

7 Saint Vincent

Occupation Right Agreement

Care Suite



metlifecare

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PARTIES

Operator: Metlifecare Retirement Villages Limited

Resident:

INTRODUCTION

- A. We own and operate the retirement village known as 7 Saint Vincent at 7 St Vincent Avenue, Remuera, Auckland New Zealand ("**Village**").
- B. You have undergone a needs assessment that has confirmed that you require the level of care that we can provide to you in the Care Suite. On the basis of such assessment, we have agreed to accept your application upon the terms set out in this Agreement.
- C. This Agreement sets out the terms and conditions that apply to your residency of the Care Suite, including our obligations to you, and your obligations to us.
- D. You confirm that you have received independent legal advice before signing this Agreement.
- E. You confirm that you have received a copy of each of the following:
 - (a) Admission Agreement;
 - (b) Disclosure Statement;
 - (c) The Rules (if any);
 - (d) The Code of Residents' Rights; and
 - (e) The Code of Practice.

ESSENTIAL INFORMATION

In this Agreement, capitalised terms have the following meanings:

Care Suite	[] at the Village
Commencement Date	The date that you occupy the Care Suite, being: _____
Capital Sum	[\$]
Net Management Fee	Up to 30% of the Capital Sum, as more particularly set out in clause 2.3
Daily Care Fee	[\$] (including GST) per day Please see clause 2.2 for further details about the Daily Care Fee
Operator's Chattels	[]

Regeneration of the Village

- (a) You acknowledge that we have plans to undertake a regeneration of certain buildings at the Village and, as at the date of this Agreement, we are consulting with residents regarding such plans. This clause applies if we decide to proceed with the regeneration.
- (b) In order to ensure that the regeneration is undertaken in an efficient and financially viable manner, we reserve the right to alter the staging and timing of completion of the regeneration, the final number of units, the Common Areas and the services and facilities that may be offered.
- (c) In undertaking the regeneration at the Village, we will take reasonable steps to cause as little inconvenience to you as is practical in the circumstances.
- (d) To facilitate the regeneration of the Village, you agree that you will not make any objection or claim compensation in respect of the construction and development and shall, if asked by us, sign all consents and other documents as may be required. Further, you agree not to institute or commence any action or proceeding for an injunction, damages or other relief arising out of, or consequent upon, any such works.
- (e) Nothing in sub-clauses (a) to (d) above detracts from your right to raise a complaint either under our Feedback Policy or under the Retirement Villages Act 2003.

EXECUTION OF THIS AGREEMENT

Resident

Signed by:

Signature of Resident or
Resident's Attorney

Name of Resident or
Resident's Attorney

Date

**Signed in the presence
of:**

Signature of witness
(Certifying Solicitor)

Name of witness

Occupation of witness

Address of witness

Lawyer Certification

Name of Village: 7 Saint Vincent

Registration No. of Village: 2055070

I, _____ certify that:

(a) I explained to _____

_____ *(name of Resident and/or Attorney of Resident)* the general effect of the attached Agreement and its implications before each of them signed the Agreement; and

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

_____ *(name of Resident and/or Attorney of a Resident)*

Dated: _____

Signed: _____

Name of Lawyer: _____

Street address of Lawyer
and name of Firm: _____

Postal address of Lawyer
and name of Firm: _____

Email address of Lawyer: _____

Telephone number of Lawyer _____

Fax number (optional) of Lawyer: _____

Operator

Signed by:

Metlifecare Retirement Villages Limited

Director

Director/Authorised Signatory

Date of Execution

This Agreement has been executed this _____ day of _____ 20____

1. GRANT OF OCCUPATION RIGHT

- 1.1 We will grant you, and you accept, a licence to occupy the Care Suite on the terms set out in this Agreement.
- 1.2 You may occupy the Care Suite on the Commencement Date.
- 1.3 Nothing in this Agreement gives you any ownership right or interest in the Village or the Care Suite. You agree not to caveat or otherwise encumber the title to the Village.
- 1.4 The rights of occupancy set out in this Agreement are not transferable and there are no rights of transmission, except by survivorship as between two residents in the same Care Suite who are joint tenants.
- 1.5 Where two of you have signed this Agreement as a resident then, unless a contrary intention is expressed, you will be deemed to hold your interests as joint tenants. On the death of one of the joint tenants, the surviving joint tenant will assume all the rights and obligations under this Agreement unless we have received written notification while both joint tenants are alive, that you have cancelled your right of survivorship in respect of such joint interest.
- 1.6 If funds are provided by a third party and paid towards the Capital Sum (for example, the trustees of a trust), the gift or loan arrangements relating to those funds will be a matter to be agreed between you and the provider of the funds. If you wish to assign your rights to the Repayment Sum (after deduction of the Net Management Fee and any other amounts that you owe us) to the provider of the funds or to another person or entity, you may do so by providing an Authority for Direction of Payment, or such assignment documentation as may be required, to us, in a form acceptable to us at the time, provided that you provide such authority prior to payment of the Repayment Sum.
- 1.7 You must sign this Agreement prior to occupying the Care Suite.
- 1.8 You must sign an Admission Agreement prior to occupying the Care Suite. The Admission Agreement is required under the ARRC Contract but does not replace this Agreement. In the event of any inconsistency between the provisions of this Agreement and the provisions of the Admission Agreement, this Agreement will prevail.

