

AGREEMENT BETWEEN

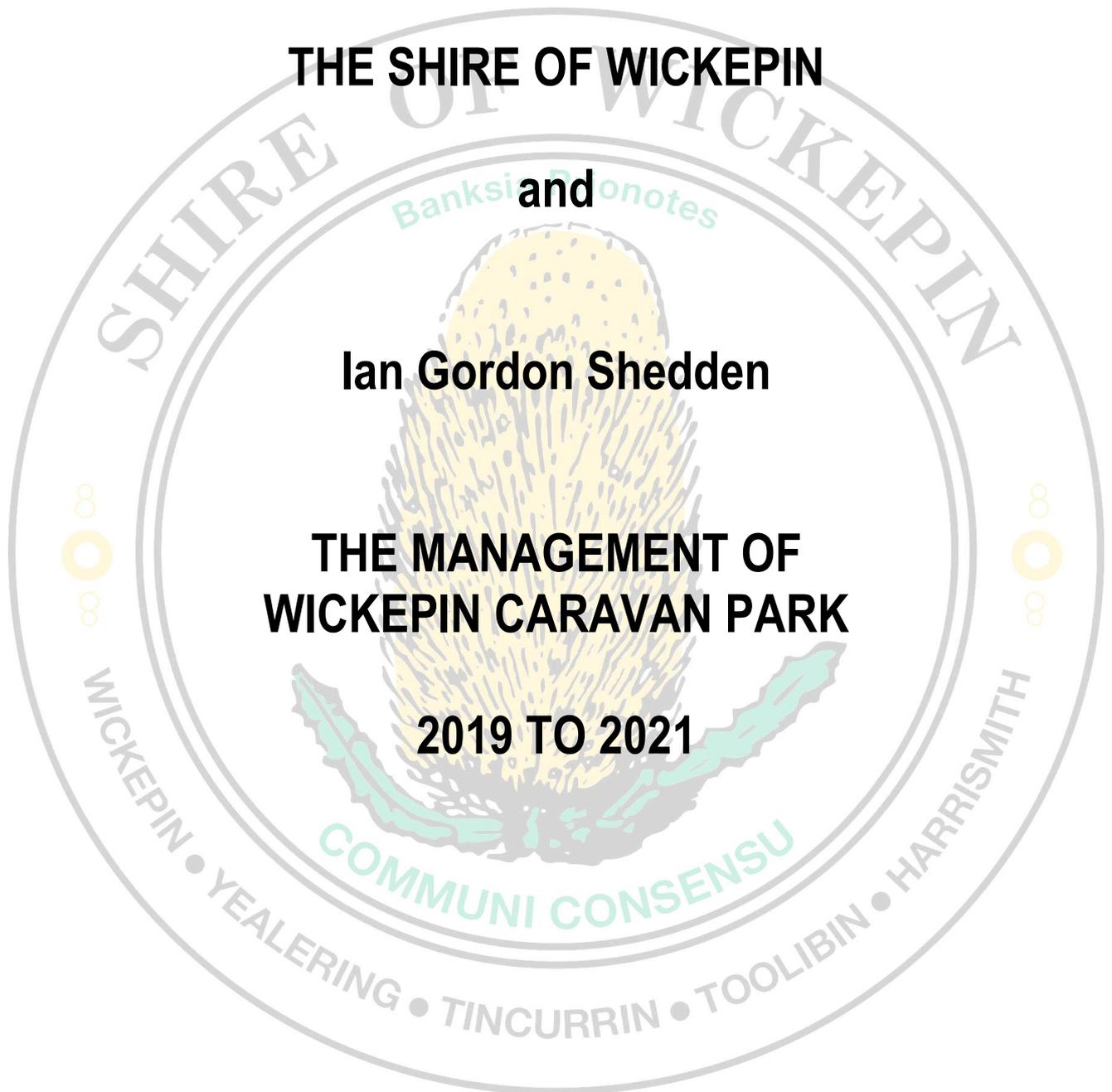
THE SHIRE OF WICKEPIN

and

Ian Gordon Shedden

**THE MANAGEMENT OF
WICKEPIN CARAVAN PARK**

2019 TO 2021



AGREEMENT

AGREEMENT DATED 1st September 2019

BETWEEN SHIRE OF WICKEPIN of Post Office Box 19, Wickepin, Western Australia, 6370 ('**the Shire**')

AND Ian Gordon Shedden of 62 Dumbleyung Road Wickepin, Western Australia 6370

RECITALS

A. The Shire has appointed the Managers to provide management and caretaking services for the Wickepin Shire public caravan park.

