

Occupation Right Agreement – Apartment

PARKWOOD RETIREMENT VILLAGE

[NAME OF RESIDENT/S]



lane neave.

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DATE**[Date]****PARTIES****Parkwood Trust Incorporated (Operator)**The Resident being that/those person(s) named in Schedule 1 (**Resident**)**BACKGROUND**

- A. We own and operate the Village which is registered as a retirement village under the Act.
- B. The Village provides accommodation and health and care services to people in their retirement who are generally aged 65 years or older.
- C. The Resident has applied to the Operator for the right to live in an Apartment including the right to receive certain health and care services.
- D. The Resident has supplied appropriate medical and financial reports to the Operator and, in reliance on such reports, the Operator has agreed to enter into this Agreement with the Resident.
- E. When you have paid the Capital Sum and this Agreement has been signed, you have the right to live in the Apartment, and to receive health and care services, on the terms and subject to the conditions set out in this Agreement.
- F. We must, at all times, comply with the requirements of the Act and all associated legislation.

AGREEMENT**1. Definitions and Interpretation**

- 1.1 **Definitions:** Where a word in this Agreement is used with a capital letter, it will mean the following:

Accommodation Rebate means any amount that we are required by Te Whatu Ora to pay to you as a rebate of accommodation charges for any period during which:

- (a) you have been assessed by the needs assessment and service co-ordination service as requiring long-term residential care; and
- (b) we are providing you that long-term residential care in the Apartment.

Act means the Retirement Villages Act 2003.

Additional Charge means the charge levied for any additional services provided to you at your request.

Administration Fee has the meaning given to that term in clause 7.2 of this ORA.

Admission Agreement means the agreement for the provision of long-term residential care entered into between you and us.

Agreement or **ORA** means this occupation right agreement (including the attached Schedules) that describes the terms and conditions under which you may live in the Apartment, and under which we must run and maintain the Village.

Apartment means the residential Apartment within the Lodge identified in Schedule 1 in which you have the right to live and to receive health and care services pursuant to this Agreement.

Building Code means the building code attached as Schedule 1 to the Building Regulations 1992.

Capital Repayment Entitlement means the net amount we must pay you after the Termination Date at the time specified in this Agreement, being the Capital Sum less the Retention Fee, less any other money you owe us under this Agreement.

Capital Sum means the agreed price for the Apartment, plus any agreed pre-purchase modification or renovation costs, that you pay to us to for an ORA giving you the right to live in a specified Apartment, to use the Common Areas and to receive certain health and care services described in this Agreement.

Code of Practice means the Retirement Villages Code of Practice 2008.

Commencement Date means the date specified in Schedule 1, being the date on which you may start to live in the Apartment on the terms and subject to the conditions described in this Agreement.

Common Areas means the areas of the Village to which all residents have a right of access, including the grounds, paths and driveways, common rooms, halls, the reception area, and meeting and recreation spaces identified within the Village buildings.

Deed of Supervision means the deed of supervision that complies with the Legislation which describes the legal relationship between us and the Statutory Supervisor.

Fair Wear and Tear means the loss of value and/or usefulness of an asset (including an Operator's Chattel) through normal usage over time. For the avoidance of doubt, it does not include deterioration or damage arising from a resident's smoking or keeping of pets, neither does it include damage caused by an insured event.

Financial Year means the 12 month period that starts on 1 February in one year and ends on 31 January of the following year.

Legislation means, collectively, the Act (including the Code of Residents' Rights), the Retirement Villages (General) Regulations 2006, and the Code of Practice.

Lodge means the on-site care facility owned and operated by the Operator that provides age-appropriate care/medical services to qualifying persons.

Operator or we/us means Parkwood Trust Incorporated (registered as a charitable trust under the Charitable Trusts Act 1957, number 368754, and as a charity under the Charities Act 2005 number CC20977) which uses its financial surpluses to further its charitable purposes.

Operator's Chattels means the chattels that belong to us that are in the Apartment when you move in, or that we later provide for the Apartment, including any heat pump, lights, curtains, blinds, and fixed floor coverings.

ORA is an abbreviated way of referring (generally) to an occupation right agreement or (specifically) to this Agreement.

Prospective Resident means a person who, in a meaningful way, has indicated that they are interested in becoming, or wish to become, a resident.

Resident or you means the person named in Schedule 1 (and, if more than one, all such persons) who has entered into this Agreement with us to occupy the Apartment.

Retention Fee means the money you must pay us:

- (a) when this Agreement has terminated and an incoming resident has purchased a new ORA for the Apartment; and
- (b) as a contribution to costs we incur to develop, maintain and improve the Village and its facilities.

Retirement Commissioner means the Retirement Commissioner appointed pursuant to the New Zealand Superannuation and Retirement Income Act 2001.

Rules means the Village rules in place at any time with which each person on Village premises must comply.

Service Charge means the charge levied for particular health and/or care services we provide to you that we supply, or that we have organised, at your request.

Service Fee means the fee you must pay us, being the Service Charge and any Additional Charge.

Statutory Supervisor means, at the date of this Agreement, Trustees Executors Limited including any successor or replacement.

Termination Date means the date on which this Agreement is deemed to have terminated, being the date on which we take back vacant possession of the Apartment.

Village means Parkwood Retirement Village at 99 Belvedere Avenue, Woodlands, Waikanae 5036 (registered as a retirement village under the Act, number 1959058) and, where the context requires or permits, includes the Apartment and the Common Areas.

Lodge Manager means the person we appoint who is responsible for the day-to-day management of the Lodge.

Village Outgoings Charge means your contribution to the costs of running and maintaining the Village.

Working Day means a day other than a Saturday, a Sunday or a public holiday in Wellington.

1.2 **Interpretation:** When reading this Agreement, the following principles will apply where the context requires or permits:

- 1.2.1 a word meaning the singular also includes the plural, and vice versa;
- 1.2.2 the use of any word automatically includes another grammatical use of that same word;
- 1.2.3 headings are to be ignored when interpreting this Agreement;
- 1.2.4 a reference to:
 - (a) any item of Legislation includes all amendments, substitutions and replacements of that Legislation;
 - (b) any document or agreement includes any amendment, variation, replacement or assignment of that document or agreement;
 - (c) a person includes an individual, a body corporate, a trust, an estate, or any lawful representative or agent of such an entity;
 - (d) a clause or a schedule is to a clause or a schedule of this Agreement;

- (e) a 'month' or a 'year' is to a calendar month or a calendar year respectively;
 - (f) '\$' or 'dollars' is to New Zealand currency; and
 - (g) the term 'we will do our best' means we will use our best commercial endeavours;
- 1.2.5 all amounts stated in this ORA include goods and services tax (if any), unless stated otherwise;
- 1.2.6 an email communication is deemed to fulfil the requirements of being 'written' or 'in writing';
- 1.2.7 the use of any of the words 'includes', 'including' or 'for example' is deemed to be followed by the words 'without limitation'; and
- 1.2.8 if any clause in, or interpretation relating to, this Agreement is inconsistent with the Legislation, the Legislation will prevail.
- 1.3 **Plain English:** This Agreement has been written in plain English to make its content easier to read and to understand. Some words, however, have a strict legal meaning (particularly words used in the Legislation) and, when interpreting this Agreement, the simpler language used will not derogate from the established legal meaning of a particular word or collection of words.

2. Being a Resident

- 2.1 **Right to occupy:** Starting on the Commencement Date, we are granting a non-transferable right for you to personally occupy the Apartment during your lifetime, on the terms and subject to the conditions of this Agreement, until this Agreement is terminated:
- 2.1.1 automatically, because you have died or (where there are joint Residents described in this ORA) the survivor has died;
 - 2.1.2 by you, because you don't want to continue living in the Apartment; or
 - 2.1.3 by us, because you have breached this Agreement or your Apartment has been damaged or destroyed and we are not going to repair or replace it.
- 2.2 **Rights of Use:** As a Resident, you are entitled to use and enjoy the Common Areas along with the other residents of the Village.
- 2.3 **Right of Quiet Enjoyment:** You have the right to quiet enjoyment of the Apartment, and we will not unnecessarily interfere with that right as long as you honour your obligations under this Agreement.
- 2.4 **No dealing:** Subject to clause 2.5 you must not sell, assign, mortgage, encumber, sub-licence or otherwise deal with your rights under this Agreement, and you agree that you will not caveat any title that forms part of the Village land.
- 2.5 **Interest or charge:** We are usually able to consent to you granting a security (or other interest) over your Capital Repayment Entitlement but you do need to ask for our consent and that consent does need to be in writing to be valid. If this becomes important for you, please talk with us first.
- 2.6 **Personal contract only:** This Agreement only creates personal contractual rights. It does not create any legal or equitable interest for you in any Village land neither does it give you any proprietary right in the Apartment or in any other land or buildings at the Village. This Agreement will automatically transfer to the survivor of joint Residents (see clause 2.7) but cannot be transferred to an executor, an administrator or to any beneficiary. At law, this Agreement does not create any form of lease, tenancy, or registrable interest in the Apartment.

- 2.7 **Joint occupiers:** If two or more people are named as Residents in this Agreement, we will (at law) deal with those named Residents as 'joint tenants'. When a Resident dies or moves out of the Apartment, the rights and obligations described in this Agreement will automatically transfer to the survivor(s) of joint tenants. When the survivor dies or leaves the Apartment, s/he will alone be entitled to receive the Capital Repayment Entitlement. If the Capital Repayment Entitlement is to be shared in any way between two or more Residents, such direction must be put in place outside this Agreement. We do not, and will not, recognise 'tenancies in common'.
- 2.8 **Pets:** We may allow you to keep a small pet in the Apartment (subject to any rules we may make) but you must have our consent first. We do reserve the right to withdraw our consent at any time if, on reasonable grounds, we believe that your pet is disturbing the quiet enjoyment of other Residents in the Lodge. We will not usually allow you to replace a pet that has died.
- 2.9 **Campervans:** If you have a campervan, caravan, mobile home, boat or trailer you acknowledge that we do not, and we have no obligation to, provide parking for such a vehicle at the Village. If you, or one of your guests, brings such a vehicle into the Village we reserve the right to ask that it be moved outside the Village if it is to be parked overnight.
- 2.10 **Electric Vehicles:** If you have a vehicle that requires an electric charging point (**ECP**) (a mobility scooter, for example) you acknowledge that we have no obligation to provide any parking with an ECP for your sole use at the Village.
- 2.11 **Guests:** An Apartment is not generally suitable for guest accommodation. If you have a guest that requires accommodation on compassionate grounds, we may be able to provide short-term accommodation (depending on circumstances) but we have no obligation to do so. Please speak with us if guest accommodation becomes an issue for you.
- 2.12 **Completion date for Apartment:** If this Agreement relates to an Apartment that is still to be built, or will only be completed after the date of this Agreement, the proposed Commencement Date is the date recorded for that purpose in Schedule 1.
- 2.13 **Cancellation of Agreement:** Once you (or all of you, if there are joint Residents) have signed this Agreement, the Act allows you (or all of you, if there are joint Residents) to cancel the Agreement:
- 2.13.1 by a notice given to us (or a person referred to in the Act) no later than 15 Working Days after you have signed this Agreement. You do not need to tell us why you are cancelling the Agreement; or
- 2.13.2 if this Agreement relates to an Apartment that has not yet been built, or is still to be completed, and the Apartment has not been built or completed within six months of the date we have specified in Schedule 1 as the proposed Commencement Date, by a notice given to us (or a person referred to in the Act) at any time after the expiry of that six month period,
- and following a notice of cancellation we will request the Statutory Supervisor to refund all moneys that you have paid to date, including any interest earned (if any, less withholding tax). The Act requires the payment to be made within 10 Working Days of the date of your request.
- 2.14 **Smoking:** The Lodge is a 'no smoking' zone, and you may not smoke in your Apartment while you live there. You may only smoke outside the Lodge in a designated smoking area (if any) although we are under no obligation to provide such an area. For the purposes of this clause, 'smoking' also includes any similar activity (e-cigarettes or vaping, for example).

3. Your Rights

We acknowledge that you have:

- 3.1 **Code of Residents' Rights:** the rights stated in the Code of Residents' Rights attached as Schedule 4 to the Act (in addition to any rights you have as a recipient of age-related health and care services in and from the Lodge);
- 3.2 **Safety and Security:** the right to reasonable safety and personal security while you live in the Village. In particular, we will:
 - 3.2.1 have and maintain a written policy which complies with the Code of Practice that addresses the safety and personal security of all Village residents. You are entitled to request a written copy of that policy; and
 - 3.2.2 implement and maintain policies and systems that are designed to protect the safety and security of Residents of the Village, and that comply with the Code of Practice. The Operator will review those policies and systems from time to time, as required;
- 3.3 **Financial statements:** the right to receive, free of charge, a copy of our most recent audited financial statements prepared under section 35B of the Act. This right continues until the time we have paid your Capital Repayment Entitlement to you; and
- 3.4 **Consultation:** the right to expect us to consult you over any matter which may materially and/or adversely affect your occupancy of the Apartment or your residency within the Village, including where we wish to amend or alter any current Rule, or introduce a new Rule.

4. Our Rights

You acknowledge that we have the right:

- 4.1 **Entry into Apartment:** to enter your Apartment at any reasonable time, together with any agent, medical practitioner or consultant, tradesperson or other lawful invitee, for the purpose of inspecting the Apartment, providing care and/or assistance to you, assessing the state of your health and/or well-being, or to carry out any necessary or (in our opinion) desirable maintenance, repairs or alterations to the Apartment. In such circumstances we will give you as much prior notice as we can (we will try to give you at least 24 hours' notice) and will do our best to cause you as little disturbance and inconvenience as possible;
- 4.2 **Resident to respect rights:** to expect you to observe and respect the rights of other residents in the Village in relation to their rights to quiet enjoyment, privacy, exclusive occupancy of their Apartments, and shared use of the Common Areas free from interruption, disturbance or annoyance;
- 4.3 **Change to Rules:** to make, change or cancel any Rule that in our view will help with the efficient operation of the Village and will benefit all residents, but we must consult you first;
- 4.4 **Maintenance Account:** to hold, in a separate bank account, the money we collect from residents (if any) specifically for long-term maintenance of the Village. Any money we hold in this account can only be used in accordance with the long-term maintenance plan (see clause 6.12); and
- 4.5 **Varying Agreement:** to vary (in writing) any provision, term or condition of this Agreement but only if you agree and only if we have first consulted with the Statutory Supervisor.

5. Your Financial Obligations – Moving into the Apartment

- 5.1 **Initial Payments:** On or before the Commencement Date, you will pay us the Capital Sum. If you paid an initial deposit to us, this will be credited toward payment of the Capital Sum. On the Commencement Date, we are entitled to retain the Capital Sum for our own use.
- 5.2 **Alteration to Apartment:** We will only allow you to alter the interior of the Apartment if we have given you our consent in writing. Typically, we will ask to see full details of any proposed change or alteration to the Apartment, and/or have you explain to us why you would like the Apartment to be altered. If we agree to your request (whether on the basis as submitted, or on a different but agreed basis) we will be responsible for ensuring that the work is completed. We are not obliged to give consent to any proposed change or alteration, and we may impose conditions to our consent if we believe they are appropriate. If we agree to modify the Apartment, we will employ the contractors to perform any necessary works, you will generally be responsible for the costs, and (if it is a condition of our consent) we will reinstate the Apartment on termination of this Agreement for which you agree to promptly reimburse us for the costs involved.
- 5.3 **Alterations to Apartment permitted for residents with disabilities:** If you have or develop a disability, and if the Apartment in its then state does not meet your needs, you should talk with us to see whether it is possible for the Apartment to be altered to better suit your living requirements. We acknowledge that we will engage with you in good faith and we will write to you to let you know any decision we reach, including any conditions that might attach to that decision. If we agree to modify the Apartment, we will employ the contractors to perform any necessary works, you will generally be responsible for the costs, and (if it is a condition of our consent) we will reinstate the Apartment on termination of this Agreement for which you agree to promptly reimburse us for the costs involved.
- 5.4 **Legal costs:** You will be responsible for paying the following legal costs:
- 5.4.1 the legal costs we have paid in connection with clause 17 of this Agreement which you are directed by a court or other body of competent jurisdiction to refund to us (if any); and
- 5.4.2 your own legal costs to enter into, and to terminate, this Agreement.

6. Your Financial Obligations – Living in the Apartment

- 6.1 **Service Fee:** You will pay a Service Fee to us, being:
- 6.1.1 a Service Charge which is payable to us for as long as you remain a Resident. The Service Charge is payable monthly in advance, by direct debit, into our bank account. The Service Charge that you will pay when you move into the Apartment is stated in Schedule 1; and
- 6.1.2 an Additional Charge (if any) which is payable to us as and when you request that we provide you with services that are additional to the services we must provide to you under the Admission Agreement. If any Additional Charge is incurred, we will invoice this to you separately, and payment will be due in accordance with the terms of the invoice.
- 6.2 **Term of Service Fee:** The Service Fee is payable from the Commencement Date until the Termination Date.

6.3 **Changes to Service Fee:**

- 6.3.1 The Service Fee will be the daily care fee set out in, and payable under, the Admission Agreement, and for rest home level services is subject to a maximum amount set by the Government (**Maximum Contribution**).
- 6.3.2 We can change the Service Fee at any time to reflect changes in the Maximum Contribution. We will endeavour to give you as much notice as possible of any change and that change will take effect on the date determined by the Government.
- 6.3.3 You may be eligible for a residential care subsidy from the Government if you meet the needs assessment and the means assessment criteria. If so, Te Whatu Ora will pay that subsidy to us and we will adjust the Service Fee accordingly.

6.4 **Additional Charge:** An Additional Charge will apply, and will be payable by you to us, for any costs we incur for services provided by us to you at your request.

6.5 **Services from a Third-Party Provider:** If any services you require are only available from a third party provider, you will be responsible for paying those costs directly to the appropriate provider. We accept no responsibility for the level of such costs or how frequently those costs might change.

6.6 **Village Outgoings Charge and Accommodation Rebate:**

6.6.1 The Village Outgoings Charge:

- (a) will accrue to us on a weekly basis; and
- (b) may be increased or decreased to reflect any changes in the Accommodation Rebate,

6.6.2 The Accommodation Rebate:

- (a) will accrue to you on a weekly basis; and
- (b) may increase or decrease over time as a result of changes in Government policy.

6.6.3 The amount of the Village Outgoings Charge will always be equivalent to the Accommodation Rebate (each inclusive of GST, if applicable). By setting off the Village Outgoings Charge against the Accommodation Rebate, we will be discharging our mutual obligations as described in this clause 6.6.

6.7 **Resident's costs – Utilities:** You must pay all costs and charges in relation to the Apartment for:

- 6.7.1 all telecommunication and broadband services supplied to the Apartment, including the costs of subscriber television (Sky or Netflix, for example); and
- 6.7.2 the costs to insure your own property (including, for example, the items you own that are in the Apartment, and your mobility scooter). You do not have to insure any of your own property, but we encourage you to do so.

6.8 **Apartment Maintenance – Interior and Exterior:** It is our responsibility, at our cost, to keep the interior, the exterior and the infrastructure (including all plumbing, drains, wiring and so on) of the Apartment in good order, repair and condition so that the Apartment is in a sound, habitable, and weatherproof condition. It is your responsibility to promptly report to us any matters of concern, and we will do our best to have any necessary work completed in a timely manner.

- 6.9 **Apartment Maintenance – Operator’s Chattels:** We will ensure, at our cost, that the Operator’s Chattels remain in good order, repair and condition. You will not be responsible for the cost of maintenance or replacement of any Operator’s Chattel while you are living in the Apartment.
- 6.10 **Apartment Repair and Maintenance – Access:** Where any repair, maintenance or replacement connected with the Apartment is required you agree that you will ensure that our appointed tradespeople have access to the Apartment at all reasonable times.
- 6.11 **Apartment Repair and Maintenance – Insurance:** Where any item of repair or replacement connected with the Apartment is the subject of an insurance claim on the Village insurance policy, you will not be responsible for any costs associated with the repair or replacement unless your actions, or the actions of any of your guests, are deemed by the Village insurer to have contributed (whether in whole or in part) to the claim. If so, we may require that you be responsible for the cost of paying the insurance excess of the policy. The insurance excess as at the date of this Agreement is stated in Schedule 1 – note that this is likely to increase over time.
- 6.12 **Long-term maintenance:** We must prepare, adhere to and review from time to time a long-term plan for maintaining and refurbishing the Village, including its facilities and amenities. We are responsible for ensuring that funding is available to undertake the maintenance described in the long-term maintenance plan. You are welcome to inspect the long-term maintenance plan, having given us reasonable notice of your wish to do so, but it is usually discussed at the annual general meeting of Residents.

7. Your Financial Obligations – Moving out of the Apartment

- 7.1 **Calculation of Retention Fee:** The Retention Fee you need to pay us after this Agreement has terminated is the equivalent of 10% per year of the Capital Sum (calculated on a daily basis) to a maximum of 20% of the Capital Sum. The calculation starts on the Commencement Date and stops on the earlier of:
- 7.1.1 the Termination Date; or
 - 7.1.2 two years after the Commencement Date.
- 7.2 **Administration Fee:** The Administration Fee is part of the consideration you pay to us after this Agreement has terminated in exchange for the supply of accommodation. The Administration Fee is described in Schedule 1 and is a one-off fixed fee. It is not related to the time for which you are a Resident. We use the Administration Fee to cover expenses we incur after the Termination Date, including our legal, marketing and administration costs, any costs we incur to upgrade the Apartment, and any fees that we might pay to a sales agent. For the avoidance of doubt, no Administration Fee is payable if your Apartment is damaged or destroyed and not replaced, and this ORA is then terminated pursuant to clause 13.3.2.
- 7.3 **Costs to remediate or repair Apartment:** Following termination of this Agreement we cannot charge you for any costs that are directly attributable to Fair Wear and Tear of the Apartment or to the Operator’s Chattels. You will, however, generally be required to reimburse us for any costs we incur where:
- 7.3.1 the Apartment has been modified in accordance with clause 5.2 or clause 5.3 and we determine, at our sole discretion, that it needs to be returned to its pre-modified condition; or
 - 7.3.2 you or your guests have caused damage to the Apartment that is not covered by insurance, and we need to repair the damage in order to sell a new ORA to a Prospective Resident,

and, in either case, you will need to reimburse us for the costs of the remediation or repair.

- 7.4 **Share in Gain or Loss on Resale:** After you have terminated this Agreement, we will typically renovate the Apartment (as we think appropriate) and sell a new ORA to an incoming Resident. Whatever purchase price we obtain from an incoming Resident, you will not be entitled to share in any increase (where the price we obtain is higher than the Capital Sum), neither do we expect you to share in any decrease (where the price we obtain is lower than the Capital Sum).

8. Your Occupancy Obligations – What we expect you to do

You agree that, for as long as you live in the Apartment, you will:

- 8.1 **Personal use:** only use the Apartment as a private residence for yourself, you will not use it to store property that belongs to another person;
- 8.2 **Reasonable care of Apartment:** keep the interior of the Apartment in a clean and tidy state, and report to us any change in condition about which we should know (if an item requires a repair, for example);
- 8.3 **Maintenance of drains:** not negligently or recklessly block or cause damage to any drains or pipes in, under or around the Apartment;
- 8.4 **No rubbish:** only leave rubbish in the parts of the Village that we set aside for rubbish;
- 8.5 **No aerial:** only erect an aerial, satellite dish or other communication device outside the Apartment if we have given you written consent to do so;
- 8.6 **No nuisance:** not be a nuisance or annoyance to other residents at the Village, or to our management and staff;
- 8.7 **Parking:** Parking is generally not provided for residents of the Lodge. Parking may be provided in certain circumstances with the prior approval of the General Manager. Parking agreements may be revoked at any time at our absolute discretion;
- 8.8 **Insured matters:** not do anything, or fail to do something, that might result in our insurance cover being void or voidable, or that might directly cause our insurance premiums to increase;
- 8.9 **Provision of power of attorney:** provide us with a copy of your properly executed Enduring Powers of Attorney for Personal Care and Welfare, and for Property, and keep us updated with the current contact details of your appointed attorney(s);
- 8.10 **Details of Executor(s):** keep us updated with the current contact details of the intended executor(s) of your Will. We do not require a copy of your Will;
- 8.11 **Medical records:** provide us with copies, or access to copies, of your relevant medical and other health records that we may need from time to time, and for this purpose you agree to sign a Privacy Act authorisation in the form attached as Schedule 2;
- 8.12 **Medical assessment:** agree, if we ask you:
 - 8.12.1 to be examined and assessed by an independent medical practitioner or consultant in accordance with clause 11.3.1 in order to determine whether you can continue to live safely in the Apartment; and
 - 8.12.2 authorise and allow that independent medical practitioner or consultant to have access to your relevant medical records and history for the purpose of the assessment and determination; and

8.13 **Compliance with laws:** comply with all laws and all lawful directions given to you,

and, where applicable, your guests must also comply with the requirements set out in clauses 8.1 to 8.13 above.

9. **Our Operational Obligations – What we are expected to do**

We agree that, for as long as you live in the Apartment, we will:

- 9.1 **Costs incurred in operation:** pay all local body rates, levies and (subject to clause 6.7.1) water rates for the Village;
- 9.2 **Maintain Village:** maintain the grounds at the Village in a neat and tidy condition;
- 9.3 **Maintain Insurance Policies:** ensure that we have comprehensive insurance policies in place that insure the Village and each Apartment (including the Operator's Chattels and any capital improvements or additional fittings provided by you, but not your personal belongings or motor vehicle(s)) for their full replacement value, to the satisfaction of the Statutory Supervisor and in compliance with the Code of Practice. Following an insured event, we will reinstate or rebuild the Apartment if it has been damaged or destroyed, and you will not be liable to pay or contribute to the cost of such reinstatement or rebuilding, even if the insurance moneys are wholly or partially irrecoverable because of something you did, or did not, do. We are not, however, obliged to reinstate or rebuild the Apartment if, in our opinion, we consider it is impractical or undesirable to do so;
- 9.4 **Repair and Reinstatement:** subject to clause 11.3, reinstate or rebuild as soon as practicable any Apartment or building (if the Apartment is part of a building) if the Apartment or the building is destroyed or damaged so as to render it unfit for your future use. We will reinstate or rebuild the Apartment substantially in accordance with its original design, or to such other design as we consider desirable (as long as it is generally of a standard and floor area equivalent to that of the original Apartment);
- 9.5 **Charges where Apartment is destroyed or damaged:** ensure that:
 - 9.5.1 the Service Fee is no longer payable; and
 - 9.5.2 the Retention Fee no longer accrues to us,
 on and from the date the damage or destruction occurs. These charges will only resume if:
 - 9.5.3 we provide you with temporary accommodation under clause 9.6 (in which case both charges will resume on the date that the temporary accommodation is available to you, whether or not you move into that temporary accommodation);
 - 9.5.4 you agree to accept an offer to transfer to another apartment in the Village in accordance with clause 9.7 (in which case both charges will resume on the date that the replacement apartment is ready for your occupation, whether or not you move into that replacement apartment); or
 - 9.5.5 the Apartment is repaired or replaced (in which case both charges will resume on the date that the Apartment is ready for your occupation, whether or not you move into the Apartment);
- 9.6 **Temporary Accommodation:** (where your Apartment is destroyed or damaged so that it is unfit for your future occupation) do our best to re-house you as quickly as possible in the Village until your Apartment is reinstated, or we determine in accordance with clause 11.3 that we will not rebuild it. We will do our best to provide temporary accommodation for you, if the need arises, but we are not under any legal obligation to do so;

- 9.7 **Offer of transfer to another dwelling:** (where your Apartment is destroyed or damaged so that it is unfit for your future occupation, and we have determined that it is not practicable to repair or replace it) offer you the option to transfer to another apartment in the Village if we determine that a suitable apartment is available. If there are any costs associated with such a transfer we will discuss those with you at the time with a view to reaching an agreement with you that will enable you to stay in the Village. If you do not accept the option to transfer within 10 Working Days of the offer being made, you will be deemed to have terminated this Agreement and clause 14 will apply;
- 9.8 **Reasonable care in conducting Village affairs:** use all reasonable care and skill to ensure that the Village is properly and effectively managed;
- 9.9 **Reasonable care in exercising powers:** use all reasonable care and skill when we exercise and/or perform our powers and functions;
- 9.10 **Resident to be treated with respect:** treat you with courtesy and respect, and do our best to see that all the people who work for us at the Village, or who provide services to you, do likewise;
- 9.11 **Resident not to be exploited:** respect your rights and do our best to see that you are not exploited. We will ask all the people who work for us at the Village, or who provide services to you, to do likewise;
- 9.12 **Staffing:** provide proper and adequate staffing at the Village;
- 9.13 **Emergency management:** install and maintain fire alarms that comply with the Building Code, and plan and provide for fire protection and the management of an emergency situation at the Village;
- 9.14 **Communication:** (if necessary) make special arrangements for you if English is your second language, or if your ability to communicate is limited;
- 9.15 **Consultation:** consult with you if we consider appointing a new management entity (but not a Lodge Manager), before we sell the Village for any reason, or before we change the availability or cost of any of the services or benefits that we provide to you, and in each case we will also involve the Statutory Supervisor in the consultation process;
- 9.16 **Forecast statements:** prepare at the start of each Financial Year a forecast statement that complies with the Legislation, and give you a copy of that forecast statement within three months of the start of our Financial Year (that is, before 30 April in any year);
- 9.17 **Annual General Meeting:** call an Annual General Meeting of all residents of the Village that complies with the Legislation. The rules for meeting procedures to be followed are described in the Deed of Supervision. At each Annual General Meeting we will provide information to Residents that has been requested, whether in writing or orally, and where we have been given reasonable notice of the topic or the question;
- 9.18 **Obligation to hold meeting with residents:** call meetings in accordance with any of the circumstances described below. We must generally give you at least 10 Working Days' notice of the time and place of a residents' meeting:

Item	Circumstances	Purpose of the Meeting
1	Within six months of the end of a Financial Year, we must share with you our audited financial statements for that Financial Year.	To consider the financial statements, the Statutory Supervisor's report, the

		maintenance report and any other relevant matters.
2	Where the meeting has been requested by the Statutory Supervisor or by at least 10% of the Village residents.	To give the Statutory Supervisor the residents' opinions or directions relating to the exercise of the Statutory Supervisor's powers.
3	Where any Legislation requires us to obtain the consent of Village residents.	To obtain the consent of Village residents.
4	Where any other legislation, a resident's occupation right agreement, or any other document requires us to obtain the residents' collective consent.	To obtain the residents' collective consent.

- 9.19 **Statutory Supervision:** comply in all respects with the Deed of Supervision. If for any reason the appointment of the Statutory Supervisor is terminated in accordance with the Deed of Supervision, we will promptly appoint a new statutory supervisor. If we have difficulty in finding and appointing a replacement statutory supervisor, we will consult with the Retirement Commissioner and/or the Registrar for the purpose of finding a replacement. We are not required to appoint a replacement statutory supervisor if the Registrar has granted us an exemption under the Act from needing to appoint a statutory supervisor, but we will need to comply with the requirements of the exemption (if any); and
- 9.20 **Compliance with Code of Practice:** observe and comply with the Code of Practice and have, keep and maintain the policies, procedures and processes required by the Code of Practice.

10. Transfers within the Village

Transfer to a unit, or to another Apartment, within the Village: We do not generally encourage Residents to transfer to an independent living unit in the Village, or to transfer to a different apartment in the Lodge. If you believe that we should consider such a transfer for you, please talk with us. If we agree, we reserve the right to require that any transfer be subject to such conditions as we consider appropriate, at our absolute discretion.

11. Termination of this Agreement – Usual Circumstances

- 11.1 **Termination event:** This Agreement will automatically terminate when you die, or on the death of the survivor if this Agreement is with joint Residents.
- 11.2 **Your Right to Terminate this Agreement:** You may choose to terminate this Agreement at any time, but you must give us at least one month's notice. If there are joint Residents at the time you give us notice, the notice will apply to all of you.
- 11.3 **Our Right to Terminate this Agreement:** We may choose to terminate this Agreement at any time, but only for one of the following reasons and only if we have given you the required amount of notice:
- 11.3.1 an independent medical practitioner, appointed under and following the procedures required by the Code of Practice, has assessed you and has certified that your physical or mental health is such that you cannot live safely in the Apartment or in the Village – we must give you at least one month's written notice of termination;
 - 11.3.2 you have materially breached a term and/or a condition of this Agreement – we must give you at least one month's written notice of termination;

- 11.3.3 we decide, after having made reasonable enquiries, that you have permanently abandoned or vacated the Apartment – we must give you at least one month's written notice of termination;
- 11.3.4 you do not pay the Service Fee for a period of at least two months – we must give you at least one month's written notice of termination; and
- 11.3.5 you have intentionally or recklessly (those words have specific legal meanings) caused or allowed, or your behaviour is highly likely to cause or allow:
 - (a) serious damage, or damage which might become serious if it continues, to the Apartment or to Village property; or
 - (b) serious injury, distress or harm to another resident or their guest, to us, or to one of our employees or invitees,

and we have given you a period of time that we believe is reasonable in the circumstances for you to remedy the damage, injury, harm or distress – we must give you at least one month's written notice of termination if you have not remedied that damage, injury, harm or distress.

12. Termination of this Agreement – Damage or Destruction of the Apartment

- 12.1 **Termination upon damage to Apartment:** If the Apartment is damaged or destroyed through no fault of yours, and cannot be lived in, we will generally repair or rebuild it. We are not, however, required to repair or rebuild it if it is impractical and/or uneconomic to do so – being 'impractical' or 'uneconomic' may include circumstances where:
 - 12.1.1 the necessary building consents cannot be obtained;
 - 12.1.2 the insurance money needed to repair or rebuild the Apartment or the apartment building cannot be obtained, or it is not enough to replace the property that has been damaged or destroyed; or
 - 12.1.3 we determine, taking into account all the circumstances, that it is not practical or economic to repair or rebuild the Apartment, or the building of which the Apartment forms part.
- 12.2 **Procedure and Timing:** In the event of the damage or destruction of the Apartment we must consult with you and the Statutory Supervisor in good faith to decide whether it is practical to repair or rebuild the Apartment, the building of which it forms part, or the Village itself (if a number of apartments are damaged or destroyed). After we have consulted you and, in good faith, taken your views into account, we will write to you to tell you what decision we have reached. Consultation under this clause will take place as soon as practical after we have received the information we need to make a decision.
- 12.3 **Outcome of Consultation:** After we have consulted with you we will make our decision whether or not to repair or rebuild the Apartment. Where our decision is that the Apartment:
 - 12.3.1 will be repaired or rebuilt, we will fully repair or rebuild it as soon as it is practical for us to do so; or
 - 12.3.2 will not be repaired or rebuilt, we will terminate this Agreement so that the Termination Date will be the date we give you notice of our decision. We will pay you the Capital Repayment Entitlement (without taking the Retention Fee or any other deduction other than money you owe to us at the Termination Date) within 10 Working Days of us or the Statutory Supervisor receiving payment in full from our insurer for the loss or damage under the material damage insurance policy that covers the Apartment.

13. Termination of this Agreement – What Happens?

13.1 **Process following termination:** Starting on the Termination Date:

13.1.1 we will carry out any work on the Apartment that, at our absolute discretion, we believe needs to be undertaken prior to a sale, and do our best to sell a new ORA for the Apartment to a Prospective Resident, each in a timely manner;

13.1.2 we will market the Apartment as we see fit, but we do not need to have your (or your representative's) agreement to a marketing plan; and

13.1.3 we will provide you (or your representative) with a written update after three months (and monthly after that) to let you know what marketing we are doing to sell a new ORA for the Apartment to a Prospective Resident, but

if a new ORA has not been entered into with a Prospective Resident within six months of the Termination Date, we will obtain (at our cost) a valuation of the Apartment by an independent registered valuer who is experienced in valuing ORAs in registered retirement villages. You may obtain a valuation (at your cost) from an independent registered valuer, in which case we must take both valuations into account before establishing the price at which we will continue to market the Apartment. If a new ORA has not been entered into within nine months of the Termination Date, you may be able to initiate a dispute process under certain circumstances.

13.2 **Removal of possessions:** Unless we have agreed with you otherwise, you (or your representative) will ensure that all your personal belongings, furniture and chattels have been removed from the Apartment before the Termination Date, otherwise we will arrange for the Apartment to be cleared and move your personal possessions to a secure storage facility (at your cost). If your items are still in storage three months later, we have the right to arrange for everything to be sold, in which case we will account to you (or your representative) for the net proceeds of sale. If we incur any costs as a result of an action we take under this clause 13.2, you agree that we may be reimbursed for those costs from the Capital Repayment Entitlement.

13.3 **Introduction of replacement resident:** You may introduce a Prospective Resident to us (or to our agent) at any time but we have the sole and absolute discretion to enter into an ORA with that person. Our main criteria for any new Resident is that the person:

13.3.1 meets the normal entry criteria for the Village; and

13.3.2 offers to acquire an ORA at fair market value.

13.4 **Operator acquiring Apartment:** At any time after the Termination Date we may, at our sole option, give you notice (**Notice Date**) that, without us needing to sell a new ORA for the Apartment, we will pay the Capital Repayment Entitlement to you within 20 Working Days of the Notice Date. We will calculate the Capital Repayment Entitlement as if we had paid fair market value. If between us we cannot agree on what fair market value might be, we will engage an independent registered valuer who is experienced in valuing ORAs in registered retirement villages and 'fair market value' will be as assessed by that valuer. If we need to engage an independent registered valuer under this clause, we will each pay half of the valuer's costs.

14. Termination of this Agreement – Payments

14.1 **Payment of Capital Repayment Entitlement:** We will pay you the Capital Repayment Entitlement on the date stated in clause 14.3, being an amount equivalent to the Capital Sum less the deductions and payments described in clause 14.2.

- 14.2 **Payments on Termination:** The Capital Repayment Entitlement consists of the repayment of the Capital Sum that we must make to you, reduced by the payments you must make to us of the following amounts:

- 14.2.1 the Retention Fee;
- 14.2.2 the Administration Fee;
- 14.2.3 any unpaid Service Fee;
- 14.2.4 any costs due or incurred for repair and/or reinstatement that exceeds normal refurbishment of the interior of the Apartment; and
- 14.2.5 any other amounts due to us and not yet paid that are described in this Agreement and that you owe to us,

and we both agree that all these amounts can be set-off against each other so that when we pay you the Capital Repayment Entitlement, it will discharge all the financial obligations described in this Agreement that we have to each other.

- 14.3 **Payment of Capital Repayment Entitlement:** Except where this Agreement is terminated under clause 11.3 or where either of clauses 12.3.2 or 13.4 apply, we must pay you the Capital Repayment Entitlement:

- 14.3.1 no later than five Working Days after the date on which the Statutory Supervisor (as stakeholder) has released the payment for a new ORA to us; or
- 14.3.2 in the case of a deceased resident, no later than five Working Days after we have received a copy of probate or letters of administration or (if neither probate nor letters of administration are available) an indemnity satisfactory to the Statutory Supervisor that has been signed by the executor of the Resident's estate,

whichever is later in time.

- 14.4 **Payment Upon Operator's Termination:** If this Agreement is terminated under clause 11.3 we will pay the Capital Repayment Entitlement to you within five Working Days of the Termination Date.

15. Future of the Village

- 15.1 **Our Right to Develop:** Over time we may develop, or redevelop, the Village in which case we will do our best to cause you as little inconvenience as is practical in the circumstances, and you agree that:

- 15.1.1 you will not make any unreasonable objection or claim compensation in relation to any development or redevelopment that we undertake; and
- 15.1.2 you will, if we require, sign any consent and/or other document that allows us to complete such development or redevelopment.

- 15.2 **Our Right to Sell:** We may sell:

- 15.2.1 any part of the Village that we consider is surplus to our needs, including any undeveloped land or any property we have acquired that is not then being used as part of the Village; or
- 15.2.2 the Village as a complete operation, provided the Statutory Supervisor consents to the incoming operator and is satisfied that the interests of the Residents will not be adversely affected by the sale.

- 15.3 **Consultation:** We will engage with the Statutory Supervisor in relation to any sale, or any development or redevelopment, and the Statutory Supervisor may require us to consult with the Residents. We will consult with Residents in any event if we wish to consider altering the basic scope and nature of the amenities and facilities located within, and provided as part of, the Village.

16. Complaints and Disputes

The following provisions will apply with respect to a complaint or dispute between any parties concerning this Agreement or any other matter that touches on your occupancy of the Apartment, your residency in the Village, and any matter concerning this Agreement between any two or more residents, ourselves, or any other resident or residents of the Village.

- 16.1 **Complaints and disputes:** We have and will maintain a procedure that complies with the Code of Practice for dealing with any complaints (whether informal or formal) by you about the Village, us or other residents of the Village. We will give you a written copy of the complaints procedure on request.
- 16.2 **Complaints and disputes process:** If you make a formal complaint, we will follow the procedure described in the Code of Practice and will ensure you are regularly kept informed about the progress of your complaint.
- 16.3 **Dispute resolution under the Act:** If you make a formal complaint and it has not been resolved within 20 Working Days of the complaint being made, you will be entitled (where and as appropriate) to rely on the dispute resolution and enforcement provisions of Part 4 of the Act.
- 16.4 **Information and compliance:** We will, at all times while a complaint or dispute is unresolved, comply with our obligations under the Code of Practice and the Act.

17. Miscellaneous Provisions

- 17.1 **Further actions:** We reserve the right to take whatever lawful steps we believe might be necessary to protect and/or to enforce your, our and other Residents' rights and obligations described in this Agreement. We will do our best to act in good faith, at all times, and you agree that you will do likewise.
- 17.2 **Village Rules:** We have published a set of Rules for the good and proper control, management and well-being of the Village, including all the Residents and their guests, our staff and employees, and all invited contractors. You are entitled to a copy of the Rules and we must consult with you if we want to change any of them. Depending on the circumstances we may, at our sole discretion, deem a material or ongoing breach of one or more of the Rules to be a breach of this Agreement.
- 17.3 **Resident's property:** You are absolutely responsible for everything at the Village that you own – typically your furniture, motor and mobility vehicle(s) and all your personal possessions located in the Apartment – and for ensuring that your property is adequately insured. We accept no responsibility for any uninsured loss or damage to your property unless we (including our staff, employees and invited contractors) have caused the loss or damage.
- 17.4 **No waiver:** Our failure to insist upon your strict performance, observance or compliance with any of the terms or provisions of this Agreement, or our waiver of your breach of any term or provision, must 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 and provisions of this Agreement.

- 17.5 **Notices to be in Writing:** All demands, consents and notices must be in writing and may be:
- 17.5.1 (if for us) handed to the Lodge Manager, served on us at 99 Belvedere Avenue, Woodlands, Waikanae 5036 during normal business hours, posted to us at the same address, or emailed to us at lodgemanager@parkwoodvillage.co.nz; or
- 17.5.2 (if for you) handed to you, served on you at your Apartment during normal business hours, posted to you at your Apartment, or emailed to you at what we believe to be your current email address.
- 17.6 **Amendments:** We may amend the terms of:
- 17.6.1 this Agreement for any reason, but only if you agree to the change(s); or
- 17.6.2 the terms of our standard ORA for future Residents, in which case the terms of this Agreement will not change,
- and in each case we will consult with the Statutory Supervisor.
- 17.7 **Counterpart Execution:** This Agreement may be signed in any number of counterparts (including electronic transmission), all of which when taken together will constitute one document and any of the parties may sign this Agreement by signing any such counterpart. The parties acknowledge for the purposes of Part 4 of the Contract and Commercial Law Act 2017 to be bound by any agreement reached through electronic means.
- 17.8 **Governing Law and Jurisdiction:** This Agreement will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

SIGNED as an Agreement

Signed for and on behalf
of the Operator
PARKWOOD TRUST INCORPORATED

Authorised Signatory

Signed by the Resident(s)
[NAME OF RESIDENT(S)]
in the presence of the advising lawyer
named in Schedule 3:

Resident

Resident

Witness signature

Full name

Occupation

Address

Schedule 1: Occupancy and Costs

A Apartment Details:

	Parkwood Village
Resident(s):	[Resident A]
	[Resident B]
Apartment Number:	[Number]
Postal address:	Apartment [Number] 1 Robin Place Parkwood Lodge Waikanae, 5032
Commencement Date:	[Commence date]
Proposed Commencement Date (if the Apartment is still under construction):	N/a

B What will it cost me to move into the Apartment?

Item	Clause	Amount
Capital Sum:	5.1	[\$[Capital Sum amount]]
Costs to modify the Apartment (if required):	5.2, 5.3	[list] or N/A
Resident's legal costs:	5.4	At Resident's cost
Operator's legal costs:	5.4	At Operator's cost.

C What will it cost me to stay in the Apartment?

Item	Clause	Amount
Service Charge:	6.1.1	[Service Charge]
Increases to Service Charge:	6.3	As required, but subject to one month's notice.
Additional Charge (if any):	6.1.2	As and when incurred .
Utility costs (eg electricity, Sky, broadband):	6.7	At Resident's cost.

Personal living costs (incl insurance):	6.7.3	At Resident's cost.
Operator's legal costs:	5.4	At Operator's cost (unless otherwise directed).
Repairs and Maintenance to the Apartment:	6.8 to 6.11	No cost, unless caused by the Resident. If insurance is available, Resident's maximum liability is only for the amount of the insurance excess payable.
Operator's Insurance excess:	6.11	\$1,000.00
Chattel Repairs and Maintenance:	6.9	To be undertaken by Operator, generally at the Operator's cost.
Replacement of Operator's Chattels	6.9	At Operator's cost.

D What will it cost me to move out of the Apartment?

Item	Clause	Amount
Retention Fee:	7.1	A charge equivalent to 10% per annum of the Capital Sum, to be calculated <i>pro rata</i> on a daily basis starting on the Commencement Date and ending on the earlier of the Termination Date, or 2 years after the Commencement Date. The Retention Fee is limited to a maximum of 20% of the Capital Sum. Maximum Retention Fee for this ORA: \$[amount]
Administration Fee:	7.2	\$890 plus GST (if any).
Costs to reinstate the Apartment where modifications have been removed:	7.3.1	At Resident's cost, unless Operator agrees to accept the modifications.
Costs to repair damage to the Apartment:	7.3.2	At Resident's cost where damage has been caused by the Resident and is not covered by insurance.
Contribution to loss on resale (ie new purchase price is lower than Capital Sum):	7.4	No share of loss attributable to Resident.
Share of gain on resale (ie new purchase price exceeds Capital Sum):	7.4	No share of gain attributable to Resident.

Schedule 2: Privacy Act Authorisation

1. For the sole purpose of determining your continued suitability for occupation of the Apartment by reference to your physical and/or mental health, you authorise:
 - (a) us to collect health information from any health agency possessing information relevant to your physical and/or mental health; and
 - (b) any health agency to disclose relevant health information about you to the Lodge Manager to assist determination of the continued stability of the Resident for occupation of the Apartment.
2. You have the right, during our usual office hours, to access and correct all personal information we hold about you.
3. While we hold any of your personal information, we will comply with our responsibilities described in the Privacy Act 2020 and the Health Information Privacy Code 2020.
4. For the purposes of this authorisation the terms “health agency”, “health information” and “personal information” have the meanings given to them under the Privacy Act 2020 and the Health Information Privacy Code 2020.

Date

Signed by

[NAME OF RESIDENT(S)]

in the presence of

Resident's Signature

Resident's Signature

Witness signature

Full name

Occupation

Address

Schedule 3: Lawyer Certification

Certificate by Lawyer Advising Intending Resident

Section 27(5), Retirement Villages Act 2003

Name of Village: Parkwood Retirement Village

Registration Number of Village: 1959058

Resident/s: **[NAME OF RESIDENT(S)]**

I, _____ of _____ (to include name and firm) certify that:

- (a) I explained to the Resident/s the general effect of this Agreement and its implications before the Resident/s signed the Agreement; and
- (b) I gave the explanation in the manner and in language that was appropriate to the age and understanding of the Resident/s.

Dated:

Signed by

Solicitor's Signature

Solicitor's Name

Firm

Street Address

Postal Address

Email Address

Telephone Number: