

**THE FALLS ESTATE LIFESTYLE VILLAGE**

**OCCUPATION LICENCE**

**Resident:**

**Dwelling: [       ]**

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## PART A

**THIS LICENCE** comprises parts A, B and C.

### 1. INTRODUCTION

- 1.1 We own a retirement village known as **The Falls Estate Lifestyle Village** at **94 Boundary Road, Whangarei**, which provides accommodation and facilities primarily for persons in their retirement
- 1.2 You have applied to become a resident of the Village and the Dwelling and we have accepted your application.
- 1.3 This Licence 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 Licence is a licence to occupy your Dwelling.

### 2. OUR AGREEMENTS

- 2.1 We and you agree that we and you have the respective rights as set out in this Licence and agree to abide by our respective obligations.
- 2.2 You confirm that you have received a copy of:
  - (a) the Disclosure Statement;
  - (b) the Code of Residents' Rights; and
  - (c) Code of Practice.
- 2.3 You confirm that you have received independent legal advice before signing this Licence, as certified below.

**EXECUTION**

Your signing of this Licence:

	<b>[Resident 1]</b>	<b>[Resident 2]</b>
Signature of Resident:	_____	_____
Name of Resident:	_____	_____
Witness signature: *	_____	_____
Name:	_____	_____
Address:	_____	_____
Occupation:	_____	_____

\* To be witnessed by the lawyer who certifies this Licence.

Date you signed this Licence: \_\_\_\_\_

Our signing of this Licence:

**Signed by The Falls Estate Lifestyle Village Limited Partnership by its General Partner,  
The Falls Estate Lifestyle Village GP Limited**\_\_\_\_\_  
Director\_\_\_\_\_  
Director

## LAWYER'S CERTIFICATE

### Lawyer's certification

Name of Village: The Falls Estate Lifestyle Village

Registration number of village: 2121651

I, *[insert name of lawyer]*, certify that:

- (a) I explained to *[insert name of intending resident or person treated by section 27(7) of the Act as the intending resident]* the general effect of the attached licence and its implications before he or she signed the licence; and
- (b) I gave the explanation in a manner and in language that was appropriate to the age and understanding of *[insert name of intending resident or person treated by section 27(7) of the Act as the intending resident]*.

Dated: *[insert date]*.

Signed: *[insert signature of lawyer]*.

Name: *[insert name of signatory]*.

Street address: *[insert street address of lawyer, including the name of the organisation (such as firm or chambers) within which the lawyer works]*.

Postal address: *[insert postal address of lawyer, including the name of the organisation (such as firm or chambers) within which the lawyer works]*.

Email address: *[insert email address of lawyer]*.

Telephone number: *[insert telephone number of lawyer]*.

Fax number (optional): *[insert fax number for lawyer, if desired]*.



## PART B

### IMPORTANT INFORMATION

#### 3. OCCUPATION LICENCE DETAILS

##### 3.1 Date of this Licence:

##### 3.2 Parties

Operator: **The Falls Estate Lifestyle Village Limited Partnership**, described in this Licence as us, we or the Operator and including our successors and assigns.

Resident: **[Name of Resident(s)]**, described in this Licence as you or the Resident.

##### 3.3 Dwelling

Dwelling: **[description]**

Garage: **[description]** or any other garage you have been allocated by the Operator pursuant to clause 21.2.

##### 3.4 Commencement and Termination of the Occupation Right

The Commencement Date is: **[[insert date]**

The Termination Date is: The date your right to occupy the Dwelling ends, as set out in clause 58 and 68 of this Licence.

### 3.5 **Entry and Exit Payments**

On the Commencement Date you will pay us an Entry Payment of **[insert amount]** (clause 10).

On the Exit Payment Date, we will pay you an amount calculated as follows:

(a) The Exit Payment,

Minus:

(b) Your Deferred Management Fee:

The Deferred Management Fee is consideration for providing you with accommodation in your dwelling over the entire period of this Licence.

There is no liability arising for the Deferred Management Fee and we have no legal entitlement to collect payment or issue an invoice for the Deferred Management Fee until the Exit Payment Date.

The maximum Deferred Management Fee payable by you is \$[ ], being an amount equal to 30% of the Entry Payment (clause 11.1).

The Deferred Management Fee will be calculated on a daily basis at a rate equal to 10% of the Entry Payment per year. The Deferred Management Fee will be calculated from the Commencement Date until the earlier of:

- the expiry of 3 years from the Commencement Date;
- the later of the Termination Date or the Vacation Date.

- (c) Our reasonable legal and administration costs as set out in clause 16.2.
- (d) Any amount payable by you pursuant to clauses 61.7 and 61.9 to reflect a decrease in value of the Dwelling.
- (e) Any costs of removing any alterations or additions to the Dwelling made by us due to your disabilities as set out in clause 51.5.
- (f) Any balance of the payments or other amounts you owe to us as set out in clause 63.

(The Exit Payment Date is set out in clause 61.2.)

### 3.6 **Further Payments**

In addition to the Entry Payment and Deferred Management Fee you will also make the following payments during the term of this Occupation Right:

#### **A Village Fee**

Your Village Fee is: **[insert amount]** per month including GST (if any) (clause 12). (This amount is subject to change in accordance with clause 12.3).

Your Village Fee is payable on: The fifteenth day of each month in advance. However, if the Commencement Date is not the fifteenth 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 fifteenth of the next month.

Your Village Fee ceases to be payable: On the later of the Termination Date or Vacation Date.

## **B Additional Services**

Any additional payments or amounts payable by you to us:

- 3.7 **Default Interest Rate:** The overdraft rate our principal bank would charge us for overdraft money during the default period plus an additional 2% interest per annum (clause 18)
- 3.8 **Statutory Supervisor:** Covenant Trustee Services Limited including its successors.

## **4. RIGHTS OF CANCELLATION – COOLING OFF**

- 4.1 You may cancel this Licence under section 28(1) of the Act, without having to give any reason. You can do this by notice given not later than 15 Working Days after you sign this Licence.
- 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 under section 28(1) of the Retirement Villages Act. You can do this by giving 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 Licence.
- 4.4 Your notice may be given on your behalf by a person authorised in writing by you.

- 4.5 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 Licence (unless we have notified you that such person has ceased to act on our behalf); or
  - (c) any other person who we have notified to you is a person authorised to receive communications on our behalf.
- 4.6 If you exercise your rights under clauses 4.1 or 4.2 you are entitled to a refund of any deposit, progress payment and any other payments made by you for the grant of the Occupation Right. This refund will be without deduction and will include any interest earned in the Deposit Holder's account (but less any tax). You are entitled to receive this refund within 10 Working Days after your request.
- 4.7 If you exercise your rights under clause 4.1, we are entitled to reasonable compensation for:
- (a) services, if we provided you with services while you were living in the Village; and
  - (b) damage, if you are responsible for any damage to your Dwelling or to any facilities in the Village.

## PART C

### DEFINITIONS

We have produced this Licence 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 Licence some terms used in the Licence have been defined. These terms, and the full meanings they have in this Licence are set out in clause 5. Wherever a defined term is used in this Licence 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 AND INTERPRETATION

#### Definitions

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

- 5.1 **"Accounting Period"** means the period ending on our annual balance date in each year.
- 5.2 **"Act"** means the Retirement Villages Act 2003 and its Regulations as updated, amended or replaced from time to time.
- 5.3 **"Additional Services"** means the services we make available from time to time for you to use at your discretion, set out in Schedule Three, subject to change in accordance with this Licence.
- 5.4 **"Additional Services Payment"** means the payment by you for the Additional Services payable in accordance with clause 13.
- 5.5 **"Code of Residents' Rights"** means the code of residents' rights which is applicable from time to time pursuant to the Act.
- 5.6 **"Code of Practice"** means the Code of Practice approved under the Act, as updated, amended or replaced from time to time.
- 5.7 **"Community Facilities"** means the common areas and community facilities of the Village provided by the Operator from time to time.
- 5.8 **"Deed of Supervision"** means the deed that we have entered into appointing the Statutory Supervisor as required by the Act and as may be amended from time to time.

- 5.9 **"Deferred Management Fee"** means the payment made by you as described in clause 3.5 in exchange for the supply of accommodation and the supply of Community Facilities over the entire period of the Licence.
- 5.10 **"Deposit Holder"** means the Statutory Supervisor.
- 5.11 **"Disclosure Statement"** means the written document titled the disclosure statement containing information about this Village, in accordance with the Act.
- 5.12 **"Entry Payment"** means the payment made by you on entering the Occupation Licence in exchange for the right to receive the Exit Payment as set out in clause 3.5.
- 5.13 **"Exit Payment"** means an amount equal to the Entry Payment.
- 5.14 **"Garage"** means the independent garage allocated to you by the Operator.
- 5.15 **"Licence"** means this Occupation Licence comprising parts A, B and C and the Schedules.
- 5.16 **"Occupation Right"** means your right to occupy a Dwelling under this Licence.
- 5.17 **"Operator's Chattels"** means the chattels belonging to us set out in Schedule One.
- 5.18 **"Resident's Chattels"** means any personal items kept or installed in the Dwelling by the Resident.
- 5.19 **"Rules"** means the Operator's rules for the Village, which are subject to change in accordance with this Licence and which, as at the date of this Licence are set out in Schedule Two.
- 5.20 **"Termination Date"** means the date your right to occupy the Dwelling under this Licence ends, as set out in:
- (a) Clause 58.14, if this Licence is automatically terminated on death;
  - (b) Clause 58.15, if this Licence is terminated by agreement between you and us;
  - (c) Clause 58.13, if this Licence is terminated by you;
  - (d) Clause 58.10, if we have terminated this Licence; or
  - (e) Clause 67.2, if we have decided not to repair or replace the Dwelling following a Damage Event.
- 5.21 **"Vacation Date"** means the date that you stop permanently living in the Dwelling and remove all of your possessions including Resident's Chattels from the Dwelling and the Village.

- 5.22 **"Village Outgoings"** means the outgoings of the Village set out in Schedule Three.
- 5.23 **"Village Fee"** means the periodic payment described in clause 3.6 paid by you in exchange for the supply of accommodation and Community Facilities.
- 5.24 **"Working Day"** means any day of the week other than:
- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Matariki and Labour Day;
  - (b) A day in the period commencing on 25 December in any year and ending on 2 January in the following year, inclusive;
  - (c) If 1 January falls on a Friday, the following Monday, and if 1 January falls on a Saturday or Sunday, the following Monday and Tuesday.
- A Working Day will be deemed to commence at 9am and end at 5pm. Any act done pursuant to this Licence 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.
- 5.25 **"You"** means you the Resident as named in this Licence. If there are two of you, this term includes you both jointly and severally. This term also includes, where the meaning of the provisions allow, your personal representatives.
- 5.26 Those terms included in Parts A and B with capitalised first letters have the full meanings given to them in the relevant Part.

## OCCUPANCY RIGHTS

### 6. GRANT OF OCCUPATION RIGHT

- 6.1 We grant to you, and you accept, the Occupation Right for your Dwelling, under this Licence.
- 6.2 The rights we are granting to you in this Licence are personal contractual rights only. Nothing in this Licence gives you any ownership right or interest in the Village or the Dwelling. This Licence does not give you any tenancy or leasehold rights to the Dwelling.
- 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 your Dwelling on the Commencement Date, subject to clause 10.2.

### 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.

- 7.2 No transfer of the Occupation Right into the name of your personal representative (following death) will be allowed.

## **8. USE OF DWELLING AND OPERATOR'S CHATTELS**

- 8.1 You are entitled to reasonable exclusive use and occupation of your Dwelling free from our unnecessary interruption.

- 8.2 We will provide and install the Operator's Chattels in your Dwelling.

## **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 occupy your Dwelling, use the Garage or enjoy other benefits under this Licence until you have paid the Entry Payment in full, even though this Licence may have been completed and the Commencement Date may have arrived, unless otherwise agreed by us.

### **11. YOUR DEFERRED MANAGEMENT FEE**

- 11.1 You agree to pay us the Deferred Management Fee calculated in the manner set out in clause 3.5.
- 11.2 Calculation of your Deferred Management Fee will be suspended if clause 66.4 applies.

### **12. YOUR VILLAGE FEE**

- 12.1 You agree to pay us the Village Fee in the manner and at the times set out in clause 3.6.
- 12.2 The Village Fee is calculated as a proportion of the cost of the Village Outgoings.
- 12.3 We are entitled to change the Village Fee at any time in accordance with changes in the outgoings of the Village. Any such change to the Village Fee will take effect no earlier than one calendar month following our notice.



12.4 Your Village Fee 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.

12.5 Your obligation to pay us the Village Fee will cease on the date set out in clause 3.6.

12.6 Payment of your Village Fee will be suspended if clause 66.3 applies.

### **13. YOUR ADDITIONAL SERVICES PAYMENT**

13.1 In addition to any other payment under this Licence, you will pay us the Additional Services Payment for any Additional Services provided at your request and which we may agree to provide.

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 20<sup>th</sup> of the month following the date of invoice.

### **14. YOUR VILLAGE FEE PAYMENT**

14.1 You agree to sign and deliver to us an authority authorising the payment to us of, each Village Fee as it falls due, by direct debit from your bank account.

14.2 We will give you 10 Working Days' written notice of the amount of the proposed Village Fee prior to deducting such amount from your bank account if any of the amounts change

### **15. YOUR UTILITY CHARGES**

15.1 You are solely liable to pay all separately charged utilities consumed in respect of your Dwelling, including electricity, gas and telephone/tolls and we will have no responsibility to meet any of these charges on your behalf.

15.2 If we purchase any of these utility services in bulk, we will supply them to you and ensure that you receive a share of any benefit.

15.3 If any of these utilities are not separately metered to you, we may at our sole discretion decide to include the cost of provision of such utilities in the Village Outgoings.

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 20<sup>th</sup> of the month following the date of invoice.

15.5 You will continue to be solely liable to pay all charges for utilities consumed in respect of your Dwelling following the Termination Date until the Vacation Date;

**16. YOUR LEGAL AND OTHER COSTS**

- 16.1 You must pay all your own legal and other costs associated with your application for entry into and termination of this Licence.
- 16.2 You must pay our reasonable legal and administration costs associated with the termination of this Licence.
- 16.3 You must pay us our reasonable legal and administration costs associated with any request by you for consent or approval under this Licence.

**17. TERMINATION PAYMENTS**

- 17.1 Each of us agree to make certain payments as set out in Part B on the Exit Payment Date.

**18. DEFAULT INTEREST**

- 18.1 You must duly and promptly pay us each and every payment required to be made by you in this Licence. If you fail to pay the Entry Payment on the Commencement Date or such other date that you and we agree, or if you fail to make any other such payment for 5 Working Days after the payment is due, you must pay default interest at the Default Interest Rate on the payment, from the due date until the day we receive payment.
- 18.2 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.

**19. GST**

- 19.1 Where we must pay GST on the cost of goods and services that we purchase (including but not limited to the Village Fee), and we are not able to recover some or all of that GST from the Inland Revenue Department, you must reimburse us for such GST on demand.
- 19.2 Where we are required to account for GST on any amounts you pay to us, (except for the amounts specified in clause 19.3) you must pay us the amount of that GST on demand.
- 19.3 The Entry Payment and Deferred Management Fee are GST inclusive.

**YOUR GENERAL OBLIGATIONS****20. PERMITTED USE OF DWELLING**

- 20.1 You will use the Dwelling only for your own personal use and occupation.
- 20.2 You may have friends or relatives or other persons to stay with you in the Dwelling for up to ninety days in any calendar year. You may have friends or relatives or other persons to stay with you in the Dwelling for longer periods with our prior consent. 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.

## **21. PARKING**

- 21.1 If you are allocated a Garage, you are entitled to reasonable exclusive use of your Garage free from our unnecessary interruption.
- 21.2 We have the right to relocate you to another allocated Garage at any time.
- 21.3 Garages can only be used for the storage of vehicles. We have the right to cancel your access to the Garage if you use it for other purposes, or if you no longer own a vehicle to be parked at the Village.
- 21.4 We may refuse to permit you to bring to the Dwelling or the Village any caravan, boat, camper van, trailer or similar item. If we grant you permission, we may require you to comply with our directions as to where such item is parked. Further, we may require you to remove such item, despite any previous approval. You must comply with such refusal or requirement.

## **22. DEALING WITH DWELLING**

- 22.1 You are not entitled to transfer this Licence or any legal or equitable interest you may have in your Dwelling, give any mortgage or charge over your interest in this Licence, sublet or allow any person to have possession or occupancy of the Dwelling.
- 22.2 You may grant a security interest over your right to receive the Exit Payment, with our prior consent and provided we have entered into an arrangement with the person you wish to grant such a security interest to. Whether we enter into such an arrangement is at our sole discretion.

## **23. CARE OF DWELLING AND COMMUNITY FACILITIES**

- 23.1 You will ensure that you always use the Community Facilities with care and consideration for others.

## **24. NO ALTERATIONS WITHOUT PRIOR CONSENT**

- 24.1 You must not make any alterations or additions to your Dwelling, or modify the Operator's Chattels, or fit television aerials, radio aerials or other appurtenances to your Dwelling, without our prior consent, except where clause 51.1 applies. We can give or withhold consent at our sole discretion.

## **25. INSURANCE OF YOUR BELONGINGS (INCLUDING VEHICLES)**

- 25.1 We strongly recommend that you maintain your own insurance policy to cover risks of loss or damage to your own possessions in your Dwelling. You must maintain cover for your motor vehicle(s) under an appropriate motor vehicle insurance policy. Irrespective of cause, we will have no responsibility, under any circumstances, for loss of or damage to any of your property or vehicles.

**26. COMPLIANCE WITH RULES**

- 26.1 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.
- 26.2 You must, at all times, observe and comply with the Rules, and not do anything in contravention of the Rules.
- 26.3 You must ensure that all guests or visitors you invite into the Village are aware of the Rules and comply with those Rules in all respects.
- 26.4 We are entitled from time to time to establish, review and amend the Rules at our sole discretion, after consultation as provided in clause 52.4, provided that any establishment, review or amendment to the Rules does not affect or detract from your existing rights under this Licence.
- 26.5 If there is any inconsistency between this Licence and the Rules, the provisions of this Licence will override the Rules.

**27. INDEMNIFICATION OF OWNER**

- 27.1 If we suffer any loss or damage as a result of your, or your visitors', carelessness or negligence, you must upon our demand:
- (a) reimburse us for any insurance policy excess, where such loss or damage is covered by our insurance; or
  - (b) compensate and reimburse us in full, including payment of any insurance excess, where such loss or damage is not covered by our insurance.

**28. YOUR RELATIONSHIPS WITH OTHERS**

- 28.1 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, or cause distress to, other residents or to us.
- 28.2 You agree to abide by your obligations under the Code of Residents' Rights.

**29. ENDURING POWERS OF ATTORNEY**

- 29.1 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 your attorneys.
- 29.2 Where there are two of you as the Resident, clause 29.1 applies to each of you. If the powers of attorney of one of you appoint the other as attorney, you must ensure that the powers of attorney name another person as a successor attorney in the event that the appointment of the first attorney ceases for any reason.

### **30. PRIVACY AUTHORISATION**

- 30.1 In order to check your continued suitability to occupy the Dwelling 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.
- 30.2 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;
  - (b) any agency to disclose such relevant information, and in particular, any health agency to disclose information relating to your health to us; and
  - (c) us to release any such relevant information to any independent medical practitioner who is required to make an assessment under clause 58.1 or any health or governmental agency.
- 30.3 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.

### **31. REPRESENTATIONS**

- 31.1 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 Licence with you on the basis of such reports/information.
- 31.2 All statements made by you in such reports/information must be correct.

### **32. WILL AND NEXT OF KIN**

- 32.1 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.
- 32.2 You will keep us informed of the name, address and telephone number of your legal personal representative or next of kin.

### **33. ALTERNATIVE ACCOMMODATION**

- 33.1 For the purposes of this clause 33 the word "Certificate" means a certificate given by an independent medical practitioner certifying that the physical or mental health of one of you (where there are two of you as the Resident) is such that:
- (a) the person to whom the Certificate relates cannot live safely in his/her Dwelling; or
  - (b) other residents, cannot live safely in their Dwellings.

- 33.2 If a Certificate is given in respect of one of you, you both agree that you will arrange alternative accommodation and suitable care (which may be outside the Village) for the person to whom the Certificate relates as soon as practicable.
- 33.3 Any Certificate will be based on a medical assessment obtained by us at our cost. If we require such an assessment we will consult you, your family or appointed representative as appropriate. You agree to cooperate with us in obtaining this assessment. You may obtain a second opinion at your cost and present this to us.

## **OUR GENERAL OBLIGATIONS**

### **34. MANAGEMENT OF VILLAGE**

- 34.1 We will use reasonable care and skill in ensuring that the affairs of the Village are conducted properly and efficiently.
- 34.2 We will use reasonable care and skill in the exercise and performance of our powers, functions and duties.
- 34.3 We will appoint a manager to undertake the day to day management of the Village.
- 34.4 If we need to, or in our reasonable opinion we consider it sensible, due to any public health, civil defence or other Government restrictions or events, we may make changes to our Village operations, including the provision of services and removal of access to Community Facilities. We will make such changes as we consider are necessary to comply with Government requirements and/or to protect the health, wellbeing and property of residents and our staff.

### **35. CODE OF PRACTICE**

- 35.1 We will meet all requirements of the Code of Practice (subject to any exemptions we may obtain).

### **36. POLICIES AND PROCEDURES**

- 36.1 We have and will maintain written policies and procedures in respect of the following matters:
- (a) Staffing of Village;
  - (b) Safety and personal security of residents;
  - (c) Fire protection and emergency management (including access for people with disabilities);

- (d) Transfer of residents within the Village;
- (e) Meetings of residents with us and resident involvement;
- (f) Dealing with complaints by Village residents;
- (g) Accounts;
- (h) Maintenance and upgrading;
- (i) Termination of this Licence; and
- (j) Communication with residents.

### **37. PROVISION OF UTILITIES AND MAINTENANCE OF VILLAGE**

37.1 We will:

- (a) supply the Dwelling with standard connections for water, telephone, television and electricity.
- (b) maintain and keep in good condition and order the common areas, pathways and grounds surrounding the buildings including the gardens and trees and shrubs.
- (c) maintain and keep maintained in good condition and order all buildings and carpark areas in the Village.
- (d) maintain and keep maintained in clean and safe working order, suitable for their intended use, all buildings, plant and equipment.

37.2 We will make and adhere to a long-term plan for maintaining and refurbishing the Village.

37.3 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.

**38. INSURANCE OF VILLAGE**

- 38.1 We will, in respect of the Village as a whole, including the Dwelling, Operator's Chattels, capital improvements, and additional fittings provided by residents (other than any Resident's Chattels), arrange and maintain a comprehensive insurance policy covering the Village for its full replacement value in respect of all usual risks including damage or destruction by fire, accident and natural disaster, and covering any other insurable risk which we may consider desirable, in our interests or in the interests of residents.
- 38.2 We will ensure that the insurance which we have arranged is to the satisfaction of the Statutory Supervisor.

**39. PROVISION OF ADDITIONAL SERVICES**

We will provide you with such Additional Services as we may agree with you from time to time. However, we are not obliged to provide you with the Additional Services while you are absent from the Village.

**40. PAYMENT OF VILLAGE OUTGOINGS**

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

**41. COMMUNICATION POLICIES**

- 41.1 We have and will maintain written policies and procedures for communicating with residents who speak English as a second language or who have a limited ability to communicate. These policies and procedures will be available to a Resident on request.

**42. CODE OF RESIDENTS' RIGHTS**

- 42.1 We have adopted a Code of Residents' Rights and this has been handed to you prior to your signing this Licence.
- 42.2 You are entitled to further copies of the Code of Residents' Rights at any time on request.

**43. RIGHTS TO COURTESY AND NON-EXPLOITATION**

- 43.1 We will ensure that we, all of our staff and all people who provide services at the Village, treat Village residents with courtesy and respect their rights.
- 43.2 We will ensure that we, all of our staff and all people who provide services at the Village do not exploit Village residents.



## **OUR OBLIGATIONS IN RELATION TO FINANCIAL STATEMENTS**

### **44. YOUR RIGHT TO COPY OF FINANCIAL STATEMENTS**

- 44.1 We will give to you, when you request, free of charge a copy of the most recent financial statements prepared by us under the Retirement Villages Act.
- 44.2 Our obligation under clause 44.1 will apply, regardless of termination of this Licence, until you have received your Exit Payment.
- 44.3 We will prepare, at the start of each Accounting Period, a statement forecasting for that period:
- (a) the operating expenditure relating to the Village; and
  - (b) all expenditure relating to the Village (including amounts repayable to residents, former residents and their estates); and
  - (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.
- 44.4 We will give a copy of the statement prepared under clause 44.3 to you and to all the other residents of the Village within three months of the start of each Accounting Period.

## **GENERAL RIGHTS AND OBLIGATIONS OF BOTH OF US**

### **45. CHANGES TO VILLAGE FACILITIES**

- 45.1 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.
- 45.2 Our ongoing costs and expenses of providing and maintaining the Community Facilities fall within the Village Fee, and are met by residents.

### **46. MAINTENANCE OF INTERIOR OF DWELLING**

- 46.1 You will at all times keep your Dwelling and its surrounds, together with the Operator's Chattels, in a proper, tidy, clean and sanitary condition and (where appropriate) working order, at your cost.
- 46.2 You will replace at your cost all mirrors, lightshades, light bulbs, power elements, plumbing fittings, window security stays and electrical fittings in the Dwelling 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.
- 46.3 You will give us prompt notice of:

- (a) any defect in or want of repair of the Dwelling or the Operator's Chattels; and
- (b) any damage caused to the Residential Unit or the Operator's Chattels, of which you are aware.

46.4 We will make all necessary arrangements for any repairs, maintenance (including painting) or replacements of the interior of the Dwelling or the Operator's Chattels:

- (a) where you have notified us that they are necessary in accordance with clause 46.3; or
- (b) where we think they are necessary or desirable after inspecting the Dwelling, whether or not you have notified us of them in accordance with clause 46.3,

to be carried out as soon as reasonably practicable, and to be paid for by you in accordance with clause 46.6.

46.5 We will consult you about any repairs, maintenance or replacement to be carried out under clause 46.4.

46.6 You are responsible for:

- (a) the cost of remedying any breach of your obligations under clause 46.1 or 46.2;
- (b) the cost of repair of any damage caused to the Dwelling or Operator's Chattels by you or your guests; and
- (c) the cost of repairs, maintenance or replacement of the interior of the Dwelling and the Operator's Chattels,

and you will pay such costs in the manner set out in clause 46.7.

46.7 We will invoice you for the costs of such repairs, maintenance or replacement (plus GST where applicable) at the end of each month. You must pay us no later than the 15<sup>th</sup> of the month following the date of invoice, unless your Licence has terminated. In this case, you must pay us in the manner set out in clause 61.1. Where the Dwelling is new, we will ensure that the benefit of any warranties is taken into account.

46.8 You are not responsible for the cost of remedying any inherent defect to the Dwelling or the Operator's Chattels. Such costs will be payable by us.

46.9 We will not be liable for any loss or inconvenience suffered by you arising from any defect or want of repair to your Dwelling 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.

**47. OPERATOR'S RIGHT TO ENTER DWELLING**

- 47.1 You agree to permit us at all reasonable times to enter your Dwelling for the purpose of inspecting the Dwelling, 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.
- 47.2 Wherever practicable we will give you 24 hours prior written notice of our intention to enter your Dwelling in accordance with clause 47.1.

**48. FURTHER DEVELOPMENT OF THE VILLAGE**

- 48.1 We are entitled, as set out in the Deed of Supervision, to improve, extend, add to, reduce or alter the Village or in any manner whatsoever alter or deal with the Village. In undertaking such further development, we will use our best endeavours to cause as little inconvenience to you as is practical in the circumstances.
- 48.2 You are not entitled to make any objection or claim compensation in respect of any further development or building works we undertake. You will, if we require, sign all consents and other documents as may be required to give effect to such further development.
- 48.3 You agree that we are entitled to sell any part of the Village which has not been developed and which we deem to be surplus to our needs.

**49. DISPOSE OF/SUBCONTRACT OUR RIGHTS**

- 49.1 We are entitled to market, sell, assign or dispose of our interest under this Licence. If we do so, we recognise our obligation to consult with you as set out in clause 52.2.
- 49.2 With effect from the date of sale, assignment, or disposal, all our rights and obligations under this Licence will pass to the replacement operator, and we will have no further rights and no further obligations to you under this Licence. You agree to continue to observe and perform all your obligations under this Licence for the benefit of the replacement operator.
- 49.3 You agree to sign a deed of novation of this Licence in favour of the new operator of the Village and such deed will be in the form provided by us.
- 49.4 We are entitled at any time without restriction to subcontract our operation rights and obligations 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 Licence. If we do subcontract our rights and obligations for any period under this Licence, then the subcontracted operator will be our representative for all purposes under this Licence, and you will comply with all instructions, notices, directions and decisions of the subcontracted operator as if we had issued them directly.

## **50. DEPOSIT HOLDER**

50.1 We and you each appoint the Statutory Supervisor as the Deposit Holder (called the Stakeholder under the Deed of Supervision) and we agree that we will be bound by the provisions of the Deed of Supervision.

## **51. RESIDENTS WITH DISABILITIES**

51.1 If you have a disability, you have the right to alter your Dwelling if it does not meet your needs.

51.2 If you wish to alter your Dwelling to meet your needs, you must give us notice in writing:

- (a) advising that you need alterations; and
- (b) identifying what alterations that you consider you need.

51.3 We will consult with you and reach agreement with you as to what alterations you might need.

51.4 We will undertake the alterations. You will be responsible for the costs of those alterations. We will invoice you upon completion of the alterations and you must pay us at the time and in the manner set out in clause 46.7.

51.5 We may require you to reinstate your Dwelling to its original condition upon termination of this Licence. If we do so, then you will be responsible for the cost of the reinstatement. However, if you and we agree, we may decide not to require you to reinstate your Dwelling. If this is the case, you will not be entitled to any compensation for such alterations and you may be required to make a payment to us to reflect any reduction in value of your Dwelling caused by the alterations.

## **OUR CONSULTATION, REPORTING AND NOTICE OBLIGATIONS**

### **52. WE WILL CONSULT WITH YOU**

52.1 We will consult with you 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.

52.2 If we decide to sell or dispose of our interest in the Village, we will consult with the Village residents and ensure that any purchaser consults with the Village residents before we sell or dispose of our interest in the Village. Our consultation with Village residents will take place:

- (a) at a time directed by the Statutory Supervisor; or
- (b) if there is no Statutory Supervisor, at an appropriate time that is a reasonable time before settlement of the transaction.

52.3 We will consult with Village residents before appointing a new manager.

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

52.5 We will consult with you about the marketing of your Dwelling. In particular, we will consult with you about:

- (a) when the Dwelling goes on the market;
- (b) the general nature of the marketing plan for the Dwelling; and
- (c) the actual charges relating to the marketing and sale of the Dwelling that you are liable to pay (if any).

We will continue to keep you informed on a monthly basis about progress with marketing.

### **53. WE WILL NOTIFY YOU**

53.1 We will promptly 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.

## **DEFAULT**

### **54. YOUR DEFAULT**

54.1 If you default at any time in the observance or performance of your obligations under this Licence 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 will be treated as an advance by us and you must pay interest on that advance at the Default Interest Rate.

54.2 Alternatively, upon such default, if the default is significant or becomes significant because it continues, we may terminate this Licence in accordance with clause 58.

## **TRANSFER**

### **55. WE WILL ENDEAVOUR TO EFFECT TRANSFER**

55.1 We acknowledge that you may wish to move to another dwelling within the Village. Where possible, and subject to:

- (a) the availability of another Dwelling;
- (b) our being satisfied that the alternate Dwelling will be suitable for you; and
- (c) our finding a new resident to enter an occupation licence for your Dwelling,

we will endeavour to accommodate your requirements.

### **56. CONDITIONS OF TRANSFER**

56.1 Your right to transfer to another dwelling in the Village will be subject to the following terms and conditions:

- (a) At our option, a resident entering an occupation licence in respect of your Dwelling that you are vacating and making full payment to us for that occupation licence;
- (b) Receipt by us of an acknowledgement of termination of this Licence signed by or on behalf of you;
- (c) on termination of this Licence the Exit Payment you will receive less the amounts set out in clause 3.5, is to be applied towards the entry payment for the new dwelling;
- (d) Your signing an occupation licence for the new dwelling and payment by you of an entry payment; and
- (e) payment by you of an entry payment for the new dwelling. If this is higher than the amount payable to you under clause (c) less the amount in clause (f) (if any), you must pay us the difference upon transfer.
- (f) You will be required to pay a transfer fee being an amount equal to 15% of the entry payment for the new dwelling, or such lesser sum as we may determine in our sole discretion.

56.2 You will only be required to pay one deferred management fee in respect of both your first Dwelling and the new dwelling. The deferred management fee for the new dwelling will be calculated at the usual rate for the highest entry payment of the two dwellings. The amount of the calculated Deferred Management Fee paid by you for the first Dwelling will be credited against the deferred management fee for the new dwelling. The calculation for the accrual of any additional portion of the deferred management fee for the new dwelling is at our discretion

56.3 You must arrange for the moving of yourself and your belongings at your own cost and you must pay your own legal fees relating to the transfer as well as our legal and administrative costs relating to transfer.

## **57. OWNER'S DISCRETION REGARDING TERMS AND CONDITIONS OF TRANSFER**

57.1 Subject to any requirements of the Code of Practice and any relevant requirements in Schedule Five, the terms and conditions that will apply to your transfer to another dwelling providing a different level of care within the Village will be at our sole discretion.

## **TERMINATION**

### **58. TERMINATION EVENT**

#### **Termination by Operator**

##### ***Health***

58.1 We may terminate this Licence if, based on a medical assessment obtained by us at our cost under clause 58.2, an independent medical practitioner has certified that your physical or mental health is such that you cannot live safely in your Dwelling or other residents in the Village cannot live safely in their Dwellings.

58.2 Should we wish to obtain a medical assessment as set out in clause 58.1, then:

- (a) we will give you not less than 14 days' notice of our intention to require you to have a medical assessment;
- (b) we will consult with you, your family or appointed representative where appropriate;
- (c) you agree to co-operate with us in obtaining this assessment;
- (d) if there are two of you, and clause 58.1 applies to only one of you, we will not terminate this Licence for this reason provided you comply with clause 33.2;
- (e) you may obtain a second opinion at your cost and present this to us within 7 days of your being advised of the assessment we have obtained as provided for in clause 58.1.

58.3 If we have complied with our obligations in clauses 58.1 and 58.2 and the circumstances giving rise to our right to terminate have not changed, then we will give you not less than one month's written notice of termination.

##### ***Serious Damage, Injury, Harm or Distress***

58.4 We may terminate this Licence if you have intentionally or recklessly caused or permitted, or you are highly likely to cause or permit:

- (a) serious damage to the Dwelling or Community Facilities;
- (b) damage to the Dwelling or Community Facilities which is not of itself of a serious nature but which is made so by its continuous nature; or
- (c) serious injury, harm or distress to us or to another resident or any of our employees or visitors or any of your visitors.

58.5 Should we wish to terminate this Licence under clause 58.4, then we will give you as much initial written notice as is reasonable in the circumstances that we intend to terminate this Licence unless the default is remedied. When determining the period of notice required to remedy the default, we will take into account the nature and extent of the damage, injury, harm or distress concerned.

58.6 If we have complied with our obligations in clause 58.5 and the circumstances giving rise to our right to terminate have not changed or been remedied, and we still wish to terminate this Licence, then we will give you as much final written notice as is reasonable in the circumstances.

#### ***Permanent Abandonment or Breach of Licence***

58.7 We may terminate this Licence if:

- (a) you have permanently abandoned the Dwelling; or
- (b) you have breached this Licence in a material way.

58.8 Should we wish to terminate this Licence under clause 58.7, then we will give you not less than one month's initial written notice that we intend to terminate this Licence unless the breach or circumstances are remedied.

58.9 If we have complied with our obligations in clause 58.8 and the breach or circumstances giving rise to our right to terminate have not changed or been remedied, and we still wish to terminate this Licence, then we will give you not less than one month's final written notice of termination.

#### ***General***

58.10 The Termination Date will be the first Working Day after the expiry of the applicable notice period set out in clauses 58.3, 58.6 or 58.9.

#### ***Termination by Resident***

58.11 You may terminate this Licence, at your option, at any time.

58.12 Should you wish to terminate this Licence then you must give us one calendar month's notice in writing that you intend to terminate this Licence. If there are two of you in joint occupation then the notice must be signed by both of you.

58.13 The Termination Date will be the first Working Day after the expiry of that notice period.



### **Automatic termination**

- 58.14 This Licence will automatically terminate on the day that you die, or, where two of you have jointly signed this Licence, the surviving Resident dies (as the case may be). This day will be the Termination Date.
- 58.15 This Licence will automatically terminate as set out in any written agreement between you and us for the automatic termination of this Licence. The day stipulated in that agreement will be the Termination Date.

### **59. DEPARTURE FROM DWELLING**

- 59.1 You must leave the Dwelling:
- (a) on the Termination Date; and
  - (b) in the same repair, order and condition as it was at the Commencement Date, except for fair wear and tear or any damage by fire, earthquake, tempest, enemy action or other inevitable accident.
- 59.2 In particular, you must remove all the Resident's Chattels, personal belongings, effects and vehicles from the Dwelling and the Village on or before the Termination Date or, where termination occurs under clause 58.14, seven days after the Termination Date. You must make good any damage caused to the Dwelling or Village in removing these items.
- 59.3 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 one month we may sell the items and, after deducting our expenses of removal, storage and sale, pay the proceeds to you.
- 59.4 You acknowledge that from the Vacation Date we may use the Dwelling for any purpose including, allowing it to be occupied by other residents or intending residents provided that any Village Fee payable by you is abated during the period that we are using the Dwelling.

### **60. FIND NEW RESIDENT**

- 60.1 Subject to clause 60.3, after the Termination Date, we will take all reasonable steps to obtain a new resident for the Dwelling who we consider suitable as a resident of the Village and who is prepared to enter into an occupation licence on our then standard terms and conditions and for the best price reasonably obtainable, with an entry payment and Deferred Management Fee that are consistent with the proportions generally adopted by us at that time for marketing of Dwellings in the Village.
- 60.2 You may introduce a prospective new resident for the Dwelling to us at any time prior to us entering into a new occupation licence for the Dwelling. We are not obliged to accept any prospective new resident who we consider unsuitable as a resident of the Village and/or who does not comply with clause 60.1.

- 60.3 We do not have to obtain a new resident if:
- (a) this Licence terminates under clause 67.2; or
  - (b) we decide we do not want a new resident occupying the Dwelling.
- 60.4 We will not give preference to finding residents for Dwellings in the Village that have not previously been occupied by residents under an Occupation Right Agreement ahead of this Dwelling.
- 60.5 We will consult with you regarding the marketing of the Dwelling as set out in clause 52.5.
- 60.6 If a new occupation licence for the Dwelling has not been entered into within three months of the Termination Date, we will report in writing to you and then provide monthly written reports until a new occupation licence is entered into. We will ensure that our report sets out the steps that we have taken to market your Dwelling and the progress that has been made towards finding a new resident.
- 60.7 If we have not entered into a new occupation licence for the Dwelling within six months of the Termination Date, we will obtain a valuation of the Dwelling at our cost by an independent registered valuer who is experienced in valuing retirement village units to establish a suitable price at which to market the Dwelling. We will show you this valuation. If you do not agree with it, you may obtain a second valuation performed by an independent registered valuer who also is experienced in valuing retirement village units, at your cost.
- 60.8 We will market the Dwelling at the price established by the valuation which we have obtained. If however, you have obtained a second valuation then we will consider that second valuation when determining a suitable price at which to market the Dwelling.

## **61. OUR EXIT PAYMENT TO YOU**

- 61.1 Except where clause 67 applies, on or before the Exit Payment Date, we will pay you the Exit Payment minus the amounts set out in clause 3.5 in accordance with the following provisions of clause 61.

### **Exit Payment Date**

- 61.2 Subject to clauses 61.3 to 61.6 and clause 67.4, the Exit Payment Date is any date within five Working Days after we:
- (a) receive full settlement of the total amount payable by any new resident for the Dwelling; and
  - (b) hold an occupation licence satisfactory to us for the Dwelling properly signed by the new resident.
- 61.3 If we agree with you in writing to pay you the Exit Payment prior to finding a new resident to enter into an occupation licence for your Dwelling, the Exit Payment Date is the date 20 Working Days after we reach agreement.

- 61.4 If we decide we do not want a new resident occupying the Dwelling under clause 60.3(b), the Exit Payment Date is 20 Working Days after we notify you of our decision.
- 61.5 If we have initiated termination under clause 58.1, 58.4 or 58.7, then the Exit Payment Date is five Working Days after the date of expiry of the applicable notice period as set out in clause 58.3, 58.6 or 58.9.
- 61.6 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 have been met.

### **Decrease in Dwelling's value**

- 61.7 If the amount of the entry payment we are able to obtain from a proposed new resident for the Dwelling is less than the Entry Payment, then you must pay us the difference between your Entry Payment and the entry payment paid by the new resident.

### **Determination of Value**

- 61.8 If we are due to pay you the Exit Payment before we receive full settlement of the total amount payable by any new resident for the Dwelling, we will appoint an independent registered valuer to assess the fair market value of the entry payment that could have been obtained at the Termination Date for a new occupation licence in respect of the Dwelling. We will share equally the cost with you of the valuation.
- 61.9 If such valuation relating to your Dwelling is less than the amount of your Entry Payment, you must pay us the difference.

## **62. PAYMENT OF INTEREST**

- 62.1 If we have not paid you the amount due under clause 61.1 within nine months of the Termination Date, we will pay you interest on the sum outstanding. The interest rate will be the ASB Bank 30 day term deposit rate and will accrue from the date which is nine months after the Termination Date to the Exit Payment Date. Payment of interest less resident withholding tax shall be made each calendar month.

## **63. YOUR PAYMENTS TO US ON TERMINATION**

- 63.1 The amounts to be deducted from any payment made by us to you on termination, are as follows:
- (a) Your Deferred Management Fee (except if clause 67.3 applies);
  - (b) any outstanding Village Fee;

- (c) any outstanding Additional Services Payment;
- (d) our reasonable legal and administration costs;
- (e) any utility charges;
- (f) any other money due or that will be due from you under this Licence.

## **DAMAGE OR DESTRUCTION OF THE DWELLING**

### **64. DAMAGE OR DESTRUCTION**

- 64.1 If your Dwelling is damaged or destroyed by fire, accident, natural disaster or any other risk ("Damage Event") the following provisions in clauses 64 to 68 apply.
- 64.2 You and we both acknowledge that if a Damage Event occurs, the time frames for consulting, deciding, providing alternative accommodation and undertaking any works may well depend on circumstances outside our control. Accordingly the phrase "as soon as reasonably practicable" shall mean taking all relevant circumstances into account.

### **65. CONSULTATION**

- 65.1 Following a Damage Event we will consult with you to decide whether it is practicable to repair or replace your Dwelling. We will endeavour to consult with you and notify you of our decision as soon as reasonably practicable after the Damage Event. After we have consulted with you, we will notify you in writing of our decision.

### **66. REPAIR OR REPLACEMENT OF DWELLING**

- 66.1 If we have decided it is practicable to repair and replace your Dwelling, we will fully repair or replace your Dwelling as soon as practicable. However, we are not bound to expend any more money than the actual amount of the insurance money we receive.
- 66.2 Subject to clause 66.1 above, if we have decided to replace your Dwelling we will endeavour to ensure that it is replaced to a design we consider appropriate and to a standard at least equal to that of your Dwelling prior to the Damage Event, subject to us receiving the necessary building consents to do so.

#### ***Suspensions of Payments during Repair or Replacement***

- 66.3 If your Dwelling becomes uninhabitable following a Damage Event and which is not as a result of any of your, or your visitors', acts or omissions, your requirement to pay the Village Fee and any Additional Services Costs will be suspended from the date of the Damage Event to the date your Dwelling (or its replacement) is ready for occupation by you following repair or replacement.

66.4 Unless clause 66.8 applies, if your Dwelling becomes uninhabitable following a Damage Event and which is not as a result of any of your, or your visitors', acts or omissions, the calculation of the Deferred Management Fee will be suspended from the date of the Damage Event until the date your Dwelling (or its replacement) is ready for occupation by you following repair or replacement. Your Deferred Management Fee will not exceed the amount set out in clause 3.5 and its total period of calculation shall be extended by no more than the length of time of such suspension.

### **Temporary Accommodation**

66.5 Following the Damage Event we will use our best endeavours to provide alternative temporary accommodation for you while your Dwelling is being repaired or replaced or until this Licence is terminated. Such accommodation may be outside of the Village and will be provided as soon as reasonably practicable after the Damage Event occurs.

66.6 We will be responsible for the cost of providing such accommodation to you initially for as long as we receive adequate amounts from our insurer for such costs. If our insurance for such costs is exhausted, you will be responsible for such costs.

66.7 You must pay us any outgoings relating to such accommodation and any charges for personal services provided to you whilst you are staying in temporary accommodation.

66.8 For as long as you are staying in temporary accommodation paid by us (pursuant to clause 66.6) the Deferred Management Fee will continue to be calculated.

66.9 If a facility in the Village is being repaired or replaced following an insured event, we will use our reasonable endeavours to provide alternative facilities at our cost as soon as reasonably practicable subject to our receiving adequate amounts from our insurer to cover such costs.

## **67. TERMINATION OF LICENCE**

67.1 Following a Damage Event and after consultation with you under clause 65, we may (in our sole discretion) decide it is not practicable to repair or replace your Dwelling in the following circumstances:

- (a) repair or replacement of the Dwelling is not practicable due to the nature or extent of the damage or destruction;
- (b) we are unable to obtain the necessary building consents to repair or replace;
- (c) the insurance money we receive is not adequate to meet the cost of repairing or replacing the Dwelling;
- (d) we receive no insurance money.

- 67.2 If we decide not to repair or replace the Dwelling under clause 67.1, this Licence will automatically terminate on the date we write to you notifying you of our decision, unless clause 68 applies. This day will be the Termination Date.
- 67.3 If this Licence terminates under clause 67.2, we will pay you the Exit Payment without deducting any Deferred Management Fee or administration fee, but we will be entitled to deduct any other amounts due to us under clauses 3.5 and 63. Clause 61.6 applies to such payment.
- 67.4 If this Licence terminates under clause 67.2 the Exit Payment Date is 10 Working Days after the date we or the Statutory Supervisor receives full payment from our insurers for the loss or damage.
- 67.5 If we do not receive full payment from our insurers, we must still pay you the Exit Payment as set out in clause 67.3.

## **68. TRANSFER TO ANOTHER DWELLING**

- 68.1 If we decide not to repair or replace the Dwelling, we may offer you an option to transfer to an alternative Dwelling (either pre-existing or yet to be constructed) in the Village or in another retirement village owned by us which is in reasonable proximity to the Village, with regard to the circumstances giving rise to the Damage Event.
- 68.2 If we offer you such option, the entry payment for the alternative Dwelling will be such amount as we determine at the time of transfer.
- 68.3 If you accept such option you will be responsible for moving yourself and your belongings at your own cost and your and our legal costs in relation to entering into a new occupation licence for the alternative dwelling on our then standard terms.
- 68.4 If we offer you an option to transfer to an alternative Dwelling and you do not accept such option, this Licence will be deemed terminated by you giving notice to us under clause 58.11 (giving us one calendar month's notice).
- 68.5 If this Agreement is terminated under clause 69.4 the following provisions apply:
- (a) the Exit Payment Date is 10 Working Days after the date we or the Statutory Supervisor receives payment from our insurers for the loss or damage;
  - (b) on or before the Exit Payment Date, we will pay you the Exit Payment minus the amounts set out in clauses 3.5(b) to 3.5(e); and
  - (c) for the avoidance of doubt, the Deferred Management Fee will be payable by you.

## **69. DAMAGE OR DESTRUCTION OF PART OF THE VILLAGE**

- 69.1 If a substantial part of the Village is damaged or destroyed, even if the Dwelling is not damaged, we will consult with you to decide whether it is practicable to repair or replace such part of the Village. If you decide to terminate this Licence in these circumstances, the Exit Payment and Exit Payment Date provisions in clause 61 will apply.

## **COMPLAINTS FACILITY AND DISPUTES RESOLUTION**

### **70. DISPUTE RESOLUTION (EXCEPT A DISPUTE REGARDING DISPOSAL OF DWELLING)**

- 70.1 Notwithstanding any other provision in this Licence, any complaint or dispute (except a dispute regarding the disposal of your Dwelling) shall be dealt with in accordance with this clause 70.

#### **Your complaint**

- 70.2 If you have a complaint you must first refer the complaint to us as set out in our complaints policies or procedures.
- 70.3 20 Working Days after you referred the complaint to us, you may require the matter to be resolved by a disputes panel established under the Act by giving us and/or any other party a dispute notice.

#### **Our complaint**

- 70.4 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.
- 70.5 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.

### **71. DISPUTE RESOLUTION FOR DISPUTE REGARDING DISPOSAL OF DWELLING**

- 71.1 Notwithstanding any other provision in this Licence, a dispute regarding the disposal of your Dwelling will be dealt with in accordance with this clause 71.
- 71.2 If you have a complaint because we have not found a new resident for your Dwelling within nine months after the Dwelling became available to us for disposal, you may be able to give us a dispute notice in accordance with the Act.

## MEETINGS

### 72. RESIDENTS' MEETINGS

72.1 We will call meetings of residents of the Village in the circumstances and for the purposes set out below:

#### Circumstances

#### Purpose

An annual general meeting within 6 months after the end of an accounting period for which financial statements must be prepared for the operator or the retirement village

Considering the financial statements, a report from the statutory supervisor (if any), a report on maintenance and any other matters

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

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

Where the Act, Regulations or the Code of Practice require us to obtain the consent of residents of the village

To obtain the consent of residents of the Village

Where other enactments, the resident's Occupation Licence or other such documents require us to obtain the residents' collective consent

To obtain the residents' collective consent

72.2 We will provide written notice of the meeting to you and each resident of the Village in the manner set out in clauses 73.2 and 73.3 at least 10 Working Days before the meeting. The notice will specify the time, place and agenda of the meeting, and all papers to be considered at the meeting will be attached.

72.3 You and we agree that the meetings will be chaired by a person:

- (a) appointed by the Statutory Supervisor; or
- (b) appointed in accordance with the conditions (if any) of an exemption (if any) that we may have from appointing a statutory supervisor; or
- (c) appointed by the majority of the residents of the Village who are at the meeting if an appointment has not been made under paragraphs (a) or (b) above.



- 72.4 We will give to you and the other residents attending the meeting, either orally or in writing, the information that:
- (a) relates to the affairs of the Village; and
  - (b) has been requested with reasonable notice by a resident of the Village.

## **GENERAL**

### **73. GENERAL PROVISIONS**

#### **No waiver**

- 73.1 Any failure by us to insist upon your strict performance, observance or compliance with any of your obligations under this Licence, or our waiver of your breach of any terms of this Licence 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 Licence.

#### **Notices**

- 73.2 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.
- 73.3 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**

- 73.4 If, under this Licence, 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.

#### **In writing**

- 73.5 All notices and consents or approvals given under this Occupation Licence must be in writing.

#### **Non-merger**

- 73.6 Our and your obligations set out in the following provisions of this Licence will continue until the specific terms of the provision have been complied with or on any later date upon which we have paid you the Exit Payment:
- (a) Clauses 11 to 19 inclusive;
  - (b) Clause 20 to 28 inclusive;
  - (c) Clause 44.1 and 46.6;

- (d) Clauses 60 to 63 inclusive; and
- (e) Clauses 67.3 to 67.5 inclusive.

### **Severability**

73.7 If any provision of this Licence is declared illegal, invalid or unenforceable this Licence shall be read as if such provision were not contained in it. You and we shall endeavor in good faith negotiations to replace any such illegal, invalid or unenforceable provisions.

### **Procedure if there ceases to be a statutory supervisor**

73.8 If the Statutory Supervisor at the Commencement Date, or any replacement statutory supervisor, ceases to be the Statutory Supervisor of the Village, then we will promptly appoint a new statutory supervisor with the required qualifications to act as statutory supervisor of the Village in accordance with the procedures set out in the Act and the Deed of Supervision.

73.9 If we and the residents of the Village by extraordinary resolution passed at a meeting held in accordance with the Deed of Supervision decide that there shall be no statutory supervisor for the Village, then we will make application to the Registrar of Retirement Villages under the Act for an exemption from having a statutory supervisor for the Village. If the exemption is approved, then we will abide by all the conditions required by the Registrar of Retirement Villages.

**SCHEDULE ONE -  
OPERATOR'S CHATELS**

(amend as necessary)

- (a) Automatic oven;
- (b) Ceramic hob;
- (c) Range hood;
- (d) Heavy duty solution dyed carpet and underlay;
- (e) Kitchen vinyl flooring;
- (f) Light Fittings throughout;
- (g) Laundry supertub;
- (h) TV aerial;
- (i) Clothes line;
- (j) Blinds, curtains and tracks throughout;
- (k) Stainless dishwasher;
- (l) Garage door motor;
- (m) Garage fittings;
- (n) Garage door remote;
- (o) Doorbell;
- (p) Airphone.

## SCHEDULE TWO - RULES

1. You shall not in any way obstruct or permit the obstruction of any walkways, pavements, entrances or passages, courtyards, corridors, service ways, vestibules, halls, roads, stairways, fire or escape doors or other part of the Village or any appurtenances or conveniences therein.
2. You shall not in any way cover or obstruct any lights, skylights, windows or other means of illumination of the Village or of the Village generally.
3. 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 Dwelling and the Village and at such times as we may from time to time direct.
4. You shall not throw or permit to be thrown any article or substance whatsoever from or out of the Dwelling or the Village or any part of the Village and shall not place upon any sill, ledge or other like part of the Dwelling or the Village any article or substance.
5. You will keep clean and free from dirt and rubbish such part or parts of the Village and/or any public footpath or right-of-way immediately adjoining the Dwelling.
6. You will use your best endeavours to protect and keep safe the Dwelling and any property contained therein from theft or robbery and shall keep all doors, windows and other openings closed and securely fastened when the Dwelling is not in use or occupied.
7. We will provide keys for locks on doors and other openings of the Dwelling and you will return to us on the termination of this Licence all such keys and shall not permit the same at any time to come into the possession or control of any person other than you.
8. No rubbish or waste shall at any time be burned in the Dwelling or the Village or any part of the Village.
9. You shall not conduct or permit to be conducted in the Dwelling any auction, garage or fire sale.
10. You shall not use or permit to be used the Village or any part thereof for any business or commercial purpose.
11. For the purpose of drying or airing, washing or laundry of any kind, you shall use only those parts of the Village specifically designated for such purpose by us.

12. Subject to any provisions contained in this Licence, we shall be entitled to close the Village or any part thereof and to prevent and prohibit any person (including you) from entering or remaining thereon during prohibited hours and without affecting the preceding provisions of this rule we may close, lock off or otherwise control the Village or any part thereof 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. We shall not take any action under this rule inconsistent with your right to have access to the Dwelling.
13. All blinds, shades, awnings, windows, ventilators and other similar fittings and fixtures installed by you shall conform to our reasonable requirements.
14. You shall give written notice to us if the Dwelling is to be left vacant for more than five (5) Working Days.
15. You shall give us written notice, if:
  - (a) It is intended that any person other than you is to reside in the Dwelling for more than one month; or
  - (b) It is intended that any person under the age of 18 years is to reside in the Dwelling.
16. We may in our absolute discretion permit any resident to keep in the Dwelling any bird or animal but shall be entitled to withdraw any consent so granted if in our opinion the bird or animal disturbs other residents, causes any damage to the Dwelling or any part of the Village or creates any nuisance whatsoever.

### SCHEDULE THREE - VILLAGE OUTGOINGS

The Village Outgoings means all costs, charges, expenses, wages, salaries, fees and other outgoings paid or payable in relation to the management, supervision and operation of the Village and include (without limitation):

- (a) all taxes (except income tax or capital taxes in respect of our income or profits) in respect of the Village and the Land;
- (b) all rates, levies, charges, assessments and fees payable to any government, territorial or local authority in respect of the Village and the Land;
- (c) the cost of compliance with any statute, regulation, bylaw or other lawful obligation in respect of the Village;
- (d) the charges for water, wastewater, gas, electricity, fuel, telephone and tolls, sewerage and equipment leases and other utilities, services or requirements furnished or supplied to us for the Village and its residents, and not specifically the responsibility of a resident;
- (e) the costs of operating, supplying, maintaining, inspecting, testing and repairing all services from time to time provided by us, including electrical and plumbing services, emergency or other alarm services or systems (if any), television network system (if any), and plant and equipment required for any such services;
- (f) all NZ Fire Service charges or the maintenance charges for all fire detection and fire fighting equipment;
- (g) insurance premiums relating to all buildings, the Community Facilities (but excluding your personal belongings and vehicle(s)) and any associated valuation fees;
- (h) salaries, wages, fees, other remuneration, Accident Compensation Corporation charges, superannuation payments and other employment related expenses for persons engaged in the administration, management and operation of the Village;
- (i) the costs of providing security, rubbish collection, cleaning, gardening, lawn mowing and other services for the general use and benefit of the residents;
- (j) the cost of replacing minor capital items;
- (k) the costs of owning or leasing any vehicles (including a minibus) provided for the use of residents;
- (l) the costs of maintaining, repairing, renovating or replacement of all buildings, Community Facilities and the Village generally, but excluding the cost of any structural maintenance and repairs able to be funded out of the historic sinking fund, and any maintenance, repair and replacement costs payable by you pursuant to the provisions of your Licence;
- (m) a reasonable allowance for depreciation of the chattels in the Community Facilities;

- (n) appropriate fees and expenses of the Statutory Supervisor and all other accounting, audit and legal costs incurred in the administration of the Village, and including all costs relating to maintaining Village registration under the Retirement Villages Act;
- (o) registration fees, accreditation costs and levies relating to our membership of the Retirement Villages Association of New Zealand (Incorporated) or any similar association.
- (p) An administration fee covering the cost of services provided by BeGroup Investments LP to us.

**SCHEDULE FOUR - ADDITIONAL SERVICES**



## SCHEDULE FIVE - SPECIAL OBLIGATIONS