

**SPELDHURST COUNTRY ESTATE  
OCCUPATION RIGHT AGREEMENT**

## OCCUPATION RIGHT AGREEMENT

### 1. PARTIES

- A. **Operator:** Speldhurst Country Estate Limited
- B. **Licensee:** **Insert name of holder of the licence. This may or may not be a trustee of a Trust. If it is the Resident then insert the name of the Resident**
- C. **Resident:** **Insert the name of the person who will occupy the Unit**

### 2. INTRODUCTION

- 2.1 The Operator owns and operates the retirement village known as Speldhurst Country Estate at 70 Kimberley Road, Levin.
- 2.2 The Licensee has applied to the Operator for the grant of an Occupation Right to enable the Resident to become a resident of a Unit in the village and the Operator has agreed to accept the Licensee's application upon the terms set out in this Agreement.
- 2.3 If the Licensee is a person or persons other than the Resident then it is acknowledged by the Licensee that only the Resident will be entitled to occupy the Unit and use the village facilities at any time.
- 2.4 The Licensee and the Resident will, notwithstanding anything in this Agreement to the contrary, be jointly and severally liable to the Operator for all payments and the observance and performance of all obligations on the part of the Resident under this Agreement.

### 3. AGREEMENT

- 3.1 This Agreement is set out in the following Parts:

- **Part A** – this contains a schedule of information about the Unit selected, the Operator's chattels included in the Unit, payments to be made by the Resident, services selected by the Resident and the conditions which must be satisfied before this Agreement can have any effect.
- **Part B** – this contains definitions used in this Agreement, the terms and conditions that apply to the grant of the Occupation Right for the Unit and the obligations of each party.
- **Part C** – this sets out the Village Outgoings Charge calculation and a description of the Village operating expenses.
- **Part D** – this sets out the services and facilities in the Village.

- **Part E** – this contains a plan of the Village.

**3.2** Subject to the conditions set out in Part A being satisfied, it is agreed that the Operator will grant to the Licensee and the Licensee will accept, the right for the Resident to occupy the Unit (described in Part A) in return for payment of the Capital Sum on entry to the Unit and the payment of the Amenities Contribution on termination of the Agreement (such payments are described in Part A) and the agreement of the Licensee and the Resident to comply with the terms of this Agreement.

**3.3** The Licensee and the Resident confirm that they have been handed a copy of each of the following:

- (a) Disclosure Statement;
- (b) Code of Resident's Rights; and
- (d) The form of this Agreement.
- (e) Code of Practice 2008.

The Code of Practice 2008 is in force at the date of this Agreement.

**3.4** The Licensee and the Resident confirm that they have received independent legal advice before signing this Agreement.



**4.2 Licensee**

Signed by

.....  
Signature of Licensee      Name of Licensee      Date

.....  
Signature of Licensee      Name of Licensee      Date

.....  
Signature of Licensee      Name of Licensee      Date

.....  
Signature of witness (Certifying Solicitor)

.....  
Name of witness

.....  
Occupation

.....  
Address

**4.3 Resident**

Signed by

.....  
Signature of Resident      Name of Resident      Date

.....  
Signature of Licensee      Name of Resident      Date

.....  
Signature of witness (Certifying Solicitor)

.....  
Name of witness

.....  
Occupation

.....  
Address

**4.4 Lawyers Certification**

**Name of Village:** Speldhurst Country Estate

**Registration No. of Village:** 2635411

I, \_\_\_\_\_ (*Insert name of lawyer*) certify that:

- (a) I explained to \_\_\_\_\_ (*Insert names of Licensees and Residents or Attorney of a Licensee or Resident*) the general effect of the attached Agreement and its implications before each of them signed the Agreement; and
- (b) I gave the explanation in a manner and in language that was appropriate to the age and understanding of \_\_\_\_\_ (*Insert names of Licensees and Residents or Attorney of a Licensee or Resident*).

Dated: \_\_\_\_\_ (*Insert date*)

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

Name of signatory: \_\_\_\_\_

Street address of Lawyer and name of Firm: \_\_\_\_\_  
\_\_\_\_\_

Postal address of Lawyer and Firm: \_\_\_\_\_

Email address of Lawyer: \_\_\_\_\_

Telephone number of Lawyer: \_\_\_\_\_

Fax number of Lawyer: \_\_\_\_\_

**4.5 Date of Execution**

This Agreement has been signed this \_\_\_\_\_ day of \_\_\_\_\_ 2018

## PART A

### 5. SCHEDULE OF INFORMATION

#### 5.1 Unit Type

Villa No:

#### 5.2 Completion Status (delete one option)

The Unit selected is completed and ready for occupation;

or

The Unit selected is not yet built or completed. It is expected to be completed on **insert date of completion**.

#### 5.3 Nature of Occupation Right

A licence to occupy the Unit.

#### 5.4 Commencement Date of Occupation Right (delete on option)

##### Completed Unit:

**date** or the day following the date of expiry of 15 working days after this Agreement has been signed by the Resident, whichever date is the later.

or

##### To be Built or Completed:

**date** or 7 days after the Operator notifies the Resident that the Unit is complete, unless the Agreement has been previously cancelled by the Licensee.

#### 5.5 Payments

5.5.1 Capital Sum: \$ \_\_\_\_\_

5.5.2 Village Outgoings Charge: \$ \_\_\_\_\_ per week, GST inclusive

5.5.3 Amenities Contribution: This fee is payable in terms of clause 8.3 and is an amount equal to 4% per annum of the Capital Sum accruing to the Operator each month (or part of the month) from the Commencement Date (see item 5.4 above) until the date the Resident vacates the Unit or dies and all the Resident's possessions are removed from the Unit but subject to a maximum charge of 20% of the Capital Sum.



**5.5.4 Administration Charge:** The Resident is required to pay the Operator an amount equal to 2% of the Capital Sum, plus GST, on the date of settlement of payments under a relicensing of the Unit to a new resident, as an administration charge.

## **5.6 Operator's Chattels**

These are the chattels of the Operator and are referred to in clause 6.3:

cooktop oven, dishwasher, rangehood, heated towel rail, extractor fan, carpet, light fittings, waste disposal, laundry supertub, automatic garage door opener and heat pump.

## **5.7 Conditions**

**5.7.1** This Agreement is subject to each of the following conditions being satisfied:

- (a) **Sale of Resident's Existing Property:** The Resident obtaining an unconditional agreement for the sale of their property at **insert address** on terms satisfactory in all respects to the Resident.

If this condition has not been satisfied by **date**, then either the Operator or the Licensee may cancel this Agreement and in such event, any deposit paid in terms of this Agreement shall be refunded by the Statutory Supervisor to the Licensee, together with any accrued net interest.

**5.7.2** If the Operator receives another offer for the unit before the condition in clause 5.7.1(a) (Sale of Resident's Existing Property) is satisfied, the Operator may give the Licensee and the Resident written notice of the existence of the offer ("notice"). If the Licensee and the Resident fail to make this agreement unconditional by 4pm on the fifth working day after receiving the notice, this agreement will be void (time being of the essence). If this agreement becomes void under this clause 5.7.2, the deposit will be refunded by the Statutory Supervisor to the Licensee and neither party will have any further right or claim against the other.

## **PART B**

### **6. DEFINITIONS**

**6.1** Unless the context requires a different interpretation, words and phrases not otherwise defined in this Agreement have the same meanings given to those words and phrases in the Retirement Villages Act 2003 or the Retirement Villages (General) Regulations 2006, as amended or replaced from time to time.

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

**6.3** In this Agreement where the context admits;

(a) Words implying the masculine gender shall include the feminine.

(b) Words implying the singular number shall include the plural and vice versa.

(c) Words and expressions referred to shall have the meanings as set out below:

"Amenities Contribution" means the amenities contribution described in clause 8.3.

"Broken Period" means the period from the Commencement Date of the Occupation Right (as specified in item 5.4 of the Schedule of Information) to the next following 31 March and also the period from and including 1 April during the term of this Agreement until the date on which the Operator settles the payments under a licence to a new resident.

"Capital Sum" means the capital sum specified in item 5.5.1 of the Schedule of Information.

"Code of Practice" means the Retirement Villages Code of Practice in accordance with section 89 of the Retirement Villages Act 2003 in force from time to time.

"Code of Residents Rights" means the code of residents rights described in Schedule 4 of the Retirement Villages Act 2003.

"Commencement Date" means the commencement date of the Occupation Right as determined under clause 5.4 of the Schedule of Information.

"Common Areas" means those parts of the Village including entrances, lobbies, corridors, lavatories, stairways, paths, driveways, visitor car parking areas, gardens, grounds and other common amenities and conveniences other than those reserved to the Operator or to any other person from time to time by the Operator.

"Community Facilities" means the Common Areas and any Community facilities of the Village provided by the Operator from time to time.

"Disclosure Statement" means the written document titled the "Disclosure Statement for the purposes of the Retirement Villages Act 2003" issued by the Operator in respect of the Village.

"Occupation Right" means a licence to occupy the Unit without interruption or disturbance by the Operator and to the use in common with all other residents of the Village and all other persons from time to time authorised by the Operator of the Common Areas on the terms and conditions set out in this Agreement.

"Operator's Chattels" means the fittings, furniture and appliances specified in item 5.6 of the Schedule of Information.

"Resident" means the resident named in item 1 (or in the case where two persons are so named, either one of such persons) and shall for all purposes, except occupation of the Unit and use of the Village Common Area and facilities, include the Licensee.

"Resident's Possessions" means any personal items installed in the Unit or the Village by the Resident.

"Review Date" means 1 April in each year.

"Rules" means the Operator's rules for the Village which are subject to change in accordance with this Agreement.

"Statutory Supervisor" means Covenant Trustee Services Limited and its successors and permitted assigns as appointed pursuant to a Deed of Supervision.

"Unit" or "unit" means the type of dwelling accommodation selected in item 5.1 of the Schedule of Information in respect of which an Occupation Right has been granted by the Operator to the Licensee for the benefit of the Resident in terms of this Agreement.

"Village Outgoings Charge" means the village outgoings charge specified in item 5.5.2 of the Schedule of Information.

"Village Outgoings Calculation" means the calculation of the Village Outgoings Charge as at 1 April in each year in accordance with the provisions of Part C of this Agreement.

"Village Manager" means the person employed by the Operator to manage the operation of the Village.

"Village Outgoings" means all operating costs, expenses and outgoings incurred by the Operator or on its behalf and paid or payable in respect of the Village and its management, supervision and operation and includes the costs, expenses and outgoings specified in Part C of this Agreement.

"Working Day" means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day and Waitangi 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
- (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

A Working Day will be deemed to commence at 9.00am and end at 5.00pm. Any act done pursuant to this Agreement by a party after 5.00pm on a Working Day, or on a day which is not a Working Day, will be deemed to have been done at 9.00am on the next succeeding Working Day.

## **7. GRANT OF OCCUPATION RIGHT**

- 7.1** The Operator grants to the Licensee and the Licensee accepts the Occupation Right for the benefit of the Resident in exchange for payment by the Licensee of the Capital Sum and the agreement of the Licensee to pay the Amenities Contribution on termination subject to the Licensee and the Resident making payments as set out in clause 8 and to the Licensee and the Resident complying with the terms of this Agreement.
- 7.2** The Resident shall be entitled to take up occupation of the Unit on the Commencement Date.
- 7.3** The Occupation Right is a personal contractual right only. Nothing in this Agreement gives the Licensee or the Resident any ownership right or interest in the Village or the Unit (including any tenancy or leasehold rights to the Unit). The Licensee and the Resident agree with the Operator that they will not be entitled to caveat or otherwise encumber the Operator's title to the Village.
- 7.4** If the Occupation Right is granted to the Licensee for the benefit of two Residents then upon the death of one Resident, the interest of that person will transfer to the surviving Resident. If one of such Residents ceases to reside permanently in the Unit for any reason then the joint interests of that Resident under this Agreement must be transferred to the remaining Resident.
- 7.5** Except as provided in item 7.4, the Occupation Right is not transferable and, in particular, no transfer into the name of the Licensee's or Resident's personal representatives (following death) will be permitted.

## **8. PAYMENTS**

### **8.1 Capital Sum**

**8.1.1** At the time of making application the Licensee will pay a deposit equal to 10% of the Capital Sum or such lesser amount as the Operator shall accept and will pay the balance of the Capital Sum on the Commencement Date, provided that if the Resident is transferring from another unit in the Village, then the Licensee will pay the balance of the Capital Sum on the earlier of the expiry of six months from the Commencement Date or the date of settlement of payments of the former unit to a new resident.

**8.1.2** The deposit and the balance of the Capital Sum will be paid by the Licensee to the Statutory Supervisor. If the Licensee does not exercise the right to cancel this Agreement as set out in clause 18 of this Agreement, the Operator will be entitled to require the Statutory Supervisor to release to the Operator the deposit and the balance Capital Sum, together with any net interest earned through the Statutory Supervisor's trust account.

### **8.2 Village Outgoings Charge**

**8.2.1** The Licensee will pay to the Operator each year the Village Outgoings Charge for the cost of administration, rates, insurance, maintenance and depreciation of chattels of the Community facilities and the provision of other services in the Village and specified in the Village Outgoings Schedule.

**8.2.2** The Licensee will pay to the Operator a proportion of the Village Outgoings Charge for any Broken Period.

**8.2.3** The Licensee will pay to the Operator the Village Outgoings Charge by equal weekly instalments in advance calculated from the Commencement Date. The Licensee will sign and deliver to the Operator an authority to permit the Operator to deduct each weekly instalment of Village Outgoings as it falls due by direct debit from the Licensee's bank account provided that any Village Outgoings Charge falling due that has not been paid by direct debit shall be payable by the Licensee to the Operator on demand.

**8.2.4** The Operator shall be entitled to change the Village Outgoings Charge as at 1 April each year during the term of this Agreement in accordance with the Village Outgoings Calculation. The Operator will give to the Licensee 10 days written notice of the amount of the proposed charge prior to deducting such amount from the Licensee's bank account or, if not paid by direct credit, the Licensee shall pay the charge on demand.

It is acknowledged and agreed:

- (a) The Operator will not be required to increase the Village Outgoings Charge on the Review Date and shall be entitled to increase the Village Outgoings Charge by an amount less than the maximum permitted in accordance with the Village Outgoings Calculation; and

- (b) The Operator may reduce the Village Outgoings Charge on any Review Date.

- 8.2.5** Subject to the provisions of sub-clause 8.2.6 and 8.2.8 the Licensee will pay the Village Outgoings Charge until the date on which the Operator settles the payments for the licensing of the Unit to a new resident in accordance with the provisions of this Agreement.
- 8.2.6** If, within six months from the date of termination of this Agreement and vacation of the Unit by the Resident (including the removal of the Resident's Possessions from the Unit) the Operator has not settled the re-licensing of the Unit then upon the expiry of six months from the date of termination of this Agreement and vacation of the Unit (including the removal of the Resident's Possessions from the Unit) the Village Outgoings Charge shall cease to be payable by the Licensee.
- 8.2.7** It is acknowledged by the Licensee and the Resident that the Operator will be entitled to charge different levels of Village Outgoings Charge to residents.
- 8.2.8** If the Unit has been rendered uninhabitable as a result of damage or destruction through no fault of the Licensee or the Resident and the Operator has not provided the Resident with temporary accommodation the Village Outgoings Charge shall cease to be payable by the Licensee from the date of the damage or destruction but shall resume on the date the Unit has been reinstated and made available to the Resident for occupation.

### **8.3 Amenities Contribution**

- 8.3.1** The Licensee agrees to pay to the Operator an Amenities Contribution 5 working days after the date on which the Operator shall settle payments for the licensing of the Unit to a new resident in accordance with the provisions of clause 21.
- 8.3.2** The Amenities Contribution shall be an amount equal to 4% per annum of the Capital Sum and shall accrue to the Operator each month (where only part of the month elapses, a full month's accrual will occur except for the last month when the accrual shall be on a daily basis) from the Commencement Date until the Last Accrual Date provided however that the maximum sum payable by the Licensee as an Amenities Contribution in terms of this licence shall be an amount equal to 20% of the Capital Sum.
- 8.3.3** The expression 'Last Accrual Date' shall mean the earlier of:
  - (a) The date on which the Resident vacates the Unit and removes all the Resident's Possessions; or
  - (b) Following the death of the Resident (and if more than one Resident, the last surviving resident), the date on which all of the deceased Resident's Possessions are removed from the Unit.

**8.3.4** Notwithstanding anything in this clause 8.3 to the contrary if the Unit is rendered uninhabitable as a result of damage or destruction through no fault of the Licensee or the Resident and the Operator has not provided the Resident with temporary accommodation the Amenities Contribution shall cease to accrue to the Operator from the date of the damage or destruction. The accrual of the Amenities Contribution will resume from the date the Unit has been reinstated and made available to the Resident for occupation.

#### **8.4 Administration Charge**

The Resident is required to pay the Operator an amount equal to 2% of the Capital Sum, (plus GST, if any) on the date of settlement of payments under a relicensing of the Unit to a new resident, as an administration charge.

#### **8.5 Repair Charges**

**8.5.1** The Licensee and the Resident will pay to the Operator on demand all costs incurred by the Operator during the term in repairing and maintaining the interior of the Unit (including the stove, garage doors, plumbing and electrical fittings and fixtures) and the Operator's Chattels in good order, repair and condition.

**8.5.2** On termination of this Agreement the Resident is required to pay to the Operator the costs incurred by the Operator in repairing any damage or want of maintenance or repair caused to the interior of the Unit (including the Operator's Chattels) which is not attributable to fair wear and tear.

#### **8.6 Utility Charges**

**8.6.1** The Resident will pay and discharge all charges for the supply of electricity, gas, telephone connection, telephone rental and tolls, television subscription and connection fees and all other utility charges in respect of the Unit.

**8.6.2** The charges payable under clause 8.6.1 are payable to the utility provider which supplies the service provided that where the Unit does not have a separate meter, a charge will be calculated by the Operator as a fair proportion attributable to the Unit. In such case the Resident will be billed on a monthly basis for the supply of such utilities.

**8.6.3** The Resident will continue to be liable to pay all charges for utilities consumed in respect of the Unit until the date the Resident vacates the Unit and removes the Resident's Possessions.

#### **8.7 Health Service Charges**

The Resident will pay to the Operator on demand all charges for the provision of medical and pharmaceutical services to the Resident while the Resident continues to reside in the Unit.

## **8.8 Service Costs**

- 8.8.1** If at the time of entering into this agreement the Resident has agreed to purchase services then the Resident agrees to purchase such services during the whole term of this Agreement provided that the Resident will be entitled from time to time on giving reasonable prior written notice to the Manager to elect to purchase a reduced or increased level of services by selecting from the range of service modules provided by the Manager (if any).
- 8.8.2** The Resident shall pay to the Manager an amount each month for the services as determined by agreement between the Operator and the Resident and such payment shall be in addition to the Village Outgoings Charge.
- 8.8.3** The Operator will be entitled to review the amount of the cost for services supplied to the Resident from time to time. The basis for reviewing the charge for services is increases in the cost of providing the service. The Operator will consult with the Resident regarding any increases four weeks in advance of any proposed review to provide the Resident with time to discuss his/her service level requirements.
- 8.8.4** If the Unit has been rendered uninhabitable as a result of damage or destruction through no fault of the Resident and the Operator has not provided the Resident with temporary accommodation the service cost shall cease to be payable by the Resident from the date of the damage or destruction but shall resume on the date the Unit has been reinstated and made available to the Resident for occupation.

## **8.9 Interest on Unpaid Money**

If the Licensee or the Resident fails to make payment of any moneys payable on the due date for payment under this Agreement then the Licensee will, on demand, pay interest on the moneys unpaid from the due date for payment down to the date of payment at the rate of 4% per annum above the Bank overdraft interest rate of the Operator calculated on a daily basis.

## **8.10 Operator to Pay Village Outgoings**

The Operator will duly pay or cause to be paid within a reasonable period after they become due all Village Outgoings incurred by the Operator or on its behalf and paid or payable in respect of the Village and its management, supervision and operation that are referred to in the Village Outgoings Schedule.

## **8.11 Administration Charge**

The Resident will pay to the Operator on demand a reasonable charge in the event that the cost of any goods or services supplied to the Resident are charged directly to the Operator.



## **8.12 Insurance Excess Payments**

If the buildings and/or the Operator's Chattels in the Village or, any part of them, are damaged or destroyed as a result of the negligent or wilful act of the Resident or any guest of the Resident then, without prejudice to the Operator's other rights, the Operator will be entitled at its option by notice in writing served on the Resident to require the Resident to pay the amount of any excess charge made by the insurer of such assets and the Resident agrees to pay to the Operator the amount of such excess charge immediately upon demand being made in writing.

## **9. RESIDENT'S OBLIGATIONS**

The Resident agrees with the Operator as follows:

### **9.1 Care of Unit**

**9.1.1** The Licensee and the Resident shall during the term of this Agreement be liable for the cost of keeping the interior of the Unit and the fixtures, fittings and chattels in the Unit in good order, repair and condition. The Resident may not carry out any maintenance or repair work to the Unit or the said fixtures, fittings and chattels but shall be liable to pay the Operator the cost incurred by the Operator in carrying out the repairs and maintenance pursuant to clause 8.5.

**9.1.2** The Resident will give to the Operator prompt written notice of any defect in, or want of repair of, the Unit or the Operator's Chattels of which the Resident is aware and the Operator will within a reasonable time after receipt of such notice take appropriate steps to repair and make good the defect or want of repair.

**9.1.3** The Licensee and the Resident shall not carry out any alterations or additions to the Unit.

**9.1.4** Following vacation of the unit and removal of the Resident's possessions, the Operator will arrange at its cost for a person suitably qualified with building experience to carry out an assessment of the Resident's liability pursuant to clause 8.5 of the Occupation Right Agreement for maintenance and repairs to the interior of the unit and the Operator's chattels. The Operator will consult with the Resident on the extent and cost of any required maintenance and repairs and will arrange for a contractor to carry out such work in a prompt and efficient manner. If the Resident does not approve the extent and/or cost of any required maintenance and repairs then the Operator will engage a Quantity Surveyor to make a determination on the issue in dispute and the cost of engaging such person will be borne by the Resident. The Resident will permit the Operator and its contractor to enter the unit to do the work and the cost of such work (as approved by the Resident or determined as aforesaid) shall be deducted from the moneys payable by the Operator to the Resident following the relicensing of the unit to a new resident.

**9.1.5** The Operator will consent to the alteration of the Unit for a resident with disabilities if the Unit does not meet his needs but such consent will be made subject to such terms and conditions which the Operator considers appropriate and which will be advised to the resident at the time of applying for consent. Any approved alterations will be carried out by the Operator at the cost of the resident. It will be a condition of any consent to such work that the alterations to the Unit shall be reinstated at the cost of the Resident to its condition at the Commencement Date, on the termination of the Agreement.

## **9.2 Personal Chattels**

The Resident shall be responsible for insuring all personal chattels and belongings and acknowledges that the Operator shall have no liability for any loss or damage arising to the same.

## **9.3 Personal Conduct in the Village**

The Resident covenants with the Operator that he will at all times:

**9.3.1** conduct himself in the Unit and in the Village in such a manner as to not unreasonably cause a nuisance or become an annoyance or give offence to any person;

**9.3.2** not use any veranda, deck, patio or other external area of the unit for the hanging of clothes or washing except those areas designated from time to time by the Operator for that purpose;

**9.3.3** use the unit only as his personal dwelling and not for any other purpose.

## **9.4 Not to Deposit Waste**

The Resident shall not do or permit any act or thing which could cause any of the drains or water pipes in, under or surrounding the Unit to be or become blocked, or deposit rubbish other than in approved receptacles or defile any part of the land or buildings on or in the village.

## **9.5 To Use the Designated Car Parking Areas**

The Resident shall not park or permit to be parked any vehicle on any part of the Village other than in the areas designated from time to time by the Operator for that purpose.

## **9.6 Not to Construct TV, Radio Aerials or Audible Burglar Alarms**

The Resident shall not erect or place on or outside any Unit any radio or television aerial or antenna or install audible burglar alarms without the prior written consent of the Operator.

## **9.7 Not to Keep Animals and Birds**

The Resident shall not keep any cat, dog, bird or other animals in the Unit or in the Village without the prior consent in writing of the Operator. Such consent shall be at the complete discretion of the Operator and may be withdrawn at any time.

## **9.8 Assignment or Sublicensing**

**9.8.1** The Licensee and the Resident will not transfer, assign, part with, share or otherwise encumber, deal with or dispose of the Unit or this Agreement.

**9.8.2** The Licensee may sub-licence the Unit subject to the prior written consent of the Operator which will not be withheld unreasonably in the case of a sub-licence to a respectable, responsible and solvent person who is to occupy the Unit and who would otherwise meet the Operator's normal criteria for the grant of an Occupation Right. Such person will be required to enter into a Deed of Covenant, to be prepared by the Operator's solicitor at the sub-licensee's expense, which will include such terms, covenants and conditions of this Agreement as the Operator deems appropriate in the circumstances. The Licensee is not permitted to sub-licence the Unit for more than six months in any year.

**9.8.3** The Resident shall be entitled to have friends or members of the Resident's family stay in the Unit for an aggregate total (in respect of all guests) of 90 days in any period of twelve (12) consecutive months (or for longer periods with the written consent of the Operator) subject to compliance by such guests with all Rules of the Village.

**9.8.4** The Operator will consent to a de-facto partner of the Resident living in the Unit provided that person would otherwise meet the Operator's normal criteria for the grant of an Occupation Right and such person signs a Deed of Covenant (at his expense) which requires him to observe and perform such terms and conditions from this Agreement as the Operator considers appropriate.

## **9.9 To Allow Entry by Operator**

The Resident will allow the Operator and its servants, agents and workmen the right of entry at all reasonable times to the Unit to inspect the interior and to carry out any necessary repairs to the Unit or the Operator's Chattels.

## **9.10 Disclosure of Medical Condition**

The Resident will disclose to the Operator, in writing, prior to the execution of this Agreement any ailment or illness suffered by the Resident. Should the Resident fail to comply with this obligation, then the Operator shall be entitled to issue a Dispute Notice pursuant to the provisions of clause 25 seeking remedies that may include termination of this Agreement.

### **9.11 Resident's Personal Necessities**

The Resident shall provide suitable and sufficient clothing and personal necessities at the Resident's own expense. If the Operator is required by this Agreement to furnish, supply or give the Resident support, care, meals or accommodation then such obligation shall not apply while the Resident is absent from the Village.

### **9.12 Power of Attorney**

The Resident will provide to the Operator prior to the Commencement Date with a copy of a properly executed Enduring Power of Attorney for both personal care and welfare and property together with relevant contact details of the appointed attorneys. These Powers of Attorney must operate in the event of mental incapacity. The Resident will advise the Operator of any change to the Powers of Attorney or contact details. The Resident acknowledges that the Operator will be entitled to rely on the most recent information supplied in writing by the Resident to the Operator.

### **9.13 Compliance with Rules**

**9.13.1** The Resident will at all times observe and comply with the Rules and not do anything in contravention of the Rules.

**9.13.2** The Resident will ensure that all guests or visitors of the Resident are aware of the Rules and comply with those Rules in all respects.

**9.13.3** The Operator is entitled from time to time, subject to consultation with the residents in the Village, to establish, review and amend the Rules provided that the Rules may not detract from the Resident's rights under this Agreement and in the event of any inconsistency between this Agreement and the Rules, the provisions of this Agreement will prevail.

**9.13.4** If the Operator changes the Rules in accordance with clause 9.13.3 it must notify the Resident of the changes before the Resident is required to observe them.

### **9.14 Privacy Authorisation**

**9.14.1** The Resident acknowledges that the Operator is required to collect and to hold relevant personal information about the Resident (including the Resident's physical and mental health) and authorises:

- (a) The Operator to collect the relevant personal information about the Resident from any relevant agency; and
- (b) Any agency to disclose such relevant information and in particular any health agency to disclose to the Operator information relating to the Resident's health.

**9.14.2** The Resident has the right during normal business hours to access his personal information held by the Operator and to require the Operator to correct any errors in relation to that person's information.

### **9.15 Valid Will and Details of Next of Kin**

The Resident 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 before the Commencement Date and shall keep the Operator informed of the name, address and telephone number of his legal personal representative or next of kin.

## **10. CONSULTATION WITH RESIDENTS AND TREATMENT OF RESIDENTS**

### **10.1 Consultation With Residents**

The Operator will consult with the Licensee and the Resident:

**10.1.1** before the Operator's interest in the Village is sold or transferred. This consultation will take place either at a time directed by the Statutory Supervisor or in any other case, at an appropriate time that is a reasonable time before settlement of the transaction. The Operator will ensure that any proposed purchaser of the Operator's interest is party to the consultation.

**10.1.2** before appointing a new Village Manager.

**10.1.3** about any proposed changes in the services and benefits provided or the charges that the Licensee or the Resident is required to pay that will or might have a material impact on the ability of the Licensee or the Resident to pay for the services and benefits provided.

### **10.2 Treatment of Residents**

**10.2.1** The Operator will treat all residents in the Village with courtesy and will respect their rights and develop procedures and policies to ensure that such courtesy and respect is extended by all people who work at the Village and who provide services at the Village.

**10.2.2** The Operator will not exploit the residents in the Village and will develop procedures and policies to ensure that this obligation is observed by all people who work at the Village and who provide services at the Village.

## **11. OPERATOR'S COVENANTS**

**11.1** The Operator agrees with the Licensee and Resident as follows:

**11.1.1 Insurance:** To maintain a comprehensive reinstatement insurance policy with a reputable insurance company covering all buildings, plant, equipment and chattels owned by the Operator (including assets, amenities and utilities within the Village) and any capital improvements or fittings provided by the Resident for their replacement value against loss or damage to or destruction caused by fire, accident or natural disaster and covering any other insurable risks which

the Operator considers desirable, in the interests of the Operator or in the interests of the Residents.

**11.1.2 Operator's Chattels:** To provide and install into the Unit the Operator's Chattels.

**11.1.3 Utilities:** To supply the Unit with connections for water, electricity, gas (where applicable), telephone and standard wall connections for television. The Resident shall pay and discharge the actual costs of usage as indicated (where possible) by separate meter.

**11.1.4 Garden and Ground Maintenance:** To maintain and keep in good and respectable tidy operational order and condition the Common Areas, including pathways and grounds surrounding the buildings, the gardens, trees and shrubs.

**11.1.5 Maintenance and Repair:**

- (a) To maintain and keep maintained in good, clean, tidy, repair, order and condition all buildings in the Village.
- (b) On being advised of any defect or want of repair to the Unit or the Operator's Chattels the Operator will, within a reasonable time, take appropriate steps to repair and make good the defect or want of repair.
- (c) The Operator shall not be liable for any loss or inconvenience suffered by the Resident arising from any defect or want of repair to the Unit or the Operator's Chattels unless the Operator shall have been advised in writing of any such defect or want of repair and shall have failed within a reasonable time to take reasonable steps to repair and make good the defect or want of repair.

**11.1.6 Code of Practice:** The Operator will comply with the requirements of the Code of Practice.

**11.1.7 Code of Residents Rights:** The Code of Residents Rights which has been handed to the Licensee and the Resident summarises the minimum rights conferred on a Resident of the Village by the Retirement Villages Act 2003.

**11.1.8 Financial Information:**

- (a) To give to the Resident, free of charge, on request a copy of the most recent audited financial statements of the Operator. This obligation shall continue after termination of this Agreement until the Licensee is refunded the repayment entitlements as determined under clause 21.
- (b) The Operator will, at the start of each accounting period (as defined in the Financial Reporting Act 2013) of the Operator, prepare a statement forecasting for the period:
  - (i) The operating expenditure relating to the Village; and

- (ii) All expenditure relating to the Village (including amounts repayable to residents, former residents and their estates); and
- (iii) All income relating to the Village; and
- (iv) The amounts of the operating expenditure that must be met by the residents of the Village;

and give a copy of the statement to each resident of the Village within three months of the start of the accounting period.

**11.1.9 Transfer to another Unit:** If the resident wishes to transfer to another Unit in the Village the Operator will permit the transfer subject to the following terms and conditions:

- (a) The Resident will be given priority over applicants who are not existing residents in the Village but any transfer will be subject to a suitable unit being available at the time of application.
- (b) The Resident must pay the Operator's reasonable legal costs in documenting the transaction, the amount of which will depend on the extent of the legal services provided.
- (c) The Resident will be required to pay a capital sum for the replacement Unit and other charges as determined by the Operator and advised to the Resident in writing at the time of the transfer.
- (d) The Resident will not be required to pay a further Amenities Contribution in respect of the replacement Unit if the Amenities Contribution payable for the Unit under this Agreement has fully accrued (i.e. the full 20% maximum Amenities Contribution has accrued) to the Operator by the date on which the Resident pays the capital sum for the replacement Unit.
- (e) Except in the case of (d) above, the Resident will be required to pay a further Amenities Contribution in respect of the replacement Unit. The amount of this Amenities Contribution will be advised in writing by the Operator to the Resident but the Resident will be credited with an amount (expressed as a percentage) that the accrued Amenities Contribution in respect of the Unit under this Agreement bears to the maximum Amenities Contribution payable in respect of the replacement Unit.

## **12. DAMAGE OR DESTRUCTION OF UNIT**

**12.1 Temporary Accommodation:** If the Unit, any building in the Village or the Village itself is destroyed or damaged to the extent that, in the opinion of the Operator, the Unit is unfit for occupation (“Material Event”) the Operator will at its cost promptly provide temporary accommodation in the Village or, at its discretion, outside of the Village until:

- (a) the Unit or a reasonably equivalent dwelling as described in clause 12.2 is made fit for occupation; or
- (b) the expiry of a reasonable notice given in writing by the Operator pursuant to clause 12.2 (b).

**12.2 Repair and Reinstatement of Unit:** Following a Material Event (as defined in clause 12.1):

- (a) if it is practicable for the Operator to do so (to be decided in the sole discretion of the Operator following consultation with the Licensee and the Resident) the Operator will without unreasonable delay repair or reinstate the Unit or build a reasonably equivalent dwelling within the Village which substantially conforms to the original design of the Unit or such other design as the Operator considers appropriate but of a standard and floor area equivalent to that of the Unit; or
- (b) the Operator will give the Licensee and the Resident reasonable notice in writing stating that it has determined that it is not practicable to:
  - (i) repair or reinstate the Unit; or
  - (ii) build a reasonably equivalent dwelling within the Village site.

## **12.3 Consultation and Decision:**

- (a) the Operator will consult with the Licensee and the Resident to decide if it is practicable for the Operator to repair or reinstate the Unit or build a reasonably equivalent dwelling as described in clause 12.2(a) and such consultation will take place no later than 28 days after the Material Event;
- (b) the Operator will advise the Licensee and the Resident in writing within three months of the occurrence of a Material Event of its decision on whether the Unit will be repaired or reinstated or replaced by a reasonably equivalent dwelling as described in clause 12.2(a);
- (c) the circumstances which the Operator shall be entitled to take account of when determining if it is practicable to repair or reinstate the Unit shall include the following:
  - (i) the extent and/or location of the damage or destruction;
  - (ii) whether all necessary building consents can be obtained;



- (iii) the extent to which insurance money needed to repair and reinstate the Unit can be obtained or is sufficient.

**12.4 Obligation to Repay Capital Sum if Unit is not Reinstated:** If the Operator gives written notice to the Licensee and the Resident pursuant to clause 12.2(b), this Agreement will terminate on the date of expiry given in such notice and the Operator will pay to the Licensee no later than 10 working days after the date the Operator or the Statutory Supervisor receives payment in full under any insurance policy covering the Unit, the amount of the Capital Sum paid by the Licensee under this Agreement less any charges owed to the Operator by the Licensee and/or the Resident provided that the Operator shall not be entitled to charge the Amenities Contribution referred to in clause 8.3. The Operator's payment pursuant to this clause 12.4 will be in full satisfaction of the Operator's obligation to make repayment of the Capital Sum pursuant to clause 21.

**12.5 Option to Transfer if Unit is not rebuilt:** Where clause 12.4 applies, the Operator may offer the Resident the option in writing to transfer permanently to another dwelling in the Village on no less favourable terms as contained in this Agreement. If the Licensee and the Resident do not accept an option to transfer to another dwelling on these terms then notwithstanding anything in clause 12.4 to the contrary this Agreement will be treated as having been terminated by the Licensee in accordance with clause 20.2 and the provisions of clause 12.4 shall not apply.

### **13. PHYSICIANS AND SURGEONS**

The Resident may engage the services of any accredited physician or surgeon but the Operator shall not be responsible for or obliged to defray any charge incurred.

### **14. SERVICES AND FACILITIES**

The Operator will provide the services and facilities in the Village as described in Part D of this Agreement.

### **15. PROPERTY**

The Operator shall not be responsible for the loss of any property belonging to the Resident due to theft or any other cause. The Resident shall have the responsibility for providing insurance protection to cover any such loss in accordance with clause 9.2.

### **16. LOSS OR DAMAGE BY RESIDENT**

The Licensee and the Resident shall reimburse the Operator for any loss or damage suffered by the Operator as a result of the carelessness or negligence of the Resident except loss or damage by perils insured against by the Operator provided that in any case where the acts or omissions of the Resident have made any such insurance void

the Resident shall upon demand compensate and reimburse the Operator in full for such loss or damage.

## **17. FURTHER DEVELOPMENT OF VILLAGE**

- 17.1** The Operator shall be entitled at its sole discretion to improve, extend, add to or reduce or alter the Village or in any manner whatsoever alter or deal with the Village ("the Further Development") but in doing so will use its best endeavours to cause as little inconvenience to the Resident as is practical in the circumstances. The Resident expressly agrees that the Operator shall be entitled to sell any part of the land which has not been developed by the construction of dwelling accommodation and which is deemed by the Operator to be surplus to its needs. The Resident shall not be entitled to make any objection or claim compensation in respect of the Further Development and shall, if required by the Operator, sign all consents and other documents as may be required to give effect thereto.
- 17.2** The Resident will make no objection to building works associated with the construction of the Village or any Further Development or to the dust, noise or other discomfort or nuisance which may arise therefrom and will not institute or commence any action or proceeding for an injunction, damages or other relief arising out of or consequent upon any such works.

## **18. COOLING-OFF PERIOD AND CANCELLATION OF AGREEMENT**

- 18.1** The Licensee may cancel this Agreement without having to give any reason by notice given not later than 15 Working Days after the Licensee and the Resident sign this Agreement. Where the Agreement has been signed by the Licensee and the Resident on different dates, the later date will be used for the purpose of determining the 15 Working Day period.
- 18.2** Where this Agreement relates to a Unit which is to be built or completed after the date this Agreement is signed by the Licensee and the Resident then, if the Unit is not finished within 6 months after the proposed date for completion referred to in item 5.2 of the Schedule of Information, the Licensee or the Resident may cancel this Agreement by giving written notice at any time after the expiry of that 6 month period.
- 18.3** The Notice of Cancellation under clause 18.1 and 18.2 must be in writing and be given to the Operator. This provision constitutes notice to the Licensee and the Resident that no real estate agent or other person is authorised to receive a notice of cancellation.
- 18.4** If the Licensee cancels this Agreement in accordance with the provisions of clause 18.1 or 18.2 the Licensee will be entitled to a refund of the deposit and all progress payments (with interest) within 10 Working Days after the notice is given. In such event the Licensee and the Resident will be liable to pay the Operator reasonable compensation for services provided to the Resident under this Agreement before cancellation takes effect and for any damage to the Unit or any facilities in the Village for which the Licensee or the Resident is responsible.

## **19. OPERATOR'S OBLIGATION TO RUN VILLAGE PROPERLY**

The Operator will:

- 19.1** Use reasonable care and skill in ensuring that the affairs of the Village are conducted properly and efficiently; and
- 19.2** Keep the Village in good condition and order; and
- 19.3** Make and adhere to the long-term plan for maintaining and refurbishing the Village and its facilities; and
- 19.4** Insure the Village for its full replacement value, to the satisfaction of the Statutory Supervisor; and
- 19.5** Use reasonable care and skill in the exercise and performance of the Operator's powers, functions and duties.
- 19.6** Provide adequate staff to maintain the operation of the Village.
- 19.7** Put in place and keep operational adequate provisions for the continuing safety and personal security of the Residents and provide adequate fire protection and emergency systems for the Residents.
- 19.8** Ensure that it will make available an appropriate interpreter or liaison person if the Resident needs assistance to communicate effectively regarding the exercise of any rights under this Agreement due to limited communication skills.

## **20. TERMINATION**

### **20.1 Termination by the Operator**

The Operator may terminate this Agreement on the following grounds:

**20.1.1 Medical Grounds:** If a registered Medical Practitioner, after assessing the Resident, certifies that the Resident's physical or mental health is such that the Resident or other Residents cannot live safely in the Village. The Operator will appoint a registered Medical Practitioner for the purposes of carrying out this assessment who must be independent of the Operator and the assessment of the registered Medical Practitioner must take into account:

- (a)** the care, support and facilities offered in the Village, including the opportunity to transfer to a higher level of care;
- (b)** support services that could be brought in from outside the Village to support aging in place.

The Resident may obtain a second opinion and present this to the Operator for his consideration.

**20.1.2 Breach:** If the Resident has significantly breached the Agreement the Operator may terminate the Agreement provided:

- (a) The breach must be significant, or has become significant because it continues;
- (b) The Operator has notified the Resident of its intention to terminate the Agreement unless the breach is remedied;
- (c) The Operator has given the Resident at least one month's notice to remedy the breach;
- (d) The Resident has failed to remedy the breach within the time period given in the Operator's notice.

**20.1.3 Abandonment:** The Operator may terminate the Agreement on the grounds of abandonment subject to the following conditions:

- (a) The Operator must have made reasonable enquiries and determined that the Resident has permanently abandoned the Unit;
- (b) The Operator has notified the Resident of the Operator's intention to terminate the Agreement unless the Resident re-occupies his or her Unit;
- (c) The Operator must have given the Resident at least one month to re-occupy and the Resident has failed to re-occupy the Unit in that time period.

**20.1.4 Serious Damage to the Unit or Serious Harm to People:** The Operator may terminate the Agreement if the Resident, intentionally or recklessly has caused or allowed or is highly likely to cause or allow:

- (a) serious damage to the Unit or facilities or damage which has become serious because it continues;
- (b) serious injury or harm to the Operator or another Resident or an employee or guest of the Operator or the Resident.

The Operator must have notified the Resident of the Operator's intention to terminate the Agreement unless the damage, injury or harm is remedied in a specified time that is reasonable in the circumstances. The Operator must have taken into account the nature and extent of the damage, injury or harm in determining the time period given to the Resident to provide a remedy. Further, the Resident must have failed to remedy the damage, injury or harm within the period given in the Operator's notice.

## **20.2 Termination by Resident:**

The Resident is entitled to terminate this Agreement for any reason and at any time on the service of one month's prior written notice to the Operator.

## **20.3 Termination on Death:**

This Agreement shall terminate on the death of the Resident provided that if two persons are named as Resident in this Agreement the termination occurs only when the last surviving Resident dies.

## **20.4 Effect of Termination on Persons Living With Resident**

On termination of this Agreement any person living in the Unit with the Resident will be required to vacate the Unit immediately.

## **20.5 Charges that are Payable after Termination**

The charges that continue to be payable by the Licensee and the Resident after termination of this Agreement are:

**20.5.1 Village Outgoings Charge:** The Village Outgoings Charge continues to be payable on the same terms as prior to termination until settlement of payments under a licence of the Unit to a new resident, subject to clause 8.2.6. This charge will cease to be payable by the Licensee if the Operator enters into a tenancy arrangement for the Unit with a third party with the prior consent of the Licensee. In such circumstances the Operator shall be entitled to retain the rent income in lieu of charging the Village Outgoings Charge during the period of the tenancy arrangement.

**20.5.2 Amenities Contribution:** The Amenities Contribution will continue to accrue on the same terms as prior to termination until the date on which the Resident either vacates the Unit or dies and all the Resident's Possessions are removed from the Unit.

**20.5.3 Administration Charge:** The Resident is required to pay the Operator an amount equal to 2% of the Capital Sum, (plus GST, if any) on the date of settlement of payments under a relicensing of the Unit to a new resident as an administration charge.

**20.5.4 Default Interest:** Default interest will be payable for late payment of moneys due under this Agreement.

**20.5.5 Capital Gain/Loss:** Any capital gain arising out of termination of this Agreement is retained by the Operator. Any capital loss arising out of the termination of this Agreement and re-sale of the unit is borne by the Operator.

## **21. REPAYMENT OF CAPITAL SUM**

- 21.1** In the event this Agreement is terminated by the Operator on any of the grounds set out in clause 20.1 the Operator shall (subject to clause 23) repay to the Licensee an amount equal to the Capital Sum within 5 working days of the Resident vacating the Village or on the date on which the Operator shall settle the payments under a licence of the Unit to a new resident, whichever event shall first occur.
- 21.2** In the event this Agreement is terminated for any reason other than as set out in clause 20.1 and clause 12.4, the Operator shall repay to the Licensee the Capital Sum, subject to the Operator having entered into a licence in respect of the Unit to a new resident and in such event the Capital Sum shall be payable 5 working days after the date on which the Operator shall settle the payments under a licence of the Unit to a new resident ("the Repayment Date").
- 21.3** Notwithstanding anything in clauses 21.1 and 21.2 to the contrary, it is agreed that:
- 21.3.1** Where the Licensee has died, the Operator shall not be required to pay the Capital Sum to the executors or administrators of the Licensee until proof of grant of Probate of the last will of the deceased Licensee or Letters of Administration of his estate has been produced to the Operator; and
- 21.3.2** The Operator shall be entitled to deduct by way of set-off in accordance with clause 23 the amount of the Amenities Contribution (if any) accrued during the term together with any other moneys payable by the Licensee under this Agreement.

## **22. OPERATOR'S OBLIGATION TO FIND NEW RESIDENT**

- 22.1** The Operator agrees to take all reasonable steps to find a suitable replacement resident for the Unit following termination of this Agreement; and shall not give preference to finding residents for residential Units in the Village that have not previously been occupied by a resident under an Occupation Right Agreement.
- 22.2** The Resident shall be entitled to introduce a prospective resident but the Operator is not obliged to accept any prospective resident who does not meet the Operator's normal village entry criteria or whose offer to buy does not meet market value or conditions.

## **23. SET-OFF**

At all times during this Agreement and after termination of this Agreement the Operator shall be entitled to set-off and apply any and all moneys at any time held and other indebtedness at any time owing by the Operator to or for the credit or the account of the Licensee or the Resident against any and all of the obligations of the Licensee or the Resident now or hereafter existing under this Agreement or any other document delivered under this Agreement irrespective of whether or not the Operator shall have made any demand under this Agreement or such other document and

although such obligations may be unmaturred. These rights of the Operator shall be in addition to all other rights and remedies which the Operator may have.

## **24. REMOVAL OF PERSONAL POSSESSIONS**

**24.1** On or before the date of termination of this Agreement the Resident shall remove from the Unit all of the Resident's Possessions. If the Resident fails to do so the Operator may at the expense and risk of the Resident remove the Resident's Possessions and place them into storage.

**24.2** If the Resident does not take possession of the Resident's Possessions within one month of the termination of this licence, the Operator may sell the Resident's Possessions and the sale proceeds, after deduction of expenses of removal, storage and sale, shall be paid to the Resident. The Operator shall not exercise the power of sale without first giving to the Resident 7 days prior written notice of intention to sell. The Operator shall not be liable for any loss or damages incurred in respect of the removal, storage or sale of the Resident's Possessions.

## **25. DISPUTE RESOLUTION**

**25.1** Any dispute which may arise between the Resident and any other resident or between the Licensee or the Resident and the Operator and which cannot be resolved at first instance by a referral to the Operator must be referred to the Complaints Committee.

**25.2** The Complaints Committee shall comprise the following:

- (1)** A person appointed by the residents of the Village; and
- (2)** A person representing the Operator; and
- (3)** A person agreed to by both the residents of the Village and the Operator or, failing Agreement, as nominated by the Statutory Supervisor.

**25.3** The Complaints Committee shall be required to meet as soon as possible after being notified of a dispute and shall hear and decide the matter as it sees fit. Decisions of the Complaints Committee shall be majority decisions. The Complaints Committee shall advise the parties to the dispute in writing of its decision within 20 days of hearing the dispute but any decision by the Complaints Committee will not be binding on the parties to the dispute and cannot require the Operator to incur any capital expenditure. Each party shall bear their own costs involved in resolving a dispute before the Complaints Committee.

**25.4** If a dispute has been referred to the Complaints Committee and is not resolved through that complaints facility the Licensee or the Resident may give a Dispute Notice to the Operator where:

- (a)** The dispute relates to any decision the Operator has made concerning:
  - (i)** The Resident's right to live in a Unit or to access services or facilities;  
or

- (ii) Changes to charges for outgoings or access to services or facilities imposed or payable under this agreement; or
  - (iii) Charges or deductions imposed as a result of the Resident's occupation right coming to an end; or
  - (iv) Money owed to the Licensee or the Resident under this agreement following termination or avoidance of this agreement under section 31 of the Act;
  - (v) An alleged breach of a right referred to in the Code of Residents Rights or of the Code of Practice.
- (b) Twenty (20) working days (and not more than six (6) months) has elapsed after referring the complaint to the Complaints Committee provided that if the dispute involves the sale or other disposal of the Resident's Unit, the Licensee or the Resident (or former resident) must wait nine (9) months after the Unit has been made available to the Operator for disposal before giving a Dispute Notice and in such circumstances the Licensee and the Resident does not have to first make a complaint to the Complaints Committee.
- (c) The Operator will appoint an independent Dispute Panel to resolve the dispute within twenty (20) working days after receipt of a duly issued Dispute Notice. The appointment of the Dispute Panel and the hearing of the dispute will be carried out in accordance with the provisions of Part 4 Retirement Villages Act 2003 and regulations issued pursuant to that Act.

## **26. NOTICES**

All notices shall be in writing and may be given to or served upon a party by being left at the party's address last known to the party making or giving such notice or in the case of a notice to be given to the Resident, by leaving the same at the Unit or by being posted in a pre-paid certified or registered letter addressed to that party at such address. Any such notice if posted shall be deemed duly served at the expiration of four days after the time of posting.

## **27. ASSIGNMENT BY OPERATOR**

- 27.1** The Operator shall be entitled to assign this Agreement to any person or company who will be the operator of the Village ("the Assignee") subject to prior consultation with the Residents of the Village and obtaining the prior written approval of the Statutory Supervisor.
- 27.2** The Licensee and the Resident promise the Assignee that the Licensee and the Resident will observe and perform this Agreement.
- 27.3** The Operator promises the Licensee and the Resident that it will ensure that the Assignee agrees to observe and perform this Agreement.



## **28. MEDICAL AND PHARMACEUTICAL SERVICES**

- 28.1** The Operator will ensure that a person is available at all times to respond to calls by the Resident. Should a medical practitioner provide services to the Resident then the Resident will pay the cost of such services as a separate charge.

## **29. RIGHTS OF RESIDENT IN RELATION TO UNIT**

In addition to all other rights conferred by this Agreement, the Licensee and the Resident shall be entitled:

- 29.1 Grant a Security Interest:** To grant a security interest in the repayment entitlement determined in accordance with the provisions of clause 21 but this right is subject to the prior right of the Operator to set-off and deduct from such proceeds any amounts owing by the Licensee or the Resident in terms of this Agreement at termination.
- 29.2 Let the Unit to another person:** To sublet the Unit subject to the provisions of clause 9.8.2.
- 29.3 Have a member of the Resident's family stay:** To have friends or members of the Resident's family stay in the Unit subject to the provisions of clauses 9.8.3 and 9.8.4.
- 29.4 Sell and market the Unit:** The Operator will market the Unit for sale on termination of this Agreement. The Licensee or the Resident is entitled to introduce a new resident who is willing to pay the market value of the licence and who satisfies the Operator's normal entry criteria for the Village.

## **30. ARRANGEMENTS FOR MANAGEMENT OF THE VILLAGE**

- 30.1** The Operator employs suitably qualified and trained staff to ensure the efficient management and operation of the Village.
- 30.2** A full time, experienced and mature person has been appointed Village Manager with responsibility to oversee the management of the Village and its staff.
- 30.3** The Village Manager is responsible for the day to day organisation of all activities and services, including the co-ordination of activities initiated by residents at the Village.
- 30.4** The grounds and other Common Areas of the Village will be cared for by the Operator in an appropriate manner.

### **31. OPERATOR'S OBLIGATIONS RELATING TO RESIDENTS' MEETINGS**

#### **31.1 Calling of Meetings**

The Operator will call meetings of the Residents of the Village in the circumstances and for the purposes set out in clause 31.2 by issuing a written notice of meeting to each resident of the Village in accordance with the requirements of Section 106 of the Retirement Villages Act 2003 at least 10 working days before the proposed meeting.

#### **31.2 Circumstances and Purposes of Meetings**

The circumstances and purposes of meetings shall be as follows:

<b>Circumstances</b>	<b>Purpose</b>
<b>(a)</b> Within 6 months after the end of an accounting period for which financial statements must be prepared for the Operator.	Considering the financial statements.
<b>(b)</b> 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.
<b>(c)</b> If there is no 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.

#### **31.3 Chairperson**

The meetings will be chaired by a person:

- (i)** appointed by the Statutory Supervisor (if any) of the Village; or
- (ii)** appointed in accordance with the conditions (if any) of an exemption (if any) of the Operator from appointing a Statutory Supervisor; or
- (iii)** appointed by the majority of the residents of the Village who are at the meeting if an appointment has not been made under sub-paragraphs (i) or (ii).

#### **31.4 Information**

The Operator will give the residents at a meeting, orally or in writing, information that:

- (i)** relates to the affairs of the Village; and
- (ii)** has been requested with reasonable notice by a resident of the Village.

**32. PROCEDURE IF THERE CEASES TO BE A STATUTORY SUPERVISOR**

The procedure to be followed if there ceases to be a Statutory Supervisor will be the procedure as set out in the terms of the existing Deed of Participation with the Statutory Supervisor or as prescribed in the Retirement Villages Act 2003.

**33. LIMITATION OF LIABILITY FOR TRUSTEES**

If the Licensee enters into this Agreement as trustee of a trust then:

**33.1** That person warrants that:

- (a) That person has power to enter into this Agreement under the terms of the trust;
- (b) That person has properly signed this Agreement in accordance with the terms of the trust;
- (c) That person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Agreement; and
- (d) All of the persons who are trustees of the trust have approved entry into this Agreement.

**33.2** If that person has no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the trust, that person's liability under this Agreement shall not be personal and unlimited but shall be limited to an amount equal to the value of the assets of the trust that are available to meet that person's liability unless the right of that person to be indemnified from the assets of the trust has been lost and, as a result, the other party to this Agreement is unable to recover from that person that amount.

**34. ENTIRE AGREEMENT**

**34.1** This Agreement comprises the entire understanding and agreement between the parties as to its subject matter.

**34.2** All previous negotiations, understandings, representations, warranties or agreements in relation to or in any way affecting the subject matter of this Agreement are merged in this Agreement and are of no further effect whatsoever.

**34.3** No oral explanation or information provided by the Operator or its employees or agents to the Licensee and/or the Resident affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding between any of the parties.

## **PART C**

### **1. Village Outgoings Calculation**

The Operator shall be entitled to increase the Village Outgoings Charge each year as at the Review Date to reflect increases in costs in order to meet the financial obligations of the Village. The amount of any increase shall be limited to the greater of 2.5% of the Village Outgoings Charge charged prior to such increase or the percentage change in the Consumer Price Index since the same quarter in the previous year.

### **2. Village Outgoings:**

The Village Outgoings include:

- All taxes in respect of the Village;
- All rates, levies, charges, assessments and fees payable to any Government, Territorial or Local Authority;
- Costs of compliance with any statute, regulation, by-law or other lawful obligation in respect of the Village;
- Charges for water, gas, electricity, telephones and other utilities or services in respect of the common areas and facilities;
- Insurance premiums and associated valuation fees.
- All salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village;
- The costs of providing security, cleaning, gardening and other services for the general use and benefit of the residents;
- The costs of maintenance and repair of all buildings, common areas and the Village generally;
- Appropriate fees and expenses of the Statutory Supervisor and Auditor.

**PART D**

**SERVICES AND FACILITIES**

**1. Services**

	<b>Service</b>	<b>Nature</b>	<b>Extent</b>	<b>Frequency</b>
(a)	Gardening:	Planting and maintenance of all gardens	Operator arranges for all gardening work to be carried out	Continuous maintenance programmed to occur throughout the year
(b)	Lawnmowing:	All lawns and edges	Operator arranges all lawn mowing	As required
(c)	Repairs and Maintenance:	Repairs and maintenance to Village common areas, unit exteriors and Operator's plant and equipment Repairs and maintenance to interior of unit and Operator's chattels in unit	Operator will carry out all repairs and maintenance to a clean and safe working order, suitable for their intended use Will be carried out by Operator at Resident's cost	Continuous maintenance programme, with repairs undertaken as required As required
(d)	Nursing and Medical Services:	Provided at local medical centre/ hospital	As organised directly by resident	As arranged by resident
(e)	Provision of Meals:	Residents cater own meals or organise meals on wheels	As arranged by resident	As arranged by resident
(f)	Shops and other services for provision of goods:	Not available.	As arranged by resident	As arranged by resident
(g)	Laundry Services:	Not available – residents can install own laundry chattels	Not available	Not available
(h)	Hairdressing and other personal care services:	Not available – but will be available when Community	By arrangement	Monday and Friday mornings

<b>Service</b>	<b>Nature</b>	<b>Extent</b>	<b>Frequency</b>
	Centre has been constructed		
(i) Transport Services:	Bus Transport to and from Levin	This service will be offered on completion of Community Centre	Regular intervals by arrangement with the Operator
(j) Recreation and entertainment services:	Village arranges recreational events inside the Village	Facilitated monthly by Village Manager or Resident's Committee	Monthly or as arranged by residents directly
(k) Security Services	Residents are encouraged to purchase a personal medical alarm	As arranged by resident at his cost	As arranged by resident
	Security Gate	Gated entrance	Locked 8pm-6am

**2. Facilities**

<b>Service</b>	<b>Nature</b>	<b>Extent</b>	<b>Frequency</b>
(a) Dining Facilities	Kitchen and café to be provided in proposed Community Centre	As required	As required
(b) Lounge or Television Room	Community Centre	Available to all residents without additional charge	As required by residents
(c) Laundry	Not available	Not available	Not available
(d) Gymnasium	A fitness/exercise room will be provided in the proposed Community Centre	Available to all residents without additional charge	Available as required by residents
(e) Spa Pool/ Swimming Pool Complex:	Indoor heated Swimming pool to be provided in proposed Community Centre	Available to all residents without additional charge	As required.

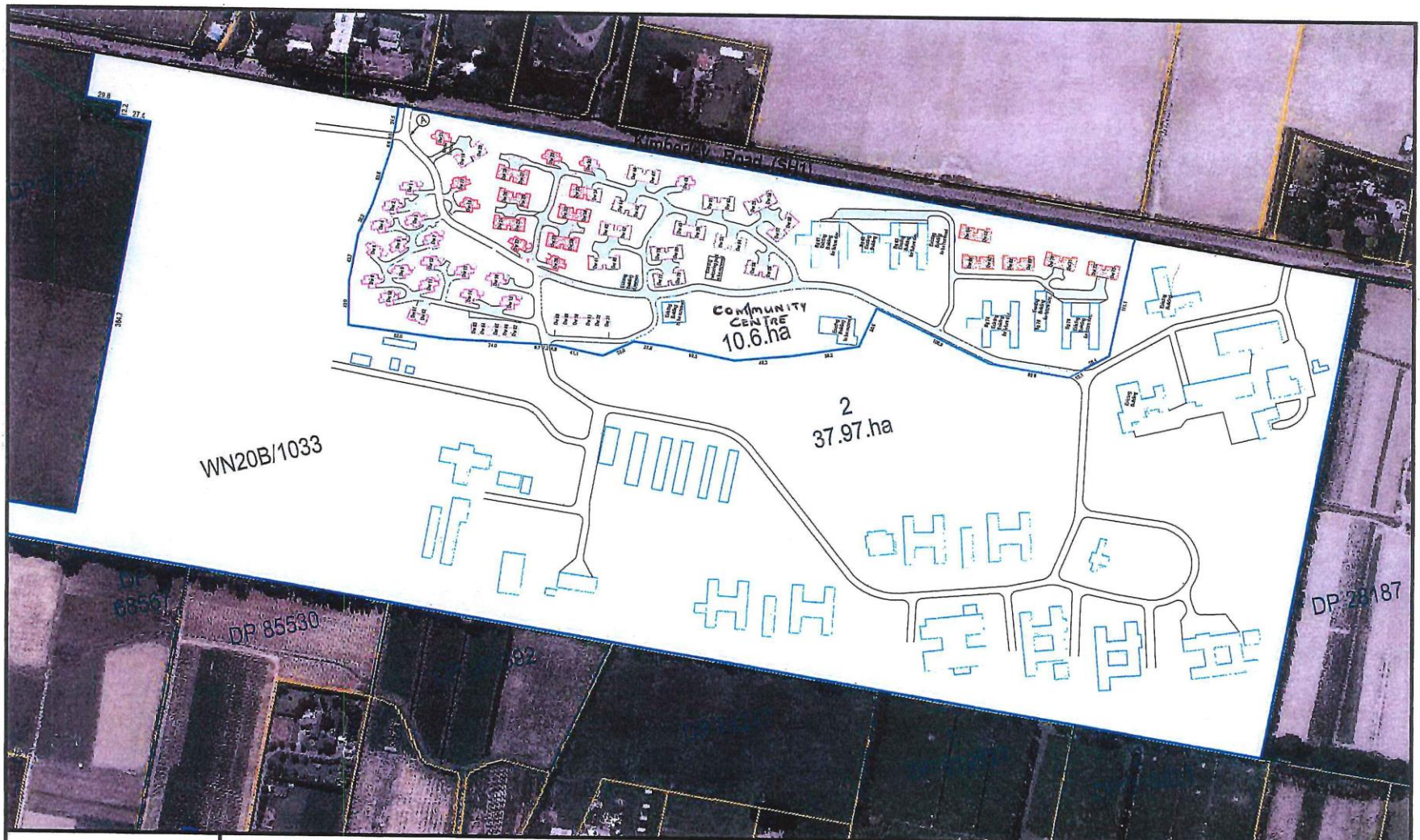
	<b>Service</b>	<b>Nature</b>	<b>Extent</b>	<b>Frequency</b>
(f)	Health Clinic	Not available	Not available	Not available
(g)	Tennis Court	Not available	Not available	Not available
(h)	Petanque Court	Not available	Not available	Not available
(i)	Bowling Green	Will be provided on completion of the proposed Community Centre	Available to all residents without additional charge	As required by residents
(j)	Croquet	Available		
(k)	Library	To be provided in the proposed Community Centre	Available to all residents without additional charge	As required
(l)	Hairdressing Salon		Residents pay and make own appointments	Available Monday and Friday Mornings
(m)	Community Hall	An existing 500 seat Community hall	Available for resident arranged concerts/meetings	As required
(n)	Chapel	An existing Chapel	Available to residents	As required

**PART E**

**PLAN OF VILLAGE**

Refer to attached plan





Horizontal Scale 1 : 3000 at A3  
 Vertical Scale N/A  
 Date Drawn July 2015

**Overall site plan of proposed Retirement Village over  
 Section 99 Block V Waiopehu SD., Kimberley Road, Levin**

PREPARED FOR  
 Wayne Bishop  
 Investment  
 Limited  
 DRAWN BY: RCT

DRAWING NO  
 TA-4597  
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