

Occupation Right Agreement – Tamahere Retirement Village

Tamahere Eventide Home Trust

^

TABLE OF CONTENTS

| | | |
|-------|---|----|
| A. | DATE: | 5 |
| B. | PARTIES:..... | 5 |
| C. | BACKGROUND: | 5 |
| D. | MATTERS AGREED: | 5 |
| 4.0 | DEFINITIONS | 5 |
| 5.0 | CONSTRUCTION | 10 |
| 6.0 | CODE OF PRACTICE | 11 |
| 7.0 | CODE OF RESIDENTS’ RIGHTS | 11 |
| 8.0 | GRANT OF RIGHT TO OCCUPY | 11 |
| 9.0 | VILLAGE MANAGER AND STAFF..... | 11 |
| 10.0 | DEPOSIT AND PAYMENTS HELD BY STATUTORY SUPERVISOR | 12 |
| 11.0 | COOLING OFF PERIOD..... | 12 |
| 12.0 | RESIDENT’S OBLIGATIONS | 13 |
| 12.1 | Payments | 13 |
| 12.2 | Care of Unit and Chattels | 13 |
| 12.3 | Alterations to Unit..... | 15 |
| 12.4 | Insurance Obligations on Resident..... | 16 |
| 12.5 | Use of Unit/Nuisance | 16 |
| 12.6 | Resident’s Personal Necessities | 16 |
| 12.7 | Waste..... | 16 |
| 12.8 | Designated Car Parking Areas | 17 |
| 12.9 | Television, Radio Aerials, Burglar Alarms..... | 17 |
| 12.10 | Interference with Emergency Call System/Alarm System..... | 17 |
| 12.11 | Not to Keep Animals..... | 17 |
| 12.12 | No Disposal or Encumbrance | 17 |
| 12.13 | Ownership/Caveat..... | 17 |
| 12.14 | Visitors..... | 18 |
| 12.15 | Vacancy..... | 18 |
| 12.16 | Entry to Unit | 18 |
| 12.17 | Representations Correct | 19 |
| 12.18 | Powers of Attorney, Next of Kin and Will..... | 19 |
| 12.19 | Medical Practitioner..... | 20 |
| 13.0 | TRUST’S OBLIGATIONS..... | 20 |
| 13.1 | Powers, Functions and Duties | 20 |
| 13.2 | Management of Village | 20 |
| 13.3 | Consultation and Communication..... | 20 |
| 13.4 | Statutory Supervisor..... | 20 |
| 13.5 | Insurance | 21 |
| 13.6 | Financial Accounts..... | 21 |
| 13.7 | Forecast Statement | 21 |
| 13.8 | Bank Accounts | 22 |
| 13.9 | Policies..... | 22 |
| 13.10 | Garden and Grounds Maintenance | 22 |
| 13.11 | Building Maintenance and Refurbishment..... | 23 |
| 13.12 | Trust’s Chattels..... | 24 |
| 13.13 | Utilities | 24 |
| 13.14 | Trust to Pay Outgoings | 25 |
| 14.0 | OUTGOINGS..... | 25 |

| | | |
|------|--|----|
| 15.0 | SERVICE CHARGES | 26 |
| 16.0 | REPAIR, MAINTENANCE AND REFURBISHMENT COSTS | 27 |
| 17.0 | HEALTH SERVICE CHARGES..... | 27 |
| 18.0 | NURSING CARE | 27 |
| 19.0 | MEDICAL AND PHARMACEUTICAL..... | 27 |
| 20.0 | HEALTH AND WELFARE PLAN | 28 |
| 21.0 | EMERGENCY CALL SYSTEM | 28 |
| 22.0 | SECURITY..... | 28 |
| 23.0 | ENGLISH AS A SECOND LANGUAGE/ABILITY TO COMMUNICATE | 28 |
| 24.0 | ADDITIONAL SERVICES AND FACILITIES | 29 |
| 25.0 | INTEREST ON UNPAID MONEY | 29 |
| 26.0 | PROPERTY | 29 |
| 27.0 | LOSS OR DAMAGE BY RESIDENT..... | 29 |
| 28.0 | TRANSFER TO ANOTHER UNIT | 29 |
| 29.0 | DAMAGE OR DESTRUCTION OF UNIT | 30 |
| 30.0 | TERMINATION OF THIS AGREEMENT BY THE TRUST..... | 35 |
| 31.0 | NOTICE OF TERMINATION BY THE TRUST | 37 |
| 32.0 | TERMINATION ON DEATH OR PERMANENT CARE | 38 |
| 33.0 | TERMINATION BY THE RESIDENT | 39 |
| 34.0 | REFURBISHMENT OF INTERIOR OF UNIT ON TERMINATION | 39 |
| 35.0 | SALE PROCESS: SALE OF OCCUPATION RIGHT AGREEMENT | 41 |
| 36.0 | PAYMENT ON TERMINATION OF OCCUPATION RIGHT AGREEMENT | 42 |
| 37.0 | REMOVAL OF PERSONAL BELONGINGS FROM UNIT..... | 44 |
| 38.0 | SET-OFF..... | 45 |
| 39.0 | RULES..... | 45 |
| 40.0 | DEVELOPMENT OF VILLAGE..... | 45 |
| 41.0 | DISPOSAL OF VILLAGE BY TRUST | 46 |
| 42.0 | COMPLAINTS PROCEDURE..... | 47 |
| 43.0 | DISPUTE NOTICES/DISPUTE PANEL | 47 |
| 44.0 | ANNUAL GENERAL MEETING..... | 48 |
| 45.0 | SPECIAL GENERAL MEETING..... | 48 |
| 46.0 | INFORMAL MEETINGS | 49 |
| 47.0 | NOTICES..... | 49 |
| 48.0 | VARIATION OR REPLACEMENT AGREEMENT | 50 |
| 49.0 | TRUST'S CONSENT | 50 |
| 50.0 | PROCEDURE IF STATUTORY SUPERVISOR CHANGES..... | 50 |
| 51.0 | LEGAL ADVICE..... | 51 |
| 52.0 | DATE OF AGREEMENT | 51 |
| 53.0 | UNIT TO BE BUILT OR COMPLETED | 51 |
| 54.0 | SPECIAL CONDITIONS | 52 |
| | FIRST SCHEDULE – OUTGOINGS..... | 55 |
| | SECOND SCHEDULE – COMMON FACILITIES..... | 57 |
| | THIRD SCHEDULE – SCHEDULE OF DETAILS | 58 |

| | |
|--|----|
| FOURTH SCHEDULE - PRIVACY ACT AUTHORISATION AND APPLICATION..... | 59 |
| FIFTH SCHEDULE – VILLAGE RULES | 60 |
| SIXTH SCHEDULE – DOCUMENTS PROVIDED TO RESIDENT | 64 |

A. DATE:

B. PARTIES:

1.0 **Tamahere Eventide Home Trust** of Hamilton.

(The Trust)

2.0 ^ of ^, Retired.

(You/the Resident)

C. BACKGROUND:

3.0 The Trust owns and operates the Tamahere Retirement Village ("the Village") providing accommodation and access to health care for men and women over the age of fifty-five (55) years.

3.1 The Village is registered under the Retirement Villages Act 2003.

3.2 Covenant Trustee Services Limited is appointed by the Trust as the Statutory Supervisor for the Village.

3.3 You have applied to the Trust for occupancy of one of the units at the Village under an occupation right agreement.

3.4 You have provided the Trust with the medical and financial reports requested by the Trust.

3.5 The Trust has accepted your application subject to you entering into an occupation right agreement.

3.6 This occupation right agreement sets out the terms and conditions of your right to occupy a unit in the Village.

D. MATTERS AGREED:

4.0 DEFINITIONS

In this agreement unless the context otherwise requires:

- **Accounts** mean the latest audited financial statements relating to the Tamahere Eventide Home Trust prepared in accordance with the Financial Reporting Act 1993.
- **Act** means the Retirement Villages Act 2003.

- **Agreement** means this occupation right agreement granting you a right to occupy a unit in the Village.
- **Agreement Fee** means the capital sum payable by you on the issue of an occupation right agreement as specified in the Third Schedule.
- **Code of Practice** means the Retirement Villages Code of Practice approved under section 89 of the Act as varied under section 90 of the Act from time to time.
- **Code of Resident's Rights** means the Code of Resident's Rights as adopted by the Trust for the Village.
- **Commencement Date** means the date specified in the Third Schedule of this agreement being the date on which you shall be entitled to occupy a unit by paying the agreement fee to the Trust.
- **Common Facilities** means those facilities of a shared or communal kind provided in the Village for the benefit of residents and includes the facilities specified in the Second Schedule.
- **Complaints Procedure** means the complaints procedure established by the Trust for resolution of complaints between residents in the Village or between you and the Trust and includes any policy for resolution of complaints.
- **Consult** includes the obligation on the Trust to consult residents under the Act and to consult in accordance with the Code of Practice and consultation shall have a corresponding meaning.
- **Development** means any development or redevelopment of any part of the Village or land on which the Village is situated or immediately adjacent to and develop has the corresponding meaning.
- **Disputes Panel** means the panel appointed under section 59 of the Act.
- **Dispose** includes sell, transfer, or in any manner part with any possession of.
- **Fair wear and tear** means deterioration, damage or something that occurs through normal use or is normal change that takes

place with the ageing of the unit and may include but is not limited to any chattels provided by the Trust, but without limitation excludes deterioration or damage attributable to smoking, incontinence and use of mobility aids.

- **Financial Year** means the year commencing 1 July and ending 30 June.
- **Management Fee** means the fee deducted by the Trust on termination of this agreement when the Trust receives payment from an incoming resident for a new occupation right agreement for the unit in accordance with clause 36 of this agreement.
- **Occupation Right Agreement** means:
 - (a) This agreement; and
 - (b) Includes any variation of this agreement fully executed by both parties to the agreement.
- **Operator** means the Tamahere Eventide Home Trust, and the Operator shall be referred to in this agreement as “the Trust”.
- **Outgoings** means the monthly amount payable by you towards the costs incurred by the Trust to operate, manage, supervise and maintain the Village as set out in the First Schedule, but does not include the cost of providing personal services to residents.
- **Practical Completion** for a unit to be built or completed means the date on which the Trust’s architect or builder advises the Trust that the unit has been completed and practical completion may occur prior to the issue of a code of compliance certificate by the relevant territorial authority.
- **Proposed Date of Completion** for a unit to be built or completed means the date specified for completion in the Third Schedule.
- **Refurbishment Costs** means the actual cost of refurbishing the unit (including fixtures and fittings) along with the Trust’s chattels to the same standard or the same condition as the unit or chattels were in at the commencement date, less fair wear and tear.

