
GROUND LEASE

1 LAKESIDE DRIVE, BARMERA

LAKE BONNEY - DISCOVERY PARKS

THIS LEASE AGREEMENT is made the _____ day of _____ 20____

Between

Berri Barmera Council ABN 72 546 893 281 of 19 Wilson Street, Berri SA 5343 (“the **Council**”)

and

Discovery Holiday Parks Pty Ltd 5000 ABN 50 111 782 846 of Level 7, 60 Light Square, Adelaide SA (“the **Lessee**”)

BACKGROUND

- A. The Council is a council constituted under the *Local Government Act 1999*.
- B. The Council is the registered proprietor of or otherwise has care, control and management of the whole of the land identified in **Item 3** of the Schedule (“the **Land**”).
- C. The Lessee has requested and the Council has agreed to grant to the Lessee a ground lease of the Premises for the Permitted Use during the Term.
- D. The Council and the Lessee record the terms of their agreement in this Lease.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Introductory

In the Lease, unless the contrary intention appears:

- 1.1.1 a reference to this Lease is a reference to this document;
- 1.1.2 words beginning with capital letters are defined in clause 1.2;
- 1.1.3 a reference to a clause is a reference to a clause in this Lease;
- 1.1.4 a reference to an Item is a reference to an item in the Schedule;
- 1.1.5 a reference to a Schedule is a reference to the schedule of this Lease; and
- 1.1.6 a reference to an Annexure is a reference to an annexure to this Lease.

1.2 Defined Terms

In this Lease:

“**Act**” means the *Retail and Commercial Leases Act 1995*;

“**Agreed Consideration**” means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or

use of the Premises and any goods, services or other things provided by the Council under this Lease (other than GST payable under clause 19);

“**Commencement Date**” means the date shown as the commencement date in **Item 4** of the Schedule;

“**Common Areas**” means all areas of the Land (if any) which are not leased or tenanted and which are for common use by tenants and lessees of the Land and their invitees and customers including driveways, car parks, walkways, washrooms, toilets, lifts and stairways;

“**Council’s Equipment**” means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Premises and made available for use by the Lessee;

“**CPI**” means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide);

“**CPI Review**” means the Review Method described in clause 4.1;

“**Current CPI**” means the CPI number for the quarter ending immediately before the relevant CPI Review Date;

“**Default Rate**” means a rate of two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by the Local Government Finance Authority on overdraft facilities of more than \$100,000.00 and if there is more than one rate published the higher of those rates;

“**GST**” has the same meaning as given to that term in the GST Legislation;

“**GST Legislation**” means the *A New Tax System (Goods and Services Tax) Act 1999* and any similar legislation;

“**GST Rate**” means 10% or such other percentage equal to the rate of GST imposed from time to time under GST Legislation;

“**Improvements**” means any alternations, additions or improvements to the Premises made by the Lessee during the Term, whether or not such improvements were approved by the Council as required under this Lease;

“**Initial Term**” means the term of this Lease commencing on the Commencement Date and described in **Item 4** of the Schedule,

“**Land**” means the land described in **Item 3** of the Schedule and includes any part of the Land;

“**Legislation**” means any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Council or Local Government body or authority;

“**Lessee**” means the party described as "Lessee" in **Item 1** of the Schedule and where the context permits includes the employees, contractors, customers, agents and other invitees of the Lessee;

“**Lessee's Equipment**” means any and all fixtures and fittings and other equipment installed in or brought on to or kept in or on the Premises by the Lessee;

“**Lessee's Share**” means the proportion of the area that the Premises bears to the Land;

“**Outgoings**” means that term as defined in **Item 10** of the Schedule;

“**Payment Date**” means the Commencement Date and the first day of each month during the Term;

“**Permitted Use**” means the use described in **Item 8** of the Schedule;

“**Premises**” means the part of the Land, described in **Item 2** of the Schedule;

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

“**Rates and Taxes**” means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, other department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Land or Premises and includes water and sewer charges, council rates, emergency services levy and (subject to the Act if it applies to this Lease) land tax on a single holding basis;

“**Renewal Term**” means a term (if any) of renewal or extension granted under this Lease, as identified in **Item 7** of the Schedule;

“**Review Date**” means each date in **Item 6** of the Schedule;

“**Review Method**” means the relevant method of Rent Review specified in **Item 6** of the Schedule for any Review Date;

“**Statutory Authorities**” means any authority created by or under any relevant Legislation;

“**Statutory Requirements**” means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation;

“**Term**” means the Initial Term, the Renewal Term(s) and any period during which the Lessee holds over or remains in occupation of the Premises;

“**Valuer**” means a qualified valuer with a minimum of five (5) years of relevant experience and who is licensed to practice as a valuer of the kind of premises whose review is required, and who is appointed to make a determination or assessment under

this Lease as agreed by the Council and the Lessee or (failing agreement) by the President of the South Australian Division of the Australian Property Institute; and

“Yearly Amounts” means the aggregate of the Rent, Outgoings and any other moneys payable by the Lessee during the Term.

1.3 Interpretation

Unless the contrary intention appears:

- 1.3.1 headings are for convenience only and do not affect interpretation;
- 1.3.2 the singular includes the plural and vice-versa;
- 1.3.3 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government body or authority and vice versa;
- 1.3.4 a reference to any party in this Lease, or any other document or arrangement referred to in this Lease, includes that party's executors, administrators, substitutes, successors and assigns;
- 1.3.5 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.3.6 a reference to any statute or to any statutory provision include any statutory modification or re-enactment of it or any statutory provision substituted for it, and all by-laws, regulations;
- 1.3.7 "including" and similar expressions are not and must not be treated as words of limitation;
- 1.3.8 any special conditions in the Schedule will apply to this Lease and in the event of any inconsistency with the terms and conditions in the body of this Lease, then those special conditions will prevail; and
- 1.3.9 the Background is accurate and forms part of this Lease.

2 GRANT OF LEASE

The Council grants and the Lessee accepts a lease of the Premises for the Term as set out in this Lease.

3 RENT

3.1 Payment of Rent

The Lessee must pay the Rent to the Council annually in advance of the Payment Date, and in the manner directed by the Council.

3.2 Instalment

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

4 RENT REVIEWS

4.1 CPI Review

Where the Review Method for a Review Date is a CPI Review, the Rent is to be increased from the Review Date by the amount (expressed as a percentage) by which the Current CPI exceeds the Previous CPI.

5 OUTGOINGS

5.1 Liability for Outgoings

The Lessee must pay to the Council when due all Outgoings (including, subject to the Act, Rates and Taxes) levied, assessed or charged in respect of the Premises or the Land, or upon the owner or occupier of the Premises or the Land.

5.2 Lessee's Share

If any Outgoings are not separately assessed or charged in respect of the Premises, the Lessee must pay the Lessee's Share of any such Outgoing.

5.3 Sinking Fund

5.3.1 After such time as any Improvements have been constructed, the Council may establish a sinking fund to fund provision for major items of repair or capital works to the Premises.

5.3.2 The Council must advise the Lessee in writing of the establishment of a sinking fund and of the contribution to be made by the Lessee to that fund.

5.3.3 The following provisions apply to any sinking fund established under this clause 5.3:

5.3.3.1 the Council will establish a separate fund for such moneys and all monies paid by the Lessee for this purpose will be paid into that fund;

5.3.3.2 that fund or so much of the balance standing to the credit of that fund as remains unexpended from time to time for a purpose for which the fund was established will be held by the Council in a separate interest-bearing account; and

5.3.3.3 any amounts paid by the Lessee for the credit of that fund, and the net interest earned by the Council on that fund, will not be applied by the Council for any purpose other than that for which the fund was established.

5.4 Power and Other Utilities

- 5.4.1 The Lessee will be responsible for and pay when due the full amount of all accounts, invoices, assessments and charges with regard to the consumption, use or supply of telephone, light, electricity, gas, and any and all other services and utilities supplied to or used from the Premises.
- 5.4.2 If there is no separate meter for recording or measuring the services and utilities consumed on or from the Premises, then the Lessee must, if required by the Council, install the necessary meters at its own cost.

6 USE OF PREMISES

6.1 Permitted Use

The Lessee must use the Premises only for the Permitted Use. The Lessee must not use or allow the Premises to be used for any other use without the Council's prior written consent.

6.2 Operation of Lessee's Business

- 6.2.1 The Lessee must only use the Premises in accordance with generally accepted best practice for the Permitted Use.
- 6.2.2 The Lessee must conduct its operations and the Permitted Use in a good, lawful and orderly manner and to a high standard.

6.3 Statutory Requirements

The Lessee must obtain, keep current and comply with all consents, approvals, licences or other Statutory Requirements relating to:

- 6.3.1 the Lessee's use and occupation of the Premises;
- 6.3.2 the nature of the business or operations conducted on the Premises by the Lessee; or
- 6.3.3 any deliberate or negligent act or omission of the Lessee,

including (but not limited to) any requirements for building works or modifications to the Premises (whether structural or otherwise).

6.4 Signs

The Lessee must not place any signs or advertisements on the outside of the Premises, or inside the Premises (if they can be seen from outside of the Premises), except a sign or signs advertising or promoting the name and nature of the business conducted on the Premises by the Lessee and which:

- 6.4.1 are approved (in writing) by the Council; and

6.4.2 comply with any relevant Statutory Requirements.

6.5 Dangerous Equipment and Installations

The Lessee will not install or bring onto the Premises except insofar as may reasonably be required in connection with the Permitted Use and with the consent of the Council:

6.5.1 any electrical, gas powered or other machinery or equipment which may pose a danger, risk or hazard to the Premises or any people;

6.5.2 any chemicals or other dangerous substances which by their nature, or their volume, may pose a danger, risk or hazard to the Premises or any people; or

6.5.3 any heavy equipment or items which may damage the Premises.

6.6 Fire Precautions

The Lessee must:

6.6.1 comply with all requirements and directives issued by the Council from time to time (if any) with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and

6.6.2 comply with all Statutory Requirements relating to fire safety and procedures including any required structural works or modifications to any building or structure on the Premises which are required as a result of:

6.6.2.1 the Lessee's use or occupation of the Premises;

6.6.2.2 the nature of the business or operations conducted on the Premises by the Lessee; or

6.6.2.3 any deliberate or negligent act or omission of the Lessee.

6.7 Notice of defect

The Lessee must:

6.7.1 give the Council prompt notice of any circumstance or event of which the Lessee should reasonably be aware that might cause danger, risk or hazard to the Premises or to any person on the Premises; and

6.7.2 if required by the Council, promptly rectify any defect or want of repair to make the Premises safe from any danger, risk or hazard, at the Lessee's own cost.

6.8 Security

The Lessee must use the Lessee's best endeavours to protect and keep safe the Premises and any property contained in or on it from theft or robbery, including (where applicable) keeping all doors windows and other openings closed and locked when the Premises are not in use.

6.9 No Warranty

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose, and the warranty of fitness for purpose provided under section 18 of the Act is expressly excluded by the Council in this Lease.

6.10 Refurbishment, re-fitting and redecoration

6.10.1 The Lessee must repaint and refurbish the interior and exterior of the Premises ("Refurbishment") every seven (7) years during the Term and prior to expiration of the Term, in accordance with the following:

6.10.1.1 clean and repair all surfaces to be repainted or refurbished; and

6.10.1.2 paint (with at least two (2) coats) or wallpaper, stain, varnish or polish each surface to be repainted or redecorated according to the previous treatment of that surface; and

6.10.1.3 external paint colours are to be approved by the Council in writing prior to any Refurbishment.

6.10.2 The Lessee must carry out the Refurbishment to a standard appropriate to the Premises and in accordance with the last refurbishment undertaken with the Council's approval, or if no such prior refurbishment has taken place, to the same standard as at the Commencement Date.

7 INSURANCE

7.1 Lessee must insure

The Lessee must keep current during the Term, for the Premises (including any Improvements) and the Lessee's Equipment:

7.1.1 public liability insurance for at least the amount in Item 9 of the Schedule (or any other amount the Council reasonably requires) for each claim;

7.1.2 all insurance in respect of the Lessee's Equipment and any Improvements for their full replacement value;

7.1.3 insurance of the Premises and any Improvements against damage by fire, storm, tempest, earthquake, flood, explosion, lightning, malicious damage, removal of debris, architects' and engineers' fees and other such risks as the Council thinks fit from time to time for the full reinstatement value; and

7.1.4 other insurances required by law or which the Council reasonably requires for at least the amounts the Council reasonably requires.

7.2 Requirements for policies

7.2.1 Each policy the Lessee takes out under this clause 7 must:

7.2.1.1 note the Council as an interested party;

7.2.1.2 have no limit on the number of claims that can be made under it;

7.2.1.3 cover events occurring during the policy's currency regardless of when claims are made; and

7.2.1.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

7.2.2 Any proceeds of a claim in respect to the insurance policy set out in clause 7.1.3 that are received by the Council or the Lessee shall be applied towards reinstatement, rebuilding, repair or replacement of the Premises.

7.3 Evidence of Insurance

On or before the Commencement Date, the Lessee must give the Council certificates evidencing the currency of the policies the Lessee has taken out under this clause 7. During the Term the Lessee must:

7.3.1 pay each premium before it is due for payment;

7.3.2 give the Council certificates of currency each year when the policies are renewed and at other times upon the Council's request;

7.3.3 not allow any insurance policy to lapse or vary without the Council's consent; and

7.3.4 notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

7.4 Insurance affected

7.4.1 The Lessee must not do anything which will or may:

7.4.1.1 prejudice any insurance required under this clause 7; or

7.4.1.2 increase the premium for any insurance required under this clause 7.

7.4.2 If the Lessee does anything (without the Council's consent) that increases the premium of any insurance the Council has in connection with the Premium, the Lessee must pay the amount of that increase to the Council on demand.

8 REPAIR AND MAINTENANCE

8.1 Maintain, Replace and Repair

The Lessee must, at all times during the Term, at the Lessee's own expense, and without any notice or demand from the Council, keep, maintain, repair and replace (as applicable) to the reasonable satisfaction of the Council the Premises, the Lessee's Equipment and the Improvements such that they are in good repair, condition and working order (including, subject to the Act, if it applies, such structural and capital maintenance, repair and replacement as is necessary from time to time).

8.2 Alterations by Lessee

The parties acknowledge and agree that:

- 8.2.1 the lease of the Premises is a ground lease only;
- 8.2.2 the Lessee intends, at its own cost, to carry out works to the Premises to make it suitable for the Permitted Use following the commencement of this Lease;
- 8.2.3 the Lessee must undertake the works to the Premises in accordance with the plans and specifications attached as Annexure B to this Lease (“the Works”) or, if none are attached, as may otherwise be approved by the Council;
- 8.2.4 the Lessee must at its cost obtain all necessary approvals and authorisations for the Works from any and all Statutory Authorities;
- 8.2.5 the Lessee must use all reasonable endeavours to minimise damage to the Premises and interference with adjoining landowners or members of the public during the construction of the Works;
- 8.2.6 the Lessee must repair any damage caused to the Premises or the Land in connection with alterations made by the Lessee to the Council’s satisfaction. In the event the Lessee fails to do so, the Council may undertake the repairs itself and recover its costs of doing so from the Lessee as a debt;
- 8.2.7 the Lessee must undertake and complete the Works in a proper, workmanlike and timely manner;
- 8.2.8 the Lessee must not undertake or make any other Improvements to the Premises during the Term without the prior written approval of the Council. The Lessee will pay the Council’s costs (including consultant’s costs and legal costs) as a result of considering any additional Improvements proposed by the Lessee (whether or not consent is ultimately granted by the Council); and
- 8.2.9 any Improvements to the Premises (including, but not limited to the Works) will remain the property of the Lessee during the Term and the Lessee will be responsible for maintaining such Improvements in accordance with this Lease.

8.3 Cleaning

The Lessee must at all times during the Term:

- 8.3.1 keep the Premises clean and tidy;
- 8.3.2 keep the Premises free of vermin, insects and other pests; and
- 8.3.3 not cause the Premises to be left untidy or in an unclean state or condition.

9 ASSIGNMENT AND SUB-LETTING

9.1 Assignment

The Lessee must not assign the Lessee's interest in the Premises or any part of it under this Lease without the consent of the Council, which consent may be withheld in the Council's absolute discretion unless the Act applies to this Lease, in which case the Council's consent may be withheld by the Council only if:

- 9.1.1 the proposed assignee proposes to change the use to which the Premises is put;
- 9.1.2 the proposed assignee is unlikely to be able to meet the financial obligations of the Lessee under the Lease;
- 9.1.3 the Council reasonably considers that the proposed assignee's business skills are inferior to those of the Lessee; or
- 9.1.4 the Lessee has not complied with procedural requirements for obtaining the Council's consent as set out in section 45 of the Act.

9.2 Request for Assignment

If the Lessee requests that the Council consent to any assignment, transfer or parting with possession of the Premises (or any part of it), the Lessee must immediately on receipt of a request to do so from the Council:

- 9.2.1 pay all arrears of Rent any other moneys outstanding under this Lease and remedy all outstanding breaches and defaults and pay to the Council or its solicitors or agents such sum of money as is reasonably estimated by the Council as being required to remedy such breaches or defaults;
- 9.2.2 submit a true copy of all agreements to be entered into in respect of any proposed dealing with the Lease or the Premises including a true copy of any business sale agreement entered into by the Lessee as vendor, if applicable, and evidence satisfactory to the Council that the proposed transferee or assignee is respectable, responsible, solvent and suitable and any other information reasonably required by the Council about the financial standing and business experience of the proposed transferee or assignee;
- 9.2.3 if the proposed assignee or transferee is a trustee of a trust to submit a copy of the instrument under which such trust was constituted and the full names addresses and occupations of the beneficiaries of such trust;
- 9.2.4 procure the proposed assignee or transferee to submit to the Council a business plan setting out the proposed assignee's plans, intentions and projections concerning the business conducted at the Premises (and containing such details and particulars as are reasonably required by the Council); and
- 9.2.5 pay to the Council or its solicitors the reasonable costs and expenses of and incidental to any inspection of the Premises and enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation, negotiation and stamping of the documents deemed necessary by the Council,

and if such consent is given, the Lessee shall ensure that prior to the date of any assignment or transfer the person to whom it is proposed to assign or transfer enters into a direct covenant with the Council to observe the terms of this Lease and furnishes such guarantees of the performance of such person's obligations under this Lease as the Council may reasonably require.

9.3 Sub-lease, Mortgage or Licence

The Lessee may not:

- 9.3.1 grant any sub-lease, licence or concession for the whole or part of the Premises;
- 9.3.2 otherwise part with possession of the whole or a part of the Premises; or
- 9.3.3 mortgage or otherwise charge or encumber the Lessee's interest under this Lease,

without the prior written consent of the Council which the Council may withhold in its absolute discretion.

9.4 No Release

Subject to the Act (if it applies to this Lease), where the Council grants consent or is deemed to grant consent to an assignment, the Lessee as assignor will not be released or discharged from its current and future obligations and liabilities under this Lease for the balance of the Term.

10 COUNCIL'S OBLIGATIONS AND RIGHTS

10.1 Quiet Enjoyment

Subject to the Council's rights and to the Lessee complying with the Lessee's obligations under this Lease, the Lessee may occupy the Premises during the Term without interference from the Council.

10.2 Right to enter

The Council may (except in the case of emergency when no notice will be required) enter the Premises after giving the Lessee reasonable notice:

- 10.2.1 to see the state of repair of the Premises, the Lessee's Equipment or any Improvements;
- 10.2.2 to do repairs or other works to the Premises as required or permitted to be undertaken by the Council under this Lease and, for this purpose, interrupt any services to the Premises as necessary to undertake the repairs or works; or
- 10.2.3 to do anything the Council must or may do under this Lease or must do under any law or to satisfy the requirements of any Statutory Authorities.

10.3 Right to rectify

- 10.3.1 Subject to clause 10.3.2, the Council may at the Lessee's cost, do anything which the Lessee should have done under this Lease but which the Lessee has not done or which the Council reasonably considers the Lessee has not done properly.
- 10.3.2 Prior to undertaking any works as permitted by clause 10.3.1, the Council must first provide the Lessee with a notice of defects or works required to be undertaken by the Lessee, which notice must provide a reasonable period for the Lessee to rectify the defects or undertake the required works.
- 10.3.3 The Lessee will not make any claim or commence or maintain any suit or action against the Council for breach of the covenant contained in clause 10.1 or otherwise in consequence of such entry or in execution of any of the works contemplated by this clause 10.3.

10.4 Maintenance and repair

The Lessee acknowledges and agrees that the Council has no obligation to maintain or repair the Premises, the Lessee's Equipment or any Improvements.

11 DAMAGE OR DESTRUCTION

11.1 Termination for destruction or damage

11.1.1 If the Lessee's Equipment or the Improvements (or part of them) are destroyed or damaged so that the Premises are unfit for the Permitted Use then within three (3) months from the date that the damage or destruction occurred, the Lessee must give the Council a notice either:

11.1.1.1 terminating this Lease; or

11.1.1.2 advising the Council that the Lessee intends to repair the Lessee's Equipment or the Improvements as necessary so that the Lessee can continue to occupy and use the Premises.

11.1.2 If the Lessee gives a notice under clause 11.1.1.2 but does not commence the repairs within six (6) months of the date of the notice, the Council may give notice to the Lessee that the Council intends to terminate the Lease if the Lessee does not do whatever is necessary to make the Premises accessible and fit for use by the Lessee within a reasonable time specified in the notice (having regard to the nature of the required work).

11.1.3 If the Lessee does not comply with clause 11.1.1 or the Council's notice under clause 11.1.2, the Council may terminate this Lease by giving the Lessee not less than one (1) month's notice.

11.2 Reduction or abatement of rent

11.2.1 The Yearly Amounts to be paid by the Lessee will during the period the Premises are unfit or inaccessible be reduced unless:

11.2.1.1 the Premises are unfit or inaccessible; or

11.2.1.2 an insurer refuses to pay a claim;

as a result of a deliberate or negligent act or omission of the Lessee.

11.2.2 The level of the reduction under clause 11.2.1 (if any) will depend on the nature and extent of the damage.

11.2.3 If the level of the reduction under clause 11.2.1 (if any) cannot be agreed between the parties it will be determined by a Valuer.

11.3 No limitation

The provisions of this clause 11 do not prejudice or alter the rights and entitlements of the Council to recover for loss and damage from the Lessee if and to the extent that the damage to the Improvements or the Premises is caused or contributed to by any deliberate or negligent act or omission on the part of the Lessee.

12 RENEWAL

12.1 Rights of Renewal

If the Lessee wishes to exercise any right of renewal described in **Item 7** of the Schedule, then the Lessee must serve a written notice on the Council not less than three (3) months and not more than six (6) months prior to the expiry of the Initial Term or the preceding Renewal Term (as the case may be) stating its desire to renew this Lease for the relevant Renewal Term specified in **Item 7**. If such notice is given then:

12.1.1 the Council will be obliged to renew this Lease for the relevant Renewal Term on the same terms and conditions as are contained in this Lease except (in the case of the final Renewal Term) for the exclusion of this clause 12.1; and

12.1.2 the Renewal Term commences immediately after the expiration of the Initial Term or the preceding Renewal Term (as the case may be).

12.2 No Renewal Entitlement

The Lessee will not be entitled to a right of renewal pursuant to clause 12.1 if:

12.2.1 the Lessee is in breach of a term of this Lease before or at the time of giving notice of the Lessee's desire to exercise the right of renewal ("**notice**"); or

12.2.2 the Lessee is in breach or commits any breach of a term of this Lease after giving that notice but before commencement of the relevant Renewal Term.

13 RIGHTS AND OBLIGATIONS ON EXPIRY

13.1 Expiry

This Lease will come to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under any other provision of this Lease, in which case it will come to an end when such earlier termination is effected.

13.2 Handover of Possession

13.2.1 Before this Lease comes to an end, the Lessee will:

13.2.1.1 remove all of the Lessee's Equipment and repair any damage caused by such removal;

13.2.1.2 if required by the Council, remove any Improvements and reinstate, to the Council's satisfaction, the Premises to the condition it was immediately prior to the Lessee having commenced occupation; and

13.2.1.3 carry out and complete any repairs and maintenance which the Lessee is obliged to carry out under this Lease,

such that the Premises and Improvements (if applicable) are handed over to the Council in good order and repair and working condition.

13.2.2 If it is not practical for the Lessee to undertake and complete these requirements before the Lease comes to an end, then the Lessee must undertake such works immediately after the Lease comes to an end in accordance with any reasonable requirements of the Council relating to security, access and time for completion.

13.2.3 When this Lease comes to an end the Lessee will:

13.2.3.1 hand over vacant possession of the Premises in good repair and condition; and

13.2.3.2 hand over to the Council all keys and other security devices for the Premises which the Lessee has in its possession or control.

13.2.4 If at the time that possession of the Premises is given back to the Council, the Lessee has not complied with all or any of its obligations under this clause 13.2, the Lessee will not be relieved of its obligation to comply with those requirements, or to compensate the Council for failure to do so, by reason of the fact that the Council has accepted or taken possession of the Premises.

13.3 Ownership of Improvements

If, during the Term of this Lease the Lessee has undertaken any Improvements, then upon expiration of the Term or earlier determination of this Lease, the Council may:

13.3.1 direct that the Improvements are to remain on the Premises, in which case the Improvements will form part of the Land upon expiration of this Lease and will become the property of the Council and the Lessee will forfeit to the Council (without payment of any compensation or consideration by the Council) any interest the Lessee has in the Improvements; or

13.3.2 direct that the Improvements be removed and the Premises be reinstated in accordance with clause 13.2.1 of this Lease.

13.4 Abandoned Goods or Improvements

Subject to the requirements of the Act (if applicable) if, when this Lease comes to an end, or within a reasonable time following expiration of this Lease:

13.4.1 the Lessee leaves any goods or the Lessee's Equipment at the Premises, then the Council will be entitled to deal with and dispose of those items as the Council sees fit, including (but not limited to) selling those items with any profits from such sale to be retained by the Council; or

13.4.2 the Lessee has failed to remove the Improvements as required by clause 13.2.1, then the Council may undertake such rectification works as required to be undertaken by the Lessee and recover the cost of those rectification works from the Lessee as a debt.

14 BREACH

14.1 Payment Obligations

14.1.1 The Lessee must make payments due under this Lease:

14.1.1.1 without demand (unless this Lease provides demand must be made);

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

14.1.1.3 to the Council or as the Council directs; and

14.1.1.4 by direct debit or such other means as directed by the Council.

14.1.2 If a payment is stated to be due on a particular Payment Date (such as the next Payment Date or the first Payment Date after an event) and there is no such Payment Date, the Lessee must make that payment on demand.

14.2 Default, Breach and Re-Entry

If:

14.2.1 any money (or part of any money) payable under this Lease are unpaid for the space of seven (7) days after any day on which the same ought to have been paid (although no formal or legal demand has been made);

14.2.2 the Lessee commits, permits or suffers to occur any breach, or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of the Lease, and such breach or default has continued for at least fourteen (14) days following service of a notice of default on the Lessee by the Council;

- 14.2.3 any property in or on the Premises is seized or taken in execution under any judgment or proceedings; or
- 14.2.4 the Premises are left unoccupied for one (1) month or more without the Council's consent,

then despite any other clause of this Lease the Council at any time has the right to re-enter into and upon the Premises and to repossess and enjoy the Premises as its own estate, and/or to terminate this Lease.

14.3 **Rights of Council Not Limited**

If the Council exercises its rights under clause 14.2 of this Lease:

- 14.3.1 such action will not exclude, limit or prejudice any other action or remedy which the Council has or might have or otherwise could have for any breach of this Lease by the Lessee (including but not limited to any loss or damage suffered by the Council as a result of such breach); and
- 14.3.2 the Council will be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of the Lease.

14.4 **Repudiation and Damages**

- 14.4.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:
 - 14.4.1.1 the obligation to pay Rent;
 - 14.4.1.2 the obligation to pay Rates and Taxes;
 - 14.4.1.3 the obligation to pay Outgoings;
 - 14.4.1.4 the obligation to contribute to any sinking fund established under clause 5.3;
 - 14.4.1.5 the obligations and prohibitions in relation to use of the Premises; and
 - 14.4.1.6 the restriction on assignment, sub-letting, mortgaging and licensing.
- 14.4.2 If the Council accepts payment of any money late or does not act or exercise any rights immediately or at all in respect of any breach of an essential term, that conduct on the part of the Council will not be deemed to amount to a waiver of the essential nature of that essential term.
- 14.4.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this Lease and the Council may at any time thereafter rescind this Lease by accepting that repudiation.
- 14.4.4 The Lessee agrees that if this Lease is terminated by the Council because of a breach by the Lessee of an essential term, or if the Lessee repudiates this Lease and the Council accepts that repudiation thereby rescinding this Lease, the Lessee will be obliged to pay compensation to the Council including rent and

other money which the Council would otherwise have received under this Lease had the Lessee not breached an essential term or repudiated this Lease.

14.4.5 The rights of the Council under this clause 14.4 and any action taken by the Council do not exclude or limit any other rights or entitlements which the Council has under this Lease or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

14.5 Interest on Overdue Amounts

If the Lessee does not pay an amount when it is due, the Lessee must pay interest on that amount on demand from when the amount became due until it is paid in full. Interest is calculated daily on all outstanding balances at the Default Rate.

14.6 Council's Rights on Breach

If the Lessee is at any time in breach of any of its obligations under this Lease, and the Lessee fails to remedy that breach to the satisfaction of the Council after being requested by the Council to do so, the Council and anybody authorised by the Council for that purpose may at any time come onto the Premises without notice and do all things necessary to remedy that breach. The Lessee must pay or reimburse the Council for all costs and expenses incurred in that regard which the Council may recover from the Lessee as a debt due and payable on demand.

14.7 Landlord and Tenant Act

In the case of a breach or default of any term of this Lease where notice is required to be given pursuant to Section 10 of the *Landlord and Tenant Act 1936*, such notices will provide that the period of fourteen (14) days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Council.

15 DISPUTE RESOLUTION

15.1 If any dispute or disagreement arises between the parties in connection with this Lease, the parties undertake to use all reasonable endeavours, in good faith, to settle the dispute or disagreement by negotiation between representatives of both parties.

