

LEEDERVILLE GARDENS (INC.)

CONSTITUTION

NAME

1. The name of the Association is “LEEDERVILLE GARDENS (INC)”.

INTERPRETATION

- 2 (a) Throughout this Constitution, if not inconsistent with the context:
- “Association” means LEEDERVILLE GARDENS (INC)
- “Board” means the Board of Management of the Association.
- “Constitution” has the same meaning as is given to the expression “the Rules” in the Associations Incorporation Act 1987.
- “member” means any member, associate member, life member or any other member whose name is entered on the Register of members.
- “retired person” means a person who has attained the age of 55 years or a person who is or was the spouse, de facto spouse or partner of such a person.
- “special resolution” means a resolution which is passed by a majority of not less than three-fourths of the members of the association who are entitled under the rules of the association to vote and vote in person or by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution was given in accordance with those rules.
- “Town” means the Town of Vincent.
- (b) A reference to any Act or any section of an Act shall include all consolidations, amendments, re-enactments or replacement of any of them.
- Words and phrases used in this Constitution have the same meaning as in the Associations Incorporation Act 1987.
- A reference to service of any notice, letter or other notification includes a service made electronically or by email.

OBJECTS

3. The objects of the Association shall be:
- (a) To establish and maintain housing, villages, flats apartments or similar accommodation specifically for the use enjoyment and well being of retired persons.
 - (b) To arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures and classes in furtherance of the objects of the Association or any of them.

POWERS

4. The Association shall have power:
- (a) to acquire hold own sell let lease license mortgage caveat or otherwise deal with any property real or personal by purchase, exchange, gift, devise, lease or by any other means whatsoever subject to or not subject to any special or other condition or other conditions and subject to the objects of the Association and to enter into all and any documents required to give to any of the above;
 - (b) to purchase bank endorsed bills of exchange;
 - (c) to build, construct, establish, alter, rebuild, renovate, reconstruct and maintain units, houses, flats, homes, premises, rooms, hostels, nursing homes, day care centres and grounds and other things and places generally for the purpose of carrying out the objects of the Association;
 - (d) to borrow money and, for the purpose of securing repayment of such moneys and interest thereon, to mortgage or charge the whole or any part of the real or personal property of the Association and for such purpose to execute mortgages, bills of sale, debentures or other securities containing such covenants and provisions as the Association may consider necessary;
 - (e) to invest all or any of the funds of the Association in any securities or investments and upon any terms and conditions provided that such securities or investments and such terms and conditions are authorised or permitted by the laws of Western Australia for the investment of trust funds;
 - (f) to enter into any contract it considers necessary or desirable;
 - (g) to establish, assist, support and aid in the establishment, assistance or support of any institution or association established or to be established in furtherance of or with similar objects to the Association and for such purpose to transfer any of the property of the Association whether real or personal by sale or gift to any such institution or association;

- (h) to make alter and rescind by-laws, rules or regulations and other proceedings for the due maintenance of the Association;
 - regulating the duties, control and conduct of persons in the employ or under the care or control of the Association;
 - governing and regulating applications for admission to the home or housing of the Association, the occupancy thereof and the conduct and welfare of the occupants;
- (i) to do all such other lawful things as may be incidental to or deemed to be conducive to the attainment or execution of the objects and powers of the Association or any of them and generally to manage the units, houses, flats, homes, premises, rooms, hostels, nursing homes, day care centres and grounds of the Association.

MEMBERSHIP

5. (a) A person shall be entitled to be a member of the Association if he or she enters into a lease, licence, deed or other written agreement which entitles that person to occupy his or her principal place of residence any unit, house, flat, home, premises, room, hostel, nursing home, day care centre which is owned or managed by the Association.
- (b) The spouse, de facto spouse or partner of the member as described in s 5(a) shall be entitled to be an associate member of the Association for so long as the member remains entitled to occupy and reside lawfully in any unit, house, flat, home, premises, room, hostel, nursing home, day care centre which is owned or managed by the Association.
- (c) The Board may in its discretion admit as members of the Association persons who by their particular skill set, knowledge or experience may be of assistance to either the Board or the Association generally, provided always, that the number of persons that may become members in this way shall not exceed ten per cent (10%) of the total membership of the Association.
- (d) The Town may in its discretion nominate up to six (6) persons to be members of the Association. Three (3) may be Board Members and three (3) Deputy Board Members. At no time may more than three (3) Town nominated members sit at a General, Special or Annual General Meeting. Such persons shall remain members of the Association only for so long as that person serves as a Board Member or Deputy Board Member.
- (e) The Association shall not charge or levy any membership fees.
- (f) Membership of the Association shall come to an end in the event of a member's death or resignation or on the date that a member's entitlement to occupy any unit, house, flat, home, premises, room, hostel, nursing home, day care centre which is owned or managed by the Association.

LIFE MEMBERSHIP

6. At any annual general meeting of the Association life membership may, by a special resolution, be conferred upon a person or persons in recognition of outstanding service to the Association PROVIDED THAT not more than two (2) life memberships shall be conferred in any one year. Any member may nominate another member for life membership by giving written notice of such nomination to the Secretary of the Association on or before the 15th day of August in any year.

BOARD OF MANAGEMENT

7. (a) The Board shall comprise up to six (6) Board members, three (3) of whom shall be appointed by the Town and three (3) of whom shall be elected by the members. The President of Leederville Gardens Residents' Association Inc. may be invited to attend Board meetings in the capacity of an ex-officio member with no voting rights.
- (b) Each Board member, whether appointed or elected, shall serve for a term of three (3) years and shall be eligible to be re-appointed or re-elected for a further term.
- (c) The Town may appoint deputies for the Board members it has appointed and the Board may appoint deputies for the elected Board members. Deputy Board members shall, when acting, have the same powers, privileges, duties and indemnities as the Board member they deputize for.
- (d) A casual vacancy shall occur on the Board when, because of death, incapacity, ill health or resignation a Board member is unable to complete his or her term.

(e) (i) Casual Vacancy Community Members

A casual vacancy in an appointed Board member's position shall be filled by the Board appointing a new Board member. The appointee will be entitled to fill out the remainder of the original term if agreed to by Members of the Association.

(ii) Casual Vacancy Elected Members

A casual vacancy in an elected Board member's position shall be filled by the Town appointing a casual Board Member to serve the vacancy.

8. (a) Upon the expiration of an elected Board member's term, an election to fill that position shall be held at the next annual general meeting.
- (b) The Secretary shall call for nominations from members for candidates

for the position of Board member so that such nominations may be received no later than 15 August prior to the annual general meeting.

- (c) All nominations must be in writing and be signed by both the nominated candidate and the nominating member and state that the candidate is willing to both stand for election and to serve as a Board member.

9. (a) The Board shall have and shall exercise the sole control direction and management of the Association and of the occupancy of the units, houses, flats, homes, premises, rooms, hostels, nursing homes or day care centres owned and controlled by the Association and shall receive and determine applications for admission thereto.
- (b) The Board shall make and present an annual report to the annual general meeting.
- (c) The Board may establish sub-committees and appoint thereto such members (including Board members) or other persons of experience as the Board thinks fit. All such sub-committees shall be chaired by a Board member.

10. The Board shall at its first meeting following every annual general meeting appoint:
- (a) A Chairman from among the three (3) members appointed by the Town; and
- (b) a Vice Chairman from amongst its remaining members,
both of whom shall hold office until the conclusion of the first meeting of the Board held after the annual general meeting next following their appointments. Both of such office bearers shall be eligible for re-appointment.

11. (a) The Board shall meet in a general board meeting at least six (6) times per year and at least once per quarter at such time and place convenient to the Board. The Chairman or any two (2) members of the Board may at any time request the Secretary to convene a special Board meeting.
- (b) At any general or special Board meeting four (4) Board members shall be necessary to be in attendance to form a quorum.

12. At least seven (7) clear days' notice of General Board meetings and three (3) clear days for Emergency Board meetings and the business to be brought forward at the meeting shall be given to each member of the Board verbally, by telephone or letter delivered to the address of the member or by pre-paid post or electronically by email. A notice so sent shall be deemed to have been delivered on the second day after the same has been forwarded.

13. The Chairman or in the Chairman's absence the Vice Chairman shall preside at all meetings of the Board but in the absence of both the Chairman and the vice Chairman the Board members present shall choose from among their number a chairman for that meeting. All questions at a meeting of the Board shall be determined by a majority of the votes of the Board members present, each of whom shall be entitled to one (1) vote provided that in the case of an equality of votes the chairman at the meeting shall have a second or casting vote.

14. The Board may, in its discretion appoint either a manager or managers to manage any property of the Association or it may contract a company or corporation to manage the property of the Association.

SECRETARY AND TREASURER

15. (a) The Board may appoint a Secretary and Treasurer at such remuneration and on such terms and conditions and with such powers and authorities as it thinks fit and may terminate the appointment of any Secretary or Treasurer so appointed by it. Nothing herein contained shall prevent the Board appointing an Honorary Secretary or Honorary Treasurer. A Secretary, Honorary Secretary, Treasurer or Honorary Treasurer may hold another office in the Association.

(b) The Board may appoint one person to be both the Secretary and the Treasurer

16. The Secretary shall attend all meetings of the Board and of any sub-committee to which he is appointed and shall be entitled to be heard on any question but shall not be entitled to vote.

17. The Treasurer shall:

- (i) be responsible for the receipt of all money on behalf of the Association and give receipts therefore;
- (ii) pay all moneys into such account or accounts in the name of the Association at such bank or banks as the Board may from time to time direct;
- (iii) submit at the annual general meeting, an annual report, balance sheet, statement of income and expenditure the auditor's report and other such information as the Association or Board may require;
- (iv) submit financial statements as and when required by the Board to correctly show the financial transactions and the position of the Association;
- (v) generally carry out the instructions and decisions of the Board relating to the property and finances of the Association.

AUDIT

18. (a) The Association's financial year shall be from the 1st July to the 30th June in the following year and once at least in every year the Board shall cause the Association's accounts to be audited by a duly qualified independent and experienced person or persons who shall be approved by the Town ("the Auditor").
- (b) The Treasurer shall report to the Board on the result of the audit of the Association's accounts and such report shall be presented to the members at the annual general meeting of the Association in each year.

GENERAL MEETINGS

19. Annual general meetings of members of the Association shall be held each year during the month of September. All other general meetings shall be special meetings.

20. Any member may, submit a motion to an annual general meeting. A member intending to submit a motion shall give to the Secretary written notice, together with a copy of the proposed motion, on or before the 15th day of August in any year. The Secretary shall give a copy of the proposed motion to the members with the notice of the annual general meeting.

21. The business of the annual general meeting shall be:
- (a) the confirmation of the minutes of the last annual general meeting and of any special meetings held since the last annual general meeting;
 - (b) the receipt and adoption of a report from the Board and/or Chairman;
 - (c) the receipt and adoption of the Auditor's report and the annual accounts;
 - (d) the election of members of the Board;
 - (e) special business (if any) brought forward after written notice as herein before mentioned;
 - (f) general business.

22. A special general meeting shall be called by the Secretary upon the written demand
- (a) of the Chairman of the Board or, in his absence,
 - (b) of the Vice Chairman of the Board, or
 - (c) of any two (2) members of the Board or
 - (d) of the lesser of twenty per centum (20%) of the membership of the Association or twenty (20) members of the Association.

23. The Secretary shall give at least fourteen (14) days' but not more than twenty-one (21) days notice of all annual general and any special meeting to the members by posting or causing to be delivered notice thereof to each member at the address or email address appearing in the members register. Such notice shall specify the nature of the business to be transacted at the meeting.

QUORUM

24. At any meeting of members the lesser of twenty per centum (20%) of the membership of the Association at that time or twenty (20) of the members of the Association present in person or by proxy shall form a quorum.

CHAIRMAN

25. The Chairman or in the Chairman's absence the Vice Chairman shall preside at all annual general or special meetings of members of the Association but in the absence of both the Chairman and the Vice Chairman the members present shall choose from among the members present a chairman for that meeting. The Chairman shall present a report to the members at the annual general meeting outlining the results of the previous year and proposed activities during the ensuing year.

VOTING

26. (a) At all annual general or special meetings of members of the Association voting shall be a show of hands save in the case of the election of Board members where voting shall be by secret ballot. In the event of an equality of votes the Chairman of the meeting shall have a second or casting vote.
- (b) A member or associate member shall be entitled to attend and vote at any meeting of members either in person or by written proxy. The secretary (or such other person appointed by the Board) shall when forwarding notices of a meeting to members include a form of proxy for members to complete and return;
- (c) The validity or otherwise of any proxy form shall be determined by the Chairman or in his or her absence the Vice Chairman or in both their absences the chairman of the relevant member's meeting and his or her decision shall be final.

MINUTES, RECORDS AND MEMBERS REGISTER

27. (a) The Secretary shall keep or cause to be kept detailed minutes of the proceedings of every general meeting and of every meeting of the Board and of every meeting of a sub-committee in a book and such book, when signed by the chairman of the meeting in question shall be conclusive evidence that the proceedings minuted therein were regular and actually

took place as minuted and shall be binding on all the members. The book in which the minutes as so entered shall be kept by the Secretary and shall be available for inspection by members during usual business hours.

- (b) It shall be permissible for the Secretary to keep minutes and records of minutes electronically and to display same on any web site of the Association.

28. The Secretary shall prepare and maintain a member's Register which shall indicate inter alia, in relation to each member, the name, address, contact details, membership category, date of admission to membership and date of termination of membership.

29. (a) The Secretary shall have the custody of the records (including the member's Register) books, documents and the securities of the Association.

- (b) Members may inspect the records (including the member's Register), books, documents and securities which relate to the operations of the Association and may request a copy, or take an extract from such records but shall have no right to remove the records for any purpose.

COMMON SEAL

30. The Association shall have a Common Seal which shall be held in the custody of the Town of Vincent Chief Executive Officer. The Common Seal may be affixed to in the presence of two Board members, the Board having previously resolved accordingly. The Common Seal of the Association must not be used without the express authority of the Board and every use of the Common Seal must be minuted.

EMPLOYEES

31. The Board or a sub-committee to which such function has been delegated may employ on behalf of the Association such persons on such terms and conditions as it considers necessary and shall insure all persons so employed under the usual terms of a workers' compensation insurance policy.

BANKING

32. All moneys received by the Association shall be banked in one or more accounts to be opened with a bank selected by the Board. Cheques and other documents relating to every such account shall be signed or otherwise authorized by any two (2) of the Chairman, Vice Chairman or Secretary or such other person as is nominated by the Board for that purpose.

ACCOUNTS FOR PAYMENT

33. All accounts shall be presented to and passed for payment at meetings of the Board or of any sub-committee to which such powers may have been delegated and a proper record of such approval shall be recorded in the minutes. The Board may delegate the responsibility to pay certain specified types of accounts to the Chairman, Vice Chairman and Secretary jointly as and when they fall due subject to those accounts being subsequently presented to and confirmed by the Board.

INCOME AND PROPERTY

34. The income and property of the Association shall be applied solely towards the promotion of the objects of the Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever to its members providing that nothing herein shall prevent the payment in good faith or remuneration to any officer or servant of the Association for services actually rendered to the Association.

INDEMNITY

35. The Board members (and all deputy Board members) and every sub-committee and all officers of the Association shall be indemnified and saved harmless out of the funds and assets of the Association from and against all charges, cost, losses, damages and expenses which they or any of them shall or may incur or sustain in or about the execution of their respective offices except as may be occasioned by or through their own wilful default or malfeasance and none of them shall be answerable for the acts of the others of them.

DISSOLUTION

36. (1) If at either an annual general or special meeting of the members, a resolution for the dissolution of the Association is passed by a special resolution of the members present at that meeting, the Association shall, thereupon or at such future date as is specified in that resolution, after paying and discharging out of the Association's funds and assets all the Association's debts and other liabilities and with the prior written approval of the Town, transfer the Association's remaining funds and assets (if any) to one or any of those organisations which:
- (a) have objectives similar to the Association;
 - (b) exist for the acquisition, construction, provision, maintenance, management or extension of residential villages for retired persons or other senior citizens within the Town's boundaries; and
 - (c) comply with the provisions of section 78(4) and Item 4.1.1 of the Income Tax Assessment Act;

and the Deputy Commissioner of Taxation in Western Australia shall be informed in writing of the date of dissolution.

(2) If no organisation exists which satisfies the requirements set out in clause 36(i) () at the date of dissolution of the Association, the Association shall transfer the Association's remaining funds and assets (if any) to one or any of those organisations which:

- (a) comply with by the provisions of section 78(4) and item 4.1.1 of the Income Tax Assessment Act; and
- (b) are approved in writing by the Town of Vincent as appropriate recipients of the remaining assets

and the Deputy Commissioner of Taxation in Western Australia shall be informed in writing of the date of dissolution.

INTERPRETATION OF THE CONSTITUTION

37. Should any question arise as to the interpretation of this Constitution or of any by-laws rules or regulations which the Association is authorised and empowered to make, such questions shall be decided by the Board whose decision shall be final and binding.

ALTERATIONS TO THE CONSTITUTION

38. The Constitution of the Association may be altered, added to or repealed by a special resolution passed at any annual general or special meeting of members Any such alteration, addition or repeal shall not become effective until such time as the written consent of the Town to the proposed alteration, addition or repeal is obtained.

In the event of the Constitution being added, altered or repealed by special resolution, the Association shall lodge with the relevant State Government body a notice of the special resolution in accordance with Section 17 (2) of the Associations Incorporations Act 1987.

ACCUMULATED OPERATING SURPLUS

39. (1) In this clause:

- (a) 'accumulated operating surplus' means the total of the accumulated funds of the Association after deducting therefrom all amounts paid or allowed for capital expenditure and after paying or allowing for the operating expenses of the Association and includes all moneys received by way of deposits, contribution fees, gifts or donations and rental and maintenance charges but excludes reserves for the purchase, replacement or periodic maintenance of capital items or equipment, reserves for repayment of contribution fees or deposits or reserves arising out of a capital revaluation.
- (b) 'the base amount' means in respect of a given financial year that amount which is calculated from the formula -

$$\$500,000 \quad \times \quad \frac{\text{CPI} - \text{N}}{\text{CPI} - \text{O}}$$

where CPI - O is the index number for the Consumer Price Index (All Groups) as published by the Commonwealth Bureau of Consensus and Statistics for the quarter ending 30 June 1992, and CPI - N is that index number for the quarter ending 30th June in that given financial year.

PROVIDED:

That if the reference base (or basis) of the index numbers used in calculating the value of CPI-O or CPI-N is changed, or if the Consumer Price Index (All Groups) is not calculated or published or calculation or publication is suspended then the Association's auditor shall determine the most appropriate substitutes for both the reference base and/or the Consumer Price Index (All Groups).

- (2) Within four months after the end of each financial year the Association's auditor shall certify to the Treasurer the accumulated operating surplus and the base amount.
- (3) If at the end of the financial year the amount of the accumulated operating surplus exceeds the base amount, then the Association shall within 30 days after receipt of the Association's auditor's certificate pay the amount of that excess to the Town. This payment to the Town shall be on the basis of a trust to the Town requiring that the Town deposit the excess in a particular reserve account and payments from that account shall be made to one or any of those organisations which:
- (i) have similar aims and objectives to the Association;

(ii) exist for the acquisition, provision, maintenance, management or extension of any existing housing, villages, flats apartments or similar accommodation operated by the Association, or the purchase or construction of a similar type of facility for senior citizens within the Town's boundaries; and

(iii) are covered by the provisions of section 78(4) and Item 4.1.1 of the Income Tax Assessment Act,

and the Deputy Commissioner of Taxation in Western Australia shall be provided with a copy of the financial records of the Trust in each financial year at the completion of the audit referred to in clause 18(a).

(4) If no organisation exists which satisfies the requirements set out in clause 42(3) the Town may transfer the excess to one or any of those organisations which:

(a) are covered by the provisions of section 78(4) and item 4.1.1 of the Income Tax Assessment Act; and

(b) are approved in writing by the Association as appropriate recipients of the excess prior to the transfer taking place.

and the Deputy Commissioner of Taxation in Western Australia shall be provided with a copy of the financial records of any such trust in each financial year at the completion of the audit referred to in clause 18(a).

DISPUTES AND MEDIATION

40. (1) The grievance procedure set out in this clause applies to disputes between-

(a) a member and another member; or

(b) a member and the Association or Board; or

(c) if the Association provides services to non-members, those non-members who receive services from the Association and the Association.

(2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

(3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

(4) The mediator must be-

(a) a person chosen by agreement between the parties; or

(b) in the absence of agreement-

(i) in the case of a dispute between a member and another

- member, a person appointed by the Board;
- (ii) in the case of any other dispute a person who is a mediator appointed to, or employed with, a not for profit organisation.
- (5) A member of the Association can be a mediator.
- (6) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (7) The mediator, in conducting the mediation, must-
- (a) give the parties to the mediation process every opportunity to be heard;
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (8) The mediator must not determine the dispute.
- (9) The mediation must be confidential and without prejudice.
- (10) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Associations Incorporations Act 1987 or otherwise at law.