



Department of Planning,
Lands and Heritage

Land Use Management

Our ref: File 02133-1966, IDA11030630.
Enquiries: Kevin Harrison, ph 9791 0860
Fax: 6552 4417

21st August 2020

Kott Gunning Lawyers
Level 8 AMP Building
140 St Georges Terrace
Perth WA 6000

Email only dschilizzi@kottgunn.com.au

Dear *Daphne*

Section 18 Ministers Consent for proposed Lease over Reserve 28563, Shire of Merredin between Merrittville Retirement Village

Thank you for your recent correspondence regarding permission to Lease Reserve 28563 which is set aside for the purpose of Homes for the Aged and managed by the Shire of Merredin with power to lease for any term not exceeding 21 years subject to the consent of the Minister for Lands.

In accordance with section 18 of the *Land Administration Act 1997* (LAA) approval from the Minister for Lands is granted to the proposed Lease provided to the Department of Planning, Lands and Heritage (DPLH) by email dated 14 August 2020 on the condition that the final Lease executed by the parties is on the same terms as that provided to DPLH with that email. If the final document executed by the parties is not on the approved terms, then it may be void under section 18 LAA.

Please note that this approval is for the purposes of section 18 LAA only and does not constitute an endorsement as to the terms and effect of the document. DPLH cannot provide any advice in respect of the Lease and recommends that each party obtain their own independent advice as to their rights and obligations under the Lease.

This approval is subject to the registration requirements of the *Transfer of Land Act 1893*. You will need to provide a copy of this letter to Landgate if the documents are to be lodged for registration at Landgate.

Should you have any enquiries please do not hesitate to contact me on any of the above details.

Yours sincerely



Kevin Harrison
Senior Land Officer
Case Delivery

DEED OF VARIATION - DEED OF TERMINATION AND RELEASE OF JVAs AND ALLOCATION AGREEMENT

Housing Authority (**Housing Authority**)

-and-

Shire of Merredin (**Shire**)

-and-

Merrittville Retirement Village Inc. (**MRV**)



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advoc



KOTT GUNNING
LAWYERS | 100 YEARS

B E T W E E N:

HOUSING AUTHORITY (a body corporate constituted under the *Housing Act 1980* (WA)) of 99 Plain Street, East Perth, Western Australia 6004 (**Housing Authority**)

and

SHIRE OF MERREDIN of 110 Barrack Street (Cnr of King Street), Merredin, Western Australia 6415 (**Shire**)

and

MERRITTVILLE RETIREMENT VILLAGE INC of PO Box 106, Merredin, Western Australia 6415 (**MRV**)

BACKGROUND

- A. On 7 October 2019 the Parties entered into the Deed of Termination and Release.
- B. The Parties have agreed to vary the Deed of Termination and Release on the terms of this Variation Deed.

OPERATIVE PART:

1. INTERPRETATION

1.1 Definitions

In this Variation Deed, unless the context requires otherwise, the following terms have the following meanings:

Business Day means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

Date of Variation means the date of execution of this Variation Deed by the last Party to sign it.

Deed of Termination and Release means the Deed of Termination and Release of JVs and Allocation Agreement dated 7 October 2019 between the Housing Authority, Shire of Merredin, and Merrittville Retirement Village Inc.

Party and **Parties** or **party** and **parties** mean respectively a party or parties to this Variation Deed.

Variation Deed means this document.

1.2 Interpretation

In this document, unless the context requires otherwise:

- (a) words and phrases that are not defined in this Variation Deed but are defined in the Deed of Termination and Release have the meaning given to them in the Deed of Termination and Release;
- (b) unless specified otherwise, a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure to or of the Deed of Termination and Release;
- (c) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (d) a reference to a time is a reference to Australian Western Standard Time;
- (e) where the day or last day for doing an action or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is not a Business Day, the day or last day for doing that act or payment of that money or on which that entitlement arises or notice is deemed served, shall be deemed to be the next Business Day;
- (f) a reference to a party includes its administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (g) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (h) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and authorities;
- (i) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation; and
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision;
- (j) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this document or any part of it; and
- (k) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation.

2. VARIATION OF DEED OF TERMINATION AND RELEASE

2.1 Effective Date

The Parties agree that on and from the Date of Variation, the Deed of Termination and Release is amended by the terms of this Variation Deed.

2.2 Clause 17(b) – Dealings with JVA Land

Clause 17(b) of the Deed of Termination and Release is deleted in its entirety.

3. PRESERVATION OF DEED OF TERMINATION AND RELEASE

The Parties agree that, except as varied by Clause 2 of this Variation Deed, all of the provisions of the Deed of Termination and Release remain in full force and effect.

4. INCONSISTENCIES

If any of the terms, covenants, and conditions in this Variation Deed are inconsistent with the terms, covenants and conditions in the Deed of Termination and Release, the terms, covenants and conditions in this Variation Deed shall prevail to the extent of such inconsistency.

5. PROPER LAW

This Variation Deed is governed by, and is to be interpreted in accordance with, the laws of Western Australia and where applicable the laws of the Commonwealth of Australia.

6. GENERAL

6.1 Waiver

The failure, delay, relaxation or indulgence by any party in exercising any of its rights under this Variation Deed or the Deed of Termination and Release does not operate as a waiver of that right, and nor does any single exercise of any right preclude any further exercise of it or the exercise of any other right under this Variation Deed or the Deed of Termination and Release.

6.2 Severance

If any provision of this Variation Deed is void or unenforceable, other provisions which are self-sustaining and capable of separate enforcement with regard to the void or unenforceable provision, are and continue to be valid and enforceable.

6.3 Recitals

The Recitals shall form part of this Variation Deed.

6.4 Counterparts

This Variation Deed may be executed in counterparts, each of which are deemed to be an original and all of which shall constitute one and the same instrument.

EXECUTED by the Parties as a Deed

THE COMMON SEAL of the)
SHIRE OF MERREDIN)
hereunto affixed in the)
presence of:)

Signature of President

Signature of Chief Executive Officer

Name of President (print)

Name of Chief Executive Officer
(print)

THE COMMON SEAL of)
HOUSING AUTHORITY)
hereunto affixed in the)
presence of:)

Signature of Authorised Officer

Signature of Authorised Officer

Name of Authorised Officer (print)

Name of Authorised Officer (print)

Position Title (print)

Position Title (print)

THE COMMON SEAL of)
MERRITTVILLE RETIREMENT)
VILLAGE)
hereunto affixed in the)
presence of:)

Signature of Authorised Officer

Signature of Authorised Officer

Name of Authorised Officer (print)

Name of Authorised Officer (print)

Position Title (print)

Position Title (print)

ORIGINAL

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet Form B1 should be used with appropriate headings. The boxed sections should only contain the words "See Annexure".
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the person signing this document and their witnesses.

NOTES

1. RESERVE DESCRIPTION
Reserve number and details to be stated. The Volume and Folio numbers to be stated.
2. MANAGEMENT BODY
State the full name and address of management body.
3. CONDITIONS
Detail the conditions specified by the Minister to be observed by the management body in its care control and management of the Reserve.
4. ATTESTATION
This document is to be executed by the Minister for Lands or a person to whom the power to grant a management order under section 46 of the Land Administration Act 1997 has been duly delegated under section 9(1) of the Act (if applicable).

Office Use Only

0418454 XE

03 Jun 2020 09:14:02 Perth



MANAGEMENT ORDER (XE)

LODGED BY Department of Planning Lands and Heritage

ADDRESS Goldfields Esperance and Wheatbelt - Box 98C

PHONE No.
FAX No.

REFERENCE No. Janine Finch Our Ref: 02133-1966 Ph: 6552 4587 Fax: 6552 4417

ISSUING BOX No. 98C

PREPARED BY Department of Planning Lands and Heritage

ADDRESS Goldfields Esperance and Wheatbelt - Box 98C

PHONE No.
FAX No.

