

Occupation Right Agreement – Unit

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 ancillary property services to people in their retirement who are generally aged 65 years or older. Access to an on-site Care Facility owned and operated by the Operator may be available on terms described in this Agreement.
- C. When you have paid the Capital Sum and this Agreement has been signed, you have the right to live in the Unit on the terms and subject to the conditions set out in this Agreement.
- D. 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:

Act means the Retirement Villages Act 2003.

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

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 Unit, and under which we must run and maintain the Village.

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 Valuation Amount less the Retention Fee, less any other money you owe us under this Agreement.

Capital Sum means the agreed price for the Unit, 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 Unit, to use the Common Areas and to receive certain services described in this Agreement.

Care Facility means the on-site care facility (the Lodge) owned and operated by the Operator where some age-appropriate care/medical services are available to a qualifying Resident.

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 Unit 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.

Common Facilities Site Contribution has the meaning given to that term in clause 5.2 of this ORA.

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.

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 Unit when you move in, or that we later provide for the Unit, including any heat pump, whiteware item, lights, curtains, blinds, fixed floor coverings and, for the avoidance of doubt, the hot water system. Items that are part of the infrastructure of the Unit (plumbing (other than the hot water system), taps, drains and windows, for example) will be considered as part of the exterior of the Unit for the purposes of clause 6.6.

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 Unit.

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 Unit; 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 services we provide to you that we supply, or that we have organised, at your request. For the avoidance of doubt, the Service Charge includes the cost to insure the Unit.

Service Fee means the fee you must pay us, being the Village Outgoings Charge and the Service 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 Unit.

Unit means the residential Villa or Flat in the Village identified in Schedule 1 in which you have the right to live pursuant to this Agreement.

Valuation Amount means the amount determined to be the value of the Unit following termination of this Agreement, calculated in accordance with clause 14.2.

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 Unit and the Common Areas, but not the Care Facility.

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

Village Outgoings Charge means the charge levied as 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 Unit 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 Village;
 - 2.1.3 by agreement with us, because you would like to transfer to a different Unit or you need to transfer into the Care Facility; or
 - 2.1.4 by us, because you have breached this Agreement or your Unit 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 Unit, 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 Unit 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 Unit.
- 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 Unit, 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 Unit, 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 will usually allow you to keep a small pet (excluding dogs) in the Unit (although we may make Rules about pets being in other parts of the Village) 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. 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**) (an electric car, a plug-in hybrid car or a mobility scooter, for example) you acknowledge that we have no obligation to provide any parking with an ECP at the Village. If this ORA is for a Unit with its own identifiable garage or undercover parking area, we may agree (with or without conditions) to the installation of an ECP in the Unit's garage or parking area. If there is an ECP installed for your sole use, you agree that you will be responsible for the costs of maintaining that ECP and for the costs of electricity metered to that ECP.
- 2.11 **Guests:** The Unit will be your home for the duration of this ORA and, as such, it is for your personal use and occupation as a residence and not otherwise. You may have a guest or a live-in carer come and stay with you for an aggregated total of up to 90 days in each year (which need not be concurrent) but you must get our consent if your guests intend to stay longer (or end up staying longer, whether they intended to or not). We may allow a companion or a live-in carer to stay for a longer period but we are unlikely to agree to you having a boarder or a house-sitter. Our approval to any extended stay is at our sole and absolute discretion and, if we believe we have good reason, we can withdraw that consent at any time. If a spouse, civil union partner or de facto partner moves into your Unit with you after the Commencement Date, that person will be considered a guest unless (at our sole discretion, and on terms we may specify) we have agreed to add that person's name to this Agreement as a joint Resident.
- 2.12 **Completion date for Unit:** If this Agreement relates to a Unit 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 a Unit that has not yet been built, or is still to be completed, and the unit 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:** You may smoke in your Unit while you live there but we have the right, at your cost, to require that you make good any smoking-related damage or deterioration to the Unit that results from your smoking. You may only smoke outside your Unit 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;
- 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 Unit 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 Unit:** to enter your Unit at any reasonable time, together with any agent, medical practitioner or consultant, tradesperson or other lawful invitee, for the purpose of inspecting the Unit, 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 Unit. 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 Unit, 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 6.11).
- 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 Unit

- 5.1 **Initial Payments:** On or before the Commencement Date, you will pay us:
 - 5.1.1 the Capital Sum; and

5.1.2 the Common Facilities Site Contribution.

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 and the Common Facilities Site Contribution for our own use.

- 5.2 **Common Facilities Site Contribution:** The Common Facilities Site Contribution is a one-off sum that you pay to us being a contribution to the capital costs of the community facilities available to you at the Village. When this Agreement terminates, the Common Facilities Site Contribution may be repayable to you by us only if:

5.2.1 you have lived in the Unit for less than 12 months, and you are not transferring to a Replacement Unit in accordance with clause 11.1 – in which case we will refund you one twelfth of the Common Facilities Site Contribution that you paid for each complete month that you occupied the Unit; or

5.2.2 the Unit is damaged or destroyed and not replaced, and this ORA has been terminated pursuant to clause 13.3.2 – in which case we will refund the full Common Facilities Site Contribution to you.

- 5.3 **Alteration to Unit:** We will only allow you to alter the exterior or the interior of the Unit 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 Unit, and/or have you explain to us why you would like the Unit 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 Unit, 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 Unit on termination of this Agreement for which you agree to promptly reimburse us for the costs involved.

- 5.4 **Alterations to Unit permitted for residents with disabilities:** If you have or develop a disability, and if the Unit in its then state does not meet your needs, you should talk with us to see whether it is possible for the Unit 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 Unit, 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 Unit on termination of this Agreement for which you agree to promptly reimburse us for the costs involved.

- 5.5 **Legal costs:** You will be responsible for paying the following legal costs:

5.5.1 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

5.5.2 your own legal costs to enter into, and to terminate, this Agreement.

6. Your Financial Obligations – Living in the Unit

- 6.1 **Service Fee:** You will pay a Service Fee (comprising the Village Outgoings Charge and the Service Charge) to us for as long as you remain a Resident. The Service Fee is payable monthly in advance, by direct debit, into our bank account. The Service Fee that you will pay when you move into the Unit is stated in Schedule 1.

- 6.2 **Term of Service Fee:** The Village Outgoings Charge is payable from the Commencement Date until the Termination Date. The Service Fee is only payable if and when you receive the particular services.

