



HERITAGE LIFECARE

OCCUPATION RIGHT AGREEMENT

[RESIDENT 1 NAME]

[RESIDENT 2 NAME]

CARE SUITE [NUMBER]

ANNIE BRYDON RESIDENTIAL VILLAGE

CONTENTS

PARTIES	1
INTRODUCTION.....	1
1 ESSENTIAL INFORMATION	1
2 LIVING IN YOUR CARE SUITE	2
Entry Payment.....	2
Nature of your right.....	2
Joint owners	3
Guests.....	3
Pets.....	3
Parking	3
3 LIVING AT THE VILLAGE.....	3
Your rights	3
Village Charter.....	4
Your relationships with others.....	4
Your use of Community Facilities.....	4
Care Services.....	4
4 COSTS PAYABLE DURING YOUR STAY	5
Care Services Fee.....	5
Additional Services.....	5
Direct debit.....	5
Payment on invoice.....	5
Utility costs	6
Legal costs.....	6
Repair and upgrade costs	6
Indemnity	6
GST	6
Default interest	6
5 CARING FOR AND MAINTAINING YOUR CARE SUITE	6
Our right to enter your Care Suite.....	6
Your responsibilities.....	7
Our responsibilities.....	7
Refurbishing, modifying or upgrading your Care Suite	7
6 HOW WE WILL RUN THE VILLAGE	8
Management of the Village.....	8
Community Facilities.....	8
Maintenance of Village.....	8
Insurance.....	9
Development of the Village	9
Sale of the Village	9
7 TRANSFERRING TO ANOTHER CARE SUITE.....	9
8 HOW THIS AGREEMENT ENDS.....	10
Termination by you.....	10
Termination on death.....	10
Termination by agreement	10
Termination by us.....	10
Termination Date.....	11

9	VACATING YOUR CARE SUITE	12
10	FINDING A NEW RESIDENT	12
11	PAYMENTS FOLLOWING TERMINATION	13
	Exit Payment.....	13
	Deferred Management Fee.....	13
	Our payment of the Exit Payment less deductions	13
	Exit Payment Date	14
	Interest on Exit Payment	14
	When we can defer payment.....	14
12	DAMAGE OR DESTRUCTION	15
	Repair or replacement.....	15
	Suspension of payments.....	15
	Temporary accommodation.....	15
	Termination following a Damage Event.....	16
	Transfer to another Care Suite following a Damage Event.....	16
	Damage or destruction to part of the Village.....	17
13	HOW TO SOLVE PROBLEMS	17
14	BREACH OF THIS AGREEMENT	17
15	GENERAL	18
	Notices and consents.....	18
	Meetings of residents	18
	Procedure if there ceases to be a statutory supervisor.....	19
	Counterparts.....	19
16	IMPORTANT DOCUMENTS	19
	Your application	19
	Enduring powers of attorney and wills	20
	Personal Information and privacy	20
	Village documents.....	20
	Policies and procedures	20
	Financial statements.....	21
	SIGNING OF THIS AGREEMENT	22
	YOUR RIGHT TO CANCEL OR AVOID THIS AGREEMENT	22
	LAWYER'S CERTIFICATE	23
	SCHEDULE 1: DEFINITIONS	24
	SCHEDULE 2: OPERATOR'S CHATTELS	26

PARTIES

- 1 **[Insert Resident name]** [{"you"}] - *delete if there are two residents*
- 2 **Optional: [Insert Resident Two]** (together, "you")
- 3 **Annie Brydon Village Limited** ("we" or "us")

Date of this Agreement:

INTRODUCTION

We own the Village and you have applied to be a resident. This Agreement sets out the terms and conditions that apply to the licence we grant to you to occupy your Care Suite in the Village. You will also need to sign a Resident Admission Agreement for occupation of your Care Suite and the provision of Care Services to you.

Where any words or phrases are shown with capital first letters, their meanings are set out in Clause 1 (Essential Information) or Schedule 1 (Definitions).

You and we acknowledge and agree the following:

1 ESSENTIAL INFORMATION

1.1	Village	Annie Brydon Residential Village at 71-79 Glover Road and 102 Wilson Street, Hawera
1.2	Your Care Suite	[insert Care Suite number] , or any replacement care suite we provide you with.
1.3	Commencement Date <i>This is the date all obligations in this Agreement come into effect.</i>	[insert date]
1.4	Target Completion Date <i>This is the date we anticipate your Care Suite will be practically completed.</i>	Not applicable/[insert date]
1.5	Entry Payment <i>This is the amount you pay for the right to live in your Care Suite. For more, see clause 2.1.</i>	[\$insert]

1.6	<p>Deferred Management Fee</p> <p><i>This is the amount that we charge you on the Exit Payment Date and is payable by you on that date</i></p> <p><i>For more, see clauses 11.2 and 11.3.</i></p>	<p>Maximum amount of \$[insert]</p> <p>(being equal to 30% of the Entry Payment)</p> <p>If the DMF Calculation Date occurs within two years of the Commencement Date (or earlier date you moved into the Care Suite) the Deferred Management Fee will be reduced and the amount payable by you will be calculated from the Commencement Date (or earlier date you moved into the Care Suite) to the DMF Calculation Date at a rate equal to 15% of the Entry Payment per year for two years, pro-rated on a daily basis (in the case of any incomplete year).</p>
1.7	Care Services	[Rest home/hospital] care
1.8	<p>Care Services Fee</p> <p><i>This is subject to change. For more, see clauses 4.1 to 4.5.</i></p>	<p>Initially, \$ per month</p> <p>(paid on the 29th of each month)</p>
1.9	Special Provisions: [Insert if any/Not applicable]	

2 LIVING IN YOUR CARE SUITE

Entry Payment

- 2.1 On the Commencement Date you must pay us the Entry Payment. Unless we agree with you otherwise, you will not be entitled to occupy your Care Suite until you have paid the Entry Payment in full.

Nature of your right

- 2.2 We grant to you, and you accept a licence to occupy the Care Suite from the Commencement Date on the terms of this Agreement. You are entitled to reasonable exclusive use and occupation of your Care Suite free from our unnecessary interruption.
- 2.3 As the Care Services will be provided to you in your Care Suite, a Resident Admission Agreement must be entered into by you within five Working Days of the Commencement Date. The Resident Admission Agreement will not replace this Agreement and this Agreement will prevail if any terms conflict.
- 2.4 The rights granted to you under this Agreement are personal contractual rights only and cannot be registered. This Agreement does not give you any ownership right or tenancy in the Village or your Care Suite.

- 2.5 You are not entitled to transfer your rights under this Agreement or any interest in this Agreement, or to sublicense or allow any other person to occupy your Care Suite.
- 2.6 You may not borrow against your right to receive the Exit Payment. You may, with our consent grant a security interest over your right to receive the Exit Payment.

Joint owners

- 2.7 If this Agreement was originally for two of you, you both hold the benefits and have obligations under this Agreement jointly. If one of you dies (at any time, up to and including the Exit Payment Date), the interest of that person automatically transfers to the other person.
- 2.8 If you die, no transfer of your rights into the name of your personal representative is permitted.

Guests

- 2.9 Your Care Suite is only for your own personal use and occupation. You may not have guests stay with you in the Care Suite.

Pets

- 2.10 You may keep a pet in your Care Suite with our prior consent. We can withdraw our consent at any time if we decide your pet is not suitable for the Village or that you are unable to care adequately for your pet.

Parking

- 2.11 Your guests may only park vehicles in the designated areas set aside for visitor parking.

3 LIVING AT THE VILLAGE

Your rights

- 3.1 We will ensure that we, all people who work at the Village and all service providers at the Village treat you with courtesy, respect your rights and do not exploit you.
- 3.2 You are entitled to all the rights under the Code of Residents' Rights.
- 3.3 The Code of Practice applies to this Agreement. We will comply with our responsibilities as set out in the Code of Practice.
- 3.4 We will consult with you about any proposed changes in the services and benefits we provide that will or might have a material impact on your occupancy or your ability to pay for the services and benefits.
- 3.5 We will promptly notify you about any matter that would or might have a material impact on:
- (a) your right to occupy your Care Suite, or your rights to quiet enjoyment; and

- (b) your payments in consideration of your right to occupy your Care Suite or your right to services and/or facilities within the Village.

Village Charter

- 3.6 If we have a Village Charter, you agree to comply with our Village Charter at all times and ensure that your guests are made aware of, and comply with, the Village Charter.
- 3.7 We may from time to time establish, review and amend the Village Charter provided we consult with residents first and any such amendment does not affect or detract from your existing rights under this Agreement. Any changes to the Village Charter do not take effect until we give you notice of the changes.
- 3.8 If there are any inconsistencies between the Village Charter and this Agreement, this Agreement overrides the Village Charter.

Your relationships with others

- 3.9 You may not do anything or allow anything to be done, within your control, which is or could be a nuisance, or annoyance to, or cause distress to, other residents, people who work at the Village, invitees to the Village or us.
- 3.10 You agree to comply with your obligations to others under the Code of Residents' Rights, in particular you will respect the rights of, and treat with courtesy, other residents, us, the people who work at the Village, and the people who provide services at the Village.

Your use of Community Facilities

- 3.11 You are entitled to enjoy the Community Facilities. You agree that your use of the Community Facilities is to be exercised with care and in consideration for others.

Care Services

- 3.12 We will provide, or will arrange for Heritage Lifecare to provide, you with the Care Services on the terms of the Resident Admission Agreement.
- 3.13 You agree that you will not arrange or agree to receive any health or care services into your Care Suite provided by anyone other than us or Heritage Lifecare unless you first get our approval. This is so we can monitor who visits the Village and the quality of services provided to you. We will not unreasonably withhold consent where we do not provide the services requested by you.
- 3.14 If we consider your health needs have changed, we will assist you to have your needs assessed (at your cost) to determine if you require a different level of long-term residential care.
- 3.15 If the result of any needs assessment is that you require a level of long term residential care that we cannot provide you with in the Care Suite you acknowledge that you will need to make alternative arrangements for your care and we will assist you with these arrangements.

- 3.16 We will ensure that you are provided with information on all available options relating to your increased need for care. We will consult with you about any such proposed move.

4 COSTS PAYABLE DURING YOUR STAY

Care Services Fee

- 4.1 In exchange for the provision of the Care Services, you will pay the Care Services Fee and the initial amount is set out in clause 1.
- 4.2 The Care Services Fee will be the daily care fee set out in, and payable under, the Resident Admission Agreement, and is subject to a maximum amount set by the government ("Maximum Contribution").
- 4.3 We can change the Care Services Fee at any time to reflect changes in the Maximum Contribution. We will endeavour to give you as much notice as possible of any change and that change will take effect on the date determined by the government.
- 4.4 You may be eligible for a residential care subsidy from the government if you meet the needs assessment and means assessment criteria. If so, Te Whatu Ora – Health New Zealand pays the operator of the Care Facility that subsidy and we will adjust the Care Services Fee accordingly.
- 4.5 The Care Services Fee is payable by you monthly by direct debit from the Commencement Date to the date you stop permanently living in your Care Suite.

Additional Services

- 4.6 If you ask us or Heritage Lifecare to provide any Additional Services you will pay us a fee on the terms set out in the Resident Admission Agreement.

Direct debit

- 4.7 For any regular and ongoing payments payable to us by direct debit they will be paid by you monthly on the 29th day of each month. You agree to sign and deliver to us an authority to deduct any such payments from your bank account.
- 4.8 We will give you 10 Working Days' notice of the proposed amount to be deducted from your bank account if any of the amounts change.

Payment on invoice

- 4.9 We will invoice you for any Additional Services or other amounts due that are not payable by regular direct debit.
- 4.10 For any amount set out in this Agreement as being payable on invoice, we will provide you with a written invoice on or around the 15th of the month and such amount will be payable by you by direct debit on the 29th day of that month.
- 4.11 Where this Agreement refers to any payment being made on the 29th day of a month, in each February occurring during a non-leap year, payment will be made on the 28th day of that month.

Utility costs

- 4.12 You are directly responsible to the relevant provider for all utility charges incurred in respect of your use of telephone and internet. All other utility charges are included in the Care Services Fee.

Legal costs

- 4.13 You must pay all your own and our reasonable legal and other costs for entry into and termination of this Agreement. If you ask for any consent under this Agreement we may charge you our reasonable legal costs relating to such consent.

Repair and upgrade costs

- 4.14 You may be required to reimburse us for any required maintenance, repair, alteration or upgrade work to be carried out on your Care Suite from time to time (see clause 5).

Indemnity

- 4.15 If we suffer any loss or damage as a result of your, or your guests', intentional acts, carelessness or negligence, you must:
- (a) reimburse us for any insurance policy excess, where such loss or damage is covered by our insurance; or
 - (b) compensate and reimburse us in full, where such loss or damage is not covered by our insurance.

GST

- 4.16 Where we are required to account for GST on any amounts you pay to us (other than the amounts specified in clause 4.17), then you will pay that GST to us on demand.
- 4.17 The Entry Payment, Deferred Management Fee and Service Fees are GST inclusive if applicable.

Default interest

- 4.18 If you fail to make any payment due to us under this Agreement for five Working Days, you will be required to pay interest on the amount due at the Default Interest Rate from the due date until the date of payment. This right does not limit or replace any other rights we have in respect of your default.

5 CARING FOR AND MAINTAINING YOUR CARE SUITE

Our right to enter your Care Suite

- 5.1 You agree that we have the right to enter your Care Suite at any reasonable time for the purpose of providing you with the Care Services.

- 5.2 We also have the right at all reasonable times to enter your Care Suite to carry out an inspection or any repairs or alterations we consider necessary, provided we give you a reasonable amount of notice. In doing so we will try to cause you as little disturbance as possible, and to the extent possible we will try to give you at least 24 hours' notice. You agree to waive notice in cases of emergencies.
- 5.3 Where we need you to vacate your Care Suite to carry out any repairs or alterations, you must do so. We will first consult with you and agree arrangements for any temporary accommodation if required.

Your responsibilities

- 5.4 You will co-operate with us to keep your Care Suite and the Operator's Chattels at all times in a proper, tidy and clean condition.
- 5.5 You will advise us of any damage to or maintenance required for your Care Suite or the Operator's Chattels as soon as you become aware of them. If you do not advise us we will not be responsible for any resulting loss or inconvenience.
- 5.6 You are not responsible for the cost of any repairs or maintenance to the interior or exterior of your Care Suite or other buildings or chattels of the Village unless you or your guests intentionally or carelessly cause any damage beyond Fair Wear and Tear, in which case the costs are payable by you on invoice.

Our responsibilities

- 5.7 We will provide the Care Suite with the Operator's Chattels for your use.
- 5.8 We will, at our cost, take responsibility for arranging any repair, maintenance or replacement to the interior of your Care Suite and the Operator's Chattels that either you notify us of or that we consider is required.
- 5.9 We will consult with you about any repairs, maintenance or replacement to be carried out to the interior of your Care Suite or the Operator's Chattels.

Refurbishing, modifying or upgrading your Care Suite

- 5.10 You are not responsible for any costs of refurbishing or upgrading your Care Suite following termination of this Agreement. However, we can charge you for any damage to the Care Suite as set out in clauses 9.2 and 9.3.
- 5.11 You must not make any alterations or additions to your Care Suite, or modify the Operator's Chattels, or fit aerials or other items to the exterior of your Care Suite without our consent.
- 5.12 If you have a disability, you have the right to alter your Care Suite if it does not meet your needs. If so, you must give us notice identifying what alterations you consider you need. We will consult and reach agreement with you as to what alterations are to be made and we will arrange the work. Any such costs are payable by you on invoice.

- 5.13 If any alterations or works have been made at your request including under clause 5.12, we may require the return of your Care Suite to its original condition on termination of this Agreement. We will arrange for the work and any such costs are payable by you on invoice. If we do not require you to reinstate your Care Suite to its original condition then you will not be entitled to any compensation for the cost of the alterations or works.

6 HOW WE WILL RUN THE VILLAGE

Management of the Village

- 6.1 We will use reasonable care and skill in ensuring that the affairs of the Village are conducted properly and efficiently and in the exercise and performance of our powers, functions and duties.
- 6.2 We are entitled to appoint an entity or company as the manager to undertake the day to day management of the Village. We will consult with you if we decide to appoint a new entity or company as manager. However, we will not consult with you if we or any manager decides to employ new staff members in managerial roles.
- 6.3 If we need to, or if in our reasonable opinion we consider it prudent, due to any public health, civil defence or other Government restrictions or events, we may make changes to our business operations, including the provision of services and removal or restriction of access to Community Facilities. We will make such changes as we consider are necessary to comply with Government requirements and/or to protect the health, wellbeing and property of residents and our staff. You agree to comply with any policies we make in this regard.

Community Facilities

- 6.4 We are entitled to provide additional buildings, areas or amenities as part of the Community Facilities, or to remove buildings, areas or amenities from the Community Facilities permanently or temporarily.

Maintenance of Village

- 6.5 We will maintain and keep in good condition and order the Village including making, reviewing and keeping to a long term plan for maintaining the Village.
- 6.6 We will supply your Care Suite with standard connections for telephone and television but (subject to our obligations to you under the Resident Admission Agreement) we are not responsible for any failure caused by any third-party provider in the provision or maintenance of utility services, such as electricity, gas, telephones, internet and water.

Insurance

- 6.7 We will arrange and maintain a comprehensive insurance policy covering the Village (including your Care Suite, Operator's Chattels, capital improvements, and additional fittings provided by you), for its full replacement value in respect of all usual risks including damage or destruction by fire, accident and natural disaster and covering any other insurable risk which we may consider desirable, in our interests or in the interests of residents.
- 6.8 We will ensure that the insurance we have arranged is to the satisfaction of the Statutory Supervisor.
- 6.9 We are not responsible for insuring your personal belongings. We strongly recommend that you maintain your own insurance to cover risk of loss or damage to your personal belongings. We are not responsible for any loss of or damage to your property except where we or our staff have caused or contributed to such loss or damage.

Development of the Village

- 6.10 We may decide to improve, extend, add to, reduce, alter or redevelop the Village. If we do, we will try our best to cause as little inconvenience to you as is practical in the circumstances.
- 6.11 You may not make any unreasonable objection or claim compensation in respect of any development or building works we undertake. You will, if we require, sign all consents and other documents as may be required to give effect to such development.
- 6.12 We are entitled to sell any part of the Village which we determine to be surplus to our needs.

Sale of the Village

- 6.13 We may decide to market, sell, assign or dispose of our interest under this Agreement. If we decide to sell or dispose of our interest in the Village, we will consult with residents. Any such consultation will take place at a time directed by the Statutory Supervisor (if there is no Statutory Supervisor, it will be at a reasonable time before settlement of the transaction).
- 6.14 With effect from the date of sale, assignment or disposal, all our rights and obligations under this Agreement will pass to the new operator, and we will have no further rights and no further obligations to you under this Agreement. You agree to continue to observe and perform all your obligations under this Agreement for the benefit of the new operator.

7 TRANSFERRING TO ANOTHER CARE SUITE

- 7.1 We acknowledge that you may wish to move to another Care Suite within the Village or another Heritage Lifecare village. There are no special terms that apply for transfers from your Care Suite to another care suite at the Village or another Heritage Lifecare village and if you choose to transfer to another care suite you will be required to pay the then current entry payment for the new care suite.

- 7.2 Further terms and conditions that will apply to your transfer to another care suite within the Village or another Heritage Lifecare village will be subject to our transfer policy in place from time to time and as agreed between us.

8 HOW THIS AGREEMENT ENDS

Termination by you

- 8.1 You may terminate this Agreement on one calendar month's written notice to us. Your notice should set out the date on which you intend for the Agreement to terminate. If there are two of you named as resident then the notice must be signed by both of you.

Termination on death

- 8.2 This Agreement will automatically terminate on the day that you die, or, where two of you have jointly signed this Agreement, the surviving resident dies.

Termination by agreement

- 8.3 You and we can agree in writing to terminate this Agreement.

Termination by us

Health

- 8.4 We may terminate this Agreement if based on a medical assessment obtained by us at our cost, an independent medical practitioner has certified that your physical or mental health is such that you cannot live safely in your Care Suite or that other residents in the Village cannot live safely in their Care Suites.

- 8.5 If we wish you to obtain a medical assessment, then:

- (a) we will give you not less than 14 days' notice of our intention to require you to have a medical assessment;
- (b) we will consult with you, your family or appointed representative where appropriate; and
- (c) you agree to co-operate with us in obtaining this assessment.

- 8.6 You may obtain a second opinion at your cost and present this to us within seven days of your being advised of the assessment we have obtained. We will take this into consideration before making a final decision on whether to give you a notice of termination.

- 8.7 If we have complied with our obligations above and the grounds giving rise to our right to terminate have not changed, then we will give you not less than one calendar month's notice of termination.

- 8.8 If there are two of you and the medical assessment applies to only one of you, we will not terminate this Agreement for health reasons provided you arrange suitable care and accommodation (which may need to be outside the Village) for the resident who has been assessed as soon as possible.

Serious damage, injury, harm or distress

- 8.9 We may terminate this Agreement if you have intentionally or recklessly caused or permitted, or we consider that you are reasonably likely to cause or permit:
- (a) serious damage to your Care Suite or to the Community Facilities;
 - (b) damage to your Care Suite or to the Community Facilities which is not of itself of a serious nature but which is made so by its continuous nature; or
 - (c) serious injury, harm or distress to us or to another resident or person who works at the Village or to any visitors to the Village.
- 8.10 If we wish to terminate this Agreement on these grounds we will give you as much initial notice as is reasonable in the circumstances that we intend to terminate this Agreement unless the default is remedied. When determining the period of notice required to remedy the default, we will take into account the nature and extent of the damage, injury, harm or distress concerned.
- 8.11 If we have complied with our obligations above and the grounds giving rise to our right to terminate have not changed or been remedied, and we still wish to terminate this Agreement, then we will give you as much final notice as is reasonable in the circumstances.

Permanent abandonment or breach of agreement

- 8.12 We may terminate this Agreement if:
- (a) you have permanently abandoned your Care Suite; or
 - (b) you have materially breached this Agreement.
- 8.13 If we wish to terminate this Agreement on these grounds, we will give you not less than one calendar month's initial notice that we intend to terminate this Agreement unless the breach or circumstances are remedied.
- 8.14 If we have complied with our obligations above and the grounds giving rise to our right to terminate have not changed or been remedied, and we still wish to terminate this Agreement, then we will give you not less than one calendar month's final notice.

Termination Date

- 8.15 The Termination Date is the applicable date from the following:
- (a) the expiry of the notice period (being not less than one month) in a notice of termination given by you to us; or
 - (b) the date the last surviving resident dies; or
 - (c) the date that you and we agree in writing; or
 - (d) the expiry of the applicable notice period in a final notice of termination given by us to you.

8.16 Any termination of this Agreement shall be deemed to be a termination of the Resident Admission Agreement.

9 VACATING YOUR CARE SUITE

9.1 You must leave your Care Suite and remove all personal belongings from your Care Suite and the Village on or before the Termination Date or if you have died, within two weeks of the date of death. If for any reason you remain in the Care Suite after the Termination Date your obligations relating to living in and using the Care Suite will continue to apply.

9.2 You must leave your Care Suite in similar repair, order and condition as it was at the Commencement Date, except for Fair Wear and Tear or any damage by fire, accident or natural disaster. You must make good any damage caused to your Care Suite or Village in removing your personal belongings.

9.3 When you have left the Care Suite and removed your personal belongings we will enter the Care Suite to assess whether you or your guests have caused any damage to the interior of the Care Suite or the Operator's Chattels which is more than Fair Wear and Tear. If there is any such damage, we will consult with you about the nature of any works required and the cost to carry out repairs. We will then carry out the works and the costs will be payable by you by way of a deduction from your Exit Payment.

9.4 If your personal belongings are not removed by the date set out above, we may remove them at your cost. If you have not collected them within a further two months we may either dispose of the items or otherwise sell them and, after deducting our expenses of removal and storage pay any proceeds to you.

9.5 We are entitled to enter the Care Suite after the Termination Date and we may permit a new resident to live in the Care Suite before you have received your Exit Payment if we consult with you first. In particular, we are entitled to allow a resident to occupy the Care Suite on a casual basis under an admission agreement whilst we are trying to obtain a resident prepared to enter into an occupation right agreement for the Care Suite.

10 FINDING A NEW RESIDENT

10.1 After the Termination Date (or any later Vacation Date) we will in a timely manner make all reasonable efforts to obtain a new resident for your Care Suite who is prepared to enter into an occupation right agreement and an admission agreement on our then standard terms and conditions and for the best price reasonably obtainable.

10.2 You may introduce a prospective new resident for your Care Suite to us at any time prior to us entering into a new occupation right agreement for your Care Suite. We are not obliged to accept any prospective new resident who we consider unsuitable as a resident of the Village or the Care Suite.

10.3 We do not have to obtain a new resident if this Agreement is terminated following a Damage Event (see clause 12.12) or if we agree to pay you the Exit Payment prior to finding a new resident.

- 10.4 We will not give preference to finding residents for new Care Suites in the Village ahead of your Care Suite.
- 10.5 We will consult with you about the marketing of your Care Suite. In particular, we will consult with you about when your Care Suite goes on the market and the general nature of the marketing plan for your Care Suite. We will continue to keep you informed on a monthly basis about progress with marketing.
- 10.6 You are not required to pay for any direct charges relating to the marketing and sale of your Care Suite.

11 PAYMENTS FOLLOWING TERMINATION

Exit Payment

- 11.1 Your Exit Payment is an amount equal to your Entry Payment.

Deferred Management Fee

- 11.2 On the Exit Payment Date we will charge you and you agree to pay us the Deferred Management Fee. The amount and calculation of the Deferred Management Fee is set out in clause 1.6.
- 11.3 In setting the Deferred Management Fee we have taken into account the obligation to pay you a rebate for the accommodation portion of the Care Services Fee, and the Deferred Management Fee, as calculated in accordance with clause 1.6, is net of any such rebate. You acknowledge that any obligation for us to pay a rebate for accommodation charges is satisfied by our payment of the Exit Payment, to you less the deductions set out in clause 11.6.
- 11.4 There is no liability or legal debt arising in relation to the Deferred Management Fee until this Agreement has been terminated and all obligations under this Agreement have ceased. Further, there is no entitlement to invoice for this fee until this Agreement is terminated. Regardless that the Deferred Management Fee is calculated over an agreed period of time, you and we agree that the Deferred Management Fee is consideration for the right to occupy the Care Suite over the entire period of this Agreement.
- 11.5 There is no right to charge you and no obligation for you to pay us the Deferred Management Fee if this Agreement terminates due to a Damage Event following our decision not to repair or replace the Care Suite under clause 12.12.

Our payment of the Exit Payment less deductions

- 11.6 On or before the Exit Payment Date, we will pay you the Exit Payment, and minus the following amounts:
- (a) your Deferred Management Fee;
 - (b) our legal fees for the termination of this Agreement;
 - (c) any unpaid Care Services Fees and/or fees for Additional Services;

- (d) any amounts due to the operator of the Care Facility or to Heritage Lifecare; and
- (e) any other money due or that will be due from you under this Agreement.

Exit Payment Date

11.7 The Exit Payment Date is the applicable date from the following:

- (a) within five Working Days after we hold a new occupation right agreement and receive full settlement of the entry payment from a new resident for your Care Suite; or
- (b) if we agree in writing to pay you the Exit Payment prior to finding a new resident to enter into an occupation right agreement for your Care Suite, the Exit Payment Date is 20 Working Days after the date we reach agreement; or
- (c) five Working Days after the date of expiry of the applicable notice period if we give you a final notice of termination.

Interest on Exit Payment

11.8 If the Exit Payment Date is more than nine months after the Termination Date we will, subject to the conditions set out in clause 11.9, pay you interest on the amount due to you. Interest will be paid to you on the Exit Payment Date and will accrue from the date which is nine months after the Termination Date until the date that funds are held by the Statutory Supervisor and available to be paid to you (being the "**Availability Date**"). Interest will be calculated at a per annum rate equal to the Bank of New Zealand's 90 day term deposit rate on the Availability Date.

11.9 Our obligation to pay you interest in accordance with clause 11.8 is subject to the following conditions:

- (a) that the payment of interest will not cause us to breach the Deed of Supervision or any conditions of any funding that we may have in place at the time the payment of interest is due to be made; and
- (b) that we have satisfied the Solvency Condition. For the purposes of this clause, "Solvency Condition" means that we are solvent and are able to satisfy the solvency test contained in section 4 of the Companies Act 1993, (as modified by section 52 of the act) on the date that the interest payment is due to be made, and that we will continue to satisfy the solvency test immediately after making the payment.

When we can defer payment

11.10 If you (or the last resident, if there were originally two of you) have died, then we will defer making payment until your personal representative provides evidence of probate of your will, or letters of administration of your estate.

12 DAMAGE OR DESTRUCTION

- 12.1 If your Care Suite is damaged or destroyed by fire, accident, natural disaster or any other risk (“Damage Event”) the provisions in this clause 12 apply, which may override other clauses in this Agreement relating to termination and exit payments.
- 12.2 If a Damage Event occurs, the time frames for consulting, deciding, providing alternative accommodation and undertaking any works may well depend on circumstances outside our control. As such, the phrase “as soon as reasonably practicable” shall mean taking all relevant circumstances into account.
- 12.3 Following a Damage Event we will consult with you to decide whether it is practicable to repair or replace your Care Suite. We will try to consult with you as soon as reasonably practicable after the Damage Event. After we have consulted with you, we will notify you of our decision.