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

2/2

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

1. Dep Management Order Received Items
2. _____ Nos.
3. _____
4. _____ Receiving Clerk
5. _____
6. _____

EXAMINED

1902632-002



Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

ORIGINAL

FORM LAA-1023

SECTION 46

WESTERN AUSTRALIA
LAND ADMINISTRATION ACT 1997
TRANSFER OF LAND ACT 1893 as amended

MANAGEMENT ORDER (XE)

RESERVE DESCRIPTION (NOTE 1)	EXTENT	VOLUME	FOLIO
28563	Whole	3118	697

MANAGEMENT BODY (NOTE 2)

Shire of Merredin of PO Box 42 MERREDIN WA 6415


CONDITIONS (NOTE 3)

- i) To be utilised solely for the designated purpose only; and
- ii) Power to lease (sub-lease or licence) for the designated purpose is granted for the whole or any portion thereof for any term not exceeding twenty-one (21) years from the date of the lease subject to the approval in writing of the Minister for Lands being first obtained to each and every lease or assignment of lease, pursuant also to the provisions of section 18 and section 19 of the Land Administration Act 1997.

THE MINISTER FOR LANDS (IN THE NAME OF AND ON BEHALF OF THE STATE OF WESTERN AUSTRALIA) ORDERS THAT THE CARE, CONTROL AND MANAGEMENT OF THE ABOVE RESERVE BE PLACED WITH THE MANAGEMENT BODY DESCRIBED ABOVE FOR THE PURPOSE FOR WHICH THE LAND COMPRISING THE RESERVE IS RESERVED UNDER SECTION 41 OF THE LAND ADMINISTRATION ACT 1997, AND FOR PURPOSES ANCILLARY OR BENEFICIAL TO THAT PURPOSE SUBJECT TO THE CONDITIONS ABOVE

Dated this 28 day of May in the year 2020

ATTESTATION (NOTE 4)

 NAME: Kevin Harrison
L4 SENIOR STATE LAND OFFICER
TEAM: Delivery



Certificate of Duty

Transfer - (General Rate)

Duties Act 2008

Certificate Number:	1031830315	Certificate Issue Date:	10-12-2019
Bundle ID:	192818999	Client Reference:	2000/01006-07
Transaction Date:	07-10-2019		
Dutiable Value:	\$ 0.00		
Transfer Duty:	\$ 0.00		
Penalty Tax:	\$ 0.00		
Exemption Type(s):	CROWN (SECTION 92) (100%)		
Non-monetary Consideration:	Deed of Termination and Release of JVA's		

Dutiable Transaction: Agreement To Transfer Dutiable Property

Description of Property:

Land in WA: Lot 1460, Plan 194884 Volume/Folio: LR3118/697

New Subdivision Details: Lot 1352 Bates Street, Merredin being Crown Land subject to Reserve number 28563 and vested in and for the benefit of the Shire on 28 May 1980 for the purpose of 'Homes of the Aged' and includes any improvements to the Land.

Seller(s): HOUSING AUTHORITY

Buyer(s): SHIRE OF MERREDIN



Government of **Western Australia**
Department of **Communities**

DEED OF TERMINATION AND
RELEASE OF JVAs
AND
ALLOCATION AGREEMENT

Merrittville Retirement Village

63 Bates Street Merredin

Housing Authority (**Housing Authority**)

Shire of Merredin (**Shire**)

Merrittville Retirement Village Inc. (**MRV**)

Details

Date 7 October 2019

Parties

Name Housing Authority (a body corporate constituted under the *Housing Act 1980* (WA))

Short form name **Housing Authority**

Notice details 99 Plain Street
EAST PERTH WA 6004

Name Shire of Merredin

Short form name **Shire**

Notice Details 110 Barrack Street (Cnr of King Street)
MERREDIN WA 6415

Name Merrittville Retirement Village Inc.

Short form name **MRV**

Notice Details PO Box 106
MERREDIN WA 6415

Agreed terms

1. Defined terms & interpretation

1.1. Defined terms

In this Deed, unless the context otherwise requires:

Allocated Dwelling means, as at the Effective Date, the JVA Dwellings and the New Dwellings which, once vacated and ready for occupation, are to be allocated to, and used exclusively for Occupants who are Eligible Persons and who have been drawn from the Joint Wait List and approved by the Housing Authority as Occupants.

Allocation Period means the period for allocation of the Allocated Dwellings under clause 6.4 of this Deed and being the period commencing on the Effective Date and concluding on 9 February 2026 or such other date determined by the Parties.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

Community Housing Agreement means an agreement of the same name entered into between a Community Housing Organisation and the Housing Authority.

Community Housing Organisation means a not for profit entity incorporated under the Law of the Commonwealth of Australia or of an Australian state or territory which has objects consistent with the provision of community housing or a local government authority that provides community housing.

Contingency Reserve Account means the separate financial account to be held by MRV under the terms of the JVAs for the purpose of ring-fencing contingency monies for the anticipated future costs of repairs and maintenance of the Land and the JVA Units and includes all surplus income (as that term is defined in the JVAs) and which at all times remains the property of the Housing Authority.

Costs means all costs and expenses associated with or incidental to MRV complying with its Maintenance and Management Obligations under this Deed, including but not limited to reasonable staff and administration costs (to the extent such costs are not otherwise covered by Insurance), local government rates, taxes and charges, water rates, the premiums on the policies of Insurance, all costs associated with and incidental to the Occupancy Agreements including all other expenses associated with and incidental to the Allocated Dwelling.

Deed means this Deed of Termination and Release of JVAs and Allocation Agreement.

Development means the planned construction of Future Dwellings on the JVA Land by the Shire and MRV and towards which the Housing Authority will make no financial contribution.

Effective Date means the date on which the last Party to sign this Deed, signs.

Eligible Persons means persons who meet the Housing Authority's prevailing eligibility criteria for social housing as set out in the relevant Policy and who have been approved by the Housing Authority to reside in the Allocated Dwelling.

Essential Fixtures means any item or items affixed or additions or modifications to the Allocated Dwelling, including but not limited to, hot water systems, ovens, stoves, floor coverings and air conditioners that the Housing Authority determines are essential to ensuring that the Allocated Dwelling is suitable for the purpose for which it has been provided.

Existing Caveat means the caveat lodged against the JVA Land by the Housing Authority for the purpose of securing the Housing Authority's interest in the JVA Land and the performance by MRV and the Shire of its covenants under the JVAs.

Future Dwellings means those dwellings which are to be constructed on the JVA Land as part of the Development and the funding and management for which is the responsibility of MRV and the Shire (including any costs and liabilities arising thereof).

Guarantors means Julie Townrow and Maria Young the guarantors to the Mortgage.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insurance means the policies of insurance required to be taken out by MRV (and if applicable, the Shire) in accordance with clause 7.8 of this Deed and, the evidence of which, is required to be provided by MRV to the Housing Authority in accordance with item 3 of the Schedule.

Joint Wait List means the list of Eligible Persons maintained by the Housing Authority and includes persons referred by or entered onto the list by a community housing organisation to form a common community housing wait list.

JVA 1 means the joint venture agreement between the Housing Authority and MRV made on or around 29 September 1981 (for an unspecified term) and pursuant to which ten (10) one-bedroom residential living units were developed on the JVA Land and in which the Housing Authority fully funded the construction of the dwellings and which, together with the dwellings constructed under JVA 2, JVA 3 and JVA 4, comprise the JVA Dwellings.

JVA 2 means the joint venture agreement between the Housing Authority and MRV made on or around 11 January 1993 for a term of 50 years (due to expire on 11 January 2043) and pursuant to which five (5) one-bedroom residential living units were developed on the JVA Land and in which the Housing Authority has a 87.10% interest and MRV has a 12.90% interest and which, together with the dwellings constructed under JVA 1, JVA 3 and JVA 4, comprise the JVA Dwellings.

JVA 3 means the joint venture agreement between the Housing Authority and MRV made on or around 16 June 1995 for a term of 50 years (due to expire on 16 June 2045) and pursuant to which five (5) two-bedroom residential living units were developed on the JVA Land and in which the Housing Authority has a 87.2% interest and MRV has a 12.8% interest and which, together with the dwellings constructed under JVA 1, JVA 2 and JVA 4, comprise the JVA Dwellings.

JVA 4 means the joint venture agreement between the Housing Authority, MRV and the Shire made on or around 9 February 2001 for a term of 25 years (due to expire on 9 February 2026) and pursuant to which six (6) two-bedroom residential living units were developed on the JVA and in which the Housing Authority has a 82.7% interest, MRV has a 14.8% interest and the Shire has a 2.5% interest and which, together with the dwellings constructed under JVA 1, JVA 2 and JVA 3, comprise the JVA Dwellings.

JVA Dwellings means the twenty-six (26) residential living units constructed on the JVA Land under the terms of the JVAs and in which the Housing Authority holds the JVA Interest set out in item 1 of the Schedule.

JVA Interest means the percentage interest in the value of the JVA which each party to each of the JVAs respectively holds.

JVA Land means Lot 1352 Bates Street Merredin being Crown Land subject to Reserve number 28563 and vested in and for the benefit of the Shire on 28 May 1980 for the purpose of "Homes of the Aged" and includes any improvements to the land.

JVAs means the four joint venture agreements (comprising JVA 1, JVA 2, JVA 3 and JVA 4) entered into between the Parties between the period of 29 September 1981 and 9 February 2001 and pursuant to which the JVA Dwellings were constructed on the JVA Land and set out in item 1 of the Schedule.

Law includes any constitution or provision, treaty, decree, convention, statute, Act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgement, rule of common law or equity, rule, ruling or guideline by a competent entity exercising jurisdiction in the relevant matter, including a rule, ruling, by-law, town planning scheme, building code or guideline of any governmental agency.

Lease means the proposed lease of the JVA Land from the Shire to MRV together with the dwellings constructed thereon which will be entered into as soon as practicable after this Deed and will contain the minimum requirements for the lease as set out in this Deed and at Annexure B.

Maintenance means any works for the maintenance or repair of the Allocated Dwelling, including of any material defect.

Management Obligations means the management obligations with respect to the Allocated Dwelling.

Management Order means the Order H521537 registered on title on 9 September 2000, noting the Shire of Merredin as the management body of the JVA Land and recognising the interest of the Housing Authority in the JVA Land by virtue of the JVAs.

Mortgage means the interest-bearing loan advanced 1 October 2013 from the Shire to MRV which was obtained by MRV pursuant to a deed between MRV, the Shire, and the Guarantors for the purpose of constructing the New Dwellings and repayments for which are currently serviced by the Contingency Reserve Account.

New Caveat means the absolute caveat to be lodged against the JVA Land by the Housing Authority for the purpose of securing the performance by the Shire and MRV of its covenants under this Deed.

New Dwellings means the three (3) x three-bedroom new dwellings constructed on the JVA Land and to which the Housing Authority claims an equitable interest by virtue of the dwellings having been constructed using, in part, monies from the Contingency Reserve Account and, in part, monies from the Mortgage with the Shire (the repayments for which are serviced by the Contingency Reserve Account).

Occupancy means each period of tenure of the Allocated Dwelling by the Occupant.

Occupancy Agreement means any agreement, express or implied, between MRV (as landlord) and the Occupant or Occupants by granting a right to occupy the Allocated Dwelling, or part thereof, whether exclusively or otherwise, in accordance with the terms of this Deed and, without limiting the generality of the foregoing, includes a residential tenancy agreement under the RT Act, a residence contract under the RV Act or any agreement granting a right of occupancy made under any relevant Law.

Occupant means a person who is an Eligible Person and who enters into an Occupancy arrangement through the Occupancy Agreement to reside in the Allocated Dwelling from time to time in accordance with the provisions of this Deed.

Occupant Rent means the rent which is charged by MRV to Occupants under the Occupancy Agreement and in accordance with the Policies.

Parties means both the parties to this Deed and Party has a corresponding meaning.

Policies means the Housing Authority's policies and procedures contained in item 2 of the Schedule, as updated and/or amended by the Housing Authority from time to time, and includes any new policies adopted by the Housing Authority, and **Policy** has a corresponding meaning.

Property Condition Report means the report prepared by MRV following an inspection of the Allocated Dwelling and which provides detailed information about the condition of the premises.

Residual Current Device means the residual current device required by Law.

RT Act means the *Residential Tenancies Act 1987* (WA) and its associated regulations as amended from time to time.

RV Act means the *Retirement Villages Act 1992* (WA) and its associated regulations as amended from time to time.

Service Fees means those optional fees (not charged as part of the Occupant Rent) for additional

occupancy management services, made available by MRV directly or through a third party, to Occupants on a user pay basis, including but not limited to, services such as: laundry, linen change, meals and house cleaning services, or furniture or television/video hire.

Smoke Alarms means the smoke alarms required by Law.

1.2 Interpretation

In this Deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A**, dollar or **\$** is to Australian currency;
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (g) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (h) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (j) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; and
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Machinery of Government Reforms

As a result of the 2017 Machinery of Government reforms, the Housing Authority is one of a number of agencies that has formed the new Department of Communities. However, until further legislative changes are undertaken, the Housing Authority remains a separate legal entity under the *Housing Act 1980* (WA) and, as such, is capable of terminating the JVAs and entering into this Deed in its own right and in the manner set out herein.

2. Background

- (a) The Housing Authority, the Shire and MRV entered into the JVAs between the period of 29 September 1981 and 9 February 2001 in order to construct the JVA Dwellings.
- (b) The JVA Dwellings were constructed on JVA Land, over which, the Housing Authority has the Existing Caveat.
- (c) Pursuant to the terms of the JVAs, the JVA Land is leased to MRV from the Shire and thereafter MRV is responsible for the Maintenance and Management Obligations of the JVA Dwellings.
- (d) In or around 2013, MRV, with assistance from the Shire, utilised funds from the Contingency Reserve Account to construct the New Dwellings to which the Housing Authority now claims an equitable interest.
- (e) MRV and the Shire further anticipate undertaking the new Development and constructing the Future Dwellings on the JVA Land (but for which the Housing Authority claims no interest).
- (f) Due to the growing complexity of each Party's interest, rights and obligations with respect to the JVA Land and any improvements thereof, in order to:
 - (i) clearly settle and document each Party's interest, rights and obligations with respect to the JVA Dwellings, the New Dwellings and the Future Dwelling; and
 - (ii) provide certainty and security of tenure for the residents of the Merrittville Retirement Village,

the Parties have agreed to terminate the JVAs, pursuant to which:

- (iii) the Housing Authority will agree to:
 - (A) forego any interest it may have in the JVA Dwellings;
 - (B) forego any interest it may have in the New Dwellings; and
 - (C) otherwise release the Shire and MRV from each of their obligations under the terms of the JVAs,

IN CONSIDERATION FOR the Shire and MRV granting to the Housing Authority allocation rights to the Allocated Dwellings for the Allocation Period on the terms set out in this Deed.

3. Clarifications and Acknowledgements

3.1 Configuration of the JVA Dwellings

Notwithstanding, Item 1 of the Schedule to this Deed and the Schedule in JVA 1 which both state that 10 one-bedroom units were constructed pursuant to JVA 1, the Parties hereby acknowledge and agree that, since the commencement of JVA 1, reconfiguration to units 4 and unit 5 has occurred such that unit 4 is now a two-bedroom unit and unit 5 has been remodelled such that its toilet and laundry is now utilised as a general use facility.

3.2 Housing Authority's Interest in the New Dwellings

The Parties acknowledge and agree that:

- (a) the JVA Land contains the New Dwellings which were not part of the JVAs;
- (b) MRV undertook the construction of the New Dwellings on the JVA Land using, in part, monies from the Contingency Reserve Account and, in part, monies from an interest-bearing loan from the Shire; the repayments for which are serviced by the Contingency Reserve Account;
- (c) under the terms of the JVAs the Contingency Reserve Account is to only be used for the purpose of undertaking repairs and maintenance of the JVA Dwellings but otherwise remains the property of the Housing Authority;
- (d) the New Dwellings were constructed with monies to which the Housing Authority would otherwise have been entitled; and
- (e) by virtue of the New Dwellings being constructed using monies to which the Housing Authority was entitled, the Housing Authority has an equitable interest in the New Dwellings.

3.3 Housing Authority's Interest in the Future Dwellings

- (a) MRV and the Shire intend to undertake the Development to construct the Future Dwellings.
- (b) The Parties hereby acknowledge and agree that any and all costs and liabilities arising from the Development and the Future Dwellings are the responsibility of MRV and the Shire. The Housing Authority makes no contribution towards the Development nor shall it assume any financial liability for the Future Dwellings. The Housing Authority

thereby claims no legal or equitable interest in the Development or the Future Dwellings.

4. Termination and release of JVAs

- (a) As and from the Effective Date and subject to the terms of this Deed:
 - (i) the Parties agree that the JVAs are terminated on the Effective Date; and
 - (ii) the Housing Authority, the Shire and MRV each release and discharge;
 - (A) the other Parties from the performance of the covenants, agreements and obligations contained in or implied in the JVAs or imposed by law to be observed and performed by the other Party or Parties without prejudice to any covenants, agreements and obligations under the JVAs arising before the Effective Date; and
 - (B) the other Parties from any action, claim and demand it has, or but for this clause it would have had, against the other Party or Parties under or in respect of JVAs without prejudice to any action, claim and demand under or in respect of the JVAs arising before the Effective Date.

5. Transfer of Housing Authority Interest

5.1 Interest in the JVA Dwellings

- (a) In consideration of the termination and release contained in clause 4 hereof on and from the Effective Date and subject to the terms of this Deed:
 - (i) the Housing Authority assigns its JVA Interest in the JVAs to the Shire and surrenders to the Shire any interest that it may have in the assets of the JVAs;
 - (ii) MRV agrees to the assignment of the Housing Authority JVA Interest in the JVAs to the Shire and the Shire accepts the assignment of the Housing Authority JVA Interest in the JVAs to the Shire; and
 - (iii) both the Shire and MRV release the Housing Authority from its obligations under the terms of the JVAs as at the Effective Date.
- (b) The Parties acknowledge and agree that the transfer of the Housing Authority's JVA Interest to the Shire and MRV is:
 - (i) in anticipation of the performance by the Shire and MRV of each and all its obligations under this Deed; and
 - (ii) for no monetary consideration and the Housing Authority will be entitled to any remedy available to it under this Deed or at Law should the Shire or MRV not perform, or threaten to not perform, any or all of its obligations under this Deed.

5.2 Interest in the New Dwellings

- (a) As and from the Effective Date:
 - (i) in anticipation of the performance by the Shire and MRV of each and all its obligations under this Deed; and
 - (ii) for no monetary consideration;
 - (A) the Housing Authority assigns its interest in the New Dwellings to the Shire; and
 - (B) MRV agrees to the assignment of the Housing Authority's interest in the New Dwellings to the Shire and releases the Housing Authority from any costs, liabilities or other obligations (if any) it may have or have had in relation to the New Dwellings; and
 - (C) the Shire accepts the assignment of the Housing Authority's interest in the New Dwellings to the Shire and releases the Housing Authority from any costs, liabilities or other obligations (if any) it may have or have had in relation to the New Dwellings; and
 - (iii) for no monetary consideration;
 - (A) the MRV assigns its interest in the JVA Dwellings and the New Dwellings to the Shire; and
 - (B) the Housing Authority agrees to the assignment of MRV's interest in the JVA Dwellings and the New Dwellings to the Shire and releases MRV from any costs, liabilities or other obligations (if any) it may have or have had in relation to the JVA Dwellings or the New Dwellings (including MRV's unauthorised use of the Contingency Reserve Account to part finance the New Dwellings); and
 - (C) the Shire accepts the assignment of MRV's interest in the JVA Dwellings and the New Dwellings to the Shire and releases the MRV from any costs, liabilities or other obligations (if any) it may have or have had in relation to the JVA Dwellings and the New Dwellings (including MRV's unauthorised use of the Contingency Reserve Account to part finance the New Dwellings), but excluding the Mortgage.

6. The Allocated Dwellings

6.1 Determining the Allocated Dwellings

- (a) In consideration for the Housing Authority terminating the JVAs and transferring both its JVA Interest and its interest in the New Dwellings to the Shire, the Shire and MRV will commit each and all of the JVA Dwellings and New Dwellings on the JVA Land to social housing (together the **Allocated Dwelling**).
- (b) The Housing Authority will be entitled to allocation rights in respect to the Allocated Dwelling for the Allocation Period.

6.2 Allocation of the Allocated Dwelling

- (a) MRV is responsible for allocation of the Allocation Dwelling and must ensure that the Allocated Dwelling is at all times during the Allocation Period allocated only to an Eligible Person in accordance with this Deed and in compliance with the Housing Authority's Policies.
- (b) If, as at the Effective Date, a JVA Dwelling or a New Dwelling is occupied by a person who is not an Eligible Person, the Parties agree that the following process will apply:
 - (i) MRV is not required to seek immediate vacant possession of the JVA Dwelling or New Dwelling (as the case may be) and the existing tenant may continue to reside in the dwelling until such time as their tenancy is terminated by MRV or terminates or expires due to the passage of time;
 - (ii) At and from the date on which the tenant referred to in subclause (b)(i) has vacated the JVA Dwelling or New Dwelling, the dwelling will be deemed to be an Allocated Dwelling and MRV must ensure that the Allocated Dwelling is, for the duration of the Allocation Period, allocated only to an Eligible Person from the Joint Wait List in accordance with this Deed and in compliance with the Housing Authority's Policies.

6.3 Allocation if no Eligible Person

- (a) In the event there is an insufficient number of Eligible Persons to satisfy the requirement in clause 6.2 above at any time during the Allocation Period then MRV may fill the vacancy in an Allocated Dwelling with a person from its own wait list.
- (b) If MRV allocates an Allocated Dwelling to a person from its own wait list in accordance with subclause (a) above then following such allocation:
 - (i) if any other dwelling on the JVA Land becomes a vacated dwelling; and
 - (ii) there is an Eligible Person available to occupy that dwelling, then MRV will allocate that other dwelling to the Eligible Person and:

- (iii) that other dwelling will be deemed to be an "Allocated Dwelling" for the purposes of this Deed; and
- (iv) MRV will comply with all of its obligations regarding Allocated Dwellings in respect to that other dwelling.

6.4 Use of the Allocated Dwelling

- (a) For the period of the Allocation Period:
 - (i) the Allocated Dwelling will be used exclusively for occupation by persons who are Eligible Persons drawn from the Joint Wait List and approved by the Housing Authority;
 - (ii) the Allocated Dwelling will be occupied by an Occupant under the Occupancy Agreement made on such terms and conditions as have been approved by the Housing Authority;
 - (iii) the Allocated Dwelling is to be occupied as soon as possible after the Effective Date and in any event no later than fifteen (15) Business Days after which the Allocated Dwelling was last vacated by an Occupant (for subsequent instances), whichever is applicable, or unless otherwise agreed in writing by the Housing Authority;
 - (iv) if the Allocated Dwelling is not allocated and occupied by Eligible Persons in compliance with clause 6.4(a)(i) for any reason which is or should reasonably be within the control of MRV, MRV acknowledges that such delay will constitute a breach of this Deed.
 - (v) the Housing Authority will be immediately notified when and to whom MRV allocates the Allocated Dwelling, such notification being through the electronic recording system maintained by the Housing Authority, if possible, but otherwise in writing, including the Occupants' details, date of allocation and any other information that may be reasonably requested by the Housing Authority to enable it to verify that the allocation has been performed and the Allocated Dwelling occupied in accordance with the requirements of this Deed.
 - (vi) If the Allocated Dwelling is occupied by an Occupant who is no longer an Eligible Person, MRV must immediately notify the Housing Authority who will elect whether to:
 - A. continue to house that Occupant in the Allocated Dwelling; or
 - B. remove that Occupant from the Allocated Dwelling and re-tenant that Allocated Dwelling to a new Eligible Person.
- (b) For the period following the Allocation Period, MRV agrees that:
 - (i) the Occupant or Occupants who are residing in the Allocated Dwelling at the end of

the Allocation Period are to remain in the Allocated Dwelling on the same terms and conditions as previously applied to the Occupancy until such time as the Occupancy Agreement of that Occupant or Occupants expires or is terminated by the Occupant or terminated due to an unrectified breach by the Occupant of their Occupancy Agreement; and

- (ii) the termination of the Occupancy Agreement referred to in clause 6.4(b)(i) may only occur with the written consent of the Housing Authority.
- (c) MRV will not terminate an Occupancy Agreement on the basis that this Deed has expired and the Allocation Period has ended.
- (d) For the avoidance of doubt, as at the Effective Date:
 - (i) MRV irrevocably and unconditionally indemnifies the Housing Authority against all loss, payments, costs, charges and expenses directly or indirectly arising from or incurred, in connection with the allocation and occupation of the Allocated Dwelling by the Occupant; and
 - (ii) the Housing Authority has no obligation to contribute any monies towards the cost of ongoing maintenance or repairs to the Allocated Dwelling.

6.5 Management of the Allocated Dwelling

- (a) The Allocated Dwelling must be managed by MRV in accordance with the Management Obligations set out in this Deed.
- (b) MRV must not cause or permit the Allocated Dwelling to be used for any illegal purposes or in such a manner as to create a nuisance.
- (c) MRV may (with the prior consent of the Housing Authority and the Shire) enter into an arrangement with a Community Housing Organisation to perform the Management Obligations and where that Community Housing Organisation is a party to a Community Housing Agreement, MRV must ensure that the Allocated Dwelling is managed in accordance with the provisions of the Community Housing Agreement, or where that Community Housing Organisation is not a party to a Community Housing Agreement in accordance with the provisions of this Deed during the Allocation Period.

6.6 Access to the Allocated Dwelling

- (a) The Housing Authority may enter the Allocated Dwelling:
 - (i) with the consent of the Occupant and MRV given at or immediately before the time of entry; or
 - (ii) for inspection annually provided that, if the Allocated Dwelling is occupied, it has given MRV a minimum ten (10) Business Days' notice so as to allow MRV to provide adequate notification to the Occupant as required under any applicable Law.

6.7 Shire may Replace MRV as Manager

- (a) The Shire may :
 - (i) provided it has first obtained the written consent of the Housing Authority; and
 - (ii) following consultation with MRV,replace MRV as manager of the Allocated Dwellings and appoint a new manager that is a Community Housing Organisation (**New Manager**) to undertake all of the Maintenance and the Management Obligations on behalf of MRV pursuant to this Deed.
- (b) Any New Manager must execute a deed with the Shire and the Housing Authority inter alia to agree to be bound by the obligations imposed on the MRV for the Maintenance and the Management Obligations for the Allocation Period, including the obligation to commit surplus amounts of Occupant Rent to repayment to the Shire of the Mortgage..

7. Management and Maintenance Obligations

7.1 Occupancy and Allocation Records

- (a) MRV must notify the Housing Authority when and to whom it allocates the Allocated Dwelling in accordance with clause 6.2.
- (b) MRV must maintain records for each Occupancy which include, but are not limited to, the following information:
 - (i) occupancy dates;
 - (ii) fortnightly income source;
 - (iii) weekly assessable income for rental purposes and confirmation of continued eligibility for social housing;
 - (iv) weekly Occupant Rent;
 - (v) Service Fee charges (if applicable); and
 - (vi) Occupancy expiry date.
- (c) MRV must provide a report of the information required in this clause 7.1 and Annexure A (**Allocation Report**) in the manner and at the frequency set out in item 3 of the Schedule

7.2 Additional Service to Occupants, Occupant Rent and Eligibility

- (a) MRV must provide a high level of service to Occupants and make every effort to sustain each Occupancy and respond fairly and flexibly to the changing needs of its Occupants.
- (b) The Occupant Rent to be charged by MRV must be in accordance with any relevant Policy.
- (c) MRV is responsible for collecting Occupant Rent and other fees or expenses payable by Occupants in a timely manner and must use reasonable endeavours to collect any

Occupant Rent arrears or debts from Occupants or former Occupants.

- (d) MRV must undertake annual income assessments of the Occupant/s and/or when Occupant income changes in accordance with any relevant Policy.

7.3 Occupancy Agreements

- (a) MRV must provide Occupants with an Occupancy Agreement that complies with its obligations under this Deed and the minimum requirements set out in any applicable Law.
- (b) MRV must ensure that:
 - (i) its Occupancy Agreements; and
 - (ii) its Occupancy management practices, comply with any relevant Law.
- (c) The Housing Authority may review the standard form of any Occupancy Agreement used by MRV and may direct MRV to make any amendments to the standard form, if the Housing Authority considers that it does not comply with MRV's obligations under this Deed or any applicable Law.
- (d) The covenants and agreements on the part of any Occupant in any Occupancy Agreement shall be deemed to be supplementary to the Management Obligations and shall not in any way relieve MRV from liability to comply with any of the Management Obligations.
- (e) Except where the Housing Authority grants an exemption which may apply to the Allocated Dwelling or to a specific Occupancy in the Allocated Dwelling from time to time, MRV will abide by all Policies.
- (f) MRV must document, maintain and make available to Occupants and, upon request, the Housing Authority, its own written policies and procedures.
- (g) MRV must take all reasonable steps to ensure that Occupants and any other persons who come into the Allocated Dwelling do not interfere with the reasonable peace, comfort, and privacy of surrounding neighbours.

7.4 Occupant Rent

- (a) The Housing Authority agrees that, for the period while MRV remains responsible for the Maintenance and Management Obligations under this Deed:
 - (i) MRV is entitled to retain all Occupant Rent to apply towards the Costs; and
 - (ii) any surplus amount of the Occupant Rent remaining after the Costs are met may, with the prior written consent of the Housing Authority, be utilised by MRV to service the existing Mortgage to the Shire.

- (b) For the avoidance of doubt, Occupant Rent can only be utilised for the purposes set out in subclause (a) above. If MRV uses the Occupant Rent (including any surplus thereof) for any other purpose (including, without limitation, the construction of any additional dwellings or improvements on the Land) then the Parties agree that this will constitute a breach of this Deed and entitle the Housing Authority to terminate this Deed in accordance with clause 14.

7.5 Service Fees

MRV is entitled to charge Service Fees to Occupants for additional services it provides to Occupants that are ancillary to the provision of residential accommodation provided that the Occupant has agreed to use the service or services to which the Service Fees relate with full knowledge of the Service Fees.

7.6 Maintenance

- (a) MRV is responsible for Maintenance of the Allocated Dwelling and shall undertake and complete such Maintenance promptly and expeditiously and in a good and tradesman like manner and with good quality and suitable materials and in compliance with all applicable Laws and Policies.
- (b) Without limiting subclause (a) above, MRV must at all times ensure that:
 - (i) Insurance on the Allocated Dwelling is obtained and maintained in the manner and to the standard set out in clause 7.8;
 - (ii) the Allocated Dwelling is maintained in a good state of repair and condition;
 - (iii) the Allocated Dwelling complies with all applicable Laws, including without limitation those relating to health, safety and buildings;
 - (iv) Smoke Alarms and Residual Current Devices are installed in the Allocated Dwelling and at all times fully operational and compliant with applicable Laws, including being tested by an electrician at least once within each 365-day period or such other more frequent period required by Law;
 - (v) the Allocated Dwelling is kept free from pests and vermin and inspected for termites;
 - (vi) any damage to the Allocated Dwelling howsoever caused (and whether the Allocated Dwelling is occupied or unoccupied) is promptly and expeditiously repaired (and that it takes all reasonable action to recover the costs of such repairs from the Occupants or any other person(s) who caused the damage); and
 - (vii) any Essential Fixtures in the Allocated Dwelling which are damaged or unfit for purpose are replaced.

7.7 Maintenance Records and Inspections

- (a) MRV must:
- (i) undertake a comprehensive inspection of the Allocated Dwelling at least once during each year of the Allocation Period and at each conclusion of an Occupancy Agreement and commencement of each new Occupancy Agreement;
 - (ii) prepare a Property Condition Report, which records the condition of the Allocated Dwelling(s) at the time of each comprehensive inspection referred to above;
 - (iii) undertake a push button test of all Residual Current Devices and test the Smoke Alarms in the Allocated Dwelling at least once during each year of the Allocation Period;
 - (iv) ensure that a termite inspection of the Premises is carried out at least once during each year of the Allocation Period;
 - (v) Prepare a long-term maintenance plan for the Allocated Dwellings which covers, at a minimum, the period of this Deed and in which future maintenance requirements and the costs involved are identified and estimated (**Maintenance Plan**);
 - (vi) maintain a register which must include:
 - (A) a record of all Maintenance undertaken;
 - (B) a record of the dates on which each of the Allocated Dwellings were inspected for the purposes of a Property Condition Report;
 - (C) a record of the dates on which each of the Residual Current Devices and Smoke Alarms were tested ;
 - (D) a record of the dates on which termite inspections were carried out;
 - (E) copies of Property Condition Reports;
 - (F) any other information relevant to the Maintenance of the Allocated Dwelling; and
 - (G) any other information relevant to the Allocated Dwelling, fit out or improvements to the dwelling that the Housing Authority or the Shire may require from time to time,
- (**Maintenance Register**).
- (b) MRV must make available for inspection the Maintenance Plan and the Maintenance Register upon request by the Housing Authority or the Shire.

7.8 Insurance

- (a) MRV must obtain and at all times during the Allocation Period maintain the following insurance coverage (with an insurer approved by the Housing Authority):
 - (i) building insurance up to the full insurable value of the Allocated Dwelling against loss or damage by fire, storm, tempest, earthquake and any other applicable risk as the Housing Authority may reasonably require from time to time;
 - (ii) public liability insurance with respect to the Allocated Dwelling, in an amount not less than \$20,000,000 (twenty million dollars) (subject to periodic review by the Housing Authority) in respect of any one claim or any other reasonable amount as required by Housing Authority from time to time;
 - (iii) employers' indemnity insurance (including workers' compensation insurance) in respect of all employees of MRV under statute and common law;
 - (iv) volunteers' insurance (where applicable);
 - (v) motor vehicle insurance (where applicable); and
 - (vi) any other insurances reasonably required as determined by the Housing Authority from time to time.

- (b) MRV must ensure that, where applicable, any contractors obtain and at all times during the Allocation Period maintain the following insurance coverage:
 - (i) contract works insurance against accidental loss or damage to any material defects works and such insurance must name MRV as an additional insured;
 - (ii) public liability insurance with respect to the material defects works, in an amount not less than \$20,000,000 (twenty million dollars) in respect of any one claim or any other reasonable amount as required by the Housing Authority;
 - (iii) motor vehicle insurance;
 - (iv) any other insurances reasonably required as determined by the Housing Authority from time to time; and
 - (v) adequate workers' compensation and common law liability insurance,

(and the insurances referred to in subclauses (a) and (b) above, are together referred to as the **Insurance Policies**).

- (c) MRV must ensure (and must procure that its contractors ensure) that:
 - (i) the Housing Authority (and if applicable, the Shire) is named as an additional insured on all Insurance Policies in which it has an insurable interest for its respective rights and interests;

- (ii) the Insurance Policies have no exclusions, endorsements or alterations unless first approved in writing by the Housing Authority acting reasonably;
 - (iii) the respective rights and interests of MRV, the Housing Authority and any other party(s) to the Insurance Policies under the Insurance Policies are independent of each other and a breach of a condition of the Insurance Policies by one party will not impact or affect the rights and interests of the other party; and
 - (iv) to the extent permissible at Law, the Insurance Policies waive all express and implied rights of subrogation against officers, employees and agents of the Housing Authority (and if applicable, the Shire).
- (d) MRV must provide to the Housing Authority, within ten (10) Business Days of request by the Housing Authority and to the satisfaction of the Housing Authority, evidence of all current Insurance Policies required to be taken out by MRV and the contractors.
 - (e) MRV must not do or permit to be done any act, matter or thing upon the Allocated Dwelling, or bring or keep anything onto the Allocated Dwelling, whereby any Insurance Policy may be rendered void or voidable.
 - (f) If MRV does or permits to be done any act, matter or thing which has the effect of voiding any of the Insurance Policies, MRV will be responsible for and must pay and discharge on demand any damage or loss suffered or incurred by the Housing Authority.

7.9 Dealing with the Allocated Dwelling

- (a) Except as expressly permitted in this Deed, a Party is not entitled to assign or otherwise deal with its interest under this document.
- (b) Neither MRV nor the Shire may sell, assign, transfer, surrender, let, lease or dispose of its or their estate or interest in the Allocated Dwelling other than in accordance with the terms of this Deed and with the prior written consent of the Housing Authority, which consent may be withheld in the Housing Authority's absolute discretion.

8. Records and Reporting

8.1 Financial management

- (a) MRV must at all times keep and maintain proper and accurate accounting records that meet the applicable Australian accounting standards.
- (b) Where MRV operates other housing services which are not part of its obligations to the Housing Authority, it must separate the administrative and financial accounting in relation to the procurement and management of the Allocated Dwelling from those other services.
- (c) MRV must provide the Housing Authority with annual financial statements of its

operations (audited, if required by the *Corporations Act 2001* (Cth) or other relevant legislation) for the immediate past Financial Year within four (4) months of the end of each Financial Year (Financial Statements).

- (d) The Financial Statements will cover all the properties within MRV's community housing property portfolio (unless the Housing Authority requests a customised Financial Statement for only the Allocated Dwelling).
- (e) The Financial Statements must include all information which is required by Law to be included in them.
- (f) In the event MRV fails to comply with the requirements of subclause (c) above, the Housing Authority may:
 - (i) arrange the preparation of the Financial Statements at MRV's expense;
 - (ii) invoice MRV for any amounts due; and
 - (iii) undertake debt recovery proceedings to recover any amount due.

8.2 Reporting requirements generally

MRV must provide any reports and documents required to be provided to the Housing Authority pursuant to this Deed:

- (a) at the frequency and by the dates specified in item 3 of the Schedule; and
- (b) in the form required by the Housing Authority (and including any specific detail required by this Deed including as set out in Annexure A).

9. The Lease

- (a) As soon as practicable after the Effective Date, the Parties will work together to finalise a lease for the JVA Land between the Shire and MRV. The Lease will be on reasonable terms, mutually agreed and substantively incorporating the minimum requirements set out at Annexure B.
- (b) Whilst MRV will continue to provide its services to the Occupants under the terms and conditions of both that Lease and this Deed, in the event of any inconsistency between that Lease and this Deed, this Deed will prevail to the extent of the inconsistency.
- (c) In the event that the Housing Authority or Shire exercise its right to appoint a New Manager then the Parties will work together to novate and assign the Lease to that New Manager.

10. Caveat

10.1 Withdrawal of Existing Caveat

The Housing Authority agrees, as soon as reasonably practicable after the Effective Date it will withdraw the Existing Caveat and will be responsible for the preparation and lodgement of all necessary documentation to effect the withdrawal of the Existing Caveat including requisition notices thereof (if any).

10.2 New Caveat

- (a) In order to better secure the Parties observance or performance of each of their obligations under this Deed, as at the Effective Date, the Shire charges the whole of the JVA Land in favour of the Housing Authority with the observance or performance of the obligations of the Shire and MRV under this Deed until such obligations are satisfied.
- (b) The Housing Authority is entitled to lodge the New Caveat and to protect the charge granted under subclause (a) above.

11. The Mortgage

- (a) It is a condition of this Deed that, for the period in which it remains responsible for the Maintenance and Management Obligations under this Deed, MRV continues to be liable for repayment of money owing pursuant to the Mortgage and meet any financial obligations and commitments it has to the Shire pursuant to that Mortgage.
- (b) In the event that the Housing Authority or Shire exercise its right to appoint a Community Housing Organisation as New Manager to undertake the Maintenance and Management Obligations under this Deed (in substitution for MRV), then the Shire and the New Manager must enter into a written agreement to ensure that the obligations and requirements of clauses 6.7 and 11 are performed.
- (c) If the Mortgage has not been repaid in full by the last day of December 2028 then, in consideration for MRV having:
 - (i) assigned its equitable interest in the JVA Dwellings and New Dwellings to the Shire on the Effective Date; and
 - (ii) otherwise complied with its obligations under this Deed,the Mortgage will be deemed to have been discharged and the Shire will thereafter:
 - (iii) have no further claim against MRV or any guarantor of MRV to the Mortgage; and
 - (iv) not attempt to enforce any rights it may otherwise have had under the Mortgage.

12. Dispute resolution

- (a) If a dispute (Dispute) arises out of or in connection with this Deed, then either the Housing Authority or MRV or the Shire may give a notice (Notice of Dispute) in writing to the other setting out details of the Dispute and thereafter this clause 12 will apply to the Dispute.
- (b) The Parties must use their best endeavours to resolve the Dispute between themselves within ten (10) Business Days from the date of:
 - (i) delivery of the Notice of Dispute to the recipient;
 - (ii) the Dispute being deemed to have arisen; or
 - (iii) such other date as may be agreed between the Parties.
- (c) If the Parties are unable to resolve the Dispute in accordance with subclause (b), the Dispute must be referred to the respective Chief Executive Officers of the Shire and the Housing Authority and the Chairperson of MRV.

