

**HOUSING JOINT VENTURE AGREEMENT**

Dated *22nd December 1999*

**The State Housing Commission**

**("HOMESWEST")**

**and**

**TOWN OF PORT HEDLAND**

**("the Organisation")**

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THIS JOINT VENTURE AGREEMENT dated *22nd December 1999*

BETWEEN THE STATE HOUSING COMMISSION, a body corporate constituted under the Housing Act 1980, of 99 Plain Street, East Perth in the State of Western Australia ("**Homeswest**")

AND TOWN OF PORT HEDLAND of P O Box 41 Port Hedland WA 6721 in the said State ("**the Organisation**")

**RECITALS**

- A. Homeswest is empowered pursuant to the Act to provide residential rental accommodation for Eligible Tenants.
- B. The Land described in Item 1 of the Schedule is crown reserve land vested with the Organisation under Section 33 of the Land Act 1933 for the purpose of Upgrade of aged persons bedsitters
- C. The Parties have agreed to form the Joint Venture to carry out the Project on the Land on the terms and conditions contained in this Agreement.

**IT IS AGREED**

1. **INTERPRETATION**

1.1 In this Agreement:

"Act " means the Housing Act 1980.


"Agreement" means this agreement including the schedules as amended from time to time.

"Common Areas " means any areas on the land that are not designated for exclusive use by a specific tenant, including parking areas, common lighting, common garden areas and communal laundry facilities.

"Construction Cost" means the cost of construction or modification or renovation of the Units as set out in Item 2 of the Schedule.

"Eligible Persons " means persons who meet the prevailing Homeswest eligibility criteria for public rental housing.

"Financial or Administrative Mismanagement" means gross financial or administrative mismanagement by the Organisation of the Organisation's obligations under this Agreement as reasonably determined by Homeswest.

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"**Financial Year**" means any period of 12 months ending on 30 June during the Term.

"**Force Majeure**" means an act of God, strike, lockout, insurrection, civil commotion, lightning, fire, storm, flood, earthquake, inclement weather, explosion, breakage or accident to machinery or lines of pipe, governmental restraint, embargoes, inability to obtain or delay in obtaining equipment or transport, governmental approvals, permits, licences or allocations and other cause, whether of the kind enumerated in this definition or otherwise, which is not reasonably within the control of a Party.

"**Guidelines**" means the guidelines issued by Homeswest in respect of the Joint Venture Housing Program, including all amendments and additions thereto from time to time, annexed to this Agreement and marked 'A'.

"**Joint Venture**" means the joint venture between the parties established pursuant to this Agreement, to carry out the Project.

"**Joint Venture Property**" means the Land, the Units and any other buildings on the Land.

"**Land**" means that portion only of the land described in Item 1 of the Schedule (together with all buildings and fixtures thereon) that is delineated on the Site Plan which forms Annexure 'C' of this Agreement.

"**Land Costs**" means any costs incurred to prepare the Land for construction or modification of the Units, including but not limited to land clearance, demolition of any existing buildings on the Land, land fill and compacting costs, surveying and lot amalgamation or sub-division costs, land servicing costs and the cost of Engineer's Certificates. These costs are listed in Item 2 of the Schedule.

"**Market Rent**" is the median rent charged by the private sector in a particular area which takes into account type of dwelling, property age, number of bedrooms and amenity level. As a guide Homeswest produces tables of market rent levels which are regularly updated.

"**Parties**" means the parties who are for the time being parties subject to this Agreement and "**Party**" shall have a corresponding meaning.

"**Project**" means the project to provide residential rental accommodation for Eligible Persons to be managed and maintained by the Organisation.

"**Service Fees**" are fees for additional tenancy management services which are made available by the Organisation to tenants on a user pay basis. Examples include laundry, linen change, meals and house cleaning services, or furniture or TV/video hire, where these services are contracted or provided directly by the Organisation. These fees must be optional and not included as part of the rent. The level of the fee should not exceed the cost of providing the service.

**"Target Group "** means any specific categories of Eligible Persons that the Units are to be let to by the Organisation, as identified in Item 1 of the Schedule to this Agreement.

**"Tenancy Agreement"** means any agreement, express or implied, between the Organisation as landlord and a person or persons which grants that person or persons a right to occupy any Unit, or part thereof, whether exclusively or otherwise, for the purpose of residence.

**"Tenants "** means persons who occupy the Units under a Tenancy Agreement, who must be Eligible Persons when they are first allocated a Unit.

**"Term"** means the term of this Agreement being 25 years commencing on the Commencement Date.

**"Total Project Cost"** means the sum of the Land Costs and the Construction Costs, as listed in Item 2 of the Schedule.

**"Units"** means the buildings which are to be purchased, constructed or modified on the Land pursuant to this Agreement to provide residential rental accommodation.

**"Valuer "** means a person who:

- (a) is licensed under the Land Valuers Licensing Act 1978;
- (b) is a full member of not less than 5 years standing of the Australian Institute of Valuers and Land Economists Inc; and
- (c) has been actively engaged in Western Australia for not less than 5 years in undertaking land valuations.