Repair or replacement

- 12.4 If we have decided it is practicable to repair and replace your Care Suite, we will do so as soon as reasonably practicable. We will try to repair or replace your Care Suite to a design we consider appropriate taking into account current market conditions, subject to us receiving the necessary building consents to do so. However, we are not bound to expend any more money than the actual amount of the insurance money we receive.

Suspension of payments

- 12.5 If your Care Suite becomes uninhabitable following a Damage Event and which is not as a result of any of your, or your visitors’, acts or omissions:
- (a) your requirement to pay the Care Services Fee and any fees for Additional Services; and
 - (b) the calculation of the Deferred Management Fee (if applicable),
- will be suspended from the date of the Damage Event to the date your repaired or replaced Care Suite is ready for occupation by you.
- 12.6 However, if we are providing you with temporary accommodation (as set out below), the calculation of the Deferred Management Fee will resume from the date that we make temporary accommodation available to you.

Temporary accommodation

- 12.7 Following the Damage Event we will use our reasonable endeavours to provide alternative temporary accommodation for you while your Care Suite is being repaired or replaced or until this Agreement is terminated. Such accommodation may be outside of the Village and will be provided as soon as reasonably practicable after the Damage Event occurs.

- 12.8 We will be responsible for the cost of providing such accommodation to you, to the extent and for the time period that we receive adequate amounts from our insurer for such costs. We are entitled to determine and change at any time the amount of temporary accommodation cover that we maintain.
- 12.9 You must pay us any outgoings relating to such accommodation and any charges for personal services (such as the Care Services on the terms of the Resident Admission Agreement, and any Additional Services) provided to you whilst you are staying in temporary accommodation.
- 12.10 If a Community Facility is being repaired or replaced following an insured event, we will use reasonable endeavours to provide alternative facilities at our cost as soon as reasonably practicable.

Termination following a Damage Event

- 12.11 Following a Damage Event and after consultation with you, we may (in our sole discretion) decide it is not practicable to repair or replace your Care Suite in the following circumstances:
- (a) repair or replacement of your Care Suite is not practicable due to the nature or extent of the damage or destruction;
 - (b) we are unable to obtain the necessary building consents to repair or replace;
 - (c) the insurance money we receive is not adequate to meet the cost of repairing or replacing your Care Suite; or
 - (d) we receive no insurance money.
- 12.12 If we decide not to repair or replace your Care Suite, this Agreement will terminate on the date we give you notice of our decision, unless clauses 12.13 to 12.15 apply. If this Agreement terminates under this clause:
- (a) we will pay you the Exit Payment without deducting any Deferred Management Fee, but we will be entitled to deduct any other amounts due to us under clause 11.6; and
 - (b) the Exit Payment Date is 10 Working Days after the date we or the Statutory Supervisor receives full payment from our insurers for the loss or damage; and
 - (c) we must pay you the Exit Payment even if we do not receive full payment from our insurers.

Transfer to another Care Suite following a Damage Event

- 12.13 If we decide not to repair or replace your Care Suite, we may offer you an option to transfer to an alternative Care Suite (either pre-existing or yet to be constructed) in the Village or in another retirement village owned by Heritage Lifecare which is in reasonable proximity to the Village, with regard to the circumstances giving rise to the Damage Event.

- 12.14 If we offer you such option, the entry payment for the alternative Care Suite will be no more than the Entry Payment for your Care Suite and the Deferred Management Fee in relation to both Care Suites will not exceed the amount set out in clause 1.6.
- 12.15 If we offer you an option to transfer to an alternative Care Suite and you do not accept such option, this Agreement will be deemed terminated by you and the usual Exit Payment and Exit Payment Date provisions will apply. For the avoidance of doubt, the Deferred Management Fee will be payable by you.

Damage or destruction to part of the Village

- 12.16 If a substantial part of the Village is damaged or destroyed, even if your Care Suite is not damaged, we will consult with you to decide whether it is practicable to repair or replace such part of the Village. If you decide to terminate this Agreement in these circumstances, the usual Exit Payment and Exit Payment Date provisions will apply. For the avoidance of doubt, the Deferred Management Fee will be payable by you.

13 HOW TO SOLVE PROBLEMS

- 13.1 We have a village complaints facility to deal with any informal and formal complaints raised by you relating to the retirement village aspects of your occupation or raised by other residents or us. This complaints facility will comply with the Retirement Villages Act and the Code of Practice.
- 13.2 Under the Retirement Villages Act you may have grounds to require a matter to be resolved by a disputes panel by giving us and/or any other party a dispute notice, provided you first refer the complaint to our village complaints facility.
- 13.3 If you have a complaint concerning any health services or disability services (including the Care Services), the Code of Health and Disability Service Consumers' Rights applies and you need to use our Care Facility complaints facility. Disputes relating to Care Services cannot be referred to a disputes panel under the Retirement Villages Act.
- 13.4 If you have a complaint because we have not found a new resident for your Care Suite within nine months after your Care Suite became available to us for disposal, you may be able to give us a dispute notice in accordance with the Retirement Villages Act without first referring your complaint to our complaints facility.

14 BREACH OF THIS AGREEMENT

- 14.1 If you breach any of your obligations under this Agreement we may, without prejudice to any of our rights, powers or remedies, at your cost, pay money and do things in our opinion reasonably necessary for the performance of your obligations. We will consult you before paying such money or doing such things.
- 14.2 You will promptly pay us all money paid by us and our legal costs incurred to enforce our rights and remedies under this Agreement. Until we receive such payment, moneys and costs incurred on your behalf will be treated as an advance and interest is payable by you at the Default Interest Rate.

14.3 If we do not insist upon your strict performance, observance or compliance with any of your obligations under this Agreement, or we waive any of your breaches of this Agreement, this shall not be construed to be a waiver or relinquishment by us of our right to insist upon your strict compliance with all or any one or more of the terms of this Agreement.

15 GENERAL

15.1 If any clause of this Agreement is declared illegal, invalid or unenforceable this Agreement shall be read as if that clause were not contained in it. You and we shall endeavour in good faith negotiations to replace any such illegal, invalid or unenforceable clauses.

Notices and consents

15.2 If you require our consent or approval for anything under this Agreement, such consent or approval may be given conditionally or unconditionally or withheld by us in our sole discretion. Our consent or approval must be obtained before the act, matter or thing is done.

15.3 All notices, consents or approvals given under this Agreement must be in writing.

15.4 All notices to you may be given by delivering such notice either personally to you or to your Care Suite. All notices to us may be given by delivering such notice to the Village's physical address or its registered office.

Meetings of residents

15.5 We will call meetings of residents of the Village in the circumstances and for the purposes set out below:

Circumstances

An annual general meeting within 6 months after the end of an accounting period for which financial statements must be prepared for the operator or the retirement village

There is a statutory supervisor of the village and the meeting has been requested by the statutory supervisor or by at least 10% of the residents of the village

There is not a statutory supervisor of the village and the meeting has been requested by at least 10% of the residents of the village

Where the Act, Regulations or the Code of Practice require us to obtain the consent of residents of the village

Purpose

Considering the financial statements, a report from the statutory supervisor (if any), a report on maintenance and any other matters

Giving the statutory supervisor the residents' opinions or directions relating to the exercise of the statutory supervisor's powers

Giving the operator the residents' opinions or directions

To obtain the consent of residents of the Village

Circumstances

Purpose

Where other enactments, the resident’s Agreement or other such documents require us to obtain the residents’ collective consent

To obtain the residents’ collective consent

15.6 We will provide written notice of the meeting to you and each resident of the Village at least 10 Working Days before the meeting. The notice will specify the time, place and agenda of the meeting, and all papers to be considered at the meeting will be attached.

15.7 You and we agree that the meetings will be chaired by a person:

- (a) appointed by the Statutory Supervisor; or
- (b) appointed in accordance with the conditions (if any) of an exemption (if any) that we may have from appointing a statutory supervisor; or
- (c) appointed by the majority of the residents of the Village who are at the meeting if an appointment has not been made under paragraphs (a) or (b) above.

15.8 We will give to you and the other residents attending the meeting, either orally or in writing, the information that relates to the affairs of the Village and has been requested with reasonable notice by a resident of the Village.

Procedure if there ceases to be a statutory supervisor

15.9 If the Statutory Supervisor ceases to be the statutory supervisor of the Village, then we will promptly appoint a new statutory supervisor with the required qualifications to act as statutory supervisor of the Village in accordance with the procedures set out in the Retirement Villages Act and the Deed of Supervision.

Counterparts

15.10 This Agreement may be signed in counterparts. All executed counterparts together will constitute one document. Any copy of this Agreement sent via email in PDF format or by facsimile may be relied on by any other party as though it were an original. This Agreement may be entered into on the basis of an exchange of such copies.

16 IMPORTANT DOCUMENTS

16.1 Any documents made available to you as set out in this clause or as required under the Retirement Villages Act will be given to you free of charge.

Your application

16.2 You confirm any reports or information you have supplied to us in connection with your application for this Agreement are correct and true.

16.3 This Agreement remains subject to any conditions set out in your application for this Agreement.

Enduring powers of attorney and wills

16.4 On or before the Commencement Date you must give us a copy of your properly executed enduring powers of attorney in respect of both your property and your personal care and welfare. These powers of attorney must remain valid in the case of mental incapacity. You must provide a copy of any replacement enduring powers of attorney you grant during the term of this Agreement.

16.5 On or before the Commencement Date you must confirm to us that you have a valid last will and testament.

16.6 You will keep us informed of the name, address and telephone number of your attorneys, legal personal representatives and next of kin.

Personal Information and privacy

16.7 We are committed to being open and transparent about how we manage your Personal Information. In particular we will always comply with the requirements of applicable privacy laws which regulate how we may collect, store, use and disclose your Personal Information. Those laws also specify other requirements, such as how you may access, correct and delete information held about you. We have put in place our own privacy policy, which aims to communicate in the clearest way possible how we treat your Personal Information.

Village documents

16.8 You confirm that you have received a copy of:

- (a) the Disclosure Statement;
- (b) the Code of Residents' Rights; and
- (c) the Code of Practice.

16.9 Further copies of the above documents can be requested from us at any time.

16.10 Copies of any management agreement, the Village Charter, the Deed of Supervision and our certificate of insurance for the Village can be requested from us at any time.

Policies and procedures

16.11 We have and will maintain written policies and procedures in respect of the following matters, and copies of these policies can be requested from us at any time:

- (a) Staffing of Village;
- (b) Safety and personal security of residents;

- (c) Fire protection and emergency management (including access for people with disabilities);
- (d) Transfer of residents within the Village;
- (e) Meetings of residents with us and resident involvement;
- (f) Dealing with complaints by Village residents;
- (g) Accounts;
- (h) Maintenance and upgrading;
- (i) Termination of this Agreement;
- (j) Communication with residents (for communicating with residents who speak English as a second language or who have a limited ability to communicate); and
- (k) Privacy policy.

Financial statements

16.12 On request we will give to you a copy of the most recent audited financial statements prepared by us under the Retirement Villages Act. Your right to request a copy of the audited financial statements continues until you have received your Exit Payment.

16.13 We will prepare, at the start of each financial year, a statement forecasting for that period:

- (a) the operating expenditure relating to the Village;
- (b) all expenditure relating to the Village (including amounts repayable to residents, former residents and their estates);
- (c) all income relating to the Village; and
- (d) the amounts of the operating expenditure that must be met by the residents of the Village.

16.14 We will give a copy of the forecast statement to you and to all the other residents within three months of the start of each financial year.

SIGNING OF THIS AGREEMENT

Signature of Resident:

[Insert Resident 1 name]

_____ [Insert Resident 2 name]

Witness signature*

Witness name

Witness address

Witness occupation

Date signed by the
Resident(s):

* To be witnessed by the lawyer who certifies this Agreement. Please also sign the Lawyer's Certificate on the following page.

Signed for and on behalf of
the Operator by:

Name

Signature

YOUR RIGHT TO CANCEL OR AVOID THIS AGREEMENT

- (a) You may cancel this Agreement under section 28(1) of the Retirement Villages Act, without having to give any reason. You can do this by notice given not later than 15 Working Days after you sign this Agreement.
- (b) Where this Agreement relates to a Care Suite which is to be built or completed after the date you sign this Agreement, then, if your Care Suite is not finished within six months after the Target Completion Date, you may also cancel this Agreement under section 28(1) of the Retirement Villages Act. You can do this by giving notice to us at any time after the expiry of that six-month period.
- (c) Your notice of cancellation must be in writing and must clearly indicate your intention to cancel this Agreement.
- (d) Your notice may be given on your behalf by a person authorised in writing by you.
- (e) The notice of cancellation must be given to us or to any person we have told you is authorised to receive communications on our behalf.
- (f) If you cancel your Agreement under this clause, you are entitled to a refund of any payment made by you for this Agreement within 10 Working Days of your request. This refund will include any interest earned in the Statutory Supervisor's account (but less any tax) and be without deduction except we are entitled to reasonable compensation for any services we have provided to you while you were living in the Village, and for any damage to your Care Suite or to any facilities in the Village, for which you are responsible.

LAWYER'S CERTIFICATE

Lawyer's certification

Name of Village: Annie Brydon Residential Village

Registration number of village: 2002676

I, _____ [insert name of lawyer], certify that:

(a) I explained to

_____ [insert name of intending resident or person treated by section 27(7) of the Act as the intending resident] the general effect of the attached Agreement and its implications before he or she signed the Agreement; and

(b) I gave the explanation in a manner and in language that was appropriate to the age and understanding of

_____ [insert name of intending resident or person treated by section 27(7) of the Act as the intending resident].

Dated: _____ [insert date].

Signed: _____ [insert signature of lawyer].

Name: _____ [insert name of signatory].

Street address: _____ [insert street address of lawyer, including the name of the organisation (such as firm or chambers) within which the lawyer works].

Postal address: _____ [insert postal address of lawyer, including the name of the organisation (such as firm or chambers) within which the lawyer works].

Email address: _____ [insert email address of lawyer].

Telephone number: _____ [insert telephone number of lawyer].

Fax number (optional): _____ [insert fax number for lawyer, if desired].

Schedule 1: Definitions

Additional Services means the services we may in our discretion make available to you on the terms of the Resident Admission Agreement.

Agreement means this Agreement including the Schedules.

Care Facility means the aged care facility situated at the Village and operated by us or an entity associated with us.

Care Services means the long-term residential care services we make available to you on the terms of the Resident Admission Agreement.

Care Services Fee means the payment (if any) you make in exchange for the provision of the Care Services. The initial amount is set out in clause 1.8 and more detail is in clauses 4.1 to 4.5.

Care Suite means the Care Suite identified in clause 1 which is a residential unit for the purposes of the Retirement Villages Act.

Code of Practice means the Retirement Villages Code of Practice 2008 as updated, amended or replaced from time to time.

Code of Residents' Rights means the code of resident's rights which is applicable from time to time under the Retirement Villages Act.

Community Facilities means the common areas and community facilities of the Village provided by us from time to time for use by care suite residents.

Deed of Supervision means the written document we have entered appointing the Statutory Supervisor to the Village as required under the Retirement Villages Act, as amended from time to time.

Default Interest Rate means the rate of 3% above the 90 day bank bill rate as published by Bank of New Zealand.

Deferred Management Fee or **DMF** means the deferred management fee described in clause 1.6 and clauses 11.2 to 11.5.

DMF Calculation Date means the Termination Date (or later Vacation Date).

Disclosure Statement means the written document entitled the disclosure statement containing information about the Village, in accordance with the Retirement Villages Act.

Entry Payment means the payment set out in clause 1.5 and which is payable in exchange for your right to occupy the Care Suite and to receive the Exit Payment.

Exit Payment means an amount equal to your Entry Payment, from which certain amounts can be deducted.

Exit Payment Date means the date we must pay you the Exit Payment and which is set out in clause 11.7.

Fair Wear and Tear means the normal change that takes place with the ageing of the Care Suite or the Operator's Chattels through normal use by you or your guests. It does not include any damage caused by smoking or by pets.

Heritage Lifecare means the group of retirement villages and care facilities owned and operated from time to time by companies ultimately owned by Heritage Lifecare Limited. References to "Heritage Lifecare" may mean the group as a whole or any group company.

Operator's Chattels means any chattels or goods installed in your Care Suite by us including those items set out in Schedule 2.

Personal Information means identifiable information about you, such as your name, date of birth, email, address, telephone number, health information and so on.

Resident Admission Agreement means the agreement for the provision of long-term residential care to be entered into between you and us/or an entity associated with us.

Retirement Villages Act means the Retirement Villages Act 2003 as updated, amended or replaced from time to time.

Statutory Supervisor means Covenant Trustee Services Limited or any other company appointed as statutory supervisor of the Village.

Termination Date means the date this Agreement terminates or ends as set out in clause 8.15 or clause 12.12.

Vacation Date means the date you have stopped living in your Care Suite and have removed all your possessions, provided this Agreement is terminated.

Village Charter means our rules for the Village which we may establish or change from time to time, as set out in this Agreement.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Matariki and Labour Day;
- (b) A day in the period commencing on 25 December in any year and ending on 2 January in the following year, inclusive;
- (c) If 1 January falls on a Friday, the following Monday, and if 1 January falls on a Saturday or Sunday, the following Monday and Tuesday;
- (d) If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

A Working Day will be deemed to commence at 9am and end at 5pm. Any act done under this Agreement by a party after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed to have been done at 9am on the next succeeding Working Day.

Schedule 2: Operator's Chattels