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

- **Rest home and Hospital** means the Trust's rest home and aged care hospital (currently under construction) situated adjacent to the Village.

- **Resident** means any of the following:
 - (a) You and includes anyone who enters into an occupation right agreement with the Trust for a unit (notwithstanding that the cooling off period in clause 11 of the agreement has yet to expire).
 - (b) A person who under an occupation right agreement is, for the time being, entitled to occupy a unit within the Village.

- **Retirement Village Property** means the buildings, plant and equipment that are owned by the Trust (including assets, amenities and utilities within the Village boundary).

- **Right to Occupy** means the right to occupy a unit granted to you by the Trust on the terms and conditions in this agreement.

- **Rules** means the rules attached to this agreement in the Fifth Schedule, as may be amended from time to time.

- **Schedules** means the schedules referred to and attached to this agreement.

- **Service Charge** means the charge payable by you for personal services provided to you by the Trust or a service provider to the Village.

- **Settlement Date** means:
 - (a) For an incoming resident, the commencement date of this agreement.
 - (b) For an outgoing resident, fifteen (15) working days after the date on which an unconditional occupation right agreement has been entered into for the unit and the Trust has received payment under the new agreement.

- **Statutory Supervisor** means Covenant Trustee Services Limited appointed as the Statutory Supervisor and Trustee under a Deed of Supervision dated 29 August 2007, a Deed of Variation of Supervision dated 25 January 2012 and a Deed of Retirement and Accession dated 18 February 2014.'

- **Termination Date** means the later of:
 - (a) The date on which you or the Trust terminates this agreement pursuant to a notice of termination given under the terms of this agreement; or
 - (b) The date on which you have vacated the unit (removing all possessions).

- **Trust** means the Tamahere Eventide Home Trust established by Deed of Trust dated 3 November 1998 by the Methodist Church of New Zealand.

- **Trust's Chattels** means the chattels supplied by the Trust as itemised in clause 13.12.

- **Unit** means:
 - (a) The residential dwelling (including any garage or carport for the unit) in respect of which a right to occupy has been granted by the Trust to you under this agreement; or
 - (b) The residential dwelling (including any garage or carport for the unit) to be built or completed by the Trust in accordance with this agreement; and
 - (c) The term unit shall include all fixtures, fittings and the Trust's chattels situated in the unit.

- **Village** means the Tamahere Retirement Village, being a retirement village for persons over the age of fifty five (55) years situated at 621 State Highway 1, Tamahere.
- **Village Manager** is the person employed by the Trust to manage the daily operation of the Village.
- **Working Day** means any day of the week other than:
 - (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, The Sovereign's Birthday, Labour Day, Waitangi Day, the Provincial Holiday; and
 - (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and
 - (c) if the 1st January falls on a Friday, the following Monday; and
 - (d) if the 1st January falls on Saturday or a Sunday the following Monday and Tuesday.

5.0 CONSTRUCTION

5.1 Except to the extent that the context otherwise requires:

The schedules attached to this agreement are:

- (a) First Schedule – Outgoings
- (b) Second Schedule – Common Facilities
- (c) Third Schedule – Schedule of Details
- (d) Forth Schedule – Privacy Act Authorisation
- (e) Fifth Schedule – Rules
- (f) Sixth Schedule – Documents to be given to the Resident.

5.2 The singular includes the plural and visa versa.

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

6.0 CODE OF PRACTICE

6.1 The Trust agrees the Code of Practice applies to the Village and to the Trust's activities as operator of the Village.

6.2 The Trust agrees that it will meet the requirements of the Code of Practice and shall endeavour to ensure that any obligation on the Trust to consult with residents shall be in accordance with the Code of Practice.

6.3 The Trust acknowledges that the Code of Practice is enforceable by the resident as a contract and it will prevail over any less favourable terms in this agreement.

7.0 CODE OF RESIDENT'S RIGHTS

7.1 The Trust has adopted a Code of Resident's Rights.

7.2 The Trust agrees to take all reasonable steps to ensure the Village Manager and other staff comply with the Code of Residents' Rights.

7.3 The Trust will provide you with a copy of the Code of Residents' Rights prior to this agreement being signed and a further copy upon request free of charge.

8.0 GRANT OF RIGHT TO OCCUPY

8.1 In consideration of you making all payments in accordance with this agreement, the Trust grants you and you take a right to occupy your unit on the terms and conditions in this agreement and you shall be entitled to:

- (a) Occupy the unit on the commencement date; and
- (b) Use and enjoy the benefit of the common facilities in the Village.

8.2 The Trust shall not unnecessarily interrupt your use of the unit whilst you duly and punctually observe and perform the terms and conditions in this agreement.

9.0 VILLAGE MANAGER AND STAFF

9.1 The Village Manager is responsible for the day to day running of the Village.

9.2 You will in the first instance direct all enquiries to the Village Manager.

- 9.3 The Trust will employ such staff as are necessary for the proper running of the Village in accordance with the Trust's policy for staff employment.
- 9.4 The Trust will ensure appropriate training is given to its staff on the obligations contained in the Code of Practice and the Code of Residents' Rights.
- 9.5 The Trust will consult residents if there is to be a change in Village Manager. However, the final decision on the appointment of a new Village Manager will be the Trust's decision.

10.0 DEPOSIT AND PAYMENTS HELD BY STATUTORY SUPERVISOR

- 10.1 You agreed in your application for a right to occupy the unit that the Statutory Supervisor is appointed by you as stakeholder to hold:
- (a) Any deposit paid by you for the unit; or
 - (b) For a unit to be built or completed, any progress payment.
- 10.2 You agree the money referred to in clause 10.1 will be held by the Statutory Supervisor as stakeholder in an interest bearing trust account operated by the Statutory Supervisor for this purpose. It is agreed by you and the Trust that this money shall not be paid to the Trust until the commencement date of this agreement.

11.0 COOLING OFF PERIOD

- 11.1 You or any person authorised on your behalf shall be entitled to withdraw from this agreement by giving written notice of cancellation to the Trust:
- (a) Not later than 5pm on the fifteenth (15) working day (time being of the essence) after the date of execution of the agreement by you; or
 - (b) For a unit to be built or completed at a later date and if the unit is not finished to a point of practical completion within six (6) months after the proposed date of completion of the unit, at any time after the expiry of the six (6) month period.

The period in which you shall be entitled to give notice shall be referred to in this agreement as the cooling off period.

- 11.2 On receipt of a notice of cancellation in accordance with clause 11.1, the Trust shall immediately provide the Statutory Supervisor

with a copy of the notice of cancellation so that the Statutory Supervisor can pay the deposit or progress payment to you (provided no Dispute Notice has been issued) in accordance with the provisions of the Deed of Supervision, together with any net interest accrued.

11.3 You agree that the Trust shall be entitled to compensation for the cost of:

- (a) All services provided to you during the cooling off period; and
- (b) All damage to the unit or common facilities for which you are responsible during this period.

12.0 RESIDENT'S OBLIGATIONS

You agree and undertake with the Trust as follows:

12.1 Payments

12.1.1 To make all payments due to the Trust under this agreement.

12.2 Care of Unit and Chattels

12.2.1 To keep the interior of the unit and the fixtures, fittings and Trust's Chattels in the unit in a good, clean, tidy and safe condition.

12.2.2 To pay for the cost of the repair and maintenance of the interior of the unit including fixtures, fittings and the Trust's Chattels during the term of this agreement as a Service Charge.

12.2.3 To pay the cost of refurbishment of the interior of the unit during the term of this agreement as a Service Charge.

12.2.4 You shall not be liable for the cost of external maintenance and refurbishment of the unit other than through the payment of the Outgoings charged by the Trust for this purpose.

12.2.5 To promptly notify the Trust of any defect in or want of repair in the unit or to the Trust's Chattels.

12.2.6 To promptly return the security pendant provided to you as part of the Trust's Chattels upon termination of this

agreement, or to pay for the cost of a replacement security pendant if the security pendant is not returned on the termination date. If the security pendant is not returned or has been lost during the term of this agreement, the Village Manager will advise you in writing of the replacement cost of the pendant such pendant being at all times compatible with the Village's emergency call system. The Trust may deduct the cost of a replacement pendant from the sum paid to you on termination under clause 36 of this agreement.

12.2.7 You shall not be liable for any loss or damage to the unit or the Trust's Chattels where the Trust is insured against such loss or damage and the insurance moneys have not been rendered irrecoverable as a consequence of any act or default by you, provided that you shall:

(a) Reimburse the Trust for any insurance excess charged under the Trust's insurance policy up to the sum of \$1,000.00; and

(b) If you have intentionally, recklessly or carelessly damaged the unit or the Trust's Chattels, you shall pay the cost of remedying such damage as a liquidated debt if requested to do so by the Trust where:

i. the damage is similar or of a repeat nature and an insurance claim has already been made by the Trust previously for such damage; or

ii. the cost of repairing the damage is less than the excess payable on the Trust's insurance policy.

12.2.8 You shall not engage the services of any contractor or tradesman to carry out repairs, maintenance, or refurbishment to the unit or the Trust's Chattels without obtaining the prior approval of the Trust. The Trust will nominate approved contractors or tradesman and you agree to use the nominated contractors or tradesmen, unless the express consent of the Trust has been obtained to use other contractors or tradesmen.

12.2.9 To permit the Trust entry to inspect the unit to:

- (a) Ensure the interior of the unit including the fixtures, fittings and Trust's Chattels are in a good, clean, tidy and safe condition;
- (b) Ascertain whether any repairs, maintenance and refurbishment are necessary;
- (c) To carry out any such repairs, maintenance and refurbishment;

provided entry for the purpose of carrying out repairs, maintenance or refurbishment will be in accordance with clause 12.16 of this agreement.

12.3 Alterations to Unit

12.3.1 Not to carry out or cause to be carried out alterations to the unit except as provided in this clause.

12.3.2 If you have a disability or develop a disability and the unit does not accommodate this disability you may carry out such alterations as are necessary to accommodate your disability provided, however, that prior to any such alterations being commenced you shall:

- (a) Advise the Village Manager of the disability and the alterations required to accommodate this disability;
- (b) Discuss with the Village Manager whether it is appropriate for you to transfer to another unit in the Village or to the Rest home (subject to availability);
- (c) Provide the Village Manager with a complete set of plans and specifications for prior approval by the Trust, such approval not to be unreasonably withheld; and
- (d) Obtain all territorial authority consents necessary for the alterations.

12.3.3 Alterations that a resident may carry out under this clause must comply with the Building Act and Building Code in force and must not be structural in nature.

12.3.4 You shall only engage the services of a contractor or tradesman nominated by the Trust to carry out the alterations and you shall pay the cost of the alterations.

12.3.5 On termination of this agreement the Trust may require reinstatement of the unit to its original conditional and such reinstatement shall be at your cost, provided the Trust shall only require reinstatement if it is practicable for this to occur at a reasonable cost.

12.3.6 Prior to the Trust beginning any reinstatement work the Trust shall consult with you about the options available.

12.4 **Insurance Obligations on Resident**

12.4.1 You must insure your personal chattels and belongings at your expense and you agree that the Trust shall have no liability for any loss or damage arising to same.

12.4.2 You may decide to (but are not required to) take out insurance for temporary accommodation should your unit become uninhabitable as such accommodation is not provided by the Trust.

12.4.3 You shall not do permit to be done or suffer any act or omission that would cause any insurance policy held by the Trust to become void or voidable or to increase the insurance premium payable by the Trust.

12.5 **Use of Unit/Nuisance**

12.5.1 To only use the unit as a private dwelling.

12.5.2 You shall not do, permit to be done or suffer any act or omission upon or about the unit or the Village that shall be or become a nuisance or annoyance to other residents or staff in the Village or Home.

12.6 **Resident's Personal Necessities**

12.6.1 You shall provide for your own personal needs including suitable clothing and mobility aides, such as walkers and walking sticks.

12.6.2 Except for the chattels provided by the Trust, you will furnish the unit at your expense.

12.7 **Waste**

12.7.1 Not to do or permit to be done, or suffer any act or omission which could cause any of the drains or water pipes in, under, or surrounding the unit, to be or become

blocked, or deposit rubbish other than in approved receptacles or defile any part of the land or buildings on or in the Village or the Home.

12.8 Designated Car Parking Areas

12.8.1 Not to park or permit to be parked any vehicle in the Village other than in the areas designed by the Trust for that purpose.

12.9 Television, Radio Aerials, Burglar Alarms

12.9.1 Not to erect, or place on or outside any unit any radio, television aerial or antenna or install audible burglar alarms without the prior consent of the Trust.

12.10 Interference with Emergency Call System/Alarm System

12.10.1 Not to operate in, on or outside any unit any radio or television device that causes interference with the operation of the Village's emergency call system or security alarm system.

12.11 Not to Keep Animals

12.11.1 Not to keep any cat, dog, bird or other animal without the prior consent of the Trust. Such consent will be at the discretion of the Trust and may be withdrawn at any time.

12.12 No Disposal or Encumbrance

12.12.1 Not to dispose or encumber by way of mortgage or otherwise the unit or your interest under the occupation right agreement.

12.13 Ownership/Caveat

12.13.1 You acknowledge the interest created in this agreement is an equitable interest only and does not create nor grant a registrable or caveatable interest in the unit or the Village. The rights granted in this agreement to you are personal contractual rights only. This agreement does not give you any tenancy or leasehold rights to the unit. You agree that to the extent permitted by law, the covenants implied in licences by the Property Law Act 2007 are expressly excluded and do not apply to the occupation right agreement.

12.13.2 You undertake that no steps will be taken by you or on your behalf to register an interest or lodge a caveat against the unit or the Trust's land.

12.13.3 If this agreement is granted to two residents jointly then both residents will hold the benefits and have the obligations under the agreement jointly. Upon the death of one of the residents, the interest of that person will automatically transfer to the surviving resident.

12.13.4 You agree that the interest in this agreement does not create any rights of transmission.

12.14 **Visitors**

12.14.1 Notwithstanding anything to the contrary in this agreement, you may have relatives or friends stay in the unit for an aggregate total for all guests of ninety (90) days in any period of twelve (12) consecutive months.

12.14.2 The Trust may at its discretion consent to longer periods of visitation, however, this consent may be withdrawn at anytime by the Trust.

12.14.3 You will ensure your visitors comply with the Trust's Rules for visitors, including that they comply with the instructions of the Trust's staff. You agree that failure on the part of your visitor to comply with the Trust's Rules will entitle the Trust to ask the visitor to leave.

12.15 **Vacancy**

12.15.1 You shall not leave the unit vacant for more than two (2) months in total in any one twelve (12) month period from the commencement date without the prior consent of the Trust.

12.15.2 You shall continue to remain liable for the Outgoings and Service Charges incurred by the Trust on your behalf whilst the unit is vacant.

12.16 **Entry to Unit**

12.16.1 To allow the Village Manager and other employees, contractors or tradesmen engaged by the Trust to enter the unit:

(a) In an emergency immediately without notice;

- (b) For non-urgent repairs and maintenance after five (5) working days notice or earlier by mutual agreement;
- (c) For all other matters, including but not limited to inspection or refurbishment of the unit, with reasonable notice and at a reasonable time.

12.16.2 The Trust agrees that it will endeavour to give at least five (5) working days prior notice of entry to you and will take all reasonable steps to comply with the Code of Residents' Rights.

12.17 **Representations Correct**

12.17.1 You undertake that the information supplied to the Trust in the medical and financial reports is true and correct to the best of your knowledge.

12.17.2 Should any statement made by you in the medical or financial reports prove to be materially incorrect and it is shown that you knew or should have known that the statement was materially incorrect at the time this agreement was signed by you the Trust may terminate this agreement in accordance with the termination provisions of this agreement.

12.18 **Powers of Attorney, Next of Kin and Will**

12.18.1 You shall on signing this agreement provide the Trust with:

(a) A copy of your properly executed enduring powers of attorney for:

i. personal care and welfare; and

ii. property

together with relevant contact details of the appointed attorney or attorneys or details of a duly authorised next of kin.

(b) Confirmation that you have a will, which is held by your solicitor.

12.18.2 If the enduring powers of attorney are subsequently amended or revoked, you will provide the Trust with copies of the amended or replacement documents.

12.19 Medical Practitioner

12.19.1 You shall advise the Trust of the name of your medical practitioner prior to the commencement date and update such details of the practitioner should they change.

13.0 TRUST'S OBLIGATIONS

The Trust agrees and undertakes with you as follows:

13.1 Powers, Functions and Duties

13.1.1 To use reasonable care and skill in carrying out the Trust's functions and duties and exercising its powers under this agreement.

13.2 Management of Village

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

13.3 Consultation and Communication

13.3.1 To consult and communicate with residents as required in the Code of Practice and this agreement and as may be requested by the Statutory Supervisor from time to time.

13.3.2 To attend (or if more appropriate, for the Village Manager to attend) meetings of residents as requested by the residents.

13.3.3 To ensure residents can contact the Trust through the Village Manager.

13.4 Statutory Supervisor

13.4.1 To comply with the Trust's covenants in favour of the Statutory Supervisor as set out in the Deed of Supervision for the benefit of the residents and in particular to communicate and report to the Statutory Supervisor as required in the Deed of Supervision.

13.4.2 To ensure the residents have access to the Statutory Supervisor by providing residents with contact details for the Statutory Supervisor.

13.5 Insurance

- 13.5.1 To insure and keep insured with a reputable insurance company all retirement village property including the Trust's Chattels in the Village under a comprehensive insurance policy for full replacement value against loss or damage by fire, accident or natural disaster to the satisfaction of the Statutory Supervisor, and in accordance with the Code of Practice.
- 13.5.2 In accordance with the Code of Practice, the insurance policy held by the Trust shall also cover if applicable all capital improvements or additional fittings provided by residents.
- 13.5.3 The Trust shall ensure that the interests of the Statutory Supervisor for the benefit of the residents are noted against any such insurance policy.

13.6 Financial Accounts

- 13.6.1 On request provide you with a copy of its financial accounts free of charge.
- 13.6.2 The Trust acknowledges that it's obligation to provide you with a copy of the accounts under this clause continues until payment to you on termination of this agreement.

13.7 Forecast Statement

- 13.7.1 To prepare at the beginning of each financial year a forecast statement for the Village that shall include:
- (a) the operating expenditure for the Village;
 - (b) all expenditure for the Village (including amounts repayable to residents of the Village and former residents or their estates);
 - (c) all income for the Village; and
 - (d) the amount of the operating expenditure must be met by the residents of the Village.
- 13.7.2 The Trust shall provide a copy of the forecast statement to you within three (3) months of the start of each financial year.

13.7.3 The Trust shall consult with the Statutory Supervisor on the preparation of the forecast statement.

13.8 Bank Accounts

13.8.1 To operate such bank accounts as are necessary for the efficient management of the Village and to enable the Trust to properly account to the Statutory Supervisor for money received by the Trust in connection with the Village.

13.8.2 To operate a separate bank account for moneys received from residents for maintenance and refurbishment of the Village.

13.9 Policies

13.9.1 To ensure the Trust has in place and implements the policies required under the Code of Practice and any other policies as are necessary for the safe and efficient operation of the Village.

13.9.2 To ensure the Trust's policies are regularly reviewed by the Trust and the Village Manager.

13.9.3 To consult with residents on any amendment to the Trust's policies.

13.9.4 To ensure the Village Manager maintains a current register of policies and that the register is available to the residents at the Village for inspection on working days between the hours of 9.00 am and 4.00pm.

13.9.5 To give residents a copy of any policy or amended policy on request. The Trust will be entitled to recover the cost of providing copies of policies or amendments of policies from residents.

13.10 Garden and Grounds Maintenance

13.10.1 To maintain and keep in good, clean, tidy and operational order and condition the pathways and grounds surrounding the Village buildings including the gardens, trees and shrubs, except to the extent that such garden areas are attributable to any unit for the benefit of a resident.

13.11 Building Maintenance and Refurbishment

13.11.1 To maintain and keep maintained in good, clean, tidy, repair, order and safe condition all buildings in the Village and the Trust's Chattels, including the security systems and fire protection and management systems in the Village, in accordance with all statutory and regulatory requirements and to:

- (a) Make financial provision for the repair, maintenance and periodic upgrading or refurbishment of the Village;
- (b) Enter into repair and maintenance arrangements and periodically review such arrangements;
- (c) Ensure policies for repair, maintenance and refurbishment required in the Code of Practice are implemented and regularly reviewed;
- (d) Report at the annual general meeting of the residents of the Village on the financial provision for repair, maintenance and upgrading; and
- (e) Otherwise consult with residents in accordance with the provisions of the Code of Residents' rights.

13.11.2 To ensure the Village Manager:

- (a) Maintains appropriate procedures for carrying out emergency and non-urgent repairs and maintenance and gives effect to the Trust's policies for repair and maintenance;
- (b) Informs residents of the appropriate contact person to arrange repairs and maintenance if this person is not the Village Manager;
- (c) On becoming aware of or being advised of any defect or want of repair to the unit or the Trust's Chattels shall:
 - i. in an emergency take appropriate steps to repair and make good the defect or want of repair as soon as reasonably practicable; or

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

13.11.3 The Trust shall not be liable for any loss or inconvenience suffered by you arising from any defect or want of repair to the unit or the Trust's Chattels unless the Trust has been advised of the defect or want of repair and has not within the expected time frame taken appropriate steps to repair and make good the defect or want of repair as set out in clause 3.11.2 above.