13. Notices

- (a) A notice, consent, information or request that must or may be given or made to a Party under this Deed is only given or made if it is:
 - (i) delivered or posted to that Party at the contact address stated in item 4 of the Schedule ;
 - (ii) faxed to that Party at the fax number stated in item 4 of the Schedule ; or
 - (iii) emailed to that person at the email address stated in item 4 of the Schedule ,
 - (iv) or at such other address, fax number or email (as the case may be) that has been notified by that Party to the other Party in writing, from time to time.
- (b) If notice is given by email, the sending Party must ensure that it is either signed by means of an electronically produced signature of a person authorised by that Party to send the email or states that it is being sent by a person authorised to send the email on behalf of that Party.
- (c) A notice, consent, information or request is to be treated as received at the following time if it is:
 - (i) delivered, when it is left at the relevant address.
 - (ii) sent by post, 5 Business Days after it is posted.
 - (iii) sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

- (iv) sent by email, as soon as it enters the recipient's information system.
- (d) If:
 - (i) a notice, consent, information or request is delivered;
 - (ii) an error free transmission report in relation to a fax of a notice, consent, information or request is received; or
 - (iii) the email enters the recipient's information system,after the normal business hours of the Party to whom it is delivered or sent, it is to be treated as having been received at 9.00am the next Business Day.

14. Termination by Housing Authority

- (a) The Parties agree that MRV and the Shire will be in breach of this Deed and the Housing Authority will be entitled to terminate this Deed if:
 - (i) MRV or the Shire fail to comply with any of their obligations under this Deed; or
 - (ii) MRV or the Shire cease or threaten to cease to carry out any of its obligations under this Deed.
- (b) If the Housing Authority is entitled to terminate this Deed under clause 14(a) above, the Housing Authority must give MRV and the Shire written notice specifying the non-compliance and requiring MRV or the Shire (as applicable) to remedy it within the minimum time reasonable after the date on which the notice is given (Breach Notice).
- (c) If MRV or the Shire (if applicable) does not comply with the Breach Notice or notices referred to in subclause (b) above within the time prescribed in the relevant Breach Notice or notices (or if no such time is prescribed, within 28 days), the Housing Authority may terminate this Deed and on termination the Housing Authority will be entitled to, and may immediately demand to be paid:
 - (i) an amount equivalent to the JVA Interest which, but for this Deed, the Housing Authority would have been entitled under the terms of the JVA; and
 - (ii) an amount equivalent to the aggregate sum expended by MRV from the Contingency Reserve Account for the construction of the New Dwellings and Mortgage repayments which, but for this Deed, the Housing Authority would have been entitled under the terms of the JVA; and
 - (iii) any remaining balance of the Contingency Reserve Account as at the date of the termination.
- (d) Without limiting the rights of the Housing Authority to terminate this Deed and be paid the amounts set out in clause 14(c), if at any time during the Allocation Period, MRV consistently fails to:

- (i) comply with its Maintenance and Management Obligations under this Deed; or
 - (ii) meet its financial obligations to the Shire under the Mortgage, the Housing Authority may seek to enter into an arrangement with a Community Housing Organisation to perform any or all of MRV's obligations under this Deed in respect to the Allocated Dwellings (in substitution for MRV).
- (e) If the Housing Authority seeks to enter into an arrangement with a Community Housing Organisation pursuant to subclause (d) the Shire will do everything reasonably necessary to assist such arrangement including, without limitation, terminating the Lease with MRV and entering into a new lease with the Community Housing Organisation and overseeing all of the tenancy management and property maintenance obligations to be undertaken by that Community Housing Organisation under that new lease.
- (f) For the avoidance of doubt if the Housing Authority or the Shire enters into an arrangement with a Community Housing Organisation to perform the Maintenance and Management Obligations under this Deed the Community Housing Organisation will, at and from the date on which it is appointed, be entitled to all amounts contained in the Contingency Reserve Account and all Occupant Rent for the period of that arrangement;

15. Relationship between the Parties

- (a) Except as expressly stipulated in this Deed, nothing in this Deed, or the conduct of the Parties contemplated by this Deed, does, or is intended to do, any of the following:
- (i) result in the creation of a new joint venture, partnership or other relationship under which one Party will be held responsible or liable for any act or omission of the other Party, or which will result in income being received jointly by the Parties;
 - (ii) adversely affect the status of either Party; or
 - (iii) creates any trust.

16. Variations to Policies

The Housing Authority may update and amend the Policies and introduce new Policies from time to time and MRV agrees to be bound by the Policies as amended, updated and introduced provided that the Housing Authority has communicated the substance of any such amendment or update to the Policies or any new Policy to MRV in writing.

17. Dealings with the JVA Land

- (a) During the Allocation Period:
- (i) to the extent to which it is within the Shire's control, the Shire must remain the

management body under the Management Order;

- (ii) the Shire will not seek conversion of the Management Order to freehold title without the prior written consent of the Housing Authority; and
 - (iii) in the event the Management Order is converted to freehold title, the Shire will not transfer the JVA Land or otherwise attempt to dispose of its interest in the JVA Land other than under the terms and conditions of this Deed.
- (b) As soon as practicable or in any event no later than 30 days after the Effective Date the Shire will procure from the Department of Lands an amendment to condition 3 of the Management Order to note the rights of the Housing Authority under this Deed.
- (c) The Parties agree that this clause 17 is an essential clause of this Deed and any failure by the Shire to comply with this clause will constitute a fundamental breach of this Deed sufficient to entitle the Housing Authority to terminate this Deed in accordance with clause 14.

18. GST

- (a) In this clause, to the extent applicable, **Additional Amount**, **Recipient**, **Supplier**, **Taxable Supply** and **Valid Tax Invoice** have the same meanings as defined in the GST Act.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this Deed, unless specifically described in this Deed as 'GST inclusive', does not include an amount on account of GST.
- (c) To the extent applicable, where the consideration for a Taxable Supply under this Deed is not expressed or is not expressed as an amount of money, the Parties agree:
- (i) to exchange Valid Tax Invoices that reflect the GST exclusive market value of the Properties which shall include the following statements:
 - (A) in respect of a Valid Tax Invoice issued by the Housing Authority:
'This is a GST only tax invoice. The total amount due will be offset against a tax invoice issued for an equal amount by the Organisation for consideration of the obligations thereby undertaken by the Organisation in respect of the Properties'; and
 - (B) in respect of a Valid Tax Invoice issued by the Organisation:
'This is a GST only tax invoice. The total amount due will be offset against a tax invoice issued for an equal amount by the Housing Authority for consideration due on transfer of the Properties to the Organisation'.
 - (ii) that notwithstanding clause 20(h), any amounts payable by the Parties to each other

on account of GST under that paragraph will be set off against each other, with only the net amount payable to the appropriate Party (if any) to set-off the GST component of the Valid Tax Invoices issued by each Party.

- (d) The Parties agree that the margin scheme will not apply to the transfer of any Properties by the Housing Authority to the Shire and MRV under this Deed.
- (e) To the extent applicable and, as set out in GSTD 2006/3, settlement adjustments in favour of either the supplier or the recipient of the supply of real property are taken into account in determining the consideration for the supply or acquisition.
- (f) To the extent applicable, the Parties will record any GST payable and any input tax credits claimable from the tax invoices in their monthly Business Activity Statements for the tax period in which the Settlement occurs.
- (g) MRV must take all necessary steps to claim back GST input tax credits in respect of any acquisitions, costs or expenses incurred in connection with or during the course of it complying with its obligations under this Deed at the earliest opportunity under the GST Act and apply those credits in full to the provision of Community Housing in accordance with the terms of this Deed.
- (h) If a Party (**Supplier**) makes a taxable supply under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for that supply, the Recipient must, in addition to any other consideration payable under this Deed, pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (**Additional Amount**) at the same time as the relevant consideration or any part of it is provided.
- (i) The obligation to pay the Additional Amount under clause 20(h) only arises once the Supplier has issued a tax invoice (and any adjustment note) to the Recipient in respect of the Additional Amount.
- (j) If, under this Deed, one Party (**Payer**) is required to pay an amount to reimburse or compensate the other Party (**Payee**) for any cost or liability incurred by that other Party:
 - (i) the amount to be reimbursed or compensated shall first be reduced by the amount of any input tax credit to which the Payee is entitled on that cost liability; and
 - (ii) if and to the extent that the reimbursement or compensation payment is itself consideration for a taxable supply by the Payee, it shall then be increased by the amount of GST payable by the Payee on that taxable supply once a tax invoice has been issued by the Payee for that supply.
- (k) MRV must:
 - (i) obtain and at all times during the term of this Deed maintain endorsement as a

charitable institution under section 176-1(1) of the GST Act; and

- (ii) ensure that any supply of accommodation or other supply under or in connection with this Deed qualifies to be, and otherwise always constitutes, a GST-free supply pursuant to Subdivision 38-G of the GST Act.

19. Costs, duties and fees

- (a) The Housing Authority will pay the cost and expense associated with stamping of this Deed including the registration of any caveats contemplated by this Deed and all stamp duty (if any) payable with respect to this Deed.
- (b) The Shire and MRV will pay the cost and expense associated with the Lease and any duty payable thereof.
- (c) Each Party will be responsible for the payment of its own legal costs and all other expenses incidental to the completion of this Deed

20. Proper Law

This Deed is governed by and shall be construed according to the law of Western Australia and the Parties submit to the exclusive jurisdiction of the Courts of Western Australia.

21. Further Assurances

The Parties agree that they will sign, execute and complete all such further assurances and documents and do all such further things as may be reasonably required to complete the matters set out or contemplated by this Deed.

Signing page

EXECUTED as a deed.

The Common Seal of)
Housing Authority was)
hereunder affixed in the)
presence of)



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Signature of Authorised Officer

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Deborah Upton

Signature of Authorised Officer

←

ALLAN PEREIRA

Name of Authorised Officer (please print)

Deborah Enid Upton

Name of Authorised Officer (please print)

MANAGER
SECURITIES &
CONVEYANCING

Position Title (please print)

CONVEYANCING MANAGER

Position Title (please print)

Signed for and on behalf of the **Merrittville Retirement Village Incorporated** in accordance with its Constitution

Donna Crook

Signature of Authorised Officer

←

Debbie Morris

Signature of Authorised Officer

←

DONNA CROOK

Name of Authorised Officer (please print)

DEBBIE MORRIS

Name of Authorised Officer (please print)

CHAIRPERSON

Position Title (please print)

SECRETARY

Position Title (please print)

The Common Seal of)
Shire of Merredin was)
hereunder affixed in the)
presence of)

Ken Hooper

Signature of Authorised Officer

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Lee Powell

Signature of Authorised Officer

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KEN HOOPER

Name of Authorised Officer (please print)

LEE POWELL

Name of Authorised Officer (please print)

SHIRE PRESIDENT

Position Title (please print)

CEO

Position Title (please print)



Annexure A – Reporting Requirements

TARGET	EVIDENCE REQUIRED
<p><u>ELECTRICAL SAFETY</u></p> <p>Electrical Safety Devices (ESD) Smoke Alarms & Residual Current Devices (RCD)</p> <p><i>Please refer to the Building Codes of Australia</i></p>	<ul style="list-style-type: none"> • Registers, File notes, PCR or Inspection Reports recording the testing and maintenance of RCDs and smoke alarms • Any other relevant records • Electrician’s Certification on which they were tested with the test results summarised
<p><u>FINANCIAL VIABILITY</u></p> <p>MRV can continue to fund the supply of its services.</p>	<ul style="list-style-type: none"> • Current Audited financial Statements <ul style="list-style-type: none"> • Profit and Loss Statement • Balance Sheet Statement • Cash Flow Statement • Audited financial report that contain evidence of a Long Term Maintenance provision, and Day-to-Day Maintenance expenses
<p><u>LONG TERM MAINTENANCE</u></p>	<ul style="list-style-type: none"> • Long Term Maintenance plan
<p><u>MAINTENANCE GENERALLY</u></p> <p>MRV provides clean, safe, secure and structurally sound accommodation.</p>	<ul style="list-style-type: none"> • Maintenance Register • Property Condition Reports • Termite Inspections

Signing page

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presence of)

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Signature of Authorised Officer

Signature of Authorised Officer

Name of Authorised Officer (please print)

Name of Authorised Officer (please print)

Position Title (please print)

Position Title (please print)

The Common Seal of)
Merrittville Retirement)
Village Incorporated)
hereunder affixed in the)
presence of)

Quook

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Amoris

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Signature of Authorised Officer

Signature of Authorised Officer

DONNA CROOK

Name of Authorised Officer (please print)

DEBBIE MORRIS

Name of Authorised Officer (please print)

CHAIRPERSON

Position Title (please print)

SECRETARY

Position Title (please print)

The Common Seal of)
Shire of Merredin was)
hereunder affixed in the)
presence of)

Kenneth A Hooper

←

Gabe Power

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Signature of Authorised Officer

Signature of Authorised Officer

KENNETH A HOOPER

Name of Authorised Officer (please print)

GABE POWER

Name of Authorised Officer (please print)

PRESIDENT.

Position Title (please print)

CEO

Position Title (please print)

Schedule

Item 1 – SUMMARY OF THE JVAS AND JVA DWELLINGS

Stage	Documentation	Term	Dwellings	Housing JVA Interest
1 (JVA 1)	Joint Venture between the Housing Authority and MRV in form of letter agreement dated 29 September 1981	unspecified	ten (10) one bedroom units	Estimated 100%
2 (JVA 2)	Joint Venture between the Housing Authority and MRV in formal agreement dated 11 January 1993	50 years. Expiry 11.01.2043	five (5) one bedroom units	87.10%
3 (JVA 3)	Joint Venture between the Housing Authority and MRV in formal agreement dated 16 June 1995	50 years. Expiry 16. 06. 2045	five (5) two bedroom units	87.2%
4 (JVA 4)	Joint Venture between the Housing Authority, MRV and the Shire in formal agreement dated 9 February 2001	25 years. Expiry 09.02.2026	six (6) two bedroom units	82.7%

Item 2 -- POLICIES

MRV will comply with the following Housing Authority Policies and procedures:

Policies
Asset Condition Standards and Guidelines Manual for Managed Premises
Community Housing Allocations Policy (2010)
Community Housing Rent Setting Policy (2009)
Community Housing Income and Asset Limits Policy (2013)

Item 3 -- REPORTING DATES

Reports	Reference	Frequency	Last Date to Provide
Financial Statements	Clause 8.1 and Annexure A	Annually	31 October
Evidence of Insurance Policies	Clause 7.8	Annually	Within 10 Business Days of request

Smoke Alarms and Residual Current Devices Certification	Clause 7.6, 7.7 and Annexure A	Annually	30 April
Electrical Safety Certificates for each Smoke Alarm and Residual Current Device installed or replaced and the make, model and date of expiry for each such device as applicable	Clause 7.6, 7.7 and Annexure A	Annually	Within 10 Business Days of installation or replacement
Termite Inspections	Clause 7.7	Annually	Within 10 days of the annual anniversary of this Deed
Maintenance Register and Maintenance Plans	Clause 7.8 and Annexure A	Annually	As required
Allocation Records	Clause 7.1	Annually	As required

Item 4 -- PARTIES CONTACT DETAILS FOR NOTICE

MRV	
Street Address	63 Bates Street, Merredin
Postal Address	PO Box 106, Merredin WA 6415
Email Address	merrittvillecommittee@gmail.com
Facsimile	
Telephone	0459 027 862
HOUSING AUTHORITY	
Street Address	99 Plain Street, East Perth WA 6004
Postal Address	Locked Bag 22, East Perth WA 6872
Email Address	communityhousing@communities.wa.gov.au
Facsimile	
Telephone	9222 4666
SHIRE OF MERREDIN	

Street Address	Barrack Street, Merredin WA 6415
Postal Address	PO Box 42, Merredin WA 6415
Email Address	ceo@merredin.wa.gov.au
Facsimile	
Telephone	(08) 9041 1611

Annexure B – The Lease

The following sets out the minimum conditions of Lease

The lease is to be:

- a) drafted by the Shire and approved by the Housing Authority;
- b) comply with the requirements of the Management Order, including any relevant consents;
- c) acknowledge the history of the JVAs, JVA Units and New Dwellings including recognition of the equitable interest that the Housing Authority, but for this Deed, would have had in the JVA Units;
- d) comply with and be subject to the same terms and conditions contained in this Deed in respect to Maintenance and Management Obligations;
- e) have termination provisions sufficient to allow the Lease to be terminated on breach of this Deed or to be novated and assigned if a New Manager is appointed; and
- f) in all other ways, be consistent with the terms and conditions of this Deed.