



Association for Christian Senior Citizens' Homes (WA) Inc

&

Resident Name

Licence of Unit No. _____



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Acknowledgment by the Resident

The Resident signs below to acknowledge:-

Documents received by you before entering this agreement

You acknowledge that you have received the following documents at least ten working days before signing this agreement:

1. A copy of all contracts you will be required to sign to enter into the Village;
2. Information Statement for prospective residents prepared in accordance with section 13(2) of the Retirement Villages Act 1992;
3. Notice of Rights under sections 13 and 14 of the Retirement Villages Act 1992 and the documents referred to in that notice including:
 - (a) A copy of the Village rules
 - (b) A current copy of the Code of Fair Practice for Retirement Villages

You acknowledge that you have received at least ten working days before signing this service agreement, written information in relation to:

1. The costs payable under the contract, including all ongoing village operating costs and charges; and
2. Details of the services to be provided under the contract; and
3. Details of the notice to be given to, and the costs payable by you to terminate the provisions of the services.

Signed (Resident): X _____ Date: ____/____/20 ____

Signed (Resident): X _____ Date: ____/____/20 ____

Cooling Off Period

Under this agreement, you have the right to rescind the agreement at any time within seven working days of the date of this agreement. You have a statutory right to rescind this agreement without any reason, by sending written notice to the Village Owner at the Village Owner's address shown in the agreement. This is the statutory Cooling Off Period.

The Cooling Off period starts the day after the date the last party under this agreement, signs this agreement.

If you terminate the agreement within the cooling off period, any and all monies paid by you to the Village Owner under this agreement (with the exception of the Administration Fee) will be refunded to you within 14 days of the Village Owner receiving Your written notice.

The Cooling Off period is waived by you if you begin to live in the Residence before the expiration of the cooling off period.

Notes Section

1. The Retirement Villages Act 1992 Part 4 sets out circumstances in which an application may be made to the State Administrative Tribunal including in relation to the following matters:
 - (a) a residence contract's compliance with a requirement of the Retirement Villages Regulations 1992 (s. 55);
 - (b) a dispute about a service contract or the variation or cancellation of the terms of a service contract (s. 56);
 - (c) an increase in recurrent charges or imposition of levy (s. 57A);
 - (d) the transfer of a resident to other accommodation in the retirement village (s. 57);
 - (e) the termination of a resident's occupation of a retirement village (s. 58 and 59);
 - (f) the termination of a residence contract (s. 62 and 63).
2. The Retirement Villages Act 1992 section 23 and the regulations made under that section set out limits to the liability of certain former residents of a retirement village to pay recurrent charges after permanently vacating residential premises in the village.
3. Regulations made under the Retirement Villages Act 1992 section 25 set out matters in respect of which the administering body of a retirement village cannot demand or receive payment from a resident or former resident of the retirement village.

Access to Aged Care Services

The administering body of a retirement village **cannot** guarantee that –

- (a) any proposed residential aged care facility will be constructed, or that any existing residential aged care facility will continue to be available; or
- (b) you will be allocated a place in, or have an automatic right of transfer to, any Commonwealth funded residential aged care facility (which provides accommodation for people who can no longer live independently); or
- (c) you are eligible to receive Commonwealth and/or State funded community care services (which provides support to assist people to continue to live independently).

Your entry to residential aged care facilities and your eligibility to receive aged care support services are subject to availability and to your ability to meet the eligibility and assessment requirements administered by the Commonwealth and/or State Government.

Aged care facilities and services are not regulated by the *Retirement Villages Act 1992* (Western Australia).

Prior to Signing this agreement, the Resident is strongly advised to obtain independent legal and financial advice about your rights and duties under this agreement.

Occupancy Agreement

Independent Living Unit, Manoah Village

DATED

Association for Christian Senior Citizens' Homes (WA) Inc. of 86 Mills Road, Martin, Western Australia 6110 (**Association**)

AND

of (Resident)

Part one – Introduction

This section explains the definitions and interpretations to enable the Resident to more easily understand the terms of the Agreement

1. Definitions and Interpretation

1.1 Definition

Administration Fee means the fee specified in Item 3 of Schedule 1 payable by the Resident, inclusive of GST.

Agents Fee includes all costs, fees and expenses and commission payable to the Residents Agent and associated legal or settlement fees (if applicable).

Agreed Entry Date means the date set out in Item 4 of Schedule 1.

Agreement means this Occupancy Agreement.

Code means the Fair Trading (Retirement Villages Code) Regulations current at the time the Resident enters into this Occupancy Agreement as it is from time to time amended or repealed and re-enacted and to any other Code enacted in its place.

Common Areas means those areas of the Village which are made available for the use and enjoyment in common of the Residents of the Village, or other persons authorised by the Association.

Communal Amenities means amenities within the Village that all Village Residents have access to, as set out in Schedule 6.

Communal Services means the services that are provided and made available to the Residents residing in the village as set out in Schedule 6.

Community Guest Room means the guest accommodation available at the Community Hall within the Village for a fee and subject to the terms and conditions imposed by the Association in its absolute discretion.

Contents means the items provided by the Association for use by the Resident during the Term listed in Item 2 of Schedule 1.

Current Market Value means the value of the Unit that a willing prospective resident is prepared to pay for the right to occupy the Unit under an agreement or agreed or determined under clause 15.2.

Essential Service means electricity, gas, refrigeration, sewerage, septic tank or other waste management treatment, water, including the supply of hot water.

Entry Contribution means the amount set out in Item 3 of Schedule 1.

Evidence of Death means:

- (a) evidence of a grant of probate or letters of administration; or
- (b) other evidence that the Association accepts as evidence of the Residents death.

Exit Fee means the deferred fee the Resident must pay to the Association under clause 12.1, which is calculated in accordance with clause 12.2.

Exit Administration Fee means the exit administration fee the Resident must pay the Association under clause 12.1 for arranging the termination of this Agreement, which is calculated in accordance with the formula shown in Item 5 of Schedule 1.

Financial Year means 1 July of each year to 30 June of the following year.

Land means the land described in Item 1 of Schedule 1.

Maintenance Schedule means the guide to funding responsibility for repairs, maintenance and replacements for Village units as set out in Schedule 4.

New Entry Contribution means an entry contribution paid to the Association by the Next Resident under an agreement entered into in relation to the Residents Unit but for whom the right to occupy does not commence until after termination of this Agreement.

Next Resident means a new resident who enters into a new agreement with the Association for the Unit after termination of this Agreement.

No Market Notice means a written notice given by the Association to the Resident under clause 15.1 electing not to advertise or market the Unit.

Notes Section means the section at the start of the Agreement with a heading labelled as the notes section.

Occupancy Agreement means this agreement and includes all schedules or annexures referred to or forming part of this document.

Personal Amenity means a personal amenity provided or made available by the Association for the exclusive use of the Resident as set out Schedule 6.

Personal Service means any service provided or made available to the Resident by the Association, as set out in Schedule 6.

Permanently Vacated means that all of the following have occurred:

- (a) the Association has been given notice of the Residents intention to vacate the Unit in accordance with this Agreement;
- (b) the Resident has removed their goods and belongings from the Unit;
- (c) the Resident has ceased to reside in the Unit; and
- (d) The Resident has given up the Residents right to exclusively occupy the Unit by returning the keys and access cards to the Unit and the Village to the Association or if the Resident has died by the Residents personal representative returning the keys and access cards to the Association.

Real Estate Agent means a person acceptable to the Association, acting reasonably who:

- (a) holds a current real estate agents' licence under the Real Estate and Business Agents Act 1978 (WA); and
- (b) is experienced in the sale or leasing of premises in retirement villages in Western Australia.

Recurrent Charge means the amount payable by the Resident as the Residents proportionate share of the Village Operating Costs as specified in Item 6 of Schedule 1.

Refund means the amount payable to the Resident following termination of this Agreement in accordance with clause 12.

Refurbishment Work means the work to replace the carpets in the Unit and the painting of all surfaces in the Unit previously painted and any other refurbishment work required to make the Unit marketable in the opinion of the Association.

Re-letting Fee means if the Resident appoints the Association (including the Associations Real Estate Agent) under clause 15.4 the applicable Re-letting Fee is:

- (i) if the Association self-markets, the costs incurred by the Association for the marketing and advertising; or
- (ii) if the Associations Real Estate Agent is appointed the Re-Letting Fee is 3% of the New Entry Contribution paid by the Next Resident this covers the costs, fees, expenses, and commission payable to the Associations Real Estate Agent; and
- (iii) if the Resident appoints its own Agent pursuant to clause 12.8, the applicable Re-Letting Fee is the costs incurred by the Association (if any) for the marketing and advertising of the Unit.

Reserve Fund means the fund established for the purposes stated in clause 12.6.

Reserve Fund Contribution means the amount the Resident must pay the Association under clause 12.1, which is calculated in accordance with clause 12.3.

Residents means any or all of the other residents of the Village.

Residents Agent means a Real Estate Agent or other person legally licenced to represent the Resident in marketing the Residents Unit.

Reservation Form means the reservation form annexed to this Agreement.

Retirement Village Laws means:

- (a) the Retirement Villages Act 1992 (WA);
- (b) the Retirement Villages Regulations 1992 (WA); and
- (c) the Fair Trading (Retirement Villages Code) Regulations,

as amended or substituted from time to time.

Residence Rules means the residence rules of Manoah Village as set out in Schedule 2.

Term has the meaning given in clause 2.

Termination means the termination of this Occupancy Agreement in accordance with clause 13 and Schedule 5.

Tribunal means the State Administrative Tribunal or its replacement.

Settlement Date means the Agreed Entry Date.

Unit means the premises occupied by the Resident under this Occupancy Agreement and is more particularly described in Item 1 of Schedule 1, including any garage or car space specifically allocated to the unit and any courtyard or garden to which access by persons other than the Resident is restricted.

Urgent Repair means a repair that is necessary:

- (a) for the supply or restoration of an Essential Service; or
- (b) to avoid:
 - (i) risk of injury to a Resident; or
 - (ii) damage to the Unit; or
 - (iii) the Unit being or becomes unsafe or insecure; or
 - (iv) undue hardship to a Resident.

Valuer means a person who:

- (a) is licensed as a land valuer under the applicable law in Western Australia which licenses land valuers;
- (b) is a fellow or association of the Australian Institute of Valuers and Land Economics Incorporated (WA Division); and
- (c) has had at least 4 years' experience in Western Australia in the valuation of property of the same general classification as the Unit.

Village means Manoah Village, 86 Mills Road, Martin, Western Australia 6110.

Village Owner means the entity described at the front of this Agreement as a party to this Agreement and includes any successor in title, nominated representatives or any manager nominated by the Association and its officers, agents, and employees.

Village Operating Costs means each outgoing or expense of the Village Owner payable or incurred in relation to the ownership of the Land and the operation, management and administration of the Village and the provision of facilities and services generally to the Residents, including but not limited to:

- (a) all rates, including council rates, water rates, electricity, gas or other fees from utilities and all charges and expenses payable for installation, repair or consumption of water, gas, oil, electricity, light, power, fuel, telephone, sewerage, garbage and other services or requirements supplied to the Village for the purpose of operating the Village;
- (b) all legal, accounting, auditing and other professional charges incurred by the Association in the conduct and operation of the Village, including payments to staff, consultants, contractors and other persons;

- (c) stamp duty, bank charges, reasonable fees and the costs of establishing and maintaining all records required by any statute or otherwise, the cost of keeping proper books of account, the costs including postage, preparation, printing and sending notices and correspondence;
- (d) all taxes including any GST arising under any supply made by the Association to the Resident or any person, any government taxes, levies or duties for which the Association becomes liable in relation to the conduct and management of the Village;
- (e) all insurance premiums payable by the Association in respect of policies of insurance for:
 - (i) repair and reinstatement of the Units, the buildings and infrastructure of the Village for the full replacement value arising out of its damage or destruction by any cause including flood;
 - (ii) public liability for personal injury and property damage;
 - (iii) workers compensation and voluntary workers compensation; and
 - (iv) any other insurance that the Association is required by law or statute to take out or that the Association elects to take out;
- (f) upkeep and maintenance of all fire alarms systems, rainwater detention/retention tanks & pumps, and all monitoring and safety services provided to the Village and the Units (if any);
- (g) all services provided to the Common Areas and the Village including ground maintenance cleaning, lighting, pest control, waste removal, gardening and landscaping, fire prevention and any other services;
- (h) costs for maintaining and repairing all ventilation, air-conditioning, cooling, and heating of the Common Areas (other than as specifically reserved to be the Resident's responsibility);
- (i) costs incurred in maintaining and repairing the Village and the Units, including repairs to Common Areas (other than as specifically reserved to be the Resident's responsibility);
- (j) any other amount that the Association may, from time to time, deem reasonable and desirable to provide for future repairs, renovations and alteration of non-fixed equipment and machinery such as air-conditioners, fridges, microwaves, dish washing machine, washing machine, dryers, furniture, equipment and furnishings;
- (k) the cost of administration staff and all other staff necessary to manage and operate the Village and provide any services to its Residents including all fringe benefits taxes, payroll tax or other taxes and costs related to employment of staff members; and

- (l) any other expenses the Association incurs for the operation, management and conduct of the Village including all provisions, stationery, products, and consumables acquired for the conduct and operation of the Village, but excluding
- (m) any work of a structural or capital nature for which the Resident or another Village resident of a unit within the Village is liable (but expressly excluding the Village Owner); and
- (n) any amount which, under the Act, Code or Regulations cannot be recovered from residents of the Village at that time.

1.2 Interpretation

In this Agreement, unless inconsistent with the context:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) a reference to a party to this Agreement includes its successors and permitted assigns;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a clause, schedule or annexure is a reference to a clause, schedule, or annexure to this Agreement;
- (e) the word *includes* is not a word of limitation and does not restrict the interpretation of a word or phrase in this Agreement;
- (f) a reference to a document, includes a variation or replacement of it;
- (g) a reference to a thing, including but not limited to a right, is a reference to either the whole thing or a part of the thing;
- (h) an agreement, representation, or warranty in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (i) a reference to currency is to the Australian currency;
- (j) a reference to an Item is a reference to an items in the Schedule to this Agreement; and
- (k) reference to an annexure, attachment or schedule is a reference to the corresponding annexure, attachment, or schedule in this Agreement.

1.3 Existence of the Act, the Code, and the Regulations

The Resident is referred to the Act, the Code and the Regulations and the Resident's rights under that legislation including:

- (a) the rights set out in the Code to be consulted on, and have access to information about, the administrative and financial arrangements of the Retirement Village;
- (b) the rights set out in the Code in relation to processes available to the Resident for the resolution of disputes in relation to the Retirement Village; and
- (c) the rights set out in Note 1 in the Notes Section.

1.4 Acknowledgement of entire agreement

The Resident acknowledges this Agreement represents the entire agreement between the Resident and the Association.

Part Two – Moving into the Village

This section explains when the contract officially commences and the payments which need to be made upon entry by the resident.

2. Settlement

On the Settlement Date the Resident must pay to the Association:

- (a) the Entry Contribution;
- (b) the first months Recurrent Charge; and
- (c) the Administration Fee.

3. Licensing

3.1 Grant of Licence

- (a) The Association grants to the Resident a licence of the Unit subject to the terms contained in this Agreement; and
- (b) The Resident has the right as licensee to exclusively occupy and use the Unit and a non-exclusive right to use the Common Areas and Communal Amenities in the Village.
- (c) This Licence is granted subject to each restriction, condition, reservation or right, easement, restrictive covenant or memorial affecting the Unit contained on the certificate of title for the Land or at law.

3.2 Term

- (a) The Term of the licence commences on and from the Agreed Entry Date and continues for the life of the Resident or if more than one person signs this Agreement as Resident, on the earlier death of the last survivor or when otherwise terminated under the provisions of this Agreement.
- (b) If the Association agrees to an extension or renewal of this Occupancy Agreement the Residents financial rights and obligations under this Agreement will not be affected.
- (c) The Unit is an independent living and self-care residence. It is always an essential term of this Agreement that the Resident must be able to live independently in the Unit on a self-care basis.

3.3 Warranty

The Association warrants that the Unit will be in reasonable condition when the Resident takes possession.

3.4 Resident's Representations

The Resident represents that:

- (a) The Resident, or if the Resident is more than 1 person both persons must be over the age of 55 years or retired from full-time employment or a person who is or was the spouse of such a person; and
- (b) each person occupying the Unit is capable of maintaining their own safety, health, and hygiene as a resident of the Village and if required with the assistance of a Home Care Package; and
- (c) they accept the Christian concept of the Village and the Village Rules

Part Three – Living in the Village

This section explains the resident's and operator's obligations while the resident/s are residing in the village.

4. The Residents Unit

4.1 Quiet enjoyment

Subject to the provisions of this Agreement, and the Resident observing and performing the Residents obligations under this Agreement, The Resident may peacefully and quietly hold and enjoy the Unit during the Term without interruption by the Association.

4.2 Guests

The Resident must not permit any visitor to stay in the Unit and the Community Guest Room (individually or as a combination of the two) for longer than two consecutive weeks without the Association's consent (which consent will not be unreasonably withheld).

4.3 Absence

The Resident must advise the Association in writing if the Resident intends to be absent from the Residents Unit for any period exceeding 14 days.

4.4 Pets

The Resident may be allowed, in the Association's absolute discretion, and only under strict conditions determined by the Association, to have a pet reside with the Resident in the Unit.

4.5 Additional Resident

- (a) The Resident does not have an automatic right to have an additional person, who is not a resident at the date the Resident signed this Agreement, become a Resident under this Agreement.
- (b) A person who is not a resident at the date of signing this Agreement may become a resident under this Agreement, if that person has the Associations prior written consent, which consent will not be unreasonably withheld if:
 - (i) there is only one Resident or one surviving Resident;
 - (ii) the Resident marries that person;
 - (iii) that person is over the age of 55 years;
 - (iv) that person agrees in writing to be bound by the terms and conditions of this Agreement;
 - (v) the Association agrees in writing to that person becoming a Resident;
 - (vi) the Association is satisfied (by a deed of agreement or otherwise) that no person who was previously a Resident but who has ceased to reside in the Unit, or their personal representative (if they are deceased), has any claim against the Association for the payment of all or any part of the Refund;
 - (vii) the Resident, if the Association so requires, signs a deed of surrender, prepared by the Associations solicitor, at the Residents

cost and in a form acceptable to the Association or all parties enter into a variation deed to vary the terms of this Agreement to add the additional person;

- (viii) that person, the Resident and the Association execute a new agreement (if required) on the same terms and conditions as this Agreement or on terms determined by the Association and any incidental changes that the Association may require; and
 - (ix) the Resident pays all the Associations costs, including legal costs, associated with that person becoming a Resident.
- (c) In the case of a new agreement referred to in clause 4.5(b)(vii), the new agreement shall specify:
- (i) that the Refund will not be payable on the termination of this Agreement, and will only be payable to the Resident in accordance with the new agreement;
 - (ii) that for the calculation of any exit fees, the length of the term of this Agreement shall be added to the length of the term of the new agreement;
 - (iii) the amount paid by the Resident under this Agreement as the Recurrent Charge for the month in which the surrender occurs shall be apportioned on a daily basis as operating costs for the purpose of this Agreement and the new agreement;
 - (iv) that the new resident and the Resident agree to pay to the Association the Associations costs (including GST and any duty) incurred or payable in the preparation and execution of the new licence and together with an amount equal to the Administration Fee then charged by the Association for the grant of new licences for units within the Village.

4.6 Medical Assistance

- (a) To permit the Association its servants or agents to enter the Unit at any time using any force required in the event of an emergency or apparent emergency to ascertain the state of health of the Resident or the Resident's spouse or to render medical assistance to the Resident or the Resident's spouse.
- (b) The Resident is responsible for any costs associated with attending and entering the Unit in the event of an emergency.
- (c) The Association its servants or agents cannot be held liable if efforts to provide medical assistance are unsuccessful.

5. Recurrent Charge

5.1 Payment of Recurrent Charge

- (a) From the Agreed Entry Date, the Resident must pay to the Association the Recurrent Charge, fortnightly in advance or at such other time as the Association may direct in writing.
- (b) The Residents Recurrent Charge must be paid to the Association by direct bank transfer of funds to the Associations nominated bank account if the Association so requires.
- (c) The Resident will continue to be responsible for the Residents Recurrent Charge in accordance with clause 12.7 after the termination of this Agreement.

5.2 Basis of calculation

- (a) The Association will determine the amount of Recurrent Charge payable by the residents of the Village. The Association shall on or before 30 June in each Financial Year or as soon as practical thereafter, provide the Resident with:
 - (i) details of Village Operating Costs incurred during the last expired Financial Year;
 - (ii) a budget of Village Operating Costs estimated for the next Financial Year after the expired Financial Year; and
 - (iii) written notice of the amount of the Resident's Recurrent Charge estimated for the next Financial Year.
- (b) The Association will bear the proportion of Village Operating Costs payable in relation to each completed unit at the Village and held by the Association.

5.3 Variation

- (a) The Recurrent Charge payable by the Resident may be varied by the Association at least annually or such other period as the Association, acting reasonably may determine in accordance with any adjustments in the Village Operating Costs.
- (b) If the Resident's proportion of the Village Operating Costs of the Village is less than the Recurrent Charge paid by the Resident in respect of a Financial Year the Association (except in the case of the last Financial Year in which case if there is no money owing by the Resident to the Association the Association is to refund the excess to the Resident) then the Association must apply any surplus towards the future Village Operating Costs, except if the residents, by special resolution, approve the

application of whole or part of the budget surplus to any other purpose generally for the benefit of the residents of the Village.

- (c) If the Resident's proportion of the Village Operating Costs exceeds the Recurrent Charge paid by the Resident in respect thereof the Resident shall pay the deficiency to the Association upon demand.
- (d) The Association refers the Resident to Note 2 of the Notes Section.

5.4 Interest on Unpaid Moneys

Without prejudice to the rights powers and remedies that the Association may have under this Agreement, the Resident must pay to the Association interest at the rate of the maximum overdraft rate for the time being applied by the Association's bank on overdrafts of \$100,000 or more on any moneys, costs, expenses or fees due but unpaid for 14 days by the Resident to the Association on any account whatsoever pursuant to this Agreement. Such interest is to be computed from the due date for the payment of the moneys in respect of which the interest was chargeable until payment of such moneys in full.

5.5 Financial reports

The Association must provide the Resident with financial reports, including a statement of all income and expenditure in relation to the Village and a Reserve Fund statement for the Village for each Financial Year. The Association must present the financial statements and auditors report (if any) to the Resident in accordance with the requirements of the Code.

5.6 Pay for power, phone, and utilities

- (a) From the Agreed Entry Date and until the Refund is paid to the Resident, the Resident must pay all charges in respect of the supply and consumption of any utilities including electricity, telephone, internet (including service lines), pay television, gas and other utilities and services, connected to, used in or charged against the Unit or its occupiers, including all applicable meter costs, connection and service charges.
- (b) The Association refers the Resident to Note 2 in the Notes Section.

6. Maintain the Unit

6.1 The Residents maintenance obligations

- (a) The Resident must:
 - (i) keep the Unit and all fixtures, fittings, and the Contents in the Unit in good and reasonable condition throughout the Term;
 - (ii) keep and maintain the areas of the outside (as applicable and except those parts, such as the unit gardens that are maintained by

the Association), shown on the Plan as forming part of the Unit, to ensure those outside areas are maintained in a reasonable condition to the Associations reasonable satisfaction;

(iii) pay for repairs to the garage roll-a-doors as necessary;

(iv) maintain in good order and condition:

(A) any improvements made to the Unit; and

(B) any fixtures or fittings installed in the Unit,

by the Resident or any former resident.

(b) The Residents obligations under clause 6.1(a) do not:

(i) require the Resident to pay for the maintenance, repair or replacement of any item that is the Associations responsibility under clause 6.2; or

(ii) require the Resident to pay for the maintenance, repair, or replacement of an Essential Service; or

(iii) require the Resident to pay the cost of repairing and making good any damage to the Unit that is covered by the Associations insurance policies, except to the extent that:

(A) the damage arises out of the neglect, default or misuse of the Unit by Resident or the Residents invitee; and

(B) the Associations insurance against that damage is invalidated by an act, neglect or omission by the Resident, or the Residents invitee.

(c) The Association refers the Resident to Note 3 in the Notes Section.

6.2 The Association's maintenance obligations

(a) Subject to clause 6.2(b) the Association is responsible for arranging the maintenance, repair and replacement:

(i) of parts of the Unit to ensure the Unit stays waterproof and structurally sound; and

(ii) of the Essential Services,

so that in relation to these matters the Unit is maintained in a reasonable condition.

- (b) The Associations obligations under clause 6.2(a) do not require the Association to maintain, repair or replace an item if the maintenance, repair or replacement is required:
 - (i) in respect of personal property owned by the Resident (including refrigerators and other appliances); and/or
 - (ii) wholly or substantially because of:
 - (A) neglect or misuse or abuse of the Unit by the Resident, the Residents invitee or representative; or
 - (B) a failure by the Resident to comply with clause 6.1(a).

6.3 Urgent Repairs of the Unit

- (a) The Resident is entitled to arrange on the Associations behalf for an Urgent Repair to be carried out on any fixtures, chattels, or capital items included in, or attached or connected to, the Unit, that the Association is responsible for, if:
 - (i) the Resident has made all reasonable attempts to notify the Association of the need for an Urgent Repair (and the Resident acknowledges that in the Associations opinion it is reasonable for the Association to require the Resident to follow any processes the Association has in place for the Resident to notify the Association of a need for an Urgent Repair);
 - (ii) the Association has failed to carry out an Urgent Repair in a timely manner having regard to the nature of the repairs and any process established by the Association for the carrying out of an Urgent Repair; and
 - (iii) the Resident arranges for the Urgent Repair work to be carried out in accordance with the Associations process (if any) established by the Association for the carrying out of Urgent Repairs; and
 - (iv) the Resident arranges for the Urgent Repair work to be carried out by a repairer who is on a list of repairers approved by the Association and displayed at a prominent place in the Village, or if no such list is displayed, by a professional repairer qualified to undertake repairs of that nature.
- (b) If the Resident arranges for Urgent Repairs to be carried out under clause 6.3(a), the Association will be responsible for payment of the Urgent Repairs including reimbursement to the Resident of any amount paid by the Resident in respect of the repairs.

6.4 Maintenance Schedule

- (a) Without limiting any other provision in this Agreement, a Maintenance Schedule to help clarify the responsibility for funding maintenance, repairs and replacements is contained in Schedule 4.
- (b) If the Maintenance Schedule is inconsistent with this Agreement, then the terms and conditions in this Agreement shall prevail.
- (c) The Resident acknowledges and agrees that the Maintenance Schedule may be amended by the Association from time to time, if in the Associations reasonable opinion it is required for the proper maintenance of the Unit and the Village, subject to those amendments not being inconsistent with the maintenance responsibilities set out in this Agreement.

6.5 Personal Amenities

The Association grants to the Resident the exclusive use of the Personal Amenities as set out in Schedule 6.

6.6 Personal Services

The Association will provide the Personal Services to the Resident as set out in Schedule 6.

6.7 Communal Amenities

The Association will provide the Communal Amenities to the residents of the Village as set out in Schedule 6.

6.8 Communal Services

The Association will provide the Communal Services to Resident as set out in Schedule 6.

7. Transfer

- (a) The Resident does not have the automatic right to transfer to another unit in the Village. The Resident may request to do so.
- (b) The Association may refuse such a request or may agree to it at its discretion and subject to any terms and conditions as it sees fit.

8. Residents obligations

8.1 The Resident must not

The Resident must not do any of the following:

- (a) cause any annoyance or nuisance to other Residents within the Village;
- (b) Assign this licence or grant a sublicense.
- (c) keep any dangerous materials (such as highly flammable liquids) in or near the Unit;
- (d) make any structural changes to the Unit without obtaining the Association's prior written consent. The Resident may apply to the Association for approval to add a fixture or fitting to, or remove a fixture or fitting from, the Unit (the alteration) and the Association:
 - (i) may not unreasonably withhold approval for the alteration; and
 - (ii) will notify the Resident in writing, if the alteration is not approved, giving reasons of the decision no later than 10 days after the decision is made.

If the alteration is approved:

- (i) the Association will notify the Resident in writing, stating the terms and conditions of the Associations consent given under this clause, which the Association considers appropriate in its discretion, including a requirement making the consent conditional upon the Association approving the contractors whom the Resident proposes to engage to perform any such works; and
 - (ii) the Resident will be responsible for the cost of maintaining or repairing any fixture or fitting the subject of the approval; and
 - (iii) the Association has the right to have the alterations, fixtures and fittings removed and the Resident will be responsible, at the Resident's expense, to make good the Unit; and
 - (iv) the Resident may be held liable for any damage caused by any alteration, fixture or fitting or the removal of any alteration, fixture, or fitting.
- (e) If the Resident has been allocated a car space, the Resident will be entitled to park one motor vehicle in each car space of the Residents car space in accordance with this agreement and, if applicable, the Resident, if applicable, shall be provided with one device for each car space to enable the Resident to gain access to their car space.
 - (f) The use of the Residents car space is to be in accordance with the

relevant provisions in the Residence Rules, as updated from time to time.

8.2 Residents committee and meetings

- (a) The Association encourages all village residents to communicate their views concerning matters affecting their welfare at Manoah Village. The following processes and rights are available for the residents' participation.
- (b) The residents are entitled to establish a residents' committee in accordance with the provisions of the Code to consult with the CEO about the day to day running of Manoah Village and any issues or proposals raised by the residents.
- (c) The residents can attend regular meetings between residents and the Board's representatives.
- (d) The residents who are members of the Association can attend the Annual General Meetings of the Association and all village residents can attend the meetings of the Village.

9. Association's rights and obligations

The Association will:

- (a) at all times endeavour to ensure that the Village is managed and conducted to a high standard in a sensible and financially prudent manner;
- (b) insure and keep insured the building and fixtures supplied by the Association;
- (c) maintain and keep clean and in good repair and condition, and replace (where applicable) Common Areas and Communal Amenities; and
- (d) aid and assist in the moral and spiritual welfare of the Resident by arranging visitation of the Resident by a representative of the Christian Reformed Churches of WA if requested.

10. Insurance

10.1 The Residents insurance

It is the Residents responsibility, at the Residents own expense, to insure the Residents property and furniture fittings and fixtures contained in or about the Unit (including any additions added to the Association, which the Association has consented to) to the full insurable value against loss or damage and insure for any public risk including any risk arising from any contractors, employees or guests the Resident engages from time to time or who may enter the Unit at the Residents request. The Resident agrees that the Association is not liable for any loss or damage suffered by any contractor, employee, or guest the Resident

engages from time to time or who may come onto the Village at the Residents request.

10.2 Insurance of Unit by the Association

The Association will insure and keep insured the Village including all Units against damage or destruction for an amount determined by the Association in the Associations sole discretion or as required by any law.

10.3 Public risk insurance

The Association will enter and maintain a public risk or public liability insurance policy, covering the Associations liability only, for an amount determined by the Association, or required by law.

10.4 Approved insurers

All insurance policies to be entered under this agreement by the Association will be for amounts and cover risks and contain conditions as determined in the Associations sole discretion.

10.5 Resident not to void insurance

The Resident will not, without the Associations prior written consent do, or allow anything to be done that:

- (a) increases the premium to be paid in respect of any insurance policy effected by the Association or for the Associations benefit; or
- (b) renders void any insurance policy effected by the Association or for the Associations benefit.

11. Indemnity

The Resident will indemnify the Association against all claims arising from:

- (a) the negligent use, or misuse, by the Resident or the Residents invitees of the water, gas, electricity, oil, lighting and other services and facilities in the Unit;
- (b) overflow or leakage of water in or from the Unit caused or contributed to by any act or omission by the Resident or the Residents invitee;
- (c) loss, damage, injury or death caused or contributed to by the use of the Unit by the Resident or the Residents invitees, or any contractor, employee the Resident engages from time to time or who may come onto the Village or into the Residents Unit at the Residents request.

Part Four – Leaving the Village

This section explains the ways in which an agreement can be terminated and the various obligations the operator and the resident/s have to each other once occupancy ends.

12. Refund

12.1 Refund calculation

Upon termination of this Agreement the Association will pay an amount called the Refund. The Refund amount is calculated as follows:

- (a) the New Entry Contribution paid or payable by the Next Resident or the Current Market Value if the Association has given the Resident a No Market Notice;

Less

- (b) the Exit Fee, which the Resident must pay to the Association in accordance with clause 12.2;

Less

- (c) the Reserve Fund Contribution, which the Resident must pay to the Association in accordance with clause 12.3;

Less

- (d) any other amount payable by the Resident to the Association under this Agreement, including any unpaid Recurrent Charge, Refurbishment Costs that the Resident may be liable for under this Agreement, the Re-Letting Fee, the Exit Administration Fee, being the Association's costs in regards to the termination of this Agreement and any settlement fees.

12.2 Exit Fee

The Resident must pay to the Association the Exit Fee when the Association is required to pay to the Resident the Refund. The Exit Fee is calculated as follows:

Exit Fee = 2% x **V** x **N** [to a maximum of 10 years]

Where:

V is the New Entry Contribution paid or payable by the Next Resident or the Current Market Value if the Association has given the Resident a No Market Notice.

N is the number of days commencing on the Agreed Entry Date and expiring on the date the Association is required to pay the Refund, divided by 365 (**N** x 2% will not exceed 20% because **N** has a maximum of 10 years).

12.3 Reserve Fund Contribution

The Resident must pay to the Association the Reserve Fund Contribution when the Association is required to pay to the Resident the Refund. The Reserve Fund Contribution is calculated as follows:

Reserve Fund Contribution = 0.5% x **V** x **N** (**N** is to a maximum of 10 years).

Where:

V is the New Entry Contribution paid or payable by the Next Resident or the Current Market Value if the Association has given the Resident a No Market Notice.

N is the number of days commencing on the Agreed Entry Date and expiring on the date we are required to pay the Refund, divided by 365 (**N** x 0.5% will not exceed 5% because **N** has a maximum of 10 years.)

12.4 Time of payment of Refund

After termination of this Agreement, the Association must pay by way of cheque or Electronic Funds Transfer the Refund to the Resident, or if Resident has died, then to the Residents estate by:

- (a) if the Association does not intend to re-licence the Unit, within the period required by the Act or if the time period required by the Act does not apply, no later than 6 months after the date on which the Resident Permanently Vacates the Unit.; and
- (b) if the Association licences the Unit, then within 7 days after the Association receives payment of the New Entry Contribution from the Next Resident.

12.5 Right to Set Off

The Resident agrees that the Association may set off any amount the Resident owes the Association under this Agreement against any amount that the Association owes to the Resident.

12.6 Reserve Fund

- (a) The Association must, establish a Reserve Fund. The Reserve Fund will be held by the Association for the purpose of reimbursing the Association for those costs and expenses that the Association, in its sole and absolute discretion, incur and make claim from time to time for:

- (i) capital replacements which are required for residences in the Village, the Associations fixtures and fittings, all fences, boundary walls and Common Areas which expenditure are not otherwise payable out of the Village operating costs or by Village residents; and
 - (ii) all works, other than minor non-structure repairs required so as to restore in good condition all buildings (including related external improvements), fences, footpaths, roadways, pipes for water supply, drainage, stormwater disposal, sewerage, electricity and communications reticulation, ornamental ponds and other capital improvements within the Village.
- (b) Until the Reserve Fund money is required for the purposes stated in clause 12.6(a), the Association may invest all or part of the Reserve Fund in investments authorised by law for the investment of trust money. All income (if any) earned by the invested Reserve Fund must be added in the Reserve Fund. The Resident does not have any claim to any Reserve Fund money when this Agreement is terminated.

12.7 Recurrent Charges after termination

- (a) Notwithstanding termination of this Agreement, the Resident will continue to be liable to pay the Recurrent Charge and the Residents liability will cease on:
- (i) the date the Next Resident becomes liable to pay the Recurrent Charge;
 - (ii) if the Resident has not died and the Resident has Permanently Vacated the Unit, then on the date that is 3 months after the Unit has been Permanently Vacated (even if the Resident does not reside in the Unit up to that date); or
 - (iii) if the Resident has died, then on the date that is 3 months after the later of:
 - (A) the Association receives the Residents Evidence of Death; or
 - (B) the Unit has been Permanently Vacated (even if the Resident does not reside in the Unit up to that date).
- (b) The Association refers the Resident to Note 2 of the Notes Section.

12.8 Right to Appoint Agent

- (a) The Resident may appoint, in writing, a Residents Agent to assist the Resident to introduce a potential Next Resident for the Residents Unit, subject to:
 - (i) the Association being satisfied that the Residents Agent fully understands and can represent the Village in accordance with the law;
 - (ii) the Association being satisfied that the Residents Agent can work in conjunction with the Association to market the Unit to potential Next Residents;
 - (iii) the Residents Agent agreeing that the Association or its own Real Estate Agent may continue to market the Unit and that no Agent Fee will be paid where the Association or its own Real Estate Agent sources a Next Resident directly;
 - (iv) the Resident agrees that any Agent Fee payable by the Resident to the Residents Agent for successfully introducing a Next Resident may be deducted or set off by the Association from any amounts owing by the Association to the Resident under this Agreement;
 - (v) the Residents Agent agrees to market the Unit in the price range nominated by the Association; and
 - (vi) without limiting the Associations discretion in any way, in considering an offer for a new licence, the Association:
 - (A) may require proof to the Associations reasonable satisfaction that the proposed new resident will be aged 55 or more years;
 - (B) must reasonably satisfy the Association that the proposed new resident is able to live independently in the Unit on a self-care basis; and
 - (C) may require proof of any other matters which the Association, in its sole discretion, considers prudent, having regard to the interests of all other residents and the operation of the Village;
 - (vii) the Association must notify the Resident if it accepts an offer for a new licence.
- (b) The Resident, the Residents Agent and the Association must agree an Agents Fee that will apply to the New Entry Contribution.

- (c) Neither the Resident or the Resident's Agent or the Association's Real Estate Agent have any rights to suggest to potential new residents that they meet the entry requirements of the Association. The Association shall have the sole and exclusive right to determine who meets the entry requirements of Manoah Homes through the execution of the Reservation Form.

13. Provisions for Termination

13.1 Termination of Agreement

The Association cannot terminate this Agreement without the Residents agreement or an order of the Tribunal, as outlined in the Code and as set out in Schedule 5.

13.2 Termination

This Agreement shall terminate on:

- (a) the Residents early termination pursuant to clause 13.3;
- (b) the Residents death (or if the Resident comprises two persons, then on the death of the survivor);
- (c) the Residents abandonment of the Unit; or
- (d) termination by the Tribunal under the Act;

13.3 Resident's early Termination

The Resident may vacate the Unit at any time by giving 30 days' notice in writing to the Association of the Residents intention to vacate. If the Resident does so, the Resident agrees to Permanently Vacate the Unit upon the expiry of that month. If the Resident does not Permanently Vacate the Unit at the end of that month then this Agreement is deemed not to have terminated until the Resident has Permanently Vacated the Unit.

13.4 The Tribunal's powers to terminate Agreement

The Association may apply for an order from the State Administrative Tribunal if:

- (a) the Resident's physical or mental health is such as to make the Unit unsuitable for occupation by the Resident;
- (b) the Resident has breached this Agreement or the Residence Rules and has failed to rectify that breach within 14 days after receiving notice of the breach from the Association;

- (c) the Resident has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit, serious damage to the Unit or injury to the Association, an employee of the Association or another resident; or
- (d) the Association would, in the special circumstances of the case, suffer undue hardship if the Agreement was not terminated.

13.5 Notice of proposed application

On the happening of any of the events described in 13.4, the Association will give the Resident at least 10 working days written notice of the Association's intention to make any application to the Tribunal to terminate this Agreement. The notice to the Resident must set out in a clear form the following:

- (a) the date sought to terminate the Agreement;
- (b) any refund applicable;
- (c) the grounds for termination (including the particulars of any breach of the Agreement or the Residence Rules);
- (d) the period during which the Resident may rectify a breach that may be rectified;
- (e) the Resident's right to invoke the dispute settling procedures in accordance with the Code;
- (f) that the Agreement cannot be terminated without an order from the State Administrative Tribunal; and
- (g) that the Resident may occupy the Unit until the Tribunal authorises a termination date.

A copy of the notice to the Resident under this clause must be sent to at least one person named on the Resident's application form as an emergency contact (if any) and to the Commissioner.

If the Association obtains an order from the Tribunal terminating this Agreement, the Resident must vacate the Unit within the period set out in the order or if no such period is contained in the order, within 28 days after the date of the order.

The Association must not terminate this Agreement without the agreement of the Resident or an order from the Tribunal.

13.6 Payment to Resident's estate

- (a) Upon the Residents death the Association will only release funds to a bank account in the name of the Residents estate, and only upon receiving written evidence of the grant of probate or letters of administration (certified copies of these may be required) from the bone a

fide executor of the Residents estate to show evidence of the Residents death.

- (b) The Association will be entitled if required to rely on photographic identification (in the form of a passport or driver's licence only) identifying the bone a fide executor or authorised representative
- (c) The Association are exempt from any liability whatsoever to the Residents estate or any person claiming against the estate in respect of any act or omission done by the Association at the request or direction of the Residents bone a fide executor or authorised representative.

14. Residents obligations when vacating

14.1 Removal of the Residents furniture, furnishings, and fittings

- (a) The Resident will at or prior to termination of this Agreement, remove the Residents property from the Unit and leave the Unit in a clean condition, like the condition of the Unit as at the Agreed Entry Date. The Resident must follow the Associations vacate procedure, which will be explained to the Resident prior to vacating.
- (b) When the Resident removes their property, the Resident must not cause any damage to the Unit or the Common Areas. If any damage is caused, the Resident must make good the damage. Any work to be carried out to repair the damage must first be approved by the Association and paid for by the Resident.
- (c) Following termination, any of the Residents property and goods that are abandon in or about the Unit, may be dealt with in accordance with the Act or Regulations.
- (d) The Resident will be responsible for the costs of rectifying any damage to the Unit, caused, or contributed to by the Resident or the Residents invitees.

14.2 Refurbishment

- (a) The Association will carry out the Refurbishment Work at the Residents cost. Before the commencement of the Refurbishment Work, the Association must give the Resident a written notice:
 - (i) stating the nature and estimated cost of the Refurbishment Work; and
 - (ii) provide an indication as to the commencement and completion dates of the Refurbishment Work.

- (b) The Resident may apply to the Tribunal for an order in relation to the Refurbishment Work and or the estimated cost of the Refurbishment Work if the Resident is of the opinion that:
 - (i) before the Refurbishment Work was carried out, the Unit was not in a condition, whether partly or wholly, requiring Refurbishment Work; and / or
 - (ii) the estimated costs of the Refurbishment Work are excessive.

15. Marketing

15.1 Decision to market the Unit or not

Following termination or before the date of termination (where the Resident has given the Association a notice of termination or it is reasonable for the Association to conclude that the Agreement will be terminated) the Association:

- (a) may at any time before a new licence is granted give the Resident a No Market Notice stating the proposed Current Market Value (the Current Market Value as agreed or determined in accordance with clause 15.2 will be used to determine the Refund as set out in clause 12); or
- (b) may decide to market the Unit and if so, the Association must provide the Resident with a written notice of the proposed Current Market Value.

15.2 Current Market Value

- (a) Within 5 Working Days after the Resident receives the notice of the Current Market Value, the Resident may:
 - (i) accept the proposed Current Market Value in writing; or
 - (ii) object to the proposed Current Market Value in writing and then the matter must be referred to a Valuer acceptable to both parties or failing which a Valuer nominated by the president or other principal officer of the Australian Property Institute and is mutually agreed by both parties.
- (b) The Association must appoint the agreed or nominated Valuer to provide an expert's determination in relation to the Current Market Value.
- (c) The Association will promptly notify the Resident following the Valuer being appointed.
- (d) Both the Association and the Resident can make submissions to the Valuer but that must be done within 5 Working Days of the Valuer's appointment and a copy of any submission must be given to the other party.

- (e) The Valuer will be directed to make a determination within 10 Working Days of appointment.
- (f) The Valuer's determination is final and binding upon both the Village Owner and the Resident.
- (g) The Resident must pay one half of the costs, and the Association will pay one half of the costs, of the Valuer providing its determination.

15.3 Subsequent Valuations

- (a) If within 3 months after the Current Market Value has been agreed or determined the Unit has not been successfully marketed resulting in a grant of a new licence, the Resident acknowledges and agrees:
 - (i) Clause 15.2 applies again, and if the Current Market Value is not agreed, the same Valuer as previously appointed (or a new Valuer if that person is not available) must make a new determination as set out in clause 15.2.
 - (ii) The Resident must pay one half of the costs, and the Association will pay one half of the costs, of the Valuer providing its determination
 - (iii) The Association may change the amount to be advertised to the market to the new Current Market Value.

15.4 Appointment of Real Estate Agent

- (a) Within 5 Working Days after the Current Market Value is agreed or determined, the Resident may:
 - (i) appoint the Association (which shall include the Associations Real Estate Agent); or
 - (ii) advise the Association to appoint the Resident's Agent on a non-exclusive basis.
- (b) If the Resident does not make an appointment under clause 12.8(a) the Resident is deemed to have appointed the Association (which shall include the Associations Real Estate Agent) for the purposes of marketing the Unit at the Current Market Value.
- (c) Commencing one month after the Unit is first placed on the market, the Association must provide the Resident with a monthly written report that details the steps taken by the Association to market the Unit.

15.5 Re-Letting Fee

If the Resident appoints the Association (including the Association Real Estate Agent) under clause 15.4, the Resident must pay the Association the applicable Re-letting Fee.

15.6 Dispute resolution in Village

As far as allowed under law, the Resident agrees that if a dispute arises between the Resident and the Association, or between the Resident and another Village resident or residents, the Resident will attempt to resolve the matter in a polite and cordial manner without recourse to third parties. Each disputing party will seek to refer any dispute to mediation prior to commencing any court proceedings.

15.7 Outside dispute resolution

If a dispute is unable to be resolved within the Village and either party does not wish to mediate the dispute, then either party may make an application to have the dispute heard at the appropriate Court or Tribunal.

16. Retirement Village Laws

- (a) The retirement village industry in Western Australia is regulated by the Retirement Village Laws.
- (b) The Retirement Village Laws provide for Residents to be consulted on and have access to information about administrative and operating financial arrangements of the Village.
- (c) The Residents can:
 - (i) establish a residents' committee in accordance with the provisions of the Code to consult with the Association about daily operations at the Village and any issues or proposals raised by the Residents;
 - (ii) attend regular meetings between Residents and the Association's representatives;
 - (iii) attend the annual general meetings of the Association and of the Village;
 - (iv) peruse the presentation of the published village quarterly accounts and attend the annual Village budget meeting;
 - (v) peruse or obtain individual copies of the full audited accounts of the Association;
 - (vi) provide input into any change of services where these will affect residents; and
 - (vii) provide input regarding any improvements that can have an impact on the Recurrent Charge.

17. Damage and destruction

- (a) If the Unit or any part thereof is at any time during the Term destroyed or damaged to such an extent as to be wholly unfit for occupation and use the Association:
 - (i) shall apply any insurance moneys available to it to reinstate or rebuild the Unit (as may be necessary) so as to again make the same fit for occupation and use by the Resident PROVIDED that the Association shall not be obliged to expend more than those moneys in any such reinstatement or rebuilding; and
 - (ii) may, in the Associations absolute discretion, but is not obliged to do so offer the Resident alternative accommodation until such time as the Unit has been rebuilt or reinstated.
- (b) The Association shall commence and complete the reinstatement or rebuilding of the Unit as soon as practicable after the receipt of any insurance moneys.
- (c) The Association reserves the right at any time of the damage or destruction to decide not to rebuild or reinstate all or any part of the Village. Nothing in this clause 17 limits the Associations ability to obtain an order from the Tribunal or any other applicable Court terminating this Agreement.

18. Redevelopment

18.1 Upgrade or change use

The Association can:

- (a) add to or modify the Village as the Association believes is appropriate in its sole discretion; and
- (b) demolish or otherwise redevelop part of the Village which may affect the Residents use of the Unit.

18.2 Notice to be issued upon upgrade or change of use

In the event the Association intends to undertake development of part or all of the Village, which may include the Residents Unit and the planned works will most likely interfere with the Residents peace, comfort and quiet enjoyment of the Residence, then the Association will give the Resident at least six (6) months' notice in writing that the Association requires the Resident to vacate the Unit to permit the works to be undertaken. This is the **Redevelopment Notice**. The Redevelopment Notice will specify:

- (a) the nature of the work to be undertaken;

- (b) the estimated duration of the work;
- (c) the date the Association requires the Resident to vacate the Unit to permit the works to be undertaken;
- (d) whether at the conclusion of the works the Resident will be able to resume occupation of the Residents original Unit; and
- (e) whether the Resident is entitled to relocate to an alternative residence within the Village.

18.3 Receipt of Notice under clause 18.2

- (a) Upon receipt of the notice referred to in clause 18.2 the Resident may request to be relocated to another residence in the Village and subject to availability, the provisions set out in clause 18.4 will apply; or
- (b) The Resident may within the notice period, surrender the Residents Unit and this Agreement will terminate in which case the provisions relating to termination of this Agreement, including termination payment provisions will apply and the Resident will vacate the Unit within thirty (30) days of the notice.

18.4 Relocation to another residence within the Village

If after receiving a Redevelopment Notice the Resident elects to relocate to another residence within the Village, then:

- (a) The Association will provide the Resident with a list of all alternative residences in the Village available for occupation by the Resident following the Resident Permanently Vacating the Unit. The Association agrees where possible that the alternative residences will be of at least the same quality to the Residence under this Agreement.
- (b) The Resident will have the right to nominate one of the alternative residences the Resident wishes to occupy (the **Second Residence**). In this case, the Resident must nominate the Second Residence prior to the Resident Permanently Vacating the Unit.
- (c) The Resident agrees to vacate the Unit by the end of the notice period.
- (d) The Resident will enter into a new licence (the **Second Agreement**) for the Second Residence. The Second Agreement will be on similar terms and conditions as this Agreement.
- (e) Upon the Resident vacating the Unit and commencing occupation of the Second Residence under the Second Agreement, the Entry Contribution paid by the Resident under this Agreement will be the same for the Second Agreement.

- (f) For the purposes of calculating the exit fees of the Second Agreement, the Second Agreement will be taken to have commenced from the Agreed Entry Date of this Agreement.
- (g) The Association will pay the Residents reasonable expenses in relocating to the Second Residence and will meet the reasonable costs of connection of all utilities.

19. Notices

19.1 Residents Notice

Any notice, communication, or information to be given to the Association by the Resident under this Agreement may be delivered on any Working Day to the Associations address namely:

The Chief Executive Officer
Manoah Homes
PO Box 381
Gosnells, Western Australia 6990

19.2 The Associations Notices

Any notice, communication or information required by this Agreement to be given to the Resident may be:

- (a) delivered by hand to the Resident or to the Residents mailbox; or
- (b) sent by prepaid mail addressed to the Resident at the Unit or to the Residents personal representative; or
- (c) sent by electronic email and signed off by electronic signature; or
- (d) if the Resident has temporarily or permanently vacated the Unit, to the mailing address which the Resident last notified the Association of.

Where delivery is made under subclause (b) or (d), the Resident is deemed to have received the item mailed by the expiry of two Working Days after the date of mailing or at such time as set out in the Code. Where delivery is made under subclause (c), the Resident is deemed to have received the email by email delivery confirmation.

20. General provisions

20.1 Consideration for other Residents and Staff

- (a) The Resident acknowledges and agrees that all Village residents are required to conduct themselves in a civil manner showing courtesy and

consideration for their fellow Village residents and staff and must not cause annoyance or offence to other Village residents or staff.

- (b) The Resident acknowledges that the Associations Village manager and representatives have a right to work in a workplace that complies with occupational safety and health laws and not be exposed to socially unacceptable behaviour or behaviour that is against the law.

20.2 Goods and services tax

- (a) Unless expressly stated otherwise, all amounts stated in this Agreement are exclusive of GST.
- (b) If GST is payable in respect of a supply the Association makes to the Resident under or in relation to this Agreement, the Resident must pay to the Association an additional amount equal to the GST payable on the supply. That additional amount is payable by the Resident in addition to and at the same time as the net consideration for the supply.

For the purposes of this clause “GST” has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* or any replacement of this legislation.

20.3 Governing Law and Jurisdiction

This Agreement is governed by and subject to the law in the State of Western Australia.

SCHEDULE 2

Residence Rules

These rules have been established for the benefit of all residents at Manoah Homes. They are common-sense rules to ensure there is an understanding of the obligations of all residents and to protect your enjoyment in the Village.

All residents have agreed to abide by these Rules by virtue of the Agreement that each has signed and all residents shall inform their guests of these rules, and as far as practicable, shall ensure that their guests adhere to them.

All residents must also acknowledge that Manoah Homes is a Christian community, financially and prayerfully supported by the Christian Reformed Churches of Western Australia. As part of living in a Christian community, village residents shall show respect and care towards each other and not offend each other's sensitivities. No drugs of addiction shall be brought on the premises; alcohol shall not be consumed excessively; no offensive language will be tolerated, and no paid business transactions, tradesmen or deliveries of goods shall be permitted on Sundays.

In addition to these general rules, the following specific rules shall also apply:

1. Noise

- (a) A level of noise within the Village is expected, however, you must not make any noise likely to unreasonably interfere with the quiet enjoyment of others in the village, this rule applies whether the Resident and the Residents visitors are inside the Resident Unit or in Common Areas.
- (b) When listening to music or a radio, playing computer games or watching television, you should not have the volume turned high enough to be heard from outside your residence. Residents with hearing difficulties are encouraged to use headphones or other aides.

2. Parking

- (a) As parking spaces are limited within the Village, the Resident may park a vehicle only in the Residents car bay or other parking allocated specifically to the Resident or to all residents. The Resident must not park or stand your vehicle on any other part of the village. This rule does not prevent the Resident from stopping to allow passengers to get out of or enter the Residents vehicle. However, under no circumstances may a vehicle be parked or driven on grassed areas
- (b) In the interest of safety, drivers within the Village the Resident must always obey speed limits and other traffic signs
- (c) "Visitor Parking" spots are available for the use only by visitors, tradespeople, visiting doctors, emergency vehicles or other people just

visiting the Village. They are not to be used by residents, guests staying overnight or longer.

- (d) The Resident must ensure that the motor vehicle parked in the Residents parking space does not leak or spill oil, grease, petrol diesel or liquefied petroleum gas. The Resident must ensure that any flammable fuel is stored in containers designed specifically for that use and in limited volumes.

3. Waste and Garbage Disposal

- (a) For health and safety reason, the Resident must ensure that the Residents waste and garbage is securely wrapped before placing it in a bin.
- (b) The Resident must not litter or leave rubbish in Village property, other than in the bins provided.
- (c) The Resident is required to dispose of all waste and garbage in the appropriate bins provided and maintain the bin area in a safe and clean manner.

4. Keys and locks

- (a) The Resident is responsible for the safe custody of the Residents keys and other security equipment and the cost of replacement of they are lost.
- (b) The cost of any replacement or additional keys is the Residents responsibility. At the termination of this Agreement, the Resident shall give the Association all keys and security access devices to the Unit.
- (c) Any locks that have keys provided by the Association are not be changed, altered, or tampered with in any way. No bolts, snub locks or chains are to be added to any external door.

5. Will and next of kin

- (a) The Resident should always have a valid will and arrange for the Association to know the whereabouts together with the name and address of the executor.
- (b) The Resident shall advise the Association of the name and address of the next of kin or reliable contact.

6. Smoking

- (a) The Village is a smoke free environment.
- (b) The Resident or any other person may not smoke a cigarette, pipe, cigar, or anything similar in any part of the Common Areas or Communal Amenities or communal spaces.

- (c) If the Resident chooses to smoke in their Unit the Resident must not cause any discomfort to other residents.

7. Staff duties

The Resident must not interfere with the Village staff in the performance of their duties or any persons appointed by the Association in the performance of their duties.

8. Valuables

No responsibility is accepted by the Association for valuables brought into the Village.

9. Washing

Washing or clothes must only be hung in designated drying areas within the Unit.

10. Children

All persons under the age of 18 years of age, or who are partly or completely dependent, shall in all circumstances be supervised by the Resident during any visits. They shall not be left to use any Village facilities whilst the Resident is absent. All persons under the age of 18 years of age are not allowed in any circumstances to stay a night or nights in the Residents Unit.

11. Resident liable for costs associated with illness

If the Association believes that the Resident may be ill, the Association may on the Residents behalf, engage the services of a medical practitioner, and summon an ambulance and the Resident will be liable for the costs of those services incurred in doing so.



SCHEDULE 3 – Plans (Site Plan and Unit Plan)

SCHEDULE 4 – Responsibilities for Repairs, Maintenance and Replacement

The Association is responsible for all maintenance and repairs in the Unit, except:

- (a) the replacement of lightbulbs; and
- (b) the garage roll a door lock (its opening mechanism, and electronic controls) and its functionality; and
- (c) any improvements made to the Unit and any fixtures or fittings installed in the Unit, by the Resident or any former resident of the Unit (with the Associations permission); and
- (d) personal property owned by the Resident (including refrigerators and other appliances); and
- (e) any damage to the Unit or its fixtures and fittings which has arisen out of the neglect, default or misuse of the Unit by Resident or the Residents invitee.

SCHEDULE 5 – Termination of Unit Contracts and a Resident’s Right of Occupation of Residential Premises

1. A resident’s right to occupy residential premises

The legal right to occupy particular residential premises in a retirement village most often follows the signing of a Unit contract and in many instances involves the payment of a sum of money called ‘a premium’¹.

A Unit contract is a binding agreement between the resident and the operator² of the village (who may or may not also own the village). It can take a variety of forms including:

- (a) non-owner Unit contracts which take the form of an Agreement for life, an Agreement/licence to
- (b) occupy, or a periodic or fixed term rental agreement. Each of these grant occupancy rights but not land ownership to residents;
- (c) owner Unit contracts in a strata title scheme which grant both occupancy rights and ownership of a ‘lot’ (land and buildings) within the village; and
- (d) owner Unit contracts that confer a right to occupy particular premises under a purple title scheme in which the resident becomes a co-owner after buying an undivided share of the village.

2. Termination initiated by an operator and recovery of the residential premises

A Unit contract and right of occupation cannot be terminated by an operator without a resident’s consent except in the range of circumstances specified in sections 17, 58, 59, 62 and 63 of the *Retirement Villages Act 1992* (the RV Act). Paragraphs 4 and 5 below contain additional detail on these provisions.

An operator of a retirement village or any other person is prohibited from entering residential premises occupied by a resident of the village under a Unit contract for the purpose of recovering possession of the premises, unless this is authorised by a judgment, warrant or order of a court or the State Administrative Tribunal (SAT) (section 66).

An operator is also prohibited from commencing proceedings in a court for the recovery of possession of residential premises occupied by a resident of a village under a Unit contract (section 65).

These provisions ensure that the SAT has primary jurisdiction in relation to the termination of Unit contracts.

¹ Amounts paid to secure a right to occupy premises are called a premium under the RV Act. A premium does not include an amount paid on a recurrent basis such as an amount paid monthly for rent or village operating costs.

² Under the RV Act the operator of a village is referred to as the ‘administering body’

3. Termination initiated by a resident (sections 14 and 17)

A resident can rescind a Unit contract within seven working days after entering into the contract (the cooling off period) as long as they have not moved into the residential premises (section 14). A longer period³ applies where the resident was not given the pre-contractual disclosure documents required by section 13(1) (see section 14(1)(b) of the RV Act).

Other ways in which the resident can terminate the Unit contract (section 17) include:

- (a) if the resident dies; or
- (b) if the resident decides that they want to terminate the Unit contract. Some Unit contracts will include a process by which the resident informs the operator of an intention to terminate the Unit contract. Under the Retirement Villages Regulations 1992 (RV Regulations) a resident cannot be required to give more than 30 days notice of an intention to terminate the Unit contract. A Unit contract also cannot require a resident to do anything contrary to conditions set out under sections 57, 58, 59, 62 and 63 of the Act. These grounds are explained in paragraph 5. For example, a Unit contract that requires the resident to surrender the Agreement where the resident is unfit to care for themselves and to undergo medical examinations without consent is contrary to the requirements in section 58 of the RV Act.

4. Termination of a Unit contract by the State Administrative Tribunal

The SAT may terminate a Unit contract on certain grounds specified in sections 57, 58, 59, 62 and 63 of the Act. These grounds are explained in paragraph 5.

Where the SAT makes an order terminating a Unit contract on any of these grounds, it also has the power to make additional orders including those relating to payment or refund of monies by the operator to the resident or by the resident to the operator.

If the SAT makes an order terminating a Unit contract it must also fix a date by which the residential premises are to be vacated by the resident. The SAT may also suspend the operation of an order fixing a date by when a resident must vacate residential premises or refuse to make an order terminating a Unit contract (section 64).

A resident who does not vacate the premises by the set date may also be required to pay the operator compensation by order of the SAT.

³ 17 workings days after the date on which the pre-contractual disclosure documents are given to the prospective resident

Grounds for termination by the SAT

5. Dispute about transfer of resident to other accommodation in village – resident initiated (section 57)

A resident of a retirement village may apply to the SAT for an order in respect to a dispute between the resident and the operator of the village as to whether the resident should be transferred from one Unit in the village to another.

Other dispute resolution procedures available to the resident under the Act or the Fair Trading (Retirement Villages Code) Regulations 2015 (RV Code) must have been exhausted before the resident can make an application.

For the purpose of determining an application, the SAT may, with the consent of the resident, request and have regard to various reports about the resident's physical or mental capacity. The SAT may make one or more of the following orders in respect to an application made under this section of the Act:

- (a) an order that restrains the operator from transferring the resident to another kind of accommodation within the village; or
- (b) an order that requires the resident to transfer or the operator to transfer the resident to another accommodation; or
- (c) an order terminating the Unit contract and setting a date by which the residential premises must be vacated by the resident.

In addition to the above orders, the SAT can make an order for the payment or refund of money:

- (a) by an operator to a resident; or
- (b) by a resident to an operator.

6. Medical grounds – operator initiated (section 58)

The SAT may, on the application of the operator of a retirement village, make an order terminating the Unit contract of a resident where the SAT is satisfied that:

- (a) the residential premises occupied by the resident are unsuitable for occupation by the resident due to the resident's physical or mental incapacity; or
- (b) it is otherwise appropriate to terminate the contract having regard to the circumstances of the case.

For the purpose of determining such an application, the SAT may with the resident's consent request, and have regard to, various reports about the resident's physical or mental capacity. The SAT cannot order termination of a Unit contract under this section of the Act unless it is satisfied that the operator has given the resident (and followed any procedures specified in the RV Code or

the Unit contract for giving) notice of intention to terminate the Unit contract and for termination of the contract.

To make an order terminating the Unit contract the SAT must also be of the opinion that the residential premises are unsuitable for the resident because of the resident's physical or mental incapacity or the circumstances of the case are such that it is otherwise appropriate to order that the Unit contract is terminated.

7. Breach of Unit contract or rules – operator initiated (section 59)

Where a resident of a retirement village has breached the Unit contract or the Unit rules of the village, the SAT may, on the application of the operator of the village, make an order terminating the Unit contract if the SAT is satisfied that in the circumstances of the case:

- (a) the breach is such as to justify termination of the contract; or
- (b) persistent breaches by the resident are such as to justify the termination of the contract; or
- (c) it is otherwise appropriate to terminate the contract.

The SAT will not order a termination of a Unit contract under this section of the Act if the operator has not given the resident the required notice of intention to terminate the Unit contract and for termination of the contract (as set out in any applicable code or Unit contract), unless the SAT thinks it is appropriate to do so in the special circumstances of the case (see 'notice requirements' below).

8. Serious damage or injury caused by resident – operator initiated (section 62)

On the application of the operator of a retirement village, the SAT may make an order terminating the Unit contract where satisfied that the resident has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit:

- (a) serious damage to the residential premises; or
- (b) injury to the operator or an employee of the operator or to any other resident.

The Act does not require the operator to give the resident a notice of intention to terminate the contract before making this application.

In addition to making an order terminating a Unit contract, the SAT may make other such orders as it thinks fit (including compensation orders payable by the resident or the operator to the other party).

9. Undue hardship to operator – operator initiated (section 63)

On the application of the operator of a retirement village, the SAT may make an order terminating the Unit contract of a resident where the SAT is satisfied

that the operator would, in the special circumstances of the case, suffer undue hardship if the contract were not terminated.

The Act does not require the operator to give the resident a notice of intention to terminate the contract before making this application.

In addition to making an order terminating a Unit contract, the SAT may make other such orders as it thinks fit (including an order that the operator pay compensation to the resident for the resident's loss of rights under the contract).

10. Abandoned premises – operator initiated (section 68)

On the application of the operator of a retirement village the SAT may make an order that declares the residential premises occupied by a resident were abandoned by the resident on the day specified by SAT and the resident will be taken to have abandoned the premises on that day.

The operator is then entitled to be compensated by the resident for any loss caused by the abandonment. The operator does however have an obligation to mitigate any loss caused by the abandonment and is not entitled to compensation for losses that could have been avoided by the operator taking steps to mitigate the loss. The mechanism by which the operator is compensated is by an application to SAT for an order that the resident pay the operator such compensation as the SAT thinks fit.

11. Notice requirements

(a) Notice to be given by resident

A Unit contract cannot include a provision that requires the resident to give more than 30 days notice of the resident's intention to terminate the contract.

(Retirement Villages Regulations 1992 (reg. 7J(2)(b))

(b) Notice to be given by operator

For the purpose of an application to terminate a Unit contract under the following sections of the Act:

- (i) section 58 (termination of occupation on medical grounds); or under
- (ii) section 59 (termination of occupation on grounds of breach of Unit contract or rules).

The operator of a retirement village must give a resident at least 10 working days written notice of its intention to apply to the SAT for an order to terminate the contract.

The notice must:

- (i) if the termination is sought under section 58 - specify the reasons why the residential premises occupied by the resident are unsuitable for occupation by them;
- (ii) if the termination is sought under section 59 - specify the relevant breach and give the resident a reasonable and specified time to rectify a breach that may be rectified;
- (iii) clearly state that the Unit contract cannot be terminated without an order by the SAT; and
- (iv) advise the resident of their right to occupy the residential premises until any date of termination fixed by the SAT.

(Fair Trading (Retirement Villages Code) Regulations 2015, cl.34(1))

SCHEDULE 6 – Amenities and Services

Part A – Matters Relating to Personal Amenities

Item	Provision or Matter Relating to Personal Amenity
1.	<p>(a) A list of Personal Amenities that will be provided or made available for your exclusive use are as follows:</p> <p>(i) None at this time.</p> <p>(b) A list of the Personal Amenities available in the Village that may be made available as a Personal Amenity for your exclusive use and the conditions on which those Personal Amenities will be made available to you are as follows:</p> <p>(i) None.</p>
2.	<p>(a) The charges that apply to your access to, or use of each Personal Amenity are:</p> <p>(i) Not applicable.</p> <p>(b) The basis for determination of the current charges for providing or making each Personal Amenity available is:</p> <p>(i) Not applicable.</p> <p>(c) The basis for determination of future additional charges for providing or making available each Personal Amenity is:</p> <p>(i) Not applicable.</p>
3.	<p>(a) The period of notice that you must give us to vary the provision or availability of a Personal Amenity is as follows:</p> <p>(i) See Item 5.</p>
4.	<p>We will not, without your consent, vary the provision or availability of a Personal Amenity.</p>
5.	<p>We must provide you with at least 30 days notice of our intention to withdraw a Personal Amenity.</p>

6.	<p>(a) If a Personal Amenity to be provide or made available after you have entered into occupation of the Unit:</p> <p>Yes/No (circle correct response)</p> <p>(b) If yes, the Personal Amenity is specified in item 1.</p> <p>(c) The specified Personal Amenity will be provided on the happening of the following events:</p>
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Part B – Matters Relating to Communal Amenities

Item	Provision or Matter Relating to Communal Amenity
7.	<p>A list of Communal Amenities that are part of, or will be part of, the Village is as follows:</p> <ul style="list-style-type: none"> (i) Club house. (ii) Craft and art room.
8.	<p>(a) Is a Communal Amenity to be provided or made available after you have entered into occupation of the Unit?</p> <ul style="list-style-type: none"> (i) Yes. <p>(b) If yes, the specified Communal Amenity is described in Item 1.</p>
9.	The Communal Amenity described in Item 1 is shown on the site plan in Schedule 3.
10.	The Association will not vary the provision or availability of any Communal Amenity unless the Village residents, by a special resolution, consent to the variation.

Part C – Matters Relating to Personal Services

Item	Provisions or Matter relating to Personal Service
1.	<p>(a) A list of each Personal Service that will be provided or made available to you for your use is as follows:</p> <ul style="list-style-type: none"> (i) Some meals are available from the Manoah House (ii) Other services provided or made available in future that would otherwise fall within the definition of a 'Personal Service' is

	<p>likely to be made the subject of a service contract that is separate from this Deed.</p> <p>(b) A list of services we provide or make available in the Village that may be made available as a Personal Service for your use and the conditions on which those Personal Services would be made available to you are as follows:</p> <p>(i) See above.</p>
<p>2.</p>	<p>(a) The charges that apply to your access to, or use of each Personal Service are:</p> <p>(i) If you choose to access Personal Services it will be on a user pays basis.</p> <p>(b) The basis for determination of the current charges of providing or making each Personal Service available is:</p> <p>(i) Currently \$10.00 this will be subject to variation at the Boards discretion.</p> <p>(c) The basis of determination of future additional charges of providing or making available each Personal Service is:</p> <p>(i) At the Board's discretion.</p> <p>(d) The additional charges that may be payable by you for a variation in the provision or availability of a Personal Service are:</p> <p>(i) As notified by the board from time to time.</p>
<p>3.</p>	<p>(a) We must provide you with at least 30 days notice of our intention to vary or withdraw a Personal Service.</p> <p>(b) Will any Personal Service be varied or withdrawn? Yes/No (circle correct answer).</p> <p>(c) If yes, the specified Personal Service is:</p> <p>(i) Not applicable.</p> <p>(d) The specified Personal Service may be varied or withdrawn by us on the following circumstances (which must be reasonable having regard to the nature of the Personal Services and the circumstances in which it is provided or made available):</p> <p>(i) If the personal service can no longer be provided by a third party.</p>

4.	<p>(a) The period of notice you must give us to vary the provision of a Personal Service is:</p> <p>(i) The period of notice set out in Item 3.</p>
5.	<p>We will not vary the provision of any Personal Service unless:</p> <p>(a) The variation is in the circumstances set out in accordance with item 3 and after the period of notice provided for in that item has ended; or</p> <p>(b) You have consented to the variation.</p>
6.	<p>You will not be liable to pay for any Personal Service that you do not use, if:</p> <p>(a) the Deed has been terminated; or</p> <p>(b) you have permanently vacated the Premises; or</p> <p>(c) you have temporarily ceased to reside in the Premises.</p>
7.	<p>We refer you to Note 1 in the Notes Section.</p>

Part D – Matters Relating to Communal Services

Item	Provision or Matter Relating to Communal Service
1.	<p>The description of each Communal Service that is or is to be provided or made available to you is as follows:</p> <p>Emergency Assistance</p> <p>Important Information – this Part sets out how the Emergency Medical Alert System works. There is no medical help on site at the Village.</p> <p>Our Supply of Emergency Medical Alert System</p> <p>The Emergency Medical Alert System is supplied as part of Our Fixtures and Fittings in accordance with the Deed.</p> <p>Your Use of the Emergency Call System</p> <p>You must use the Emergency Medical Alert System only in the case of a genuine emergency and operate all equipment and appliances provided by us in relation to the Emergency Medical Alert System, in accordance with manufacturer’s recommendations, and not damage or use them improperly and immediately report to us any damage or defect in them.</p>

2.	Is the Communal Service to be provided or made available after you have entered into occupation of the Unit: Yes.
3.	We will not vary the availability of any Communal Service, including by providing a new Communal Service, unless the Village residents, by a special resolution, consent to the variation.

Execution page

EXECUTED as an agreement

Signed on behalf of the **Association for Christian Senior Citizens' Homes (WA) Inc**

Signature of authorised person:

Name of authorised person:

Office held Chief Executive Officer

RESIDENT 1

Prior to signing this contract you are strongly advised to obtain independent legal and financial advice about your rights and duties under this contract.

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

Witness (Signature)

Witness Full Name

Witness Address

Witness Occupation



RESIDENT 2

Prior to signing this contract you are strongly advised to obtain independent legal and financial advice about your rights and duties under this contract.

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

Witness (Signature)

Witness Full Name

Witness Address

Witness Occupation