

HARBOURSIDE VILLAGE MINDARIE  
VILLAGE SCHEME  
AND  
RESIDENCY DEED

**BETWEEN:**                    **The Developer**  
LLP WA Village Holdings Pty Ltd (ACN 072 668 225)

**AND:**                         **The Manager**  
Village Management Limited  
(ACN 009 055 556)

**AND:**                         **The Resident(s)**

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**FOR:**                         **Residential Accommodation**

**VILLA:**                        \_\_\_\_\_

**ADDRESS:**                 **7 Honiara Way, Mindarie, W. A. 6030**

**DATED:**                        \_\_\_\_\_

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# HARBOURSIDE VILLAGE MINDARIE

## THE VILLAGE SCHEME AND THE RESIDENCY DEED

### THE PARTIES:

**LLP WA Village Holdings Pty Ltd (ACN 072 668 225) as trustee for the Lend Lease Primelife Villages WA Trust** of 1<sup>st</sup> Floor 823 Wellington Street West Perth - W.A. 6005 ("the Developer");

**THE PERSON** named and described in Schedule 6 ("the Resident"); and

**VILLAGE MANAGEMENT LIMITED (ACN 009 055 556)** of 1<sup>st</sup> Floor 823 Wellington Street West Perth - W.A. 6005 ("the Manager").

### WHEREAS:

- A.** The Developer intends to build, is in the process of building, or has built, on the *Land* a retirement village to be known as "Harbourside Village Mindarie". It is to be sold, occupied and managed under a purple title retirement village scheme.
- B.** You have agreed to purchase an *Estate* consisting of an undivided share in the *Land* held as a tenant in common and a licence to exclusively occupy the *Villa* and use the *Village Centre* facilities in accordance with the retirement *Village Scheme* contained in this Deed.
- C.** This Deed sets out the rights and obligations of each party hereto and seeks to both protect and improve the value of the *Estate* and to facilitate the constant improvement and modernisation of the *Village* in order to maintain its desirability to prospective purchasers of the *Estate*.

### 1.1 DEFINITIONS

Unless otherwise required by the context or subject matter:

**"Advisory Board"** means the board of advisers appointed under Clause 3.4;

**"Auditor"** means the auditor appointed under Clause 16.1;

**"Boarder"** has the meaning given in Clause 7.1(a);

**"Code"** means the Fair Trading (Retirement Villages Code) Regulations 2006;

**"Common Areas"** means all those parts of the *Village* (except the *Villas* and the *Service Areas*) which are nominated from time to time by the Manager for use by the *Residents* in common with others including the *Village Centre*, entrances, passages, halls, courts, paths, driveways, internal roadways, stairways, patios, grounds and gardens;

**"Common Services"** means the services that are made available to or undertaken for the benefit of all of the *Residents* from time to time and paid for by us on behalf of all the *Residents* out of the *Trust Account* including, but not limited to, those services listed in Schedule 5;

**"Consumer Price Index"** means the Consumer Price Index (All Groups) Perth issued by the Australian Statistician;

**"Deferred Facilities Fee"** means the fee payable by you to the Developer upon settlement of the resale of the *Estate* in accordance with Schedule 6;

**"Disputes Committee"** means the disputes resolution committee convened for the *Village* as required by the *Code* as in Clause 13.1;

**"Estate"** means the estate or interest in fee simple in the *Land* held as a tenant in common owner of an undivided share that you have agreed to purchase together with the exclusive licence to occupy the *Villa* in accordance with the provisions of this Deed.

**"Estate Purchase Price"** means the price paid by you for the *Estate* as specified in Schedule 6;

**"Estate Sale Price"** means the gross sale price paid to you by the purchaser upon the sale of your interest in the *Estate* under a *Standard Contract* evidencing the sale;

**"Excluded Maintenance"** means, with regard to the *Villa*, those categories of maintenance and repairs listed in Schedule 1 which are your responsibility;

**"Fund"** means the fund referred to in Clause 4.3(n).

**"Furniture and Fittings"** means all furniture, fixtures and fittings in or about the *Villa* including carpets and light fittings;

**"GST"** means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act");

**"Guest"** has the meaning given in Clause 7.1(a);

**"Land"** means the land described Schedule 6;

**"Licence to Occupy"** has the meaning given in Clause 2.1;

**"Money Secured"** means the whole or any part of the *Deferred Facilities Fee, Refurbishment and Improvements Contribution*, interest and other money due to or recoverable by the *Residents*, the *Village*, the Developer or us under the terms of this Deed;

**"Other Residents"** means all of the other proprietors of an *Estate* from time to time who have entered into the *Village Scheme and Residency Deed* except you (the Resident named in this Deed);

**"Our Employees"** means all persons employed by us as agent and on behalf of the *Residents*;

**"Plans"** means the plans for the *Village* as they are from time to time amended, a copy of which has been initialled by the parties hereto for the purposes of identification;

**"Plumbing Fittings"** means all sinks, water closets, basins and other plumbing fittings contained in or about the *Villa*;

**"Prospective Resident"** means any of:

(a) a person who has attained the age of 55 years; or

(b) two persons, one of whom has attained the age of 55 years;

who has, or have jointly (as the case may be) notified us in writing of his or her or their desire to become the owner of an *Estate* specifying:

(i) the *Villa* sought to be occupied; and

(ii) the amount proposed to be paid for the *Estate*.

**"Redemption Money"** has the meaning given in Clause 7.8;

**"Refurbishment and Improvements Contribution"** has the meaning given in Schedule 6.;

**"Residents' Committee"** means the Harbourside Village Mindarie Residents' Committee appointed under Clause 3.10;

**"Resident's Contribution"** means the amount payable by you each month in respect of all payments that are authorised to be made by us on behalf of all the Residents under this Deed in respect of outgoings, costs and expenses incurred in the maintenance, management and operation of the *Village* in accordance with Clause 6;

**"Residents"** means the collective proprietors of each *Estate* in the *Village* from time to time and includes where appropriate their executors or administrators and permitted assigns;

**"Retirement Villages Act"** means the Retirement Villages Act 1992 (W.A.);

**"Rules"** means the rules of the *Village* formulated and in force from time to time as listed in Schedule 4;

**"Service Areas"** means those parts of the *Village* being the kitchens, staff rooms, administration and management rooms, sales office, the Western Power plant room and any other areas in the *Village* that are nominated by us as being for our exclusive use for the purposes of managing and operating the *Village* as a retirement village;

**"Standard Contract"** means a contract in the same form as the contract of sale provided by us to you, as amended from time to time, in order to purchase the *Estate* but which may contain minor modifications that are appropriate to the circumstances of a particular sale;

**"Tenant"** means the person or persons approved to reside in the *Villa* under Clause 7.1(e);

**"Titles Office"** means the Department of Land Administration Office of Titles, Midland;

**"Tribunal"** means the State Administrative Tribunal acting under the provisions of the *Retirement Villages Act*;

**"Trust Account"** means the trust bank account operated by the Manager as agent for and on behalf of and for the benefit of the *Residents* into which the *Resident's Contribution* is to be deposited each month and from which only payments authorised under this Deed may be made;

**"Villa"** means the residential accommodation unit (which may be an apartment, double storey house, villa or homestead or other type of residential accommodation unit) described in Schedule 6 and includes any part of it;

**"Villas"** means all of the residential accommodation units comprised in and shown on the *Plans*.

**"Village"** means the *Land*, the *Villas*, the *Village Centre* and ancillary facilities together comprising the retirement village shown on the *Plans*;

**"Village Centre"** means the buildings, recreational facilities and associated areas so designated on the *Plans* and forming part of the *Common Areas*.

**"Village Scheme"** means the retirement village scheme constituted by this Deed;

**"Village Scheme and Residency Deed"** means a deed in the form of this Deed as varied from time to time;

**"Visitors"** means each of your invitees, visitors, employees and agents and any other person who may at any time be in the *Villa* or in the *Village* intending to visit the *Villa*, not being our invitee, and not staying the night; and

**"Working Day"** means a day other than a Saturday, Sunday or a public holiday.

## 1.2 Interpretation

When interpreting this Deed and the *Rules*, unless the context otherwise requires:

- (a) References to statutes (State or Federal), regulations, codes and by-laws shall include all statutes, regulations, codes and by-laws which amend, consolidate or replace them. They also include any notices, ordinances or orders issued under them.
- (b) References to clauses, paragraphs, schedules, annexure's or items by letter or number are references to clauses, paragraphs, schedules, annexure's or items of this Deed.
- (c) Words in the singular number include the plural number. The masculine gender includes the feminine or neuter or vice versa.
- (d) Words referring to persons include corporate bodies.
- (e) A covenant or agreement entered into by more than one person is deemed to be entered into by those persons jointly and each of them severally.
- (f) The covenants and obligations expressed as binding on and enforceable against you are also binding and enforceable against all occupants of the *Villa* from time to time.
- (g) In this Deed the words 'you', 'your' and 'yourself' refer to the Resident who signs this Deed and also applies to your lawful *Visitors, Guest, Boarder* and *Tenant*. The words 'we', 'us', 'our' and 'ourselves' refer to the Manager and where appropriate include *Our Employees* and agents.
- (h) All words and expressions used in this Deed that have defined meanings are identified by being written in italics. Their meanings are given in Clause 1.1 of this Deed.

## OPERATIVE PART

The parties agree as follows:

### 2. LICENCE TO OCCUPY

#### 2.1 Grant of Licence

The Developer and ourselves (on behalf of the *Other Residents*) GRANT to you:

- (a) the exclusive right as licensee to occupy the *Villa* while you own the *Estate*; and
- (b) the right in common with the *Other Residents* to use the *Common Areas*;

together called the "*Licence to Occupy*" which rights commence upon settlement of your purchase of the *Estate*.

The *Licence to Occupy* may only be varied or cancelled in accordance with the provisions of this Deed.

## 2.2 Resident's Grant to Other Residents

In signing this Deed you hereby grant to each of the *Other Residents* and to all future proprietors of an *Estate* in the *Village*, the exclusive right as licensee to occupy the particular *Villa* specified in the *Village Scheme and Residency Deed* that either has been entered into by the *Other Residents* or is to be entered into by any future purchaser of an *Estate* in the *Village*. To ensure such grants are made to future proprietors of an *Estate* in the *Village*, you irrevocably appoint us as your attorney to make future grants of licences by executing a *Village Scheme and Residency Deed* with each future proprietor of an *Estate* in the *Village*.

## 2.3 No Fee Payable

No fee is payable for the *Licence to Occupy*.

## 2.4 Cancellation on Sale

Your *Licence to Occupy* is cancelled when:

- (a) you have settled your sale of the *Estate*; or
- (b) this Deed is cancelled under Clauses 14 or 15,

to enable the grant of a *Licence to Occupy* to the person who purchases the *Estate*.

## 2.5 Surrender Possession on Settlement

You must immediately surrender possession of the *Villa* to the purchaser of the *Estate* on settlement of that purchase.

## 2.6 Termination on Death

Subject to Clause 11, and unless earlier determined, the *Licence to Occupy* automatically terminates on your death.

## 3. THE MANAGEMENT STRUCTURE

The *Village* is managed by the *Advisory Board*, the *Residents' Committee* and ourselves as follows:

### 3.1 Advisory Board

The *Advisory Board* is mainly concerned to see that the *Village Scheme* is properly managed. It must consider submissions from the *Residents' Committee*. The *Advisory Board* delegates to the *Residents' Committee* its responsibility for decision making in the management areas specified in Clause 3.13. The *Residents* may only make submissions to the *Residents' Committee*.

### 3.2 Resident's Committee

The *Residents' Committee* must consider the views and interests of yourself, each of the *Other Residents*, the Developer and ourselves. The *Residents' Committee* may make submissions to us or the *Advisory Board* on any matter including those specified in Clause 3.13.



The *Residents' Committee* is responsible for decision making in areas of management delegated to it. Any decision, which is disputed by one or more members of the *Residents' Committee*, may at the election of the member who disputes the decision, be referred to the *Advisory Board* for a final ruling.

### 3.3 Manager

We, and any subsequent manager, are responsible for the day to day administration and management of the *Village Scheme*. We must, at their request, report to either the *Advisory Board* or the *Residents' Committee* regarding the administration and management of the *Village Scheme*.

### 3.4 Composition of Advisory Board

The *Advisory Board* must always consist of 5 respectable and responsible persons, nominated as follows:

- (a) One member nominated by us.
- (b) One member nominated by the Developer.
- (c) Two members nominated by the *Resident' Committee*, each of whom must reside in the *Village* and one of whom must be the chairperson of the *Residents' Committee*. These members shall hold their position for one year from the date of their election. The *Residents' Committee* must also, at the same time and in the same manner, elect an alternative representative for each of these two members (called the "Alternate Resident Member") who may act as a member of the *Advisory Board* in the place of the member at times when the member is unable or unwilling for whatever reason to attend a meeting of the *Advisory Board*. If either member or their respective Alternate Resident Member is either unable or unwilling (for whatever reason) to act as a member of the *Advisory Board*, a new member must be elected to and nominated by the *Residents' Committee* for the remainder of the original *Residents' Committee* member's term of appointment. If the *Residents' Committee* or in its absence the *Residents* do not nominate either or both of these two members, then the Developer may nominate the replacement member(s).
- (d) One member, who must be independent of the *Residents*, the Developer or ourselves and has good standing in the community, shall be jointly appointed by all of the other members of the *Advisory Board* for a term of 3 years. He or she may be re-appointed as a member for any number of 3 year terms. If the other members can't agree on this appointment, it is to be referred to and made by the *Tribunal*.

An *Advisory Board* member may be removed by the majority decision of the other members of the *Advisory Board*, if they reasonably believe the member is not giving proper attention to their duties. The vacancy created by such a removal must be filled by a new member nominated in accordance with this Clause 3.4.

### 3.5 Board Business

The *Advisory Board* must meet, conduct its affairs, exercise its powers and carry out its duties in accordance with the regulations in Schedule 2.

### 3.6 Payment of Board Members

We may pay to the independent member of the *Advisory Board* from the *Trust Account* a fee payable at the rates and times determined by the *Advisory Board*.

We will pay or reimburse from the *Trust Account* all costs and expenses reasonably incurred by any member in carrying out the duties of an *Advisory Board* member as are approved by the *Advisory Board*.

### 3.7 Powers of Board

The *Advisory Board* has the power:

- (a) to give us directions regarding performance of our duties under this Deed;
- (b) to amend the *Rules* under Clause 3.9; and
- (c) to amend this Deed under Clause 20.5.

### 3.8 Alterations to Village

Either the Developer or the *Advisory Board* may authorise the improvement, refurbishment, modernisation, extension, variation or reduction of the *Village* with the cost of such works to be paid from the *Fund*.

If the balance of the *Fund* is insufficient to pay this cost, and additional monies are required in order to complete these works, the Developer may (at its sole discretion) elect to advance these additional monies to the *Fund*. Any additional monies so advanced under this clause plus interest chargeable at the rate then charged by our bankers on overdraft current accounts over \$100,000.00 shall be repaid to the Developer from future payments to the *Fund* as and when these are received.

In the event that the *Residents* seek to do additional works where the balance of the *Fund* is insufficient to pay this cost and the Developer elects not to advance the additional monies to the *Fund*, the *Residents'* approval for these additional works must be obtained in the form of a resolution passed by 75% of *Residents* entitled to vote in a meeting of the *Residents* in accordance with Clause 17.

Where the approval of the *Residents* is so obtained, the additional monies must be paid by the proprietor of each *Estate* in equal proportions. But:

- (a) details of the work to be done and an estimate of its cost must accompany the notice of the *Residents'* general meeting; and
- (b) before these works are commenced, the *Advisory Board* must be satisfied that the necessary additional funds have either been raised or are available to pay for the works.

In completing any works to the *Village*, there must be as little inconvenience caused to the *Residents* as is practicable in the circumstances.

**3.9 Board May Amend Village Rules**

The *Advisory Board* may either itself, or at the request of the *Residents' Committee*, amend Schedules 2, 3, 4 and 5 to this Deed if and when it considers this to be reasonably appropriate. You must comply with any such amendments after we give you written notice of them.

A notice signed by the chairperson of the *Advisory Board* listing the *Rules* in force or any amendment to them is, until further notice, conclusive evidence that those *Rules* as amended are in force and properly made.

**3.10 Composition of Residents' Committee**

The *Residents' Committee* must consist of at least 5 respectable and responsible persons, who are elected annually by the *Residents*.

A member may be dismissed from the *Residents' Committee* by passing a special resolution of the *Residents' Committee* if they believe, on reasonable grounds, that the member is not giving adequate attention to their duties as a member of the *Residents' Committee*. The dismissed member must be replaced by a person elected by the *Residents*.

**3.11 Residents' Committee Business**

The *Residents' Committee* must meet and conduct its business in accordance with the regulations in Schedule 3.

**3.12 Residents' Committee Costs and Expenses**

*Residents' Committee* members must perform their duties as members without payment. However, we may pay or reimburse from the *Trust Account* all costs and expenses reasonably and properly incurred by, or on behalf of, any member or secretary of the *Residents' Committee* in carrying out their duties as a member or secretary.

**3.13 Residents' Committee Duties**

The duties of the *Residents' Committee* include:

- (a) To review the annual *Resident's Contribution* budget and, if considered appropriate, make submissions to either us or the *Advisory Board* regarding proposed changes or additions to the budget.
- (b) To review the *Rules* and, if appropriate, make submissions to the *Advisory Board* regarding proposed changes or additions to the *Rules*.
- (c) To hear submissions from any of the *Residents* on matters relating to:
  - the general welfare of the *Residents* under the *Village Scheme*;
  - actual or proposed changes to services or facilities which may involve increased costs to or loss of amenities by the *Residents*;

- maintenance of any of the *Villas*;
- any plans for the expansion of the *Village*;
- social activities of the *Residents* carried on in any areas within the *Village* except inside any of the *Villas*;
- proposals for the upgrading of buildings, fixtures or fittings where these are to be wholly or partially paid for by the *Residents*;
- the interpretation or variation of any of the *Rules*;
- the *Disputes Committee*;

and make representations to us or the *Advisory Board* on any matters.

#### **4. MANAGER'S DUTIES**

##### **4.1 Manage and Operate Village**

We must use our best endeavours to:

- (a) manage and operate the *Village* as a retirement village in a proper and efficient way including the payment of expenses on behalf of the *Residents* as authorised under this Deed.;
- (b) be the primary point of contact with you;
- (c) ensure that you and each of the *Other Residents* comply with the provisions of this Deed; and
- (d) allow you to have input into the management of the *Village* as required by the *Code*.
- (e) provide the *Residents' Committee* and its subcommittees with reasonable access to and use of village office equipment and supplies in the performance of their duties.

Subject to the constraints of the annual *Resident's Contribution* budget, we may as the agent and on behalf of the *Residents* employ any persons that we consider are necessary to assist us in arranging the *Common Services* on behalf of the *Residents* and performing our duties under this Deed.

##### **4.2 Maintain Service Areas and Common Areas**

We must (acting as the agent and on behalf of the *Residents*) arrange for the *Service Areas* and the *Common Areas* to be maintained in good order and condition. This includes the exterior walls, roofs and painted surfaces and all parking spaces, roads, pavements, lawns and gardens within the *Common Areas*. The costs of such maintenance are to be met from the *Trust Account*.

Any other expenditure incurred on behalf of the *Residents* in the operation of the *Village* must also be paid out of the *Trust Account* that is not otherwise payable by an individual proprietor of an *Estate* or any other person, but the way in which the *Common Areas* and associated facilities are operated and managed is determined by us at our discretion, having regard to the standards of the *Village*.

We must ensure that you and your *Visitors, Guest, Boarder and Tenant* have the right, in common with others granted the same right, to use for parking any part of the *Common Areas* set aside by us for parking motor vehicles in accordance with the *Rules*.

#### **4.3 Manager's Particular Duties**

We must:

- (a) give the *Advisory Board* and the *Residents Committee* those details they reasonably require relating to our management of the *Village Scheme*;
- (b) comply with the Retirement Villages Act and the Code;
- (c) at least 4 weeks prior to the end of each financial year, prepare a budget for the total expenditure that we believe will be necessary to provide the *Common Services* for and on behalf of the *Residents* for the forthcoming financial year;
- (d) calculate the monthly *Resident's Contribution* that must be paid by the proprietor of each *Estate* in order to raise the budgeted amount of *Common Services* expenditure for the forthcoming financial year and notify the proprietor of each *Estate* of the amount of their monthly *Resident's Contribution*;
- (e) supervise the collection of their monthly *Resident's Contribution* from the proprietor of each *Estate* and ensure that these amounts are deposited into the *Trust Account* and held on behalf of the *Residents*;
- (f) acting as the agent of the *Residents*, operate the *Trust Account* and utilise the funds raised by the *Resident's Contribution* to pay from the *Trust Account* on behalf of the *Residents* all payments authorised under this Deed including, but not limited to, those made in respect of the *Common Services* including any rents, rates, taxes, duties, assessments, liabilities and outgoings assessed or levied against the *Village* (but excluding those charges which are levied or charged to an individual *Estate*) unless we have, on reasonable grounds, contested any assessment or levy;
- (g) except for *Excluded Maintenance* and the interior of each of the *Villas*, arrange on behalf of the *Residents* for all parts of the *Village* which are of a repairable nature to be maintained in proper repair, working order and condition the cost of which is to be paid from the *Trust Account*;
- (h) not pull down, remove or damage any part of the *Village* without restoring or replacing that part, except in the ordinary course of business, or due to some lawful requirement, or otherwise with the consent of the *Advisory Board*;

- (i) permit and assist any *Advisory Board* or *Residents' Committee* member and any person authorised by the *Advisory Board* or the *Residents' Committee* in writing, to enter and inspect the *Village*, to view its state of repair and condition;
- (j) within 14 days after a written application is given to us at our *Village* office, in accord with Clause 5.11(1)(e) of the *Code* by *Residents* who are eligible to vote (pursuant to Clause 17.7), summon a meeting of the *Residents* under Clause 17 and notify the *Advisory Board* and the *Residents' Committee* that the application has been received;
- (k) keep proper accounting records for all *Residents'* funds that pass through our hands in accordance with our duties under both this Deed;
- (l) subject to the approval of the *Advisory Board*, have the *Village Scheme* accounts and the *Trust Account* audited at the end of each financial year by the Auditor;
- (m) on your written request, allow you to inspect the *Village Scheme* accounts in our offices and supply to you the most recent report of the Auditor on those accounts;
- (n) hold in Trust the amounts of Refurbishment and Improvements Contribution paid under Clause 7.8(b) and in accordance with Schedule 6 as a fund ("the Fund"). We must invest the Fund in an authorised trustee investment. Interest on any Fund monies invested will accrue to the Fund and any taxes on income earned by the Fund or costs incurred in administering the Fund shall be paid out of the Fund. All other expenditure made from the Fund shall be in accordance with Clause 3.8; and
- (o) before any of the *Residents* offers their Estate for sale, ensure that the *Villa* which forms part of that *Estate* is upgraded in accordance with Clause 7.6(i) of this Deed.

