

**WAIHI LIFECARE VILLAGE LIMITED**

AND

**[RESIDENT]**

# **OCCUPATION RIGHT AGREEMENT**



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THIS AGREEMENT is made on the      day of

2023

## PARTIES

1.      **WAIHI LIFECARE VILLAGE LIMITED** (the **Operator**)
2.      of Waihi, Retired (**You / you / the Resident**)

## BACKGROUND

- A.      The Operator operates the Waihi Lifecare Village (“the Village”) providing retirement accommodation for men and women over the age of sixty-five (65).
- B.      The Village is registered under the Retirement Villages Act 2003.
- C.      The Operator has been granted an exemption to appoint a statutory supervisor under section 41 of the Retirement Villages Act and no statutory supervisor is appointed.
- E.      You have applied to the Operator for occupancy of one of the units at the Village under an Occupation Right Agreement.
- F.      You have provided the Operator with the medical and financial reports requested by the Operator.
- G.      The Operator has accepted your application subject to you entering into an Occupation Right Agreement.
- H.      This Occupation Right Agreement sets out the terms and conditions of your Right to Occupy a Unit in the Village.

## AGREEMENT

### 1.      **DEFINITIONS**

1.1      In this Agreement unless the context otherwise requires:

“**Accounts**” mean the latest audited financial statements of the Operator prepared in accordance with the Financial Reporting Act 1993.

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

“**Agreement**” means this Occupation Right Agreement.

“**Annual Administration Charge**” means the amount payable in equal fortnightly instalments by you towards the expenses and outgoings incurred in the operation, management, administration, maintenance, supervision and insurance of the Village by the Operator (including the Common Property in the Village) and such costs includes all Rates if not directly billed and paid by you or separately assessed for the Unit and on-charged to the Resident by the Operator upon receipt of the rates demand from the relevant territorial authority.

“**Body Corporate**” means Body Corporate No: 319312 (South Auckland Registry) and the **Body Corporate Manager** means Waihi Lifecare Village Limited appointed in accordance with clause 3 of the Body Corporate Rules, registered on each Unit’s Record of Title, Supplementary Record Sheet 84775, memorial 5558401.1.

**“Code of Practice”** means the Retirement Village Code of Practice approved by the Minister under section 89 of the Act, as varied under section 90 of the Act from time to time.

**“Code of Residents’ Rights”** means the Code of Residents’ Rights as adopted by the Operator for the Village.

**“Commencement Date”** means the date on which you shall be entitled to occupy the Unit as specified in the Second Schedule.

**“Common Property”** means those facilities of a shared or communal nature in the Village for the benefit of the Residents.

**“Complaints Facility”** means the complaints facility established by the Operator for resolution of complaints between Residents in the Village or between you and the Operator and includes any policy for resolution of complaints.

**“Consult”** includes the obligation on the Operator to consult Residents under the Act and to consult in accordance with the consultation requirements in the Code of Practice and consultation shall have a corresponding meaning.

**“Deferred Management Fee”** means the fee payable to the Operator in accordance with clause 36.1 on the termination of this Agreement.

**“Development”** means any development or redevelopment of any part of the Village or land on which the Village is situated or immediately adjacent to and develop has the corresponding meaning.

**“Disputes Panel”** means the panel appointed under this Agreement in accordance with the Act.

**“Dispose”** includes sell, transfer, or in any manner part with any possession of.

**“Entry Payment”** means the payment recorded in paragraph 4 of the Second Schedule made by the Resident to the Operator on the Commencement Date in exchange for the Right to Occupy and the right to receive the Exit Payment on the termination of this Agreement in accordance with clause 34.

**“Exit Payment”** means the Entry Payment minus (if applicable) the Deferred Management Fee and any other amounts set out in clause 37.1.

**“Exit Payment Date”** means the date defined in clause 35.

**“Fair wear and tear”** means deterioration or damage that is attributable to normal use and normal operation of natural forces and, without limitation, excludes deterioration attributable to smoking, incontinence and use of mobility aids.

**“Financial Year”** means the year commencing 1 April and ending 31 March.

**“Occupation Right Agreement”** means this Agreement and includes any written agreement or other document or combination of documents that:

- (a) Confers on any person the right to occupy a unit in the Village; and

- (b) Specifies the terms and conditions to which the right to occupy is subject.

**“Notice of Intention to Terminate”** means the notice of intention to terminate this Agreement given to you by the Operator in accordance with clause 30.1.

**“Notice of Termination”** means the notice of termination of this Agreement given to you by the Operator in accordance with clause 30.4.

**“Operator”** means Waihi Lifecare Village Limited, Company Number 902556, incorporated on 22 April 1998 and “the Operator” has the corresponding meaning.

**“Operator’s Chattels”** means the chattels owned by the Operator in the Unit and include those chattels listed in the Second Schedule and any other chattels installed by the Operator.

**“Rates”** means any rates levied for the Unit by the Hauraki District Council and/or the Waikato Regional Council referred to in this Agreement as a territorial authority.

**“Representative”** means a person:

- (a) Acting in the place of or for a Resident under a power of attorney or enduring power of attorney that has not been revoked or suspended under the Protection of Personal Property Rights Act 1988; or
- (b) Who is a welfare guardian or manager appointed for a Resident under a Protection of Personal Property Rights Act 1988; or
- (c) Who the Resident has nominated, subject to the provisions of the Protection of Personal Property Rights Act 1988, provided such person is not a member of staff of the Village.

**“Resident”** means any of the following:

- (a) You, being the person or persons who enter into or have entered into this Occupation Right Agreement with the Operator for a unit (notwithstanding that the cooling off period in clause 4 of the Agreement has yet to expire);
- (b) Any person who under an Occupation Right Agreement who is for the time being entitled to occupy a unit in the Village;
- (c) An incoming or outgoing Resident.

**“Retirement Village Property”** means the buildings, plant and equipment owned by the Operator (including the Unit, Common Property, the assets, amenities and utilities within the Village boundary).

**“Rest Home and Hospital”** means that part of the premises at Toomey Street, Waihi, operated by Waihi Lifecare (2018) Limited as a licensed rest home and hospital providing care for the elderly.

**“Right to Occupy”** means the right to occupy the Unit granted to you by the Operator on the terms and conditions in this Agreement.

**“Rules”** means the rules of the Village **attached** to this Agreement in the Third Schedule as may be amended from time to time.

**“Service Charge”** means the charge payable by you for personal services provided to you by the Operator or a service provider at the Village, and the use by you of the facilities offered by the Operator when the cost of the use of such facilities is not covered by the Annual Administration Charge.

**“Termination Date”** means the date that your Right to Occupy the Unit ends, as set out in the following clauses:

- (a) *Transfer*: clause 27 (being the date that all conditions contained in clause 27.2 and any other conditions specified by the Operator pursuant to clause 27.4 have been met);
- (b) *Damage or destruction*: clause 28.8(c)(ii) (being the date you decline the offer to transfer to another unit or are deemed to have declined the offer to transfer to another unit by failing to accept the offer by the date specified by the Operator in accordance with clause 28.8(c)(i);
- (c) *Damage or destruction*: clause 28.8(c)(iii) (being the date the Operator gives you notice of termination);
- (d) *Termination by the Operator*: clauses 29 to 30 (being the date specified in the Notice of Termination);
- (e) *Termination on Death or Permanent Care*: clause 31 (being the date of the relevant event);
- (f) *Termination by the Resident*: clause 32 (being the date specified in clause 32.3),

or as otherwise terminated in accordance with this Agreement.

**“Unit”** means:

- (a) The residential unit and if relevant the garage or carport in respect of which a licence to occupy has been granted by the Operator to the Resident under this Agreement; or
- (b) The residential unit and if relevant the garage or carport to be built or completed by the Operator in accordance with this Agreement; and
- (c) Includes all fixtures, fittings and the Operator’s Chattels in the unit.

**“Unit Titles Act”** means the Unit Titles Act 2010 and any act enacted in replacement or substitution of this legislation.

**“Village”** means the Waihi Lifecare Village.

**“Village Manager”** is the person employed by the Operator to manage the daily operation of the Village.

**“Waihi Lifecare (2018) Limited”** means the related company of the Operator, Company Number 6962193, incorporated to manage the Rest Home and Hospital at Toomey Street, Waihi.

**“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, Waitangi Day, the Provincial Holiday; and
- (b) A day in the period commencing with the 25<sup>th</sup> day of December in any year and ending with the 2<sup>nd</sup> day of January in the following year; and
- (c) If the 1<sup>st</sup> January falls on a Friday, the following Monday; and
- (d) If the 1<sup>st</sup> January falls on Saturday or Sunday the following Monday and Tuesday.

## 2. **CONSTRUCTION**

2.1 Except to the extent that the context otherwise requires, the Schedules **attached** to this Agreement are:

- (a) First Schedule – Annual Administration Charges;
- (b) Second Schedule – Schedule of Details;
- (c) Third Schedule – Rules; and
- (d) Fourth Schedule – Documents are Given to Resident.

2.2 The singular includes the plural and vice versa.

2.3 A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Agreement).

## 3. **OCCUPATION RIGHT AGREEMENT**

3.1 The Operator grants you the Right to Occupy the Unit in consideration of you:

- (a) Entering into this Occupation Right Agreement
- (b) Paying the Entry Fee to the Operator; and
- (c) Complying with all of your obligations in the Agreement and making all payments due under the Agreement, including the Annual Administration Charge, Service Charges and the Deferred Management Fee.

3.2 You shall be entitled to occupy the Unit on the Commencement Date of this Agreement, provided the Commencement Date shall not occur until after the expiry of the cooling off period in clause 4 below.

3.3 You shall be entitled to use and enjoy the Common Property from the Commencement Date of this Agreement, such right being appurtenant to and not severable from your Right to Occupy the Unit.

3.4 The Operator shall not unnecessarily interrupt your use of the Unit whilst you duly and punctually observe and perform the terms and conditions in this Agreement.



- 3.5 The rights granted to you in this Agreement are personal contractual rights only. Nothing in this Agreement gives you any ownership right or interest in the Village, the Unit or the Common Property. This Agreement does not give you any tenancy or leasehold rights to the Unit.
- 3.6 You agree not to require registration of the Occupation Right Agreement and not to caveat or otherwise encumber the title to the Village, the Unit, the Common Property or the land on which the Rest Home and Hospital is situated.
- 3.7 It is further agreed by the Resident:
- (a) Only the Resident has the Right to Occupy the Unit and no other person has any right to occupy the Unit.
  - (b) Not to transfer their interest in the Unit.
  - (c) Not to mortgage or otherwise secure borrowing against their interest in the Unit without the prior written consent of the Operator.
  - (d) Not to grant a security interest in the termination proceeds, such proceeds being the sum the Resident will receive on termination of the Occupation Right Agreement less the deductions in clause 37 of this Agreement.

#### 4. **COOLING OFF PERIOD**

- 4.1 You or any person authorised on your behalf shall be entitled to withdraw from this Agreement (without having to give any reason) by giving written notice of cancellation to the Operator:
- (a) Not later than 5.00pm on the fifteenth (15<sup>th</sup>) working day (time being of the essence) after the date of execution of the Agreement by you; or
  - (b) For a unit to be built or completed at a later date and if the unit is not finished to a point of practical completion within six (6) months after the proposed date of completion of the Unit, at any time after the expiry of the six (6) month period.
- 4.2 The period in which you shall be entitled to give notice shall be referred to in this Agreement as the "cooling off period".
- 4.3 If you exercise your rights under this clause you are entitled to a refund of any deposit, progress payment and any other payments made by you for the grant of this Agreement. This refund will be without deduction (except for the amounts set out below). You are entitled to receive this refund within ten (10) working days after your request. You agree that the Operator shall be entitled to compensation for the cost of:
- (a) All services provided to you during the cooling off period; and
  - (b) All damage to the Unit or Common Property for which you are responsible during this period.
- 4.4 The Deferred Management Fee will not be deducted where this Agreement is cancelled during the cooling off period.

**5. CODE OF PRACTICE**

- 5.1 The Operator agrees the Code of Practice applies to the Village and to the Operator.
- 5.2 The Operator agrees it will meet the requirements for the Code of Practice and shall endeavour to ensure that any obligation on the Operator to Consult with Residents shall be in accordance with the Code of Practice.
- 5.3 The Operator acknowledges that the Code of Practice is enforceable by the Resident as a contract and that it will prevail over any less favourable terms in this Agreement.

**6. CODE OF RESIDENTS' RIGHTS**

- 6.1 The Operator has adopted a Code of Residents' Rights.
- 6.2 The Operator agrees to take all reasonable steps to ensure the Village Manager, other staff or contractors comply with the Code of Residents' Rights.
- 6.3 The Operator will provide you with a copy of the Code of Residents' Rights prior to this Agreement being signed and a further copy upon request free of charge.

**7. VILLAGE MANAGER AND STAFF**

- 7.1 The Village Manager is responsible for the day to day running of the Village.
- 7.2 You will in the first instance direct all enquiries to the Village Manager.
- 7.3 The Operator will employ such staff as are necessary for the proper running of the Village in accordance with the Operator's policy for staff employment.
- 7.4 The Operator will ensure appropriate training is given to its staff on the obligations contained in the Code of Practice and the Code of Residents' Rights.
- 7.5 The Operator will consult Residents if there is a change in the Village Manager, however, the final decision on any such appointment will belong to the Operator.

**8. RESIDENT'S OBLIGATIONS**

You agree and undertake with the Operator as follows:

**8.1 Payments**

- (a) To make all payments due to the Operator under this Agreement.
- (b) To make payment of all Rates levied by a territorial authority in respect of the Unit and either invoiced directly to you or on-charged by the Operator.

**8.2 Permitted Use**

- (a) To use the Unit only for your own personal use and occupation. You may have friends or relatives or other persons to stay with you in the Unit for periods not exceeding three (3) weeks at any one time or for longer periods with the Operator's prior written consent. However, the Operator reserves the right to curtail any such arrangement where the

Operator considers it is interfering with the quiet enjoyment of other residents in the Village.

### 8.3 Care of Unit and Chattels

- (a) To keep at all times your Unit and its surrounds, together with the Operator's Chattels, in a proper, tidy, clean and sanitary condition and (where appropriate) working order. You are not responsible for Fair wear and tear.
- (b) You must give the Operator prompt notice of any defect in or want of repair of the Unit or the Operator's Chattels of which you are aware. The Operator shall arrange to replace at your cost all Operator's Chattels, mirrors, light shades, light bulbs, power elements, plumbing fittings, window security stays and electrical fittings in the Unit as and when they wear out or are broken or become unserviceable. The replacement items will be of at least the same quality as those installed at the Commencement Date.
- (c) You must advise the Operator of any damage caused to the Unit or the Operator's Chattels by you or your guests as soon as you become aware of it. The Operator shall be responsible for arranging the repair of such damage in accordance with clauses 12.10 and 12.12 of this Agreement.
- (d) You are liable for the cost of interior maintenance and repairs arranged by the Operator in accordance with clause 12.10 of this Agreement. You shall not be liable for the cost of external maintenance and external refurbishment of the Unit other than through the payment of the Annual Administration Charge, which shall be applied by the Operator in accordance with clause 12.12 of this Agreement.
- (e) You will permit the Operator to:
  - (i) Inspect the interior of the Unit, including the fixtures, fittings and the Operator's Chattels to ensure they are in good repair and in a clean, tidy and safe condition;
  - (ii) Carry out such repairs, maintenance and work as are necessary for the Operator to comply with its obligations in clauses 12.10 to 12.12, or for the Operator's contractors or tradesman to carry out such repairs, maintenance or work to the Unit.
- (f) Entry to your Unit for the purpose of inspection or carrying out work under this clause will be in accordance with clause 8.16 of the Agreement.

### 8.4 No Alterations to Unit Without Prior Consent

- (a) You must not make any alterations or additions to your Unit, or modify the Operator's Chattels, or fit television aerials, radio aerials or other appurtenances to your Unit, without the Operator's prior written consent, except where clause 8.4(b) applies. The Operator may give or withhold consent at its sole discretion.
- (b) If you have a disability or develop a disability and the Unit does not accommodate this disability you may carry out such alterations as are

necessary to accommodate your disability, provided however that prior to any such alterations being commenced you shall:

- (i) Advise the Village Manager of the disability and the alterations required to accommodate this disability;
  - (ii) Discuss with the Village Manager whether it is appropriate for you to transfer to another unit in the Village or to the Rest Home and Hospital (subject to availability);
  - (iii) Provide the Village Manager with a complete set of plans and specifications for prior approval by the Operator, such approval will not be unreasonably withheld;
  - (iv) Obtain all territorial authority consents necessary for the alterations;
  - (v) Obtain the prior consent of the Body Corporate as provided in clause 1.1 of the Body Corporate Rules (if required).
- (c) The alterations that you may carry out under this clause shall not include any alterations that are structural in nature.
- (d) You shall only engage the services of a contractor or tradesman approved by the Operator to carry out the alterations and you shall pay the cost of all such alterations.
- (e) On termination of this Agreement, the Operator may at its discretion and at your cost reinstate the Unit to its original condition. If however the Operator agrees not to require you to reinstate your Unit, you will not be entitled to any compensation for such alterations and the Operator may require you to make a payment to the Operator to reflect any reduction in value of the Unit caused by the alterations. Prior to the Operator beginning any reinstatement work under this clause, the Operator shall consult with you about the options available to each party.

## 8.5 Insurance

- (a) You will insure all personal chattels and belongings at your own expense and you agree the Operator shall have no liability for any loss or damage arising to same.
- (b) You may decide to (but are not required to) take out insurance for temporary accommodation should your Unit become uninhabitable as the Operator is not required to provide you with temporary accommodation.
- (c) You agree the Operator will insure and hold the insurance policy for the Village. You agree that the Operator shall be entitled to pass on the cost of any such insurance cover to you in the Annual Administration Charge.
- (d) You shall not do, permit to be done, or suffer any act or omission that would cause any insurance policy held by the Operator to become void or voidable or to increase the insurance premium payable by the Operator.

- (e) You shall not be liable for any loss or damage to the Unit or the Operator's Chattels when the Operator is insured against such loss or damage and the insurance moneys have not been rendered irrecoverable as a consequence of any act or default by you, provided you shall:
  - (i) Reimburse the Operator for any insurance excess charged under the Operator's insurance policy up to the sum of \$1,000.00; and
  - (ii) If you have intentionally, recklessly or carelessly damaged the Unit, the Operator's Chattels, the Common Property or the Retirement Village Property, you shall pay the cost of remedying such damage as a liquidated debt if requested to do so by the Operator where:
    - A The damage is similar or of a repeat nature and an insurance claim has already been made by the Operator previously for such damage; or
    - B The cost of repairing the damage is less than the excess payable on the Operator's insurance policy.

#### 8.6 Private Dwelling/Nuisance

- (a) You shall only use the Unit as a private dwelling.
- (b) You shall not do, permit to be done, or suffer any act, or omission upon or about the unit or the Village, including the Common Property, that shall be or become a nuisance or annoyance to other Residents in the Village.

#### 8.7 Resident's Personal Necessities

- (a) You will provide for your own personal needs including suitable clothing.
- (b) Except for the Operator's Chattels, you will furnish the Unit at your own expense.

#### 8.8 Waste

- (a) Not to do, or permit to be done, or suffer any act or omission 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 or the Rest Home and Hospital.

#### 8.9 Designated Car Parking Areas

- (a) Not to park or permit to be parked any vehicle in the Village other than in the areas designated by the Operator for that purpose.

#### 8.10 Television, Radio Aerials, Burglar Alarms

- (a) Not to erect or place on or outside any Unit any radio, television aerial or antenna or install audible burglar alarms without the prior consent of the Operator.

8.11 Interference with Security/Emergency Call System

- (a) Not to operate in, on or outside any Unit any radio or television device that causes interference with the operation of the Village's security system or emergency call system.

8.12 Animals and Birds

- (a) Not to keep any cat, dog, bird or other animals without the prior consent of the Operator. Such consent shall be at the discretion of the Operator and may be withdrawn at any time.

8.13 Body Corporate

- (a) To comply with the Body Corporate Rules and provide or obtain all consents and approvals required in the Body Corporate Rules.

8.14 Visitors

- (a) Notwithstanding anything to the contrary in Agreement, you shall be entitled to have relatives or friends stay in the Unit for an aggregate total for all guests of ninety (90) days in any one period of twelve (12) consecutive months.
- (b) The Operator may at its discretion consent to longer periods of visitation, however, the Operator may withdraw this consent at any time.
- (c) You will ensure that visitors comply with the Village Rules.

8.15 Vacant Unit

- (a) Not to leave the Unit vacant for more than two (2) months in total in any one twelve (12) month period from the Commencement Date without the prior consent of the Operator.
- (b) You shall continue to remain liable for the Annual Administration Charge and the Deferred Management Fee whilst the Unit is vacant.

8.16 Entry to Unit

- (a) To allow the Village Manager and other employees, contractors or tradesmen engaged by the Operator to enter the Unit:
  - (i) in an emergency immediately without notice;
  - (ii) for non-urgent repairs and maintenance after five (5) working days' notice, or earlier by mutual agreement;
  - (iii) for all other matters including but not limited to inspection or refurbishment of the Unit, with reasonable notice and at a reasonable time.
- (b) The Operator agrees that it will endeavour to give at least five (5) working days prior notice of entry to you and will take all reasonable steps to comply with your rights set out in the Code of Residents' Rights.

#### 8.17 Utilities

- (a) You will pay and discharge the actual costs of usage of all utilities for the Unit.
- (b) You will pay for the installation and actual costs of usage of internet services to the Unit such as broadband or Wi-Fi services.

#### 8.18 Representations Correct

- (a) You undertake that the information supplied to the Operator in the medical and financial reports is true and correct to the best of your knowledge.
- (b) Should any statement be made by you in the medical or financial reports prove to be materially incorrect and it is shown that you knew or should have known that the statement was materially incorrect at the time this Agreement was signed by you the Operator may terminate this Agreement in accordance with the termination provisions of this Agreement.

### 9. **POWERS OF ATTORNEY, WILL AND NEXT OF KIN**

The Resident agrees:

- 9.1 On signing this Agreement to provide the Operator with a copy of their properly executed enduring powers of attorney for personal care and welfare and property, together with relevant contact details of the appointed attorney or attorneys.
- 9.2 If the enduring powers of attorney are amended or revoked by the Resident to provide the Operator with up to date copies of the documents or relevant details as is appropriate.
- 9.3 Where there are two of you as the Resident, clauses 9.1 and 9.2 apply to each of you. If the powers of attorney of one of you appoints 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 fails for any reason.
- 9.4 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.
- 9.5 You will keep the Operator informed of the name, address and telephone number of your legal personal representative or next of kin.

### 10. **MEDICAL PRACTITIONER AND PRIVACY AUTHORISATION**

- 10.1 The Resident agrees to advise the Operator of the name of their medical practitioner prior to the Commencement Date and update such details of the practitioner should they change.
- 10.2 In order to check your continued suitability to occupy the Unit and for Village administration purposes, we will need to collect and hold relevant personal information about you and in particular relating to your physical or mental health.

- 10.3 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 29.1, or any health or governmental agency.
- 10.4 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.

## 11. **JOINT RESIDENTS**

- 11.1 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.
- 11.2 Unless terminated earlier, on the death of the surviving Resident this Agreement will terminate and the provisions in clauses 32 to 37 of this Agreement will apply. No transfer of the Occupation Right Agreement into the name of your personal representative (following death) will be allowed.

## 12. **OPERATOR'S OBLIGATIONS**

The Operator agrees and undertakes with you as follows:

### 12.1 Powers, Functions and Duties

- (a) To use reasonable care and skill in carrying out the Operator's functions and duties and exercising its powers under this Agreement.

### 12.2 Management of Village

- (a) To ensure the Village is managed by the Village Manager with reasonable skill and care in a proper and efficient manner.

### 12.3 Consultation and Communication

- (a) To Consult and communicate with Residents as required in the Code of Practice and this Agreement.
- (b) To attend (or if more appropriate for the Village Manager to attend) meetings of Residents as requested by Residents.
- (c) To ensure Residents can contact the Operator through the Village Manager.

### 12.4 Registrar of Retirement Villages



- (a) To comply with any conditions imposed by the Registrar of Retirement Villages in the Registrar's decision to grant an exemption to appoint a Statutory Supervisor to the Village.

#### 12.5 Insurance

- (a) To insure and keep insured with a reputable insurance company all Retirement Village Property including the Operator's Chattels under a comprehensive insurance policy against loss or damage by fire, accident or natural disaster and any other insurable risks to the satisfaction of the Registrar of Retirement Villages and as required under the provisions of the Code of Practice.
- (b) The Operator is appointed the Body Corporate Manager for the Body Corporate. If this appointment ceases and a body corporate committee is formed, the Operator agrees to each year at the annual general meeting of the Body Corporate (or any meeting called for this purpose by the body corporate committee) report at such meeting on the insurance held by the Operator for the Village.
- (c) The Operator shall report to the Residents at the annual general meeting on the insurance position of the Village or at any earlier special general meeting called for that purpose.

#### 12.6 Financial Accounts

- (a) On request provide you with a copy of the Operator's financial Accounts free of charge.
- (b) The Operator acknowledges that the obligation upon it to provide you with a copy of the financial Accounts under this clause continues until payment is made in accordance with clause 34 of this Agreement.

#### 12.7 Forecast Statement

- (a) To prepare at the beginning of each Financial Year a forecast statement for the Village that shall include:
  - (i) The operating expenditure for the Village;
  - (ii) All expenditure for the Village (including amounts payable to Residents, former Residents or their estates);
  - (iii) All income for the Village; and
  - (iv) The amount of the operating expenditure that must be met by Residents.
- (b) The Operator shall provide a copy of the forecast statement to you within three (3) months of the start of each Financial Year.

#### 12.8 Bank Accounts

- (a) To operate such bank accounts as are necessary for the efficient management of the Village and to enable the Operator to properly account for money received by the Operator in connection with the Village.

- (b) Where the Operator requires you to contribute to long term funding for maintenance, to operate a separate bank account for collection and distribution of any moneys received from Residents for maintenance and refurbishment of the Common Property and the exterior of the Units in the Village.

#### 12.9 Policies

- (a) To ensure the Operator has in place and implements the policies required under the Code of Practice and other policies as are necessary for the safe and efficient operation of the Village.
- (b) To ensure the Operator's policies are regularly reviewed by the Operator and the Village Manager.
- (c) To consult with Residents on any amendment to the Operator's policies.
- (d) To ensure the Village Manager maintains a current register of policies and that the register is available to the Residents at the Village for inspection.
- (e) To give Residents a copy of any policy or amended policy on request. The Operator shall be entitled to recover the cost of providing copies of policies or amendments of policies from Residents.

#### 12.10 Interior Maintenance and Repair

- (a) To make all necessary arrangements for any repairs, maintenance or replacements:
  - (i) that you notify the Operator of in accordance with clause 8.3(b) or (c); or
  - (ii) that the Operator considers necessary or desirable after inspecting the Unit, whether or not you have notified the Operator of them in accordance with clause 8.3(b) or (c),to be carried out as soon as reasonably practicable.
- (b) To consult you about any repairs, maintenance or replacement to be carried out under clause 12.10(a).
- (c) The Operator will invoice you for the costs of such repairs, maintenance or replacement at the end of each month. Payment must be made no later than the 20<sup>th</sup> of the month following the date of invoice, unless your Agreement has terminated. In this case, you must make payment in the manner set out in clause 34.1. Where any item has the benefit of a current warranty, the Operator will ensure that the benefit of any warranties is taken into account.
- (d) You are not responsible for the cost of remedying any inherent defect or damage to the Unit unless the damage is caused by you or your invitee.
- (e) The Operator will not be liable for any loss or inconvenience suffered by you arising from any defect or damage or want of repair to your Unit unless you have advised the Operator in writing of any such defect,

damage or want of repair and the Operator has failed within a reasonable time to take reasonable steps to repair and make good the defect damage or want of repair.

#### 12.11 Garden, Grounds and Common Property Maintenance

- (a) To maintain and keep in good and respectable tidy operational order and condition the Common Property, including the pathways, roads, gardens, trees and shrubs, except to the extent that a garden area is attributable to a Unit for the benefit of the Resident.

#### 12.12 Exterior Repair, Maintenance and Refurbishment

- (a) To maintain and keep maintained in good repair, order and safe condition the exterior of all buildings in the Village including the:
  - (i) Common property;
  - (ii) Security systems;
  - (iii) Fire protection and management systems.
- (b) To make financial provision for the maintenance and periodic upgrading or refurbishment of the Village through the Annual Administration Charge and to:
  - (i) Enter into maintenance arrangements and periodically review such arrangements;
  - (ii) Ensure policies for maintenance and refurbishment required in the Code of Practice are implemented and regularly reviewed;
  - (iii) Report at the annual general meeting of the Residents of the Village on the financial provision for maintenance and upgrading; and
  - (iv) Consult with Residents in accordance with the provisions of the Code of Residents' Rights.
- (c) To ensure the Village Manager:
  - (i) Maintains appropriate procedures for carrying out emergency and non-urgent repairs and maintenance and gives effect to the Operator's policies for repair and maintenance;
  - (ii) Informs Residents of the appropriate contact person to arrange repairs and maintenance if this person is not the Village Manager;
  - (iii) On becoming aware of or being advised of any defect or want to repair to the Unit or the Operator's chattels shall:
    - A In an emergency take appropriate steps to repair and make good the defect or want of repair as soon as reasonably practicable; or

B For non-urgent repairs within five (5) working days provide the Resident with an expected timeframe for the repairs to be carried out and ensure appropriate steps are taken to carry out the repairs within this expected timeframe.

(d) 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 exterior of the Unit or the Operator's Chattels, unless the Operator has been advised of the defect or want of repair and has not within the expected timeframe taken appropriate steps to repair and make good the defect or want of repair as set out in this clause.

#### 12.13 Operator's Chattels

- (a) To provide and install in each Unit the Operator's Chattels, including (without limitation) a call bell system.
- (b) To provide such other chattels as you and the Operator shall from time to time agree.

#### 12.14 Utilities

- (a) To supply the Unit with the usual connections for water, sewerage, storm water, electricity, telephone and standard connections for free to air television.
- (b) If the cost of usage of a utility is not separately metered or billed by the utility or service provider, the cost will be charged as part of the Annual Administration Charge.

#### 12.15 Operator to Pay Outgoings

- (a) The Operator will pay or cause to be paid within a reasonable period after they become due and payable (prior to any penalties becoming payable) all costs, expenses and outgoings payable by the Operator, including (subject to paragraph (b) below) all Rates and taxes in respect of the Unit and the Village.
- (b) The Operator will on-charge to the Resident any Rates that are separately assessed for the Unit and invoiced directly to the Operator upon receipt of the rates demand from the relevant territorial authority. The Operator is not obligated to pay Rates for the Unit if the Rates are invoiced directly to the Resident by the relevant territorial authority, provided that if the Resident does not make payment of the Rates, the Operator may make payment of the Rates and recover any unpaid Rates (including any penalties for the Rates arrears) from the Resident under clause 14.

### 13. ANNUAL ADMINISTRATION CHARGE

13.1 You shall pay the Annual Administration Charge (plus GST if any) without deduction to the Operator. Details of the Annual Administration Charge are set out in the First Schedule and the amount of the charge at the date of this Agreement is specified in the Second Schedule.

- 13.2 You shall pay the Annual Administration Charge to the Operator by fortnightly instalments in advance, except at the commencement of this Agreement you shall pay the first fortnightly instalment plus an additional amount for any period of occupancy of less than a fortnight. The Operator will issue an initial reoccurring invoice with further invoices being issued should a change or increase in the fortnightly instalment payment occur. Your liability to pay the Annual Administration Charge will continue even though you may temporarily vacate the Unit.
- 13.3 The Operator may increase or vary the Annual Administration Charge to cover any increase in costs, increase in goods and services tax or additional service costs to be paid by all Residents of the Village. Before any increase or variation, the Operator will consult with you and the other Residents in the Village.
- 13.4 If in error a cost or charge payable by a Resident is not included in the Annual Administration Charge this cost or charge will be included in the next fortnightly instalment and will be backdated by the Operator. You agree any such cost or charge shall be payable by you on demand.
- 13.5 The Annual Administration Charge is to be calculated by dividing the total expenses incurred for the benefit of the Village or levied against the Village by the aggregate number of units completed. The Operator may vary the proportion where in the reasonable opinion of the Operator any particular outgoing or charge has been incurred for the benefit of one or more of the Residents whether in whole or in part. When varying the proportion payable by a Resident or Residents the Operator will give reasonable notice to the affected Resident or Residents and will consult with these Residents.
- 13.6 You shall not be liable to pay outgoings or charges in respect of:
- (a) Any part of the Village which is under construction; or
  - (b) Any other construction works; or
  - (c) Any further Development of the Village.
- 13.7 As soon as practicable after the end of the Operator's Financial Year (but no later than three (3) months after the end of the Financial Year) the Operator shall give the Residents a statement from a chartered accountant certifying that the Operator has applied the moneys paid by the Residents towards the Annual Administration Charge, together with reasonable particulars of the actual outgoings or charges for the year or period then ended. Any overpayment shall be credited to the Residents and any deficit will be payable by the Residents on demand.
- 13.8 The Resident shall be liable for the Annual Administration Charge until the commencement date of a new Occupation Right Agreement for the Unit. The Annual Administration Charge shall be reduced by 50% if a new unconditional Occupation Right Agreement has not been entered into for the Unit by the later of:
- (a) six (6) months after the Termination Date; or
  - (b) the date the Resident ceases to live in the Unit and removes all their possessions.

## **14. SERVICE CHARGES**

- 14.1 You shall pay to the Operator any Service Charges incurred by the Operator on your behalf. Service Charges are charges payable by a Resident for personal services provided to the Resident either by the Operator or a service provider to the Village.
- 14.2 The Operator may list the Service Charges you will receive in the Second Schedule of this Agreement. You agree that the Service Charges may vary depending on the services used by you.
- 14.3 The Operator will issue an initial invoice for Service Charges incurred by you and further invoices will be issued should there be a change or increase to these charges. Payment will be due fortnightly unless otherwise arranged with the Operator.
- 14.4 As soon as the Operator becomes aware of any increase in the cost of personal services provided to Residents it will advise the Residents of the increase.
- 14.5 You agree to promptly advise the Village Manager if a personal service for which a charge is incurred is no longer required by you either temporarily or permanently. The Operator shall stop charging for personal services you no longer receive or for such services on the date you stop living permanently in the Unit.
- 14.6 If a Service Charge is mistakenly omitted by the Operator when invoicing you for services received or anticipated, this charge will be payable by you on demand.
- 14.7 The Operator shall be entitled to recover all outstanding Service Charges as at the date you cease to reside in the Unit.

## **15. REPAIR, MAINTENANCE AND REFURBISHMENT OF EXTERIOR OF UNIT**

- 15.1 You shall pay the cost of the repair, maintenance and refurbishment of the exterior of the Unit and the Common Property as part of the Annual Administration Charge.

## **16. REFURBISHMENT OF INTERIOR OF UNIT**

- 16.1 On termination of this Agreement, you must ensure that the Unit and the Operator's Chattels are in a similar repair, order and condition as they were in at the Commencement Date, except for fair wear and tear or any damage by fire, earthquake, tempest, enemy action or other inevitable accident.
- 16.2 The Operator will consult with you prior to determining whether the interior of the Unit requires refurbishment. If in the view of the Operator it is reasonably necessary to refurbish the interior of the Unit or repair or replace any of the Operator's Chattels in order to comply with the obligations of the Resident under clause 16.1, then you will be required to pay for the costs of such refurbishment (excluding Fair wear and tear), which will be deducted from the Exit Payment in accordance with clause 37.1.
- 16.3 The Operator will, after consultation with you, determine the scope of work required to refurbish the Unit and (if required) the repair or replacement of any of the Operator's Chattels. The Operator shall arrange (at your cost) for the

refurbishment of the interior of the Unit and (if required) the repair or replacement of any of the Operator's Chattels prior to the Unit being marketed for re-sale and as soon as reasonably possible.

- 16.4 You agree to provide the Operator and its contractors all reasonable access to the Unit to undertake the refurbishment work. The Operator will ensure that the refurbishment work is carried out in a proper and workmanlike manner by suitably qualified tradespeople and that all fixtures, fittings, materials and chattels used in the refurbishment are new and of good quality.
- 16.5 Any disagreement regarding the refurbishment of the interior of the Unit or the repair or replacement of the Operator's Chattels shall firstly be referred to the Complaints Facility as set out in clause 42 of this Agreement.

## **17. HEALTH SERVICE CHARGES**

- 17.1 You shall pay to the Operator on demand all charges for the provision of medical and pharmaceutical services that the Resident has requested from the Operator as a Service Charge.

## **18. NURSING CARE**

- 18.1 As a retirement village operating in conjunction with a Rest Home and Hospital, if your health so requires the Operator will, subject to availability and suitability, endeavour at your cost to provide such care either in the form of temporary nursing care in your Unit or in the Rest Home and Hospital.

## **19. MEDICAL**

- 19.1 The Operator shall ensure that as far as practicable a nursing practitioner is available at the Rest Home and Hospital to respond to any emergency call made by you. You shall pay as a Service Charge the cost of any such services provided by the Operator's nursing staff. If a medical practitioner's services are required, ambulance called or any charge incurred by the Operator on your behalf you shall reimburse the Operator such costs as a Service Charge.
- 19.2 Nothing in this clause shall prevent you from engaging any other medical practitioner at your cost.

## **20. EMERGENCY CALL SYSTEM**

- 20.1 The Operator shall contract with a suitable provider for an emergency call system so Residents have access to help 24 hours a day. The cost of this service shall be included in the Annual Administration Charge.

## **21. SECURITY**

- 21.1 The Operator shall provide a nightly security patrol of the Village and lighting to illuminate the movement of Residents and guests around the Common Property. The Operator will maintain this service and lighting at all times subject to the cost being included in the Annual Administration Charge.

## **22. ENGLISH AS A SECOND LANGUAGE / ABILITY TO COMMUNICATE**

- 22.1 If a Resident is not able to communicate easily in English when a Resident's rights and obligations are affected the Operator will make arrangements for a suitably qualified interpreter to assist with communication. In such

circumstances the Village Manager may in the first instance contact a Resident's Representative. The cost of any interpreter shall be met by the Operator.

**23. ADDITIONAL SERVICES AND FACILITIES**

- 23.1 The Operator may arrange for other service providers such as meals on wheels and Residents wishing to make use of such services shall pay the cost levied by the provider either directly to the provider or as a Service Charge.
- 23.2 The Operator may offer other recreational activities and entertainment or provide other recreational facilities for use by Residents. The Operator shall consult with Residents if any proposed additional facility will impose a cost on Residents.

**24. INTEREST ON UNPAID MONEY**

- 24.1 If the Resident is in default on the payment and any moneys payable under this Agreement for more than fourteen (14) working days then the Resident shall, on demand, pay interest on the moneys unpaid from the due date for payment to the date of payment at a rate of 2% per annum above the bank overdraft rate charged by the Bank of the Operator.

**25. PROPERTY**

- 25.1 The Operator shall not be responsible for any loss of any property belonging to the Resident due to theft or any other cause.

**26. LOSS OR DAMAGE BY RESIDENT**

- 26.1 You shall reimburse the Operator for any loss or damage suffered by the Operator as a result of your carelessness or negligence, except for loss or damage covered by any insurance policy held by the Operator, provided that in any case where your act or omission has made any such insurance void you shall upon demand compensate and reimburse the Operator in full for such loss or damage.

**27. TRANSFER TO ANOTHER UNIT**

- 27.1 The Operator acknowledges that you may wish to move to another unit within the Village. Where possible, and subject to:

- (a) the availability of another unit;
- (b) the Operator being satisfied that the alternate unit will be suitable for you; and
- (c) the Operator finding a new Resident to enter an Occupation Right Agreement for your Unit on terms satisfactory to the Operator,

the Operator will endeavour to accommodate your requirements to allow one transfer to another unit.

- 27.2 Any transfer will be subject to the following:

- (a) A new Resident entering an Occupation Right Agreement in respect of the Unit that you are vacating and making full payment to the Operator



for that Occupation Right Agreement (this condition will be waived if you pay the Operator the amount referred to in clause (c) below;

- (b) Receipt by the Operator of an acknowledgement of termination of this Agreement signed by or on behalf of you;
- (c) You signing an Occupation Right Agreement for the new unit on the Operator's then standard terms and conditions (including any particular terms and conditions that apply on a transfer) and paying the Operator the current market value for an Occupation Right Agreement for the new unit as at the date of the transfer (the "New Entry Payment") or such other amount as determined by the Operator at its sole discretion;
- (d) You paying a transfer fee equal to 2.5% of the New Entry Payment;
- (e) You meeting your legal costs associated with the transfer; and
- (f) You arranging for the moving of yourself and your belongings to the new unit at your own cost.

27.3 For your first transfer to another unit within the Village, you will only pay one Deferred Management Fee for this Unit and the new unit. That Deferred Management Fee will be calculated on the higher value of the two units. This clause does not apply to any subsequent transfers. The deductions and fees payable by you when transferring from one unit to another unit in the Village will otherwise be the deductions and fees payable on the termination of this Agreement as set out in clause 37, except in the case of a transfer where a unit is damaged or destroyed and in such circumstances the provisions of clause 28 below will apply.

27.4 Subject to any requirements of the Code of Practice and any relevant requirements elsewhere in this Occupation Right Agreement, the terms and conditions that will apply to your transfer to another unit within the Village will be at the Operator's sole discretion.

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

### **Temporary Accommodation**

28.1 If the Unit (or building of which it forms part) or the facilities in the Village are so damaged or destroyed so as to make the Unit uninhabitable, you agree the Operator is not required to provide you with temporary accommodation.

28.2 If the Operator has a unit available that is suitable temporary accommodation for you, the Operator may offer this temporary accommodation to you subject to you:

- (a) Accepting the temporary accommodation on the terms set out in this clause and if requested by the Operator the terms of a temporary accommodation agreement;
- (b) Paying the Annual Administration Charge for the temporary accommodation;
- (c) Paying any Service Charges for personal services received by you when in the temporary accommodation;

- (d) Paying all moving costs; and
- (e) Accepting that the Deferred Management Fee will continue to accrue under this Agreement whilst you are living in the temporary accommodation.

28.3 The Operator shall advise you within five (5) working days of an event damaging or destroying the Unit if temporary accommodation is available.

28.4 Any offer of temporary accommodation shall be on the basis that the accommodation will only be available to you whilst your Unit is being repaired or replaced and the accommodation will be promptly vacated when the Operator advises you that the Unit is available for reoccupation. If on replacement or completion of repairs to the Unit you do not return to your Unit the Operator may terminate this Agreement by giving a Notice of Termination in accordance with clause 29.1(i).

### **Payment of Fees**

28.5 If your Unit is uninhabitable due to no fault of the Resident (for example due to a natural disaster), the Operator shall from the date of destruction or damage until the date the Unit is available for re-occupation by the Resident, which shall be the date of practicable completion for the repairs or replacement of the Unit:

- (a) Stop charging the Annual Administration Charge for the Unit;
- (b) Stop charging any Service Charges; and
- (c) The accrual of the Deferred Management Fee shall cease for that period of time,

provided that if temporary accommodation is supplied to the Resident by the Operator in accordance with clauses 28.1 to 28.4, the Resident shall pay the Annual Administration Charge for the temporary accommodation and Service Charges to the Operator and the Deferred Management Fee will continue to accrue.

28.6 In accordance with the Code of Practice the Operator shall not extend or increase the rate of accrual of the Deferred Management Fee if the Operator repairs or replaces a Unit that has been damaged or destroyed due to a no fault event.

### **Repair or Replacement of Unit that is Uninhabitable**

28.7 The Operator agrees it has an obligation to repair and replace your Unit if it is practicable to do so. It shall not be practicable to repair or replace your Unit if:

- (a) The Operator's insurance claim in respect of the damage and destruction and your Unit is declined;
- (b) The cost of repairing or replacing the Unit and other facilities in the Village (including infrastructure) exceeds the sum the Operator will receive under its insurance policy;
- (c) The extent of the damage or the risk of damage to the land on which the Village is situated or to the infrastructure in the Village is such that it is determined by the Operator that the land is no longer a suitable site for

a retirement village and any such assessment shall not be limited to the part of the land on which your Unit is situated; or

- (d) The Operator cannot obtain in a timely manner all necessary consents from the relevant territorial authority and any other approvals, consents or permits required from any other authority; and
- (e) Will include any other matter that makes it impracticable to repair or replace your Unit or the Village (as the case may be).

#### **Procedure for Repair and Replacement of Unit that is Uninhabitable**

28.8 If the Unit is damaged or destroyed through no fault of the Resident, the Operator shall, after consultation with you as set out in this clause, determine whether or not the Unit will be repaired or replaced. The Operator shall:

- (a) Meet with you to discuss the repair or replacement of the Unit and will confirm in writing the outcome of the meeting setting out the Operator's decision to repair or replace the Unit. The Operator agrees it will endeavour to arrange a meeting with you no later than sixty (60) working days after the event causing the damage or destruction of the Unit. However, if all information is not available (such as geo-technical reports and territorial authority consents) the Operator may have an initial meeting with you, but will then hold a further meeting with you once all necessary information is to hand.
- (b) If the Operator's decision is to repair or replace the Unit, the Operator shall fully repair or replace the Unit as soon as reasonably practicable. The Operator will provide you with an indication of when such work is likely to commence and be completed. The Operator agrees it will update you as information becomes available. You agree that this information may be provided by the Operator at a meeting of Residents called for this purpose.
- (c) If the Operator's decision is not to repair or replace the Unit the following procedure will apply:
  - (i) The Operator may offer you the option of transferring to another unit (which may be an existing unit or one to be constructed) and will advise you of the terms of any such offer including the date by which you must accept the offer; and
  - (ii) You agree that if you do not accept the offer to transfer to another unit you will be deemed to have given notice to terminate this Agreement and that payment will be made to you on receipt by the Operator of the insurance proceeds for a claim for the Unit, less the Deferred Management Fee and other deductions in accordance with clauses 37 and 38 of this Agreement. The procedure and timing of any such payment will be in accordance with sub-clause (iv) below.
  - (iii) If the Operator is not able to offer you the option of transferring to another unit, you agree the Operator shall terminate this Agreement. The notice to terminate will set out the amount to be paid to you and this amount shall be calculated as follows:

- A The Entry Payment paid by you on the Commencement Date of this Agreement, less any Annual Administration Charges and Service Charges owed by you to the Operator; and
- B The Deferred Management Fee (ordinarily deducted on termination by the Operator) will not be deducted from the amount to be paid to you.

- (iv) Payment under sub clause (ii) and (iii) above will be made no later than ten (10) working days after the date the Operator receives payment in full in respect of any insurance claim for the Unit, provided that this clause does not remove the Operator's obligation to pay all money owing to you if the Operator does not receive payment in full under the insurance policy for the Retirement Village property.

28.9 If you give notice to terminate and your Unit has not been damaged or destroyed by a no fault event then the termination provisions of this Agreement shall apply and payment shall be made in accordance with clause 34.1 with the Deferred Management Fee deducted.

#### **Partial Damage of Unit and Unit Habitable**

28.10 If the Unit is damaged but not so as to make the Unit uninhabitable, the Operator shall consult with you about the repair process of the Unit. The repair of the Unit shall be subject to:

- (a) The Operator's insurance claim being accepted by the Operator's insurer; and
- (b) The Operator obtaining all necessary territorial authority consents for the work undertaken.

28.11 You agree the Operator will not be required to expend more money than the actual sum received under its insurance policy or to complete repairs to a standard greater than the Unit was in at the date of damage.

28.12 You agree that you will co-operate with the Operator and its contractors to allow any repair work to be completed in a timely and safe manner in accordance with all Health and Safety legislation.

28.13 You agree that if it is not practicable for you to remain in the Unit whilst repairs are being carried out that you will vacate the Unit to allow such work to be undertaken. In such circumstances the provisions in this clause relating to temporary accommodation will apply.

#### **Operator to Consult**

28.14 The Operator agrees that it will Consult with you in accordance with the provisions of the Code of Practice if your Unit is damaged, destroyed or in the event of substantial damage to the Village.

### **29. TERMINATION OF THE AGREEMENT BY THE OPERATOR**

29.1 The Operator may terminate this Agreement on the following grounds:

## **Medical Grounds**

- (a) The Operator may terminate this Agreement on medical grounds if your physical or mental health has been assessed and certified by a registered medical practitioner as being such that you cannot safely continue to live in the Unit. In the first instance the assessment will be completed by your usual medical practitioner, however, the Operator may request a medical practitioner be appointed to complete an assessment, provided that such medical practitioner shall be independent of the Operator.
- (b) The assessment of the registered medical practitioner will take into account:
  - (i) The level of care, support and facilities offered in the Village, including the ability to transfer to a higher level of care such as the Rest Home and Hospital and/or a public or private hospital;
  - (ii) The support services available outside the Village that may assist you to remain in the Unit and the cost of such services to you.
- (c) You agree that if asked to do so by the Village Manager you will as soon as practicable undergo the medical assessment in clause 29.1 (a). You or your Representative may seek a second opinion from another registered medical practitioner and may provide a copy of this assessment to the Operator.
- (d) Prior to termination on medical grounds the Operator shall first give a Notice of Intention to Terminate this Agreement. Such Notice of Intention to Terminate shall be given in accordance with clause 30 below.

## **Breach or Default of Terms and Conditions of Agreement etc**

- (e) If you have materially breached or defaulted in the observance or performance of any of the terms and conditions of this Agreement and the Operator has:
  - (i) Given you a Notice of Intention to Terminate setting out the breach or default to you and you have failed to rectify the breach or default within one (1) month of receiving the notice (or within such other extended notice period stipulated by the Operator);
  - (ii) Advised you in the notice of the Operator's intention to terminate the Agreement should the breach or default not be remedied within the timeframe specified in the notice; and
  - (iii) You have failed to remedy the default specified in the notice.

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

- (f) If you have intentionally or recklessly caused or permitted or in the opinion of the Village Manager you are likely to intentionally or recklessly cause or permit serious injury, harm or distress to:
  - (i) The Village property or to the Rest Home and Hospital; or

- (ii) To an employee or guest of the Operator, or any Resident of the Village or the Rest Home and Hospital; and

The Operator has given written notice to you of its intention to terminate unless the serious injury, harm or distress is remedied within the time specified in the notice (such time to be reasonable in the circumstances taking into account the nature and extent of the damage, injury or harm) and you have failed to comply with the notice within the time specified.

#### **Abandonment of Unit**

- (g) If you have abandoned the Unit. You shall be deemed to have abandoned the Unit if:
  - (i) You have advised the Village Manager or other staff member of an intention to abandon the Unit and the Unit has been vacated (either wholly or in part) by you; or
  - (ii) The Unit has been left unoccupied for a period of fifteen (15) working days without prior notification by you and after due enquiries and inspection of the Unit by the Village Manager it is determined that you have abandoned the Unit; and
  - (iii) The Operator has given written Notice of Intention to Terminate this Agreement on the grounds of permanent abandonment by you and you have not re-occupied the Unit within one (1) month of service of the notice (or within such other extended notice period stipulated by the Operator).
- (h) You acknowledge that the Village Manager shall be entitled to enter the Unit without notice to determine whether or not abandonment of the Unit has occurred.

#### **Damage or Destruction of Unit**

- (i) The Operator may give you a Notice to Terminate in the following circumstances under clause 29:
  - (i) You fail to return to your Unit when it has been repaired or replaced and such action shall be deemed to be an abandonment of the Unit;
  - (ii) The Operator is not able to offer you a unit to transfer to or you do not accept the offer of transfer to a unit.
- (j) Notice shall be given in accordance with clause 30.4 below.

### **30. NOTICE OF TERMINATION BY THE OPERATOR**

#### **Notice of Intention to Terminate**

30.1 The Operator shall give you Notice of Intention to Terminate this Agreement in writing and shall (except where serious injury, harm or distress is alleged as set out in clause 29.1 (f) above where the notice period may be shortened) require remedy of the default or breach within a minimum of one (1) month of the date of service of the notice in writing.

30.2 All Notices of Intention to Terminate shall comply with the requirements of the Code of Practice and the notice will (amongst other things) include:

- (i) Date of issue of the notice;
- (ii) Proposed grounds for termination;
- (iii) Steps to be taken to remedy any default or breach and the time by which the steps must be taken;
- (iv) Consequences of non-compliance with the notice;
- (v) Details of your right to information and consultation under the Code of Practice and Code of Residents' Rights;
- (vi) Details of your right to refer the matter to the dispute resolution process and the right to have a Representative or support person present at all meetings, and to re-occupy in the case of abandonment of the Unit.

30.3 The Operator will Consult with you and your Representative as required under the Code of Practice.

#### **Notice of Termination**

30.4 If on expiry of the Notice of Intention to Terminate, the Operator determines it will terminate this Agreement the Operator shall issue you with a written Notice of Termination. The Notice of Termination shall comply with the Code of Practice and state (amongst other things):

- (a) Date of issue of the notice;
- (b) Grounds for termination;
- (c) Refer to the specific provisions in this Agreement and the Code of Practice permitting the Operator to terminate the Agreement;
- (d) Your right to issue a dispute notice under the Act;
- (e) That the notice may be suspended where you have made a complaint about a decision in relation to this Agreement; and
- (f) The period of the notice.

30.5 The period of notice specified in a Notice of Termination shall not be less than one (1) month, as prescribed by the Code of Practice.

#### **Payment on Termination**

30.6 If the Operator terminates this Agreement you agree:

- (a) Where termination is due to medical grounds, breach or default of the terms of the Agreement, serious injury or harm or distress or abandonment of the Unit (including failure to return to a unit that has been replaced or repaired) the Operator will, within five (5) working days

of the date on which the termination takes effect, pay all sums due to you.

- (b) Where termination is due to the Operator either not being able to offer you a unit to transfer to or you declining any such offer under clause 28.8, you agree that payment will be made in accordance with clause 28.8.

### **31. TERMINATION ON DEATH OR PERMANENT CARE**

31.1 This Agreement shall terminate:

- (a) On the death of the Resident;
- (b) If two Residents have jointly signed this Agreement, on the death of the surviving Resident; or
- (c) If the Resident or surviving Resident has permanently moved to rest home or hospital care,

and the provisions in clauses 32 to 37 of this Agreement will apply to such termination.

### **32. TERMINATION BY RESIDENT**

32.1 You may terminate this Agreement, at your option, for any reason at any time.

32.2 Should you wish to terminate this Agreement then you must give the Operator one calendar months' notice in writing that you intend to terminate this Agreement. If there are two of you in joint occupation then the notice must be signed by both of you.

32.3 The Termination Date will be the first working day after the expiry of that notice period.

32.4 You must leave the Unit:

- (a) on the Termination Date; and
- (b) in similar 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.

32.5 In particular, you must remove all the Resident's Chattels, personal belongings, effects and vehicles from the Unit and the Village on or before the Termination Date or, where termination occurs under clause 31.1, seven days after the Termination Date. You must make good any damage caused to the Unit or Village in removing these items.

32.6 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.



- 32.7 You agree the Operator may also recover the cost of any cleaning required to be undertaken in the Unit if you fail to leave it in a clean and tidy condition on the Termination Date.

**33. FIND NEW RESIDENT**

- 33.1 Subject to clause 33.3, after the Termination Date the Operator shall take all reasonable steps to obtain a new resident for the Unit who the Operator considers suitable as a resident of the Village and who is prepared to enter into an Occupation Right Agreement on the Operator's then standard terms and conditions for new Occupation Right Agreements and for the best price reasonably obtainable, with a Entry Payment and Deferred Management Fee that are consistent with the proportions generally adopted by the Operator at that time for marketing of residential units in the Village.
- 33.2 You may introduce a prospective new resident for the Unit to the Operator at any time prior to the Operator entering into a new Occupation Right Agreement for the Unit. The Operator is not obliged to accept any prospective new resident who the Operator considers is unsuitable as a resident of the Village and/or who does not comply with clause 33.1.
- 33.3 The Operator does not have to obtain a new resident if:
- (a) this Agreement terminates under clause 28.8(c); or
  - (b) the Operator decides it does not want a new resident occupying the Unit.
- 33.4 The Operator will not give preference to finding residents for units in the Village that have not previously been occupied by residents under an Occupation Right Agreement ahead of this Unit.
- 33.5 The Operator will consult with you about the marketing of your Unit. In particular, the Operator will consult with you about:
- (a) when the Unit goes on the market; and
  - (b) the general nature of the marketing plan for the Unit.
- The Operator will continue to keep you informed on a monthly basis about progress with marketing.
- 33.6 If a new Occupation Right Agreement for the Unit has not been entered into within three months of the Termination Date, the Operator will report in writing to you and then provide monthly written reports until a new Occupation Right Agreement is entered into. The Operator will ensure that the report sets out the steps that have been taken to market your Unit and the progress that has been made towards finding a new resident.
- 33.7 If the Operator has not entered into a new Occupation Right Agreement for the Unit within six months of the Termination Date, the Operator will obtain a valuation of the Unit at its cost by an independent registered valuer who is experienced in valuing retirement village units to establish a suitable price at which to market the Unit. The Operator will provide you with a copy of 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.

- 33.8 The Operator will then market the Unit at the price established by the valuation obtained by the Operator in accordance with clause 33.7. If however, you have obtained a second valuation in accordance with clause 33.7 then the Operator will consider that second valuation when determining a suitable price at which to market the Unit.
- 33.9 If a new resident has not been found and a new Occupation Right Agreement entered into in respect of the Unit within nine (9) months after the Termination Date, the Resident or the Resident's personal representatives may give a dispute notice in accordance with clause 42 of this Agreement.

#### **34. EXIT PAYMENT**

- 34.1 Except where clause 28.8(c)(iv) applies, on or before the Exit Payment Date you will be paid the Exit Payment minus the amounts set out in clause 37.1; in accordance with the following provisions of clause 35.

#### **35. EXIT PAYMENT DATE**

- 35.1 Subject to clause 28.8(c)(iv) and clauses 35.2 to 35.4 (inclusive), the Exit Payment Date is any date within five (5) working days after the date the Operator receives full settlement of the total amount payable by any new resident for the Unit.
- 35.2 If the Operator agrees with you in writing that you will be paid the Exit Payment prior to finding a new resident to enter into an Occupation Right Agreement for your Unit, the Exit Payment Date is the date 20 working days after we reach agreement.
- 35.3 If the Operator decides that it does not want a new resident occupying the Unit under clause 33.3(b), the Exit Payment Date is twenty (20) working days after the Operator notifies you of its decision.
- 35.4 If the Operator has initiated termination under clauses 29.1(a), (e), (f) or (g), then the Exit Payment Date shall be within five (5) working days of the date of expiry of the applicable notice period as set out in clause 30.4(f).
- 35.5 If requested to do so, you will provide the Operator with a surrender of this Occupation Right Agreement on the Exit Payment Date.
- 35.6 If payment is made directly to your personal representative, the Operator will be entitled to be satisfied that the personal representative holds proper probate of your Will or Letters of Administration of your estate before making payment. If there is any delay in meeting the Operator's requirements in this regard then the Operator will arrange for the money due to be deposited in the Operator's solicitor's trust account on interest bearing deposit to your account until the Operator's requirements are met.

#### **36. DEFERRED MANAGEMENT FEE**

- 36.1 On the termination of this Agreement you agree to pay a Deferred Management Fee to the Operator calculated in accordance with clause 36.2, up to a maximum amount equal to 30% of the Entry Payment.
- 36.2 The Deferred Management Fee will be a minimum amount equal to 7.5% of the Entry Payment and will increase over time. The Deferred Management Fee shall accrue on a daily basis at a rate equal to 7.5% of the Entry Payment per

year, up to a maximum amount equal to 30% of the Entry Payment. The Deferred Management Fee will be calculated from the Commencement Date until the earlier of the Termination Date or four (4) years from the Commencement Date.

36.3 You agree that the Operator will deduct the Deferred Management Fee from the funds payable to you on termination of this Agreement.

36.4 The Deferred Management will not be deducted where this Agreement is terminated in accordance with clause 28.8(c)(iii) or cancelled during the cooling off period in clause 4.1.

### **37. OTHER PAYMENTS PAYABLE ON TERMINATION**

37.1 The amounts to be deducted from any payment made to you on termination, are as follows:

- (a) any outstanding Annual Administration Charges payable in accordance with clause 13;
- (b) any outstanding Services Charges payable in accordance with clause 14;
- (c) any outstanding costs for additional services provided to you;
- (d) any outstanding utility charges;
- (e) any outstanding Rates charges;
- (f) the actual costs of repairing any damage caused to the interior of the Unit (including the Operator's Chattels) which is not attributable to fair wear and tear;
- (g) the actual costs of repairs, maintenance or replacement payable by the Resident in accordance with clause 12.10(d);
- (h) the actual costs of refurbishing the interior of the Unit (including the Operator's Chattels) which is not attributable to fair wear and tear payable in accordance with clause 16;
- (i) any alteration or reinstatement costs that the Operator is entitled to under this Agreement;
- (j) the actual costs of cleaning the Unit if it is not left in a clean and tidy condition; and
- (k) any other money due or that will be due from you under this Agreement.

### **38. SET-OFF**

38.1 At all times during this Agreement and within 12 months of termination of this Agreement, the Operator shall be entitled to set-off and apply any and all moneys at any time held by and other indebtedness at any time owing by the Operator to or for the credit or the account of the Resident against any or all of the obligations of the Resident now or hereafter existing under this Agreement irrespective of whether or not the Operator shall have made any demand under

this Agreement. These rights shall be in addition to all other rights and remedies that the Operator may have.

### **39. RULES**

- 39.1 Rules for the management and operation of the Village including the Common Property are in the Third Schedule of this Agreement.
- 39.2 The Operator in consultation with Residents may from time to time make, modify and amend these Rules. The Operator shall provide the Resident with a copy of any modification or amendment to the Rules.
- 39.3 You agree you will comply with the Rules and any modifications or amendment of the Rules as a condition of the continuation of this Agreement. You agree that if you fail to observe or comply with the Rules that such non-observance or failure will be deemed to be a breach of this Agreement.
- 39.4 You agree the terms of this Agreement will prevail in the event of any conflict between the Rules and this Agreement.
- 39.5 The Operator shall not be liable for any loss or damage arising out of a failure to enforce any such Rules.

### **40. DEVELOPMENT OF VILLAGE**

- 40.1 Prior to commencing any further Development (including redevelopment) of the Village the Operator shall consult with the Residents on the proposed Development providing the Residents with details of the Development and any potential impact of Residents.
- 40.2 Notwithstanding anything in clause 40.1 above, if prior to the Commencement Date of this Agreement the Operator has completed consultation with Residents the Operator shall not be required to further consult with Residents on the proposed Development. The Operator shall ensure as far as practicable that details of the proposed Development are disclosed to you prior to you entering into this Agreement.
- 40.3 When carrying out a Development the Operator shall use its best endeavours to cause as little inconvenience as possible to Residents and will request its contractors or tradesmen to minimise any damage, noise or disruption to Residents.
- 40.4 The Operator shall use all reasonable endeavours to ensure any Development is carried out in accordance with the plans (subject to such modifications that may be necessary) and in accordance with all territorial authority consents and building and fire statutory requirements.
- 40.5 You shall not be entitled to object or claim compensation in respect of any Development once consultation with Residents has been completed and shall if required by the Operator sign any consent or other documents as may be required.

### **41. DISPOSAL OF VILLAGE BY OPERATOR**

- 41.1 The Operator shall be entitled to market, sell, assign or dispose of its interest in the Village.

- 41.2 The Operator shall ensure any purchaser meets Residents prior to the settlement date of any sale.
- 41.3 With effect from the date of sale, assignment, or disposal, all the Operator's rights and obligations under this Agreement will pass to the new Operator, and the Operator will have no further rights and further obligations to you under this Agreement. You agree to continue to observe and perform all the obligations under this Agreement for the benefit of the new Operator.

**42. COMPLAINTS FACILITY/DISPUTE RESOLUTION PROCESS**

- 42.1 The Operator shall establish a Complaints Facility to handle all complaints. You agree in the first instance to refer any complaints to the Village Manager. The Village Manager shall try and resolve the complaint simply, fairly and quickly. You agree to work with the Village Manager to resolve the complaint.
- 42.2 If the complaint relates to this Agreement and/or any proposed action by the Operator, the Operator will suspend the proposed action until such time as the complaint has either been resolved by agreement or determined by the Disputes Panel. The Disputes Panel procedure is set out in clause 44 of this Agreement.
- 42.3 If the complaint is resolved by agreement and twenty (20) working days has elapsed since the complaint was referred to the Village Manager, the Resident may refer the complaint to the Disputes Panel.
- 42.4 When the complaint is resolved by mutual agreement, the Village Manager shall record the outcome in writing and each party to the complaint will sign this record. The Village Manager will provide a signed copy of the record to each party to the complaint.
- 42.5 If the complaint is unable to be resolved by mutual agreement (and referral has not been made to the Disputes Panel) the Village Manager shall determine the matter and issue a decision. A copy of the decision will be given to each party to the complaint and will include the following details:
- (a) The reasons for the decision;
  - (b) Any action the Operator intends to take as a result of the decision;
  - (c) A statement that where the complaint involves one or more Residents of the Village that the parties to the complaint are not bound by the decision;
  - (d) A statement that the Resident may refer the matter to the Disputes Panel; and
  - (e) Any other matter required in the Code of Practice.
- 42.6 The Operator shall keep, maintain and make available for inspection by the Registrar of Retirement Villages a register of all complaints including details of the parties, the nature of the complaint and the outcome.

**43. DISPUTE NOTICES / DISPUTES PANEL**

- 43.1 Within twenty (20) working days of receipt of a dispute notice from a Resident or the issue of a dispute notice by the Operator, the Operator shall convene a

Disputes Panel to resolve the dispute in accordance with the provisions of the Act.

**44. ANNUAL GENERAL MEETING**

- 44.1 The Operator shall hold an annual general meeting of Residents no later than six (6) months after the end of each Financial Year and the Residents shall be given notice in writing of the meeting at least thirty one (31) working days before the date of meeting. Such notice shall be in the form specified in the Code of Practice.
- 44.2 At the annual general meeting the agenda shall include the:
- (a) Accounts;
  - (b) Operator's Report;
  - (c) Village Manager's Report; and
  - (d) Maintenance Report (if not included in the Village Manager's Report).
- 44.3 The meeting will be conducted and information provided in accordance with the Code of Practice.
- 44.4 The Operator will ensure:
- (a) Minutes of the meeting are made and kept at the Village and are available to the Residents on request; or
  - (b) All Residents are provided with copies of the minutes within thirty (30) working days of the meeting.

**45. SPECIAL GENERAL MEETING**

- 45.1 The Operator shall call a special general meeting of Residents in the following circumstances:
- (a) When the consent of Residents is required;
  - (b) If asked to do so by not less than 10% of the Residents; or
  - (c) If requested by the Registrar of Retirement Villages.
- 45.2 The Operator shall give the Residents at least ten (10) working days written notice of the special general meeting in accordance with the Code of Practice.
- 45.3 The meeting will be conducted and information provided in accordance with the Code of Practice.
- 45.4 The Operator will ensure:
- (a) Minutes of the meeting are made and kept at the Village and are available to the Residents on request; or
  - (b) All Residents are provided with copies of the minutes within thirty (30) working days of the meeting.

**46. INFORMAL MEETINGS**

- 46.1 The Operator may call informal meetings with Residents to discuss matters relating to the Village.
- 46.2 The Operator shall ensure proper notice of any such meeting is given to the Residents.
- 46.3 The Village Manager may represent the Operator at such meetings.
- 46.4 A quorum for any such meeting will be twenty-five percent (25%) of Residents in the Village.
- 46.5 You agree to be bound and adhere to any decision or resolution passed by a majority of Residents at an informal meeting called under this clause.

**47. NOTICES**

- 47.1 All notices shall be in writing and may be served upon a party by delivering it to that party personally or by leaving it at, or sending it to, that party's last known usual place of residence or business.
- 47.2 If a notice addressed to a party's last known address 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.

**48. VARIATION OR REPLACEMENT AGREEMENT**

- 48.1 The Operator shall be entitled to call upon you to execute an agreement in terms similar to this Agreement or a variation of this Agreement if the replacement Agreement or variation is for the purpose of:
  - (a) Incorporating a material change to the information contained in the Agreement that has become apparent or necessary from:
    - (i) A change in the circumstances of the Operator;
    - (ii) A change in the ownership structure of the Village;
    - (iii) A change in law; or
    - (iv) A request from the Registrar of Retirement Villages;
  - (b) To remedy a mistake or error in the Agreement.
- 48.2 The Operator shall comply with its obligation to Consult Residents under the Code of Practice.
- 48.3 The Operator shall meet the cost to you for any variation or replacement agreement, except where the need for the new agreement or variation is due to a change in the law or an error or mistake due to information provided by you prior to the signing of this Agreement in which case the cost of the new agreement or variation will be paid by you.

49. **OPERATOR'S CONSENT**

49.1 Where the consent of the Operator is required to be given to a Resident for the purpose of permitting some activity under this Agreement, such consent shall not be unreasonably withheld unless otherwise stated and shall be in writing.

50. **LEGAL ADVICE**

50.1 You acknowledge that prior to signing this Agreement you have obtained independent legal advice from a lawyer on the terms and conditions of this Agreement.

50.2 You are advised by the Operator that until such independent legal advice has been obtained and certification completed by your legal advisor this Agreement is deemed by the Operator not to have been entered into by you, notwithstanding that it may have been signed by you.

51. **DATE OF AGREEMENT**

51.1 Subject to clause 51, this Agreement is deemed to have been signed by you on the date in Part A.

52. **SPECIAL CONDITIONS OF AGREEMENT**

52.1

**SIGNED** by )  
**WAIHI LIFECARE VILLAGE LIMITED** )  
in the presence of: )

\_\_\_\_\_  
Director

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Occupation)

\_\_\_\_\_  
(Address)

**SIGNED** by )  
 )  
as Resident )  
in the presence of the certifying lawyer: )

\_\_\_\_\_

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Occupation)





**CERTIFICATION UNDER SECTION 27(5) RETIREMENT VILLAGES ACT 2003**

Name of Village: **Waihi Lifecare Village**

Registration Number of Village: **2153705**

I, [Name of Solicitor], Solicitor, certify that:

(a) I explained to the general effect of the **attached** Agreement and its implications before he or she signed the Agreement; and

(b) I gave the explanation in a manner and in language that was appropriate to the age and understanding of .

Dated:

Signed:

Name:

Firm:

Street Address:

Postal Address:

Email Address:

## FIRST SCHEDULE

### Annual Administration Charge

1. The Annual Administration Charge payable by the Resident covers all costs expenses and outgoings incurred by the Operator and/or the Body Corporate Manager in respect of the Village.
2. The Resident agrees to pay to the Operator (by direct payment authority fortnightly in advance) a 1/25<sup>th</sup> share of the total outgoings for the Village, or a proportionate share of the total outgoings based on the number of completed Units in the Village as follows:
  - 2.1 All taxes (except income tax or capital taxes in respect of the Operator's income or profits) in respect of the Village.
  - 2.2 All rates, levies, charges, assessments and fees payable to any government, territorial or local authority if not directly billed to the Resident by the territorial or local authority or separately assessed for the Unit and on-charged to the Resident by the Operator upon receipt of the rates demand from the relevant territorial authority;
  - 2.3 Costs of compliance with any statute, regulation, by-law or other lawful obligation in respect of the Village.
  - 2.4 Charges for water and any other utilities or services;
  - 2.5 Insurance premiums and associated valuation fees;
  - 2.6 All salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village;
  - 2.7 The costs of providing security, fire protection systems, cleaning, gardening and other services for the general use and benefit of the residents in the Village;
  - 2.8 The costs of maintenance and repair of all buildings (including the Common Property and the exterior of all Units) but excluding the cost of structural maintenance and repairs (except under sub-clause 2.10 below) and any costs payable directly by a Resident;
  - 2.9 Appropriate fees and expenses of any statutory supervisor (if appointed), auditor, the Operator's accountant, and legal advisors and for the Common Property and Village generally;
  - 2.10 A reasonable sum in each Financial Year as determined by the Operator in its sole discretion as a contribution to a maintenance fund to cover the cost of Village repair and maintenance of a substantial but infrequent or irregular nature; and
  - 2.11 A reasonable allowance for depreciation of the recreational facilities and the chattels comprising the Common Property.

## SECOND SCHEDULE

### Schedule of Details

1. Full Name of Resident:
2. Unit Number:
3. Commencement Date:
4. Entry Payment:
  - 4.1 Deposit: \$
  - 4.2 Balance: \$
  - Total: \$**
5. Annual Administration Charge at the Commencement Date: \$6,929.26 per annum (inclusive of GST) (\$266.51 per fortnight)

**Note:** At the date of this Occupation Right Agreement:

  - 5.1 Waikato Regional Council Rates are paid as part of the Annual Administration Charge;
  - 5.2 Hauraki District Council Rates for your Unit are separately levied for the Unit and charged to the Operator. The Operator will on-charge Hauraki District Council Rates to you upon receipt of a rates demand from the council.
6. Service Charges (if any) at the Commencement Date: \$
7. Operator's Chattels at the Commencement Date:
  - Call bell system
  - Carpet and fixed floor coverings
  - Curtains and blinds
  - Light fittings
  - Smoke detectors
  - Stove/oven
  - Heat pump
  - Dishwasher
  - Heated towel rail
  - Rangehood
  - Kitchen waste disposal
  - Garage door motor and remote
  - Burglar alarm

***[Strike out as necessary]***
8. You will pay all utility charges for your Unit as set out in clause 9.17 of the Agreement.

## THIRD SCHEDULE

### Waihi Lifecare Village Rules

You agree and undertake to comply with the following rules:

1. Not damage or deface any part of the Unit, Common Property or other building in the Village.
2. To take all practicable steps to prevent infestation of the Unit by vermin and/or insects.
3. To keep your car parking space tidy and free of all litter.
4. To keep clean all glass in windows and doors of the Unit and promptly replace with new glass of the same kind and weight as at present if broken or cracked as a result of want of care misuse or abuse on the part of you or your invitees.
5. Not to use or damage any lawn, garden, tree, shrub, plant or flower situated in the Village, Rest Home and Hospital, unless the lawn, garden, tree etc are attributable to the Resident's Unit.
6. To ensure that when using the Common Property you (or your visitors or invitees) are adequately clothed and do not use language or behave in a manner likely to cause offence, embarrassment or nuisance to other occupants of the Village or to any person lawfully using the Common Property.
7. To take all reasonable steps to ensure that your visitors or invitees do not behave in a manner likely to interfere with the peaceful enjoyment of other occupants of the Village or of any person lawfully using the Common Property.
8. Not to create any noise or nuisance in the Unit, Common Property or elsewhere in the Village or home likely to interfere with the peaceful enjoyment of other Residents of the Village or the occupants of the home.
9. Except with the consent in writing of the Village Manager not to:
  - 9.1 Inscribe, paint, display or affix any sign advertisement, name, flagpole, flag or notice on any part of the outside or inside of any building or structure forming part of the Village; or
  - 9.2 Erect any awning, blind, shades, television aerial or antennae on the exterior of any buildings forming part of the Village.
10. Not to park or stand any motor vehicle or other vehicle upon the Common Property except with approval of the Village Manager.
11. To keep securely fastened all doors and windows of the Unit on all occasions when the Unit is left unoccupied and authorise the Village Manager to enter the Unit and fasten the same if left insecurely fastened.
12. To give written notice to the Village Manager if the Unit is to be left vacant for more than fourteen (14) consecutive days.
13. Not to deposit or throw upon the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of occupants of other parts of the Village or of any person lawfully using the Common Property.

14. To keep clean and free from dirt and rubbish such parts of the Common Property as immediately adjoins your Unit.
15. To ensure that all rubbish is placed in the correct rubbish receptacle for your Unit and that before doing so it is securely wrapped or in the case of tins or other containers completely drained.
16. Not to more than twelve (12) hours before the time rubbish is normally collected, place the rubbish receptacle within the area designated for such purpose by the Village Manager.
17. After rubbish has been collected to return the rubbish receptacle to the Unit or designated area on the Common Property and:
  - 17.1 Not to place anything in the rubbish receptacle of another Resident except with the permission of that Resident; and
  - 17.2 To promptly remove any spilt rubbish (whether by the Resident or the rubbish collector) and take such action as may be necessary to clear the area in which the rubbish has spilt; and
  - 17.3 If the Operator provides central rubbish bins for use by Residents, to place your rubbish in those bins for collection.
18. Not to burn any rubbish or waste in or upon the Unit or the Common Property.
19. Not to bring into the Village any heavy machinery or other plant or equipment of such nature or size as to cause, or in the reasonable opinion of the Operator be likely to cause, structural or other damage to the buildings in the Village.
20. Not to use nor allow the toilets, sinks, drains or any other plumbing facilities in the Unit or the Common Property for any purpose other than that for which such facilities were constructed or intended and the Resident will not deposit nor allow the deposit of any sweepings, rubbish or other matter in such facilities and any damage caused or arising out of such misuse of the facilities shall immediately be made good by you.
21. To ensure that all water taps in the Unit are promptly turned off after use.
22. Not to use any method of heating other than by electricity except with the written consent of the Village Manager.
23. Except with the approval in writing of the Village Manager, not to use or store upon the Unit or upon the Common Property any flammable chemical, liquid, gases or the flammable material other than small quantities of chemicals, liquids, gases or the materials used or intended to be used for domestic purposes or any such chemical, liquid, gases or other material in a fuel tank of a motor vehicle or internal combustion engine.
24. You may with the prior written consent of the Operator keep a cat or bird in the Unit. You shall ensure that your visitors or invitees do not bring any animal into the Unit or the Common Property. The Operator reserves the right to vary this rule on compassionate grounds.
25. In the event of any infectious illness occurring in the Unit immediately give notice of the illness to the Village Manager and to the appropriate public authorities. You shall at your

expense clean and disinfect the Unit to the satisfaction of the Village Manager and the appropriate public authorities and comply with any requirements of the public authorities.

26. Not to:

26.1 Obstruct the lawful use of the Common Property by any person;

26.2 Permit any auction, bankrupt or fire sale to be conducted or take place in the Village without the prior written consent of the Operator;

26.3 Use or permit to be used the Common Property or part thereof for any business or commercial purpose.

27. The Operator may make rules relating to the Common Property and any other amenities provided by the Operator provided that such rules are not inconsistent with these rules.

28. Any dispute between Residents or between the Village Manager and a Resident in respect of these Rules will be referred to the Complaints Facility.

**FOURTH SCHEDULE**

**Documents to be provided to Resident**

You acknowledge you have received from the Operator copies of the following documents prior to you entering into this Agreement:

1. Disclosure Statement, with **attached** copies of:
  - 1.1 Code of Resident's Rights
  - 1.2 Body Corporate Rules
2. Occupation Right Agreement.
3. Code of Practice.

.....

.....

Date

Note: A copy of the latest audited financial Accounts for the Village is available on request.