

# OCCUPATION RIGHT AGREEMENT

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**KAPITI RETIREMENT TRUST**

**AND**

**{INSERT NAMES}**

**{INSERT ADDRESS}**

**SEVENOAKS – MIDLANDS GARDENS RETIREMENT VILLAGE**

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AGREEMENT DATED THE LATER OF THE DATES IT HAS BEEN SIGNED BY THE RESIDENT AND SIGNED BY THE OPERATOR

**BETWEEN**

**KAPITI RETIREMENT TRUST** a registered charitable trust having its registered office at Lodge Drive, Sevenoaks, Paraparaumu (called "the Operator")

**AND**

**{INSERT RESIDENT NAME(S)}** (called "the Resident")

**WHEREAS**

- (A) The Operator owns and operates a retirement village at Paraparaumu known as Sevenoaks/Midlands Gardens Retirement Village (called "the Village"), registration number 1966478, providing accommodation and health care for people of the age when they are entitled to NZ Superannuation and for whom the Village will provide appropriate accommodation.
- (B) The terms and conditions of residency in the Village are as set out in this agreement.
- (C) The Resident has made application to the Operator for residency of a Unit in the Village.
- (D) The Resident has supplied Medical and Financial Reports to the Operator and on the basis of such reports the Operator has agreed to issue to the Resident a licence to occupy a Unit.
- (E) The Statutory Supervisor of the Village appointed pursuant to the Retirement Villages Act 2003 has approved this Occupation Right Agreement.

IT IS AGREED AS FOLLOWS:

**1 DEFINITIONS**

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- 1.1 Margin headings are for convenience only and are not intended to form part of this Occupation Right Agreement.
- 1.2 In this Occupation Right Agreement where the context so admits:
  - (a) words implying the masculine gender shall include the feminine.
  - (b) words implying the singular number shall include the plural and vice versa.
  - (c) words and expressions referred to shall have the meanings as set out below:

"Act" means the Retirement Villages Act 2003 as updated, amended or replaced from time to time.

"Amenities Contribution" means the amount paid by the Resident on entry to the village as a contribution to the common facilities of the village.

"Capital Purchase Sum" means the price, excluding the Amenities Contribution, the Resident pays for the Occupation Right Agreement on entering the village in accordance with the Schedule of Details.

"Capital Repayment Entitlement" means the total repayment available to the Resident on the termination of the Occupation Right Agreement.

"Capital Profit Sum" means the amount by which the "as is" valuation of the Occupancy Right Agreement on its termination exceeds the Capital Purchase Sum and is used in the determination of the Capital Repayment Entitlement payable to the Resident on termination.

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

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

"Code of Resident's Rights" means the code of resident's rights which is applicable from time to time pursuant to Section 92 of the Act.

"Commencement Date" means the earlier of the date that the resident takes occupation of the unit and Occupation Date.

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

"Deferred Management Fee" means the Operator fee deducted from the Capital Purchase Sum on termination of the Occupation Right Agreement.

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

"Further Development" means further development defined in clause 15 of this Occupation Right Agreement.

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

"Occupation Date" means the date agreed between the Resident and the Operator that the unit is available for the Resident to take occupation.

"Occupation Right Agreement" means this licence to occupy.

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

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

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

"Repayment Date" means the date upon which the Capital Repayment Entitlement is paid and is defined as such in clause 17.1 of this Occupation Right Agreement.

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

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

"Service Fee" means the monthly payments a Resident makes as detailed in clause 3.2 of this Occupation Right Agreement.

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

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

"Statutory Supervisor" means Trustees Executors Ltd of Level 11, 51 Shortland Street, PO Box 4197, Auckland 1015. Telephone 0800 878 783 or any replacement statutory supervisor appointed pursuant to the Deed of Supervision.

"Total Capital Sum Payable" is the total purchase price of the Occupation Right Agreement and comprised the Capital Purchase Sum and the Amenities Contribution.

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

"Village" means when referred to in this document, the complex of Kapiti Retirement Trust located within and forming part of the complex known as Sevenoaks/Midlands Gardens Retirement Village situated at Paraparaumu together with any additional Units constructed by the Operator and forming part of the complex.

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

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

- (a) A Saturday, a Sunday, Wellington Anniversary Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) A day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) If 1 January falls on a Friday, the following Monday; and
- (d) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

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

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- 2.1 In consideration of the Resident paying to the Operator the Capital Purchase Sum and Amenities Contribution for the Occupation Right Agreement specified in the Schedule of Details ("the Total Capital Sum Payable") including GST (if any) the Operator agrees to supply accommodation to the Resident pursuant to the terms of this licence to occupy the Unit and to supply the right to use common areas of the Village, and to pay to the Resident the Capital Repayment Entitlement less any amount which the Operator shall be entitled to deduct on termination in accordance with clauses 17 and 18. The nature of the right to occupy the Unit is a contractual licence to occupy that does not grant the Resident any interest in land of the Unit.
- 2.2 The Resident shall be entitled to occupy the Unit on the date of occupancy specified in the Schedule of Details.
- 2.3 The Resident shall, subject to clause 4.10, be entitled for life to the quiet use and enjoyment of the Unit without interruption or disturbance by the Operator or any person lawfully claiming under it, together with the use in common with all other residents of the Village and all other persons from time to time to be authorised by the Operator of all those parts of the Village including entrances, lobbies, corridors, toilets, stairways, lifts, paths, driveways, visitors' car parking areas, gardens, grounds, amenities and conveniences other than those reserved to the Operator or to any other person from time to time by the Operator (called the "common areas"), on the terms and conditions set out in this Occupation Right Agreement.
- 2.4 The above rights of occupancy are not transferable and there are no rights of transmission except transmission by survivorship as between Residents who are joint tenants.

## **3 PAYMENTS**

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- 3.1 Charges Payable Prior to Occupation of the Unit
  - (a) Prior to occupation of the unit the Resident is required to pay the operator the Total Capital Sum Payable which comprises the Capital Purchase Sum plus the Amenities Contribution.

- (b) Upon application for this Occupation Right Agreement the Resident shall have paid to the Statutory Supervisor an initial deposit of an amount as agreed with the Operator.
- (c) The balance of the Capital Purchase Sum plus the Amenities Contribution shall be paid by the Resident to the Statutory Supervisor prior to the Occupation Date, or at any other time agreed by the Resident and the Operator.
- (d) If for any reason save the default of the Operator the Resident fails to pay any portion of the payments when due then without prejudice to any other rights or remedies of the Operator the Resident shall pay to the Operator interest on the amount due at the rate of 4% per annum above the published business overdraft interest rate of the Operator's bank calculated on a daily basis.

