

**LONG TERM HOLIDAY  
SITE AGREEMENT  
(ANNUAL SITE AGREEMENT)**

Revised August 2009

**INTRODUCTION**

- A. The Owner owns the 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) declared by the Owner to be abandoned under Clause 11.1.

“**Act**” means the Residential Tenancies Act 1997.

“**Agreement**” means this agreement.

“**Annual Site Agreement**” means an agreement to occupy a Long Term Holiday Site for a fixed term of one year.

“**Application for Renewal**” means a written Application for Renewal of this Agreement which must be accompanied by the then Annual Site Agreement applicable to sites within the park (which the Owner will supply upon request) duly completed and signed by the Principal Occupant and payment of the Site Fee applicable to the Site for the following year as published by the Owner.

“**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 day this Agreement comes to an end either by termination in accordance with this Agreement or as specified in the Schedule.

“**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 12 day of November next after the Commencement Date.

“**Invitee**” means any person coming on to the Park to visit the Occupants.

“**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.

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

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

“**Owner**” means the person or entity or their representative named as such in the Schedule.

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

“**Park Rules**” means the rules published by the Owner from time to time.

“**Permitted Continuous Period**” means 45 days.

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(signature of Principal Occupant/s)

“**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.

“**Policies**” means Insurance Policies covering the following:-

- (a) Damage by fire or otherwise to the Dwelling for its full replacement value; and
- (b) Public risk in respect of incidents occurring on the Site with a cover for each incident of not less than \$10,000,000.00.

“**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.

“**Regulations**” means the Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 1999.

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

“**Schedule**” means the schedule to this Agreement.

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

“**Site Fee**” means the fees 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.

“**Visitor**” means a person other than the Occupants who wishes to occupy the Site.

“**Works**” means any building, renovation or refurbishment Works.

**1.2 Interpretations**

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 genders and vice versa;

1.2.3 Words importing natural persons shall (where appropriate) include corporations, firms, unincorporated associations, partnerships, Trust 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 and Schedules of and to this Agreement; and

1.2.7 References to (or to any specified provision of) this Agreement or to any other agreement or document shall be construed as references to (that provision of) this agreement or that other agreement or document as amended, substituted, novated, supplemented, varied or replaced with the agreement of the relevant Parties and in force at any relevant time.

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(signature of Principal Occupant/s)

1.2.8 Words defined in the Act and the Regulations shall have the same meaning as is attributed to them by the Act or the Regulations, as the case may be, with such modifications as are necessary to make them applicable to occupants of Long Term Holiday Sites.

1.2.9 Where a party to this Agreement comprises two or more persons, each of those persons 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 license 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 12th day of November 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 joint intention that under no circumstances shall any person who has the right to use the Site under this Agreement be or become a resident within the meaning of the Act.

**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 other than the Site Fee as specified in the Schedule.

3.2 The Principal Occupant will pay the Owner for the use of any electricity, gas and water used by the occupants provided that 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 Owner will pay for-

(a) All charges arising from a water supply service to a separately metered site that is not based on the amount of water supplied or used.

(b) All charges related to the supply or use of any sewerage or drainage facilities to or at a separately metered site that are not based on the extent of use of the service.

Excluded from this provision are any capital works desired by the Principal Occupant and for which the Principal Occupant has agreed to pay.

(c) The cost of all services to the site if those services are not separately metered.

3.4 Upon payment of the Site Fee or any other charges the Owner must, if requested, provide the Principal Occupant or the person making the payment with a written receipt.

**4. Duties of Owner**

The Owner must –

4.1 perform all duties specified in the Duty Statement 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 ensure that the Site, everything provided by the Owner with the site for use by the Occupants, and the common areas of the Park, are reasonably clean and fit to occupy or use;

4.5 subject to Clause 5.4, allow the Permitted Occupants to occupy the Site and use the facilities of the park for the Permitted Nights.

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(signature of Principal Occupant/s)

**5. Duties of Occupants**

The Principal Occupant must –

- 5.1 perform all duties specified in the Duty Statement 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 all Invitees comply with all of the duties specified in this Agreement and the Duty Statement 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 the Policies throughout the Term and produce certificates of currency of the Policies 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; and
- 5.11 at the cost of the Principal Occupant, comply with any Statutory Order as far as it relates to the Dwelling;
- 5.12 advise, and ensure that all Permitted Occupants and Invitees advise the Owner each time they arrive at or depart from the park.
- 5.13 only park on the Site the number of vehicles specified in the Schedule and not park vehicles and/or boats within the Park other than within areas designated for that purpose.

**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 Invitee:
  - (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 a permanent 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.

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(signature of Principal Occupant/s)

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 (“Notice”) specifying the breach complained of and stating that if the breach is not remedied within 7 days of the date the Notice is served on the Principal Occupant that this Agreement shall be at an end and if the breach specified in the 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 Park by the date specified in the notice which shall be not earlier than sixty (60) 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 by the Principal Occupant.

**8. Ending of Agreement**

8.1 This Agreement ends -

- (a) If the Principal Occupant sells the Dwelling; or
- (b) If it is so agreed between the Principal Occupant and the Owner; or
- (c) If the Principal Occupant vacates with the consent of the Owner; or
- (d) If it is properly terminated by either the Owner or the Principal Occupant in accordance with this Agreement; or
- (e) If the Principal Occupant abandons the Dwelling; or
- (f) If the Park is sold; or
- (g) If the Dwelling, beyond the reasonable control of the Principal Occupant, becomes unfit for human habitation or is destroyed totally or to such an extent as to be rendered unsafe; or
- (h) If the Site or the Park become unfit for human habitation, or
- (i) At the commencement of any new agreement between the Principal Occupant and the Owner.
- (j) On the Expiry or End Date.

8.2 When this Agreement ends the Principal Occupant must immediately vacate the Site and remove all of the Occupants’ property (except the Dwelling if it has been sold to remain on the Site and the Owner has entered into a Long Term Holiday Site Agreement with the purchaser) from the Site and in any event leave the Site in a clean and tidy condition.

8.3 If the Principal Occupant fails to comply with Clause 8.2 then the Principal Occupant shall pay site fees to the Owner at a daily rate equivalent to the then current fee payable in the Park for long term holiday sites plus 10% for each day after the End Date during which any property of the Principal Occupant remains on the Site. Nothing in this clause 8.3 shall be construed as creating any right of renewal of this Agreement nor any right for the Principal Occupant to use the site or the facilities of the Park after the End Date.

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(signature of Principal Occupant/s)

8.4 The Principal Occupant shall be entitled to a refund of any prepaid fees if the Agreement ends for any of the reasons prescribed in paragraphs (b), (c), (f), (h) and (i) of Clause 8.1 or if the dwelling is sold on Site or if the Agreement is properly terminated by the Principal Occupant because of a breach by the Owner.

**9. Visitors and Invitees**

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 Occupants 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 sites in the 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.

**10. Sale of Dwelling on Site**

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

- (a) Notify the Owner in writing of the intention to sell 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 in to 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 but may only do so if it has been agreed between the Principle Occupant and the Owner prior to the sale.

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. Uncollected Goods**

11.1 The caravan park owner may declare goods (including the Dwelling) left at the Park to be Uncollected Goods within the meaning of the Disposal of Uncollected Goods Act 1961 if one month has elapsed since -

- (a) The date upon which the Site Fee as specified in the Schedule were due for payment; or
- (b) The date upon which this Agreement ended, whichever is the latest, provided that the Owner has given or taken all reasonable steps, without success, to give written notice to the Principal Occupant as to when and from where the goods may be collected and the Principal Occupant has failed to collect the goods and pay all outstanding money due to the Owner

11.2 The Owner must take reasonable care of Uncollected Goods.

11.3 The Owner may dispose of Uncollected Goods which are perishable foodstuffs, worthless or dangerous.

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(signature of Principal Occupant/s)

11.4 At the Owner’s discretion Uncollected Goods comprising a dwelling may be stored on the Site or relocated within the Park and in either case will be stored at a daily fee equivalent to ninety percent (90%) of the fee payable for Long Term Holiday Sites in the Park.

11.5 The Owner may sell Uncollected Goods in compliance with the provisions of the Uncollected Goods Act 1961.

11.6 The Principal Occupant may at any time before the Uncollected Goods are sold, collect the Uncollected Goods if the Principal Occupant pays the Owner all outstanding site fees and other charges due under this Agreement, all storage costs and the reasonable costs incurred by the Owner in -

- (a) Moving, handling, storing or paying for the moving, handling and storing of the Uncollected Goods;
- (b) Giving (or attempting to give) any notices required to be given to the Principal Occupant under this Agreement; and
- (c) Organizing the sale of the Uncollected Goods.

11.7 If subsequent to the sale of Uncollected Goods the Principal Occupant makes a written claim on the Owner for the proceeds of the sale of the Uncollected Goods then the Owner must pay to the Principal Occupant the net proceeds of the sale of the Uncollected Goods after deducting all outstanding site fees and other charges due under this Agreement, all storage costs and the reasonable costs incurred by the Owner in :-

- (a) Moving, handling, storing or paying for the moving, handling and storing of the Uncollected Goods;
- (b) Giving (or attempting to give) any notices required to be given to the Principal Occupant under this Agreement; and
- (c) Organizing the sale of the Uncollected Goods.

**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.
- (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.

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

12.4 If the dispute is settled, all parties must sign the terms of agreement and these terms are binding on the parties.

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(signature of Principal Occupant/s)

12.5 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 the lease 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.

12.8 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 its choice.

**13 Application for Renewal**

13.1 The Principal Occupant acknowledges that this Agreement constitutes a license for the Principal Occupant to occupy the Site for the Term and does not give the Principal Occupant any right title or interest in the Site.

13.2 The Principal Occupant may not later than 60 days before the end of the Term forward to the Owner an Application for Renewal in respect of the Site for the year commencing immediately after the Expiry or End Date.

13.3 Upon receipt of an Application for Renewal the Owner will offer the Principal Occupant an Annual Site Agreement for the year commencing immediately after the End Date on the terms (including as to site fees) as are to apply to Annual Site Agreements for the next year unless in the sole discretion of the Owner:-

- (a) The Dwelling fails to meet the standards required by the Owner for dwellings within the Park as published by the Owner from time to time; or
- (b) The Site or any part of it is to be used by the Owner otherwise than as a site for an Annual Site Agreement in which case the Owner may not use the Site as a site for an Annual Site Agreement for a period of six (6) months from the date of termination of this Agreement.

**14. General**

14.1 If the Occupant defaults in the payment of any money due under this Agreement then the 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 as at the date of the default.

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
- by hand deliver

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

Notices delivered or sent by facsimile after 5.00p.m. will be taken to have been received at 9.00a.m. on the next business day at the place where it is received.

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(signature of Principal Occupant/s)

14.3 The failure or omission of a party at any time to enforce or enquire 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 nonexclusive 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 :) ..... date: ...../...../.....

Witness

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

Signed by or on behalf of the Owner ) .....

in the presence of :

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

Witness