2. PAYMENTS

2.1 Capital Sum

Unless the parties agree otherwise in writing, you must pay the Capital Sum to the Statutory Supervisor prior to taking occupation of the Care Suite.

2.2 Daily Care Fee

- (a) You agree to pay the Daily Care Fee to us. The Daily Care Fee is invoiced one month in advance on or around the last day of the month and is paid on or around the 15th day of the following month by bank direct debit authority.

- (b) The Daily Care Fee will change if:
- (i) the level of care that you require changes, in which case the new Daily Care Fee will be effective from the date that we start to provide such different level of care to you; or
 - (ii) if the daily bed rates are reviewed under the ARRC Contract, in which case the change of rate will take effect from the date that the new daily bed rate applies under the ARRC Contract.
- (c) Health New Zealand may pay a portion of the Daily Care Fee on your behalf if you meet the criteria set by the Ministry of Social Development from time to time.
- (d) The services covered by the Daily Care Fee include all meals, laundry, the use of common areas and grounds, visits from the Village's GP or nurse practitioner, some Pharmac-funded prescribed medications, wound care, most continence products and transport (with assistance if necessary) to some health service appointments, as more particularly set out in the Admission Agreement.
- (e) If you are hospitalised, you will be required to pay the Daily Care Fee whilst the Care Suite remains unoccupied in accordance with the provisions of the Admission Agreement.
- (f) You agree to pay the Daily Care Fee from the Commencement Date until the earlier of:
- (i) the day after you pass away, if this Agreement is terminated in accordance with clause 11.3;
 - (ii) the date the Care Suite is damaged or destroyed and is uninhabitable through no fault of your own; and
 - (iii) the date of termination of this Agreement, if this Agreement is terminated under clauses 11.1 or 11.2.

2.3 Net Management Fee

- (a) You agree to pay the Net Management Fee to us by way of deduction from the amounts paid to you following termination of this Agreement.
- (b) The Net Management Fee will accrue to us over three years. The maximum sum payable by you as a Net Management Fee in terms of this Agreement will be an amount equal to 30% of the Capital Sum. The Net Management Fee accrues on a daily basis from the Commencement Date until the Last Accrual Date at the following rates:
- (i) 15% of the Capital Sum for the first year commencing from the Commencement Date or \$5,000, whichever is the greater;

- (ii) 10% of the Capital Sum for the second year commencing on the first anniversary of the Commencement Date; and
- (iii) 5% of the Capital Sum for the third year commencing on the second anniversary of the Commencement Date.

For the purposes of this clause 2.3(b), the “Last Accrual Date” means the later of:

- (iv) the date of termination of this Agreement; and
 - (v) the date that the Care Suite is vacated and all the Personal Possessions are removed.
- (c) Any obligation to pay you any rebate under the ARRC Contract for services provided under both the Admission Agreement and this Agreement has been satisfied and taken into account in setting the Net Management Fee. You agree that this obligation is satisfied by payment of the Repayment Sum to you.

2.4 Utility Charges

The costs of all electricity, water and gas (if applicable) supplied to the Care Suite are covered by the Daily Care Fee.

2.5 Additional Services

- (a) You may contract to purchase additional services offered by us from time to time. You agree to pay us the cost of any such services in addition to the Daily Care Fee (such additional costs being the “**Additional Service Costs**”). The Additional Service Costs will be invoiced on or around the last day of the month and will be paid on or around the 15th day of the following month by bank direct debit authority.
- (b) We will be entitled to change the amount of the Additional Service Costs from time to time during the term of this Agreement by written notice to you.
- (c) You will pay the Additional Service Costs until the earlier of the date that:
 - (i) you leave the Care Suite; or
 - (ii) you stop receiving the relevant additional services.

3. LIVING IN YOUR CARE SUITE

3.1 Care of Care Suite

- (a) You will co-operate with us to keep the Care Suite and Operator's Chattels in a proper, tidy and clean condition at all times.
- (b) During the term of this Agreement, you will be liable for all damage to the interior of the Care Suite and the Operator’s Chattels caused by any of your, or your visitors’, intentional acts, carelessness or negligence.

- (c) You may not carry out any alterations or additions to the Care Suite or modify the Operator's Chattels unless you obtain our prior written consent.

3.2 Residents with Disabilities

- (a) If you have a disability, you have the right to alter the Care Suite if it does not meet your needs.
- (b) If you wish to alter the Care Suite to meet your needs, you need to give us written notice advising that you need alterations and identifying what alterations you consider you need.
- (c) We will consent to the alteration of the Care Suite if it does not meet your needs. We may grant the consent subject to such reasonable terms as we may think fit and we will carry out the necessary works in connection with the alteration or addition.
- (d) On termination of this Agreement, the Care Suite will be reinstated to its original condition, and you will pay the cost of such reinstatement.

3.3 Personal Conduct in the Village

You will:

- (a) conduct yourself in the Care Suite and in the Village in such a manner so as to not unreasonably cause a nuisance or become an annoyance or give offence to any person so as to materially detract from other residents' rights of enjoyment.
- (b) use the Care Suite only as your personal dwelling and not for any other purpose except with our prior written consent.
- (c) not smoke or vape in the Care Suite, common areas or any other part of the Village.

3.4 Removal of Objects

You agree to remove from the Care Suite balcony, patio or other area any object(s) that we reasonably consider may damage the balcony or surrounds, present a danger to persons in the Village or that we consider detracts from the appearance of the Village.

3.5 Not to Keep Pets

You will not keep a pet in the Care Suite.

3.6 Assignment or Sublicensing

You are not permitted to sub-licence, transfer, assign, part with, share or otherwise encumber (including mortgaging or borrowing against your interest in the Care Suite), deal with or dispose of the Care Suite or this Agreement.

3.7 **Guests**

You may have a friend or member of our family stay in the Care Suite with you on compassionate grounds, subject to our prior written consent (which may be granted or withheld in our discretion).

3.8 **To Allow Entry by us**

- (a) You agree that we have the right to enter the Care Suite at any reasonable time for the purpose of providing you with care services in accordance with this Agreement and the Admission Agreement.
- (b) You also agree to allow us and our agents and workmen the right of entry to the Care Suite at all reasonable times to inspect the interior and to carry out any necessary repairs to the Care Suite or the Operator's Chattels.

3.9 **Power of Attorney**

You agree to provide to us, prior to the Commencement Date, a copy of properly executed Enduring Powers of Attorney for both personal care and welfare and property, together with relevant contact details of the appointed attorneys. These Enduring Powers of Attorney must remain valid in the case of mental incapacity. You agree to advise us of any change to the Enduring Powers of Attorney or contact details. You acknowledge that we will be entitled to rely on the most recent information supplied by you to us.

3.10 **Compliance with Rules**

- (a) You agree to observe and comply with the Rules.
- (b) You will ensure that all of your guests and visitors are aware of, and comply with, the Rules.
- (c) We are entitled, subject to consultation with the residents in the Village, to establish, review, suspend, add to or amend the Rules provided that the Rules may not detract from your rights under this Agreement. If there is any inconsistency between this Agreement and the Rules, the provisions of this Agreement will prevail.
- (d) If we change the Rules, we will notify you and all other residents in the Village before the change takes effect.

3.11 **Privacy and Personal Information**

- (a) You acknowledge that we collect and hold relevant personal information about you (being identifiable information, such as name, date of birth, email, address, telephone number and health information).
- (b) We are committed to being open and transparent about how we manage your personal information. In particular, we will comply with the requirements of applicable privacy laws which regulate how we may collect, store, use and

disclose your personal information. We have a Privacy Policy, which sets out how we treat personal information.

- (c) You authorise us to collect, store, use and disclose your personal information for the purposes contemplated in this Agreement and our Privacy Policy. Those purposes primarily relate to the operation of the Village and providing services and support to you (including us providing information we hold about you to your doctor, any other authorised persons, or our professional advisors and us obtaining health information from any health agency).
- (d) You have the right to request access to your personal information held by us and to request that we correct any errors in such information.

3.12 **Grant a Security Interest**

Subject to our prior written consent, you may be entitled to grant a security interest in the Repayment Sum payable to you on termination of this Agreement. This right is subject to our right to set-off and deduct from the Repayment Sum any amounts owing by you following termination of this Agreement.

3.13 **Insurance of Personal Possessions**

You are responsible for insuring any Personal Possessions in the Care Suite, at your cost. You may choose to take out a contents insurance policy in respect of your Personal Possessions with an insurer, but you are not required to do so. If you do not choose to take out a contents insurance policy, you acknowledge that we are not responsible for any loss or damage to any of your Personal Possessions.

4. **OUR OBLIGATIONS**

4.1 **Insurance**

We will maintain a comprehensive insurance policy covering the Village as a whole (including the independent living units and care suites, the Operator's Chattels, the assets, amenities and utilities within the Village, and further including capital improvements and additional fittings provided by residents (but excluding any Personal Possessions)), all for their full replacement value (to the satisfaction of the Statutory Supervisor) against loss or damage or destruction caused by fire, accident or natural disaster and covering any other insurable risks. We will provide you with a copy of the insurance certificate of currency on request.

4.2 **Operator's Chattels**

- (a) We will provide and install into the Care Suite the Operator's Chattels at our cost.
- (b) We will repair, maintain and replace the Operator's Chattels as we consider necessary. Any such works will be at our cost, unless the works are due to damage caused by you or your guests or invitees in which case you will be required to pay such costs.

4.3 Garden and Ground Maintenance

We will maintain and keep in good condition and tidy operational order the common areas, including pathways and grounds surrounding the buildings, the gardens, trees and shrubs.

4.4 Policies and Procedures

We will have, maintain, implement and (on request) provide to you written policies and procedures in respect of Staffing of the Village, Safety and Personal Security, Fire Protection and Emergency Management and Dealing with Complaints.

4.5 Maintenance and Repair

- (a) We will keep the interior of the Care Suite and the fixtures, fittings and Operator's Chattels in the same good, clean and tidy condition as at the Commencement Date.
- (b) We will maintain and repair the Care Suite during the term of this Agreement to ensure that the Care Suite and the Operator's Chattels are kept in good operational order and condition.
- (c) We will maintain and keep maintained in good clean tidy and safe repair, order and condition, all buildings, plant and equipment in the Village.
- (d) On being advised of any damage to the Village, or the Care Suite, or Operator's Chattels, we will, within a reasonable time, take appropriate steps to repair and make good the damage.
- (e) We will not be liable for any loss or inconvenience suffered by you arising from any defect or want of repair to the Care Suite or Operator's Chattels unless you have notified us of the defect or want of repair and we have failed within a reasonable time to take reasonable steps to repair and make good any defect or want of repair.
- (f) Notwithstanding anything to the contrary contained or implied in this Agreement, except as otherwise agreed in writing, we will have no obligation to expend capital moneys on any improvement, addition, or alteration to the Care Suite, unless such improvement, addition or alteration is required to keep the Care Suite and Operator's Chattels in good operational order and condition.

4.6 Code of Practice

We will comply with the requirements of the Code of Practice.

4.7 Financial Information

- (a) We will give you, free of charge, on request, a copy of the most recent audited financial statements prepared by us under the Retirement Villages Act 2003 (or under an Act referred to in section 35F of the Retirement Villages Act 2003). This obligation will continue until you are paid the Repayment Sum under clause 12.

- (b) At the start of each accounting period (which, as at the date of this Agreement, is 1 July in each year), we will prepare a statement forecasting for the period:
- (i) The operating expenditure relating to the Village;
 - (ii) All expenditure relating to the Village (including amounts repayable to residents, former residents and their estates);
 - (iii) All income relating to the Village; and
 - (iv) The amounts of the operating expenditure that must be met by the residents of the Village,

and give a copy of the statement to each resident of the Village within three months of the start of the accounting period.

4.8 Provision of Care

We will provide you the care services specified in the Admission Agreement.

4.9 Obligation to Run Village Properly

We will:

- (a) Use reasonable care and skill in ensuring that the affairs of the Village are conducted properly and efficiently;
- (b) Keep the Village in good condition and order;
- (c) Make and adhere to the long-term plan for maintaining and refurbishing the Village and its facilities;
- (d) Use reasonable care and skill in the exercise and performance of the Operator's powers, functions and duties;
- (e) Provide adequate staff to maintain the operations of the Village; and
- (f) Put in place (and keep operational) adequate provisions for the continuing safety and personal security of the residents and provide adequate fire protection and emergency systems for the residents.

4.10 Pay Village Operating Expenses

We will pay all Village Operating Expenses incurred in respect of the Village.

4.11 Consultation With Residents

We will consult with you as required under the Retirement Villages Act 2003 and Code of Practice, including:

- (a) Before our interest in the Village is sold or transferred. This consultation will take place either at a time directed by the Statutory Supervisor or in any other case, at an appropriate time that is a reasonable time before settlement of the transaction. We will ensure that any proposed purchaser of our interest is party to the consultation.
- (b) Before appointing a company or entity as manager of the Village.
- (c) About any proposed changes in the services and benefits provided or the charges that you are required to pay that will or might have a material impact on your occupancy or your ability to pay for the services and benefits provided.

4.12 Treatment of Residents

We will treat all residents in the Village with courtesy, will respect their rights and will not exploit any residents, and will ensure all people who work and who provide services at the Village similarly treat all residents in the Village with courtesy, respect their rights and do not exploit them.

5. CHANGE IN YOUR CARE NEEDS

- 5.1 If we consider it advisable, or you have requested it, we will assist you to obtain a needs assessment to determine if you require a different level of care.
- 5.2 If you are assessed as requiring a different level of care and we can provide that level of care in the Care Suite, then we will provide you with that care in accordance with the Admission Agreement.
- 5.3 You acknowledge that if you are assessed as requiring a level of care which we cannot provide in the Care Suite then you will need to move to another care suite or room in the Care Facility (subject to availability) or another care facility. You acknowledge that you being assessed as requiring a different level of care does not amount to us giving you notice of termination under clause 11.1 of this Agreement.
- 5.4 We will provide you, and your family or representative, with information on all available options for you to receive the new level of care. If we are able to provide the level of care that you require in another available care suite in the Village, then you may request a transfer to the available care suite in accordance with clause 6.

6. TRANSFER TO ANOTHER CARE SUITE

- 6.1 If you wish to transfer to another available care suite in the Village ("**Replacement Care Suite**"), such transfer will be at our absolute discretion and subject to you being assessed as suitable for the available care offered by us in the Replacement Care Suite. If we agree to a transfer the following terms will apply:
 - (a) The Daily Care Fee will continue at the same rate following transfer to the Replacement Care Suite unless you will be receiving a different level of care. Any additional services provided into the Replacement Care Suite will be at your cost.

- (b) If the transfer is due to a change in your care needs, you will only be required to pay a further Net Management Fee if the Net Management Fee for the Care Suite under this Agreement has not fully accrued by the transfer date. If the Net Management Fee has not fully accrued by the transfer date the outstanding percentage will accrue at the rates described in clause 2.3(b) calculated on the capital sum of the Replacement Care Suite, until the expiry of three years from the Commencement Date of this Agreement or any earlier last accrual date of the Replacement Care Suite.
- (c) If the transfer is for any reason other than a change in your care needs, you will be required to pay a total Net Management Fee across both units calculated as 30% of the higher of the Capital Sum for the Care Suite under this Agreement and the capital sum for the Replacement Care Suite. If we agree to you transferring more than once (other than a transfer due to a change in your care needs), a further Net Management Fee will be payable by you on our terms.
- (d) In either case, you will be required to pay a transfer fee of 2% (plus GST if any) of the capital sum for the Replacement Care Suite as a contribution to our direct and indirect costs associated with the transfer.
- (e) You will be required to:
 - (i) enter into a new occupation right agreement for the Replacement Care Suite on our then current form (which may contain different terms and conditions to this Agreement);
 - (ii) fund the capital sum for the Replacement Care Suite;
 - (iii) arrange the physical transfer of the Personal Possessions (at your cost); and
 - (iv) obtain independent legal advice in respect of the transfer and entry into the occupation right agreement.

All other terms of transfer will be at our discretion.

6.2 Resident's rights

For any transfer, you have the right to be given information on all available options, have an independent assessment (including a needs' assessment) and, together with your family or representative, be consulted in relation to the transfer.

7. DAMAGE OR DESTRUCTION OF CARE SUITE

- 7.1 If the Care Suite is damaged or destroyed by fire, accident, natural disaster or any other risk then, subject to clause 7.2, we will repair and reinstate the Care Suite as soon as practicable. Such repairs and reinstatement will be financed by the funds available under the insurance policy effected under clause 4.1. We are not bound to expend more money than the actual amount of the insurance money we receive.

- 7.2 If the Care Suite or the Village, or a substantial part of the Care Suite or Village, is destroyed or damaged and we form the reasonable opinion that either:
- (a) It is not practicable to repair or reinstate the damaged or destroyed property;
 - (b) The necessary building consents, or consent of any necessary authority, cannot be obtained; or
 - (c) The insurance money needed to repair or replace cannot be obtained or it is not enough to replace the property damaged or destroyed,
- then the procedure set out in clauses 7.3 to 7.9 will apply.
- 7.3 In the event clause 7.2 applies, we will consult with you and the other residents of the Village to decide whether it is practicable to repair or replace the Care Suite or Village. Following that consultation, we will write to you and the other residents of the Village setting out our decision. If we determine that the Care Suite or the Village (or part thereof):
- (a) Will be replaced, then we will fully repair or reinstate it as soon as practicable; or
 - (b) Will not be replaced, then this Agreement is terminated with effect from the date of notice of our decision and clause 7.9 will apply.
- 7.4 The consultation under clause 7.3 will take place as soon as practicable once we have all relevant information required to make a decision (including any engineering, surveying, insurance, resource management or legal reports it considers necessary) and, having considered that information, we have identified that it may not be practicable to repair or replace the damaged or destroyed property. Following the consultation, the notification of our decision will be given as soon as practicable.
- 7.5 If the Care Suite has been damaged or destroyed and we have determined that it is not practicable to repair or replace it, subject to a suitable Care Suite being available, we may offer you the option to transfer to another Care Suite in the Village, or another Care Suite in a Village owned by us or a related company in reasonable proximity to the Village. Any costs associated with such a transfer will be determined on a case by case basis and agreed between the parties at the time of transfer. If we offer you the 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 termination and repayment provisions will apply. For the avoidance of doubt, you will be required to pay the Net Management Fee.
- 7.6 The Daily Care Fee will cease to be payable on the date the damage or destruction (as a result of which the Care Suite is uninhabitable) occurs.
- 7.7 The Net Management Fee will cease to accrue on the date the damage or destruction (as a result of which the Care Suite is uninhabitable) occurs.
- 7.8 The Daily Care Fee and the Net Management Fee will resume:

- (a) If you are provided with temporary accommodation under clause 7.10, on the date that accommodation is available, as notified to you in writing;
 - (b) If you accept an offer to transfer to another Care Suite in the Village, or another Care Suite in a Village owned by us or a related company in accordance with clause 7.5 by agreement between you and us; or
 - (c) If the Care Suite is repaired and replaced, on the date that you are notified you may move back into the Care Suite.
- 7.9 In the event that this Agreement is terminated in accordance with clause 7.3(b), then we will repay the Capital Sum to you (without deducting the Net Management Fee, but with the ability to deduct any other amounts due to you) within 10 Working Days after the date we or the Statutory Supervisor receives payment in full under the material damage insurance policy covering the Care Suite. We must pay the amounts due even if we do not receive full payment from our insurers.
- 7.10 In the event of damage or destruction to the Care Suite, we will use all reasonable endeavours to provide temporary accommodation or facilities to you where it is possible to do so, having reference to our insurance cover and available accommodation and facilities. If we provide temporary accommodation or facilities to you, such accommodation and facilities will be provided as soon as reasonably practicable in the circumstances, and the cost will be met out of our insurance cover, if available, or by agreement between you and us.
- 7.11 This clause 7 will not apply to events of damage or destruction which you have intentionally or recklessly caused or allowed.

8. LOSS OR DAMAGE

- 8.1 You will reimburse us for any loss or damage suffered by us (including to the interior of the Care Suite and the Operator's Chattels) as a result of your intentional acts, carelessness or negligence, except for loss or damage by perils insured against by us. We may ask you to contribute up to a maximum of \$1,000 towards the excess payable under our insurance policy in respect of loss or damage that you cause. Where your acts or omissions have made our insurance void, you will compensate and reimburse us in full for such loss or damage.
- 8.2 We will have no responsibility, under any circumstances, for any loss or damage to your Personal Possessions or suffered by you except where we or our staff have caused such loss or damage.

9. FURTHER DEVELOPMENT OF VILLAGE

- 9.1 In order to ensure the ongoing financial viability and attractiveness of the Village, we may choose to carry out further development at or next to the Village, including to improve, extend, add to, reduce, alter, repair or regenerate the Village or in any manner whatsoever alter or deal with the Village ("**Further Development**").
- 9.2 We will take reasonable steps to cause as little inconvenience to you as is practical in the circumstances. Accordingly, if asked by us, you will sign all consents and other documents as may be required by us.

- 9.3 Where the Further Development may affect your right to quiet enjoyment, we will take reasonable steps to consult with you and minimise the effects of the Further Development on you.
- 9.4 You agree not to institute or commence any objection, action or proceeding for an injunction, damages or other relief arising out of, or consequent upon, any Further Development. Nothing in this clause 9 detracts from your right to raise a complaint either under our Feedback Policy or the Retirement Villages Act 2003.
- 9.5 You acknowledge that we may sell any part of the Village which is deemed by us to be surplus to our needs.

10. CANCELLATION OF AGREEMENT

10.1 Cooling-Off Period

You may cancel this Agreement by giving written notice (without stating any reason) to us not later than 15 Working Days after this Agreement is signed by you.

10.2 To Be Built or Completed

You may cancel this Agreement if this Agreement relates to a Care Suite which is to be completed or certified after the date this Agreement is signed by you, and the Care Suite is not completed and/or certified within six months after the proposed date for occupation, by giving written notice to us at any time after the expiry of that six month period.

10.3 Refund for Cancellation during Cooling-Off Period

If this Agreement is cancelled in accordance with the provisions of clause 10.1 or 10.2:

- (a) you will be entitled to a refund of any amount paid towards the Capital Sum (with interest as accrued, less Resident Withholding Tax) within 10 Working Days after the notice is given.
- (b) you will be liable to pay reasonable compensation to us for services provided to you under this Agreement before the cancellation takes effect and for any damage to the Care Suite or any facilities in the Village for which you are responsible.

11. TERMINATION

11.1 Termination by us

We may terminate this Agreement on the following grounds:

- (a) **Medical Grounds:** We may terminate this Agreement by giving you one month's written notice if a registered Medical Practitioner certifies that your physical or mental health is such that you cannot live safely in the Care Suite or any other resident cannot live safely in their rooms or units, in which case we will use all reasonable endeavours to assist you to move to an appropriate

healthcare facility, after consulting with you and your representatives. We will appoint a registered Medical Practitioner for the purposes of carrying out this assessment who must be independent of us. The assessment of the registered Medical Practitioner must take into account:

- (i) the care, support and facilities offered in the Village, including the opportunity to transfer to a higher level of care;
- (ii) support services that could be brought in from outside the Village to support you to remain in your Care Suite.

You may obtain a second opinion (at your cost) and present this to us for our consideration.

(b) Breach: We may terminate this Agreement by giving you one month's written notice where:

- (i) A material breach of this Agreement has occurred;
- (ii) We have notified you in writing of our intention to terminate this Agreement unless the breach is remedied;
- (iii) We have given you at least one month's notice to remedy the breach;
- (iv) You have failed to remedy the breach within the time period given in our notice.

(c) Abandonment: We may terminate this Agreement on the grounds of abandonment by giving you one month's written notice subject to the following conditions:

- (i) We must have made reasonable enquiries and determined that you have permanently abandoned the Care Suite;
- (ii) We have notified you in writing of our intention to terminate this Agreement unless you re-occupy the Care Suite;
- (iii) We must have given you at least one month to re-occupy the Care Suite and you have failed to re-occupy the Care Suite in that time period.

(d) Serious Damage to the Care Suite or Serious Harm to People: We may terminate this Agreement on reasonable written notice if you have intentionally or recklessly caused or allowed or are highly likely to cause or allow:

- (i) serious damage to the Care Suite or facilities;
- (ii) serious injury or harm or distress to us, another resident, one of our employees or guests or one of your guests.

We must have notified you of our intention to terminate this Agreement. We must have taken into account the nature and extent of the damage, injury or harm in determining the time period given to you to provide a remedy. You

must have failed to remedy the damage, injury or harm within the period given in our notice.

11.2 Termination by you

Notwithstanding any other provisions in this Agreement, you may terminate this Agreement for any reason and at any time by giving us not less than two week's prior written notice. Where two of you have signed this Agreement as residents in joint occupation of the Care Suite, the notice must be signed by both of you.

11.3 Termination on Death

This Agreement will terminate on your death, provided that if two of you have signed this Agreement as residents, this Agreement will only terminate when the second resident dies.

11.4 Charges that are Payable after Termination

If the Net Management Fee has not fully accrued, the Net Management Fee will continue to accrue after the Termination Date until the Care Suite has been vacated and all the Personal Possessions have been removed.

12. PAYMENT OF REPAYMENT SUM

12.1 If this Agreement is terminated by us on any of the grounds set out in clause 11.1, we will pay you the Repayment Sum, being an amount equal to the Capital Sum less any payments or other amounts that you owe to us as set out in clause 12.3 below. We will pay you the Repayment Sum five Working Days after the date of termination of this Agreement, subject to you having vacated the Care Suite (including removal of all the Personal Possessions).

12.2 In the event this Agreement is terminated for any reason other than as set out in clause 7 or clause 11.1, we will pay you the Repayment Sum, being an amount equal to the Capital Sum less any payments or other amounts that you owe to us as set out in clause 12.3 below, and less any Capital Sum Part Payment already repaid as set out in clause 12.4 below. We will pay you the Repayment Sum no later than five Working Days after the date that we receive payment in full under a new occupation right agreement in respect of the Care Suite with a new resident.

12.3 We are entitled to deduct from any payments due under clause 12.1 or 12.2:

- (a) an amount equal to the Net Management Fee accrued during the term of this Agreement in accordance with clause 2.3;
- (b) any costs required to repair any damage caused by you or your guests or invitees; and
- (c) any other money due or that will be due from you to us including any outstanding Daily Care Fees.

12.4 Following termination (other than a termination as set out in clauses 7 or 11.1), you, or your executors or administrators, may apply to us by notice in writing to receive a

partial repayment of the Capital Sum of an amount up to \$20,000 (the “**Capital Sum Part Payment**”). Subject to our approval (at our discretion), the Capital Sum Part Payment will be made five Working Days following the later of:

- (a) our approval of an application to receive the Capital Sum Part Payment;
 - (b) the Termination Date;
 - (c) the date you vacate the Care Suite (including removal of all the Resident’s Possessions); and
 - (d) where applicable, the date that we are provided with a copy of probate for you.
- 12.5 We will not be required to make any payment under this clause 12 to your executors or administrators until proof of grant of probate of your last will or letters of administration have been received by us.

13. OUR OBLIGATION TO FIND A NEW RESIDENT

- 13.1 We agree to take all reasonable steps to find a suitable replacement resident for the Care Suite following termination of this Agreement (other than termination under clause 7).
- 13.2 You are entitled to introduce a prospective resident to us provided that person complies with our normal Village entry criteria including having been needs assessed as requiring the level of care that can be provided in the Care Suite.
- 13.3 We will inform and consult with you regarding the marketing of the Care Suite as required by the Code of Practice. We will not give marketing preference to finding residents for any care suite in the Village that has never been occupied.
- 13.4 We may permit a new resident to live in the Care Suite before we pay the Repayment Sum to you. In particular, we may allow a resident to occupy the Care Suite on a casual basis under an admission agreement while trying to obtain a new resident to enter into an occupation right agreement.

14. PAYMENT OF INTEREST

- 14.1 We will pay you interest on the Repayment Sum if settlement under an occupation right agreement for the Care Suite to a new resident has not occurred within nine months from the date of termination of this Agreement and vacation of the Care Suite. The interest payable will be calculated at BNZ’s monthly term deposit rate and will accrue from the date which is nine months after termination of this Agreement and vacation of the Care Suite, including clearance of all Personal Possessions, until we pay the Repayment Sum to you. We will, at your election, either pay you interest less Resident Withholding Tax each calendar month until we pay you the Repayment Sum, or we will add the interest payment to the Repayment Sum.

15. SET-OFF

- 15.1 We will be entitled to set-off or deduct from moneys due to you any moneys falling due during the term of this Agreement and which are owed by you to us and which remain

unpaid at the date of termination of this Agreement, including any costs or charges payable by you in terms of this Agreement, the provision of care services to you by us or otherwise, and irrespective of whether or not we have made any demand for such unpaid money.

- 15.2 Our rights under this clause 15 will be in addition to all other rights and remedies which we may have.

16. REMOVAL OF PERSONAL POSSESSIONS

- 16.1 You agree to remove all the Personal Possessions from the Care Suite on or before the date of termination of this Agreement, or where termination occurs upon death, your personal representatives will remove all the Personal Possessions within seven days after the date of death. You acknowledge that we may access the Care Suite after termination of this Agreement but before all of the Personal Possessions have been removed for the purposes of arranging refurbishment of the Care Suite.
- 16.2 If you or your personal representatives do not remove all of the Personal Possessions within seven days of termination of this Agreement, we may, on seven days' written notice, remove from the Care Suite and store or sell the Personal Possessions. Any sale proceeds, after deduction of expenses of removal, storage and sale, will be paid to you. We will not be liable for any loss or damages incurred in respect of the removal, storage or sale of the Personal Possessions.

17. DISPUTE RESOLUTION

- 17.1 We have a Feedback Policy for dealing with informal and formal complaints raised by residents. The Feedback Policy is available on request.
- 17.2 If a complaint is not resolved within 20 Working Days after we receive the written complaint, you may have grounds to require the complaint to be resolved by a disputes panel.
- 17.3 If the complaint involves the sale or other disposal of your Care Suite, you must wait nine months after the Care Suite has been made available to us before the complaint can be referred to a disputes panel. In these circumstances, you do not have to first make a complaint pursuant to the Feedback Policy.

18. NOTICES

- 18.1 All notices will be in writing, delivered personally or delivered by leaving it at, or sending it to, the party's last known address or place of residence. In the case of a notice to you, notice can be left at the Care Suite. In the case of notice to us, such notice can be given to the Nurse Manager or Village Manager or sent to our registered office. If posted, any notice will be deemed delivered four days after posting.

19. ASSIGNMENT BY US

- 19.1 We are entitled to sell or dispose of our interest in the Village, in which case we will also be entitled to assign this Agreement to the purchaser, who will be the operator of

the Village. Any sale will be subject to prior consultation with the residents of the Village and obtaining the prior written approval of the Statutory Supervisor.

- 19.2 With effect from the date of sale or disposal, all of our rights and obligations under this Agreement will pass to the new operator (and we will have no further rights or obligations to you under this Agreement). You agree to continue to observe and perform this Agreement for the benefit of the new operator.

20. ARRANGEMENTS FOR MANAGEMENT OF THE VILLAGE

- 20.1 We employ suitably qualified and trained staff to ensure the efficient management and operation of the Village.
- 20.2 A full time, experienced and mature person will be appointed Nurse Manager to oversee the management of the Care Facility and its staff.
- 20.3 The grounds and other common areas of the Village (including the Care Facility) will be cared for by us in an appropriate manner.

21. OUR OBLIGATIONS RELATING TO RESIDENTS' MEETINGS

21.1 Calling of Meetings

We will call meetings of the residents of the Village in the circumstances and for the purposes set out in clause 21.2 by issuing a written notice of meeting to each resident of the Village in accordance with the requirements of Section 106 of the Retirement Villages Act 2003 at least 10 Working Days before the proposed meeting.

21.2 Circumstances and Purposes of Meetings

The circumstances and purposes of meetings will be as follows:

Circumstances	Purpose
(a) An annual general meeting within six months after the end of an accounting period for which financial statements must be prepared for us.	Considering the financial statements, a report from the Statutory Supervisor, a report on maintenance and any other matters.
(b) The meeting has been requested by the Statutory Supervisor or by at least 10% of the residents of the village.	Giving the Statutory Supervisor the residents' opinions or directions relating to the exercise of the Statutory Supervisor's powers.
(c) Where the Retirement Villages Act 2003, the Retirement Villages (General) Regulations 2006 or the Code of Practice require us to obtain the consent of Village residents.	To obtain the consent of Village residents.
(d) 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

21.3 Chairperson

The meetings will be chaired by a person:

- (a) appointed by the Statutory Supervisor (if any) of the Village; or
- (b) appointed by the majority of the residents of the Village who are at the meeting if an appointment has not been made under sub-paragraph (a).

21.4 Information

We will give the residents at a meeting, orally or in writing, information that:

- (a) relates to the affairs of the Village; and
- (b) has been requested with reasonable notice by a resident of the Village.

22. STATUTORY SUPERVISOR CESSATION

- 22.1 The procedure to be followed if there ceases to be a Statutory Supervisor will be the procedure as set out in the terms of the Deed of Supervision with the Statutory Supervisor or as prescribed in the Retirement Villages Act 2003.

23. SEVERABILITY

23.1 If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed to be deleted from this Agreement and such invalidity or unenforceability will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

24. DEFINITIONS

24.1 In this Agreement, the following defined terms have the following meanings:

Admission Agreement means the agreement entered into between you and us for the provision of Aged Related Residential Care as defined in the ARRC Contract.

ARRC Contract means the contract entered into between Health NZ and us for the provision of Aged Related Residential Care.

Care Facility means any areas certified to deliver age related care services within the Village.

Code of Practice means the Code of Practice approved under the Retirement Villages Act 2003 (as updated, amended or replaced from time to time).

Code of Residents' Rights means the code of residents' rights described in Schedule 4 of the Retirement Villages Act 2003.

Health NZ means Te Whatu Ora – Health New Zealand.

Nurse Manager means the person employed by us to manage the operation of the Care Facility.

Repayment Sum means a sum equal to the Capital Sum less any deductions set out in clause 12.3.

Personal Possessions means any personal items installed in the Care Suite or brought into the Village by you, including any mobility device.

Rules means our rules for the Village (if any). The Rules are subject to change in accordance with this Agreement.

Statutory Supervisor means the statutory supervisor appointed in relation to the Village or any successor.

Village Manager means the person employed by us to manage the operation of the Village.

Village Operating Expenses means all operating costs, expenses and outgoings incurred by us or on our behalf and paid or payable in respect of the Village and its

management, supervision and operation but excludes any costs directly payable by a resident.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Matariki, Waitangi 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;
- (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.