

RICHARD PAYNE & ASSOCIATES

Commercial Solicitors
Level 2, Colord House, 33 Colin Street, West Perth, W.A. 6005
Telephone 61 8 9481 0844 Facsimile 61 8 9481 2434
P.O. Box 1275, West Perth, W.A. 6872
Australia
email - rapayne@iinet.net.au

ACCC

8 AUG 2008

PERTH

Our Ref: **RP**

Your Ref:

DOC ID

7 August 2008

Adjudication Branch
Australian Competition and Consumer Commission
PO Box 6381
East Perth WA 6892

Dear Sir,

Greenvalley Asset Pty Ltd - Exclusive dealing notification

We act for Greenvalley Asset Pty Ltd ACN 125 151 975 (**Greenvalley**).

We refer to our telephone discussion with Joanne Palisi from your Canberra office today. Greenvalley who owns lot 1090 on plan 174830 being the whole of the land comprised in certificate of title volume 1991 folio 48 and known as lot 1090 Karratha Road, Karratha, Western Australia (**Property**).

Greenvalley intends to develop a strata title short stay serviced apartment complex to be known as "The Ranges Karratha" (**Complex**) on the Property.

The planning approval for the Complex from the Local Government requires that the ongoing management and use of the development shall be undertaken in accordance with a management statement which relevantly provides that the strata company and the manager shall enter into an agreement for the manager to be the exclusive provider of on-site management services on the Property. There are concerns that this provision in the management statement and the management and caretaker agreement to be entered into between the strata company and the manager may constitute exclusive dealing in the form of third line forcing. Accordingly, Greenvalley wishes to lodge a notification in respect of this proposed conduct.

Greenvalley has appealed against the imposition of the above condition to the State Administrative Tribunal (WA). The hearing of this appeal has been adjourned pending the outcome of the Notification enclosed with this letter.

Notification

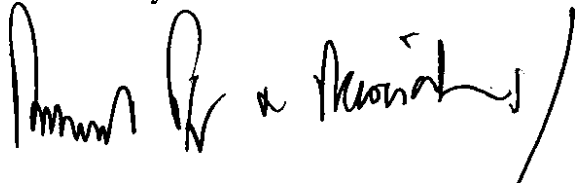
We enclose the following documents:

1. Form G - Notification of Exclusive Dealing.
2. Copy of the planning approval from the Local Government (refer to condition 6)
3. Copy of the endorsed management statement referred to in condition 6 of the planning approval.
4. Copy of the proposed management and caretaker agreement in respect of the Complex.
5. Filing fee in the sum of \$100.00 for a proprietary limited company.

If you have any queries on the Notification or require further information please do not hesitate to contact Richard Payne.

We would be grateful to receive your early response in this matter.

Yours faithfully,
Richard Payne & Associates

A handwritten signature in black ink, appearing to read 'Richard Payne & Associates', written over a horizontal line.

Encl

cc Mr Mark Morton-Smith & Mr Angus Murray
Greenvalley Asset Pty Ltd

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93(1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47(2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

GREENVALLEY ASSET PTY LTD ACN 125 151 975 N93539

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Property development and sale

- (c) Address in Australia for service of documents on that person:

C/o Richard Payne & Associates, PO Box 1275, West Perth, WA, 6872
Telephone 08 9481 0844 Facsimile 08 9481 2434
Email: rapayne@iinet.net.au

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Management services. See also background details in annexure A

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

See annexure "A"

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Buyers of lots to be used in a proposed short stay serviced apartment complex in Karratha, Western Australia

(b) Number of those persons:

(i) At present time:

34

(ii) Estimated within the next year:

(Refer to direction 6)

Approximately 148

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

See annexure "B"

4. Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

See annexure "C"

(b) Facts and evidence relied upon in support of these claims:

See annexure "C"

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

See annexure "C"

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

See annexure "C"

(b) Facts and evidence relevant to these detriments:

See annexure "C"

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

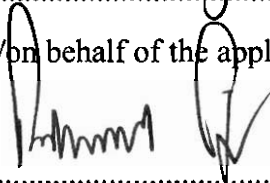
Richard Payne of Richard Payne & Associates, PO Box 1275, West Perth, WA, 6872

Telephone: 61 8 9481 0844

Facsimile: 61 8 9481 2434

Email: rapayne@iinet.net.au

Dated..... 7 August 2007

Signed by/on behalf of the applicant


.....
(Signature)
RICHARD PAYNE

.....
(Full Name)
RICHARD PAYNE & ASSOCIATES - SOLICITORS FOR GREENVALLEY AUSTRALIAN PM LTD

.....
(Organisation)
PRINCIPAL

.....
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Annexure "A"

2(b) Description of the conduct or proposed conduct:

Greenvalley Asset Pty Ltd (**Greenvalley**) owns lot 1090 on plan 174830 being the whole of the land comprised in certificate of title volume 1991 folio 48 and known as lot 1090 Karratha Road, Karratha, Western Australia (**Property**).

Greenvalley intends to develop a 4 star strata title short stay serviced apartment complex to be known as "The Ranges Karratha" (**Complex**) on the Property. The Complex is still in the planning stage and no construction work has commenced.

On completion the Complex will consist of up to 148 accommodation units, one unit for the manager (which will include a reception area, a shop and the on-site manager's residence), and improvements on the common property including swimming pool (including ablution facilities), gymnasium, landscaped gardens, barbeque facilities, fish cleaning station, boat wash down bay, walkways, pathways, roads and car parking and boat parking areas.

The strata titled units will be fully serviced lots for short stay accommodation. The following short stay restrictions will apply in relation to each strata unit in the Complex (other than the manager's unit), namely:

- (a) in the first 5 years after the date of registration of the strata plan for the Complex, a person must not occupy a unit for a continuous period exceeding 12 months; and
- (b) after the expiration of 5 years from the date of registration of the strata plan, a person must not occupy a unit for a period greater than 3 months in any period of 12 months.

The Complex will be operated under the professional management of an experienced operator (on-site manager) (**Manager**) with full services being offered to the proprietors and their tenants and guests. All persons staying in the Complex will have the right to use the amenities on the common property. The Manager, who has not yet been selected by Greenvalley, will be appointed the Manager by entering into a Management and Caretaker Agreement with the strata company. The Manager will have a full time resident caretaker who will live in the Complex and be responsible for day to day management.

Greenvalley is selling strata units in the Complex 'off the plan' to investors (buyers) who will have the option of including their unit in a letting pool run by the Manager who will let out the units to members of the public for short stay accommodation. Buyers will also be able appoint an off-site person, as their letting agent to let out their unit or they may choose to stay in the unit themselves provided they comply with the short stay restrictions.

A buyer can end his or her participation in the letting pool by giving the Manager 90 days' written notice at any time without cause. Further, a majority of the owners in the letting pool can compel the Manager within 9 months to transfer the management rights to another person.

Although the strata units will be owned by individual proprietors, the Complex will be operated as an integrated complex by the Manager under what is known as a "management

rights scheme” in which the individual proprietors may, but are not obliged to, engage the Manager as the on-site letting agent to rent out their units.

The ASIC has granted Greenvalley relief which allows Greenvalley and the Manager to lawfully market and operate interests in the management rights scheme in respect of the Complex without complying with certain provisions of the Corporations Act.

Condition 6 of the development approval for the Complex dated 4 April 2008 from the Shire of Roebourne provides:

6. The ongoing management and use of the development shall be undertaken in accordance with the endorsed management statement entitled Annexure “E” Management Statement for The Ranges – Karratha.

Note: Any alteration or amendment of the endorsed management statement shall not occur without the prior consent of the Council.

This Management Statement comprises the complete by-laws for the Complex under the Strata Titles Act 1985 (WA). The Shire of Roebourne required the Management Statement to include by-law 19 (management services) which relevantly provides:

- (1) the strata company and the Manager shall enter into an agreement for the Manager:
 - (a) to be the exclusive provider of on-site management services on the parcel, regardless of whether proprietors are participants in the Management Scheme or not, which services shall include, but not be limited to:
 - (i) reception services (including check-in and check-out);
 - (ii) keeping a register of tenants;
 - (iii) laundry services (including replacement of linen);
 - (iv) cleaning services including cleaning at least once each week each lot that is occupied by the same person(s) for more than one week;
 - (v) room service;
 - (vi) maintaining and making available the Communication System as required pursuant to by-law 27 of Schedule 1;
 - (vii) providing other services in relation to the servicing of lots; and
 - (viii) providing services ancillary to the operation of a serviced apartment complex on the parcel; and
 - (b) to act as manager and caretaker of the Facilities and common property; and
 - (c) to advertise, market and promote the short stay accommodation on the parcel at the cost of the strata company.
- (2) ...
- (5) a proprietor of a lot must ensure that his or her lot is not used or permitted to be used to provide any management services that control or manage any accommodation on the parcel or any other services similar to those provided by the Manager on the parcel.
- (6) ...
- (7) each proprietor shall be bound by, and shall not do anything which constitutes a breach of, the terms of any agreements between the strata company and the Manager.

By-law 19 cannot be removed or varied without the consent of the Shire of Roebourne.

By-law 16 of the Management Statement includes the following definitions:

Facilities means the facilities and improvements situated on the common property including, landscaping and gardens.

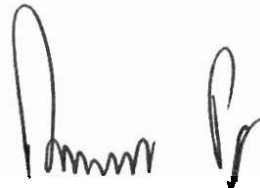
Manager means the on-site manager of the Management Scheme from time to time appointed by the strata company.

Management Scheme means the scheme under which the Manager lets and manages lots as part of a short stay serviced apartment complex on the parcel.

The Contract of sale of strata title units in the Complex includes:

- As Annexure “E”, the Management Statement (which will bind buyers once they become the registered proprietor of the unit, that is from settlement of the purchase); and
- As Annexure “D”, the Management and Caretaker Agreement (to be entered into by the strata company and the Manager to appoint the Manager as the caretaker of the common property and also to provide management services in accordance with by-law 19 of the Management Statement.

The provisions of by-law 19 of the Management Statement and the terms of the Management and Caretaker Agreement may constitute third line forcing within the meaning of s47 of the Trade Practices Act 1974 (Cth).

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a final vertical stroke.

.....
Signed by/on behalf of the applicant

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure "B"

3(c) **Names and addresses of Persons, or classes of persons, affected or likely to be affected by the notified conduct:**

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Annexure "C"

4. *Public benefit claims*

(a) *Arguments in support of notification:*

- (i) **Compliance with local government requirements** - The development approval for the Complex from the Shire of Roebourne requires that the ongoing management and use of the development shall be undertaken in accordance with the Management Statement which requires the Strata Company and the Manager shall enter into an agreement for the Manager to be the exclusive provider of on-site management services on the Property.

The requirement for the Manager to be the exclusive provider of the management services is being imposed by the Shire of Roebourne in accordance with the policy and direction of the Western Australian Planning Commission, and Tourism WA. Having one manager will maintain the integrity of the Complex.

The local authority prefers to deal with one manager in relation to the ongoing operation of the Complex and its interaction with local residents, guests and the community generally. There is a need for an on-site manager to deal with security, maintenance, complaints and other issues as they arise.

- (ii) **Limited application of proposed conduct** – The management services in respect of which the Manager is to be the exclusive on-site provider are limited in application and scope. Firstly, the exclusivity of the services only applies on the Property. Secondly the width of the services to be provided will only relate to the management of the Complex including reception services, keeping a register of tenants, laundry and cleaning services, room service and other ancillary services. These limitations have the support of the Western Australian Planning Commission, the Shire of Roebourne and Tourism WA.
- (iii) **Efficiencies**– As the Complex will have a maximum of up to 148 accommodation units, it is not practicable nor efficient to have more than one manager of the Complex. Economies of scale and the need to ensure service quality dictate that the management services be provided to all units, rather than individual agreements. The benefit of centralising the management services through one Manager is that it will increase efficiencies and keep the costs of same down. This will result in improved quality control and lower costs in relation to the services provided, thereby making the Complex more competitive.
- (iv) **Letting arrangement** – There is no requirement for a buyer to use the Manager as the letting agent in respect of a buyer's unit. Every buyer is able to appoint any letting agent it wishes and therefore there is competition to provide letting services for buyers in the Complex. If other parties are so involved, it will result in the conduct of the Manager being monitored to ensure a satisfactory level of performance both from the point of view of members of the public staying at the Complex and also as far as owners are concerned who want to see their investment properly managed and maintained and a reasonable return on investment.

It is in the best interests of buyers to have centralised control of access to all units in respect of the management services for same. It enhances security and assists in the

overall control of the Complex and also provides one point of contact for the assistance for persons staying in the Complex and also in the case of emergencies.

- (v) **Competition in the market** – A single Manager in the Complex will be an independent and professional manager. It is in the interests of Greenvalley as the seller to choose the best available manager and for the costs of that manager to be competitive as this will make the strata units more saleable.

The accommodation facilities in and around Karratha include:

- Karratha Central Apartments which has approximately 80 strata title apartments which is operated as a short stay facility
- Karratha International Hotel with approximately 80 hotel rooms
- The Comfort Inn with 23 self contained apartments

There are also a number of real estate companies in Karratha who can provide management services at the Complex and also letting services for buyers, including Ray White Karratha and Pilbara Real Estate. Both these companies provided letters in support of Greenvalley's application for an exemption to the ASIC advising they were able to offer full management services to owners of properties in the Complex including off site management services if required.

Under the Management and Caretaker Agreement, if a majority of owners in the management scheme (letting pool) advise the Manager in writing that they wish to terminate the Manager's engagement (eg, they are dissatisfied with the level of service they were receiving from the Manager), the Manager must within 9 months transfer the management rights to another person.

Buyers and potential buyers of units in the Complex will have a choice of other facilities in which to invest and also the ability to replace the Manager. There is therefore no barrier to the appointment of another manager at the Complex and buyers will have an opportunity to compare the performance of the chosen Manager with that of other operators to ensure the Manager's performance, fees and expenses are competitive.

- (vi) **Terms of Management Statement and Management and Caretaker Agreement not yet finalised** – The precise terms of the Management Statement and the Management and Caretaker Agreement have not yet been finalised and there may be some minor amendments to satisfy the requirements of State Government bodies and relevant statutory authorities including the Western Australian Planning Commission, the Shire of Roebourne and Tourism WA. These State Government bodies and statutory authorities act and impose requirements in the public interest.
- (vii) **Generally** – The appointment of the Manager as outlined above will enable the common property to be managed efficiently and cost effectively, and the short stay accommodation system at the Complex to be promoted and run in a co-ordinated manner which will benefit the local community, tourism in and around Karratha, the environment and the individual owners of strata units in the Complex. The operation of the Complex will attract employment and expenditure to the local area and assist in meeting the shortage of accommodation in Karratha.

(b) *Facts and evidence relied upon in support of these claims:*

Refer to answers in paragraph (a) above and see also the terms of the planning approval from the Shire of Roebourne, the Management Statement and the Management and Caretaker Agreement.

5. ***Market definition***

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Once the Complex is completed, the market for the management services is limited to the Complex. These management services will only relate to the management of the Complex including reception services, keeping a register of tenants, laundry and cleaning services, room service and other ancillary services.

There is no restriction on how an appointed Manager is to provide the management services. For example, the Manager may acquire necessary consumables and other items from local suppliers or from suppliers elsewhere and may use local labour or bring in labour as required.

A substitute manager will be available to provide the management services if a majority of owners wish to replace the Manager. A couple of the real estate companies in Karratha, and also companies outside Karratha have expressed an interest in managing the Complex. There is therefore no barrier to the appointment of another manager at the Complex.

6. ***Public detriments***

(a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:*

It is submitted that there is little public detriment that is likely to result from the notification and that any detriment is outweighed by the following public benefits.

Apart from the reduction in the number of competitors who may provide management services at the Complex, there does not appear to be any significant public detriment arising from the provisions of the Management Statement and the terms of the Management and Caretaker Agreement for the Manager to be the exclusive provider of on-site management services in the Complex.

We do not believe having the Complex centrally managed in an efficient and cost effective manner by a Manager who promotes and operates the short stay accommodation system at the Complex in a co-ordinated manner will be of any detriment to the community.

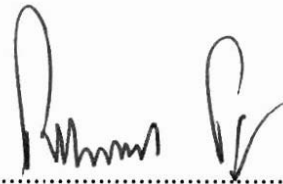
We do not consider the appointment of the Manager as the exclusive provider of on-site management services in the Complex will adversely impact on the cost or quality of the services provided. The Management and Caretaker Agreement includes a mechanism for how the Manager's fees are to be reviewed and the majority of owners are able to replace the Manager.

We submit that the proposed conduct will not increase the restrictions on entry into the market by other potential managers, nor will it have a negative impact on competition by other market participants. There is at least one other short stay facility in and around Karratha and more are planned. The Manager can be replaced as the manager of the Complex if the owners are dissatisfied. We believe a single on-site manager enhances the efficiency of the Complex and its attractiveness to investors and guests.

Finally, the proposed conduct ensures compliance with the planning approval by ensuring all units are managed in accordance with the standards imposed by the Shire of Roebourne in consultation with the Western Australian Planning Commission and Tourism WA.

(b) Facts and evidence relevant to these detriments:

Refer to answers in paragraph (a) above and see also the terms of the planning approval from the Shire of Roebourne, the Management Statement and the Management and Caretaker Agreement.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by several loops and a final flourish.

.....
Signed by/on behalf of the applicant



SHIRE OF ROEBOURNE

TOWN PLANNING SCHEME No 8

DECISION ON APPLICATION FOR PLANNING APPROVAL No PA1764

DETAILS OF APPLICATION

OWNER OF LAND:	NAME	GREENVALLY ASSET PTY LTD
	ADDRESS	PO BOX 148 INNALOO WA 6918
APPLICANT:	NAME	GREENVALLY ASSET PTY LTD C/O RAPLEY WILKINSON 33 WALTERS DRIVE OSBORNE PARK WA 6017
LOCATION OF DEVELOPMENT:	LOT No	1090
	STREET	KARRATHA ROAD
	LOCALITY	STOVE HILL

PROPOSED DEVELOPMENT: ONE HUNDRED AND FORTY [140] SERVICED APARTMENTS, SITE PREPARATION WORKS, SWIMMING POOL, MANAGERS RESIDENCE/ OFFICE/ SHOP/ LAUNDRY/ PLANT ROOM/ STORAGE BUILDING, GYMNASIUM AND ANCILLARY WORKS

PROPOSED USES: HOLIDAY ACCOMMODATION [SERVICED APARTMENTS]

Approval to commence or carry out development in accordance with the provisions of the Shire of Roebourne Town Planning Scheme No.8 [TPS8], the application received on 9 October 2007 and the attached stamped plans is: -

GRANTED subject to the following conditions: -

1. The approved buildings, works and layout shall not be altered without the prior written consent of Council.
2. In accordance with the Shire of Roebourne's Development Performance Guarantee Policy DP-2 (attached), a bank guarantee must be submitted to Council prior to the issue of a Building Licence to ensure the satisfactory completion of the development. The development includes, but is not limited to:
 - i. Construction of the managers' residence, general store, pool pump and chemical store, laundry, shop, office/ reception building;
 - ii. Construction of the gymnasium and garden store buildings;
 - iii. Construction of the communal barbecue area, swimming pool and shade sails;
 - iv. Sealing of crossovers, internal vehicle access ways and parking bays including construction of kerbing and wheel stops where required;

- v. Delineation of parking bays including bay numbering and ACROD signage for disabled bays;
- vi. Erection of vehicle directional signage;
- vii. Sealing of internal pedestrian walkways;
- viii. Construction of the bin store, fish cleaning station and washdown bay;
- ix. Establishment of reticulated landscaping;
- x. Construction of all drainage swales and associated infrastructure including erosion control at outlets; and
- xi. Erection of boundary fencing.

The amount of the "Development Performance Guarantee" to be lodged shall be as follows:

Bank Guarantee - \$500,000

When the development has been completed to the satisfaction of Council the "Performance Guarantee" shall be repaid.

Note: To assist Council to receipt your performance guarantee and not delay the issue of your Building Licence please ensure that either a covering letter accompanies payment by mail that states the purpose of payment (performance guarantee for planning approval), the planning approval number (PA1764) and the location of your development. Should you undertake an electronic funds transfer, please ensure that 'Planning Application' and the planning approval number are provided in the description field.

3. The proposed serviced apartment units shall not be occupied until the approved building and ancillary site development works detailed above in condition 2 (i – xi) above have been completed to the satisfaction of Council.
4. Details of boundary fencing, including materials, dimensions and colour schemes shall be submitted to Planning Services for endorsement prior to the issue of a building licence.
5. The proposed car park, access driveways and building entry areas are to be lit in accordance with Australian Standard AS1158. A Lighting Plan including specifications must be submitted to Planning Services for approval prior to the issue of a Building Licence. Once endorsed, the Lighting Plan shall form part of this development approval.

Note: Any external lighting shall be installed and maintained so as to avoid distracting passing motorists or causing nuisance to neighbours.

6. The ongoing management and use of the development shall be undertaken in accordance with the endorsed management statement entitled *Annexure "E" Management Statement* for "The Ranges – Karratha:

Note: Any alteration or amendment to the endorsed management statement shall not occur without the prior written consent of Council.

7. The facility manager and/ or future strata manager shall maintain a register of occupancy of all serviced apartment units within the development. The register shall be made available for inspection at any time
8. Bicycle parking facilities must be constructed in accordance with AS2890.3 *Bicycle parking facilities* and must accommodate a minimum of fourteen (14) bicycles in accordance with the requirements of Council's Bikeplan.
9. Provision of appropriate directional signage advising of; the location of the off-street parking area, access and egress with directions on both sides of each sign, and painted directional arrows on the pavement surface in accordance with the current requirements of Australian Standards AS2890.1.

10. The external finishes and materials of the approved development shall be clad in a pre-finished material or painted in a colour of natural or earth tones to complement the surroundings in which the development is located.
11. All sealed areas including delineation of designated parking bays (80 – 100 mm wide white or yellow painted lines or raised markers as per AS2890.1) shall be maintained to the satisfaction of Council.
12. All landscaping and paved areas of as shown on the endorsed plans shall be maintained to the satisfaction of Council. Dead or diseased plants shall be replaced as soon as practical.
13. The ongoing use of the site and approved development works shall not cause erosion or degradation to the subject or surrounding land. Should Council deem it necessary to undertake mitigation works to address erosion or degradation, such works must be in accordance with plans, specifications and work schedules to be submitted to Council for endorsement and to be undertaken by the proponent at no cost and to the satisfaction of Council.
14. No goods or materials are to be stored permanently in the parking or landscaping area, communal areas or within access driveways.
15. Advertising signs shall not be erected or displayed on the site except with the approval of Council.
16. This decision to approve will expire if the development has not substantially commenced and is in continuation within two [2] years of the date of this decision.

Note: Council may approve extensions to the approval period for periods of up to two [2] years subject to requests to extend the currency of the approval being made in writing no later than the original or extended date of expiry.

HEALTH

17. The development site has been classified as being of high dust risk in accordance with the *Guideline for the Prevention of Dust and Smoke Pollution from Land Development Sites in Western Australia* published by the Department of Environment and Conservation (DEC). As such, the following erosion control measures must be implemented during earthworks and construction to prevent scouring and dust nuisance problems occurring:

Provisions:

- Prior to works commencing, provide to Council's Environmental Health Department the name and contact details of the engineer for the development.
- Wind fencing of a shall to be stored on site or available within one hour of being required by the engineer for the developer. The nominated wind fencing is to remain in position until the disturbed surface is stable.
- Surface stabilisation is to be applied to the disturbed area of each section of the site upon completion of the works in that section.
- The engineer for the developer shall maintain strict control of works with dust-creating potential. Material which has been excavated for trenching shall be stabilised if the trench is to be left exposed for longer than 72 hours.
- After all site works are completed, and before the contractor has vacated the site, the developer should ensure that the entire site is stable.
- The use of 'a fill capping' layer to reduce dust-creating potential.
- All stock piled material to be controlled through the use of water dampening, chemical stabilisation, tarping or other appropriate measures.

Contingency arrangements:

- Suitable water-carts in good working condition and of not less than 10,000 litres capacity, or an appropriate alternative, shall be available to commence immediate watering on the site.
 - Surface stabilisation equipment shall be available to commence operation on site within 48 hours of being required to do so by the engineer for the developer/local government/DEC and with sufficient capacity to cover the disturbed site area within a further 48 hours.
 - Additional wind fencing shall be erected within 18 hours of the contractor being required to do so by the engineer for the developer/local government/DEC. Dust generating works on the site shall cease in the interim.
 - Include an allowance for water-cart operation, wind fencing and surface stabilisation during the construction period for the purposes of dust and wind-borne material suppression.
 - Include an allowance for surface stabilisation for the purposes of dust and wind-borne material suppression to be maintained after the construction period and until change of ownership/control takes place.
18. The development including the fish cleaning station must be connected to the Water Corporation of Western Australia's reticulated sewerage disposal system.
19. The applicant must provide on-site either a chemical toilet or self-flushing toilet with sewer connection for use by site workers.
20. The sealed washdown area shall be fitted with a petrol and oil trap and must and operated in accordance with the *Water Quality Protection Note 68 Mechanical Equipment Washdown* (Department of Water, March 2006) and is to be connected to the sewer, with the Water Corporation's approval.
21. The bin store area must be provided with a tap and adequate mains supply and be constructed with a concrete floor graded to a 100 mm industrial floor waste gully connected to the sewer, with the Water Corporations approval.
22. All generated litter is to be placed in rubbish receptacles and secured so that it does not blow onto neighbouring areas.
23. Public toilet WC's to be provided with a sign/symbol to indicate for which sex its use is intended. This includes toilets intended for use by the disabled. The lightweight wall/stud wall between the male and female toilets to be acoustically treated so as to provide sufficient density to blanket sounds.
24. The construction and operations of the swimming pool are to comply with the Health (Aquatic Facilities) Regulations 2007 and the Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities.

The swimming pool backwash disposal must not be disposed of through the stormwater system and leave the property. The proponent is to provide a plan of an onsite swimming pool wastewater disposal system.

Provision to be made for onsite backwash wastewater disposal and the developer must provide details of the estimated maximum flow and the dimensions of the onsite wastewater disposal system.

The Code of Practice can be downloaded at the following URL:

http://www.health.wa.gov.au/envirohealth/water/docs/Code_of_Practice_Aquatic_Facilities.pdf

25. The proposed shop and general store must comply with the *Health (Food Hygiene) Regulations 1993*. If there is a kitchen, food preparation area, or food storage facility within the proposed shop, plans and elevations of the fit out must be provided to Council's Environmental Health Services for approval.
26. The gymnasium is classified as a public building as defined in the *Health (Public Buildings) Regulations 1992* and must comply with these provisions.

The proponent must complete the form *Application to Construct, Extend or Alter a Public Building* (appended) and then apply to have the building approved for use with the form *Application for Certificate of Approval* (appended) and a licensed electrician must complete a *Certificate of Electrical Compliance* (appended) which must be approved before a Certificate of Approval for use can be issued for the building to be legally occupied.

Maximum accommodation numbers are based on available floor area, ventilation, exit widths, and toilet numbers. Please provide this information in order to obtain a certificate.

27. The proponent is advised that the proposed development is located in an area, which at times is subject to high levels of nuisance and potentially disease transmitting mosquito populations. Council is under no statutory obligation to provide pest management services on private property.

Prior to the issue of a building licence submit a mosquito management plan to the satisfaction of the environmental health department before occupation of the accommodation units.

ENGINEERING

28. The stormwater drainage system for the development shall be designed in accordance with the endorsed stormwater drainage plan to ensure that no stormwater run-off discharges onto any adjacent private property by directing all run-off into adjacent road reserves or to any other point of discharge approved by the Shire.

Note: A minimum 0.5% longitudinal fall along valley and kerb lines for all sealed surfaces is deemed to satisfy this requirement.

29. The car parking and manoeuvring areas shall be constructed to a Type A – Double Coat Seal or Type C – Asphaltic Concrete Seal standard in accordance with the Shire of Roebourne's Commercial/Industrial Pavement Construction Specification (Types A- D).

Note: Council's Pavement Specifications include requirements relating to drainage, kerbing, line marking, bollards and construction methods (in addition to the pavement construction).

30. Prior to the commencement of the works the applicant shall submit a traffic management plan to Main Roads Western Australia for works affecting Karratha Road. During the course of constructing the works the applicant shall be responsible for all aspects of the works, including public safety and shall ensure adequate barricades, signage and other warning devices are in place at all times.

Note: All works within the road reserve shall be undertaken in accordance with the *Traffic Management for Works on Roads Code of Practice – Main Roads WA February 2007*.

INFORMATION NOTES

- i) The determination of this application for planning approval has been made under delegated authority. If you object to this decision or any of the conditions imposed you may request that Council reconsidered the decision. The right to request reconsideration is separate from and does not impinge upon any right of appeal under the *Planning and Development Act 2005* (as amended).

- ii) Should the owner and/or applicant be aggrieved by this decision, or any of the conditions imposed, there is a right of review under the *Planning and Development Act 2005* (as amended). An application for review must be submitted in accordance with Part XIV of the *Planning and Development Act 2005* within 28 days of the date of this decision to: the State Administrative Tribunal, GPO Box U1991, Perth, WA 6845. Further information regarding this right of review is available on the SAT website www.sat.justice.wa.gov.au or by phoning 1300 306 017.
- iii) A demolition licence is required prior to the demolition of any existing buildings and structures.
- iv) A building licence is required prior to the commencement of any on-site construction works.
- v) All works within, and alterations to Karratha Road, including construction of the vehicle crossover shall be undertaken in accordance with Main Roads Western Australia approval.
- vi) Separate applications must be made for any health approvals required under the *Health Act 1911*.
- vii) The development and use shall at all times comply with the provisions of the Council's District Town Planning Scheme, the *Health Act 1911*, the *Building Code of Australia*, the *Environment Protection Act 1986* and any other relevant Acts, Regulations, Local Laws or Council policies.
- viii) The applicant and his agents shall ensure that construction works on the development site complies with the provisions of the *Environment Protection (Noise) Regulations 1997*.
- ix) The contractor must ensure that all site workers comply with the requirements of the *Occupational Safety and Health Act 1984* and associated Regulations.
- x) All asbestos on the site must be removed and handled in accordance with the *Health Act 1911 Health (Asbestos) Regulations 1992/ Policy for the Regulation of Asbestos Waste* under the *Environmental Protection (Controlled Waste) Regulations 2001*.
- xi) During the construction stage adjoining lots are not to be entered without the prior written consent of the affected owner(s).
- xii) It is the responsibility of the applicant to search the title of the property to ascertain the presence of any easements that in any case must not be built upon.

SIGNED



p.p. CHIEF EXECUTIVE OFFICER

DATE


4/4/2008

ANNEXURE "E"

MANAGEMENT STATEMENT

THE RANGES - KARRATHA

Lot 1090 Karratha Road,
Stove Hill, Western Australia

SHIRE OF ROEBOURNE TOWN PLANNING APPROVAL	
APPROVAL No	<u>PA 1764</u>
SIGNED	<u></u>
DATE	<u>4.4.08</u>

AMENDED
25.3.08.

FORM 25

Strata Titles Act 1985

Section 5C (1)

STRATA PLAN No.

MANAGEMENT STATEMENT

GREENVALLEY ASSETS PTY LTD ACN 125 151 975

Lot 1090 on Plan 174830 being the whole of the land comprised in certificate of title volume 1991 folio 48.

This management statement lodged or to be lodged with a strata plan in respect of the above land sets out the by-laws of the strata company or amendments to the by-laws contained in Schedule 1 and 2 of the Act that are to have effect upon registration of the strata plan.

THE SCHEDULE 1 BY-LAWS ARE AMENDED, REPEALED OR ADDED TO AS FOLLOWS –

The following by-laws are added –

16. DEFINITIONS

When used in Schedule 1 and Schedule 2 of these by-laws, the following terms have the following means:

Act means the Strata Titles Act 1985 (WA) as amended.

Facilities means the facilities and improvements situated on the common property including, landscaping and gardens.

Landgate means the Western Australian Land Information Authority.

Manager means the on-site manager of the Management Scheme from time to time appointed by the strata company.

Management Scheme means the scheme under which the Manager lets and manages lots as part of a short stay serviced apartment complex on the parcel.

Manager Lot means lot [] on the strata plan used by the Manager and which includes a residence for the resident caretaker or other staff of the Manager.

Pool Area means any enclosed area on the common property containing a swimming pool.

17. USE AND OPERATIONS ON PARCEL

Each proprietor:

- (1) acknowledges and agrees that the Manager shall operate a serviced apartment complex on the parcel under the Management Scheme and in so doing is authorised to operate an on-site letting service and provide management services on the parcel.
- (2) acknowledges and agrees that each lot in the strata scheme (other than the Manager Lot) is to be used for short stay accommodation and is subject to the following limitations:
 - (a) in the first 5 years after the date of registration of the strata plan, a person must not occupy a lot for a continuous period exceeding 12 months; and

- (b) after the expiration of 5 years from the date of registration of the strata plan, a person must not occupy a lot for a period greater than 3 months in any period of 12 months.
- (3) acknowledges and agrees that the Manager Lot will be used for management and administration purposes as part of the Management Scheme and as a residence for the resident caretaker and/or other staff of the Manager.
- (4) shall comply, and shall ensure that his or her tenants and guests comply, with the directions of the Manager at all times.
- (5) shall not use, nor permitted to be used, his or her lot in such a manner as to be inconsistent with the Shire of Roebourne town planning scheme or future variations of this scheme.

18. MANAGEMENT SCHEME

- (1) Under the Management Scheme the Manager will provide on-site letting services and be the sole and exclusive letting agent for each proprietor who wishes the Manager to let and manage his or her lot and who enters into an agreement with the Manager for this to be done.
- (2) A proprietor may choose not to participate in the Management Scheme and may appoint a person other than the Manager to let and manage his or her lot.
- (3) The strata company and the Manager will use reasonable endeavours to promote the short stay accommodation on the parcel under the Management Scheme.

19. MANAGEMENT SERVICES

- (1) The strata company and the Manager shall enter into an agreement for the Manager:
 - (a) to be the exclusive provider of on-site management services on the parcel, regardless of whether they are participants in the Management Scheme or not which services shall include, but not be limited to:
 - (i) reception services (including check-in and check-out);
 - (i) keeping a register of tenants;
 - (ii) laundry services (including replacement of linen);
 - (iii) cleaning services including cleaning at least once each week each lot that is occupied by the same person(s) for more than one week;
 - (iv) room service;
 - (v) maintaining and making available the Communication System as required pursuant to by-law 27 of Schedule 1;
 - (vi) providing other services in relation to the servicing of lots; and
 - (vii) providing services ancillary to the operation of a serviced apartment complex on the parcel; and
 - (b) to act as manager and caretaker of the Facilities and common property; and
 - (a) to advertise, market and promote the short stay accommodation on the parcel at the cost of the strata company.
- (2) As part of providing the Management Services:
 - (a) the Manager will be responsible for ensuring the Facilities will be operated in a manner and to a standard which complements the efficient operation of the serviced apartment complex on the parcel;
 - (b) the strata company may delegate any of its rights, powers, duties or roles under the by-laws in Schedule 1 or Schedule 2 to the Manager;

- (c) the proprietor of the Manager Lot must cause that lot to be leased to or made available for the use of the Manager at all times on commercial terms to assist in the conduct of the Management Scheme;
- (d) the Manager will at all times retain keys to the building on each lot and shall be entitled to enter the building at any reasonable time on prior notice, and in an emergency without notice, for the purpose of undertaking any act, matter or thing the Manager is authorised to undertake under the Management Scheme, or in providing the Management Services or pursuant to these by-laws including:
 - (i) providing services to a lot;
 - (ii) carrying out repairs, maintenance, replacements and other works and inspections to a lot; and/or
 - (iii) monitoring compliance with these by-laws;
- (3) The Manager will determine the standard of window treatments, internal furnishings and inventory items that must be supplied by the proprietor, of each lot (other than the Manager Lot), which standard shall be subject to the approval of the strata company.
- (4) A proprietor of a lot (other than the Manager Lot) shall comply with all directions of the Manager given from time to time with respect to the presentation of his or her lot including window treatments, internal furnishings and inventory items.
- (5) A proprietor of a lot (other than the Manager Lot) must ensure that his or her lot is not used or permitted to be used to provide any management services that control or manage any accommodation on the parcel or any other services similar to those provided by the Manager on the parcel.
- (6) Any agreements entered into, from time to time, between the strata company and the Manager will be included as part of the strata company's records.
- (7) Each proprietor shall be bound by, and shall not do anything which constitutes a breach of, the terms of any agreements between the strata company and the Manager.

Despite any other provisions of these by-laws, this by-law cannot be removed or varied without the consent of the Shire of Roebourne.

20. LEVIES

The strata company may raise levies to cover all expenses arising from the matters contained in these by-laws (including, without limitation, levies for advertising, marketing and promoting the short stay accommodation on the parcel) and each proprietor shall contribute to same on the basis of unit entitlement, provided that in accordance with section 42B of the Act, the method of assessing contributions to be levied on proprietors by the strata company pursuant to section 36 of the Act is varied as follows.

- (1) the proprietor of the Manager Lot, will be exempt from all contributions for strata levies and other expenses levied on the proprietors of lots by the strata company from time to time in accordance with section 36 of the Act except for the contributions for public liability, workers' compensation and office bearers insurance premiums;
- (2) contributions for public liability, workers' compensation and office bearers insurance premiums will be levied on the proprietors of all lots in proportion to the unit entitlement of their respective lots; and
- (3) contributions for strata levies and other expenses (other than contributions for public liability, workers' compensation and office bearers insurance premiums) will be levied on each proprietor in the same proportion as the unit entitlement of each lot bears to the total unit entitlement of all the lots in the scheme excluding the Manager Lot.

21. STANDARD OF DEVELOPMENT

- (1) strata company will use reasonable endeavours to maintain the appearance, ambience, style and standard of the development on the parcel:
 - (a) consistent with the appearance, ambience, style and standard determined by the original proprietor; and
 - (b) in keeping with the standard of similar serviced apartment complexes and having regard to the fact that many of the lots may be let to members of the public;
- (2) A proprietor of a lot must not construct, erect, add to, redevelop or alter any building or other improvement upon his or her lot without first submitting to the strata company a copy of the plans, specifications and details of such works and obtaining the written approval of the strata company to such works.
- (3) The proprietor of a lot must ensure any development or redevelopment of his or her lot complies with any requirements of the Shire of Roebourne in relation to the lot.
- (4) Notwithstanding by-law 2 in Schedule 1 of the Act, a proprietor of a lot must not paint, wallpaper, redecorate or otherwise change the appearance of his or her lot without the prior approval of the strata company.

22. MAINTENANCE AND REPAIRS OF LOTS

- (1) **The proprietor of a lot that is not used as part of the Management Scheme shall repair and maintain the building located on his or her lot to a standard of repair and maintenance that is commensurate with the development on the parcel.**
- (2) If the proprietor of a lot a lot that is not used as part of the Management Scheme fails to maintain his or her lot in accordance with by-law 22(1), then:
 - (a) **the strata company may serve notice on that lot owner to carry out the required work to the required standard;**
 - (b) **if the required work is not completed within 1 month from the date of service of the notice, then the strata company or its agents may enter upon the lot to carry out the required work at the cost of the proprietor;**
 - (c) **the costs of carrying out the required work must be paid by the proprietor to the strata company upon demand and sections 38 and 39 of the Act shall apply.**
- (3) Notwithstanding by-law 1(1) in Schedule 1 of the Act:
 - (a) **the strata company shall carry out all repairs and maintenance to lots used in the Management Scheme and their contents and where necessary replacements to the building and contents and other improvements on such lots (including, without limitation, air conditioners, water heaters, fixed electrical equipment and appliances, security systems, building management systems, ducting, fly screens, door locks and awnings, inventory items, window treatments, plant, equipment and furnishings) to a standard of repair and maintenance that is commensurate with the development on the parcel.**
 - (b) **the costs of the repairs and maintenance and where necessary replacements to a lot and its contents referred to in paragraph (a) will be payable by and recoverable from the proprietor of the lot, provided that the strata company will not incur expenditure for such repair, maintenance and replacement in respect of any one item exceeding such amount as may be specified from time to time in the letting agreement (if any) in relation to the lot between the Manager and the proprietor without the proprietor's prior written consent which consent shall not be unreasonably withheld.**

- (4) The proprietor of a lot authorises the strata company and its officers, agents, contractors, workmen and representatives to enter the lot to exercise the rights conferred on the strata company under this by-law.

23. FACILITIES

- (1) The Manager shall be responsible for the day to day supervision and management of the Facilities.
- (2) A proprietor must comply with the Manager's reasonable instructions regarding the use of the Facilities and must not interfere with or allow anything to be done which might impair the efficient operation of any of the Facilities.
- (3) The strata company and the Manager shall have no liability to the proprietor, occupier or other resident for financial loss or inconvenience, including any damages, because:
 - (a) any of the Facilities are out of order or are not functioning properly or at all; or
 - (b) any of the Facilities are temporarily stopped or interrupted pending inspection, repair, maintenance, replacement or any other cause.
- (4) The Manager, and persons authorised by the Manager, may enter any lot:
 - (a) for the purpose of inspecting the condition and state of repair of the services to the Facilities;
 - (b) to carry out any repairs, including maintenance, installations, alterations, replacement or renewal in respect of a building, services or the Facilities, in order to:
 - (i) undertake work which the strata company or the Manager is required or desires to carry out in accordance with these by-laws; and
 - (ii) comply with the requirements of any statutory authorities.
- (5) A person using the Facilities shall when finished using them leave them in a clean, neat and tidy condition.
- (6) The strata company may make house rules for the control and use of the Facilities and for the conduct of persons using the Facilities and will display or cause to be displayed any such house rules for the benefit of all occupiers of lots within the scheme.

24. USE OF COMMON PROPERTY

Without limiting by-law 23 above or by-law 1(2) in Schedule 1 of the Act:

- (1) every person using the common property must obey all reasonable directions of the strata company or the Manager with regard to use of the common property and must not in any way obstruct the strata company or the Manager in its control of the common property and of persons therein.
- (2) a person using the common property must not:
 - (a) enter or be in or upon the common property while intoxicated;
 - (b) smoke tobacco or any other substance on any portion of the common property where notices direct that smoking is not permitted;
 - (c) damage or interfere with or use improperly or remove any part of the common property or the furniture, fittings or equipment thereon; or
 - (d) behave in an unseemly, improper, disorderly or riotous manner, nor swear or use any indecent, obscene or abusive language;
- (3) a proprietor, occupier or other resident of a lot shall take all precautions to ensure that, excessive noise and other potential nuisances emanating from their lot do not

interfere with the peaceful and quiet enjoyment of other the proprietors, occupiers and residents and other users of the common property.

25. MAINTENANCE OF COMMON PROPERTY

- (1) Each proprietor acknowledges that all pipes, conduits, wires, plant, equipment, facilities, services and systems associated with the water supply, sewerage, drainage, electrical and communications services on the parcel that are located within a lot are deemed to be common property and are and will be under the care and control of the strata company.
- (2) The strata company shall at all times be responsible for the maintenance, repair and where necessary replacements to the common property, including the Facilities, air conditioners, water heaters, fixed electrical equipment and appliances, security systems, building management systems, ducting, fly screens, door locks and awnings, vehicle and pedestrian access ways, thoroughfares, parking areas, paths, sewerage systems, drainage systems, water services, electrical wiring and switch systems, communication wiring and equipment, machinery and plant, common lighting, fences, walls, lawns, gardens, trees, shrubs, plants, garden watering and reticulation systems and all other buildings, structures, utilities, services, landscaping and other improvements on the common property.
- (3) Each proprietor expressly authorises the strata company and its agents, contractors and employees to have access to the proprietor's lot at any reasonable time for the purpose of inspecting, replacing or repairing any of the common property.
- (4) The strata company shall care for and maintain all landscaping, gardens, reticulation and open areas of the common property to a reasonable standard.

26. LEASE OF COMMON PROPERTY

The strata company may at any time or from time to time grant a lease or licence to use the common property to any person or company as the strata company may select on such terms as the strata company may think fit and the strata company may amend or vary any such lease or license or take action to enforce its rights under such lease or license.

27. COMMUNICATION FACILITIES

- (1) The proprietors of the lots acknowledge and agree that:
 - (a) at the cost of the strata company the Manager shall maintain in operational condition the main telephone and internet system for lots on the parcel (**Communication System**).
 - (b) the Manager shall make the Communication System available for use by the proprietors of the lots, and occupiers or other residents of such lots, at reasonable commercial rates comparable to rates charged by similar serviced apartment complexes.
 - (c) the Manager may make profits from making the Communication System available for use in the manner specified in paragraph (b).
- (2) The strata company authorises the Manager to enter into such arrangements and contracts for the provision of pay television and other visual and audio facilities for such of the lots in the strata plan as the Manager considers appropriate to enable the proprietors, occupiers or other residents of those lots to have access to such facilities. The Manager may, where necessary, install on or within the common property any devices necessary to provide such visual and audio facilities to lots in the strata plan. All costs in relation to the provision of such visual and audio facilities shall be payable by the strata company who will levy contributions in respect of same only on the proprietors of lots with access to such visual and audio facilities in the same proportion as the unit entitlement of each of such lots bears to the total unit entitlement of all lots with access to such facilities.

28. OBLIGATION TO NOTIFY DEFECTS IN SERVICES

A proprietor, occupier or other resident shall give the Manager or the strata company prompt written notice of any accident to or defect in the water pipes, electrical installations, cabling or fixtures that form part of the common property and which are situated in his or her lot. The strata company may carry out such repairs and renovations as and when it deems necessary for the safety and preservation of the buildings, and services and other improvements on the parcel.

29. BLOCKAGE OF DRAINAGE PIPES

The water closets, conveniences and other water apparatus, including waste pipes and drains, shall not be used for any purposes other than those for which they are constructed and no sweepings, rubbish or other unsuitable substance shall be deposited therein. Any damage or blockage resulting to such water closets, conveniences and other water apparatus, waste pipes and drains from misuse or negligence shall be borne by the proprietor of the lot from which the damage or blockage originated whether the damage or blockage is caused by the proprietor's own actions or those of the proprietor's tenants, servants, agents, invitees or licensees.

30. WATER LEAKAGE TO OTHER LOTS AND COMMON PROPERTY

- (1) It is the responsibility of the proprietor of a lot to ensure that all wet areas, such as bathrooms, toilets, laundries, kitchens and balconies, contained within his or her lot are maintained in a proper sealed manner to prevent the leakage, seepage or transference of any water or other liquid on to any part of the common property or other lot other than through waste pipes provided for the disposal of such water or liquid.
- (2) The proprietor of a lot will be liable for the cost of the repair and replacement of any part of the common property, any part of a lot or any of the contents of a lot that has been damaged by water leakage from the proprietor's lot.

31. ACCESS OVER A LOT BY THE STRATA COMPANY OR ITS AGENTS

Where and to the extent that the strata company considers that access is reasonably necessary or desirable for repairs to the common property, cleaning of the external parts of the windows or painting and maintenance of a lot, the proprietor, occupier or resident of a lot shall permit the strata company and its servants, agents and contractors and invitees (with all necessary plant and equipment) to have access through his or her lot in order to enable such work to be carried out.

32. INSTRUCTING OF CONTRACTORS BY PROPRIETORS

A proprietor, occupier or other resident shall not directly instruct any contractors or workmen employed by the strata company unless authorised by the strata company. Any proprietor, occupier or other resident instructing any contractor or workmen without authorisation from the strata company shall be responsible personally for the payment of such contractor or workmen and shall also be personally responsible for the cost of removing or altering any such work which the strata company deems unsatisfactory.

33. FLOOR LOADING

A proprietor, occupier or other resident of a lot shall not do any act or thing or permit any person to do any act or thing that will result in excessive stress or floor loading to any part of his or her lot or the common property and, without limiting the generality of the foregoing, shall not allow a weight loading on any part of the lot other than that which is specified in the engineering specifications for that lot.

34. MANAGEMENT OF STRATA COMPANY

The strata company may employ the services of a strata management agent for the purpose of conducting the day to day administrative, secretarial, accounting and treasury functions and affairs of the strata company.

35. ADMINISTRATIVE EXPENSES GENERALLY

- (1) Pursuant to Section 36(1) of the Act, the strata company shall at each annual general meeting or at an extraordinary general meeting called for the purpose, review and amend as considered necessary the administration fund of the strata company.
- (2) In accordance with section 42B of the Act where an item of administrative expense is specific to some but not all lots within the scheme, the cost of that expense shall wherever practicable be borne by the proprietors of those lots to which the item of expense specifically relates.
- (3) The proportions by which costs referred to in by-law 35(2) are allocated to lots shall be determined in each instance by the strata company in a fair and equitable manner having regard to the use and benefit derived from the item of expense by each lot.
- (4) An allocation of costs pursuant to by-law 35(3) need not bear any relationship to the unit entitlement of any or all of the lots.

36. RESERVE FUND

The strata company may administer a reserve fund in accordance with section 36(2) of the Act for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, likely to arise in the future.

37. LEASING OF LOTS

If a proprietor proposes to lease his or her lot, before the commencement date of the lease the proprietor shall:

- (1) inform the strata company or the Manager of the name of the proprietor's managing agent for the lot (if any) and the name of the lessee. This information shall be recorded on the strata company roll;
- (2) provide the lessee with a copy of the strata company by-laws; and
- (3) provide to the strata company or the Manager a copy of the executed lease and ensure that such lease states that any non-compliance with the by-laws of the strata company shall be a default under the terms of such lease.

38. FIRE CONTROL PLAN AND EVACUATION

- (1) The strata company will develop a fire management plan that complies with the requirements of the Fire and Emergency Services Authority of Western Australia or any other statutory authority having the responsibility of fire control.
- (2) The proprietor, occupier or other resident of a lot will ensure that he or she and any persons lawfully using lot are informed of the evacuation procedures and the fire management plan.

39. WATER METERING

To the extent consumption of water on lots is recorded from common meters, the proprietors agree that the cost of consumption will be levied on each proprietor of a lot subject to such common meters in the same proportion as the unit entitlement of each such lot bears to the total unit entitlement of all such lots.

40. HOUSE RULES

The strata company may from time to time make, withdraw or amend rules for the use and management of the common property including, but not limited to, in respect of:

- (a) the use of the recreational facilities including the Facilities;
- (b) the control of the vehicle access ways and vehicle parking;
- (c) the safety and conduct of proprietors, occupiers, other residents and guests; and
- (d) rubbish collection,

to promote the peaceful and orderly enjoyment of common property for the mutual benefit of all proprietors, occupiers and other residents and guests, provided that such rules must not conflict with any of the provisions of these by-laws.

41. POWER OF ATTORNEY

- (1) Without affecting the proprietor's rights under the Act and except to the extent that they may override any provision of this by-law, each proprietor irrevocably appoints the original proprietor of the parcel and each of the directors of the original proprietor and any real estate agent nominated in writing by the original proprietor from time to time (**Attorney**), jointly and severally, to be the true and lawful attorney and proxy of the proprietor:
 - (a) to convene, act, attend and vote on each proprietor's behalf at the absolute discretion of the Attorney at all meetings of the Strata Company; and
 - (b) to execute any document and to do or perform any other acts and things which the Buyer as a member of the Strata Company is entitled to do under the Strata Titles Act, the Strata Title General Regulations 1996 or these by-laws.

and the proprietor agrees to ratify and confirm all that such attorney and proxy does pursuant to this by-law. Each proprietor further agrees that the Attorney may exercise any of the above powers even to the exclusion of a proprietor who is present at the meeting and notwithstanding that the Attorney or the original proprietor may have a financial interest in the subject matter of the resolution (whether under section 50A of the Act or otherwise).

- (2) The attorney and proxy appointed under by-law 41(1) will remain in full force and effect and be irrevocable until the first to occur of the following:
 - (a) the expiration of a period of 5 years from the date of registration of these by-laws; and
 - (b) until the original proprietor resigns as attorney and proxy.
- (3) The proprietor agrees that any person, including the Registrar of Titles of Western Australia, dealing with any attorney appointed under this by-law, or any person purporting to be such attorney, is entitled to rely on this by-law as conclusive evidence that:
 - (a) the person holds the office set out in the relevant provision of this by-law that grants a power of attorney;
 - (b) the power of attorney has come into effect;
 - (c) the power of attorney has not been revoked; and
 - (d) the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power;

and is not required to make any enquiries in respect of any of the above matters.

- (4) The proprietor charges his or her lot in favour of the original proprietor to secure the proprietor's obligations pursuant to this by-law and agrees the original proprietor may lodge a subject to claim caveat against the certificate of title to the proprietor's lot in order to protect the original proprietor's rights and interests under this by-law.
- (5) If the original proprietor of the parcel sells, transfers, assigns, or otherwise disposes of its interest in the scheme at any time before the development on the parcel is fully completed, the proprietor acknowledges and agrees that the benefit of the power of attorney granted under this by-law may be assigned by the original proprietor to that other person and if that other person is a corporation, to the directors of that corporation.

42. PERSONS BOUND BY THESE BY-LAWS

A proprietor, tenant, occupier and other resident of a lot and any licensee or invitee of a proprietor, occupier or other resident on any part of the parcel shall be bound by these by-laws.

43. ORIGINAL PROPRIETOR TO BE MEMBER OF COUNCIL

Despite any provision of by-law 4 in Schedule 1 of the Act, whilst the original proprietor of the parcel remains a proprietor of a lot:

- (1) **the nominee of the original proprietor notified in writing from time to time by the original proprietor to the strata company will automatically comprise one of the members of the council;**
- (2) **that nominee will not be required to stand for election, or to be elected, as one of the members of the council; and**
- (3) **by-law 4(8) in Schedule 1 of the Act will not apply to such nominee.**

44. STAGED DEVELOPMENT

Each proprietor acknowledges that the development of the scheme is intended to be a three stage development as follows:

- (1) **the first stage of the development comprises [] lots, the Manager Lot, common property and one vacant lot being the balance of the undeveloped land in the parcel as shown on the original strata plan.**
- (2) **if the original proprietor proceeds with the second stage of the development on the parcel, it is intended the scheme will comprise [] lots (including the lots in the first stage), the Manager Lot, common property and one vacant lot being the balance of the undeveloped land in the parcel as shown on the strata plan of re-subdivision and the plans and specifications referred to in by-law 45(1)(a).**
- (3) **if the original proprietor proceeds with the third stage of the development on the parcel, it is intended the scheme will comprise [] lots (including the lots in the first and second stages), the Manager Lot and the common property in accordance with the strata plan of re-subdivision and the plans and specifications referred to in by-law 45(1)(b).**

45. PROPOSED RE-SUBDIVISION

- (1) **It is intended that the original strata plan in relation to the parcel be re-subdivided and developed in stages at times in the future determined by the original proprietor to create additional lots and common property. The information in respect of the re-subdivision and further re-subdivisions of the parcel are set out in the following, namely:**
 - (a) **in respect of the second stage of the development on the parcel, as set out in attachment 1 hereto:**
 - (i) **the strata plan of the re-subdivision;**
 - (ii) **the statement of unit entitlements for the re-subdivision and the licensed valuer's certificate (form 27) for the re-subdivision; and**
 - (iii) **the plans and specifications of the building or other improvements shown on the proposed floor plan or the proposed location plan (but not shown on the floor plan or the location plan of the original strata plan) for the re-subdivision.**
 - (b) **in respect of the third stage of the development on the parcel, as set out in attachment 2 hereto:**
 - (i) **the strata plan of the further re-subdivision;**

- (ii) the statement of unit entitlements for the further re-subdivision and the licensed valuer's certificate (form 27) for the re-subdivision; and
 - (iii) the plans and specifications of the building or other improvements shown on the proposed floor plan or the proposed location plan (but not shown on the floor plan or the location plan of the original strata plan or the strata plan of re-subdivision for the second stage) for the further re-subdivision.
- (2) The original proprietor of the parcel will be responsible for all fees and costs associated with the strata plans of the re-subdivision and the further re-subdivision.
- (3) The re-subdivision and the further re-subdivision of the parcel will be in accordance with sections 8, 8A, 8B and 8C of the Act and Item 8 of Schedule 2A of the Act.

WARNING

THE PROPOSED RE-SUBDIVISION AND FURTHER RE-SUBDIVISIONS IN THIS BY-LAW ARE NOT BINDING ON THE WESTERN AUSTRALIAN PLANNING COMMISSION, LOCAL GOVERNMENT AUTHORITY, OR ANY OTHER PUBLIC OR STATUTORY AUTHORITY. ANY OF THESE AUTHORITIES MAY NOT APPROVE, OR MAY REQUIRE CHANGES BEFORE APPROVING, THE PROPOSED RE-SUBDIVISION AND ANY FURTHER RE-SUBDIVISIONS.

46. DEVELOPMENT OF LOTS

The development and any redevelopment of the lots on the parcel must comply with the development approval issued or to be issued by the Shire of Roebourne or such alternative development approval as the Shire of Roebourne may grant which complies with the requirements of the Shire of Roebourne town planning scheme and planning policies. Despite any other provisions of the by-laws in Schedule 1 and Schedule 2, this by-law cannot be removed or varied without the consent of the Western Australian Planning Commission.

47. BUILDING WORKS

- (1) The strata company authorises the original proprietor of the parcel and its agents, employees and contractors to undertake any works of any nature or description on the parcel (**Building Works**) which it may need to carry out in order to complete the construction of the development on the parcel (and register with Landgate the final strata plan of re-subdivision as referred to in by-law 45(1) including the following:
- (a) making such noise as is reasonable in order to complete the Building Works;
 - (b) erecting such barriers, fences, hoardings and signs as it deems necessary to facilitate any of the Building Works;
 - (c) taking exclusive and sole possession of any parts of the common property as it may need to have exclusive possession of in order to carry out any of the Building Works;
 - (d) excluding all and any proprietors or occupiers from any parts of the common property as may be necessary in order to carry out any of the Building Works;
 - (e) erecting "For Sale", promotional advertising, or other signs as the original proprietor of the parcel or its nominee may require on any part of the common property;
 - (f) granting rights to use or access through or over the common property to third parties on such terms and conditions as the original proprietor of the parcel or its agent thinks fit; and

- (g) using whatever rights or way or points of egress and ingress to the parcel as may be necessary to carry out any of the Building Works and blocking for whatever periods are necessary any rights of way or points of egress and ingress to the parcel in order to carry out any works.
- (2) All other by-laws in these by-laws shall not in any way apply to or be enforceable against the original proprietor of the parcel or its agents, employees or contractors where to do so would prevent, hinder, obstruct or in any way interfere with the Building Works.

48. CONTROLS ON ENTRY INTO PARCEL

- (1) Entry into the parcel is restricted to proprietors, occupiers, residents and their contractors, employees, agents, visitors and guests.
- (2) The strata company and the Manager may control and monitor access to the parcel by tradespeople, delivery vehicles, service contractors and other authorised persons.

49. EXCLUSIVE USE RIGHTS OVER COMMON PROPERTY

- (1) In accordance with section 42(8) of the Act, rights of exclusive use and enjoyment over that volume of common property occupied by any air conditioning plant, any hot water system and any machinery that services or relates to the air conditioning or hot water system of an individual lot within the strata scheme, are granted to the registered proprietor of the lot to which such air conditioning plant, hot water system and/or machinery relates.
- (2) All costs in relation to any maintenance, repairs or replacements to any part of the common property that may become necessary due to the repair, maintenance or replacement of any air conditioning plant, hot water system and/or machinery for which a proprietor is responsible shall be the responsibility of that proprietor.
- (3) A proprietor shall have access at all reasonable times to areas of common property external to the lot that may be required for any maintenance, repair or replacement to any air conditioning plant, hot water system or machinery installation that is the responsibility of that proprietor, provided that the proprietor has first given reasonable notice to that effect, verbally or in writing, to the Manager that such access is required.

50. GST

- (a) In these by-laws:
GST law has the same meaning as GST law in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
GST means the same as in the GST law.
- (b) Unless otherwise stated, all amounts payable by one party to the other party under these by-laws are exclusive of GST.
- (c) A recipient of a taxable supply made under these by-laws must pay to the supplier an amount equivalent to any GST paid or payable by the supplier in respect of the taxable supply subject to the supplier issuing a valid tax invoice in accordance with the GST law to the recipient.
- (d) A party's obligation to reimburse the other party for an amount paid or payable to a third party includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.
- (e) Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this agreement.

51. MEDIATION OF DISPUTES

- (1) In the event that a proprietor, occupier or other resident bound by these by-laws is in dispute with another proprietor, occupier or other resident or the strata company or Manager and such parties cannot resolve such a dispute then the provision of this by-law shall take effect.
- (2) A party asserting a dispute must give the other party notice of such dispute (**Dispute Notice**).
- (3) The Dispute Notice must be served by registered mail and must state:
 - (a) what is in dispute;
 - (b) **the arguments of the party giving the Dispute Notice; and**
 - (c) what should be done to rectify the dispute.
- (4) The party receiving the Dispute Notice must respond in writing within 7 days of receiving the Dispute Notice from the other party.
- (5) If the dispute is not resolved by the exchange of notices, then the parties must confer in the presence of a Mediator to attempt to resolve the dispute.
- (6) The conference with the Mediator must be held within 14 days from a notice convening the conference being sent by one of the parties.
- (7) The decision of the Mediator will be final and binding on the parties. The Mediator must also determine which party or parties pays the costs of and incidental to the resolution of the dispute.
- (8) Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in subsequent proceedings.
- (9) During the dispute resolution process the parties must continue to perform their obligations in accordance with the by-laws.
- (10) For the purposes of this by-law a Mediator shall mean a Law Society of Western Australia approved mediator to be agreed between the parties or failing agreement to be appointed on the application of either party by the President of the time being of the Law Society of Western Australia Inc. (President). The person agreed or appointed must have sufficient expertise in the areas in which the parties are in dispute, however, if an appointment is made by the President then that appointment is not subject to challenge by the parties on any grounds.

52. AMENDMENT OF BY LAWS

- (1) Subject to the provisions of these by-laws, the by-laws in Schedule 1 and Schedule 2 may only be amended or repealed or added to in a manner permitted by section 42 of the Act.
- (2) Any purported amendment, repeal or addition to any by-law will be null and void unless made in compliance with the terms of by-law 52(1).

THE SCHEDULE 2 BY-LAWS ARE AMENDED, REPEALED OR ADDED TO AS FOLLOWS –

By-laws 1, 7, 10 and 12(c) are hereby repealed and the following by-laws added –

16. PARKING ON COMMON PROPERTY

- (1)
 - (a) The strata company has designated car parking areas on the common property which the strata company may vary from time to time. Car parking bays have not been designated to any particular lots.
 - (b) A proprietor, occupier or resident of a lot has the right to use one car bay being part of the common property, and when not in use by that proprietor, occupier or resident the car bay may be used by a visitor to that proprietor, occupier or resident.
 - (c) There are more car bays designated on the common property than there are lots and a proprietor, occupier or resident of a lot or his or her visitor may use one further vacant car bay.
 - (d) At no time will a proprietor, occupier or resident of a lot or his or her visitor use more than two car bays on the common property at any one time, irrespective of availability, without the prior written approval of the strata company or the Manager.
- (2)
 - (a) In addition to the car bays, there are marked parking spaces for caravans, campervans, trailers, marine crafts and commercial vehicles.
 - (b) A proprietor, occupier and other resident of a lot shall not park a caravan, campervan, trailer, marine craft or commercial vehicle on the common property other than in one of the spaces provided for same without the prior written approval of the strata company or the Manager.
 - (c) A proprietor, occupier and other resident of a lot or his or her visitor shall not use more than one other car bay when the proprietor occupier and other resident has a caravan, campervan, trailer, marine craft or commercial vehicle parked on the common property.
 - (d) A proprietor, occupier and other resident of a lot must ensure that his or her visitor do not park a caravan, campervan, trailer, marine craft or commercial vehicle on the common property.
- (3) The strata company will not be responsible for any:
 - (a) **damage from any cause whatsoever any motor vehicle, caravan, campervan, trailer, marine craft or commercial vehicle may sustain at any time or whilst being moved by an employee or agent of the strata company;**
 - (b) **theft of any motor vehicle, caravan, campervan, trailer, marine craft or commercial vehicle or for the theft of any parts equipment or contents thereof howsoever occurring;**
 - (c) **theft of any of the goods or belongings of any proprietor, occupier and other resident of a lot or any visitor whether the theft occurred in a lot or on common property; or**
 - (d) **any injuries which any proprietor, occupier, resident or visitor may sustain however or wheresoever occurring.**
- (4) The proprietors and occupiers and their visitors must comply with the directions and published notices of the strata company and/or the Manager in relation to all parking areas on the common property and ingress and egress from same.
- (5) A proprietor, occupier or other resident of a lot must not leave a motor vehicle, caravan, campervan, trailer, marine craft or commercial vehicle unattended or in a position where it is likely to be a nuisance or obstruct access to or ingress or egress

to any car parking area, lot, any part of the common property or any part of the parcel except as authorised by the strata company or the Manager.

- (6) A proprietor, occupier or other resident of a lot must not park nor stand on a lot any commercial vehicle, truck, bus or mobile machinery without the prior written approval of the strata company or the Manager.
- (7) Each proprietor will indemnify and keep indemnified the strata company and the Manager and their respective employees and agents against all costs claims actions suits demands and expenses arising from any loss or damage caused to any motor vehicle, caravan, campervan, trailer, marine craft or commercial vehicle belonging to the proprietor, occupier or resident of a lot or any visitor to the lot or any injury to or death of any person caused by such proprietor, occupier, resident or visitor using any of the land in the parcel;

17. SPEED LIMITS

No motor vehicle will exceed a speed limit of 15 kilometres per hour while travelling within the parcel and it shall be the responsibility of all proprietors, occupiers and residents to ensure this by-law is adhered to by all motor vehicles entering the parcel.

18. NO MOTOR VEHICLE REPAIRS

No motor vehicle, caravan, campervan, trailer, marine craft or commercial vehicle may be serviced, repaired or restored on any part of the common property without the prior written approval of the strata company or the Manager.

19. SIGNS

- (1) Except for the Manager Lot and subject to by-law 19(3), no proprietor, occupier or other resident will erect or maintain any business or trade sign or display on any part of the parcel.
- (2) A proprietor, occupier or other resident must not erect or cause to be erected any signs advertising the sale or lease of a lot.
- (3) Nothing contained in this by-law shall restrict the right of:
 - (a) the Manager at any time to display on any part of the common property such signs as the Manager sees fit; or
 - (b) the original proprietor of the parcel to display on any part of the common property such signs as the original proprietor sees fit in the period up until the final strata plan of re-subdivision (as referred to in by-law 45(1)(b) in Schedule 1) is registered with the Landgate.

20. DAMAGE TO COMMON PROPERTY

A proprietor, occupier or other resident of a lot will be responsible for any damage to any part of the common property through misuse by the proprietor, occupier or other resident or his, her or its employees, agents and other invitees and shall be liable to pay for any repairs to make good the damage.

21. DAMAGE TO COMMON PROPERTY

A proprietor, occupier or other resident of a lot will be responsible for any damage to any part of the common property, or the fixtures or fittings on the common property, caused or contributed to by any misuse or negligence by the proprietor, occupier or other resident of a lot or any, servant, agent, visitor, invitee or licensee of any such person.

22. GARBAGE DISPOSAL

- (1) A proprietor, occupier or resident of a lot:
 - (a) shall maintain within their lot, or on such part of the common property as may be authorized by the strata company, in clean and dry condition and adequately covered, a receptacle for garbage;

- (b) comply with all local government authority by-laws and ordinances relating to garbage disposal; and
 - (c) ensure that the health, hygiene and comfort of the proprietor, occupier or resident of any other lot is not adversely affected by their disposal of garbage.
- (2) The strata company may arrange for the regular collection and disposal of the garbage and recycling bins and shall ensure the same are washed and cleaned. The strata company shall include the costs for this service in the annual budget.

23. SWIMMING POOL BY-LAWS

- (1) The Pool Area on the common property is intended for the sole use of proprietors, occupiers and residents of lots from time to time and are not open to the public or for use by any person who is not a proprietor, occupier and resident of a lot, provided that a child under the age of 10 years may only use the Pool Area when accompanied by an adult exercising effective control who must remain present at all times while the child is in the Pool Area. The responsibility for the safety of a child in the Pool Area is the responsibility of that adult.
- (2) The Manager may temporarily suspend admittance to the Pool Area, or clear all or any part of same if, in its opinion, the action is necessary or desirable for the safety or well being of authorised pool users or if the water treatment equipment is not functioning correctly or is being repaired, or for other like reason.
- (3) Every person using the Pool Area must:
 - (a) obey all reasonable directions of the Manager with regard to that use and must not in any way obstruct the Manager in its control of the Pool Area and of persons therein.
 - (b) enter and exit from the entrances or exits provided for that purpose.
 - (c) be properly attired in a costume so as to preserve public decency and must so cover the body as to prevent indecent exposure of the person. Any person who in the opinion of the Manager commits a breach of this by-law may be required by the Manager to resume ordinary clothing and must forthwith comply with that requirement.
- (4) A person must not:
 - (a) enter or be in or upon the Pool Area while in an intoxicated condition.
 - (b) approach or enter any swimming pool if in the opinion of the Manager they are dirty or otherwise unfit to use the pool including, without limitation, because they are affected by or suffering from an infectious, contagious or offensive disease or skin complaint.
 - (c) bring or deposit any rubbish in the Pool Area.
 - (d) eat in or take into the swimming pool food, drink or confectionery of any kind.
 - (e) smoke tobacco or any other substance in the pool areas or in any portion of the Pool Area where notices direct that smoking is not permitted.
 - (f) behave in an unseemly, improper, disorderly or riotous manner, or swear or use any indecent, obscene or abusive language or gamble or misconduct themselves in the Pool Area.
 - (g) climb up or on any fence, wall, partition or roof of the Pool Area.
 - (h) waste or wastefully use fresh water in the Pool Area.
 - (i) spit or expectorate in the Pool Area or commit any nuisance therein.
 - (j) use soap in any part of the Pool Area;

- (j) use any detergent or any other substance, oil or preparation whilst in any pool (other than normal insect repellent and sunburn creams) which might cause the water to be discoloured or contaminated or turbid or, in the opinion of the resident caretaker, in any way unfit;
 - (k) foul or pollute the water in any pool;
 - (l) bring into any part of the pool areas or place thereon any chemical substance, liquid or powder (excepting the person cleaning and maintaining the swimming pool in the Pool Area generally).
 - (m) damage or interfere with or use improperly any part of the Pool Area or the furniture, fittings or equipment, nor remove from the Pool Area any of the furniture, fittings or equipment. The position of the fittings or equipment may only be changed by the Manager.
 - (n) use the Pool Area for the private use of any one or more individuals to the exclusion of the authorised users and no person may for profit, teach, coach or train any other person in the Pool Area.
- (5) The Manager may refuse admission to or remove or cause to be removed from the Pool Area:
- (a) any person who, in the opinion of the Manager, is guilty of a breach of any of the provisions of this by-law or who, by his past or present conduct, is deemed undesirable and that person must, upon the request of the Manager immediately leave the Pool Area, quietly and peaceably.
 - (b) any person affected by or who appears to the Manager to be affected by or suffering from an infectious, contagious or offensive disease or skin complaint may not remain in the Pool Area.
- (6) Neither the strata company, nor the Manager, nor any officer or employee of the strata company or Manager, will be in any way responsible for any article lost by or stolen from any person whilst in or about the Pool Area or for any article damaged or destroyed whilst in upon or about the Pool Area.
- (7) The Manager may post a copy of these by-laws for the Pool Area within the Pool Area.

DATED

20

SIGNATURE OF APPLICANT

NOT REQUIRED FOR SALES DISCLOSURE

SIGNED BY PERSONS HAVING REGISTERED INTERESTS AND CAVEATORS (IF ANY)

ENCUMBRANCE DOCUMENT & NO MORTGAGE

SIGNATURE

NOT REQUIRED FOR SALES DISCLOSURE

FOR THE **SECOND** STAGE OF THE DEVELOPMENT,
THE STRATA PLAN OF THE RE-SUBDIVISION,
THE STATEMENT OF UNIT ENTITLEMENTS,
THE LICENSED VALUER'S CERTIFICATE AND
THE BUILDING PLANS AND SPECIFICATIONS

FOR THE **THIRD** STAGE OF THE DEVELOPMENT,
THE STRATA PLAN OF THE RE-SUBDIVISION,
THE STATEMENT OF UNIT ENTITLEMENTS,
THE LICENSED VALUER'S CERTIFICATE AND
THE BUILDING PLANS AND SPECIFICATIONS

ANNEXURE “D”

MANAGEMENT AND CARETAKER AGREEMENT

THE RANGES - KARRATHA

Lot 1090 Karratha Road,
Karratha, Western Australia

INDEX

1.	INTERPRETATION.....	1
1.1	DEFINITIONS	1
1.2	INTERPRETATION.....	3
1.3	DEFINITIONS IN STRATA TITLES ACT	3
2.	APPOINTMENT AS CARETAKER AND MANAGER	4
2.1	APPOINTMENT	4
2.2	MANAGER'S RIGHT TO RENEW	4
3.	MANAGEMENT SERVICES	4
3.1	PROVISION OF MANAGEMENT SERVICES	4
3.2	ADDITIONAL OBLIGATIONS	5
3.3	COMMUNICATION SYSTEM.....	5
3.4	MANNER OF PERFORMANCE	5
4.	DUTIES AS CARETAKER.....	6
4.1	REPAIRS, MAINTENANCE AND CLEANING	6
4.2	POWERS OF MANAGER AS CARETAKER	7
4.3	MONITOR BY-LAWS	7
4.4	ACCOUNT	7
4.5	KEYS	8
4.6	RESIDENT CARETAKER	8
4.7	COMPLY WITH DIRECTIONS	9
4.8	ADDITIONAL DUTIES	9
4.9	MANNER OF PERFORMANCE	9
5.	REMUNERATION.....	10
5.1	ANNUAL REMUNERATION.....	10
5.2	ANNUAL REVIEW.....	10
5.3	ADDITIONAL REMUNERATION	10
5.4	EXPENSES.....	10
6.	OBLIGATIONS OF STRATA COMPANY	11
6.1	GENERAL OBLIGATIONS	11
6.2	ALTERATIONS TO BY-LAWS.....	12
6.3	USE THE BUSINESS NAME, ETC.....	12
7.	DEFAULT	12
7.1	TIME OF THE ESSENCE	12
7.2	DEFAULT	12
7.3	CONSEQUENCE OF DEFAULT	13
8.	COSTS AND EXPENSES	13
8.1	COSTS AND STAMP DUTY	13
8.2	DEFAULT COSTS	13
9.	GST.....	14
10.	DISPUTES.....	14
10.1	DISPUTE RESOLUTION	14
10.2	DETERMINATION BY AN EXPERT.....	14
10.3	AGREEMENT CONTINUES	14
10.4	PROCEDURE	14
11.	FORCE MAJEURE	15
12.	ASSIGNMENT.....	15
12.1	ASSIGNMENT BY THE MANAGER	15
12.2	CHANGE IN SHARE HOLDING	16
13.	TRANSFER OF MANAGEMENT RIGHTS.....	16
13.1	TRANSFER OF MANAGEMENT RIGHTS	16
13.2	CONSENT OF STRATA COMPANY TO NEW CARETAKING ARRANGEMENTS.....	16

(ii)

13.3	PRICE PAYABLE ON TRANSFER.....	16
13.4	VOTING	17
13.5	COSTS	17
13.6	ASSISTANCE.....	17
14.	STAGED DEVELOPMENT	17
14.1	STAGED DEVELOPMENT.....	17
14.2	COMPLETION OF FURTHER STAGE.....	17
15.	NOTICES	18
16.	GENERAL.....	18
16.1	NO PARTNERSHIP.....	18
16.2	PARTIES TO ACT IN GOOD FAITH	18
16.3	FURTHER ASSURANCES	18
16.4	ENTIRE AGREEMENT.....	18
16.5	SEVERANCE.....	18
16.6	WAIVER	19
16.7	AUTHORITY TO COMPLETE	19
16.8	GOVERNING LAW	19

**MANAGEMENT AND CARETAKER AGREEMENT
THE RANGES - KARRATHA**

AGREEMENT dated

20

PARTIES

1. _____

Western Australia, _____; Fax: _____ (**Manager**)

2. **THE OWNERS OF THE RANGES - KARRATHA STRATA PLAN NO.**

[_____] a company constituted under the Strata Titles Act 1985 (WA) of

Western Australia, _____; Fax: _____ (**Strata Company**)

OPERATIVE PROVISIONS:

RECITALS

- A. Under the Strata Titles Act the Strata Company is responsible for the control and management of the Common Property for the benefit of all the proprietors of Lots.
- B. The Strata Company has agreed to engage the Manager and the Manager has agreed to accept its engagement as the caretaker of the Common Property upon and subject to the terms and conditions set out in this agreement.
- C. The Strata Company has also agreed to appoint the Manager and the Manager has agreed to accept such appointment for the purpose of providing the Management Services to the Participating Owners upon the terms and conditions set out in this agreement.

1. INTERPRETATION

1.1 Definitions

In this agreement, unless the context otherwise requires

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

Common Property means the common property of the Complex as defined in the Act.

Complex means the serviced apartment development known as "THE RANGES - KARRATHA" situated at lot 1090 Karratha Road, Karratha, Western Australia comprising individual lots of short stay accommodation and associated infrastructure, improvements, facilities and recreational amenities on the Common Property.

Council means the council of the Strata Company constituted or deemed to be constituted under the Strata Titles Act.

CPI means the Consumer Price Index (all groups) for Perth published from time to time by the Australian Bureau of Statistics, but in the event that there is any suspension or

discontinuance of such index then it shall mean any index published by the Australian Bureau of Statistics which reflects the fluctuations of the cost of living in Perth.

Insolvency Event means in respect of any person, being in liquidation, provisional liquidation or under administration, having a controller (as defined in section 9 of the Corporations Act) appointed to it or any of its property, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), as a result of the operation of section 459F(1) of the Corporations Act being taken to have failed to comply with a statutory demand, being unable to pay its debts as and when they fall due and payable, in the case of a natural person dying or having a trustee in bankruptcy appointed, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, entering into any compromise, arrangement or assignment, whether formal or informal, with any of its creditors, or anything analogous or having a substantially similar effect to any of the events specified above occurs.

Letting Agreements mean the letting agreements each between a Participating Owner and the Manager by which a Participating Owner appoints the Manager to let and manage his or her Lot.

Lots means the strata lots in the Complex and **Lot** means any one of such lots.

Management Rights means:

- (a) the Manager's rights under this agreement;
- (b) any freehold or leasehold interest in a property owned or occupied by the Manager or a related party or associate of the Manager for the purpose of providing the services under this agreement; and
- (c) all other real and personal property and contractual rights of the Manager and any related party or associate of the Manager that facilitates the managing and letting of Lots owned by Participating Owners.

Management Services means the on-site letting services to be provided by the Manager in connection with the letting of Lots including:

- (a) bookings for accommodation at the Complex;
- (b) reception services (including check-in and check-out and keeping a register of tenants);
- (c) the hire or rental of chattels and equipment;
- (d) laundry services (including replacement of linen);
- (e) cleaning services including cleaning at least once each week each Lot that is occupied by the same person(s) for more than one week;
- (f) room service;
- (g) sales of food, household goods and beverages;
- (h) services related to travel and tourism;
- (i) advertising, marketing and promoting the Complex as short stay accommodation in accordance with the terms of the Letting Agreements;
- (j) making available the main telephone and internet system for the Complex;
- (k) providing in-house films and entertainment; and
- (l) providing other services:
 - (1) in relation to the servicing of Lots; and
 - (2) ancillary to the letting of Lots and the operation of the Complex.

Participating Owners means the proprietors of Lots who use the Management Services.

Plan means the strata plan of the Complex registered or to be registered under the Strata Titles Act.

Residence means the lot on the Plan nominated by the original proprietor of the parcel (as defined in section 3(1) the Strata Titles Act) on which the Complex is situated.

Strata Titles Act means the Strata Titles Act 1985 (WA).

Term means the period of 5 years commencing on the date the Strata Company resolves in general meeting to enter into this agreement, subject to the provisions in this agreement for early termination.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa.
- (b) words of one gender include every other gender.
- (c) words denoting individuals include a firm, body corporate, an unincorporated association and any governmental or other public body or authority of any kind and vice versa.
- (d) references to any statute, ordinance, code or other law includes regulations and other instruments under any of them and amendments, re-enactments, replacements or consolidations of any of them occurring at any time.
- (e) headings shall not effect the construction or interpretation of this agreement.
- (f) references to a clause, paragraph, annexure or schedule is a reference to the same in this agreement.
- (g) a reference to a party in this agreement includes a party's personal representatives, successors in title and permitted assigns.
- (h) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally.
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.
- (j) a reference to a document includes that document as amended or replaced.
- (k) a reference to a whole thing includes a reference to part of that thing.
- (l) a reference to a professional body includes the successors to or substitutes for that body.
- (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.
- (n) where a word or phrase is defined in this agreement, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.
- (o) money means Australian currency unless otherwise specified.
- (p) "include", "including" and other similar expressions are not words of limitation.
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (r) if an act prescribed under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.
- (s) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
- (t) a reference to time is a reference to Perth time.

1.3 Definitions in Strata Titles Act

Except where the same have been amended by, and for the purpose of this agreement, as set out in clause 1.1, the words used in this agreement that are defined in the Strata Titles Act shall have the same meanings in this agreement as they have in the Strata Titles Act.

2. APPOINTMENT AS CARETAKER AND MANAGER

2.1 Appointment

The Strata Company appoints the Manager for the Term:

- (a) as the caretaker of the Common Property; and
- (b) to provide the Management Services,

and the Manager accepts its appointment upon the terms and conditions of this agreement.

2.2 Manager's right to renew

- (a) On the expiration of the Term this agreement shall be automatically renewed on the terms set out in this clause unless:
 - (1) there is an outstanding breach of this agreement by the Manager entitling the Strata Company to terminate this agreement; or
 - (2) the Manager gives written notice to the Strata Company not later than 3 months prior to the end of the Term that the Manager does not wish to continue with this agreement.
- (b) The agreement for the renewed term will be upon the same terms and conditions as are contained in this agreement except that:
 - (1) the renewed agreement will begin immediately after the end of the Term and will be for the term first specified in paragraph (d); and
 - (2) the renewed agreement will exclude any automatic renewal of the Term that has already occurred:
 - (A) if the particulars of the renewed term are the only particulars specified in paragraph (d), by deleting this clause 2.2 from the renewed agreement; or
 - (B) if the particulars of more than one renewed term are specified in paragraph (d), by deleting the particulars of the renewed term first specified from paragraph (d) in the renewed agreement.
- (c) If required by either party, to evidence the agreement for the renewed term, the parties hereto shall as soon as practicable enter into a deed of extension of this agreement prepared by the Strata Company's solicitors and the Manager shall pay the Strata Company's reasonable legal costs of preparing such deed and all stamp duty thereon.
- (d) The agreement may be automatically renewed for 4 further terms each of 5 years.
- (e) The Strata Company is not entitled to receive any premium, payment or benefit in connection with any renewal, extension, variation or assignment of this agreement or any extension or variation of this agreement.

3. MANAGEMENT SERVICES

3.1 Provision of Management Services

During the Term the Manager must:

- (a) offer the Management Services to the owners of Lots and their tenants and guests.
- (b) provide the Management Services from within the Complex by maintaining and staffing an office and reception area within the Complex during the hours reasonably necessary for the proper and adequate provision of the Management Services.
- (c) supervise the standard of tenants of Participating Owners and use its best endeavours to ensure that no nuisance is created by those tenants or their guests.
- (d) use its best endeavours to improve and expand the Management Services where appropriate, including by erecting signs advertising the Management Services in

the Complex to the extent permitted by the by-laws of the Strata Company and any other applicable laws, provided that the number, size, type, design and in location of such signs are not inconsistent with the general appearance and amenity of the Complex and do not interfere with the use and enjoyment of the Complex by proprietors, tenants and other occupiers of Lots.

3.2 Additional obligations

In providing the Management Services the Manager must:

- (a) comply with all applicable laws, regulations, by-laws and orders and any lawful directions of any government body or authority having jurisdiction in respect of the Complex;
- (b) comply with the by-laws of the Strata Company;
- (c) be licensed as required by law;
- (d) undertake the Management Services in a manner that does not interfere with the quiet enjoyment and occupation of the Lots;
- (e) not give, take or seek any secret commission or bribe;
- (f) not discriminate between Participating Owners;
- (g) use its best endeavours to treat all Participating Owners and their tenants fairly;
- (h) not solicit the Participating Owners for any purpose other than in respect of the provision of the Management Services;
- (i) account to the Participating Owners annually in relation to any expenditure made on behalf of Participating Owners;
- (j) keep proper records of all lettings of Lots;
- (k) upon request, make full details of all lettings of a particular Lot available to the Participating Owner of that lot;
- (l) meet with representatives of the Strata Company and its council when reasonably required and arrange and attend meetings of the Strata Company and its council; and
- (m) assist a proprietor of a Lot who is not Participating Owner, if he or she so wishes, with accommodation arrangements in respect of the Lot by arranging for the booking in and out of guests and the cleaning and servicing of the Lot at the expense of the proprietor.

3.3 Communication System

The parties agree that the Manager:

- (a) shall at the cost of the Strata Company maintain the main telephone and internet system installed in the Complex (**Communication System**) in operational condition at all times.
- (b) shall make the Communication System available for use by Participating Owners and other proprietors and occupiers of Lots and their guests at reasonable commercial rates comparable to rates charged by similar standard serviced apartment complexes.
- (c) may make profits from making the Communication System available for use in the manner specified in paragraph (b).

3.4 Manner of performance

The Manager shall provide the Management Services:

- (a) at the Manager's expense unless otherwise expressly provided to the contrary by this agreement,
- (b) to the best of the Manager's ability;

- (c) exercising due care, diligence and skill;
- (d) in a competent manner and to a standard that is reasonably appropriate to a serviced apartment complex of the standard of the Complex;
- (e) using good methods and practices appropriate for the letting of Lots in the Complex; and
- (f) in a manner that does not discriminate between the proprietors, tenants and other occupiers of Lots owned by Participating Owners and the proprietors, tenants and other occupiers of Lots owned by non Participating Owners.

4. DUTIES AS CARETAKER

4.1 Repairs, maintenance and cleaning

During the Term, the Manager shall as the caretaker of the Common Property:

- (a) at the cost of the Strata Company perform, or arrange and supervise the performance of, all work and services required to keep the Common Property in a clean and tidy condition including:
 - (1) cleaning all walkways, lobbies, stairways, utility rooms, paved areas, car parks, grounds and recreation areas forming part of the Common Property;
 - (2) regularly tending to landscaped areas, gardens and lawns (including automatic watering) and trees forming part of the Common Property;
 - (3) cleaning all glass and windows forming part of the Common Property;
 - (4) cleaning the pool and all areas around the pool;
 - (5) ensuring that vermin, pests, insects and noxious weeds are eradicated or controlled by a certified pest control company and that such company provides regular maintenance to the Complex; and
 - (6) arranging for the collection and removal of all garbage, rubbish, refuse and waste from Common Property and keep the Common Property where the garbage, rubbish, refuse and waste is housed clean and tidy at all times.
- (b) at the cost of the Strata Company perform, or arrange and supervise the performance of, all work and services required to keep the Common Property in good working order and repair (fair wear and tear excepted) including:
 - (1) ensuring all lighting in the Common Property is operative and maintained;
 - (2) ensuring all eaves and downpipes and all drains running from or serving the Common Property are kept clear and functioning efficiently;
 - (3) ensuring all firefighting equipment is operative and maintained, and shall arrange for the inspection of the equipment from time to time by an appropriate person to ensure it complies with all relevant statutory requirements;
 - (4) arranging for mechanical, electrical and building services to be regularly maintained by a suitable qualified person;
 - (5) arranging all maintenance and supply contracts required by the Strata Company and ensuring such contracts remain in force and are carried out in accordance with their terms;
 - (6) attending to any and all emergencies including security breaches and vandalism, so as to maintain the Complex to an appropriate standard; and
 - (7) liaising with all relevant local and statutory authorities in relation to any requirements of those authorities so far as they affect the Common Property or the Complex.
- (c) compile and maintain a record of all items in the Complex which require regular maintenance and keep a written record of all work performed in relation to such

items, which list and records the Strata Company or its representative may inspect at any reasonable time.

- (d) promptly report to the Strata Company or its representative on all material things requiring repair beyond the scope of the Manager's duties as caretaker and on all matters creating a hazard or danger and take interim remedial action where appropriate.
- (e) as requested by the Strata Company from time to time, obtain quotes (including insurance quotes) for repairs, maintenance and replacements and complete insurance claim documents where appropriate.
- (f) comply with all written directions of the Strata Company (not inconsistent with the provisions of this agreement) regarding policies or procedures to be observed by the Manager in carrying out its duties as caretaker.

4.2 Powers of Manager as caretaker

In the performance of its duties as the caretaker of the Common Property, with the prior consent of the Strata Company, which consent will not be unreasonably withheld, the Manager has the power and authority to:

- (a) engage servants, agents, contractors, sub-contractors and consultants to do all things which are necessary or advisable to properly perform its duties hereunder;
- (b) negotiate and enter into (and extend, vary or cancel) agreements for the supply of materials, equipment and services in connection with the Common Property;
- (c) personally undertake and perform any of the work and services under paragraphs (a) and (b); and
- (d) in the case of emergency or accident, take any action necessary for the protection of life and property.

4.3 Monitor by-laws

The Manager as the caretaker of the Common Property:

- (a) shall monitor the observance of the by-laws of the Strata Company by the proprietors and the occupiers (including their guests) for the time being of the Lots and report serious or persistent breaches to the Strata Company.
- (b) has power on behalf of the Strata Company, to the same extent as that power may be exercisable by the Strata Company, to evict or deal with any person creating a nuisance or annoyance on the Common Property or committing any breach of the by-laws of the Strata Company.
- (c) shall regularly during each day inspect Common Property to ensure that no unauthorised persons are using Common Property and the facilities therein.
- (d) shall take all reasonable and lawful steps to ensure that proper and appropriate standards of behaviour are maintained by persons in or using the Common Property.
- (e) shall at the direction and expense of the Strata Company supply and erect signs and notices on Common Property for the proper and efficient control, management, use and enjoyment of Common Property and in particular car parking signs and notices.

4.4 Account

As the caretaker of the Common Property, the Manager must:

- (a) fully and promptly account to the Strata Company and, where applicable, to the proprietors of the Lots for all funds and other property of the Strata Company or the proprietors (as the case may be) coming into the possession or control of the Manager.

- (b) credit the Strata Company with the full benefit of any discounts, commissions or rebates obtained with respect to any purchase or expenditure on behalf of the Strata Company.

4.5 Keys

The master key or keys for any building or other area under the control of the Strata Company must be kept in the control and possession of the Manager at all times and shall not be surrendered to any person except an authorised representative of the Strata Company. As the caretaker of the Common Property, the Manager shall allow any lawfully authorised person (including occupants of any Lot and their guests) access to any part of the Common Property at all reasonable times.

4.6 Resident caretaker

- (a) As the caretaker of the Common Property, the Manager must provide the services of a natural person as the resident caretaker of the Complex who shall permanently occupy the Residence and whose duties shall include the following:
 - (1) **(legal requirements)** ensuring the Strata Company complies with all relevant statutes, regulations and by-laws including those relating to fire safety, workplace health and safety and public health, ensuring the Strata Company complies with all notices, orders and requirements of any government or other competent authority relating to the Complex and notifying all occupants of the Lots of fire safety requirements and carrying out for the Strata Company mandatory inspection of fire safety equipment.
 - (2) **(notice of non-compliance)** notifying the Strata Company of any failure to comply with laws and requirements specified in subparagraph (1).
 - (3) **(by-laws)** monitoring and ensuring, so far as is reasonably practicable, compliance with the by-laws of the Strata Company and advising the Strata Company of any serious or persistent breaches of the by-laws.
 - (4) **(cleaning)** keeping the Common Property and other property of the Strata Company clean and tidy, or arranging and supervising appropriate persons to keep clean and tidy the Common Property and other property of the Strata Company including keeping the Common Property drains clear, cleaning the pool and spa daily and keeping the chemical levels and temperature of the pool and spa at an appropriate level for the safety, comfort and health of users.
 - (5) **(gardening)** maintaining the lawns and gardens of the Complex, or arranging and supervising appropriate persons to maintain the lawns and gardens of the Complex, including watering, fertilising, weeding, mulching and top dressing, and mowing the lawns and trimming the edges.
 - (6) **(repairs and maintenance)** maintaining the Common Property and other property of the Strata Company in good order and condition by undertaking, or arranging and supervising the undertaking by skilled trade persons, of all necessary repairs and maintenance, other than repairs and maintenance that are covered by other contracts with the Strata Company.
 - (7) **(materials and services)** obtaining quotes for materials and services necessary to perform the Manager's duties as caretaker hereunder and, as instructed by the Strata Company from time to time, and buying materials and engaging services for the Strata Company.
- (b) In respect of the duties of the resident caretaker specified in subparagraphs (a)(4), (5) and (6), the Manager may:
 - (1) contract out the duties to outside contractors or subcontractors; and/or
 - (2) undertake the duties itself,in each case at the expense of the Strata Company, provided that:

- (3) such expense in each year shall not be greater than the amount(s) specified in the approved budget of the Strata Company for that year for such items without the prior approval of the Strata Company which approval shall not be unreasonably withheld; and
 - (4) the approved budget of the Strata Company in each year for such items shall be increased by not less than the trends disclosed by any variation by way of increase in proportion that the CPI as determined immediately prior to the commencement of that year bears to the CPI as determined immediately prior to the commencement date of the previous year.
- (c) Notwithstanding any other provision of this agreement, if any duties of the Manager hereunder require work of a specialist nature, the Manager's duties in respect thereof are limited to arranging and supervising appropriate outside consultants and/or contractors at the expense of the Strata Company with the prior approval of the Strata Company which approval shall not be unreasonably withheld.
- (d) The Manager has the right to appoint a suitable replacement for the resident caretaker from time to time for such periods as the Manager may decide for the purpose of allowing such person to have reasonable holidays or other leave, provided that:
- (1) the replacement is properly informed in respect of the duties of the resident caretaker;
 - (2) the replacement adequately performs the duties of the resident caretaker;
 - (3) any breach of this agreement by the replacement is deemed to be a breach by the Manager; and
 - (4) any remuneration paid to the replacement is the sole responsibility of the Manager.

4.7 Comply with directions

The Manager shall comply with and carry out all reasonable directions from time to time given by the Strata Company to the Manager concerning the control, management and administration of the Common Property.

4.8 Additional duties

The Manager agrees to perform such additional duties as caretaker to those set out in clauses 4.1 to 4.7 as the Strata Company may by written notice reasonably request from time to time.

4.9 Manner of performance

The Manager shall perform, or cause to be performed, its duties as the caretaker of the Common Property:

- (a) except where otherwise expressly provided hereunder, at the Manager's expense.
- (b) to the best of the Manager's ability;
- (c) exercising due care, diligence and skill;
- (d) in a competent manner and to a standard that is reasonably appropriate to a serviced apartment complex of the standard of the Complex.
- (e) using good methods and practices appropriate for the Complex;
- (f) in a manner consistent with the Manager's knowledge that the Lots are intended to be let by the proprietors of the Lots to members of the public;
- (g) in accordance with all applicable laws, regulations, by-laws and orders and any lawful directions of any government body or authority having jurisdiction in respect of the Complex;
- (h) in compliance with the by-laws of the Strata Company; and

- (i) under supervision of the principal shareholders or directors of the Manager, or a nominee of the Manager who must be approved by the Council, whose approval shall not be unreasonably withheld.

5. REMUNERATION

5.1 Annual remuneration

- (a) In consideration of the Manager performing the supervisory duties as the caretaker of the Common Property, the Strata Company shall pay to the Manager an amount per Lot per annum as annual remuneration. In the first year of the initial Term the annual remuneration shall be the sum of \$800.00 per Lot per annum.
- (b) The annual remuneration (as reviewed in accordance with this agreement) shall be paid by consecutive monthly payments equal to one-twelfth of the annual remuneration in advance. The first payment must be paid on the date of commencement of this agreement and each subsequent payment on the same day of each following month.
- (c) It is expressly agreed that none of the remuneration paid to the Manager pursuant to this agreement is for the provision of the Management Services, nor is it for any letting services that may be provided to Participating Owners by the Manager or any interests associated with or related to the Manager.

5.2 Annual review

On each anniversary of the commencement date of this agreement (including during any extended term of this agreement), the annual remuneration of the Manager shall be reviewed for the next 12 months period. The amount of the annual remuneration for the next 12 months period shall be the greater of:

- (a) the annual remuneration as agreed by the parties, but if not agreed within 14 days of request by the Manager the market value of the duties and services to be provided and performed by the Manager hereunder for the next 12 months period determined by a single qualified valuer licensed under the Land Valuers Licensing Act 1978 to be appointed by the President for the time being of the Australian Institute of Valuers and Land Economists (Inc.) (W.A. Division), who is to act as an expert and not as an arbitrator, and the costs of the valuer must be paid by the parties equally and the valuer's determination is final and binding on the parties; and
- (b) the annual remuneration paid for the 12 months immediately preceding the review date increased by the trends disclosed by any variation by way of increase in proportion that the CPI as determined immediately prior to the relevant review date bears to the CPI as determined immediately prior to the commencement date of this agreement (in the case of the first review date) or the previous review date (in each other case).

5.3 Additional remuneration

In consideration of the Manager providing any additional duties in accordance with clause 4.8, the Strata Company shall pay to the Manager such additional remuneration as may be mutually agreed, but failing agreement within 20 Business Days of the Strata Company requesting the additional duties, the additional remuneration shall be determined by an expert appointed and acting in accordance with clause 10. The Manager must not refuse to perform the additional duties requested by the Strata Company in accordance with clause 4.8 on the basis that the amount of the additional remuneration has not yet been agreed or determined.

5.4 Expenses

- (a) The Strata Company must pay all costs and expenses payable by the Strata Company pursuant to this agreement.
- (b) Where costs and expenses payable by the Strata Company pursuant to this agreement have been paid or incurred by the Manager on behalf of by the Strata

Company, the Strata Company must pay or reimburse any such costs and expenses within 10 Business Days of written request for payment or reimbursement by the Manager, provided that the request is accompanied by copies of invoices or receipts from the supplier of the materials or services.

- (c) No profit margin or mark up shall be charged by the Manager in relation to any materials or services procured by the Manager for the Strata Company unless the profit margin or mark up is allowed under any other agreement with the Strata Company.
- (d) The Strata Company shall be given benefit of any discount or benefit negotiated by the Manager in relation to any materials or services procured by the Manager for the Strata Company.
- (e) The Manager must not pledge the credit of, nor incur expenses on behalf of the Strata Company, except that in performing its duties as caretaker the Manager may:
 - (1) pledge the credit of and incur expenses on behalf of the Strata Company in respect of any single item and service up to an amount not exceeding \$600.00 for the purpose of obtaining materials or services required in the performance of the Manager's duties as caretaker hereunder; and
 - (2) use the funds of the Strata Company for such other purposes as are necessary or incidental to the performance of the Manager's duties as caretaker hereunder.

The amount specified in subparagraph (e)(1) shall be increased in accordance with the increases in the annual remuneration specified in clause 5.2.

6. OBLIGATIONS OF STRATA COMPANY

6.1 General obligations

The Strata Company shall:

- (a) ensure the Common Property is adequately and properly kept and maintained in a manner appropriate with the standard of the Complex and having regard to the fact that many of the Lots are let to members of the public.
- (b) provide and maintain sufficient furniture and associated facilities for the proper use and enjoyment of Common Property including in the reception and recreational areas of the Common Property.
- (c) not unreasonably or unlawfully interfere with the provision of the Management Services by the Manager.
- (d) not provide, nor attempt to provide, nor grant any other person the right to provide, any services similar to the Management Services from within the Complex.
- (e) not make any part of the Common Property available to any person for the purpose of providing Management Services.
- (f) purchase or lease the Communication System (as defined in paragraph 3.3(a)) installed or to be installed in the Complex.
- (g) supply the Manager with the materials and equipment necessary for the performance of the Manager's duties as the caretaker of the Common Property at the cost of the Strata Company.
- (h) from time to time authorise one member of the Council to give instructions to and communicate with the Manager in its role as the caretaker of the Common Property on behalf of the Strata Company.
- (i) confer fully and freely with the Manager concerning the performance of the Manager's duties as the caretaker of the Common Property and the control and management of the Common Property.

- (j) provide prompt, proper and reasonable instructions to the Manager in relation to the Manager's duties as the caretaker of the Common Property.
- (k) ensure that no other person provides Management Services from any part of the Complex during the Term.

6.2 Alterations to by-laws

The Strata Company agrees that if any provision of this agreement requires the repeal, enactment or variation of any by-law of the Strata Company to make such a provision legally enforceable, then the Strata Company shall do all such acts matters and things to the maximum extent permitted by law as are necessary to ensure that such by-law is so repealed, enacted or varied.

6.3 Use the business name, etc.

- (a) To the extent it is lawfully able to, the Strata Company grants to the Manager the right to use the business name "THE RANGES - KARRATHA" (**Business Name**) and any related name, trade mark and logo in connection with the provision of the Management Services during the Term.
- (b) To the extent it is lawfully able to, the Manager will conduct its business at the Complex under the Business Name throughout the Term.
- (c) Upon the execution of this agreement the parties will , if they are lawfully able to do so, execute or cause to be executed all forms, papers and documents, and perform all acts, matters and things necessary to effect the registration of the Business Name in the name of the Manager who will maintain the registration of the Business Name throughout the Term.
- (d) The Manager must simultaneously with the registration of the Business Name in the name of the Manager execute as transferor and provide to the Strata Company a transfer in registrable form of the Business Name which signed form will be retained by the Strata Company.
- (e) The Manager agrees:
 - (1) not at any time to contest the validity of or attack, or conspire with or assist any other person to contest the validity of or attack the Business Name or any related name, trade mark and logo.
 - (2) not use the Business Name or any related name, trade mark and logo other than in connection with carrying on its business at the Complex.
 - (3) not do anything to prejudice or damage any goodwill in the Business Name or any related name, trade mark and logo.
 - (4) the right to use the Business Name and any related name, trade mark and logo is personal to the Manager and that it must not assign, transfer, licence or otherwise deal with such right without obtaining the prior written consent of the Strata Company in accordance with this agreement.
- (f) Subject to the rights of the Strata Company to the Business Name and any related name, trade mark and logo, the Strata Company acknowledges that any goodwill associated with the Manager's business at the Complex shall vest solely in the Manager and the Manager shall have the right to deal with that goodwill as it sees fit, subject to the provisions of this agreement.

7. DEFAULT

7.1 Time of the essence

Time shall be of the essence of this agreement in all respects.

7.2 Default

A party is in default of this agreement if:

- (a) a party commits a breach of any material term of this agreement and the breach

remains unremedied for a period of 20 Business Days after written notice thereof shall have been given to it by a party not in default specifying the default and clearly stating what has to be done to remedy the default;

- (b) in the case of the Manager, the resident caretaker specified in clause 4.6 ceases to be the permanent occupier of the Residence and is not replaced within 20 Business Days;
- (c) a judgment or order, or any encumbrance is enforced, or becomes enforceable, against the party and is not paid or satisfied within 20 Business Days;
- (d) the party is convicted of an indictable offence involving fraud or dishonesty or is convicted on indictment of an assault or an offence involving an assault; or
- (e) an Insolvency Event occurs in respect of the party.

7.3 Consequence of default

Where a party is in default of this agreement (**Defaulting Party**) then, without limiting any other of the legal rights or remedies of the party not in default:

- (a) if such default is capable of remedy, the party not in default may remedy such default at the cost of the Defaulting Party; and
- (b) within a reasonable time after the default by the Defaulting Party whether or not paragraph (a) applies, the other party may give the Defaulting Party written notice stating that this agreement will be terminated if the default is not remedied within 5 Business Days of the date of service of the notice and, if the default is not remedied within that period, this agreement will terminate at the expiration of that 5 Business Days period, provided that the Strata Company may only give such notice if an ordinary resolution to give that notice is first passed in general meeting.
- (c) if this agreement expires or agreement is terminated by reason of the Manager being the Defaulting Party:
 - (1) if the Manager or any person associated or related to the Manager occupies the Residence, the Manager must cause vacant possession of the Residence to be provided to the nominee of the Strata Company;
 - (2) the Manager must give reasonable assistance to enable the nominee of the Strata Company to operate the Complex; and
 - (3) the Manager must provide to the nominee of the Strata Company all master and other keys, books, account and records of the Manager in relation to the Complex including all information concerning any prospective bookings.
- (d) where the Manager is the Defaulting Party, the Manager shall indemnify and keep indemnified the Strata Company against any claim, demand, or cause of action (whether at law, in equity or based on statute) and any damage, loss, cost, expense or liability incurred by the Strata Company to the extent that it arises as a result of any default by the Manager hereunder.

8. COSTS AND EXPENSES

8.1 Costs and stamp duty

Each party shall pay their own legal fees of and incidental to the instructions for and the negotiation preparation execution and stamping of this agreement but all stamp duties payable on this agreement shall be paid by the Manager.

8.2 Default costs

A party in default shall pay all the reasonable legal costs and expenses of the other party in relation to such default and in relation to the exercise, or attempted exercise, of any right, power or remedy of the party not in default under this agreement.

9. GST

(a) In this agreement:

GST law has the same meaning as GST law in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST means the same as in the GST law.

- (b) Unless otherwise stated, all amounts payable by one party to the other party under this agreement are exclusive of GST.
- (c) A recipient of a taxable supply made under this agreement must pay to the supplier an amount equivalent to any GST paid or payable by the supplier in respect of the taxable supply subject to the supplier issuing a valid tax invoice in accordance with the GST law to the recipient.
- (d) A party's obligation to reimburse the other party for an amount paid or payable to a third party includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.
- (e) Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this agreement.

10. DISPUTES

10.1 Dispute resolution

If any dispute between the parties arises out of, relates to or is in connection with this agreement, the parties undertake with each other to use all reasonable endeavours in good faith to settle the dispute by negotiation between their respective representatives as soon as practicable.

10.2 Determination by an expert

If the parties do not settle the dispute by negotiation within 10 Business Days of one party giving written notice to the other that a dispute has arisen the following provisions apply:

- (a) the dispute shall be determined by an appropriately qualified independent expert agreed upon by the parties.
- (b) if the parties cannot agree on the choice of such an expert within 5 Business Days of one party requesting the appointment of the expert for the purpose of this clause then either party may request the President for the time being of the Law Society of Western Australia (Inc.) to appoint an expert to determine the dispute.
- (c) the expert may make such enquiries and acquire and take such evidence as he may consider necessary to determine the dispute, but all evidence and submissions to the expert are to be in writing unless the expert otherwise directs or the parties otherwise mutually agree.
- (d) the expert's determination shall be binding on the parties and shall be final and conclusive and no appeal may be made to any court in relation thereto except on the ground of an error of law.
- (e) the parties shall pay the costs of the expert in equal shares unless the expert otherwise directs.

10.3 Agreement continues

Pending and during the expert's determination of any dispute, the parties are to continue to perform their obligations under this agreement.

10.4 Procedure

Unless a party has complied with clauses 10.1 to 10.3, that party may not commence court proceedings relating to any dispute arising from this agreement except where that party

seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking that relief.

11. FORCE MAJEURE

If the performance of this agreement, or of any obligation hereunder is prevented, restricted or interfered with by reason of fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, cyclone, flood, earthquake, drought or lack of raw materials, power or supplies or war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any authority or representative thereof, or any other acts whatsoever beyond the reasonable control of a party, then:

- (a) the party so affected, upon giving prompt notice to the other party, shall be excused from such performance (other than an obligation to pay any money) to the extent of such prevention, restriction or interference; and
- (b) the other party shall likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with,

provided that the party so affected must use its best efforts to avoid and remove such causes of non-performance. Both parties will resume performance of their respective obligations as soon as is practicably possible when such cases are removed.

12. ASSIGNMENT

12.1 Assignment by the Manager

Except for the appointment by the Manager of a duly qualified agent to carry out any of the Manager's duties and obligations hereunder for which the Manager shall remain fully responsible, the Manager must not assign, transfer, encumber or otherwise dispose of, or deal with its interests pursuant to this agreement, nor agree to do so, without the prior written consent of the Strata Company, which consent must not be unreasonably withheld if:

- (a) at the time such consent is sought, the Manager is not in default under this agreement;
- (b) the Manager gives the Strata Company not less than 20 Business Days notice in writing of the date of the proposed assignment and provides the Strata Company with all reasonable details of the proposed assignee;
- (c) the Manager arranges an interview between the Council and the proposed assignee or a representative of the proposed assignee;
- (d) the Manager proves, to the reasonable satisfaction of the Strata Company, that the proposed assignee is a respectable responsible and financially sound person capable of adequately performing and observing the Manager's duties and obligations under this agreement;
- (e) the Manager procures the execution by the proposed assignee of an assignment of this agreement (prepared by the Strata Company's solicitors at the Manager's expense) to which the Strata Company is a party in such form and upon such reasonable terms and conditions as the Strata Company requires including a provision whereby the Manager releases the Strata Company from all claims against the Strata Company in respect of or in any way arising from this agreement;
- (f) the Manager pays all the reasonable costs and expenses incurred by the Strata Company in respect of the request for consent to the assignment whether or not the assignment is made; and
- (g) the Manager has given prior written notice of the assignment to the Shire of Roebourne (**Shire**) and, if required by the Shire, procured the execution by the proposed assignee of a deed to which the Shire is a party in such form and upon

such terms and conditions as the Shire requires whereby the proposed assignee agrees to comply with the covenants and agreements in the deed entered into by the Shire and the developer of the Complex.

12.2 Change in share holding

Where the Manager is a corporation, any change in the principal shareholders of the Manager which has the effect of altering the effective control of the Manager is deemed to be an assignment of this agreement. In this clause 12.2, "effective control" means control of the composition of the board of directors or control of more than 50% of the shares with the right to vote in general meetings of the corporation.

13. TRANSFER OF MANAGEMENT RIGHTS

13.1 Transfer of Management Rights

- (a) If a majority of the Participating Owners, excluding the Manager and its associates (**Participating Members**) advise the Manager in writing that they wish to terminate the Manager's appointment hereunder (including the Management Rights), the Manager must within 9 months transfer the Management Rights to a person chosen by the Manager who has not been involved in the operation (including promotion) of the Complex and is not controlled by a person that has been involved in the operation (including promotion) of the Complex.
- (b) If the Manager fails to transfer the Management Rights within the 9 months period, the Manager must transfer the Management Rights to a replacement agent named in a written notice given by a majority of Participating Members, at a price specified in the notice.
- (c) The transfer referred to in paragraphs (a) or (b) (as the case may be) must be done as soon as practicable, but there must be a reasonable time for the Strata Company to consider whether to make a decision referred to in clause 13.2(b).
- (d) A transfer in relation to Management Rights means to assign or transfer the Management Rights or to cause another person to become the holder of those rights or rights substantially the same as those rights.

13.2 Consent of Strata Company to new caretaking arrangements

- (a) If the Manager receives a notice under paragraph 13.1(b) the Manager must advise all members of the Strata Company (other than any associate of the Manager) of the name of the person to whom the transfer is to be made.
- (b) The Manager does not have to transfer the Management Rights to the person named in the notice under paragraph 13.1(b) if a majority of members of the Strata Company decide and state in writing to the Manager that the person should not be engaged by the Strata Company to perform caretaking functions.
- (c) If a majority of members of the Strata Company make a decision referred to in paragraph 13.2(b), a majority of members of the Strata Company may then name another person to whom the transfer is to be made, and the processes outlined above will then apply to that transfer.
- (d) This clause 13.2 does not apply if a majority of members of the Strata Company agree in writing to the transfer to the person named in the notice before that notice is given to the Manager.
- (e) For the avoidance of doubt, this clause 13.2 does not apply if the Manager transfers the Management Rights to another person chosen by the Manager in accordance with paragraph 13.1(a).

13.3 Price payable on transfer

- (a) The price Participating Members specify in the notice referred to in paragraph 13.1(b) must be one of the following:
 - (1) the average of 2 valuations of the Management Rights by independent qualified valuers nominated by the Australian Property Institute (or

- another relevant independent professional body approved by the Australian Securities and Investment Commission; or
- (2) the highest bona fide bid for the Management Rights (excluding a bid by the Manager or its associates) at an auction of which at least 60 days notice has been given; or
 - (3) the highest bona fide amount tendered (excluding any tender by the Manager or its associates) for the Management Rights following reasonable efforts to market the Management Rights for at least 60 days.
- (b) For the avoidance of doubt, this clause 13.3 does not apply if the Manager transfers the Management Rights to another person chosen by the Manager in accordance with paragraph 13.1(a).

13.4 Voting

- (a) In determining if there is a majority of Participating Members or members of the Strata Company, the Manager and its associates and any person nominated as a replacement Manager and associates of that person must not be counted.
- (b) For Participating Members, a majority is based on their entitlement to vote at Strata Company meetings.
- (c) For members of the Strata Company, a majority is based on their entitlement to vote at Strata Company meetings.
- (d) A Participating Member or a member of the Strata Company makes a decision by signing a document that sets out the resolution or decision.

13.5 Costs

- (a) Any member of the Strata Company may arrange a valuation or auction of, or may market, the Management Rights before or after the expiration of the 9 months period referred to in paragraph 13.1(a) for the purpose of determining a price to be specified in a notice under paragraph 13.1(b).
- (b) If a member of the Strata Company incurs any reasonable valuation, auction or marketing costs under paragraph 13.5(a), that member is entitled to be reimbursed out of the price payable by any person nominated by the members as transferee of the Management Rights when the price is paid to the Manager.

13.6 Assistance

The Manager must give reasonable assistance to enable the transferee to operate the Complex including:

- (a) making available information concerning any prospective bookings; and
- (b) contemporaneously with the transfer of the Management Rights, if the Manager and/or its resident caretaker and manager occupies a lot in the Complex, causing vacant possession of that lot or those lots to be provided to the transferee or its nominee.

14. STAGED DEVELOPMENT

14.1 Staged development

The parties acknowledge and agree that the Complex is a staged development that is proposed to take place over a period of years and that, after the first stage of the development of the Complex, any further stage is merely a proposal and may or may not proceed. The Manager must not make any claim for compensation or damages against the Strata Company by reason of any changes to any further stage, or any delay or failure to proceed with, or complete the construction of any further stage.

14.2 Completion of further stage

If any further stage of the proposed development of which the Complex forms part is completed, the Manager shall carry out the same duties and obligations with respect to

such further stage on the same terms and conditions as are contained in this agreement with any necessary changes. The parties acknowledge that changes may be required to some of the provisions of this agreement and agree to negotiate in good faith and mutually agree any such changes.

15. NOTICES

Any notice or other communication in connection with this agreement:

- (a) must be in writing.
- (b) must be signed by the party giving it or that party's solicitor or agent.
- (c) must be given or served:
 - (1) in a manner authorised by law or by personal delivery;
 - (2) by sending by prepaid post to the address of the addressee specified above; or
 - (3) by sending by fax to the fax number of the addressee specified above, or if the addressee notifies another address or fax number in accordance with this clause then to that address or fax number.
- (d) takes effect from the time it is received and, unless a later time is specified, is taken to be received:
 - (1) if served or given by personal delivery, at the time it is delivered;
 - (2) if left at the address of the addressee specified above, at the time it is left;
 - (3) if sent by prepaid ordinary post to the address of the addressee specified above, at the expiration of 2 Business Days after posting;
 - (4) if sent by fax to the fax number of the addressee specified above, at the time shown in the transmission report as the time that the whole fax was sent,

provided that if a notice or other communication is received after 5.00 pm in the place of receipt or on a non-Business Day, it is taken to be received at 9.00 am on the next Business Day.

16. GENERAL

16.1 No partnership

Nothing in this agreement should constitute or be construed to create a partnership or joint venture between the parties.

16.2 Parties to act in good faith

The parties must act in the utmost good faith towards the other of them in all matters and things concerning this agreement.

16.3 Further assurances

The parties agree to execute enter into and do all such further or other deeds documents acts matters or things necessary desirable or convenient to give effect to the provisions of this agreement and the matters and transactions contemplated in it.

16.4 Entire agreement

The parties agree that this agreement contains the entire agreement between them as to its subject matter and supersedes all prior agreements understandings and negotiations as to such subject matter.

16.5 Severance

If any provision of this agreement or the application of that provision to any person or circumstance is or becomes invalid or unenforceable, then the remaining provisions of this

agreement are not affected and are valid and enforceable to the fullest extent permitted by law.

16.6 Waiver

A provision of or a right created under this agreement may not be waived or varied except in writing signed by the party to be bound.

16.7 Authority to complete

The Manager authorises the Strata Company and its solicitors to date or complete any blank spaces in this agreement.

16.8 Governing law

This agreement is governed by and construed in accordance with the law in force in Western Australia and the parties agree to submit to the jurisdiction of the courts of that State and any court hearing appeals from those courts in all matters arising out of this agreement. Each party unconditionally submits to the jurisdiction of the courts mentioned above and waives any right it has to object to an action being brought in any of those courts.

SIGNING PAGE

SIGNED by)
PTY LTD ACN)
in accordance with section 127(1))
of the Corporations Act)

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

The **COMMON SEAL** of **THE OWNERS**)
OF THE RANGES - KARRATHA)
STRATA PLAN NO. [])
was hereunto affixed by authority of the)
council of the strata company in the)
presence of two members of that council:)

Signature of member

Signature of member

Name of member

Name of member