DEFINITIONS AND INTERPRETATION

1.1 Definitions

"Agreement" means this Agreement, and includes the Schedule;

"Shire" means the Chief Executive Officer of the Shire of Wickepin or authorised delegate; -

"Managers" means Ian Shedden of 62 Dumbleyung Road Wickepin, Western Australia 6370

"Park" means the Wickepin Shire caravan park located on Wogolin Road, Wickepin, Western Australia 6370 and includes all buildings, transportable accommodation, facilities and grounds within the park boundary;

"Party" means a party to this Agreement and **"Parties"** has a corresponding meaning; and

"Term" means the term of this Agreement as specified in Item 1 of the Schedule.

1.2 Interpretation

- (a) A reference to legislation includes that legislation as amended, re-enacted or replaced and any subordinate legislation issued under it.
- (b) Headings of parts and clauses of this Agreement are for reference only and do not affect the interpretation of this Agreement.
- (c) Any agreement, representation, warranty or indemnity by two or more persons (including where two or more persons are included in the same defined term) binds them jointly and severally.
- (d) Any agreement, representation, warranty or indemnity in favour of two or more persons (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally.
- (e) A singular word includes the plural and vice versa.
- (f) If an example is given of anything (including a right, obligation or concept) and includes something else, the example does not limit the scope of that thing.

MANAGERS'S OBLIGATIONS

2.1 Engagement and Term

The Shire HEREBY ENGAGES the Managers to manage and caretake the Park and perform the obligations contained in this Agreement for the Term.

2.2 Park amenity block

The Managers shall ensure:

- (a) male and female toilet and shower areas are inspected and cleaned at least once daily;
- (b) Park laundry is inspected and cleaned at least once daily;
- (c) Park washing machine is in good working order at all times; and
- (d) any mechanical, electrical and/or structural faults within the Park are reported to the Shire immediately.

2.3 Maintenance of Park grounds and buildings

The Managers shall ensure:

- (a) Park lawns are mowed and maintained in a neat and tidy state at all times;
- (b) Park gardens are maintained in a neat and tidy state at all times;
- (c) Park barbeque and barbeque table are inspected and cleaned at least once weekly;
- (d) all routine and general maintenance of plant, equipment and buildings in the Park is undertaken; and
- (e) any maintenance items requiring specialist contract assistance, including plumbing, electrical or carpentry, are reported to the Shire.

2.4 Transportable accommodation

The Managers shall ensure:

- (a) each transportable accommodation unit is inspected, cleaned and re-stocked after final check-out of the occupier;
- (b) linen used in each transportable accommodation unit is laundered and replaced upon final check-out of the occupier;
- (c) in the event of medium to longer term rentals of a transportable accommodation unit, that suitable arrangements for cleaning and linen be made between the Managers and the occupant;
- (d) each transportable accommodation unit is inspected and cleaned at least once weekly if unoccupied; and

- (e) any mechanical, electrical and/or structural faults within the transportable accommodation units are reported to the Shire immediately.

2.5 General Park amenity

The Managers shall ensure:

- (a) no dogs wander unattended around the Park grounds at any time;
- (b) no large animals are kept on the Park in accordance with the Wickepin Shire Council's *Health Local Laws 2008*;
- (c) noise within the Park is kept to a minimum after 9.00pm; and
- (d) Park grounds are kept and maintained for public use only, with the exception of parking of Managers personal and work vehicles.

2.6 Administration

The Managers shall:

- (a) ensure bookings for the caravan park and transportable accommodation unit are taken and recorded at the Park in a timely and efficient manner;
- (b) collect and safeguard all monies from fees and charges with respect to the Park;
- (c) deliver all monies collected from the Park weekly to the offices of the Shire in accordance with the procedure specified from time to time by the Shire; and
- (d) deliver to the Shire a written record of the number of persons accommodated at the Park monthly.

2.7 Instructions of Shire

The Managers shall comply with any reasonable directions given by the Shire from time to time that the Shire and/or Wickepin Shire Council considers necessary or convenient for the proper management, administration or operation of the Park.

2.8 Manager's insurance

- (a) The Managers must effect and keep in force throughout the Term of the Agreement public risk/liability insurance for the management of the Park.
- (b) Upon written request, the Managers must provide to the Shire a certificate of currency or a copy of the current public risk/liability insurance policy.

2.9 No assignment, subcontracting or delegation

- (a) The Managers is not the agent of the Shire and shall not enter into any contract or do any act that is binding upon the Shire.

- (b) The Managers must not assign, sub-contract, transfer or delegate any of its rights or the performance of any duty or obligation in this Agreement to any person without the prior written consent of the Shire.
- (c) Any consent given by the Shire to any assignment, sub-contract, transfer or delegation of this Agreement does not relieve the Managers from the obligations in or liabilities arising from this Agreement and in all respects the Managers shall remain obliged and liable for:
 - (i) the performance of this Agreement; and
 - (ii) the acts and/or omissions of any assignee, sub-contractor, transferee or delegate.

2.10 Indemnity

The Managers indemnifies and agrees to keep indemnified the Shire from and against all actions, claims, proceedings or demands which may be brought against the Shire in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) which arises by reason of any breach of warranty, default, act or omission or any negligence by the Managers or by any assignee, sub-contractor, transferee or delegate of the Managers.

REMUNERATION

3.1 The Shire shall provide remuneration to the Managers as specified in Item 2 of the Schedule.

THE SHIRE'S OBLIGATIONS

4.1 Maintenance costs of the Park

- (a) The Shire shall arrange payment for stores, materials and parts required to maintain the Park under this Agreement, including but not limited to maintenance undertaken pursuant to clauses 2.2, 2.3, 2.4, 2.5, 2.6 and 2.7.
- (b) The Shire shall carry out any major or preventative maintenance the Shire considers necessary at its own cost.

4.2 Water, electricity, gas and telephone expenses

- (a) The Shire shall pay for all water, electricity and gas charges incurred by the Park.
- (b) The Shire shall pay an allowance of \$20 per month for the use of a private phone.

4.3 The Shire's insurance

The Shire shall effect and keep in force throughout the Term a property, contents and public liability insurance policy for the Park and all equipment at the Park that is owned by The Shire.

TERMINATION AND DISPUTE RESOLUTION

5.1 Termination by agreement

Either Party may terminate this Agreement for any reason by giving three (3) months written notice to the other Party and, in that event, the Agreement terminates upon expiration of that period.

5.2 Automatic termination

Upon:

- (a) death of the Managers;
- (b) the inability of the Managers to perform the obligations under this Agreement for any reason for a continuous period of 21 days or more, unless otherwise agreed to in writing by the Shire; or
- (c) the Park being destroyed or substantially damaged so as to require rebuilding or reconstruction of the Park,

then the Agreement is terminated.

5.3 Termination on default

If:

- (a) the Managers defaults in the observance or performance of any term or condition of this Agreement; and
- (b) the Managers fails to remedy the default (if it is capable of remedy) within seven (7) days of the Shire giving notice in writing to the Managers specifying the default and requiring the default to be remedied;

then the Shire may:

- (i) enter the Park and undertake any works, repairs or maintenance that are required to be done under this Agreement by the Managers;
- (ii) refer the matter to arbitration pursuant to clause 5.6; or
- (iii) by notice in writing given to the Managers terminate the contract, without prejudice to any other powers, rights, authorities or remedies against the Managers under the Agreement or otherwise.

5.4 Discretion to terminate

If, in the opinion of the Shire, the Managers:

- (a) is unable by reason of illness or any other cause to act as Managers of the Park and manage and administer the Park for any extended period not less than 21 days;
- (b) is guilty of any personal misconduct that would detract from the Managers ability to properly and adequately discharge the duties and obligations under this Agreement; or
- (c) is guilty of any personal misconduct that would discourage members of the public from utilising the Park as a public facility,

then the Shire may give notice in writing to the Managers terminating this Agreement within seven (7) days of receipt of the notice by the Managers, and in that event, the Agreement terminates upon expiration of that period.

5.5 Retention of rights and remedies upon termination

The Shire retains its rights and remedies with respect to any breach of any term and/or condition of the Agreement prior to termination of the Agreement.

5.6 Arbitration

- (a) Notice of any dispute or disagreement arising out of or in connection with this Agreement must be given in writing by the Party claiming that a dispute has arisen to the other Party to this Agreement specifying the nature of the dispute.
- (b) Upon receipt of the notice of dispute, the Parties must attempt to agree upon an appropriate procedure for resolving the dispute.
- (c) If within seven (7) days of receipt of the notice of dispute the dispute is not resolved or an appropriate alternative dispute resolution process is not agreed, then the Parties shall refer the dispute to a single arbitrator agreed upon by the parties in writing to be determined in accordance with the *Commercial Arbitration Act 1985 (WA)*, or if he is unable or unwilling to act, or failing agreement, by a single arbitrator nominated at the request of either Party by the President of the Law Society of Western Australia Inc.
- (d) For the purposes of the *Commercial Arbitration Act 1985 (WA)*, each Party may appear before the arbitrator personally or where the Party is a body, whether corporate or unincorporated, by an officer, employee or agent of the body and each Party may be represented by a duly qualified legal practitioner or other representative.
- (e) The arbitrator shall determine the dispute between the Parties and any award made by the arbitrator shall be final and binding upon the Parties.
- (f) If any dispute or disagreement relating to this Agreement is referred to arbitration then the costs of that arbitration shall be borne equally between the Parties unless otherwise determined by the arbitrator.
- (g) If any dispute or disagreement relating to this Agreement is referred to arbitration the Agreement shall continue to be in force.
- (h) It is a condition precedent to the right of either Party to commence litigation, other than for interlocutory relief that it has first offered to submit the dispute to arbitration.

5.7 Transfer after termination

Upon termination of this Agreement, the Managers shall transfer the management and caretaking of the Park promptly, peacefully and in an orderly and timely manner to the Shire or to its successor, including vacating the Managers residence at 7 Fisher Street, Wickiepin, Western Australia 6370.

5.8 No compensation after termination

Unless the Shire resolves in writing, no damages or compensation are payable to the Managers upon termination of this Agreement.

GENERAL

6.1 Notices

- (a) Any notice to be given or served by one Party upon the other pursuant to this Agreement must be in writing and shall be sufficiently given:
 - (i) if delivered personally to or left at the address of the Party appearing in this Agreement;
 - (ii) in the case of the Managers, if delivered to or left at the Park during normal business hours (8.30am to 5.00pm); or
 - (ii) if sent by prepaid post addressed to that Party at the address appearing in this Agreement.
- (b) Any notice, demand or document sent by prepaid post shall be deemed to have been received forty eight (48) hours after posting.

6.2 Relationship of parties

- (a) The Parties acknowledge that the relationship between them is not that of employer and employee, nor principal and agent, nor any other relationship whatsoever.
- (b) The parties acknowledge that:
 - (i) the Shire shall not deduct any income taxation from the remuneration in Item 2 of the Schedule, and it is the responsibility of the Managers to pay all such taxes as are appropriate;
 - (ii) the Shire shall not pay any superannuation in relation to the Managers management and caretaking of the Park;
 - (iii) the Shire shall not pay any worker's compensation in relation to the Managers management and caretaking of the Park; and
 - (iv) the Managers shall not be entitled to any holiday pay, long service leave, sickness benefits nor any other benefit arising under any statute or industrial award or agreement that may be conferred upon persons who are employees.

6.3 Waiver

- (a) A waiver of any term or condition of this Agreement must be in writing.
- (b) A waiver of a term or condition of this Agreement shall not operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.
- (c) If a Party does not exercise (or delays in exercising) any of its rights under this Agreement, that failure or delay does not operate as a waiver of those rights.
- (d) A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.

6.4 Severability

In the event of any one or more of the provisions of this Agreement being held to be prohibited, invalid or unenforceable for any reason, the remainder of the Agreement shall remain binding and in full force and effect.

EXECUTED as an Agreement

THE COMMON SEAL of
SHIRE OF WICKEPIN
was hereunto affixed
in the presence of:

Chief Executive Officer

Shire President

Mark J Hook
Print Name

Banksia Prionoxanthus

Julie A Russell
Print Name

in the presence of:

Witness:

Print Name:

Address:

Occupation:

SIGNED by

Caretaker

Print Name:

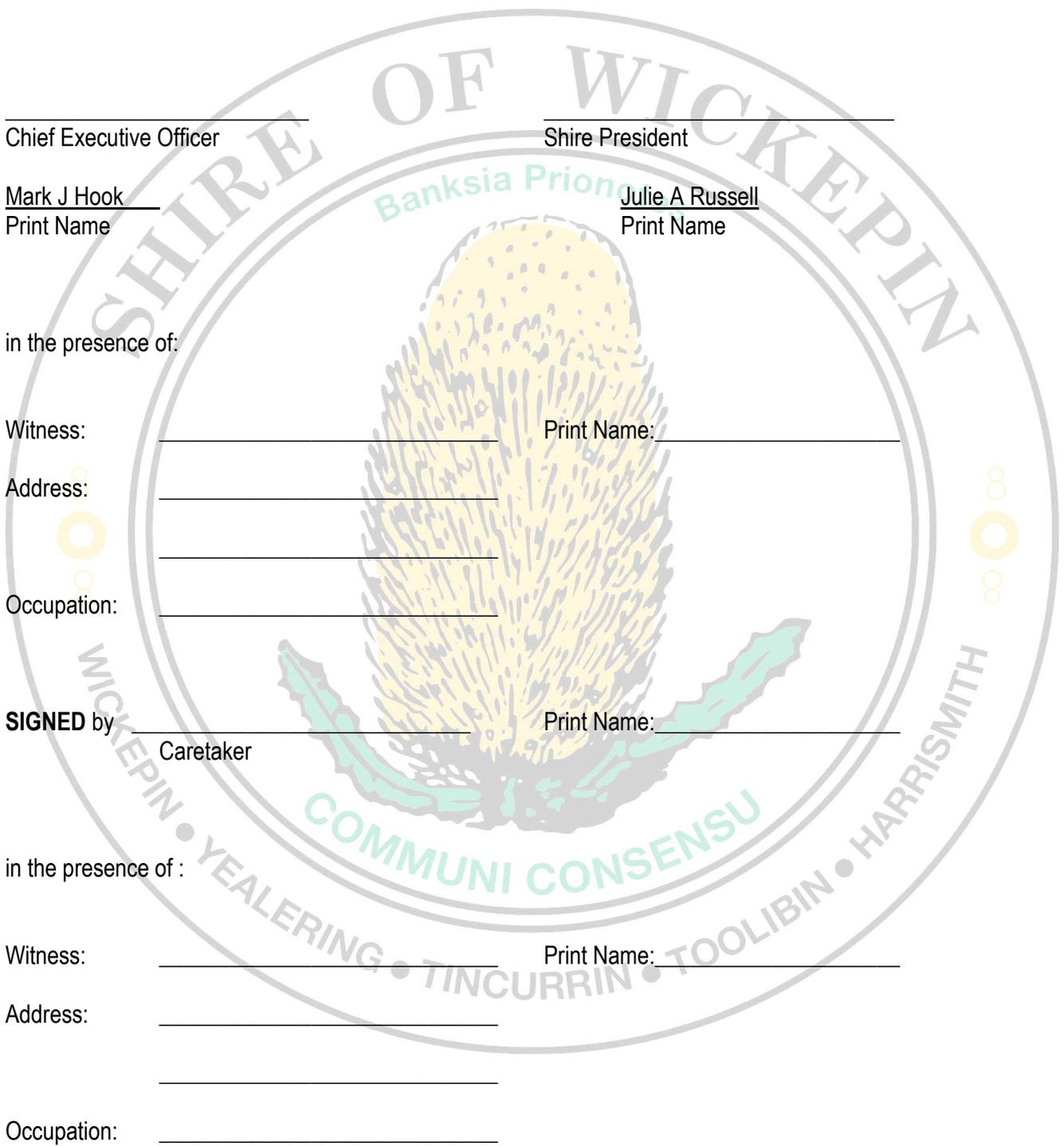
in the presence of :

Witness:

Print Name:

Address:

Occupation:



SCHEDULE

Item 1 - Term – Two Years

1 September 2019 to 30 June 2021

Item 2- Remuneration

- (a) a sum equal to 15% of the gross takings of all paid bookings at the Park, payable monthly;
- (b) The Shire shall pay a sum of \$20 per month for telephone calls made relating to the management and caretaking of the Park in accordance with section 4.2(c), payable monthly.
- (c) Reimbursement of the Cost of Public Liability Insurance for \$15,000,000 up to the amount of \$1,800

Manager's insurance

The Managers must effect and keep in force throughout the Term of the Agreement public risk/liability insurance for the management of the Park.

Upon written request, the Managers must provide to the Shire a certificate of currency or a copy of the current public risk/liability insurance policy.

