

# Occupation Right Agreement

## St Lukes Village

Unit Number: \_\_\_\_\_

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

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

# Occupation Right Agreement St Lukes Village

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# Part A

**THIS AGREEMENT comprises parts A, B and C**

## **1 Introduction**

- 1.1 We own a retirement village known as St Lukes Village at 196 Vigor Brown St, Napier South. We provide accommodation for people generally aged 65 or over.
- 1.2 You have applied to become a resident of the Village and the Residential Unit and we have accepted your application.
- 1.3 This Agreement sets out the terms and conditions that apply to your Occupation Right, including our obligations to you, and your obligations to us.
- 1.4 The Occupation Right granted to you by this Agreement is a licence to occupy your Residential Unit.

## **2 Our Agreements**

- 1.5 We and you agree as follows:
  - (a) We grant to you the Occupation Right in accordance with clauses 6 – 9.
  - (b) You agree to make the payments set out in clauses 10– 21.
  - (c) We agree to abide by our consultation and notice obligations set out in clauses 22 and 23.
  - (d) You agree to abide by your general obligations set out in clauses 24 –37.
  - (e) We agree to abide by our general obligations set out in clauses 38 –46.
  - (f) We both agree to abide by the general obligations set out in clauses 47 –56.
  - (g) On transfer of the Residential Unit, the provisions of clauses 57 – 59 will apply.
  - (h) On termination of this Agreement, the provisions of clauses 60 – 66 will apply.
  - (i) We both agree to abide by the Code of Residents' Rights set out in Schedule 3.
  - (j) We both agree to abide by the special terms (if any) set out in Schedule
- 1.6 You confirm that you have received a copy of:
  - (a) the Disclosure Statement;
  - (b) the Code of Residents' Rights;
  - (c) the Code of Practice; and
  - (d) this Agreement
- 1.7 You confirm that you have received independent legal advice before signing this Agreement, as certified below.



**Certificate of non-revocation of power of attorney**

I, \_\_\_\_\_ of \_\_\_\_\_, certify:

1. That by deed dated \_\_\_\_\_ appointed me his/her/its attorney
2. That I have not received notice of any event revoking the power of attorney.

Signed at: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

## Certificate of non-revocation and non-suspension of enduring power of attorney

1. I, \_\_\_\_\_ of \_\_\_\_\_, certify:

- On \_\_\_\_\_ 20\_\_\_\_ granted to me an enduring power of attorney to act in relation to his/her property.

or

- On \_\_\_\_\_ 20\_\_\_\_ granted to me an enduring power of attorney to act in relation to his/her personal care and welfare.

or

- On \_\_\_\_\_ 20\_\_\_\_ granted to me an enduring power of attorney to act in relation to his/her personal care and welfare and his/her property.

2. I have not received notice of an event\* revoking my authority to act under the enduring power of attorney.

3. I have not received written notice from \_\_\_\_\_ suspending my authority to act under the enduring power of attorney.

Signed at: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### Notes

\*Definition of an event revoking the power of attorney

An event revoking the power of attorney means any of the following events in which the enduring power of attorney ceases to have effect:

- the donor revokes the power while mentally capable of doing so; or
- the donor dies; or
- the attorney gives notice of disclaimer in accordance with section 104 of the Protection of Personal and Property Rights 1988; or
- the attorney dies, or is adjudged bankrupt, or becomes a patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 detained in a hospital under that Act, or becomes subject to a personal order under Part 1 of the Protection of Personal and Property Rights Act 1988 or a property order under Part 3 of the Protection of Personal and Property Rights Act 1988, or otherwise becomes incapable of acting; or
- in the case of an enduring power of attorney that appoints more than one attorney with joint but not several authority, one of the attorneys dies, or is adjudged bankrupt, or becomes a patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) 1992 detained in a hospital under that Act, or becomes subject to a personal order under Part 1 of the Protection of Personal and Property Rights 1988, or a property order under Part 3 of the Protection of Personal and Property Rights 1988, or otherwise becomes incapable of acting; or
- a Court revokes the appointment of the attorney pursuant to section 105 of the Protection of Personal and Property Rights 1988.

**Certificate by lawyer advising intending resident**

*Section 27/(5), Retirement Villages Act 2003*

Name of village: St Lukes Village

Registration number of village:2072832

I, \_\_\_\_\_,  
certify that –

- (a) I explained to \_\_\_\_\_ the general effect of the attached agreement and its implications before he or she 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:

Name:

Street address:

Postal address:

Email address:

Telephone number:

Fax number (optional):

# Part B

## IMPORTANT INFORMATION

### 3 Occupancy Right Agreement Details

#### 3.1 Parties

Operator **Riversaint Villages Limited**, described in this Agreement as us, we or the Operator and including our successors and assigns.

Resident: \_\_\_\_\_, described in this Agreement as you or the Resident.

#### 3.2 Residential Unit

Dwelling:

Carpark(s): N/A or any other carpark you have been allocated by the Operator pursuant to clause 8.4.

#### 3.3 Commencement and Termination of the Occupation Right.

The Commencement Date is: \_\_\_\_\_

Your right to occupy the Residential Unit ends on the Termination Date.

#### 3.4 Entry Payment and Exit Payment

On or before the Commencement Date you will pay us an Entry Payment of \$\_\_\_\_\_ (clause 10), of which \$\_\_\_\_\_ will be the Initial Deposit paid on application.

Your Entry Payment is a payment made by you on entering this Agreement and in exchange for the right to receive the Exit Payment as set out in this clause 3.4 and clause 63.

On the Exit Payment Date, we will pay you the Exit Payment (clause 63.1), comprising an amount equal to the Entry Payment less:

##### 3.4.1 Your Village Contribution;

Calculated at the rate of 7% of the Entry Payment on the Commencement Date and 5% of the Entry Payment for each year from the Commencement Date (adjusted proportionately on a per day basis in the case of any incomplete year) but not exceeding 27% of the Entry Payment.

Calculation of the Village Contribution will stop the earlier of:

- The expiry of four years;
- The Termination Date.

Calculation of the Village Contribution will also stop in the event of Damage or Destruction of the Residential Unit as provided by clause 50, from the date on which the damage event has rendered the Residential Unit uninhabitable. If we offer to provide you with temporary accommodation, then calculation of the Village Contribution will restart and cease at the earlier of:

- The Termination Date;
- The expiry of four years' occupation by the Resident of the Residential Unit (which for the purposes of this provision is deemed to include any temporary accommodation),

calculated from the Commencement Date but excluding any period during which calculation of the Village Contribution is suspended in accordance with this provision.

If you do not accept our offer to transfer you to another unit following damage or destruction to the Residential Unit in accordance with clause 50, you are deemed to have terminated this Agreement. The calculation of the Village Contribution will therefore stop the earlier of:

- The expiry of four years;
- The Termination Date.

Your Village Contribution is a payment made by you as a contribution to our general costs incurred in the supply of accommodation, Community Facilities and related services at the Village of the life of this Agreement (.

3.4.2 Any balance of your payments or other amounts you owe to us.

### 3.5 Further Payments

In addition to the Entry Payment and Village Contribution, you will also make the following payments during the term of this Occupation Right:

Your Village Outgoings Payment is: \$\_\_\_\_\_monthly (clause 12). (This amount is subject to change in accordance with clause 12.3.)

Your Village Outgoings Payment is payable on The first day of each month in advance. However, if the Commencement Date is not the first day of a month, then on the Commencement Date you will pay us a broken period payment for the period of occupancy from the Commencement Date until the end of the month, plus the payment due on the first of the month following the Commencement Date.

Your Village Outgoings Payment is calculated by: Dividing the total amount of the Village Outgoings by the aggregate number of completed units.

Your Village Outgoings Payment ceases to be payable on: Subject to clauses 12.6 and 66, your obligation to pay the Village Outgoings Payment beyond the Exit Payment Date.

The Village Outgoings Payment will also cease to be payable during any period between the date on which the Residential Unit is destroyed or damaged and deemed uninhabitable, and the date from which we offer to provide you with temporary accommodation refer to clause 50).

Any additional payments or amounts payable by you to us: (e.g. Additional Services payments (clause 13), charges for utility services (clause 15), Default Interest (clause 20), health service charges (clause 16), legal costs (clause 17), money paid or costs incurred as a result of your default (clause 31),, our costs of maintaining the interior of the Residential Unit (clause 48.5).

## 4 Right of Cancellation

4.1 After you sign this Agreement you may cancel this Agreement, without having to give any reason. You can do this by notice given not later than 15 Working Days after you sign this Agreement.

- 4.2 Where this Agreement relates to a Residential Unit which is to be built or completed after the date you sign this Agreement, then, if the Residential Unit is not finished within 6 months after the proposed date for completion, you may cancel this Agreement. You can do this by giving written notice to us at any time after the expiry of that 6-month period.
- 4.3 Your notice of cancellation must be in writing and must clearly indicate your intention to cancel this Agreement.
- 4.4 The notice of cancellation must be given to
- (a) us; or
  - (b) the real estate agent or other person who dealt with you on our behalf when you signed this Agreement (unless we have notified you that such person has ceased to act on our behalf);
  - (c) any other person who we notified you is authorised to receive communications on our behalf.
- 4.5 If you cancel this Agreement you are entitled to a refund of the Deposit (and any other payments made by you for the grant of the Occupation Right). This refund will be without deduction (other than tax) and will include any interest earned in the Deposit Holder's account. You are entitled to receive this refund within 10 Working Days after your request.
- 4.6 If you cancel this Agreement we are entitled to reasonable compensation for services provided to you under this Agreement, and for damage to any residential unit or facilities in the Village for which you are responsible.

# Part C

## Definitions

We have produced this Agreement as a plain English document, and using as little legal terminology as possible, consistent with properly recording the rights and obligations of both parties. To assist you to be able to read and understand the Agreement, some terms used in the Agreement have been defined. These terms, and the full meanings they have in the Agreement, are set out in clause 5. Wherever a defined term is used in this Agreement it is shown with a capitalised first letter, so that you will be aware that this is a term which, for legal purposes, has a fuller meaning than the term on its own may suggest.

## 5 Definitions

Throughout this Agreement, the following terms with capitalised first letters have the given full meanings:

- 5.1 “Additional Services” means the services we make available from time to time for you to use at your discretion, subject to change in accordance with this Agreement.
- 5.2 “Agreement” means parts A, B and C of this document.
- 5.3 “Code of Practice” means at all times the code of practice approved in accordance with s89(1) of the Retirement Villages Act such as may be in force from time to time.
- 5.4 “Code of Residents' Rights” means the code of residents' rights which is applicable from time to time pursuant to the Retirement Villages Act.
- 5.5 “Consult/Consultation” means to invite the parties to comment and provide advice on a given matter, so that the comments or advice can be taken into account when making a decision.
- 5.6 “Community Facilities” means the common areas and community facilities of the Village provided by the Operator from time to time.
- 5.7 “Deed of Supervision” means the deed that we have entered into appointing the Statutory Supervisor as required by the Retirement Villages Act.
- 5.8 “Default Interest Rate” means 4% per annum above our bank overdraft interest rate calculated on a daily basis unless a higher rate is specified.
- 5.9 “Deposit Holder” means either the Statutory Supervisor or a lawyer nominated by both the Resident and the Operator.
- 5.10 “Disclosure Statement” means the written document titled the disclosure statement containing information about this Village, in accordance with the Retirement Villages Act.
- 5.11 “Fair Wear and Tear” means something that occurs through normal use or is the normal change that takes place with the aging of the property, and may include but is not limited to, any chattels provided by the Operator such as curtains and drapes, fixtures and fittings. Fair Wear and Tear does not include deterioration attributable to smoking, incontinence and the use of mobility aids.
- 5.12 “Operator's Chattels” means the chattels belonging to us set out in Schedule 4.
- 5.13 “Registrar” means the Registrar of Retirement Villages appointed under the Retirement Villages Act 2003.
- 5.14 “Resident's Chattels” means any personal items installed in the Residential Unit by the Resident.

- 5.15 "Retirement Commissioner" means the Retirement Commissioner appointed pursuant to the Crown Entities Act and the New Zealand Superannuation and the Retirement Income Act 1993.
- 5.16 "Retirement Villages Act" means the Retirement Villages Act 2003 as updated, amended or replaced from time to time.
- 5.17 "Rules" means the Operator's rules for the Village, which are subject to change in accordance with this Agreement, and which, as at the date of this Agreement are set out in Schedule 2.
- 5.18 "Statutory Supervisor" means Covenant Trustee Services Limited or its lawful successors or assigns.
- 5.19 "Termination Date" has the meaning set out in clause 60.9.
- 5.20 "Village" means when referred to in this Agreement, the complex of (currently) 13 units located within and forming part of the complex known as the St Lukes Village situated at 196 Vigor Brown St, Napier South.
- 5.21 "Village Outgoings" means the outgoings of the Village set out in Schedule 1, subject to change in accordance with this Agreement.
- 5.22 "Village Outgoings Payment" means the payment you made to us stated in clause 3.5 in Part B of this Agreement and as provided for in clause 12 in Part C.
- 5.23 "Working Day" means any 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;
  - (b) A day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
  - (c) If 1 January falls on a Friday, the following Monday;
  - (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
  - (e) If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

A Working Day will be deemed to commence at 9am and end at 5pm. Any act done pursuant to this Agreement by a party after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed to have been done at 9am on the next succeeding Working Day.

## **OCCUPANCY RIGHTS**

### **6 Grant of Occupation Right**

- 6.1 We grant to you, and you accept, the Occupation Right for your Residential Unit, under this Agreement, and you agree to comply with the terms of this Agreement.
- 6.2 The rights we are granting to you in this Agreement are personal contractual rights only. Nothing in this Agreement gives you any ownership right or interest in the Village or the Residential Unit. This Agreement does not give you any tenancy or leasehold rights to the Residential Unit.
- 6.3 You agree not to require registration of the Occupation Right and not to caveat or otherwise encumber our title to the Village.
- 6.4 You are entitled to take up occupation of the Residential Unit on the Commencement Date.
- 6.5 You do not have the right to sell or market your Residential Unit.

### **7 Joint Owners**

- 7.1 If the Occupation Right was initially granted to two of you, then you both will hold the benefits and have obligations under the Occupation Right jointly. Upon the death of one of you, the interest of that person will automatically transfer to the survivor of you, and the survivor will be entitled to a transfer of the Occupation Right into his or her sole name.
- 7.2 No transfer into the name of your personal representative (following death) will be allowed.
- 7.3 If one of you, holding the Occupation Right jointly with the other, ceases to reside permanently in the Residential Unit for any reason, then the joint interests of that Resident under the Occupation Right must be transferred to the remaining permanent Resident.

### **8 Use of Residential Unit, Operator's Chattels and Carpark(s)**

- 8.1 You are entitled to reasonable exclusive use and occupation of the Residential Unit, free from our unnecessary interruption.
- 8.2 We will provide and install the Operator's Chattels into your Residential Unit.
- 8.3 You are entitled to reasonable exclusive use of the Operator's Chattels free from our unnecessary interruption.
- 8.4 Except where you have a right to occupy a specific Carpark(s) in accordance with clause 3.2 of this Agreement, you are not entitled to exclusive use and occupation of the Carpark(s) and we have the right to relocate you to other allocated carparks at any time.

### **9 Use of Community Facilities**

- 9.1 You are entitled to enjoy the Community Facilities. Your rights to enjoy the Community Facilities are not exclusive and must be exercised in common with all other residents and any other persons to whom we may, in our discretion, grant similar rights at any time.

## **YOUR PAYMENTS**

### **10 Your Entry Payment**

- 10.1 On or before the Commencement Date you must pay us the Entry Payment.

10.2 You will not be entitled to exercise rights of occupancy of the Residential Unit or other benefits under this Agreement until you have paid the Entry Payment in full, even though this Agreement may have been completed and the Commencement Date may have arrived.

## **11 Your Village Contribution**

11.1 You agree to pay us the Village Contribution in the manner set out in Part B.

## **12 Your Village Outgoings Payment**

12.1 You agree to pay us in each year, or part year, a proportion of the cost of the Village Outgoings.

12.2 You agree to pay us the Village Outgoings Payment in the manner set out in Part B.

12.3 We are entitled to change the Village Outgoings Payment at any time in accordance with changes in the outgoings of the Village or where we consider an adjustment is required to achieve fairness. Such change to the Village Outgoings Payment will take effect no earlier than one calendar month following our notice.

12.4 Your Village Outgoings Payment will not include any outgoings of the Village payable by us in respect of:

- (a) any part of the Village which is under construction;
- (b) any construction works;
- (c) any further development of the Village.

12.5 Your Village Outgoings Payment will reduce by 50% if no new Occupation Right Agreement has been entered into for your Residential Unit six months after the Termination Date.

12.6 Your obligation to pay us the Village Outgoings Payment will cease in the manner set out in clause 3.5 of Part B. However, it will also cease to be payable during any period between the date on which the Residential Unit is destroyed or damaged and deemed uninhabitable, and the date from which we offer to provide you with temporary accommodation (refer to clause 50).

## **13 Your Additional Services**

13.1 In addition to any other payment under this Agreement, you will pay us for any Additional Services provided at your request, being services not included in the Village Outgoings.

13.2 We will invoice you for any Additional Services at the end of each month, and you must pay us no later than the 20th of the month following date of invoice.

## **14 Your Automatic Payment Authority**

14.1 You agree to sign and deliver to us an automatic bank payment authority, directing your bank to pay each Village Outgoings Payment as it falls due, by direct credit from your bank account to ours.

14.2 Subject to our consultation obligations as may be applicable we will give you 10 Working Days written notice of the amount of the proposed Village Outgoings Payment and of any change therein; and

14.3 Any Village Outgoing that we have not taken into account in determining the instalments or which has not been paid by automatic payment, will be payable by you on demand.

## **15 Your Utility Charges**

15.1 Where your Residential Unit is separately metered for utility services, including (without limitation) electricity, gas, telephone/tolls, and water charges, you shall be solely liable to pay all charges for

utilities consumed in respect of your Residential Unit and we will have no responsibility to meet any of these charges on your behalf.

- 15.2 Where your Residential Unit is not separately metered for utility services, including (without limitation) electricity, gas, telephone/tolls and water charges, you shall pay a fair proportion of the charges for utilities consumed in respect of your Residential Unit. We will invoice you at the end of each month for charges falling due under this clause 15.2.
- 15.3 If we are able to purchase in bulk any of these utility services, we will supply them to you and pass on your proportionate share of any savings.
- 15.4 If we provide you with any utility services directly, we will invoice you for such services at the end of each month and you must pay us no later than the 20th of the month following date of invoice.
- 15.5 You will continue to be solely liable to pay all charges for utilities consumed in respect of your Residential Unit following the Termination Date. Your liability to pay all charges for utilities consumed in respect of your Residential Unit will cease on:
- (a) the commencement date of a new occupation right agreement, entered into by us and a new resident, in respect of the Residential Unit; or
  - (b) on the earlier occupation of your vacated Residential Unit by a new resident.

## **16 Your Health Service Charges**

- 16.1 You will pay on demand all charges for the provision of medical and pharmaceutical services incurred on your behalf.

## **17 Your Legal and Other Costs**

- 17.1 You must pay all your own legal and other costs associated with your application for and entry into this Agreement.
- 17.2 You are required to pay also our reasonable costs incurred in the preparation, execution and termination of this Agreement and any costs incurred by us that are incidental to the enforcement or the attempted enforcement of our rights, remedies and powers under this Agreement.

## **18 Termination Payments**

- 18.1 There are certain payments that each of us agree to make on or around the Termination Date as set out in Part B.

## **19 Your Other Payments**

- 19.1 In addition to the regular payment set out in clause 12, you may also be required to make other payments to us as set out in Part B.

## **20 Default Interest**

- 20.1 You will duly and promptly pay us each and every payment required to be made in this Agreement. If you fail to make any such payment for 5 Working Days after the payment is due, you will pay interest at the Default Interest Rate on the payment, from the due date until the day we receive payment.
- 20.2 Our entitlement to charge default interest under this clause does not limit or replace any other rights available to us in respect of your default.

## **21 GST Inclusive**

- 21.1 All monetary amounts set out in this Agreement include GST (if any).

- 21.2 If the status of the Village and the services provided is altered in any way in terms of our liability for the payment of Goods and Services Tax, we reserve the right to review and adjust the amounts of any one or more of the payments provided for under this Agreement.

## **OUR CONSULTATION AND NOTICE OBLIGATIONS**

### **22 We Will Consult With You**

22.1 We will consult with you and take into account your views about any proposed changes in:

- (a) the services and benefits we provide;
- (b) your payments

that will or might have a material impact on your occupancy or your ability to pay for the services and benefits we provide.

22.2 We will also consult with you regarding:

- (a) appointing a new entity as the manager (but not the employment of new staff into managerial positions); and
- (b) any decision to sell or dispose of our interest in the Village (in which case the purchasers and we will each consult with you); such consultation shall be at a time directed by the Statutory Supervisor.

### **23 We Will Notify You**

23.1 We will notify you about any matter that would or might have a material impact on:

- (a) your Occupation Right, or your rights to quiet enjoyment;
- (b) your payments in consideration of your Occupation Right or your right to services or and facilities within the Village.

23.2 We will notify you regarding:

- (a) any proposal by us to develop or redevelop any part of the land on which the Village is situated or to acquire any nearby land for development;
- (b) any notice we receive from the Registrar suspending the registration of the Village;
- (c) any request by us to the Registrar for cancellation of the registration of the Village;
- (d) any decision by the Registrar to exempt us from the requirement to appoint a Statutory Supervisor;
- (e) the appointment of a new Statutory Supervisor;
- (f) any decision by the Registrar to exempt us from the requirement to comply with a provision of the Code of Practice;
- (g) any proposal by us to increase our borrowings or liabilities secured over any part of the Village;
- (h) any decision by an insurer to refuse to insure the Village or any part of it;
- (i) any actual or threatened legal proceedings against the Village that affect your interests;

- (j) any actual or threatened action by a creditor, mortgagee or charge holder in respect of the Village, against us, in respect of that person's security or any sum over \$1,000;
- (k) any action by a creditor to put us or the Village in receivership or liquidation.

## **YOUR GENERAL OBLIGATIONS**

### **24 Permitted Use**

- 24.1 You will use the Residential Unit only for your own personal use and occupation as a Residential Unit.
- 24.2 You may have friends or relatives to stay with you in the Residential Unit for periods not exceeding three weeks at any one time. However, we reserve the right to curtail any such arrangement where we consider it is interfering with the quiet enjoyment of other residents in the Village.
- 24.3 We may refuse to permit you to bring to the Residential Unit or the Village any item of furniture, musical instrument or electronic or electrical equipment. We may require you to remove such item, despite any previous approval. You must comply with such refusal or requirement.
- 24.4 You are not to keep any pet or animal in the Village without our prior approval which shall be at our sole discretion. Any approval we give under this clause may be withdrawn by us at any time.
- 24.5 You are not to erect or place on or outside any Residential Unit any radio or television aerial or antennae, nor install audible burglar alarms, without our prior written consent. We may require you to remove such item, despite any previous approval. You must comply with such refusal or requirement.
- 24.6 You are not to bring into or keep in the Residential Unit any goods or substances of a highly combustible nature or do or permit to be done anything (including the unauthorised use of light or power fittings) which may render an increased premium payable for any insurance cover on any part of the Village or which may make void or voidable any such insurance.

### **25 Restrictions on Transfer**

- 25.1 You are not entitled to transfer this Agreement or any legal or equitable interest you may have in the Residential Unit, borrow or give any mortgage or charge against your interest in this Agreement or your Exit Payment entitlement, sublet or allow any person to have possession or occupancy of the Residential Unit.

### **26 Care of Residential Unit and Common Facilities**

- 26.1 Unless we are obliged to provide such services under clause 40.1, you will at all times:
  - (a) (subject to the provisions in clause 48 "Maintenance of Interior of Residential Unit") keep the interior of your Residential Unit together with the Operator's Chattels in a proper, tidy, clean, sanitary and (where appropriate) working order and condition; and
  - (b) use the Community Facilities in such a manner as to keep them in a proper, tidy, clean, sanitary and (where appropriate) in working order and condition.
- 26.2 You are not to do anything or allow anything within your control to occur, which could cause any blockage of storm-water drains or sewage outlets servicing the Residential Unit or the Village.
- 26.3 You are not to deposit rubbish other than in approved receptacles, nor defile any part of the land or buildings on or in the Village.
- 26.4 You are not to leave or place in the pathways, corridors, driveways or parking area or in the grounds or communal facilities of the Village, any receptacles or obstructions whatsoever.

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

## **27 No Alterations Without Prior Written Consent**

27.1 You must not make any alterations or additions to the Residential Unit, or modify the Operator's Chattels, or fit television aerials, radio aerials or other appurtenances to the Residential Unit without our prior written consent. We can give or withhold this at our sole discretion.

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

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

27.4 We reserve the right, on termination of your Occupation Right to reinstate your Residential Unit to the condition it was in prior to the alterations being made and the cost of such reinstatement will be advised to you and paid by you on termination of this Agreement.

## **28 Provision of Services**

28.1 You are not entitled to engage the services of any other person to provide services to you at the Village except with our prior written approval, which will not be unreasonably withheld where the service requested by you is one which we do not provide.

## **29 Insurance of Your Belongings (Including Car)**

29.1 We recommend that you maintain your own insurance policy to cover risks of loss or damage to your own possessions in the Residential Unit. You may wish to also include in your insurance policy provision for temporary accommodation and facilities in the event of damage or destruction of the Residential Unit.

29.2 You should also maintain cover for your motor vehicle(s) under a comprehensive motor vehicle insurance policy.

29.3 Irrespective of cause, we will have no responsibility, under any circumstances, for loss or damage to any of your property or vehicles.

## **30 Compliance with rules**

30.1 You must, at all times, observe and comply with the Rules, and not do anything in contravention of the Rules.

30.2 You are to ensure that all guests or visitors you invite into the Village are aware of the Rules and comply with those Rules in all respects.

30.3 We are entitled from time to time to establish, review and amend the Rules at our sole discretion, provided that any establishment, review or amendment to the Rules does not affect or detract from your existing rights under this Agreement.

30.4 If we make changes to the Rules, we will first consult the Village residents and notify you of the changes before you are obliged to observe them.

30.5 If there is any inconsistency between this Agreement and the Rules, the provisions of this Agreement will override the Rules.

### **31 Indemnification of Owner**

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

### **32 No Nuisance**

- 32.1 You are not to do anything or allow anything to be done, within your control, which is or could be a nuisance or annoyance to other Residents or to us.

### **33 Parking**

- 33.1 You are to park only in the Carpark(s).
- 33.2 You are not to allow any guest or visitor to park a vehicle anywhere in the Village other than in the designated areas set aside for guest or visitor parking.

### **34 Enduring Powers of Attorney**

- 34.1 On or before the Commencement Date you must give us a copy of properly executed enduring powers of attorney given by you in respect of your property and in respect of your personal care and welfare. These powers of attorney must remain valid in the case of mental incapacity. You must also keep us informed of the current contact details of the attorney.

### **35 Privacy Authorisation**

- 35.1 In order to check your continued suitability to occupy the Residential Unit and for Village administration purposes, we will need to collect and hold relevant personal information about you and in particular relating to your physical or mental health.
- 35.2 You authorise:
- (a) 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; and
  - (b) any agency to disclose such relevant information, and in particular, any health agency to disclose information relating to your health to us.
- 35.3 During normal business hours, you have the right to access your personal information held by us and to require us to correct any errors in that personal information.

### **36 Representations**

- 36.1 If you have supplied us with reports and/or information in connection with your application for the Occupation Right, we have agreed to enter into this Agreement with you on the basis of such reports/information.
- 36.2 All statements made by you in such reports/information must be correct.

### **37 Will and next of kin**

- 37.1 You will provide for the final disposal of all property and possessions and the payment of funeral

expenses by the execution of a valid last will and testament on or before the Commencement Date.

- 37.2 You will keep us informed of the name, address and telephone number of your legal personal representative or next of kin.

## **OUR GENERAL OBLIGATIONS**

### **38 Management of the Village**

- 38.1 We must use reasonable skill and care in ensuring that the Village's affairs are conducted properly and efficiently, and in performing our powers, functions and duties.
- 38.2 We will appoint a manager to undertake the day-to-day management of the Village.

### **39 Code of Practice**

- 39.1 We will meet all requirements of any currently applicable Code of Practice (subject to any exemption we may obtain) particularly in respect of the following matters:
- (a) Staffing of the Village;
  - (b) The safety and personal security of residents;
  - (c) Fire protection and emergency management;
  - (d) The transfer of residents within the Village (see clauses 57 to 59);
  - (e) Meetings of residents with us (see clause 45);
  - (f) A complaints facility (see clause 53);
  - (g) Accounts;
  - (h) Maintenance and upgrading (see clause 40.1);
  - (i) Termination of this Agreement (see clause 60);
  - (j) Communication;

and we acknowledge that those requirements shall be binding upon us in the same way as if they were set out in this section "Our General Obligations".

- 39.2 If there is no currently applicable Code of Practice, we will comply with the operating standards set by any organisation of which we are a member.

### **40 Provision of Utilities and Maintenance of Village**

- 40.1 We will:
- (a) supply the Residential Unit with standard connections for water, telephone, television, electricity and/or gas.
  - (b) maintain and keep in good and respectable tidy operational order and condition the exterior of your Residential Unit and its surrounds, the Community Facilities, pathways and grounds surrounding the buildings including the gardens and trees and shrubs.
  - (c) (Subject to your obligations under clause 26 "Care of Residential Unit and Common Facilities") maintain and keep maintained in good, clean, and tidy repair, order and condition all buildings and carpark areas in the Village.
  - (d) make and adhere to a long-term plan for maintenance and refurbishment of the Village and its Facilities.

40.2 We will not be responsible for any failure in the provision or maintenance of utility services, such as electricity, gas, telephones, tolls and water for any reason at all.

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

#### **41 Insurance of Village**

41.1 We will, in respect of the Village as a whole, including the Residential Unit and Operator's Chattels, arrange and maintain a comprehensive insurance policy for its full replacement value to the satisfaction of the Statutory Supervisor.

41.2 The policy must cover the Village for usual risks including damage or destruction by fire and earthquake and covering any other insurable risk which we may consider desirable, in our interests or in the interests of residents. We must update the insured value as the policy may require.

41.3 If for any reason we are unable to obtain full replacement cover, we must inform you. A list of relevant insurance policies that we hold is set out in the Disclosure Statement and a copy of the certificate of currency is available on request.

41.4 We may require you to pay the insurance excess payable in relation to any insurance claim made as a result of any damage or destruction of the Residential Unit, or any other damage caused by you or your invitees.

#### **42 Provision of Care Services and Additional Services**

42.1 The Residential Unit to which this Agreement relates is an independent living unit and no care services are offered as part of this agreement.

42.2 We will provide you with the Additional Services that we may agree with you from time to time.

#### **43 Payment of Village Outgoings**

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

#### **44 Provision of Financial Statements**

44.1 We must give you on request and free of charge a copy of the most recent audited financial statements prepared by us under section 35B of the Retirement Villages Act or under an Act referred to in section 35F of the Retirement Villages Act, and a copy of the most recent audited financial statements prepared by us under section 35C of the Retirement Villages Act (if any).

This obligation applies until you have been paid your Exit Payment in accordance with clause 63 of this Agreement.

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

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

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

#### **45 Meetings With Residents**

We are required to call the following meetings of residents of the Village:

- 45.1 A meeting to receive the financial statements of the Operator for the most recently completed financial year, such meeting to be held within six months after the end of the financial year to which those statements apply.
- 45.2 A meeting for the purpose of giving to the Statutory Supervisor, the Residents' opinions or directions relating to the exercise of any of the Statutory Supervisor's powers, such meeting to be held if requested by the Statutory Supervisor or by at least 10% of the Residents of the Village.
- 45.3 We must provide you with written notice of all such meetings at least 10 (ten) Working Days before the meeting is held.
- 45.4 The meetings must be chaired by a person appointed by the Statutory Supervisor or in the absence of any such appointment, a person appointed by the majority of the Residents of the Village who are at the meeting.
- 45.5 We are required to give to you at the meeting, either orally or in writing, such information relating to the affairs of the Village as has been requested by a Resident of the Village with reasonable notice.

#### **46 Statutory Supervisor**

- 46.1 If the Statutory Supervisor retires or his appointment is otherwise terminated, we will (subject to any approval required by law) appoint another person or corporation to be the Statutory Supervisor of the Village.
- 46.2 Subject to the operation of law, the position of the Statutory Supervisor will not be vacated until:
  - (a) our appointment of a new Statutory Supervisor; and
  - (b) that new Statutory Supervisor's acceptance of its appointment; and
  - (c) the execution by that new Statutory Supervisor of a Deed of Supervision whereby it accedes to the duties and powers of the Statutory Supervisor under that Deed.

## **GENERAL OBLIGATIONS OF BOTH OF US**

### **47 Changes to Village Facilities**

- 47.1 We are entitled periodically to provide additional buildings, areas or amenities as part of the Community Facilities, or to remove buildings, areas or amenities from the Community Facilities permanently or temporarily.
- 47.2 Our ongoing costs and expenses of providing and maintaining the Community Facilities fall within the Village Outgoings and are met by residents. We must reply to all non-urgent maintenance requests within five working days and give you an expected timeframe for the maintenance to be done. We will tell you in writing, the name and contact details of a person to contact about minor repairs and maintenance requests.

### **48 Maintenance of Interior of Residential Unit**

- 48.1 You will replace at your cost all mirrors, lightshades, light bulbs, power elements, automatic garage door openers and plumbing and electrical fittings in the Residential Unit as and when they wear out or are broken or become unserviceable. The replacement items must be of at least the same quality and power as those installed at the Commencement Date.
- 48.2 You will give us prompt notice of any defect in or want of repair of the Residential Unit or the Operator's Chattels of which you are aware.
- 48.3 We will make all necessary arrangements for any repairs, maintenance or replacement
- (a) that you notify us of in accordance with clause 48.2;
  - (b) that we think are necessary or desirable after inspecting the Residential Unit whether or not you have notified us of them in accordance with clause 48.2,
- to be carried out as soon as reasonably practicable.
- 48.4 We will consult you about any repairs, maintenance or replacement required.
- 48.5 We will invoice you for the costs of such repairs, maintenance or replacement for the Residential Unit at the end of each month and you must pay us no later than the 20th of the month following date of invoice. (Where the Residential Unit is new, we will ensure that the benefit of any warranties is taken into account). We will also invoice you for the costs of such repairs, maintenance or replacement for the Operator's Chattels where the need for such work has arisen from your deliberate or negligent actions.
- 48.6 We will not be liable for any loss or inconvenience suffered by you arising from any defect or want of repair to the Residential Unit or the Operator's Chattels unless you have advised us in writing of any such defect or want of repair and we have failed within a reasonable time to take reasonable steps to repair and make good the defect or want of repair.

### **49 Operator's Right to Enter Residential Unit**

- 49.1 You agree to permit us at all reasonable times to enter the Residential Unit for the purpose of inspecting the Residential Unit, giving care and assistance to you and carrying out any necessary or (in our opinion) desirable repairs or alterations. In doing so we will cause as little disturbance as possible to you.
- 49.2 Wherever practicable we will give you 24 hours' prior written notice of our intention to enter the Residential Unit in accordance with clause 49.1.
- 49.3 In cases of emergencies, the requirement of prior written notice may be waived.

## **50 Damage to Residential Unit or Village**

- 50.1 If the Residential Unit is damaged or destroyed by fire, earthquake, storm, enemy action, inevitable accident or other risk against which we are insured, then we will repair or replace the Residential Unit as soon as practicable. In some circumstances we may require you to meet any insurance excess applicable to the repair or reinstatement.
- 50.2 We will repair or replace the Residential Unit to a design and standard we consider equal to or similar to the standard of the Residential Unit prior to its damage or destruction.
- 50.3 If the Residential Unit is uninhabitable we will endeavor to provide you with alternative accommodation within the Village (and continued use of the Facilities in the Village) as follows:
- (a) We will provide alternative accommodation to you as soon as it becomes available and for a period of time until the damaged Residential Unit has been repaired or replaced and is ready for you to move back in.
  - (b) The cost of any alternative accommodation will be no greater cost than what you are then currently paying.
  - (c) If there is a delay in the availability of alternative accommodation, your obligations to pay the Village Outgoings Payment, and the calculation of the Village Contribution will temporarily cease during the period from when the Residential Unit is damaged or destroyed until the commencement of your occupation in alternative accommodation provided by us.
- 50.4 If the Residential Unit is damaged or destroyed or a substantial part of the Village is damaged or destroyed, even if the Residential Unit is not damaged, we will undertake a preliminary investigation to establish whether it is practicable to repair or replace that part of the Village or Residential Unit as soon as reasonably possible.
- 50.5 We will, during our investigation, consult with and obtain reports including (without limitation) any engineering, architectural, geotechnical, quantity surveying, insurance, resource management, legal and financial reports that we consider reasonably necessary in the circumstances.
- 50.6 We will, within 20 working days of receiving such reports consult with you to decide whether it is practicable for us to undertake repair and or replacement of the Residential Unit or Village.
- 50.7 Within 40 working days of our consultation with you we will follow up with you in writing of our decision on whether we will or will not repair or replace of the damage to the Residential Unit or Village.
- 50.8 We may not be able to repair or replace the Residential Unit or Village for the following reasons:
- (a) such repair may be impracticable; or
  - (b) the consent of any necessary authority to such repair is likely to be refused.
- 50.9 If we decide not to repair or replace the Residential Unit or Village then this Agreement is terminated in accordance with clause 60 of this Agreement. We may in our sole discretion offer to transfer you to another unit within the Village whether pre-existing or yet to be built.

### **Transfer following damage or destruction**

- 50.10 If following damage or destruction of the Residential Unit we elect to offer you the option to transfer to another unit, the following will apply:
- (a) It will be in our sole discretion to offer you the option to transfer. Before deciding whether to make a Transfer Offer to you we will consider (without limitation or obligation) whether or not there is a suitable residential unit available, whether or not suitable care is available (as may be required), whether or not you are assessed as suitable for the available care and whether or not we are disadvantaged in any way by the move.

- (b) The Transfer Offer will:
  - (i) Be included in our written decision as to whether or not to repair or replace the Residential Unit or Village.
  - (ii) Be in respect of another unit (“the Replacement Unit”) either pre-existing or yet to be constructed in the Village or in another village that we own in reasonable proximity to the Village.
  - (iii) Specify any costs that you will be required to pay for the transfer to the Replacement Unit.
  - (iv) Specify the details of the Replacement Unit including location, description and (in the case of a unit yet to be constructed) plans and specifications of the Replacement Unit.
  - (v) Specify the expected timing of the availability of the Replacement Unit (if known).
  - (vi) Specify the time frame within which you can in writing accept the Transfer Offer. If you do not accept the Transfer Offer in writing within that time frame (or any extension of it that we grant) then you will be deemed to have rejected the Transfer Offer.
- (c) In considering whether to make a Transfer Offer we are not obliged to give you priority ahead of any other resident.
- (d) You have the right to be provided with information regarding all available options, the right to be independently assessed (including a needs assessment) and the right to be consulted along with your family or representative. A needs assessment may be required in order to access subsidies administered by Government agencies such as the Ministry of Health, and Work and Income New Zealand.
- (e) If you accept the Transfer Offer, then the following will apply:
  - (i) We may ask you to enter into a variation of this Agreement or where appropriate, enter into a new agreement with us in respect of the Replacement Unit.
  - (ii) If the Replacement Unit attracts a different level of Village Outgoings Payment, then those different charges will apply to you.
  - (iii) We will assist you with your physical transfer and the transfer of your personal belongings. We reserve the right to make a reasonable charge to you for the administrative and other costs relating to your transfer between residential units.
  - (iv) We may offer you alternative accommodation under clause 50 until the Replacement Unit becomes available for your accommodation.

50.11 If you do not accept or are deemed to have rejected the Transfer Offer, then this Agreement will be treated as if it had been terminated by you in accordance with clause 60.7.

## **51 Statutory Supervisor**

51.1 The Operator and the Resident each agree to be bound by the terms of the Deed of Supervision.

51.2 In terms of the Deed of Supervision, the Statutory Supervisor will be entitled to be indemnified by us and by you and all the other residents for the time being in the Village in respect of all expenses and liabilities reasonably incurred by the Statutory Supervisor, and against all claims the Statutory Supervisor may suffer in respect of any matter relating to his appointment and duties under the Deed of Supervision (other than a claim arising out of gross negligence, bad faith or wilful misconduct by the Statutory Supervisor).

51.3 In accordance with the Contract and Commercial Law Act 2017, the provisions of this clause are intended to be enforceable by the Statutory Supervisor as a person beneficially entitled.

## **52 Dispose of/subcontract our rights**

52.1 We are entitled to market, sell, assign or dispose of our interest under this Agreement.

52.2 With effect from the date of sale, assignment, or disposal, all our rights and obligations under this Agreement will pass to the replacement operator, and we will have no further rights and no further obligations to you under this Agreement. You agree to continue to observe and perform all your obligations under the Agreement for the benefit of the replacement operator.

52.3 You agree to sign a deed of novation of this Agreement in favor of the new operator of the Village and such deed will be in the form provided by us. You irrevocably authorise the Statutory Supervisor to execute such deed on your behalf.

52.4 We are entitled at any time without restriction to subcontract our operation rights to another suitably qualified operator. No such subcontracting will change the basic relationship between us and you, and we will continue to be obliged to perform and observe the terms of this Agreement. If we do subcontract our rights for any period under this Agreement, then the subcontracted operator will be our representative for all purposes under this Agreement, and you will comply with all instructions, notices, directions, and decisions of the subcontracted operator as if we had issued them directly.

## **53 Dispute Resolution (Except a dispute regarding disposal of Residential Unit)**

53.1 Notwithstanding any other provision in this Agreement, any complaint or dispute (except a dispute regarding the disposal of your Residential Unit) shall be dealt with in accordance with this clause 53.

### *Your concern or issue*

53.2 We must have a written procedure so that you may contact us or our designated contact person informally about a concern or issue.

53.3 If you have a concern or issue you must refer the concern or issue to our designated contact person. You do this by raising your concern or issue to the person we employ as manager of the Village.

53.4 After you raised the concern or issue to our designated contact person or if you are not satisfied with the outcome, you may require the matter to be resolved by making a formal complaint in writing.

### *Your formal complaint*

53.5 We must operate a complaints facility and a complaints procedure in accordance with the Retirement Villages Act for dealing with formal complaints by residents, and we must provide you with a written copy of that procedure.

53.6 If you have a formal complaint, you must refer the complaint to the person we employ as manager of the Village.

53.7 If the complaint is not resolved 20 Working Days after you made the complaint, we must refer the complaint to the Statutory Supervisor and ask the Statutory Supervisor to provide an impartial perspective and to recommend a way forward.

53.8 If the complaint is not resolved 20 Working Days after it has been referred to the Statutory Supervisor, we must offer you the option of resolving the complaint through independent mediation.

53.9 If you do not agree to independent mediation or if the complaint is not resolved following mediation, 20 Working Days after the referral to a mediator or other third party, you may require the matter to be resolved by a disputes panel by giving us and/or any other party a dispute notice.

53.10 You have right to give a dispute notice at any stage of the complaints process 20 Working days after and within six months of filing a formal complaint.

53.11 We must report to the Retirement Commissioner six-monthly in relation to formal complaints received by the Village.

*Our complaint*

53.12 If we have a complaint concerning you, we must first notify you of that complaint. We must then make reasonable efforts to resolve our complaint with you.

53.13 If the complaint is not resolved 20 Working Days after we notified you of the complaint, we may require the matter to be resolved by a disputes panel by giving you and any other party a dispute notice.

*Disputes panel*

53.14 After receipt of a dispute notice by you or us, we must appoint a disputes panel (from the list of people who the Retirement Commissioner has approved for appointment as a member of a disputes panel).

53.15 The hearing and disposal of any dispute referred to a disputes panel will be conducted in accordance with the Retirement Villages Act and the Regulations made pursuant to that Act.

**54 Dispute Resolution for Dispute Regarding Disposal of Residential Unit**

54.1 Notwithstanding any other provision in this Agreement, a dispute regarding the disposal of your Residential Unit shall be dealt with in accordance with this clause 54.

54.2 You may give us a dispute notice regarding the resolution of a dispute concerning any alleged breach by us of this Agreement or the Code of Practice in disposing of the Residential Unit.

54.3 In resolving such dispute, the provisions of clause 53 apply except that you cannot give disputes notice until 9 months after the Residential Unit became available to us for disposal.

**55 Your Default**

55.1 If you default at any time in the observance or performance of your obligations under this Agreement we may, without prejudice to any of our rights, powers or remedies, at your cost, pay money and do things in our opinion reasonably necessary for the performance of your obligations.

(a) We will consult you before paying such money or doing such things.

(b) You will immediately pay us all money we paid and the costs of us doing such things. Until we receive such payment, the money we paid and costs we incurred shall be treated as an advance by us and you will pay interest on that advance at the Default Interest Rate.

55.2 Alternatively, upon such default, we may terminate this Agreement in accordance with clauses 60.1(b) and 60.2.

**56 General Provisions**

*No waiver*

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

### *Notices*

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

### *Our consent*

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

### *Property Law Act*

- 56.5 To the extent permitted by law, the covenants implied in licences by the Property Law Act 2007 are expressly negated, and in the event of there being any conflict between the provisions of this Agreement and your interest in the Residential Unit then the provisions of this Agreement shall be paramount.

### *Majority resolutions*

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

### *Courtesy, respect*

- 56.7 We, and the people who work or provide services at the Village, must treat you with courtesy, and must respect your rights as a Resident and not exploit you.
- 56.8 In return, you will respect our rights and treat us with courtesy, and likewise respect the rights of those who work or provide services at the Village and treat them with courtesy.

### *Non-merger*

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

## **TRANSFER**

### **57 Terms and Conditions of Transfer**

- 57.1 The terms and conditions that will apply to your transfer to another residential unit within the Village where the damage/destruction provisions of clause 50.10 do not apply are as follows in clauses 58 and 59.

### **58 We Will Endeavour to Effect Transfer**

- 58.1 If you wish to transfer to another residential unit within the Village, you must make that request by giving us written notice. You can withdraw that notice within fifteen Working Days of the notice date, if at the time of withdrawal, we have not issued an application form for the purchase of the occupation right for the Residential Unit with another person.
- 58.2 Where possible, we will endeavor to accommodate your request, but any such move will depend upon (inter alia):
- (a) a suitable residential unit being available;
  - (b) suitable care being available (as may be required);

- (c) you being assessed as suitable for the available care;
  - (d) our not being disadvantaged in any way by the move.
- 58.3 You have the right to be provided with information regarding all available options, the right to be independently assessed (including a needs assessment) and the right to be consulted along with your family or representative. A needs assessment may be required in order to access subsidies administered by Government agencies such as the Ministry of Health, and Work & Income New Zealand.
- 58.4 We will give priority to your request to move, over an application by an intending resident (as defined in the Retirement Villages Act).
- 58.5 If the transfer is to a unit that attracts a higher level of entry payment, then we will ask you to pay the difference. If the entry payment is lower than that of your current Unit we will refund the difference when that Unit is relicensed.
- 58.6 If the transfer is to a residential unit that attracts a different level of Village Outgoings Payment, then those different charges will apply to you.
- 58.7 We will assist you with your physical transfer and the transfer of your personal belongings, and we reserve the right to recover from you any cost incurred in so doing.

## **59 Transfer amounts to termination**

- 59.1 If you transfer to another residential unit within the Village, this Agreement will terminate, and you will enter into a new agreement with us in respect of the other residential unit.
- 59.2 We reserve the right to make a reasonable charge to you, for the administrative and other costs relating to your transfer between residential units.

## **TERMINATION**

### **60 Termination Event**

Termination by Us

- 60.1 We may terminate this Agreement if:
- (a) Your physical or mental health is such that, based on a medical assessment by an independent medical practitioner, you or another Resident cannot safely live in the Residential Unit. The medical practitioner may in the first instance be your own doctor, or otherwise may be another doctor appointed by us, but independent of us. The assessment by the medical practitioner must take into account, the care, support and facilities offered in the Village and such support services (if any) that we may agree could be brought in from outside the Village. In such event we will consult you, your family or appointed representative where appropriate. If the doctor is one appointed by us, you may obtain a second opinion from another medical practitioner at your own expense and present it to us. We reserve the right to obtain a second opinion at our own expense. In the event that there are two of you, and this applies to only one of you, we will not terminate the Agreement for this reason; or
  - (b) You have defaulted in a material way, in observing or performing any of your obligations under this Agreement and you have failed to rectify the default within a reasonable time (but no less than one month) after receiving written notice from us that we intend to terminate the Agreement unless such default or defaults are remedied; or
  - (c) You have either intentionally or recklessly caused or permitted, or you are highly likely to cause or permit:

- (i) serious damage to the Residential Unit or Facilities;
- (ii) damage which has become serious because of its continuous nature; or
- (iii) serious injury, harm or distress to us or to another resident or any of our employees or visitors or any other Resident's visitors.

and you have failed to cease such behaviour and/or remedy the damage or harm or distress caused by it, within a reasonable time after receiving written notice from us that we intend to terminate the Agreement unless such conduct ceases and/or such remedy is made; or

- (d) We have made reasonable enquiries and determined that you have permanently abandoned the Residential Unit. We must notify you of our intention to terminate this Agreement unless you re-occupy the Unit, and we must first give you by written notice, one month in which to re-occupy.

Any written notice we give you under this clause 60, must comply with the requirements of the Code of Practice.

- 60.2 Should we decide to terminate this Agreement on any of the grounds mentioned in subclauses (a) (b) and (d) above, then we shall give you not less than one month's further notice in writing (the "Notice of Termination") that we are terminating the Agreement. Should we decide to terminate this Agreement on the grounds mentioned in subclause (c) above, then our Notice of Termination will give you as much notice in writing as is reasonable in the circumstances that we are terminating the Agreement.
- 60.3 The Notice of Termination we give you under clause 60.2 must comply with the requirements of the Code of Practice. You have the right to make a complaint regarding our termination of this Agreement; however, we may, after consultation with the Statutory Supervisor, decide that it is in the best interests of the Village as a community, to continue without proposed action while your complaint is being dealt with.
- 60.4 The Termination Date will be the first Working Day after the applicable notice period or the date on which you stop living in the Unit and remove all your possessions, whichever is the later.
- 60.5 If we terminate this Agreement under clause 60.1, then we must pay you your Exit Payment within five Working Days of the Termination Date.

#### Termination by You

- 60.6 You can terminate this Agreement, at your option, at any time.
- 60.7 You are deemed to have terminated this Agreement if you do not accept our offer to transfer you to another unit following damage or destruction to the Residential Unit in accordance with clause 50 and for the avoidance of doubt the payment provisions in clause 47(2)(e) of the Code of Practice shall not apply.
- 60.8 Should you wish to terminate this Agreement then you must give us one month's notice in writing that you intend to terminate the Agreement. If there are two of you in joint occupation, then the notice must be signed by both of you. You can withdraw that notice within fifteen Working Days of the notice date, if at the time of withdrawal, we have not issued an application form for the purchase of the occupation right for the Residential Unit with another person.

#### Termination Date

- 60.9 The termination date (**Termination Date**) will be the earlier of:
  - (a) the first Working Day after that notice period set out in clause 60.2 or 60.8 or the date on which you stop living in the Unit and remove all your possessions, whichever is the later.
  - (b) the day that you die, or, where two of you have jointly signed this Agreement, the surviving Resident dies (as the case may be).

- (c) in the event that you (or both of you, if you are joint Residents) transfer to another residential unit within the Village, and take up a replacement agreement, pursuant to clause 59.1, the day prior to the commencement date of that replacement agreement.
- (d) the date set out in the terms of any written agreement reached between you and us for the termination of this Agreement.
- (e) the date of the event of damage or destruction as provided in clause 50, if this Agreement is terminated in accordance with clause 50 following an event of damage or destruction affecting the Residential Unit or the Village and we do not offer to transfer you to another unit within the Village.
- (f) the date that you decline or are deemed not to have accepted a Transfer Offer in accordance with clause 50.

60.10 Note: The provisions of this clause 60 are to be read in conjunction with the provisions of sections 243-264 inclusive of the Property Law Act 2007.

## **61 Departure from Residential Unit**

61.1 You (and any guest living with you pursuant to clause 24.2) must leave the Residential Unit,

- (a) upon the expiry of the Notice of Termination; and
- (b) in similar repair, order and condition as it was at the Commencement Date, except for any damage by fire, earthquake, tempest, enemy action or other inevitable accident, and except for Fair Wear and Tear.

61.2 In particular, you must remove all the Resident's Chattels, personal belongings, effects and vehicles from the Residential Unit and the Village on or before the Termination Date (except on termination under clause 60.9(b), in which case removal shall be within 1 week of the Date of Termination). You must make good any damage caused to the Residential Unit or Village in removing these items.

61.3 If you do not remove these items by the required date, then we may remove them and store them at your expense and cost. If you have not taken possession of these items within a further 1 month we may sell the items and, after deducting our expenses of removal, storage and sale, pay the proceeds to you.

61.4 We have the right, once your belongings have been removed from the Residential Unit, to enter the Residential Unit for the purposes of redecoration, refurbishment, and marketing of the Residential Unit.

61.5 We reserve the right to charge you a reasonable rent for the Residential Unit for each day after the expiry of the Notice of Termination, that the unit is not available to us for marketing because you have failed to remove your possessions from the Residential Unit.

## **62 Find New Resident**

62.1 Subject to clause 62.5 below, after the Termination Date we will take all reasonable steps to enter into a new Occupation Right Agreement for the Residential Unit in a timely manner and for the best price reasonably obtainable. This will be with a new resident who we consider suitable as a resident of the Village, and with an Entry Payment and Village Contribution that is consistent with the proportions generally adopted by us at that time for marketing of Residential Units in the Village.

62.2 We will not give preference to finding residents for a Residential Unit in the Village which has not been previously occupied by a resident under an Occupation Right Agreement. We shall take proper steps to market the Residential Unit and respond to all enquiries about the Residential Unit in a timely and helpful way.

62.3 We will consult with you about the marketing of your Residential Unit including when the Residential

Unit goes on the market and the general nature of our marketing plan for the Residential Unit. We are required to keep you informed on a monthly basis as to the progress of marketing.

- 62.4 You have the right to introduce a new resident for your Residential Unit, at any time. We are not obliged to accept any prospective resident who does not meet our normal entry criteria or whose offer does not meet fair the market value or conditions, as per clause 62.1 above.
- 62.5 We do not have to obtain a new resident if:
- (a) this Agreement terminates under clause 50 (Damage to Residential Unit or Village); or
  - (b) we decide we do not want a new resident occupying the Residential Unit, in which case we must pay your Exit Payment in accordance with clause 63.4 of this Agreement.

### **63 Our Exit Payment to you**

- 63.1 On or before the Exit Payment Date, we will pay you the Exit Payment in accordance with the following provisions of clause 63.

#### Exit Payment Date

- 63.2 Subject only to clauses 60.5, 63.3 and 63.4, the Exit Payment Date is a day which is no later than 5 Working Days after the date on which the operator has received full settlement of the total amount payable by the new resident for the Residential Unit and provided the cooling-off period has expired in respect of the new Occupation Right Agreement the Operator has entered into with a new resident, for the Residential Unit.
- 63.3 However, if this Agreement terminates under clause 50 (destruction of or damage to Residential Unit/Village) and we need to obtain payment from our insurers in respect of an insured risk in order to be able to meet our obligations to pay you and any other resident in a similar situation, the Exit Payment Date is 10 Working Days after the date we receive full payment from our insurers for the loss or damage.
- 63.4 If we decide we do not want a new resident occupying the Residential Unit, the Exit Payment Date is the date one month after we advise you of our intention not to immediately relicense the Residential Unit.
- 63.5 If our payment of the Exit Payment must be made to your personal representative, then we will be entitled to be satisfied that your personal representative holds proper probate of your will, or letters of administration of your estate before making a payment. If there is any delay in meeting our requirements in this regard then we will lodge the money due to your estate on interest bearing deposit, with interest to accrue to the benefit of your estate until our requirements can be met.

#### Decrease in Residential Unit's value

- 63.6 If the amount we are able to obtain from a proposed new resident for the Residential Unit is less than the Entry Payment, then your Exit Payment will not be reduced as a result. If the Residential Unit does not sell within 6 months, the Residential Unit is valued by an independent registered valuer experienced in valuing retirement village units, appointed at our expense. We must market the Residential Unit at the price established by the valuation (which shall be in writing) unless you obtain a second valuation at your own cost. We will consider your valuation in determining a suitable price. If such revaluation results in a reduced Entry Payment being paid by a new resident, then your Exit Payment will not be reduced as a result.

#### Increase in Residential Unit's value

- 63.7 If the amount we are able to obtain from a proposed new resident for the Residential Unit is more than the Entry Payment, then your Exit Payment will not be increased as a result. If the Residential Unit does not sell within 6 months, the Residential Unit is valued by an independent registered valuer, experienced in valuing retirement village units, at our expense. We must market the Residential Unit at the price established by the valuation (which shall be in writing) unless you obtain a second valuation at your own expense. We will consider your valuation in determining a suitable

price. If such valuation results in an increased Entry Payment being paid by a new resident, then your Exit Payment will not be increased as a result.

#### Non-sale Cases

- 63.8 If we decide under clause 62.5(b) we do not want a new resident occupying the Residential Unit we will enter into an agreement with you to buy your interest in the Residential Unit. We will do this by paying the same Exit Payment that you would have received, had we sold the occupation right for your Residential Unit, to a new resident.
- 63.9 As a result, if we buy your interest in the Residential Unit, your Exit Payment will not be increased or reduced. We will pay you the same Exit Payment as you would have received had we sold the occupation right to your Residential Unit to a new resident.
- 63.10 We will pay your Exit Payment within 20 Working Days of the date of our agreement to purchase your interest.

#### **64 Your Payments to us on termination**

- 64.1 The amounts to be deducted from any payment made by us to you on termination, are as follows:
- (a) your Village Contribution calculated in accordance with clause 3.4 of this Agreement;
  - (b) any other money due, or that will be due from you under this Agreement (e.g. your Entry Payment (clause 10), your Village Outgoings Payment (clause 12), your Additional Services payments (clause 13), charges for utility services (clause 15), your health service charges (clause 16), legal costs (clause 17), Default Interest (clause 20), our costs of maintaining the interior of the Residential Unit (clause 48.5), money paid or costs incurred as a result of your default (clause 55)).
- 64.2 If this Agreement is terminated in accordance with clause 60.9(e) of this Agreement, then no charge for Village Contribution will be deducted from the payment made by us to you on termination.

#### **65 Dispute pending on termination**

- 65.1 If resolution of a dispute between you and us is pending or arises on the Termination Date, all payments due to be made by you to us or us to you (or a lesser amount if we agree) will be paid to the Statutory Supervisor, to be held in an interest bearing account until resolution of the dispute and then paid out in accordance with this Agreement unless ordered otherwise by the Disputes Panel.

#### **66 Letting following termination**

- 66.1 After you have vacated the Residential Unit, we may enter into a rental agreement for the Residential Unit with a third party as a temporary resident prior to entering into a new Occupation Right Agreement with a permanent resident. You shall not be liable to pay the Village Outgoings Payment from the date of commencement of that tenancy. We shall be entitled to the rent received.

# Schedule 1 – Village Outgoings

You will pay a charge as a contribution towards the recovery of all costs, charges, expenses, fees and other outgoings incurred by us in maintaining, supervising and operating the Village from year to year (the “Village Outgoings”) including (without limitation):

- (a) all taxes (except income tax or capital taxes in respect of our income or profits) in respect of the village;
- (b) all rates, levies, charges, assessments and fees payable to any government, territorial or local authority;
- (c) the cost of compliance with any statute, regulation, bylaw or other lawful obligation in respect of the Village;
- (d) the charges for water, gas, electricity, telephone and tolls, and other utilities or services relating to the Community Facilities and buildings at the Village;
- (e) insurance premiums relating to all buildings, facilities (including the Community Facilities) (but excluding your personal belongings and vehicle(s)) and any associated valuation fees;
- (f) salaries, wages, fees and other remuneration for persons engaged in the administration, management and operation of the Village;
- (g) a reasonable management fee in respect of the management services we provide, reviewable annually to reflect then current market terms and conditions;
- (h) the costs of providing security, cleaning, gardening and other services for the general use and benefit of the residents;
- (i) the costs of maintaining and repairing all buildings, Community Facilities and the Village generally but excluding any maintenance, repair and replacement costs payable by you pursuant to the provisions of your Agreement;
- (j) a reasonable allowance for depreciation of the chattels in the Community Facilities;
- (k) where provided in the Village the provision of an emergency call system; and
- (l) appropriate fees and expenses of the Statutory Supervisor and other accounting, audit and legal costs incurred in the administration of the Village.

# Schedule 2 – Rules

## Rules of St Lukes Village

1. You will co-operate with staff in looking after your health.
2. You will tell staff when you are leaving home and when you expect to return.
3. You will comply with our smoking policy.
4. You will not in any way obstruct or permit the obstruction of any walkways, pavements, entrances, passages, courtyards, corridors, service-ways, vestibules, halls, roads, stairways, fire or escape doors or other parts of the Community Facilities.
5. You will not in any way cover or obstruct any lights, skylights, windows or other means of illumination of the Community Facilities.
6. You will use or permit to be used for the receipt, delivery or other movement of any furniture, goods or articles of bulk only such parts of the Residential Unit and the Community Facilities and at such times as we may from time to time direct.
7. You will not throw or permit to be thrown or to be deposited or to fall any article or substance whatsoever from or out of the Residential Unit or the Community Facilities and shall not place upon any sill, ledge or other like part of the Residential Unit or the Community Facilities any article or substance.
8. You will keep clean and free from dirt and rubbish such part or parts of the Community Facilities or any public footpath or way as immediately adjoin the Residential Unit.
9. You will use your best endeavors to protect and keep safe the Residential Unit and any property contained therein from theft or robbery and shall keep all doors, windows and other openings closed and securely fastened when the Residential Unit is not in use or occupied.
10. We will provide keys for locks on doors or other openings of the Residential Unit and you will return to us on the termination of this Agreement all such keys and shall not permit the same at any time to come into the possession or control of any person other than yourself including your invitees or agents.
11. No rubbish or waste shall at any time be burned upon the Residential Unit or the Community Facilities.
12. You shall not conduct or permit to be conducted on the Residential Unit any auction, bankrupt, garage or fire sale.
13. You shall not use or permit to be used the Community Facilities for any business or commercial purpose.
14. For the purpose of drying or airing washing or laundry of any kind you shall use only those parts of the Community Facilities specifically designated by us for such purpose.
15. All blinds, shades, awnings, windows, ventilators and other similar fittings and fixtures installed by you with our consent in or upon the Residential Unit and visible from the outside of the Residential Unit shall conform to our reasonable requirements and standards as to design, quality and appearance.
16. Subject to any provision contained in any Occupation Right Agreement we are entitled to close the Village (being those buildings available for use by all residents in common) or any part thereof and to prevent and prohibit any person (including any Resident) from entering or remaining thereon between the hours of 10.00 pm and 6.00 am. Without affecting the preceding provisions of this rule, we may close, lock off or otherwise control the Community Facilities from time to time

and may take all such actions as it deems necessary for the purpose aforesaid and in particular may take such actions as it deems necessary to prevent unauthorised persons from using any part of the Village.

17. You will give us written notice if the Residential Unit is to be left vacant for more than seven consecutive days.
18. We may in our absolute discretion permit you to keep in the Residential Unit any bird or animal but shall be entitled to withdraw any consent so granted if in its opinion the bird or animal disturbs other Residents or causes any damage to the Residential Unit or any part of the Village.
19. We have the right to regulate the use of all motor vehicles within the Village, including the right to prohibit any person from driving a motor vehicle within the Village.

# Schedule 3 – Code of Residents’ Rights

## Basic rights of residents

This is a summary of the basic rights given to you by the Retirement Villages Act 2003

### *Services and other benefits*

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

### *Information*

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

### *Consultation*

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

### *Right to complain*

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

### *Disputes*

5. You have 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*

6. 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*

7. 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*

8. 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 persons

If you want more information about your rights or wish to make a complaint against the operator or another resident, the operator's contact persons are:

Peter Leathem  
Managing Director  
Mobile: 027 290 1116  
Email: [peter.leathem@nzagedcare.co.nz](mailto:peter.leathem@nzagedcare.co.nz)

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

- (a) the statutory supervisor  
Covenant Trustee Services Ltd  
Ph: 09-302-8073  
Email: [team@covenant.co.nz](mailto:team@covenant.co.nz)  
<mailto:>
- (b) the Registrar of Retirement villages.

## Information

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

# Schedule 4 – Operator's Chattels

*[Delete those not applicable]*

- (a) Carpet
- (b) Drapes
- (c) Heater (lounge)
- (d) Cooker
- (e) Range Hood
- (f) Such other chattels as the parties may agree in writing.

NOTE: Chattels that are in the unit on the issue of this Occupation Right Agreement that are not Operator's Chattels, will not be replaced when they expire.

# Schedule 5 – Special Terms