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AGREEMENT NO. 2182

AGREEMENT TO THE OCCUPANCY OF GIRALIA HOMESTEAD

This agreement is made the day of 2004

BETWEEN

the EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT (CALM) a body corporate constituted by the Conservation and Land Management Act 1984 of 17 Dick Perry Avenue, Kensington, in the State of Western Australia (hereinafter called “the Executive Director”) of the one part

AND

DENVER FRANK BLAKE, DENVER HAROLD BLAKE AND NATHAN ROBERTSON BLAKE of care of Giralia Station, in the said State (hereinafter called the “Occupier”).

WHEREAS

- (i) the Executive Director is desirous that Giralia homestead (and home paddock) (hereinafter referred to as the “facility”) be let on his behalf and the Occupier has accepted a proposal to occupy the facility subject to the covenants, agreements and stipulations hereinafter contained.
- (ii) the Occupier is desirous to manage the facility for the provision to the public of tourism services including the provision of accommodation, meals and such retail sales as may be necessary and the Executive Director agrees to such proposal.

AND WHEREAS

the parties are desirous of placing in writing the terms of an agreement and confirming the granting thereof.

1. This agreement commences on FIRST day of DECEMBER 2003 and expires on THIRTIETH day of NOVEMBER 2005 and replaces all previous agreements between the Executive Director and the Occupier of the facility.
2. Subject to the Occupier complying in all respects with the covenants and provisions of this Agreement the Executive Director grants unto the Occupier the right to occupy the facility.
3. The Executive Director hereby covenants with the Occupier:
 - (a) to allow the Occupier to occupy the facility rent free, from the FIRST day of DECEMBER 2003 to the THIRTIETH day of NOVEMBER 2005 and if the Agreement is extended under the provision of clause 3 (f), then at an annual rent as prescribed by the Executive Director.
 - (b) to provide the Occupier with access to the facility so as to enable them to provide the services specified in this agreement;
 - (c) to pay all costs for travel and accommodation undertaken by the Occupier up to the level of the currently prescribed Public Service rates incurred in attending approved training;
 - (d) to be responsible for the insurance of the facility and fixed improvements on the lease property as listed in the attached schedule;
 - (e) to enter the facility in the following circumstances:

- a. with the consent of the Occupier given at, or immediately before, the time of entry;
 - b. in any case of emergency;
 - c. for the purpose of inspecting the facility or any other purpose on a day and at a reasonable hour specified in a notice given to the Occupier between seven and fourteen days in advance;
 - d. for the purpose of carrying out necessary repairs to or maintenance of the facility, at any reasonable hour, after giving to the Occupier not less than seventy-two hours notice.
- (f) the Occupier has the option to enter into a new Agreement for an additional period of 5 years, but only if:
- (1) the Occupier notifies the Executive Director in writing that the Occupier wants to extend this Agreement for that period at least 3 months before the Expiry Date (but not earlier than 6 months before that date);
 - (2) the Occupier is not in default under this Agreement as extended when the option is exercised; and
 - (3) the Occupier has submitted to the Executive Director financial statements relating to the tourism services conducted during the previous term.

4. The Occupier hereby covenant with the Executive Director:

- (a) to bear the cost of all rates, taxes (including any Goods and Services Tax) or charges imposed in respect of the premises under any written law under which a rate, tax or charge is imposed;
- (b) the Occupier must pay or reimburse the Executive Director on request for all stamp duty and fees (including fines and penalties attributable to the Occupier) payable in connection with this Facility;
- (c) to arrange to the satisfaction of the Executive Director's representative for temporary caretaker staff to maintain the facility during extended periods of

- absence (greater than 5 working days) from the property by the tenant for any purpose;
- (d) to seek approval from the Executive Director's representative prior to purchasing any equipment or making any additions or alterations to any buildings or fixed improvements;
 - (e) to follow design specifications as designated by the Executive Director, his agents or workmen in accordance with the Department and/or Australian Standards specifications and must not make alterations to the design or construction specifications in the construction of the structure or item being constructed or installed;
 - (f) to seek approval from the Executive Director prior to commencing any works other than those identified as part of an approved works program approved by the Executive Director's representative;
 - (g) to be responsible for the minor repair ("**Minor Repair Costs**" means costs of repair which do not exceed 10% of the value of the individual item shown in any assets register maintained by the Executive Director a copy of which shall be provided to the Occupier prior to the commencement of the Term), upkeep and maintenance necessary to make good normal wear and tear to the buildings and fixed improvements listed in the attached Schedule B;
 - (h) to keep the facility in a state of cleanliness and not cause or allow any pollutant or contaminant material or substance over which the Occupier has control to be released into or affect the Facility and shall notify the Executive Director as soon as practicable and no later than three (3) days of any damage to the facility or of any state of disrepair which arises during the term of the occupancy;
 - (i) store or use inflammable or explosive substances at the facility except those normally used for any activity included in Schedule A but then only if they are stored in proper containers and used only in accordance with all relevant laws and the requirements of any Authority;

- (j) to be responsible for and indemnify the Executive Director against any Liability resulting from any loss or damage to property or any injury to or death of any person occurring in the facility or caused by the tenant wherever occurring. This indemnity does not apply to the extent that the liability is contributed to by the Executive Director;
- (k) to maintain with a reputable insurer public liability insurance of at least \$10,000,000 for each incident or event in the facility;
- (l) do or allow anything to be done which could adversely affect any insurance taken out by the Executive Director in connection with the facility or which could increase the cost of obtaining that insurance;
- (m) to undertake not to use the facility or cause or permit the facility to be used for any illegal purpose or cause or permit any nuisance;
- (n) to comply with observe and carry out and conform to the provisions of all statutes (State or Federal) and all subsidiary legislation now or hereafter in force and all requirements and orders of any authority statutory or otherwise which affect the management of the facility;
- (o) to adhere to occupational health and safety guidelines as outlined under the Occupation Health and Safety Act (1984) and Occupational Health and Safety Regulations (1988) in the performance of all duties specified in this agreement;
- (p) to give the Executive Director a minimum of four weeks notice prior to vacating the facility for periods exceeding five (5) working days;
- (q) that in the event that the Occupier wishes to leave the facility permanently, whether by choice or due to circumstances beyond their control, the Occupier must give the Executive Director, at least eight (8) weeks prior notice of their intent;
- (r) the Occupier must move out of the facility and remove all the Occupier's property from the facility by the end of the term of the agreement except that if this agreement is terminated before that date, the Occupier must move out and remove the Occupier's property as soon as reasonably possible (but no longer

than 30 days unless otherwise agreed in writing) after this agreement is terminated;

- (s) the Occupier is deemed to have abandoned any of the Occupier's property that remains at the facility at the end of the agreement and the Occupier's Property will become the property of the Landlord;
- (t) not to allow the sub-lease or let the facility or any part of the facility to a third party;
- (u) subject to Clause 4 (g) to maintain the electrical and domestic water and sewage systems in good working order and in accord with any regulations;
- (v) that any fixed improvements will remain fixed improvements of the facility;
- (w) promptly give the Executive Director a copy of every notice from any Authority received by the Occupier relating to the facility;
- (x) this agreement does not grant to the Occupier any rights to forest produce as defined in the Conservation and Land Management Act and the provisions of Section 96(4) of the Conservation and Land Management Act are hereby expressly excluded;
- (y) If the Occupier engages any employee or contractor to perform any of the Occupier's obligations pursuant to this Agreement then the Occupier shall insure and keep insured each and every one of the employees or contractors engaged by the Occupier for the purpose of this Agreement for the time being for the full amount of the liability of the Occupier and the joint and several liabilities of the Occupier and the Department (if any) to pay compensation under the Workers' Compensation and Rehabilitation Act 1984 and such insurance shall indemnify the Department in respect of any liability under section 175 of the said Act;
- (z) The Occupier shall ensure that each policy of insurance contains a provision that it may not be amended or cancelled unless the Executive Director has been given not less than 10 days prior notice of the proposed amendment or cancellation.

5. The Executive Director and Occupier agree:
- (a) All monies received by the Occupier for the provision of accommodation, food and other retail items shall remain the property of the Occupier absolutely;
 - (b) If any dispute of difference arises between the Executive Director and the Occupier relating to any clause, matter or thing contained in this Agreement or any matter or thing in any way connected to their rights, duties or liabilities of either the Occupier or the Executive Director in every such case the dispute or difference shall be referred to a single arbitrator in accordance with and subject to the provisions of the Commercial Arbitration Act 1985;
 - (c) If either the Executive Director or the Occupier are in breach of any provision of this Agreement then the party not in default may give the party in default written notice of its intention to terminate this Agreement unless the breach or default is remedied within thirty five (35) days;
 - (d) If the breach or default is not remedied within the specified period, the party not in breach may without further notice terminate this Agreement, without prejudice to any of the antecedent rights and remedies of the party not in default pursuant to this Agreement;
 - (e) The cost of this Agreement, including preparation and engrossing of the Agreement and instructing solicitors and stamp duty (if any) shall be shared equally between the Executive Director and the Occupier;
 - (f) To those matters listed on the attached Schedule A that are of specific relevance to the facility and are not mentioned in any part of the above agreement.

IN WITNESS WHEREOF the Common Seal of the Executive Director has been hereunto affixed and the Occupier has hereunto set their hand the day and year first aforesaid.

THE COMMON SEAL of the
EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF CONSERVATION
AND LAND MANAGEMENT was
hereunto affixed in the presence of:

WITNESS

EXECUTIVE DIRECTOR

SIGNED by the said Occupier DENVER FRANK
BLAKE in the presence of:

WITNESS

OCCUPIER

SIGNED by the said Occupier DENVER HAROLD
BLAKE in the presence of:

WITNESS

OCCUPIER

SIGNED by the said Occupier NATHAN
ROBERTSON BLAKE in the presence of:

WITNESS

OCCUPIER

**SCHEDULE 'A' RELATING TO SECTION 5(f) OF THE OCCUPANCY
AGREEMENT**

Operations

The Occupier will not operate plant or equipment unless the appropriate qualification for operation has been attained or, where it is a requirement that accredited training and/or a measure of proficiency must have been undertaken prior to authorised operation of the same plant or equipment, such training must be obtained to manage the facility in accordance with the principle of nature conservation.

Maintenance

Grounds

The Occupier is responsible for the upkeep of the facility which includes maintaining the homestead in an accepted standard of cleanliness, rubbish regularly disposed, lawns and trees watered according to season.

Cottage, Sheds, other buildings

Subject to Clause 4(g) the Occupier is responsible for the routine upkeep of all buildings and structures associated with the facility. Routine upkeep includes actions such as fixing down loose sheets of tin on shed roofs, replacing weakened support posts etc, so as to prevent further deterioration. The Executive Director is to be advised of any major repairs or upgrades requiring the services of a building contractor.

The Executive Director's staff - facilities and access

As property managers, the Executive Director's staff working on Giralia Pastoral Lease / Station (hereinafter referred to as "Giralia") will from time to time, require accommodation in the Shearers Shed at no cost to the Executive Director. The Executive Director will provide the Occupier with a reasonable period of notice when the facility is

required. The Occupier is to ensure the Shearers Shed is maintained in an agreed state of cleanliness and preparedness.

Services

Electricity

Electricity supply is the responsibility of the Occupier. The Occupier is responsible for all routine maintenance of the generator. The Executive Director is responsible for all major repairs or necessary replacements.

Household water supply

The water supply is the responsibility of the Occupier. The Occupier is responsible for routine and minor maintenance. Subject to Clause 4 (g) the Executive Director is responsible for major repairs for which the Executive Director may engage the Occupier on a contract basis.

Household gas supply

The Occupier is responsible for the provision of domestic gas to the facility.

Telephone

The Occupier is responsible for arranging telephone services and routine costs associated with that service.

Insurance

The Occupier is responsible for providing insurance cover for their personal effects, including furniture, tools, vehicles, livestock (horses) and other items as necessary. The Executive Director will not be liable for claims of damage against privately insured personal items.

The Executive Director will maintain insurance cover on all permanent fixtures, including

buildings (homestead, shearing shed, sheds and garages), windmills, generators (diesel and solar) and other replaceable assets.

Keeping of animals and pets

The Occupier is given approval to retain three (3) horses within the fenced horse paddock at the facility for the term of the tenancy. Any increase in the number of horses kept is to be negotiated with the Executive Director.

A limited number of sheep (less than 20) may be kept for private purposes in secure paddocks at the facility.

The Occupier may also keep three (3) pet and working dogs.

Caretaker Services

Visitor advice and emergency services

The Occupier will provide, where necessary, advice to visitors both official and otherwise, of conditions of roads on the property and act as representative of the Executive Director. Visitors will be encouraged to advise the Occupier of their travel plans while on Giralia. In cases of emergency involving visitors, the Occupier will act as the primary contact for search and rescue on Giralia.

Royal Flying Doctor Service (RFDS) medical chest

The Occupier retains responsibility for the administration of the RFDS medical chest, as per established procedures and with advice from RFDS personnel in emergency situations.

Bushfire prevention and control

Fire equipment

The Executive Director will provide fire fighting equipment, in the form of a light attack water tank and pumper unit to be fitted to the Occupier's vehicle. This equipment is to be used for the purpose of protecting life, property and conservation values within the boundary of the property and on neighbouring properties, from the effects of wildfire.

Training

The Executive Director will, where necessary, provide the Occupier approved training including fire training and the operation of plant and equipment to be used in the provision of services as outlined in this agreement.

The Occupier will be reimbursed on the provision of original Tax Invoices for the costs of travel and accommodation up to the level of the currently prescribed Public Service rates incurred when attending approved training;

Contacts

In the event of a wildfire on Giralia, the Occupier will advise the local Department of Conservation and Land Management Office or the local Chief Bushfire Control Officer.

Surveillance

The Occupier agrees to maintain an intimate knowledge of conditions on Giralia with respect to seasonal conditions bushfire potential and provide regular advice to the Executive Director.

Prevention

The Occupier agrees to regularly carry out accepted measures of fire prevention at the facility by regularly keeping the surrounds free of rubbish and dry debris that presents a fire risk.

Response

The Occupier agrees to act as the Executive Directors primary point of contact in the event of a fire on Giralia, although may not be required to attend the fire.

Control

In the event of a fire on Giralia, the Duty Officer at CALM Exmouth will co-ordinate the response to the fire and determine if the Occupier is required to assist in control. The Occupier shall liaise with the duty Chief Bush Fire Control Officer for directions during fire.

Firearms

The Occupier shall only use a firearm for approved purposes with the Executive Director's authorisation, such as feral animal control and for humane purposes. The Occupier shall ensure that all firearms and ammunition are stored in an approved locked cabinet or container that at least meets the specifications as defined in the Firearms Regulations 1974.

Security

The Executive Director will provide the necessary security fixtures on all doors and windows at the facility. The Occupier will be responsible for ensuring the facility is secured during any absence.

Reporting

The Occupier shall act as a representative of the Executive Director while living in the facility and as part of normal day to day activities should maintain a regular level of surveillance around all parts of Giralia to observe and keep records of seasonal conditions, occurrences of domestic and feral animals, unusual occurrences of plants, animals or birds and any unusual or suspicious activity.

Provision for leave

In the event of the Occupier wishing to leave the property for a period in excess of three days in summer, or a week in winter, arrangements to cover their absence needs to be made in consultation with the Executive Director.

Emergency, priority and routine management guidelines

Any fault or damage to the following items are to be made safe by exclusion or removal from the environment and/or repaired or maintained as agreed to in Clause 4 (g) of the Occupancy Agreement. Items that fall within the following categories are to be attended to:

Category 1 (Emergency maintenance)

Items that fall within this criterion are to be attended to within three hours by the Occupier (where appropriate) of the problem being reported. The Executive Director is to be advised as soon as practical and will respond the same day if practical;

Category 2 (Priority maintenance)

Items that fall within this criterion are to be attended to within forty eight hours by the Occupier or the Executive Director, of the problem being reported.

Category 3 (Routine maintenance)

Items that fall within this criterion are to be attended to within 10 calendar days by the Occupier or the Executive Director, of the problem being reported.

CATEGORY 1

The items eligible for **EMERGENCY MAINTENANCE** are as follows:

Electrical

- No power

- Any electric shocks, sparks, etc
- Stove that is completely out of action
- No lights but not applying to security lighting

Gas

- Any gas leaks
- Stove that is completely out of action

Plumbing

- Burst water pipes
- Toilet pan that is completely blocked
- Septic tanks/soak wells that are overflowing and causing a health hazard

CATEGORY 2

The items eligible for **PRIORITY MAINTENANCE** are as follows:

Electrical

- Hot water units which are out of action
- Stoves where two or more parts are not working
- Air conditioners that are out of action

Plumbing

- Blocked waste pipe
- Soak wells that are collapsed, ground subsiding, lids broken or damaged
- Tap washers that are running only not dripping
- Roof that leaks during the wet season
- Cracked or broken ped pan

Carpentry

- Faulty external door locks
- Roof that leaks during the wet season
- Broken window latches

Glazing

- Any external glass that is broken but not cracked

Tree Lopping

- Any dangerous situation posing a threat to person or property.

CATEGORY 3

The items eligible for **ROUTINE MAINTENANCE** are all other items not included in the above categories.

TOURISM OPERATION OF THE FACILITY

The Occupier shall:

During the Term keep and maintain the facility open to all members of the public and provide accommodation, meals and such other merchandise or good as the Occupier deems necessary from time to time.

At his own cost, to maintain and keep current complete book of accounts, including trading and profit and loss accounts, and a balance sheet in a form acceptable to the Executive Director.

No later than six months after the conclusion of each financial year to allow access by a person authorised by the Department to the books of account and will allow them to be audited by and at the cost of the Executive Director.

In the operation of the facility shall keep and maintain all Licenses required for the lawful operation of the facility and shall at all times comply with all relevant laws.

Acknowledge that planning and management of conservation in respect of Giralia is the responsibility of the Executive Director.

Not allow visitor access to any part of Giralia outside of the facility and environs without prior approval of the Executive Director. For the purposes of this clause “environs” refers to an area within a 2 kilometre radius of the facility, and “visitor” includes any employee

or agent or contractor of Government Agency or statutory body and any person seeking access for the purposes of mining or exploration, tourism and scientific research.

In addition to the preceding clause no access shall be given to Giralia for any research and wildlife monitoring without the prior written approval of the Department.

SCHEDULE 'B' RELATING TO SECTION 4(g) OF THE TENANCY AGREEMENT

Those buildings and fixed improvements that the Tenant is responsible for the minor repair, upkeep and maintenance necessary to make good normal wear and tear.

ITEM	DESCRIPTION	CONDITION
	Homestead (Main)	
	The Quad (tourism accommodation)	
	Homestead (Second)	
	Storage shed	
	Shearer's kitchen	
	Fencing - boundary	
	Lighting plant	

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