### 3.2 Charges Payable During the Term of This Agreement

#### (a) Service Fee

- (i) The Resident shall pay to the Operator a Service Fee ("the Service Fee"). The Service Fee consists of firstly a charge in respect of expenses relating to the Operator's provision of accommodation, the Facilities and common areas in the Village ("the Village Outgoings Charge") and secondly a charge for the provision of personal care and/or other services as may be appropriate ("the Service Charge").
- (ii) The Village Outgoings Charge shall be paid by the Resident in consideration of the grant of the right to occupy the Unit and the supply of domestic goods and services including accommodation pursuant to this Occupation Right Agreement, and the provision of the Facilities and the right to use the common areas of the Village. The Village Outgoings Charge payable by a Resident shall be the appropriate fee chargeable for the recovery of certain basic costs of operating the Village, as set out in the Second Schedule, and shall be calculated by dividing the total of such outgoings by the aggregate number of completed units. The Operator at its sole discretion may vary the proportion where in the reasonable opinion of the Operator any particular outgoing has been incurred for one or more residents whether in whole or in part.
- (iii) The Service Charge shall be paid by the Resident in consideration of the grant of the right to occupy the Unit.
- (iv) The amount of the Service Fee shall depend on the type of Unit and the Service Level selected as appropriate to the level of care and assistance required by the Resident. The available Service Levels are set out in the First Schedule of this Occupation Right Agreement. The Operator shall consult with the Resident about any proposed changes in the Service Level provided.



- (v) The Service Fee shall be apportioned where appropriate in respect of periods current at the commencement and termination of the Resident's liability to pay the Service Fee.
- (vi) The Resident shall pay to the Operator by direct debit or automatic bank payment, the Service Fee in monthly instalments in advance on the first day of each month being initially the amount specified in the Schedule of Details. The first monthly payment plus an additional amount for any period of occupancy of less than a month shall be payable on the Occupation Date. Where any charge has not been taken into account in determining the monthly instalments it shall be payable on demand. The Operator shall comply with the Accounts clauses of the Code of Practice.
- (vii) The Service Fee may be reviewed by the Operator from time to time. Any review of the Village Outgoings Charge is subject to prior consultation with the Statutory Supervisor and the Residents. Any review in the Service Charge is subject to prior consultation with the Residents.
- (viii) The Resident shall not be liable to contribute to Outgoings as part of the Service Fee in respect of:
  - (A) any part of the Village which is under construction; or
  - (B) any construction works; or
  - (C) any outgoing relating to the Further Development of the Village; or
  - (D) Any part of the Village which is leased to a third party.
- (ix) The Operator is required by the Deed of Supervision to provide the Resident with an annual forecast statement of operating expenditure for the Village. The Operator will provide with such a statement the actual amount of Village outgoings paid by the Operator for the previous accounting period, and a statement that the Operator has applied monies paid by the Resident by way of the Village Outgoings Charge, as set out in the statement.
- (x) The Operator shall stop charging the Resident the Service Charge for personal services on the date that the Resident stops living in the Unit. The Resident's liability to pay the Village Outgoings Charge and any other charges payable under this Occupation Right Agreement shall continue until the earlier date of either that which a Resident takes occupation under a new Occupation Right Agreement for the Unit entered into as per clause 17 or the Repayment Date. However, the Village Outgoings Charge will reduce by 50% the later of:

- (A) 6 months after the date of termination; or
  - (B) the date the Resident stops living in the Unit and has removed all their belongings.
- (xi) After the Resident has vacated the Unit, the Operator shall with the written consent of the Resident, be entitled to enter into a rental agreement for the Unit. The Resident shall not be liable to pay any Service Fee from the date the Operator first receives rent. The Operator shall be entitled to the rent received.
- (b) **Repair Charges**

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

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

The Resident shall pay to the Operator on demand all charges for the provision of medical and pharmaceutical services whilst the Resident continues to reside in the Unit.
- (e) **Additional Service Costs**

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

Other than as referred to in clause 3.1 (d), if the Resident or the Operator defaults in payment of any moneys payable under this Occupation Right Agreement for 14 days then the Resident or the Operator respectively 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 published business

overdraft interest rate of the Operator's bank calculated on a daily basis.

### 3.3 Charges Payable on Termination of This Agreement

- (a) In consideration of the grant of the right to occupy the Unit and the supply of other domestic goods and services and subject to clause 6.2, the Resident agrees to pay to the Operator a Deferred Management Fee on termination of this Occupation Right Agreement, on the day which is the Repayment Date, as per clause 17.2 of this Occupation Right Agreement. The Deferred Management Fee shall be satisfied by way of deduction by the Operator from the Capital Purchase Sum payable to the Resident.
- (b) The Deferred Management Fee shall be an amount equal to 20% including GST (if any) of the combined total of the Capital Purchase Sum plus the Amenities Contribution which shall accrue to the Operator over 36 months from the Commencement Date of this Occupation Right Agreement until the Repayment Date. The maximum sum payable by the Resident as a Deferred Management Fee shall be an amount equal to 20% including GST (if any) of the Total Capital Sum Payable.

## **4 RESIDENTS' COVENANTS**

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

### 4.1 Care of Unit

- (a) The Resident shall keep the interior of the Unit and the Operator's Chattels contained therein in a safe, good, clean and tidy condition. The Resident shall not be responsible for effecting the maintenance or repair of the Unit but shall be liable to pay for costs of repair and maintenance pursuant to clause 3.2(b).
- (b) The Resident shall give to the Operator prompt notice of any defect in, or required repair of the Unit, of which the Resident is aware.
- (c) The Resident shall not be liable for any loss or damage to the Unit and the Operator's Chattels in the Unit where the Operator is insured against the loss or damage and the insurance monies have not been rendered irrecoverable as a consequence of any act or default of the Resident, except that the Operator's insurance excess of \$500 (or any different amount subsequently notified to the Resident) shall be payable by the Resident.
- (d) The Resident shall not engage the services of any contractor or tradesman to carry out maintenance or repair to the Unit and the Operator's chattels without first obtaining the Operator's prior written consent. The Resident may only engage the services of a contractor or tradesman nominated by the Operator unless express permission is given by the Operator to engage the services of some other contractor or tradesman.

#### 4.2 To Keep and Maintain Resident Insurances

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

Irrespective of cause, the Operator will have no responsibility, under any circumstances, for loss or damage to any resident's property or vehicles.

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

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

#### 4.4 Not to Deposit Waste

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

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

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

#### 4.6 Not to Add Any Structure or Appendage to the Unit

The Resident shall not erect or place on, or construct outside the Unit any radio, television aerial, antenna, satellite dish, flagpole, closed circuit television camera, pergola, sunshade (including sail cloth) or any other structure without the prior written consent of the Operator.

#### 4.7 Not to Keep Animals and Birds

The Resident shall not keep any pet (other than a neutered cat, which will wear a collar with a bell at all times and be microchipped) or any other animal without the prior consent in writing of the Operator. Such consent shall be at the discretion of the Operator and may be withdrawn at any time.

#### 4.8 Paraparaumu (Kapiti) Airport

The Resident acknowledges

- (a) The Airport's existence and operation is permitted by both the Kapiti Coast District Council's District Plan and by existing user rights.

- (b) Height restrictions on buildings and structures and other planning requirements are designed to protect the continued use of the Airport, based on its existing usage.
- (c) Increased usage of the Airport is a possibility.

The Resident waives any right of objection to the continued operation of the Paraparaumu (Kapiti) Airport or development undertaken on the Airport land within the rules and regulations that may exist at the time.

#### 4.9 No Assignment or Sublicensing

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

The Resident shall be entitled to have friends or relatives to stay with the Resident in the Unit for an aggregate total in respect of all guests of 90 days in any period of twelve (12) consecutive months, or for longer periods with the written consent of the Operator, provided that guests comply with all Village rules.

All such guests shall only stay in the unit if the Resident is also present unless the Operator has given specific permission for a guest to stay, unaccompanied by the Resident.

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

The Resident shall allow the Operator and its representatives the right of access at all reasonable times into the Unit:

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

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

#### 4.11 The Representations Made are Correct

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

#### 4.12 No Caveat

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

#### 4.13 Resident's Personal Necessities

The Resident shall provide suitable and sufficient clothing and personal necessities at the Resident's own expense. The Operator shall not be obliged to furnish, supply or give the Resident any support, care, maintenance, meals, or accommodation when the Resident is absent from the Village.

#### 4.14 Enduring Powers of Attorney

The Resident shall execute and keep in force Enduring Powers of Attorney for Property and for Personal Care and Welfare, as defined by The Protection of Personal and Property Rights Act 1988. The Resident will advise the Operator of any changes to the Power of Attorney or contact details of them.

#### 4.15 Health and Safety

- (a) The Resident shall ensure, and undertake all practical steps to ensure, the safety of any employees, contractors or sub-contractors of the Operator when they are undertaking work in, on or around the Unit. This includes the minimisation by the Resident of hazards within the Resident's Unit.
- (b) The Operator has taken all practical steps to ensure the safety of its own employees, contractors and sub-contractors in their place or work. However it is the obligation of the Resident to ensure that all such employees, contractors and sub-contractors who undertake work on, in or around the Resident's Unit do so in a safe working environment.

#### 4.16 Village Rules

The Resident agrees to comply with the Village Rules (as referred to in clause 9) and not do anything in contravention of them.

## **5 OPERATOR'S COVENANTS**

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

### **5.1 Insurance**

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

### **5.2 Operator's Chattels**

The Operator shall provide such chattels as the Resident and the Operator shall agree.

### **5.3 Utilities**

The Operator shall supply the Unit with connections for water, electricity, telephone and television. The Resident shall pay and discharge the actual costs of usage as indicated (where applicable) by separate meter or otherwise in accordance with clause 3.2(c).

### **5.4 Common Areas' Maintenance**

The Operator shall maintain and keep in good and respectable tidy operational order and condition the common areas.

### **5.5 Provide Services**

The Operator shall provide or ensure the provision of those services that are the subject of the Service Fee.

### **5.6 Maintenance and Repair**

- (a) The Operator shall maintain and keep maintained in good clean tidy repair order and condition, all buildings in the Village.
- (b) The Operator on being advised of any defect or want of repair to the Unit or the Operator's Chattels therein shall within a reasonable time take appropriate steps to repair and make good the defect or want of repair subject to clauses 3.2 (b) and 4.1.
- (c) The Operator shall not be liable for any loss or inconvenience suffered by the Resident arising from any defect or want of repair to the Unit or the Operator's Chattels therein unless the Operator has been advised thereof and has not within a reasonable time taken appropriate steps to repair and make good the defect or want of repair.
- (d) The Operator shall comply with the Maintenance and Upgrading clauses of the Code of Practice.

#### 5.7 Reasonable Care and Skill

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

#### 5.8 Operator to Pay Outgoings

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

#### 5.9 Long-Term Maintenance Plan

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

#### 5.10 Preparation of Forecast Statements

- (a) The Operator shall prepare, at the start of each accounting period (as defined in the Financial Reporting Act 2013) of the Operator a statement forecasting for the period:
  - (i) the operating expenditure relating to the Village; and
  - (ii) all expenditure relating to the Village (including amounts repayable to residents, former residents and their estates); and
  - (iii) all income relating to the Village; and
  - (iv) the amounts of the operating expenditure that must be met by the residents of the Village; and
- (b) The Operator shall give a copy of the statement to each Resident of the Village within three months of the start of the accounting period.

#### 5.11 Provision of Audited Financial Statements

- (a) The Operator shall give the Resident on request, free of charge, a copy of the most recent audited financial statements prepared by the Operator under section 35B of the Act.
- (b) Clause 5.11(a) shall survive termination of this Occupation Right Agreement until payment of the Capital Repayment Entitlement to the Resident.

#### 5.12 Residents' Meetings

- (a) The Operator shall call, in the way described in clause 5.12(d) and the Meetings of Residents with Operator and Resident Involvement



clause of the Code of Practice, meetings of the Residents of the Village;

- (i) within six months after the end of an accounting period for which financial statements must be prepared for the Operator for the purpose of considering the financial statements; or
  - (ii) if a meeting has been requested in writing by the Statutory Supervisor or by at least 10% of the Residents of the Village for the purpose of giving the Statutory Supervisor the Resident's opinions or directions relating to the exercise of the Statutory Supervisor's powers; or
  - (iii) if the Act, Regulations or Code of Practice require the Operator to obtain the consent of Residents; or
  - (iv) if other enactments, the Residents' Occupation Right Agreements or other such documents require the Operator to obtain the Residents collective consent.
- (b) The Operator shall ensure the meeting shall be chaired by a person;
- (i) appointed by the Statutory Supervisor of the Village; or
  - (ii) appointed by the majority of the Residents of the Village who are at the meeting if an appointment has not been made under clause 5.12(b)(i).
- (c) The Operator shall give the Residents at a meeting, orally or in writing, information that relates to the affairs of the Village, as has been requested with reasonable notice by a Resident of the Village.
- (d) The Operator shall call a meeting by providing written notice of it to each Resident of the Village in accordance with clause 23 at least 10 Working Days before the meeting.
- (e) The procedures applying to annual and special meetings shall comply with the Procedures Applying to Annual and Special General Meetings clause of the Code of Practice.

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

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

#### 5.14 Fair Treatment of Residents

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

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

#### 5.15 Staffing of Village

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

#### 5.16 Safety and Personal Security of Residents

The Operator shall have a process for reviewing the safety and personal security of Residents in the Village and comply with the Safety and Personal Security of Residents clauses of the Code of Practice.

#### 5.17 Fire Protection and Emergency Management

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

#### 5.18 Communication with Resident

- (a) The Operator shall supply the Resident with information relevant to the Resident's occupancy; and
- (b) The Operator shall allow the Residents to form a Residents' committee and will attend Residents' committee meetings when invited in compliance with the Residents' Committee clause of the Code of Practice.

5.19 The Operator shall have and maintain a policy and procedure for communicating with Residents or intending Residents who speak English as a second language or who have a limited ability to communicate, and to comply with the Communication with Residents clauses of the Code of Practice.

#### 5.20 Compliance with Code of Practice

The Operator shall comply with all requirements of the Code of Practice. The Code of Practice is enforceable as a contract by the Resident and prevail over any less favourable provision in this Occupation Right Agreement.

#### 5.21 Compliance with Code of Resident's Rights

The Operator shall comply with all requirements of the Code of Resident's Rights. The Code of Resident's Rights is a summary of the minimum rights conferred on the Resident by the Act. The Operator shall give to the Resident (or his or her nominated Resident) a copy of the Code of

Resident's Rights before the Resident enters into this Occupation Right Agreement, and also on request.

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

- (a) The Operator agrees that a Resident with disabilities has the right to alter the Unit if it does not meet their needs; and
- (b) All such alterations shall be at the cost of the Resident, including the cost of the Operator complying with all applicable statutes and regulations relating to such alterations; and

Subject to clause 6.3, on termination of this Occupation Right Agreement the Resident shall pay all costs incurred by the Operator in reinstating the Unit to its original condition including the cost of complying with all applicable statutes and regulations relating to such reinstatement.

#### 5.23 Privacy

The Operator will comply with the requirements of applicable privacy laws that regulate how it may collect, store, use and disclose the Resident's personal information.

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

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### 6.1 Partial Destruction

If the Unit or the building of which it forms part is damaged or destroyed, then the Operator shall (subject to clause 16.8) with all reasonable speed repair such damage or reinstate the Unit and/or the building.

### 6.2 Temporary Accommodation

- (a) If the Unit or the building of which it forms part is damaged so as to render the Unit uninhabitable, then the Operator shall (subject to clause 16.8) use the Operator's best endeavours to provide as soon as possible the Resident with temporary accommodation until the Unit is repaired or replaced by another unit and is ready for occupation. The Operator makes no guarantee that the Operator will be in a position to provide such temporary accommodation, and the Resident should be aware that the Resident may have to arrange the Resident's own accommodation at the Resident's cost until the Resident is able to return to the Unit. The Resident may (but is not required to) take out their own insurance policy for the provision of temporary accommodation. Refer also to clauses 3.2(l) and 3.3(c) relating to the payment of fees
- (b) If the Unit has been damaged or destroyed through no fault of the Resident and is uninhabitable, and the Operator provides temporary accommodation to the Resident, the Resident shall pay the Operator the Service Fee relating to that temporary accommodation (which may or may not be the same amount as the Service Fee for the damaged or destroyed Unit). If the Operator does not provide

the Resident temporary accommodation, the Resident shall not be required to pay the Service Fee from the date that the damage or destruction has caused the Unit to be uninhabitable. If this Occupation Right Agreement is not terminated, the Resident shall resume payment of the Service Fee from the date the Unit is repaired or replaced by another unit and is ready for occupation.

- (c) If the Unit has been damaged or destroyed through no fault by the Resident and is uninhabitable, and the Operator does not provide the Resident temporary accommodation, the Deferred Management Fee shall stop accruing from the date that the damage or destruction has caused the Unit to be uninhabitable. If the Occupation Right Agreement is not terminated, the Deferred Management Fee shall resume accruing from the date the Unit is repaired or replaced by another unit and is ready for occupation.

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

- (a) In the event that this Occupation Right Agreement is terminated in accordance with clause 16.8 (b)(v), the Resident shall be entitled to the payment of the Capital Purchase Sum paid by the Resident in relation to the Unit without any deduction of the Deferred Management Fee but subject to the Sales and Administration fee and any amount outstanding under this Occupation Right Agreement, and such payment shall be made within 10 working days of the Operator or the Statutory Supervisor receiving payment in full under any insurance policy covering the Unit. However, if the amount the Resident would have received if clause 6.3(b) had been applied is greater, than the Resident shall be entitled to such greater amount.
- (b) In the event that this Occupation Right Agreement is terminated in accordance with clause 16.8(b)(vi), then this Occupation Right Agreement is terminated by the Resident and the Operator shall proceed to offer a new Occupation Right Agreement to a new resident for the unit offered to the Resident (for transfer), and clauses 17 and 18 of this Occupation Right Agreement shall apply with respect to such a unit to determine the Resident's Capital Repayment Entitlement.

## **7 CARE FACILITY**

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- 7.1 The Operator shall when the health of the Resident so requires, provide the Resident at the Resident's expense with either temporary or permanent care in the Care Facility, provided that admission to the Care Facility will be subject to availability of beds and appropriate independent geriatric agency assessment of the Resident.
- 7.2 The Resident will be provided (subject to clause 7.1) with care and services of rest home and hospital care standard, as described in

the Health and Disability Services (Safety) Act 2001 or such other statute or regulation as may be in force in its place.

## **8 MEDICAL AND PHARMACEUTICAL SERVICES**

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- 8.1 Residents are encouraged to retain the service of their own medical practitioner.
- 8.2 The Operator may provide the Resident support with access to pharmaceutical services for the supply of medicine and pharmaceutical products, and the cost thereof shall be at rates as determined by the Operator.

