

## OCCUPATION RIGHT AGREEMENT

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**COLDSTREAM VILLAGE**

**UNIT \*\***

**[ 1 ]**



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

**BETWEEN**

**COLDSTREAM RETIREMENT VILLAGE LIMITED** a duly incorporated company having its registered office at Timaru (called "the Operator")

**AND**

{ 1 } (called "the Resident")

**WHEREAS**

- (A) The Operator owns and operates a retirement village at 44 and 47 Burnett Streets, Ashburton known as Coldstream Village (called "the Village") providing accommodation and health care for people generally 60 years of age and over, for whom the Village will provide appropriate accommodation.
- (B) The terms and conditions of residency in the Village are as set out in this agreement.
- (C) The Resident has made application to the Operator for residency of a Unit 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.

"Capital Deduction" means the amount referred to in clause 3.3 of this Occupation Right Agreement.

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

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

"Care Service Level" means the levels of care services specified in the Third Schedule of this Occupation Right Agreement.

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

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

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

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

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

"Occupation Right Agreement" means this licence to occupy.

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

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

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

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

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

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

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

"Statutory Supervisor" means Covenant Trustee Services Limited of Level 34, Vero Centre, 48 Shortland Street, Auckland or any replacement statutory supervisor appointed pursuant to the Deed of Supervision.

"Termination Date" means the date on which this Occupation Right Agreement terminates in accordance with the provisions of clause 16.

"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 11 units located within and forming part of the complex known as Coldstream Village situated at 44 and 47 Burnett Streets, Ashburton 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.

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

- (a) A Saturday, a Sunday, 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 Sum for the Occupation Right Agreement specified in the Schedule of Details ("the Capital Sum") including GST (if any) the Operator agrees to supply accommodation to the Resident pursuant to the terms of this licence to occupy the Unit and to supply the right to use common areas of the Village, and to repay to the Resident the Capital Sum 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 4.9 be entitled for life to the quiet use and enjoyment of the Unit without interruption or disturbance by the Operator or any person lawfully claiming under it, together with the use in common with all other residents of the Village and all other persons from time to time to be authorised by the Operator of all those parts of the Village including entrances, lobbies, corridors, lavatories, stairways, lifts, paths, driveways, visitors' car parking areas, gardens, grounds, amenities and conveniences other than those reserved to the Operator or to any other person from time to time by the Operator (called the "common areas"), on the terms and conditions set out in this Occupation Right Agreement.
- 2.4 The above rights of occupancy are not transferable and there are no rights of transmission except transmission by survivorship as between Residents who are joint tenants. Any person staying in the Unit with the Resident who is not a party to this Occupation Right Agreement must therefore vacate the Unit prior to the Termination Date, unless they meet the Operators entry criteria for the Unit and enter into a new Occupation Right Agreement for the Unit with the Operator.

## **3 PAYMENTS**

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- 3.1 Capital Sum
  - (a) Upon application for this Occupation Right Agreement the Resident shall have paid to the Statutory Supervisor an initial deposit of 10% of the Capital Sum or such other amount as agreed between the Resident and the Operator.
  - (b) The balance of the Capital Sum shall be paid by the Resident to the Statutory Supervisor prior to the Commencement Date of Occupation, or at any other time agreed by the Resident and the Operator.
  - (c) If for any reason save the default of the Operator the Resident fails to pay any portion of the payments when due then without prejudice to any other rights or remedies of the Operator the Resident shall pay to the Operator interest on the amount due in accordance with Clause 3.8.

### 3.2 Periodic Charges

- (a) The Resident shall pay to the Operator 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").
- (b) The Village Outgoings Charge shall be paid by the Resident in consideration of the grant of the right to occupy the Unit and the supply of domestic goods and services including accommodation pursuant to this Occupation Right Agreement, and the provision of the Facilities and the right to use the common areas of the Village. The Village Outgoings Charge payable by a Resident shall be the appropriate fee chargeable for the recovery of certain basic costs of operating the Village, as set out in the First Schedule, and shall be calculated by dividing the total of such outgoings by the aggregate number of completed units. The Operator following consultation with the Residents may at its sole discretion but subject to clause 3.2(g) vary the proportion where in the reasonable opinion of the Operator any particular outgoing has been incurred for one or more residents whether in whole or in part.
- (c) The Care Services Payment shall be paid by the Resident in consideration of the grant of the right to occupy the Unit, and the supply of care services. The amount of the Care Services Payment shall depend on the Care Service Level selected as appropriate to the level of care and assistance required by the Resident, as set out in the Third Schedule of this Occupation Right Agreement. The Operator shall consult with the Resident about any proposed changes in the Care Service Level provided.
- (d) The Village Outgoings Charge and Care Services Payment shall be apportioned where appropriate in respect of periods current at the commencement and termination of the Resident's liability to pay these charges.
- (e) The Resident shall pay to the Operator by automatic bank payment, the Village Outgoings Charge and Care Services Payment in monthly instalments in advance on the first day of each month being initially the amount specified in the Schedule of Details. The first monthly payment [plus an additional amount for any period of occupancy of less than a month] shall be payable on the date of commencement of occupation. Where any charge has not been taken into account in determining the monthly instalments it shall be payable on demand.
- (f) The Village Outgoings Charge and Care Services Payment may be reviewed by the Operator from time to time, provided that any increase in the Village Outgoings Charge and/or Care Services Payment is subject to prior consultation with the Residents, and the Statutory Supervisor in the case of the Village Outgoings Payment, and the Resident being given not less than one month's notice of any such increase.
- (g) The Resident shall not be liable to contribute to outgoings as part of the Village Outgoings Charge in respect of:
  - (i) any part of the Village which is under construction; or
  - (ii) any construction works; or
  - (iii) any outgoing relating to the further development of the Village; or
  - (iv) Any part of the Village which is leased to a third party.
- (h) The Operator is required by the Deed of Supervision to provide the Resident with an annual forecast statement of operating expenditure for the Scheme. The Operator will provide with such a statement a statement of the actual amount of

Village outgoings paid by the Operator for the previous accounting period, and a statement that the Operator has applied moneys paid by the Resident by way of the Village Outgoings Charge, as set out in the statement.

- (i) The Resident's liability to pay the Care Services Payment shall cease on the date on which the Resident stops living in the Unit permanently. The Resident's liability to pay the Village Outgoings Charge shall continue until the date on which a new Occupation Right Agreement for the Unit is entered into as per clause 17 provided however that if such date is not within either:

- (i) 6 months of the date of Termination Date; or

- (ii) Any later date the Resident stops living in the Unit and removes all their possessions;

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

- (j) 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 Village Outgoings Charge from the date the Operator first receives rent. The Operator shall be entitled to the rent received.

### 3.3 Capital Deduction

- (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 6.5, the Resident agrees to pay to the Operator a Capital Deduction 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 Capital Deduction shall be satisfied by way of deduction by the Operator from the Capital Sum repayable to the Resident.
- (b) The Capital Deduction shall be an amount accruing progressively to the Operator calculated as follows:
  - (i) 8% including GST (if any) of the Capital Sum from the Commencement Date of Occupation of the Unit for the first year; and
  - (ii) A further 7% including GST (if any) of the Capital Sum from the date which is one year after the Commencement Date of Occupation of the Unit for the second year.

Calculation of the Capital Deduction shall stop on the earlier of the expiry of this period, or the Repayment Date. Where the Repayment Date is within one of the periods above, the Capital Deduction shall stop accruing on the Repayment Date, and for that period shall be pro-rated on a daily basis at the rate applying for the applicable period. The maximum sum payable by the Resident as a Capital Deduction shall be an amount equal to 15% including GST (if any) of the Capital Sum.

### 3.4 Repair Charges

Subject to clause 4.1(c), the Resident shall pursuant to clause 4.1(a) pay to the Operator on demand all costs incurred by the Operator in respect of the repair of the interior of the Unit prior to termination of this Occupation Right Agreement including fair wear and tear including (where applicable) the repair 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. The benefit of all warranties obtained by the Operator shall be passed on to the Resident.

### 3.5 Utility Charges

The Resident shall pay and discharge all charges for the supply of telephone, toll calls, cable TV, satellite TV and all other utility charges, where separately monitored, in respect of the Unit.

### 3.6 Health Service Charges

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

### 3.7 Additional Service Costs

The Resident shall, in addition to the Care Services Payment pay to the Operator the cost ("the Additional Service Cost") of any services provided at the Resident's request being services not included in the Care Services Payment. The Additional Service Cost will be invoiced at the end of each month, and payment will be due on 20th of the month following date of invoice.

### 3.8 Interest on Unpaid Money

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

### 3.9 Operator to Pay Outgoings

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

## **4 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 good, clean and tidy condition. The Resident shall not be responsible for effecting the repair and maintenance required to keep the Unit in such condition, but shall be liable to pay for costs of repair and maintenance, including fair wear and tear, arising prior to termination of this Occupation Right Agreement, pursuant to clause 3.4.
- (b) The Resident shall give to the Operator prompt notice of any defect in or want of repair of the Unit of which the Resident is aware.
- (c) The Resident shall not be liable for any loss or damage to the Unit and the Operator's Chattels in the Unit where the Operator is insured against the loss or damage and the insurance monies have not been rendered irrecoverable as a consequence of any act or default of the Resident, except that the Operator's insurance excess 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 therein without first obtaining the prior approval of the Operator and shall engage the services of a contractor or tradesman nominated by the Operator unless express permission is

given by the Operator to engage the services of some other contractor or tradesman.

4.2 To Keep and Maintain Resident Insurances

The Resident shall keep and maintain all personal chattels and belongings properly insured at the Resident's own expense.

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

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

4.4 Not to Deposit Waste

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

4.5 To Use the Designated Car Parking Areas

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

4.6 Not to Construct TV Radio Aerials

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

4.7 Not to Keep Animals and Birds

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

4.8 No Assignment or Sublicensing

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

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

4.9 To Allow Access by Operator and its Representatives

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

- (a) to assist the Resident in an emergency; and

- (b) for 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; and
- (d) for refurbishing or upgrading the Unit.

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.

#### 4.10 The Representations Made are Correct

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

#### 4.11 No Caveat

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

#### 4.12 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.

#### 4.13 Enduring Powers of Attorney

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

#### 4.14 Health and Safety

- (a) The Resident shall ensure, and undertake all 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. In particular, the Resident will ensure that such employees, contractors or sub-contractors are not exposed to hazards arising out of the arrangement, disposal or manipulation, organisation or use of other things within the Resident's Unit.
- (b) The Operator has taken all 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. Accordingly, the Resident hereby indemnifies the Operator against all claims, actions and proceeding whatsoever which may be brought, commenced or prosecuted against the Operator arising in any way in respect of actions, omissions or otherwise undertaken by the Resident which leads to harm or injury of any sort whatsoever, suffered or incurred by any such contractor, sub-contractor or employee whilst on the premises of the Unit.

## **5 OPERATOR'S COVENANTS**

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

### **5.1 Insurance**

To insure and keep insured with a reputable insurance company all buildings 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**

- (a) To provide and install into each Unit carpet, vinyl, drapes, light fittings, ensuite bathroom facilities, oven or benchtop oven and heated towel rail in bathroom.
- (b) To provide such other chattels as the Resident and the Operator shall agree.

### **5.3 Utilities**

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

### **5.4 Common Area's Maintenance**

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

### **5.5 Provide Services**

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

### **5.6 Maintenance and Repair**

- (a) To maintain and keep maintained in good clean tidy repair order and condition all buildings in the Village and to arrange for the exterior of all windows to be regularly cleaned.
- (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.
- (c) The Operator shall not be liable for any loss or inconvenience suffered by the Resident arising from any defect or want of repair to the Unit or the Operator's Chattels therein unless the Operator shall have been advised thereof and has not within a reasonable time taken appropriate steps to repair and make good the defect or want of repair.

### **5.7 Reasonable Care and Skill**

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

## 5.8 Long-Term Maintenance Plan

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

## 5.9 Preparation of Forecast Statements

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

## 5.10 Provision of Audited Financial Statements

- (a) To give the Resident on request, free of charge, a copy of the audited financial statements, relating to the Operator or the Village, most recently delivered by the Operator under Section 18 of the Financial Reporting Act 1993.
- (b) Clause 5.10(a) shall survive termination of this Occupation Right Agreement until repayment of the Capital Sum to the Resident.

## 5.11 Resident's Meetings

- (a) To call 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) That the meeting shall be chaired by a person;
  - (i) appointed by the Statutory Supervisor of the Village; or
  - (ii) appointed by the majority of the residents of the Village who are at the meeting if an appointment has not been made under clause 5.11(b)(i).

- (c) To give the Residents at a meeting, orally or in writing, information that relates to the affairs of the Village, and has been requested with reasonable notice by a Resident of the Village.
- (d) To call a meeting by providing written notice of it to each Resident of the Village in accordance with clause 23 at least 10 Working Days before the meeting.

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

To consult with the Residents before the Operator's interest in the Village is sold or otherwise disposed of, at a time directed by the Statutory Supervisor (see also the purchasers 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.

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

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

#### 5.15 Staffing of Village

To employ staff who are appropriately qualified and experienced for the role and the responsibilities to be carried out.

#### 5.16 Safety and Personal Security of Residents

To have a process for reviewing the safety and personal security of Residents in the Village.

#### 5.17 Fire Protection and Emergency Management

To have and maintain a policy relating to fire protection and emergency management that meets all applicable statutory requirements.

#### 5.18 Communication with Resident

- (a) To supply the Resident with information relevant to the Resident's occupancy; and
- (b) To have and maintain a policy and procedure for communicating with Residents or Intending Residents who speak English as a second language or who have a limited ability to communicate.

#### 5.19 Compliance with Code of Practice

The Code of Practice shall be given effect to by the Operator in accordance with section 92 of the Act.

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

To 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.

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

- (a) That a Resident with disabilities has the right to alter the Unit if it does not meet their needs; and
- (b) All such alterations shall be undertaken by the Operator at the cost of the Resident, including the cost of the Operator complying with all applicable statutes and regulations relating to such alterations; and
- (c) Subject to clause 6.5, on termination of this Occupation Right Agreement the Resident shall pay all costs incurred by the Operator in reinstating the Unit to its original condition including the cost of complying with all applicable statutes and regulations relating to such reinstatement.

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

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#### 6.1 Total Destruction

If the Unit or the building of which it forms part, shall be so destroyed or damaged:

- (a) As to render the Unit uninhabitable, or
- (b) In the reasonable opinion of the Operator, as to require demolition or reconstruction,

then the Operator shall (subject to clause 16.8), with all reasonable speed expend all the insurance moneys received by the Operator in respect of such damage, towards repairing such damage or reinstating the Unit and/or the building.

#### 6.2 Partial Destruction

If the Unit or the building of which it forms part shall be damaged but not so as to render the Unit uninhabitable, then the Operator shall (subject to clause 16.8) with all reasonable speed expend all the insurance moneys received by the Operator in respect of such damage, towards repairing such damage or reinstating the Unit and/or the building.

#### 6.3 Reasonably Adequate Reinstatement

Any repair or reinstatement shall be substantially in accordance with the original design and shall be carried out in a manner that the Operator thinks fit and shall be acceptable so long as it is reasonably adequate for the Resident's enjoyment of the Unit. The Operator shall not be liable to expend any sum of money greater than the amount of the insurance money received.

#### 6.4 Temporary Accommodation

If the Unit or the building of which it forms part is damaged so as to render the Unit uninhabitable, then the Operator shall (subject to clause 16.8) use the Operator's best endeavours to provide the Resident with temporary accommodation until the Resident is able to return to the Unit. 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.

#### 6.5 Payment from Insurance Proceeds

In the event that this Occupation Right Agreement is terminated in accordance with clause 16.8 following an insured event, the Resident shall be entitled to the payment of the insurance moneys received by the Operator without any deduction of the Capital Deduction

or other moneys payable by the Resident, and such payment shall be made within 14 days of the Operator's receipt of the insurance moneys. If the occupation right agreements of other residents of the Village have been terminated as a result of the same insured event, the insurance moneys relating to the event received by the operator shall be shared between the Resident and all such residents on a pro-rata basis according to the Capital Sum paid by each of them.

## **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 assessment of the Resident.
- 7.2 The Resident will be provided with care and services of rest home and hospital care standard, as described in the Health and Disability Services (Safety) Act 2001 or such other statute or regulation as may be in force in its place.

## **8 MEDICAL AND PHARMACEUTICAL SERVICES**

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- 8.1 Residents are encouraged to retain the service of their own medical practitioner. However the Operator will provide the Resident with access to the village medical advisor for medical requirements, if necessary, and the cost of the services provided shall be at a rate as agreed between the Operator and the village medical advisor.
- 8.2 The Operator will provide the Resident with access to the Village Pharmaceutical Service 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 AND SURGEONS**

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

## **11 FACILITIES**

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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 Second 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 will equip and maintain in the Units without separate charge to the Resident, an emergency alarm system to the Unit so that the Resident has immediate access to help 24 hours a day. The Operator will also provide a personal medical bleeper to the Resident upon request but this service will be subject to a separate charge pursuant to clause 3.7.
- 12.2 The Operator will arrange for a suitably trained person to be available 24 hours a day to respond to any calls by the Resident and will ensure that a health service is available 24 hours a day. A separate charge will be levied if the Resident uses this service.
- 12.3 The Operator has provided a security system to the Village, together with lighting to illuminate the movement of residents and guests around the common areas at night, and will maintain this system and lighting at all times during the term without separate charge to the Resident.
- 12.4 The Operator shall arrange for consultants (for example, hairdressers, physiotherapists) to attend at the Village and each Resident wishing to use any such service will be required to pay a separate charge as levied by the provider of the service.
- 12.5 The Operator shall consult with the Resident about any proposed changes in the services and benefits provided or the charges that the Resident pays that will or might have a material impact on the Resident's occupancy or ability to pay for the services and benefits provided.

## **13 PROPERTY**

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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.

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

## **16 TERMINATION**

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

This Occupation Right Agreement shall terminate upon the expiry of one calendar month's written notice from the Resident terminating the Occupation Right Agreement for any reason PROVIDED HOWEVER that subject to clause 3.2(i), 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 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 or their units. The following conditions apply:
  - (i) the Operator shall appoint the medical practitioner at the Operator's cost.
  - (ii) the medical practitioner appointed must be independent of the Operator.
  - (iii) the assessment by the medical practitioner must take into account the care, support and facilities offered in the Village, including the opportunity to transfer to a higher level of care, and support services that could be brought in from outside the Village to support the Resident to remain in the Village.
  - (iv) the Resident (or support person or holder of an Enduring Power of Attorney for Personal Care and Welfare) may, as part of being consulted on the proposed termination obtain a second medical opinion at the Resident's cost and present it to the Operator.

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

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

- (a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement if the Resident has materially breached the Occupation Right Agreement. The following conditions apply to this right of termination:
  - (i) the Operator must have notified the Resident in writing of the Operator's intention to terminate the Occupation Right Agreement unless the breach is remedied.
  - (ii) the Operator must have given the Resident reasonable time, not less than one month, to remedy the breach.
  - (iii) The Operator must have taken into account the nature and extent of the breach in determining the time given for the Resident to provide a remedy.
  - (iv) the Resident must have failed to remedy the breach in the time given.

#### 16.6 Termination for Abandoning the Unit

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

- (a) The Operator may have grounds for termination of the Resident's Occupation Right Agreement on the grounds of abandonment. The following conditions apply to this right of termination:
  - (i) the Operator must have made reasonable enquiries and determined that the Resident has permanently abandoned the Unit.
  - (ii) the Operator must have notified the Resident in writing of the Operator's intention to terminate this Occupation Right Agreement unless the Resident re-occupies the Unit.
  - (iii) the Operator must have given the Resident at least one month to re-occupy the Unit.
  - (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

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

- (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.
- (b) The following conditions apply to this right of termination:
  - (i) the Operator must have notified the Resident of the Operator's intention to terminate this Occupation Right Agreement unless the damage, injury, harm or distress is remedied in a specified time that is reasonable under the circumstances. The Operator must have taken into account the nature

and extent of the damage, injury or harm in determining the time given for the Resident to provide a remedy.

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

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

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

- (a) The Operator and Resident may agree to terminate the Resident's Occupation Right Agreement if the repair or reinstatement of the Unit or the Village is not practicable because of the extent of the damage or destruction and because:
  - (i) The necessary building consents cannot be obtained, or
  - (ii) 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) The Operator must consult the Resident to decide whether it is practicable to repair or replace the Unit or Village. Then the Operator must follow up in writing setting out their decision.

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

#### 16.10 Property Law Act 2007

This clause 16 is subject to the provisions of sections 243 – 264 of the Property Law Act 2007.

### **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 notice of termination of this Occupation Right Agreement pursuant to clause 16 and prior to the expiry of the period of notice of termination. The Operator's obligation to repay the Capital Sum is subject to the Operator issuing a new Occupation Right Agreement for the Unit to a third party.

17.2 Subject to clause 6.5, in the event of termination of this Occupation Right Agreement, the Capital Sum shall be repaid to the Resident but subject to the deduction of the Capital Deduction and any other charges as calculated/specified in the Schedule of Details. Repayment is subject always to the Operator having issued a new Occupation Right Agreement for the Unit for a Capital Sum equal to or in excess of the Capital Sum specified in the Schedule of Details. The Capital Repayment Entitlement shall be repayable to the Resident no later than 5 Working Days after the date that a new Occupation Right Agreement has been entered into and the Operator has received payment for it. The Resident acknowledges and agrees that the Operator will not receive payment for such new Occupation Right Agreement until such payment is authorised by the Deed of Supervision, which requires amongst other matters that the cooling off period prescribed by the Act for such new Occupation Right Agreement has expired ("the Repayment Date").

17.3 The Operator shall not issue a new Occupation Right Agreement for the Unit for a Capital Sum less than that specified in the Schedule of Details without the prior written approval of the Resident. In such case the issue of the Occupation Right Agreement can only proceed with the Resident's agreement to accept the reduced Capital Sum (payable by the new incoming Resident) less the Capital Deduction and other costs recoverable by the Operator from the Resident under this Occupation Right Agreement.

However, if a new Occupation right Agreement for the Unit has not been entered into within 6 months of the termination date, the Operator shall obtain, at the Operator's expense, a valuation of the Unit to establish a suitable Capital Sum at which to market the Unit. The valuation must be written and be carried out by an independent registered valuer who is experienced in valuing retirement village units. If the Resident does not agree with the valuation, the Resident may at the Resident's cost obtain a second written valuation from an independent registered valuer.

The Operator shall market the Unit at the Capital Sum established by the first valuation, unless the Resident obtains a second valuation, in which case the Operator must consider the second valuation in determining a suitable Capital Sum. Such Capital Sum shall be accepted by the Resident, as a minimum Capital Sum, for the purposes of the Resident's approval under this provision.

Notwithstanding any reduced Capital Sum pursuant to this clause, there shall be no reduction in the Capital Deduction so that the Resident shall be liable for all of the loss.

- 17.4 The Resident is not required to pay any costs relating to fair wear and tear to the Unit, but if on the Termination Date 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 (at the Operator's cost) engage an assessor to carry out an inspection of the Unit and make an assessment of the damage and the costs of repairing such damage. The Resident and the Operator agree that all wear and tear caused by smoking, mobility aids, pets, incontinence and other medical conditions is not attributable to fair wear and tear and shall be included by the assessor in the damage and the costs of repair. If engaged, the assessor shall act as an independent expert, and shall be engaged by the Operator as soon as reasonably practicable after the Termination Date. The assessor shall be a person who either represents themselves as a quantity surveyor or be employed by a firm representing themselves as quantity surveyors, but shall not be required to hold any minimum qualification. The Resident and the Operator agree to accept the assessor's assessment and the Resident will pay the assessed repair costs. The assessed repair costs may be deducted by the Operator from the Capital Sum payable to the Resident, and the Operator shall repair the assessed damage. The Operator's access to the Unit to undertake any such repair shall be pursuant to clause 4.9.
- 17.5 The Operator will charge the Resident and deduct from the moneys payable to the Resident in terms of this clause 17 an amount equal to 3% plus GST of the Capital Sum as an administration charge.
- 17.6 The Operator shall be entitled to deduct from the moneys payable to the Resident in terms of this clause 17 any moneys (including GST) owing to the Operator by the Resident under this Occupation Right Agreement.
- 17.7 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's processes relating to the disposal of the vacant Unit, consultation on marketing of the Unit and reporting to the Resident about the marketing process shall comply with the Code of Practice.

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

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- 18.1 Subject to clause 6.5, on the Repayment Date the Capital Sum shall be refunded to the Resident in accordance with the provisions of clause 17, less:
- (a) The Capital Deduction; and
  - (b) The administration charge (clause 17.5); and

- (c) Any monies whether outstanding Service Fees or otherwise owing to the Operator in terms of this Occupation Right Agreement.
- 18.2 The net amount refundable to the Resident after the amounts in 18.1(a) and 18.1(b) above have been calculated shall be the Capital Repayment Entitlement payable to the Resident.

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## **19 REFUNDS WHERE JOINT RESIDENTS**

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

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## **20 REMOVAL OF PERSONAL BELONGINGS**

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- 20.1 Within 30 days after the expiry of the period of notice of 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 expiry of the period of notice of 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.

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## **21 STATUTORY SUPERVISOR**

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- 21.1 The Resident acknowledges that in terms of clause 7 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 breach of duty, breach of trust or other fiduciary obligation that involves gross negligence, bad faith or wilful misconduct by the Statutory Supervisor.
- 21.2 It is acknowledged for the purposes of the Contracts (Privity) Act 1982, that the provisions of this clause 21 are provided for the benefit of the Statutory Supervisor as well as binding

the Operator and the Resident, and are intended to be enforceable by the Statutory Supervisor against either party as well as by the Operator and the Resident.

**21.3 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.

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**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.
- 22.2 The Statutory Supervisor is Covenant Trustee Services Limited, and can be contacted by writing to PO Box 4243, Shortland Street, Auckland 1140, emailing [peter@covenant.co.nz](mailto:peter@covenant.co.nz) or by telephone at 09 302 0638. 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.
- 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.

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**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).

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**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.

## **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 has contracted the day to day management of the Village to Coldstream Rest Home and Hospital Limited. Coldstream Rest Home and Hospital Limited is a related company of the Operator and shares the same directors and shareholders as the Operator. Coldstream Rest Home and Hospital Limited employs a General 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;

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.
- (c) About any proposed changes in the services and benefits provided or charges as per clauses 3.2(b), 3.2(f) and 12.5.
- (d) Before making or amending village rules as per clause 9.
- (e) To decide whether it is practicable to repair or replace the damaged or destroyed Unit or Village as per clause 16.8(b).
- (f) About the marketing of the Unit as per clause 17.7.

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

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29.1 In addition to the Operator's obligation in clause 5.12 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 and/or the Scheme to any person or company who will be the Operator of the Village ("the Assignee"), subject to clauses 5.12 and 29.1 and to obtaining the prior written approval of the Statutory Supervisor of the Village appointed pursuant to the Securities Act 1978.

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.

### **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).

**SIGNED** for and on behalf of )  
**COLDSTREAM RETIREMENT** )  
**VILLAGE LIMITED**

in the presence of

\_\_\_\_\_  
Signature

Date of Signature by the Operator:

**SIGNED** by the said )  
**(1)** )  
as Resident

\_\_\_\_\_  
Resident

Date of signature by the Resident:

in the presence of

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Lawyer

## **FIRST SCHEDULE - OUTGOINGS**

(Clause 3.2(b))

- (a) The Village Outgoings Charge payable pursuant to clause 3.2 of the Occupation Right Agreement will consist of all costs expenses and outgoings incurred by the Operator or on its behalf and paid or payable in respect of the Village and its management supervision and operation, including but without limiting the generality of the foregoing:
  - (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 levies charges assessments and fees payable to any government, territorial or local authority;
  - (iii) Costs of compliance with any statute, regulation, by-law or other lawful obligation in respect of the Village;
  - (iv) Charges for water, gas, electricity, telephones and other utilities or services;
  - (v) Insurance premiums and associated valuation fees;
  - (vi) All salaries, wages, fees and other remuneration of persons engaged in the management and operation of the Village, including a reasonable management fee in respect of the management services provided by the Operator;
  - (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 the long term maintenance plan and any costs payable by a Resident under clause 3.4 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.

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

\* No communal facilities

### **THIRD SCHEDULE – CARE SERVICE LEVELS**

#### **Care Service Level One**

- (a) Activities Programme (occasional additional charge may apply for special events).

#### **Care Service Level Two**

- (a) Activities Programme (Occasional additional charge may apply for special events).
- (b) Daily staff visit.
- (c) Medication management (medication itself and contracted Pharmacy charges are additional costs).
- (d) General Practitioner home visit arrangements with an accompanying staff member. (You are to pay the General Practitioner's charge).
- (e) Wound care and dressings being basic wound care and first aid/dressing. (Complex and ongoing wound care will be charged on a time and materials basis).

#### **Care Service Level Three**

- (a) Activities Programme (Occasional additional charge may apply for special events).
- (b) Twice daily staff visits.
- (c) Medication management (medication itself and contracted Pharmacy charges are additional costs).
- (d) General Practitioner home visit arrangements with an accompanying staff member. (You are to pay the General Practitioner's charge).
- (e) Wound care and dressings being basic wound care and first aid/dressing. (Complex and ongoing wound care will be charged on a time and material basis).
- (f) Registered Nurse supervision.

Note: Utilisation of one component of a service in any of the levels of services on an ongoing basis would automatically move the resident into that level of service (e.g. medication management, will mean a Level Two service applies).

Residents who have a need for temporary care at a level higher than their existing level of care may receive that additional care charged at an hourly rate for such services, plus cost of product (e.g. during a period of ill health such as influenza or similar).

## SCHEDULE OF DETAILS

RESIDENT'S NAME: {1}

VILLA NO:

COMMENCEMENT DATE OF OCCUPATION:

CAPITAL SUM: \$ Including GST (if any)  
(subject to clause 17.3)

CARE SERVICES PAYMENT: \$ PER MONTH/WEEK Including GST (if any)  
(reviewable as per clause 3.2(f))

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

CALCULATION OF CAPITAL REPAYMENT ENTITLEMENT:  
(in accordance with clauses 17 and 18)

(a) Capital Sum \$

**Deduct:**

(b) Capital Deduction:

Year 1 \$ (8% including GST (if any))

Year 2 \$ (7% including GST (if any))

Where the Repayment Date is within one of the periods above, the Capital Deduction shall stop accruing on the Repayment Date, and for that period shall be pro-rated on a daily basis at the rate applying for the applicable period.

(c) Administration Charge \$ (3% plus GST of the Capital Sum)

(d) Subject to any deduction in accordance with clause 17.3 and any further deduction chargeable in accordance with clauses 17.4 and 17.6.

Capital Repayment Entitlement [(a) – [(b) & (c) & (d)]]

\$

**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 Occupation Right Agreement; and
- 4        The Code of Practice.

.....  
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: Coldstream Village

Registration Number of Village: 2076780

I, **[name of lawyer]** certify that:

- (a) I explained to **[insert name of intending resident or person treated by Section 27(7) of the Act as the intending resident]** the general effect of the attached Occupation Right Agreement and its implications before he or she 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 name of intending resident or person treated by Section 27(7) of the Act as the intending resident]**.

Signed by Lawyer:

Dated:

Name of Lawyer:

Street Address: **[insert street address of lawyer, including the name of the organisation (such as firm or chambers) within which the lawyer works]**

Postal Address:

E-mail address: **[insert e-mail address of lawyer]**

Telephone number:

Fax Number:

[09/2010]