

**MEMORANDUM OF LEASE****CERTIFICATE(S) OF TITLE BEING LEASED**

The whole of the land comprised in Certificate of Title Volume [Insert] Folio [Insert], more commonly described as Allotment [Insert] Bowhill SA 5238 (ie Allotment [Insert] DP 69861)

**ESTATE AND INTEREST**

In fee simple

**ENCUMBRANCES**

Encumbrance/Agreement no. 10434380

**LESSOR (Full Name and Address)**

**SCHMIDT FAMILY ESTATES PTY LTD** ACN 638 820 381 of 99 Riverview Road Bowhill SA 5238

**LESSEE (Full Name, Address and Mode of Holding)**

**[Insert full name & address]**

**TERM OF LEASE**

(a) Original Term: FOR A TERM OF (1) year commencing on [Insert] and expiring [Insert].

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

Subject to clauses 2.1 and 2.3, the annual rental will be [insert words & figures];

plus

There is a first year grant of lease (or lease premium) payment due by Lessee to Lessor of DOLLARS (\$) .

Therefore, for the first 12 months period, the total payment for the 12 months is \$ , payable by fortnightly payments of \$ in advance.

OPERATIVE CLAUSE

The Lessor LEASES TO THE LESSEE the land ABOVE described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed herein and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

**INDEX**

1.	<b>INTERPRETATION</b> .....	<b>4</b>
2.	<b>RENTAL, CHARGES AND OUTGOINGS</b> .....	<b>5</b>
3.	<b>DAMAGE OR DESTRUCTION OF PREMISES</b> .....	<b>6</b>
4.	<b>USE OF PREMISES</b> .....	<b>6</b>
5.	<b>ADDITIONAL COVENANTS OF THE LESSEE</b> .....	<b>11</b>
6.	<b>ASSIGNMENT AND SUBLETTING</b> .....	<b>14</b>
7.	<b>ALTERATIONS ADDITIONS REPAIRS AND INSPECTIONS</b> .....	<b>15</b>
8.	<b>INSURANCE</b> .....	<b>17</b>
9.	<b>INDEMNITIES AND RELEASES</b> .....	<b>17</b>
10.	<b>COVENANTS OF LESSOR QUIET ENJOYMENT</b> .....	<b>18</b>
11.	<b>SURRENDER AND TENANT'S FIXTURES</b> .....	<b>19</b>
12.	<b>DEFAULT AND CANCELLATION</b> .....	<b>19</b>
13.	<b>RIGHTS OF LESSOR</b> .....	<b>20</b>
14.	<b>HOLDING OVER</b> .....	<b>21</b>
15.	<b>RENT REVIEW</b> .....	<b>21</b>
16.	<b>RENEWAL</b> .....	<b>21</b>
17.	<b>WAIVER</b> .....	<b>21</b>
18.	<b>SEVERABILITY</b> .....	<b>21</b>
19.	<b>AMENDMENTS</b> .....	<b>22</b>
20.	<b>ENTIRE AGREEMENT</b> .....	<b>22</b>
21.	<b>GOVERNING LAW</b> .....	<b>22</b>
22.	<b>NOTICES</b> .....	<b>22</b>
23.	<b>ACKNOWLEDGMENTS BY LESSEE</b> .....	<b>22</b>
24.	<b>LAND MANAGEMENT AGREEMENT</b> .....	<b>22</b>
25.	<b>SPECIAL CONDITIONS</b> .....	<b>22</b>

1. **INTERPRETATION**

- 1.1 **"Authority"** means any court, government, semi-government, local government, statutory, public, private or other authority, body or person having jurisdiction over the Land, the River Murray or any part thereof or any matter or thing in relation thereto and it is acknowledged that a reference to **"Authority"** in clauses 4 and 5 of this Lease may include a reference to any other entity supplying services to the Land or any part thereof.
- 1.2 **"a current market rent review"** is a review of the then current annual rent of the Land to such rent, having regard to the terms and conditions of this Lease and other relevant matters which would be reasonably expected for the Land if it were unoccupied and offered for renting at the highest and best use to which the Land may be put under this Lease disregarding the value of any goodwill created by the Lessee's occupation and the value of the Lessee's fixtures and fittings (if any), as may be agreed between the Lessor and the Lessee and failing such agreement by the relevant review date as determined by a valuation carried out by a person appointed by the Lessor within 14 days of the relevant review date whose costs shall be borne equally between the parties. The valuer will act as an expert and not as an arbitrator such that the valuer's determination shall be final and binding upon the parties.
- 1.3 **"a C.P.I. rent review"** is a review of the then current annual rent of the Land to an amount calculated by increasing the rent payable by the Lessee during the year immediately preceding the review date (disregarding any rent free period or other incentive) by a percentage figure equal to the amount (expressed as a percentage) by which the Consumer Price Index (Adelaide - All Groups) has increased during the one year period immediately preceding the relevant review date provided that if during the term the Consumer Price Index ceases to be published or substantially changes, the Lessor will select another similar index or indicator of increases in consumer costs in lieu of the Consumer Price Index for the purposes of this definition.
- 1.4 **"the Land"** means the land described in Item 3 of the Schedule together with all the land buildings and improvements on the Land as well as any improvements now or erected or made in the future and includes (but without limitation) all fixtures and fittings of the Lessor and all their conveniences services amenities and appurtenances and any part of them provided always that the lessor may at any time and in its absolute discretion exclude any parts of such land from the land comprising **"the Land"** pursuant to this Lease.
- 1.5 **"the Leases Act"** means the Retail and Commercial Leases Act 1995.
- 1.6 **"the Lessee"** includes its executors administrators successors permitted assigns and where not repugnant to the context its servants agents and licensees.
- 1.7 **"the Lessor"** includes its executors, administrators, successors and assigns.
- 1.8 **"the rent"** means the rent amount per year set out in Item 4 of the Schedule as varied from time to time.
- 1.9 Reference to one gender includes the other genders; a reference to a person includes an incorporated body and vice versa; the singular includes the plural and vice versa.
- 1.10 Where a party comprises more than one person, this Lease applies to all of them together and each of them separately.
- 1.11 Headings are for convenience of reference and shall not effect the interpretation of this Lease.
- 1.12 This Lease is written in clear English. The parties agree that its terms are to be interpreted to give efficacy to the parties' arrangements. No rule resolving a doubt as to interpretation against the party preparing this Lease or any part of it shall apply. Any specific provisions will not limit the interpretation of general provisions.
- 1.13 Any express obligation on a party shall, unless otherwise stated, be performed at that party's expense.

- 1.14 If a provision of this Lease is void or voidable by either party or unenforceable, invalid or illegal but would not be void, voidable, unenforceable, invalid or illegal if it were read down, it shall be read down accordingly. If notwithstanding the foregoing a provision of this Lease is still void, voidable, unenforceable, invalid or illegal:-
- 1.14.1 if the provision would not be void or voidable or unenforceable or invalid or illegal if a word or words as the case may be were severed, then that word or words are hereby severed; and
- 1.14.2 in any other case, the whole provision is hereby severed and the remainder of this Lease has full force and effect.
- 1.15 To the extent that any terms or conditions implied by statute are inconsistent with the terms or conditions of this Lease any such implied terms and conditions are, unless not permitted by law, expressly excluded from this Lease.

## 2. RENTAL, CHARGES AND OUTGOINGS

### 2.1 Payment of rent

The Lessee shall pay the rent due under this Lease into such bank account as may be nominated by the Lessor from time to time or in the absence of such a nomination then by cash or cheque to the Lessor or to such other person as may be nominated by the Lessor at the time and in the manner set out in Item 4 of the Schedule and the Lessee shall make no deductions from such rent.

### 2.2 Payment of charges

During the term of this Lease the Lessee shall pay promptly:

- 2.2.1 charges for gas, electricity, oil, water, telephone and other utilities and services used in or charged in respect of the Land and all charges duties and impositions of whatever kind lawfully made levied or assessed separately upon the Land; and
- 2.2.2 all rates, taxes and levies (including but not limited to council rates, water and sewerage rates, land tax and the Emergency Services Levy imposed pursuant to the Emergency Services Funding Act 1998, as amended) and similar charges payable in respect of the Land or any part thereof (whether assessed directly to the Land or not).

### 2.3 Goods and services taxes

In addition to all other amounts payable by the Lessee pursuant to this Lease the Lessee shall pay to the Lessor, at the same time as the relevant outgoing, expense or other amount is due, all goods and services taxes, value added taxes, consumption taxes or other similar taxes, duties, excises, surcharges, levies or imposts (collectively "**GST**") (if any) charged or levied in respect of:

- 2.3.1 any outgoings or other expenses incurred or paid by the Lessor and which are to be reimbursed by the Lessee to the Lessor pursuant to this Lease; and
- 2.3.2 any other taxable supply by the Lessor (for which the Lessor is to receive consideration from the Lessee pursuant to this Lease) within the meaning of A New Tax System (Goods and Services Tax) Act 1999 or any other Act amending or in substitution therefore ("**the GST Act**").

The parties acknowledge that the rent specified in Item 4 of the Schedule and reserved by this Lease from time to time is exclusive of GST, and that the Lessor will not charge (and is not required to charge) GST to the Lessee on the rent.

Notwithstanding the above, if this Lease requires the Lessee to pay, reimburse or contribute to an amount paid or payable by the Lessor in respect of an acquisition from a third party for which the Lessor is entitled to an input tax credit under the GST Act, the amount for payment, reimbursement or contribution by the Lessee will be the GST-

exclusive value of the acquisition by the Lessor plus, if the Lessor's recovery from the Lessee will be a taxable supply within the meaning of the GST Act, the GST payable in respect of that supply.

### 3. **DAMAGE OR DESTRUCTION OF PREMISES**

- 3.1 If during the term of this Lease the Land is destroyed or damaged by any contingency so as to be unfit for use by the Lessee the rent shall abate commensurately with the nature and extent of the damage or destruction and no later than one month after the occurrence of that damage or destruction the Lessor may give written notice to the Lessee that the Lessor terminates this Lease (in that event this Lease shall terminate forthwith but without prejudice to the right of either party in respect of any antecedent breach of any covenant or agreement of this Lease) PROVIDED HOWEVER that this clause shall not apply in the event of any flooding of the River Murray.
- 3.2 Notwithstanding clause 3.1, the Lessee is not relieved from the obligation to pay the rent if the damage to the Land resulted from the wrongful act or negligence of the Lessee or an employee agent or licensee of the Lessee.
- 3.3 Notwithstanding clause 3.1, the Lessor will have no liability to the Lessee for any damage or destruction caused to the Land or any building or improvements thereon including any damage or destruction caused by any flooding of the River Murray.

### 4. **USE OF PREMISES**

#### 4.1 **Permissible use**

The Lessee shall not without the express written consent of the Lessor use or permit to be used the Land for any purpose other than that set out in Item 6 of the Schedule.

#### 4.2 **Construction of holiday home/cabin**

The Lessor hereby agrees that the Lessee may:

- 4.2.1 place erect improve and maintain (on the terms and conditions hereinafter provided) not more than one holiday home or cabin on the Land (but subject nevertheless to the prior written consent of the Lessor and any Local or State Authority having the power to give such consent);
- 4.2.2 place on the Land the usual appurtenances to such holiday home or cabin which may include a rainwater tank and stand (subject to the requirements of the relevant Authority);
- 4.2.3 have the use occupation and enjoyment of the Land and any holiday home or cabin and appurtenances thereon; and
- 4.2.4 have reasonable access to the Land provided always that, without limiting any other provision hereof, the Lessee shall ensure that in exercising its rights pursuant to this clause it shall comply with all applicable council regulations and any conditions of development approval (including but not limited to the conditions of development approval set out in Development Application Number 711/D002/05) relating to any of the matters referred to in this clause.

#### 4.3 **Laws and rules**

At its own expense the Lessee will observe and comply with the requirements of all laws and governmental rules affecting the Land or any improvements thereon and also with all lawful directions and orders of any Authority relating to the Land or any improvements thereon. The Lessee shall not do or omit to do anything in respect of the Land or any improvements thereon which could make the Lessor liable to pay a penalty or bear some expense incurred under any such laws, rules or orders. If the Lessee does not strictly comply with the terms of this clause 4 then the Lessor may enter the Land and carry out the required work at the Lessee's expense and any costs incurred by the Lessor in carrying out the required work shall be paid by the Lessee to the Lessor upon demand. If any amounts are not paid immediately then the Lessor may charge interest on such

unpaid amounts until the date of payment at the rate of interest specified in Item 10 of the Schedule.

#### 4.4 **Set Backs**

- 4.4.1 The Lessee shall ensure that all improvements on the Land are set back from the river in accordance with the requirements contained from time to time in the Development Plan created by the Local or State Authority insofar as it relates to the Land pursuant to the Development Act 1993 (or any amendments thereto or statute or regulations issued in addition or in substitution therefore).
- 4.4.2 In addition to its obligations pursuant to clause 4.4.1 the Lessee must not construct any building or structure within 600 millimetres of any side boundary of the Land provided that nothing contained in this clause shall prevent the Lessee from constructing a fence on that portion of the Land subject to compliance by the Lessee with the provisions of clause 4.12 of this Lease.
- 4.4.3 Other than in respect of allotments 70, 75, 82 and 84 (to which clause 4.4.4 shall apply) the Lessee must not construct any building or structure within 3 metres of either Providence Drive or Schmidt Lane.
- 4.4.4 In respect of allotments 70, 75, 82 and 84 the Lessee must not construct any building or structure within 1 metre of Schmidt Lane.
- 4.4.5 In addition to the Lessee's obligations pursuant to clause 4.4.2 the Lessee must not construct any building or structure within 600 millimetres of either Gerhard Place, Terrence Place or Nathaniel Place.

#### 4.5 **Conduct avoiding insurance**

The Lessee shall not do or permit to be done on the Land anything which may prejudice invalidate or vitiate any policy of insurance in respect of the Land.

#### 4.6 **Signs**

The Lessee can only have on the Land or attached to any improvement thereon an advertisement, notice, sign, or hoarding ("**sign**") if the Lessor has previously granted its written consent to the particular sign and the Lessee has obtained, at its cost, the requisite consents from and approvals of the appropriate Authorities. Any sign on the Land shall be removed by the Lessee when this Lease expires or earlier if this Lease is cancelled prior to its expiry date and any damage arising in the course of such removal shall be immediately restored by the Lessee at its own cost.

#### 4.7 **Services and Infrastructure**

The Lessee shall at its own expense keep all toilets basins drains pipes water apparatus septic tanks and holding tanks on the Land open and free from blockage and in proper working order. The Lessee shall be responsible for and bear the cost of the proper disposal of all effluent and storm water that arises within and/or on the Land and comply with all laws, rules and regulations and any Authority requirements with respect to such disposal. The Lessor gives no warranty that the present effluent disposal system or storm water disposal complies with all laws, rules and regulations.

#### 4.8 **Disposal of Effluent and Sewerage**

- 4.8.1 The Lessee shall at all times and at its own cost comply with and meet all requirements of the South Australian Health Commission (or such other body or agency who from time to time determines the required standard for septic tanks or common waste control systems in South Australia) in respect of any septic tank, effluent disposal system or sewage system situated on or installed on the Land either at or after the date of this Lease (including without limitation any alterations, additions or replacements thereto that may be made by or on behalf of the Lessee or which may otherwise be required by the South Australian Health Commission (or such other body or agency who from time to time

determines the required standards for septic tanks or common waste control and disposal systems in South Australia).

- 4.8.2 The Lessee shall at its own cost within three months of the commencement of this Lease install underground pipes between the holiday home and the allocated connection point to the common effluent or sewage system provided for the Land and shall ensure that all such pipes are properly connected thereto and that such pipes storage chambers pump(s) and electrical wiring are properly connected to the system referred to in clause 4.8.1 and accord with the requirements referred to in clause 4.8.1 hereof. The Lessee shall provide to the Lessor a suitable design plan and obtain the written approval of the Lessor and required approvals from the relevant Authority before the works commence.
- 4.8.3 The Lessee shall at its own cost within three months of the commencement of this Lease disconnect and remove from the Land all pipes drains sewers holding tanks or septic tanks on the Land which become obsolete or superseded following completion of the works referred to in clause 4.8.2 hereof and make good the Land and any adjoining land from which such infrastructure has been removed.
- 4.8.4 The Lessee shall prevent damage to any underground infrastructure including infrastructure crossing the Land which will become obsolete or superseded and the Lessee shall at its own cost determine the locations of all existing underground infrastructure on the Land before commencing earthworks digging trenching or driving in stakes or posts.
- 4.8.5 The Lessee shall be responsible for all maintenance works in respect of such pipes and effluent or sewerage disposal system as are located on the Land as may be required from time to time and shall be responsible for all costs for repairs of any damage to any meter pipe connection point cable or underground infrastructure.
- 4.8.6 If the Lessee does not strictly comply with the terms of clauses 4.8.2 and 4.8.3 then the Lessor may enter the Land and carry out the work specified in clauses 4.8.2 and 4.8.3 at the Lessee's expense and all costs incurred by the Lessor in carrying out the required work shall be paid by the Lessee to the Lessor upon demand and the Lessor may charge the Lessee interest on any unpaid amounts until paid and if all amounts are not paid the Lessor may at its option terminate this Lease without further notice.

#### 4.9 **Water Supply**

- 4.9.1 The Lessee acknowledges that any water supplied to the Land or to public reserves adjoining the Land is non-potable and unfit for human consumption and that such water supply and the conditions under which water is supplied are always subject to the continuing availability, and terms and conditions, of a licence from the relevant Authority and the Lessee further acknowledges that the Lessor has no obligation to supply the Lessee water and that the Lessee has the opportunity to have supplied to it water by the relevant Authority upon the commencement of this lease.
- 4.9.2 Without limiting the foregoing, the Lessee further acknowledges that the quality and quantity of any water supplied to the Land or to public reserves is dependent on the quality and quantity of the water available for supply from the relevant Authority in accordance with any restrictions that may be imposed by any Authority.
- 4.9.3 The Lessee shall be responsible for informing all guests invitees and other persons occupying the Land of the matters set out in clause 4.9.1 of this Lease.
- 4.9.4 The Lessee shall be responsible for complying with and bearing the cost of any requirements of any relevant Authority for provision of a potable water supply to



the Land to meet its water supply needs in accordance with any requirements that may be imposed by the relevant Authority.

- 4.9.5 The Lessee acknowledges and agrees that the installation and maintenance and cost of any connection from the water main connection point to the Land provided by the relevant Authority is the sole responsibility of the Lessee.
- 4.9.6 The Lessee shall at its own cost within three months of the commencement of this Lease or such earlier date notified by the Authority install underground pipes between the holiday home and the allocated connection point to a new water supply system provided for the Land and shall ensure that all such pipes are properly connected thereto and that such pipes are properly connected to the system in accord with the requirements that may be imposed by the relevant Authority. The Lessee shall provide to the Lessor a suitable design plan and obtain the written approval of the Lessor and the required approvals from the relevant Authority before the works commence.
- 4.9.7 Subject to the Lessee obtaining the required approvals from the relevant Authority and subject to the Lessee complying with clause 4.9.8 the Lessee shall at its own cost within three months of the commencement of this Lease or such earlier date notified by the Authority disconnect and remove from the Land all pipes drains and pumps on the Land which become obsolete or superseded following completion of the works referred to in clause 4.9.6 hereof and make good the land from which such infrastructure has been removed.
- 4.9.8 The Lessee shall permit the Lessor to enter the Land to disconnect and remove from the Land all the Lessor's pipes and drains on the Land which become obsolete or superseded following completion of the works referred to in clause 4.9.6 hereof and make good the land from which such infrastructure has been removed.
- 4.9.9 The Lessee shall prevent damage to any underground infrastructure including existing water supply mains and other infrastructure crossing the Land which will become obsolete or superseded and the Lessee shall at its own cost determine the locations of all existing underground infrastructure on the Land before commencing earthworks digging trenching or driving in stakes or posts.
- 4.9.10 The Lessee shall be responsible for all maintenance works in respect of such pipes as are located on the Land as may be required from time to time and shall be responsible for all costs for repairs of any damage to any pipes any meter and any pipe connection point cable or underground infrastructure.
- 4.9.11 The Lessee shall not divert water from any water supply to neighbouring allotments for use upon the Land nor divert water from water supplied to the Land for use upon neighbouring allotments.

#### 4.10 **Power and Telecommunications**

- 4.10.1 The Lessee at its own cost shall within three months of the commencement of this Lease connect the holiday home's electricity supply to the service pit allocated to the Land by SA Power Networks ("**the SA Power service pit**") by laying underground cables from the holiday home to the SA Power service pit and the lessee must disconnect and remove from the Land all obsolete infrastructure within three months of the commencement of this Lease. The Lessee shall provide to the Lessor a suitable design plan and obtain the written approval of the Lessor and the required approvals from the relevant Authority before the works commence.
- 4.10.2 If the Lessee does not comply with its obligations pursuant to clause 4.10.1 to connect to the SA Power service pit within the period specified in clause 4.10.1, the Lessor or the relevant Authority shall be entitled to enter the Land and carry out the required work specified in clause 4.10.1 at the Lessee's expense and all costs incurred by the Lessor or the relevant Authority in carrying out the required work shall be paid by the Lessee to the Lessor or the relevant Authority upon demand and the Lessor or the relevant Authority may charge the Lessee interest

on any unpaid amounts until paid and if all amounts are not paid the Lessor may at its option terminate this Lease without further notice and the Lessee shall have no claim against the Lessor, the relevant Authority or any other party in respect thereof.

- 4.10.3 The Lessee at its own cost shall within three months of the commencement of this Lease connect the holiday home's telecommunication lines from the telecommunications supply point allocated to the Land ("**the common supply point**") by laying underground cable and/or conduit to the holiday home from the common supply point and then disconnect all obsolete telecommunication lines and infrastructure (if any) and remove all overhead lines and infrastructure from the Land. The Lessee shall provide to the Lessor a suitable design plan and obtain the written approval of the Lessor and the required approvals from the relevant Authority before the works commence.
- 4.10.4 The Lessee shall prevent damage to any underground infrastructure including existing power and telecommunication lines or other infrastructure crossing the Land which will become obsolete or superseded and the Lessee shall at its own cost determine the locations of all existing underground infrastructure on the Land before commencing earthworks digging trenching or driving in stakes or posts. The Lessee shall be liable for the cost of repairing any damage it causes to the underground infrastructure.
- 4.10.5 The Lessee shall be responsible for all maintenance works in respect of such underground cables as are located on the Land as may be required from time to time and shall be responsible for all costs for repairs of any damage to any cable meter pipe connection point or underground infrastructure.

#### 4.11 **Television and Radio Antennae**

- 4.11.1 The Lessee shall at its own cost within three months of the commencement of this Lease disconnect and remove any existing television and radio antennae from the Land except any satellite dish and shall ensure that any future television or other communication lines servicing the Land are located below the ground and connected from the Land to the common supply point for a communal television and other communication facility available for use by the Land and otherwise accord with the requirements of all authorities having jurisdiction or responsibility in respect of such infrastructure. The Lessee shall provide to the Lessor a suitable design plan and obtain the written approval of the Lessor and the required approvals from the relevant Authority before the works commence.
- 4.11.2 No part of any satellite dish or other communication infrastructure may be located higher than 1.5 metres above the highest part of the roof of the holiday home.
- 4.11.3 The Lessee shall prevent damage to any underground infrastructure including infrastructure crossing the Land which **will** become obsolete or superseded and the Lessee shall **at its** own cost determine the locations of all existing underground infrastructure on the Land before commencing earthworks digging trenching or driving in stakes or posts.
- 4.11.4 The Lessee shall be responsible for all maintenance works in respect of such television or other communication lines as are located on the Land as may be required from time to time and shall be responsible for all costs for repairs of any damage to any meter pipe connection point cable or underground infrastructure.

#### 4.12 **Fencing**

- 4.12.1 The Lessee shall if it is to erect fencing on the Land, only erect permaline post and wire fences of a maximum height of one metre with a minimum distance of 100mm between any two strands of wire all of which shall be horizontal and a minimum distance between permaline posts of 2 metres and a maximum

distance between permapine posts of 4 metres (being fences through which flood waters can move with ease).

- 4.12.2 The Lessee shall not at any time erect any fencing on the Land without obtaining the written approval of the Lessor and all approvals required pursuant to any applicable statute or regulation (including without limitation any approvals required under the Development Act 1993).
- 4.12.3 No fence may be erected on the Land within 60cm of any part of any dwelling on the Land.
- 4.12.4 The provisions and restrictions contained in this Lease in relation to fencing on the Land shall also apply to gates on the Land provided that gates must not be constructed of wood but must be constructed of steel or other metal and shall be of a design similar to a farm gate, which gate or gates must open inwards into the Land only.
- 4.12.5 Without limiting the foregoing, no fence may be installed or erected between the holiday home and the river front or river side (being the Crown Reserve comprising Section 700) and, if applicable, nor along any boundary of the Land fronting Schmidt Lane, Nathaniel Place, Terrence Place or Gerhard Place.
- 4.12.6 The Lessee shall provide to the Lessor a suitable design plan and obtain the required approvals from the relevant Authority for the fencing before the works commence for such fencing.
- 4.12.7 The Lessee shall prevent damage to any underground infrastructure including infrastructure crossing the Land which will become obsolete or superseded and the Lessee shall at its own cost determine the locations of all existing underground infrastructure on the Land before commencing earthworks digging trenching or driving in stakes or posts. The Lessee shall be liable for the cost of repairing any damage it causes to the underground infrastructure.
- 4.12.8 The Lessee shall be responsible for all maintenance works in respect of such fencing as are located on the Land as may be required from time to time and shall be responsible for all costs for repairs of any damage to any meter pipe connection point cable or underground infrastructure.

#### 4.13 **Inflammable substances and other materials**

The Lessee shall not without the Lessor's prior written consent use or store inflammable substances on the Land other than reasonable quantities of petrol for the operation of power boats, lawnmowers and any other garden equipment which must be stored in containers which comply with the requisite Australian Standard. The Lessee shall not dump lawn cuttings, ashes or any other materials on the Land, public reserves adjoining the Land or any other land adjoining or near the Land. The Lessee shall comply with all statutes as they relate to fire safety prevention clearances and bans.

#### 4.14 **Overloading**

The Lessee shall not have on the Land any plant or equipment which may in the reasonable opinion of the Lessor be likely to cause any structural or other damage to the Land and before bringing any heavy equipment upon the Land the Lessee shall inform the Lessor of the Lessee's intention to do so and shall comply with any directions given to the Lessee by the Lessor in relation to the use, installation or location of such equipment.

### 5. **ADDITIONAL COVENANTS OF THE LESSEE**

- 5.1 The Lessee shall not do any of the following things at any time during the term of this Lease:

- 5.1.1 use or permit or suffer to be used the Land for any illegal purpose or activity;
  - 5.1.2 use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the Land or any part thereof any noxious noisome or offensive act trade business occupation or calling;
  - 5.1.3 do or permit to be done any act matter or thing in or upon the Land or the Land which causes any annoyance nuisance grievance damage or disturbance to occupiers or owners of any adjacent premises;
  - 5.1.4 place or erect more than one holiday home or cabin on the Land;
  - 5.1.5 place or erect any unsightly building or erections on the Land;
  - 5.1.6 commence earthworks digging trenching or driving in stakes or posts without determining the locations of all existing underground infrastructure on the Land;
  - 5.1.7 use shoot fire or otherwise discharge air guns firearms or any other devices capable of firing missiles nor use any rabbit traps or the like on or about the Land;
  - 5.1.8 place or erect any caravan or tent for a period exceeding 7 days on the Land without the express consent in writing of the Lessor;
  - 5.1.9 remove any stone earth or minerals from the Land or the Land nor remove lop or cut or ring bark or otherwise destroy any standing tree living or dead which shall now or hereafter be standing upon the Land or on the Land PROVIDED HOWEVER that if any such tree is or may become a hazard then the Lessee may remove the same (or part thereof) upon receipt of the written consent of the lessor and if required the relevant Authority;
  - 5.1.10 do or permit to do on the Land anything that contravenes any of the Laws By-laws or Regulations of any Statutory Authority of the State of South Australia;
  - 5.1.11 interfere with any stock or crops on the Land;
  - 5.1.12 bring onto the Land any soil, firewood, vehicle, bike, lawnmower or any other thing from any area adjacent to or near the Land which may at any time be effected by Branched Broomrape or any other declared infestation and be part of a quarantine area declared by any Authority;
  - 5.1.13 interfere with the position of survey pegs on the Land;
  - 5.1.14 cause or permit any damage to any access road adjoining the Land and public reserves adjoining the Land or damage any sprinklers, hoses and storm water drainage installed in any adjoining Land and public reserves;
  - 5.1.15 cause or permit any damage to any fencing anywhere on the Land; and
  - 5.1.16 remove or in any way either wholly or partially dismantle any holiday home or cabin on the Land without the applicable development approval so as to defeat or abolish the Lessor's existing rights to lease the Land as a holiday site.
- 5.2 The Lessee shall at all times during the term of this Lease:

- 5.2.1 upon the erection or placing of any holiday home or cabin on the Land provide sanitary accommodation which shall comply with all requirements of the Local Board of Health;
- 5.2.2 observe the speed limits on all of the access roads adjoining the Land and such other traffic restrictions as may be otherwise indicated by road signs;
- 5.2.3 keep all building and erections on the Land in good repair and condition at all times;
- 5.2.4 at all times provide a site number plate on the boundary of the Land and keep the same clearly visible from the access road;
- 5.2.5 keep the Land in good and clean condition and shall not store or keep in the open any unsightly rubbish or other items which may reasonably offend other lessees of the Land or neighbouring land owners;
- 5.2.6 destroy and keep destroyed all rodents vermin insects pests rabbit burrows and noxious weeds on the Land and comply with the provisions of all relevant legislation in respect thereof;
- 5.2.7 observe all rules pertaining to the river as set out in the Marine and Harbour booklet; and
- 5.2.8 comply with all regulations regarding the keeping and care of dogs, cats and other pets.

### 5.3 **Keys**

Upon expiry or the earlier cancellation of this Lease the Lessee shall deliver to the Lessor all keys entry cards and similar devices which give access to any part of the Land.

### 5.4 **Rules and regulations**

The Lessee shall ensure that the Lessee and the Lessee's employees contractors licensees and visitors observe and perform all rules and regulations which may be made from time to time by the Lessor for the better functioning of the Land as long as no such rule or regulation is inconsistent with the provisions contained in this Lease.

### 5.5 **Environmental Impact**

The Lessee shall take all such reasonable measures and precautions as may be necessary to ensure that the environmental impact resulting from the Lessee's occupation of the Land and the activities of the Lessee are kept to a minimum. Without limiting the generality of the foregoing and irrespective of whether the Lessor has given its consent in respect of the storage of any particular compounds or substances upon or within the Land by the Lessee in the event that during the term of this Lease or any period of holding over, any pollution contamination or degradation occurs of, on or to the Land (other than to the extent to which the same has been caused by any wilful or negligent act or omission of the Lessor or its servants agents or employees) then the Lessee shall immediately prior to the expiration of the term of this Lease or any period of holding over at its own cost and expense remove any and all such contaminating or polluting substances and compounds from all parts of the Land.

### 5.6 **Re-letting or sale**

If requested by the Lessor the Lessee shall permit the Lessor and its agent at the expiration or earlier determination of this lease or during any period of holding over to place re-letting or sale signs on the Land and upon receiving reasonable notice will allow the Lessor and its agent to show prospective tenants purchasers and others through the Land.

### 5.7 **Infectious illness**

If any infectious illness transpires on or about the Land the Lessee shall immediately give written notice to the Lessor and to the proper public authorities of such illness and shall thoroughly fumigate and disinfect the Land at the Lessee's own expense and to the satisfaction of such public Authority.

**5.8 Notices**

If the Lessee receives or becomes aware of any notice from any Authority with respect to the Land then the Lessee shall immediately give the Lessor written notice of such notice.

**5.9 Costs**

The Lessee shall pay all stamp duty payable on this Lease and any other duties which may be assessed in respect of this Lease and the Lessor's reasonable legal costs and all other costs in relation to the negotiation preparation completion stamping and registration of this Lease or if the law permits any renewal of it including but not limited to costs and expenses in obtaining the consent of any mortgagee to the granting of this Lease, the costs payable to such mortgagee for production of the Certificate(s) of Title and the costs of preparation and registration of any plan delineating the Land. If the Lessee does not observe or perform any provisions in this Lease the Lessee shall pay to the Lessor all legal and other expenses for which the Lessor shall become liable in consequence of or in connection with such default. Legal costs shall be on a full indemnity basis.

**5.10 Land suitability**

The Lessee further acknowledges and declares that the Lessee has relied on its own judgment, expertise and experts in deciding that the Land and any building or improvement situated thereon is suitable for the Lessee's purposes and that the Lessee has obtained requisite consents from and approvals of all government, semi-government, local government, statutory, public or other authorities, bodies or persons having jurisdiction over the Land in relation to the Lessee's use of the Land.

**6. ASSIGNMENT AND SUBLETTING**

- 6.1 It is a term of this Lease that the Lessee has the right, subject to the consent of the Lessor, to assign the Lessee's rights under this Lease and that the Lessor will not unreasonably withhold consent nor make any charge for consent other than the Lessor's reasonable incidental expenses provided that without limiting the foregoing, the Lessor is entitled to withhold consent to a proposed assignment if:
- 6.1.1 The proposed assignee proposes to change the use to which the Land is put from the use specified in Item 6 of the Schedule (or from such other use as may previously have been consented to in writing by the Lessor); or
  - 6.1.2 The proposed assignee is unlikely to be able to meet the financial obligations of the Lessee under this Lease; or
  - 6.1.3 The Lessee does not comply with clause 6.2 of this Lease.
- 6.2 Subject to clause 6.1 of this Lease the Lessee covenants with the Lessor that the Lessee:-
- 6.2.1 will not assign sublet transfer or part with possession of the Land or any part of the Land or mortgage charge or encumber the Lessee's interest under this Lease without the written consent of the Lessor;
  - 6.2.2 will at the time of applying for consent have remedied all existing breaches (if any) on the part of the Lessee under this Lease;
  - 6.2.3 will before, or at the time of, applying for consent submit to the Lessor a true copy of all transfers assignments agreements and other instruments to be entered into in respect of any proposed dealing with this Lease or the Land or the Lessee's interest therein and in the case of a proposed transfer assignment or subletting the Lessee will submit evidence satisfactory to the Lessor that the

proposed transferee assignee or subtenant is respectable responsible solvent and suitable; and

6.2.4 will, if so required by the Lessor, before any proposed assignment transfer or subletting is effected procure from the proposed assignee transferee or subtenant a direct covenant with the Lessor to observe the terms and conditions of this Lease and procure such guarantees of the performance of the Lessee's obligations under this Lease as the Lessor may require.

6.3 For the purposes of this clause and without in any way limiting the generality of clauses 6.1 and 6.2 an assignment of this Lease shall be deemed to be effected and the Lessee must obtain the prior written consent of the Lessor in accordance with clauses 6.1 and 6.2 above if:

6.3.1 the Lessee (or any Lessee if more than one) is a company where there is a change in the beneficial ownership of the shares of the company and the change alters the effective control of the company; or

6.3.2 the Lessee is a partnership where there is any change in the constitution of the partnership except by the death of any partner.

## 7. ALTERATIONS ADDITIONS REPAIRS AND INSPECTIONS

### 7.1 No alterations without consent

7.1.1 The Lessee shall not make or allow any alterations, additions or installations to or on the Land unless the Lessee has first obtained the written consent of the Lessor.

The Lessor shall not unreasonably withhold such consent and in particular (but without in any way limiting the generality of the foregoing) the Lessee shall not:

7.1.1.1 install any exterior shade or awning; or

7.1.1.2 install any air-conditioning plant sprinkler system gas or electrical fixture equipment or appliance; or

7.1.1.3 alter any electrical core equipment by means of which electrical power is conveyed to the Land.

7.1.2 Any application for the consent of the Lessor to any alteration addition improvement or installation shall be accompanied by copies of all plans and specifications for the work.

7.1.3 Any alteration addition improvement or installation to which the Lessor consents shall be affected at the expense of the Lessee and all associated work shall be done in a proper and workmanlike manner. It is a condition of every consent to perform work in relation to the Land that in performing the work the Lessee shall comply with and observe all the requirements of the Lessor's insurance underwriters (if any) and all statutory regulations and by-laws relating to the work.

### 7.2 Notice

The Lessee shall give to the Lessor prompt notice in writing of any apparent circumstances known to the Lessee reasonably likely to be or cause any danger risk or hazard to the Land or any person on the Land.

### 7.3 Repair and Maintenance

At all times during the term of this Lease the Lessee shall:-

7.3.1 Repair, clean and maintain the Land and any building or improvement situated thereon so that they are kept in a condition they were in at the commencement of the Lessee's occupation (or in the case of additions or installations made after

the commencement of this Lease then in the same condition as when the relevant addition or installation was completed);

- 7.3.2 Maintain in good order and condition all painted exterior and papered or painted portions of the interior of any building or improvement situated on the Land during the term of this Lease;
- 7.3.3 Keep the Land and any building or improvement situated thereon clean and free from rubbish, vermin, white ants and graffiti and keep all garbage in proper receptacles and not overfill those receptacles which are to be regularly emptied to prevent odour and pollution;
- 7.3.4 Keep and maintain all fittings plant furnishings and equipment on or within the Land and any building or improvement situated thereon so that they are clean and in good condition;
- 7.3.5 Repair any damage to any premises adjoining the Land caused by the act default or neglect of the Lessee or its employees agents contractors or licensees. The Lessee's obligations under this clause will not apply to the extent that the Lessor, neighbouring land owner or neighbouring lessee has received compensation for such damage under a policy of insurance;
- 7.3.6 Promptly repair and replace all broken glass and repair all damaged or broken heating lighting or electrical equipment and plumbing on the Land and any building or improvement situated thereon and all doors windows locks and keys and all Lessor's fixtures and things which are on or are part of the Land and any building or improvement situated thereon. Any replacement materials or materials used to repair damage or breakages must be of the same or similar quality to the previous materials; and
- 7.3.7 The Lessee shall keep any exterior part of any building situated on the Land in a clean and tidy condition and keep and maintain any subsisting garden areas.

#### 7.4 **Lessor's power to view and repair**

The Lessor and persons authorised by it (including, without any limitation, any relevant authority) may at all reasonable times upon giving prior reasonable notice to the Lessee enter the Land to inspect it for any purpose. If the Lessee has not complied with any of the Lessee's obligations in relation to cleaning maintaining and repairing the Land then the Lessor may serve on the Lessee a notice requiring the Lessee to undertake the requisite maintenance cleaning or repair work and if within a reasonable time of receiving such notice the Lessee does not undertake the requisite work then the Lessor or persons authorised by it may undertake such work and for that purpose the Lessor and persons authorised by it may enter the Land and remain on the Land until the requisite works have been completed. Any expenses or costs incurred in carrying out such work shall be immediately paid by the Lessee to the Lessor upon demand.

#### 7.5 **Lessor's power to enter and undertake works**

Notwithstanding any other provision in this Lease, the Lessor and persons authorised by it may upon giving reasonable written notice (other than in an emergency in which case no such notice shall be required) to the Lessee:

- 7.5.1 install, maintain, use, repair, alter and replace any of the Lessor's fixtures, fittings, plant and equipment in or on the Land or any pipes, wires, tubes, conduits, ducts and cables leading through the Land;
- 7.5.2 carry out any other works as may be provided for in this Lease; and
- 7.5.3 for any such purposes enter the Land and run water, air, electricity, sewerage, drainage, gas and other substances through such pipes wires tubes conduits



ducts and cables PROVIDED ALWAYS THAT in so doing the Lessor shall make reasonable endeavours to minimise inconvenience caused to the Lessee.

## 8. **INSURANCE**

### 8.1 **Lessee's insurance**

At its own expense the Lessee shall maintain during the term of this Lease the following insurance:-

- 8.1.1 A policy of public risk insurance with respect to the Land, business or businesses carried out on the Land for a sum of not less than twenty million dollars;
- 8.1.2 A policy to insure all buildings and improvements on the Land and permitted additions to the Land carried out by the Lessee and to insure all of the Lessee's fixtures, fittings and property against loss or damage by any cause and for their full replacement value; and
- 8.1.3 Plate glass insurance in respect of all plate glass (including windows) on the Land.

### 8.2 **Certificates of insurance**

All policies of insurance shall be taken out with a recognised and reputable public insurance office and the Lessee shall provide the Lessor with copies of certificates of insurance in relation to the policies. The policies of insurance specified in clauses 8.1.1 and 8.1.3 shall be in the joint names of the Lessor and the Lessee.

### 8.3 **Lessee not to cause premium to increase**

Subject to obtaining the prior written consent of the Lessor, the Lessee must not perform an act or omit to perform an act which may increase the rate of premium payable under any policy of insurance taken out in respect of the Land.

### 8.4 **Compliance with insurance requirements**

The Lessee shall comply with the requirements of the Insurance Council of Australia, any fire protection authority or other body having similar jurisdiction and with the requirements of any statutes regulations or notices issued by any similar authority. The Lessee's obligations under this clause shall not require it to undertake structural alterations to the Land unless such alterations are required as a result of the nature of the use of the Land by the Lessee or the Lessee's activities on the Land.

## 9. **INDEMNITIES AND RELEASES**

### 9.1 **Risk of Lessee**

The Lessee agrees to occupy and use the Land and any improvement or building thereon and to enter the Land at its own risk. The Lessee releases to the fullest extent permitted by law the Lessor (and its agents contractors and employees) and any relevant Authority from every claim and demand which may result from an accident damage or injury occurring on the Land and any improvement or building thereon or on the Land including but not limited to an accident damage or injury resulting from flood, tempest or fire any livestock trespass on the Land or any improvement or building thereon or rising from any of the risks referred to in this clause 9. The Lessor shall not be released from liability where the accident damage or injury is caused by the negligence or wilful act of the Lessor.

- 9.2 Without limiting the foregoing, the Lessee acknowledges that prior to entering into this Lease it has inspected the Land and it further acknowledges that it is aware that all the full risks of or associated with the Land or its state and condition are unknown.

- 9.3 The Lessee acknowledges that, by virtue of the nature and situation of the Land, the Land is or may be subject to many risks which the Lessee acknowledges may occur on or in respect of the Land at any time, such risks include, but are not limited to the following, namely:
- 9.3.1 the risk of flooding, inundation or deluge of the Land and/or any improvements, vehicles, boats, other vessels, facilities or services situated thereon (whether such flooding, inundation or deluge is caused or contributed to by the act or omission of man or occurs as a result of a natural process or both);
  - 9.3.2 the risk of erosion to or of the Land and to or of any improvements and/or natural features on, adjacent to or in the vicinity of the Land, whether such erosion is caused or contributed to by the act or omission of man or occurs as a result of a natural process or both, (including, but not limited to, erosion of river banks, revetments, levees, embankments, natural surfaces, retaining walls adjacent to or in the vicinity of the Land and foundations or supports of a dwelling or other fixtures or improvements on or in the vicinity of the Land);
  - 9.3.3 the risk of loss of life, injury, loss or damage to person or property on, in or in the vicinity of the Land (including damage to any improvements situated in, on, or in the vicinity of the Land and including any loss of amenity or value of the Land or any improvements situated thereon) howsoever caused including, but not limited to, by:
    - 9.3.3.1 the occurrence of either or both of the risks specified in subclauses 9.3.1 and 9.3.2;
    - 9.3.3.2 any undermining or loss of support to any structures, facilities, improvements, services, vehicles, boats or other vessels situated in, on or in the vicinity of the Land due to sand/soil drift or the blowing out of sand/soil from under or the accumulation of sand/soil on, against or over such structures, facilities, improvements, services, vehicles, boats or other vessels;
    - 9.3.3.3 dislodgment, throwing up, washing up and/or deposition of material, rocks, debris, timber, concrete and/or construction material or any structure, vehicle, boat or other vessel or part thereof;
    - 9.3.3.4 the collapse or partial collapse of any structures or objects or debris from any structures or objects (including, but not limited to, river banks, locks, weirs, revetments, retaining walls, jetties, ranges, walkways, wharves, boardwalks, buildings, fences, outbuildings, vehicles, boats or other vessels) situated in, on or in the vicinity of the Land howsoever caused, whether such collapse, partial collapse or debris arises or occurs before, during or after a storm or a high flow of any river or otherwise).
- 9.4 The lessee shall indemnify and keep indemnified the Lessor and the relevant Authority against all past, present and future claims made by the Lessee or by any persons who are not parties to this Lease and against all demands, actions, proceedings, judgments, orders, damages, costs, losses and expenses which the Lessor or the relevant Authority may suffer or incur in connection with the Land and/or any loss of life, injury, loss or damage to person or property suffered or occurring in, on or in the vicinity of the Land howsoever caused and/or in connection with the occurrence in, on or in the vicinity of the Land of any of the risks referred to in clause 9 of this Lease.

## 10. COVENANTS OF LESSOR QUIET ENJOYMENT

During the term of this Lease if the Lessee is not in default of its obligations and subject to any express provision in this Lease the Lessor shall allow the Lessee to peacefully and quietly occupy and enjoy the Land.

## 11. SURRENDER AND TENANT'S FIXTURES

### 11.1 Surrender of premises

Provided that the Lessee has not exercised the right of any first refusal set out in clause 1 or 2 of Item 9 of the Schedule the Lessee shall peacefully and quietly leave and surrender the Land and all fixtures on the Land to the Lessor free of occupants, clean and free from rubbish and in the same condition as at the commencement of the Lessee's occupation of the Land (with damage caused by inevitable accident or causes beyond the control of the Lessee or its agents employees contractors or licensees being excepted).

### 11.2 Removal of Fixtures

At no time may the Lessee remove any buildings or cabins or any other additions or appurtenances thereto from the Land without first obtaining the express written consent of the Lessor PROVIDED HOWEVER if at the expiry or earlier cancellation of this Lease the Lessor requires any buildings or cabins or any other improvement situated on the Land to be removed, they will be removed by the Lessee at the Lessee's cost forthwith.

### 11.3 Removal of Lessee's fittings and fixtures

Subject to clause 11.2, upon expiry or the earlier cancellation of this Lease or within seven days after that date the Lessee shall, unless otherwise required by the Lessor, remove all chattels fittings and non-structural fixtures belonging to the Lessee from the Land and shall make good any damage or disfigurement caused by such removal and any chattels fittings or fixtures not so removed shall, if the Lessor so elects, become the absolute property of the Lessor.

### 11.4 Sale of Leasehold interest

The Lessee may at any time prior to the expiration of the term of this Lease offer for sale an assignment of this Lease upon such terms and conditions and for such sum as the Lessee thinks fit but subject always to the provisions of clause 6 hereof.

## 12. DEFAULT AND CANCELLATION

If any one or more of the following events occur namely:-

### 12.1 Late payments

Any payments payable under this Lease by the Lessee are greater than fourteen days late (whether or not formal or legal demand has been made for such payment);

### 12.2 Breaches

Without limiting clause 12.1, the Lessee is in breach of any of the Lessee's obligations under this Lease and such breach continues for a period of fourteen days following service of a written notice of such default; or

### 12.3 Insolvency

The Lessee, being a natural person, is found guilty of any indictable offence or becomes bankrupt or commits an act of bankruptcy or an act which could give rise to the same, or, being a body corporate, an order is made or a resolution is passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the Lessor's written consent, which shall not be unreasonably withheld), has an administrator appointed or a receiver or manager is appointed over or a mortgagee takes possession of any asset of the Lessee or if any proceedings are issued or event occurs intended to lead to any of those consequences or if any other action relating to insolvent debtors occurs in relation to the Lessee,

the Lessor may in addition to its other powers either re-enter the Land and eject the Lessee and all other persons and repossess the Land or cancel this Lease immediately by written notice to the Lessee, or both and thereupon this Lease will terminate but without prejudice to any action or other remedy which the Lessor has or might otherwise have for arrears of rent or breach of

covenant or for damages as a result of any such event PROVIDED THAT in the case of a breach of any covenant or condition to which section 10 of the Landlord and Tenant Act 1936 applies, fourteen days is hereby fixed as the time referred to in such section within which the Lessee is to remedy such breach if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Lessor for such breach.

### 13. RIGHTS OF LESSOR

#### 13.1 Recovery rights

Without prejudice to any rights powers or remedies of the Lessor arising from any breach by the Lessee of its obligations under this Lease the Lessor shall have all or any of the following rights and remedies:-

13.1.1 To recover from the Lessee any loss or damage suffered by the Lessor as a result of the Lessor being unable to re-let the Land or if the Lessor is able to re-let the Land for the loss of rent between the date of breach by the Lessee and the date of re-letting the Land and the cost of such re-letting; and

13.1.2 To recover from the Lessee any loss or damage suffered by the Lessor as a result of re-letting the Land to a subsequent lessee at a rental less than that which would have been payable by the Lessee for the unexposed residue of the term (as extended or renewed) of this Lease.

#### 13.2 Acceptance of arrears

The acceptance by the Lessor of arrears or of any late payment of rent shall not constitute a waiver of the essentiality of the Lessee's obligation to pay interest in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay rent during the term of this Lease.

#### 13.3 Lessee's repudiation

If the Lessee's conduct (whether by action or omission) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any agreement contained in this Lease the Lessee shall compensate the Lessor for any loss or damage suffered by reason of such repudiation or breach.

#### 13.4 Entire term of Lease

The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of agreement for the damage suffered by the Lessor during the entire term of this Lease.

#### 13.5 Lessor may claim damages

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire term of this Lease including the periods before and after the Lessee may have vacated the Land and before and after any abandonment termination repudiation acceptance of repudiation or surrender by operation of law of this Lease whether the proceedings are instituted either before or after such conduct.

#### 13.6 Mitigation

The Lessor's conduct in pursuance of any duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach repudiation or a surrender by operation of law.

#### 13.7 Lessor may rectify

If the Lessee does not pay any money or do anything which the Lessee is obliged under this Lease to do or pay then the Lessor may (without prejudice to any other rights or remedies it may have) pay such money or do such thing itself and for that purpose may along with its consultants workers or agents or the relevant Authority enter the Land and remain on the Land for the purpose of doing such thing. Any costs or expenses incurred

by the Lessor in exercising its rights pursuant to this clause shall be payable by the Lessee immediately upon demand.

**13.8 Interest and Recovery Fees**

Without prejudice to any rights or remedies of the Lessor the Lessee will pay to the Lessor interest at the rate specified in Item 10 of the Schedule on any moneys not paid on the due date pursuant to this Lease or pursuant to any judgment or order in which this or any other provision in this Lease may become merged. Such interest shall be calculated from the due date for the payment of the moneys in respect of which the interest is chargeable until payment of such moneys in full and shall be recoverable in the same way as rent in arrears. The Lessee shall reimburse the Lessor for all reasonable collection and/or solicitor's fees incurred in recovering any outstanding rental.

**13.9 Essential Terms**

Without limiting any previous provision in this Lease each of the covenants by the Lessee which are contained in clauses 2.1, 2.2, 2.3, 4.1, 4.2, 4.3, 4.8, 4.9, 4.10, 4.11, 4.12.7, 5.1, 5.2, 5.4, 7, 8 and 9 of this Lease are acknowledged and declared to be essential terms of this Lease.

**14. HOLDING OVER**

If the Lessee with the consent of the Lessor remains in occupation of the Land after expiration of the term of this Lease then in the absence of any express written agreement to the contrary the Lessee shall be deemed to be tenant from month to month of the Land and the tenancy may be cancelled by either party upon the expiration of one month's written notice to the other. During any such monthly tenancy the terms and conditions applying under this Lease to the Lessee's occupation of the Land shall continue to apply and the calendar monthly rental shall be equal to one twelfth of the rent payable (together with any applicable increase pursuant to a CPI rent review) during the last year of the term of this Lease.

**15. RENT REVIEW**

The rent shall be reviewed at the times and in the manner specified in Item 7 of the Schedule.

**16. RENEWAL**

If the Lessee wishes to renew this Lease for the further terms specified in Item 8 of the Schedule then the Lessee shall request the Lessor in writing for such a renewal. The request must be received by the Lessor not less than six months nor more than nine months before the expiry of this Lease. If at the time of the request there is no outstanding breach of this Lease by the Lessee and if after the request the Lessee does not breach this Lease then the Lessor will at the Lessee's expense grant to the Lessee a renewal of this Lease. The renewed Lease will not include a right of renewal other than for any further term specified in Item 8 of the Schedule and otherwise will be upon the same terms and conditions as this Lease together with any agreed amendments. Unless the Lessor and the Lessee otherwise agree a new Lease for the renewed Lease term shall be prepared by the Lessee's solicitors at the Lessee's expense and shall be executed by the parties before commencement of the renewed Lease term. If this Lease has been guaranteed then the renewed Lease shall automatically be deemed to be guaranteed by the same persons on the same terms unless the Lessor expressly agrees in writing to the contrary. Without limiting the previous sentence the Lessor may require a new Deed of Guarantee to be prepared by the Lessor's solicitors and executed by the same and/or other guarantors prior to commencement of the renewed Lease term.

**17. WAIVER**

The failure by the Lessor to insist upon strict performance by the Lessee of any terms of this Lease shall not be deemed a waiver of any breach by the Lessee of any term of this Lease.

**18. SEVERABILITY**

Every provision of this Lease will be deemed severable as far as possible from the other provisions of this Lease. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from this Lease. This Lease with the offending provision severed and omitted and with any consequential amendment if necessary, will otherwise remain in full force.

19. **AMENDMENTS**

Any amendment to a term of this Lease shall only be made in writing executed by the parties or duly authorised officers on behalf of the parties.

20. **ENTIRE AGREEMENT**

The parties agree that the terms set out in this Lease contain their entire agreement notwithstanding any negotiations, documents or discussions which took place or were given prior to the execution of this Lease. This Lease replaces any other agreement between the parties.

21. **GOVERNING LAW**

This agreement shall be construed according to the laws of South Australia and the parties submit themselves to the jurisdiction of the Courts of that State and any competent appellate Courts.

22. **NOTICES**

Any written Notice to be given by one party to the other shall be signed by the party giving the Notice or by an officer or the duly authorised solicitor or agent of that party and shall be hand delivered or sent by prepaid post or sent by facsimile to the address of that party shown in this Lease or to a facsimile number at that address (or any other address or facsimile number that a party may advise in writing) and shall be deemed sufficiently given:-

22.1 In the case of hand delivery on the date of delivery; or

22.2 In the case of prepaid post two business days after being sent by prepaid post;

22.3 In the case of facsimile on receipt by the sender of a successful transmission answerback; or

22.4 In the case of email, on the date the email is sent, provided the subject line contains the words "Lease Notice" and the sender does not receive an error message in response indicating that the email has failed in transmission.

23. **ACKNOWLEDGMENTS BY LESSEE**

23.1 The Lessee acknowledges that the Lessor is the registered proprietor of the Land and is the owner of any building, cabin and improvements situated thereon or therein.

23.2 The Lessee acknowledges that the Lessor has entered into a Land Management Agreement (as set out in annexure 1 of this Lease) with the Mid Murray Council ("Council") in respect of development upon the Land relating to matters including but not limited to the nature and height of fencing, the obligation for land owners to connect to services within a prescribed period and required building setbacks, together with other terms and conditions agreed with Council.

24. **LAND MANAGEMENT AGREEMENT**

The Lessee will at its own cost and expense comply with all requirements imposed by a land management agreement with Council over the Land, complying with the terms of any such agreement insofar as they relate to the Land and are not inconsistent with the provisions hereof and bringing any building, cabin or other improvement situated on the Land into compliance with any requirements that may apply or be imposed pursuant to the Development Act 1993 or the regulations thereunder or the Building Code of Australia.

25. **SPECIAL CONDITIONS**

The Special Conditions contained in Item 9 of the Schedule shall form part of this Lease and if inconsistent with any other provision in this Lease shall prevail.

**SCHEDULE**

**ITEM 1**

The Lessee

[Insert]

**ITEM 2**

The Lessor

**SCHMIDT FAMILY ESTATES PTY LTD ACN 638 820 381** of care of  
Commercial & Legal, 278 Flinders Street Adelaide SA 5000

**ITEM 3**

The Land

The whole of the land comprised in Certificate of Title Volume [Insert] Folio  
[Insert]

**ITEM 4**

The Rent and manner of payment

Subject to clauses 2.1 and 2.3 the annual rental will be [Insert] words &  
figures] payable fortnightly in advance to the Lessor. In addition, for the  
first year only, there is an annual lease grant fee (or lease premium) of \$  
The total of \$ is to be paid \$ payable fortnightly in advance.

**ITEM 5**

Term

For a term of one (1) year commencing on [Insert]

**ITEM 6**

Permissible Use

Holiday Home Site

**ITEM 7**

Rent Review

Not applicable

**ITEM 8**

Further Terms

Not Applicable

**ITEM 9**

Special conditions

1. Encroachments

The Lessee acknowledges that:

- 1.1 improvements constructed on land adjoining the Land ("**the neighbouring land**") may at the commencement of this Lease encroach upon the Land and subject to paragraph 1.2 below the Lessee consents to any such encroachment or encroachments (as the case may be);
- 1.2 improvements constructed on the Land may at the commencement of this Lease encroach upon the neighbouring land;
- 1.3 if it becomes lawful to make alterations to the improvements on the Land and if any of the improvements erected on the Land encroach upon the neighbouring land then the Lessee shall, within three months of receiving a written request from the Lessor, at the Lessee's cost, cause the encroachment to be rectified by removing the relevant improvements the subject of the encroachment from the neighbouring land. The Lessee shall comply with the provisions of clause 8.1 of this Lease in undertaking such removal and any consequential alterations; and
- 1.4 if it becomes lawful to make alterations to the improvements on the neighbouring land and if there is an encroachment upon the Land from such improvements, the Lessee shall allow the occupant of the neighbouring land to enter the Land at all

reasonable times and upon reasonable notice to rectify such encroachment.

2. Residential Tenancies Act 1995 (SA)

The Lessee acknowledges and agrees that this Lease is granted on the basis that the Land is to be used in accordance with the Permitted Use and it is not intended that the Land is to be used for residential purposes and as such parties acknowledge and agree that the Residential Tenancies Act 1995 (SA) does not apply to this Lease.

3. Leases Act Does Not Apply

The Lessee acknowledges that the Premises are not a "Retail Shop" within the meaning of that term under the Leases Act and that the Lessee does not intend to use the Premises for any or the purposes within the meaning of that term under the Leases Act and the Lessee hereby warrants to the Lessor that during the Term the Lessee will neither use the Premises for the retail sale of goods to the public nor allow services to be provided from the Premises to the public nor allow the Premises to be used such that the public is invited to negotiate for the supply of services and the Lessee shall indemnify and keep indemnified the Lessor against all and any claims, demands, actions, proceedings, loss or otherwise arising out of or in relation to a breach of this warranty by the Lessee.

4. Early Termination

The Lessor and the Lessee covenant and agree that:

4.1 this Lease may be terminated at any time during the term of this Lease by either the Lessee or the Lessor giving to the other party not less than six (6) months' notice of its intention to terminate ("**Termination Notice**");

4.2 unless otherwise agreed in writing by the Lessor and the Lessee this Lease shall terminate on the expiration of the later of:

(a) six (6) months after the service of the Termination Notice; or

(b) such further period specified in the Termination Notice

and neither party shall have any claim for or right to recover any damages by reason of such termination but without prejudice to:

(c) the rights of either party for any antecedent breach or default; and

(d) the Lessee's obligations pursuant to clause 11 of this Lease or any other obligations of the Lessee due at the end of this Lease; and

(a) if this Lease is terminated pursuant to this clause:

(b) the parties shall promptly on receipt execute a Memorandum of Surrender of this Lease in registrable form which Surrender shall be prepared stamped and (if this Lease is registered) registered by the Lessor's solicitors at the cost and expense of the Lessee; and

(c) the Lessee shall promptly on receipt of a request produce to the Lessor's solicitors the Lessee's registered copy of this Lease to enable registration of the Surrender.



Interest Rate

A rate of interest equal to the rate of interest charged from time to time by the Commonwealth Bank of Australia on overdrafts of less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) plus Two per centum (2%).

**ANNEXURE**

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene Section 32 of the Development Act 1993.

DATED .....

EXECUTION

SIGNED for and on behalf of the
SCHMIDT FAMILY ESTATES PTY LTD ACN 638 820 381 in
accordance with Section 127 (1) of the Corporations Act 2001:

Director

Print Full Name

\*Director/\*Secretary

Full Name

(\*please delete the inapplicable title)
(Note: please affix common seal if required by the Company's Constitution)

in the presence of:

Signature of WITNESS - Signed in my presence
by the LESSEE who is either personally known
to me or has satisfied me as to her identity

Full name of Witness

Address of Witness

Telephone No. (during business hours)

\* NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

