



# **RESIDENTIAL TENANCIES ACT 1997**

## **PART 4A AGREEMENT**

**Revised August 2014**

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**BETWEEN:**

**The Park Owner described in Item 1 of the Schedule**

**AND**

**The Site Tenant described in Item 2 of the Schedule**

**IN RESPECT OF**

**The Caravan Park described in Item 3 of the Schedule.**

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## Part 4A Site Agreement

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Date

20##

### Parties

The Park Owner

The Site Tenant

## OPERATIVE PART

### 1. DEFINITIONS

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#### 1.1 Definitions

In this Agreement unless the context requires otherwise:

“**Act**” means the *Residential Tenancies Act 1997 (Vic)*;

“**Additional Fees**” means the fees and charges specified in Schedule 2;

“**Agent**” means a person engaged by the Site Tenant to sell the Park Home;

“**Agreement**” means this agreement and all Schedules and annexure to it;

“**Approved Beneficiary**” means a beneficiary of the Site Tenant’s estate with whom the Park Owner, acting reasonably, is prepared to enter into a Part 4A agreement;

“**Approved Purchaser**” means a purchaser of the Park Home from the Legal Personal Representative with whom the park Owner, acting reasonably, is prepared to enter into a Part 4A agreement.

“**Common Area**” means any part of the Park used by the Site Tenant

in common with the Park Owner or any other Patron;

“**CPI**” means the Consumer Price Index (All Groups Index - Melbourne) as published by the Australian Bureau of Statistics. If the CPI is discontinued, the Index to be used will be that stipulated by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Melbourne;

“**CPI Increase**” means the increase in the CPI for the year ended 31 March in the year in which the adjustment to the Site Fee is being made.

“**Fire Authority**” means the Country Fire Authority, the Metropolitan Fire Brigade and any other body which has the power to impose fire safety requirements in respect to caravan parks in Victoria.

“**Land**” means the land upon which the Park is situated.

“**Licence**” means a licence to occupy the Site.

“**Legal Personal Representative**” means the person or persons to

whom probate of the will, or letters of administration of the intestate estate, of the deceased Site Tenant has been granted or who otherwise satisfies the Park Owner that they have the right to deal with the assets of the deceased Site Tenant.

**“LPR Removal Date”** means the day which is four (4) month after the Park Home Sale Date;

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

**“Occupants”** means the persons described as such in the Schedule;

**“Park”** means the caravan park described in the Schedule;

**“Park Home”** means the Part 4A dwelling owned by the Site Tenant located, or to be located, on the Site;

**“Park Home Sale Date”** means the date which is three (3) months after the day upon which the Legal Personal Representative produces evidence to the Park Owner that he, she or they have the right to deal with the assets of the deceased Site Tenant;

**“Park Owner”** means the person described as such in the Schedule and includes the person’s heirs, executors, administrators and assigns and any person appointed in writing as the Park Owner’s agent;

**“Park Rules”** means the rules (as amended from time to time) made by the Park Owner under the Act.

**“Part 4A”** means Part 4A of the Act;

**“Part 4A agreement”** means an agreement under Part 4A;

**“Part 4A dwelling”** has the same meaning as is attributed to it by the Act;

**“Patrons”** means any person lawfully on the Park;

**“Prescribed Purpose”** means –

- a. A notice to vacate or a notice of intention to vacate the Site has been given and entry is required to show the Site to a prospective site tenant;
- b. The Site is to be sold or used as security for a loan and entry is required to show the Site to a prospective buyer or lender;
- c. Entry is required to enable the Park Owner to carry out a duty under this Agreement or the Act;
- d. The Park Owner has reasonable grounds to believe that the Site Tenant has failed to comply with his or her duties under this Agreement or the Act; or
- e. Entry is required to enable inspection of the Site and entry for that purpose has not been made within the last 6 months.

