



**ASCOT PARK**  
RETIREMENT VILLAGE

**OCCUPATION RIGHT AGREEMENT**

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**RESIDENT 1 NAME**

**RESIDENT 2 NAME**

**HOME NAME**

**ASCOT PARK RETIREMENT VILLAGE**

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## PARTIES

**[Insert Resident One] ("you") and**

**Optional: [Insert Resident Two] (together, "you")**

**Ascot Park Retirement Village Limited ("we" or "us")**

**Date of this Agreement:**

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## INTRODUCTION

We own the Village and you have applied to be a resident. This Agreement sets out the terms and conditions that apply to the licence we grant to you to occupy your Home in the Village.

Where any words or phrases are shown with capital first letters, their meanings are set out in Clause 1 (Essential Information) or Schedule 1 (Definitions).

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You and we acknowledge and agree the following:

### 1. ESSENTIAL INFORMATION

1.1	Village	Ascot Park Retirement Village at 79 King Street, Taradale, Hawkes Bay
1.2	Your Home	Villa ____
1.3	Commencement Date	<i>This is the date all obligations in this Agreement come into effect and from which you can live in your Home</i>
1.4	Target Completion Date	<i>This is the date we anticipate your Home will be practically completed</i>
1.5	Entry Payment	\$  <i>This is the amount you pay for the right to live in your Home</i>  <i>For more, see clause 2.1</i>

1.6	<p>Deferred Management Fee</p> <p><i>This is the amount we deduct at the end of this Agreement</i></p>	<p>Maximum amount of \$ _____, being 30% of the Entry Payment.</p>
		<p>The Deferred Management Fee will accrue to us as follows:</p>
		<p>(i) An amount equal to 6% of the Entry Payment accrues on a daily basis, from the Commencement Date until the first anniversary of the Commencement Date;</p> <p>(ii) An amount equal to 8% of the Entry Payment t per year, calculated on a daily basis, from the first anniversary of the Commencement Date to the earlier of:</p> <ul style="list-style-type: none"> <li>• the expiry of 4 years from the Commencement Date; or</li> <li>• the Exit Payment</li> </ul>
1.7	<p>Weekly Fee</p> <p><i>This is the amount you will pay us on a monthly basis</i></p> <p><i>For more, see clauses 4.1 to 4.3</i></p>	<p>\$ _____ <b>per week</b></p> <p>(being \$ _____ per month, paid monthly in advance)</p>
1.8	<p>Services Fee</p> <p><i>This will depend on the Services you select, and is subject to change</i></p> <p><i>For more, see clauses 4.4 to 4.6</i></p>	<p>Not applicable / \$ _____ per week –</p> <p>(being \$ _____ per month, paid monthly in advance)</p>
1.9	<p>Additional Services Fee</p> <p><i>This will depend on the Additional Services you select, and is subject to change</i></p> <p><i>For more, see clauses 4.7 to 4.9</i></p>	<p>\$ _____</p>
1.10	<p>Special Provisions</p>	

## **2. LIVING IN YOUR HOME**

### ***Entry Payment***

- 2.1 On the Commencement Date you must pay us the Entry Payment. Unless we agree with you otherwise, you will not be entitled to occupy your Home until you have paid the Entry Payment in full.
- 2.2 We and you each appoint the Statutory Supervisor as the stakeholder to hold any deposit or other payments you make towards your Entry Payment in accordance with the Deed of Supervision.

### ***Nature of your right***

- 2.3 We grant to you, and you accept a licence to occupy the Home from the Commencement Date on the terms of this Agreement. You are entitled to reasonable exclusive use and occupation of your Home free from our unnecessary interruption.
- 2.4 The rights granted to you under this Agreement are personal contractual rights only and cannot be registered. This Agreement does not give you any ownership right or tenancy in the Village or your Home.
- 2.5 You are not entitled to transfer your rights under this Agreement or any interest in this Agreement, or to sublicence or allow any other person to occupy your Home.
- 2.6 You may borrow against, or grant a security interest over, your right to receive the Exit Payment if you get our consent.

### ***Joint owners***

- 2.7 If this Agreement was originally for two of you, you both hold the benefits and have obligations under this Agreement jointly. If one of you dies, the interest of that person automatically transfers to the other person.
- 2.8 No transfer of your rights into the name of your personal representative (following death) is permitted.

### ***Guests***

- 2.9 Your Home is only for your own personal use and occupation.
- 2.10 You may have up to two guests stay with you for no longer than three weeks at a time and up to six weeks overall in any 12 month period. If you get our consent, you may have guests for longer stays or have a larger number of guests. We may require any guest to leave if we consider other residents' enjoyment of the Village is negatively affected by their stay.
- 2.11 Your guests may only park a vehicle in the designated areas set aside for visitor parking.

### ***Pets***

- 2.12 You may not keep any pet or animal in the Village without our prior written approval which shall be at our sole discretion. Any approval we give under this clause may be withdrawn by us at any time.
- 2.13 You will ensure that all your guests or visitors do not bring any pets (other than guide dogs) into the Village.

### ***Parking***

- 2.14 You are only entitled to park in the driveway or the garage forming part of your Home.

## **3. LIVING AT THE VILLAGE**

### ***Your rights***

- 3.1 We will ensure that we, all people who work at the Village and all service providers at the Village treat you with courtesy, respect your rights and do not exploit you.
- 3.2 You are entitled to all the rights under the Code of Residents' Rights.
- 3.3 We will comply with our responsibilities as set out in the Code of Practice, which apply to this Agreement.
- 3.4 We will consult with you about any proposed changes in your payments that will or might have a material impact on your occupancy or your ability to pay for the services and benefits we provide.
- 3.5 We will promptly notify you about any matter that would or might have a material impact on:
  - (a) your right to occupy your Home, or your rights to quiet enjoyment; and
  - (b) your payments in consideration of your right to occupy your Home or your right to services and/or facilities within the Village.

### ***Village rules***

- 3.6 You are expected to comply with our Village Rules at all times and ensure that your guests are made aware of, and comply with, the Rules.
- 3.7 We may from time to time establish, review and amend the Rules provided we consult with residents first and any such amendment does not affect or detract from your existing rights under this Agreement. Any changes to the Rules do not take effect until we give you notice of the changes.
- 3.8 If there are any inconsistencies between the Rules and this Agreement, this Agreement overrides the Rules.

### ***Your relationships with others***

- 3.9 You may not do anything or allow anything to be done, within your control, which is or could be a nuisance, or annoyance to, or cause distress to, other residents, people who work at the Village, invitees to the Village or us.
- 3.10 You agree to comply with your obligations to others under the Code of Residents' Rights, in particular you will respect the rights of, and treat with courtesy, other residents, us, the people who work at the Village, and the people who provide services at the Village.

### ***Your use of Community Facilities and access to Services***

- 3.11 You are entitled to enjoy the Community Facilities and have access to the Services. We expect your use of the Community Facilities and Services to be exercised with care and in consideration for others.

## **4. COSTS PAYABLE DURING YOUR STAY**

### ***Weekly Fee***

- 4.1. The Weekly Fee is your contribution to the cost of the Village Outgoings and the amount is set out in clause 1.7. We are entitled to change the Weekly Fee on an annual basis in accordance with changes in the outgoings of the Village. Any such change to the Weekly Fee will take effect no earlier than one calendar month following our notice
- 4.2. Your Weekly Fee will not include any outgoings of the Village payable by us in respect of:
- (a) any part of the Village that is under construction and
  - (b) any construction works.
- 4.3. The Weekly Fee is payable by you by direct debit from the Commencement Date to the earlier of:
- (a) the Exit Payment Date: or
  - (b) four weeks after the Termination Date or any later Vacation Date.

### ***Services Fee***

- 4.4. In exchange for the provision of the Services, you will pay us the Services Fee and the amount is set out in clause 1.8.
- 4.5. We may change the Services Fee where there is a change in the Services provided to you or in the cost to us of providing the Services. Any increase will take effect one calendar month after we give you notice of the increase.
- 4.6. The Services Fee is payable by you by direct debit from the Commencement Date to the date you stop permanently living in your Home.



### ***Additional Services Fee***

- 4.7. If you ask us to provide any Additional Services you will pay us a fee as set by us at the time you request it.
- 4.8. We may change the fee for any Additional Services provided to you where there is a change in the cost to us of providing the Additional Services. Any increase will take effect one month after we give you notice of the increase.
- 4.9. Fees for regular and ongoing Additional Services are payable by you by direct debit. Fees for one-off or occasional Additional Services may be payable by you on invoice.

### ***Direct debit***

- 4.10. For any payments payable to us by direct debit they will be paid by you in advance on the first day of each month. You will sign and give us an authority to deduct any such payments by direct debit from your bank account.
- 4.11. We will give you 10 Working Days' notice of the proposed amount to be deducted from your bank account if any of the amounts change.

### ***Payment on invoice***

- 4.12. We will invoice you for any Weekly Fee, Services Fee and any Additional Services Fee that has not been paid by direct debit.
- 4.13. For any amount set out in this Agreement as being payable on invoice, we will provide you with a written invoice and you must pay us not later than the 20th of the month following the date of the invoice.

### ***Utility costs***

- 4.14. You are directly responsible to the relevant provider for all utility charges incurred in respect of your use of utilities, including electricity, telephone, internet, water and wastewater charges (except where these are included in your Weekly Fee).
- 4.15. Where we provide you with any utility services directly, we will invoice you for such costs.

### ***Legal costs***

- 4.16. You must pay all your own legal and other costs for entry into and termination of this Agreement. If you ask for any consent under this Agreement we may charge you our reasonable legal costs relating to such consent.

### ***Repair costs***

- 4.17. You may be required to reimburse us for any required maintenance or repair work to be carried out on your Home from time to time (see clause 5).

### ***Indemnity***

- 4.18. If we suffer any loss or damage as a result of your, or your guests', intentional acts, carelessness or negligence, you must:
- (a) reimburse us for any insurance policy excess, where such loss or damage is covered by our insurance; or
  - (b) compensate and reimburse us in full, where such loss or damage is not covered by our insurance.

### ***GST***

- 4.19. Where we are required to account for GST on any amounts you pay to us (other than the amounts specified in clause 4.20), then you will pay that GST to us on demand.
- 4.20. The Entry Payment and Deferred Management Fee are GST inclusive if applicable.

### ***Default interest***

- 4.21. If you fail to make any payment due to us under this Agreement for five Working Days, you will be required to pay interest on the amount due at the Default Interest Rate from the due date until the date of payment. This right does not limit or replace any other rights we have in respect of your default.

## **5. CARING FOR AND MAINTAINING YOUR HOME**

### ***Our right to enter your Home***

- 5.1 You will permit us at all reasonable times to enter your Home for the purpose of carrying out an inspection, to give you care and assistance, or to carry out any repairs or alterations we consider necessary. In doing so we will try to cause you as little disturbance as possible, and to the extent possible, we will try to give you at least 24 hours' notice.
- 5.2 Where we need you to vacate your Home to carry out any repairs or alterations, you must do so. We will first consult with you and arrange and pay for any temporary accommodation that may be required.