#### 4.4 Manager to Comply with Directions

We must, subject to Clause 4.1, comply with the *Advisory Board's* directions under Clause 3.7 and hear any representations made by the *Residents' Committee* pursuant to its delegated duties under Clause 3.13.

Any dispute between ourselves and the *Advisory Board*, over whether or not we must comply with a direction of the *Advisory Board*, must be promptly referred to the *Tribunal* for the final decision.

#### 4.5 Manager to Insure Village

We must, to the satisfaction of the *Advisory Board* as the agent and on behalf of the *Residents*, ensure that all parts of the *Village* that are insurable against fire, storm and tempest, breakage of glass, impact and explosion (and any other risks usually insured against) are always kept insured with a reputable insurer at their full insurable value and, if possible, for their full reinstatement value. The cost of all such insurances shall form part of the annual *Resident's Contribution* budget and shall be paid by us out of the *Trust Account* on behalf of the *Residents*.

#### 4.6 Type of Insurance Cover

We must, to the satisfaction of the *Advisory Board* and on behalf of the *Residents*, ensure that the *Advisory Board*, *Residents' Committee*, Developer, ourselves and each of the *Residents* are always kept insured with a reputable insurer against all claims, damages, costs, losses and expenses of any nature which any of the insured may suffer or incur in connection with loss of life, personal injury or damage to property arising from:

- (a) any occurrence in the *Village*; or
- (b) the use of the *Village* or any part of it by any of the *Residents*, their *Visitors*, *Guest*, *Boarder*, *Tenant* or any of *Our Employees*, contractors and consultants.

#### 4.7 Insurances

We must, to the satisfaction of the *Advisory Board* and on behalf of the *Residents*, ensure that general and products insurance, industrial special risks insurance, workers' compensation, house owner's and householder's insurance and any other insurances similar to those that would be required by a Strata Company under the Strata Titles Act 1985 (W.A.) are taken out with a reputable insurer and always kept in force for an insured amount (and if possible for the full reinstatement value) which a prudent person engaged in a similar business would take out. We are not required to take out insurance for the *Villa's* contents, that insurance is your responsibility.

We must:

- (a) not do or permit any act or thing which may prejudice or make invalid any insurance; and
- (b) take out and hold those insurances in the names of the Developer and ourselves (as agent for the *Residents*).

#### 4.8 Application of Insurance Proceeds

If any event occurs for which insurance money is payable under any policy of insurance, then that money must be paid by the insurer or insurers directly to the *Fund* and must be applied by us:

- (a) firstly, in reinstatement of so much of the *Village* that is the subject of the insured event;
- (b) secondly, in payment of any money owing to the Developer or ourselves; and
- (c) thirdly, to the *Residents* and
- (d) lastly, to any proprietor of an individual Estate that is entitled to these monies.

We must, when taking out the insurance, direct the insurer or insurers in the above terms.

#### **4.9 Use of Village Facilities**

We may, at our discretion, grant to any one person or to any select group the right to exclusively use any part of the *Village Centre* or the *Common Areas* provided that we believe such use would be beneficial to the *Village*.

### **5. RESIDENT'S RIGHTS AND OBLIGATIONS**

#### **5.1 Use of Villa**

You may only use the *Villa* as a residence.

#### **5.2 Right to Use the Common Areas and the Village Centre**

We and the Developer grant to you the right, in common with the *Other Residents*, to use the *Common Areas* and the *Village Centre* with the exception of any area set aside by the Manager from time to time in accordance with Clause 4.9.

#### **5.3 Not Cause Nuisance or Damage**

You must not do anything in or about the *Villa* or the *Village* that causes or may cause annoyance, grievance, damage or disturbance to the *Other Residents*, persons lawfully in the *Village* or the occupiers or owners of any nearby land.

#### **5.4 Keep Villa in Good Repair**

You must keep and maintain:

- (a) the *Villa*, including its doors, windows, *Furniture and Fittings* plus those items covered under *Excluded Maintenance* (per Schedule 1) *excepting locks on front doors*, in good repair, order and condition;
- (b) the *Villa* and its immediate surroundings clean and tidy; and
- (c) the waste pipes leading from the *Villa* in a clean and free flowing condition and must not place, or allow to be placed, in them any sweepings, rubbish, rags or other harmful substances.

You hereby grant us the right to enter the *Villa* and carry out at our discretion any of the maintenance works specified in this clause that we believe are necessary for you to comply with this clause. The cost of any such works will be payable by you and any unpaid amount will be secured by a registered charge against your *Estate*.

#### **5.5 Use of Plumbing Fixtures, Power and Gas**

You may only use the *Plumbing Fittings* for the purposes for which they were installed.



You must not use any form of light, power or heat except that generated by electric current or gas supplied through installed meters. Auxiliary power or lighting (except exposed flame) may be used during power failures or restrictions.

**5.6 Storage of Rubbish**

You must keep all rubbish and recyclable materials in proper containers and arrange for its regular removal from the *Villa*.

**5.7 Keep Pest Free**

You must take all reasonable precautions to keep the *Villa* free of pests. If you do not keep the *Villa* free of pests, then we may arrange for a pest exterminator to enter the *Villa* and do all things necessary to exterminate pests. You must at any reasonable time allow the pest exterminator that we have arranged to have access to the *Villa*. We may require, at our discretion, that you pay the exterminator's fee if you have not kept the *Villa* free of pests.

**5.8 Not Cause Notices to Issue**

You must ensure that the *Villa* is not used in a way which results in any authority issuing or being entitled to issue any notice, including but not limited to, a notice requiring structural alterations or repairs to be made to any part of the *Villa*.

**5.9 Comply with Legal Requirements**

You must comply with all laws that affect the *Villa*, including any notices and orders issued in respect of the *Villa* or its allowed use that have been issued by an authority having jurisdiction and always keep us indemnified in respect of all such laws, notices or orders.

**5.10 Report and Deal with Infectious Illness**

If any infectious illness occurs in the *Villa*, you must immediately notify us and the proper public authorities. In this event, you must, at your cost, thoroughly fumigate and disinfect the *Villa* to both our and the public authorities' satisfaction and comply with their lawful requirements.

**5.11 Give Notice of Damage to Manager**

You must give us prompt written notice of:

(a) any structural damage to, or defect or need for repair in, any services to or fittings in the *Villa*, except matters within the categories of *Excluded Maintenance*;

and

(b) any circumstances likely to be (or cause) any danger, risk or hazard to the *Villa* or any person in the *Villa*.

**5.12 Access to View, Repair, Alter**

We may at reasonable times with *Our Employees*, contractors, consultants and all necessary materials and equipment enter the *Villa* after giving not less than 2 days prior notice to you (no prior notice is needed where we believe an emergency exists);

- (a) to carry out any works, repairs, alterations or additions to the *Villa* which we reasonably consider necessary or desirable;
- (b) whenever we reasonably require, to view the state of repair and condition of the *Villa* and make reasonable investigations to see if there has been any breach of the terms or conditions of this Deed;
- (c) to reasonably exercise any of our other powers under this Deed; and
- (d) if any part of the *Villa* is destroyed or damaged, to rebuild or make it fit for occupation and use by you, the costs of which, to the extent they are not paid for by insurance cover, must be paid by you.

**5.13 Manager to Minimise Interference**

When exercising our rights under Clause 5.12, we must give proper regard to your rights to occupy the *Villa* and to privacy. To the extent that it is reasonably practical, we and *Our Employees*, contractors and consultants must not interfere with those rights.

**5.14 No Installations Without Consent**

You must not, without our written consent, install or have installed on, in, or about the *Villa*:

- (a) any aerial, antenna, loud speaker, sky light, air conditioner or device likely to be heard or seen from outside the *Villa*; or
- (b) any device that does or may interfere with any emergency call system installed within the *Village*.

If we consider it appropriate, having regard to the interests of the *Village* and the rights or interests of the *Other Residents*, we may withdraw our consent at any time. If any installation is made without our consent, we may obtain access to the *Villa* and remove the offending item at your cost.

**5.15 No Awning Without Consent**

You must not, without our written consent, attach or allow to be attached, an awning or similar attachment to the exterior of the *Villa*.

**5.16 No Alterations**

You must not, without our written consent, make structural alterations or additions to the *Villa*, or interfere with the fittings and the *Plumbing Fittings*.

**5.17 Observe Rules**

You must always observe and comply with the *Rules*. If you do not, you will be breach of this covenant.

**5.18 Remove Property When Occupation Ceases**

On or before termination of your occupation of the *Villa*, you may remove from it all fixtures, fittings and equipment that you installed, without causing any substantial damage to the *Villa* and you must repair any damage caused to the *Villa* by such removals.

**5.19 Abandoned Property**

Subject to Clause 15.4, any fittings, fixtures or equipment not removed by you are deemed abandoned by you. Subject to any law to the contrary, they become the property of the person who next owns the *Estate*.

**6. RESIDENT'S CONTRIBUTION**

**6.1 Resident's Contribution Payable**

From the date that you settle your purchase of the *Estate* or the date on which you obtain possession of the *Estate* (whichever is the earlier) until the date that you part with possession of the *Estate*, you must pay the *Resident's Contribution* monthly in advance, the first and last payments being adjusted pro rata as necessary for periods of less than a month respectively. In respect of a *Boarder*, the applicable Resident's Contribution due under Clause 7.1(c) must be paid until the date the *Boarder* ceases to be a *Boarder* and this is notified to us.

**6.2 Trust Account**

The *Resident's Contribution* shall be collected, paid into the *Trust Account* and managed on behalf of the residents in accordance with the provisions of Sub-clauses 4.3(d) to (g) of this agreement.

**6.3 Not to cause Resident's Contribution increase**

From the date that you settle your purchase of the *Estate* or the date that you obtain possession of the *Estate* (whichever is the earlier) until the date that you part with possession of the *Estate* you must not do, or allow your *Visitors*, *Guest* or *Tenant* to do, or neglect to do or perform any thing or action that would cause the *Resident's Contribution* to increase.

**6.4 Amount of Resident's Contribution**

For the financial year (1st July to 30th June) current at the date of this Deed, the monthly *Resident's Contribution* is the amount specified in Schedule 6. The amount is calculated so as to apportion all operating costs between *Villas* equally except that the operating costs share applicable to the *Villas* that have double occupancy is 25% higher than the share for *Villas* with single occupancy.

**6.5 Annual Review of Resident's Contribution**

The *Resident's Contribution* must be revised annually to the amount that we and the *Advisory Board* determine is appropriate allowing for any changes in the cost of running the *Village* including, but not limited to, the costs referred to in Clause 6.7 and any other factors which we consider affect the cost of running the *Village*.

**6.6 Considerations When Reviewing Resident's Contribution**

When reviewing the *Resident's Contribution*, we and the *Advisory Board* shall take into account the desirability of keeping any increase in the *Resident's Contribution* to a minimum and to preserve (as far as possible) relativity between the rate of increase in the *Resident's Contribution* and the increase in the general rate of economic inflation.

## 6.7 Application of Resident's Contribution

We must apply the *Resident's Contribution* as agent and on behalf of the *Residents* to pay all outgoing, costs and expenses incurred in the maintenance, management and operation of the *Village* under this Deed including but not limited to:

- (a) provision of the *Common Services*;
- (b) rates, charges, assessments and fees of any public, municipal or government authority payable in respect of the *Village Centre* and *Common Areas* including land tax;
- (c) water usage charges payable for the *Village*;
- (d) insurance premiums payable in respect of the *Village* including those insurances detailed in Clauses 4.5, 4.6 and 4.7;
- (e) charges for water, gas, oil, electricity, power, telephone, garbage, sewerage, cleaning, caretaking, security, fire equipment, first aid services and other services or requirements supplied to the *Village Centre* and the *Common Areas*;
- (f) repair and maintenance costs for the *Village Centre* and the *Common Areas* incurred under related maintenance contracts other than any works under Clause 3.8 for which you may be responsible;
- (g) labour and materials for repair and other maintenance work, cleaning, landscaping and maintaining the garden areas in and around the *Village Centre* and the *Common Areas*;
- (h) photocopying, newspapers, periodicals, postage, printing and stationery;
- (i) repair and maintenance of all fixed assets (including plant, equipment and machinery) owned by the *Village*;
- (j) salaries, wages and associated employment costs of all staff employed by us as agent for and on behalf of the *Residents* that we consider are necessary to assist us in arranging the *Common Services* and performing our duties under this Deed;
- (k) any additional amounts determined from time to time by us, the *Advisory Board* and the *Residents' Committee* which amounts are to be levied on each *Estate* in equal proportions; and
- (l) the *Manager's* annual fee calculated in accordance with Clause 8.2.

**BUT EXCLUDING** any expenditure on those items of *Excluded Maintenance* per Schedule 1.

**6.8 Interest on Unpaid Amount of Resident's Contribution**

Where:

- (a) you pay less than the total *Resident's Contribution* charged each month; or
- (b) a debit balance payable is left unpaid by you for two calendar months after the due payment date where you elected to pay the monthly *Resident's Contribution* instalment in full;

interest is calculated on a daily basis and charged from the first day of the next monthly period, on the balance outstanding on each day, until the debit balance is paid in full. The rate of interest chargeable shall be 3% per annum above the minimum rate then charged by our bankers on overdraft current accounts over \$100,000.00. The interest is calculated from the date the money is due for payment to the date the money is recovered and paid to the *Trust Account*. Nothing in this clause restricts the remedies under Clause 14 for default.

**6.9 Developer's Subsidy During Construction of the Village**

Until construction of the *Village* is complete, the Developer must contribute monthly to the overall *Resident's Contribution* the balance required to meet all expenses incurred in operating the *Village* after allowing for the amount of *Resident's Contribution* payable by the *Residents* in accordance with Schedule 6 of each *Village Scheme and Residency Deed*. During the period of construction of the *Village*, the *Resident's Contribution* will be adjusted annually each July, but will not increase by more than the increase percentage increase in the *Consumer Price Index* (if any) plus any increase in Government Statutory Charges for that year (including GST) plus costs associated with any additional services provided.

**6.10 Developer's Contributions for Unsold Estate**

The Developer must each calendar month pay the *Resident's Contribution* in respect of each unsold *Estate* that is still owned by the Developer at the single occupancy rate then applicable. The Developer's responsibility to pay the *Resident's Contribution* shall be reduced pro-rata on the sale of any such *Estate*.

**6.11 Developer's Subsidy to Cease**

Once construction of the *Village* is complete, the Developer's obligation to pay the *Resident's Contribution* will cease.

**7. SALE OF ESTATE**

**7.1 No Sale or Subletting Except on Certain Conditions**

You must not sell, transfer, sublet or part with the possession of the *Villa* or this Deed or any estate or interest in the *Estate* to any person except in accordance with the provisions of Clause 7.

- (a) If the *Villa* is a single bedroom *Villa*, you may only permit one person to reside with you in the *Villa*. If the *Villa* is either a single bedroom *Villa* with a study or a two bedroom *Villa*, you may permit up to two persons to reside with you in the *Villa*. If the *Villa* is either a two bedroom *Villa* with a study or a three bedroom *Villa*, then you may permit up to three persons to reside with you in the *Villa*. Any person who resides in the *Villa*

one month or less is called a *Guest*. Any person who resides in the *Villa* for more than one month is called a *Boarder*. Residents must advise us when they have a *Guest* who may become a *Boarder* and when they have a *Boarder* who ceases to become a *Boarder*.

- (b) You are not obliged to pay any additional *Resident's Contribution* when a *Guest* resides in the *Villa*.
- (c) The amount of the *Resident's Contribution* payable when a *Boarder* resides with you shall be increased by 25% of the single occupancy *Resident's Contribution* for each *Boarder*.
- (d) You must ensure that a *Boarder* or *Guest* ceases residing in the *Villa* when the *Advisory Board* gives you a written request for the *Boarder* or *Guest* to do so.
- (e) You may, with our written approval, grant to any person or persons over the age of 55 years (or in the case of a married or de facto couple one of whom is over the age of 55 years), a right to reside in the *Villa* in your place. That person is called a *Tenant*.
- (f) Your obligations under this Deed apply to the *Tenant*. The *Tenant* must acknowledge in writing, in terms satisfactory to us, that he or she is bound by those obligations. The term of a *Tenant's* residency must not exceed 6 months and must be specified in the *Tenant's* acknowledgments. Unless the *Advisory Board* approves in writing, you must not grant any *Tenant* the right to reside in the *Villa* for more than 6 months in any calendar year (i.e. 1st January to 31st December)

## 7.2 Right to Appoint Selling Agent

You may appoint an independent agent to sell your *Estate* subject to you and your agent complying with the requirements of this Deed for that sale.

## 7.3 Manager to Consider Prospective Resident

We must promptly consider any application to purchase your *Estate* in accordance with this Deed. However, you may only sell your *Estate* to a *Prospective Resident*.

## 7.4 Supply Evidence of Age to Manager

In considering an application under Clause 7.3, we may ask you to produce evidence that at least one of the proposed purchasers is aged 55 years or more.

## 7.5 Manager's Discretion to Approve

Approval of an application under Clause 7.3 may be either granted or withheld at our discretion. We may not withhold our approval without giving you an opportunity to present your case.

## 7.6 Notification of Sale and Price

You may at any time offer your *Estate* for sale, but in each case:

- (a) You must first notify the Developer of your intention to sell.

- (b) To prevent anyone taking advantage of you, you must request the Developer to advise you as to what it considers the market value of your *Estate* to be which, subject to paragraph (c), shall be the market value of your *Estate*.
- (c) If you disagree with the Developer's assessment in paragraph (b), and notify us in writing within 14 days of receiving that assessment, then you may obtain a valuation from a licensed valuer ("Valuer") appointed by the President of the Australian Property Institute (Inc) W.A Division in order to determine the market value of your *Estate*.
- (d) The Valuer must determine the market value of your *Estate*, within the context of the *Village* and the *Village Scheme*, as being the price that a willing purchaser would pay for your *Estate* on an open market.
- (e) The Valuer's costs must be paid by you.
- (f) You must initially market the *Estate* either at or above the market value as determined in either (b) or (c) above, but, if a sale cannot be made at or above the market value within 3 months of the date that it is first offered for sale, then you may sell your *Estate* at any price that you consider acceptable.
- (g) You may not exhibit a "For Sale" sign on the *Villa* (or elsewhere within the *Village*).
- (h) We reserve the right to exhibit signs within the *Village* advertising *Estates* for sale.
- (i) Before you offer your *Estate* for sale, we may cause the *Villa* to be upgraded at your cost to the standard that we believe is necessary in order to both achieve its optimum selling price and to ensure that the *Village* continues to be maintained in a first-class modern condition. Such upgrade works may include any renovation works that we may reasonably require at our discretion.
- (j) You must not offer your *Estate* for resale prior to the *Villa* being inspected by us and the provisions of Clause 7.6(i) being complied with.

#### **7.7 Procedure on Sale**

Unless we, the Developer and the *Advisory Board* otherwise agree in writing, the following provisions apply to the sale of your *Estate* and the payment of the *Redemption Money*:

- (a) You must apply for approval of the proposed sale by sending a written notice to us ("Application Form") which supplies details of the *Prospective Resident* together with a *Standard Contract* duly signed by the *Prospective Resident* as purchaser.
- (b) If approval is given, you may accept the *Prospective Resident's* offer to purchase by signing the *Standard Contract*.
- (c) If approval is not given, either you or the *Prospective Resident* may, within 14 days of being so advised, request a meeting with us. We must listen to the views expressed

by you and the *Prospective Resident*. Our decision will be final, but we must apply procedural fairness and the rules of natural justice.

- (d) Within 14 days of receiving notification of approval, the *Prospective Resident* must:
- pay the deposit due under the *Standard Contract*; and
  - properly sign and deliver to us a *Village Scheme and Residency Deed* previously supplied by us in triplicate.
- (e) The sale of your *Estate* must be completed pursuant to the *Standard Contract*.

### **7.8 Procedure on Settlement**

On settlement of the sale of your *Estate*, you must, based on figures calculated by us:

- (a) pay to the Developer the *Deferred Facilities Fee*, calculated in accordance with Schedule 6;
- (b) then pay the *Refurbishment and Improvements Contribution* calculated in accordance with Schedule 6;
- (c) then pay all monies owed by you (if any) under this Deed whether for arrears of the monthly *Resident's Contribution*, fees, charges or otherwise including monies payable pursuant to Clause 7.6(i);
- (d) then pay all other monies owed by you to any other person in respect of the sale of your *Estate* that are still unpaid.

The proceeds of sale remaining after deducting the items provided for in Sub-clauses 7.8(a), (b), (c) and (d) ("*Redemption Money*") will be paid to you or your legal representative. Upon settlement being completed, the rights and obligations of the parties to this Deed come to an end.

### **7.9 Redemption Money Receipt**

Your written acknowledgement of your receipt of the *Redemption Money* is a complete and absolute discharge of our obligations to you regarding the sale of the *Estate*.

### **7.10 Costs Payable by Resident**

You must pay all costs and fees payable on the sale of your *Estate*, including sales commission, legal costs, government charges and *Titles Office* fees.

### **7.11 Developers right to purchase**

If you wish to sell your *Estate*, the Developer may, should it wish to do so, repurchase your *Estate* pursuant to the mechanism set out in this Clause 7.



## 8. PAYMENT TO MANAGER

### 8.1 Payment of Manager's Costs and Expenses

We, as agent for the *Residents*, may pay from the *Trust Account*:

- (a) all costs, charges and expenses (including solicitor and client as well as party and party costs) reasonably and properly incurred by or on behalf of us; and
- (b) any stamp or other duty which is payable from time to time

in the carrying out or exercise by us of any duty, right, power or discretion imposed or conferred on us expressly or impliedly by this Deed.

### 8.2 Manager's Annual Fee

In addition to the payments under Clause 8.1, as from the commencement of the calendar month following the month when the first *Estate* in the *Village* is sold, we are entitled to a fee of \$45,000 per annum plus GST for acting as manager under this Deed. This fee is paid out of the *Trust Account*.

Our fee is payable by equal calendar monthly instalments in arrears. It is to be adjusted on 1st July in each year ("the Adjustment Date") under the following formula:

Where:

F	=	Existing fee paid prior to Adjustment Date;
X	=	Adjusted fee payable subsequent to Adjustment Date;
PCPI	=	The Consumer Price Index determined prior to the preceding Adjustment Date, or where this fee is being adjusted for the first time, prior to the preceding 1st July.
CPI	=	The Consumer Price Index determined immediately prior to the Adjustment Date.

Formula:  $X = F \times \frac{CPI}{PCPI}$

### 8.3 Consumer Price Index

The reference base for the *Consumer Price Index* is that adopted by the Australian Statistician for the March 1992 quarter onwards. If the Australian Statistician updates the reference base of that index, appropriate arithmetic adjustments must be made to the index as published to ensure the preservation of the intended continuity of the calculation provided for by Clause 8.2.

### 8.4 Alternative Adjustment

If the *Consumer Price Index* is suspended or discontinued, or if there is a major change in those items by reference to which that index is calculated, then the basis for adjustment of our fee will change to that sum determined by an independent actuary, or econometrician (acting as an expert) who is instructed by the *Advisory Board*, so as to be increased at a rate equal to the rate of economic inflation in Perth. The costs of any determination are paid by us but are recoverable as an expense under Clause 8.1.

## **9. RESIDENT'S RIGHT TO RESCIND**

### **9.1 Cooling Off Period**

At any time within 5 *Working Days* after the date of this Deed, you may rescind this Deed or, if Section 13(2) of the *Retirement Villages Act* is not complied with, then at any time within 10 *Working Days* after that section is complied with. However, you forfeit your right to rescind this Deed once you occupy the *Villa*.

### **9.2 Repayment of Amounts Paid**

If you rescind this Deed under Clause 9.1:

- (a) Then the *Estate Purchase Price* that you have paid for the *Estate* must be repaid to you by the recipients of that money.
- (b) Where the *Estate* has been registered in your name, you must, subject to the repayment to you of the *Estate Purchase Price*:
  - sign all documents presented to you for signature by the previous proprietor that are necessary to register the certificate of title to the *Estate* in the name of the previous proprietor or his or her nominee;
  - surrender to the previous proprietor or his or her nominee the certificate of title to the *Estate* free of any mortgage or other charge or encumbrance that may have been registered against the certificate of title due to your acts or omissions (excluding a memorial registered under Section 15 of the *Retirement Villages Act*).

### **9.3 Liability for Costs**

You are not liable for any costs or expenses incurred due to you cancelling this Deed under Clause 9.1.

## **10. TERMINATION DUE TO ILL HEALTH OF RESIDENT**

### **10.1 Resident Unable to Provide Own Care**

If we consider you are incapable of maintaining (or adequately providing for) your safety, health or hygiene, you must agree for us to engage a qualified medical practitioner to provide us with a full written report on your condition.

### **10.2 Meet to Discuss Health Report**

If that report confirms our view as to your incapacity, we may resolve to require you to:

- (a) where you are the sole proprietor of the *Estate*, sell your *Estate* in the manner referred to in Clause 7 even if a spouse or other person is co-habiting the *Villa* with you;

- (b) where you jointly own the *Estate* with another person who is co-habiting the *Villa* with you, vacate the *Villa* in which case your joint proprietor may elect either to:
- continue to reside in the *Villa*; or
  - to vacate the *Villa* in which case you and your joint proprietor must sell the *Estate* in the manner referred to in Clause 7;

Before so resolving, we will give you a copy of the report and meet with you to listen to your views. Your next of kin and medical practitioner may also attend the meeting and express their views. In reaching our decision, we will take account of the views expressed by you, your next of kin and the medical practitioner.

### **10.3 Apply to Tribunal to Terminate Residency**

If we decide under Clause 10.2 that we require you to sell your *Estate* or vacate the *Villa*, unless you voluntarily arrange to do so, we must apply to the *Tribunal* for an order terminating your right to occupy the *Villa*.

If the *Tribunal* terminates your right to occupy the *Villa*, we must give you a written copy of that order. If you do not vacate the *Villa* and sell the *Estate* as required by the *Tribunal's* order, you are in default and Clause 14 then applies.

### **10.4 Emergency Alarm System and Emergency First Aid**

You hereby acknowledge that neither us nor any of *Our Employees* or agents are liable to you for any damages which you may suffer due to our failure to answer any emergency call system installed in the *Villa* or any delay in doing so. You also hereby acknowledge that any emergency first aid treatment is first aid treatment and not medical treatment and may be provided by persons who are not qualified health professionals.

### **10.5 Hospitalisation**

You hereby acknowledge and agree that, if we reasonably consider that you need the services of a doctor or treatment that requires hospitalisation, we may call a doctor or an ambulance on your behalf as the circumstances require and that you are responsible for the costs of the doctor, ambulance or hospital.

### **10.6 No Liability for First Aid**

You hereby acknowledge and agree that despite any actual or implied provision of this Deed or any rule of law or equity to the contrary, neither we nor any of *Our Employees* and agents are liable for any personal injury, suffering or death arising wholly or partially due to us or any of *Our Employees* or agents either providing, attempting to provide or failing to provide or assist in providing appropriate emergency first aid treatment to you or your spouse.

## 11. DEATH OF RESIDENT

### 11.1 Sale After Sole Resident's Death

If you were a sole proprietor, on your death your executors or administrators are entitled and obliged to offer your *Estate* for sale in the manner set out in Clause 7. This ensures that your *Estate* is sold in accordance with the *Village Scheme*.

### 11.2 No Sale where Survivor Joint Proprietor

If you die leaving a person surviving you who:

- (a) is a joint proprietor of the *Estate* (if any); and
- (b) is a party to this Deed;

and that person has:

- (c) attained the age of 55 years; and
- (d) been approved as a resident of the *Village* by us;

then the provisions of Clause 7 do not apply and that person is entitled to be registered as sole proprietor of the *Estate* and be permitted to continue to reside in the *Villa* under the terms of this Deed.

### 11.3 No Sale where Survivor Inherits Estate

If you die leaving a surviving person who:

- (a) prior to your death, lived with you in the *Villa*; and
- (b) is entitled to your interest in the *Estate* under your will or on an intestacy; and
- (c) is aged 55 years or more; and
- (d) has received our approval to be a resident of the *Village*; and
- (e) has executed and given us a stamped *Village Scheme and Residency Deed*;

then the provisions of Clause 7 do not apply and that person is entitled to a transmission of your interest in the *Estate* and to continue to reside in the *Villa* under the terms of this Deed.

### 11.4 Reasonable Time to Vacate

If you die leaving a surviving person who was living with you in the *Villa* prior to your death but is not entitled under Clauses 11.2 or 11.3 to continue to reside in the *Villa* after your death, then the following applies:

- (a) We must, despite the provisions of this Deed, allow that person reasonable time to vacate the *Villa*.

- (b) If within that period that person does not vacate the *Villa*, then there is default under this Deed.
- (c) If the default is not remedied within 28 days after we have served notice of the default under Clause 14 then immediately, or at any later time and without further notice or demand, we may apply for an order of the *Tribunal* terminating this Deed under Clause 15.

## 12. RELOCATION RIGHTS

### 12.1 No Special Right to Relocate in Village

You do not have any right under this Deed to be transferred or relocated from the *Villa* to reside in any other *Villa* in the *Village*. You may however sell your *Estate* under the provisions of this Deed and (subject to the *Advisory Board's* approval being given in the usual manner under Clause 7) purchase any other *Estate* within the *Village* that may be available for sale.

## 13. DISPUTES

### 13.1 Disputes Committee

We must convene a *Disputes Committee* in accordance with Clause 6.2 of the *Code*. The *Disputes Committee* must hear and mediate disputes that arise between the *Residents* (including yourself) and us, and also between you and any of the *Other Residents*. The *Disputes Committee* must comprise 3 members, being:

- (a) a person appointed by the majority of the *Residents*;
- (b) a person appointed by the Developer; and
- (c) an independent person, not being one of the *Residents* or an employee or associate of the Developer, who is appointed jointly by the Developer and the *Residents*.

### 13.2 Tenure of Disputes Committee

The *Disputes Committee* is appointed for a term of 3 years. A resigning member must, as soon as practicable, be replaced by a new member appointed in the same manner as the resigning member. A member of the *Disputes Committee* may be re-appointed as a member of the *Disputes Committee* when that member's term expires there being no limit on the number of times a member may be re-appointed.

### 13.3 Referral of Disputes

You or we may either separately or jointly refer a dispute to the *Disputes Committee*. The *Disputes Committee* must notify the parties to the dispute of its receipt of the referral and the date, time and venue at which the *Disputes Committee* will hear the parties' submissions on the dispute. Matters must be heard with the degree of formality that the *Disputes Committee* considers appropriate but the parties are not entitled to legal representation.

### 13.4 Hearing and Decision

The *Disputes Committee* must hear disputes promptly and attempt by mediation to resolve the dispute between the parties. If the dispute is not resolved by mediation, the *Disputes Committee* must give its written decision on the dispute within 10 days of the hearing. The *Disputes Committee's* decision must be by the unanimous decision of its members.

### 13.5 Referral to Ministry of Fair Trading or Tribunal

- (a) If the *Disputes Committee* decides that a dispute is beyond its competence, it must decline to hear the matter and advise the applicant to refer the dispute to the Ministry of Fair Trading or the *Tribunal*.
- (b) If the dispute is not decided by the *Disputes Committee*, either party to the dispute may refer the dispute to the Department of Commerce or the *Tribunal*.
- (c) Following the written decision of the *Disputes Committee*, either party to the dispute may refer the matter to the Department of Commerce or apply to the *Tribunal* for a hearing.

## 14 DEFAULTS

### 14.1 Default and Termination Notice

If you fail to:

- (a) pay any money or charges; or
- (b) perform any agreement;

as required by this Deed and any of those failures continue for 28 days after we have given you a written notice of the failure ("Termination Notice") which:

- (i) advises of your breaches of this Deed or the *Rules* and requires them to be remedied within a specified time being not less than 30 days;
- (ii) states that this Deed may not be terminated without an order to that effect made by the *Tribunal*;
- (iii) advises of our intention to apply to the *Tribunal* for an order terminating this Deed; and
- (iv) advises you of your right to occupy the *Villa* until a date set by the *Tribunal*;

then we may at our option, in our capacity as your agent, remedy your breaches of this Deed or the *Rules*. We may demand payment from you of all expenses that we reasonably incur in remedying your breaches. Alternatively, we may apply to the *Tribunal* for an order terminating this Deed.

## **14.2 Sue for Amounts Owing**

We may, without prejudice to any other remedy, sue you as agent for the *Residents* for any money which becomes due and owing by you under this Deed.

## **15. CONFIRMATION OF TERMINATION BY TRIBUNAL**

### **15.1 Termination Only by Tribunal Order**

Subject to this Clause 15, and despite the other provisions of this Deed, we may not terminate this Deed. However, the *Tribunal* may by written order terminate this Deed in accordance with the *Retirement Villages Act* and fix a date by which you must vacate the *Villa*.

### **15.2 Termination when Order Made**

If the *Tribunal* makes an order terminating this Deed, then, except to the extent that either party may have obligations to perform under it after termination, this Deed is deemed terminated.

### **15.3 Resident to Vacate and Sell on Termination**

If this Deed is terminated by the *Tribunal*, you must vacate the *Villa* by or on the date prescribed in the *Tribunal's* order and sell your *Estate* as soon as is reasonably practical under the terms of this Deed that apply to the voluntary sale of your *Estate*.

### **15.4 Disposal of Abandoned Goods**

If you abandon any property in or about the *Villa* after termination of this Deed by the *Tribunal*, we may deal with that property in accordance with the then current Retirement Villages Regulations.

### **15.5 Termination does not Affect Right to Sue**

The termination of this Deed does not prejudice or affect any of our rights or remedies against you for any prior breach by you of any term, condition, or restriction contained or implied in this Deed to be performed or observed by you.

## **16. AUDITOR**

### **16.1 Appointment and Dismissal**

The *Auditor* who is approved by the *Advisory Board* must be appointed by us. The *Auditor* may be dismissed at any time by us or the *Advisory Board*. The *Auditor* may retire on giving us one month's prior written notice.

### **16.2 Auditor's Fees**

The *Auditor's* fees are fixed by the *Advisory Board* and paid from the *Trust Account*.

## **17. MEETINGS OF THE RESIDENTS**

### **17.1 Call Meetings**

The *Advisory Board*, the *Residents' Committee* and ourselves may each at any time call a meeting of the *Residents* which must be held within 30 days of notice being given to convene it. We must also call a meeting of the *Residents* within 14 days of us receiving an application made under Clause 4.3(j).

**17.2 Procedure for Calling Meeting**

No meeting of the *Residents* may be held without giving at least 14 days prior written notice. The notice must:

- (a) specify the time and place of the meeting;
- (b) the nature of the business to be transacted; and
- (c) as appropriate, be given to each of the *Residents*, the Developer, every member of the *Advisory Board*, every member of the *Residents' Committee* and ourselves.

**17.3 Attendees at Residents' Meetings**

As appropriate, the following persons are the only persons entitled to be present at any meeting of the *Residents*:

- (a) each of the *Residents*;
- (b) the *Auditor* (if a firm, by any member of that firm);
- (c) the Developer (by its representatives);
- (d) the members of the *Advisory Board* and the *Residents' Committee*;
- (e) ourselves.

**17.4 Procedural Mistake not to Invalidate**

The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by, any persons entitled to receive notice except the members of the *Advisory Board*, the members of the *Residents' Committee*, the Developer or us does not invalidate the proceedings at that meeting.

**17.5 Quorum**

A quorum for a meeting is constituted where at least 30% of the proprietors of the then existing *Estates* that comprise the *Village* who are entitled to vote are present in person or by proxy. For quorum purposes, joint proprietors are to be counted as having one vote.

**17.6 Chairperson**

The Chairperson must be the chairperson of the *Residents' Committee* or, if that Chairperson is not present, a nominee of the *Residents' Committee* who shall be elected from the floor of the meeting.



**17.7 Voting**

Votes must be cast personally or by proxy. Voting must be either by a show of hands or secret ballot. Each proprietor of an *Estate* who is present has one vote, but only one of the joint proprietors of an *Estate* may vote. If the joint proprietors of an *Estate* cannot agree who is to vote then the person whose name is first listed on the certificate of title for the *Estate* may vote. The Chairperson has a casting vote.

**17.8 Adjournment**

The Chairperson may, if the majority of *Estate* proprietors eligible to vote at the meeting agree, adjourn the meeting to a time and place which the Chairperson determines. The Chairperson must adjourn any meeting at which a quorum is not present.

**17.9 Notices to Joint Proprietors of an Estate**

Any notice to be given to joint proprietors of an *Estate* may be given to the joint proprietor whose name first appears on the certificate of title for the *Estate*.

**17.10 Chairperson Rules on Conduct**

To the extent that this Deed makes no provision, the meeting shall be conducted as directed by the Chairperson.

**18. LIABILITIES INDEMNITIES AND INSURANCE**

You hereby agree that, subject to our covenants:

**18.1 Occupy Villa at Own Risk**

You occupy and use the *Villa* at your own risk. Neither we nor the Developer are liable for or responsible to you or to any other person for any injury, loss or damage to any property or person in or about the *Villa*.

**18.2 Liability for Interruption to Services**

Neither we nor the Developer are liable to you for any loss or damage suffered by you from:

- (a) any malfunction, or interruption to the water, gas, or electricity or heating services or other equipment; or
- (b) any *Plumbing Fittings* or the blockage of any sewers, waste drains, gutters, downpipes or storm water drains.

**18.3 Resident Indemnity**

You must always indemnify the Developer and us from and against all loss and damage to the *Villa* and to all property in the *Villa* caused by you or your *Visitors, Guest, Boarder or Tenant*.

**18.4 Liability for Theft**

Neither we nor the Developer are liable for any damage due to any burglary, theft, breaking and entering or malicious damage caused by any person to the *Villa* or to your *Furniture and Fittings*.

**18.5 Resident Not to Affect Insurance**

You must not bring, do, or allow to be done any act, matter, or thing upon the *Villa*, or keep anything in the *Villa*, which may:

- (a) invalidate, or make liable to invalidation, any insurance policies taken out pursuant to this Deed; or
- (b) increase the premium payable on any such insurance policies.

**19. CHARGE**

**19.1 Charge to Secure Money Secured**

In consideration of us and the Developer entering into this Deed and in consideration of any money which is now due or may become due and payable to us and the Developer by you under this Deed and for the purpose of securing the payment of the *Money Secured*, you hereby charge to us your estate and interest in the *Estate* subject to any of the encumbrances described in Schedule 6.

**19.2 Continuing Security**

The charge created by Clause 19.1 is a continuing security despite any settlement of account, intervening payment or other matter or thing until a satisfaction and discharge of the charge is given by us to you.

**19.3 Not to permit Prior Charges**

Without the written consent of the Developer and us, you must not permit any subsequent mortgage, charge or encumbrance against the *Estate* to have priority to or rank equally with the charge created by Clause 19.1.

**19.4 Application of Money**

All *Money Secured* received by us under this clause must be applied as follows:

- (a) firstly, towards the interest component of the *Money Secured*; and then
- (b) secondly, towards the *Money Secured* excluding the interest.

**19.5 Rates and Taxes**

You must pay all council rates, water and sewerage rates and charges, taxes, assessments and outgoings levied, charged or payable in respect of the *Estate*.

**19.6 General Powers**

Without being deemed to be a mortgagee in possession, we may:

- (a) make payment of the whole or any part of any money claimed by any person to be charged against, or secured over, or to be payable from the *Estate* or from the proceeds of the sale of the *Estate*;
- (b) receive the proceeds of any insurance policy in respect of the *Estate*; and
- (c) enter the *Villa* to exercise all or any of our rights, powers or remedies contained in or implied by this Deed exercisable by us against any person or in respect of the charged property.

## 19.7 Statutory Powers

The powers and remedies conferred on a mortgagee by any statute or ordinance, the general law or otherwise are in addition to the powers expressly conferred in this Clause 19. Those powers and remedies may be exercised by us (or any receiver appointed hereunder) immediately upon or at any time after this security becomes enforceable without any notice or expiration of time under that statute or ordinance being necessary. All other provisions of any statute or ordinance shall, to the extent permissible by law, be deemed to be negated or varied to the extent that they are inconsistent with the terms and provisions of this Deed.

## 19.8 Certificate of Title

We may hold your certificate of title for the *Estate* as security for the charge. You will hold an undivided share of the whole of the *Land* upon the settlement of your *Estate*. Upon completion of the *Village*, the Developer may transfer to you a part of any remaining undivided share in the *Land* and you hereby irrevocably appoint our directors to be your attorney with full power to exercise for and on behalf of and in the name of and as the act and deed of yourself to execute any documents including a transfer of part of any remaining undivided share in the *Land* subject to the encumbrances shown on the certificate of title for the *Land* or any part thereof provided that the transfer only increases the undivided share of the *Land* already held by you. Any person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere, dealing with the attorney or a person purporting to be an attorney under this power, is:

- (a) Entitled to rely on execution of any document by that person as conclusive evidence that:
  - (i) the person holds the office set out in the power;
  - (ii) the power of attorney has come into effect;
  - (iii) the power of attorney has not been revoked; and
  - (iv) the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power.
  
- (b) Not required to make any enquiries in respect of any of the above matters.

## 20. GENERAL PROVISIONS

### 20.1 No Partnership, Agency, Joint Venture

This Deed does not create, and must not be treated by any person as creating, any joint venture or principal and agent relationship between the parties. The only relationships between the parties created by and subject to this Deed are those of Developer, Manager and Resident.

### 20.2 Consents or Approvals in Writing

All consents or approvals required to be given by the *Advisory Board*, the *Residents' Committee* or ourselves must be obtained in writing.

### 20.3 Waiver of Certain Land Rights

Except to the extent contemplated by this Deed, you now waive your right to cause the *Estate* held by you, or in which you have an interest as tenant-in-common or lessee, to be partitioned while the *Village Scheme* continues. This waiver extends to any right to have the *Village Scheme* over the *Land* terminated.

### 20.4 Resident's Personal Representative

This Deed binds you and takes effect for the benefit of you and your permitted assigns, executors and administrators.

### 20.5 Amending this Deed

The *Advisory Board* and the Developer may either alter or add to the provisions of this Deed (including this clause and any provisions that amend or supplement this Deed) by an amending deed:

- (a) to satisfy the requirements of any law which affects the provisions of this Deed;
- (b) so that the provisions of this Deed can be more conveniently, advantageously, profitably or economically administered or managed;
- (c) so as to correct a manifest error; or
- (d) in any way that both the *Advisory Board* and the Developer may agree upon. However, where any alteration, addition or cancellation is made under any of paragraphs (b), (c) or (d) of this Clause, the *Advisory Board* and the Developer must be reasonably satisfied that:
  - (e) it does not detrimentally affect the interests of the *Residents*; or
  - (f) if it detrimentally affects the interests of the *Residents*, it has been approved by a resolution of the *Residents* present and voting with 75% in favour at a general meeting of the *Residents* properly convened and held.

Any alteration or addition to the provisions of this Deed not made pursuant to Clause 20.5 is of no effect.

### 20.6 Notices

Any consent, notice or demand in writing, required to be given by any party to another must be signed by that party, or by a duly authorised officer of that party, and be addressed to that other party. It may be sent by prepaid mail to the recipient's address stated in this Deed or to any other address last specified by the recipient. A posted notice is deemed received on the third *Working Day* after the day it was posted or by transmitting it on a *Working Day* by facsimile or any other electronic transmission device including e-mail to the other party or solicitor.

## 20.7 Provisions Survive Partial Invalidity

If any covenant, condition or term in this Deed is or becomes invalid or unenforceable, the remaining covenants, conditions or terms are not affected by that invalidity or unenforceability and remain valid and enforceable to the fullest extent permitted by law.

## 20.8 Legal Costs and Stamp Duty

The costs of preparing this Deed must be paid by the Developer. You must pay any stamp duty assessed on this Deed.

## 20.9 Law of Western Australia Applies

All matters affecting this Deed and the rights of the parties to this Deed are governed by the laws of Western Australia.

## 20.10 Power of Attorney

In the event that the *Tribunal* terminates this Deed, you irrevocably appoint our directors to be your attorney with full power for and on behalf of, in the name of and as the act and deed of yourself to do all or any of the following:

- (a) to enter and possess the *Villa* and exercise all of your rights in relation to it and, if we as your attorney so decide, to deliver possession of the *Villa* to another person to the exclusion of yourself;
- (b) to sign the withdrawal of any caveat lodged by you in respect of the *Estate*, the *Villa* or the *Village* and lodge that withdrawal for registration at the *Titles Office*;
- (c) to accept any new occupant of the *Villa* on the same terms and conditions as are contained in this Deed;
- (d) to execute any documents including a transfer of the *Estate* to a new occupant in accordance with the terms of this Deed; and
- (e) exercise the powers contained in the 19<sup>th</sup> Schedule of the *Transfer of Land Act 1893*.

Whatever the attorney lawfully does, purports to do, or causes to be done as attorney, is by this Deed ratified and confirmed by you. A statutory declaration made by us, or by our secretary, or any of our directors for the time being is sufficient proof of the fulfilment of all pre-conditions to be met prior to the exercise by us of any power contained in this sub-clause. The Registrar of Titles of Western Australia is authorised to act on that statutory declaration and to accept it as sufficient evidence of our right to exercise those powers.

Any person, including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere, dealing with the attorney or a person purporting to be an attorney under this power, is:

- (a) Entitled to rely on execution of any document by that person as conclusive evidence that:
  - (i) the person holds the office set out in the power;

- (ii) the power of attorney has come into effect;
- (iii) the power of attorney has not been revoked; and
- (iv) the right or power being exercised, or being purported to be exercised, is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power.

(b) Not required to make any enquiries in respect of any of the above matters.

#### **20.11 Rights Prior to Termination not Prejudiced**

The termination of this Deed does not prejudice or affect our rights or remedies against you for the prior breach by you of any term, condition or covenant contained or implied in this Deed to be performed or observed by you.

#### **20.12 Variation of Refurbishment and Improvements Contribution**

With the prior approval of the Developer and 75% of the *Residents* present and voting and entitled to vote at a meeting of the *Residents*, the *Advisory Board* may vary the percentages applicable to the *Refurbishment and Improvements Contribution*. If the *Refurbishment and Improvements Contribution* is varied, then that new percentage is effective in respect of each *Estate* from and including the day after the date of the meeting. The *Refurbishment and Improvements Contribution* shall, for each of the days prior to the variation, be calculated at the percentage or percentages that were then applicable.

#### **20.13 Variation of Deferred Facilities Fee**

In respect of any *Estate* owned by the Developer, the Developer reserves the right to vary the percentages used to calculate the *Deferred Facilities Fee* in item 6 of Schedule 6 that will be payable by the purchaser upon the first resale of the *Estate*. For each subsequent resale the percentages shown in item 6 of Schedule 6 shall apply.

#### **20.14 Assignment**

The Developer and/or ourselves shall be entitled to assign their interest pursuant to this Deed and the *Village Scheme* to any third party without the approval of the *Residents*.

### **21. GST**

**21.1** If *GST* is payable by the Developer or ourselves for any supply pursuant to the *Standard Contract* or this Deed or anything contained in this Deed, then:

- (i) the Developer or ourselves may increase the consideration or the relevant part thereof which relates to the goods, services or other things supplied by an amount which is equal to the *GST* payable by the Developer or ourselves;
- (ii) the Developer or ourselves shall notify you in writing of the amount by which the consideration has been increased; and

- (iii) you shall pay the increased consideration as and when it falls due and, if no date for payment is specified, then on demand.

**IMPORTANT NOTICE**

**This contract does not provide a full refund  
within the first 6 months**

## SCHEDULE 1

### HARBOURSIDE VILLAGE MINDARIE

#### EXCLUDED MAINTENANCE

The following categories of maintenance or repairs are your responsibility and cost:

1. Maintenance and repair of all surfaces, fixtures and fittings located inside the *Villa* including but not limited to:
  - ceiling extractor fans;
  - light fittings;
  - kitchen extractor fans;
  - kitchen stove;
  - other internal appliances;
  - internal painting;
  - internal tiling;
  - maintenance and replacement of floor coverings;
  - air-conditioning equipment.
2. Maintenance and repair of the following external surfaces, fixtures and fittings located outside, but still forming part of, the *Villa*:
  - clothes lines;
  - light fittings;
  - air-conditioning equipment;
  - pergola;
  - hot water heater;
  - paving and tiling to private court-yards;
  - window shutters;
  - garage/carport roller door.
3. Maintenance and repairs to any improvements either internal or external made by you to the *Villa* or its surrounds.
4. The *Plumbing Fittings*.



## SCHEDULE 2

### HARBOURSIDE VILLAGE MINDARIE

#### ADVISORY BOARD REGULATIONS

1. The members may meet together in person or at a distance, by telephone or by exchange of facsimile correspondence between each of them to conduct business, adjourn and otherwise regulate their meetings and proceedings as they think fit. The quorum for any meeting of the *Advisory Board* is 5.
2. Any member may at any time convene a meeting of the *Advisory Board*.
3. Subject to Clause 3.4, the members may elect and fix the term of office of a chairperson of their meetings. If no chairperson is elected, or if the chairperson is not present at the time appointed for the meeting the members present must elect one of their number to be chairperson of the meeting.
4. Questions arising at any meeting of the *Advisory Board* must be decided by a majority of votes. Each member has 1 vote and a determination by a majority of the members must for all purposes be deemed a determination of the *Advisory Board*. In case of an equality of votes the chairperson has a second or casting vote.
5. All acts done by one or more members of the *Advisory Board* acting as *Advisory Board* members will be, even if:
6.
  - (a) subsequently some defect in the appointment or the continuance in office of any such member or person acting as a member is discovered; or
  - (b) they or any of them were disqualified or had vacated office or were not entitled to vote,be as valid as if each person had been duly appointed or had continued in office and was qualified or had continued to be a member and was entitled to be a member.
6. A resolution in writing signed by all 5 members is as valid and effective as if it had been passed at a meeting of members duly convened and constituted. That resolution may consist of several documents in the same form each of which is signed by one or more members.
7. The *Advisory Board* must keep proper minutes of its meetings, resolutions and proceedings. The minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting.
8. The *Advisory Board* may appoint a secretary on terms and conditions as it thinks fit.

9. We must pay from the *Trust Account* to each member of the *Advisory Board* travelling and other expenses reasonably incurred by the member in order to attend meetings or otherwise regarding the business of the *Advisory Board*. Notwithstanding Clause 3.6 of this Deed, if a member performs extra services or exercises any special qualifications which we consider are outside the scope of the ordinary duties of a member, we may pay the member any additional sum (being a special fee) from the *Trust Account* that we decide upon.
10. Unless the members agree in writing to a shorter period of notice, at least 7 days notice (excluding the day the notice is given or deemed given) of any meeting of the *Advisory Board* must be given to each of its members. The notice must state the date, time and place of the meeting and include an agenda.
11. A notice may be given to any member or the secretary either personally or by sending it by post to the member's address shown in the notice of the member's appointment or to any other address (if any) nominated by the member for the giving of notices.

### SCHEDULE 3

#### HARBOURSIDE VILLAGE MINDARIE

#### RESIDENTS' COMMITTEE REGULATIONS

1. The members may meet for business and adjourn and otherwise regulate their meetings and proceedings as they think fit. The quorum for *Residents' Committee* business is 4.
2. Any *Residents' Committee* member may at any time convene a meeting of the *Residents' Committee*.
3. Unless the members agree in writing to a shorter period of notice, at least 7 days notice of a *Residents' Committee* meeting (excluding the day the notice is given) must be given to all members. The notice must state the date, time and place of the meeting and include an agenda.
4. Subject to Clause 3.10, the members may elect and fix the term of office of a chairperson of their meetings. If no chairperson is elected, or if the chairperson is not present at the time appointed for the meeting, the members present must elect one of their number to be chairperson of the meeting.
5. Questions arising at any meeting of members must be decided by a majority of votes. Each member has 1 vote and a determination by a majority of the members must for all purposes be deemed a determination of the *Residents' Committee*. In case of an equality of votes the chairperson has a second or casting vote.
6. The continuing members, may if there is a quorum, act despite any vacancy in their body.
7. All acts done by one or more members of the *Residents' Committee* acting as *Residents' Committee* members must, even if:
  - (a) subsequently some defect in the appointment or the continuance in office of any such member or person acting as a member is discovered; or
  - (b) they or any of them were disqualified or had vacated office or were not entitled to vote,be as valid as if each person had been duly appointed or had continued in office and was qualified or had continued to be a member and was entitled to be a member.
8. A resolution in writing signed by at least four (4) members is as valid and effective as if it had been passed at a meeting of members duly convened and constituted. That resolution may consist of several documents in the same form each of which is signed by one or more members.

9. The *Residents' Committee* must keep proper minutes of its meetings, resolutions and proceedings. The minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting.
10. The *Residents' Committee* may appoint a secretary of the *Residents' Committee* for such term and on such conditions as the *Residents' Committee* thinks fit.
11. The *Residents' Committee* may delegate to a sub-committee any of its powers and duties as it thinks fit and at any time revoke that delegation.
12. A notice may be given to any member or the secretary either personally or by post to the member's address shown in the notice of the member's appointment or to any other address (if any) nominated by the member for the giving of notices.

## SCHEDULE 4

### HARBOURSIDE VILLAGE MINDARIE

#### VILLAGE RULES

1. You must not obstruct or allow the obstruction of any walkways, pathways, entrances, passages, courts, corridors, driveways, vestibules, halls, roads, stairways, fire or escape doors or other parts of the *Common Areas* or any related *Plumbing Fittings* or conveniences.
2. You must not throw or deposit or allow to be thrown, deposited or to fall any article or substance from, out of or onto the *Villa* or the *Common Areas*.
3. We must provide keys for locks of doors or other openings of the *Villa*. You must return all keys for locks of doors or other openings of the *Villa* to the Manager on the sale or other termination of your *Estate*.
4. No locking device may be altered or fitted to the *Villa*'s front door or security door without our approval. This requirement will protect your interests where an emergency occurs and we have to use a master key to enter the *Villa*.
5. No rubbish or waste may be burned in or about the *Villa* or the *Common Areas* except in an incinerator that we have approved for the purpose.
6. Subject to any provision contained in this Deed, we may close, lock off or otherwise control access to the *Village Centre* from time to time and may take any and all actions we consider necessary for those purposes. In particular, we may take any actions necessary to prevent unauthorised persons from using any part of the *Village*.
7. You must give written notice to us if the *Villa* is to be left vacant for more than fourteen (14) consecutive days.
8. You must give written notice to us if you intend to share occupancy of the *Villa* with any other person for more than one month.
9. You must not hang any washing, towel, bedding, clothing or article on any part of the *Villa* so as to be visible from outside the *Villa*.
10. You must not light any fire in or outside the *Villa* except in a designated fireplace.
- 11.1 You may only use and occupy the parking areas of the *Village* or permit them to be used and occupied by you or your *Visitors*, *Guest*, *Boarder* and/or *Tenant* for the purpose of the parking of motor vehicles owned or used by you or your *Visitors*, *Guest*, *Boarder* and/or *Tenant*.
- 11.1 You must ensure that your motor vehicle standing on the parking area is parked within the limits of a car bay and so as not to interfere with or obstruct the movement of any other motor vehicle in the parking areas.

- 11.3 Your vehicle must not occupy a car bay signed as a 'visitor's bay'.
- 11.4 A vehicle may briefly stand on a village street for the purpose of pick-up or set-down of people or goods or if for the purpose of loading/unloading a caravan or removalist van, may while complying with "No Parking" signs park on a village street for up to four (4) business hours or with the village Manager's permission, overnight."
- 11.5 You must ensure vehicles are not within six(6) metres for a corner; not opposite a driveway; and the passenger door is to the kerb, when parking or standing on a village street.
- 11.6 A vehicle owner must move their vehicle when requested to do so by the Village Manager.
- 11.7 A vehicle may only utilise disabled parking bays in accord with City of Wanneroo Local Parking Law, which requires display of an ACROD sticker and a qualifying disabled person arriving in the vehicle
- 11.8 You must not permit any mechanical work to be carried out on your vehicle on the parking areas (except in cases of emergency) or allow any motor vehicle to tow or push any other motor vehicle owned or used by you on the parking areas or permit any breakdown vehicle to enter the parking areas without our prior consent.
- 11.9 You must not store or keep on or allow to be stored or kept on the parking areas, or in any motor vehicle standing in a parking area, any petrol or inflammable fuel except that which is contained in petrol or other fuel feed tanks or lines forming a permanent part of a motor vehicle. Any spillage or leakage of oil, grease or petrol onto any part of the parking areas from any motor vehicle owned or used by you or your *Visitors* or any *Guest, Boarder* or *Tenant* shall be removed, and the parking area cleaned, at your expense.
12. **RULES FOR USE OF POOL AND SPA**
- 12.1 Children must always be accompanied by an adult. For the purpose of safety, a child is defined in these *Rules* as being anyone under the age of 15. Children are not permitted to use the spa.
- 12.2 Your visitors and guests may only enter the pool or spa if you or another resident who accepts responsibility for them is present. Guests utilising the Guest Suite may only use the pool or spa with approval from the Village Manager.
- 12.3 All users of the pool and spa must wear appropriate swimming attire at all times and may be refused access by us or requested to leave if their attire is considered by us to be unsuitable.
- 12.4 For hygiene purposes, showers must be taken before entering the pool or spa.
- 12.5 No food or drink may be consumed within one metre of the pool or spa surrounds.
- 12.6 Running is not permitted around the pool or spa areas.

- 12.7 All users must observe common safety sense such as checking depth before entering the pool. Diving, or in any way jumping, into the pool or spa is prohibited.
- 12.8 All users must properly dry themselves before entering the *Village Centre*.
- 12.9 The general peaceful enjoyment of the area must not be reduced by excessive noise caused by radios, etc.
- 12.10 We must be notified in writing of your intention to use of these facilities for a special event at least 7 days in advance of the event.
- 12.11 The spa must only be used in accordance with the signs placed on or near the equipment.
- 12.12 You must not enter the plant room adjacent to the pool.

13. **RULES FOR USE OF VILLAGE CENTRE DINING ROOM FOR PRIVATE FUNCTIONS**

- 13.1 The private function must directly involve one of the *Residents* – e.g. a birthday, wedding anniversary or special occasion for one of the *Residents*.
- 13.2 If guests at a private function given by one of the *Residents* use the swimming pool, the pool rules apply. That is, the host must be present at the poolside.
- 13.3 Regular functions held by groups of the *Residents* (e.g. bingo, Friendly Hour, etc.) shall be given priority over requests from one of the *Residents* for a private function.
- 1.4 All bookings must be made at our office. We may consider the special circumstances of the request for a private function that falls outside these guidelines.

14. **RULES APPLYING TO APPROVED PETS**

We may permit pets to be kept in the *Villa* at our absolute discretion.

Approval may be given, upon receiving a specific application from the pet owner, for the keeping of a pet subject to the following conditions:

- (a) The owner must maintain proper control over the pet at all times and, in regard to dogs, will keep the pet under the control of a leash whenever the pet is taken onto the *Common Areas*.
- (b) Cats must be kept indoors at night, to avoid possible disturbance to any of the Other Residents.
- (c) The pet must be tagged with its owner's name and telephone number.
- (d) The owner must abide by and observe all local government by-laws concerned with the keeping of pets.

- (e) Both the pet and its environment must be kept in a clean and hygienic state, which in no way reduces the quality of life of the Other Residents or any one of them.
- (f) The right of the Other Residents to quiet enjoyment of their environment must not be impeded, especially by excessive pet noise.

15. **RULES APPLYING TO SKATE BOARDS, ROLLER SKATES, ROLLER BLADES, BICYCLES AND BATTERY OPERATED VEHICLES**

- 15.1 Skate boards, roller skates and roller blades must not be used in the *Village*.
- 15.2 Bicycles may be ridden on the left-hand side of *Village* roadways but not on the footpaths.
- 15.3 Battery-operated vehicles must use the footpaths and observe public road safety rules in the same manner as a pedestrian.



## SCHEDULE 5

### HARBOURSIDE VILLAGE MINDARIE

#### COMMON SERVICES

The *Common Services* are paid for out of the *Trust Account* operated by us in accordance with Clause 4.3. These services may be varied by agreement between the *Advisory Board* and ourselves and currently include, but are not limited to:

1. Monitoring and response to the emergency call system 24 hours a day;
2. Services of the Manager and associated staff in the co-ordination and facilitation of health care services, welfare issues, recreation and other activities;
3. Maintenance and upkeep of the *Common Areas*, the *Village Centre* and the *Village* buildings and grounds;
4. Maintenance and upkeep of all common facilities and equipment owned by the *Village*;
5. Repairs, cleaning and maintenance of the *Village Centre* and maintenance of paths and gardens;
6. Lawn mowing, gardening, maintenance of landscaping and reticulation of the *Village* grounds;
7. Comprehensive insurance cover on all *Village* buildings, facilities and equipment;
8. Administration and management of the *Village*;
9. Security lighting for the *Village Centre* and the *Common Areas*.

**SCHEDULE 6**

**HARBOURSIDE VILLAGE MINDARIE**

**PURCHASE PARTICULARS**

**1. THE RESIDENT**

Name(s) : \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**2. (a) THE VILLA**

Villa \_\_\_\_\_, 7 Honiara Way, Mindarie, W. A. 6030 as shown on the *Plans*.

**(b) THE ESTATE \_\_\_\_\_**

(i) the *Licence to Occupy* the *Villa* and

(ii) the whole of the interest in Certificate of Title Volume \_\_\_\_\_ Folio \_\_\_\_\_

**3. THE ESTATE PURCHASE PRICE \$ \_\_\_\_\_**

**4. THE LAND**

Portion of Swan Location 1370 being part of Lot 1300 on Diagram 100611 and being the whole of the land comprised in Certificate of Title Volume 2208 Folio 58

Encumbrances are: **1. Memorial No. H 719290 Retirement Villages Act 1992**

**2. Notification No. H 710235**

Section 70A Application lodged by the City of Wanneroo to secure the ongoing use of the land as a Retirement Village.

**5. YOUR PROPORTION OF THE COMMENCING MONTHLY RESIDENT'S CONTRIBUTION**

Single Occupancy \$ \_\_\_\_\_

Double Occupancy \$ \_\_\_\_\_

**6. DEFERRED FACILITIES FEE**

On settlement of the resale of your *Estate*, you must pay to the Developer a fee called the *Deferred Facilities Fee*.

If you have been entitled to occupy the *Villa* for, up to but not more than, 3,650 days; the *Deferred Facilities Fee* shall be an amount equal to 2.5% of the *Estate Sale Price* multiplied by the number of days that you have been entitled to occupy the *Villa* and then divided by 365.

If you have been entitled to occupy the *Villa* for more than 3,650 days, the *Deferred Facilities Fee* shall then be the greater of:

- (a) 25% of the *Estate Sale Price*; or
- (b) 50% of the amount by which the *Estate Sales Price* exceeds the *Estate Purchase Price*.

Where GST is payable by the Developer on any resale, the *Deferred Facilities Fee* shall be increased by this amount.

Please Initial \_\_\_\_\_

**7. REFURBISHMENT AND IMPROVEMENTS CONTRIBUTION**

On settlement of the resale of your *Estate* you must pay the *Refurbishment and Improvements Contribution* being an amount equal to 0.5% (or some other percentage as may be determined under Clause 20.12) of the *Estate Sale Price* multiplied by the number of days that you have been entitled to occupy the *Villa* up to a maximum of 3,650 days and then divided by 365. The *Refurbishment and Improvements Contribution* amount shall not, however, in any case exceed 5% of the *Estate Sale Price*.

Please Initial \_\_\_\_\_

**8. DATE OF THE DEED**

The \_\_\_\_\_ day of \_\_\_\_\_

**ACKNOWLEDGEMENT**

I/We Acknowledge That I/We Have Been Given An Opportunity To Take A Copy Of This Contract (i.e. This Deed) Away And Obtain Independent Advice

.....  
**(Resident)**

**Date** .....

.....  
**(Resident)**

**Date** .....

**EXECUTED BY THE PARTIES AS A DEED**

.....  
**(Resident Signature)**

.....  
**(Print Name)**

In the presence of:

.....  
**(Witness Signature)**

Name:  
Address  
Occupation:  
Date:

**Signed for**  
**LLP WA Village Holdings Pty Ltd (formerly**  
**Fini Villages Pty Ltd (A.C.N. 072 668 225)**  
Under Power of Attorney Number K929990

.....  
Attorney

.....  
Print Name

**In the presence of:**

Witness sign .....

.....  
Print Full Name  
Address  
Occupation  
Date:

.....  
**(Resident Signature)**

.....  
**(Print Name)**

In the presence of:

.....  
**(Witness Signature)**

Name:  
Address  
Occupation:  
Date:

**Signed for**  
**Village Management Ltd**  
(A.C.N. 009 055 556)  
Under Power of Attorney Number K929987

.....  
Attorney

.....  
Print Name

**In the presence of:**

Witness sign

.....  
Print Full Name  
Address  
Occupation  
Date: