

# OCCUPATION RIGHT AGREEMENT

---

**PARKWOOD TRUST INCORPORATED**



**G E O F F C U R R I E L A W Y E R S**

6 Peterborough Lane, Central City, Christchurch 8013  
PO Box 21095, Edgeware, Christchurch 8143

Tel +64 3 365 8355  
Fax +64 3 365 8356

1	DEFINITIONS .....	1
2	ISSUE OF OCCUPATION RIGHT AGREEMENT .....	3
3	PAYMENTS .....	4
4	RESIDENT'S COVENANTS .....	7
5	OPERATOR'S COVENANTS.....	9
6	DAMAGE OR DESTRUCTION OF UNIT .....	12
7	CARE FACILITY.....	13
8	MEDICAL AND PHARMACEUTICAL SERVICES .....	13
9	VILLAGE RULES.....	13
10	PHYSICIANS AND SURGEONS .....	13
11	FACILITIES .....	13
12	ADDITIONAL SERVICES AND FACILITIES.....	14
13	PROPERTY .....	14
14	LOSS OR DAMAGE BY RESIDENT .....	14
15	FURTHER DEVELOPMENT OF VILLAGE .....	14
16	TERMINATION .....	15
17	SURRENDER OF UNIT UPON TERMINATION AND NEW OCCUPATION RIGHT AGREEMENT .....	17
18	PAYMENT OF CAPITAL REPAYMENT ENTITLEMENT ON THE REPAYMENT DATE.....	18
19	REPAYMENT WHERE JOINT RESIDENTS .....	19
20	REMOVAL OF PERSONAL BELONGINGS.....	19
21	STATUTORY SUPERVISOR.....	19
22	ACCESS, COMPLAINTS FACILITY AND DISPUTES RESOLUTION.....	20
23	NOTICES .....	20
24	COOLING-OFF PERIOD AND CANCELLATION FOR DELAY.....	20
25	RIGHT TO INTRODUCE NEW RESIDENT .....	21
26	MANAGEMENT OF THE VILLAGE.....	21
27	TRANSFER OF RESIDENTS WITHIN THE VILLAGE.....	21
28	MATTERS IN RESPECT OF WHICH THE OPERATOR SHALL CONSULT WITH RESIDENTS.....	22
29	SALE AND ASSIGNMENT BY OPERATOR.....	23
30	SATISFACTION OF CONDITIONS IN APPLICATION FORM .....	23
31	COMMON FACILITY SITE DONATION REBATE .....	23
	FIRST SCHEDULE – SERVICE LEVELS .....	26
	SECOND SCHEDULE – OUTGOINGS .....	27
	THIRD SCHEDULE – FACILITIES IN THE VILLAGE .....	28
	SCHEDULE OF DETAILS.....	29
	CERTIFICATE BY LAWYER .....	33

**AGREEMENT** dated the later of the dates it has been signed by the Resident and signed by the Operator

**BETWEEN**

**Parkwood Trust Incorporated** a duly incorporated trust pursuant to the *Charitable Trusts Act 1957* having its registered office at 99 Belvedere Avenue, Woodlands, Waikanae (called "the Operator")

**AND**

called "the Resident"

**WHEREAS**

- (A) The Operator owns and operates a retirement village at Waikanae known as Parkwood Retirement Village (called "the Village") providing accommodation and health care for people generally of the age when they are entitled to NZ Superannuation and over, for whom the Village will provide appropriate accommodation.
- (B) The terms and conditions of residency in the Village are as set out in this agreement.
- (C) The Resident has made application to the Operator for residency of a Unit or Rest Home Apartment in the Village.
- (D) The Resident has supplied medical and financial reports to the Operator and on the basis of such reports the Operator has agreed to issue to the Resident a licence to occupy a Unit or Rest Home Apartment.
- (E) The Statutory Supervisor of the Village appointed pursuant to the *Retirement Villages Act 2003* has approved this Occupation Right Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 DEFINITIONS**

---

- 1.1 Margin headings are for convenience only and are not intended to form part of this Occupation Right Agreement.
- 1.2 In this Occupation Right Agreement where the context so admits:
  - (a) words implying the masculine gender shall include the feminine.
  - (b) words implying the singular number shall include the plural and vice versa.
  - (c) words and expressions referred to shall have the meanings as set out below:
    - "Act" means the *Retirement Villages Act 2003* as updated, amended or replaced from time to time.
    - "Capital Loss Sum" means the amount if any by which the Valuation Amount for a Rest Home Apartment is less than the Capital Purchase Sum.
    - "Capital Profit Sum" means the amount if any by which the Valuation Amount for a Rest Home Apartment is more than the Capital Purchase Sum.
    - "Capital Purchase Sum" means the amount paid for this Occupation Right Agreement excluding the Common Facility Site Donation as per the Schedule of Details.
    - "Capital Sum" means the amount paid on settlement for this Occupation Right Agreement as per the Schedule of Details.

"Capital Repayment Entitlement" means the amount referred to in clause 18.2 of this Occupation Right Agreement.

"Care Facility" means the building and facilities in the Village providing rest home and hospital accommodation and care, and care for any resident who either on a temporary or permanent basis is unable to live independently.

"Code of Practice" means a code of practice which the Operator must comply with pursuant to Section 92 of the Act.

"Code of Residents' Rights" means the code of residents' rights which is applicable from time to time pursuant to the Act.

"Common Facility Site Donation" means the contribution made to the general development of Parkwood Retirement Village.

"Deed of Supervision" means the Deed of Supervision entered into between the Operator and the Statutory Supervisor of the Village pursuant to the Act and as may be amended from time to time, including any replacement deed.

"Facilities" means facilities in the Village that are available to the Resident as set out in the Third Schedule or as subsequently provided or removed pursuant to clause 11.4.

"Further Development" means any improvement, extension or alteration to the facilities, Units or Rest Home Apartments in the Village.

"Management" means officers of the Operator responsible for the administration of the Village.

"Occupation Right Agreement" means this licence to occupy.

"Operator" means the Operator and its successors or assigns.

"Operator's Chattels" means those fixtures, fittings, equipment, furnishing and furniture supplied in the Unit or Rest Home Apartment by the Operator.

"Regulations" means the Retirement Villages (General) Regulations 2006 and any other regulations made under the Act.

"Repayment Date" means the date defined as such in clause 17.2 of this Occupation Right Agreement.

"Resident" means where appropriate the Resident, executors, administrators and personal legal representatives of the Resident.

"Residents" means the residents of the Village and where appropriate the Resident.

"Rest Home Apartment" means the Parkwood Lodge accommodation in respect of which an Occupation Right Agreement has been issued by the Operator to the Resident as specified in the Schedule of Details.

"Retention Fee" means the amount referred to in clause 3.3 of this Occupation Right Agreement.

"Service Level" and "Service Levels" means and refers to the Service Levels described in the First Schedule of this Occupation Right Agreement.

"Schedule of Details" means the Schedule of Details annexed to this Occupation Right Agreement.

"Statutory Supervisor" means Trustees Executors Limited of Level 12, 45 Queen Street, Auckland or any replacement statutory supervisor appointed pursuant to the Deed of Supervision.

"Unit" means the dwelling accommodation in respect of which an Occupation Right Agreement has been issued by the Operator to the Resident as specified in the Schedule of Details.

"Valuation Amount" means the amount determined as the value of the Occupation Right Agreement for the Unit upon termination as per clause 17.3 and is the amount used to calculate the Capital Repayment Entitlement payable to the Resident following termination.

"Village" means when referred to in this document, the complex of Parkwood Trust Incorporated located within and forming part of the complex known as Parkwood Retirement Village situated at Waikanae together with any additional Units constructed by the Operator and forming part of the complex.

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

"Weekly Rebate" means the weekly rebate accrued in favour of a resident of a Rest Home Apartment which the Operator is required to pay by the District Health Board and which is the difference between 18% of the weekly maximum contribution applying in the Territorial Local Authority Region pursuant to the *Social Security Act 1964* and the weekly Village Outgoings Charge (provided that if the weekly Village Outgoings Charge is the greater amount then the Weekly Rebate shall be nil), and which is payable as set out in the First Schedule.

1.3 "Working Day" means a day of the week other than:

- (a) A Saturday, a Sunday, Wellington Anniversary Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day; and
- (b) A day in the period commencing with 25 December in a 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.

## **2 ISSUE OF OCCUPATION RIGHT AGREEMENT**

---

- 2.1 In consideration of the Resident paying to the Operator the Capital Sum for the Occupation Right Agreement specified in the Schedule of Details ("the Capital Sum") including GST (if any) the Operator agrees to supply accommodation to the Resident pursuant to the terms of this Occupation Right Agreement in the Unit or Rest Home Apartment and to supply the right to use common areas of the Village, and to repay to the Resident the Valuation Amount less any amount which the Operator shall be entitled to deduct on termination in accordance with clauses 16 and 17. The nature of the right to occupy the Unit or Rest Home Apartment is a contractual Occupation Right Agreement that does not grant the Resident any interest in land of the Unit or Rest Home Apartment.
- 2.2 The Resident shall be entitled to occupy the Unit or Rest Home Apartment on the date of occupancy specified in the Schedule of Details.
- 2.3 The Resident shall subject to clause 4.9 be entitled for life to the quiet use and enjoyment of the Unit without interruption or disturbance by the Operator or any person lawfully claiming under it, together with the use in common with all other residents of the Village and all other persons from time to time to be authorised by the Operator of all those parts of the Village including entrances, lobbies, corridors, lavatories, stairways, lifts, paths, driveways, visitors' car parking areas, gardens, grounds, amenities and conveniences other than those reserved to the Operator or to any other person from time to time by the Operator (called the "common areas"), on the terms and conditions set out in this Occupation Right Agreement.
- 2.4 The above rights of occupancy are not transferable and there are no rights of transmission except transmission by survivorship as between Residents who are joint tenants.

### **3 PAYMENTS**

---

#### 3.1 Capital Sum

- (a) The Resident upon settlement shall pay the Capital Sum as set out in the Schedule of Details.
- (b) If for any reason save the default of the Operator the Resident fails to pay any portion of the payments when due then without prejudice to any other rights or remedies of the Operator the Resident shall pay to the Operator interest on the amount due in accordance with Clause 3.8.

#### 3.2 Service Fee

- (a) The Resident shall pay to the Operator a Service Fee ("the Service Fee"). The Service Fee consists of firstly a charge in respect of expenses relating to the Operator's provision of accommodation, the Facilities and common areas in the Village ("the Village Outgoings Charge") and secondly a charge for the provision of accommodation and care services as may be appropriate ("the Service Charge").
- (b) The Village Outgoings Charge shall be paid by the Resident in consideration of the grant of the right to occupy the Unit and the supply of domestic goods and services including accommodation pursuant to this Occupation Right Agreement, and the provision of the Facilities and the right to use the common areas of the Village. The Village Outgoings Charge payable by a Resident shall be the appropriate fee chargeable for the recovery of certain basic costs of operating the Village, as set out in the Second Schedule, and shall be calculated by dividing the total of such outgoings by the aggregate number of completed Units. The Operator at its sole discretion may vary the proportion where in the reasonable opinion of the Operator any particular outgoing has been incurred for one or more residents whether in whole or in part.
- (c) The Service Charge shall be paid by the Resident in consideration of the grant of the right to occupy the Unit or Rest Home Apartment, and the supply of care services, as appropriate.
- (d) The amount of the Service Fee shall depend on the type of Unit or Rest Home Apartment and the Service Level selected as appropriate to the level of care and assistance required by the Resident. The available Service Levels are set out in the First Schedule of this Occupation Right Agreement. The Operator shall consult with the Resident about any proposed changes in the Service Level provided.
- (e) The Service Fee shall be apportioned where appropriate in respect of periods current at the commencement and termination of the Resident's liability to pay the Service Fee.
- (f) The Resident shall pay to the Operator by direct debit or automatic bank payment the Service Fee in monthly instalments in advance on the first day of each month being initially the amount specified in the Schedule of Details. The first monthly payment plus an additional amount for any period of occupancy of less than a month shall be payable on the date of commencement of occupation. Where any charge has not been taken into account in determining the monthly instalments it shall be payable on demand. The Operator shall comply with the Accounts clauses of the Code of Practice.
- (g) The Service Fee may be reviewed by the Operator from time to time. Any review of the Village Outgoings Charge is subject to prior consultation with the Statutory Supervisor and the Residents. Any review of the Service Charge is subject to prior consultation with the Residents.

- (h) The Resident shall not be liable to contribute to outgoings as part of the Service Fee in respect of:
  - (i) any part of the Village which is under construction; or
  - (ii) any construction works; or
  - (iii) any outgoing relating to the further development of the Village; or
  - (iv) any part of the Village which is leased to a third party.
- (i) The Operator is required by the Deed of Supervision to provide the Resident with an annual forecast statement of operating expenditure for the Village. The Operator will provide with such a statement a statement of the actual amount of Village outgoings paid by the Operator for the previous accounting period, and a statement that the Operator has applied monies paid by the Resident by way of the Village Outgoings Charge, as set out in the statement.
- (j) The Operator shall stop charging the Resident the Service Charge for personal services on the date that the Resident stops living in the Unit. The Resident's liability to pay the Village Outgoings Charge and any other charges payable under this Occupation Right Agreement shall continue until the date on which a new Occupation Right Agreement for the Unit is entered into as per clause 17 provided however that if such date is not within either:
  - (i) 6 months of the date of termination; or
  - (ii) any later date the Resident stops living in the Unit;the Operator shall from that date reduce such charges by 50%.
- (k) In respect to the Rest Home Apartment Occupation Right Agreement, the Service Fee payable will cease as soon as vacant possession is granted provided the Operator is able to use the Rest Home Apartment until a new Occupation Right Agreement is granted for that Rest Home Apartment. The Resident shall not be liable to pay any Service Fee from the date the Operator is able to use the Rest Home Apartment.
- (l) If the Unit or Rest Home Apartment has been damaged or destroyed through no fault of the Resident and is uninhabitable, and the Operator provides temporary accommodation to the Resident, the Resident shall pay to the Operator the Service Fee relating to that temporary accommodation (which may not be the same amount as the Service Fee for the damaged or destroyed Unit or Rest Home Apartment). If the Operator does not provide temporary accommodation to the Resident, the Resident shall not be required to pay the Service Fee from the date of the damage or destruction. If this Occupation Right Agreement is not terminated, the Resident shall resume payment of the Service Fee from the date the Unit is repaired or replaced by another unit and ready for occupation.
- (m) The Village Outgoings Charge payable by a Resident of a Rest Home Apartment who is eligible for a Weekly Rebate shall not be payable by monthly instalments but shall for the period of eligibility accrue as set out in the definition of Weekly Rebate in clause 1.2, and the Operator shall accept use of the accrued amount in the calculation of the Weekly Rebate as payment by the Resident in full of the Village Outgoings Charge for the relevant period.
- (n) To the extent that this Occupation Right Agreement requires the Resident of a Rest Home Apartment to pay the Service Charge for rest home care to the Operator during the term of this Occupation Right Agreement, that requirement may at the Operator's discretion be waived by the Operator for so long as and to the extent that the Operator shall elect to accept payment of any residential care subsidy in place of such Service Charge.

### 3.3 Retention Fee

- (a) In consideration of the grant of the right to occupy the Unit or Rest Home Apartment and the supply of other domestic goods and services and subject to clause 6.3, the Resident agrees to pay to the Operator a Retention Fee on termination of this Occupation Right Agreement, on the day which is the Repayment Date, as per clause 17.2 of this Occupation Right Agreement. The Retention Fee shall be satisfied by way of deduction by the Operator from the Valuation Amount repayable to the Resident.
- (b) The Retention Fee shall be:
  - (i) for Rest Home Apartments an amount equal to 2.0% plus GST per annum of the Valuation Amount which shall accrue every 12 months from the date of this Occupation Right Agreement until the date the Resident permanently vacates the Rest Home Apartment (provided that this amount excluding GST shall be no greater than the Weekly Rebate accrued in favour of the Resident); or
  - (ii) for Units an amount equal to 25% including GST (if any) of the Valuation Amount which shall accrue over 36 months from the date of this Occupation Right Agreement, or until the Repayment Date or the date of transfer to a Rest Home Apartment if earlier. The maximum sum payable by the Resident as a Retention Fee for Units shall be an amount equal to 25% including GST (if any) of the Valuation Amount.
- (c) If the Unit or Rest Home Apartment has been damaged or destroyed through no fault of the Resident and is uninhabitable, and the Operator does not provide temporary accommodation to the Resident, the Retention Fee shall stop accruing from the date of the damage or destruction, and if this Occupation Right Agreement is not terminated, the Retention Fee shall resume accruing from the date the Unit is repaired or replaced by another unit and ready for occupation.

### 3.4 Repair Charges

The Resident shall pay to the Operator on demand all costs incurred by the Operator in respect of the repair and maintenance of the interior of the Unit or Rest Home Apartment including (where applicable) the repair and maintenance of any stove, microwave oven, clothes dryer, refrigerator, washing machine, garage doors, plumbing and electrical fixtures and fittings and other Operator's Chattels contained in the Unit or Rest Home Apartment.

### 3.5 Utility Charges

The Resident shall pay and discharge all charges for the supply of telephone, toll calls, cable TV, satellite TV and all other utility charges, where separately monitored, in respect of the Unit. Where such utility charges are not separately monitored, the Operator will include a proportional allowance as a contribution under the Village Outgoings Charge.

### 3.6 Health Service Charges

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

### 3.7 Additional Service Costs

The Resident shall, in addition to the Service Fee under his or her selected Service Level, pay to the Operator the cost ("the Additional Service Costs") of any additional services provided at the Resident's request being services not included in the selected Service Level. Additional Service Costs will be invoiced at the end of each month, and payment will be due no later than the 20<sup>th</sup> of the month following date of invoice.



### 3.8 Interest on Unpaid Money

If the Resident or the Operator defaults in payment of any monies payable under this Occupation Right Agreement for 14 days then the Resident or the Operator respectively shall on demand pay interest on the monies unpaid from the due date for payment down to the date of payment at the rate of 4% per annum above the bank overdraft interest rate of the Operator calculated on a daily basis.

### 3.9 Operator to Pay Outgoings

The Operator will duly pay or cause to be paid within a reasonable period after they become due and payable all outgoings in respect of the Village.

## **4 RESIDENT'S COVENANTS**

---

The Resident agrees covenants and undertakes with the Operator as follows:

### 4.1 Care of Unit

- (a) The Resident shall keep the interior of the Unit and the Operator's Chattels contained therein in a good, clean and tidy condition. The Resident shall not be responsible for effecting the maintenance or repair of the Unit but shall be liable to pay for costs of repair and maintenance pursuant to clause 3.4.
- (b) The Resident shall give to the Operator prompt notice of any defect in or want of repair of the Unit of which the Resident is aware.
- (c) The Resident shall not be liable for any loss or damage to the Unit and the Operator's Chattels in the Unit where the Operator is insured against the loss or damage and the insurance monies have not been rendered irrecoverable as a consequence of any act or default of the Resident, except that the Operator's insurance excess of \$500 (or any different amount subsequently notified to the Resident) shall be payable by the Resident.
- (d) The Resident shall not engage the services of any contractor or tradesman to carry out maintenance or repair to the Unit and the Operator's chattels, if any, therein without first obtaining the prior approval of the Operator and shall engage the services of a contractor or tradesman nominated by the Operator unless express permission is given by the Operator to engage the services of some other contractor or tradesman.

### 4.2 To Keep and Maintain Resident Insurances

The Operator strongly recommends that the Resident keep and maintain all personal chattels and belongings properly insured at the Resident's own expense.

The Operator also strongly recommends that the Resident maintain cover for his or her motor vehicle(s) under an appropriate motor vehicle insurance policy. Irrespective of cause, the Operator will have no responsibility, under any circumstances, for loss of or damage to any of the Resident's property or vehicles.

### 4.3 To Use as a Private Dwelling and Not to Commit Nuisances

The Resident shall use the Unit as a private dwelling and shall not do or permit to be done or suffer any act or omission upon or about the Unit or the Village which shall be or become a nuisance or annoyance to other residents of the Village or occupiers of other Units in the Village. The Resident shall not carry out any structural alterations or additions to the Unit without the prior written consent of the Operator.

### 4.4 Not to Deposit Waste

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

#### 4.5 To Use the Designated Car Parking Areas

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

#### 4.6 Not to Construct TV Radio Aerials

The Resident shall not erect or place on, or outside any Unit any radio, television aerial, antenna or satellite dish without the prior written consent of the Operator.

#### 4.7 Not to Keep Animals and Birds

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

#### 4.8 No Assignment or Sublicensing

The Resident will not transfer assign part with share or otherwise encumber deal with or dispose of the Unit or Rest Home Apartment or the Occupation Right Agreement. However, with the written consent of the Resident, the Operator will accept an instruction to pay the amount payable to the Resident pursuant to clause 18.2 or part thereof to any Government funding authority or other party in relation to any subsidy or other financial assistance provided by the authority or party to the Resident for the payment for monies required to be paid by the Resident pursuant to this Occupation Right Agreement.

Notwithstanding anything to the contrary in the Occupation Right Agreement the Resident shall be entitled to have friends or relatives to stay with the Resident in the Unit for an aggregate total in respect of all guests of 90 days in any period of 12 consecutive months or for longer periods with the written consent of the Operator and subject to the due compliance with all house rules by such invitees.

#### 4.9 To Allow Access by Operator and its Representatives

The Resident shall allow the Operator and its servants, agents and workmen the right of access at all reasonable times into the Unit:

- (a) to assist the Resident in an emergency; and
- (b) installing, checking and maintaining smoke alarms and call systems; and
- (c) to inspect the interior of the Unit or Rest Home Apartment and to carry out any necessary repairs to the Unit or Rest Home Apartment or the Operator's Chattels, if any.

In an emergency no notice of access is required. Otherwise the Operator must give the Resident reasonable notice in the circumstances, taking into account the amount of time the Operator will require access to the Unit or Rest Home Apartment, and the level of disruption to the Resident's use of the Unit or Rest Home Apartment during such access. The Resident acknowledges that the Operator must retain a key to the Unit at all times for the purposes of access in an emergency situation.

#### 4.10 The Representations Made are Correct

The Resident has supplied to the Operator a medical report and a financial report and on the basis of these reports the Operator has agreed to issue this Occupation Right Agreement to the Resident. Any ailment or illness suffered by the Resident prior to the execution of this Occupation Right Agreement shall be disclosed to the Operator by the Resident.

#### 4.11 No Caveat

The Resident acknowledges that the interest hereby created is an equitable interest only and agrees not to require registration of the interest in the Unit nor to caveat or otherwise encumber the Operator's title to the Village.

#### 4.12 Resident's Personal Necessities

The Operator shall not be obliged to furnish supply or give the Resident any support, care, maintenance, meals or accommodation when the Resident is absent from the Village.

#### 4.13 Enduring Powers of Attorney

The Resident shall execute and keep in force Enduring Powers of Attorney for Property and for Personal Care and Welfare, as defined by the *Protection of Personal and Property Rights Act 1988*.

#### 4.14 Health and Safety

- (a) The Resident shall ensure, and undertake all practicable steps to ensure, the safety of any employees, contractors or subcontractors of the Operator when they are undertaking work in, on or around the Unit. In particular, the Resident will ensure that such employees, contractors or subcontractors are not exposed to hazards arising out of the arrangement, disposal or manipulation, organisation or use of other things within the Resident's Unit.
- (b) The Operator has taken all practicable steps to ensure the safety of its own employees, contractors and subcontractors in their place of work. However, it is the obligation of the Resident to ensure that all such employees, contractors and subcontractors who undertake work on, in or around the Resident's Unit do so in a safe working environment. Accordingly, the Resident hereby indemnifies the Operator against all claims, actions and proceedings whatsoever which may be brought, commenced or prosecuted against the Operator arising in any way in respect of actions, omissions or otherwise undertaken by the Resident which lead to harm or injury of any sort whatsoever, suffered or incurred by any such contractor, subcontractor or employee whilst on the premises of the Unit.

## **5 OPERATOR'S COVENANTS**

---

The Operator agrees, covenants and undertakes with the Resident as follows:

### 5.1 Insurance

To insure and keep insured with a reputable insurance company all buildings, the Operator's Chattels in the Village and capital improvements or additional fittings provided by residents for their full replacement value against loss or damage by fire earthquake and other usual insurable risks, to the satisfaction of the Statutory Supervisor.

### 5.2 Utilities

To supply the Unit with connections for water, electricity, telephone and television. The Resident shall pay and discharge the actual costs of usage as indicated (where applicable) by separate meter or otherwise in accordance with clause 3.5.

### 5.3 Common Areas Maintenance

To maintain and keep in good and respectable tidy operational order and condition the common areas.

### 5.4 Provide Services

To provide or ensure the provision of those services the subject of the Service Fee.

### 5.5 Maintenance and Repair

- (a) To maintain and keep maintained in good clean and tidy repair order and condition all buildings in the Village.
- (b) The Operator on being advised of any defect or want of repair to the Unit or the Operator's Chattels, if any, therein shall within a reasonable time take appropriate steps to repair and make good the defect or want of repair subject to clauses 3.4 and 4.1.

- (c) The Operator shall not be liable for any loss or inconvenience suffered by the Resident arising from any defect or want of repair to the Unit or the Operator's Chattels therein unless the Operator shall have been advised thereof and has not within a reasonable time taken appropriate steps to repair and make good the defect or want of repair.
- (d) To comply with the Maintenance and Upgrading clauses of the Code of Practice.

#### 5.6 Reasonable Care and Skill

- (a) To use reasonable care and skill in ensuring the affairs of the Village are conducted properly and efficiently;
- (b) To use reasonable care and skill in the exercise of the performance of the Operator's powers, functions and duties.

#### 5.7 Long Term Maintenance Plan

The Operator shall make and adhere to a long term plan for maintaining and refurbishing the Village and Facilities.

#### 5.8 Preparation of Forecast Statements

- (a) To prepare, at the start of each accounting period (as defined in the *Financial Reporting Act 1993*) of the Operator a statement forecasting for the period:
  - (i) the operating expenditure relating to the Village; and
  - (ii) all expenditure relating to the Village (including amounts repayable to residents, former residents and their estates); and
  - (iii) all income relating to the Village; and
  - (iv) the amounts of the operating expenditure that must be met by the residents of the Village; and
- (b) To give a copy of the statement to each Resident of the Village within three months of the start of the accounting period.

#### 5.9 Provision of Audited Financial Statements

The Operator will give to the Resident, on request, free of charge:

- (a) a copy of the Operator's or the Village's financial statements, being those audited financial statements that the Operator has most recently delivered under section 18 of the *Financial Reporting Act 1993*; or
- (b) A copy of the most recent audited financial statements prepared by the Operator under section 35B of the *Retirement Villages Act* or under an Act referred to in section 35F of the *Retirement Villages Act* and a copy of the most recent audited financial statements prepared by the Operator under section 35C of the *Retirement Villages Act* (if any), once such provisions apply to the Operator.

Clauses 5.9(a) and 5.9(b) shall survive termination of this Occupation Right Agreement until repayment of the Capital Repayment Entitlement to the Resident.

#### 5.10 Residents' Meetings

- (a) To call, in the way described in clause 5.10(d) and the Meetings of Residents with Operator and Resident Involvement clause of the Code of Practice, meetings of the Residents of the Village;
  - (i) within six months after the end of an accounting period for which financial statements must be prepared for the Operator for the purpose of considering the financial statements; or

- (ii) if a meeting has been requested in writing by the Statutory Supervisor or by at least 10% of the Residents of the Village for the purpose of giving the Statutory Supervisor the Residents' opinions or directions relating to the exercise of the Statutory Supervisor's powers; or
  - (iii) if the Act, Regulations or Code of Practice require the Operator to obtain the consent of Residents; or
  - (iv) if other enactments, the Residents' Occupation Right Agreements or other such documents require the Operator to obtain the Residents' collective consent.
- (b) That the meeting shall be chaired by a person;
  - (i) appointed by the Statutory Supervisor of the Village; or
  - (ii) appointed by the majority of the Residents of the Village who are at the meeting if an appointment has not been made under clause (i).
- (c) To give the Residents at a meeting, orally or in writing, information that relates to the affairs of the Village and has been requested with reasonable notice by a Resident of the Village.
- (d) To call a meeting by providing written notice of it to each Resident of the Village in accordance with clause 23 at least 10 Working Days before the meeting.
- (e) The procedures applying to annual and special meetings shall comply with the Procedures Applying to Annual and Special General Meetings clause of the Code of Practice.

#### 5.11 Sale of the Operator's Interest in the Village

To consult with the Residents before the Operator's interest in the Village is sold or otherwise disposed of, at a time directed by the Statutory Supervisor (see also the purchaser's obligation to consult with residents in clause 29.1). If there is no Statutory Supervisor, the consultation is to take place at an appropriate time that is a reasonable time before settlement of the transaction.

5.12 That the Operator, the people who work at the Village and the people who provide services at the Village, shall treat the Residents with courtesy and shall respect the rights of Residents.

5.13 That the Operator, the people who work at the Village and the people who provide services at the Village, shall not exploit the Residents.

#### 5.14 Staffing of Village

To employ staff who are appropriately qualified and experienced for the role and the responsibilities to be carried out, and to comply with the Staffing of Retirement Village clauses of the Code of Practice.

#### 5.15 Safety and Personal Security of Residents

To have a process for reviewing the safety and personal security of Residents in the Village, and to comply with the Safety and Personal Security of Residents clauses of the Code of Practice.

#### 5.16 Fire Protection and Emergency Management

To have and maintain a policy relating to fire protection and emergency management that meets all applicable statutory requirements, and to comply with the Fire Protection and Emergency Management clauses of the Code of Practice.

#### 5.17 Communication with Resident

- (a) To supply the Resident with information relevant to the Resident's occupancy; and

- (b) To allow the Residents to form a Residents' Committee and to attend Residents' Committee meetings when invited in compliance with the Residents' Committee clause of the Code of Practice.
- (c) To have and maintain a policy and procedure for communicating with Residents or intending Residents who speak English as a second language or who have a limited ability to communicate, and to comply with the Communication with Residents clauses of the Code of Practice.

#### 5.18 Compliance with Code of Practice

The Code of Practice shall be given effect to by the Operator in accordance with section 92 of the Act (which as at the date of this Occupation Right Agreement provides that a Code of Practice shall be enforceable as a contract by the Resident and prevail over any less favourable provision in this Occupation Right Agreement).

#### 5.19 Compliance with Code of Residents' Rights

To comply with all requirements of the Code of Residents' Rights. The Code of Residents' Rights is a summary of the minimum rights conferred on the Resident by the Act. The Operator shall give to the Resident (or his or her nominated representative) a copy of the Code of Residents' Rights before the Resident enters into this Occupation Right Agreement, and also on request.

#### 5.20 Alteration of Unit for Resident with Disabilities

- (a) That a Resident with disabilities has the right to alter the Unit if it does not meet their needs; and
- (b) All such alterations shall be undertaken by the Operator at the cost of the Resident, including the cost of the Operator complying with all applicable statutes and regulations relating to such alterations; and
- (c) On termination of this Occupation Right Agreement the Resident shall pay all costs incurred by the Operator in reinstating the Unit to its original condition including the cost of complying with all applicable statutes and regulations relating to such reinstatement.

## **6 DAMAGE OR DESTRUCTION OF UNIT**

---

6.1 Except in the circumstances set out in clause 16.8, if the Unit or Rest Home Apartment or the building of which it forms part is damaged or destroyed the Operator must fully repair or replace it as soon as practicable.

#### 6.2 Temporary Accommodation

If the Unit or the building of which it forms part is damaged so as to render the Unit uninhabitable, then the Operator shall (subject to clause 16.8) use the Operator's best endeavours to provide the Resident as soon as possible with temporary accommodation or facilities while the Unit or facility is being repaired or replaced. The Operator makes no guarantee that the Operator will be in a position to provide such temporary accommodation, and the Resident should be aware that the Resident may have to arrange the Resident's own accommodation at the Resident's cost until the Resident is able to return to the Unit. The Resident may (but is not required to) take out his or her own insurance policy providing for temporary accommodation or facilities.

#### 6.3 Payment to Resident on Termination Following Damage or Destruction

- (a) In the event that this Occupation Right Agreement is terminated in accordance with clause 16.8(b)(v), the Resident shall be entitled to the payment of the Capital Sum paid by the Resident without any deduction of the Retention Fee but subject to deduction of the Administration Fee and any amount outstanding under this Occupation Right Agreement, and such payment shall be made no later than 10 Working Days after the date the

Operator or the Statutory Supervisor receives payment in full under any insurance policy covering the Unit. However if the amount that the Resident would have received if clause 6.3(b) had applied was a greater amount, then the Resident shall be entitled to payment of such greater amount.

- (b) In the event that this Occupation Right Agreement is terminated in accordance with clause 16.8(b)(vi), then this Occupation Right Agreement is terminated by the Resident and the Operator shall proceed to offer a new Occupation Right Agreement to a new resident for the unit offered to the Resident (for transfer), and clauses 17 and 18 of this Occupation Right Agreement shall apply with respect to such unit to determine the Resident's Capital Repayment Entitlement.

## **7 CARE FACILITY**

---

- 7.1 The Operator shall when the health of the Resident so requires provide the Resident at the Resident's expense with either temporary or permanent care in the Care Facility, provided that admission to the Care Facility will be subject to availability of beds and assessment of the Resident. The assessment will be carried out by an appropriate independent geriatric assessment agency.
- 7.2 The Resident will be provided with care and services of rest home and hospital care standard, as described in the *Health and Disability Services (Safety) Act 2001* or such other statute or regulation as may be in force in its place.
- 7.3 The Resident will have priority over outside applicants for admission into the care facility, subject to the result of the assessment.

## **8 MEDICAL AND PHARMACEUTICAL SERVICES**

---

- 8.1 Residents are encouraged to retain the service of their own medical practitioner.
- 8.2 The Operator will provide the Resident with access to a pharmaceutical service for the supply of medicine and pharmaceutical products.

## **9 VILLAGE RULES**

---

The Operator may, subject to prior consultation with the Residents, from time to time make, modify and amend rules as may be necessary for the efficient management and operation of the Village and Facilities. The Operator shall notify the Resident of the rules and any changes thereto, and the Resident agrees to comply with such rules and regulations and changes thereto as a condition of the continuation of this Occupation Right Agreement. The rules shall not be contrary to the terms of this Occupation Right Agreement and in the event of any conflict the terms of this Occupation Right Agreement shall prevail.

## **10 PHYSICIANS AND SURGEONS**

---

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

## **11 FACILITIES**

---

- 11.1 The Facilities in the Village that are available to the Resident as at the date of this Occupation Right Agreement are set out in the Third Schedule.
- 11.2 The Operator shall promptly inform the Resident about any matter that would or might have a material impact on the Resident's right to use the Facilities.

11.3 The Operator shall consult with the Resident about any proposed changes in the Facilities that will or might have a material impact on the Resident's occupancy or ability to pay for the Facilities provided.

11.4 Subject to the information and consultation obligations set out in this clause, the provision of such Facilities and the provision of additional buildings, areas or amenities as part of the Facilities, or the removal of buildings, areas or amenities from the Facilities whether permanently or temporarily, shall be at the sole discretion of the Operator.

## **12 ADDITIONAL SERVICES AND FACILITIES**

---

12.1 The Operator will arrange to provide a personal medical alarm to the Resident upon request. This service will be payable by the Resident.

12.2 The Operator will arrange for a suitably trained person to be available 24 hours a day to respond to any calls by the Resident.

12.3 The Operator has provided lighting to illuminate the movement of residents and guests around the common areas at night, and will maintain this at all times during the term without separate charge to the Resident.

12.4 The Operator may arrange for consultants (for example hairdressers, physiotherapists) to attend at the Village and each Resident wishing to use any such service will be required to pay a separate charge as levied by the provider of the service.

12.5 The Operator shall consult with the Resident about any proposed changes in the services and benefits provided or the charges that the Resident pays that will or might have a material impact on the Resident's occupancy or ability to pay for the services and benefits provided.

## **13 PROPERTY**

---

The Operator shall not be responsible for the loss of or damage to any property belonging to the Resident due to theft or any cause. The Resident shall have the responsibility for providing insurance protection to cover any such loss in accordance with clause 4.2 or the Resident shall be solely responsible for any such loss if uninsured.

## **14 LOSS OR DAMAGE BY RESIDENT**

---

The Resident shall reimburse the Operator for any loss or damage suffered by the Operator as a result of the carelessness or negligence of the Resident or persons whom the Resident has invited to the Village except loss or damage insured against by the Operator when the Resident shall reimburse the Operator's insurance excess of \$500 (or any different amount subsequently notified to the Resident) PROVIDED THAT in any case where the acts or omissions of the Resident or the Resident's invitees have made any such insurance void the Resident shall upon demand compensate and reimburse the Operator in full for such loss or damage.

## **15 FURTHER DEVELOPMENT OF VILLAGE**

---

15.1 The Operator shall be entitled at its sole discretion to improve extend or alter the Village ("the Further Development") in any way whatsoever BUT in doing so will use its best endeavours to cause as little inconvenience to the Resident as is practical in the circumstances. The Resident shall not be entitled to make any objection or claim compensation in respect of the Further Development and shall if required by the Operator sign all consents and other documents as may be required to give effect thereto.



- 15.2 The Resident will make no objection to building works associated with the construction of the Village or any Further Development or to the dust, noise or other discomfort or nuisance which may arise 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.

## **16 TERMINATION**

---

### **16.1 Termination by the Resident**

This Occupation Right Agreement shall terminate upon the expiry of one calendar month's written notice from the Resident terminating the Occupation Right Agreement for any reason PROVIDED HOWEVER that subject to clauses 3.2(j) and 3.2(k), the Resident shall continue to be liable for all payments under clause 3.

### **16.2 Termination on Death**

This Occupation Right Agreement shall terminate upon the death of the Resident, or, where two Residents have jointly signed this Occupation Right Agreement, upon the death of the surviving Resident. No notice of termination is required if the reason for termination is because the last surviving Resident has died.

- 16.3 The Resident shall provide for the final disposal of all property and possessions and the payment of funeral expenses by the execution of a valid last Will and Testament before or upon entering the Village, and shall keep the Operator informed of the name, address and telephone number of the Resident's legal personal representative or next of kin.

### **16.4 Termination on Medical Grounds**

The Operator may terminate this Occupation Right Agreement on the following grounds:

- (a) If a medical practitioner, after assessing the Resident, certifies that the Resident's physical or mental health is such that the Resident or other Residents cannot live safely in their units. The following conditions apply:
- (i) the Operator shall appoint the medical practitioner at the Operator's cost.
  - (ii) the medical practitioner appointed must be independent of the Operator.
  - (iii) the assessment by the medical practitioner must take into account the care, support and facilities offered in the Village, including the opportunity to transfer to a higher level of care, and support services that could be brought in from outside the Village to support the Resident to remain in the Unit.
  - (iv) the Resident (or support person or holder of an Enduring Power of Attorney for Personal Care and Welfare) may, as part of being consulted on the proposed termination, obtain a second medical opinion at the Resident's cost and present it to the Operator.

### **16.5 Termination for Breach of this Occupation Right Agreement**

- (a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement if the Resident has materially breached the Occupation Right Agreement. The following conditions apply to this right of termination:
- (i) the Operator must have notified the Resident in writing of the Operator's intention to terminate this Occupation Right Agreement unless the breach is remedied.
  - (ii) the Operator must have given the Resident at least one month to remedy the breach. The Operator must have taken into account the

nature and extent of the breach in determining the time given for the Resident to provide a remedy.

(iii) the Resident must have failed to remedy the breach in the time given.

#### 16.6 Termination for Abandoning the Unit

(a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement on the grounds of abandonment. The following conditions apply to this right of termination:

(i) the Operator must have made reasonable enquiries and determined that the Resident has permanently abandoned the Unit.

(ii) the Operator must have notified the Resident in writing of the Operator's intention to terminate this Occupation Right Agreement unless the Resident reoccupies the Unit.

(iii) the Operator must have given the Resident at least one month to reoccupy.

(iv) the Resident must have failed to reoccupy the Unit in the time given.

#### 16.7 Termination for Serious Damage to Unit or Serious Harm to People

(a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement if the Resident, intentionally or recklessly, has caused or allowed, or is highly likely to cause or allow:

(i) serious damage to the Unit or Facilities, or damage which has become serious because it continues.

(ii) serious injury, harm or distress to the Operator or another resident, or to an employee or guest of the Operator or the Resident.

(b) The following conditions apply to this right of termination:

(i) the Operator must have notified the Resident in writing of the Operator's intention to terminate this Occupation Right Agreement unless the damage, injury, harm or distress is remedied in a specified time that is reasonable under the circumstances. The Operator must have taken into account the nature and extent of the damage, injury or harm in determining the time given for the Resident to provide a remedy.

(ii) the Resident must have failed to remedy the damage, injury, harm or distress in the time given.

#### 16.8 Termination if the Unit is Damaged or Destroyed

(a) The circumstances when a Unit or Rest Home Apartment that is destroyed or damaged may not be fully repaired or replaced are:

(i) if the Operator considers that the repair or reinstatement of the Unit or the Village is not practicable because of the extent of the damage or destruction,

(ii) if the necessary building consents cannot be obtained, or

(iii) if the insurance money needed to repair or replace the Unit or Village cannot be obtained or is not enough to replace the property damaged or destroyed.

(b) If one or more of these circumstances apply, then:

(i) The Operator must consult the Resident to decide whether it is practicable to repair or replace the Unit;

(ii) After consultation, the Operator must follow up in writing, setting out the decision. The timeframe for consulting and notifying the Resident of the Operator's decision will depend upon the circumstances,

however the Operator will use its best endeavours to complete these matters without delay;

- (iii) If the Operator decides to repair or replace the Unit, then the Operator will fully repair or replace the Unit as soon as practicable;
- (iv) The Operator may offer the Resident the option to transfer to another unit (either pre-existing or yet to be constructed) in the Village or in another retirement village owned by the Operator in reasonable proximity to the Village, with regard to the circumstances giving rise to this situation. The Resident will be required to meet the costs associated with transferring to another Unit;
- (v) If the Operator decides not to fully repair or replace the Unit, and the Operator does not offer the Resident the option to transfer, this Occupation Right Agreement is terminated and clause 6.3(a) applies;
- (vi) If the Operator decides not to fully repair or replace the Unit, and the Operator offers the Resident the option to transfer to another unit and the Resident does not accept the option to transfer to another unit, this Occupation Right Agreement is terminated by the Resident and clause 6.3(b) applies.

16.9 The Operator's process for exercising any of the Operator's rights to terminate this Occupation Right Agreement shall comply with the requirements of the Code of Practice.

## **17 SURRENDER OF UNIT UPON TERMINATION AND NEW OCCUPATION RIGHT AGREEMENT**

---

17.1 The Resident or his or her legal personal representative shall surrender to the Operator the Unit following termination pursuant to clause 16. The Operator's obligation to repay the Capital Repayment Entitlement is subject to the Operator issuing a new Occupation Right Agreement for the Unit or Rest Home Apartment to a third party.

17.2 Subject to clause 6.3, in the event of termination of this Occupation Right Agreement, the Capital Repayment Entitlement shall be repaid to the Resident as calculated/specified in the Schedule of Details. The Capital Repayment Entitlement shall be repayable to the Resident no later than 5 Working Days after the date that a new Occupation Right Agreement has been entered into and the Operator has received payment for it. The Resident acknowledges and agrees that the Operator will not receive payment for such new Occupation Right Agreement until such payment is authorised by the Statutory Supervisor in accordance with the Deed of Supervision, which requires amongst other matters that the cooling off period prescribed by the Act for such new Occupation Right Agreement has expired ("the Repayment Date").

17.3 The Operator shall not issue a new Occupation Right Agreement for the Unit or Rest Home Apartment for a Capital Purchase Sum less than that specified in the Schedule of Details without the prior written approval of the Resident.

The Valuation Amount is the value of an Occupation Right Agreement for the Unit upon termination of this Occupation Right Agreement, and shall be determined by agreement between the Operator and the Resident or the personal representatives of a deceased Resident such value being fixed by reference to recent Occupation Right Agreement values. The Operator may retain the services of an independent registered valuer for this purpose. The charge for such a valuation shall be borne by the Operator except in the case of a voluntary internal move by the Resident in which case the Resident shall bear the cost. The valuation will be complete prior to any upgrading work being undertaken and will take into account the condition of the Unit at the time of termination.

If the Operator and the Resident or personal representatives of the same cannot agree upon the value of the Occupation Right Agreement, the valuation of a registered valuer shall be conclusive and binding on all parties provided agreement can be reached on the appointment of such valuer. If the parties cannot agree on the appointment of one registered valuer, each party shall be entitled to appoint its own registered valuer and failing agreement between such valuers, the final value shall be determined by an umpire to be appointed by the parties and failing agreement as to the appointment, an umpire appointed by the President of the Institute of Valuers. Such costs will be shared between the Operator and the Resident or personal representatives of the same.

The Valuation Amount shall be determined with reference to and include only the Unit, the land it sits on including 1.3 metres out from the foundations together with paths, clothes lines and letterbox, but shall take no account of the surrounding land or any associated amenities.

The Valuation Amount for a Rest Home Apartment Occupation Right Agreement shall be determined by an independent registered Valuer appointed by the Operator prior to any upgrading work being undertaken and will take into account the condition of the Rest Home Apartment at the time of termination. That valuation shall be conclusive.

Upon determination of the Valuation Amount, the Operator shall grant to a third party a new Occupation Right Agreement for the Unit or Rest Home Apartment and upon payment to the Operator as per clause 17.2 shall account to the Resident or their personal representatives as per clause 18.

- 17.4 The Operator shall be entitled to deduct from the monies payable to the Resident in terms of this clause 17 any monies (including GST) owing to the Operator by the Resident under this Occupation Right Agreement.
- 17.5 The Operator shall make all reasonable efforts to find a new resident for the Unit and shall not give preference to finding residents for units in the Village that have not previously been occupied by a Resident under an Occupation Right Agreement. From 2 October 2009 the Operator shall comply with the Operator's responsibilities relating to the sale or disposal of a vacant residential unit following Termination of an Occupation Right Agreement clause of the Code of Practice, including the Operator's obligations to consult with the Resident about the marketing of the Unit and keep the Resident informed.
- 17.6 If a new Occupation Right Agreement for the Unit or Rest Home Apartment has not been entered into within 9 months of the Unit or Rest Home Apartment becoming available for reoccupation (or disposal), the Resident may give a dispute notice.

## **18 PAYMENT OF CAPITAL REPAYMENT ENTITLEMENT ON THE REPAYMENT DATE**

- 18.1 Subject to clause 6.3, on the Repayment Date the Valuation Amount shall be paid to the Resident in accordance with the provisions of clause 17, less:
  - (a) the Retention Fee; and
  - (b) any monies whether outstanding Service Fees or otherwise owing to the Operator in terms of this Occupation Right Agreement; and
  - (c) an Administration Fee of \$890 including GST on the termination of an Occupation Right for the Unit; and.
  - (d) if this Occupation Right Agreement is for a Rest Home Apartment, then an amount equal to 50% of the Capital Profit Sum, provided that if there is no Capital Profit Sum and there is a Capital Loss Sum then an amount equal to 50% of the Capital Loss Sum shall be added to the Valuation Amount.

- 18.2 The net amount repayable to the Resident after the amounts in 18.1(a), 18.1(b) , 18.1(c) and 18.1(d) above have been calculated shall be the Capital Repayment Entitlement payable to the Resident.

## **19 REPAYMENT WHERE JOINT RESIDENTS**

---

- 19.1 Where two residents have jointly signed this Occupation Right Agreement no repayment of the Capital Repayment Entitlement shall be made until both Residents have ceased to reside in the Unit.
- 19.2 The Operator shall not be bound to enquire or ascertain nor be deemed to have had any notice of the proportions of the Capital Sum paid by such joint residents and the Operator shall be entitled at all times to deal with the Resident last in occupation or the survivor of such Resident.

## **20 REMOVAL OF PERSONAL BELONGINGS**

---

- 20.1 Within 30 days after the termination of this Occupation Right Agreement the Resident shall remove from the Unit all of the Resident's possessions and belongings. If the Resident fails to do so the Operator may at the expense and risk of the Resident remove and place into storage these belongings. In respect of a Rest Home Apartment Occupation Right Agreement the Resident's possessions and belongings shall be removed within 7 days during which time the Service Fee continues to be payable.
- 20.2 If the Resident does not take possession of the personal belongings within 30 days of the termination of this Occupation Right Agreement the Operator may sell the personal belongings and the sale proceeds after deduction of expenses of removal storage and sale shall be paid to the Resident. The Operator shall not exercise the power of sale without first giving to the Resident 7 Working Days written notice of intention to sell. The Operator shall not be liable for any loss or damages incurred by the Resident in respect of the removal storage or sale of the personal belongings.

## **21 STATUTORY SUPERVISOR**

---

- 21.1 The Resident and the Operator appoint the Statutory Supervisor as stakeholder under the Deed of Supervision and agree to be bound by the provisions of the Deed of Supervision.
- 21.2 The Resident acknowledges that in terms of clause 20.2 of the Deed of Supervision, the Statutory Supervisor and every attorney, agent or other person appointed by the Statutory Supervisor pursuant to that Deed, will be entitled to be indemnified by the Operator and by the Resident and all other Residents for the time being in the Village:
- (a) in respect of all expenses and liabilities reasonably incurred by the Statutory Supervisor in the execution or purported execution in good faith of the Statutory Supervisor's duties hereunder, or any powers, authorities, or directions vested in the Statutory Supervisor pursuant to that Deed; and
  - (b) against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted relating to the Statutory Supervisor's appointment and duties under the Deed of Supervision, other than a claim arising out of a wilful or negligent default by the Statutory Supervisor.
- 21.3 It is acknowledged for the purposes of the *Contracts (Privity) Act 1982*, that the provisions of this clause 21 are provided for the benefit of the Statutory Supervisor as well as binding the Operator and the Resident, and are intended to be

enforceable by the Statutory Supervisor against either party as well as by the Operator and the Resident.

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

If there ceases to be a Statutory Supervisor for the Village, the Operator shall promptly exercise its power of appointment of a new Statutory Supervisor who is approved as such pursuant to the Act and shall require the new Statutory Supervisor to execute a Deed undertaking to be bound by all the obligations of the Statutory Supervisor under the Deed of Supervision, and as from the date of the appointment the new Statutory Supervisor shall be vested with all the rights, powers, immunities, duties and obligations of its predecessor as if it had been originally named as a party to the Deed of Supervision.

## **22 ACCESS, COMPLAINTS FACILITY AND DISPUTES RESOLUTION**

---

22.1 The Operator shall have and maintain a process so that Residents can contact the Operator about concerns and issues and shall comply with the Residents' Access to Operator and Statutory Supervisor clause of the Code of Practice.

22.2 The Statutory Supervisor is Trustees Executors Limited, and can be contacted by writing to Level 7, 51 Shortland Street, Auckland, telephoning 09 302 9376 or by emailing Justine.Wealleans@trustees.co.nz. The Operator shall inform the Resident of any amendment to these details.

22.3 The Operator shall operate and make known to the Residents of the Village a written procedure for dealing with complaints about the Operator or other Residents of the Village which comply with the Complaints Facility clauses of the Code of Practice.

22.4 The procedure for the resolution of a dispute relating to this Occupation Right Agreement shall be as set out in Part 4 (Dispute Resolution, Enforcement and Penalties) of the *Retirement Villages Act 2003*.

## **23 NOTICES**

---

All notices shall be in writing and may be given to or served upon a party in accordance with section 106 of the Act (which provides for, as at the date of this Occupation Right Agreement, delivering it to that person either personally or by leaving it at, or by sending it to, the person's last known or usual place of residence or business), and shall be deemed to be received in accordance with section 106 of the Act (which provides that, as at the date of this Occupation Right Agreement, a notice addressed to a person and posted to the person's last known or usual place of residence or business 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).

## **24 COOLING-OFF PERIOD AND CANCELLATION FOR DELAY**

---

24.1 The Resident may cancel this Occupation Right Agreement without having to give any reason, by notice given not later than 15 Working Days after this Occupation Right Agreement is signed by the Resident.

24.2 If this Occupation Right Agreement relates to a Unit which is to be built or completed after the date the Resident signs this Occupation Right Agreement, then, if the Unit is not finished to the point of practical completion within six months after the proposed date for completion of the Unit as specified in the Schedule of Details, the Resident may cancel this Occupation Right Agreement. The Resident can do this by giving notice at any time after the expiry of such six month period.

- 24.3 The Resident's notice of cancellation must be in writing and in a form that indicates (irrespective of the exact words used) the intention of the Resident to cancel the agreement, and may be given by the Resident or any person authorised in writing by the Resident to act on his or her behalf.
- 24.4 The notice of cancellation must be given to:
- (a) the Operator; or
  - (b) the real estate agent (if any) or other person who dealt with the Resident on behalf of the Operator when the Resident acquired an occupation right, unless the Operator has notified the Resident that the person has ceased to act on behalf of the Operator; or
  - (c) any person who the Operator has notified the Resident is a person authorised to receive communications on behalf of the Operator.
- 24.5 The Operator is entitled to reasonable compensation for services provided to the Resident under this Occupation Right Agreement and for damage to a unit or any Facilities in the Village for which the Resident is responsible before the cancellation takes effect.
- 24.6 If this Occupation Right Agreement is cancelled pursuant to this clause the Resident is entitled, on request, to a refund, with interest and without deduction other than tax, of the deposit and all progress payments within 10 Working Days after the request.

## **25 RIGHT TO INTRODUCE NEW RESIDENT**

---

- 25.1 The Resident shall have the right to introduce a proposed new resident for the Unit at any time and shall notify the Operator of the Resident's desire to make such introduction. The Operator is not obliged to accept any prospective Resident who does not meet the Operator's normal entry criteria or whose offer for an Occupation Right Agreement does not meet market value or conditions. Other than as set out in this clause, the Operator shall be solely responsible for marketing the Unit.
- 25.2 If the Resident introduces a prospective new Resident who enters into a new Occupation Right Agreement for the Unit, the sales costs charged to the Resident (if any) must be the actual costs incurred, and the Resident must be informed.

## **26 MANAGEMENT OF THE VILLAGE**

---

- 26.1 The Operator shall employ a Manager to manage the daily operation of the Village.
- 26.2 The Operator shall consult with Residents before appointing a new Manager pursuant to this clause.

## **27 TRANSFER OF RESIDENTS WITHIN THE VILLAGE**

---

- 27.1 This Occupation Right Agreement provides for the Resident to apply to the Operator to move from another type of unit in the Village to a Rest Home Apartment in the Care Facility.
- 27.2 The Resident should be aware that a Rest Home Apartment resident is required to successfully complete a needs assessment in order to access subsidies administered by government agencies such as the Ministry of Health and Work and Income.
- 27.3 Any transfer to a Rest Home Apartment is subject to:
- (a) the availability of a Rest Home Apartment; and

- (b) the Operator being satisfied that the Rest Home Apartment will be suitable for the Resident including the Resident completing any assessment required by the Operator; and
- (c) the Operator not being disadvantaged by the proposal; and

The Operator will endeavour to accommodate the Resident's request.

27.4 Any Resident affected has the right to:

- (a) be given information on all available options; and
- (b) have an independent assessment (including a needs assessment) at the Resident's cost; and
- (c) be consulted, along with their family or representative; and
- (d) receive reasonable assistance from the Operator with arranging the physical transfer of the Resident and personal belongings.

27.5 The financial arrangements on transfer are as follows:

- (a) Prior to such a transfer the Resident will be required to terminate this Occupation Right Agreement in accordance with clause 16.1 and the Resident will be required to enter into a new Occupation Right Agreement with the Operator in respect of the Rest Home Apartment, with the Resident being responsible for the Resident's costs in relation to these matters. The Operator will provide the Resident with a disclosure statement that complies with the Act disclosing all of the charges which apply to the Rest Home Apartment before the Resident enters into such Occupation Right Agreement; and
- (b) Payment of the new Capital Sum for such Occupation Right Agreement for the Rest Home Apartment shall be required prior to the commencement date of occupation of such apartment, provided that the Operator may at the Operator's discretion agree to defer payment until payment to the Resident of the Capital Repayment Entitlement, in which case the Resident agrees to the new Capital Sum being set off against the Capital Repayment Entitlement.
- (c) Provided that the Resident has paid the Common Facility Site Donation for the Unit and not received any Common Facility Site Donation Rebate, the new Occupation Right Agreement for the Rest Home Apartment shall provide that no further Common Facility Site Donation is payable by the Resident.
- (d) The Resident shall pay the Retention Fee payable pursuant to the Occupation Right Agreement for the Unit, and shall pay the Retention Fee payable pursuant to the Occupation Right Agreement for the Rest Home Apartment.

## **28 MATTERS IN RESPECT OF WHICH THE OPERATOR SHALL CONSULT WITH RESIDENTS**

---

28.1 The Operator shall consult with the Resident:

- (a) before appointing a new Manager as per clause 26.
- (b) before the Operator's interest in the Village is sold or otherwise disposed of as per clause 5.11.
- (c) about any proposed changes in the services and benefits provided or charges as per clauses 3.2(d), 3.2(g) and 12.5.
- (d) before making or amending Village rules as per clause 9.
- (e) to decide whether it is practicable to repair or replace the damaged or destroyed Unit or Village as per clause 16.8(b).



28.2 The consultation process shall comply with the Residents' Participation in Decision-making clause of the Code of Practice.

## **29 SALE AND ASSIGNMENT BY OPERATOR**

---

- 29.1 In addition to the Operator's obligation in clause 5.11 to consult with the Residents before the Operator's interest in the Village is sold or otherwise disposed of, the purchaser of the Village must also consult with the Residents at a time directed by the Statutory Supervisor. If there is no Statutory Supervisor, the consultation is to take place at an appropriate time that is a reasonable time before settlement of the transaction.
- 29.2 The Operator shall be entitled to assign this Occupation Right Agreement to any person or company who will be the Operator of the Village ("the Assignee"), subject to clauses 5.11 and 29.1 and to obtaining the prior written approval of the Statutory Supervisor of the Village appointed pursuant to the *Retirement Villages Act 2003*.
- 29.3 Assignment of the Operator's rights and obligations shall be effected by the Operator notifying the Resident of the assignment and the date from which the assignment shall be effective. With effect from the notified day, all the Operator's rights and obligations under this Occupation Right Agreement shall pass to the replacement Operator and the Operator shall have no further rights and obligations to the Resident. The Resident agrees to continue to observe and perform all of the Resident's obligations under this Occupation Right Agreement for the benefit of the replacement Operator.
- 29.4 To give effect to clauses 29.1 and 29.3 and in consideration of the grant of this Occupation Right Agreement to the Resident, the Resident irrevocably appoints the Statutory Supervisor to be the Resident's attorney to sign any Deed of Assignment or Novation. The Resident agrees to ratify any such signing by the Statutory Supervisor. The Resident also agrees to sign a separate Power of Attorney making such appointment at the request of the Operator. The Statutory Supervisor will only use such power of attorney after consultation with Residents.

## **30 SATISFACTION OF CONDITIONS IN APPLICATION FORM**

---

- 30.1 If the Resident's application form is subject to the satisfaction of a condition relating to the sale of property by the Resident, then this Occupation Right Agreement shall also be conditional upon the satisfaction of such condition, and confirmation of the Resident's application form as unconditional shall be deemed to be confirmation of this Occupation Right Agreement as unconditional (subject to the terms of the Act and in particular clause 24 of this Occupation Right Agreement).

## **31 COMMON FACILITY SITE DONATION REBATE**

---

- 31.1 Notwithstanding anything to the contrary other than if the payment to the Resident on termination is pursuant to clause 6.3(a) following damage or destruction (which provides for the Resident to receive a refund of the Capital Sum including all of the Common Facility Site Donation), should the Resident's occupancy be less than 12 months, the Operator will refund the Common Facility Site Donation at the rate of 1/12th for each full month that the occupancy is less than 12 months for Units. The \$10,000 Common Facility Site Donation paid for the purchase of a Rest Home Apartment is non-refundable.



**SIGNED** for and on behalf of )

**Parkwood Trust Incorporated** )

\_\_\_\_\_  
Signature of Trustee

\_\_\_\_\_  
Signature of Trustee

Date of signature by the Operator: \_\_\_\_\_

**SIGNED** by the said )

)

as Resident )

\_\_\_\_\_  
Signature of Resident

Date of signature by the Resident: \_\_\_\_\_

in the presence of

\_\_\_\_\_  
Signature of Lawyer as Witness

Full name and address of Lawyer:

## **FIRST SCHEDULE – SERVICE LEVELS**

The Service Fees are reviewable from time to time by the Operator after first consulting the Statutory Supervisor and the Residents in respect of that part of the Service Fee relating to the Village Outgoings Charge, and the Residents in respect of that part of the Service Fee relating to the Service Charge.

Residents living in a Unit shall pay their own telephone charges, electricity, home contents insurance premium, and for the maintenance of the interior of the Unit.

In addition, Residents living in a Unit shall pay on a "user pay" basis for additional services a Resident may require from time to time, such as midday meals, doctors' visits, pharmaceutical and podiatrist charges, external nursing care, hairdressing and physiotherapy, etc. The Operator will negotiate such services with a view to obtaining the best value at reasonable cost. Such payment for additional services shall be in consideration of the supply of goods and services to which they relate.

The Operator shall stop charging the Resident the Service Charge for personal services on the date that the Resident stops living in the Unit.

The Resident's liability to pay the Village Outgoings Charge and any other charges payable under this Occupation Right Agreement for a Unit shall continue until the date on which a new Occupation Right Agreement for the Unit is entered into as per clause 17 provided however that if such date is not within either:

- (a) 6 months of the date of termination; or
- (b) any later date the Resident stops living in the Unit;

the Operator shall from that date reduce such charges by 50%.

The Resident's liability to pay the Village Outgoings Charge for a Rest Home Apartment shall continue until vacant possession of the Rest Home Apartment is given, and the Operator is able to use the Rest Home Apartment until a new Occupation Right Agreement is granted for that Rest Home Apartment.

The Resident of a Rest Home Apartment is required to receive and pay for full rest home care (whether private or subsidised). The Operator will pay the Weekly Rebate (if any) as defined in clause 1.2 to the Resident at the same time as payment to the Resident of the Capital Repayment Entitlement.

## SECOND SCHEDULE – OUTGOINGS

### Clause 3.2(b)

The Village Outgoings Charge payable pursuant to clause 3.2 of the Occupation Right Agreement will consist of all costs expenses and outgoings incurred by the Operator or on its behalf and paid or payable in respect of the Village and its management supervision and operation, including but without limiting the generality of the foregoing:

- 1 All taxes (except income tax or capital taxes in respect of the Operator's income or profits) in respect of the Village;
- 2 All rates, levies, charges, assessments and fees payable to any government, territorial or local authority;
- 3 Costs of compliance with any statute, regulation, bylaw or other lawful obligation in respect of the Village;
- 4 Charges for water, gas, electricity, telephones and other utilities or services excluding any charges paid directly by the Resident pursuant to clause 3.5;
- 5 Insurance premiums for Village Facilities and associated valuation fees excluding Unit insurance premiums which are payable by the Resident;
- 6 All salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village.
- 7 The costs of providing security, cleaning, gardening and other services for the general use and benefit of the Residents;
- 8 The costs of maintenance and repair of all buildings, common areas and the Village generally, but excluding costs relating to the long term maintenance plan and any costs payable by a Resident under clause 3.4 of the Occupation Right Agreement;
- 9 Administrative costs (including appropriate accountancy, legal, Statutory Supervisor, audit and management).

The Resident shall not be liable to pay the cost of any capital expenditure by the Operator in respect of the development or further development of the Village.

### **THIRD SCHEDULE – FACILITIES IN THE VILLAGE**

- 1 Parklands Social Centre – comprising lounge, dining room, hall, theatre/music room, billiards room, library and Village Care office.
- 2 Lloyd Parker Plateau Centre – comprising arts and craft/indoor bowls room, dining room, lounge/bar and pool/fitness centre.
- 3 Bowling rink.
- 4 Croquet green and pavilion.
- 5 Workshop.
- 6 Vegetable allotments.
- 7 Two petanque pistes – one in Parklands, one in Woodlands.
- 8 Parkwood Lodge care facility – comprising a 63 bed rest home (Rest Home Apartment Occupation Right Agreements) and a 25 bed hospital.

## SCHEDULE OF DETAILS

**Resident's Name:**

**Unit Address:**

**Commencement Date of Occupation: 20**

A	Valuation Amount (subject to clause 17.3)	\$
B	Upgrading/Renovation Costs	\$
A+B	= Capital Purchase Sum	\$
C	Common Facility Site Donation	\$35,000
A+B+C	= <b>Capital Sum</b>	<b>\$</b>
	Service Fee	\$545.00 per month including GST (if any) reviewable as per clause 3.2(g)

*NOTE: An additional Service Cost may be further payable under clause 3.7 for further services requested and provided.*

### **CALCULATION OF CAPITAL REPAYMENT ENTITLEMENT:**

(in accordance with clauses 17 and 18)

E Valuation Amount \$

#### **Deduct:**

F 50% of the Capital Profit Sum for a Rest Home Apartment \$

G Retention Fee for Rest Home Apartment (2.0% per annum plus GST of the Valuation Amount) \$

AND/OR

G Retention Fee for Unit (25% including GST (if any) of the Valuation Amount) \$

H Administration Fee \$890.00

I Subject to any deduction in accordance with clause 17.4

E-F-G-H-I = **Capital Repayment Entitlement \$**





**CERTIFICATE BY RESIDENT  
AS TO RECEIPT OF INFORMATION PRIOR TO ENTERING INTO  
THIS OCCUPATION RIGHT AGREEMENT (S 30(2) OF THE ACT)**

The Resident hereby acknowledges in writing that, prior to entering into this Occupation Right Agreement, the Resident has received copies of:

- 1 A Disclosure Statement that complies with Schedule 2 of the Act; and
- 2 The Code of Residents' Rights; and
- 3 A copy of the Occupation Right Agreement; and
- 4 A copy of the Code of Practice; and
- 5 A copy of the Safety and Personal Security policy.

---

Signed by the Resident  
in acknowledgement of the above

---

Witnessed by Lawyer advising the Resident

---

Dated



**CERTIFICATE BY LAWYER  
ADVISING INTENDING RESIDENT**

Name of Village: Parkwood Retirement Village

Registration number of Village: 1959058

I, \_\_\_\_\_ certify that:

- 1 I explained to **[NAME OF RESIDENT]** the general effect of the attached Occupation Right Agreement and its implications before the Resident signed the Occupation Right Agreement; and
- 2 I gave the explanation in a manner and in language that was appropriate to the age and understanding of **[NAME OF RESIDENT]**.

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

Signed by lawyer: \_\_\_\_\_

Name of lawyer: \_\_\_\_\_

of **[ENTER LAW FIRM]**

Street address:

Postal address:

Email address:

Telephone number: