

# **Ngunguru Retirement Village**

**OCCUPATION RIGHT AGREEMENT**

**DATED:**

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## **PART A**

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

### **1. INTRODUCTION**

- 1.1 We own a retirement village known as **Ngunguru Retirement Village** at **8 Kakariki Road Ngunguru**. We provide a living environment predominantly for people in their retirement and their spouses and partners.
- 1.2 You have applied to become a resident of the Village and we have accepted your application.
- 1.3 This Agreement sets out the terms and conditions that apply to your Occupation Right, including our obligations to you, and your obligations to us.
- 1.4 The Occupation Right granted to you by this Agreement is a licence to occupy the Residential Unit described in clause 3.2.

### **2. OUR AGREEMENTS**

2.1 We and you agree as follows:

- (a) We grant to you the Occupation Right in accordance with clauses 6 - 9.
- (b) You agree to make the payments set out in clauses 10 -18.
- (c) We agree to abide by our consultation and notice obligations set out in clauses 19 and 20.
- (d) You agree to abide by your general obligations set out in clauses 21 - 32.
- (e) We agree to abide by our general obligations set out in clauses 33 - 40.
- (f) We both agree to abide by the general obligations set out in clauses 41 - 51.
- (g) On transfer to another Residential Unit, the provisions of clause 52 will apply.
- (h) On termination of this Agreement, the provisions of clauses 53 - 59 will apply.
- (i) We both agree to abide by the Code of Residents' Rights set out in Schedule Three.
- (j) We agree to abide by our obligations set out in the Code of Practice (when in force)

2.2 You confirm that you have received a copy of:

- (a) the Disclosure Statement;
- (b) the Code of Residents' Rights;
- (c) the Code of Practice (if in force) ; and
- (d) this Agreement

2.3 You confirm that you have received independent legal advice before signing this Agreement, as certified below.

**Your signing of this Agreement:**

	<b>[Resident 1]</b>	<b>[Resident 2]</b>
Signature of Resident:	_____	_____
Name of Resident:	_____	_____
Signature of Witness:	_____	_____
Name of Witness: (NB. Witness must be the certifying Lawyer)	_____	_____

Date of execution by Resident: \_\_\_\_\_

**Our signing of this Agreement:**

EXECUTED by **NGUNGURU  
RETIREMENT VILLAGE TRUST** by  
the affixing of its **Common Seal**  
pursuant to a resolution of the  
Trustees in the presence of:

\_\_\_\_\_

Signature of Trustee

\_\_\_\_\_

Signature of Trustee

\_\_\_\_\_

Full Name

\_\_\_\_\_

Full Name

Date of execution by Operator : \_\_\_\_\_

**Certificate by lawyer advising intending resident**  
*Section 27(5), Retirement Villages Act 2003*

Name of village: Ngunguru Retirement Village.

Registration number of village: 2139159

I, \_\_\_\_\_ certify that –

- (a) I explained to [*insert name of intending resident or person treated by section 27(7) of the Act as the intending resident*] the general effect of the attached 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 [*insert name of intending resident or person treated by section 27(7) of the Act as the intending resident*].

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

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

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

Street address & name of firm: \_\_\_\_\_  
\_\_\_\_\_

Postal address & name of firm: \_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_



**PART B****IMPORTANT INFORMATION****3. OCCUPANCY RIGHT AGREEMENT DETAILS****3.1 Parties**

Operator: **Ngunguru Retirement Village Trust** (registered under the Charitable Trusts Act 1957 under number 581120), described in this Agreement as “us”, “we” or “the Operator” and including our successors and assigns.

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

**3.2 Residential Unit**

Residential Unit: Lot number **[description of Site]** (as identified on the plan attached to this agreement as Schedule Five) (“the Site”);

and

The Dwelling located on this Site, which is completed and ready for occupation.

**3.3 Commencement and Termination of the Occupation Right**

The Commencement Date is: The later of:

(a) **[insert date]**; or

(b) The date following expiry of fifteen (15) Working Days after the date on which you sign this Agreement, unless you have previously cancelled this Agreement in accordance with clause 4.

The Termination Date is: The date your right to occupy the Residential Unit ends in accordance with clause 53 of this Agreement.

### 3.4 Entry or Exit Payments

The Entry Payment you will pay us for granting the Occupation Right set out in this Agreement is **[\$ insert amount]** (clause 10) is made up as follows:

<b>Site Payment</b>	<b>\$ 25,000.00</b>
<b>Dwelling Payment</b>	<b><u>\$ [insert amount]</u></b>
<b><u>TOTAL ENTRY PAYMENT</u></b>	<b><u>\$ [insert amount]</u></b>

On signing this Agreement you will immediately pay us a Deposit of ten percent (10%) of the Total Entry Payment, as follows:

**Deposit:                   \$ [insert amount].**

This Deposit will be held by the Deposit Holder until the expiry of the period set out in clause 4.1 unless you cancel this Agreement in accordance with clause 4.

On or before the Commencement Date you will pay us the balance of the Total Entry Payment, being **\$ [insert amount]**.

On the Exit Payment Date (set out in clause 56), we will pay you the Exit Payment. The Exit Payment will be:

- (a) The amount that we receive as the dwelling payment from the person who takes a new occupation right agreement for the Residential Unit (“the new resident”) but will not include any part of the site payment that we may receive from the new resident);

OR

- (b) Determined in accordance with:
- i. Clause 56.8 (Non-Sale Cases) if this Agreement terminates under clause 44 (Damage to Residential Unit or Village); or
  - ii. Clause 56.9 (Non-Sale Cases) if this Agreement terminates under clause 53.1 (Termination By Us) or we decide we do not want a new resident occupying the Residential Unit,

Minus the following deductions:

- (a) Any balance of your payments or other amounts you owe to us under this Agreement (clause 57); and
- (b) Our actual costs incurred for the Statutory Supervisor, legal, marketing and other fees and disbursements associated with your exit.

### 3.5 Further Payments

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

Your Village Outgoings Payment is: **\$280.00** per month (clause 11). (This amount is subject to change in accordance with clause 11.3.)

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

Your Village Outgoings Payment is calculated by: Dividing the total forecast operating costs for the Village by the aggregate number of Residential Units in the Village.

Your Village Outgoings Payment ceases to be payable on: The earlier of:

- (a) The Termination Date if:
  - i. This Agreement terminates under clauses 44 (Damage to Residential Unit or Village), or 53.1 (Termination by Us), or
  - ii. We decide we do not want a new resident occupying the Residential Unit,
- OR
- (b) Subject to clause 11.5, the date we receive an irreversible full settlement of the total amount payable by a new resident for the Residential Unit,

However, we will not charge the Village Outgoings Payment for any period that we let the Residential Unit under clause 59.

~~Your Utility Charge is: **N/A** — each resident is responsible for their own utilities (clause 12).~~

~~OR~~

~~**[\$ — ]** (This amount is subject to change in accordance with clause 12.3)~~

~~[Delete one]~~

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

~~Your Utility Charge is calculated by: Dividing the total forecast utility service charges for the Village by the number of Residential Units in the Village.~~

~~Your Utilities Charge ceases to be payable on: The earlier of:~~

~~(a) The Termination Date if:~~

- ~~• This Agreement terminates under clauses 44 (Damage to Residential Unit or Village), 53.1 (Termination by Us), or~~
- ~~• We decide we do not want a new resident occupying the Residential Unit; or~~

~~(b) The date we receive an irreversible full settlement of the total amount payable by a new resident for the Residential Unit;~~

~~However, we will not charge the Utility Charge for any period that we let the Residential Unit under clause 59.~~

Any additional payments or amounts payable by you to us: These may include: legal costs (clause 14), Default Interest (clause 17), compensation for reinstatement of the Dwelling where alterations have been made at your request (clause 24.4), money paid or costs incurred as a result of your default (clause 50).

3.6 **Default Interest Rate:** **Fourteen percent (14%)** per annum calculated on a daily basis.

### 3.7 **Statutory Supervisor**

Statutory Supervisor: **Covenant Trustee Services Limited** (being Company Number 2194946), including its successors and assigns.  
 Level 34, Vero Centre  
 48 Shortland Street  
 Auckland  
 PO Box 4243  
 Shortland Street  
 Auckland 1015

#### **4. RIGHTS OF CANCELLATION**

- 4.1 After you sign this Agreement you may cancel this Agreement, without having to give any reason. You can do this by notice given not later than 15 Working Days after you sign this Agreement.
- 4.2 Your notice of cancellation must be in writing and must clearly indicate your intention to cancel this Agreement.
- 4.3 The notice of cancellation must be given to
- (a) us; or
  - (b) any other person who dealt with you on our behalf when you signed this Agreement (unless we have notified you that such person has ceased to act on our behalf); or
  - (c) any other person who we have notified you is authorised to receive communications on our behalf.
- 4.4 If you cancel this Agreement you are entitled to a refund of the Deposit (and any other payments made by you for the grant of the Occupation Right). This refund will be without deduction (other than tax and as set out in clause 4.5) and will include any interest earned in the Deposit Holder's account. You are entitled to receive this refund within 10 Working Days after your request.
- 4.5 If you cancel this Agreement we are entitled to reasonable compensation for services provided to you under this Agreement, and for damage to any dwelling or facilities in the Village for which you are responsible.

## **PART C**

### **PLAIN ENGLISH**

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

#### **5. DEFINITIONS**

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

- 5.1 **“Agreement”** means parts A, B and C of this document, together with the Schedules.
- 5.2 **“Chattels”** means the chattels included with the Residential Unit, set out in Schedule Six.
- 5.3 **“Code of Practice”** means at all times any code of practice approved in accordance with s.89 (1) of the Retirement Villages Act such as may be in force from time to time. The Code of Practice approved as at the date of this Agreement (if any), is attached to this Agreement as Schedule Four.
- 5.4 **“Code of Residents’ Rights”** means the code of residents’ rights which is applicable from time to time pursuant to the Retirement Villages Act. The Code of Residents’ Rights current at the date of this Agreement is attached as Schedule Three.
- 5.5 **“Community Facilities”** means the common areas and community facilities of the Village allocated by the Operator from time to time for the use of the residents of the Village.
- 5.6 **“Deed of Supervision”** means the deed that we have entered into appointing the Statutory Supervisor as required by the Retirement Villages Act.
- 5.7 **“Default Interest”** means the interest set out in clause 17 which we are entitled to charge you for overdue payments.
- 5.8 **“Deposit Holder”** means the Statutory Supervisor.
- 5.9 **“Disclosure Statement”** means the written document titled “the Disclosure Statement” containing information about this Village, prepared in accordance with the Retirement Villages Act.

- 5.10 **“Dwelling”** means the residential dwelling erected on the Site described in clause 3.2, and, where the context permits, includes the Chattels.
- 5.11 **“Dwelling Payment”** means the payment made by you in accordance with clause 3.4, in exchange for the supply of accommodation and the right to receive the Exit Payment set out in clause 3.4.
- 5.12 **“Entry Payment”** means the payment set out in clause 3.4 which you must pay us for granting the Occupation Right, and comprises the Dwelling Payment and the Site Payment.
- 5.13 **“Exit Payment”** means the payment set out in clause 3.4 which we must pay you following termination of this Agreement.
- 5.14 **“Exit Payment Date”** means the date we must pay you your Exit Payment, as set out in clause 56.
- 5.15 **“Fair Wear and Tear”** means deterioration attributable to normal use and the normal operation of natural forces, but does not include deterioration attributable to smoking, incontinence and the use of mobility aids.
- 5.16 **“Occupation Right”** means your right under this Agreement to occupy the Site and Dwelling described in clause 3.2.
- 5.17 **“Registrar”** means the Registrar of Retirement Villages appointed under the Retirement Villages Act.
- 5.18 **“Residential Unit”** means the site and dwelling described in clause 3.2 of Part B of this Agreement.
- 5.19 **“Retirement Commissioner”** means the Retirement Commissioner appointed under the Retirement Income Act 1993.
- 5.20 **“Retirement Villages Act”** means the Retirement Villages Act 2003 as updated, amended or replaced from time to time.
- 5.21 **“Rules”** means the Operator’s rules for the Village, which are subject to change in accordance with clause 26.3 of this Agreement, and which, as at the date of this Agreement are set out in Schedule Two.
- 5.22 **“Site”** means the site at the Village which we are licencing to you and on which your Dwelling is situated, as set out in clause 3.2.
- 5.23 **“Site Payment”** means the payment made by you in accordance with clause 3.4, in exchange for the right to occupy the Residential Unit, to access the Community Facilities, and the right to receive the Exit Payment as set out in clause 3.4.
- 5.24 **“Utility Charge”** means the charge made for utilities supplied to residents of units which are not separately metered for utility services, in accordance with clauses 3.5 and 12.2.

- 5.25 **“Village”** means the complex of (currently) 37 units located within and forming part of the complex known as Ngunguru Retirement Village situated at 8 Kakariki Road, Ngunguru.
- 5.26 **“Village Outgoings”** means the outgoings of the Village set out in Schedule One, subject to change in accordance with this Agreement.
- 5.27 **“Working Day”** means any day of the week other than:
- (a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday and Labour Day;
  - (b) A day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
  - (c) If 1 January falls on a Friday, the following Monday; and
  - (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday, and

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



## **OCCUPANCY RIGHTS**

### **6. GRANT OF OCCUPATION RIGHT**

- 6.1 We grant to you, and you accept, the Occupation Right for your Residential Unit under this Agreement. We are granting this Occupation Right in exchange for payment by you of the Entry Payment and your agreement to comply with the terms of this Agreement.
- 6.2 The rights we are granting to you in this Agreement are personal contractual rights only. Nothing in this Agreement gives you any ownership right or interest in the Village or the Village land. This Agreement does not give you any tenancy or leasehold rights to the Residential Unit.
- 6.3 You agree not to require registration of the Occupation Right and not to caveat or otherwise encumber our title to the Village.
- 6.4 You are entitled to take up occupation of the Residential Unit on the Commencement Date.
- 6.5 You do not have the right to sell your Residential Unit. However, you do have the right to introduce a potential new resident in accordance with clause 55.2.

### **7. JOINT OWNERS**

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

### **8. USE OF RESIDENTIAL UNIT**

- 8.1 You are entitled to reasonable exclusive use and occupation of the Residential Unit free from our unnecessary interruption.
- 8.2 You are entitled to reasonable exclusive use of the Chattels free from our unnecessary interruption.

### **9. USE OF COMMUNITY FACILITIES**

- 9.1 You are entitled to enjoy the Community Facilities. Your rights to enjoy the Community Facilities are not exclusive and must be exercised in common

with all other residents and any other persons to whom we may, in our discretion, grant similar rights at any time.

## **YOUR PAYMENTS**

### **10. YOUR ENTRY PAYMENT**

- 10.1 On or before the Commencement Date you must pay us the Entry Payment as set out in clause 3.4 of Part B.
- 10.2 You will not be entitled to exercise rights of occupancy of the Residential Unit or other benefits under this Agreement until you have paid the Entry Payment in full, even though this Agreement may have been completed and the Commencement Date may have arrived.

### **11. YOUR VILLAGE OUTGOINGS PAYMENT**

- 11.1 You agree to pay us in each year, or part year, a proportion of the cost of the Village Outgoings, which proportion will be calculated in accordance with clause 3.5 of Part B.
- 11.2 You agree to pay us the Village Outgoings Payment in the manner set out in Part B.
- 11.3 We are entitled to change the Village Outgoings Payment at any time in accordance with changes or likely changes in the outgoings of the Village or where we consider an adjustment is required to achieve fairness. Such change to the Village Outgoings Payment will take effect no earlier than one calendar month following our notice of the change.
- 11.4 Your Village Outgoings Payment will not include any outgoings of the Village payable by us in respect of any further development of the Village.
- 11.5 Your Village Outgoings Payment will reduce by 50% if no new occupation right agreement has been entered into for your Residential Unit within either:
- (a) Six months of the Termination Date (determined in accordance with clause 53); or
  - (b) Such later date as you vacate the Residential Unit.
- 11.6 Your obligation to pay us the Village Outgoings Payment will cease in the manner set out in clause 3.5 of Part B.

### **12. YOUR UTILITY CHARGES**

- 12.1 Where your Residential Unit is separately metered for utility services, including (without limitation) electricity, gas, telephone/tolls, water charges, television connection and subscription fees, you shall be solely liable to pay

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

- 12.2 Where your Residential Unit is not separately metered for utility services, including (without limitation) electricity, gas, telephone/tolls, water charges, television connection and subscription fees, you agree to pay us the Utility Charge in the manner set out in Part B, as a fair proportion of the charges for utilities consumed in respect of your Residential Unit.
- 12.3 We are entitled to change the Utility Charge at any time in accordance with changes in the cost of providing the relevant utility services. Such change to the Utility Charge will take effect no earlier than one calendar month following our notice.
- 12.4 Any increase in the Utility Charge shall be subject to any applicable requirements of the Code of Practice (when in force), and to prior consultation with you in accordance with clauses 19 and 20 of this Agreement.
- 12.5 If we are able to purchase in bulk any of these utility services, we will supply them to you and pass on your proportionate share of any savings.
- 12.6 Where your Residential Unit is separately metered for utility services, you will continue to be solely liable to pay all charges for utilities consumed in respect of your Residential Unit following the Termination Date. Your liability to pay all charges for utilities consumed in respect of your Residential Unit will cease in the manner set out in clause 3.5 of Part B.

### **13. YOUR AUTOMATIC PAYMENT AUTHORITY**

- 13.1 You agree to pay us each Village Outgoings Payment and (if applicable) Utility Charge as they fall due in such manner as we shall direct from time to time.
- 13.2 At the Commencement Date you agree to give us a signed automatic payment authority or such other authority as required by us, authorising a monthly payment to us for the total of the Village Outgoings Payment and (if applicable) the Utility Charge specified in clause 3.5.
- 13.3 If and when we notify you of a change to the Village Outgoings Payment and/or the Utility Charge (under clause 11.3 and/or clause 12.3) (“the revised amount”) you agree to give us, within five working days of the date of our written notice, a signed automatic payment authority or such other authority as required by us for the revised amount.

### **14. YOUR LEGAL AND OTHER COSTS**

- 14.1 You must pay all your own legal and other costs associated with your application for and entry into this Agreement.
- 14.2 You are required to pay also our reasonable costs, including but not limited to legal costs, incurred in the preparation, execution and termination of this

Agreement and any costs incurred by us that are incidental to the enforcement or the attempted enforcement of our rights, remedies and powers under this Agreement.

## **15. TERMINATION PAYMENTS**

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

## **16. YOUR OTHER PAYMENTS**

- 16.1 In addition to the regular payments set out in clauses 11 and 12, you may also be required to make other payments to us as set out in Part B.

## **17. DEFAULT INTEREST**

- 17.1 You will duly and promptly pay us each and every payment required to be made pursuant to this Agreement. If you fail to make any such payment for 5 Working Days after the payment is due, you will pay interest on the payment at the Default Interest Rate set out in clause 3.6, from the due date until the day we receive payment.
- 17.2 Our entitlement to charge default interest under this clause does not limit or replace any other rights available to us in respect of your default.

## **18. GST INCLUSIVE**

- 18.1 All monetary amounts set out in this Agreement include GST (if any).
- 18.2 If the status of the Village and the services provided is altered in any way in terms of our liability for the payment of Goods and Services Tax, we reserve the right to review and adjust the amounts of any one or more of the payments provided for under this Agreement.

## **OUR CONSULTATION AND NOTICE OBLIGATIONS**

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

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

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

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

### **20. WE WILL CONSULT YOU**

20.1 We will consult you about any matter that will or might have a material impact on:

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

20.2 We will consult with you regarding:

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

- (j) any actual or threatened legal proceedings against the Village or against us that affect your interests;
- (k) any actual or threatened action by a creditor, mortgagee or chargeholder in respect of the Village, against us, in respect of that person's security or any sum over \$1,000;
- (l) any action by a creditor to put us or the Village in receivership or liquidation; and
- (m) any decision to sell or dispose of our interest in the Village (in which case the purchasers and we will jointly consult with you), such consultation shall be at a time directed by the Statutory Supervisor.

## **YOUR GENERAL OBLIGATIONS**

### **21. PERMITTED USE**

- 21.1 You will use the Residential Unit only for your own personal use and occupation as a residential dwelling.
- 21.2 You may have friends, relatives or other persons to stay with you in the Residential Unit for periods not exceeding three weeks at any one time, or otherwise with our prior written consent. However, we reserve the right to curtail any such arrangement where we consider it is interfering with the quiet enjoyment of other residents in the Village.
- 21.3 If you marry or enter into a civil union or a de facto relationship during the term of this Agreement, we will consent to your new partner living with you in the Residential Unit provided that person would otherwise meet our normal criteria for the grant of an occupation right and that person signs a Deed of Covenant (at their expense) which requires them to observe and perform such terms and conditions from this Agreement as we consider necessary.
- 21.4 We may refuse to permit you to bring to the Residential Unit or the Village any item of furniture, musical instrument or electronic or electrical equipment. We may require you to remove such item, despite any previous approval. You must comply with such refusal or requirement.
- 21.5 You are not to keep any pet or animal in the Village without our prior written approval which shall be at our sole discretion. Any approval we give under this clause may be withdrawn by us at any time.
- 21.6 You are not to erect or place on or outside the Dwelling or on any other part of the Residential Unit, any radio or television aerial, antennae or similar appurtenance, nor install audible burglar alarms, without our prior written consent. We may require you to remove such item, despite any previous approval. You must comply with such refusal or requirement.
- 21.7 You are not to bring into or keep in the Dwelling or on the Site any goods or substances of a highly combustible nature or do or permit to be done anything (including the unauthorised use of light or power fittings) which may render an increased premium payable for any insurance cover on any part of the Village or which may make void or voidable any such insurance.
- 21.8 Smoking is not permitted in any of the Village's Community Facilities. You are not to smoke, nor allow any of your guests to smoke, in any Community Facilities.

### **22. RESTRICTIONS ON TRANSFER**

- 22.1 You are not entitled to transfer this Agreement or any legal or equitable interest you may have in the Residential Unit, borrow or give any mortgage or charge against your interest in this Agreement or your Exit Payment

entitlement, sublet or allow any person to have possession or occupancy of the Residential Unit.

### **23. CARE OF RESIDENTIAL UNIT AND COMMUNITY FACILITIES**

- 23.1 You are responsible for maintenance and repair to the Residential Unit, including (but not limited to) the exterior and interior of the Dwelling, its pipes and drains and the Chattels, to a good, clean and tidy standard of repair, order and condition. "Good repair, order and condition" means a standard not less than the repair, order and condition of the Chattels, Dwelling, Site and its improvements as at the Commencement Date and allowing for Fair Wear and Tear from that date.
- 23.2 You will ensure the structural soundness and integrity of the Dwelling, and maintain connections for utility services to the Dwelling. You must ensure that the Dwelling complies at all times with all lawful requirements of the local authority or Department of Health and with all applicable statutes, regulations and bylaws.
- 23.3 You will at all times use the Community Facilities in such a manner as to keep them in a proper, tidy, clean, sanitary and (where appropriate) working order and condition.
- 23.4 You are not to do anything or allow anything within your control to occur, which could cause any blockage of stormwater drains or sewage outlets servicing the Residential Unit or the Village.
- 23.5 You are not to deposit rubbish other than in approved receptacles, nor defile any part of the land or buildings on or in the Village.
- 23.6 You are not to leave or place in the pathways, corridors, driveways or parking area or in the grounds or Community Facilities of the Village, any receptacles or obstructions whatsoever.
- 23.7 We must take all practical steps to ensure the safety of our employees, contractors and subcontractors at work in the Village. You must also do the same, when our employees, contractors and subcontractors are undertaking work in, on or around your Residential Unit.

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

- 24.1 You must not make any alterations or additions to the Residential Unit, or modify the Chattels, or fit television aerials, radio aerials or other appurtenances to the Residential Unit without our prior written consent. We can give or withhold consent at our sole discretion.
- 24.2 Subject to our prior written approval, which may not be unreasonably withheld, you have the right to alter your Residential Unit if you suffer from a physical disability as defined in Section 21(1)(h) of the Human Rights Act 1993, to the extent that the Residential Unit does not meet your needs.



24.3 You will arrange for any agreed alterations to be undertaken at your cost. You will also obtain any necessary building or other consents for the alterations and ensure that they are completed in a timely, proper and tradesman-like manner. Upon completion of alterations requiring a building consent, you will provide us with a copy of the code compliance certificate issued by the local authority.

24.4 Those alterations may materially and adversely affect our ability to obtain a new resident for your Residential Unit on termination of your Occupation Right in accordance with clause 55 of this Agreement. If that is the case, we may require your Residential Unit to be reinstated to its original condition at your cost, or require you to make a compensation payment instead of reinstatement.

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

25.1 You must maintain your own insurance policy to cover risks of loss or damage to your own possessions in the Dwelling and on the Site. You must also maintain insurance cover for your motor vehicle(s) for a minimum of third party, fire and theft. Irrespective of cause, we will have no responsibility, under any circumstances, for loss or damage to any of your property or vehicles.

## **26. COMPLIANCE WITH RULES**

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

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

26.3 We are entitled from time to time to establish, review and amend the Rules at our sole discretion, provided that any establishment, review or amendment to the Rules does not affect or detract from your existing rights under this Agreement. We will consult with you before we make any changes to the Rules.

26.4 If we make changes to the Rules, we must notify you of the changes before you are obliged to observe them.

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

## **27. INDEMNIFICATION OF OPERATOR**

27.1 You will reimburse us for any loss or damage suffered by us as a result of your carelessness or negligence or that of your guests and invitees, except loss or damage for which we have been indemnified by our insurers. However, in any case where your acts or omissions (or those of your guests or invitees) have made our insurance void, you will, upon demand, compensate and reimburse us in full for such loss or damage.

27.2 Where the loss or damage is covered by our insurance we reserve the right to require you to pay any excess applicable to the claim.

## **28. NO NUISANCE**

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

## **29. PARKING**

29.1 You are not to park, or allow any guest or visitor to park a vehicle anywhere in the Village other than in the designated areas set aside (as the case may be) for resident, guest or visitor parking.

## **30. PRIVACY AUTHORISATION**

30.1 In order to check your continued suitability to occupy the Residential Unit and for Village administration purposes, we will need to collect and hold relevant personal information about you and in particular relating to your physical or mental health.

30.2 You authorise:

- (a) us to collect the relevant personal information about you from any relevant agencies, in particular any health agencies who possess information relating to your physical and mental health; and
- (b) any agency to disclose such relevant information, and in particular, any health agency to disclose information relating to your health to us.

30.3 During normal business hours, you have the right to access your personal information held by us and to require us to correct any errors in that personal information.

## **31. REPRESENTATIONS**

31.1 If you have supplied us with reports and/or information in connection with your application for the Occupation Right, we have agreed to enter into this Agreement with you on the basis of such reports/information.

31.2 All statements made by you in such reports/information must be correct.

## **32. NEXT OF KIN**

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

## **OUR GENERAL OBLIGATIONS**

### **33. MANAGEMENT OF THE VILLAGE**

- 33.1 We must use reasonable skill and care in ensuring that the Village's affairs are conducted properly and efficiently, and in performing our powers, functions and duties.
- 33.2 We may employ a Manager to undertake the day-to-day management of the Village.

### **34. CODE OF PRACTICE**

- 34.1 We will meet all requirements of any applicable Code of Practice (when in force), particularly in respect of the following matters:
- (a) Staffing of the Village;
  - (b) The safety and personal security of residents;
  - (c) Fire protection and emergency management;
  - (d) The transfer of residents within the Village (see clause 52);
  - (e) Meetings of residents with us (see clause 39);
  - (f) A complaints facility (see clause 48);
  - (g) Accounts;
  - (h) Maintenance and upgrading (see clause 35.1);
  - (i) Termination of this Agreement (see clause 53);
  - (j) Communication;

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

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

- 35.1 We will:
- (a) supply the Residential Unit with standard connections for water, telephone, and electricity.
  - (b) (subject to your obligations under clause 23, Care of Residential Unit and Community Facilities) maintain and keep the Community Facilities in good and tidy operational order and condition.

- (c) make and adhere to (as far as reasonably possible and as financial circumstances permit) a long term plan for maintenance and refurbishment of the Community Facilities.
  - (d) provide community lighting to illuminate the movement of residents and guests around the common areas, and will maintain this system and lighting at all times.
- 35.2 We will not be responsible for any failure in the provision or maintenance of utility services, such as electricity, gas, telephones, tolls and water for any reason at all.
- 35.3 Except to the extent that we are covered by our insurance policy, we will not be liable to you or any other person for water damage caused by either the overflow of water supplied or rainwater unless we have received prior written notice of any defect or want of repair for which we are responsible and we have failed to remedy the same within a reasonable period and that failure has contributed to the damage.

## **36. INSURANCE OF VILLAGE.**

- 36.1 We will, in respect of the Village as a whole, including the Residential Unit, arrange and maintain a comprehensive insurance policy for its full replacement value to the satisfaction of the Statutory Supervisor covering the Village for usual risks including damage or destruction by fire and earthquake, and covering any other insurable risk which we may consider desirable, in our interests or in the interests of residents.
- 36.2 We shall be entitled to arrange and maintain public liability and statutory liability insurance policies or other common types of insurance to cover any liabilities to which the Operator may be liable as owner and/or manager of the Village for such sums as we consider reasonably desirable.
- 36.3 We shall be entitled to arrange insurance to cover the loss of income arising as a result of any usual insurable risks to cover a loss of income for a period of up to 24 months.
- 36.4 Our costs of arranging and maintaining the above insurance policies fall within the Village Outgoings, and are met by residents.
- 36.5 In the event of any damage to the Residential Unit which may give rise to an insurance claim by us, you agree to:
- (a) Give us prompt notice of any such damage of which you are aware; and
  - (b) Comply with any reasonable request for information as may be required to complete the claim with our insurer.

### **37. PAYMENT OF VILLAGE OUTGOINGS**

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

### **38. PROVISION OF FINANCIAL STATEMENTS**

- 38.1 We must give you on request and free of charge, a copy of our audited financial statements most recently filed under the Financial Reporting Act 1993. This clause applies until you have been paid your Exit Payment in accordance with clause 56 of this Agreement. If the financial statements have not been audited in the year prior to registration then the financial statements must comply with Schedule 6 of the Retirement Villages (General) Regulations 2006.

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

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

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

### **39. MEETINGS WITH RESIDENTS**

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

- 39.1 An annual general meeting to consider the financial statements for the most recently completed financial year of the Village, and any other matters required by the Code of Practice (when in force). Such meeting will be held within six months after the end of the financial year to which the financial statements apply.
- 39.2 A meeting for the purpose of giving to the Statutory Supervisor, the Residents' opinions or directions relating to the exercise of any of the Statutory Supervisor's powers, such meeting to be held if requested by the Statutory Supervisor or by at least 10% of the Residents of the Village.
- 39.3 We must provide you with written notice of all such meetings at least 10 (ten) working days before the meeting is held.
- 39.4 The meetings must be chaired by a person appointed by the Statutory Supervisor or in the absence of any such appointment a person, appointed by the majority of the Residents of the Village who are at the meeting.

39.5 We are required to give to you at the meeting, either orally or in writing, such information relating to the affairs of the Village as has been requested by a Resident of the Village with reasonable notice. We will not be obliged to give you information in respect of which we have legal grounds to withhold that information.

#### **40. STATUTORY SUPERVISOR**

40.1 If the Statutory Supervisor retires or its appointment is otherwise terminated, we will (subject to any approval required by law) appoint another person or corporation to be the Statutory Supervisor of the Village.

40.2 Subject to the operation of law, the position of the Statutory Supervisor will not be vacated until:

- (a) our appointment of a new Statutory Supervisor; and
- (b) that new Statutory Supervisor's acceptance of its appointment; and
- (c) the execution by that new Statutory Supervisor of a Deed of Supervision whereby it accedes to the duties and powers of the Statutory Supervisor under that Deed.

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

### **41. CHANGES TO VILLAGE FACILITIES**

- 41.1 We are entitled periodically to provide additional buildings, areas or amenities as part of the Community Facilities, or to remove buildings, areas or amenities from the Community Facilities permanently or temporarily.
- 41.2 Our ongoing costs and expenses of providing and maintaining the Community Facilities fall within the Village Outgoings, and are met by residents.

### **42. MAINTENANCE OF RESIDENTIAL UNIT**

- 42.1 You are responsible for maintaining the Residential Unit at your own cost in accordance with clauses 23.1 and 23.2, and so as not to detract from the enjoyment of the Village by all the Residents in the Village.
- 42.2 We have the right to arrange for any repairs, maintenance and replacement works to the Residential Unit for which you are responsible if we consider you have failed to attend to those works within what we consider to be a reasonable time. We will invoice you for the costs of such repairs, maintenance or replacements and you must pay us no later than the 20<sup>th</sup> of the month following the date of our invoice, unless this Agreement has terminated in which case you must pay us in the manner set out in clause 57.
- 42.3 We will ensure that in exercising our rights under clause 42.2 minimum inconvenience is caused to you.
- 42.4 We will not be liable for any loss or inconvenience suffered by you arising from any defect or want of repair to the Residential Unit. We will not be responsible for replacement of the Chattels.

#### **Inspection on Termination**

- 42.5 On termination of this Agreement we have the right to arrange for an inspection of the Residential Unit by a person we consider to be suitably qualified. A copy of that building inspection report will be given to you. We will invoice you for the costs of that inspection and you must pay us in the manner set out in clause 57.
- 42.6 You will be responsible for any repairs, maintenance or replacement works that the building inspector's report identifies as necessary to correct any defect in the structural soundness or integrity of the Dwelling or to otherwise ensure that the Residential Unit complies with all lawful requirements of the local authority and any applicable statute, regulation and by-law. If you do not attend to those works within what we consider to be a reasonable time we have the right to arrange for those works to be done and to recover our costs under clause 42.3 above.

**43. OPERATOR'S RIGHT TO ENTER RESIDENTIAL UNIT**

- 43.1 You agree to permit us at all reasonable times to enter the Site and the Dwelling for the purpose of inspecting the Residential Unit, giving care and assistance to you, and carrying out any work under clause 42.3.
- 43.2 Wherever practicable we will give you 24 hours prior written notice of our intention to enter the Residential Unit in accordance with clause 43.1.
- 43.3 In cases of emergencies, the requirement of prior written notice may be waived.

**44. DAMAGE TO RESIDENTIAL UNIT OR VILLAGE**

- 44.1 Subject to clauses 44.3 and 44.4 below, if the Residential Unit is damaged by fire, earthquake, storm, enemy action, inevitable accident or other risk against which we are insured, then we will repair and reinstate the Residential Unit. We will consult with you about the repairs or reinstatement. However, we are not bound to expend any more money than the actual amount of the insurance money we receive.
- 44.2 We will not provide alternative accommodation for you while your Residential Unit is being repaired and reinstated.
- 44.3 If the Residential Unit is damaged and any insurance money we receive is not adequate to meet the cost of repair, or if we form the reasonable opinion that such repair is impracticable or the consent of any necessary authority to such repair is refused, then this Agreement may be terminated by the giving of written notice by either party. (See clause 53.11).
- 44.4 If a substantial part of the Village is damaged, even if the Residential Unit is not damaged, and any insurance money we receive is not adequate to meet the cost of repairing such part of the Village, or if we form the reasonable opinion that such repair is impracticable or the consent of any necessary authority to such repair is refused, then this Agreement may be terminated by the giving of written notice by either party. (See clause 53.11).
- 44.5 Before we give a notice of termination under clause 44.3 and clause 44.4 we must have first consulted with you to decide whether it is practicable to repair the Residential Unit.

**45. FURTHER DEVELOPMENT OF THE VILLAGE**

Subject to our consultation obligations under clause 19 and 20 of this Agreement:

- 45.1 We are entitled to improve, extend, add to, reduce or alter the Village or in any manner whatsoever alter or deal with the Village. In undertaking such further development, we will use our best endeavours to cause as little inconvenience to you as is practical in the circumstances.



- 45.2 You are not entitled to make any objection or claim compensation in respect of any further development we undertake. You will, if we require, sign all consents and other documents as may be required to give effect to such further development.
- 45.3 You will make no objection to building works associated with the construction of the Village or any further development or to the dust, noise or other discomfort or nuisance which may arise from such works and will not institute or commence any action or proceeding for an injunction, damages or other relief arising out of or consequent upon any such works.
- 45.4 You agree that we are entitled to sell any part of the Village which we deem to be surplus to our needs.

#### **46. STATUTORY SUPERVISOR**

- 46.1 In terms of the Deed of Supervision, the Statutory Supervisor will be entitled to be indemnified by us and by you and all the other residents for the time being in the Village in respect of all expenses and liabilities reasonably incurred by the Statutory Supervisor, and against all claims the Statutory Supervisor may suffer in respect of any matter relating to his appointment and duties under the Deed of Supervision (other than a claim arising out of gross negligence, bad faith or wilful misconduct by the Statutory Supervisor).
- 46.2 In accordance with the Contracts (Privity) Act 1982, the provisions of this clause are intended to be enforceable by the Statutory Supervisor as a person beneficially entitled.

#### **47. DISPOSE OF/SUBCONTRACT OUR RIGHTS**

- 47.1 We are entitled to market, sell, assign or dispose of our interest under this Agreement.
- 47.2 With effect from the date of sale, assignment, or disposal, all our rights and obligations under this Agreement will pass to the replacement operator, and we will have no further rights and no further obligations to you under this Agreement. You agree to continue to observe and perform all your obligations under the Agreement for the benefit of the replacement operator.
- 47.3 You agree to sign a deed of novation of this Agreement in favour of the new operator of the Village and such deed will be in the form provided by us. You irrevocably authorise the Statutory Supervisor to execute such deed on your behalf.
- 47.4 We are entitled at any time without restriction to subcontract our operation rights to another suitably qualified operator. No such subcontracting will change the basic relationship between us and you, and we will continue to be obliged to perform and observe the terms of this Agreement. If we do subcontract our rights for any period under this Agreement, then the subcontracted operator will be our representative for all purposes under this

Agreement, and you will comply with all instructions, notices, directions and decisions of the subcontracted operator as if we had issued them directly.

#### **48. DISPUTE RESOLUTION (EXCEPT A DISPUTE REGARDING DISPOSAL OF RESIDENTIAL UNIT)**

48.1 Notwithstanding any other provision in this Agreement, any complaint or dispute (except a dispute regarding the disposal of your Residential Unit) shall be dealt with in accordance with this clause 48.

##### **Your complaint**

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

48.3 If you have a complaint you must first refer the complaint to the complaints facility. You do this by making your complaint to the person who is the secretary of the Operator or such other person notified to you as the complaints contact person for the Operator.

48.4 Twenty (20) Working Days after you referred the complaint to the complaints facility, you may require the matter to be resolved by a disputes panel by giving us and/or any other party a dispute notice.

##### **Our complaint**

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

48.6 Twenty (20) Working Days after we notified you of the complaint, we may require the matter to be resolved by a disputes panel by giving you and any other party a dispute notice.

##### **Disputes panel**

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

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

#### **49. DISPUTE RESOLUTION FOR DISPUTE REGARDING DISPOSAL OF RESIDENTIAL UNIT**

49.1 Notwithstanding any other provision in this Agreement, a dispute regarding the disposal of your Residential Unit shall be dealt with in accordance with this clause 49.

- 49.2 You may give us a dispute notice regarding the resolution of a dispute concerning any alleged breach by us of this Agreement (in particular, clause 53 – Termination Events) or the Code of Practice (when in force) in disposing of the Residential Unit.
- 49.3 In resolving such dispute, the provisions of clause 48 apply except that you cannot give a disputes notice until 9 months after the Residential Unit became available to us for disposal.

## **50. YOUR DEFAULT**

- 50.1 If you default at any time in the observance or performance of your obligations under this Agreement we may, without prejudice to any of our rights, powers or remedies, at your cost, pay money and do things in our opinion reasonably necessary for the performance of your obligations:
- (a) we will consult you before paying such money or doing such things; and
  - (b) you will immediately pay us all money we paid and the costs of us doing such things. Until we receive such payment, the money we paid and costs we incurred shall be treated as an advance by us and you will pay interest on that advance at the Default Interest Rate.
- 50.2 Alternatively, upon such default, we may terminate this Agreement in accordance with clauses 53.1(b) and 53.2.

## **51. GENERAL PROVISIONS**

### **No waiver**

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

### **Notices**

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

**Our consent**

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

**Property Law Act**

- 51.5 The covenants implied in leases by the Property Law Act 2007 or any other statute are hereby expressly negated.

**Majority resolutions**

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

**Courtesy, respect**

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

## **TRANSFER TO ANOTHER RESIDENTIAL UNIT**

### **52. TRANSFER TO ANOTHER RESIDENTIAL UNIT WITHIN THE VILLAGE.**

- 52.1 You will have no right to transfer to another residential unit within the Village and we will have no obligation to assist you if you wish to acquire an occupation right for another residential unit.
- 52.2 The provisions in this clause will not prevent you seeking to acquire an occupation right for another residential unit which is available but you will need to apply for the occupation right for that other residential unit in the same manner as any other person who is not already the holder of an occupation right in the Village and we will not be obliged to give your application priority over any other application.
- 52.3 If you do acquire an occupation right in respect of another residential unit within the Village then the Termination Date for this Agreement will be determined in accordance with clause 53.10 and the amount due to you under this Agreement on the Exit Payment date may be set off against the amount payable by you under the provisions of the agreement for the residential unit to which you wish to transfer.
- 52.4 The provisions of this clause will not prevent us from assisting you in moving to another residential unit but we will have no legal obligation to assist you in that process and will be under no obligation to make any concession in the application of the provisions of this Agreement which apply on the termination of this Agreement.

## TERMINATION

### 53. TERMINATION EVENT

#### Termination by Us

53.1 We may terminate this Agreement if:

- (a) Your physical or mental health is such that, based on a medical assessment by an independent medical practitioner but appointed by us, at our cost, you or another Resident cannot safely live in the Village. You agree to submit to an independent medical assessment for this purpose at our request. The assessment by the medical practitioner must take into account, the care, support and facilities offered in the Village and such support services (if any) that we may agree could be brought in from outside the Village. In such event we will consult you, your family or appointed representative where appropriate. You may obtain a second opinion from another medical practitioner at your own expense, and present it to us. In the event that there are two of you, and this applies to only one of you, we will not terminate the Agreement for this reason; or
- (b) You have defaulted in a material or significant way, in observing or performing any of your obligations under this Agreement and you have failed to rectify the default within a reasonable time (but no less than one month as per clause 53.2) after receiving written notice from us that we intend to terminate the Agreement unless such default or defaults are remedied; or
- (c) You have either intentionally or recklessly caused or permitted, or you are highly likely to cause or permit:
  - (i) serious damage to the Residential Unit or Community Facilities;
  - (ii) damage which is not of itself of a serious nature but which is made so by its continuous nature; or
  - (iii) serious injury, harm or distress to us or to another resident or any of our employees or visitors or any other Resident's visitors.
- (d) We have made reasonable enquiries and determined that you have permanently abandoned the Residential Unit. We must notify you of our intention to terminate this Agreement unless you re-occupy the Residential Unit, and we must first give you one month in which to re-occupy in accordance with clause 53.2.

53.2 Should we wish to terminate this Agreement on any of the grounds mentioned in subclauses (a), (b) and (d) above, then we shall give you not less than one month's notice in writing that we intend to terminate the Agreement. Should we wish to terminate this Agreement on the ground mentioned in subclause (c) above, then we shall give you as much notice in

writing as is reasonable in the circumstances that we intend to terminate the Agreement.

- 53.3 The Notice of Termination we give you under clause 53.2 must comply with the requirements of the Code of Practice (when in force).
- 53.4 The Termination Date will be the first Working Day after the applicable notice period or, the date on which the Residential Unit is vacant, whichever is the later.
- 53.5 If we terminate this Agreement under clause 53.1, then we must pay you your Exit Payment in accordance with clause 56.5.(Exit Payment Date).

### **Termination by You**

- 53.6 You can terminate this Agreement, at your option, at any time.
- 53.7 Should you wish to terminate this Agreement then you must give us one (1) calendar month's notice in writing that you intend to terminate the Agreement. If there are two of you in joint occupation then the notice must be signed by both of you.
- 53.8 The Termination Date will be the first Working Day after that notice period, or the date on which the Residential Unit is vacant, whichever is the later.

### **Automatic termination**

- 53.9 This Agreement will automatically terminate on the day that you die, or, where two of you have jointly signed this Agreement, the surviving Resident dies (as the case may be). This day will be the Termination Date.
- 53.10 In the event that you (or both of you, if you are joint Residents) transfer to another residential unit within the Village, and take up a replacement agreement pursuant to clause 52, this Agreement will automatically terminate on the day prior to the commencement date of that replacement agreement. That day will be the Termination Date.
- 53.11 This Agreement will automatically terminate as set out in the terms of any written agreement reached between you and us for the termination of this Agreement (including clauses 44.3 and 44.4). The day stipulated in that agreement will be the Termination Date.

## **54. DEPARTURE FROM RESIDENTIAL UNIT**

- 54.1 You (and any person living with you pursuant to clause 21.2 or clause 21.3) must leave the Residential Unit:
- (a) on or before the Termination Date; and
  - (b) in similar repair, order and condition as it was at the Commencement Date, except for any damage by fire, earthquake, tempest, enemy action or other inevitable accident, and except for Fair Wear and Tear.

54.2 In particular, you must remove all personal belongings, effects and vehicles from the Residential Unit and the Village on or before the Termination Date (except on termination under clause 53.9 (death of resident), in which case removal shall be within four (4) weeks following the Termination Date). You must make good any damage caused to the Residential Unit or Village in removing these items.

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

## **55. FINDING A NEW RESIDENT**

55.1 Subject to clause 55.8 below, after the Termination Date we will take all reasonable steps to enter into a new occupation right agreement for the Residential Unit in a timely manner and for the best price reasonably obtainable. This will be with a new resident who is prepared to enter into an occupation right agreement on our then standard terms and conditions and who satisfies our normal criteria for entry into the Village (“the new resident”). We have absolute discretion in determining if those criteria have been met.

55.2 You have the right to introduce a new resident for your Residential Unit at any time. You are also entitled to engage an agent to introduce a new resident for your Residential Unit, but if you do so you will be liable for any agency commission, advertising costs or other marketing expenses incurred. We are not obliged to accept any prospective resident who does not comply with clause 55.1.

55.3 The Entry Payment to be payable by the new resident will comprise:

- (a) a site payment of an amount that we determine is a fair charge to be made for a right to occupy a site within the Village, and
- (b) a dwelling payment of an amount agreed between us, you and the new resident as the market value of a right to occupy the Dwelling.

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

55.5 We will consult with you (or your personal representative as the case may be) about the marketing of your Residential Unit including the timing of when the Residential Unit goes on the market, the general nature of our marketing plan for the Residential Unit and any charges relating to the marketing and the sale of the Residential Unit that you are liable to pay. We will keep you informed on a monthly basis as to the progress of marketing.



55.6 If we have not entered into a new occupation right agreement within six (6) months of the Termination Date:

- (a) We will obtain a valuation of the Dwelling at our cost by an independent registered valuer to establish a suitable price at which to market the Residential Unit. We will show you this valuation. If you do not agree with it you may, at your own cost, obtain a second valuation from an independent registered valuer.
- (b) We will market the Residential Unit with a dwelling payment amount established by the valuation which we have obtained. If, however, you have obtained a second valuation then we will consider that second valuation when determining a suitable price at which to market the Residential Unit.

55.7 If the dwelling payment we are able to obtain from a proposed new resident is less than the Dwelling Payment paid by you for the Residential Unit, we will not enter into a new occupation right agreement without your prior written approval.

55.8 We do not have to obtain a new resident for the Residential Unit if:

- (a) this Agreement terminates under clause 44 (Damage to Residential Unit or Village), in which case we must pay your Exit Payment in accordance with clause 56.4 and clause 56.8 of this Agreement; or
- (b) this Agreement terminates under 53.1 (Termination By Us), in which case we must pay your Exit Payment in accordance with clause 56.5 and clause 56.9 of this Agreement; or
- (c) we decide we do not want a new resident occupying the Residential Unit, in which case we must pay your Exit Payment in accordance with clause 56.6 and clause 56.9 of this Agreement.

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

56.1 On or before the Exit Payment Date, we will pay you the Exit Payment in accordance with the following provisions of clause 56.

56.2 The Exit Payment to be paid to you will be calculated in accordance with clause 3.4 of Part B.

### **Exit Payment Date**

56.3 The Exit Payment Date is any date within 5 Working Days after the later of the dates we:

- (a) receive an irreversible full settlement of the total amount payable by any new resident for the Residential Unit; or
- (b) hold an agreement or other security satisfactory to us for the Residential Unit properly signed by the new resident.

- 56.4 However, if this Agreement terminates under clauses 44.3 or 44.4 (Damage to Residential Unit or Village) and we need to obtain payment from our insurers in respect of an insured risk in order to be able to meet our obligations to pay you and any other resident in a similar situation, the Exit Payment Date is 5 Working Days after the date we receive full payment from our insurers for the loss or damage.
- 56.5 If this Agreement terminates under clause 53.1 (Termination By Us) the Exit Payment Date is seven (7) Working Days after the Termination Date.
- 56.6 If we decide we do not want a new resident occupying the Residential Unit, the Exit Payment Date is the date one month after the Termination Date except to the extent that the Code of Practice (when in force) provides otherwise.
- 56.7 If our payment of the Exit Payment must be made to your personal representative, then we will be entitled to be satisfied that your personal representative holds proper probate of your will or letters of administration of your estate before making a payment. If there is any delay in meeting our requirements in this regard then we will lodge the money due to your estate on interest bearing deposit, with interest to accrue to the benefit of your estate until our requirements can be met.

### **Non-sale Cases**

- 56.8 If this Agreement terminates under clauses 44.3 or 44.4 (Damage to Residential Unit or Village), the dwelling payment for the purposes of calculating your Exit Payment will be the full amount of insurance money we receive for the Dwelling located on your Site. This payment will be in full satisfaction of our obligation to pay to you the Exit Payment.
- 56.9 If this Agreement terminates under clause 53.1 (Termination by Us) or if we decide that we do not want a new resident occupying the Residential Unit, we will appoint, at our cost, an independent registered valuer to assess the market value of the Dwelling that could have been obtained at the Termination Date for a new occupation right in respect of the Residential Unit (excluding the Site Payment).

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

- 57.1 The amounts to be deducted from any payment made by us to you on termination, are as follows:
- (a) any Village Outgoings Payment (pursuant to clause 11) not previously paid; and
  - (b) any other money due or that will be due from you under this Agreement. This may include (but is not limited to) your Entry Payment (clause 10), Utility Charges (clause 12), legal costs (clause 14), Default Interest (clause 17), compensation for reinstatement of the Dwelling where alterations have been made at your request (clause 24.4), our

costs of repairing and maintaining the Residential Unit (clauses 42.2 and 42.6), building inspection fees (clause 42.5), money paid or costs incurred as a result of your default (clause 50).

#### **58. DISPUTE PENDING ON TERMINATION**

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

#### **59. LETTING FOLLOWING TERMINATION**

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

## **SCHEDULE ONE VILLAGE OUTGOINGS**

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

- (a) all taxes (except income tax or capital taxes in respect of our income or profits) in respect of the Village;
- (b) all rates, levies, charges, assessments and fees payable to any government, territorial or local authority;
- (c) the cost of compliance with any statute, regulation, bylaw or other lawful obligation in respect of the Village;
- (d) the charges for water, gas, electricity, telephone and tolls, and other utilities or services relating to the Community Facilities and buildings at the Village;
- (e) insurance premiums for insurances of the types referred to in clause 36 relating to all buildings, facilities (including the Community Facilities) (but excluding your personal belongings and vehicle(s)) and any associated valuation fees;
- (f) salaries, wages, fees and other remuneration for persons engaged in the administration, management and operation of the Village;
- (g) a reasonable management fee in respect of the management services we provide, reviewable annually to reflect then current market terms and conditions;
- (h) the costs of providing security, cleaning, gardening and other services for the general use and benefit of the residents;
- (i) the day-to-day costs of maintaining and repairing all buildings, Community Facilities and the Village generally, but excluding any maintenance, repair and replacement costs payable by you pursuant to the provisions of your Agreement;
- (j) a reasonable allowance for depreciation of the chattels in the Community Facilities; and
- (k) appropriate fees and expenses of the Statutory Supervisor and other accounting, audit and legal costs incurred in the administration of the Village.

## SCHEDULE TWO

### RULES: (clause 26)

The Rules of Ngunguru Village applicable at the time of this Agreement:

# NGUNGURU *Retirement* VILLAGE RULES




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**This is a basic set of rules applying to all residents, see your Occupation Right Agreement for a full set of rules/requirements**

Compliance with Rules - you must, at all times, observe and comply with the rules, and not do anything in contravention of the rules.

You are to ensure that all guests or visitors you invite into the village are aware of the rules and comply with those rules in all respects. We are entitled from time to time to establish, review and amend the rules at our sole discretion, provided that any establishment, review or amendment to the rules does not affect or detract from your existing rights under the ORA. We will consult with you before we make any changes to the rules. If we make changes to the rules, we must notify you of the changes before you are obliged to observe them. If there is any inconsistency between the ORA and the rules, the provisions of the ORA will override these rules.

- **Next of Kin and Legal Representative** - You will keep the Trust informed of the name, address and telephone number of your legal personal representative or next of kin.
- **Occupation** - You will use the Occupation Site only for your own personal use and occupation as a residential dwelling.
- **Guests** - You may have friends, relatives or other persons to stay with you in the Dwelling for periods not exceeding three weeks at any one time or otherwise with our prior written consent. However, the Trust reserve the right to curtail any such arrangement where we consider it is interfering with the quiet enjoyment of other residents in the Village.
- **Pets** – Keeping pets is at the discretion of the Trust.
- **Additions to Dwelling or Section** – Any additions or landscaping to, or surrounding your home must meet the approval and written consent of the Trust board
- **Caravan/Campervan Parking** – there is limited permanent parking space allocated for vans which will be allocated on a first-in first-served basis. Occupying vans within the Village is not permitted for longer than three weeks. When vans are in use within the Village (e.g. loading/unloading) they must be parked so as not to cause nuisance to other residents.

## SCHEDULE THREE

### CODE OF RESIDENTS' RIGHTS

#### NGUNGURU RETIREMENT VILLAGE CODE OF RESIDENTS' RIGHTS

#### **Basic rights of residents**

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

#### ***Services and other benefits***

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

#### ***Information***

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

#### ***Consultation***

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

#### ***Right to complain***

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

#### ***Disputes***

- 5 You have the right to a speedy and efficient process for resolving disputes between you and the operator or between you and other residents of the village.

#### ***Use of support person or representative***

- 6 You have the right, in your dealings with the operator or other residents of the village, to involve a support person or a person to represent you. The cost of involving a support person or person to represent you must be met by you.

#### ***Right to be treated with courtesy and have rights respected***

- 7 You have the right to be treated with courtesy and have your rights respected by the operator, the people who work at the village, and the people who provide services at the village.

#### ***Right not to be exploited***

- 8 You have the right not to be exploited by the operator, the people who work at the village, and the people who provide services at the village.

**Your obligations to others**

Your rights exist alongside the rights of other residents and the rights of the operator, the people who work at the village, and the people who provide services at the village. In the same way that these people are expected to respect your rights, it is expected that you in return will respect their rights and treat them with courtesy.

**Operator's contact person**

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

*Phiona Wilson*

*10 Kopipi Crescent, RD3, Ngunguru, Whangare 0173,*

*phone: (09) 434 3841 (daytime/early evening)*

**Other contact persons**

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

- (a) the statutory supervisor;
- (b) the Registrar of Retirement villages.

**Information**

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

**SCHEDULE FOUR -****CODE OF PRACTICE**

The attached Code of Practice came into force on 2 October 2009, in accordance with the provisions of section 90 of the Retirement Villages Act 2003.



**SCHEDULE FIVE**

**PLAN OF THE VILLAGE**

[Attached]

**SCHEDULE 6****CHATTELS**

The Dwelling contains the following Chattels:

**[list]**