

# 9. **CABINS AND ALTERATIONS**

9.1 The Licensee must not carry out any alterations or additions to the Site, including the installation of a cabin on the Site, without the Council's prior written consent.

9.2 The issue of all approvals required under the *Development Act 1993 (Act)* for the proposed alterations or additions to the Site by the Council acting as the relevant authority under the Act will satisfy the requirement to obtain consent pursuant to clause 9.1.

9.3 Every application for the Council's consent pursuant to clause 9.1 must, at a minimum, include the following:

9.3.1 Full details of the proposed alterations and additions to the Council.

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- 9.3.2 The design (selected from the Councils prequalified range of cabins) of cabin that the Licensee proposes to have constructed on the Site.
  - 9.3.3 Comply with all other requirements of the Council and the Act.
  - 9.4 The Council may approve or decline to approve any application pursuant to clause 9.1 and may impose any conditions it considers necessary if it gives its approval.
  - 9.5 The Licensee must carry out any approved alterations and additions:
    - 9.5.1 in a proper and workmanlike manner;
    - 9.5.2 in accordance with the conditions imposed by the Council and with the approvals made by Council;
    - 9.5.3 in accordance with all Statutory Requirements;
    - 9.5.4 in a way to minimise disturbance to others; and
    - 9.5.5 by suitably qualified and licensed persons (where applicable);
  - 9.6 Unless otherwise agreed in writing between the parties, all alterations and additions to the Land or the Site made pursuant to this clause remain the property of the Licensee.
  - 9.7 Immediately after the completion of any alterations or additions which comprise or include the connection of gas or electricity to the Site, a current certificate of compliance in respect of such connection must be provided to the Council.
  - 9.8 The Licensee must pay all of the Council's costs (including consultant's costs and legal costs) as a result of the Licensee's alterations and additions.

## 10. MANAGEMENT SERVICES

### 10.1 Bookings Services

- 10.1.1 If the Licensee constructs a Cabin on the Site, on nights on which the Licensee does not propose to use the Site during the Term, the Licensee may enter into an arrangement with any manager the Council has engaged in respect of the Park (**Manager**) to manage the booking and use of the Site and the Cabin on the Site by third parties (**Users**).
- 10.1.2 The following terms will apply to any arrangement entered into between the Manager and the Licensee pursuant to clause 10.1:
  - 10.1.2.1 All enquiries and bookings will be managed, and all payments will be collected, by the Manager.
  - 10.1.2.2 Except where set off has occurred in accordance with clause 19.4, the Manager will pay all payments collected in respect of the Site to the Licensee on 1 January and 1 July each year.

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- 10.1.2.3 The rates payable for the use of the Site will be those set by the Council for the use of the sites similar to the Site at the Park by members of the public from time to time.
  - 10.1.2.4 The Manager will arrange for cleaning of the Site and the cabin on the Site after each User of the Site has vacated the Site. The Licensee must pay or reimburse the Manager for the cost of such cleaning.
  - 10.1.2.5 The Manager will notify the Licensee of any damage caused to the Site or the cabin on the Site by any User which requires repair. Any such repair may be remedied in accordance with clause 10.2.

## **10.2 Repairs and Maintenance Services**

- 10.2.1 At any time during the Term, the Licensee may notify the Manager in writing that the Licensee wishes to engage the Manager's services to undertake certain repairs and maintenance to the Site and any Cabin, or other improvements to the Site in accordance with the following:
  - 10.2.1.1 the Manager may require the Licensee to sign a written agreement with the Manager in relation to the provision of maintenance and repair services by the Manager provided that the terms of any such agreement are not inconsistent with the terms of this licence;
  - 10.2.1.2 the Licensee authorises the Manager to undertake any minor repairs and maintenance to the Site and any Cabin, or other improvements to the Site up to the Cost Limit, unless such repairs and maintenance are the subject of any claim made under an insurance policy held by the Licensee;
  - 10.2.1.3 except in the case where emergency repairs or maintenance are required to be undertaken at the Site, prior to undertaking any repair or maintenance at the Site, the Manager will use reasonable endeavours to notify the Licensee (by telephone or email) of the details of the proposed repair or maintenance works and the estimated costs of such works; and
  - 10.2.1.4 the Licensee must pay or reimburse the Manager for the costs of all repair or maintenance undertaken by the Manager for the Licensee at the Site within 14 days of receipt of a Tax Invoice from the Manager in the manner requested by the Manager.

## **11. ASSIGNMENT, SUBLETTING AND CHARGING**

### **11.1 Transfer or Assignment**

- 11.1.1 The Licensee must not transfer or assign its interest in this licence..
- 11.1.2 If the Licensee transfer or assigns or purports to assign or assign its interest in this licence this licence, the licensee will be deemed to have

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terminated this licence on and from the date of the assignment or transfer or purported assignment or transfer.

- 11.1.3 Upon termination of the licence pursuant to the operation of clause 11.1.2, the Licensee must immediately comply with the requirements of clause 15.2.

## 11.2 Subletting

The Licensee must not sublet or license any part of the Site without the Council's prior written consent.

## 11.3 Hiring out Site

The Licensee must not hire out or otherwise part with possession of the Site without the Council's prior written consent or otherwise in accordance with this licence.

## 11.4 Costs

The Licensee must pay all costs reasonably incurred by the Council (including the costs of any consultant or any legal fees) in relation to any dealing with the Site or this licence, including in considering whether or not to grant consent under this clause.

# 12. COUNCIL'S OBLIGATIONS AND RIGHTS

## 12.1 Quiet enjoyment

Subject to the Council's rights and to the Licensee complying with the Licensee's obligations under this licence, the Licensee may occupy the Site without interference from the Council.

## 12.2 Right to enter

- 12.2.1 The Council may (except in an emergency when no notice is required) enter the Site any structure or improvement situated on the Site after giving the Licensee reasonable notice:

12.2.1.1 to see the state of repair of the Site or any structure or improvement on the Site;

12.2.1.2 to do repairs to the Site or other works which cannot reasonably be done unless the Council enters the Site; and

12.2.1.3 to do anything the Council must or may do under this licence or must do under any Legislation or to satisfy the requirements of any Statutory Authority.

- 12.2.2 If following an inspection of the Site or any structure or improvement situated on the Site, the Council forms a view that the Site or any structure or improvement at the Site (including a Cabin) does not comply with the requirements of this licence, the Council will give the Licensee a written notice (**Remedy Notice**):

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12.2.2.1 which provides details of why the Site or any structure or improvement at the Site does not comply with the requirements of this licence; and

12.2.2.2 requires the Licensee to remedy these matters within the time stipulated in the Notice.

12.2.3 If the Licensee does not comply with the Requirements of a Remedy Notice, this will constitute a breach of this licence and the Council may take any action available to it as a result of such breach.

### 12.3 **Emergencies**

12.3.1 In an emergency the Council may:

12.3.1.1 close the Site or the Park; and

12.3.1.2 prevent the Licensee from entering the Site or the Park for the duration of the emergency.

12.3.2 If the emergency was caused or contributed to by the Licensee, then the Council may recover of its costs of responding to the emergency from the Licensee.

### 12.4 **Works and restrictions**

12.4.1 The Council may:

12.4.1.1 install, use, maintain, repair, alter, and interrupt any Services;

12.4.1.2 carry out works on the Park (including extensions, renovations and refurbishment); and

12.4.1.3 close (temporarily or permanently) and restrict access to the Common Areas.

12.4.2 The Council must (except in an emergency) take reasonable steps to minimise interference with the Licensee's use and occupation of the Site when exercising its rights under clause 12.4.1

### 12.5 **Right to rectify**

The Council may at the Licensee's cost do anything which the Licensee should have done under this licence but which the Licensee has not done or which the Council reasonably considers the Licensee has not done properly.

## 13. **RELOCATION**

13.1 At any time during the Term, the Council may, on giving the Licensee not less than twenty eight (28) day's prior written notice (**Relocation Notice**), require the Licensee to relocate from the Site to another site in the Park on a date stipulated by the Council, subject to the following conditions:

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- 13.1.1 Within twenty eight (28) days of receiving a Relocation Notice, the Licensee may terminate this licence rather than relocating to another site.
  - 13.1.2 Any site within the Park to which the Council requires the Licensee to relocate pursuant to the Relocation Notice must be of a similar quality to the Site.
  - 13.1.3 The Council will bear all reasonable costs of the Licensee to relocate to another Site pursuant to a Relocation Notice.
  - 13.1.4 The Licensee must provide the Council with all reasonable assistance in respect of the relocation.
  - 13.1.5 On and from the completion of the relocation, the terms of this licence will apply to the new site as though all reference in this licence to the 'Site' are references to the new site.

#### **14. RENEWAL**

- 14.1 If a right of renewal is specified in Item 5 of Schedule 1 and the Licensee wishes to exercise that right of renewal, then the Licensee must give a written notice to the Council not less than 6 months and not more than 12 months before the expiry of the Initial Term stating it wishes to renew this licence for the period specified in Item 5 of Schedule 1. If such notice is given the Council must renew this licence for the Renewal Term on the terms in this licence (except this subclause) commencing immediately after the Initial Term expires.
- 14.2 The Licensee is not entitled to renew this licence if:
  - 14.2.1 the Licensee has been in breach of this licence at any time before giving notice of exercise of the right of renewal;
  - 14.2.2 the Licensee is in breach of this licence at the time of giving that notice; or
  - 14.2.3 the Licensee is in breach or commits a breach of this licence after giving that notice but before commencement of the Renewal Term.

#### **15. RIGHTS AND OBLIGATIONS ON EXPIRY**

##### **15.1 Expiry**

This licence comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Licensee under this licence.

##### **15.2 Handover of possession**

- 15.2.1 Before this licence comes to an end, the Licensee must:
  - 15.2.1.1 remove all of the Licensee's Equipment and repair any damage caused by such removal;

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15.2.1.2 subject to clause 16, remove any alterations or additions made to the Site by the Licensee and reinstate to Site to the condition it was in prior to the alteration or additions having been made (fair wear and tear excepted); and

15.2.1.3 complete any repairs which the Licensee is obliged to carry out under this licence.

15.2.2 The Licensee must obtain all approvals required under Legislation for the completion of the activities detailed in clause 15.2.1.1, 15.2.1.2 and 15.2.1.3 and must provide copies of such approvals to the Council prior to the end of the Term.

### 15.3 **Abandoned goods**

If, when this licence comes to an end, the Licensee leaves any goods or equipment at the Site, then the Council may deal with and dispose of those goods as it thinks fit.

### 15.4 **Holding over**

If, with the Council's consent, the Licensee continues to occupy the Site after the end of this licence, the Licensee does so under a monthly licence which:

15.4.1 either party may terminate on one month's notice given at any time; and

15.4.2 is on the same terms as this licence.

## 16. **FIRST RIGHT OF REFUSAL**

### 16.1 **Right to Purchase**

16.1.1 If:

16.1.1.1 at any time during the Term the Licensee proposes to sell any Cabin that the Licensee has installed or situated on the Site (**Cabin**); or

16.1.1.2 not less than one month prior to the Expiry Date, if the Licensee does not propose at that time to request an extension of this licence or a new licence for the Site or another site within the Park from the Council;

then:

16.1.1.3 the Council has a first right to purchase the Cabin; and

16.1.1.4 the Licensee must immediately make an offer in writing to the Council to sell the Cabin to the Council on the terms set out in clause 16.2.

16.1.2 The offer to sell remains open for acceptance:

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16.1.2.1 in the case where the offer is made at any during the Term other than during the last month of the Term, for a period of 30 days from the date of the offer; or

16.1.2.2 in any case where the offer is made during the last month of the term, up to the Expiry Date;

(the relevant period being the **Offer Period**).

16.1.3 If the Council accepts the Licensee's offer by notice in writing before the expiry of the Offer Period, then the Licensee must sell the Cabin to the Council on the terms set out in 16.2.

16.1.4 Until the expiry of the Offer Period, the Licensee must not sell the Cabin except in accordance with this right of purchase, unless in the meantime the Council has in writing unconditionally declined the offer or waived its rights under this clause 16.1.

16.1.5 At any time after the offer is declined or waived or expires, the Licensee may sell or dispose of the Cabin.

16.1.6 For all purposes connected with this right of purchase, time is of the essence.

## **16.2 Terms of Sale and Purchase**

The sale under this clause 16 is upon the following terms:

16.2.1 unless otherwise agreed between the parties, the price is a sum of money equal to the average of two independent valuations obtained for the Cabin, being one independent valuation by a suitable qualified valuer obtained by each party at that party's cost; .

16.2.2 a deposit of 10% of the purchase price must be paid to the Licensee immediately upon the acceptance in writing of the offer to sell.

16.2.3 the purchase must be completed and the amount of the purchase money (less the deposit) must be paid within 30 days after the acceptance in writing of the offer to sell.

## **16.3 Formal Contract**

No formal contract is required to be executed in respect of the sale and purchase of the Cabin, the terms of the sale and purchase are binding upon the parties immediately after the acceptance in writing of the offer to sell.

## **17. BREACH**

### **17.1 Payment obligations**

17.1.1 The Licensee must make payments due under this licence:

17.1.1.1 without demand (unless otherwise provided);

17.1.1.2 without set-off, counter-claim, withholding or deduction;

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17.1.1.3 to the Council or as the Council directs; and

17.1.1.4 by direct debit or electronic funds transfer or in such other manner as may be directed by the Council from time to time.

17.1.2 If a Payment Date does not exist, the Licensee must make any payment due on that Payment Date on demand.

## **17.2 Council's rights on breach**

17.2.1 The Council may come onto the Site and remedy a breach of this licence without notice:

17.2.1.1 in an emergency; or

17.2.1.2 if the Licensee breaches any provision of this licence and fails to remedy the breach within 14 days after receiving notice requiring it to do so.

17.2.2 The Licensee must pay or reimburse the Council on demand for all costs of remedying the breach.

## **17.3 Breach and re-entry**

If:

17.3.1 the Licensee fails to pay a sum of money when due and fails to remedy that failure within seven days after receiving notice requiring it to do so;

17.3.2 the Licensee breaches any other provision of this licence and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

17.3.3 the Licensee ceases to be able to pay its debts as they become due;

17.3.4 any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Licensee's assets, operations or business;

17.3.5 any step is taken to enter into any arrangement between the Licensee and its creditors;

17.3.6 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Licensee's assets or business;

17.3.7 the Licensee is deregistered or dissolved or any step is taken by any person towards that;

17.3.8 the Licensee is a natural person and commits an act of bankruptcy;

17.3.9 the Licensee is convicted of an indictable offence (other than a traffic offence);

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17.3.10 execution is levied against the Licensee and not discharged within 14 days; or

17.3.11 the Site is unoccupied for six months or more without the Council's consent;

then despite any other clause of this licence, the Council:

17.3.12 may re-enter and repossess the Site, without prejudice to its other rights; and

17.3.13 is discharged from any claim by or obligation to the Licensee under this licence.

#### **17.4 Rights of Council not limited**

A power or right of the Council under this licence or at law resulting from a breach or repudiation of this licence by the Licensee, or the exercise of such power or right, does not limit the Council's powers or rights.

#### **17.5 Repudiation and damages**

17.5.1 The following provisions are essential terms of this licence:

17.5.1.1 the obligation to pay the Licence Fee;

17.5.1.2 the obligation to pay the Outgoings Contribution;

17.5.1.3 the provisions about use of the Site;

17.5.1.4 the provisions about additions and alterations to the Site;  
and

17.5.1.5 the restriction on assignment, sub-letting and licensing.

17.5.2 The Council does not waive the essential nature of an essential term by accepting late payment of the Licence Fee or other money or by failing to exercise its rights or by delay in doing so.

17.5.3 Any breach of an essential term by the Licensee is a repudiation of this licence. The Council may at any time accept that repudiation, rescinding this licence.

17.5.4 If:

17.5.4.1 the Council terminates this licence because of a breach of an essential term by the Licensee; or

17.5.4.2 the Licensee repudiates this licence and the Council accepts that repudiation, rescinding this licence;

the Licensee must pay compensation to the Council including the Licence Fee and other money which the Council would otherwise have received under this licence for the balance of the Initial Term and any Renewal Term. The Council must take reasonable steps to mitigate its

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losses and to endeavour to license the Site at a reasonable licence fee and on reasonable terms.

**17.6 Interest on overdue amounts**

The Licensee must pay to the Council interest on any overdue amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

**17.7 Landlord and Tenant Act**

A notice under section 10 of the *Landlord and Tenant Act 1936* (SA) must allow 14 days for the Licensee to remedy a breach of this licence if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Council. No period of notice is required in respect of non-payment of the Licence Fee.

**18. INDEMNITY AND RELEASE**

**18.1 Risk**

The Licensee occupies and uses the Site at the Licensee's risk.

**18.2 Indemnity**

The Licensee is liable for and must indemnify the Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:

- 18.2.1 any act or omission of the Licensee;
- 18.2.2 the overflow or leakage of water or any other harmful agent into or from the Site caused or contributed by the Licensee;
- 18.2.3 any fire on or from the Site caused or contributed to by the Licensee;
- 18.2.4 loss or damage to property or injury or death to any person caused by the Licensee, the use of the Site by the Licensee or otherwise relating to the Site;
- 18.2.5 a breach of this licence by the Licensee; or
- 18.2.6 the Licensee's use or occupation of the Site.

In this clause all references to the "Licensee" are to be read as references to the Licensee's invitees, agents, contractors and visitors.

**18.3 Release**

The Licensee releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Site or the Park except to the extent that they are caused by the Council's negligence.

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#### 18.4 **Indemnities are independent**

Each indemnity is independent from the Licensee's other obligations and continues during this licence and after this licence ends.

### 19. **GOODS AND SERVICES TAX**

19.1 If the Council is liable to pay GST in connection with a supply under this licence then:

19.1.1 the Agreed Consideration for that supply is exclusive of GST;

19.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and

19.1.3 the Licensee must pay the increased Agreed Consideration on the due date for payment by the Licensee of the Agreed Consideration.

19.2 Where the Agreed Consideration is increased under this clause, the Council must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Licensee.

19.3 If the Licensee breaches this clause and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Licensee must pay the Council on demand an amount equal to the penalties and interest.

#### 19.4 **Set Off**

If for any reason there is any debt owed by the Licensee to the Council or the Manager, then the Council may set off that debt against any amount due by the Council or the Manager to the Licensee.

### 20. **RESUMPTION**

20.1 The Council may terminate this licence by giving at least three months' written notice to the Licensee if the Council receives notice of resumption or acquisition of the Site or the Land (or any part of the Land affecting the Site) from or by any Statutory Authority governmental or semi-governmental body.

20.2 The Council may terminate this licence immediately by giving written notice to the Licensee if the Site or the Land (or any part of the Land affecting the Site) is Crown land dedicated to a particular purpose and:

20.2.1 it is withdrawn from the Council's care control and management;

20.2.2 the purpose for which it has been dedicated is altered under section 18 of the *Crown Land Management Act 2009* (SA); or

20.2.3 the dedication is revoked under section 19 of the *Crown Land Management Act 2009* (SA) or other legislation.

20.3 Termination of this licence under this clause releases each party from further liability under this licence, but does not affect a party's rights or liabilities for a prior breach.

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## 21. MISCELLANEOUS

### 21.1 Approvals and consents

Unless otherwise provided, the Council may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this licence.

### 21.2 Entire agreement

This licence:

21.2.1 constitutes the entire agreement between the parties about the Site;

21.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Site.

### 21.3 Waiver

If the Council accepts or waives any breach by the Licensee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this licence.

### 21.4 Exercise of power

21.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this licence is not a waiver of that power or right.

21.4.2 An exercise of a power or right under this licence does not preclude a further exercise of it or the exercise of another right or power.

### 21.5 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this licence, remains in force after the expiration or termination of this licence.

## 22. NOTICE

22.1 A notice, demand, consent, approval or communication under this licence (**Notice**) must be in writing, in English and signed by a person authorised by the sender.

22.2 Without excluding any other method, Notice is sufficiently given:

22.2.1 to the Licensee, if left at the Site, or if the Licensee has vacated the Site, if posted by pre-paid post to the last known address of the Licensee or emailed to the Licensee's email address notified to the Council;

22.2.2 to the Council, if posted by pre-paid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this licence unless the Licensee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).

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- 22.3 Notice given by pre-paid post is deemed to have been given three Business Days after posting.
  - 22.4 Notice sent by email is deemed to have been given on the day and at the time shown on the sender's sending report.
  - 22.5 If two or more people comprise a party, notice to one is effective Notice to all.
  - 22.6 The Licensee must immediately notify the Council of any change to the Licensee's address for service of Notices.

## 23. **COSTS**

- 23.1 On request, the Licensee must pay or reimburse to the Council all legal and other costs incurred by the Council in consequence of any actual or threatened breach by the Licensee under this licence or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council under this licence or at law or otherwise arising in consequence of any actual or threatened breach by the Licensee.
- 23.2 Where this licence requires the Licensee to do anything, that thing must be done at the Licensee's cost unless otherwise stipulated.

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## Schedule 1

### Item 1

Council and Manager  
Details

#### Council Details

**Council:** District Council of the Copper Coast

**Address:** 51 Taylor Street, SA 5554

#### Manager Details

**Name:**

**Address:**

**Contact Number:**

**Email Address:**

### Item 2

Licensee Details

**Name(s):**

**Postal Address:**

**Contact Number:**

**Email Address:**

#### **Address of Primary Place of Residence:**

(Note: A licence cannot be completed if the licensee does not include the address of a primary place of residence that they own.)

### Item 3

Site

Site Number \_\_\_\_\_ as shown on the plan of the Park in Annexure A.

(the Site is portion of the land comprised in Certificate of Title Volume 5723 Folio 269 and Crown Record Volume 5753 Folio 668).

### Item 4

Park

Wallaroo North Beach Tourist Park located at 1 Pamir Court, Wallaroo SA 5556 (which is situated on the whole of the land comprised in Certificate of Title Volume 5723 Folio 269 and Crown Record Volume 5753 Folio 668).

### Item 5

Term

**Initial Term:** Five years commencing on \_\_\_\_\_ (**Commencement Date**) and expiring at midnight on \_\_\_\_\_ (**Expiry Date**).

**Renewal Term:** Five years commencing on the Expiry Date.

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**Item 6**

Nights of Use

A maximum of 150 nights during each year calendar of the Term.

**Item 7**

Licence Fee

\$\_\_\_\_\_ per annum (exclusive of GST) subject to review pursuant to clause 4

Commencing instalment Amount: \$\_\_\_\_\_ per month (inclusive of GST)

**Item 8**

Outgoings Contribution

\$\_\_\_\_\_ per annum (exclusive of GST)

Commencing instalment Amount: \$\_\_\_\_\_ per month (inclusive of GST) subject to review in accordance with clause 4.

**Item 9**

Review Dates and Review Methods

**Review Date****Review Method**

1 July each year during the Term

CPI Review

**Item 10**

Date of Licence

**Item 11**

Cost Limit

The amount of \$\_\_\_\_\_(exclusive of GST) per month.

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**EXECUTED** as an agreement

**EXECUTED BY THE PARTIES**

**Signed for District Council of the  
Copper Coast** by its authorised delegate  
in the presence of:

.....  
Signature of witness

.....  
Signature of authorised delegate

.....  
Name of witness (print)

.....  
Name of authorised delegate (print)

.....  
Position of authorised delegate

**Signed by** \_\_\_\_\_  
in the presence of:

.....  
Signature of witness

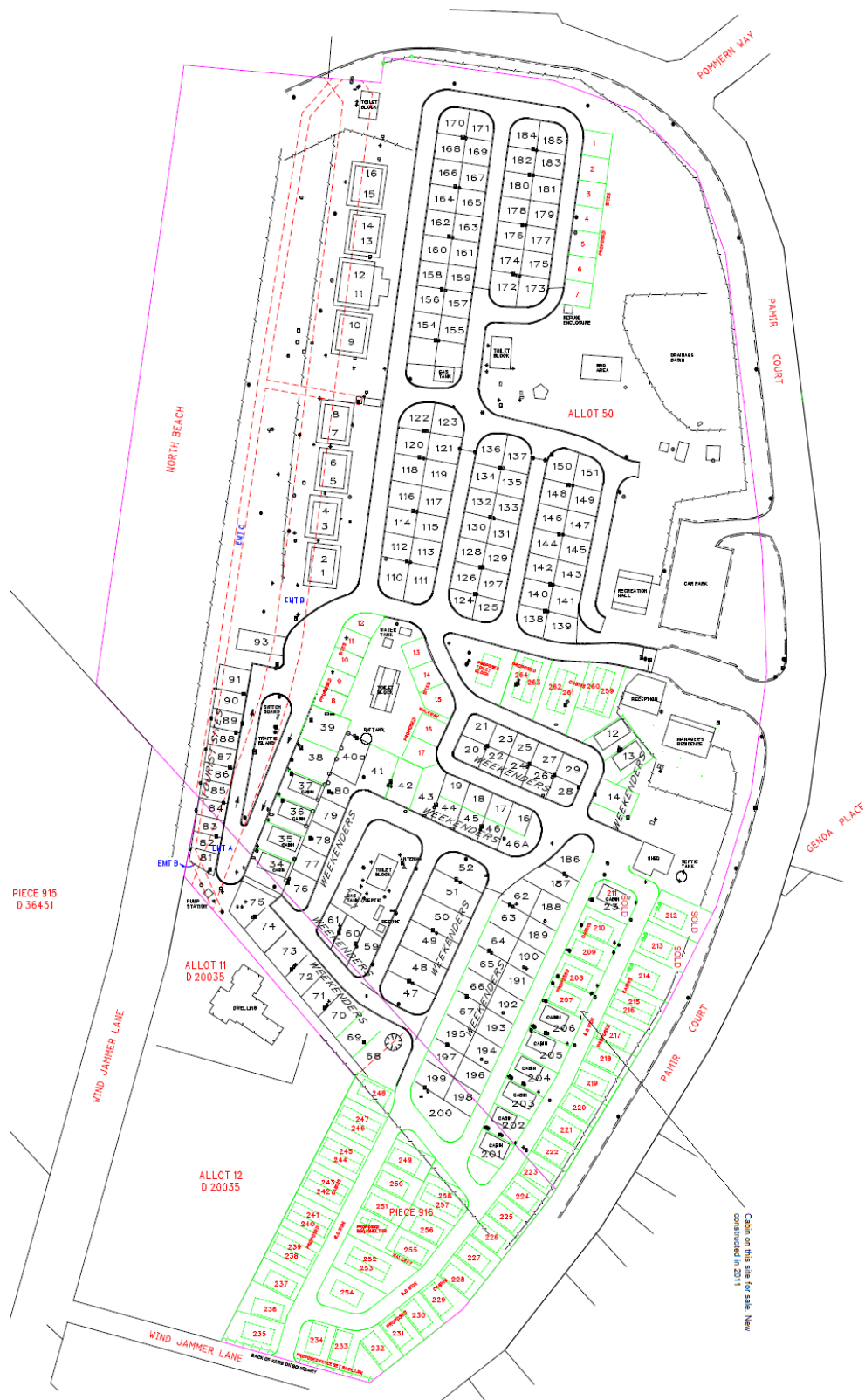
.....  
Name of witness (print)

**Signed by** \_\_\_\_\_  
in the presence of:

.....  
Signature of witness

.....  
Name of witness (print)

## Annexure A Plan



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## **Annexure B      Park Rules**

The following are the Park Rules in operation at the Commencement Date. The Council reserves the right to vary, add to, revoke and replace the Park Rules at any time.

### **1.      Rules Applying to Long Term Site Licensees (not short term hirers)**

- 1.1      All tents, shade cloths, shade sails and similar devices must be taken down when the site is un-occupied for a period of two days or more.
- 1.2      All gardens within a Site must be kept neat and tidy at all times.

### **2.      Rules Applying to all users of the Park**

- 2.1      Animals may be brought onto, and kept at, a site provided that:
  - 2.1.1      the animal is under effective control at all times; and
  - 2.1.2      the animal does not cause a nuisance or otherwise disturb any other users of the Park.
- 2.2      The site must be kept clean and tidy.
- 2.3      All waste and recyclables must be removed from the site and stored in the receptacles made available for such waste and recyclables within the Park.
- 2.4      No littering.

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**Annexure C      Cabin Site Use and Development Policy**