

DATED 7 JUNE

2012

DEED

BETWEEN

NILPAT PTY LTD (ACN 007 596 590)

AND

ANDREW HALLIDAY TAPLIN

AND

RURAL CITY OF MURRAY BRIDGE

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SETTLEMENT DEED

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BOTTEN LEVINSON  
140 South Terrace  
ADELAIDE SA 5000  
Telephone: 08 8212 9777  
Facsimile: 08 8212 8099

THIS DEED is made the

7<sup>th</sup>

day of

JUNE

2012

**BETWEEN: NILPAT PTY LTD (ACN 007 596 590)**  
of 99 Gouger Street  
Adelaide SA 5000

("Nilpat")

**AND ANDREW HALLIDAY TAPLIN**  
of 50 The Esplanade  
Glenelg South SA 5045

("Taplin")

**AND: RURAL CITY OF MURRAY BRIDGE**  
of 2 Seventh Street  
Murray Bridge SA 5253

("RCMB")

#### RECITALS

- A. RCMB owns the land comprising Allotment 12 in Deposited Plan 20027 in the Hundred of Mobilong at Murray Bridge ("**Allotment 12**").
- B. Nilpat is the lessee of registered lease numbered 2402952 over a portion of Allotment 12 marked "A" on GRO Plan 395 of 1991 ("**Piece A**").
- C. Taplin is the underlessee from Nilpat of registered lease numbered 9306322 of portion of Piece A.
- D. RCMB occupies the portion of Allotment 12 marked "T" on GRO Plan 395 of 1991 ("**Piece T**").
- E. Nilpat and Taplin (collectively referred to as "**the Plaintiffs**") have commenced proceedings in the Supreme Court of South Australia against RCMB in action number 601 of 2011 ("**the Supreme Court proceedings**") and in the Environment Resources and Development Court against RCMB in action number 429 of 2010 ("**the s85 proceedings**") and also in the Environment Resources and Development Court against the Development Assessment Commission and RCMB in action number 156 of 2011 ("**the s86 proceedings**").
- F. The Litigation concerns various acts and activities and access on and over the easterly portion of Piece T adjacent to Piece A as that portion is depicted in Annexure 1 to this deed ("**the Adjacent Area**").
- G. RCMB intends to use piece T (including the Adjacent Area) as part of a public reserve.
- H. The parties have agreed to settle the Litigation and all matters relating to Piece T and the Adjacent Area on the terms set out in this Deed.

## NOW THIS DEED WITNESSES

### INTERPRETATION

1. The parties acknowledge that the matters recited above are true and accurate and agree that they shall form part of the terms of this Deed.
2. In the interpretation of this Deed unless the context shall otherwise require or admit:
  - 2.1 the term "person" shall include a corporate body;
  - 2.2 any term which is defined in the statement of the names and descriptions of the parties or in the recitals shall have the meaning there defined;
  - 2.3 words importing the singular number or plural number shall be deemed to include the plural number and the singular number respectively;
  - 2.4 words importing any gender shall include both genders;
  - 2.5 where two or more persons are bound hereunder to observe or perform any obligation or agreement whether express or implied then they shall be bound jointly and each of them severally;
  - 2.6 references to any Statute or subordinate legislation shall include all statutes and subordinate legislation amending, consolidating or replacing the statute or subordinate legislation referred to;
  - 2.7 The contra proferentem rule will not apply to this document, namely this Deed will not be read against one party merely because that party drafted a provision.
3. Clause headings are provided for reference purposes only and shall not be resorted to in the interpretation of this Deed.

### DEFINITIONS

4. In the interpretation of this Deed unless the contrary intention appears or unless the context otherwise requires, the following expressions have the following meanings:

**"the Litigation"** means the Supreme Court proceedings, the s85 proceedings and the s86 proceedings.

**"Access Area"** means the area marked "access area" on the plan in Annexure 1 of this deed.

**"Access Purpose"** means access to travel between Wilden's Way and Piece A via the Access Area at any time on any day by pedestrian, domestic vehicle, domestic trailer or domestic boat trailer (whether or not carrying a boat), caravan or campervan or any combination of the foregoing but no other vehicle or vehicles.

**"Adverse Action"** means any act or activity caused suffered or permitted by RCMB (or any failure to take action by RCMB) that prevents or substantially impedes or restrains use of the Access Area for an Access Purpose by the Leaseholders or any invitee of the Leaseholders, but does not include

- (a) the installation of lockable demountable bollards (or similar) south of the dwelling on Piece A to which the Leaseholders have been provided with a key, or
- (b) the reasonable care and maintenance of the Adjacent Area by RCMB.

“boat” means any form of domestic recreational water craft and includes jet skis.

“Leaseholders” means the persons from time to time comprising the lessees of registered leases 2402952 and 9306322.

## **SETTLEMENT**

- 5. The parties agree that this deed is intended to settle all matters arising under, in connection with, or incidental to, the Access Area, the Adjacent Area, Piece T and the Litigation.

## **DISCONTINUANCE OF THE LITIGATION**

- 6. The Plaintiffs must within seven days of execution of this deed file and serve notices of discontinuance in respect of each of the proceedings comprising the Litigation, with no order as to costs.
- 7. The obligations and undertakings of RCMB as set out hereafter in this deed are strictly conditional upon the Plaintiffs discontinuing the litigation as required by clause 6 above and will not be binding on RCMB unless and until the litigation is discontinued.

## **DEALINGS WITH LAND**

- 8. RCMB undertakes to -
  - 8.1 notify the Leaseholders no less than 30 days prior to alienating the Access Area by lease or sale;
  - 8.2 require any purchaser of the Access Area to execute a deed of novation in the form contained in Annexure 2, to execute such deed itself, and to provide a copy of that deed of novation so executed to the Leaseholders prior to any transfer of the Adjacent Area; and
  - 8.3 not grant any lease or licence in respect of the Adjacent Area (including the Access Area) which would be inconsistent with the terms of this Deed.
- 9. Upon presentation to the Leaseholders of an copy of the deed of novation executed as contemplated by clause 8.2 the Leaseholders (including any of the Plaintiffs which is a Leaseholder at that time) release RCMB from the Enduring Obligations under this Deed (as that term is defined in the deed of novation) and also release RCMB from all actions, claims or proceedings that they may have against RCMB under the Enduring Obligations relating to any act or omission of RCMB on or after the date of presentation.
- 10. Any Leaseholder may, contemporaneously with transfer of their lease (and not otherwise), novate its rights and obligations under this Deed to the new lessee by (and only by) the deed of novation contained in Annexure 2 except that such deed shall be amended to refer to RCMB as the “Continuing Party” and the Leaseholder as the “Retiring Party”.

11. RCMB must not unreasonably refuse to execute any deed of novation contemplated by clause 10 above.
12. In the event a Leaseholder transfers their lease but does not novate its rights and obligations under this Deed as contemplated by clause 10 above, this Deed will in no way apply as between the new lessee and RCMB.

#### **NO ADVERSE ACTION BY RCMB**

13. RCMB undertakes that it will not take any Adverse Action prior to the lawful determination or termination of registered lease 2402952 ("**the Termination**").
14. In addition to the undertaking in clause 13 and without in anyway limiting that undertaking, but subject to clause 15 below, RCMB further undertakes that it -
  - 14.1 Within 3 calendar months from the date of this Deed (but not before the Plaintiffs comply with clause 16) undertake such works as are necessary to form the Access Area in a manner consistent with the plans and details at Annexure 1.
  - 14.2 Will not (without prior approval from the Leaseholders, which shall not be unreasonably withheld) prior to the Termination remove any delineators installed by RCMB along the Access Area, except in the course of maintenance activities;
  - 14.3 Until the Termination will erect and maintain in good and clearly legible condition a sign in the location depicted on the plan in Annexure 1 that states "KEEP CLEAR - 24 HOUR VEHICLE ACCESS".
  - 14.4 Until the Termination will maintain the Access Area so that it is trafficable for the Access Purpose.
  - 14.5 In the event that RCMB fails to comply with clause 14.4, will not prevent the Leaseholders from undertaking such maintenance of the Access Area as is necessary to render it trafficable for the Access Purpose provided that the Leaseholders first obtain the written consent of RCMB (which consent shall not be unreasonably withheld) and provided that the maintenance works do not result in the Access Area being improved to a standard beyond that shown in the plans and details at Annexure 1. For the avoidance of doubt hard surfacing of the Access Area (whether by way of pavers, bricks, concrete, bitumen or otherwise) is not permitted pursuant to this clause 14.5.
15. The Plaintiffs
  - 15.1 acknowledge that RCMB retains the right to undertake any actions or works in relation to the reasonable care and maintenance of the Adjacent Area, including the Access Area at its discretion;
  - 15.2 warrant that:
    - 15.2.1 they will not cause or permit the Access Area to be used by any one or more of the Plaintiffs or their invitees other than for the Access Purpose;

- 15.2.2 they will not cause nor permit any invitee to erect any barrier or otherwise take any step to prevent public use and enjoyment of the Adjacent Area, including the Access Area;
- 15.2.3 they will not cause nor permit any invitee to use the Access Area or otherwise do anything, contrary to the care and maintenance of the Adjacent Area, including the Access Area;
- 15.2.4 they will not cause nor permit any invitee to use the Access Area or otherwise do anything, contrary to the public safety, use and enjoyment of the Adjacent Area, including the Access Area;
- 15.2.5 they will at all times keep the Access Area clear and trafficable and will not nor permit any invitee to cause any vehicle, trailer, boat, boat trailer or similar to be parked or stand anywhere on the Adjacent Area, (including the Access Area) unless permitted to do so by permit under the Local Government Act 1999 or other lawful authority;
- 15.2.6 at all times, they will not use or cause or permit any invitee to use the Access Area other than with all due care and skill;
- 15.2.7 if in the course of using the Access Area any bollard or similar is moved so as to permit a vehicle (including any trailer) to pass, the Plaintiffs will ensure such bollard is immediately reinstated upon passage of the vehicle, and if such bollard was unlocked, will ensure the bollard is relocked; and
- 15.2.8 in relation to their and their invitees' use of the Access Area they release, indemnify and hold harmless RCMB absolutely, other than in respect of any matter arising from any failure by RCMB to maintain the Access Area in accordance with this deed.

#### **PLAINTIFFS TO REMOVE IRRIGATION SYSTEM**

- 16. Within 30 days of the date of this Deed the Plaintiffs will remove their irrigation system from the Adjacent Area at the Plaintiffs' cost.
- 17. In complying with the above clause, the Plaintiffs must also remove (but may relocate on to Piece A if they wish) the water supply pipe from the River Murray to the building on Piece A laid in the Adjacent Area alongside the boundary of Piece A.

#### **LEASEHOLDERS MAY KEEP STORMWATER DISCHARGE PIPE**

- 18. For the period ending upon the lawful determination or termination of registered lease 2402952, the Leaseholders may continue to keep and maintain the stormwater pipe which conveys and discharges stormwater from the building on Piece A to the Adjacent Area as shown on the plan at Annexure 1 and may continue to use that pipe for such discharge of stormwater.
- 19. During that period, RCMB will not knowingly damage or interfere with such stormwater pipe.
- 20. The parties agree that the presence and use of such stormwater pipe is entirely at the risk of the Leaseholders and that RCMB shall not be liable for any damage to or

interference with the pipe, nor be liable for any loss, damage or injury arising from the presence or use of the pipe.

#### **NO APPLICATION OF SECTION 202**

21. The parties each acknowledge and agree that this Deed and the arrangements given effect to thereby do not constitute a licence to which Section 202 of the *Local Government Act 1999* applies.
22. The parties each undertake not to argue, claim, submit or allege otherwise (including as part of any legal proceedings) and undertake not to cause, suffer or permit any other person to so argue, claim, submit or allege.

#### **NO REGISTRATION OF INTEREST BY PLAINTIFFS EXCEPT IN CERTAIN CIRCUMSTANCES**

23. So long as RCMB does not -
  - 23.1 Breach clause 8 of this Deed; or
  - 23.2 take any Adverse Action where such action remains unremedied 28 days after RCMB being notified in writing by a Leaseholder of such Adverse Action,then the Plaintiffs agree that they will:
  - 23.3 not apply, nor suffer or permit any person to apply, to have any interest in the Adjacent Area registered over the certificate of title to Allotment 12 under the *Real Property Act 1886* or otherwise howsoever; and
  - 23.4 not lodge or seek to maintain, nor cause, suffer or permit any person to lodge or seek to maintain, any caveat over Allotment 12 in respect of any interest in the Adjacent Area.
24. In the event that:
  - 24.1 RCMB takes any Adverse Action and such action remains unremedied 28 days after RCMB being notified in writing by any Leaseholder of such Adverse Action; or
  - 24.2 pursuant to legal action by a person other than the Leaseholders or some person acting to advance the Leaseholders' interests, a Court of competent jurisdiction declares that this Deed or the arrangements given effect to by this Deed constitute a licence to which section 202 of the *Local Government Act 1999* applies or are otherwise invalid,

then the Plaintiffs may register the completed and executed the grant of an easement over the Access Area contained in Annexure 3 and RCMB will consent to the registration of such.

#### **25. EASEMENT TO BE HELD BY PLAINTIFFS' SOLICITORS**

- 25.1 The Plaintiffs agree that:
  - 25.1.1 they will not register the grant of easement in Annexure 3 except in the circumstances contemplated by clause 24 of this Deed;

- 25.1.2 the grant of easement will be provided by RCMB to the Plaintiffs' solicitors only, and only upon those solicitors undertaking to abide by the terms of sub-clauses 25.1.3 to 25.1.5 inclusive;
  - 25.1.3 the solicitors will hold the grant of easement for the Plaintiffs and will not release the grant of easement to the Plaintiffs except where reasonably satisfied that the terms of this Deed and the factual circumstances existing at the time legally entitle the Plaintiffs to register the grant of easement;
  - 25.1.4 in the event the solicitors do release the grant of easement to the Plaintiffs, the solicitors must immediately advise RCMB in writing of such release; and
  - 25.1.5 in the event the Plaintiffs no longer instruct the said solicitors, the solicitors may provide the grant of easement to any new solicitors instructed by the Plaintiffs upon those solicitors giving the undertaking contemplated by sub-clause 25.1.2, but if such undertaking is not given must return the said grant of easement to RCMB.
- 25.2 RCMB agrees that:
- 25.2.1 it will execute the grant of easement contained in Annexure 3;
  - 25.2.2 it will provide the original executed grant of easement to the Plaintiffs' solicitors immediately upon satisfaction of all the following matters:
    - (a) receipt of the undertaking contemplated by clause 25.1.2; and
    - (b) receipt of all notices of discontinuance (duly completed and signed by the Plaintiffs) contemplated by clause 6, whether or not such have been filed at court.

## **RELEASE AND DISCHARGE**

26. With effect on and from the date of this Deed, the Plaintiffs hereby irrevocably and unconditionally release and forever discharge RCMB and its councillors, officers, employees, agents, successors and assigns from all or any past, current and future claims and obligations directly or indirectly (whether now known or not) relating to, or concerning the same subject matter of the Litigation, or Piece T including the Adjacent Area and the Access Area, including any claims and obligations directly arising from any finding that this Deed or any part constitutes a licence subject to Section 202 of the *Local Government Act 1999*, or is invalid.
27. With effect on and from the date of this Deed, RCMB hereby irrevocably and unconditionally releases and forever discharges the Plaintiffs and their related bodies corporate and their directors, officers, employees, agents, successors and assigns from all or any past, current and future claims and obligations directly or indirectly (whether now known or not) relating to, or concerning the subject matter of, the Litigation or Piece T including the Adjacent Area and the Access Area including any claims and obligations directly arising from any finding that this Deed or any part

constitutes a licence subject to Section 202 of the *Local Government Act 1999*, or is invalid.

#### **COVENANT NOT TO SUE**

28. The Plaintiffs expressly represent and warrant that they will not, in any jurisdiction anywhere in the world, file suit, or maintain any legal or quasi-legal proceeding or other action, to enforce, recover damages for or otherwise prosecute any claim directly or indirectly arising out of, or relating to, or concerning the subject matter of, the Litigation, or Piece T including the Adjacent Area and the Access Area.
29. RCMB expressly represents and warrants that it will not, in any jurisdiction anywhere in the world, file suit, or maintain any legal or quasi-legal proceeding or other action, to enforce, recover damages for or otherwise prosecute any claim directly or indirectly arising out of, or relating to, or concerning the same subject matter of, the Litigation, or Piece T including the Adjacent Area and the Access Area.

#### **NOTICES**

30. For the purpose of serving any notice on any party, the same shall be served at their address as appears herein by pre-paid post and shall be deemed served on the second day after the day of posting.

#### **GOVERNING LAW**

31. The law governing the interpretation and implementation of the provisions of this Deed shall be the law of South Australia.
32. The parties submit to the non-exclusive jurisdiction of the courts of the State of South Australia in respect of any proceedings in connection with this deed.
33. If any part of this Deed should be for any reason invalid or unenforceable then the parties hereby record that it is their intention that such part will be severed from the Deed and that the remainder of the Deed will continue to be enforceable.

#### **GENERAL WARRANTY AND NO ADMISSION OF LIABILITY**

34. The parties acknowledge and agree that they have entered into this Deed on a commercial basis and without any admission as to liability.
35. Each party warrants to the other party that:
  - 35.1 it has relied on its own enquiries and has not entered into this Deed in reliance on or as a result of any representation, promise, statement, conduct or inducement by or on behalf of any other party otherwise than as has been recorded in this Deed;
  - 35.2 it has taken independent legal advice as to the nature, effect and extent of this Deed; and
  - 35.3 it is aware that the other party has relied upon the above warranties in entering into this Deed.

### **ADMISSIBILITY AND BAR TO ACTION**

36. This Deed of Settlement may be pleaded and tendered in evidence in relation to any claim, by either the Plaintiffs or RCMB, commenced or maintained after the date of this Deed of Settlement, which is inconsistent with or contrary to this Deed of Settlement.
37. This Deed of Settlement may be pleaded in any court by the Plaintiffs or RCMB as a bar to any action, suit, claim, cause of action or proceeding commenced or at any time to be commenced by either the Plaintiffs or RCMB which is inconsistent with or contrary to this Deed of Settlement.

### **CONFIDENTIALITY**

38. Subject to the following sub-clause, the parties shall keep confidential and shall not disclose to any other person or party the terms of this Deed of Settlement, except with the written consent of the other party or as required by law, and except further that the parties may make such disclosure to their professional advisors, but then only on terms which permit no further disclosure.
  - 38.1 RCMB may at any time in its absolute discretion disclose the terms and existence of this Deed, and if it does so, all other parties to this Deed may likewise do so.

### **BINDING NATURE OF THIS DEED OF SETTLEMENT**

39. This Deed of Settlement shall bind the parties herein and each of the executors or administrators or any trustee in bankruptcy or liquidator appointed to any party.

### **ENTIRE AGREEMENT**

40. The covenants, terms and agreements contained in this Deed of Settlement expressly or by statutory implication comprise the whole of the agreement between the parties and the parties hereby expressly acknowledge and agree that no other covenants, agreements or terms shall be deemed to be implied herein or to arise between the parties by way of other agreement or by reason of any promise, representation, warranty or undertaking given or made by any party to the other on or prior to the execution of this Deed of Settlement, and the existence of any such implication or other agreement is hereby negated.

### **COSTS**

41. The parties agree to each bear their own costs of and incidental to the litigation and to the negotiation, preparation and execution of this Deed.

### **COUNTERPARTS**

42. This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. Where facsimile counterparts are used, original counterparts are to be exchanged as soon as practicable, but failure to exchange originals will not affect the validity of this Deed.

**EXECUTED** as a Deed

**EXECUTED by NILPAT PTY LTD (ACN 007 596 590)** in accordance with Section 127 of the Corporations Act, 2001 (Commonwealth)

.....  
Director

.....  
Director/Secretary

**EXECUTED by ANDREW HALLIDAY TAPLIN** in the presence of

.....  
Signature of witness

.....  
Full name of witness

.....  
**ANDREW HALLIDAY TAPLIN**

**EXECUTED by the RURAL CITY OF MURRAY BRIDGE** by its authorised delegate in the presence of:

.....  
Signature of witness

.....  
Full name of witness

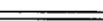
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**CHIEF EXECUTIVE OFFICER**

**ANNEXURE 1 - Adjacent Area and Access Area**

# Long Island Reserve - Access Way



## Legend

-  Fence
-  Gate
-  Stormwater Pipe
-  Access Area
-  Adjacent Area
-  Parcel Boundary

### Access Area Surface Treatment

Remove grass, chip bark on top of 150 mm deep layer of 20 mm aggregate

### Delineators

Plifix markers to be placed at 5 m intervals along both long edges of the Access Area

▲ Sign to be installed in or about this location which reads "KEEP CLEAR - 24 HOUR VEHICLE ACCESS"