## **9 VILLAGE RULES**

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

## **10 PHYSICIANS, SURGEONS AND OTHER HEALTH PROFESSIONALS**

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

## **11 FACILITIES**

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- 11.1 The Facilities in the Village that are available to the Resident as at the date of this Occupation Right Agreement are set out in the Third Schedule.
- 11.2 The Operator shall promptly inform the Resident about any matter that would or might have a material impact on the Resident's right to use the Facilities.
- 11.3 The Operator shall consult with the Resident about any proposed changes in the Facilities that will or might have a material impact on the Resident's occupancy or ability to pay for the Facilities provided.
- 11.4 Subject to the information and consultation obligations set out in this clause, the provision of such Facilities and the provision of additional buildings, areas or amenities as part of the Facilities, or the removal of

buildings, areas or amenities from the Facilities whether permanently or temporarily shall be at the sole discretion of the Operator.

## **12 ADDITIONAL SERVICES AND FACILITIES**

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- 12.1 The Operator may equip and maintain in the Units without separate charge to the Resident, an emergency alarm system to the Unit so that the Resident has access to support from staff at Sevenoaks Lodge on activation of said alarm. The staff will make a phone assessment of the Resident's need and advise accordingly. The Operator may also arrange the provision of a personal medical alarm to the Resident upon request, but this service will be subject to a separate charge pursuant to clause 3.2(e).
- 12.2 The Operator will provide night-time security to the Village, together with lighting to illuminate the movement of Residents and guests around the common areas at night, and will maintain this security and lighting at all times during the term without separate charge to the Resident.
- 12.3 The Operator may arrange for independent contractors (for example, hairdressers, podiatrists) to attend at the Village and each Resident wishing to use any such service will be required to pay a separate charge as levied by the provider of the service.
- 12.4 The Operator shall consult with the Resident about any proposed changes in the services and benefits provided or the charges that the Resident pays that will or might have a material impact on the Resident's occupancy or ability to pay for the services and benefits provided.

## **13 PROPERTY**

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

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

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

demand compensate and reimburse the Operator in full for such loss or damage.

## **15 FURTHER DEVELOPMENT OF VILLAGE**

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- 15.1 The Operator shall be entitled at its sole discretion to improve, extend or alter the Village (Further Development) in any way whatsoever BUT in doing so will use its best endeavours to cause as little inconvenience to the Resident as is practical in the circumstances. The Resident shall not be entitled to make any objection or claim compensation in respect of the Further Development and shall if required by the Operator sign all consents and other documents as may be required to give effect thereto.
- 15.2 The Resident will make no objection to building works associated with the construction of the Village or any Further Development or to the dust, noise or other discomfort or nuisance which may arise and will not institute or commence any action or proceeding for an injunction, damages or other relief arising out of or consequent upon any such works.

## **16 TERMINATION**

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### 16.1 Termination by the Resident on Notice

The Resident may terminate this Occupation Right Agreement at any time by giving one calendar month's written notice PROVIDED HOWEVER that subject to clause 3.2(a)(x), the Resident shall continue to be liable for all payments under clause 3.

### 16.2 Termination on Death

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

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

### 16.4 Termination by the Operator on Medical Grounds

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

- (a) If a medical practitioner, after assessing the Resident, certifies that the Resident's physical or mental health is such that the Resident or

other Residents cannot live safely in the Unit. The following conditions apply:

- (i) the Operator shall appoint the medical practitioner at the Operator's cost.
- (ii) the medical practitioner appointed must be independent of the Operator.
- (iii) the assessment by the medical practitioner must take into account the care, support and facilities offered in the Village, including the opportunity to transfer to a higher level of care, and support services that could be brought in from outside the Village to support ageing in place.
- (iv) as part of making representations, the Resident or support person or holder of an Enduring Power of Attorney for Personal Care and Welfare for the Resident may as part of being consulted on the proposed termination, obtain a second opinion at the Resident's cost and present it to the Operator.

#### 16.5 Termination by the Operator for Breach of this Occupation Right Agreement

- (a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement if the Resident has significantly breached the Occupation Right Agreement. The following conditions apply:
  - (i) the breach must be significant or have become significant because it continues.
  - (ii) the Operator must have notified the Resident in writing of the Operator's intention to terminate the Occupation Right Agreement unless the breach is remedied.
  - (iii) the Operator must have given the Resident at least one month to remedy the breach. The Operator must have considered the nature and extent of the breach in determining the time given for the Resident to provide a remedy.
  - (iv) the Resident must have failed to remedy the breach in the time given.

#### 16.6 Termination for Abandoning the Unit

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



- (i) the Operator must have made reasonable enquiries and determined that the Resident has permanently abandoned the Unit.
- (ii) the Operator must have notified the Resident in writing of the Operator's intention to terminate this Occupation Right Agreement unless the Resident re-occupies the Unit.
- (iii) the Operator must have given the Resident at least one month to re-occupy.
- (iv) the Resident must have failed to re-occupy the unit in the time given.

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

- (a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement if the Resident, intentionally or recklessly, has caused or allowed, or is highly likely to cause or allow:
  - (i) serious damage to the Unit or Facilities, or damage which has become serious because it continues.
  - (ii) serious injury, harm or distress to the Operator or another Resident, or an employee or guest of the Operator or the Resident or another Resident.
- (b) The following conditions apply:
  - (i) the Operator must have notified the Resident in writing of the Operator's intention to terminate this Occupation Right Agreement unless the damage, injury, harm or distress is remedied in a specified time that is reasonable under the circumstances. The Operator must have considered the nature and extent of the damage, injury, harm or distress in determining the time given for the Resident to provide a remedy.
  - (ii) the Resident must have failed to remedy the damage, injury, harm or distress in the time given.

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

- (a) The circumstances when a Unit that is destroyed or damaged may not be fully repaired or replaced are:
  - (i) the Operator considers the repair or reinstatement of the Unit or the Village is not practicable because of the extent of the damage or destruction, or
  - (ii) the necessary building consents cannot be obtained, or

- (iii) the insurance money needed to repair or replace the Unit or Village cannot be obtained or is not enough to replace the property damaged or destroyed.
- (b) If one or more of these circumstances apply, then:
  - (i) The Operator shall consult the Resident to decide whether it is practicable to repair or replace the Unit or Village;
  - (ii) Following consultation, the Operator shall write to the Resident setting out the decision. The timeframe for consulting and notifying the Resident of the Operator's decision will depend upon the circumstances, however the Operator will use their best endeavours to ensure this occurs without delay;
  - (iii) If the Operator decides to repair or replace the Unit, then the Operator will fully repair or replace the Unit as soon as practicable;
  - (iv) The Operator may offer the Resident the option to transfer to another unit (either pre-existing or to be constructed) in the Village or in another retirement village owned by the Operator in reasonable proximity to the Village, taking consideration of the circumstances giving rise to the situation. The Resident will be required to meet the costs associated with transferring to the new unit;
  - (v) If the Operator decides not to fully repair or replace the Unit, and the Operator does not offer the Resident the option of transfer to another unit in accordance with 16.8(b)(iv), this Occupation Right Agreement is terminated and clause 6.3(a) applies;
  - (vi) If the Operator decides not to fully repair or replace the Unit, and the Operator offers the Resident the option of transfer to another unit in accordance with 16.8(b)(iv) and the Resident does not accept the option to transfer to another unit, this Occupation Right Agreement is terminated by the Resident and clause 6.3(b) applies.