13.11.4 The Trust shall not be obliged to meet the cost of damage to the unit or Trust's Chattels caused by the intentional, reckless or careless acts or omissions of a resident or the resident's invitees.

13.12 Trust's Chattels

13.12.1 To provide and install into each unit a stove, drapes and blinds, carpet, light fittings, heat pump and a call bell system.

13.12.2 To provide you with a security pendant as part of the Village emergency call system.

13.12.3 To provide such other chattels as you and the Trust shall from time to time agree.

13.13 Utilities

13.13.1 The Trust shall supply the unit with the usual connections for water, sewerage, stormwater, electricity, telephone and standard connections for free to air television.

13.13.2 You shall pay and discharge the actual costs of usage of all utilities for the unit, which will where possible be separately metered, or under a separate account in your name from the utility or service provider.

13.13.3 If the cost of usage of a utility is not separately metered or billed by the utility or service provider the cost will be charged as an Outgoing.

13.14 Trust to Pay Outgoings

13.14.1 The Trust shall pay or cause to be paid within a reasonable period after they become due and payable (prior to any penalties becoming payable) all costs, expenses and outgoings of the Village, including all taxes.

14.0 OUTGOINGS

14.1 You shall pay Outgoings (plus goods and services tax if any) to the Trust. The Outgoings are specified in the First Schedule.

14.2 You shall pay the Outgoings by monthly instalments in advance on the first day of each month, except that at the commencement of this agreement you shall pay the first monthly instalment plus any additional amount for occupancy of less than a month. Your liability to pay the Outgoings will continue even though you may temporarily vacate the unit.

14.3 The Trust may increase or vary the Outgoings to cover any increase in costs, increase in goods and services tax or additional service costs to be paid by all residents of the Village. Before any increase or variation to the Outgoings the Trust will consult with you and the other residents in the Village giving prior notice of any increase. The Trust will send a copy of any notice increasing the Outgoings to the Statutory Supervisor.

14.4 If in error an Outgoing is not included in the monthly instalment figure this fee will be included in the next monthly instalment and will be backdated by the Trust. You agree any Outgoing not charged, but the cost of which has been incurred by the Trust, will be payable by you on demand.

14.5 The Outgoings will be calculated by dividing the total expenses incurred for the benefit of the Village or levied against the Village by the aggregate number of units completed. The Trust may vary the proportion where in the reasonable opinion of the Trust any particular outgoing has been incurred for the benefit of one or more residents whether in whole or in part. When varying the proportion payable by a resident or residents the Trust will give notice to the affected resident or residents and will consult with the residents.

14.6 You shall not be liable to pay Outgoings in respect of any:

- (a) Part of the Village which is under construction; or
- (b) Other construction works; or

(c) Further development of the Village.

14.7 As soon as practicable after the end of the Trust's financial year (but no later than three (3) months after the end of the financial year) the Trust will give you a statement from a chartered accountant certifying that the Trust has applied moneys paid by you for the Outgoings, together with reasonable particulars of the actual Outgoings for the year or period then ended. Any overpayment will be credited to residents.

14.8 On termination of this agreement, you shall pay an apportioned instalment for Outgoings based on the number of days remaining in that month (subject to clause 35.4 of this agreement) to the date the Trust receives payment for an occupation right agreement for the unit from an incoming resident. The final instalment will include any arrears of Outgoings.

15.0 SERVICE CHARGES

15.1 Each month you shall pay for any Service Charges incurred by the Trust on your behalf. Service Charges are charges payable by a resident for personal services provided to the resident by either the Trust or a service provider to the Village.

15.2 The Trust may list the Service Charges you will receive in the Third Schedule of this agreement. However, you agree these charges may vary depending on the services used by you.

15.3 The Trust will issue an initial invoice for Service Charges incurred by you and further invoices will be issued should there be a change or increase to these charges. Payment will be due on the first of each month.

15.4 As soon the Trust becomes aware of any increase in the cost of personal services provided to residents, the Trust will inform residents of the increase.

15.5 You agree to promptly advise the Village Manager if a service you receive and for which a charge is incurred is no longer required by you either temporarily or permanently.

15.6 If a Service Charge is mistakenly omitted by the Trust when invoicing you for services received or anticipated, this charge will be payable by you on demand.

15.7 The Trust shall be entitled to recover all outstanding Service Charges as at the date you cease to reside in the unit.

16.0 REPAIR, MAINTENANCE AND REFURBISHMENT COSTS

16.1 All costs incurred by the Trust for repair and maintenance of the interior of the unit, including the repair and maintenance of Trust Chattels, the garage door, plumbing or electrical fixtures and fittings shall be paid by the you as a Service Charge.

16.2 All costs incurred by the Trust in refurbishment of the interior of the unit during the term of this agreement will be paid by you as a Service Charge.

16.3 On termination of this agreement, you agree all refurbishment costs for the unit incurred by the Trust will be deducted in accordance clause 36 of this agreement

17.0 HEALTH SERVICE CHARGES

17.1 You agree you will pay as a Service Charge all charges incurred in the provision of medical and pharmaceutical services requested by you from the Trust.

18.0 NURSING CARE

18.1 As a retirement village operating in conjunction with a rest home, the Trust will, subject to availability and you meeting normal eligibility for rest home entry, make every endeavour when your health so requires to provide you at your cost with temporary care in the rest home or alternative nursing care.

19.0 MEDICAL AND PHARMACEUTICAL

19.1 The Trust shall ensure that a person is available at all times to arrange for an adequate response to calls by residents and ensure that a medical practitioner is available on call to respond to an emergency at any time.

19.2 The Trust shall provide:

(a) Access to a medical adviser for general medical requirements; and

(b) A pharmaceutical service to residents.

19.3 You agree that any medical or pharmaceutical services received by you from the Trust shall be paid for by you as a Service Charge. For avoidance of doubt, costs incurred by residents under this clause are not included in the Outgoings payable by residents.

19.4 Nothing in this clause prevents you from engaging at your cost a medical practitioner of your choice and arranging supply of your medicine.

20.0 HEALTH AND WELFARE PLAN

20.1 The Trust may offer you a health-monitoring plan. The plan shall be prepared in consultation with you, your medical adviser and the Village Manager. The cost of the plan and any costs associated with its implementation shall be charged as Service Charge.

20.2 Under any health and welfare plan, specialist consultations and all care costs are your responsibility. The Trust shall not be responsible for or obliged to defray any charges incurred.

21.0 EMERGENCY CALL SYSTEM

21.1 The Trust shall provide to residents an appropriate emergency call system so residents have access to help 24 hours a day from the rest home. The cost of this service will be included in the Outgoings to be paid by the residents.

21.2 As part of the emergency call system the Trust will provide you with a security pendant and you agree you will return the security pendant to the Trust on termination of this agreement. The Trust shall be entitled to recover the cost of the security pendant from you if lost or not returned.

21.3 The Trust shall arrange for an appropriate response 24 hours a day from the rest home for any resident using the Emergency Call System for the purposes of requiring urgent personal health attention or with a security concern or requirement.

22.0 SECURITY

22.1 The Trust shall provide a nightly security service to the Village together with lighting to illuminate the movement of residents and guests around the common facilities and will maintain this service and lighting at all times subject to the cost being included in the Outgoings payable by residents.

23.0 ENGLISH AS A SECOND LANGUAGE/ABILITY TO COMMUNICATE

23.1 If a resident is not able to easily communicate in English the Trust will when the resident's rights and obligations are affected make arrangements for a suitably qualified interpreter to assist with communication. You agree that in such circumstances the Village Manager may in the first instance contact your representative. The

cost of the interpreter shall be met by the Trust as set out in the Code of Practice.

24.0 ADDITIONAL SERVICES AND FACILITIES

24.1 The Trust may arrange for other service providers such as hairdressers and physiotherapists to attend at the rest home and each resident wishing to make use of such services shall pay the cost levied by the provider either directly to the provider or as a Service Charge.

24.2 The Trust may offer other recreational activities and entertainment or provide other recreational facilities for use by residents. The Trust will consult with residents if any proposed additional facility is likely to impose a cost on residents.

25.0 INTEREST ON UNPAID MONEY

25.1 If you are in default on the payment of any moneys payable under this agreement for more than fourteen (14) working days then you agree you shall on demand pay interest on the moneys unpaid from the due date for payment down to the date of payment at the rate of 4% per annum above the bank overdraft interest rate charged by the Bank of the Trust.

26.0 PROPERTY

26.1 You agree the Trust shall not be responsible for any loss of any property belonging to you due to theft or any other cause.

27.0 LOSS OR DAMAGE BY RESIDENT

27.1 You agree you shall reimburse the Trust for any loss or damage suffered by the Trust as a result of your carelessness or negligence except for loss or damage covered by any insurance policy held by the Trust, provided that in any case where your acts or omissions have made any such insurance void you shall upon demand compensate and reimburse the Trust in full for such loss or damage.

28.0 TRANSFER TO ANOTHER UNIT

28.1 You may transfer to another unit at the Village subject to:

- (a) Availability of another unit;
- (b) Suitability of the unit;

- (c) The Trust holding from an incoming resident an unconditional agreement for an occupation right agreement for your unit;
- (d) You providing the Trust with a surrender of this agreement;
- (e) You entering into an occupation right agreement for the new unit and making such payments as are due under that agreement, including the Agreement Fee as set out in clause 28.2 below and all refurbishment costs, Statutory Supervisor costs, the Trust's legal costs and other costs associated with the transfer from one unit to another.

28.2 You agree that payment of the Agreement Fee for the new unit shall be effected by you paying to the Trust the difference between:

- (a) the Agreement Fee to be paid for your unit by an incoming resident;
- (b) Less the deductions listed in clause 36; and
- (c) The Agreement Fee for an occupation right agreement for the new unit (which may be determined by registered valuation).

28.3 You shall be responsible for transfer of your belongings from the existing unit to the new unit.

29.0 DAMAGE OR DESTRUCTION OF UNIT

Temporary Accommodation

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

29.2 If the Trust has a unit available that is suitable temporary accommodation for you, or accommodation within its rest home the Trust may offer this temporary accommodation to you, subject to you:

- (a) Accepting the temporary accommodation on the terms set out in this clause and, if requested by the Trust, the terms of a temporary accommodation agreement;

- (b) Paying any Outgoings that arise in relation to the temporary accommodation;
 - (c) Paying any Services Charges for personal services received by you when in the temporary accommodation;
 - (d) Paying a rental to be advised by the Trust for the temporary accommodation;
 - (e) Paying all moving costs; and
 - (f) Accepting that the Management Fee will continue to accrue under this agreement whilst you are living in the temporary accommodation.
- 29.3 The Trust shall advise you within five working days of an event damaging or destroying a unit if temporary accommodation is available.
- 29.4 Any offer of temporary accommodation shall be on the basis that the accommodation will only be available to you whilst your unit is being repaired or replaced and the accommodation will be promptly vacated when the Trust advises you that the unit is available for reoccupation.
- 29.5 If on completion of repairs to the unit you do not wish to return to your unit, you will only be permitted to remain in the temporary accommodation if:
- (a) The temporary accommodation is assessed by the Trust as being suitable long term accommodation for you.
 - (b) A transfer from one unit to another is completed in accordance with clause 28 above.
- 29.6 If the Trust does not agree to you transferring to the temporary accommodation on a permanent basis and you fail to return to your unit, you agree the termination provisions of clause 30 of this agreement will apply and the Trust may terminate this agreement.
- 29.7 If your unit is uninhabitable due to no fault (for example due to a natural disaster) the Trust shall from the date of destruction or damage until the date your unit is available for re-occupation by you, which shall be the date of practical completion of the repairs or replacement of the unit:
- (a) Stop charging you Outgoings for the unit and for Service Charges not received; and

- (b) The accrual of the Management Fee shall cease for that period of time;

except if temporary accommodation is provided to you by the Trust the Outgoings and Service Charges will continue to be payable by you and the Management fee will continue to accrue.

- 29.8 In accordance with the Code of Practice, the Trust shall not extend or increase the rate of accrual of the Management Fee if the Trust repairs or replaces a unit that has been damaged or destroyed through no fault of the resident.

Repair or Replacement of Unit that is Uninhabitable

- 29.9 The Trust agrees it has an obligation to repair and replace your unit if it is practicable to do so. It shall not be practicable to repair or replace your unit if:

- (a) The Trust's insurance claim is declined by its insurer;
- (b) The cost of repairing or replacing the unit and other facilities in the Village (including infrastructure) exceeds the sum the Trust will receive under its insurance policy (notwithstanding that the policy is for full replacement);
- (c) The extent of the damage or the risk of damage to the land on which the Village is situated or to the infrastructure in the Village is such that it is determined by the Trust the land is no longer a suitable site for a retirement village, and such assessment shall not be limited to the part of the land on which your unit is situated; or
- (d) The Trust cannot obtain in a timely manner all necessary consents from the relevant territorial authority; and
- (e) Will include any other matter that makes it impracticable to repair or replace your unit or the Village (as the case may be).

Procedure for Repair and Replacement of Unit that is Uninhabitable

- 29.10 If your unit is damaged or destroyed through no fault (for example due to a natural disaster) the Trust shall:

- (a) After meeting with you to discuss the repair or replacement of the unit, confirm in writing the outcome of the meeting setting out the Trust's decision on whether it will repair or replace the unit. The Trust agrees it will endeavour to arrange a meeting with you no later than sixty working days after the event causing the damage or the destruction of

your unit, however, if all information is not available (such as geo-technical reports and territorial authority consents) the Trust may have an initial meeting with you, but then hold a further meeting with you once all necessary information is to hand.

- (b) If the Trust's decision is to repair or replace the unit as it is practicable to do so, an indication of when such work may commence shall be provided by the Trust. The Trust agrees it will update you as information becomes available. You agree that this information may be provided by the Trust at a meeting of residents called for this purpose.
- (c) If the Trust's decision is not to repair or replace the unit, the following will apply:
 - i. The Trust may if able offer you the option of transferring to another unit (which may be an existing unit or one to be constructed) and will advise you of the terms of any such offer including the date by which you must accept the offer; and
 - ii. You agree that if you do not accept the offer to transfer to another unit you will be deemed to have given notice of termination of this agreement and that payment will be made to you in accordance with clause 36.1 of this agreement, with deduction of the Management Fee being made under that clause.
 - iii. If the Trust is not able to offer you the option of transferring to another unit, the Trust will give you notice to terminate this occupation right agreement. The notice to terminate will set out the amount to be paid to you on termination which shall be calculated as follows:
 - A. the Agreement Fee paid by you on the commencement of this agreement, less any Outgoings and Service Charges owed by you to the Trust;
 - B. the Management Fee (ordinarily deducted on termination by the Trust/Operator) will not be deducted from the amount to be paid you; provided

C. You will not receive the benefit of any capital gain where an agreement is terminated under this sub-clause; and

D. You will not receive the benefit of any EQC payment in respect of the land on which your unit is sited.

iv. Payment under sub-clause iii above will be made in accordance with clause 36.3 and clause 36.4 of this agreement.

29.11 If you give notice to terminate and your unit has not been damaged or destroyed by a no fault event then the termination provisions of this agreement shall apply and payment shall be made in accordance with clause 36.1 with the Management Fee being deducted.

Partial Damage of Unit and Unit Habitable

29.12 If the unit is damaged but not so as to make it uninhabitable, the Trust shall consult with you about the repair process for the unit. The repair of the unit shall be subject to:

(a) The Trust's insurance claim being accepted by the Trust's insurer; and

(b) The Trust obtaining all necessary territorial authority consents for the work to undertaken.

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

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

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

Trust to Consult

29.16 The Trust agrees that it will consult with you and the Statutory Supervisor in accordance with the provisions of the Code of Practice

if your unit is damaged, destroyed or in the event of substantial damage to the Village.

30.0 TERMINATION OF THIS AGREEMENT BY THE TRUST

30.1 The Trust may terminate this agreement on the following grounds:

Medical Grounds

- (a) The Trust may terminate this agreement on medical grounds if your physical or mental health has been assessed and certified by a registered medical practitioner as being such that you cannot safely continue to live in the unit. In the first instance the assessment will be completed by your usual medical practitioner, however, the Trust may request a medical practitioner be appointed to complete an assessment and the medical practitioner will be independent of the Trust.
- (b) The assessment of the registered medical practitioner will take into account:
 - i. The level of care, support and facilities offered in the Village, including the ability to transfer to a higher level of care such as the rest home;
 - ii. The support services available outside the Village that may assist you to remain in the unit and the cost of such services to you.
- (c) You agree, that if asked to do so by the Village Manager, you will as soon as practicable undergo the medical assessment in clause 30.1(a). You or your representative may seek a second opinion from another registered medical practitioner and may provide a copy of this assessment to the Trust.
- (d) Prior to termination on medical grounds the Trust shall first give notice of intention to terminate this agreement. Notice of intention to terminate shall be given in accordance with clause 31 below.

Breach or Default of Terms and Conditions of Agreement etc

- (e) If you have materially breached or defaulted in the observance or performance of any of the terms and conditions of this agreement and the Trust has:
 - i. Given you written notice of the breach or default and you have failed to rectify the breach or default within one (1) month of receiving the notice (or

within such other extended notice period stipulated by the Trust);

- ii. Advised you in the notice of the Trust's intention to terminate the agreement should the breach or default not be remedied within the timeframe specified in the notice; and
- iii. You have failed to remedy the default specified in the notice.

Serious Injury, Harm or Distress

(f) If you have intentionally or recklessly caused or permitted, or are highly likely to intentionally or recklessly cause or permit serious injury, harm or distress to:

- i. The unit, the common facilities or the rest home; or
- ii. To an employee or guest of the Trust, or any resident of the Village or the rest home; and

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

Abandonment of Unit

(g) If you have abandoned the unit. You shall be deemed to have abandoned the unit if:

- i. You have advised the Village Manager or other staff member of an intention to abandon the unit and the unit has been vacated (either wholly or in part) by you; or
- ii. The unit has been left unoccupied for a period of fifteen (15) working days without prior notification by you and after due enquires and inspection of the unit by the Village Manager it is determined that the unit has been abandoned by you; and
- iii. The Trust has given you written notice of intention to terminate this agreement on the grounds of permanent abandonment by you and you have not re-occupied the unit within one (1) month of service

of the notice (or within such other extended notice period stipulated by the Trust).

- (h) You acknowledge that the Village Manager shall be entitled to enter the unit without notice to determine whether or not abandonment of the unit has occurred.

Damage or Destruction of Unit

- (i) Where it has been determined that it is not practicable for a unit to be repaired or replaced and the Trust is not able to offer the resident another unit to transfer to, or an offer to transfer to a unit has been declined by the resident, in the circumstances set out in clause 29. Notice will be given in accordance with clause 31 below.

31.0 NOTICE OF TERMINATION BY THE TRUST

Notice of Intention to Terminate

31.1 Written notice of intention to terminate this agreement shall be given to you by the Trust (except where serious injury, harm or distress is alleged as set out in clause 30.1(f) above where the notice period may be shortened) require remedy of the default or breach within a minimum of one (1) month of the date of service of the notice in writing.

31.2 All notices of intention to terminate shall comply with the requirements of the Code of Practice and the notice will (amongst other things) include:

- (a) Date of issue of the notice;
- (b) Proposed grounds for termination;
- (c) Steps to be taken to remedy any default or breach and the time by which the steps must be taken;
- (d) Consequences of non-compliance with the notice;
- (e) Information about your right to information and consultation under the Code of Practice and the Code of Residents' Rights;
- (f) The right to refer the matter to the dispute resolution process and the right to have a representative or support person present at all meetings; and
- (g) The right to re-occupy in the case of abandonment of the unit.

31.3 The Trust shall send a copy of the notice of intention to terminate and your response (if any) to the Statutory Supervisor. The Trust will also consult with you, your representative (if appropriate) and the Statutory Supervisor as required under the Code of Practice.

Notice of Termination

31.4 If on expiry of the notice of intention to terminate, the Trust determines it will terminate this agreement the Trust shall issue you with a written notice of termination. The termination notice shall comply with the Code of Practice and state (amongst other things):

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

31.5 The period of notice specified in a notice to terminate shall not be less than one (1) month.

Payment on Termination

31.6 If the Trust terminates this agreement pursuant to this clause, the Trust shall within five (5) working days from the date on which termination takes effect pay to you all sums due (less the deductions itemised in clause 36 herein).

32.0 TERMINATION ON DEATH OR PERMANENT CARE

32.1 This Agreement shall terminate;

- (a) Upon the death of the resident; or
- (b) Where two residents have jointly signed this agreement, on the death of the surviving resident or,
- (c) If the resident or surviving resident has permanently moved to the Home or other rest home or hospital care.

32.2 The resident shall be liable for the Outgoings until such time as the Trust receives payment for an occupation right agreement for the unit from an incoming resident, subject to any reduction in the Outgoings pursuant to clause 35.4.

32.3 The Trust shall be entitled to recover all outstanding Service Charges as at the date the resident stops living in the unit.

33.0 TERMINATION BY THE RESIDENT

33.1 This agreement shall terminate upon the expiry of one (1) months written notice from you terminating the agreement.

33.2 You shall be liable for the Outgoings until such time as the Trust receives payment for an occupation right agreement for the unit from an incoming resident, subject to any reduction in the Outgoings pursuant to clause 35.4.

33.3 The Trust shall be entitled to recover all outstanding Service Charges as at the date you stop living in the unit.

34.0 REFURBISHMENT OF INTERIOR OF UNIT ON TERMINATION

34.1 The provisions in the clause shall apply to refurbishment of the unit by the Trust on termination of this agreement. The term "refurbishment" in this agreement includes refurbishment of the Trust's Chattels.

34.2 On termination or earlier if agreed, the Village Manager will arrange an inspection of the interior of the unit with you or your representative to determine the refurbishment of the interior of the unit required, provided this inspection shall take place no later than fifteen (15) working days after the termination date. You or your representative can nominate another person to attend the refurbishment inspection.

34.3 If after the Village Manager has made all reasonable enquiries, you or your representative cannot be contacted or you fail to respond to a request to arrange a refurbishment inspection, the Village Manager may carry out the inspection without further notice and will determine the refurbishment of the unit required. You agree to accept the refurbishment determined as necessary by the Village Manager in such circumstances.

34.4 After completion of the refurbishment inspection, the Village Manager will within five (5) working days of the inspection advise you and your representative in writing of the proposed refurbishment work for the unit (the "Refurbishment Notice").

- 34.5 You (or your representative) shall within five (5) working days of receipt of the Refurbishment Notice inform the Village Manager in writing of your:
- (a) Agreement with the Refurbishment Notice; or
 - (b) Disagreement with any matters itemised in the Refurbishment Notice.
- 34.6 If you or your representative do not respond to the Refurbishment Notice within the time specified in the Refurbishment Notice you will be deemed to have accepted the Refurbishment Notice.
- 34.7 If you or your representative agree with the Refurbishment Notice or there is deemed acceptance under clause 34.6 above, the Village Manager will obtain quotes from the Trust's nominated contractors or tradesmen or other suppliers as appropriate. The Village Manager will inform you or your representative of the quotes obtained and provide details of the Trust's nominated tradesmen and contractors or suppliers (including where appropriate qualifications and experience).
- 34.8 If you (or your representative) do not agree with:
- (a) The Refurbishment Notice (either wholly or in part); or
 - (b) The quotes obtained for the work by the Village Manager;
- the following procedure shall apply:
- i) you agree an Assessor will be appointed to determine the refurbishment to be completed;
 - ii) the Assessor will be an independent person and have suitable experience and qualifications and be a current member of an appropriate trade association (if applicable);
 - iii) the Assessor's decision will be final and binding upon you and the Trust;
 - iv) if you and the Trust are unable to agree on the appointment of an Assessor either party may refer the matter to the Complaints Procedure; and
 - v) if the disagreement is unable to be resolved through under the Complaints Procedure either party may issue a Dispute Notice under the Act.

- 34.9 On confirmation from you or your representative that the quotes obtained by the Village Manager are agreed to, or on resolution of any disagreement between the parties, the Village Manager will instruct the Trust's contractors, tradesmen or suppliers to carry out the refurbishment work.
- 34.10 All refurbishment costs of the unit will be charged to you and deducted from the sum paid to you in accordance with clause 36 of this agreement.
- 34.11 You agree to allow the Trust reasonable access to the unit for the refurbishment inspection and for the refurbishment work to be carried out.

35.0 SALE PROCESS: SALE OF OCCUPATION RIGHT AGREEMENT

- 35.1 On completion of refurbishment of the unit or earlier if agreed to by you, the following sales procedure will take place:
- (a) The Trust shall instruct an independent registered valuer to provide a fair market valuation for the unit.
 - (b) You and the Trust shall each pay half the cost of this valuation, which will be deducted on the settlement date in accordance with clause 36 of this agreement.
 - (c) The Trust and you will endeavour to reach agreement on the selling price taking due notice of the valuation obtained.
 - (d) If agreement on the selling price for an occupation right agreement cannot be reached between you and the Trust within fifteen (15) working days of you receiving a copy of the valuation, you may instruct a valuer to obtain a second valuation at your cost.
 - (e) If there is no agreement after a copy of the second valuation has been provided to the Village Manager, either party may initiate the disputes resolution process through the Complaints Procedure.
- 35.2 The Trust agrees to take all reasonable steps to find a suitable replacement resident for the unit following termination of this agreement including:
- (a) Marketing of the unit for occupancy under an occupation right agreement; and
 - (b) Responding to enquiries for the unit in a timely and helpful manner.

- 35.3 If an occupation right agreement for the unit has not been entered into within three (3) months of the termination date, the Trust shall report to you in writing on the marketing and progress of the sale and thereafter monthly until the issue of a new occupation right agreement to a third party.
- 35.4 The Outgoings payable by you shall reduce by 50% on the later of:
- (a) Six (6) months after the termination date; or
 - (b) The date you stop living in the unit and remove all personal belongings.
- 35.5 If an occupation right agreement for the unit has not been entered into within nine (9) months of the termination date you may issue a Dispute Notice under the Act.
- 35.6 The Trust may purchase your interest under this agreement, provided the sum paid shall not be lower than the fair market price as determined by an independent registered valuer or a price offered by a prospective purchaser. Nothing in this clause shall prevent you and the Trust agreeing to a purchase price differing from the value determined by independent valuation.
- 35.7 You shall be entitled to introduce a prospective resident for the unit. However, the Trust is not be obliged to accept this person if the Trust's normal entry criteria are not met or the persons offer to purchase does not meet the fair market value or is on conditions unacceptable to the Trust.
- 35.8 If you introduce a prospective resident for the unit and a new agreement is entered into with this person the Trust will ensure you are only charged actual costs incurred by the Trust in the sales process.

36.0 PAYMENT ON TERMINATION OF OCCUPATION RIGHT AGREEMENT

- 36.1 The Trust shall pay to you an amount equal to the sale price achieved for the unit to an approved purchaser, less:
- (a) A Management Fee that you must pay to the Trust. The Management Fee is calculated from the commencement date of this occupation right agreement at a daily rate for the first five (5) years of the occupation right agreement at a rate of 4% per annum of the Agreement Fee paid by an incoming resident for the right to occupy the unit under an occupation right agreement.

- (b) The Trust's sales administration fee, legal fees and the Statutory Supervisor's fee;
- (c) Half the valuation fee for the unit;
- (d) Any real estate agent commission;
- (e) Any marketing costs including advertising costs charged by a real estate agent or incurred by the Trust;
- (f) Any outstanding Outgoings or Service Charges (subject to clause 35.4);
- (g) Any cleaning costs for unit incurred by the Trust;
- (h) Any refurbishment costs that the Trust is entitled to recover under this agreement;
- (i) Cost of a replacement security pendant (if not returned by you); and
- (j) Any alteration costs that the Trust is entitled to recover under this agreement.

36.2 For the purposes of clause 36.1(a) occupation by you of the unit will be deemed to have ceased on the date the Trust receives payment of the Agreement Fee under a new occupation right agreement from an incoming resident.

36.3 Subject to clause 36.4 below:

- (a) The Trust shall pay to you the amount calculated in accordance with clause 36.1 within five (5) working days of receipt of:
 - i. Payment of the Agreement Fee from an incoming resident; or
 - ii. In the case of termination of the agreement by the Trust as set out in clause 31.6 herein.
- (b) For payment under clause 29.10(c) (being payment on termination due to damage or destruction of the unit and a decision not to repair or replace the unit) payment will be made to you:
 - i. On acceptance of the Trust's insurance claim for your unit and the proceeds from this claim being received by the Statutory Supervisor;

- ii. The amount due to you under clause 29.10(c) being finalised by the Trust in consultation with you and the Statutory Supervisor; and
 - iii. The Statutory Supervisor processing the payment within ten (10) working days of receipt of the insurance proceeds.
- (c) If the insurance proceeds for your unit are received by the Trust instead of the Statutory Supervisor, the Trust agrees it will make payment in accordance with sub-clause (b) above;

provided when monies are received from a third party payment will only be made once the payment has been received and processed by the Statutory Supervisor and the monies are available to the Trust for payment to you or, in the event of delay, as soon as practicable thereafter.

36.4 Notwithstanding clause 36.3 above, prior to payment of any amount due under that clause, you or your representative must provide the Trust with:

- (a) An acknowledgement of termination of this agreement in the form requested by the Trust.
- (b) Probate or letters of administration in the case of a deceased resident or a certified copy of your last will if no probate or letters of administration are applied for.

37.0 REMOVAL OF PERSONAL BELONGINGS FROM UNIT

37.1 Within fifteen (15) working days after the termination date, you or your representative shall remove from the unit all of your possessions and belongings. If you fail to do so the Trust may at your expense and risk remove and place the belongings into storage.

37.2 If you do not take possession of your belongings within one (1) month of the termination date, the Trust may sell the belongings and the sale proceeds after deduction of expenses for removal, storage and sale shall be paid to you.

37.3 The Trust shall not exercise the power of sale without first giving to you five (5) working days prior written notice of intention to sell. The Trust shall not be liable for any loss or damages incurred, in respect of the removal, storage or sale of your belongings.

38.0 SET-OFF

38.1 At all times during this agreement and within twelve (12) months of termination of this agreement, the Trust shall be entitled to set-off and apply any and all moneys at any time held by and other indebtedness at any time owing by the Trust to or for the credit or the account of the resident against any or all of the obligations of the resident now or hereafter existing under this agreement irrespective of whether or not the Trust shall have made any demand under this agreement. These rights shall be in addition to all other rights and remedies that the Trust may have.

39.0 RULES

39.1 Rules for the management and operation of the Village including the common facilities are set out in the Fifth Schedule of this agreement.

39.2 The Trust, in consultation with residents, may from time to time make, modify and amend the Rules. The Trust will give each resident a copy of any modification or amendment to the Rules.

39.3 You agree as a term of this agreement to comply with the Rules and any modification or amendment of the Rules. You agree that if you fail to observe or comply with the Rules that such non-observance or failure will be deemed to be a breach of this agreement.

39.4 You agree the terms of this agreement will prevail in the event of any conflict between the Rules and this agreement.

39.5 The Trust shall not be liable for any loss or damage arising out of a failure to enforce the Rules.

40.0 DEVELOPMENT OF VILLAGE

40.1 The Trust shall prior to commencing any development of the Village:

- (a) Obtain the consent of the Statutory Supervisor;
- (b) Consult with residents on the proposed development of the Village giving the residents details of the development and any potential impact on residents

40.2 Notwithstanding clause 40.1, if prior to the commencement date of this agreement the Trust has completed consultation with residents, the Trust shall not be required to further consult with residents on a proposed development. The Trust shall ensure, as

far as practicable, that details of the proposed development are disclosed prior to a resident entering into this agreement.

- 40.3 When carrying out a development the Trust shall use its best endeavours to cause as little inconvenience as possible to residents and will request its contractors or tradesmen to minimise any damage, noise or disruption to residents.
- 40.4 The Trust shall ensure any development is carried out in accordance with the plans and specifications provided to residents (subject to such modifications that may be necessary) and in accordance with all territorial authority consents, and building and fire statutory requirements.
- 40.5 You shall not be entitled to object or claim compensation in respect of any development once consultation with residents has been completed and shall if required by the Trust sign any consent or other documents as may be required.

41.0 DISPOSAL OF VILLAGE BY TRUST

- 41.1 The Trust shall be entitled to market, sell, assign or dispose of its interest in the Village.
- 41.2 The Trust shall obtain the consent of the Statutory Supervisor to any disposal of the Village including any disposal of the land or assets associated with or used in connection with the Village.
- 41.3 The Trust shall:
- (a) Consult with residents in the manner and time as directed by the Statutory Supervisor; and
 - (b) Ensure any purchaser meets and consults with residents.
- 41.4 With effect from the date of sale, assignment, or disposal, all the Trust's rights and obligations under this agreement will pass to the new operator, and the Trust will have no further rights and further obligations to you under this agreement. You agree to continue to observe and perform all the obligations under this agreement for the benefit of the replacement operator.

42.0 COMPLAINTS PROCEDURE

- 42.1 The Trust has a complaints procedure and policy which is available from the Village Manager. The complaints policy is reviewed by the Trust and updated from time to time to ensure the policy complies with the Code of Practice.
- 42.2 You may make a formal or informal complaint and, in the first instance, all complaints should be referred to the Village Manager. The Village Manager will try to resolve the complaint simply, fairly and quickly in accordance with the complaints policy.
- 42.3 Included in the complaints policy will be the contact details of people and agencies that you can talk to about a wish to make a formal complaint or a formal complaint already made.
- 42.4 When a formal complaint is made, the Trust will suspend taking any proposed action that is the subject of the complaint until the complaint is resolved.
- 42.5 If a formal complaint is unable to be resolved by agreement and twenty (20) working days has elapsed since the complaint was first made, the Trust must refer the complaint to the Statutory Supervisor and ask the Statutory Supervisor to work with the parties to resolve the complaint. If the complaint remains unresolved after a further twenty (20) working days the Trust must provide you with the option of mediation.
- 42.6 If through mediation the complaint is not able to be resolved, you may issue a dispute notice which will require the complaint to go to a disputes panel for resolution.
- 42.7 If a complaint is resolved by agreement, the Village Manager shall record the outcome in writing and each party to the complaint will sign this record. The Village Manager will provide a signed copy of the record to each party to the complaint.
- 42.8 As required under the Code of Practice, the Trust will report six-monthly to the Retirement Commissioner in relation to any formal complaint received.

43.0 DISPUTE NOTICES/DISPUTE PANEL

- 43.1 You may request a complaint be referred to a Disputes Panel by issuing a dispute notice. The Trust may also issue a dispute notice.

43.2 Within twenty (20) working days of receipt of a dispute notice from a resident or the issue of a dispute notice by the Trust, the Trust shall convene a Disputes Panel. Resolution of the dispute shall be accordance with the provisions of the Act.

43.3 The Trust shall forward a copy of any dispute notice to the Statutory Supervisor.

44.0 ANNUAL GENERAL MEETING

44.1 The Trust shall hold an annual general meeting of residents of the Village no later than six (6) months after the end of each financial year and residents shall be given notice in writing of the meeting at least thirty-one (31) working days before the date of meeting. Such notice shall be in the form specified in the code of practice.

44.2 At the annual general meeting the agenda shall include the:

- (a) Accounts;
- (b) Statutory Supervisor's report and any matters arising;
- (c) Trust Chairperson's report;
- (d) Village Manager's report; and
- (e) Maintenance report (if not included in the Village Manager's report).

44.3 The meeting will be conducted and information provided in accordance with the Code of Practice.

44.4 The Trust will ensure:

- (a) Minutes of the meeting are made and kept at the Village and are available to residents on request; or
- (b) All residents are provided with copies of the minutes within thirty (30) working days of the meeting.

45.0 SPECIAL GENERAL MEETING

45.1 The Trust shall call a special general meeting of residents in the following circumstances:

- (a) When the consent of residents is required;
- (b) If asked to do so by not less than 10% of the residents;

(c) If asked to do so by the Statutory Supervisor.

45.2 The Trust shall give residents and the Statutory Supervisor at least ten (10) working days written notice of the special general meeting in accordance with the Code of Practice.

45.3 At the special general meeting, residents shall be permitted to give their opinions or directions to the Statutory Supervisor.

45.4 The meeting will be conducted and information provided in accordance with the Code of Practice.

45.5 The Trust will ensure:

(a) Minutes of the meeting are made and kept at the Village and are available to residents on request; or

(b) All residents are provided with copies of the minutes within thirty (30) working days of the meeting.

46.0 INFORMAL MEETINGS

46.1 The Trust may call informal meetings with residents in the Village to discuss matters relating to the Village.

46.2 The Trust shall ensure proper notice of any such meetings is given to residents.

46.3 The Village Manager may represent the Trust at such meetings.

46.4 A quorum for any such meeting will be 25% of residents in the Village.

46.5 You agree to be bound and adhere to any decision or resolution passed by a majority of residents at a meeting called under this clause.

47.0 NOTICES

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

47.2 If a notice addressed to a party's last known address or usual place of residence or business is posted, it is deemed, in the absence of evidence to the contrary, to have been received at the time when it would in the ordinary course of post be delivered.

47.3 The Trust shall copy all notices to the Statutory Supervisor as required under this agreement and in accordance with the Trust's covenants in the Deed of Supervision.

48.0 VARIATION OR REPLACEMENT AGREEMENT

48.1 The Trust shall be entitled to call upon you to execute an agreement in terms similar to this agreement or a variation of this agreement if the replacement agreement or variation is for the purpose of:

(a) Incorporating a material change to the information contained in the agreement that has become apparent or necessary from:

- i. a change in the circumstances of the Trust;
- ii. a change in the law;
- iii. an agreement with you; or
- iv. on the request of the Statutory Supervisor.

(b) To remedy a mistake or error in the agreement.

48.2 The Trust shall comply with its obligation to consult residents under the Code of Practice.

48.3 The Trust shall meet the cost to the resident for any variation or replacement agreement, except where the need for the new agreement or variation is due a change the in the law, or an error or mistake due to information provided by the resident prior to the signing this agreement in which case the cost of the new agreement or variation will be paid for by the resident.

49.0 TRUST'S CONSENT

49.1 The Trust agrees that it will not unreasonably withhold consent if requested by you under this agreement and that any consent will be in writing.

50.0 PROCEDURE IF STATUTORY SUPERVISOR CHANGES

50.1 If the Statutory Supervisor at the commencement date or any replacement Statutory Supervisor ceases to be the statutory supervisor of the Village, the Trust will promptly appoint a new Statutory Supervisor with the required qualifications to act as Statutory Supervisor for the Village in accordance with the procedures set out in the Act and the Deed of Supervision.

50.2 If the Trust and the residents of the Village by extraordinary resolution passed at a meeting held in accordance with the Deed of Supervision decide that there shall be no statutory supervisor, the Trust will make application to the Registrar of Retirement Villages under the Act for an exemption to appoint a statutory supervisor for the Village. If the exemption is approved, the Trust and you agree that they will abide by all the conditions required by the Registrar of Retirement Villages.

51.0 LEGAL ADVICE

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

51.2 You are advised by the Trust that until such independent legal advice has been obtained and until the certification section of the attestation clause in this agreement is correctly completed by your legal advisor, this agreement is deemed by the Trust not to have been entered into by you, notwithstanding that it may have been signed by you.

52.0 DATE OF AGREEMENT

52.1 Subject to clause 51, this agreement is deemed to have been signed on the date set out in clause A.

53.0 UNIT TO BE BUILT OR COMPLETED

53.1 Where the Trust is to build or complete the unit the trust shall:

- (a) Provide you with a copy of a plan showing the proposed location of the unit; and
- (b) If held by the Trust, the Trust shall provide you with a copy of the floor plan for the unit and a condensed summary of the specifications for the unit. This information may be provided by the Trust in the form of a marketing brochure.

53.2 The Trust agrees that it will ensure its contractors and tradesmen build or complete the unit in a tradesmen like manner so as to comply with any resource consent and building consent; provided the Trust shall be entitled to make alterations or changes to the plans, specifications and method of construction of the unit as are necessary to comply with the requirements of the territorial authority or its building inspector or a fire safety officer. You agree you shall not be entitled to nor shall claim any compensation for any alterations or changes to the plans, specifications or method of construction of the unit.

- 53.3 The Trust shall specify the proposed date of completion for the unit in the Third Schedule.
- 53.4 You shall pay the deposit specified in the Third Schedule to be held by the Statutory Supervisor in accordance with clause 10 of this agreement.
- 53.5 If you have not cancelled the agreement during the cooling off period, the Trust shall advise the intending resident of practical completion of the unit and agree with the intending resident a settlement date, which unless otherwise agreed will not be later than ten (10) working days after the date on which the Trust provides you or your legal representative with confirmation of practical completion of the unit.
- 53.6 On the settlement date the intending resident will pay the balance of the agreement fee due to the Trust as specified in the Third Schedule.

54.0 SPECIAL CONDITIONS

54.1 ^

Signed by the **Tamahere Eventide Home Trust** by way of delegated authority from the Tamahere Eventide Home Trust Board, dated 24 April 2013, in the presence of:

| | | |
|--|---|-------------------------|
| |) | |
| |) | |
| |) | Chief Executive Officer |
| |) | |
| |) | |
| |) | |
| |) | General Manager |

Signature of witness

Name of witness

Occupation

Address

Signed by ^ as resident in the presence of the)
resident's solicitor in accordance with the) _____
certification clause, pursuant to section 27(5))
of the Act, below:)

Signature of witness

Name of witness

Occupation

Address

Certification under Section 27(5) Retirement Villages Act 2003

Name of Village: Tamahere Retirement Village

Registration Number of Village: 2040343

I, , Solicitor, certify that:

- (a) I explained to the general effect of the attached agreement and its implications before he or she signed the agreement in my presence; and
- (b) I gave the explanation in a manner and in language that was appropriate to the age and understanding of .

Dated:

Certifying solicitor's signature: _____

Full Name:

Firm:

Street address:

Postal address:

E-mail address:

Telephone number:

Fax number (optional):

FIRST SCHEDULE – OUTGOINGS

- 1.0 The Outgoings payable by you are all costs expenses and outgoings incurred by the Trust payable in respect of the Village (including the Common Facilities).
- 2.0 You agree to pay to the Trust (by direct payment authority monthly in advance) a 1/108 share of the Outgoings or a proportionate share of the Outgoings based on the total number of completed units in the Village, and such Outgoings shall include:
- (a) all taxes in respect of the Village (except income tax or capital taxes in respect of the Trust's income or profits);
 - (b) all rates, levies, charges, assessments and fees payable to any government, territorial or local authority;
 - (c) costs of compliance with any statute, regulation, by-law or other lawful obligation in respect of the Village.
 - (d) charges for water and any other utilities or services;
 - (e) insurance premiums and associated valuation fees;
 - (f) all salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village;
 - (g) the costs of providing an emergency call system, security, fire protection systems, cleaning, gardening and other services for the general use and benefit of the residents in the Village;
 - (h) the costs of maintenance and repair of all buildings (including the common facilities such as the Common Centre) but excluding the cost of structural maintenance and repairs (except under sub-clause 2.0(j) below) and any costs payable directly by a resident under clause 12.0 of the agreement;
 - (i) all fees and expenses of any Statutory Supervisor, Auditor, the Trust's accountant, legal advisors and arising in relation to the common facilities and Village generally;
 - (j) a reasonable sum in each financial year as determined by the Trust in its sole discretion as a contribution to the maintenance fund to cover the cost of Village repairs, maintenance, refurbishments and replacements which may be of a substantial but infrequent or irregular nature; and

- (k) a reasonable allowance for depreciation of the Village recreational facilities and the chattels comprising the common facilities.

SECOND SCHEDULE – COMMON FACILITIES

Garden areas

Car parking areas

Community Centre

Any other recreational area as may be specified by the Trust from time to time.

THIRD SCHEDULE – SCHEDULE OF DETAILS

- A. Full Name of Resident: ^
- B. Unit number: ^
- C. Commencement date of occupation: ^
- D. Agreement Fee for a completed unit:
- (a) Deposit: ^
- (b) Balance: ^
- Total:** ^
- E. Initial Outgoings and Service Charges:
- (a) Outgoings: (inclusive of GST).
- (b) Service Charges: ^
- F. Agreement Fee for a unit to be built or completed:
- (a) Deposit: ^
- (b) Balance: ^
- Total:** ^
- G. Proposed date of completion:
- H. Additional Notes:
- I. You will pay all utility charges for the unit as set out in clause 12 of the agreement.
- J. The amount payable for the allotment of the Occupation Right Agreement to the Statutory Supervisor is \$^ (inclusive of GST).

FOURTH SCHEDULE - PRIVACY ACT AUTHORISATION AND APPLICATION

For the purpose of determining your suitability for occupation of the unit and your continued suitability by reference to your physical or mental health, you authorise:

1. The Trust to collect health information from any health agency possessing information relevant to your physical and mental health; and
2. Any health agency to disclose relevant health information about you to the Trust to assist determination of your continued suitability for occupation of the unit.
3. You shall during office hours have the right to access and correct all personal information held by the Trust about you.
4. For the purposes of this authorisation the terms "health agency" "health information" and "personal information" are to have the meanings prescribed to them under the Privacy Act 1993 and the Health Information Privacy Code 1994.

.....
^

.....
Date

FIFTH SCHEDULE – VILLAGE RULES

You agree and undertake to comply with the following rules:

1. To ensure that all window coverings blinds, curtains or drapes are hung with an approved curtaining facing the exterior of the building.
2. Not to mark, stain, paint, drive nails or screws or the like into or otherwise damage or deface any part of the unit, common facilities or other building in the Village without the approval in writing of the Village Manager.
3. To only use the picture rails to hang pictures, photos, paintings or other similar decorations or ornaments on the walls of the unit and not to use nails to secure any object to the walls.
4. To report any repairs and maintenance required to Village property (including the unit and common facilities) as soon as practicable to the Village Manager on: 07 859 1581.
5. To take all practicable steps to prevent infestation of the unit by vermin and/or insects.
6. To keep your parking space tidy and free of all litter.
7. To keep clean all glass in windows and doors of the unit and promptly replace with new glass of the same thickness and safety rating as at present, if broken or cracked as a result of lack of care misuse or abuse on your part or your guests.
8. Not to damage any lawn, garden, tree, shrub, plant or flower situated in the Village or Home.
9. Not to use for your own purposes as a garden any portion of the Village except with the prior written consent of the Village Manager.
10. To co-operate with the Village Manager in the preservation of the gardens.
11. To ensure you and your guests when using the common facilities shall be adequately clothed and shall not use language or behave in a manner likely to cause offence, embarrassment or nuisance to other occupants of the Village or to any person lawfully using the common facilities.

12. To take all reasonable steps to ensure that your guests do not behave in a manner that is likely to interfere with the peaceful enjoyment of Village residents or of any person lawfully using the common facilities.
13. Not to create any noise in the unit, Village or Home likely to interfere with the peaceful enjoyment of other residents of the Village or the occupants of the Home.
14. Not to play any musical instrument use or permit to be used any radio record player tape recorder television loudspeaker screen or other equipment or like media in such a manner that it is likely to cause interference to radio and television reception of other residents in the Village or the occupants of the Home.
15. Except with the consent in writing of the Village Manager, not to:
 - (a) Hang any washing, towels, bedding, clothing or other articles on any part of the Village in such a way as to be visible from outside the buildings forming part of the Village other than on any lines provided by the Trust for this purpose and then only for a reasonable period;
 - (b) Inscribe, paint, display or affix any sign advertisement, name, flagpole, flag or notice on any part of the outside or inside of any building or structure forming part of the Village; or
 - (c) Erect any awning, blind, shades, television aerial or antennae on the exterior of any buildings forming part of the Village.
16. Not to park or stand any motor or other vehicle upon the common facilities except with approval of the Village Manager.
17. To keep securely fastened all doors and windows of the unit on all occasions when the unit is left unoccupied and authorise the Village Manager to enter the unit and fasten the same if left insecurely fastened.
18. To give written notice to the Village Manager if the unit is to be left vacant for more than seven (7) consecutive days.
19. Not to deposit or throw upon the common facilities any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of occupants of other parts of the Village or of any person lawfully using the common facilities.

20. Not to throw or allow to fall, or permit, or suffer to be thrown or to fall any paper, rubbish, refuse, cigarette butts or other substance whatsoever out of the windows or doors of the Unit.
21. To keep clean and free from dirt and rubbish such parts of the common facilities as immediately adjoin the unit and any damage thereto or costs for cleaning or repair caused by breach hereof shall be borne by the Resident.
22. To maintain within the unit, or on such parts of the common facilities as may be authorised by the Village Manager, in a clean and dry condition an adequately covered receptacle for rubbish.
23. To ensure that before rubbish is placed in the rubbish receptacle for the unit it is securely wrapped or in the case of tins or other containers completely drained.
24. Not to more than twelve (12) hours before the time rubbish is normally collected, place the rubbish receptacle within the area designated for such purpose by the Village Manager.
25. When the rubbish has been collected to promptly return the rubbish receptacle to the unit or designated area on the common facilities and
 - (a) Not to place anything in the receptacle of another resident except with the permission of that resident; and
 - (b) To promptly remove any spilt rubbish (whether by the Resident or the rubbish collector) and take such action as may be necessary to clear the area in which the rubbish has spilt; and
 - (c) If the Trust provides central garbage bins for use by residents, to place his or her rubbish in those bins for collection.
26. Not to burn any rubbish or waste in the unit or otherwise in the Village or Home.
27. Not to bring upon the unit any heavy machinery or other plant or equipment of such nature or size as to cause or in the reasonable opinion of the Village Manager to be likely to cause any structural or other damage to the floors or walls or any other parts of the units or the common facilities.
28. Not to use nor allow the toilets, sinks, drains or any other plumbing facilities in the units or the common facilities to be used for any purpose other than that for which such facilities are constructed or

intended and the Resident will not deposit nor allow the deposit of any sweepings, rubbish or other matter in such facilities and any damage caused or arising out of such misuse of the facilities shall immediately be made good by the Resident.

29. To ensure that all water taps are promptly turned off after use.
30. Not to use any method of heating other than by electricity except with the written consent of the Trust.
31. Not to, except with the approval in writing of the Village Manager, use or store upon the unit or upon the common facilities any flammable chemical, liquid, gases or the flammable material other than small quantities of chemicals, liquids, gases or the materials used or intended to be used for domestic purposes or any such chemical, liquid, gases or other material in a fuel tank of a motor vehicle or internal combustion engine.
32. You may with the prior written consent of the Trust keep a cat, small dog or bird in the unit. You shall ensure that your guests do not bring any animal into the unit or the common facilities. The Trust reserves the right to vary this rule on compassionate grounds.
33. In the event of any infectious illness occurring in the unit, to immediately give notice of the illness to the Village Manager and to the appropriate public authorities. You shall at your expense clean and disinfect the unit to the satisfaction of the Village Manager and the appropriate public authorities and comply with any requirements of the public authorities.
34. Not to:
 - (a) Obstruct the lawful use of the common facilities by any person;
 - (b) Permit any auction, bankrupt, garage or fire sale to be conducted or take place in the Village without the prior written consent of the Trust;
 - (c) Use or permit to be used the common facilities or part thereof for any business or commercial purpose.
35. The Trust may make rules relating to the common facilities and any other amenities provided by the Trust and you shall adhere to such rules.
36. Any dispute between residents or between the Village Manager and a resident in respect of these Rules will be referred to the Complaints Procedure.

SIXTH SCHEDULE – DOCUMENTS PROVIDED TO RESIDENT

You acknowledge that you have received copies of the following documents prior to you entering into this agreement or making any payment under it:

1. Disclosure Statement.
2. Occupation Right Agreement.
3. Code of Practice
4. Code of Resident’s Rights.

.....
^

.....
Date

Note: Copies of the Deed of Supervision appointing the Statutory Supervisor and latest audited financial accounts for the Village are available on request.