



# **MASONIC VILLAGES LIMITED**

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## **OCCUPATION RIGHT AGREEMENT HOKIANGA MASONIC VILLAGE**

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**MACALISTER MAZENGARB  
SOLICITORS  
WELLINGTON**

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## **PARTIES:**

1. **THE OPERATOR** being that Party described in the First Schedule (“the Operator”); and
2. **THE RESIDENT** being that/those person(s) described in the First Schedule (“the Resident”).

## **BACKGROUND RECITALS:**

- A. The Operator operates the retirement village complex comprising, amongst others, residential units at the Village specified in the First Schedule.
- B. The Operator has approved the Resident as a resident for personal occupation of the Unit specified and identified in the First Schedule in accordance with the criteria established by the Operator and upon the terms and conditions set out in this Occupation Right Agreement.
- C. In accordance with the Retirement Villages Act 2003, the Operator has supplied to the Resident or the Resident’s representative(s), and the Resident in executing this Agreement acknowledges receipt of, the following additional documentation:
  - Village Disclosure Statement;
  - Retirement Villages Code of Practice 2008; and
  - Code of Residents’ Rights.

## **OPERATIVE PART:**

**NOW THEREFORE** the Parties hereby agree and covenant as follows:

### **1. Definitions and Interpretation**

#### **1.1 Definitions**

*In this Occupation Right Agreement, unless the context otherwise requires or admits:*

“**Act**” means the Retirement Villages Act 2003.

“**Agreement**” or “**Occupation Right Agreement**” means this Occupation Right Agreement or the next succeeding Occupation Right Agreement giving right of occupancy of the Unit to the Resident or a Prospective Resident or a new or replacement Resident.

“**Annual General Meeting**” means any Annual General Meeting of residents of the Village convened in accordance with clause 6.23 of this Agreement.

**“Attorney”** means a legal representative and/or the holder of an Enduring Power of Attorney.

**“Building Code”** means the code contained in Schedule 1 of the Building Regulations 1992.

**“Capital Sum Advance”** or **“Advance”** means the sum of money paid by the Resident to the Operator (via the Statutory Supervisor) on issue of this Occupation Right Agreement which is interest free and part refundable of the amount set out in the First Schedule and in consideration of the right to occupy the Unit and use the facilities and amenities of the Village.

**“Capital Repayment Sum”** means the sum of money to be repaid to the Resident following termination of the Agreement, calculated in accordance with the formula specified in the First Schedule.

**“Code of Practice”** means the Retirement Villages Code of Practice 2008 as may be amended from time to time or replaced subsequently and approved by the Minister pursuant to section 89 of the Act.

**“Commencement Date”** means the date on which the Resident assumes occupancy of the Unit pursuant to this Occupation Right Agreement and from which the various specified rights and obligations of the Parties hereto shall commence.

**“Deed of Supervision”** means the deed established between the Operator and the Statutory Supervisor and containing the terms on which the Operator appoints the Statutory Supervisor pursuant to the Act, as may be amended from time to time.

**“Default Interest Rate”** means the interest rate specified in the First Schedule and referenced in this Agreement as the Default Interest Rate.

**“Deferred Management Fee”** means the sum of money calculated in accordance with the formula specified in the First Schedule, being a deferred payment for the supply of accommodation of the Apartment and the use of the Village amenities and facilities in common with other residents of the Village as detailed in the Village Disclosure Statement.

**“Enduring Power of Attorney”** or **“EPA”** means an enduring power of attorney within the meaning of the Protection of Personal and Property Rights Act 1988.

**“Intending Resident”**: means, at any time, a person:

- (a) Who has within the last three months
  - (i) Indicated to the Operator that her or she is interested in becoming a resident of the Village; or
  - (ii) Had discussions with the Operator about entering into an Occupation Right Agreement; and
- (b) In respect of whom the Operator has a current address, or

sufficient other contact details to enable the Operator to send notices to that person.

**“Manager”** means any party appointed from time to time by the Operator to operate and run the Village on the Operator’s behalf.

**“Medical Practitioner”** has the same meaning as in the Health Practitioners Competence Assurance Act 2003.

**“Notice of Intention to Terminate”** means a written notice prepared by the Operator in accordance with clause 11.4, containing the information required by clause 49(2) of the Code of Practice, and allowing the Resident not less than one (1) week to respond.

**“Notice of Termination”** means a written notice prepared by the Operator in accordance with clause 11.4, containing the information required by clause 49(3) of the Code of Practice, and allowing the Resident not less than one (1) month before the termination is to take effect.

**“Occupation Right Agreement Fee”** means a charge payable on commencement of an Occupation Right Agreement to cover standard costs and expenses of the Operator, in the amount specified in the First Schedule.

**“Operator”** means the Party to this Agreement specified in the First Schedule which exercises effective management and control of the Village and which grants the right of occupancy to the Resident. Where the context requires or permits, “Operator” includes associated persons of the Operator within the meaning of subpart YB of the Income Tax Act 2007.

**“Registrar of Retirement Villages”** means the Registrar of Retirement Villages appointed pursuant to the Act.

**“Regulations”** means the Retirement Villages (General) Regulations 2006.

**“Resident”** means the person(s) named in the First Schedule and if more than one, one or both or the survivor of them, (as may be appropriate in the context to give effective meaning to a given provision), including that person’s executor(s), administrator(s), support person(s), Attorney(s), and personal representative(s), who has entered into an Occupation Right Agreement with the Operator to occupy the Unit.

**“Resident’s Notice of Termination”** means a written notice from the Resident of the Resident’s desire to terminate this Agreement, prepared in accordance with clause 11.2, and allowing the Operator not less than one (1) calendar months’ notice.

**“Retirement Commissioner”** means the Retirement Commissioner appointed pursuant to the New Zealand Superannuation and Retirement Income Act 2001.

**“Rules”** means the rules including any amendment or variation of the rules referenced in clause 13.3.

**“Service Charge”** means those expenses and outgoings of the Village listed in the Second Schedule a contribution towards which is payable by the Resident in accordance with clause 3.2.

**“Site Payment Fee”** means the upfront fee payable by the Resident to the Operator (via the Statutory Supervisor) under clause 3.1 and as specified in the First Schedule.

**“Special General Meeting”** means a special meeting of residents of the Village called by the Operator, the Statutory Supervisor or at least ten percent (10.0%) of the residents of the Village in accordance with the Code of Practice.

**“Statutory Supervisor”** means the Party named as such in the First Schedule together with any successor.

**“Termination Administration Fee”** means the charge to cover costs and expenses of the Operator on termination of the Agreement.

**“Termination Date”** means the date on which this Occupation Right Agreement terminates.

**“Trust”** means the Masonic Villages Trust (no. 210449).

**“[the] Unit”** means the whole or part of the care suite or other accommodation in the Village provided to a particular Resident pursuant to this Agreement and as described and identified in the First Schedule.

**“[the] Village”** means the retirement village described in the First Schedule.  
**“Village Disclosure Statement”** means the village disclosure statement issued by the Operator in respect of the Village, a copy of which the Resident acknowledges receipt pursuant to Recital C of this Agreement.

**“Village Site Manager”** means the person or persons appointed by the Manager to administer and perform the day to day operations of the Village.

**“Working Day”** means a day of the week other than:

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

## 1.2 Interpretation

- Headings are for guidance only and shall not affect the meaning or construction of this Agreement;
- a plural number includes the singular number and vice versa, and words importing any gender include all other genders;
- references to any Act(s) of Parliament, regulation(s) and/or code(s) include amendments and/or any enactment, regulation or codification passed in substitution therefor;
- reference to “*written*” or “*in writing*” includes telexed, cabled and emailed communication;
- references to clauses and schedules are to those contained in this Agreement;
- except where inconsistent with the context, the expression “*from time to time*” also means “*at any time*”; and
- where there is any inconsistency between the Act and/or Regulations and/or the Code of Practice on the one hand, and this Agreement on the other, as regards a provision or requirement which is stated to be mandatory, then the Act, Regulations and Code of Practice shall prevail.

## 2. Occupancy

- 2.1 In consideration of and subject to the provisions of this Agreement the Operator hereby grants to the Resident (and if there is more than one resident, both or the survivor of them) a non-transferable personal right:
- (a) to occupy the Unit at the Village upon the terms and conditions of this Agreement for life or until this Agreement is otherwise terminated in accordance with its provisions; and
  - (b) quietly to hold and enjoy the Unit without adverse interference or interruption from the Operator or any person acting on the Operator’s behalf.
- 2.2 The Resident shall be entitled to use the social, recreational and other communal amenities located within the Village and designated by the Operator for the Resident’s use.
- 2.3 The occupation rights which the Operator grants to the Resident through this Agreement do not include an automatic right for the Resident to transfer within the Village, nor to access to or usage of any rest home or hospital near or adjacent to the Village. However, subject to availability of accommodation and to the Resident’s continued eligibility for residence, the Operator will use reasonable endeavours to provide or arrange provision of suitable accommodation at any such rest home or hospital. Where there is a waiting list for entry current residents of the village and having been assessed as requiring

residential care, will have priority over outside applicants.

- 2.4 The term of this Agreement shall be for a period commencing from the Commencement Date specified in the First Schedule and shall continue until the Agreement is terminated in accordance with its terms.
- 2.5 The Resident will not assign, encumber, sub-licence or otherwise deal with the right to occupy the Unit created by this Agreement.
- 2.6 This Agreement does not confer on the Resident any proprietary right in the Unit or the Village. The rights granted to the Resident pursuant to this Agreement are contractual only and do not create any form of lease or tenancy of the Unit.
- 2.7 The Resident will not caveat any title or part title to the land comprising the Unit or the Village.

### **3. Financial Obligations of Resident**

- 3.1 The Resident upon execution of this Agreement and upon taking possession of the Unit shall pay to the Operator (via the Statutory Supervisor) the following amounts:
  - (a) the fee representing the upfront Site Payment Fee specified in the First Schedule, to supplement the general funds of the Operator;
  - (b) the capital sum specified in the First Schedule as the Capital Sum Advance and being the cost of the Resident's right of occupancy of the Unit. If the Resident has paid an initial deposit to the Statutory Supervisor then the amount of the deposit shall be deducted from the amount payable as the Advance. The Operator will pay no interest to the Resident in respect of the Capital Sum Advance; and
  - (c) the Occupation Right Agreement Fee specified in the First Schedule.
- 3.2 The Resident shall pay to the Operator the Service Charge specified in the First Schedule for costs relating to the Unit (including maintenance) and for the use and provision of any communal amenities of the Village which are available to the Resident. The Service Charge shall be payable calendar monthly in advance upon such dates as the Operator shall from time to time nominate. The first payment shall be due on the Commencement Date and if necessary will be adjusted to a date next specified for payment as calculated on a day to day basis. The Service Charge is a fixed amount for the term of this Agreement and will not be increased.
- 3.3 The Resident shall be liable for and pay costs and charges in relation to the Resident's Unit in respect of:
  - (a) all electricity, lighting, heating and power consumed and used in the Unit;
  - (b) all telephone, television and computer installation and services (such as pay television) supplied to the Unit;

(c) the cost of insurance for personal effects and the contents of the Unit not supplied by the Operator.

**3.4** The Resident will pay (via the Statutory Supervisor) the Operator's legal and other costs, expenses and charges in respect of the Resident's occupancy of the Unit or residency in the Village of and incidental to:

- (a) any application or request for consent pursuant to this Agreement;
- (b) any and every breach or default by the Resident under this Agreement;
- (c) the exercise or attempted exercise of any right or remedy of the Operator under or by virtue of this Agreement; and
- (d) any statutory or regulatory change required of the Operator in respect of the Resident's occupancy of the Unit or in the general administration or operation of the Village which the Operator incurs after the Commencement Date.

#### **4. General Obligations of Resident**

The Resident hereby covenants and agrees with the Operator as follows:

**4.1** To use the Unit as a private residence for the benefit of the Resident only and not to store or permit or suffer to be stored in or about the Unit any articles, possessions, vehicle or equipment not belonging to or owned by the Resident or any person authorised by the Operator to be in the Unit.

**4.2** To keep the Unit and its surrounds, together with the fixtures, fittings and equipment which the Operator supplies to the Unit, in good, proper, tidy, clean, sanitary and (where appropriate) working order and condition, and at the termination of this Agreement to deliver up such items in a like state of repair, order and condition to the state they were in at the Commencement Date.

**4.3** If the Operator incurs any of the following costs, the Resident is also responsible for payment, as and when invoiced (with invoices payable by the 20<sup>th</sup> of the month following the month in which the invoice is issued):

4.3.1 Costs remedying any breach by the Resident of the Residents's maintenance responsibilities

4.3.2 Costs of repairing any damage to the Unit or the Operator provided fixtures, fittings, or equipment caused by the Resident or guests of the Resident.

**4.4** Not to do or permit or suffer to be done any act or thing which might cause blockage of any drains and/or water or sewage pipes in, under or around the Unit, and to keep the same properly clear and in working order.

**4.5** Not to deposit rubbish on or debase any part of the building or grounds immediately adjacent to the Unit or any other part of the Village, nor to permit or suffer other persons to do so.

- 4.6** Not to make any alteration of any kind whatsoever to the exterior or the interior of the Unit without first obtaining the written consent of the Operator. The Operator may require the Resident to submit full details of any proposed change or alteration to the Unit including if necessary plans and specifications and any costs incurred by the Operator in respect thereof shall be paid by the Resident. The Operator shall not be obliged to grant its consent to any proposed change or alteration if it does not wish to do so and may impose such terms and conditions as it wishes.
- 4.6.1 If changes or alterations are required to the Unit because of the Resident's particular disability or condition then they may be carried out after the Operator's written approval has been obtained, subject always to the Unit being restored and made good to the state it was in prior to the alterations.
- 4.6.2 The cost of any change and alteration to the Unit and the cost of any reinstatement or making good including any costs incurred by the Operator will fall to the cost of the Resident who requested the change or alteration.
- 4.7** Not to erect or place on, outside or above the Unit any heat pump, ventilation, clothesline, drying or other such unit or equipment, any radio, television or other aerial without the prior written consent of the Operator.
- 4.8** Not to do or permit or suffer any act or omission in or about the Unit or the Village which causes a disturbance, nuisance or annoyance to other resident occupiers and neighbours of the Village, the management and staff of the Operator, or the residents, patients, invitees, management and staff of any adjacent rest home or hospital.
- 4.9** Not to keep or permit to be kept within the Unit or Village and their surrounds, any animal, bird, fish or other pet without the advance written permission of the Village Manager. Notwithstanding any previous permission granted, the Village Manager may require the removal from the Village of any animal causing a disturbance to other residents.
- 4.10** Not to park or permit to be parked any vehicle save in that part of the grounds of the Village which is expressly designated by the Operator for that purpose.
- 4.11** Not to bring into the Unit or the Village any item of furniture, musical instrument, electrical or electronic equipment which shall cause disturbance, nuisance or annoyance to other residents and neighbours of the Village or to the patients, residents, invitees, management or staff of any adjacent rest home or hospital.
- 4.12** To give the Village Site Manager prompt notice of any accident or defect or want of repair to the Unit and to the Operator's furniture, fixtures, fittings and equipment placed or installed in the Unit of which the Resident becomes aware and of any circumstances likely to be or cause any danger, risk or hazard to the Unit or any person in the Unit.
- 4.13** To be responsible for and promptly pay any costs of repair or reinstatement, or the excess of any insurance policy of the Operator arising out of damage done

or loss suffered by the Operator created by the Resident or any guest or invitee of the Resident as a result of any action, omission, negligence or otherwise, however arising.

- 4.14** Not to do or permit to be done anything or omit to do anything whereby the Operator's insurance cover of the Unit may become void or voidable or causing any increase of premium payable on any insurance policy held by the Operator.
- 4.15** To provide to the Operator copies of properly executed Enduring Powers of Attorney for both Personal Care & Welfare and Property with appropriate details of the appointed Attorney(s) and to advise any changes or alterations thereto to the intent that the Operator shall be entitled to rely on such information as being current, true and correct.
- 4.16** To use and enjoy (where applicable) all communal areas and facilities of the Village of a recreational and social nature in common with other residents, patients, guests and invitees of the Village with the same standard of care as is required of the Resident in respect of the Resident's own Unit.
- 4.17** To agree to be examined by an independent Medical Practitioner or consultant in accordance with clause 7.1 and 11.3.1 for the purposes of determining whether the Resident can or should continue to live safely in the Unit or in the Village. The Medical Practitioner should in the first instance be the Resident's regular practitioner, or otherwise another practitioner appointed by but independent of the Operator.
  - 4.17.1 The Resident may, as part of being consulted on the proposed termination, obtain a second medical opinion at the Resident's cost and present it to the Operator.
- 4.18** To permit, authorise and allow the Operator to have access to the Resident's medical records and history for the purpose of assessment and determination in accordance with clause 4.17.
- 4.19** To comply with all lawful directions, requisitions, orders and requirements of any local or other proper authority concerning and in respect of the Unit and the Village when administering any statute, regulation, order, award or by-law from time to time in force.

## **5. Rights of Resident**

The Operator hereby acknowledges that the Resident has the following rights:

- 5.1** To cancel this Agreement, without having to give any reason, within fifteen (15) Working Days from the date on which the Resident signed the Agreement, in accordance with section 28(1)(a) of the Act and the Code of Practice.
- 5.2** Where this Agreement relates to a Unit which is to be built or completed after the date on which the Resident signs this Agreement, and the Unit is not finished to the point of practical completion within six (6) months after the proposed date for completion of the Unit, to cancel this Agreement by notice to the Operator given at any time after the expiry of that six (6) month period, in

writing in a form that indicates the intention of the Resident to cancel the Agreement and given by the resident or any person that has the Residents written authorisation to act on their behalf.

- 5.3** Where the Resident cancels the Agreement in accordance with clause 5.1 or clause 5.2, the Operator is entitled to reasonable compensation for services provided to the Resident under this Agreement and for any damage to the Unit or any facilities in the Village for which the Resident is responsible before the cancellation takes effect.
- 5.4** Where the Resident makes any deposit, progress payment, or other payment as payment for an occupation right or future occupation right, to have the sum held for the benefit of the Resident in an interest-bearing account until settlement of the transaction or cancellation of the Agreement by either the Statutory Supervisor, or if there is no Statutory Supervisor, by a lawyer nominated by both the Resident and the Operator in a document separate from this Agreement.
- 5.4.1 The Resident is entitled on request to a refund (with interest and without deduction other than tax) of any deposit and/or progress payments within ten (10) Working Days of the request.
- 5.4.2 If, at the expiry of the period for cancellation under clause 5.1, notice of cancellation has not been given, any interest accrued on a deposit, progress payment, or other payment to which this clause 5.4 applies, must be paid to the Operator (via the Statutory Supervisor).
- 5.5** To have reasonable safety and personal security concerning the Resident's occupancy of the Unit and in respect of the Resident living within the Village generally. The Resident has the right to be provided with a copy of the Operator's safety and personal security policy on request.
- 5.6** To request from the Operator and have supplied to the Resident free of charge the Operator's and/or the Village's most recent audited financial statements. This provision will survive any termination of this Agreement and apply in relation to the (former) Resident until the (former) Resident is refunded the Capital Repayment Sum, less any deductions provided for in this Agreement.
- 5.7** To be consulted by the Operator over any matter which in a material way adversely affects the Resident's occupancy of the Unit or residency within the Village, or ability to pay for the services and benefits provided, including but not necessarily limited to the introduction of any new Rule or any amendment or alteration of any Rule(s). The Operator must notify residents of information on the Village as required under the Act.
- 5.8** To form a residents' committee and agree their own rules for running the committee. The residents' committee may call a meeting with the Operator or its representative.
- 5.8.1 The Operator or its representative is expected to attend residents' committee meetings when invited, unless the request is in some way unreasonable (e.g. too short a period of notice).

- 5.8.2 The residents' committee may call a meeting with the Statutory Supervisor. The Statutory Supervisor is expected to attend residents' committee meetings when invited, unless the request is in some way unreasonable (e.g. too short a period of notice).
- 5.8.3 If there is no residents' committee, the Operator or its representative and the Statutory Supervisor are expected to meet with residents at the residents' request, unless the request is in some way unreasonable (e.g. too short a period of notice).
- 5.9 When the Operator consults with residents, the residents may, individually or as a group, appoint a person or people to represent their views in the consultation process.

## **6. Obligations of Operator**

The Operator hereby covenants and agrees with the Resident as follows:

- 6.1 To keep the exterior of the Unit including the roof in good order, repair and condition so that the Unit is in a sound, habitable, and waterproof condition.
- 6.2 Subject to the Resident's reasonable compliance with the provisions of clause 4.2 the Operator will keep operable and in good order and condition the Operator's fixtures, fittings and equipment and will where necessary replace or upgrade any that are worn out, broken, obsolete or defective.
- 6.2.1 The Operator must ensure that it can afford to maintain Village property.
- 6.2.2 The Operator must have, maintain, and implement a procedure that ensures requests from residents for minor repairs, maintenance, and emergency repairs of Village property are actioned without unnecessary delay.
- 6.3 To pay all local body rates and levies, including water rates, in respect of the whole Village.
- 6.4 To cut the grass and otherwise maintain the gardens and grounds comprising the Village in a neat and tidy condition (other than any small garden bordering the Unit or other units as may be gardened and maintained by the Resident and other residents and occupants of the Village).
- 6.5 To maintain in good repair, order and condition all communal amenities and facilities located in the Village and available for the use and benefit of the Resident.
- 6.6 To prepare and adhere to a long term plan for maintaining and refurbishing the Village and its facilities and amenities.
- 6.7 To use all reasonable care and skill in ensuring the affairs of the Village are conducted properly and effectively.
- 6.8 To use all reasonable care and skill in the exercise and performance of the

Operator's powers and functions.

- 6.9** To treat the Resident and to ensure that all people working for the Operator or who provide services at the Village treat the Resident with courtesy and respect.
- 6.10** To respect the rights of the Resident and to ensure that all people working for the Operator or who provide services at the Village respect the rights of the Resident and to ensure that the Resident is not exploited.
- 6.11** To implement and maintain a written safety and personal security policy. The Operator must provide a written copy of the safety and personal security policy to residents and intending residents on request.
- 6.12** To make proper and adequate staffing at the Village, and to implement and maintain written policies, processes, and procedures for staff selection, training, and ongoing supervision. The Operator must have an induction process to familiarise staff with the Code of Practice, their own staff codes of conduct, and any management practices and what it covers. All staff must complete this process.
- 6.13** To ensure that all staff carry identification while on duty so that residents can check their identity. The Operator must inform residents and intending residents about staff employed at the retirement village. The Operator must provide ongoing training and ongoing supervision to make sure staff competence is achieved and maintained.
- 6.14** To plan and provide fire protection and emergency management at the Village.
- 6.14.1 The Operator must ensure:
- (a) that it has in place equipment for dealing with fire and other emergencies at the retirement village; and
  - (b) that fire equipment is checked and maintained,
- as required under the Fire Safety and Evacuation of Buildings Regulations 2006.
- 6.14.2 The Operator must have, maintain, and implement a written policy for fire protection and emergency management that sets out and meets the requirements of the Code of Practice and all applicable statutory requirements. The Operator must provide a copy of the fire protection and emergency management policy written in an easily readable format to residents and intending residents on request.
- 6.14.3 The Operator must clearly instruct all residents and staff in the Village's fire protection and emergency management policy and associated systems and procedures. All staff must be familiar with and participate in this process.
- 6.15** To have in place an evacuation scheme or procedure for the safe, prompt and efficient evacuation of the occupants from the scene of a fire or other emergency, as required by the Fire Safety and Evacuation of Buildings

Regulations 2006. The Operator must provide a written copy of the evacuation scheme or procedure to residents and intending residents on request, and provide a written copy of the fire and evacuation drill records to residents and intending residents on request.

- 6.16** To maintain and implement a written policy setting out how emergencies in the retirement village are dealt with. This policy must be provided to residents and intending residents on request.
- 6.17** To have in place measures and systems to protect the residential units, facilities, and indoor areas in the Village from fire.
- 6.18** To ensure that every residential unit, facility and indoor area in the retirement village is fitted with smoke alarms in a manner that meets the requirements of the Building Code.
- 6.19** To have, maintain, and implement written policies and procedures for communicating with residents or intending residents. The Operator shall not pass on to a resident(s) the cost of meeting this requirement.
  - 6.19.1 The Operator shall set up a system for informal, regular communication with residents, for example newsletters and notice boards.
  - 6.19.2 The Operator or a staff member may provide support, if appropriate, but may not act as a representative of the Resident.
  - 6.19.3 If necessary the Operator shall make special arrangements for the Resident to communicate with the Operator if the Resident's first language is not English, including the use of an interpreter who is fluent in both English and the Resident's preferred language. The Operator must not charge the Resident for the cost, if any, of the interpreter.
  - 6.19.4 If the Operator is aware that the Resident or an intending resident has a limited ability to communicate the Operator must, at any time when the rights and obligations of the Resident or intending resident may be affected, inform the Resident or intending resident of their right to use a support person or representation.
- 6.20** To consult with the Resident prior to appointing a new Manager of the Village or prior to the Operator selling or otherwise disposing of its interest in the Village. This consultation shall take place at a time directed by the Statutory Supervisor, or otherwise within a reasonable time prior to settlement of the transaction.
- 6.21** To maintain and implement a system for invoicing residents the agreed charges for outgoings and/or services.
- 6.22** To prepare at the commencement of each accounting period (as defined in section 5 of the Financial Reporting Act 2013) a forecast statement in accordance with the Regulations and to supply a copy of such forecast statement to the Resident within three (3) months of the start of the accounting

period.

**6.23** To convene an Annual General Meeting and any Special General Meeting of residents of the Village to be held at the Village in accordance with the provisions of the Act, the Regulations and the Code of Practice.

6.23.1 The rules for such meetings shall be as specified in Schedule 5 of the Deed of Supervision and/or Code of Practice.

6.23.2 The chair for such meeting will be appointed as required by Regulation 10 of the Retirement Villages (General) Regulations 2006:

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

6.23.3 The Annual General Meeting is to receive the Village's financial statements, any Statutory Supervisor's report, the maintenance report, and discuss any other matters relating to the affairs of the Village.

6.23.4 The Operator must report to the Annual General Meeting on how it proposes to pay for the maintenance and periodic upgrading of Village property. This information must include the Operator's responsibilities for the costs of maintaining the residential units.

6.23.5 The circumstances and purposes of meetings are provided for in the table below:

<b>Item</b>	<b>Circumstances</b>	<b>Purpose</b>
1	Within 6 months after the end of an accounting period for which financial statements must be prepared for the Operator or the Village	Considering the financial statements
2	There is a Statutory Supervisor of the Village and the meeting has been requested by the Statutory supervisor or by at least 10% of the Residents of the Village	Giving the Statutory Supervisor the Residents' opinions or directions relating to the exercise of the Statutory Supervisor's powers

3	There is not a Statutory Supervisor of the Village and the meeting has been requested by at least 10% of the Residents of the Village	Giving the Operator the Residents' opinions or directions
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**6.24** At meetings, the Operator shall also supply to the residents such oral and written information of the affairs of the Village as has been requested by a resident and of which reasonable notice has been given.

**6.25** To observe and comply fully with the Code of Residents' Rights and the Code of Practice and to keep and maintain the policies, procedures and processes required by such codes.

**6.26** To appoint the Statutory Supervisor and to comply in all respects with the Deed of Supervision between the Operator and the Statutory Supervisor.

The Operator must have in place a procedure to be followed if there ceases to be a Statutory Supervisor at the Village.

If for any reason the appointment of the Statutory Supervisor is terminated in accordance with the Deed of Supervision the Operator will promptly appoint a new Statutory Supervisor in its place.

If the Operator experiences any difficulty in finding and appointing a replacement Statutory Supervisor then it shall consult with and enlist the aid of the Retirement Commissioner or the Registrar of Retirement Villages for that purpose.

**6.27** To have and use a written procedure so that the Resident may contact the Operator, or its designated contact person, informally about a concern or issue, at any time. This procedure does not prevent a resident from making a formal complaint under clause 12 in the first instance. The Operator must provide to the Resident in writing any change to the procedure referred to in this clause 7, including any changes to the contact names and details of the Operator or its designated contact person.

**7. Rights of Operator**

The Resident hereby acknowledges that the Operator has the following rights:

**7.1** To enter the Unit together with the Operator's agents, servants, Medical Practitioners or consultants, tradespersons and invitees at all reasonable times for the purposes of:

- (a) inspecting the Unit; or
- (b) giving care and assistance or assessing the state, health or wellbeing of the Resident; or

(c) Carrying out any necessary or (in the Operator's opinion) desirable maintenance, repairs, refurbishment or alterations to the Unit.

7.1.1 The Operator shall give to the Resident prior written notice of its intention to enter for one of the above reasons of not less than 24 hours where reasonably practicable. Notice may be waived in cases of emergencies.

7.1.2 When exercising the rights in this clause 7.1, the Operator shall at all events cause as little disturbance and inconvenience as possible to the Resident.

**7.2** To require the Resident to observe and respect the rights of other residents and patients of the Village in relation to their rights of privacy, occupancy and use of communal Village amenities free from interruption, disturbance or annoyance such as the Resident has arising out of this Agreement.

**7.3** After consultation with the Resident, to make, amend, vary, or cancel Village directions and Rules for the proper and efficient running of the Village and/or for the benefit, welfare and wellbeing of all residents of the Village.

## **8. Insurance and Reinstatement**

The Parties hereby agree as follows:

**8.1** The Operator will keep the Unit, including the Operator-provided fixtures and fittings, insured for the full replacement value to the satisfaction of the Statutory Supervisor; but without prejudice to the Resident's liability to pay or contribute to the cost thereof in the event of the insurance moneys being wholly or partially irrecoverable by reason of any act or default by the Resident.

**8.2** The Operator's insurance cover will not extend to the Resident's own vehicle or personal contents with the Unit. The Resident is not obliged to have such insurance cover. However, if the Resident wishes to insure those items then the Resident is responsible for arranging such insurance.

**8.3** The Resident will not do or permit to be done anything or omit to do anything whereby the Operator's insurance cover of the Unit may become void or voidable or will cause any increase of premium payable on any insurance policy held by the Operator.

**8.4** Subject to the provisions of this clause 8, as soon as practicable, the Operator will reinstate, repair or replace a damaged or destroyed Unit substantially in accordance with its original design, or such other design as the Operator in its sole discretion shall consider desirable but of a standard and floor area equivalent to the original Unit.

**8.5** The Operator will not be obliged to reinstate, repair or replace the Unit if in its opinion it is considered impracticable or undesirable to do so and in any event it shall not be bound to expend any money in excess of the actual amount of the insurance moneys it receives.

**8.6** The Operator will consult with the Resident before determining whether or not

it considers it impractical or undesirable to reinstate, repair or replace the Resident's Unit after establishing the extent of the insurance moneys it will receive and whether or not there are any restrictions by reason of law, regulation or by-law in carrying such reinstatement, repair or replacement. The Operator will advise the Resident in writing of its decision whether or not it will reinstate, repair or replace the Unit within fifteen (15) Working Days of such consultation.

**8.7** If the Operator shall determine not to proceed to reinstate, repair or replace the Unit then it will either –

- (a) terminate this Agreement in accordance with clause 11.7; or
- (b) subject only to the availability of other permanent accommodation and to the Resident's continued eligibility for residence, offer to the Resident a right to transfer to another unit in the Village, or to another reasonably nearby village owned by the Operator. If the Resident refuses an option to transfer to another unit, this Agreement shall be treated as terminated by the Resident, and clause 10 shall apply to the extent that it relates to calculation of the Capital Repayment Sum and provides for payments on termination.

**8.8** If the Operator shall determine to proceed to reinstate, repair or replace the Unit then subject to availability of alternative accommodation in the Village and to the Resident's continued eligibility for residence, the Operator will use its best endeavours to provide as quickly as is practical in the circumstances, temporary accommodation for the Resident in the Village while the damaged or destroyed Unit is being reinstated, repaired or replaced.

8.8.1 The Operator will meet the cost of such temporary accommodation or facilities to the extent of its insurance.

8.8.2 The Operator will advise the Resident of the likely timeframe for obtaining temporary accommodation or facilities.

8.8.3 While the Operator is providing temporary accommodation to the Resident, the Operator may charge for personal services and outgoings related to that temporary accommodation.

8.8.4 Regardless of whether or not the Operator will provide temporary accommodation or facilities, the Resident may (but is not required to) take out their own insurance policy providing for temporary accommodation or facilities.

**8.9** For the avoidance of doubt the Operator confirms that in the event of the Resident accepting either transfer of occupancy under clause 8.7 or temporary occupancy in accordance with clause 8.8 then the provisions of this clause 8.9 will apply.

8.9.1 No further Capital Sum Advance will be payable by the Resident.

8.9.2 The Service Charge payable by the Resident will abate only for the period when the Resident is not in actual occupation at the Village as

a result of the Unit being damaged or destroyed.

8.9.3 The period of occupancy having commenced from the date of occupation of the Unit by the Resident shall be reduced only by any period when the Resident is not in actual occupation at the Village as a result of the Unit being damaged or destroyed.

8.9.4 Any costs incurred by the Resident in transferring occupation from the Unit to an alternative or temporary unit, or from an alternative or temporary unit back to the Unit where the Unit is reinstated, repaired or replaced, shall be borne solely by the Resident, excepting only any amount recovered by the Operator from its own insurance of the Unit by virtue of it being so damaged or destroyed.

**8.10** The Resident shall be absolutely responsible for any fixtures and/or fittings not the property of the Operator, for all furnishings, furniture, equipment, motor vehicles and all other personal possessions of the Resident located in the Unit or elsewhere, and for the insurance thereof. In particular, the Operator shall not be responsible for the loss, damage to or destruction of any property owned by or in the possession of the Resident due to theft or caused by any third party.

## **9. Extent and Development of Village**

**9.1** The Resident acknowledges that although the Village is completed, the Operator from time to time may wish to improve, extend, add to, reduce or alter the Village including its facilities and amenities in any manner whatsoever where:

- (a) there is no significant change to the Village; or
- (b) if there is significant change to the Village, the interests of the Village residents will nonetheless not be materially prejudiced.

**9.2** In exercising the right in clause 9.1 the Operator will endeavour to cause as little inconvenience to the Resident as is practical in the circumstances.

**9.3** The Operator shall not alter the basic scope and/or nature of the facilities and amenities located within and forming part of the Village without first obtaining the consent of the Statutory Supervisor (which consent shall not be unreasonably withheld).

**9.4** The Resident acknowledges that the Resident will not be entitled to make any requisition, objection or claim for compensation in respect of any improvement, extension, addition or alteration to or reduction of the Village and will if so required by the Operator sign any consent, surrender or release which may be required by the Operator to give effect thereto.

**9.5** The Resident shall not object to building or construction operations or work or to the construction and completion of further units or buildings within or approximate to the Village or to any dust, noise or other discomfort associated therewith. The Operator will take all reasonable steps, insofar as it is able, to ensure that any inconvenience suffered by the Resident and other residents

resulting from such building or constructions operations or work is minimalised.

- 9.6** The Operator shall be entitled to seal off and close any part or parts of the communal areas of the Village including roadways, paths, grounds, gardens, amenities and facilities for any period of time. During any such closure, the Operator will ensure that the Resident has at all times adequate access, both pedestrian and if appropriate vehicular to and from the Unit at all times.
- 9.7** The Resident agrees not to make, bring or support any unreasonable requisition, objection or claim for compensation or other relief in respect of any improvement, extension, addition or alteration to or reduction of the Village or their amenities and facilities. The Resident also will if reasonably required by the Operator sign any consent, surrender or release which may be necessary for the Operator to give effect thereto.

## **10. Sale of the Village**

- 10.1** The Resident acknowledges that the Operator and any successor to the Operator are entitled to sell or dispose of the Village. If so, the Operator will consult with residents first. Any such consultation will take place at a time directed by the Statutory Supervisor (or, if there is no Statutory Supervisor, a reasonable time before the settlement of the transaction).
- 10.2** With effect from the date of sale or disposal, all the Operator's rights and obligations under this Agreement will pass to the new operator, and the Operator will have no further rights against and no further obligations to the Resident under this Agreement. The Resident agrees to continue to observe and perform all their obligations under this Agreement for the benefit of the new operator.

## **11. Termination of Agreement**

- 11.1** This Agreement shall automatically terminate upon the death of the Resident or the survivor of them if more than one.
- 11.2** The Resident shall be entitled to terminate this Agreement for any reason and at any time by providing to the Operator a Resident's Notice of Termination, subject to its obligation to give the Operator not less than one (1) calendar month's written notice of the Resident's wish to terminate.
- 11.3** The Operator may terminate this Agreement if any of the provisions of this clause 11.3 is applicable.
- 11.3.1** If an independent Medical Practitioner, after assessing the Resident, certifies that the Resident's physical or mental health is such that the Resident or other residents cannot live safely in the Village.
- 11.3.2** If the Resident has significantly breached the terms and conditions of this Agreement. For the avoidance of doubt, the following shall be deemed, non-exclusively, to be significant breaches of the terms and conditions of this Agreement:

- (a) if the Resident fails to pay the Service Charge in accordance with clause 3.2, and any part of the charge remains unpaid for a period of two (2) months; and/or
  - (b) if the Resident permits a third party to occupy or use the Unit, whether for residential or storage purposes, without first obtaining the Operator's permission.
- 11.3.3 If the Resident has abandoned or vacated the Unit without having given any notice to the Operator that personal occupation of the Unit by the Resident is not intended. The Operator must have made reasonable inquiries and determined that the Resident has permanently abandoned the Unit.
- 11.3.4 If the Resident intentionally or recklessly has caused or allowed or is highly likely to cause or allow serious damage to the Unit or the Village or which might become serious if it continues.
- 11.3.5 If the Resident intentionally or recklessly has caused or allowed or is highly likely to cause or allow serious injury, damage or distress to the Operator or another resident of the Village or an employee or invitee of the Operator or other resident.
- 11.4** If, following an event or default specified in clauses 11.3.1 to 11.3.5, the Operator wishes to terminate this Agreement, the Operator shall:
- (a) provide a Notice of Intention to Terminate in accordance with the Code of Practice;
  - (b) if, after the initial notice period has expired and following the outcome of any response from the Resident, the Operator still wishes to terminate the Agreement, provide a Notice of Termination.
- 11.5** If the Operator has complied with the process in clauses 11.3 to 11.4 inclusive, it may terminate this Agreement with effect from the expiry of the period in the Notice of Termination.
- 11.6** If the Resident gives notice to terminate this Agreement in accordance with clause 11.2, the Resident must vacate the Unit prior to expiry of the notice period.
- 11.7** If the Unit is so damaged or destroyed that the Operator determines that it is impracticable or undesirable to reinstate, repair or replace the Unit because of the extent of the damage or destruction or it is unable to do so by reason of law, regulation or by-law, or because the insurance moneys in accordance with clause 8.6 are insufficient, then notwithstanding any other provision herein the Operator in consultation with the Resident will terminate this Agreement, and will repay to the Resident the Capital Sum Advance and Site Payment Fee in full, without deducting any Deferred Management Fee (but less any other moneys then owing to the Operator by the Resident).
- 11.7.1 The Operator will repay to the Resident the moneys properly owing to the Resident pursuant to this clause 11.7 not later than ten (10)

Working Days after the date the Operator or the Statutory Supervisor has received full payment of the proceeds of any insurance policy which had provided insurance cover of the Unit.

- 11.7.2 This clause 11.7 does not negate the Operator's obligation to pay all money owing to the (former) Resident if the Operator does not receive payment in full under the insurance policy for the Village property.
- 11.8** Upon Termination of this Agreement, the Operator will cease to charge the Resident for the Service Charge, with effect from the expiry of the one-month notice period in the Operator's Notice of Termination, or when the keys to the Unit are returned to the Operator, whichever is later.
- 11.8.1 In calculating the Capital Repayment Sum, the Operator shall be entitled to pay and recover from the proceeds of relicensing the Unit and the consequent payment due to the Resident under this Agreement as well as any other moneys which may be owing to the Operator by the Resident for deferred maintenance, outstanding breakage or repair concerning the Unit or any of the Operator's furniture, fixtures, fittings, or equipment placed or installed in the Unit or for which the Resident may otherwise become liable pursuant to the provisions of this Agreement.
- 11.8.2 On termination of this Agreement pursuant to clause 11.7 the Resident shall be released from payment of the Service Charge from the date of damage or destruction of the Unit.
- 11.9** Residents have the right to challenge the Operator's decision on terminating this Agreement through the complaints process. However, there may be occasions when the Operator, after consulting the Statutory Supervisor decides that it is in the best interests of the Village as a whole to continue with the proposed action while the complaint is being dealt with.
- 11.10** Upon termination of this Agreement the provisions of this clause 11.10 shall apply.
- 11.10.1 The Operator shall calculate the Deferred Management Fee in accordance with the formula specified in the First Schedule.
- 11.10.2 The Operator shall determine (in its sole discretion) whether the Unit vacated by the Resident requires any remedial work or refurbishment in order to prepare it for marketing of a new or replacement occupancy to be granted by a new Occupation Right Agreement.
- 11.10.3 For the avoidance of doubt, the cost of any remedial work or refurbishment shall not be deducted from the Capital Repayment Sum payable on termination of this Agreement pursuant to clause 11.10.
- 11.10.4 The Operator will start the process of entering into a new Occupation Right Agreement for the Unit in accordance with this Agreement and the Code of Practice. The Unit shall be marketed only by the Operator. The value at which the Unit shall be marketed shall be the best

reasonably obtainable value as determined by the Operator after taking into account the cost of any remedial work or refurbishment completed under clause 11.10.2 and after consideration of all market factors including but not necessarily limited to equivalent unit sales in the Village and current building replacement costs. The Resident may introduce an Intending Resident to the Operator, but the Operator shall not be obliged to accept a nominated Intending Resident who fails to meet the normal criteria for entry into the Village as established by the Operator, or whose offer to buy does not meet the conditions of sale or the value established under this clause 11.10.4 or clause 11.10.07.

- 11.10.5 The Operator will make all reasonable efforts to grant to a Prospective Resident as quickly as is possible and practical a new Occupation Right Agreement at the value attributed under clause 11.10.4. The Operator will not give preference to finding new residents for the Unit that have not previously been occupied by a resident under an occupation right agreement.
- 11.10.6 If a new Occupation Right Agreement has not been granted to a Prospective Resident within three (3) months of the Termination Date the Operator shall report in writing to the Resident and thereafter provide to the Resident monthly reports concerning the steps taken to market the Unit and the progress made towards finding a new or replacement resident.
- 11.10.7 If no new Occupation Right Agreement has been granted to a new resident within six (6) months of the Termination Date, then the Operator shall obtain at its expense a valuation of the Unit by an independent registered valuer experienced in valuing retirement village units, to establish a suitable price at which to market the Unit. The Resident at the Resident's cost may obtain a second valuation by an independent registered valuer. The Operator must market the Unit at the price established by the valuation obtained by the Operator, after consideration of any second valuation advised by the Resident to the Operator.
- 11.10.8 The value to be determined in accordance with clause 11.10.4 or with a valuation completed in accordance with clause 11.10.7 shall be on the basis of including the Unit, the land on which the Unit is constructed including 1.5 metres out from the foundations together with any driveway, path, clothesline and letterbox, and making allowance for the use and benefit of all communal amenities, facilities and other surrounding land available to the Resident within the Village.
- 11.10.9 If the Operator terminates this Occupation Right Agreement, the Operator will pay to the Resident the moneys set out in this clause 11.10 (and any other sums due to the Resident), no later than five (5) Working Days from the date on which the termination takes effect. Upon termination in all other circumstances, the Operator will pay those moneys to the Resident no later than five (5) Working Days after

the date on which the new or replacement Occupation Right Agreement has been entered into and the Operator has received payment of the new Capital Sum Advance.

- 11.10.10 Following the repayment to the Resident of the Capital Repayment Sum, the Deferred Management Fee (and any other amounts deducted in the calculation of the Capital Repayment Sum) shall thereupon become the property of and accrue to the general funds of the Operator.
- 11.10.11 If the Resident introduces an Intending Resident who then enters into a new occupation right agreement in relation to the Unit, the Termination Administration Fee charged to the former Resident or their estate must be the actual costs incurred in marketing the Unit. ,
- 11.10.12 For the avoidance of doubt, if the Unit is relicensed by a newly created Occupation Right Agreement at a price lower than the amount of the Capital Sum Advance originally paid, and any other sums paid or owing by the Resident to the Operator, the Operator shall nonetheless calculate and repay to the Resident the full Capital Repayment Sum, taking no account of the differential (the Operator thereby absorbing any capital loss).
- 11.11** On termination of this Agreement, the Operator is hereby authorised by the Resident and shall be entitled (if necessary) to enter the Unit and remove therefrom the personal belongings, furniture and chattels of the Resident, and in such event, arrange for storage thereof at the expense of the Resident and the Operator shall thereupon report to the Resident or the Resident's personal representative(s) accordingly.
- 11.11.1 Any cost incurred by the Operator, as a result of this clause, may be deducted from the payment due to the Resident or the Resident's personal representative(s) as the Capital Repayment Sum.
- 11.11.2 The Operator must cease charging the Resident for personal services on the date that the Resident ceases to live permanently in the Unit.
- 11.11.3 If the Unit is damaged or destroyed through no fault of the Resident and is uninhabitable, the Operator must cease charging the Resident for personal services and outgoings from the date of the damage or destruction.
- 11.12** On termination of this Agreement and if the Operator so wishes, the Operator may at any time agree in writing to acquire the Resident's interest in the Unit by offering to pay to the Resident the Capital Repayment Sum but subject always to the deductions specified in this Agreement.
- 11.12.1 If the Operator agrees with the Resident to acquire the Resident's interest, it must pay this amount within twenty (20) Working Days of the agreement to purchase.
- 11.12.2 The Operator shall not be compelled to acquire the Resident's interest if it does not wish to do so.

11.12.3 The Operator shall not be entitled to charge the Resident the Termination Administration Fee unless it has incurred costs and expenses in marketing the Unit prior to acquisition by the Operator.

## **12. Complaints and Disputes**

**12.1** The following provisions shall apply with respect to a complaint or dispute between the parties concerning this Agreement or any other matter generally touching the Resident's occupancy of the Unit and residency in the Village concerning any one or between any two or more of the Resident, the Operator, the Manager, the Village Site Manager and any other resident or residents of the Village.

**12.2** The Resident may make a formal complaint:

- (a) about the Village, the Operator, another resident or any other matter; and
- (b) whether or not the Resident previously raised an issue or concern informally, and is dissatisfied with the response.

**12.3** A complaint or dispute shall in the first instance be referred to the Manager or the Village Site Manager or their nominee, or to an appointed representative acting on behalf of the Operator"), for formal or informal discussion, whether by mediation or otherwise.

**12.4** If the Resident wishes to raise an issue or concern as a formal complaint, this may be done by any of the means in this clause 12.4.

12.4.1 The Resident may set out the complaint in writing and give it to the Operator.

12.4.2 If the Resident is unable to write, they may have a personal representative or another person authorised by them write it on their behalf. .

12.4.3 If neither of the above options is available, then the Operator may at the Residents' request record the complaint in writing, based on what the Resident tells the Operator at the time.

12.4.4 In any case, the Resident must sign and date the complaint.

12.4.5 The Operator will provide a written acknowledgement within five (5) Working Days of receiving any formal complaint.

**12.5** Where the Resident makes a formal complaint, the procedure in this clause 12.5 will apply.

12.5.1 The Operator will first work directly with the Resident to resolve the complaint to the Resident's satisfaction.

12.5.2 The Operator will suspend taking any proposed action that is the subject of the complaint until the complaint is resolved. However, the Operator may, after consulting the Statutory Supervisor, decide it is in

the best interests of the Village to continue with the proposed action.

- 12.5.3 If a formal complaint is resolved by mutual agreement, whether by reference to the Statutory Supervisor under clause 12.6, or by reference to a mediator or independent third party under clauses 12.7 and 12.8, the resolution must be recorded in writing and include:
- (a) the actions (if any) that must be taken, by whom, and by what time;
  - (b) any agreement as to costs and any other terms; and further
  - (c) must be dated and signed by all parties, with copies provided to all parties.
- 12.6** If possible the complaint should be resolved to the Resident's satisfaction under clause 12.5 within twenty (20) Working Days of the Operator receiving it. If not, the Operator must, on behalf of the parties, refer it to the Statutory Supervisor seeking the Statutory Supervisor's assistance to work with the parties with an impartial perspective and recommend a way forward.
- 12.7** If a complaint is not resolved in accordance with clause 12.6 within twenty (20) Working Days of being referred to the Statutory Supervisor, or it is otherwise not possible to proceed under clause 12.6, then the Manager must provide the Resident with the option of mediation.
- 12.8** If the Resident agrees to mediation, the provisions of this clause 12.8 will apply.
- 12.8.1 The Operator will, on behalf of the parties, refer the complaint to an independent mediator.
  - 12.8.2 The mediator must be a member of an alternative dispute resolution agency approved by the Retirement Commissioner and listed on the Retirement Commissioner's website.
  - 12.8.3 Alternatively, the parties may agree on another independent third party.
  - 12.8.4 If the parties cannot agree to a mediator the Operator will, on behalf of the parties, ask the Retirement Commissioner to select a mediator for them to engage.
- 12.9** Any party to a complaint or dispute not resolved to the satisfaction of that party shall have the right to refer the matter to a Disputes Panel appointed under and in accordance with the Act and the Retirement Villages (Disputes Panel) Regulations 2006.
- 12.10** At all stages of any complaint or dispute the party or parties involved shall be kept informed of the progress of the complaint or dispute, and in all respects the provisions of the Code of Practice shall be observed.

### **13. Miscellaneous Provisions**

- 13.1** The Operator may charge interest on any payment not made by the Resident via the Statutory Supervisor by the due date thereof at the Default Interest Rate specified in the First Schedule calculated on a daily basis from the due date until the payment is made in full.
- 13.2** If the Resident shall fail to make any payment required to be paid or fail to comply with any obligation provided for in this Agreement it shall be lawful but not obligatory for the Operator, at its sole option, to take such steps, expend such money, and to do such acts and things as the Operator shall consider necessary to make good the default and any money expended by the Operator in so doing together with interest thereon charged at the Default Interest Rate specified in the First Schedule (calculated on a daily basis from the date of expenditure until repayment) shall be payable by the Resident to the Operator upon demand and shall be recoverable by the Operator (if necessary).
- 13.3** The Operator may from time to time issue Rules for the good and proper control, management and wellbeing of the Village the residents and the staff and employees of the Operator. The Resident shall be entitled to a copy of the Rules and to be kept informed of any change thereto. The Operator will consult with the Resident (and with all residents of the Village) prior to introduction of a Rule or to a change of Rules. Subject to this provision and to the Resident's rights pursuant to the Act, the Regulations, the Resident shall be bound by and in all respects keep, observe and perform all Rules.
- 13.4** The Operator shall not be liable to the Resident or any other person for any water damage caused either by the overflow of water supplied to any part of the Unit or by rainwater entering the Unit where such damage results from the negligence or omission(s) of the Resident or any other person, unless in the case of rainwater damage, the Operator has received prior written notice of any defect or want of repair to the roof or exterior of the Unit or part thereof and has failed to remedy the same within a reasonable period given the circumstances.
- 13.5** The failure of the Operator in any one or more instances to insist upon the strict performance, observance or compliance by the Resident with any of the terms or provisions of this Agreement or its waiver of a breach by the Resident of any term or provision shall not be construed to be a waiver or relinquishment by the Operator of its right to insist upon strict compliance by the Resident with all or any one or more of the terms and provisions of this Agreement.
- 13.6** All demands, consents, requisitions, notices and other communications shall be in writing and may be given to or served on the Operator at the Village (addressed to the Village Site Manager) or at its registered office at 6/15 Daly Street, Lower Hutt (addressed to the Chief Executive Officer) during normal business hours, or emailed to [trust@masonicvillages.co.nz](mailto:trust@masonicvillages.co.nz). Such communications may be given to or served on the Resident by leaving the communication at the Unit, by post or by handing the communication personally to the Resident at the Unit (or in the case of the Resident's Attorney or personal representative(s), at such other address as the Resident shall from time to time notify to the Trust).

- 13.7** Except insofar as any right or obligation of the parties to this Agreement is specifically referred to or provided for within the provisions of this Agreement then the rights and obligations affecting the Resident's occupancy of the Unit and the terms and conditions thereof shall be governed in accordance with the general provisions, requirements and specifications of the Act, the Regulations and the Code of Practice and the parties hereby acknowledge and agree that they will observe, perform and comply with such general provisions, requirements and specifications to that extent as if they had been incorporated into this Agreement verbatim.
- 13.8** The Agreement can only be varied by both parties agreeing in writing.
- 13.9** The Operator adheres to a privacy policy as part of their operations. The Resident may request a copy of the Operator's privacy policy at any time. The Resident is also entitled to see what information the Operator holds about them, and to have any errors in information corrected.



**Certificate by lawyer advising intending resident**  
*Section 27(5), Retirement Villages Act 2003*

Name of village: **Hokianga Masonic Village**

Registration number of village: **2053041**

I, \_\_\_\_\_, of \_\_\_\_\_,  
Solicitor, certify that –

- (a) I explained to \_\_\_\_\_  
the general effect of the attached agreement and its implications before he, she  
or they signed the agreement; and
- (b) I gave the explanation in a manner and in language that was appropriate to the  
age and understanding of \_\_\_\_\_

Dated: \_\_\_\_\_

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

A Barrister or Solicitor of the High Court of New Zealand

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

Street address: \_\_\_\_\_

\_\_\_\_\_

Postal address: \_\_\_\_\_

\_\_\_\_\_

Email address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

## First Schedule

<b>Name of Village:</b>	<b>HOKIANGA MASONIC VILLAGE</b>
<b>Address of Village:</b>	87 Hokianga Rd, Dargaville
<b>Operator of Village:</b>	<b>MASONIC VILLAGES LIMITED</b>
<b>Village Site Manager:</b>	Chris Mason
<b>Resident's Name:</b>	[resident]
<b>Description of the Unit:</b>	Unit
<b>Identification of Unit:</b>	No. [number]
<b>Operator-provided Furniture, Fixtures and Fittings:</b>	As per attached Chattels List
<b>Commencement Date:</b>	[DATE]
<b>Service Charge:</b>	Fixed at \$169.00 per week payable monthly in advance.
<b>Site Payment Fee:</b>	\$10,000.00
<b>Capital Sum Advance:</b>	[\$amount]
<b>Capital Repayment Sum:</b>	Calculated as the Capital Sum Advance less the Deferred Management Fee and any other amounts payable by the Resident under clause 11.
<b>Deferred Management Fee:</b>	Calculated at a fixed rate each year from the Commencement Date until the Termination Date, being nine percent (9.0%) for the first 12-month period, and eight percent (8.0%) for each of the next 12-month periods (in each case adjusted proportionally on a per day basis in the case of any incomplete year), up to a maximum of twenty-five percent (25.0%) of the Capital Sum Advance.
<b>Default Interest Rate:</b>	The overdraft interest rate charged to the Operator by its bank (ASB Bank New Zealand Limited) plus a margin of four percent (4.0%).
<b>Occupation Right Agreement Fee:</b>	\$1,000.00
<b>Termination Administration Fee:</b>	\$1,500.00
<b>Statutory Supervisor:</b>	<b>TRUSTEES EXECUTORS LIMITED</b>

## **Second Schedule**

The Service Charge payable by the Resident will be based upon and include the following Village expenses and outgoings:

1. All costs, charges, expenses, wages, salaries, fees and other outgoings paid or payable by the Operator in supply of general services to the residents of the Village and in the management, supervision and operation of the Village including, but without limiting, the foregoing:
  - (a) all governmental, semi-governmental, territorial authority, local body levies, rates taxes (except capital gains and income tax), charges, assessments, duties and fees in respect of the Village;
  - (b) insurance premiums together with audit or assessment costs associated with obtaining appropriate insurance;
  - (c) costs of compliance with governmental, semi-governmental, territorial authority and local government statutes, regulations and by-laws;
  - (d) the cost of provision of utilities, cleaning, servicing and operating all services, amenities and facilities provided by the Operator for the general use and enjoyment of residents and of visitors to the Village;
  - (e) the cost of maintenance, upgrading and repair to all Unit improvements including gardens and communal grounds, roading, paths and paving, water supply, sewerage, refuse collection and power reticulation (not including interior improvement, repairs or maintenance of the Unit);
  - (f) the cost of maintenance, upgrading and repair to the Village buildings, improvements and amenities including gardens and communal grounds, roading, paths and paving, water supply, sewerage, refuse collection and power reticulation, fencing, gates and entrances as reasonably appropriate and commensurate with availability for the Resident's use;
  - (g) the cost of painting maintenance and repair to the exterior of the Units;
  - (h) the cost of maintenance and repair of all furniture, fixtures and fittings provided to or installed in the Unit by the Operator;
  - (i) the cost of provision, maintenance and repair of d smoke alarms to Units and of any other security measure deemed appropriate by the Operator;
  - (j) all or any reasonable management overhead costs including Accident Compensation levies, superannuation payments, accountancy, audit and legal fees whether incurred by the Operator in respect of the Village at the Village or elsewhere;
  - (k) all administrative costs of operating the Village;
  - (l) the replacement of minor capital items;
  - (m) all Goods and Services Taxes incurred or payable in respect of any such expenses and outgoings.