- 6.3 **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.
- 6.4 **Changes to Service Fee:**
- 6.4.1 The Village Outgoings Charge portion of the Service Fee will be increased each year on or about 1 May each year during the term of this Agreement. The increase will be based on the actual and/or forecast costs of running the Village. We will consult the Residents and the Statutory Supervisor before any increase takes effect, and you will receive at least one month's notice in writing of the increased amount.
- 6.4.2 The Service Charge portion of the Service Fee will change as and when necessary, either because of a change to the services you receive or a change in the cost of providing the services. Where we provide the services, we will endeavour to give you at least one month's notice in writing of the new amount.
- 6.5 **Resident's costs – Utilities:** You must pay all costs and charges in relation to the Unit for:
- 6.5.1 separately metered electricity, gas and water (as applicable) used in the Unit;
- 6.5.2 all telecommunication and broadband services supplied to the Unit, including the costs of subscriber television (Sky or Netflix, for example);
- 6.5.3 recycling and rubbish collection services from the Unit; and
- 6.5.4 the costs to insure your own property (including, for example, the items you own that are in the Unit, and your motor and mobility vehicle(s)). You do not have to insure any of your own property, but we encourage you to do so,
- including the cost to insure the Unit, which is recovered through the Service Charge.
- 6.6 **Unit Maintenance – Exterior:** It is our responsibility, at our cost, to keep the exterior and the infrastructure (including all plumbing, drains, wiring and so on) of the Unit in good order, repair and condition so that the Unit is in a sound, habitable, and weatherproof condition. It is your responsibility to promptly report any matters of concern to us, and we will do our best to have any necessary work completed in a timely manner.
- 6.7 **Unit Maintenance – Interior:** It is your responsibility to keep the interior of the Unit (including the Operator's Chattels and interior window surfaces) in good order, repair and condition so that the Unit is in a sound, safe, and comfortable condition. We will do our best to ensure that the Unit meets the healthy homes standards as if we were renting the Unit to you under a residential tenancy agreement. It is your responsibility to promptly report any matters of concern to us and, if work is required to repair or maintain the interior of the Unit, we will arrange for the work to be completed and you agree that you will promptly reimburse us for the reasonable costs we incur. For the avoidance of doubt, you will be responsible to pay for the costs of consumable items (light bulbs, batteries or heating elements, for example) and the maintenance or replacement of cosmetic items while you are living in the Unit (paint, curtains or carpets, for example). You will not be responsible to pay for the costs of repair or replacement to an interior item that is not an Operator's Chattel (in which case clause 6.8 will apply) where the particular item:
- 6.7.1 has reached the end of its economic life;
- 6.7.2 is subject to (or should be subject to) a warranty claim;
- 6.7.3 is subject to (or should be subject to) the terms of the Consumer Guarantees Act; or
- 6.7.4 is, is directly connected to, or is otherwise part of the hot water system.

- 6.8 **Unit Maintenance – Operator’s Chattels:** You must pay for the costs to repair, maintain or replace any Operator’s Chattel (except as described in clause 6.7). If any Operator’s Chattel needs to be replaced (or either we or you are of the view that it should be replaced) we will do so at your cost with a replacement item of similar or better standard than what is being replaced.
- 6.9 **Unit Repair and Maintenance – Access to Unit:** Where any repair, maintenance or replacement connected with the Unit is required you agree that you will ensure that our appointed tradespeople have access to the Unit at all reasonable times.
- 6.10 **Unit Repair and Maintenance – Insurance:** Where any item of repair or replacement connected with the Unit 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.
- 6.11 **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 Unit

- 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 Valuation Amount (calculated on a daily basis) to a maximum of 30% of the Valuation Amount. The calculation starts on the Commencement Date and stops on the earlier of:
- 7.1.1 the Termination Date; or
 - 7.1.2 three 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 in your Unit. 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. You pay us the Administration Fee as consideration for the supply of accommodation and we use this to cover expenses we incur after the Termination Date, including our legal, marketing and administration costs, any costs we incur to upgrade the Unit, and any fees that we might pay to a sales agent. For the avoidance of doubt, no Administration Fee is payable if your Unit 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 Unit:** Following termination of this Agreement we cannot charge you for any costs that are directly attributable to Fair Wear and Tear of the Unit 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 Unit has been modified in accordance with clause 5.2 or clause 5.4 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 Unit 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 this Agreement has terminated, and before any refurbishment is carried out, we will agree a Valuation Amount with you, to be calculated in accordance with clause 14.2. After the Valuation Amount has been agreed, we will typically renovate the Unit (as we think appropriate, and at our cost) and sell a new ORA for the Unit 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 Valuation Amount), neither do we expect you to share in any decrease (where the price we obtain is lower than the Valuation Amount).

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

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

- 8.1 **Personal use:** only use the Unit as a private residence for yourself, you will not use it to store property that belongs to another person;
- 8.2 **Reasonable care of Unit:** keep the interior, the exterior and the immediate grounds around the Unit 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 Unit;
- 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 Unit 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:** only park your car or mobility vehicle in a designated parking area or in the garage, carport or parking area reserved for your Unit;
- 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 12.3.1 in order to determine whether you can continue to live safely in the Unit; 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 Unit, we will:

- 9.1 **Costs incurred in operation:** pay all local body rates, levies and (subject to clause 6.5.1) 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 Unit (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 Unit 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 Unit if, in our opinion, we consider it is impractical or undesirable to do so;
- 9.4 **Repair and Reinstatement:** subject to clause 12.3, reinstate or rebuild as soon as practicable any Unit or building (if the Unit is part of a building) if the Unit or the building is destroyed or damaged so as to render it unfit for your future use. We will reinstate or rebuild the Unit 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 Unit);
- 9.5 **Charges where Unit 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); or
 - 9.5.4 you agree to accept an offer to transfer to another unit in the Village in accordance with clause 9.7 (in which case both charges will resume on the date that the replacement unit is ready of your occupation, whether or not you move into that replacement unit); or
 - 9.5.5 the Unit is repaired or replaced (in which case both charges will resume on the date that the Unit is ready for your occupation, whether or not you move into the Unit);
- 9.6 **Temporary Accommodation:** (where your Unit 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 Unit is reinstated, or we determine in accordance with clause 12.3 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 Unit 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 unit in the Village if we determine that a suitable unit 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 15 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 Village 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. Care Availability

10.1 **Care Room availability:** If you need to move into the Care Facility, we will give you and other residents of the Village entry priority over a person who is not a Village resident. We cannot, however, guarantee that a room will be available in the Care Facility when you need it.

10.2 **Care Needs Assessment:** If you wish to, or need to, consider receiving full-time residential care in the Care Facility, we will require you to undergo a needs assessment (at your cost) to determine whether or not you are eligible to receive full-time residential care. A needs assessment is not required if you only require respite care and there is a room available at the time in the Care Facility.

10.3 **Care Options:** If your needs assessment determines that you are entitled to receive full-time residential care, we may be able to:

10.3.1 provide a bed for you in the Care Facility for which you will be responsible to pay for the care you receive; or

10.3.2 help you find a bed in a care facility that we do not own or operate.

10.4 **Care Costs and Expenses:** In each option described in clause 10.3 you will be responsible for the costs and expenses for any residential care you receive. This may include charges for services and/or premium room charges. If residential care is provided to you, you must complete an Admission Agreement.

10.5 **Prior Consultation:** Before you make a decision related to your care, we will do our best to discuss the various alternatives with you and (if you ask us) with your family and/or your representative.

11. Transfers within the Village or to the Care Facility

- 11.1 **Transfer to another unit within the Village:** In time you may want to move to a different unit within the Village (**Replacement Unit**). We will do our best to make this happen for you but it will depend on:

- 11.1.1 the Replacement Unit being available;
- 11.1.2 us being satisfied that the Replacement Unit is suitable for you and your needs;
- 11.1.3 you terminating this Agreement; and
- 11.1.4 you signing a new ORA for the Replacement Unit.

- 11.2 **Transfer Costs if you transfer to a Replacement Unit:** If you transfer to a Replacement Unit under clause 11.1, you will pay us:

- 11.2.1 a Transfer Fee equivalent to 3% of the capital sum of the Replacement Unit;
 - 11.2.2 the difference by which the capital sum of the Replacement Unit exceeds the Capital Sum (if any); and
 - 11.2.3 the cost of a registered valuer retained to advise on the Valuation Amount,
- each to be paid before you move into the Replacement Unit, and
- 11.2.4 a Retention Fee, being the higher of:
 - (a) the Retention Fee payable for the Unit based on the time you occupied the Unit; or
 - (b) the Retention Fee payable for the Replacement Unit based on the time you occupied the Replacement Unit,

provided that if the time spent in the Unit together with the time spent in the Replacement Unit is less than 36 months in total, the Retention Fee payable will be the Retention Fee for the Unit (described in subclause (a)) plus the Retention Fee for the Replacement Unit (described in subclause (b)). The Retention Fee under this clause is only payable when the ORA for the Replacement Unit has terminated.

- 11.3 **Transfer to the Care Facility:** At any time you may want to move, or your needs may require you to consider moving, to the Care Facility. We will do our best to make this happen for you but it will depend on:

- 11.3.1 a bed or a room being available in the Care Facility;
- 11.3.2 us being satisfied that the available bed or room is suitable for you and your needs;
- 11.3.3 you having completed a needs assessment which concludes that you require residential care; and
- 11.3.4 you terminating this Agreement,

provided that where this Agreement is with joint Residents and only one Resident requires to move into the Care Facility, clause 11.3.4 will not apply, and this Agreement will be deemed to continue and to have transferred to the surviving Resident(s).

11.4 Transfer Costs if you transfer to a Care Facility: If you transfer to the Care Facility under clause 11.3:

11.4.1 you will be responsible for paying the ongoing costs of your care that are not subsidised under a residential care contract. (Note – the terms of a residential care contract are outside the terms of this Agreement, and you should talk with us if you wish to better understand such contracts); and

11.4.2 if clause 11.3.4 applies, you will pay us the required termination payments that are described in this Agreement.

If you transfer to an external care facility, and unless the proviso to clause 11.3 applies, this Agreement will terminate on the basis that the circumstances described in clause 2.1.2 and 12.2 apply.

11.5 Your Costs to Transfer: In the event that you transfer under either clause 11.1 or clause 11.3 you will be responsible for:

11.5.1 arranging to move yourself and your belongings, at your cost; and

11.5.2 seeking your own legal and/or financial advice, at your cost.

11.6 Transfer Policy updates: We are required to have a transfer policy which we will update from time to time. Consequently, the transfer policy at a particular time may differ from what is described in this clause 11. If, at the time you are considering a transfer, you prefer the terms and conditions of our transfer policy (in its then current form) instead of what is described in this clause 11 we may, at our sole discretion, allow you to transfer in accordance with the transfer policy in place at that time.

11.7 Care without a Transfer: For the avoidance of doubt, you may be able to receive some care services in your Unit so that you do not need to consider transferring to the Care Facility, although this will depend on a number of factors including the type of services you need and our ability to deliver them into your Unit. You should talk with us about this at the time.

12. Termination of this Agreement – Usual Circumstances

12.1 Termination event: This Agreement will automatically terminate when you die, or on the death of the survivor if this Agreement is with joint Residents.

12.2 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.

12.3 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:

12.3.1 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 Unit or in the Village – we must give you at least one month's written notice of termination;

12.3.2 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;

12.3.3 we decide, after having made reasonable enquiries, that you have permanently abandoned or vacated the Unit – we must give you at least one month's written notice of termination;

12.3.4 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

12.3.5 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 Unit 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.

13. Termination of this Agreement – Damage or Destruction of the Unit

13.1 **Termination upon damage to unit:** If the Unit 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:

13.1.1 the necessary building consents cannot be obtained;

13.1.2 the insurance money needed to repair or rebuild the Unit or building cannot be obtained, or it is not enough to replace the property that has been damaged or destroyed; or

13.1.3 we determine, taking into account all the circumstances, that it is not practical or economic to repair or rebuild the Unit, or a building of which the Unit forms part (an apartment building where the Unit is just one of a number of apartments, for example).

13.2 **Procedure and Timing:** In the event of the damage or destruction of the Unit we must consult with you and the Statutory Supervisor in good faith to decide whether it is practical to repair or rebuild the Unit, the building of which it forms part, or the Village itself (if a number of Units 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.

13.3 **Outcome of Consultation:** After we have consulted with you we will make our decision whether or not to repair or rebuild the Unit. Where our decision is that the Unit:

13.3.1 will be repaired or rebuilt, we will fully repair or rebuild it as soon as it is practical for us to do so; or

13.3.2 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, plus we will refund in full the Common Facilities Site Contribution that you paid) 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 Unit.

14. Termination of this Agreement – What Happens?

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

- 14.1.1 we will engage with you (or your representative) to agree the Valuation Amount (see clause 14.2);
- 14.1.2 we will carry out any work on the Unit 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 Unit to a Prospective Resident, each in a timely manner;
- 14.1.3 we will market the Unit as we see fit, but we do not need to have your agreement to a marketing plan; and
- 14.1.4 we will provide you 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 Unit 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 Unit 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 Unit. 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.

14.2 **Assessment of Valuation Amount:** The Valuation Amount of the Unit, as at the Termination Date:

- 14.2.1 will be based on the Unit in its “as vacated” state and the land on which it sits, including 1.3 metres out from the foundations together with paths, clothes lines and letterbox, but will take no account of the surrounding land or any associated amenities;
- 14.2.2 will be determined by agreement between you (or your representative) and us based on the value of recent sales of ORAs at the Village and in registered retirement villages in a reasonable proximity to the Village;
- 14.2.3 may be guided by input provided by an independent registered valuer (appointed by us at our cost, unless clause 11.2.3 applies) with experience in valuing retirement villages;
- 14.2.4 will be the amount specified by an independent registered valuer (appointed by us at our cost, unless clause 11.2.3 applies) with experience in valuing retirement villages if we cannot reach agreement as required in clause 14.2.1,

provided that you may appoint an independent registered valuer (appointed by you, at your cost) with experience in valuing retirement villages, if you wish. If you appoint such a valuer we must agree an umpire to determine a Valuation Amount (based on the input from the two independent valuers) or, if we cannot agree, the President of the Institute of Valuers will appoint an umpire. In any event, we agree that we will equally share the umpire’s costs and also agree that we will be bound by the umpire’s determination of the Valuation Amount.

We will not commence any refurbishment of the Unit (at our discretion, and at our cost) until a Valuation Amount has been agreed under this clause 14.2.

14.3 **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 Unit before the Termination Date, otherwise we will arrange for the Unit 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 14.3, you agree that we may be reimbursed for those costs from the Capital Repayment Entitlement.

- 14.4 **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:

14.4.1 meets the normal entry criteria for the Village; and

14.4.2 offers to acquire an ORA at fair market value.

- 14.5 **Operator acquiring Unit:** 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 Unit, 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.

15. Termination of this Agreement – Payments

- 15.1 **Payment of Capital Repayment Entitlement:** We will pay you the Capital Repayment Entitlement on the date stated in clause 15.3, being an amount equivalent to the Valuation Amount less the deductions and payments described in clause 15.2.

- 15.2 **Payments on Termination:** The Capital Repayment Entitlement consists of the payment of the Valuation Amount that we must make to you, and the payments you must make to us of the following amounts:

15.2.1 the Retention Fee;

15.2.2 the Administration Fee;

15.2.3 any outstanding Village Outgoings Charge;

15.2.4 any unpaid Service Charge;

15.2.5 any costs due or incurred for repair and/or reinstatement that exceeds normal refurbishment of the interior of the Unit; and

15.2.6 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.

- 15.3 **Payment of Capital Repayment Entitlement:** Except where this Agreement is terminated under clause 12.3 or where either of clauses 13.3.2 or 14.5 apply, we must pay you the Capital Repayment Entitlement:

15.3.1 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

15.3.2 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,

whichever is later in time.

- 15.4 **Payment Upon Operator's Termination:** If this Agreement is terminated under clause 12.3 we will pay the Capital Repayment Entitlement to you within five Working Days of the Termination Date.

16. Future of the Village

- 16.1 **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:

16.1.1 you will not make any unreasonable objection or claim compensation in relation to any development or redevelopment that we undertake; and

16.1.2 you will, if we require, sign any consent and/or other document that allows us to complete such development or redevelopment.

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

16.2.1 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

16.2.2 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.

- 16.3 **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.

17. 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 Unit, 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.

- 17.1 **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.
- 17.2 **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.
- 17.3 **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.
- 17.4 **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.

18. Miscellaneous Provisions

- 18.1 **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.
- 18.2 **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.
- 18.3 **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 Unit – 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.
- 18.4 **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.
- 18.5 **Notices to be in Writing:** All demands, consents and notices must be in writing and may be:
- 18.5.1 (if for us) handed to the Village 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 retire@parkwoodvillage.co.nz; or
- 18.5.2 (if for you) handed to you, served on you at your Unit during normal business hours, posted to you at your Unit, or emailed to you at what we believe to be your current email address.
- 18.6 **Amendments:** We may amend the terms of:
- 18.6.1 this Agreement for any reason, but only if you agree to the change(s); or
- 18.6.2 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.
- 18.7 **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.
- 18.8 **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

Date

Authorised Signatory

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

Resident

Date

Resident

Witness signature

Full name

Occupation

Address

Schedule 1: Occupancy and Costs

A Unit Details:

Parkwood Retirement Village	
Resident(s):	[Resident A]
	[Resident B]
Villa:	[Villa Address]
Postal address:	[Villa Address], Waikanae, 5032
Commencement Date:	[Commencement date]
Proposed Commencement Date (if the Unit is still under construction):	[Proposed date] or N/A

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

Item	Clause	Amount
Capital Sum:	5.1.1	[\$[Capital Sum]]
Common Facilities Site Contribution:	5.1.2	\$35,000
Costs to modify the Unit (if required):	5.3, 5.4	[list] or N/A
Resident's legal costs:	5.5	At Resident's cost.
Operator's legal costs:	5.5	At Operator's cost.

c What will it cost me to stay in the Unit?

Item	Clause	Amount
Service Fee (Village Outgoings Charge plus Service Charge)	6.1	
Village Outgoings Charge:	6.2	\$725.00 per month, which amount will increase annually.
Increases to Village Outgoings Charge:	6.4.1	Village Outgoings Charge will increase on or about 1 May in each year.
Service Charge:	6.2	[\$[Insurance Amount]] annual Villa insurance. A pro rata of the annual amount is invoiced at commencement date, with future annual

		premiums invoiced and payable annual on 1 May.
Increases to Service Charge:	6.4.2	As required
Utility costs (eg electricity, Sky, broadband):	6.5	At Resident's cost
Personal living costs (incl insurance):	6.5.4	At Resident's cost
Operator's legal costs:	5.5	At Operator's cost (unless otherwise directed).
Exterior Repairs and Maintenance:	6.6	No cost, unless caused by the Resident. If insurance is available, Resident's liability is only for the amount of the insurance excess payable.
Operator's Insurance excess:	6.10	\$1,000.00
Interior Repairs and Maintenance:	6.7	To be undertaken by Operator but costs are payable by the Resident.
Chattel Repairs and Maintenance:	6.7	To be undertaken by Operator, generally at the Operator's cost.
Replacement of Operator's Chattels	6.8	At Resident's cost.

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

Item	Clause	Amount
Retention Fee:	7.1	A charge equivalent to 10% per annum of the Valuation Amount, 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 3 years after the Commencement Date. The Retention Fee is limited to a maximum of 30% of the Valuation Amount.
Administration Fee:	7.2	\$890 plus GST (if any).
Costs to reinstate the Unit 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 Unit:	7.3.2	At Resident's cost where damage has been caused by the Resident and is not covered by insurance.
Share in Gain or loss on resale (ie Valuation Amount is less than or greater than Capital Sum on resale):	7.4	No share of gain or loss attributable to Resident.

Schedule 2: Privacy Act Authorisation

1. For the sole purpose of determining your continued suitability for occupation of the Unit 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 Village Manager to assist determination of the continued stability of the Resident for occupation of the Unit.
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: