

# **AROHA RETIREMENT VILLAGE**

## **OCCUPATION RIGHT AGREEMENT**

*Updated June 2022*

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**PARTIES**

Operator: **Taita Home Trust Board** (registered under the Charitable Trusts Act 1957 under number 210594)

(described in this Agreement as “us”, “we” or “the Operator”)

Resident/Occupant: **XXXXXXXXXXXXXXXXXX**

(described in this Agreement as “you” or “the Resident”)

**BACKGROUND**

- A. The Operator owns a retirement Village known as Aroha Retirement Village (“the Village”) situated at 6 Cooper Street, Taita, Lower Hutt.
- B. You have applied to become a resident of a Residential Villa/Flat in the Village.
- C. The Operator will have accepted your application after the authorised signature of this document.
- D. This Occupation Right Agreement (“this Agreement”) sets out the terms and conditions that apply to your occupation right.
- E. The occupation right granted to you by this Agreement is a licence to occupy your Villa/Flat.

**AGREEMENT**

**1 SPECIFIC TERMS OF AGREEMENT**

The Villa/Flat	The Villa/Flat is known as Villa/Flat <b>XXX</b> in the Village. The full address of your Villa/Flat is Villa/Flat <b>XX</b> /58 Molesworth Street, Taita, Lower Hutt, 5011
Date on which your occupation commences (“the Occupation Date”)	[enter date]
Entry Payment	\$ <b>xxx,xxx</b> .00 for the Villa/Flat payable as follows:

	<ul style="list-style-type: none"> <li>• 10% deposit \$xx,xxx.00 upon signing this Agreement; and</li> <li>• the balance \$xx,xxx.00 is due on or before the Occupation Date.</li> </ul> <p>Your deposit will be held by the Deposit Holder until the expiry of the period set out in clause 6.1 of the Schedule to this Agreement unless you cancel in accordance with that clause.</p>
Exit Payment	<p>On the Exit Payment Date we will pay you the Exit Payment (set out in clause 7.1 of the Schedule to this Agreement) after deducting the following:</p> <ol style="list-style-type: none"> <li>1. Any outstanding Village Outgoings Payments that you owe to us under this Agreement</li> <li>2. Deferred Occupation fee fixed at a maximum of 20% of Entry Payment, or lesser per clauses 7.1 (a), or 7.2.</li> <li>3. The actual costs incurred as a result of having an independent registered valuer value the Villa/Flat on the Termination Date</li> <li>4. Real Estate Commissions (if any)</li> <li>5. Legal fees in relation to the sale</li> <li>6. Refurbishment costs fixed at the rate of \$1,000 per year or part year thereof.</li> </ol>
Village Outgoings Payment Clause 10.1	\$238.00 per month (including GST). This amount is subject to change in accordance with clause 2.1(a) of the Schedule.
Default Interest Rate	Ten percent (10%) per annum calculated on a daily basis
Statutory Supervisor	On 29 November 2021 the Ministry of Business, Innovation & Employment granted the Villa/Flat an exemption from the requirement to appoint a Statutory Supervisor for a period of five (5) years.
Operator's Chattels	The Villa/Flat contains the following Operator's chattels; Floor Coverings, Electric Stove, Light Fittings,

Heat pump, Curtains, Emergency call system, Smoke alarms
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## 2 NATURE OF OCCUPATION RIGHT

- 2.1 We grant to you, and you accept, the occupation right for the Villa/Flat under this Agreement. We are granting you this occupation right in exchange for payment by you of the Entry Payment and your agreement to comply with the terms of this Agreement, more particularly set out in the Schedule to this Agreement.
- 2.2 The rights we are granting to you under this Agreement are personal contractual rights only. Nothing in this Agreement gives you any ownership right or interest in the Village or the Villa/Flat. Nor does this Agreement give you any tenancy or leasehold rights to the Villa/Flat.
- 2.3 You have the right to occupy your Villa/Flat from the Occupation Date. You will not be entitled to occupy the Villa/Flat until you have **paid the Entry Payment in full**, even though this Agreement may have been executed and the Occupation Date may have arrived.
- 2.4 If the occupation right is initially granted to two of you, then you will both hold the benefits and have obligations under the occupation right jointly. Upon the death of one of you, the interest of that person will automatically transfer to the survivor, and the survivor will be entitled to a transfer of the Occupation Right Agreement into his or her sole name. No transfer into the name of your personal representative (following death) will be allowed.
- 2.5 After you sign this Agreement, you have the right to cancel it, without having to give reason, within fifteen working days. The process required for you to do so is set out at clause 6.1 of the Schedule to this Agreement.
- 2.6 We will not offer security over your Villa/Flat to any bank or other lender during the term of this Agreement.
- 2.7 You agree not to require registration of your occupation right and not to caveat or otherwise encumber our titles to the Villa/Flat.

## EXECUTION

You confirm that prior to executing this Agreement you have received a copy of;

- (a) This Agreement;
- (b) The Villages Disclosure Statement;
- (c) The Villages Handbook;
- (d) The Retirement Village Code of Practice 2008;

- (e) The Code of Residents' Rights (set out below) and
- (f) Aroha Summary Financial Disclosure Declaration.

You also confirm that you have received independent legal advice before signing this agreement as required by the Retirement Village Act 2003.

**EXECUTED as an Agreement**

Signed by:

\_\_\_\_\_  
ORA Resident

Date: \_\_\_\_\_

\_\_\_\_\_  
ORA Resident (if two)

Date: \_\_\_\_\_

in the presence of:

\_\_\_\_\_  
Signature of Witnessing Lawyer

\_\_\_\_\_  
Full name of Witnessing Lawyer

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address of Witnessing Lawyer

Signed on behalf of the Operator  
**TAITA HOME TRUST BOARD**  
by its Authorised Signatory:

\_\_\_\_\_

Name:

Date:

**CERTIFICATE OF LAWYER ADVISING INTENDING RESIDENT**

I, \_\_\_\_\_ [Full name of Resident's Lawyer]

of \_\_\_\_\_ [Law Firm], certify that:

**Re: Aroha Retirement Village – Registration Number 2203231**

- (a) I explained to the Resident the general effect of this Agreement and its implications before the Resident signed the Agreement; and
- (b) I gave the explanation in the manner and in language that was appropriate to the age and understanding of the Resident.

Dated:

Signed by: \_\_\_\_\_

Name: \_\_\_\_\_

Firm:

Telephone Number:

Email address:

## SCHEDULE

### 1 YOUR RIGHTS

#### 1.1 Occupy the Villa/Flat for life

You have the right to occupy your Villa/Flat during your life. If you are joint residents, this right continues while either of you is still alive. You are entitled to reasonable exclusive use and occupation of the Villa/Flat and the Operator's Chattels, free from unnecessary interruption.

#### 1.2 Offer security to potential lenders

You are not entitled to transfer this Agreement or any legal or equitable interest you may have in the Villa/Flat, borrow or give any mortgage or charge against your interest in this Agreement or your Exit Payment entitlement, sublet or allow any person to have possession or occupancy of the Villa/Flat, except as set out below.

Notwithstanding the above you may, with our prior written consent, create an interest in or charge over the Exit Payment due to you. Any such interest or charge must protect, as a first priority payment, our entitlement to deduct any amounts owing by you under this Agreement at the Termination Date. We reserve an absolute discretion to withhold consent to any such arrangement.

#### 1.3 No right to sell or market your Villa/Flat

You do not have the right to sell or to market your Villa/Flat.

#### 1.4 Pets

You may keep a pet as long as we have given our written approval. The decision shall be at our sole discretion and may be withdrawn at any time.

#### 1.5 Parking

You, your guests and visitors may park in the Aroha complex carpark in the spaces marked. No carparks are exclusively allocated for ORA residents pursuant to their Occupation Right Agreements.

If you wish to have a specific carpark allocated to you, you may make a written request to the Village Operator. The Village Operator will consider the request but is not obliged to provide you with an allocated carpark.

If we agree to allocate a carpark for your exclusive use to you ("the Car Park") provided will incur a monthly Car Park licence fee of \$100 including GST. It will be paid by you monthly in advance by way of bank automatic payment and any other terms of use we may require are met.

Your responsibilities under this Agreement relating to your Villa/Flat will also apply to the Car Park.

If you give up the Car Park before this Agreement ends, no further Car Park licence fee will be payable by you, and you will no longer be entitled to exclusive use of the Car Park.

At any time, after consultation with you, we may terminate your licence to use the Car Park and no further Car Park licence fee shall be payable by you.

#### 1.6 **Cancellation**

You have the right to terminate this Agreement as set out further in clause 6.1 of the Schedule.

#### 1.7 **Alterations to Villa/Flat**

You must not make any alterations or additions to the Villa/Flat, or modify the Operator's Chattels without our prior written consent. We can give or withhold this at our sole discretion.

Subject to our prior written approval which may not be unreasonably withheld, you have the right to alter your Villa/Flat if you suffer from a physical disability as defined in section 21(1)(h) of the Human Rights Act 1993, to the extent that the Villa/Flat does not meet your needs.

Such alterations will be undertaken at your cost, provided that we will first reach agreement with you as to what those alterations shall be.

Those alterations may materially and adversely affect our ability to obtain a new resident when you vacate the Villa/Flat. If that is the case, we may require your Villa/Flat to be reinstated to its original condition at your cost or require you to make a compensation payment instead of reinstatement.

## 2 **YOUR OBLIGATIONS**

### 2.1 **Charges and costs**

You must pay all amounts you owe to us from time to time no later than the due date. These amounts include the following:

#### (a) **Village Outgoings Payment**

Your Village Outgoings Payment is currently \$238.00 per month (including GST). This is payable in advance commencing on the Occupation Date. You are to continue paying the Village Outgoings Payment until you permanently vacate your Villa/Flat and remove all your possessions.

We are entitled to adjust the Village Outgoings Payment annually in accordance with the Consumer Price Index or the actual increase in meeting operating expenses, whichever is greater. Such change to the Village Outgoings Payment will take effect no earlier than one (1) calendar month following our notice to you of the change.

- (b) **Legal and other costs**  
You are responsible for paying your legal and other costs relating to your application for and entry into this Agreement.
- (c) **Electricity, telephone and other utilities**  
The following costs will be for your personal account:
- 1 electricity used in the Villa/Flat;
  - 2 the costs of having a telephone and internet connection in the Villa/Flat, including installation and ongoing charges; and
  - 3 any other utility charges that you incur (e.g. Pay TV).
- (d) **Car Park licence fee**  
Any licence fee paid by you in order to have a carpark allocated by us for your exclusive use.
- (e) **Deferred Occupation fee**  
A deferred occupation fee, is a fee charged when calculating the Exit Payment to be made to you. This is set out in clause 7 of the Schedule and is capped at a maximum of 20% of the initial Entry Payment for the Villa/Flat. It is deducted from the Exit Payment at the termination of your occupation.
- (f) **Default interest**  
If you don't make any payment by seven (7) days after the due date, we can charge you interest at the default interest rate on the payment from the due date until we receive payment.
- (g) **Removal of your possessions**  
When you permanently vacate your Villa/Flat you must remove all your possessions. You need to ensure your Villa/Flat and its surrounds are left clean and tidy, and in the same condition as at the Occupation Date (other than fair wear and tear, which you are not responsible for).
- (h) **Expenses arising from your death or departure**  
You will pay for all expenses relating to your death or departure from the Villa/Flat. We will send you or your personal representative any invoice for any of these amounts.

## 2.2 **Permitted and non-permitted activities at the Village**

You can only use the Villa/Flat as a place to live.

**Guests.** You may have friends or family stay with you as your guest for up to a 14-day consecutive period in any calendar year. The total guest nights must not exceed 60 nights in total in any calendar year.

We reserve the right to curtail any such arrangement where we consider it is interfering with the quiet enjoyment of other residents in the Village.

**No smoking.** You acknowledge and agree that the Village and grounds are a smoke free area. There is a strict policy of no smoking in any Villa/Flat, or the Village grounds, the Aroha Complex and the general grounds and car parks at any time. This includes cigarettes, cigars, e-cigarettes, vapes and any other delivery systems or tobacco products or similar items.

**No dangerous goods or activities.** You are not to bring into or keep in the Village any goods, or activities or substances that may be highly combustible or illegal.

You are not to permit anything (including the unauthorised use of light or power fittings) which may render an increased premium payable for any insurance cover on any part of the Villa/Flat or which may make void or voidable any such insurance.

You are not to do anything or allow anything to be done, within your control which is, or could be, a nuisance or annoyance to quiet enjoyment of other residents or to us.

### 2.3 **Care of the Villa/Flat**

You are required to keep the interior of your Villa/Flat and its surrounds, together with the Operator's Chattels, in a proper, tidy, clean, sanitary and (where appropriate) in good working order and condition.

You will replace at your cost all mirrors, lightshades, light bulbs, power elements and electrical fittings in the Villa/Flat as and when they wear out or are broken or become unserviceable. The replacement items must be of at least the same quality as those installed at the Occupation Date.

You will give us prompt notice of any defect in or want of repair of the Villa/Flat or the Operator's Chattels of which you are aware.

If you elect to install equipment in your Villa/Flat which is not offered by us as a standard feature then you will be responsible for maintaining that equipment.

You agree to permit us at all reasonable times to enter the Villa/Flat for the purpose of inspecting it, giving care and assistance to you and carrying out any necessary or (in our opinion) desirable repairs or alterations. In doing so, we will cause as little disturbance as possible to you. Wherever practicable we will give you 24 hours prior written notice of our intention to enter the Villa/Flat. In cases of emergency, the requirement for written notice will be waived.

### 2.4 **Insurance for your belongings**

You are responsible for all your own personal possessions and for insuring those possessions. We take no responsibility for loss or damage to any of your possessions. Accordingly, we strongly recommend that you take out insurance for them.

## 2.5 **Indemnification of Operator**

You will reimburse us for any loss or damage suffered by us as a result of your carelessness or negligence or that of your guests and invitees, except loss or damage by risks we have insured against. However, in any case where your acts or omissions (or those of your guests or invitees) have made any such insurance void, you will, upon demand, compensate and reimburse us in full for such loss or damage. Where the loss or damage is covered by our insurance, we reserve the right to require you to pay any excess applicable to the claim.

## 2.6 **Statements about your age and health**

We accept occupants into the Aroha retirement Village who are at least 70 years of age or above at occupation date.

You confirm that the statements you have made to us about your age and health are correct and will not mislead us. This is important because we have relied on your statements in entering into this Agreement with you.

If these statements are wrong or mislead us, there will have been a material breach of this Agreement. This allows us to terminate this Agreement.

## 2.7 **Enduring Powers of Attorney and Authority to Contact**

Before the Occupation Date, you will provide us with copies of properly executed enduring powers of attorney for both personal care and welfare and property together with relevant contact details of the appointed attorney(s).

During the term of this Agreement, you will advise us of any change to any enduring power of attorney and provide us with a copy of the new form together with relevant contact details of the appointed attorney.

At our request, you will provide us with updated contact details for your attorney(s) or in the event that no enduring power of attorney has been invoked, your next-of-kin.

You authorise us to contact your attorney (in the event there is an enduring power of attorney which has been invoked) or next-of-kin (if the relevant enduring power of attorney has not been invoked):

- (a) in the event of emergency, or
- (b) at any time that we have reasonable concerns as to your safety and continued suitability to live in the Villa/Flat.

## 3 **COMMON AREAS AND THE VILLA/FLAT**

### 3.1 **Use of common areas**

You must use the Common Areas in the Village in such a manner as to keep them in a proper, tidy, clean and sanitary condition.

You are not to do anything or allow anything within your control to occur, which could cause any blockage of storm water drain or sewage outlets servicing the Villa/Flat or the Village.

You are not to deposit rubbish other than in approved receptacles, nor defile any part of the land or buildings on or in the Villa/Flat.

You are not to leave or place in the pathways, driveways or parking areas or in the grounds of the Village, any obstructions whatsoever.

We must take all practical steps to ensure the safety of our employees, contractors and subcontractors at work in the Village. You must also do the same when our employees, contractors and subcontractors are undertaking work in, on or around your Villa/Flat.

You must not damage any lawns, gardens, trees, shrubs, plants or flowers situated in the Village, or use any portion of the Village for the your own purposes as a garden (unless included with your Villa/Flat) except with our prior consent. You will co-operate with us in the preservation of the gardens in the Village.

### **3.2 Further Development of the Village**

Subject to our consultation obligations set out in clause 4.7 of this Schedule:

- (a) We are entitled to improve, extend, add to, reduce or alter the Village in any manner whatsoever. In undertaking such further development, we will use our best endeavour to cause as little inconvenience to you as is practical in the circumstances.
- (b) You will make no objection to building works associated with the construction of the Village or any further development or to the dust, noise or other discomfort or nuisance which may arise from such works and will not institute or commence any action or proceeding for an injunction, damages or other relief arising out of or consequent upon any such works.
- (c) You agree that we are entitled to sell any part of the Village which has not been developed by the construction of Villa/Flats and which we deem to be surplus to our needs.
- (d) You are not entitled to make any objection or claim compensation in respect of any further development we undertake. You will, if we require, sign all consents and other documents as may be required to give effect to such further development.

## **4 OUR OBLIGATIONS**

#### 4.1 **Respect**

We commit to at all times act reasonably and in good faith, and to treat you and your rights under this Agreement with the utmost respect. In signing this Agreement you also agree to make the same commitment to other residents, us and our staff.

#### 4.2 **Your safety and personal security**

We will have systems in place to keep you safe and secure at the Village. We will also provide suitable fire protection and emergency management for the Village and residents.

#### 4.3 **Management of Villa/Flat**

We must use reasonable skill and care in ensuring that the Village's affairs are conducted properly and efficiently, and in performing our powers, functions and duties. In doing so, we will:

- (a) keep the Villa/Flat in good condition and order;
- (b) engage a Manager to undertake the day-to-day management of the Village;
- (c) supply the Village with standard connections for water, telephone, television, electricity and/or gas.
- (d) maintain and keep in good and respectable tidy operational order and condition the exterior of your Villa/Flat and its surrounds, the pathways and grounds surrounding the buildings including the gardens and trees and shrubs.
- (e) subject to your obligations under clause 2.3 of this Schedule, maintain and keep maintained in good clean, tidy repair order and condition all buildings and car park areas in the Village.
- (f) make and adhere to (as far as reasonably possible and as financial circumstances permit) a long-term plan for maintenance and refurbishment of the Villa/Flat.

#### 4.4 **Liability for water damage**

Except to the extent that we are covered by our insurance policy, we will not be liable to your personal belongings, or to you or any other person for water damage caused by either the overflow of water supplied or rainwater unless we have received prior written notice of any defect or want of repair and have failed to remedy the same within a reasonable period and that failure has contributed to the damage.

#### 4.5 **Insurance**

We will insure the Village as a whole for its full replacement value, if full replacement cover is available. This insurance will cover the Villa/Flat including any capital improvements and additional fixtures installed by you but will not cover your personal possessions.

The insurance policy covers all usual risks including damage or destruction by fire and earthquake. Further provisions as to how we will deal with insurance proceeds in the event of damage or destruction of your Villa/Flat are set out in clause 5 of this Schedule.

You may request a copy of our insurance documents at any time.

**4.6 Payment of Village outgoings**

We will ensure that all outgoings in respect of the Retirement Village are paid within a reasonable period after they become due and payable.

**4.7 Our consultation obligations**

In addition to other times where we have stated that we will consult you, we will consult with residents of the Village when required to do so by law. We will follow the Code of Practice requirements when consulting with residents.

We will consult you about any matter that will or might have a material impact on:

- (a) any proposal by us to develop or redevelop any part of the land on which the Village is situated or to acquire any nearby land for development;
- (b) repairs, maintenance or replacement required to the interior of the Villa/Flat.
- (c) any notice we receive from the Registrar of Retirement Villages suspending the registration of the Villa/Flat;
- (d) any request by us to the Registrar of Retirement Villages for cancellation of the registration of the Villa/Flat;
- (e) any decision by the Registrar of Retirement Villages to exempt us from the requirement to appoint a Statutory Supervisor
- (f) the appointment of a Statutory Supervisor;
- (g) any decision by the Registrar of Retirement Villages to exempt us from the requirement to comply with a provision of the Code of Practice;
- (h) any proposal by us to incur borrowings or liabilities secured over any part of the Village;
- (i) any decision by an insurer to refuse to insure the Village or any part of it;
- (j) any actual or threatened legal proceedings against the Village or against us that affect your interest;
- (k) any actual or threatened action by a creditor, mortgagee or charge holder in

respect of the Village, against us, in respect of that person's security or any sum over \$1,000.00;

- (l) any action by a creditor to put us or the Village in receivership or liquidation;
- (m) any decision to sell or dispose of our interest in the Villa/Flat (in which case the purchasers and we will jointly consult with you);
- (n) where we intend to appoint an outside party to manage the Village, rather than us managing the Village;
- (o) any proposed changes in the services and benefits provided to residents, or the charges that residents pay. This applies where the changes will or might have a material impact on residents' occupancy or ability to pay for the services and benefits.

#### 4.8 Meetings with residents

We will hold regular meetings with residents when necessary, and at least every six months. We will call meetings of the residents of the Village in the circumstances and for the purposes set out in the table.

At these meetings we will give residents information that relates to the affairs of the Village and has been requested with reasonable notice by a resident of the Village.

This information may be given orally or in writing.

The meetings will be chaired by the Manager of the Village except in the case of the Annual General Meeting which must be chaired by a person appointed by the majority of the residents of the Village who are present at the meeting.

We must provide you with written notice of such meeting and at least ten (10) working days before the meeting is held.

The circumstances and purposes of meetings are as follows:

<b>Circumstances</b>	<b>Purpose</b>
Within six months after the end of a financial reporting period for which financial statements must be prepared.	To consider the financial statements
If there is a statutory supervisor of the Village and the meeting has been requested by the statutory supervisor or 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.
There is not a Statutory Supervisor of the Village and the meeting has been requested by at least 10% of the residents	Giving the operator the residents' opinions or directions.

of the Village	
Annually for each new financial year, a financial forecasting or budget statement.	Residents to consider and accept the financial forecast or budget statement per 4.9 at a Village meeting

#### 4.9 **Provision of financial statements**

We must give you on request and free of charge, a copy of our audited financial statements most recently filed under the Financial Reporting Act 1993. This clause applies until you have been paid your Exit Payment in accordance with clause 7.1 of this Agreement.

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

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

We must give you a copy of that statement within three months of the start of the financial year to which the statement applies.

#### 4.10 **Further obligations under the Retirement Village Act 2003**

We will comply with these matters, and all requirements relating to these matters set out in the Code of Practice:

- (a) We will provide accounts setting out charges residents have agreed for services provided to them and other charges payable by residents.
- (b) We will make available a suitable interpreter or liaison person for any resident who needs one. This could be due to language difficulty or lack of communication skills.
- (c) Ensure that we, all our staff and other service providers under our control treat residents with courtesy, respect their rights, and do not exploit residents.

## 5 **DAMAGE OR DESTRUCTION OF VILLAGE**

### 5.1 **Villa/Flat Damage or Destruction**

If the Village or Villa/Flat or a substantial part of either of them is totally or partially destroyed or damaged from any cause that the Village or Villa/Flat, as the case may

be, is substantially unfit for use and occupation and:

- (a) The destruction or damage is so extensive that in our opinion repair or reinstatement is impracticable or uneconomic; or
- (b) The funds available under the reinstatement insurance policy maintained by us are unavailable or insufficient to allow adequate repair or reinstatement; or
- (c) We are unable to reasonably obtain all necessary permits and consents to undertake the repair or reinstatement,

### **Meeting and Consultation**

We shall then meet with you as soon as is reasonable in the circumstances, to communicate our decision to repair or replace the Village or Villa/Flat, or to terminate the Resident Occupation Agreement.

In the event that we determine the Village or Villa/Flat is **not to** be fully repaired or replaced, this Agreement shall be **terminated**. The Termination Date for the purposes of this Agreement will be determined under Clause 6 of this Agreement.

### **5.2 Repair and reinstatement**

If the Village or any part of it including the Villa/Flat is destroyed or damaged and clause 5.1 above does not apply, then, to the extent of the funds available under our reinstatement insurance policy maintained by us, we will:

- (a) As soon as practicable in the circumstances consult with you to determine whether it is practicable to repair or replace the Villa/Flat;
- (b) Following consultation with you, provide notice in writing within 60 Working Days setting out our decision confirming how the Villa/Flat shall be repaired or replaced, and
- (c) Ensure that the Village and/or Villa/Flat, is reinstated as soon as is practicable to a design we consider appropriate, and to a standard and with a floor area at least equal to that of the Village and/or Villa/Flat prior to it being destroyed or damaged.

### **5.3 Insurance proceeds**

In no circumstances will we be obliged to expend any more money in the reinstatement of the Village and the Villa/Flat, as the case may be, than we receive by way of insurance monies.

### **5.4 Abatement of Village Outgoings Payment**

Where the Villa/Flat has been damaged or destroyed through no fault of you and is uninhabitable, no Villa/Flat Outgoings Payment shall be payable by you from the date of the damage or destruction until the Villa/Flat had been made fit for occupation by you. If we are providing temporary accommodation to you, you shall remain liable to

pay the Villa/Flat Outgoings Payment as accrued up to the date of the destruction or damage to the Village or Villa/Flat. For the purposes of calculating any Exit Payment due under this Agreement, any period during which the Villa/Flat Outgoings Payment cannot be charged by us under this clause must be excluded in calculating the Exit payment.

#### 5.5 **Temporary accommodation and Insurance limitations**

Following the damage or destruction of the Villa/Flat, and while it is being repaired or reinstated, we will;

1. work with our insurer to find and pay for reasonable temporary accommodation for you for up to twelve months.
2. cover the cost of moving your belongings under our current policy arrangements.

Rebuilding the Village after a destructive event is likely to take longer than twelve months. Occupants wanting insurance accommodation cover after our insurance cover period expires, (12 months) should seek independent insurance advice if extended cover is required.

Independent insurance valuations are regularly carried out to ensure that insurance termination proceeds are current.

Occupants should be aware that future market prices may be greater than any insurance proceeds received.

Occupants wanting to cover any potential gap between insurance proceeds and future market purchase prices should seek independent legal and insurance advice.

#### 5.6 **Occupation fee not deducted on destruction or damage of Village or Villa/Flat**

We will not deduct a deferred occupation fee from your Exit Payment if this Agreement is terminated due to a destructive event that damages or destroys your Village or the Villa/Flat and we elect not to rebuild. In these circumstances, we will repay your Entry Payment to you or your personal representative in full.

At our sole discretion, we may elect to pay to you more than your original entry payment up to any insurance proceeds received, provided that we receive sufficient insurance proceeds to allow us to do so.

## 6 **TERMINATION OF THE AGREEMENT**

### 6.1 **Cancellation within cooling-off period**

After you sign this Agreement you may cancel this Agreement, without having to give any reason, by giving notice to us within fifteen (15) working days of you signing this Agreement.

Your notice of cancellation must be in writing and must clearly indicate your intention to cancel this Agreement.

If you cancel this Agreement you are entitled to a refund of the Deposit and any other payments made by you to us for the grant of the occupation right. This refund will be without deduction and will include any interest earned in the Deposit Holder's account. You are entitled to receive this refund within ten (10) working days from the date of your request.

If you cancel this Agreement within the cooling off period, and you had been allowed to occupy the Villa/Flat before the Occupation Date, we are entitled to reasonable compensation for damage to the Villa/Flat or any other facilities in the Villa/Flat for which you are responsible.

## 6.2 Termination by Operator

We may terminate this Agreement if:

- (a) Your physical or mental health is such that, based on a medical assessment by an independent medical practitioner appointed by us at our cost, you cannot competently care for yourself and/or safely live in the Villa/Flat. You agree to submit to an independent medical assessment for this purpose at our request. We will consult you, your family or appointed representative where appropriate. You may obtain a second opinion from another medical practitioner at your own expense and present it to us. In the event that this agreement is for two occupants, and the assessment applies to only one of you, we will not terminate the Agreement for this reason.
- (b) You have defaulted in a material or significant way, in observing or performing any of your obligations under this Agreement and you have failed to rectify the default within a reasonable time after receiving written notice from us that we intend to terminate the Agreement unless such default or defaults are remedied.
- (c) You have either intentionally or recklessly caused or permitted, or you are highly likely to cause or permit:
  - (i) serious damage to the Villa/Flat;
  - (ii) damage which is not of itself of a serious nature but which is made so by its continuous nature; or
  - (iii) serious injury, harm or distress to us or to another resident of the Villa/Flat or any of our employees or visitors or any other resident's visitors.
- (d) We have made reasonable enquiries and determined that you have permanently abandoned the Villa/Flat. We will notify you of our intention to terminate this Agreement unless you re-occupy the Villa/Flat and give you one calendar (1) month in which to re-occupy the Villa/Flat.

(e) In accordance with clause 5.1 of this Schedule.

Should we wish to terminate this Agreement on any of the grounds referred to in sub-clauses (a), (b) and (d) above, then we shall give you not less than one (1) month's notice in writing that we intend to terminate the Agreement. Should we wish to terminate this Agreement on the ground referred to in sub-clause (c) above, then we shall give you as much notice in writing as is reasonable in the circumstances that we intend to terminate the Agreement.

The Termination Date shall be the first working day after the applicable notice period.

### **6.3 Termination by You**

At any time after the Occupation Date, you may terminate this Agreement at your option by giving us three (3) calendar months' notice in writing that you intend to terminate the Agreement. If there are two of you in joint occupation, then the notice must be signed by both of you.

The Termination Date will be the first working day after that notice period.

### **6.4 Termination on death of Resident**

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

### **6.5 Departure from Villa/Flat**

You must leave the Villa/Flat on or before the Termination Date.

You must remove all of your chattels, personal belongings, effects and vehicles from the Village and the Villa/Flat on or before the Termination Date (except on termination under clause 6.4 of this Schedule (death of resident), in which case removal shall be within one (1) month following the Termination Date). You must make good any damage caused to the Village or Villa/Flat in removing these items.

If you do not remove these items by the required date, then we may remove them and store them at your expense and cost. If we place your items in storage and they are not uplifted or dealt with by you or your personal representative within 20 working days of the Termination Date, we may sell the same, with the proceeds of such sale after deducting the Operator's costs, being paid to you or your personal representatives.

When you leave the Villa/Flat, it must be in similar repair, order and condition as it was at the Occupation Date, considering any fair wear and tear during your occupation. You will not be liable for any damage caused by fire, earthquake, tempest, enemy action or other inevitable accident where the Agreement is being terminated in accordance with clause 5.1.

6.6 After you permanently vacate your Villa/Flat and remove all your possessions and return the keys we will:

(a) **Market and resell the occupation rights after you leave**

Take all reasonable steps to market and resell the occupation rights to the Villa/Flat for the best price reasonably obtainable.

(b) **Use all reasonable efforts to find new resident**

Make all reasonable efforts to find a new resident for the Villa/Flat.

We are required to tell you whether we give preference to finding residents for Village in the Villa/Flat which have not previously been occupied by a resident under an occupation agreement. As there are no such Village in the Villa/Flat, this does not apply to us.

## 7 EXIT PAYMENT

### 7.1 Exit Payment

On or before the Exit Payment Date, we will pay you the Exit Payment as follows:

- a. If the Termination Date is within one (1) year of the Occupation Date, the Occupation fee per 2.1 (d) shall be reduced from 20% to 10% of the Entry Payment.
- b. If the Termination Date is greater than one (1) year from the Occupation Date, then we will appoint an independent registered valuer to assess the market value of the Villa/Flat at the Termination Date ("the Market Value"). The market value will determine the 'gross Exit Value' from which the deductions in 7.1 (c) will apply.
- c. Deductions from Exit Value
  - a. Occupation fee of 20% of initial entry payment, unless 7.1 (a) or 7.2 applies.
  - b. Valuation fees
  - c. Real Estate Commissions (if used)
  - d. Legal fees
  - e. Refurbishment levy set at the rate of \$1,000 per year or part year thereof.
  - f. Any other costs owed by the resident in relation to the Villa/Flat and or sale process.
- d. Share of Capital Gains after deductions in clause 7.1 c. The occupant has the right to share in 50% of the capital gains (if any). The calculation of any gain is based on the exit amount less the entry payment, AFTER all deductions have been taken into account.

### 7.2 Exit Payments

The Exit Payment Date shall be the date the Villa/Flat is settled with a new occupant and the proceeds are received by us, or nine (9) calendar months after the Termination

Date, whichever occurs first.

If our payment of the Exit Payment must be made to your personal representative, then we will be entitled to be satisfied that your personal representative holds proper documentation, or probate of your will or letters of administration of your estate before making a payment.

If there is any delay in meeting our requirements in this regard then we will lodge the money due to your estate on interest bearing deposit with interest to accrue to the benefit of your estate until our requirements can be met.

## **8 DISPUTE RESOLUTION**

Notwithstanding any other provision in this Agreement, any complaint or dispute, issue or concern shall be dealt with in accordance with the Retirement Village Act 2003, and in accordance with the Retirement Village Code of Practice 2008 and its variations. The operator must provide you with a copy of the Code of Practice. Sections 31 to 36 in the code explain the disputes process in detail.

The objective is to enable every formal complaint to be resolved in a way that is resident appropriate, objective and fair, quick, and cost effective for the operator and the resident

### **8.1 Resident complaints**

The operator must operate a complaints facility. The operator will provide you with its written procedure regarding complaints. A flow diagram from the Code of Practice 2008 will be made available to you.

In the first instance a resident can either:

- a) Informal contact with the operator, OR
- b) Formal complaint to the operator.

The procedure for raising issues or concerns informally in the first instance, does not prevent a resident from making a formal complaint within six months from raising the initial complaint.

### **8.2 Operator's complaint**

If the operator has a complaint concerning you, we will notify you of that complaint. We will then make reasonable efforts to resolve our complaint with you. Failing resolution, we will follow the Act and the Code of Practice disputes process as set out in the complaint facility procedure diagram.

### **8.3 Mediation or Disputes panel notice**

If you are not satisfied with the operator's resolution or decision, or a decision has not been made within a reasonable time after you referred the complaint to the operator, you may require the matter to be resolved by way of mediation.

If still not resolved, or you do not agree to mediation, then the resident may issue a dispute notice that requires the complaint to go to a disputes panel for resolution.

The panel is administered by the Retirement Commissioner. As operator, we must report formal complaints data to the Retirement Commissioner every 6 months.

## **9 GENERAL TERMS**

### **9.1 Operator's contact person**

If you have any questions about this agreement, you should contact the Village Manager in the first instance.

### **9.2 Collection of personal information**

To enable us to care for you and meet our requirements under this Agreement:

- (a) You authorise us to collect personal information about you and from any agency, particularly relating to your physical and mental health; and
- (b) You authorise these agencies to give this information to us.

You have the right to see what personal information about you that we hold, and have any errors in this information corrected.

### **9.3 This Agreement applies over other documents**

In the event of any inconsistency between the terms of this Agreement or any management rules applying to the Villa/Flat, this Agreement shall apply.

### **9.4 Relationship with the Code of Practice**

We will meet all requirements of the applicable Code of Practice that is in force from time to time and we acknowledge that those requirements shall be binding upon us in the same way as if they were set out in this Agreement.

If anything in this agreement is less favourable to you than a right you have under the Code of Practice, this Agreement will be considered automatically changed so that you have the more favourable right.

### **9.5 Funds provided by another person**

If funds are provided by someone else and paid towards your Entry Payment:

- (a) The gift or loan arrangements relating to those funds will be between you and the provider of the funds; and
- (b) We will pay the Exit Payment (after setting off any other amounts that you owe us) to the provider of the funds if you tell us in writing to do so, or otherwise we will pay this to you.

### **9.6 Waiver of rights**

Any failure by us to insist upon your strict performance, observance or compliance with

any of your obligations under this Agreement, or our waiver of your breach of any terms of this Agreement shall not be construed to be a waiver or relinquishment by us of our right to insist upon your strict compliance with all or any one or more of the terms of this Agreement.

**9.7 Notices**

- (a) All notices to the resident may be given by delivering such notice either personally or by leaving it at, or sending it to, the resident's last known or usual place of residence or business. If a notice is posted, it is deemed, in the absence of evidence to the contrary, to have been received at the time when it would in the ordinary course of post be delivered.
- (b) All notices to the Operator may be given by delivering such notice to the Operator's registered address.
- (c) If a notice addressed to a person at the person's last known or usual place of residence or business is posted, it is deemed, in the absence of evidence to the contrary, to have been received at the time when it would in the ordinary course of post be delivered.

**9.8 Our consent**

If, under this Agreement, the doing or execution of any act, matter or thing by you requires our consent or approval, such consent or approval may be given conditionally or unconditionally or withheld by us in our sole discretion.

**9.9 Majority resolutions**

Except where by law, the consent of a specified proportion of residents is required, the decision of a majority of the residents in the Village on a matter, will bind all residents.

**9.10 Non-merger**

Our and your obligations set out in this Occupation Right Agreement will continue until the later of when each obligation is met or when we pay you the Exit Payment.

**9.11 Amendments**

This Agreement may only be amended by agreement between the parties, with the consent of the Statutory Supervisor if there is one appointed at that time. Such variation must be recorded in writing and signed by both parties.

**9.12 Costs**

We are entitled to seek payment from you of any legal costs incurred and any other expenses of and incidental to:

- (a) Any and every breach or default by you under this Agreement;
- (b) The exercise or attempted exercise of any right, power, privilege, authority or remedy of the Operator under or by virtue of this Agreement; and

- (c) The termination of this Agreement by us.

## **10 VILLAGE OUTGOINGS**

- 10.1 Your monthly contribution as determined by clause 2.1(a) is the contribution towards the recovery of costs, charges, expenses, fees and other outgoings incurred by us in maintaining and operating the Villa/Flat from year to year (the "Village Outgoings") including but not limited to:
- (a) all rates, levies, charges, assessments and fees payable to any government, territorial or local authority;
  - (b) the cost of compliance with any statute, regulation, bylaw or other lawful obligation in respect of the Village;
  - (c) the charges for water, gas, electricity and other utilities or services relating to the buildings in the Villa/Flat;
  - (d) insurance premiums for relating to all buildings (but excluding your personal belongings) and any associated valuation fees;
  - (e) salaries, wages, fees and other remuneration for persons engaged in the administration, management and operation of the Village;
  - (f) the costs of providing security, gardening and other services for the general use and benefit of the residents;
  - (g) the day-to-day costs of maintaining and repairing all buildings and the Village generally;
  - (h) a provision for deferred maintenance which includes roofing and repainting.

## 11 DEFINITIONS

- 11.1 In this Agreement there are several defined terms set out in the front section to this agreement. In addition, the following terms are used throughout this Agreement. Terms used in this Occupation Right Agreement will have the following meanings:

**"Act"** means the Retirement Village Act 2003.

**"Agreement"** means this Occupation Right Agreement.

**"Code of Practice"** always means the code of practice approved in accordance with section 89(1) of the Retirement Village Act 2003 such as may be enforced from time to time.

**"Common Area"** means those parts of the Village provided from time to time by the Operator for common use by all residents of the Village;

**"Deposit Holder"** means a lawyer nominated by both the Resident and the Operator.

**"Disclosure Statement"** means the written document titled the Disclosure Statement containing information about the Villa/Flat in accordance with the Retirement Village Act 2003.

**"Operator's Chattels"** means the chattels belonging to the Operator set out in clause 1.

**"Personal Information"** has the meaning given to it in the Privacy Act 1993;

**"Village"** means the complex of nine Villa/Flats located within and forming part of the complex known as Aroha Retirement Village situated at 6 Cooper Street, Taita, Lower Hutt.

**"Working Day"** has the meaning set out in the Code of Practice.

## 12 CODE OF RESIDENTS' RIGHTS

- 12.1 Prior to you entering into this Agreement, we are required to provide you with the Code of Residents' Rights established by the Act. This is set out below.

### **Basic rights of residents**

This is a summary of the basic rights given to residents by the Retirement Village Act 2003.

*Services and other benefits*

1. You have the right to services and other benefits promised to you in your occupation right agreement.

*Information*

2. You have the right to information relating to any matters affecting, or likely to affect, the terms or conditions of your residency.

*Consultation*

3. You have the right to be consulted by the Operator about any proposed changes in the services and benefits provided or the charges that you pay that will or might have a material impact on your –
  - (a) Occupancy; or
  - (b) Ability to pay for the services and benefits provided.

*Right to complain*

4. You have the right to complain to the Operator and to receive a response within a reasonable time.

*Disputes*

5. You have a right to a speedy and efficient process for resolving disputes between you and the Operator or between you and other residents of the Village.

*Use of support person or representative*

6. You have the right, in your dealings with the Operator or other residents of the Village, to involve a support person or person to represent you. The cost of involving a support person or person to represent you must be met by you.

*Right to be treated with courtesy and have rights respected*

7. You have the right to be treated with courtesy and have your rights respected by the Operator, the staff and contractors who work at the Village, and any other people who provide services at the Village.

*Right not to be exploited*

8. You have the right not to be exploited by the Operator, the staff and contractors who work at the Village, and the people who provide services at the Village.

**Your obligations to others**

Your rights exist alongside the rights of other residents and the rights of the Operator, the people who work at the Village, and the people who provide services at the Village. In the same way that these people are expected to respect your rights, it is expected that you in return will respect their rights and treat them with courtesy.

**Operator's contact person**

If you want more information about your rights or wish to make a complaint against the Operator or another resident, the Operator's contact person is the Village Manager, Trish Watts. Trish can be contacted between the hours of 9.00 am and 5.00pm from Monday to Friday on (04) 567 1026 (ext. 713) or [manager@arohacarecentre.co.nz](mailto:manager@arohacarecentre.co.nz).

**Other contact persons**

Other contact persons, if you want to make a complaint about a breach of your rights, are –

- (a) The statutory supervisor (if there is one)
- (b) The Registrar of Retirement Village

**Information**

The Retirement Commissioner publishes information on the code of residents' rights and disputes procedures available under the Retirement Village Act 2003 that may assist to resolve your complaint.

End of Document