**“Regulations”** means *Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations 2010 (Vic)*;

**“Schedule 1”** means the schedule marked Schedule 1 annexed to this Agreement;

**“Schedule 2”** means the schedule marked Schedule 2 annexed to this Agreement;

**“Section 206V Notice”** means a notice complying with section 206V of the Act;

<p><b>“Selling Agent’s Fee”</b> means the amount described as such in the Schedule;</p>	(b)	<p>words suggesting any gender include any other gender;</p>
<p><b>“Site”</b> means the site described in the Schedule, but does not include any Common Area;</p>	(c)	<p>reference to a person include a company, corporation, and unincorporated or incorporated association or statutory authority;</p>
<p><b>“Site Fee”</b> means the Site Fee specified in the Schedule as adjusted or reviewed from time to time;</p>	(d)	<p>references to clauses, paragraphs, subparagraphs and schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Agreement as amended from time to time in accordance with the terms of this Agreement;</p>
<p><b>“Site Fee Review Date”</b> means each date specified in Item 8 of Schedule 1;</p>		
<p><b>“Site Tenant”</b> means the person described as such in the Schedule, and if more than one, the survivor of them and, upon the death of the Site Tenant includes the Legal Personal Representative of the Site Tenant;</p>	(e)	<p>an agreement will be incorporated into and form part of this Agreement if the parties sign the agreement and it is referred to in this Agreement and a reference to such a agreement is to that agreement as amended from time to time in accordance with the terms of this Agreement;</p>
<p><b>“Site Tenant’s Rights”</b> means the rights of the Site Tenant to –</p> <ul style="list-style-type: none"> <li>(a) occupy and use the Site;</li> <li>(b) have the Park Home situated on the Site; and</li> <li>(c) use the facilities and common areas of the Park.</li> </ul>		
<p><b>“Term”</b> means the period commencing on the date of this Agreement and continuing until this Agreement is terminated;</p>	(f)	<p>headings used for clauses, paragraphs, subparagraphs, schedules and the table of contents are for ease of reference only and will not affect the interpretation of this Agreement;</p>
<p><b>“Tribunal”</b> means the Victorian Civil and Administration Tribunal.</p>		
<p><b>“Vehicle”</b> includes Motor Vehicles, caravans, trailers and boats.</p>	(g)	<p>references to any agreement are to that agreement as amended, novated, supplemented, varied or replaced from time to time;</p>
<p><b>1.2 Interpretation</b></p> <p>In this Agreement, unless the context indicates a contrary intention:</p> <ul style="list-style-type: none"> <li>(a) words suggesting the singular include the plural and vice versa;</li> </ul>	(h)	<p>references to laws include any modification or re-enactment of those laws, or any legislative</p>

provisions substituted for such laws, and all orders, local laws, planning schemes, by-laws, regulations and other statutory instruments issued under those laws;

- (i) use of the words “includes” or “including” means without limitation, unless the contrary intention appears;
- (j) a reference to any body is:
  - (i) if that body is replaced by another organisation, deemed to refer to that organisation; and
  - (ii) if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body; and
- (k) all dollar amounts specified in this Agreement are in Australian dollars.

## 2. LICENCE

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### 2.1 The Licence and the Term

The Park Owner grants the Licence to the Site Tenant for the Term and at the Site Fee upon and subject to the terms and conditions set out in this Agreement.

### 2.2 Acknowledgement

For the avoidance of doubt the Park Owner and the Site Tenant acknowledge and agree that the Term is not a fixed term and that

this Agreement shall continue until it is terminated as prescribed in this Agreement or in the Act.

## 3. SITE FEE

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### 3.1 Payment of Site Fee

- (a) The Site Tenant must pay the Site Fee to the Park Owner at the times and in the manner specified in Item 7 of Schedule 1.
- (b) The Park Owner must provide the Site Tenant with a written receipt for the amount of the Site Fee paid. The receipt will be provided immediately if payment is made in person and in all other cases, within 5 business days.

### 3.2 Adjustment of Site Fee

The Site Fee shall be increased by the CPI Increase, expressed as a percentage, at the times specified in Item 8 of Schedule 1.

### 3.3 Adjustment of Site Fee – Market

Despite any other provision of this Agreement the Park Owner may, in any year, elect not to increase the Site Fee by the CPI Increase and propose an alternate increased Site Fee. To avoid doubt it is acknowledged that if the Park Owner exercises its right under this clause 3.3 the proposal applies only for that year and on subsequent Site Fee Review Dates the Site Fee shall be increased by the CPI Increase unless a further proposal is made by the Park Owner under this clause 3.3.

### 3.4 Section 206V Notice

The Park Owner must give a Section 206V Notice to the Site Tenant on each occasion on which the Site Fee is to be adjusted

irrespective of the manner of the adjustment.

(c) not do anything in or near the Park Home, the Site or the Park which interferes with:

#### 4. **SITE TENANT'S OBLIGATIONS**

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##### 4.1 **Services**

(a) The Site Tenant must, to the extent permitted by law, pay the Additional Fees to the Park Owner as specified in Schedule 2.

(b) The amount of the Additional Fees payable as at the date of this Agreement, the purpose for which the additional fees are charged and the basis of and circumstances in which the Additional Fees are calculated, adjusted and reviewed are all set out in Schedule 2.

(i) the privacy and peace and quiet of other occupants of the Park; or

(ii) the proper use and enjoyment of the park by other occupants of the Park.

(d) keep the Site clean and tidy;

(e) maintain the Site and the Park Home in a manner and condition that do not detract from the general standard of the Park as set by the Park Owner from time to time;

##### 4.2 **Rates, Charges and Taxes**

The Site Tenant acknowledges that if at any time the Site is separately charged rated or taxed by any local government, statutory or other authority having jurisdiction over the Site, then such rates taxes or charges shall be paid by the Site Tenant as and when due. Where applicable, there will be an equitable adjustment to the Site Fee if there is a corresponding reduction in the rates charges and taxes incurred charged or assessed in respect to the Park.

(f) not erect any structure (other than the Park Home) on the Site or in the Park without the prior written consent of the Park Owner.

(g) notify the Park Owner of any damage caused to the Site or any Common Area by the Site Tenant, any Occupant or Visitor and, at the option of the Park Owner either:

(a) promptly repair the damage; or

(b) pay compensation for the damage to the Park Owner.

##### 4.3 **Site Tenant's use of Site**

The Site Tenant must at all times:

(a) use the Site for residential purposes only;

(b) use the Site and the Common Area properly and for the purposes for which they are designed;

(h) promptly report to the Park Owner any damage to, or breakdown of, facilities within the Common Area of which the Site Tenant has knowledge;



- (i) not allow more than the number of persons specified in Item 10 Schedule 1 to reside on the Site;
- (j) at all times observe the Parks Rules.

that would, if it had been an act or omission by the Site Tenant, have constituted a breach of this Agreement.

- (b) Paragraph (a) of this clause does not extend to a person who is lawfully on the Site and whose authority to be on the Site does not derive from the permission, express or implied, of the Site Tenant.

**4.4 Park Owner’s right of entry**

- (a) The Park Owner may enter the Site:
  - (i) with the agreement of the Site Tenant given at the time entry is sought;
  - (ii) if there is an emergency and immediate entry is necessary to save life or valuable property; or
  - (iii) if the Tribunal has made an abandonment order under Section 317W of the Act;
  - (iv) at any time between 8am and 6pm on any day (except a public holiday) for a Prescribed Purpose provided at least 24 hours notice has been given to the Site Tenant.

**4.6 Assignment and sub-letting**

- (a) The Site Tenant must not assign the Site Tenant’s interest under this Agreement without the prior written consent of the Park Owner, which the Park Owner must not unreasonably withhold.
- (b) The Site Tenant must not sub-let the whole or any part of the Site without the Park Owner’s written consent, which the Park Owner must not unreasonably withhold.
- (c) For the avoidance of doubt it is agreed that it shall not be an unreasonable withholding of consent to an assignment or a sub-letting for the Park Owner to require, as a condition of providing consent, the Site Tenant to pay all outstanding Site Fees and other charges due under this Agreement.

**4.5 Vicarious responsibility of Site Tenant for breach by other persons lawfully on Site**

- (a) Where a person other than the Site Tenant is lawfully on the Site, the Site Tenant is vicariously responsible for any act or omission by that person

**4.7 Occupants and visitors**

The Site Tenant agrees that:

- (a) the persons who may occupy the Site or Park Home in addition to the

- Site Tenant during the Term are the Occupants;
- (b) only the Site Tenant and the Occupants named in Item 10 of Schedule 1 may permanently occupy the Park Home;
- (c) any other person who enters onto the Park to visit the Site Tenant or the Occupants is a visitor;
- (d) the Site Tenant must pay to the Park Owner Visitor Fees payable in the Park from time to time;
- (e) visitors may not stay on the Site or in the Park Home for longer than the period set out in Item 9.2 of Schedule 1;
- (f) no more than the number of visitors specified in Item 9.1 of Schedule 1 may stay at the Site or in the Park Home at any time;
- (g) all Occupants and visitors must be accommodated in the Park Home. At no time is any person permitted to camp on the Site;
- (h) the Site Tenant must not require a visitor to pay any fee for staying on the Site or in the Park Home; and
- (i) no visitor may occupy the Site or Park Home in the absence of the Site Tenant without the permission of the Park Owner who may in the Park Owner's absolute discretion, charge an additional fee.

#### 4.8 **Personal occupancy**

The Site Tenant must:

- (a) personally occupy the Park Home on the Site and not use the same for any purpose other than residential accommodation; and
- (b) not part with possession of the Park Home except with the Park Owner's permission.

#### 4.9 **Pets**

The Site Tenant must not to keep or care for any pets, poultry or animals on the Site or the Park, except as permitted by the Park Rules and with the Park Owners prior written approval.

#### 4.10 **Vehicles**

The Site Tenant must:

- (a) not use any Vehicle in the Park in a way that is dangerous to any other person or property;
- (b) not allow any Motor Vehicle owned by or in the custody or control of the Site Tenant, Occupants or visitors to be:
  - (i) driven at a speed in excess of 10 kph on the Park;
  - (ii) used by an unlicensed driver on the Park;
  - (iii) used for joy riding on the Park;
  - (iv) repaired or maintained on the Park except in any area defined by the Park Owner for that purpose; and

- (v) driven on the Park if it is unregistered;
- (c) not keep or use more than the number of Vehicles as set out in the Schedule on the Site or Park; and
- (d) remove from the Park any Motor Vehicle which the Park Owner reasonably considers makes excessive noise, or modify it so that it ceases to make excessive noise, to the satisfaction of the Park Owner within seven (7) days of receiving notice to do so from the Park Owner; and
- (e) not park or store any Vehicle in the Park other than in areas set aside for that purpose and then only with the consent of the Park Owner.

reinstatement value of the Park Home for damage by fire water impact or other extraneous peril reasonably required by the Park Owner; and

- (b) provide the Park Owner upon request (which must not be made more than once in any calendar year, with a certificate of currency of the insurance policy required by this clause.

**4.13 Fire Safety Equipment and Access**

The Site Tenant must, at the cost of the Site Tenant, at all times observe all fire safety requirements imposed by any Fire Authority or by law so far as they relate to the Park Home including, without limitation -

- (a) the installation in the Park Home of smoke alarms, a fire extinguisher and a fire blanket; and
- (b) the maintenance of clear access between the Park Home and the boundaries of the Site for fire fighter access.

**4.11 Deliver up**

At the end or sooner termination of the Term, the Site Tenant must, unless the Site Tenant has sold the Park Home and the Park Owner has agreed to the Site Tenant's interest under this agreement being assigned to the Purchaser of the Park Home, remove all of the Site Tenant's property (including without limitation the Park Home) from the Site and leave the Site in a clean and tidy condition with the connection points to all services properly capped or terminated.

**4.12 Indemnity and Insurance**

The Site Tenant indemnifies the Park Owner against liability for damage, loss or injury that may occur as a result of the Site Tenant's occupation of the Site and must:

- (a) take out and maintain an insurance policy for the full

**5. PARK OWNER'S OBLIGATIONS**

**5.1 Park Owner's General Duties**

The Park Owner must at all times:

- (a) provide 24 hour vehicular access to the Park and to the Site;
- (b) provide the Site Tenant with access during all reasonable hours to the Common Area which the Site Tenant is entitled to access under the terms of this Agreement;

- (c) not unreasonably restrict or interfere with the privacy peace and quiet or proper use and enjoyment of the Park Home, the Site and the Common Area by the Site Tenant;
- (d) not unreasonably restrict or interfere with the Site Tenant's occupation of the Park Home.
- (e) keep the Common Area, facilities gardens roadways paths and recreation areas in the Park clean and in a safe condition;
- (f) arrange for the collection of garbage from the Park;
- (g) maintain repair and keep clean and tidy all communal bathrooms toilets laundries and other communal facilities in the Park;
- (h) when repairing or renovating communal facilities minimise inconvenience and disruption to site tenants and, if necessary, provide temporary substitute facilities.

**5.2 Park Owner's responsibility for cleanliness and repairs**

The Park Owner must:

- (a) provide the Site in a reasonable state of repair and cleanliness;
- (b) comply with all requirements in respect of buildings, health and safety under the Act, the Regulations and any other written law in so far as they apply to the Site.

**5.3 Access**

The Park Owner must provide, for a reasonable fee payable by the Site Tenant, an access key or access card to the Park for each vehicle specified in Item 10 of Schedule 1.

**6. SALE OF PARK HOME**

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**6.1 Appointment of Park Owner**

If the Site Tenant wants to sell the Park Home, the Site Tenant may, but is not obliged to, request that the Park Owner enter into an agreement to sell the Park Home on behalf of the Site Tenant.

**6.2 Site Tenant May Engage Agent**

The Site Tenant may engage an Agent to assist the Site Tenant in the sale of the Park Home. The Agent shall be entitled to reasonable access to the Park for the purposes of selling the Park Home but must report to the office at the Park on each occasion when access is required.

**6.3 Commission**

Any agreement entered into pursuant to clause 6 shall provide for the Site Tenant to pay the Park Owner a commission on the sale calculated in accordance with Item 12 of Schedule 1.

**6.4 For Sale Signs**

Irrespective of who is engaged by the Site Tenant to sell the Park Home, neither the Site Tenant nor anyone engaged by the Site Tenant, shall place a "for sale" sign or the like on the Site other than one sign which has first been approved by the Park Owner, located inside the Park Home.

6.5 **Outstanding Site Fees and Other Charges**

The Park Owner is authorised to deduct from the proceeds of the sale of the Park Home all outstanding Site Fees and other charges owing by the Site Tenant under this Agreement.

Legal Personal Representative, remove the Park Home from the Park by the LPR Removal Date and leave the Site in a clean and tidy condition; and

- (e) all outstanding Site Fees and other charges due under this Agreement must be paid to the Park Owner before the Park Home may be removed from the Park.

7. **DEATH OF THE SITE TENANT**

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7.1 **Rights Personal**

The Site Tenant’s Rights are personal to the Site Tenant or, if more then one, the survivor thereof.

7.2 **Death of Site Tenant**

Upon the death of the Site Tenant or the survivor thereof –

- (a) the Site Fee shall continue to accrue for as long as the Park Home remains on the Site.
- (b) neither the Legal Personal Representative nor any beneficiary of the estate of the Site Tenant has any right to reside in the Park or to enjoy the Site Tenant’s Rights;
- (c) the Legal Personal Representative shall be permitted to sell the Park Home to remain on the Site to an Approved Purchaser or, alternatively, to transfer ownership of the Park Home to an Approved Beneficiary to remain on the Site;
- (d) if by the Park Home Sale Date the Park Home has been neither sold nor transferred in accordance with paragraph (c) of this clause 7.2, the Legal Personal Representative must, at the cost of the

8. **TERMINATION**

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8.1 **Right to Terminate**

The rights of the Parties to terminate this Agreement are limited to those prescribed in the Act.

8.2 **Form of notice of termination.**

Notice of termination of this Agreement by either party must be in the form prescribed by the Act or the Regulations.

8.3 **Notice of termination by Park Owner without reason.**

The Act provides that the Park Owner may give notice of termination of this Agreement to the Site Tenant without specifying any reason for the termination ALWAYS PROVIDED THAT the period of notice must be not less than 365 days.

9. **MISCELLANEOUS PROVISIONS**

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9.1 **Additional terms**

Additional terms may be included in this Agreement, if:

- (a) both the Park Owner and Site Tenant agree to the terms;
- (b) they do not conflict with the Act or any other Government Act; and
- (c) they do not conflict with the other terms of this Agreement.

the Park Owner under this Agreement.

**9.2 Variation**

- (a) Subject to the Act, this Agreement, except as amended in writing and signed by both the Park Owner and the Site Tenant, comprises the whole Agreement between the Park Owner and the Site Tenant.
- (b) Neither the Site Tenant nor the Park Owner is entitled to rely on any oral representation or any implied condition, except as provided by statute, in determining the respective rights and obligations of both the Site Tenant and

**9.3 Legislation**

Nothing in this agreement affects in any way the operation of the Act or the Regulations.

**9.4 Special terms and conditions**

The parties agree to the special terms and conditions (if any) specified in Item 11 of Schedule 1.

**9.5 No interest in Land**

By this Agreement the Park Owner grants a licence to the Site Tenant to occupy the Site. This Agreement does not create, and must not be construed as creating, a relationship of landlord and tenant between the parties nor does it confer upon the Site Tenant any interest in or charge on the Land. For the avoidance of doubt it is acknowledged that the Site Tenant has no right to lodge a caveat on the title to the Land.

**Executed** by the parties as an Agreement:

**Signed** for and on behalf of the Park Owner )  
In the presence of: )

\_\_\_\_\_  
Witness Park Owner

\_\_\_\_\_  
Name (please print) Name (please print)

**Signed** by )  
in the presence of: )

\_\_\_\_\_  
Witness Site Tenant

\_\_\_\_\_  
Name (please print) Name (please print)