### ***Your responsibilities***

- 5.3 You will at all times keep your Home and its surrounds, together with the Operator's Chattels, in good working order and in a tidy, clean and proper condition.
- 5.4 You will advise us of any damage to or maintenance required for your Home or the Operator's Chattels as soon as you become aware of them. If you do not advise us we will not be responsible for any loss or inconvenience suffered by you such issues.
- 5.5 You are not responsible for the cost of any repairs or maintenance to the exterior of your Home or other buildings or chattels of the Village unless you or your

guests intentionally or carelessly cause any damage beyond fair wear and tear, in which case the costs are payable by you on invoice.

### ***Our responsibilities***

- 5.6 We will provide the Home with the Operator's Chattels. We will replace at our cost the Operator's Chattels when replacement is required due to a chattel reaching the end of its economic life as determined by us.
- 5.7 Except as set out in clause 5.6 we will at your cost take responsibility for arranging any repair, maintenance or replacement to the interior of your Home and the Operator's Chattels that either you notify us of or that we consider is required.
- 5.8 We will consult with you about any repairs, maintenance or replacement to be carried out to the interior of your Home or the Operator's Chattels and any such costs are payable by you on invoice.
- 5.9 You will not be responsible for the cost of remedying any underlying or inherent defect to your Home or the Operator's Chattels. Where the Home or the Operator's Chattels are new we will ensure that the benefit of any warranties is taken into account.

### ***Refurbishing, modifying or upgrading your Home***

- 5.10 You are not responsible for any costs of refurbishing or upgrading your Home following termination of this Agreement.
- 5.11 If you wish to have the carpet or any other fixed floor covering replaced, or the interior of your Home refurbished, modified or upgraded during this Agreement this will be at your cost. We will consult with you and arrange for the work to be done. Any such costs are payable by you on invoice.
- 5.12 You must not make any alterations or additions to your Home, or modify the Operator's Chattels, or fit aerials or other items to the exterior of your Home without our consent.
- 5.13 If you have a disability, you have the right to alter your Home if it does not meet your needs. In this situation, you must give us notice identifying what alterations you consider you need. We will consult and reach agreement with you as to what alterations are to be made and we will arrange the work. Any such costs are payable by you on invoice.
- 5.14 If any alterations have been made at your request, we may require you to return your Home to its original condition on termination of this Agreement. We will arrange for the work and any such costs are payable by you on invoice. If we do not require you to reinstate your Home to its original condition then you will not be entitled to any compensation for the cost of the alterations.

## **6. HOW WE WILL RUN THE VILLAGE**

### ***Management of the Village***

- 6.1 We will use reasonable care and skill in ensuring that the affairs of the Village are conducted properly and efficiently and in the exercise and performance of our powers, functions and duties.
- 6.2 We have appointed Bryant House Limited as the manager of the Village. We will consult with residents if we decide to appoint a new entity as manager. However, we will not consult with residents if we or the manager decides to employ new staff members in managerial roles.

### ***Services and Community Facilities***

- 6.3 We will provide you with the Services and any Additional Services as we may agree with you from time to time. However, we are not obliged to provide you with the Services while you are away from the Village. Whether or not we make available Additional Services will be at our discretion.
- 6.4 We are entitled to change the Services and Additional Services provided to residents from time to time. If there is a change in any Services or Additional Services, we may change the Services Fee or Additional Services Fees, as applicable, in accordance with clauses 4.5 and 4.8.
- 6.5 We are entitled to provide additional buildings, areas or amenities as part of the Community Facilities, or to remove buildings, areas or amenities from the Community Facilities permanently or temporarily.
- 6.6 We will consult with you about any proposed changes in the services and benefits we provide that will or might have a material impact on your occupancy or your ability to pay for the services and benefits.

### ***Maintenance of Village***

- 6.7 We will maintain and keep in good condition and order the Village including the homes and the Community Facilities.
- 6.8 We will make and keep to a long term plan for maintaining the Village and refurbishing it.
- 6.9 We will supply your Home with standard connections for water, telephone, television and electricity but we are not responsible for any failure in the provision or maintenance of utility services, such as electricity, telephones, internet and water.
- 6.10 Our ongoing costs and expenses of providing and maintaining the Community Facilities fall within the Village Outgoings, and are contributed to by residents as part of their Weekly Fee.

### ***Insurance***

- 6.11 We will arrange and maintain a comprehensive insurance policy covering the Village (including your Home, Operator's Chattels, capital improvements, and additional fittings provided by you), for its full replacement value in respect of all usual risks including damage or destruction by fire, accident and natural disaster and covering any other insurable risk which we may consider desirable, in our interests or in the interests of residents.
- 6.12 We will ensure that the insurance we have arranged is to the satisfaction of the Statutory Supervisor.
- 6.13 We are not responsible for insuring your personal belongings or vehicle or for any loss of or damage to your property. We strongly recommend that you maintain your own insurance to cover risk of loss or damage to your personal belongings and vehicle.

### ***Development of the Village***

- 6.14 We may decide to improve, extend, add to, reduce or alter the Village. If we do, we will try our best to cause as little inconvenience to you as is practical in the circumstances.
- 6.15 You may not make any unreasonable objection or claim compensation in respect of any further development or building works we undertake. You will, if we require, sign all consents and other documents as may be required to give effect to such further development.
- 6.16 We are entitled to sell any part of the Village which we determine to be surplus to our needs.

