

Occupation right agreement

**Licence to occupy
Serviced Unit RVPROPERTYNOASSIGNED1**

**Ashbury Heights
Whangarei**

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Part 1 – Introduction, Summary of Main Terms and execution

Parties

Ashbury Heights Limited at Christchurch, together with its successors and assigns
(We/us)

RVRESIDENTNAMEFULL1 (You)

Introduction

- A. We have established a retirement village complex known as Ashbury Heights located at 50 Pompallier Estate Drive, Whangarei (**Village**).
- B. You have applied to occupy a unit at the Village (**Unit**).
- C. You have supplied certain medical and other information to us. Where this agreement relates to a Care Unit you have undertaken a needs assessment by Health New Zealand or us, and any other relevant needs assessments. On the basis of such information we have agreed to issue to you a Licence to Occupy the Serviced Unit.
- D. This Agreement sets out the terms and conditions that apply to your Occupation Right, including our obligations to you and your obligations to us.
- E. You confirm that you have received a copy of:
 - i. The Disclosure Statement;
 - ii. The Code of Residents' Rights;
 - iii. The Code of Practice; and
 - iv. This Agreement.
- F. You confirm that you have received independent legal advice before signing this Agreement, as certified in the attached certification.

Summary of Main Terms

1. **Unit:** Serviced Apartment / Care Unit/ Dementia Care Unit RVPROPERTYNOASSIGNED1.
2. **Commencement Date:**
3. **Scheduled Completion Date (if applicable):**
4. **Occupation Loan:** \$A?
5. **Commencement Fee** \$A?

The Commencement Fee is equal to 10% of the Occupation Loan. The Commencement Fee accrues to us on the Commencement Date.
6. **Maximum Village Contribution Fee:** \$A?

Often known as a Deferred Management Fee, the maximum Village Contribution Fee is equal to 20% of the Occupation Loan for a Serviced Unit. 10% of the Occupation Loan is calculated and accrues to us on a daily basis at a rate equal to 10% of the Occupation Loan per year. The Village Contribution Fee will be calculated from the Commencement Date until the earlier of 2 years from the Commencement Date, or the termination of this agreement.
7. **Service Fee:** \$A? per week (including GST, if any)
(Fixed for the term of this Agreement)
8. **Care Services Fee** \$A? per week (including GST, if any)
9. **Initial Additional Costs:**
(if any) \$A?
(payable on invoice)
10. **Refundable Amount**
 - 10.1. The Refundable Amount, being the Occupation Loan less the Commencement Fee, Village Contribution Fee and less any other outstanding amounts due by the Resident under this Agreement, shall be repaid to you in accordance with clause 13 or 14 as applicable.
 - 10.2. No capital gain nor capital loss shall accrue to you on the issue of a new Occupation Right Agreement of the Unit following termination of this

Occupation Right Agreement.

11. **Interest on Refundable Amount:**

If we have not repaid your Occupation Loan within 6 months from the Termination Date, we will pay you interest in accordance with Clause 13.4.10.2.

12. **Other key terms**

12.1. Your Service Fee and calculation of the Village Contribution Fee will cease on termination and vacation of the Unit.

12.2. Transfer Credit: If you move to another unit (that is of a different type to the unit you occupy at the time of transfer) at the Village, you will receive credit on a percentage basis for Village Contribution Fee already paid, as set out in clause 16.

13. The Resident has selected the following Service and Care Level on the Commencement Date:

- Regular Care (Serviced Apartment)
- Superior Care (Serviced Apartment)
- Premium Care (Serviced Apartment)
- Full Resthome Care (Care Unit)
- Hospital Care (Care Unit)
- Dementia Care (Dementia Care Unit)

14. **Any other matters specific to this agreement:**

14.1. A?

Execution

Signed by the Operator/Us

Signed for and on behalf of
Ashbury Heights Limited as Operator

Director

Authorised Signatory

Signed by the Resident

Resident 1

Resident 2

Signature of Resident:

Name of Resident:

in the presence of:

Full name of witness

Signature of witness

Barrister/Solicitor

Occupation of witness

City/Town of residence of witness

Date Resident signed the Occupation Right Agreement: _____

Certificate of lawyer advising client

Section 27(5), Retirement Villages Act 2003

Name of Village: Ashbury Heights

Registration number of Village: []

I, _____ certify that—

- 1. I explained to RVRESIDENTNAMEFULL1 the general effect of the attached Occupation Right Agreement and its implications before he/she/they signed the Occupation Right Agreement; and
- 2. I gave the explanation in a manner and in language that was appropriate to the age and understanding of RVRESIDENTNAMEFULL1.

Dated: _____

Signed by:

(Full name of barrister/solicitor)

Street address of law firm: _____

Postal address of law firm: _____

Email address of barrister/solicitor: _____

Telephone number of barrister/solicitor: _____

Part 2 – Occupation right agreement

Dated:

1. OCCUPATION RIGHT

- 1.1. Under this agreement, we grant you a licence to occupy the Unit upon the terms and subject to the conditions contained in this Agreement.
- 1.2. If you are joint residents, you will both hold benefits and have the obligations under this agreement. If one of you dies, the interest of that person will automatically transfer to the other person.
- 1.3. The rights granted to you are personal contractual rights, and are not transferable. There are no rights of transmission into the names of your personal representatives on your death.
- 1.4. You are entitled to exclusive use and occupation of the Unit and the use of any Operator's Chattels installed in the Unit during the term of this Agreement.
- 1.5. You will have the use (in common with other residents of the Village and all other persons who are authorised by us) of any Community Facilities and services as shall be available within the Village on the terms and conditions as set out in this Agreement.
- 1.6. Your rights pursuant to this Agreement are secured under the Memorandum of Encumbrance held in the name of the Statutory Supervisor on behalf of you and all other residents at the Village.
- 1.7. An essential term of this Agreement is that you must receive care at one of the Service and Care Levels as specified in Schedule 3 of this Agreement.

2. COMMENCEMENT AND TERMINATION OF THE OCCUPATION RIGHT

- 2.1. The Commencement Date of your Occupation Right is as specified on page 2 of this Agreement (unless the Resident has previously terminated this Agreement).
- 2.2. Your occupation of the Unit will commence on the Commencement Date provided you have executed this Agreement, an Admission Agreement (if applicable) and paid the Occupation Loan (unless we otherwise agree).
- 2.3. The Termination Date for this Occupation Right is the date your right to occupy the Unit ends, in accordance with clauses 13 and 14 of this Agreement.

3. RIGHTS OF CANCELLATION

3.1. **Statutory Cooling Off Period:** You may cancel this Agreement by written notice to us either:

3.1.1. Without having to give any reason, at any time within 15 Working Days after you sign this Agreement; or

3.1.2. If your unit is to be built or is under construction and is to be completed after you sign this Agreement, then if the Unit is not finished to the point of practical completion within six months after the Scheduled Completion Date, you may give notice of cancellation at any time after the expiry of the six month period.

If you have cancelled this Agreement pursuant to clause 3.1, we will repay all payments made by you towards your Occupation Loan including any interest earned (less Resident Withholding Tax). We will arrange this refund within 10 working days after your notice.

3.2. **90 day money back guarantee:** If you are a new Resident to the Village then you may cancel this Agreement by giving written notice to us within 90 days following the Commencement Date, if you are unhappy with the Unit and wish to make arrangements to vacate the Unit and permanently leave the Village. For the avoidance of doubt, the provisions of this clause will not apply if you are transferring from one unit to another unit within the Village.

If you cancel this Agreement pursuant to this clause 3.2, we will repay your occupation loan, free of any deduction for the amount of the Commencement Fee and Village Contribution Fee payable under this Agreement, within 30 days of the date we receive your written notice of cancellation or your vacation of the Unit, whichever is the later.

3.3. The notice of cancellation under clauses 3.1 and 3.2 must be given to us in writing and must clearly indicate your intention to cancel this Agreement. You should consult with your lawyer. Notice may be given by you or any person authorised to act on your behalf.

3.4. If you cancel this Agreement under this clause 3, then we are entitled to reasonable compensation for services provided to you before the cancellation takes effect, and for damage to any unit or facilities in the Village for which you are responsible, and such amounts will be deducted where possible from the amount payable by us to you in respect of the cancellation.

3.5. Where this Agreement is for a Care Unit and you cancel this agreement under this clause 3, you agree that we may charge you the applicable premium charge for your unit from the date you have occupied the unit until the date you leave the unit permanently and remove your belongings.

4. PAYMENTS – YOUR OBLIGATIONS

4.1. **Occupation Loan:** The Occupation Loan is the amount advanced by you to obtain an Occupation Right in respect of the Unit and will be advanced by you to us in the

following manner:

- 4.1.1. A deposit as agreed by us; and
 - 4.1.2. Prior to or on the Commencement Date, the balance of the Occupation Loan.
- 4.2. **Commencement Fee:** The Commencement Fee is equal to 10% of the Occupation Loan. The Commencement Fee is a contribution to the overall Village including (without limitation) the administration and operating structures previously established, including facilities and staff for administration, activities and events, recreational facilities and general healthcare monitoring services. The Commencement Fee accrues on the Commencement Date but payment is deferred and deducted from the Occupation Loan on repayment to you.
- 4.3. **Village Contribution Fee:** The Village Contribution Fee (often known as the Deferred Management Fee) is a maximum of 20% of the Occupation Loan and is a fee for the provision of the Unit to you for the term of this Occupation Right Agreement together with a right to use the communal facilities including ongoing administration, operating costs, activities programme and event management, general healthcare monitoring, fair wear and tear refurbishment costs and costs of compliance with any statute, regulation or other lawful obligations in respect to the Village.

The Village Contribution Fee accrues during the term of the Agreement until the Termination Date (or to such later date that the Unit is vacated and all your belongings have been removed).

The Village Contribution Fee accrues to us on a daily basis at a rate equal to 10% of the Occupation Loan per year. The Village Contribution Fee will be calculated from the Commencement Date until the earlier of 2 years from the Commencement Date, or the termination of this agreement.

- 4.4. **Service fee:** The Service Fee is a contribution to direct costs relating to the Resident's occupation as determined by us from time to time, including building insurance, rates, security systems, building maintenance, cleaning of the exterior of the windows of the unit, water supply, rubbish collection and upkeep of the Village grounds and property.

The Service Fee is fixed for the term of this Agreement. You will pay the Service Fee monthly in advance by automatic payment starting on the Commencement Date.

Subject to clause 14 (damage or destruction), the Service Fee continues to be payable until the date of termination or the date you have permanently vacated the unit.

- 4.5. **Care services fee:** The Care Services Fee is for the provision of Care Services to you. You must select care at one of the Service and Care Levels applicable to the Unit as specified in Schedule 3. The Care Services Fee is payable monthly in advance.

- 4.5.1. Serviced Apartments:

- 4.5.1.1. Weekly Care Services Fee payable monthly in advance in accordance with the terms of this Agreement and as specified on page 2 of this Agreement;
- 4.5.2. Care Units:
 - 4.5.2.1. Weekly Care Services Fee payable monthly in advance in accordance with the terms of this Agreement and as specified on page 2 of this Agreement;
 - 4.5.2.2. If the initial Care Services provided by us form part of the ARRCs Agreement, you must execute an Admission Agreement prior to the Commencement Date of this Agreement.
- 4.5.3. Changes to Care Services Fee: The Care Services Fee payable by the Resident (as specified in Schedule 1 of this Agreement) for the Regular Care, Superior Care and Premium Care (inclusive) will be fixed for the term of this Agreement. You acknowledge that if you select a different Service and Care Level, then your new Care Services Fee will be the Care Services Fee that is applicable at the time.
- 4.5.4. The Care Services Fee payable for Full Resthome Care or Hospital Level Care will be reviewed annually on 1st July each year. You will receive one calendar month's notice in writing of any change, or notice in accordance with the review procedures contained in the ARRCs Agreement (if applicable).
- 4.5.5. You may at any time request a change to your Service and Care Level. We confirm the applicable Care Services Fee at the time of your request. You agree that we may consult with your regular medical practitioner in determining the level of care to be made available to you.
- 4.5.6. We will consult with you prior to any change in the Care Services Fee or the level of care provided to you in accordance with the Code of Practice and the review procedures contained in the ARRCs Agreement (if applicable).
- 4.5.7. If the change in the Service and Care Level is to Rest Home Level Care or Hospital Level Care, which form part of the ARRCs Agreement, you must sign an Admission Agreement within 5 Working Days following the change to the Care Services being provided. The Admission Agreement will not replace this Agreement and this Agreement will prevail in the event of a conflict between this Agreement and the Admission Agreement. If your unit is not a Care Unit you may be required to enter into a new Occupation Right Agreement for a Care Unit (refer clause 16)

- 4.5.8. Subject to clause 14 (damage or destruction), the Care Services Fee continues to be payable until the date of termination or the date the Resident has permanently vacated the Serviced Unit.
- 4.6. **Additional Costs:** If you wish to elect any of the optional Additional Services, you will pay the cost of those services. The Additional Services offered from time to time and associated fees are available upon request. We may change or withdraw any Additional Services and may change the fees at any time at our discretion. If you elect any Additional Services, you agree to pay us any Additional Costs on or before the 20th day of the month following the date of the invoice.
- 4.7. **Your outgoings and utility charges:** To the extent that these are not covered within your Care Services Fee for your selected Service and Care Level, you are responsible for the following outgoings in respect of the Unit which are not included in the Service Fee or Additional Costs:
- 4.7.1. Costs of electricity and other utilities;
 - 4.7.2. The costs of having a telephone and internet connection in the Unit including installation and ongoing charges;
 - 4.7.3. Any other utility charges such as Sky Television;
 - 4.7.4. Insurance premiums and other payments in respect of your belongings (including any vehicle).
 - 4.7.5. Doctor's charges, prescription charges and other medical and pharmaceutical charges.
- 4.8. **Resident's legal and other costs:** Each party will pay their own costs (including legal and accounting) in relation to the preparation and execution of this Agreement and the termination of this Agreement. You agree to pay our costs relating to the enforcement or attempted enforcement of our rights remedies and powers under this Agreement.
- 4.9. **GST:** All charges for services provided to you are GST inclusive (unless otherwise stated).
- 4.10. **Continuing obligation and default interest:** You will duly and promptly pay each and every payment required to be made to us under this Agreement. If a payment is 7 days late we may charge you interest in accordance with clause 19.
- 4.11. **Government subsidy payments:** If you become entitled to assistance by a Government subsidy payment, then we may accept the subsidy in respect to any of the payments due by you to us under this agreement. We will at all times comply with the provisions of the ARRCs Agreement (if applicable). We will not charge you for services covered by part or all of the Village Contribution Fee, Service Fee or Care Services Fee to the extent that they are also covered by the Government subsidy payment, provided however that we are entitled to charge you for costs relating to your accommodation that are not covered by the Government subsidy payment.

5. PRIVACY AUTHORISATION

- 5.1. In order to check your continued suitability to occupy the unit and for providing services to you for Village administration purposes, we will need to collect and hold relevant personal information about you, including about your physical and mental health.
- 5.2. You authorise:
- 5.2.1. Us to collect the relevant personal information about you from any relevant agencies, in particular any health agencies who possess information relating to your physical and mental health;
- 5.2.2. any agency to disclose such information to us, in accordance with the provisions of the Privacy Act 2020 and the Health Information Privacy Code 2020;
- 5.2.3. Us to release any relevant information to any independent medical practitioner who is required to make an assessment under this agreement or any health or government agency.
- 5.3. During normal business hours, you can access personal information held by us about you and can require us to correct any errors in that personal information.

6. REPRESENTATIONS

- 6.1. If you have supplied us with reports and/or information in connection with your application to enter into this Agreement, you acknowledge we have relied on the accuracy of these reports.
- 6.2. You warrant that all statements made by you in such reports and/or information are correct.
- 6.3. You acknowledge that your age and health statements are the basis of this Agreement and any material omission or misrepresentation made by you is a material breach of this Agreement to which clause 13.3.2 shall apply.

7. YOUR COVENANTS AND OBLIGATIONS

- 7.1. You covenant and agree:
- 7.1.1. **Use of Unit:** To use the Unit solely for the purposes of a residence and for your personal occupation only, subject to our right to access the Unit in accordance with clause 7.1.13.
- 7.1.2. **Not to charge or mortgage:** You do not have any proprietary interest in or charge over the properties or assets we own nor does this Agreement constitute an interest in land nor a lease. You are not entitled to register a caveat or mortgage or otherwise encumber the underlying titles to the Village. You may not grant a security interest over the Refundable Amount due to you on termination of this Agreement.

- 7.1.3. **No alterations:** Subject to clause 8.4, you must not alter or cause or permit to be altered the Unit or any part of the Unit without our prior written consent. You must not erect or construct over the Unit any radio or TV aerial, antennae or satellite dish without our prior written consent.
- 7.1.4. **Consider other residents:** You must at all times have consideration for other residents in the Village and must not do or permit or suffer to be done any act which may be or grow to be a nuisance or annoyance or disturbance to other residents in the Village or us. You also agree to comply with your obligations under the Code of Residents Rights (specified in Schedule 1 or its replacement or amendment).
- 7.1.5. **Care of the Unit and operator's chattels:** To ensure care of the Unit and Operator's Chattels as follows:
- 7.1.5.1. You agree to keep and maintain the interior of the Unit and the fixtures, fittings and apparatus and the Operator's Chattels in a proper tidy, clean and sanitary and (where appropriate) working order and condition and in the same condition as at the Commencement Date. You are not responsible for fair wear and tear.
- 7.1.5.2. You agree not to effect repairs nor use the services of any tradesperson or other person to maintain or repair the Unit without our prior written consent. We may make arrangements for all such repairs and maintenance to be carried out and will charge you accordingly unless the cost is properly payable by some other person. We may recover from you costs of any internal repairs, painting or redecoration (excluding fair wear and tear) required as a result of any damage, loss or injury caused to the Unit by the Resident including negligent use or omission.
- 7.1.5.3. You will, at your cost, replace all mirrors, light shades and light bulbs as reasonably required.
- 7.1.5.4. Following termination, we will not charge you for any costs of refurbishment of the unit, but we can recover from you any costs of remedying damage caused to the unit by you or your guests if the damage is, in our reasonable opinion, beyond the usual fair wear and tear we expect for the unit.
- 7.1.6. **Laundry:** You agree not to hang any clothes, washing, bedding, towels or other items outside, or from any common property other than designated washing line areas.
- 7.1.7. **No dangerous, heavy or unsuitable equipment:** You will not bring into the Village:

- 7.1.7.1. Any unsuitable furniture, electrical or electronic equipment, liquid or other substances which may in our opinion be injurious to the safety, health or convenience of other residents in the Village.
- 7.1.7.2. Any dangerous weapons or firearms without our prior written consent which may be granted, refused or withdrawn in our sole discretion.
- 7.1.8. **No assignment:** Not to assign, sublet or part with possession or occupation of the Unit or any part thereof or of the Operator's Chattels without our prior written consent. Our consent may be granted, refused or withdrawn in our sole discretion.
- 7.1.9. **No other persons in unit:** Not to permit any other person or persons to stay in the unit without our prior written consent. Our consent may be granted, refused or withdrawn in our sole discretion.
- 7.1.10. **Carer:** Not to have a person stay in the Unit with you as a caregiver or carer without our prior written consent. Our consent may be granted, refused or withdrawn in our sole discretion.
- 7.1.11. **Animals or birds:** Not to keep or permit to be kept any animal or caged bird in or about the Unit or Village without our prior written consent. Our consent may be granted, refused or withdrawn in our sole discretion.
- 7.1.12. **Rubbish:** Not to deposit any refuse or rubbish on any part of any buildings on the land or grounds of the Village except in proper containers and in the area we have set aside for that purpose.
- 7.1.13. **Access by us:** To permit us at all times, together with our agents, employees and invitees, unrestricted access to enter the Unit for the purpose of giving care and/or assistance to you, without notice. Further, you permit us at all reasonable times, to enter the unit for the purpose of inspecting the unit, or for carrying out any necessary or desirable repairs or alterations. In so doing we shall cause as little disturbance as possible to you. Wherever practicable, we will give to you 24 hours prior written notice of our intention to enter the unit for inspections, repairs or alterations.
- 7.1.14. **Not void insurances:** Not to do anything which may cause any insurances in respect to the Village or to the Unit to be vitiated or rendered void or voidable.
- 7.1.15. **Update information:** To keep us informed of the name, address and telephone number of your legal representative and next of kin.
- 7.1.16. **No smoking:** Not to smoke in the Unit or any of the Community Facilities of the Village.
- 7.1.17. **Rules of village:** To agree and abide by the Rules (if any) and such other rules or regulations as may from time to time be adopted or established by us, including any reasonable alterations or modifications, for the proper

management of the Village or as required by the Act or any legislation provided however that:

- 7.1.17.1. Such Rules shall not detract from your rights under this Agreement; and
- 7.1.17.2. The Rules and any changes to the Rules will be provided to you before you are obliged to observe them.
- 7.1.18. **Enduring powers of attorney:** To execute and keep in force an Enduring Power of Attorney for Property and an Enduring Power of Attorney for Personal Care and Welfare (as defined by the Protection of Personal and Property Rights Act 1988 as amended, updated or replaced).
- 7.1.19. **Current Will:** To make provision for the final disposal by your executor of all furniture and possessions and for payment of funeral expenses in a legal Will to be made before the Commencement Date.
- 7.1.20. **Personal necessities:** You will provide suitable and sufficient clothing and personal necessities at your own expense.
- 7.1.21. **Services when you are absent:** If we are required by this Agreement to furnish, supply or give you support, meals, or Additional Services, then such obligation will not apply while you are absent from the Village.
- 7.1.22. **No third party provider:** To use the services provided by us (including Additional Services) and not to use any services from any third party provider unless, firstly, we are unable to arrange to provide you with the service required, and secondly, unless we have consented in writing to the provision of such service.
- 7.1.23. **Resident's insurance:** You are not required to hold your own contents insurance policies, however, we recommend that you obtain and maintain such an insurance policy to cover risks of loss or damage to your belongings. You should arrange insurance cover for your vehicles (if any). You may also wish (but are not obliged) to include in your insurance policy provision for temporary accommodation and facilities in the event of damage or destruction to the Unit.

Irrespective of cause, we will have no responsibility, under any circumstances, for loss or damage to any of your belongings or vehicles.
- 7.1.24. **Insurance excess:** You agree to reimburse us on request for the excess payable on any insurance claims made against our insurance policies held in relation to the Unit, the Operator's Chattels or any part of the Village, where such insurance claim arises out of negligent, deliberate or wilful damage by you or your invitees to the Unit, the Operator's Chattels or any other part of the Village, and shall also upon request, reimburse us in full where such loss or damage is not covered by our insurance.

7.1.25. **Material changes:** To disclose material changes to your health or circumstances to us during the term of this Agreement.

8. OUR OBLIGATIONS

8.1. **General – operation of the Village:** We agree:

8.1.1. To undertake the day-to-day management of the Village. We may contract with third parties to manage the Village and to provide services (including Additional Services) to residents of the Village;

8.1.2. To use reasonable care and skill in ensuring that the affairs of the Village are conducted properly and efficiently and in the performance of our powers, functions and duties;

8.1.3. To provide the services that are the subject of the Service Fee;

8.1.4. To provide the Care Services to you (unless you are absent from the Village; and

8.1.5. To provide any Additional Services that we have agreed to provide.

8.2. **Village maintenance and provision of utilities:** We agree:

8.2.1. To supply the unit with standard connections for water, telephone, television, electricity and/or gas. We will not be responsible for any failure in the provision or maintenance of utility services for any reason. You will pay for the actual costs of usage as indicated in clause 4.7 of this Agreement (where separately metered);

8.2.2. To keep the Community Facilities in good condition including gardens, trees and shrubs;

8.2.3. To arrange and maintain a comprehensive replacement insurance policy covering the Village for usual risks, including damage or destruction by fire, accident or natural disaster, and covering any other insurable risk which we may consider desirable, in our interests or in the interests of residents of the Village. The insurance will be to the satisfaction of the Statutory Supervisor. We will ensure that the insurance valuation of the Village is updated as often as required by the insurance policy. We will pay all related insurance premiums. The Village insurance policy will at all times comply with the Code of Practice and Deed of Supervision. A copy of the Village insurance certificate of currency is available upon request;

8.2.4. To duly and punctually pay all rates, taxes and maintenance costs in respect of the land and buildings of the Village;

8.2.5. To maintain, repair and paint the exterior of the unit when reasonably required;

- 8.2.6. To make and adhere to a long term plan for maintaining and refurbishment of the Village and the Community Facilities;
 - 8.2.7. To keep the exterior and interior of all buildings (except the interior of the unit) situated within the Village together with the Community Facilities and grounds of the Village in a good and proper state of repair, order and condition;
 - 8.2.8. To maintain all carpets, floor coverings, fixtures, fittings and apparatus provided by us in the Village (except where you are responsible for interior maintenance of the Unit pursuant to clause 7.1.5);
 - 8.2.9. To provide full and appropriately qualified and experienced staff for the operation of the Village;
 - 8.2.10. To have and maintain a process for reviewing the safety and personal security of residents in the Village;
 - 8.2.11. To have and maintain an adequate fire protection and emergency management policy and systems for the residents; and
 - 8.2.12. To comply with the provisions of the Code of Practice concerning maintenance of the Village.
- 8.3. **Right to courtesy/Code of Residents' Rights:** To comply with the Code of Residents' Rights and to treat you with respect and courtesy and not to exploit you.
- 8.4. **Alteration of unit for resident with disabilities:** If you need to make alterations to the unit to meet your needs due to a disability, you have the right to request such alterations.

You must obtain our prior written consent to the alterations. Any alterations must comply with all applicable Statutes and Local Authority requirements and must be carried out so as to cause minimal disturbance to other residents of the Village. All costs associated with the alterations are payable by you.

On termination, we may elect to reinstate the unit to its original condition and all costs shall be payable by you. If we decide not to reinstate the unit you will not be entitled to any compensation for such alterations. We may require you to make a payment to reflect any reduction in the value of the unit by such alterations.

8.5. **Financial reporting:** We agree:

- 8.5.1. On request, to give to you, (free of charge), a copy of our audited financial statements under the Retirement Villages Act 2003 (as amended, updated or replaced) at any time up until we repay your Occupation Loan.
- 8.5.2. We will, at the start of each Accounting Period of the Village, prepare a statement forecasting for the period:

- 8.5.2.1. The operating expenditure relating to the Village;
- 8.5.2.2. All expenditure relating to the Village (including amounts repayable to residents, former residents, and their estates);
- 8.5.2.3. All income relating to the Village; and
- 8.5.2.4. The amounts of the operating expenditure that must be met by the residents of the Village.

We will give a copy of this statement to each resident of the Village within three months of the start of the Accounting Period.

8.6. **Meetings of residents:** We will call a meeting of the residents of the Village in the circumstances and for the purposes as described below:

Item	Circumstances	Purpose
1	Within six 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.

8.6.1. We will call meetings by way of written notice to each resident of the Village in accordance with Section 106 of the Act at least 10 Working Days prior to the meetings;

8.6.2. The meetings will be chaired by a person appointed by the Statutory Supervisor; and

8.6.3. At the meeting we will give residents orally or in writing, information that relates to the affairs of the Village, and information that has been requested with reasonable notice by a resident of the Village.

9. **MUTUAL COVENANTS**

9.1. We hereby mutually covenant and agree with you:

9.1.1. We will not be liable to you or any other person for any water damage caused either by the overflow of water supplied to any part of the Village or to any

Unit or for rainwater entering the Unit unless, in the case of rainwater damage, we had received prior written notice of any defect or want of repair in the roof of the Unit and had failed to remedy the same within seven days of such notice.

- 9.1.2. You indemnify us from and against all actions, claims, demands, losses, damages, costs and expenses for which we become liable in respect of or arising from:
- 9.1.2.1. Negligent use, misuse, waste, abuse, or omission by you or any guest of the water, gas, electricity, lighting and other services and facilities of the Unit;
 - 9.1.2.2. Overflow or leakage of water (including rain water) in or from the Unit but having origin within the Unit caused or contributed to by any act or omission on the part of you or your guests;
 - 9.1.2.3. Loss, damage or injury from any cause whatsoever to property caused or contributed to by the use of the Unit by you or your guests;
 - 9.1.2.4. Loss, damage or injury from any cause whatsoever to property within or without the Unit occasioned or contributed to by any act, omission, neglect, breach or default by you or your guests; or
 - 9.1.2.5. Actions commenced by or against you to which we shall without any fault on our own part be made a party.
- 9.1.3. No waiver by us of one breach of any covenant, obligation or provision in this Agreement contained or implied shall operate as a waiver of another breach or of any other covenant, obligation or provision in this Agreement.
- 9.1.4. You will not have the right to object to any admission, terms of occupancy or termination of occupancy of any other Village resident.

10. CONSULTATION AND NOTIFICATION

10.1. Consultation: We will consult with you:

- 10.1.1. Regarding any proposed changes in:
- 10.1.1.1. The services and benefits we provide;
 - 10.1.1.2. The payments made by the residents; and
 - 10.1.1.3. The Rules of the Village or any other matters that will or might have a material impact on the residents' occupancy or ability to pay for the services and benefits we provide.

- 10.1.2. Before selling or disposing of our interest in the Village. Such consultation will take place at a time directed by the Statutory Supervisor.
- 10.1.3. Before entering into a Village management agreement.

11. CODE OF PRACTICE

- 11.1. We will meet the requirements of the Code of Practice applicable to the Village. We will have and maintain written policies and procedures in regard to the following matters:
 - 11.1.1. Staffing of Village;
 - 11.1.2. Safety and personal security of residents;
 - 11.1.3. Fire protection and emergency management (including access for people with disabilities);
 - 11.1.4. Transfer of residents within the Village;
 - 11.1.5. Meetings of residents with the Operator;
 - 11.1.6. The Village complaints facility;
 - 11.1.7. Accounts;
 - 11.1.8. Maintenance and upgrading;
 - 11.1.9. Termination of this Agreement; and
 - 11.1.10. Communication in the event that English is a second language to a Resident or if a Resident's ability to communicate is limited.
- 11.2. We will comply with the Code of Practice as applicable, in providing to you copies of the following:
 - 11.2.1. The written policies and procedures in relation to the "safety and security of residents" and the "fire protection and emergency management";
 - 11.2.2. The evacuation procedure;
 - 11.2.3. The minutes of all Village's annual general meetings and special general meetings; and
 - 11.2.4. The Village complaints procedure.

12. DISPUTE RESOLUTION, COMPLAINTS FACILITY

- 12.1. We will operate a complaints process in accordance with the Act and the Code of Practice for dealing with issues and complaints by residents and will ensure clear access to us and to the Statutory Supervisor.

- 12.2. We operate and make known to the residents of the Village a written process to be followed when dealing with complaints about us or about other residents in the Village. You agree with us to comply with the dispute resolution process and complaints process set out in the Act and the Code of Practice respectively.

13. **TERMINATION**

- 13.1. **Termination by you:** You may terminate this Agreement for any reason and at any time by giving a minimum of one calendar month's prior notice in writing to us advising of your intention to vacate the Unit and terminate this Agreement.

- 13.2. **Death of resident:** This Agreement is automatically terminated on the death of the last remaining resident in the unit.

13.3. **Termination by us:**

- 13.3.1. **Resident's health** We may terminate this Agreement by written notice if, based on a medical assessment obtained by us at our cost, an independent medical practitioner has certified that your physical or mental health is such that you cannot live safely in your unit or other residents in the village cannot live safely in their units.

Should we wish to obtain a medical assessment, then:

- 13.3.1.1. We will give you 14 days' notice of our intention to require you to have a medical assessment;

- 13.3.1.2. We will consult you, your family or appointed representative where appropriate; and

- 13.3.1.3. You may obtain a second opinion at your cost and present this to us within seven days of you being advised of the assessment obtained (as referred to above);

If we have complied with our obligations and the circumstances giving rise to the right to terminate have not changed, we can give not less than one month's written notice of termination.

- 13.3.2. **Breach of agreement:** We may terminate this Agreement by written notice in the event that you have materially breached this Agreement and have not remedied the breach by the end of expiry of the written notice we have given you (the notice period cannot be less than one month)

- 13.3.3. **Abandonment of the unit:** We may terminate this Agreement by written notice in the event that we have made reasonable enquiries and determined that you have permanently abandoned the unit you have failed to reoccupy the unit by the expiry of the written notice we have given to you (the notice period cannot be less than one month).

13.3.4. **Serious harm to Unit, community facilities or other persons:** We may terminate this Agreement by written notice if you have caused or permitted or are highly likely to cause or permit:

13.3.4.1. Serious damage to the unit or other property at the village, or;

13.3.4.2. Serious injury or harm to the Operator or another resident, or an employee or guest of the Operator or the Resident;

and you have failed to remedy the damage, injury or harm within the notice period we have given you, which must be reasonable in the circumstances.

13.3.5. **Damage or destruction:** In the event of damage or destruction of the Unit or Village then clause 14 will apply.

13.4. Procedure following termination:

13.4.1. You will vacate the unit upon termination of this Agreement. You will have no further rights to the Unit or the Village from the date of termination (other than payment of the Refundable Amount).

13.4.2. If your unit is a Serviced Apartment, on the termination of this Agreement (or in the case of termination due to death, within 10 Working Days of termination of this Agreement), you must remove all of your belongings from the unit at your cost. If you fail to remove your belongings within the timeframes above, we may at your expense and risk remove your belongings and place them into storage.

13.4.3. If your unit is a Care Unit, all of your belongings must be removed from the Care Unit within 5 working days of termination of this Agreement. If you fail to remove your belongings within the timeframes above, we may at your expense and risk remove your belongings and place them into storage.

13.4.4. If you do not remove your belongings from the unit within 3 weeks of the termination of this Agreement we may at our option sell your belongings and the sale proceeds, after deduction of expenses of removal, storage and sale, will be paid to you. We will not exercise the power of sale without first giving you 7 days prior written notice of our intention to sell. We will not be liable for any loss or damages incurred in respect of the removal, storage or sale of your belongings.

13.4.5. We may repair and make good (at your expense) all damage which may be done to the Unit by the removal of your belongings.

13.4.6. Subject to clause 14 (damage or destruction), you will pay all charges accruing to the date the Unit is vacated by you (and all of your belongings are removed).

13.4.7. Following termination, we will take all steps as are necessary to obtain as soon as possible after the date of termination the grant of a new Occupation Right Agreement on such terms and conditions as we shall determine provided

however that we shall comply with the requirements of the Act and the Code of Practice.

- 13.4.8. No capital gain nor capital loss will accrue to you on the issue of a new Occupation Right Agreement of the Unit following termination of this Occupation Right Agreement.
 - 13.4.9. You are entitled to introduce a prospective resident for the Unit at any time during the term of this Agreement or on termination provided however that we are not obliged to accept any prospective resident who does not meet the normal entry criteria and conditions for the Village.
 - 13.4.10. In addition to the remedies available to you under the Code of Practice, if we have not entered into a new Occupation Right Agreement for the Unit with a replacement resident within six months of you permanently vacating the Unit following termination:
 - 13.4.10.1. You are entitled to introduce a real estate agent to assist in the marketing of the new Occupation Right Agreement for the Unit upon terms to be agreed by us in our sole discretion. The costs of such real estate agent shall be payable by you;
 - 13.4.10.2. We will pay interest on the Refundable Amount from the date that is six months from the Termination Date until the Refundable Amount is available to be paid to you. The interest rate will be the Reserve Bank of New Zealand 90 day bank bill rate, plus 1%. The rate will be fixed as at the date that is six months from the Termination Date.
- 13.5. **Payment to you:** Following termination, your Refundable Amount will be payable as follows:
- 13.5.1. Where you have terminated this agreement, no later than five Working Days following the day on which we have settled the issue of a new Occupation Right Agreement for the unit and have received the new Occupation Loan for the unit.
 - 13.5.2. Where this Agreement has been granted to two of you no repayment shall be made until both of you have terminated the Agreement. We may at all times deal with the person last in occupation or his or her personal representatives or the survivor of such Residents. We are not obliged to ascertain or be deemed to have had any notice as to the proportions of the Occupation Loan made available by either resident in such circumstances.
 - 13.5.3. In the event we have terminated this Agreement pursuant to clause 13.3.1, 13.3.2 or 13.3.4 then payment of the Refundable Amount (less any applicable outstanding fees and deductions) shall be made five Working Days after the date of expiry of our termination notice.

13.5.4. Where this Agreement has been terminated due to an event of damage or destruction then payment shall occur in accordance with clause 14.

13.5.5. If we decide we do not wish a new resident to occupy the unit then we will give you written notice of our decision, and we will enter into an agreement with you, agreeing to pay the Refundable Amount within 20 Working Days of the date of such agreement, subject to any deductions made in accordance with this Occupation Right Agreement.

14. DAMAGE OR DESTRUCTION OF UNIT OR VILLAGE

14.1. **Damage or destruction rendering Unit uninhabitable:** If the Unit, any building in the Village (or which the Unit forms a part) or the Village is destroyed or damaged due to fire, accident, natural disaster or other risk through no fault of the Resident then the following provisions shall apply.

14.2. **Consultation:** We will consult with you to decide whether it is practicable to repair or replace your unit. We will try to consult and decide as soon as reasonably practicable after the damage occurs. The assessment will take place within a reasonable timeframe bearing in mind the extent of the damage and all other reasonable circumstances.

14.3. **Repair or reinstate:** If it is practicable to do so (in our reasonable determination, following consultation with you), we will within a reasonable time repair or reinstate the Unit or building in the Village or the Village itself within, or at a site that is within reasonable proximity of, the site of the Village, with such work to be substantially in accordance with the original design of the Unit, any building in the Village or the Village itself or such other design as we may consider desirable, but of a standard and floor area at least equal to that of the original Unit. We will not be liable to expend any sum greater than the amount of insurance proceeds we receive.

14.4. **Terminate agreement:** We will give you notice terminating this Agreement if we determine that it is not practicable to:

14.4.1. Repair or reinstate the Unit, any building in the Village or the Village itself;

14.4.2. Build a reasonably equivalent alternative Unit or Serviced Unit, any building in the Village or the Village itself within, or at a site that is within reasonable proximity of, the site of the Village; or

14.4.3. Obtain any necessary permit or consent, or the insurance monies received by us are inadequate for the repair or reinstatement.

If we terminate the Occupation Right Agreement under this clause, then no Deferred Management Fee or Commencement Fee will be deducted and the full Occupation Loan (less any outstanding payments due by you) will be paid to you, no later than 10 Working Days after the date we or the Statutory Supervisor receives payment in full under any insurance policy covering the Village.

- 14.5. **Repair or replace:** If we elect to repair or replace the unit, then we will expend all the insurance monies received by us in respect of such damage towards repairing such damage or reinstating the Unit and/or the portion of the Village but we will not be liable to expend any sum of money greater than the amount of the insurance money we receive.
- 14.6. **Temporary accommodation:** We will use our best endeavours to provide you with temporary accommodation (either in the Village or at another property within a reasonable distance to the Village at our reasonable discretion) until:
- 14.6.1. The Unit (or an alternative unit as referred to in clause 14.8 below) is made fit for occupation;
- 14.6.2. The expiry of reasonable notice given by us to terminate this Agreement pursuant to clause 14.4; or
- 14.6.3. Termination of this Agreement by either us or you pursuant to clause 13.

Where we are providing temporary accommodation, then the Village Contribution Fee will continue to accrue. You will also continue to pay the Service Fee and any Additional Costs at the rate applicable to the temporary accommodation provided.

You acknowledge that in extreme events (eg a natural disaster) we may not be able to guarantee that we can provide such temporary accommodation. In the event that we notify you in writing that we are unable to provide temporary accommodation to you, then you acknowledge you may have to arrange your own temporary accommodation at your cost until we advise you that you are able to return to the Village. In the event that you have to arrange temporary accommodation, clause 14.7 shall apply.

- 14.7. **Fees:** In relation to Service Fee, Care Services Fee, Additional Costs and Village Contribution Fee:
- 14.7.1. You will not incur the Service Fee, Care Services Fee and Additional Costs (if applicable) from the date of the damage or destruction to the Unit, until such date as temporary accommodation is made available by us or the Unit or the alternative Unit (refer clause 14.6 above) is ready for occupation by you; and
- 14.7.2. Accrual of the Village Contribution Fee will be suspended from the date of damage or destruction to the Unit until such date as temporary accommodation is made available to you by us (refer clause 14.6 above).
- 14.8. **Resident's option to transfer if Unit is not rebuilt:** Where we have decided not to repair or rebuild the Unit, then we may by written notice give an option to you to transfer permanently to another or an alternative unit, or Serviced Unit (either pre-existing or yet to be constructed) in the Village or at another Village that is owned by us (if any) in reasonable proximity to the Village (**Transfer Option**):

- 14.8.1. If you accept the Transfer Option, you will be responsible for moving yourself and your belongings at your cost together with your legal costs in relation to entering into the new Occupation Right Agreement for the alternative unit.
- 14.8.2. If we offer you a Transfer Option and you do not accept it, this agreement will be deemed terminated by you and we will be entitled to deduct the Village Contribution Fee and Commencement Fee from the Occupation Loan. We will pay the Refundable Amount to you no later than 10 Working Days after receipt by us or the Statutory Supervisor of the full insurance proceeds in respect of the Unit and the Village to enable repayment to occur. (In addition to the Village Contribution Fee, you acknowledge that in such circumstances, you will pay us any other outstanding fees owing, including any outstanding Service Fee and Additional Costs.)
- 14.9. **Damage or destruction of village – resident may terminate agreement at any time:** If the whole or a part of the Village is damaged or destroyed and we have determined it will be repaired or reinstated (even if the Unit is not damaged or destroyed), you may decide to terminate this Occupation Right Agreement under clause 13.1. In this case, you will be entitled to an amount equal to your Occupation Loan less the Commencement Fee and any accrued Village Contribution Fees as calculated pursuant to Schedule 1, and repaid in accordance with clause 13.5.1 (following the commencement of a new Occupation Right Agreement for the Unit).
- 14.10. **Termination by written agreement:** Notwithstanding any other provision in this clause 14, this Agreement may be terminated upon written agreement between you and us.

15. **NOTICES**

- 15.1. All notices may be given by delivering the notices either personally or leaving at the last known address of the receiving party. A notice sent by pre-paid post shall be deemed to be served on the day two days after the date of posting.

16. **TRANSFER BY RESIDENT TO ANOTHER SERVICED UNIT IN THE VILLAGE**

- 16.1. **Transfer:** You may apply to transfer to another Serviced Unit at the Village subject to availability and to the terms and conditions as specified by us. Subject to any requirements of the Act and the Code of Practice, the terms and conditions of the transfer will be specified by us in our sole discretion and will be advised to you in writing upon request including you completing a care needs assessment if required.
- 16.2. **Additional Occupation Loan:** You must pay such additional sum as may be required to satisfy the Occupation Loan payable for the replacement unit. You will also be responsible for payment of our reasonable legal and administration costs in facilitating the transfer. You will also be responsible for any other transfer costs you incur.
- 16.3. **New Occupation Right Agreement:** The transfer will be effected by way of a cancellation of this Agreement and the execution of a new Occupation Right Agreement in respect of the replacement unit or Serviced Unit.

16.4. **Transfer to another Serviced Unit:** If you transfer from a Serviced Apartment to a Care Unit, or from a Care Unit in the Care Facility to a Care Unit in the Dementia Care Facility:

16.4.1. Commencement Fee: You will pay a further Commencement Fee equal to 10% of the Occupation Loan for the Serviced Unit;

16.4.2. Village Contribution Fee: You will receive a credit on a percentage basis for the Village Contribution Fee paid on your first unit. The maximum Village Contribution Fee percentage for a Serviced Unit as at the date of this Agreement is 20%. Your Village Contribution Fee will not exceed 20% overall over the two units.

For example, if you pay a Village Contribution Fee of 10% on the first unit, you will pay a maximum Village Contribution Fee of 10% of the Occupancy Advance on the replacement serviced unit.

17. **SELECTION OF CARE SERVICES OR TRANSITION TO ANOTHER SERVICED UNIT, CARE FACILITY OR DEMENTIA CARE FACILITY**

17.1. **Selection of care services:** At any time during the term of the Agreement, you, in consultation with us, may choose to select one of the other Service and Care Levels offered by us to Serviced Units. If you choose to select one of the Service and Care Levels:

17.1.1. You agree that we may consult with your regular medical practitioner in determining the level of care to be made available to you.

17.1.2. If we, following consultation with your regular medical practitioner, determine that you are in need of a higher level of care we will use our best endeavours to assist you to transfer from the Unit to another serviced unit within the Village, provided that a suitable unit is available and provided that the Resident complies with the conditions and requirements for entry to that unit.

17.1.3. You will be required to sign a new Occupation Right Agreement in respect of the new Serviced Unit on the then current terms, provided however that the commencement date of the new Occupation Right Agreement shall be contemporaneous with the termination of this Agreement and the provisions of clause 16 will apply.

17.2. **Care facility:** . There are Care Units available in our Care Facility and our Dementia Care Facility. We will use our best endeavours to procure a vacancy for you in the Care Facility or Dementia Care Facility, provided that such facility is available and you comply with the conditions for entry into the Care Facility or Dementia Care Facility. This includes but is not limited to a comprehensive assessment of your care needs being completed by an approved agency.

We offer rest home level dementia care in our Dementia Care Facility but psychogeriatric care is not provided in the Dementia Care Facility.

If you transfer to the Care Facility from a Serviced Apartment you will need to give notice to terminate this Occupation Right Agreement. We may offer Occupation Right Agreements in respect of the Care Units. We may also offer residential care in a Care Unit on a non-ORA basis.

A resident who has been assessed as needing residential care may be entitled to receive Government care subsidies. Additional charges may apply where additional services are received (for example a premium room).

18. CHANGES TO VILLAGE / FURTHER DEVELOPMENT

- 18.1. You acknowledge that subject to the requirements of the Deed of Supervision we reserve the right to construct further units and to alter or extend the Village in any way whatsoever provided that in doing so we will use our best endeavours to cause as little inconvenience to you as is practical in the circumstances. You shall not be entitled to make any objection or claim any compensation in respect to any further development and shall if requested by us sign all consents and other documents as may be required to give effect to the further development.
- 18.2. You acknowledge that as at the date of this Agreement we may propose to develop and enhance the Village by developing further units and facilities.

19. DEFAULT

- 19.1. If you default on this Agreement we can:
- 19.1.1. Do anything reasonable to complete what you have not done but were required to do under this Agreement, and we can spend a reasonable sum of money to do this.
- 19.1.2. We can enter your unit to do anything you are required to but have not done.

You must reimburse us immediately for any costs we incur due to your default and if you do not, we can charge you interest at the rate equal to the residential mortgage floating interest rate charged by ANZ Bank New Zealand Limited or its successor then current plus 5% per annum.

- 19.2. If your default is significant or becomes significant then without prejudice to clause 19.1, we may terminate this Agreement in accordance with clause 13 of this Agreement.

20. STATUTORY SUPERVISOR

- 20.1. We and you each agree to be bound by the terms of the Deed of Supervision.
- 20.2. In the event that the Statutory Supervisor of the Village for any reason ceases to be the Statutory Supervisor of the Village, we will take all necessary steps to replace such Statutory Supervisor or may seek an exemption under the Act.

21. APPOINTMENT OF MANAGER

21.1. We are entitled at any time to appoint a manager or delegate, or subcontract rights and obligations to operate the Village to another suitably qualified person (subject to clause 10) . We will continue to be obliged to perform and observe the terms of this Agreement. Any appointed manager will be our representative for all purposes under this Agreement and you will comply with all instructions, notices, directions and decisions of the appointed manager as if we had issued them directly.

22. ASSIGNMENT BY OPERATOR – SALE OF OPERATOR’S INTEREST IN THE VILLAGE

22.1. We are entitled to market, sell, dispose of or assign this Agreement and/or its interest in the Village (**Village Scheme**) to any person or operator (**Assignee**), subject to obtaining the prior written approval of the Statutory Supervisor and subject to prior consultation with the residents at a time advised by the Statutory Supervisor.

22.2. You authorise the Statutory Supervisor to execute on your behalf any Deed of Assignment or Novation or any other consent document as reasonably required by us relating to any assignment of the Village Scheme, granting your consent to such assignment. Upon request by us, you agree to sign a Deed of Assignment and Novation in favour of the Assignee and new operator of the Village in the form provided by us.

22.3. You promise the Assignee that you will observe and perform the obligations and covenants contained in this Agreement.

22.4. We will ensure that the Assignee agrees to observe and perform the obligations and covenants contained in this Agreement.

23. DEFINITIONS AND INTERPRETATION

23.1. **Definitions:** Throughout this Agreement, the following terms shall have the given full meanings:

23.1.1. **Accounting Period** means the period ending on the annual balance date of the Operator in each year.

23.1.2. **Act or Retirement Villages Act** means the Retirement Villages Act 2003 (as amended, updated or replaced).

23.1.3. **Additional Services** means the optional additional services offered by us from time to time, subject to the terms of this Agreement.

23.1.4. **Additional Costs** means the charges payable by the Resident for any Additional Services provided to the Resident from time to time.

23.1.5. **Admission Agreement** means the agreement entered into between you and us for the provision of aged related residential care.

23.1.6. **Agreement or this Licence to Occupy or Occupation Right Agreement** means this Agreement.

- 23.1.7. **Application Form** means the application form provided by you to us prior to execution of this Agreement.
- 23.1.8. **ARRCS Agreement** means the agreement entered into between the Operator and Health New Zealand for the provision of aged related residential care.
- 23.1.9. **Care Facility** means the rest home and hospital level care facility situated at 50 Pompallier Estate Drive, Whangarei which is owned by the Operator.
- 23.1.10. **Care Services** means the care services provided to the Resident at the Service and Care Level selected by the Resident from time to time from the options specified in Schedule 3, subject to the terms of this Agreement.
- 23.1.11. **Care Services Fee** means the fee payable by you for the Care Services provided to you at the applicable Service and Care Level from time to time.
- 23.1.12. **Care Unit** means a unit in the Care Facility or Dementia Care Facility;
- 23.1.13. **Code of Practice** means the code of practice which is applicable from time to time pursuant to the Act.
- 23.1.14. **Code of Residents' Rights** means the code of residents' rights which is applicable from time to time pursuant to the Retirement Villages Act, and which at the date of this Agreement as specified in Schedule 1.
- 23.1.15. **Commencement Date** means the date specified on page 2 of this Agreement.
- 23.1.16. **Commencement Fee** means a contribution to the overall Village including (without limitation) the administration and operating structures previously established, including facilities and staff for administration, activities and events, recreational facilities and general healthcare monitoring services.
- 23.1.17. **Community Facilities** means those common areas and community facilities of the Village provided by us from time to time.
- 23.1.18. **Deed of Supervision** means the Deed of Supervision between us and the Statutory Supervisor (as amended, updated or replaced).
- 23.1.19. **Dementia Care Facility** means the specialist resthome dementia care facility situated on the same site as the Village at 50 Pompallier Estate Drive, Whangarei which is owned by the Operator, which offers rest home level dementia care.
- 23.1.20. **Disclosure Statement** means the written document titled the "Disclosure Statement" containing information about the Village, in accordance with the Retirement Villages Act.
- 23.1.21. **GST** means Goods and Services Tax pursuant to the Goods and Services Tax Act 1985 (as amended, updated or replaced).

- 23.1.22. **Occupation Loan** means the amount advanced by the Resident to obtain an occupation right in the Unit.
- 23.1.23. **Occupation Right** means the Licence to Occupy the Unit granted pursuant to this Agreement.
- 23.1.24. **Operator's Chattels** means the chattels belonging to us including those situated in the Unit.
- 23.1.25. **Refundable Amount** means the payment made to the Resident following termination of this Agreement, being the Occupation Loan less the Commencement Fee, Village Contribution Fee and less any other outstanding amounts due by the Resident under this Agreement.
- 23.1.26. **Registrar** means the registrar of Retirement Villages appointed under section 87 of the Act.
- 23.1.27. **Resident's Chattels** means any personal items, fittings or apparatus situated or installed in the Unit by the Resident.
- 23.1.28. **Retirement Commissioner** means the Retirement Commissioner appointed under the New Zealand Superannuation and Retirement Income Act 2001.
- 23.1.29. **Rules** means our rules for the Village, which are subject to change in accordance with this Agreement and which are available on request from us and as specified in Schedule 2.
- 23.1.30. **Service and Care Levels** means the service and care levels available from time to time.
- 23.1.31. **Service Fee** means the fee payable by you in respect of certain costs relating to your occupation of the Village and in respect of certain basic costs of operating the Village as determined by us from time to time.
- 23.1.32. **Serviced Unit** means a serviced apartment or care unit to which the Operator provides Care Services in accordance with the Service and Care Levels available from time to time.
- 23.1.33. **Statutory Supervisor** means Covenant Trustee Services Limited, or any successor or replacement.
- 23.1.34. **Termination Date** means the date your right to occupy the Unit ends in accordance with clause 13 or 14 as applicable.
- 23.1.35. **Village Contribution Fee** means the fee for the provision of the Unit to you for the term of this Occupation Right Agreement together with a right to use the communal facilities including ongoing administration, operating costs, activities and event management, general healthcare monitoring, fair wear and tear refurbishment costs and costs of compliance with any statute, regulation or other lawful obligations in respect to the Village.

23.1.36. **Working Day** means a day of the week other than:

23.1.36.1. A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Matariki and Labour Day; and

23.1.36.2. A day in the period commencing with 25 December in a year and ending with 2 January in the following year; and

23.1.36.3. If 1 January falls on a Friday, the following Monday; and

23.1.36.4. If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and

23.1.36.5. If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

23.2. **Interpretation:** In this Agreement, unless the context otherwise requires:

23.2.1. Margin headings are for convenience only and are not intended to form part of this Agreement;

23.2.2. Words implying the masculine gender shall include the feminine; and

23.2.3. Words implying the singular number shall include the plural and vice versa.

Schedule 1 – Code of residents’ rights

Services and other benefits

You have the right to services and other benefits promised to you in your Occupation Right Agreement.

Information

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

Consultation

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 you:

- Occupancy; or
- Ability to pay for the services and benefits provided.

Right to complain

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

Disputes

You have the 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

You have the right in your dealings with the Operator or other residents of the Village to involve a support person or a 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

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

Right not to be exploited

You have the right not to be exploited by the Operator, the people 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 owner's contact person is the Village Manager.

Other contact persons

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

- The Statutory Supervisor;
- The Registrar of Retirement Villages; or
- The Retirement Commissioner.

Schedule 2 – Village rules

(As at the date of this Agreement)

The Village Rules applicable from time are issued to Residents and are available on request from the Village Manager.

Schedule 3 – Care services: Service and care levels

(As at the date of this Agreement)

Serviced Apartment:

Regular Care

1. Initial and regular post-admission reviews to assess care requirements;
2. Free access to the Village's Nurse clinic;
3. Access to the Village's General Practitioner (cost of GP consultations is not included within Care Service Fee);
4. Emergency call alarm and three call bells monitored on a 24 hour basis;
5. Spritely Connect and Care package including instant communication and response tablet;
6. Care staff assistance on site at all times;
7. Participation in the Qestral TRILife wellness programme and access to all organised activities and events;
8. Access to all of the facilities in The Stables, including medical centre, library, care, movie theatre, bar, restaurant, chapel medical centre, billiards table, hairdressing salon, gym, swimming pool and spa;
9. Weekly cleaning of the Apartment;
10. Your own washing machine/dryer facilities;
11. Daily rubbish removal;
12. Morning and afternoon teas in the Café;
13. One main meal five days a week;
14. CCTV monitoring in common areas and village entrance, rates, sprinkler system, smoke alarms, building insurance, exterior repairs and maintenance, care of common areas;

Superior Care

1. All of those services included in Regular Care (except meals);
2. Spritely health monitoring system;
3. Laundry (sheets and pillowcases) changed weekly;
4. Bathroom linen changed 3 times per week;

5. General cleaning of the serviced apartment once a week;
6. Breakfast delivered to the Apartment seven days a week;
7. Assistance with zips and buttons when dressing;
8. Lunch or dinner delivered to the Apartment seven days per week;
9. Electricity and heating consumed within the unit;
10. Private phone line and internet facilities (toll calls are not included in the Care Services Fee).

Premium Care

1. All of those services included in Regular Care and Superior Care (except meal plan);
2. General care and assistance;
3. Assistance with dressing and assisting you to start the day;
4. Assistance with showering three times per week;
5. Three meals per day delivered to the Apartment, seven days a week;
6. Arranging pharmacy deliveries of medication in pre-dispensed sachets;
7. Bed made on a daily basis;
8. Personal laundry laundered three times per week;
9. Evening communication and “settle down” service.

Care Facility units:

Full rest home care

1. All those services included Regular Care, Premium Care and Superior Care;
2. Short form and long term care plan;
3. Full laundry service;
4. Regular oversight by the registered nurse and General Practitioner;
5. Coordinating and paying for appointments with the Resident’s General Practitioner. For the avoidance of doubt, costs arising from appointments with medical practitioners other than a General Practitioner are the responsibility of the Resident;
6. Supplying pharmaceuticals and medication management;
7. Night visits included as per clinical need;
8. All meals and dietary requirements met;
9. Private phone line (but not including toll charges) and internet;

10. Daily delivery of The Press;
11. Participation in the Qestral TRILife wellness programme and access to all organised activities and events; and
12. All other services included in the Admission Agreement.

Hospital Care

1. All those services included in full rest home care;
2. Hospital-grade dietary requirements catered for;
3. Greater overview by the General Practitioner and registered nurse onsite 24 hours and in charge of clinical supervision;
4. Input from medical specialists;
5. Hospital bed, aids and adaptations;
6. Administration of medication as prescribed and dispensed by a registered nurse;
7. Qualified healthcare assistants trained to hospital level care;
8. Qualified diversional therapist;
9. Allied health services including dietitian, podiatrists, physiotherapy, audiologist;
10. Palliative care management services;
11. Participation in the Qestral TRILife wellness programme and access to all organised activities and events; and
12. All other services included in the Admission Agreement.

Dementia Care Units:

Dementia Care (dementia care units only)

The Dementia Care Facility provides dementia care to Residents at rest home level only. No psychogeriatric care is provided in the Dementia Care Facility.

1. All those services included in full rest home care;
2. Dementia-grade dietary requirements catered for;
3. General Practitioner and registered nurse oversight;
4. Input from medical specialists;
5. Administration of prescribed prescription medication;
6. Qualified healthcare assistants trained to dementia level care;

7. Qualified diversional therapist;
8. Access to allied health services including dietitian, podiatrists, physiotherapy, audiologist ;
9. Access to palliative care management services;
10. All other services included in the Admission Agreement.

The Resident must select one of the Service and Care Levels as described in this Schedule applicable to their Serviced Unit.

Schedule 4 – Operator’s chattels

(As at the date of this Agreement)

Care unit only

1. Drapes and window coverings
2. King single bed
3. Bedside cabinet
4. Kitchenette cabinetry
5. Guest chair
6. Smart TV
7. Outside furniture