

Palmerston North Village

**Occupation Right
Agreement**

Independent Living

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PARTIES

- A. **Operator:** Metlifecare Palmerston North Limited (“**we**” or “**us**”)
B. **Resident:** _____ (“**you**”)

INTRODUCTION

- A. We own and operate the retirement village known as Palmerston North Village at 7 Fitchett Street, Central Palmerston North, Palmerston North, New Zealand (“**Village**”).
- B. You have applied to become a resident of a Unit in the Village.
- C. You acknowledge that you have provided a medical report to us confirming that you can live independently. On the basis of such report, we have agreed to accept your application upon the terms set out in this Agreement.
- D. This Agreement sets out the terms and conditions that apply to your residency of the Unit, including our obligations to you, and your obligations to us.
- E. You confirm that you have received independent legal advice before signing this Agreement.
- F. You confirm that you have received a copy of each of the following:
- (a) Disclosure Statement;
 - (b) The Rules (if any);
 - (c) The Code of Residents’ Rights; and
 - (d) The Code of Practice.

ESSENTIAL INFORMATION

In this Agreement, capitalised terms have the following meanings:

Unit	[]
Garage / Carpark (if applicable)	[]
Commencement Date	The date that you occupy the Unit, being: _____
Completion Status	Completed Unit The Unit selected is completed and ready for occupation. [OR] To be Built or Completed The Unit selected is not yet built or completed. It is expected to be completed on [].
Capital Sum	[\$]
Membership Fee	Up to 30% of the Capital Sum, as more particularly set out in clause 2.3
Village Fee (as at the date of this Agreement, subject to adjustment in accordance with clause 2.2)	[\$] (including GST) per month Please see clause 2.2 for further details about the Village Fee
Additional Service Costs (Serviced Apartments only) (as at the date of this Agreement, subject to adjustment in accordance with clause 2.5)	[\$] (including GST) per month Please see clause 2.52.5 for further details about the Additional Service Costs
Additional Services agreed at the Commencement Date (Serviced Apartments only)	You agree to purchase the following Additional Services from us in exchange for the Additional Service Costs from the Commencement Date in accordance with clause 2.5: []
Operator's Chattels	[]

EXECUTION OF THIS AGREEMENT

Resident

Signed by:

Signature of Resident or
Resident's attorney

Name of Resident

Date

Signature of Resident or
Resident's attorney

Name of Resident

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: Palmerston North Village

Registration No. of Village: 2053007

I, _____ certify that:

(a) I explained to _____

(names of Residents and/or Attorney of a 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 _____

(names of Residents 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 Palmerston North Limited

Director

Director/Authorised Signatory

Date of Execution

This Agreement has been executed on _____
(date)

1. GRANT OF OCCUPATION RIGHT

- 1.1 We will grant you, and you accept, a licence to occupy the Unit on the terms set out in this Agreement.
- 1.2 You may occupy the Unit on the Commencement Date.
- 1.3 You are entitled to:
- (a) The quiet use and enjoyment of the Unit without interruption or disturbance by us; and
 - (b) The use (in common with all other residents of the Village and all other persons from time to time as authorised by us) of all the Common Areas including entrances, lobbies, corridors, lavatories, stairways, paths, driveways, visitor car parking areas, gardens and grounds,
- on the terms set out in this Agreement.
- 1.4 Nothing in this Agreement gives you any ownership right or interest in the Village or the Unit. You agree not to caveat or otherwise encumber the title to the Village.
- 1.5 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 Unit who are joint tenants.
- 1.6 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.
- 1.7 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 Membership 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.
- 1.8 In respect of any car park specified in the Essential Information table at the beginning of this Agreement, we may, after consulting with you, allocate a different car park to you from time to time.

2. PAYMENTS

2.1 Capital Sum

- (a) You agree to pay a deposit to the Statutory Supervisor at the time of making an application for an occupation right for the Unit.

- (b) You must pay the balance of the Capital Sum to the Statutory Supervisor not later than the Commencement Date.
- (c) If you do not exercise the right to cancel this Agreement as set out in clause 11, we will ask the Statutory Supervisor to release the deposit and the balance of the Capital Sum to us, together with any net interest less Resident Withholding Tax earned through the Statutory Supervisor's trust account.

2.2 Village Fee

- (a) You agree to pay the Village Fee to us as a contribution to the cost of the Village Operating Expenses.
- (b) You agree to pay the Village Fee by equal calendar monthly instalments on the 15th day of each month calculated from the Commencement Date. You agree to sign and deliver an authority to deduct an amount equal to the Village Fee as it falls due by direct debit from your bank account to us. Any Village Fee falling due that has not been paid by direct debit shall be payable by you to us upon invoice.
- (c) You agree to pay the Village Fee until the later of:
 - (i) the Termination Date; and
 - (ii) the date on which you vacate the Unit and all of your possessions are removed from the Unit.
- (d)

2.3 Membership Fee

- (a) You agree to pay the Membership Fee to us by way of deduction from the amounts paid to you following termination of this Agreement.
- (b) The Membership Fee is an amount equal to 10% per annum of the Capital Sum which will accrue to us over three years. The maximum sum payable by you as a Membership Fee in terms of this Agreement shall be an amount equal to 30% of the Capital Sum. The Membership Fee accrues on a daily basis from the Commencement Date until the Last Accrual Date.

2.4 Utility Charges

- (a) We will provide the Unit with standard connections for Utilities and, acting reasonably, will determine from time to time how the Utilities will be supplied to the Unit (including whether they are supplied by us or by a third-party supplier).
- (b) You will be responsible for all charges for the supply of the Utilities to the Unit including, but not limited to, all associated usage, rental, toll, line, connection, installation and administration charges.
- (c) Where any Utility is supplied by us, you will pay all charges associated with provision of the Utility to the Unit at the reasonable rate set by us from time to time. Such charges will be paid by monthly direct debit (and you will sign and

deliver an authority to permit us to deduct such amounts by direct debit from your bank account). In certain cases, Utilities may be included in a separate services package offered by us.

- (d) Where any Utility is supplied by a third-party provider, you will pay all charges to the provider (in accordance with its terms).
- (e) You will continue to be liable to pay all charges for Utilities supplied to the Unit until the date you vacate the Unit and remove the Personal Possessions.

2.5 Additional Service Costs

- (a) We may offer Additional Services to you from time to time in exchange for the payment of Additional Service Costs to us.
- (b) The Additional Service Costs will be advised on request. The Additional Service Costs will cease on the date on which you vacate the Unit. You agree to pay the Additional Service Costs to us on the 15th day of each month.
- (c) We will be entitled to review the amount of the Additional Service Costs from time to time. The basis for reviewing the Additional Service Costs is increases in the cost to us of providing the service. We agree to consult with you regarding any increases where required, and will give one month's prior notice of any increased amount or other changes to the Additional Services.

2.6 Interest on Unpaid Money

If you fail to pay moneys on the due date under this Agreement then we may require you to pay interest on the moneys unpaid from the 21st day following the due date to the date of payment at the rate of 0.5% per annum above the BNZ Total Money Floating interest rate or equivalent, calculated on a daily basis.

2.7 Village Operating Expenses

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

2.8 Insurance Excess Payments

Where any loss or damage caused by you or your guests or invitees is insured against by us and a claim is accepted by our insurer in respect of such loss or damage, then, without prejudice to our other rights, we will be entitled by notice in writing served on you to require you to pay the amount of any excess charged by the insurer up to a maximum amount of \$1,000, as notified by us.

3. REPAIR AND MAINTENANCE

3.1 Our Responsibilities

- (a) Subject to clause 3.2, we are responsible for:
 - (i) the provision and installation of the Operator's Chattels, and the repair, maintenance and replacement of the Operator's Chattels as we consider necessary; and

- (ii) the maintenance and repair of the buildings, plant and equipment in the Village, the Unit and the Common Areas, (including the pathways and grounds surrounding the buildings, the gardens, trees and shrubs).
- (b) We are not liable for any loss or inconvenience suffered by you as a result of maintenance and repairs, unless we have failed within a reasonable time to take reasonable steps to repair any defects.

3.2 Your Responsibilities

Without limiting clause 9, you are responsible for:

- (a) any loss or damage to the interior of the Unit and/or the Operator's Chattels caused by any intentional act, carelessness or negligence of you or your guests or invitees, and must compensate and reimburse us in full for such loss or damage (including any insurance policy excess payable by us, in accordance with clause 2.8); and
- (b) keeping the Operator's Chattels and the Unit in a tidy and clean condition,

provided that you will not be responsible for paying any costs incurred by us in repairing any damage to the Unit and the Operator's Chattels which is attributable to fair wear and tear. Damage caused by smoking, pets or incontinence is considered to be outside the definition of fair wear and tear.

3.3 Notification of Defects

You agree to give us prompt written notice of any defect in the Unit or the Operator's Chattels of which you are aware. Where you notify us of defects in the interior of the Unit or the Operator's Chattels, we will take appropriate steps to repair such defects. Subject to clause 3.2, the repairs shall be at our cost.

3.4 Assessment of Liability

Following vacation of the Unit and removal of the Personal Possessions we will arrange, at our cost, for a suitably qualified person to carry out an assessment of your liability under clause 3.2 and (if applicable) clause 4.1(b)(iii). We will consult with you on the extent and cost of any required maintenance and repairs and will arrange for a contractor to carry out such work in a prompt and efficient manner. You agree to permit us and our contractor to enter the Unit to carry out the work and the cost of such work shall be deducted from the moneys payable to you following the relicensing of the Unit.

4. LIVING IN YOUR UNIT

4.1 Alterations and Additions

- (a) You agree not to carry out any alterations or additions to the Unit without our prior written consent. We will consent to the alteration of the Unit if you have disabilities and the Unit does not meet your needs.
- (b) If we consent to any request for additions or alterations to the Unit under clause 4.1(a), the following terms shall apply:

- (i) the approved additions or alterations will be carried out by us;
- (ii) you agree to pay us for all costs incurred in carrying out such additions or alterations; and
- (iii) you agree to pay for the reinstatement of the Unit to its pre-alteration configuration and condition on termination of this Agreement, if required by us.

4.2 Keep and Maintain Insurances

- (a) You are responsible for insuring the Personal Possessions, at your cost.
- (b) Our insurance includes some cover for temporary accommodation, however you are encouraged to take out insurance to provide for temporary accommodation or facilities in the event the Unit is not habitable for a period due to damage or destruction.
- (c) You agree to take out and maintain adequate insurance for any motor vehicle kept at the Village.

4.3 Personal Conduct in the Village

You will:

- (a) conduct yourself in the Unit and in the Village in such a manner as to not unreasonably cause a nuisance or become an annoyance or give offence to any person.
- (b) not use any balcony, veranda, deck, patio or other external area of the Unit for the hanging of clothes or washing and will use only the areas designated by us for that purpose.
- (c) use the Unit only as your personal dwelling and not for any other purpose except with our written consent.

4.4 Removal of Objects from Balcony or Surrounds

If requested by us, you agree to remove from a Unit balcony or surrounds 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.

4.5 Not to Store Dangerous Materials or Deposit Waste

You agree not to store or keep any dangerous or flammable items in the Unit, any garage, car park or storage unit or do or permit any act which could cause any of the drains or water pipes in, under or surrounding the Unit to be or become blocked, or deposit rubbish other than in approved receptacles or defile any part of the land or buildings on or in the Village.

4.6 To Use the Designated Car Parking Areas

You agree not to park or permit to be parked any vehicle on any part of the Village other than in the areas designated by us for that purpose.

4.7 Not to Construct TV, Radio Aerials or Audible Burglar Alarms

You agree not to erect or place on or outside any Unit any radio or television aerial or antenna or install audible burglar alarms without our prior written consent.

4.8 Not to Keep Pets

You agree not to keep any cat, dog, bird or other animals in the Unit or in the Village without our prior written consent, which will not be unreasonably withheld. Consent may be withdrawn if, in our opinion, the pet is no longer suitable for the Village or if you are no longer able to adequately care for the pet.

4.9 Assignment or Sublicensing

- (a) You are not permitted to transfer, assign, part with, let or sub-licence, share or otherwise encumber (including mortgaging or borrowing against your interest in the Unit), deal with or dispose of the Unit or this Agreement.
- (b) You may have friends or members of your family stay (as guests) in the Unit while you are present for an aggregate total in respect of all guests of 90 days in any period of 12 consecutive months (or for longer periods with our prior written consent). You may not have a person stay in the Unit as a companion or carer for you.
- (c) We will consent to a married, civil union partner or de-facto partner living in the Unit with you if that person meets our normal criteria and you and the partner each sign a Deed of Covenant (at their expense).

4.10 To Allow Entry by us

You agree to allow us and our servants, agents and workmen the right of entry to the Unit (and any garage or storage unit) at all reasonable times (subject to prior written notice, except in the case of an emergency) to inspect the interior and to carry out any necessary repairs to the Unit or the Operator's Chattels.

4.11 Enduring Power of Attorney

You agree to provide to us, prior to the Commencement Date, a certified 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 in writing by you to us.

4.12 Compliance with Rules

- (a) You agree to observe and comply with the Rules.

- (b) You will ensure that all of your guests or 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.

4.13 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 it manages 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.

4.14 Grant a Security Interest

Subject to our prior written consent, you may be entitled to grant a security interest in the amount 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.

5. CONSULTATION WITH AND TREATMENT OF RESIDENTS

5.1 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.

5.2 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.

6. OUR OBLIGATIONS

6.1 Insurance

We will maintain a comprehensive insurance policy covering the Village as a whole (including the units, 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 the 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.

6.2 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.

6.3 Code of Practice

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

6.4 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 shall continue until you are paid the Repayment Sum under clause 14.
- (b) We will, at the start of each accounting period (which, as at the date of this Agreement, is 1 July in each year), prepare a statement forecasting for the period:
 - (i) The operating expenditure relating to the Village; and
 - (ii) All expenditure relating to the Village (including amounts repayable to residents, former residents and their estates); and
 - (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.

6.5 Services

When you are present in the Village, we will provide you with any services which you and we have agreed will be provided.

7. TRANSFER TO ANOTHER UNIT

1.1 Transfer to a Serviced Apartment

If you wish to transfer to a Serviced Apartment (if available at the Village) ("**Replacement Unit**"), we will permit such a transfer on the following terms:

- (a) You will have priority over intending residents of the Village.
- (b) The transfer will be subject to there being a suitable Replacement Unit available and you being assessed as suitable for the available support commonly offered by us in the Replacement Unit.
- (c) The Village Fee for the Replacement Unit will commence at the same rate as the Village Fee payable by you for the Unit under this Agreement immediately prior to the transfer and will be subject to adjustment in accordance with the terms of the occupation right agreement for the Replacement Unit. Any Additional Services provided into the Replacement Unit will be at your cost.
- (d) You will only be required to pay a further Membership Fee if the Membership Fee for the Unit under this Agreement has not fully accrued by the transfer date. If the Membership Fee has not fully accrued by the transfer date, the outstanding percentage will accrue at a rate of 10% per annum (calculated on a daily basis) of the capital sum of the Replacement Unit, until the earlier of:
 - (i) The expiry of three years from the Commencement Date of this Agreement; and
 - (ii) The last accrual date of the Replacement Unit.
- (e) All other terms of transfer will be at our discretion.

7.1 Transfer for Preference

If you wish to transfer to another unit in the Village (other than a Serviced Apartment or Care Suite) ("**Replacement Unit**"), such transfer will be at our absolute discretion. If we agree to a transfer, the following terms will apply:

- (a) You will not have priority over intending residents of the Village.
- (b) The Village Fee for the Replacement Unit will commence at the same rate as the Village Fee payable by you for the Unit under this Agreement immediately prior to

the transfer and will be subject to adjustment in accordance with the terms of the occupation right agreement for the Replacement Unit. Any Additional Services provided into the Replacement Unit will be at your cost.

- (c) You will be required to pay a total Membership Fee across both units calculated as 30% of the higher of the Capital Sum for the Unit under this Agreement and the capital sum for the Replacement Unit. If we agree to you transferring more than once, a further Membership Fee will be payable on our terms.
- (d) You will be required to pay a transfer fee of 2% (plus GST if any) of the capital sum for the Replacement Unit as a contribution to our direct and indirect costs associated with the transfer.
- (e) All other terms of transfer will be at our discretion.

7.2 Transfer to Care Suite

If you wish to transfer to a Care Suite (if available at the Village), we will permit such a transfer on the following terms:

- (a) You will have priority over intending residents of the Village.
- (b) The transfer will be subject to there being a suitable Care Suite available, and you being assessed as suitable for the services available in the Care Suite.
- (c) The transfer will be subject to you entering into a new occupation right agreement (and paying a new membership fee and the cost of the provision of care) and an admission agreement.
- (d) All other terms of transfer will be at our discretion.

7.3 General Transfer Terms

For any transfer you must:

- (a) Enter into a new occupation right agreement for the Replacement Unit or Care Suite on our then current form (which may contain different terms and conditions to this Agreement);
- (b) Pay the capital sum for the Replacement Unit or Care Suite;
- (c) Arrange the physical transfer of your personal belongings (at your cost); and
- (d) Obtain independent legal advice in respect of the transfer and entry into the occupation right agreement for the Replacement Unit or Care Suite.

7.4 Resident's rights

For any transfer (other than a transfer for preference), 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.

8. DAMAGE OR DESTRUCTION OF UNIT

- 8.1 If the Unit is damaged or destroyed then, subject to clause 8.2, we will repair and reinstate the Unit as soon as practicable. Such repairs and reinstatement will be financed by the funds available under the insurance policy effected under clause 6.1. We are not required to expend more money than the actual amount of the insurance money we receive.
- 8.2 If the Unit or the Village, or a substantial part of the Unit 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 8.3 to 8.7 will apply.
- 8.3 In the event clause 8.2 applies, we will consult with you to decide whether to repair or replace the Unit or Village. Following that consultation we will write to you setting out our decision. If we determine that the Unit 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 will be terminated with effect from the date of notice of our decision and clause 8.7 will apply.
- 8.4 The consultation under clause 8.3 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.
- 8.5 If the Unit has been damaged or destroyed and we have determined that it is not practicable to repair or replace it, subject to a suitable unit being available we may offer you the option to transfer to another unit in the Village, or another unit 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 unit 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, if this Agreement is terminated under this clause 8.5, the Membership Fee will be deducted from the Repayment Sum.
- 8.6 The Village Fee and any Additional Service Costs will cease to be payable on the date the damage or destruction (as a result of which the Unit is uninhabitable) occurs. The Membership Fee will cease to accrue to us on the date the damage or destruction occurs. These charges will resume:

- (a) If you are provided with temporary accommodation under clause 8.8, on the date that accommodation is available, as notified to you in writing;
- (b) If you accept an offer to transfer to another unit in the Village, or another unit in a Village owned by us or a related company in accordance with clause 8.5, by agreement between you and us; or
- (c) If the Unit is repaired and replaced, on the date that you are notified that you may move back into the Unit.

8.7 In the event that this Agreement is terminated per clause 8.3(b)(b) then we will repay the Capital Sum to you (without deducting the Membership Fee, but with the ability to deduct any other amounts due to us) within 10 Working Days after the date that we or the Statutory Supervisor receives payment in full under the material damage insurance policy covering the Unit. We will pay the amounts due even if we do not receive full payment from our insurers.

8.8 In the event of damage or destruction to the Unit, 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 do 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 us and you.

8.9 This clause 8 will not apply to events of damage or destruction which you have intentionally or recklessly caused or allowed.

9. LOSS OR DAMAGE

9.1 You agree to reimburse us for any loss or damage suffered by us as a result of your intentional acts, carelessness or negligence except loss or damage by perils insured against by us. Where your acts or omissions have made any such insurance void, you agree to compensate and reimburse us in full for such loss or damage.

9.2 We will have no responsibility, under any circumstances for any loss or damage to the Personal Possessions or any motor vehicle owned by you or suffered by you except where we or our staff have caused such loss or damage.

10. FURTHER DEVELOPMENT OF VILLAGE

10.1 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**").

10.2 We will take reasonable steps to cause as little inconvenience to you as is practical in the circumstances. Accordingly, if asked by us, you agree to sign all consents and other documents as may be required.

- 10.3 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.
- 10.4 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 10 detracts from your right to raise a complaint either under our Feedback Policy or the Retirement Villages Act 2003.
- 10.5 You agree that we shall be entitled to sell any part of the Village which is deemed by us to be surplus to our needs.

11. CANCELLATION OF AGREEMENT

11.1 Cooling-Off Period

You, or your authorised representative(s) may cancel this Agreement without having to give any reason by written notice to us given not later than 15 Working Days after you have signed this Agreement.

11.2 To Be Built or Completed

Where this Agreement relates to a Unit which is to be built or completed after the date this Agreement is signed by you, if the Unit is not finished to the point of practical completion within six months after the proposed date for completion, you may cancel this Agreement by giving written notice at any time after the expiry of that six month period.

11.3 Refund for Cancellation during Cooling-Off Period

If this Agreement is cancelled in accordance with the provisions of clause 11.1 or 11.2 you will be entitled to a refund of the deposit together with any other amount paid towards the Capital Sum (with interest as accrued, less Resident Withholding Tax) within 10 Working Days after the notice is given. You will be liable to pay us reasonable compensation for Additional Services provided to you under this Agreement before cancellation takes effect and for any damage to the Unit or any facilities in the Village for which you are responsible.

11.4 90 Day Money Back Guarantee

- (a)** You may cancel this Agreement 90 days after the Commencement Date if:
- (i)** you are unhappy with your decision to move into the Village and you decide that you wish to leave the Village;
 - (ii)** you moved into the Village with the intention of permanently living in the Unit; and
 - (iii)** you have paid the Capital Sum in full prior to the date that is 90 days after the Commencement Date.
- (b)** If you wish to cancel this Agreement under clause 11.4(a) above, you must notify us in writing of such cancellation within five Working Days after the 90 day period ends.

- (c) If you cancel this Agreement in accordance with the provisions of clause 11.4(a) you will be entitled to a refund of the amount of the Capital Sum paid, without any deduction of the Membership Fee but less any deductions in clause 11.4(c) on the date which is 20 Working Days after the notice is given provided you have vacated the Village and removed all the Personal Possessions from the Unit. In the event you fail to vacate the Village within the 20 Working Day period and remove the Personal Possessions from the Unit, the cancellation will be of no effect and, for the avoidance of doubt, this Agreement will remain in full force and effect.
- (d) We are entitled to deduct from any payments due under clause 11.4(b):
- (i) any payments due from you, for the Village Fee to the date you vacated the Unit and removed the Personal Possessions from the Unit, or for Additional Service Costs which are outstanding;
 - (ii) any costs required to repair any damage to the Unit (including the Operator's Chattels) caused by you or your guests or invitees; and
 - (iii) any other money due or that will be due from you to us under this Agreement.
- (e) This clause 11.4 does not apply if:
- (i) You have transferred to your Unit from another Metlifecare unit;
 - (ii) You die; or
 - (iii) You need to leave your Unit due to health reasons, including if you transfer to a Care Suite.

12. OUR OBLIGATION TO RUN VILLAGE PROPERLY

12.1 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 our 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.

13. TERMINATION

13.1 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 Unit or another resident cannot live safely in their unit 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 the Unit.

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; and
- (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 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 Unit;
- (ii) We have notified you in writing of our intention to terminate this Agreement unless you re-occupy the Unit;
- (iii) We must have given you at least one month to re-occupy the Unit and you have failed to re-occupy the Unit in that time period.

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

- (i) serious damage to the Unit 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.

13.2 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 one month's prior written notice. Where two of you have signed this Agreement as residents in joint occupation of the Unit, the notice must be signed by both of you.

13.3 Termination on Death

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

13.4 Effect of termination on persons living with you

On termination of this Agreement any person living, or staying as a guest, in the Unit with you will be required to vacate the Unit immediately (except as otherwise agreed to in writing by us).

13.5 Charges that are Payable after Termination

The charges that continue to be payable by you after the Termination Date are:

- (a) Village Fee:** If you have not vacated the Unit on the Termination Date (including removal of the Personal Possessions) then the Village Fee continues to be payable on the same terms as prior to termination until you vacate the Unit.
- (b) Membership Fee:** The Membership Fee will continue to accrue until the Last Accrual Date on the same terms as prior to termination.
- (c) Default Interest:** Default Interest may be payable for late payment of moneys due under this Agreement.

14. PAYMENT OF REPAYMENT SUM

14.1 If this Agreement is terminated by us on any of the grounds set out in clause 13.1, 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 14.3 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 Unit (including removal of all the Personal Possessions).

- 14.2 In the event this Agreement is terminated for any reason other than as set out in clause 8 or clause 13.1, 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 14.3 below, and less any Capital Sum Part Payment already repaid as set out in clause 14.4 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 Unit with a new resident.
- 14.3 We are entitled to deduct from any payments due under clause 14.1 above 14.1 or 14.2:
- (a) an amount equal to the Membership Fee accrued during the term of this Agreement in accordance with clause 2.3;
 - (b) any outstanding Village Fees or Additional Service Costs;
 - (c) any residential care costs relating to an aged care facility operated by us or a related party;
 - (d) any costs required to repair any damage caused by you or your guests or invitees; and
 - (e) any other money due or that will be due from you to us.
- 14.4 Following termination (other than a termination as set out in clauses 8 or 13.1), you, or your executors or administrators, may apply by notice in writing to us to receive a partial repayment of the Capital Sum of an amount up to \$20,000 (“**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; and
 - (c) the date you vacate the Unit (including removal of all the Personal Possessions).
- 14.5 Where applicable, we shall not be required to make any payment under this clause 14 to your executors or administrators until proof of grant of probate of your last will or letters of administration have been received by us.

15. OUR OBLIGATION TO FIND A NEW RESIDENT

- 15.1 We agree to take all reasonable steps to find a suitable replacement resident for the Unit following termination of this Agreement (other than termination under clause 8).
- 15.2 You are entitled to introduce a prospective resident to us, provided that person complies with our normal Village entry criteria.

15.3 We will inform and consult with you regarding the marketing of the Unit as required by the Code of Practice. In particular, we will consult regarding when the Unit goes on the market, and will continue to keep you informed on a monthly basis about progress with marketing. We will not give preference to finding residents for any units in the Village that have never been occupied.

16. PAYMENT OF INTEREST

16.1 We agree to pay interest to you on that portion of the Capital Sum that is left after deduction of all moneys owing by you to us if settlement under an occupation right agreement for the Unit to a new resident has not occurred within nine months from the Termination Date and vacation of the Unit. The interest payable shall 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 Unit, including clearance of all Personal Possessions, until payment to you of those amounts owing under clause 14. You may elect whether to receive payment of interest less Resident Withholding Tax each calendar month until payment of the Repayment Sum, or in one lump sum at the same time as the Repayment Sum is paid to you.

17. SET-OFF

17.1 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.

17.2 Our rights under this clause 17 will be in addition to all other rights and remedies which we may have.

18. REMOVAL OF PERSONAL POSSESSIONS

18.1 You agree to remove all the Personal Possessions from the Unit on or before the Termination Date, or where termination occurs upon death, your personal representatives agree to remove all the Personal Possessions from the Unit within one month after the date of death.

18.2 If you or your personal representatives do not remove all of the Personal Possessions within one month of the Termination Date, we may, on seven days' written notice, remove from the Unit 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.

19. DISPUTE RESOLUTION

19.1 We have a Feedback Policy for dealing with informal and formal complaints raised by residents. The Feedback Policy is available on request.

- 19.2 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.
- 19.3 If the complaint involves the sale or other disposal of your Unit, you must wait nine months after the Unit 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.

20. NOTICES

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

21. ASSIGNMENT BY US

- 21.1 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.
- 21.2 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.

22. SUPPORT SERVICES

- 22.1 We will arrange for a 24 hour a day response to any urgent or emergency calls by you and will facilitate access to emergency and/or paramedic support as required. You acknowledge that the cost of any electricity consumed in running any emergency call bells installed within the Unit shall be borne by you.
- 22.2 We may, subject to availability, when your health so requires, provide you (at your cost) with either temporary or permanent residential aged care services in any aged care facility (which could be a Care Suite) which may from time to time be developed in the Village.

23. ARRANGEMENTS FOR MANAGEMENT OF THE VILLAGE

- 23.1 We employ suitably qualified and trained staff to ensure the efficient management and operation of the Village.
- 23.2 A full time, experienced and mature person will be appointed Village Manager to oversee the management of the Village and its staff.
- 23.3 The Village Manager is responsible for the day to day organisation of all activities and services, including the oversight of activities initiated by residents at the Village.

23.4 The grounds and other Common Areas of the Village will be cared for by us in an appropriate manner.

24. OUR OBLIGATIONS RELATING TO RESIDENTS' MEETINGS

24.1 Calling of Meetings

We will call meetings of the residents of the Village in the circumstances and for the purposes set out in 24.2 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.

24.2 Circumstances and Purposes of Meetings

The circumstances and purposes of meetings shall 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

24.3 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).

24.4 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.

25. STATUTORY SUPERVISOR CESSATION

25.1 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.

26. SEVERABILITY

26.1 If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed to be deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall 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.

27. DEFINITIONS

27.1 Unless the context requires a different interpretation, words and phrases not otherwise defined in this Agreement have the same meanings given to those words and phrases in the Retirement Villages Act 2003 or the Retirement Villages (General) Regulations 2006, as amended or replaced from time to time.

27.2 In this Agreement, words and expressions shall have the following meanings:

Capital Sum Part Payment means a partial repayment of the Capital Sum as set out in clause 14.4.

Care Suite means a residential unit designated for the accommodation of a resident and the delivery of aged residential care services which is subject to an occupation right agreement and an admission agreement.

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.

Common Areas means those parts of the Village designated by us as common areas for use by all residents including entrances, lobbies, corridors, lavatories, stairways, paths, driveways, visitor car parking areas, gardens, grounds and other common amenities and conveniences other than those reserved from time to time by us.

Cooling-Off Period means the period of 15 Working Days after you sign this Agreement, as described in clause 11.1.

CPI means the New Zealand Consumers Price Index (All Groups) published by Statistics New Zealand, or an appropriate alternative index which reflects the change in the cost of living in New Zealand if the CPI is discontinued and not replaced.

Default Interest means the interest payable under clause 2.6 of this Agreement.

Last Accrual Date shall mean the later of the Termination Date or the date that the Unit is vacated and all the Personal Possessions are removed.

Personal Possessions means any personal items installed in the Unit or the Village by you.

Repayment Sum means a sum equal to the Capital Sum less any deductions set out in clause 14.3.

Review Date means 1 April in each year (unless 1 April does not fall on a Working Day, in which case, the Review Date shall be the following Working Day).

Review Period means the period between the quarter year ending 31 December immediately before the relevant Review Date and the same quarter of the previous year.

Rules means the rules for the Village, which are subject to change in accordance with this Agreement.

Serviced Apartment means an apartment where household support services are made available from time to time and can be purchased by residents and delivered to the resident in their apartment.

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

Termination Date means the date on which this Agreement terminates as set out in clause 13.

Utilities means any electricity, gas or other applicable utilities supplied to you or the Unit and **Utility** means any one of them.

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 and includes the costs, expenses and outgoings specified in Schedule 1.

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 fall on a Saturday or a Sunday, the following Monday.

A Working Day is deemed to commence at 9.00 am and end at 5.00 pm. Any act done pursuant to this Agreement by a party after 5.00 pm will be deemed to have been done at 9.00 am on the next succeeding Working Day.

SCHEDULE 1**VILLAGE OPERATING EXPENSES**

The Village Operating Expenses include:

- (a) All taxes in respect of the Village;
- (b) All rates, levies, charges, assessments and fees payable to any Government, Territorial or Local Authority;
- (c) Costs of compliance with any statute, regulation, by-law or other lawful obligation in respect of the Village;
- (d) Charges for water, gas, electricity, telephones and other utilities or services in respect of the Common Areas;
- (e) Insurance premiums and associated valuation fees;
- (f) All salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village;
- (g) The costs of providing security, cleaning, gardening and other Village-wide services for the general use and benefit of all residents;
- (h) The costs of maintenance and repair of all buildings, common areas and the Village generally;
- (i) Appropriate fees and expenses of the Statutory Supervisor and our auditor.