



ANNUAL HOLIDAY SITE AGREEMENT

Revised March 2014

INTRODUCTION

- A. The Owner owns the Caravan Park.
- B. The Principal Occupant has requested the Owner, and, subject to the terms of this Agreement, the Owner has agreed, to allow the Occupants the use of the Site which is a Long Term Holiday Site.
- C. The purpose of this Agreement is to record the terms and conditions which the Owner and the Principal Occupant have agreed will apply in respect of the occupancy and associated use of the Site by the Occupants.

AGREEMENT

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context requires otherwise –

“**Abandoned Goods**” means goods (including the Dwelling) which become abandoned under Clause 11.2.

“**Agreement**” means this agreement.

“**Annual Site Agreement**” means an agreement to occupy a Long

Term Holiday Site for a fixed term of one year.

“**Caravan Park**” means the caravan park specified in the Schedule.

“**Commencement Date**” means the date specified as such in the Schedule.

“**Duty**” means a duty of either the Owner or the Occupants as the context requires.

“**Dwelling**” means the moveable dwelling located on the Site.

“**End Date**” means the Expiry Date or such earlier day upon which this Agreement is terminated.

“**Excluded Disputes**” means disputes about –

- (a) unpaid site fees or charges and interest charged thereon;
- (b) the termination of this Agreement;
- (c) the relocation of the Dwelling within the Park; and
- (d) the Park Rules.

“**Expiry Date**” means the 30th day of June next after the Commencement Date.

“Further Agreement” means a further agreement offered by the Owner under clause 13.2.

“Long Term Holiday Site” means a site within the Park which has been reserved for an extended period and upon which is situated a moveable dwelling which is occupied from time to time on a Non Residential Basis.

“Motor Vehicle” includes motor car, motor truck, motorcycle, motor-scooter, utility, sports utility vehicle, camper vehicle and any other motorised vehicle.

“Non Residential Basis” means, in respect to a site, that the site is not occupied by any person as his or her sole or principal place of residence.

“Occupants” includes the Principal Occupant and the Permitted Occupants.

“Office of the Essential Services Commission” means the State Government of Victoria’s Independent Economic Regulator of Essential Services.

“Owner” means the person or entity named as such in the Schedule and includes the Owner’s Authorised Representative.

“Owner’s Authorised Representative” means any person authorized in writing by the Owner as such for the purposes of this Agreement

“Park Rules” means the rules published by the Owner from time to time in accordance with the Regulations.

“Permitted Continuous Period” means 45 days.

“Permitted Nights” means the number of nights specified in the Schedule.

“Permitted Occupants” means the Principal Occupant and the other persons named in the Schedule as permitted occupants.

“Principal Occupant” means the person named as such in the Schedule and who has signed this Agreement for himself or herself and on behalf of all Permitted Occupants.

“Relocation Costs” means the reasonable costs of relocating the Dwelling in accordance with a direction of the Owner under clause 7.1 hereof but, for the avoidance of doubt, must not include any allowance for loss of amenity.

“Schedule” means the schedule to this Agreement.

“Site” means the site, within the Caravan Park, specified in the Schedule.

“Site Fee” means the site fee specified in the Schedule.

“Statutory Order” means any order, requirement or recommendation made by any competent authority and issued to either the Owner or the Principal Occupant.

“Term” means the term specified in clause 2.2.

“Vehicle” includes Motor Vehicles, caravans, trailers and boats.

“Visitor” means a person, other than the Occupants, who occupies the Site at any time with the consent of any of the Occupants and any person coming on to the Park to visit any person occupying the Dwelling at any time.

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(Signature of Principal Occupant/s)

.....
(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

“Works” means any building, renovation, refurbishment or maintenance works.

and Schedules of and to this Agreement; and

1.2 Interpretation.

- 1.2.1 words importing the singular shall (where appropriate) include the plural and vice versa;
- 1.2.2 words importing any one gender shall (where appropriate) include the other gender;
- 1.2.3 words importing natural persons shall (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 1.2.4 headings are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement;
- 1.2.5 references to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- 1.2.6 references to Sections, Clauses, Sub-Clauses, paragraphs and Schedules shall be construed as references to the Sections, Clauses, Sub-Clauses, paragraphs

1.2.7 Where a party to this Agreement comprises two or more persons, each of those persons expressly & irrevocably agree they are jointly and severally bound by that party’s obligations under this Agreement.

2. Grant and Term

- 2.1 The Owner grants the Occupants a licence to occupy the Site subject to the terms of this Agreement.
- 2.2 This Agreement commences on the Commencement Date and shall continue until the 30th day of June next following the Commencement Date or such earlier date upon which it is terminated in accordance with this Agreement or as specified in the Schedule.
- 2.3 For the avoidance of doubt, the Owner and the Principal Occupant acknowledge that they each enter into this Agreement based on their common intention that under no circumstances shall any person who has the right to use the Site under this Agreement be or become a resident or a site tenant within the meaning of the *Residential Tenancies Act 1997* (Vic).

3. Payments

Site Fee and Other Charges

- 3.1 The Principal Occupant must pay –
 - 3.1.1 the Site Fee in advance; and
 - 3.1.2 Charges in addition to the Site Fee as specified in Item 11 of the Schedule.
 - 3.1.3 Any charge or fee for any Dwelling located on the site

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

that is required by or at the direction of, or to comply with a policy of, any competent authority.

- 3.2 The Principal Occupant will only be required to pay the Owner for the use of any electricity, gas and water used by the Occupants if such services are individually metered and the costs disclosed in the Schedule. The Owner shall provide the Principal Occupant with copies of any relevant meter readings on request.
- 3.3 The Principal Occupant will be liable to pay the Owner where applicable any electrical supply charge or other periodic fee for the supply of electricity as determined and amended from time to time by the Office of the Essential Services Commission.
- 3.4 Subject to clause 3.3, the Owner will pay for the cost of provision to the Site of all reticulated services available in the Caravan Park if those services are not separately metered.
- 3.5 The Principal Occupant acknowledges that if at any time the Site is separately charged rated or taxed by any local government, statutory or other authority having jurisdiction over the Site, then such rates, taxes or charges, or, if the Term is for only part of the rating period, a pro-rata proportion thereof, shall be reimbursed to the Owner by the Principal Occupant as and when due. Where applicable, there will be an equitable adjustment to the Site Fee if there is a corresponding reduction in the rates charges and taxes incurred charged or assessed in respect to the Caravan Park.

4. Duties of Owner

The Owner must –

.....
(Signature of Principal Occupant/s)

..... Date

- 4.1 perform all duties specified as being duties of the Owner;
- 4.2 ensure that the Site is vacant so that the Occupants can move in on the Commencement Date;
- 4.3 allow the Occupants use of the Site without unreasonable interruption by the Owner;
- 4.4 subject to Clause 5.4, allow the Permitted Occupants to occupy the Site and use the facilities of the park for the Permitted Nights.
- 4.5 keep common areas, gardens, roadways, paths and recreation areas in the Park clean and in a safe condition;
- 4.6 maintain, repair and keep clean and tidy all communal bathrooms, toilets, laundries and other communal facilities in the Caravan Park;

5. Duties of Occupants

The Principal Occupant must –

- 5.1 perform all duties as being duties of the Occupants;
- 5.2 ensure that the Site is used on a Non Residential Basis only;
- 5.3 ensure that the Permitted Occupants and Visitors comply with the Park Rules and all of the duties specified in this Agreement as being duties of the Occupants;
- 5.4 ensure that neither himself nor any of the Occupants use the Site for any continuous period greater than the Permitted Continuous Period;
- 5.5 advise the Owner in writing within 7 days of changing address;
- 5.6 maintain throughout the Term a policy of insurance covering the Dwelling for its full replacement value and produce a certificate of

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(Signature of Caravan Park Owner /Manager)

..... Date

currency of the policy to the Owner upon demand;

- 5.7 maintain the Site in a neat and tidy condition and comply with the reasonable directions of the Owner to do so;
- 5.8 maintain the Dwelling in good repair and in a clean and tidy condition and comply with the reasonable directions of the Owner to do so;
- 5.9 not carry out any Works on the Site without first obtaining the written consent of the Owner which may be given or withheld entirely at the discretion of the Owner;
- 5.10 not carry out, or cause to be carried out, any electrical works on the Site unless such works are carried out by a registered electrical contractor;
- 5.11 not use any electrical extension lead in the Park unless the electrical extension lead has been tested and tagged in accordance with Australian Standard 3760;
- 5.12 at the cost of the Principal Occupant comply with any Statutory Order as far as it relates to the Dwelling;
- 5.13 advise, and ensure that all Permitted Occupants and Visitors advise, the Owner each time they arrive at or depart from the Caravan Park;
- 5.14 only park on the Site the number of Vehicles specified in the Schedule and not park Vehicles and/or boats within the Caravan Park other than within areas designated for that purpose; and
- 5.15 use, and ensure that all Visitors use, the Site, the Caravan Park and all communal areas and facilities within the Caravan Park that the Occupants are entitled to use, properly.

Termination by Owner

- 6.1 The Owner may terminate this Agreement by giving the Principal Occupant a written termination notice effective immediately if the Occupants (or any of them) or any Visitor:
 - (a) causes or allows serious damage to the Site or the Park or any facility in the Park; or
 - (b) by act or omission causes a danger to any person or property in the Park; or
 - (c) seriously interrupts the quiet and peaceful enjoyment of the Park by other occupiers; or
 - (d) uses the Site as his, her or their only or main place of residence;
 - (e) uses the Site continuously for a period greater than the Permitted Continuous Period; or
 - (f) breaches a Duty if the Occupants have previously been given not less than two written notices of breach of the Duty or a similar duty and in the most recent of those previous written notices the Owner also gave notice that if a similar breach occurred in the future the Agreement would be terminated.
- 6.2 If –
 - (a) the Site Fee or any other money due under this Agreement is more than 7 days in arrears; or
 - (b) the Site is being used for any purpose that is unlawful;

the Owner may give the Principal Occupant written notice (“Breach Notice”) specifying the breach complained of and stating that if the

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

breach is not remedied within 7 days of the date the Breach Notice is served on the Principal Occupant that this Agreement shall be at an end and if the breach specified in the Breach Notice is not so remedied then this Agreement shall be at an end.

7. Relocation of Dwelling

7.1 The Owner reserves the right, at any time during the Term by notice in writing, to require the Principal Occupant to relocate the Dwelling to an alternate site within the Caravan Park by the date specified in the notice which shall be not earlier than twenty eight (28) days after the date of the notice. The Principal Occupant shall comply with any such notice.

7.2 The Owner shall reimburse the Principal Occupant in respect of the Relocation Costs unless the relocation of the Dwelling is required by the direction of, or to comply with a policy of, any competent authority in which case the Relocation Costs must be borne solely and entirely by the Principal Occupant.

8. Ending of Agreement

8.1 This Agreement ends -

- (a) if the Principal Occupant sells, transfers, assigns or bequeaths ownership of or title to the Dwelling;
- (b) if it is so agreed between the Principal Occupant and the Owner in writing;
- (c) if the Principal Occupant vacates with the consent of the Owner in writing;
- (d) if it is properly terminated by either the Owner or the Principal Occupant in accordance with this Agreement;

- (e) if the Principal Occupant abandons the Dwelling; or
- (f) if the Site or the Caravan Park becomes unfit for human habitation,
- (g) at the commencement of any new agreement in writing between the Principal Occupant and the Owner; or
- (h) on the Expiry Date or End Date.

8.2 On the End Date the Principal Occupant must immediately vacate the Site and remove all of the Occupants' property (including the Dwelling unless it has been sold to remain on the Site and the Owner has entered into an Annual Holiday Site Agreement with the purchaser) from the Site and in any event leave the Site in a clean and tidy condition.

8.3 The parties enter into this Agreement with the common intention that it will run for the entire Term. Subject to clause 8.5, if this Agreement comes to an end before the Expiry Date the Principal Occupant is not entitled to a refund of any fees paid under this Agreement even if the fees have been paid up to a date after the End Date.

8.4 Subject to clause 8.5, any fees payable by the Principal Occupant under this Agreement that have not been paid as at the End Date shall be a liquidated debt payable by the Principal Occupant to the Owner on demand.

8.5 The Principal Occupant shall be entitled to a pro-rata refund of any prepaid fees if this Agreement ends for the reason prescribed in paragraph (f) of Clause 8.1 or if this Agreement is properly terminated by the Principal Occupant because of a breach by the Owner.

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

9. Visitors

9.1 The Principal Occupant must make prior arrangements with, and obtain the consent of the Owner if the Dwelling is to be occupied by a Visitor.

9.2 The Owner may charge the Principal Occupant additional site fees in respect of any Visitor who stays in the Dwelling. Any such additional site fee will be no greater than that which is charged for additional persons occupying short term tourist sites in the Caravan Park.

9.3 Any breach by a Visitor of this Agreement or of the Park Rules shall be deemed to be a breach by the Principal Occupant.

9.4 Visitors may not stay on the Site or in the Dwelling for longer than the period set out in Item 8.3 of the Schedule;

9.5 no more than the number of Visitors specified in Item 8.2 of the Schedule may stay at the Site or in the Dwelling at any time;

9.6 the combined number of Occupants and Visitors at any time shall not, without the approval of the Owner, exceed the maximum number of persons on site set out in Item 8.1 of the Schedule;

9.7 all Occupants and Visitors must be accommodated in the Dwelling. At no time is any person permitted to camp on the Site;

9.8 the Site Tenant must not require a Visitor to pay any fee for staying on the Site or in the Dwelling.

10. Sale of Dwelling

10.1 If the Principal Occupant wishes to sell the Dwelling to remain on Site, the Principal Occupant must

- (a) request permission from the Owner, in writing, to sell the Dwelling on Site, 28 days prior to entering into any agreement to sell or dispose of the Dwelling; and
- (b) inform any prospective purchaser that the sale of the Dwelling ends this Agreement; and
- (c) advise any prospective purchaser that they must make their own inquiries of the Owner with respect to the prospects of entering into an agreement enabling them to occupy the Site.

10.2 The Owner reserves the right to charge a transfer fee upon the sale of the Dwelling to remain on the Site to be calculated as specified in the Schedule.

10.3 The Owner must act reasonably in assessing any proposal advanced by the Principal Occupant for the sale of the Dwelling to remain on the Site but is not obliged to enter into an Annual Site Agreement with the purchaser of the Dwelling.

11. Abandoned Goods

11.1 If the Principal Occupant fails to comply with clause 8.2 of this Agreement –

- (a) the Dwelling and any other property (“Abandoned Goods”) belonging to the Occupants shall be held by the Owner under bailment on and from the day after the End Date;
- (b) the Principal Occupant must pay to the Owner a daily storage fee equivalent to the overnight rate charged to tourists for sites in the Park as at the End Date.

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

- (c) The Owner must take reasonable care of the Abandoned Goods.
- (d) within 7 days of the End Date the Owner must give notice in writing to the Principal Occupant –
 - (i) advising that the Abandoned Goods are to be collected from the Park by the date specified in the notice (which must be not earlier than 28 days after the date of the notice);
 - (ii) advising of the storage fees payable and requiring them to be paid; and
 - (iii) advising that the Owner expects to be relieved of any duty to safeguard the Abandoned Goods.
- (b) the notice must state that a dispute has arisen and identify what the dispute is.
- (c) the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party may apply to the President of Australian Centre for International Commercial Arbitration or the nominee of the President to appoint a mediator.
- (d) once the mediator has accepted the appointment the parties must comply with the mediator's instructions.
- (e) if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

11.2 If the Principal Occupant fails to collect the Abandoned Goods by the date specified in the notice given under clause 11.1(d)(i) or, if having taken reasonable steps to do so, the Owner is unable to locate or communicate with the Principal Occupant, the Abandoned Goods shall be uncollected goods within the meaning of, and must be dealt with by the Owner in accordance with, Part 4.2 of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

12.3 The mediator may fix the charges for the mediation which must be paid equally by the parties.

12.4 The mediation is confidential and —

- (a) statements made by the mediator or the parties, and
- (b) discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.

12.6 It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to this Agreement or the mediation.

12.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

12. Dispute Resolution

12.1 The parties must attempt to resolve any dispute except Excluded Disputes, by the mediation procedure.

12.2 The mediation procedure is –

- (a) a party may start mediation by serving a mediation notice on the other party.

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

12.8 The parties agree that in any proceedings between them in any Court or Tribunal each may be represented by a legal practitioner or legal practitioners of his, her or its its choice.

If the offer made by the Owner is not accepted strictly in accordance with this clause 13.3 it will lapse.

13 No Right of Renewal

13.4 If the Further Agreement is in respect of a different site to that specified in the Schedule then the grant of the Further Agreement is conditional upon the Principal Occupant, at the expense of the Principal Occupant:

13.1 The parties acknowledge and agree that this agreement is for a fixed term from the Commencement Date to the Expiry Date. The Principal Occupant acknowledges and agrees that at the end of the fixed term the Principal Occupant has no right to renew this agreement and that this Agreement will come to an end on the Expiry Date in accordance with clause 8.1(h).

(a) relocating the Dwelling to the site identified in the Further Agreement within 14 days of the end of this Agreement; and

(b) leaving the Site in good condition and repair, to the standard required by the Owner, acting reasonably.

13.2 Notwithstanding clause 13.1, the Owner may, entirely at the discretion of the Owner, give written notice to the Principal Occupant not less than 60 days before the Expiry Date, offering the Principal Occupant a further agreement on the terms (including as to site fee and site number) specified in the then current Annual Holiday Site Agreement which will be applicable in the Park immediately after the Expiry Date, two copies of which, signed by the Owner, must be enclosed with the notice given under this clause.

13.5 For avoidance of doubt the entry by the Parties into a further agreement under this clause 13 is not a renewal of this Agreement.

14. General

13.3 If the Owner offers the Principal Occupant a further agreement in accordance with 13.2 then the Principal Occupant may accept the offer by, not less than 30 days before the Expiry Date -

14.1 If the Principal Occupant defaults in the payment of any money due under this Agreement then the Principal Occupant must pay to the Owner upon demand interest on any money overdue during the period of default at a rate 2% higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic.) as at the date of the default.

- (a) returning to the Owner one copy of the Further Agreement signed by the Principal Occupant; and
- (b) paying the fee, or that part thereof, due for payment under the Further Agreement on the commencement date of the Further Agreement...

14.2 All notices, requests, demands or other communications to any party to be given under this Agreement or in connection with it may be given to or made upon the party in writing and may be given –

- by post to the party's last known address
- by facsimile to the facsimile number specified in the Schedule, or

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date

- by email with a printed or electronic copy of the email retained as proof of delivery
- by hand delivery

Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.

A Notice delivered or sent by facsimile or email after 5.00 pm will be taken to have been received at 9.00 am on the next business day at the place where it is received.

14.3 The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of this Agreement, or exercise any election or discretion under this Agreement, shall not operate as a waiver of the

rights of a party, whether express or implied, arising under this Agreement.

14.4 If any provision of this Agreement or its application to any party or any circumstance is or becomes illegal, unenforceable, or invalid then the remaining provisions of this Agreement will not be affected but will remain in full force and effect and will be valid and enforceable to the fullest extent permitted by law.

14.5 This Agreement shall be governed by and construed in accordance with the laws of Victoria for the time being in force and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

BY SIGNING THIS DOCUMENT YOU WILL BE LEGALLY BOUND BY IT

Signed by the Principal Occupant/s)
in the presence of :

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(Print full name)

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(Print full name)

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Witness

date:/...../.....

Signed by or on behalf of the Owner)
in the presence of :

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(Print full name)

date:/...../.....

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Witness

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(Signature of Principal Occupant/s)

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(Signature of Caravan Park Owner /Manager)

..... Date

..... Date