## 1.2 Interpretation

In this Agreement headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- a) a reference to any Party includes that Party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- b) a reference to this Agreement or to any other deed, agreement or document includes, respectively, this Agreement or that other deed, agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- c) references to currency are references to Australian currency ;
- d) reference to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted for

it, and ordinances, by-laws, regulations, and other statutory instruments issued thereunder;

- e) where the day on which or by which any act, matter or thing is to be done under this Agreement is not a business day, that act, matter or thing will be done on the immediately following business day.

## **2. JOINT VENTURE**

- 2.1 The parties hereby associate themselves in a Joint Venture for the purposes of the Project.
- 2.2 The Joint Venture shall commence on the Commencement Date and shall continue for the Term unless extended or renewed pursuant to clause 8.1a) of this Agreement where it shall then continue for the extended term.
- 2.3 Each party covenants and agrees with the other Party to be just and faithful in all its activities and dealings with the other Party and otherwise perform its obligations implied as well as expressed under the terms of this Agreement.
- 2.4 Nothing in this Agreement shall be construed so as to make a Party a partner, agent or representative of the other Party or to create any partnership, association or agency for any purpose.
- 2.5 The rights and obligations of the Parties shall be neither joint nor joint and several.
- 2.6 This Agreement shall be interpreted, applied and will take effect as a contract made in Western Australia and is governed and shall be performed according to the laws of Western Australia.
- 2.7 The Parties shall at all times observe, conform and comply with the provisions of all applicable laws, legislation, rules, regulations and by-laws of the Commonwealth of Australia, the State of Western Australia and any local authority, including where applicable, but not limited to, the Equal Opportunity Act 1984, the Housing Act 1980, the Housing Agreement (Commonwealth and State) Act 1990, the Residential Tenancies Act 1987, the Retirement Villages Act 1992 and the provisions of the Code of Practice for Retirement Villages as administered by the Ministry of Fair Trading.
- 2.8 Subject to its provisions, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns who become Parties under the terms of this Agreement.
- 2.9 The Organisation declares that in entering into this Agreement it has not relied on any promise, representation, undertaking or warranty given by or on behalf of Homeswest.
- 2.10 Homeswest's participation in the Project shall be recognised in all advertising, promotional and publicity materials, and upon any signage on the Units and the Land.

### 3. DESCRIPTION OF THE PROJECT

- 3.1 The Project is for the construction and upgrade of bedsitter units converted to one bedroom units on the Land, as detailed in the Schedules, to be maintained and managed by the Organisation.

### 4. VESTED LAND

- 4.1 Homeswest shall be entitled to seek an amendment to the Vesting Order or become a joint vestee in the Land in order to register Homeswest's Interests in the Joint Venture. In any such endeavour the Organisation agrees to support Homeswest's application or request.
- 4.2 The Organisation agrees that it will not seek any changes to the Vesting Order without the prior written approval of Homeswest.
- 4.3 The Organisation shall ensure that the expiry date of the Vesting Order shall not pre-date the expiry date of this Agreement.
- 4.4 The Organisation shall inform Homeswest immediately if the Governor or his successor authority, his agency or representative seeks to revoke or change the Vesting Order in any way, or if the Governor exercises any of his powers under the Local Government Act 1960 or the Land Act or any other relevant legislation which might detrimentally effect the Project or the interests of Homeswest or the Organisation under this Agreement.

### 5. DESIGN, CONSTRUCTION OR MODIFICATIONS

- 5.1 Homeswest shall undertake the construction and/ or modification on the Land of the Units as detailed in the Schedules and as described on the plans and drawings to be approved by the Parties.
- 5.2 Pursuant to Clause 5.1, where architectural services are required then Homeswest shall consult with the Organisation about the development of a Design Brief for the project. Once the Parties agree to the content of the Design Brief :-
- a) Homeswest, at it's expense, shall tender, appoint and supervise an architect who shall prepare the plans and specifications for the Project and prepare the building contract documentation ; **OR**
  - b) the Organisation, at it's own expense, shall tender, appoint and supervise an architect, subject to approval on fee price from Homeswest. This architect shall prepare the plans and specifications for the Project and prepare the building contract documentation.
- 5.3 Prior to Homeswest calling tenders and commencing construction or modification of the Units the Organisation shall, at its own expense (unless otherwise agreed by Homeswest)

:-

- a) ensure that the Land is appropriately zoned for the Project, and
  - b) cause the Land to be properly cleared, prepared and adequately serviced for the Project (the satisfaction of which requirements shall be confirmed in writing by an Engineer's Certificate) in accordance with the requirements described in Annexure B.
- 5.4 Homeswest shall, at its own expense, obtain such approvals, consents, permits and licences (other than rezoning) as are required by law for the construction or modification of the Units, together with such renewals and extensions as are necessary from time to time.
- 5.5 Where Homeswest agrees that the Organisation may, at its expense, act as the project manager for the construction or modification of the Units, then the Organisation shall be responsible for obtaining such approvals, permits and licenses as are required by law for the construction or modification of the Units, together with such renewals and extensions as are necessary from time to time, and Clause 5.4 shall not apply. The Organisation also agrees to abide by Homeswest's standard terms and conditions for construction contracts.

## **6. FINANCING & PROJECT EQUITIES**

- 6.1 Homeswest shall contribute the sum specified in Item 2b) of the Schedule to the Total Project Cost which sum is apportioned between the Land Costs and the Construction Costs so specified in Item 2b) of the Schedule and represents the percentage of the Total Project Cost specified in Item 3b) of the Schedule.
- 6.2 The Organisation shall contribute the sum specified in Item 2a) of the Schedule to the Total Project Cost which sum is apportioned between the Land Costs and the Construction Cost so specified in Item 2a) of the Schedule and represents the percentage of the Total Project Cost specified in Item 3a) of the Schedule.
- 6.3 Any additional costs beyond those specified in Clauses 6.1 to 6.2 shall be negotiated between the parties.
- 6.4 The percentage equitable Interests of the Parties in the Joint Venture shall be those stated in Items 3a) and 3b) of the Schedule.
- 6.5 In the event of any improvements or additions to the Joint Venture Property subsequently agreed to by the Parties Item 2a) or 2b) of the Schedule shall be amended according to which Party meets these costs, and the respective equitable Interests of the Parties stated in Item 3 of the Schedule shall be amended.



## 7. TRANSFER, ASSIGNMENT OR SALE OF INTERESTS

- 7.1 The Organisation shall not assign, sell, transfer, lease, let, mortgage, charge, unencumber or otherwise surrender or dispose of its estate or Interest in the Land, any other Joint Venture Property or this Agreement (other than the letting of Units to Eligible Tenants) during the term **EXCEPT** to Homeswest or another association or body approved by Homeswest which is assessed as eligible under the Guidelines to participate in the Project, unless otherwise approved in writing by Homeswest.
- 7.2 The Organisation shall not mortgage, charge, encumber or create any security over its estate or interest in the Land or any other Joint Venture Property without the prior written consent of Homeswest, which consent shall not be unreasonably withheld where the other party or parties to the proposed mortgage, charge, encumbrance or security enter into a Deed of Covenant with Homeswest whereby that party or those parties agree not to exercise any power of sale over the Land or any other Joint Venture Property under the proposed mortgage, charge, encumbrance or security without the prior written consent of Homeswest.

## 8. EXPIRATION OF THE TERM

- 8.1 At least 12 months prior to the expiration of the Term, but not earlier than 24 months before the expiration of the Term, the Parties shall agree to pursue one of the following:-
- a) to enter into a new joint venture agreement between the Parties on terms and conditions agreed between the Parties with a view to continuing the Project **or** extend the Term of the existing Agreement for a further period as agreed between the Parties; **OR**
  - b) the Organisation to buy out Homeswest's equitable Interest in the Joint Venture (as identified in Item 3b) of the Schedule) at its Current Market Value, relieving the Organisation of any future obligations or responsibilities to Homeswest or this Agreement; **OR**
  - c) Homeswest to buy out the Organisation's equitable Interest in the Joint Venture (as identified in Items 3a) and 3c) of the Schedule) at its Current Market Value with a view to taking over the responsibility for the ongoing management and maintenance of the Joint Venture Property, subject to the Governor of WA agreeing to transfer or assign the Vesting Order to Homeswest for a new term; **OR**
  - d) to purchase the delineated Land from the crown and convert it to freehold title with a view to selling the Joint Venture Property at its Current Market Value and dividing the proceeds of the sale between the Parties based on each Party's percentage equitable Interest in the Joint Venture Property as identified in Item 3 of the Schedule.

- 8.2 Pursuant to Clause 8.1a) the Parties shall request the Governor of WA or his successor authority to extend or renew the Term of the Vesting Order.
- 8.3 Pursuant to Clause 8.1b) Homeswest shall, upon receipt of the agreed payment from the Organisation, write to the Governor and divest itself from the Vesting Order (where Homeswest is a Joint Vestee) and annul any amendment or annexure to the Vesting Order which recognises Homeswest's Interest's in the Joint Venture. Any obligations of any of the Parties under this Agreement shall then cease.
- 8.4 Pursuant to Clause 8.1c) the Organisation shall, upon receipt of the agreed payment from Homeswest, write to the Governor and divest itself from the Vesting Order and shall deliver up exclusive possession to Homeswest of the Joint Venture Property and all records, accounts, documents, and registers related to the management and administration of the Joint Venture Property. Any accumulated long term maintenance funds must be transferred to Homeswest, and any accumulated operational surpluses shall be divided between the Parties in accordance with Clause 9.8.
- 8.5 Pursuant to Clause 8.1d) :-
- a) Homeswest and the Organisation shall negotiate the purchase price with the Department of Land Administration,
  - b) the Parties shall contribute to the negotiated purchase price of the Land proportionately based on their respective percentage equitable Interests in the Joint Venture as specified in Item 3 of the Schedule.
  - c) Freehold Title to the Land shall be held jointly by Homeswest and the Organisation as tenants in common until the Land is sold.
  - d) The Organisation shall act as interim managers for the Joint Venture Property until the Land is sold.
- 8.6 The Current Market Value of the Land and the other Joint Venture Property shall be determined by a Valuer approved by Homeswest. In the event of a disagreement between the Parties about the valuation, the Current Market Value of the Land and the other Joint Venture Property shall be determined by taking the average of 2 valuations thereof by 2 Valuers, one nominated by Homeswest and the other nominated by the Organisation, and this determination shall be final and binding upon the Parties.
- 8.7 In the event that the Governor does not agree to any of the options covered in Clause 8, then the Agreement between the Parties shall terminate at the end of the Term, and the Parties shall jointly seek compensation from the Governor for the value of the Joint Venture Property, based on the respective percentage equitable Interests in the Joint Venture of the Parties identified in Item 3 of the Schedule.

## **9. RENTAL INCOME, SERVICE FEES AND OPERATIONAL SURPLUSES**

- 9.1 The Organisation shall be responsible for collecting in a timely manner all rents and other fees or expenses and collect any outstanding rental arrears or debts from Tenants or former Tenants.
- 9.2 All Rent shall be the property of and be retained by the Organisation, subject to Clause 9.7 and 9.8.
- 9.3 The amount of rent charged by the Organisation shall be set at but not exceed 25% of the tenants weekly income (excluding all available subsidies) OR market rent, whichever is the lesser of these amounts. In addition, the Organisation is able to include in their rental charge a sum equivalent to the tenants weekly entitlement for Commonwealth Rent Assistance.
- 9.4 The rental income may be used by the Organisation to meet the expenses incurred in the operation, management and maintenance of the Units, including provision for long term maintenance (see Clause 11.4).
- 9.5 Pursuant to Clause 9.3 the Organisation shall undertake periodic rent reviews to ensure that appropriate rent levels are being maintained.
- 9.6 The Organisation shall be entitled to charge additional service fees to Tenants. The amount and purpose of the service fees shall be subject to prior written approval of Homeswest and should not exceed the cost to the Organisation of the provision of these additional services. Any increase in service fee charges shall be subject to prior written approval of Homeswest. All service fee revenues and costs must be identified in the annual Financial Statements of the Organisation.
- 9.7 Any surplus income accumulated by the Organisation from the management and operation of the Units may be used, subject to the approval of Homeswest, as cash contributions towards further low income rental housing projects, improvements or upgrades to existing Joint Venture Units or other purposes agreed in writing by Homeswest.
- 9.8 Where no agreed purpose can be found for the use of surplus income as referred to in Clause 9.7 or the Guidelines, then such surplus is to be divided proportionately between Homeswest and the Organisation based on each Parties percentage equitable Interest in the Joint Venture as identified in Item 3 of the Schedule.

## **10. TENANCY MANAGEMENT**

- 10.1 The Organisation shall maintain a Wait List of Eligible Persons who are seeking rental accommodation and shall let the Units to persons who are part of the Target Groups and who are also Eligible Persons, subject to Clause 10.6. Upon allocation of a Unit to an Eligible Person the Organisation shall forward to Homeswest the name and date of birth

of the new tenant so that it can remove the person from Homeswest's Wait Lists.

- 10.2 Homeswest's written approval is required for any proposed changes to the Organisation's Target Groups at any time during the Term.
- 10.3 Where the Target Groups include people with special needs who require essential support services in order to sustain their tenancy, it is the responsibility of the Organisation to ensure that appropriate support services are available.
- 10.4 The Organisation shall provide Tenants with a Tenancy Agreement that complies with the minimum requirements set out in the Residential Tenancies Act. The Term of any Tenancy Agreement may not extend beyond the Term of this Agreement
- 10.5 The Organisation shall establish a Tenant Allocations Panel in order to select the initial tenants for the Units and to fill vacancies as they arise. Homeswest Regional Managers shall have the right to have one representative on the Tenant Allocations Panel. Homeswest may refer Eligible Persons to the Organisation to be placed on the Wait List of the Organisation.
- 10.6 Once an Eligible Person has been allocated a Unit, the Organisation will guarantee that person security of tenure (subject to the tenant's continued compliance with their Tenancy Agreement) even if their circumstances change such that they would no longer be deemed to be part of the Target Group or if they would no longer meet Homeswest's eligibility criteria for public rental housing.
- 10.7 The Organisation shall ensure at all times that the Units are kept tenanted and occupied to the fullest extent possible by Eligible Persons.
- 10.8 The Organisation shall establish a procedure whereby Tenants' grievances in respect of any matter arising out of their tenancy in the Units can be heard and arbitrated, other than any provisions available to tenants under the Residential Tenancies Act. Written details of this grievances procedure must be provided to all Tenants.
- 10.9 The Organisation shall take all reasonable steps to ensure that Tenants and any other persons that come into the Units or onto the Land with the Organisation's or a Tenant's consent do not interfere with the reasonable peace, comfort or privacy of other Tenants or surrounding neighbours.

## **11. ASSET MANAGEMENT**

- 11.1 The Organisation shall be responsible for all repairs and maintenance necessary to ensure that the Units are maintained in a good state of repair and condition, and that the Units comply with any health, safety or building regulations or by-laws, or any other applicable statutory regulations or by-laws, except where such repairs are assessed by the Builder's Registration Board to be the responsibility of the contracted builder.

- 11.2 The Organisation shall be responsible for the repair or replacement of all essential fixtures and fittings to the Units and the maintenance of fences and gates on the Land.
- 11.3 The Organisation shall ensure that the Units are kept free from pests and vermin (including rats, mice, cockroaches, white ants, termites and Singapore ants) and that termite inspections are carried out at least once every year by a registered pest control agency.
- 11.4 The Organisation shall ensure that an amount per unit per year, to be agreed between the parties, is set aside from the annual rental income for the long term maintenance needs of the Joint Venture Property. This amount shall be identified in the Schedule and shall reviewed every 5 years by Homeswest and the Organisation, or sooner if requested by either Party.
- 11.5 The Organisation shall ensure that the gardens, landscaping and the grounds of the Units and any common areas are maintained to a good standard and are kept neat and tidy.
- 11.6 Any upgrading of the Units and all other improvements on the Land are the responsibility of the Organisation.
- 11.7 Throughout the Term of this Agreement the Organisation as Manager of the Joint Venture Property shall ensure that adequate workers' compensation and common law liability insurance is effected by all contractors engaged on any work in relation to the Joint Venture Property and that such insurance includes a waiver of subrogation against the Parties.
- 11.8 The Organisation shall undertake a minimum of one comprehensive inspection per year of each Unit and shall fill out a Property Condition Report (PCR) upon the occasion of each inspection.
- 11.9 The Organisation shall ensure that the Units are brought up to a good lettable standard when a Tenant vacates and that an inspection and PCR is undertaken at that time. The Organisation shall ensure that the new ingoing Tenant is provided with a copy of the PCR.
- 11.10 The Organisation is responsible for all rates, taxes, charges and other expenses levied or incurred in respect of the Land and the Joint Venture Property.

## **12. INSURANCE AND INDEMNITIES**

- 12.1 The Organisation must effect and maintain, with insurance companies approved by Homeswest, the following insurance coverage :-
- a) Building insurance with respect to the Units and all other improvements on the Land, to their full insurable value, against loss or damage by fire, storm, tempest, earthquake and any other applicable risk as Homeswest

may reasonably require.

- b) Public liability insurance with respect to the Units, all other improvements on the Land and the Land, in an amount not less than \$10,000,000 in respect of any one claim or any other reasonable amount as required by Homeswest from time to time. The Interests of Homeswest in the Joint Venture must be noted in such insurance policy.
- c) Employers indemnity insurance (including workers compensation insurance) in respect of all employees of the Organisation employed in any capacity in relation to the Joint Venture.

- 12.2 The Organisation shall provide a copy to Homeswest of all policies of insurance pursuant to clause 12.1, and shall also provide to Homeswest on an annual basis or at any other time requested by Homeswest copies of current renewal certificates of such insurance policies.
- 12.3 The Organisation shall not do or permit to be done any act, matter or thing upon the Land or the Units, or bring or keep anything on the Land or in the Units, where any policy of insurance taken out with respect to the Land or the Units may be rendered void or voidable.
- 12.4 If the Organisation does or permits to be done any act, matter or thing which has the effect of voiding any policy of insurance taken out by the Organisation or by Homeswest then (in addition to all other rights of Homeswest) the Organisation shall be responsible for and shall pay and discharge on demand any damage or loss which Homeswest may suffer or incur as a result of the Organisation's act or omission.
- 12.5 If Homeswest does or permits to be done any act, matter or thing which has the effect of voiding any policy of insurance taken out by the Organisation or by Homeswest then (in addition to all other rights of the Organisation) Homeswest shall be responsible for and shall pay and discharge on demand any damage or loss which the Organisation may suffer or incur as a result of Homeswest's act or omission.
- 12.6 The Organisation shall indemnify and keep indemnified Homeswest against all actions, claims, judgments, damages, costs, charges, expenses and losses of any nature which Homeswest may suffer or incur in connection with loss of life, injury to any person or damage to any property arising out of the use of the Joint Venture Property or any part of the Joint Venture Property pursuant to the terms of this Agreement or occasioned either wholly or in part by any act or omission on the part of the Organisation or its tenants, employees, servants, agents, contractors or lawful visitors, except to the extent caused or contributed to by an act or omission by Homeswest or its employees, servants, agents, contractors or lawful visitors.

### 13. REPORTING AND ACCOUNTABILITY

- 13.1 The Organisation shall at all times keep and maintain proper and accurate accounting records with respect to the Joint Venture Property throughout the Term showing (without limitation) the sources from which, and purposes for which, moneys relating to the Project have been received, and the manner in which those moneys have been disbursed.
- 13.2 The Organisation shall maintain and keep during the Term a Tenancy Register for the Units. The Register shall record for each paying Tenant for each Unit their date of occupancy, their weekly income, the weekly rent & service fees charged to the Tenant by the Organisation, the Target Group category (where applicable) and the vacate date if the Tenancy finishes.
- 13.3 The Organisation shall maintain and keep a Property Register for the Units. The Property Register shall include for each Unit a record of all maintenance work undertaken, the dates of all property inspections, copies of Property Condition Reports and any other information relevant to the care and maintenance of the Units.
- 13.4 The Organisation shall keep all records, accounts, receipts, documents, registers and reports pursuant to Clause 13.1, 13.2 and 13.3 open for inspection or audit at all reasonable times by responsible officers of Homeswest, the Treasury or the Auditor General.
- 13.5 The Organisation shall provide Homeswest with an annual audited financial statement detailing:-
- a) all income and expenditures in relation to the Joint Venture Property;
  - b) profit and loss statements for the Organisation; and
  - c) balance sheet for the Organisation

within 90 days of the end of each Financial Year. In relation to the Income and Expenditure statements for the Joint Venture Property, itemised expenditures should include maintenance, long term maintenance provision, administration and management costs, staff costs, property costs (eg. rates), insurances and other applicable costs. The statements must identify annual and accumulated surpluses or deficits.

- 13.6 Pursuant to Clause 13.5, where the Organisation operates and manages other Joint Venture Units which have been assisted with funds from Homeswest, the Organisation may provide composite audited financial income and expenditure statements for all of these Units so long as these statements comply with the requirements of this Agreement.
- 13.7 The Organisation shall provide Homeswest with a signed certificate within 90 days of the end of each Financial Year from persons with authority to sign legal agreements on behalf of the Organisation **certifying that the Organisation has managed the Units under the terms and conditions of this Agreement.** The statement must also detail the occupancy rate for the Units throughout the preceding Financial Year and should identify

any terms or conditions of the Agreement that the Organisation has not been able to comply with throughout the preceding Financial Year.

- 13.8 The Organisation shall upon written request from Homeswest provide such further information to Homeswest with respect to the Project as Homeswest may reasonably require from time to time.
- 13.9 The Organisation shall notify Homeswest if it is experiencing at any time any difficulties in meeting any of its obligations and responsibilities under this Agreement.
- 13.10 Homeswest will, from time to time throughout the Term, review the Organisation with respect to its management and maintenance of the Joint Venture Units. The review will include an inspection of the Tenancy and Property Registers kept by the Organisation, a review of the financial management of the Units and negotiation over use of accumulated surplus funds.
- 13.11 Homeswest retains the right to inspect any of the Joint Venture Units subject to sufficient notice by Homeswest to allow the Organisation to provide adequate notification to the Tenant as required under the Residential Tenancies Act. In the event that the Unit is unoccupied, the Organisation may require Homeswest to provide 7 days written notice of inspection.

#### **14. BREACH AND TERMINATION**

##### **14.1 IF the Organisation :-**

- a) seriously or persistently, in the opinion of Homeswest, breaches any term of this Agreement;
- b) is guilty of Financial or Administrative Mismanagement of the project
- c) uses the Joint Venture Property for a purpose other than the purpose approved under this Agreement or otherwise approved in writing by Homeswest; or
- d) abandons the Joint Venture Property or persistently under occupies the Units without good reason or the written approval of Homeswest; or
- e) is, in the opinion of Homeswest, unable to continue to meet its obligations under the terms of this Agreement for any reason other than those reasons set out in Clause 15 ;

**AND** the Organisation does not within 28 days after service by Homeswest of a written notice specifying the breach or events described in this clause either remedy the breach in a manner acceptable to Homeswest or refer any dispute concerning the breach to arbitration pursuant to clause 16.1 and 16.2



**THEN** the Organisation must immediately, if requested by Homeswest in writing (and at the Organisation's own cost), deliver up exclusive possession to Homeswest of the Joint Venture Property and all records, accounts, documents, and registers related to the management and administration of the Joint Venture Property. Any accumulated long term maintenance funds must be transferred to Homeswest, and any accumulated operational surpluses shall be divided between the Parties in accordance with Clause 9.8.

14.2 **IF :**

- a) a judgment is obtained against the Organisation in any court of law (and no stay of proceedings relative to that judgment in the court is granted) and the judgment remains unsatisfied or execution is levied or issued against any of the assets or property of the Organisation;
- b) an order is made against the Organisation by a court of law;
- c) a resolution is passed for the dissolution of the Organisation;
- d) a receiver of any part of the revenue, property, assets, or undertaking of the Organisation is appointed;
- e) the Organisation enters into a compromise or arrangement with creditors without the prior written consent of Homeswest ;
- f) the Organisation stops payment of any of its debts or ceases or threatens to cease to manage the Project ; or
- g) the Organisation without the prior written consent of Homeswest makes or attempts to make any alteration to the provisions of its memorandum or articles of association or its constitution which in the opinion of Homeswest might detrimentally affect the Project or the interests of Homeswest under this Agreement ;

**THEN** immediately after any of the foregoing events occurs, the Organisation shall meet with Homeswest and enter into discussions with Homeswest about the future ongoing management of the Joint Venture Units. If the Organisation fails to notify Homeswest or fails to enter into discussions with Homeswest, or, if in the opinion of Homeswest the Organisation is no longer able to carry out its obligations under this Agreement in a satisfactory manner, then the Organisation must immediately if requested by Homeswest in writing (and at the Organisation's own cost), deliver up exclusive possession to Homeswest of the Joint Venture Property and all records, accounts, documents, and registers related to the management and administration of the Joint Venture Property. Any accumulated long term maintenance funds must be transferred to Homeswest, and any accumulated operational surpluses shall be divided between the Parties in accordance with Clause 9.8.

- 14.3 Upon delivery of exclusive possession of the Joint Venture Property to Homeswest by the Organisation pursuant to Clause 14.1 and 14.2, Homeswest shall arrange a market valuation of the Joint Venture Property and upon agreement with the Organisation about

the valuation Homeswest shall pay to the Organisation the value of its equitable interest in the Joint Venture Property at its Current Market Value based on the Organisation's percentage equitable interest in the Joint Venture as identified in Item 3 of the Schedule. Disagreement over valuations will be dealt with as per Clause 8.6.

- 14.4 Homeswest shall be entitled to deduct from any moneys payable to the Organisation under Clause 14.3 the amount of any moneys due and payable to Homeswest by the Organisation consequent upon any breach or default by the Organisation or the termination of this Agreement.
- 14.5 Pursuant to Clause 14.3, the Organisation shall write to the Governor or his successor authority and, under the provisions of the Land Act 1933, divest itself of the Land and any claims and responsibilities thereof. At the same time Homeswest will seek to have the Land revested with Homeswest or with another organisation eligible for the Joint Venture Housing Program.
- 14.6 In cases where the Organisation fails to comply with a notice to remedy a breach within 14 days, and where the nature of the breach is deemed by Homeswest not to be covered by Clause 14.1 or 14.2, Homeswest may refer the matter to arbitration for settlement pursuant to Clause 16.1 and 16.2.
- 14.7 If Homeswest breaches any condition of this Agreement and fails to remedy the breach within 28 days after service by the Organisation of a notice specifying the breach, the Organisation may refer the matter to arbitration pursuant to Clause 16.1 and 16.2.
- 14.8 Any action taken by the Organisation in accordance with Clause 14 shall not affect any claim by Homeswest for damages in respect of a breach of a condition of this Agreement.
- 14.9 The Organisation hereby grants, in consideration of this Agreement, to Homeswest, Power of Attorney to do all things necessary, desirable or convenient to ensure that the requirements of this Clause 14 are fully complied with, and the Organisation agrees to ratify and confirm all that Homeswest as attorney shall do or cause to be done under or by virtue of this clause and the Organisation shall indemnify Homeswest in respect of any act, matter or thing done pursuant to this Power of Attorney.

## **15. FORCE MAJEURE**

- 15.1 If a Party becomes unable wholly or in part by reason of Force Majeure to carry out any of its duties or obligations under or by virtue of this Agreement:
- (a) that Party shall give prompt written notice to the other Party of the Force Majeure with reasonably full particulars thereof and of the probable (as far as is known at the time) extent to which that Party will not be able to perform or be delayed in performing such duties or obligations;
  - (b) such duties or obligations so far as they are affected by the Force Majeure shall be suspended during, but no longer than, the continuance of the Force Majeure;

- (c) that Party shall use all possible diligence to overcome or remove the impact or effects of the Force Majeure as soon as possible.

15.2 The requirement that any Force Majeure shall be overcome or remedied with all possible diligence shall not oblige a Party to settle any strike or other labour dispute on terms it does not approve of or to contest the validity of any law, regulation or decree by way of legal proceedings.

## **16. ARBITRATION**

16.1 Any dispute, difference or disagreement between the Parties arising under or in respect of this Agreement or any term of it other than a breach or default by the Organisation to which Clause 14.2 applies and except with respect to a determination of value pursuant to Clause 8.6 shall be referred to a single arbitrator acceptable to the Parties or, in the absence of agreement between the Parties, to an arbitrator selected by the President of the Law Society of Western Australia.

16.2 The arbitrator appointed pursuant to Clause 16.1 shall determine the dispute between the Parties in accordance with the Commercial Arbitration Act 1985.

## **17. NOTICES**

17.1 A notice required by one Party to the other under this Agreement shall be in writing and shall be served on the Organisation or Homeswest personally, or sent by prepaid post to address or the last known business address of the Party.

17.2 A notice given to a Party in accordance with Clause 17.1 shall be treated as having been given and received if delivered to a Party's address, on the day of delivery if a business day, otherwise on the next following business day; or if sent by prepaid mail, on the third business day after posting.

## SCHEDULE - PROJECT A

### 1. DESCRIPTION OF THE PROJECT

Crown Reserve No. 31384 Location PORT HEDLAND

If the Project is to be located on a part of the Land, this part shall be delineated in the Site Plan which is Annexed to this Agreement and marked 'D'.

Units

Type of Unit (eg 3 bedroom unit)	No.	Construct/Purchase/Modification	Target Group to be Housed
Construction I bedroom units	22	construction upgrade of bedsitters	aged persons

### 2. FINANCIAL CONTRIBUTIONS TO THE JOINT VENTURE

#### a) Organisation's Contributions to :

##### Land Costs

- Land Value contribution	Not Applicable
- Land Clearance	\$
- Site Preparation	\$
- Land Servicing	\$
- Other (eg. surveying, subdivision) \$	

-----

\$

##### Construction Costs

- Architectural Fees	\$
- Project Management (construction)	\$
- Construction of Units (cash contribution)	\$ 60,000
- Renovations / modifications	\$
- Additional Amenities	\$
- Landscaping	\$
- Other	\$

-----

**\$ 60,000**

**Organisation's Total Project Contribution = \$ 60,000**

**b) Homeswest's contributions to :**

**Land Costs**

- Land Value contribution	Not Applicable
- Land Clearance	\$
- Site Preparation	\$
- Land Servicing	\$
- Other (eg. surveying, subdivision) \$	
	-----
	\$

**Construction Costs**

- Architectural Fees	\$
- Project Management (construction) \$	
- Construction of Units	\$
- Renovations / modifications \$	
- Additional Amenities	\$
- Landscaping	\$
- Other	\$
	-----
	\$

**Homeswest's Total Project Contribution = \$**

**c) Total Project Cost = \$**

**3. THE PARTIES PERCENTAGE EQUITABLE INTERESTS IN THE JOINT VENTURE**

- a) The Organisation %
- b) Homeswest %

**4. ADDRESSES OF ALL UNITS COVERED BY THIS AGREEMENT**

Reserve 31384 Stevens Street Port Hedland

**5. LONG TERM MAINTENANCE PROVISION**

An amount of \$500.00 per Unit per year shall be set aside from the annual rental income for the long term maintenance needs of the Joint Venture Property.

**6. Commencement Date:**

**CALCULATION OF EQUITIES**

**TOWN OF PORT HEDLAND & PORT HEDLAND RETIREMENT VILLAGE INC.**

**LOT 23 STEVENS STREET PORT HEDLAND  
(22 X 1 B/R APU)**

<b>JOINT VENTURE PARTY</b>		<b>HOMESWEST</b>	
<b>TOWN of PORT HEDLAND</b>		Construction Payments	\$406,818
		Variations to contract	\$127,357
Land Value	\$ NIL	Architect Fees	\$ 12,348
(Crown Land in trust)		Consultant Fees	\$ 37,816
Improvement Value	\$720,000	Landscaping	\$ 26,195
(21 bedsits + other buildings		Administration Charges	\$ 36,632
Valuation @ 16.12.1999)		Less TPH Cash	-\$60,000
Cash Contribution	\$ 60,000		
<b>TOTAL:</b>	<b>\$780,000</b>	<b>TOTAL:</b>	<b>\$587,168</b>

Homeswest's total contribution:	\$ 587,168
Town of Port Hedland's total contribution:	\$ 780,000
Total replacement value	\$1,367,168

**EQUITY % SHARE:**

Town of Port Hedland \$780,000 x 100 = 57 %  
Total replacement cost of units \$1,367,168

H/W total contribution \$587,168 x 100 = 43 %  
Total replacement cost of units \$1,367,168

John Hughes  
Review Officer  
Community Housing Branch  
August 11, 2009

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as a Deed on the date first hereinbefore written.

THE COMMON SEAL OF THE STATE HOUSING COMMISSION was hereunto affixed in the presence of :-

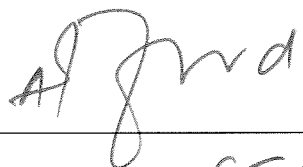



  
\_\_\_\_\_  
MANAGER  
SECURITIES, CONVEYANCING AND  
SETTLEMENT SERVICES

  
\_\_\_\_\_  
EXECUTIVE DIRECTOR

THE COMMON SEAL OF THE TOWN OF PORT HEDLAND was hereunto affixed in the presence of :



  
\_\_\_\_\_  
(Position Title) CEO

  
\_\_\_\_\_  
(Position Title) Mayor

**ANNEXURE A**

**[Joint Venture Guidelines]**



## ANNEXURE B

### [Requirements of the Site]

These additional comments explain in further detail what is required of the Organisation in relation to the clearing, preparing and servicing of the Land.

- PROPERLY CLEARED** : This includes the demolition of any unwanted old buildings, old footings and foundations, clearing all debris and all unwanted vegetation.
- PROPERLY PREPARED** : This includes the removal of unsuitable soils, like clay or peat, and filling with suitable fill material, and any rock encountered in the building works.
- ADEQUATELY SERVICED** : This includes the following:
- Electrical incoming cables, sub-stations and contributions.
  - Water incoming mains and contributions.
  - Off-site stormwater disposal to connect to Local Authority drains, or special disposal methods.
  - Sub-soil drainage.
  - Main site sewer, pipe connecting to Minister's sewer, or extension of Minister's sewer to site and contributions.

The Guidelines (Annexure A) provide details of Surveys and Reports required to assess the suitability, services and requirements of the site.

**ANNEXURE C**

**[Plan of the Land]**