15.2 In the event that negotiations do not resolve the dispute within thirty (30) days then a mediator agreeable to both parties may be engaged to seek a resolution. If the parties cannot agree upon a mediator, the mediator will be appointed by the President or Acting President of the Law Society of South Australia. The cost of the mediator will be borne equally by both parties.

15.3 Nothing in this Lease is intended to limit either party's right to seek a legal remedy for any dispute that arises.

15.4 The parties agree that matters arising out of any conflict must be kept confidential.

16 HOLDING OVER

If, with or without the Council's consent, the Lessee continues to occupy the Premises after the end of this Lease, the Lessee does so as a monthly tenant which:

16.1 either party may terminate on one (1) months' notice given at any time; and

16.2 is on the same terms as this Lease.

17 INDEMNITY AND RELEASE

17.1 Risk

The Lessee occupies and uses the Premises at the Lessee's risk.

17.2 Indemnity

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

17.2.1 any act or omission of the Lessee;

17.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;

17.2.3 any fire on or from the Premises;

17.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee or otherwise relating to or occurring on the Premises;

17.2.5 a breach of this Lease by the Lessee; or

17.2.6 the Lessee's use or occupation of the Premises.

17.3 Release

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

17.4 Indemnities are independent

Each indemnity is independent from the Lessee's other obligations and continues during this Lease and after this Lease ends. The Council may enforce an indemnity before incurring expense.

17.5 Council's liability

Despite anything else in the Lease, the Council will not be liable (except to the extent of any negligence of the Council) for any loss or damage, and the Lessee has no right to terminate

this Lease or reduce payments under this Lease, for any acts or omissions of other occupants of the Land including any members of the public.

18 POWER OF ATTORNEY

18.1 Appointment

If the Council becomes entitled to re-enter and take possession of the Premises after complying with any relevant statutory provision, the Lessee irrevocably appoints the Council to be the attorney of the Lessee to execute any documents and perform any acts the Council requires to give full effect to the power of re-entry under the *Real Property Act 1886*.

18.2 Ratification

The Council may do, execute and perform all things relating to the Premises as fully and effectually as the Lessee could do. The Lessee must ratify and confirm the appointment of and all actions by the Council under this clause.

19 GOODS AND SERVICES TAX

19.1 Agreed Consideration

If a GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with this Lease or any goods, services or other things supplied under this Lease then:

- 19.1.1 the Agreed Consideration for that supply is exclusive of GST;
- 19.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST rate; and
- 19.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

19.2 Tax Invoice

Where the Agreed Consideration is to be increased to account for GST under this clause 19, the Council will, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

19.3 Liability for Penalties

If the Lessee does not comply with its obligations under the Lease or with its obligations under GST Legislation in connection with this Lease and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the amount of the penalties and interest.

20 COUNCIL'S DISCRETION

The Council enters into this Lease as a council acting under sections 7 and 36 of the *Local Government Act 1999* and not in any other capacity. This Lease does not preclude or pre-empt the exercise by the Council of any other regulatory function or power.

21 RETAIL AND COMMERCIAL LEASES ACT

If, at any time during the Term, the Act applies to this Lease, then:

- 21.1 **this Lease will be read and interpreted subject to the provisions of the Act and, to the extent to which there is any inconsistency with the provisions of the Act, those provisions of the Act will override the terms of this Lease;**
- 21.2 **any right, power or remedy of the Council or obligation or liability of the Lessee which is affected by the Act (if applicable) will be unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act;**
- 21.3 **the Lessee acknowledges that, prior to the Council and the Lessee entering into negotiations concerning this Lease the Lessee received a copy of the proposed Lease; and**
- 21.4 **the Lessee acknowledges that, prior to the Lessee executing this Lease the Lessee received a duly completed written disclosure statement in the form required under and pursuant to the Act and the Regulations under the Act.**

22 INCORPORATED ASSOCIATION

If the Lessee is an incorporated association:

- 22.1 **the persons executing this Lease on behalf of the Lessee have warranted to the Council that the Lessee is incorporated under the *Associations Incorporation Act 1985*, and that its functions are compatible with the Permitted Use; and**
- 22.2 **the Lessee must provide the Council with:**
 - 22.2.1 upon request by the Council, a copy of the Lessee's constitution, rules or by-laws;
 - 22.2.2 within twenty eight (28) days of amendment of the Lessee's constitution, rules or by-laws, an updated copy of those documents; and
 - 22.2.3 upon execution of this Lease and upon any change in the appointment of officers of the Lessee, the full name and contact details of the current officers of the Lessee.

23 GENERAL

23.1 Costs

- 23.1.1 Each party will bear their own legal costs in connection with the negotiations for and the preparation of this Lease or any renewal or extension of it.
- 23.1.2 The Lessee will pay the Council's reasonable legal costs and other expenses incidental to any application by the Lessee for the consent of the Council to any transfer or assignment by the Lessee of this Lease or the Lessee's interest in it, or to any sub-letting by the Lessee, or to any mortgage, charge or encumbrance over the interest of the Lessee under this Lease or in the Lessee's Equipment or the Improvements (whether consent is granted or lawfully refused).

23.2 Consent

- 23.2.1 Unless otherwise provided in this Lease, in any case where the doing or execution of any act, matter or thing by the Lessee requires or is subject to the Council's consent or approval, that consent or approval may be given (conditionally or unconditionally) or withheld by the Council in its absolute discretion.
- 23.2.2 The Lessee must pay or reimburse the Council all costs, fees and expenses paid or incurred (including any fees of any agent or consultant) arising from or with respect to any application for consent or approval.

23.3 No absolute caveat

The Lessee must not lodge or cause or permit to be lodged any absolute caveat over the certificate of title for the Premises.

23.4 Confidentiality

- 23.4.1 Subject to applicable laws, this Lease is confidential and must not be published, disclosed or used for any purpose by either party without the prior written consent of the other party.
- 23.4.2 Subject to applicable laws, the Lessee must keep confidential any information about the Council that becomes known as a result of this Lease or the transactions it contemplates and, which information is not in the public domain.
- 23.4.3 This clause will remain enforceable by either party notwithstanding the expiry or termination of this Lease.

23.5 Waiver

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

23.6 Notice

- 23.6.1 Without excluding any other form of service, any notice required to be given or served will be sufficiently given or served as follows:
- 23.6.1.1 in the case of the Lessee, if left at the Premises, or if the Lessee has vacated the Premises, then if posted by pre-paid post to the last known address of the Lessee;
- 23.6.1.2 in the case of the Council, if posted by prepaid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this Lease unless the Lessee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).

23.6.2 Notice served by prepaid post will be deemed to have been given or served three (3) business days after posting.

23.7 Ombudsman

The Lessee acknowledges that the *Ombudsman Act 1972* empowers the Ombudsman to investigate matters in the public interest. The Lessee must ensure compliance with all obligations arising under that Act and all applicable Legislation.

23.8 Severance

If any part of this Lease is found to be invalid or void or unenforceable, then that part will be severed from this Lease and the remainder of this Lease will continue to apply.

23.9 Entire Agreement

The Council and the Lessee acknowledge and agree that this Lease contains and represents the entire agreement reached between them with regard to the Premises and that no promises, representations or undertakings, other than those contained in this Lease, were made or given or relied upon.

23.10 Force Majeure Events

Events in particular, the *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020* restrict a lessor's ability to terminate a lease for non-payment of rent, and require a lessor to negotiate in good faith with a lessee regarding rent arrangements. This is particularly pertinent for the Council's existing commercial leases. Council can make amendments to lease payment as in defer or void payments as per Council's endorsement regarding such an event. These events will be handled as per prescribed legislation when and if it occurs.

Executed as an agreement on the _____ day of _____ 2020

The Common Seal of the Berri Barmera Council was affixed in accordance with the *Local Government Act 1999* in the presence of:

.....
Chief Executive Officer

.....
Mayor

IMPORTANT NOTICE: The Lessee acknowledges and agrees that the Council gives no warranty that the Premises will, either at the Commencement Date or for the duration of this Lease, be structurally suitable for the Permitted Use.

Executed by the Lessee in accordance with section 127(1) of the *Corporations Act 2001*:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

SCHEDULE

ITEM 1 Lessee	Discovery Holiday Parks Pty Limited of Level 7, 60 Light Square, Adelaide SA 5000
ITEM 2 Premises	That portion of the Land being the land shown as Part piece of allotment 18, Lakeside Drive, Barmera on the plan attached as Annexure A
ITEM 3 Land	The whole of the land comprised in Crown Record Volume 6268 Folio 652 being more commonly known as Lakeside Drive, Barmera.
ITEM 4 Term	21 years commencing on the 1 st September 2020 “the Commencement Date”) and expiring at midnight on the 31 st of August 2041.
ITEM 5 Rent	\$3,700 per annum (plus GST) payable annually in advance
ITEM 6 Review Dates and Review Method	<p>Review Dates</p> <p>The Rent as stated in Item 5 will be reviewed the 1st of June annually</p> <p>Review Method</p> <p>March CPI (Adelaide)</p>
ITEM 7 Renewal Term	Nil
ITEM 8 Permitted Use	Caravan and tourist reserve
ITEM 9 Public Liability Insurance	Coverage of at least twenty million dollars (\$20,000,000.00) per claim
ITEM 10 Outgoings	“Outgoings” means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Premises including (but not limited to):

	<ol style="list-style-type: none"> 1. if the Premises are not separately levied or assessed for any Rates and Taxes, then any such Rates and Taxes which are levied or assessed in respect of the Land; 2. the cost of insuring the Premises; 3. the cost of insuring the Council against public risk; 4. the amount of any excess or deductible not paid or excluded under any insurance policy taken out by the Council; 5. the cost of insuring the Council against loss of rent and other consequential loss for a period not exceeding twelve (12) months; 6. all costs of the Council in connection with the maintenance, repair, replacement and renovation of the Premises from time to time; 7. all costs of the Council in connection with providing security in, for and around the Premises (including equipment, systems and security and other personnel); and 8. all costs of the Council in connection with preparing and providing any audited statement which is required to be prepared and/or provided under this Lease or by Legislation; and 9. contributions to any sinking fund established under clause 5.3.
<p>ITEM 11 Special Conditions</p>	<p>1 RESUMPTION</p> <ol style="list-style-type: none"> 1.1 The Council may terminate this Lease by giving at least three (3) months' written notice to the Lessee if the Council receives notice of resumption or acquisition of the Premises or the Land (or any part of the Land affecting the Premises) from or by any Statutory Authority. 1.2 The Council may terminate this Lease immediately by giving written notice to the Lessee if the Premises or the Land (or any part of the Land affecting the Premises) is Crown land dedicated to a particular purpose and: <ol style="list-style-type: none"> 1.2.1 it is withdrawn from the Council's care control and management; 1.2.2 the purpose for which it has been dedicated is altered under section 18 of the <i>Crown Land Management Act 2009 (SA)</i>; or 1.2.3 the dedication is revoked under section 19 of the

	<p><i>Crown Land Management Act 2009 (SA)</i> or other legislation.</p> <p>1.3 Termination of this Lease under this Special Condition releases each party from further liability under this Lease, but does not affect a party's rights or liabilities for a prior breach.</p> <p>2 HIRE OF PREMISES</p> <p>2.1 The Lessee may hire out the Premises or any portion of the Premises to third parties on a casual, short term basis, in accordance with this Special Condition.</p> <p>2.2 The Council may, as it sees fit, set conditions and fees for the hiring out of the Premises by the Lessee. In such case, the Lessee and any third party hirer must comply with any conditions or fees set by the Council.</p> <p>2.3 Any hire agreement entered into between the Lessee and a third party hirer must not:</p> <p style="padding-left: 40px;">2.3.1 permit any breach of this Lease by the third party hirer; and</p> <p style="padding-left: 40px;">2.3.2 confer any proprietary right or interest in the Premises to the third party hirer, such that the third party hirer only receives contractual rights to use or occupy the Premises.</p> <p>2.4 Unless the Lessee first obtains the written consent of the Council, the Lessee must not hire out the Premises:</p> <p style="padding-left: 40px;">2.4.1 for a term exceeding one (1) week in duration; or</p> <p style="padding-left: 40px;">2.4.2 for successive or periodic terms which, added together, total more than one (1) week in duration in any calendar year; or</p> <p style="padding-left: 40px;">2.4.3 for any purpose that does not fall within the scope of the Permitted Use; or</p> <p style="padding-left: 40px;">2.4.4 for any event or activity that is likely to, or capable of, generating substantial noise, traffic or other impacts on the surrounding area.</p>
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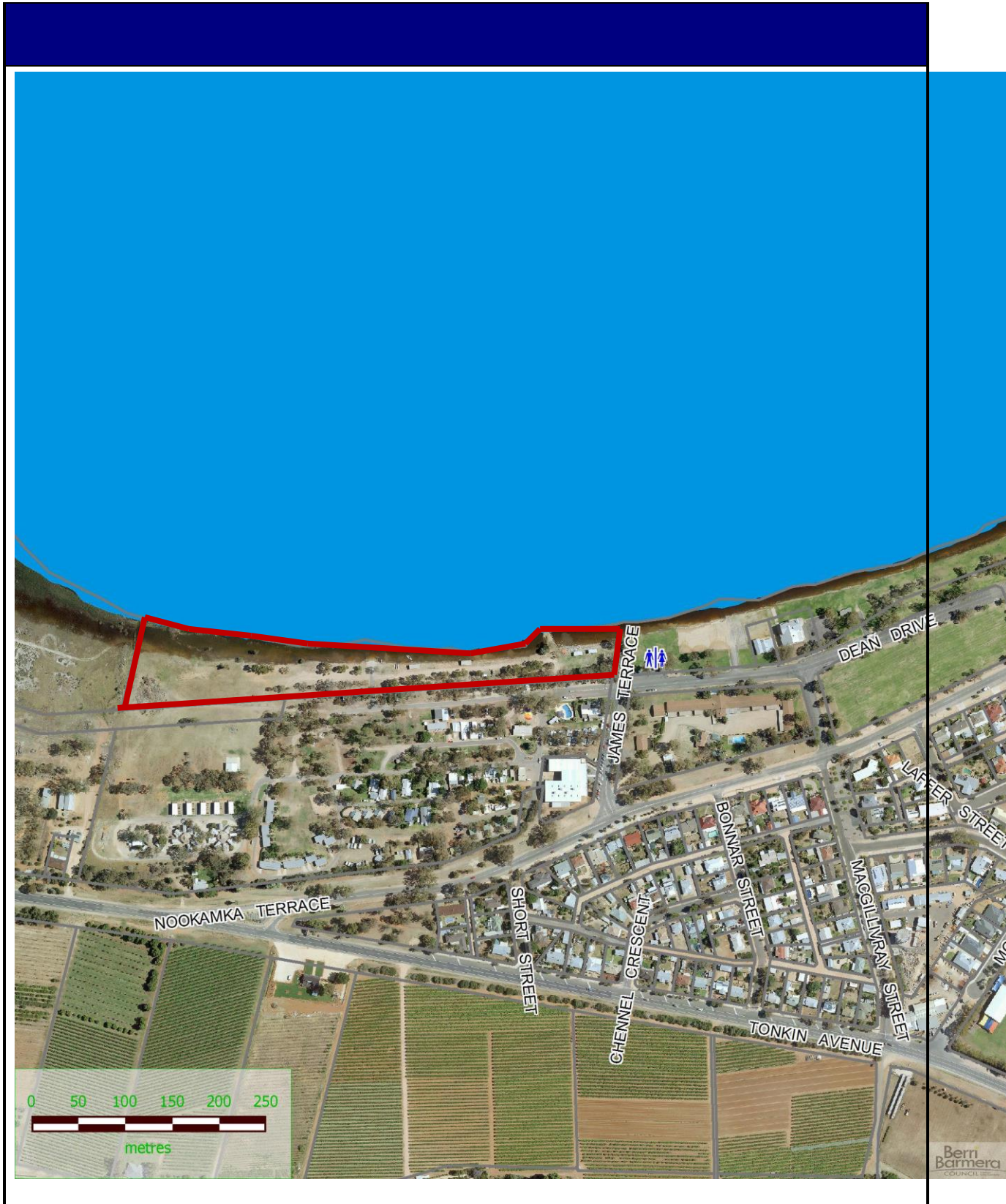
3 COMMON AREAS

The Lessee acknowledges and agrees that:

- 3.1 during the Term of this Lease, the Council may from time to time designate certain roads, driveways, carparks, footpaths, public toilets and other areas on the Land as common areas (“the Common Areas”);
- 3.2 the Lessee is granted a non-exclusive licence to access the Common Areas, only for the purpose of accessing the Premises;
- 3.3 the Council may grant rights to third parties to use and access the Common Areas together with the Lessee;
- 3.4 the Lessee will immediately comply with any directions given by the Council with respect to the Common Areas, and the Council may restrict access to any or all of the Common Areas at any time during the Term;
- 3.5 the Lessee indemnifies the Council against any actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring on the Common Areas as a result of:
 - 3.5.1 any act or omission of the Lessee on the Common Areas; or
 - 3.5.2 the Lessee’s use or occupation of the Common Areas; and
 - 3.5.3 the Lessee releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death:
 - 3.5.4 occurring on the Common Areas;
 - 3.5.5 resulting from any direction given by the Council under this Special Condition; or
 - 3.5.6 resulting from any restriction on access to the Common Areas or the Premises,

except to the extent that they are caused by the Council’s negligence.

Annexure A
Plan of Premises



Annexure B

Lessee will be responsible for:

- 1) Keeping all areas in a neat and clean condition, free from rubbish and vermin.
- 2) Maintaining the lawns and gardens.
- 3) Keeping gutters of shade structures/gazebos free from leaves and tree refuse.
- 4) Waste removal.
- 5) All scheduled maintenance.
- 6) All repairs, maintenance and building works.
- 7) Keep driveway clear.
- 8) Provide access for emergency service vehicles.
- 9) All plumbing works for example taps and sprinklers.
- 10) All electrical works including replacement of light globes and park lighting.
- 11) All maintenance, and structural repairs including rust proofing and painting.
- 12) Fence repairs.

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