### ***Sale of the Village***

- 6.17 We may decide to market, sell, assign or dispose of our interest under this Agreement. If we decide to sell or dispose of our interest in the Village, we will consult with residents. Any such consultation will take place at a time directed by the Statutory Supervisor (if there is no Statutory Supervisor, it will be at a reasonable time before settlement of the transaction).
- 6.18 With effect from the date of sale, assignment, or disposal, all our rights and obligations under this Agreement will pass to the new operator, and we will have no further rights and no further obligations to you under this Agreement. You agree to continue to observe and perform all your obligations under this Agreement for the benefit of the new operator.

## **7. TRANSFERRING TO ANOTHER HOME**

- 7.1 We acknowledge that you may wish to move to another home within the Village. Where possible we will try to accommodate your requirements, subject to:
- (a) the availability of another home;
  - (b) our being satisfied that the home will be suitable for you;

- (c) us receiving from you a signed acknowledgement of termination of this Agreement;
  - (d) you signing an occupation right agreement for the new home and payment by you of an entry payment for the new home; and
  - (e) payment by you of a transfer fee calculated at 3% of the new home's current market value.
- 7.2 For your first transfer to another home within the Village only one deferred management fee will be payable for both your current Home and the new home. That deferred management fee is calculated on the higher value of the two homes. This clause does not apply to any subsequent transfers.
- 7.3 If the full amount of your Deferred Management Fee has fully accrued, then to the extent that the new home into which you are transferring has a higher deferred management fee then the full balance of this higher deferred management fee will be due and payable by you as at the commencement date set out in the new home's occupation right agreement.
- 7.4 You must arrange for the moving of yourself and your belongings at your own cost.
- 7.5 All other terms and conditions that will apply to your transfer to another home within the Village will be at our sole discretion.

## **8. HOW THIS AGREEMENT ENDS**

### ***Termination by you***

- 8.1 You may terminate this Agreement on one calendar month's written notice to us. Your notice should set out the date on which you intend for the Agreement to terminate. If there are two of you named as the Resident then the notice must be signed by both of you.

### ***Termination on death***

- 8.2 This Agreement will automatically terminate on the day that you die, or, where two of you have jointly signed this Agreement, the surviving Resident dies.

### ***Termination by agreement***

- 8.3 You and we can terminate this Agreement by agreement in writing.

### ***Termination by us***

#### ***Health***

- 8.4 We may terminate this Agreement if based on a medical assessment obtained by us at our cost, an independent medical practitioner has certified that your physical or mental health is such that you cannot live safely in your Home or that other residents in the Village cannot live safely in their homes.

- 8.5 If we wish to obtain a medical assessment for you, then:
- (a) we will give you not less than 14 days' notice of our intention to require you to have a medical assessment;
  - (b) we will consult with you, your family or appointed representative where appropriate;
  - (c) you agree to co-operate with us in obtaining this assessment.
- 8.6 You may obtain a second opinion at your cost and present this to us within seven days of your being advised of the assessment we have obtained.
- 8.7 If we have complied with our obligations above and the grounds giving rise to our right to terminate have not changed, then we will give you not less than one calendar month's notice of termination.
- 8.8 If there are two of you in occupation and the medical assessment applies to only one of you, we will not terminate this Agreement for health reasons provided you arrange suitable care and accommodation (which may need to be outside the Village) for the resident who has been assessed as soon as practicable.

*Serious damage, injury, harm or distress*

- 8.9 We may terminate this Agreement on one calendar month's notice to you if you have intentionally or recklessly caused or permitted, or we consider that you are reasonably likely to cause or permit:
- (a) serious damage to your Home or to the Community Facilities;
  - (b) damage to your Home or to the Community Facilities which is not of itself of a serious nature but which is made so by its continuous nature; or
  - (c) serious injury, harm or distress to us or to another resident or person who works at the Village or to any visitors to the Village.
- 8.10 If we wish to terminate this Agreement on these grounds we will give you as much initial notice as is reasonable in the circumstances that we intend to terminate this Agreement unless the default is remedied. When determining the period of notice required to remedy the default, we will take into account the nature and extent of the damage, injury, harm or distress concerned.
- 8.11 If we have complied with our obligations above and the grounds giving rise to our right to terminate have not changed or been remedied, and we still wish to terminate this Agreement, then we will give you as much final notice as is reasonable in the circumstances.

*Permanent abandonment or breach of agreement*

- 8.12 We may terminate this Agreement on one calendar month's notice to you if:
- (a) you have permanently abandoned your Home; or
  - (b) you have breached a material term of this Agreement.

- 8.13 If we wish to terminate this Agreement on these grounds, we will give you not less than one calendar month's initial notice that we intend to terminate this Agreement unless the breach or circumstances are remedied.
- 8.14 If we have complied with our obligations above and the grounds giving rise to our right to terminate have not changed or been remedied, and we still wish to terminate this Agreement, then we will give you not less than one calendar month's final notice.

### ***Termination Date***

- 8.15 The Termination Date is the applicable date from the following:
- (a) The date of expiry of the notice period (being not less than one month) in a notice of termination given by you to us; or
  - (b) The date the last surviving resident dies; or
  - (c) The date that we agree in writing; or
  - (d) The date of expiry of the applicable notice period in a final notice of termination given by us to you.

## **9. VACATING YOUR HOME**

- 9.1 You must leave your Home and remove all personal belongings and vehicles from your Home and the Village on or before the Termination Date or if the last surviving resident has died, within four weeks of the date of death. If for any reason you remain in the Home after the Termination Date all your usual obligations relating to living in and using the Home will apply.
- 9.2 You must leave your Home in similar repair, order and condition as it was at the Commencement Date, except for fair wear and tear or any damage by fire, accident or natural disaster. You must make good any damage caused to your Home or Village in removing your personal belongings.
- 9.3 If your personal belongings are not removed by the date set out above, we may remove them at your cost. If you have not collected them within a further two months we may either dispose of the items or otherwise sell them and, after deducting our expenses of removal and storage pay any proceeds to you.
- 9.4 We are entitled to enter the Home after the Termination Date and we may permit a new resident to live in the Home before you have received your Exit Payment.

## **10. FINDING A NEW RESIDENT**

- 10.1 After the Termination Date (or any later Vacation Date) we will in a timely manner make all reasonable efforts to obtain a new resident for your Home who is prepared to enter into an occupation right agreement on our then standard terms and conditions, and for the best price reasonably obtainable. .
- 10.2 You may introduce a prospective new resident for your Home to us at any time prior to us entering into a new occupation right agreement for your Home.



- 10.3 We are not obliged to accept any prospective new resident who we consider unsuitable as a resident of the Village or the Home.
- 10.4 We do not have to obtain a new resident if this Agreement is terminated following a Damage Event (see clause 12.11) or if we decide we do not want a new resident for your Home.
- 10.5 We will not give preference to finding residents for new homes in the Village ahead of your Home.
- 10.6 We will consult with you about the marketing of your Home. In particular, we will consult with you about when your Home goes on the market and the general nature of the marketing plan for your Home. We will continue to keep you informed on a monthly basis about progress with marketing.
- 10.7 You are not required to pay for any direct charges relating to the marketing and sale of your Home.
- 10.8 If a new occupation right agreement for your Home has not been entered into within three months of the Termination Date, we will report in writing to you and then provide monthly written reports until a new occupation right agreement is entered into. Our report will set out the steps we have taken to market your Home and the progress that has been made towards finding a new resident.
- 10.9 If we have not entered into a new occupation right agreement for your Home within six months of the Termination Date, we will obtain a valuation of your Home at our cost by an independent registered valuer who is experienced in valuing retirement village homes to establish a suitable price at which to market your Home. We will let you know the valuation amount. If you do not agree with it, you may obtain a second valuation performed by an independent registered valuer who is experienced in valuing retirement village homes, at your cost.
- 10.10 We will market your Home at the price established by the valuation that we have obtained. If however, you have obtained a second valuation then we will consider that second valuation when determining a suitable price at which to market your Home.

## **11. PAYMENTS FOLLOWING TERMINATION**

### ***Exit Payment***

- 11.1 Your Exit Payment is an amount equal to your Entry Payment.

### ***Deferred Management Fee***

- 11.2 You agree to pay us the Deferred Management Fee on the Exit Payment Date.

### ***Our Payment of the Exit Payment less deductions***

- 11.3 On or before the Exit Payment Date, we will pay you the Exit Payment minus the following amounts:

- (a) your Deferred Management Fee;

- (b) any unpaid Weekly Fees, Services Fees and/or Additional Services Fees;
- (c) any amounts we are entitled to invoice you for during the term of this Agreement which are either unpaid or yet to be invoiced; and
- (d) any other money due or that will be due from you under this Agreement.

***Exit Payment Date***

11.4 The Exit Payment Date is the applicable date from the following:

- (a) Within five Working Days after we hold a new occupation right agreement and receive full settlement of the entry payment from a new resident for your Home; or
- (b) If we agree in writing to pay you the Exit Payment prior to finding a new resident to enter into an occupation right agreement for your Home, the Exit Payment Date is 20 Working Days after the date we reach agreement; or
- (c) Five Working Days after the date of expiry of the applicable notice period in a final notice of termination given by us to you.

***When we can defer payment***

11.5 If you (or the last resident, if there were originally two of you) have died, then we will defer making payment until your personal representative provides evidence of probate of your will, or letters of administration of your estate.

**12. DAMAGE OR DESTRUCTION**

12.1 If your Home is damaged or destroyed by fire, accident, natural disaster or any other risk ("Damage Event") the provisions in this clause 12 apply, which may override other provisions in this Agreement relating to termination and exit payments.

12.2 If a Damage Event occurs, the time frames for consulting, deciding, providing alternative accommodation and undertaking any works may well depend on circumstances outside our control. As such, the phrase "as soon as reasonably practicable" shall mean taking all relevant circumstances into account.

12.3 Following a Damage Event we will consult with you to decide whether it is practicable to repair or replace your Home. We will try to consult with you as soon as reasonably practicable after the Damage Event. After we have consulted with you, we will notify you of our decision.

***Repair or replacement***

12.4 If we have decided it is practicable to repair and replace your Home, we will do so as soon as reasonably practicable. We will try to ensure that it is replaced to a design we consider appropriate and to a standard at least equal to that of your Home prior to the Damage Event, subject to us receiving the necessary building

consents to do so. However, we are not bound to expend any more money than the actual amount of the insurance money we receive.

***Suspension of payments***

12.5 If your Home becomes uninhabitable following a Damage Event and which is not as a result of any of your, or your visitors', acts or omissions:

- (a) your requirement to pay the Weekly Fee, Services Fee and any Additional Services Fees; and
- (b) the calculation of the Deferred Management Fee (if applicable),

will be suspended from the date of the Damage Event to either the date your repaired or replaced Home is ready for occupation by you or until this Agreement is terminated.

12.6 However, if we are providing you with temporary accommodation (as set out below), the calculation of the Deferred Management Fee will resume.

***Temporary accommodation***

12.7 Following the Damage Event we will use our reasonable endeavours to provide alternative temporary accommodation for you while your Home is being repaired or replaced or until this Agreement is terminated. Such accommodation may be outside of the Village and will be provided as soon as reasonably practicable after the Damage Event occurs.

12.8 We will be responsible for the cost of providing such accommodation to you, to the extent and for the time period that we receive adequate amounts from our insurer for such costs. We are entitled to determine and change at any time the amount of temporary accommodation cover that we maintain.

12.9 You must pay us any outgoings relating to such accommodation and any charges for personal services provided to you whilst you are staying in temporary accommodation.

***Termination following a Damage Event***

12.10 Following a Damage Event and after consultation with you, we may (in our sole discretion) decide it is not practicable to repair or replace your Home in the following circumstances:

- (a) repair or replacement of your Home is not practicable due to the nature or extent of the damage or destruction;
- (b) we are unable to obtain the necessary building consents to repair or replace;
- (c) the insurance money we receive is not adequate to meet the cost of repairing or replacing your Home; or
- (d) we receive no insurance money.

12.11 If we decide not to repair or replace your Home, this Agreement will terminate on the date we give you notice of our decision, unless clauses 12.12 to 12.15 apply. If this Agreement terminates under this clause:

- (a) we will pay you the Exit Payment without deducting any Deferred Management Fee, but we will be entitled to deduct any other amounts due to us under clause 11.3; and
- (b) the Exit Payment Date is 10 Working Days after the date we or the Statutory Supervisor receives full payment from our insurers for the loss or damage; and
- (c) we must pay you the Exit Payment even if we do not receive full payment from our insurers.

***Transfer to another home following a Damage Event***

12.12 If this Agreement is terminated under clause 12.11, we may offer you an option to transfer to an alternative home (either pre-existing or yet to be constructed) in the Village.

12.13 If we offer you such option, the entry payment for the alternative home will be no more than the Entry Payment for your Home and the Deferred Management Fee in relation to both homes will not exceed the amount set out in clause 1.6.

12.14 If you accept such option we will meet your reasonable costs of relocation and your legal costs in relation to entering into a new occupation licence for the alternative home on our then standard terms.

12.15 If we offer you an option to transfer to an alternative home and you do not accept such option, this Agreement will be deemed terminated by you and the usual Exit Payment and Exit Payment Date provisions will apply. For the avoidance of doubt, the Deferred Management Fee will be payable by you.

***Damage or destruction to part of the Village***

12.16 If a substantial part of the Village is damaged or destroyed, even if your Home is not damaged, we will consult with you to decide whether it is practicable to repair or replace such part of the Village. If you decide to terminate this Agreement in these circumstances, the usual Exit Payment and Exit Payment Date provisions will apply. For the avoidance of doubt, the Deferred Management Fee will be payable by you.

**13. HOW TO SOLVE PROBLEMS**

13.1 We have established and will maintain a complaints facility to deal with any informal and formal complaints raised by you, other residents or us. This complaints facility will comply with the Retirement Villages Act and the Code of Practice.

13.2 Under the Retirement Villages Act you may have grounds to require a matter to be resolved by a disputes panel by giving us and/or any other party a dispute notice, provided you first refer the complaint to our complaints facility.

13.3 If you have a complaint because we have not found a new resident for your Home within nine months after your Home became available to us for disposal, you may be able to give us a dispute notice in accordance with the Retirement Villages Act without first referring your complaint to our complaints facility.

#### **14. BREACH OF THIS AGREEMENT**

14.1 If you breach any of your obligations under this Agreement we may, without prejudice to any of our rights, powers or remedies, at your cost, pay money and do things in our opinion reasonably necessary for the performance of your obligations. We will consult you before paying such money or doing such things.

14.2 You will promptly pay us all money paid by us and our legal costs incurred to enforce our rights and remedies under this Agreement. Until we receive such payment, moneys and costs incurred on your behalf will be treated as an advance and interest is payable by you at the Default Interest Rate.

14.3 If we do not insist upon your strict performance, observance or compliance with any of your obligations under this Agreement, or we waive any of your breaches of this Agreement, this shall not be construed to be a waiver or relinquishment by us of our right to insist upon your strict compliance with all or any one or more of the terms of this Agreement.

#### **15. GENERAL**

15.1 If any clause of this Agreement is declared illegal, invalid or unenforceable this Agreement shall be read as if that clause were not contained in it. You and we shall endeavour in good faith negotiations to replace any such illegal, invalid or unenforceable clauses.

##### ***Notices and consents***

15.2 If you require our consent or approval for anything under this Agreement, such consent or approval may be given conditionally or unconditionally or withheld by us in our sole discretion. Our consent or approval must be obtained before the act, matter or thing is done.

15.3 All notices and consents or approvals given under this Agreement must be in writing.

15.4 All notices to you may be given by delivering such notice either personally to you or to your Home. All notices to us may be given by delivering such notice to the Village's physical address or its registered office.

### ***Meetings of residents***

15.5 We will call meetings of residents of the Village in the circumstances and for the purposes set out below:

#### **Circumstances**

#### **Purpose**

An annual general meeting within 6 months after the end of an accounting period for which financial statements must be prepared for the operator or the retirement village

Considering the financial statements, a report from the statutory supervisor (if any), a report on maintenance and any other matters

There is a statutory supervisor of the village and the meeting has been requested by the statutory supervisor or by at least 10% of the residents of the village

Giving the statutory supervisor the residents' opinions or directions relating to the exercise of the statutory supervisor's powers

There is not a statutory supervisor of the village and the meeting has been requested by at least 10% of the residents of the village

Giving the operator the residents' opinions or directions

Where the Act, Regulations or the Code of Practice require us to obtain the consent of residents of the village

To obtain the consent of residents of the Village

Where other enactments, the resident's Agreement or other such documents require us to obtain the residents' collective consent

To obtain the residents' collective consent

15.6 We will provide written notice of the meeting to you and each resident of the Village in the manner set out in clauses 15.3 and 15.4 at least 10 Working Days before the meeting. The notice will specify the time, place and agenda of the meeting, and all papers to be considered at the meeting will be attached.

15.7 You and we agree that the meetings will be chaired by a person:

- (a) appointed by the Statutory Supervisor; or
- (b) appointed in accordance with the conditions (if any) of an exemption (if any) that we may have from appointing a statutory supervisor; or
- (c) appointed by the majority of the residents of the Village who are at the meeting if an appointment has not been made under paragraphs (a) or (b) above.

15.8 We will give to you and the other residents attending the meeting, either orally or in writing, the information that relates to the affairs of the Village and has been requested with reasonable notice by a resident of the Village.

***Procedure if there ceases to be a statutory supervisor***

- 15.9 If the Statutory Supervisor ceases to be the statutory supervisor of the Village, then we will promptly appoint a new statutory supervisor with the required qualifications to act as statutory supervisor of the Village in accordance with the procedures set out in the Retirement Villages Act and the Deed of Supervision.

**16. IMPORTANT DOCUMENTS**

- 16.1 Any documents made available to you as set out in this clause or as required under the Retirement Villages Act will be given to you free of charge.

***Your application***

- 16.2 You confirm that any reports or information you have supplied to us in connection with your application for this Agreement are correct and true
- 16.3 This Agreement remains subject to any conditions set out in your application for this Agreement.

***Enduring powers of attorney and wills***

- 16.4 On or before the Commencement Date you must give us a copy of your properly executed enduring powers of attorney in respect of both your property and your personal care and welfare. These powers of attorney must remain valid in the case of mental incapacity.
- 16.5 On or before the Commencement Date you must confirm to us that you have provided 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.
- 16.6 You will keep us informed of the name, address and telephone number of your attorneys, legal personal representatives and next of kin.

***Your personal information***

- 16.7 We are committed to being open and transparent about how we manage your personal information. In particular:
- (a) We will always comply with the requirements of applicable privacy laws which regulate how we may collect, store, use and disclose your personal information. Those laws also specify other requirements, such as how you may access, correct and delete information held about you.
  - (b) We have also put in place our own privacy policy, which aims to communicate in the clearest way possible how we treat your personal information.
  - (c) You authorise us to collect, store, use and disclose your personal information in accordance with our privacy policy, as updated from time to time.

16.8 During normal business hours, you have the right to request access to your personal information held and to require us to correct any errors in it.

***Village documents***

16.9 You confirm that you have received a copy of:

- (a) the Disclosure Statement;
- (b) the Code of Residents' Rights;
- (c) the Code of Practice;
- (d) the Village Rules; and
- (e) Privacy Policy.

16.10 Further copies of the above documents can be requested from us at any time.

16.11 Copies of any management agreement, the Deed of Supervision and our certificate of insurance for the Village can be requested from us at any time.

***Policies and Procedures***

16.12 We have and will maintain written policies and procedures in respect of the following matters, and copies of these policies can be requested from us at any time:

- (a) Staffing of Village;
- (b) Safety and personal security of residents;
- (c) Fire protection and emergency management (including access for people with disabilities);
- (d) Transfer of residents within the Village;
- (e) Meetings of residents with us and resident involvement;
- (f) Dealing with complaints by Village residents;
- (g) Accounts;
- (h) Maintenance and upgrading;
- (i) Termination of this Agreement;
- (j) Communication with residents (for communicating with residents who speak English as a second language or who have a limited ability to communicate); and
- (k) Privacy policy



***Financial statements***

- 16.13 On request we will give to you a copy of the most recent audited financial statements prepared by us under the Retirement Villages Act. Your right to request a copy of the audited financial statements continues until you have received your Exit Payment.
- 16.14 We will prepare, at the start of each financial year, a statement forecasting for that period:
- (a) the operating expenditure relating to the Village;
  - (b) all expenditure relating to the Village (including amounts repayable to residents, former residents and their estates);
  - (c) all income relating to the Village; and
  - (d) the amounts of the operating expenditure that must be met by the residents of the Village.
- 16.15 We will give a copy of the forecast statement to you and to all the other residents within three months of the start of each financial year.

## SIGNING OF THIS AGREEMENT

Signed for and on behalf of  
the Operator by:

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

[Insert Resident 1 name]

[Insert Resident 2 name]

Signature of Resident:

\_\_\_\_\_

\_\_\_\_\_

Witness signature\*

\_\_\_\_\_

\_\_\_\_\_

Witness name

\_\_\_\_\_

\_\_\_\_\_

Witness address

\_\_\_\_\_

\_\_\_\_\_

Witness occupation

\_\_\_\_\_

\_\_\_\_\_

Date signed by the  
Resident(s):

\_\_\_\_\_

\* To be witnessed by the lawyer who certifies this Agreement. Please also sign the Lawyer's Certificate on the following page.

## **YOUR RIGHT TO CANCEL OR AVOID THIS AGREEMENT**

- (a) You may cancel this Agreement under section 28(1) of the Retirement Villages Act, without having to give any reason. You can do this by notice given not later than 15 Working Days after you sign this Agreement.
- (b) Where this Agreement relates to a Home which is to be built or completed after the date you sign this Agreement, then, if your Home is not finished within six months after the Target Completion Date, you may also cancel this Agreement under section 28(1) of the Retirement Villages Act. You can do this by giving notice to us at any time after the expiry of that six-month period.
- (c) Your notice of cancellation must be in writing and must clearly indicate your intention to cancel this Agreement.
- (d) Your notice may be given on your behalf by a person authorised in writing by you.
- (e) The notice of cancellation must be given to us or to any person we have told you is authorised to receive communications on our behalf.
- (f) If you cancel your Agreement under this clause, you are entitled to a refund of any payment made by you for this Agreement within 10 Working Days of your request. This refund will include any interest earned in the Statutory Supervisor's account (but less any tax) and be without deduction except we are entitled to reasonable compensation for any services we have provided to you while you were living in the Village, and for any damage to your Home or to any facilities in the Village, for which you are responsible.

## LAWYER'S CERTIFICATE

### Lawyer's certification

Name of Village: Ascot Park Retirement Village

Registration number of village:

I, \_\_\_\_\_ [*insert 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 Agreement and its implications before he or she signed the 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*].

Dated: \_\_\_\_\_ [*insert date*].

Signed: \_\_\_\_\_ [*insert signature of lawyer*].

Name: \_\_\_\_\_ [*insert name of signatory*].

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: \_\_\_\_\_  
[*insert postal address of lawyer, including the name of the organisation (such as firm or chambers) within which the lawyer works*].

Email address: \_\_\_\_\_ [*insert email address of lawyer*].

Telephone number: \_\_\_\_\_ [*insert telephone number of lawyer*].

Fax number (optional): \_\_\_\_\_ [*insert fax number for lawyer, if desired*].

## Schedule 1: Definitions

**"Additional Services"** means the services we make available to you from time to time for you to use at your discretion in exchange for which you will pay us the applicable cost for the service concerned.

**"Additional Services Fee"** means the payment (if any) you make to us in exchange for our provision of the Additional Services selected by you. The initial amount is set out in clause 1.9 and more detail is in clauses 4.7 to 4.9.

**"Agreement"** means this Agreement including the Schedules.

**"Code of Practice"** means the Retirement Villages Code of Practice 2008 as updated, amended or replaced from time to time.

**"Code of Residents' Rights"** means the code of resident's rights which is applicable from time to time under the Retirement Villages Act.

**"Community Facilities"** means the common areas and community facilities of the Village provided by us from time to time.

**"Deed of Supervision"** means the written document we have entered appointing the Statutory Supervisor to the Village as required under the Retirement Villages Act, as amended from time to time.

**"Disclosure Statement"** means the written document entitled the disclosure statement containing information about the Village, in accordance with the Retirement Villages Act.

**"Default Interest Rate"** means the rate of 2% above our bank overdraft rate (clause 4.21).

**"Deferred Management Fee"** means the deferred management fee described in clause 1.6.

**"Entry Payment"** means the payment set out in clause 1.5 and which is payable in exchange for your right to occupy the Home and to receive the Exit Payment.

**"Exit Payment"** means an amount equal to your Entry Payment, from which certain amounts can be deducted.

**"Exit Payment Date"** means the date we must pay you the Exit Payment and which is set out in clause 11.4.

**"Home"** means the home identified in clause 1.2 which is a residential unit for the purposes of the Retirement Villages Act.

**"Operator's Chattels"** means any chattels or goods as set out in Schedule 3 or any other chattels provided or installed in your Home by us from time to time.

**"Personal Information"** means identifiable information about you, such as your name, email, address, telephone number, health information and so on.

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

**"Rules"** means our rules for the Village which we may change from time to time, as set out in this Agreement.

**"Services"** means the services we make available to residents from time to time as set out in Schedule 2.

**"Services Fee"** means the payment (if any) you make to us in exchange for our provision of the Services selected by you. The initial amount is set out in clause 1.8 and more detail is in clauses 4.4 to 4.6.

**"Statutory Supervisor"** means Covenant Trustee Services Limited or any other company appointed as statutory supervisor of the Village.

**"Termination Date"** means the date this Agreement terminates or ends as set out in clause 8.15 or clause 12.11.

**"Vacation Date"** means the date you have stopped living in your Home and have removed all your possessions.

**"Village Outgoings"** means the costs and outgoings of the Village including (but not limited to) taxes; rates; compliance costs; insurance costs; staff remuneration; management fees; costs relating to providing the Community Facilities; costs of providing the 24 hour emergency response system; and costs relating to maintenance of the Community Facilities and exterior of the homes.

**"Weekly Fee"** means the amount you pay us in exchange for us providing accommodation and the Community Facilities. The amount is set out in clause 1.7 and more detail is in clauses 4.1 to 4.3.

**"Working Day"** means any day of the week other than:

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

A Working Day will be deemed to commence at 9am and end at 5pm. Any act done under this Agreement by a party after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed to have been done at 9am on the next succeeding Working Day.

## Schedule 2: Services

The following Services are available:

### **Schedule 3: Operator's Chattels**