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

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

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17.1 The Resident or his or her legal personal representative shall surrender to the Operator the Unit following termination pursuant to clause 16.

The Operator's obligation to pay the Capital Repayment Entitlement is subject to the Operator issuing a new Occupation Right Agreement for the Unit to a third party.

The Capital Repayment Entitlement comprises two components as detailed in 17.2 and 17.3 below and is subject to deductions as detailed in 18.1 below. The Capital Repayment Entitlement shall be payable to the Resident no later than 5 Working Days after the date that a new Occupation Right Agreement has been entered into and the Operator has received full payment for it.

The Resident acknowledges and agrees that the Operator will not receive payment for such new Occupation Right Agreement until such payment is authorised by the Statutory Supervisor in accordance with the Deed of Supervision, which requires amongst other matters that the cooling off period prescribed by the Act for such new Occupation Right Agreement has expired ("Repayment Date").

The Operator shall be entitled to deduct from the Capital Repayment Entitlement any monies (including GST) owing to the Operator by the Resident under this Occupation Right Agreement or in relation to any other services the Resident has been provided by the Operator.

- 17.2 Subject to Clause 6.3, in the event of termination of this Occupation Right Agreement, the Capital Purchase Sum shall be repaid to the Resident but subject to the deduction of the Deferred Management Fee pursuant to Clause 3.3 and any other charges as calculated/specified in the Schedule of Details.
- 17.3 The Capital Profit Sum is the amount by which the "as is" value of this Occupation Right Agreement for the Unit upon termination of the Agreement exceeds the Capital Purchase Sum. The Resident shall be paid 50% of the Capital Profit Sum as part of their Capital Repayment Entitlement.

The 'as is' value of the unit on termination shall be determined by the Operator considering the condition of the unit at the time of termination and:

By having an "as is" value provided by an independent registered valuer who is experienced in valuing retirement village units and is appointed by the Operator. This valuation shall make reference to and include only the Unit, the land it sits on including one (1) metre out from the foundations, together with paths, clothesline and letterbox but shall take no account of the surrounding land or any associated amenities within the Village. This figure shall be conclusive and shall not include the Amenities Contribution paid on purchase.

The charge for the valuation shall be borne by the Operator except in the case of a voluntary internal move by the Resident, in which case the Resident shall bear the cost.

Upon determination of the valuation amount, the Operator shall grant to a third party a new Occupation Right Agreement for the Unit as per Clause 18.

- 17.4 The Resident is not required to pay any costs relating to fair wear and tear to the Unit, but if on termination of this Occupation Right Agreement, the Operator considers that there has been damage to the Unit and/or the Operator's Chattels which is not attributable to fair wear and tear, the Operator may make a11n assessment of the damage and the costs of repairing such damage. The Resident and the Operator agree that all wear and tear caused by incontinence, smoking and by mobility aids is not attributable to fair wear and tear and the assessed repair costs will be deducted by the Operator from the Capital Repayment Entitlement payable to the Resident.
- 17.5 The Operator shall make all reasonable efforts to find a new Resident for the Unit and shall not give preference to finding Residents for units in the Village that have not previously been occupied by a Resident under an Occupation Right Agreement. The Operator shall comply with the Operator's responsibilities relating to the sale or disposal of a vacant residential unit following the termination clause of the Code of Practice, including the Operator's obligations to consult with the Resident about the marketing of the Unit and keep the Resident informed.
- 17.6 If a new Occupation Right Agreement for the Unit has not been entered into within 9 months of the Unit becoming available for re-occupation (or disposal), the Resident may give a dispute notice.

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

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- 18.1 Subject to clause 3, on the Repayment Date, the Capital Repayment Entitlement shall be paid to the Resident in accordance with the provisions of clause 17, less:
- (a) The Deferred Management Fee;
  - (b) A Sales and Administration fee as set periodically by the Operator;
  - (c) All costs of cleaning the unit inside and out including but not limited to a general spring clean, floor coverings and window coverings as required; and
  - (d) Any monies whether outstanding Service Fees or otherwise owing to the Operator in terms of this Occupation Right Agreement.
- 18.2 The net amount payable to the Resident after the amounts in 18.1 above have been calculated shall be the Capital Repayment Entitlement payable to the Resident.

## **19 REPAYMENTS WHERE JOINT RESIDENTS**

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

## **20 REMOVAL OF PERSONAL BELONGINGS**

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- 20.1 Within 30 days after the termination of this Occupation Right Agreement the Resident shall remove from the Unit all of the Resident's possessions and belongings ("the Personal Belongings"). If the Resident fails to do so the Operator may at the expense and risk of the Resident remove and place into storage the Personal Belongings.
- 20.2 If the Resident does not take possession of the Personal Belongings within 30 days of the termination of this Occupation Right Agreement the Operator may sell the Personal Belongings and the sale proceeds after deduction of expenses of removal storage and sale shall be paid to the Resident. The Operator shall not exercise the power of sale without first giving to the Resident seven (7) Working Days written notice of intention to sell. The Operator shall not be liable for any loss or damages incurred by the Resident in respect of the removal storage or sale of the Personal Belongings.

## **21 STATUTORY SUPERVISOR**

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- 21.1 The Resident and the Operator appoint the Statutory Supervisor as stakeholder under the Deed of Supervision and agree to be bound by the provisions of the Deed of Supervision.
- 21.2 The Resident acknowledges that in terms of clause 20.2 of the Deed of Supervision, the Statutory Supervisor and every attorney, agent or other person appointed by the Statutory Supervisor pursuant to that Deed, will be entitled to be indemnified by the Operator and by the Resident and all other Residents for the time being in the Village:
- (a) In respect of all expenses and liabilities reasonably incurred by the Statutory Supervisor in the execution or purported execution in good faith of the Statutory Supervisor's duties hereunder, or any powers, authorities, or directions vested in the Statutory Supervisor pursuant to that Deed; and

- (b) Against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted relating to the Statutory Supervisor's appointment and duties under the Deed of Supervision, other than a claim arising out of a wilful or negligent default by the Statutory Supervisor.

21.3 It is acknowledged for the purposes of the Contracts and Commercial Law Act 2017, that the provisions of this clause 21 are provided for the benefit of the Statutory Supervisor as well as binding the Operator and the Resident, and are intended to be enforceable by the Statutory Supervisor against either party as well as by the Operator and the Resident.

21.4 Procedure if there ceases to be a statutory supervisor.

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

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

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

22.2 The Statutory Supervisor is Trustees Executors Ltd and can be contacted by writing to PO Box 4197, Shortland Street, Auckland 1140, emailing: justine.wealleans@trustees.co.nz, or by telephone at 0800 878 783. The Operator shall inform the Resident of any amendment to these details.

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

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

## **23 NOTICES**

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All notices shall be in writing and may be given to or served upon a party in accordance with Section 106 of the Act (which provides for, as at the

date of this Occupation Right Agreement, delivering it to that person either personally or by leaving it at, or by sending it to, the person's last known or usual place of residence or business), and shall be deemed to be received in accordance with Section 106 of the Act (which provides that, as at the date of this Occupation Right Agreement, a notice addressed to a person and posted to the person's last known or usual place of residence or business is deemed, in the absence of evidence to the contrary, to have been received at the time when it would in the ordinary course of post be delivered).

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

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- 24.1 The Resident may cancel this Occupation Right Agreement without having to give any reason, by notice given not later than 15 Working Days after this Occupation Right Agreement is signed by the Resident.
- 24.2 If this Occupation Right Agreement relates to a Unit which is to be built or completed after the date the Resident signs this Occupation Right Agreement, then, if the Unit is not finished to the point of practical completion within six months after the proposed date for completion of the Unit as specified in the Schedule of Details, the Resident may cancel this Occupation Right Agreement. The Resident can do this by giving notice at any time after the expiry of such six-month period.
- 24.3 The Resident's notice of cancellation must be in writing and in a form that indicates (irrespective of the exact words used) the intention of the Resident to cancel the agreement and may be given by the Resident or any person authorised in writing by the Resident to act on his or her behalf.
- 24.4 The notice of cancellation must be given to:
- (a) The Operator; or
  - (b) The real estate agent (if any) or other person who dealt with the Resident on behalf of the Operator when the Resident acquired an occupation right, unless the Operator has notified the Resident that the person has ceased to act on behalf of the Operator; or
  - (c) Any person who the Operator has notified the Resident is a person authorised to receive communications on behalf of the Operator.
- 24.5 The Operator is entitled to reasonable compensation for services provided to the Resident under this Occupation Right Agreement and for damage to a unit or any facilities in the Village for which the Resident is responsible before the cancellation takes effect.
- 24.6 If this Occupation Right Agreement is cancelled pursuant to this clause the Resident is entitled, on request, to a refund, with interest and without deduction other than tax, of the deposit and all progress

payments within 10 Working Days after the request. With the exception of a cancellation pursuant to clause 24.2, if this Occupation Right Agreement is cancelled after the 15 working day cooling off period expires but prior to settlement, the deposit is forfeited in full.

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

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

## **26 MANAGEMENT OF THE VILLAGE**

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

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

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- 27.1 This Occupation Right Agreement does not provide for the Resident to move from the Unit to a different unit in the Village.
- 27.2 However, the Operator acknowledges that the Resident may wish to move to another unit within the Village. Where this is possible, and subject to:
- (a) The availability of another unit; and
  - (b) The Operator being satisfied that the other unit will be suitable for the Resident; and
  - (c) The Operator not being disadvantaged by the proposal; and
  - (d) That it will better meet the current health needs of the Resident;
- the Operator will endeavour to accommodate the Resident's request.



- 27.3 Prior to such a transfer the Resident will be required to terminate this Occupation Right Agreement in accordance with clause 16.1 and the Resident will be required to enter into a new Occupation Right Agreement with the Operator in respect of the other unit. The Operator will provide the Resident with a disclosure statement that complies with the Act disclosing all of the charges which apply to the other unit before the Resident enters into such Occupation Right Agreement.

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

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- 28.1 The Operator shall consult with the Resident:
- (a) Before appointing a new Manager as per clause 26.
  - (b) Before the Operator's interest in the Village is sold or otherwise disposed of as per clause 5.12(e).
  - (c) About any proposed changes in the services and benefits provided or charges as per clauses 3.2(a)(iv), 3.2(a)(vii) and 12.4.
  - (d) Before making or amending village rules as per clause 8.2.
  - (e) To decide whether it is practicable to repair or replace the damaged or destroyed Unit or Village as per clause 16.8(b).
- 28.2 The consultation process shall comply with the Residents' Participation in Decision-making clause of the Code of Practice.

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

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- 29.1 In addition to the Operator's obligation in clause 5.12(e) to consult with the Residents before the Operator's interest in the Village is sold or otherwise disposed of, the purchaser of the Village must also consult with the Residents at a time directed by the Statutory Supervisor. If there is no Statutory Supervisor, the consultation is to take place at an appropriate time that is a reasonable time before settlement of the transaction.
- 29.2 The Operator shall be entitled to assign this Occupation Right Agreement to any person or company who will be the Operator of the Village ("the Assignee"), subject to clauses 5.12(e) and 29.1 and to obtaining the prior written approval of the Statutory Supervisor of the Village appointed pursuant to the Act.
- 29.3 Assignment of the Operator's rights and obligations shall be effected by the Operator notifying the Resident of the assignment and the date from which the assignment shall be effective. With effect from the notified day, all the Operator's rights and obligations under this Occupation Right Agreement shall pass to the replacement Operator

and the Operator shall have no further rights and obligations to the Resident. The Resident agrees to continue to observe and perform all of the Resident's obligations under this Occupation Right Agreement for the benefit of the replacement Operator.

- 29.4 To give effect to clauses 29.1 and 29.3 and in consideration of the grant of this Occupation Right Agreement to the Resident, the Resident irrevocably appoints the Statutory Supervisor to be the Resident's attorney to sign any Deed of Assignment or Novation. The Resident agrees to ratify any such signing by the Statutory Supervisor. The Resident also agrees to sign a separate Power of Attorney making such appointment at the request of the Operator. The Statutory Supervisor will only use such power of attorney after consultation with Residents.

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

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

### **31 AMENITIES CONTRIBUTION REBATE**

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- 31.1 Notwithstanding anything to the contrary, should the Resident's occupancy be less than 36 months, the Operator will refund the Amenities Contribution at the rate of 1/36<sup>th</sup> for each full month from Commencement Date to Repayment Date that is less than 36 months.

Date of signature by the Operator:

**SIGNED** for and on behalf of )  
**KAPITI RETIREMENT TRUST** )

\_\_\_\_\_ Trust                      \_\_\_\_\_ Trust

Date of signature by the Resident(s):

**SIGNED** by the said )

**[RESIDENT NAME]** )

\_\_\_\_\_ Resident

)

**[RESIDENT NAME]** )

\_\_\_\_\_ Resident

As Resident(s)

in the presence of

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

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Lawyer

## FIRST SCHEDULE - SERVICE LEVEL OPTIONS

- (a) Villa accommodation at Sevenoaks or Midlands Gardens – Independent living
- (b) Apartment accommodation with two separate bedrooms at Sevenoaks – Independent living – Couple and Single
- (c) Apartment accommodation with separate bedroom at Sevenoaks – Independent living – Couple and Single
- (d) Apartment studio accommodation at Sevenoaks – Independent living - Single

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

Residents in the apartments receive a mid-day meal which is paid for within the Service Charge and payable for each apartment occupant.

Residents pay their own phone, internet and television charges, electricity and/or gas (villas only), home contents insurance premium, garden maintenance within a metre of their Unit and for the maintenance of the interior of the Unit.

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

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

The Resident's liability to pay the Village Outgoings Charge and any other charges payable under this Occupation Right Agreement shall continue until Repayment Date as per clause 17 provided however that if such date is not within either:

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

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

## SECOND SCHEDULE - OUTGOINGS

(Clause 3.2(a)(ii))

- (a) The Village Outgoings Charge payable pursuant to clause **Error! Reference source not found.** of the Occupation Right Agreement will consist of all costs expenses and outgoings incurred by the Operator or on its behalf and paid or payable in respect of the Village and its management supervision and operation, including but without limiting the generality of the foregoing:
- (i) All taxes (except income tax or capital taxes in respect of the Operator's income or profits) in respect of the Village;
  - (ii) All rates (including water rates), levies, charges, assessments and fees payable to any government, territorial or local authority;
  - (iii) Costs of compliance with any statute, regulation, bylaw or other lawful obligation in respect of the Village;
  - (iv) Charges for water, gas, electricity, telephones and other utilities or services excluding any charges paid directly by the Resident pursuant to clause 3.2(c);
  - (v) Building insurance premiums (excluding contents insurance which remains payable by the Resident) and associated valuation fees;
  - (vi) All salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village;
  - (vii) The costs of providing security, cleaning, gardening and other services for the general use and benefit of the Residents;
  - (viii) The costs of maintenance and repair of all buildings, common areas, and the Village generally, but excluding costs relating to long term maintenance and any costs payable by a Resident under clause 3.2(b) of the Occupation Right Agreement;
  - (ix) Administrative costs (including appropriate accountancy, legal, Statutory Supervisor, audit and management).
- (b) The Resident shall not be liable to pay the cost of any capital expenditure by the Operator in respect of the development or further development of the Village.

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

The following facilities are available to all licensees of Trust Property to utilise in common with other licensees (subject to relevant rules of use):

- Sevenoaks Recreation Centre includes kitchen, library, indoor bowls facilities, dance/exercise floor, tables and chairs, music facilities, television and lounge and separate snooker/crafts room.
- Midlands Gardens Recreation Centre includes kitchen, dining room, library, snooker room, darts boards, dance/exercise floor, table tennis, music facilities, television and lounge.
- Therapeutic indoor heated pool
- Petanque Pistes
- Hobbies workshop (woodwork etc)
- Hairdressing salon
- Vegetable allotments
- Outdoor Bowling Green
- Croquet Green
- Communal gardens and walks
- Nurse Care Facilities (Sevenoaks Lodge) consisting of a 60-bed continuing care hospital including a 12-bed secure dementia unit and a 11-bed respite/end of life wing.
- Day Respite Centre – The Nikau Club

## SCHEDULE OF DETAILS

RESIDENT'S NAME: [Insert Resident Names]

UNIT ADDRESS: [Address]

COMPLETION DATE (where applicable):

OCCUPATION DATE: [Insert]

CAPITAL PURCHASE SUM: \$ [Insert] Including GST (if any)

AMENITIES CONTRIBUTION: \$ [Insert] Including GST (if any)

TOTAL CAPITAL SUM PAYABLE: \$ [Insert] Including GST (if any)

SERVICE FEE: \$ [Insert] PER WEEK Including GST (if any)  
(reviewable as per clause 3.2(a)(vii))

NOTE: An additional Service Cost may be further payable under clause 3.2(e) for further services requested and provided.

### CALCULATION OF CAPITAL REPAYMENT ENTITLEMENT:

(in accordance with clauses 17 and 18)

- (a) Capital Purchase Sum                      The Capital Purchase Sum  
(excluding the Amenities Contribution)
- (b) Share Capital Profit Sum:                50% of the Capital Profit Sum  
including GST (if any).

#### **Deduct:**

- (c) Deferred Management Fee:            20% including GST (if any) of the  
combined total of the Capital Purchase Sum plus the Amenities  
Contribution accruing over 36 months from the Commencement  
Date to the Repayment Date of this Occupation Right Agreement.  
(in accordance with Clause 3.3)
- (d) Sales and Administration Fee
- (e) Cleaning costs
- (f) Service Fees (if any owing in accordance with Clause 3.2)
- (g) Subject to any deduction in accordance with clause 3.3 and any  
further deduction chargeable in terms of clauses 17.3 and 17.4.

Capital Repayment Entitlement (a) + (b) - (c) - (d) - (e) - (f) - (g)

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

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

- 1 A Disclosure Statement that complies with Schedule 2 of the Act; and
- 2 The Code of Resident's Rights; and
- 3 The Code of Practice; and
- 4 A copy of the Occupation Right Agreement.

.....  
Signed by the Resident  
in acknowledgement of the above

.....  
Signed by the Resident  
in acknowledgement of the above

.....  
Witnessed by lawyer advising the Resident

Dated:



**CERTIFICATE BY LAWYER ADVISING INTENDING RESIDENT**

Name of Village: SEVENOAKS – MIDLANDS GARDENS RETIREMENT VILLAGE

Registration Number of Village: 1966478

I, ..... certify that:

- (a) I explained to [Insert resident names] the general effect of the attached Occupation Right Agreement and its implications before the Resident signed the Occupation Right Agreement; and
- (b) I gave the explanation in a manner and in language that was appropriate to the age and understanding of [Insert resident names]

Dated: .....

Signed by Lawyer: .....

Name of Lawyer: .....

Street Address: .....

.....

Postal Address: .....

.....

E-mail address: .....

Telephone number: .....

Fax Number: .....