



**Settlers**  
ALBANY  
LIFESTYLE VILLAGE

**SETTLERS ALBANY LIMITED**  
("Settlers")

**AND**

[.....]  
("You")

**OCCUPATION RIGHT AGREEMENT**

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**BETWEEN**    **SETTLERS ALBANY LIMITED** ("Settlers")

**A N D**        [.....] ("You")

**BACKGROUND:**

- A.**        Settlers owns and operates a residential retirement village known as Settlers Albany.
- B.**        In consideration of the Licence Payment and other fees paid or payable by you under this Agreement, Settlers will provide you with the right to occupy your Dwelling in the Village on the terms and conditions contained in this Agreement.

**AGREEMENT**

**1.        Interpretation**

In interpreting and understanding this Agreement certain capitalised words have special meanings as set out in the glossary and which is set out in clause 27 of this Agreement, or as they are otherwise defined as they first appear in this Agreement.

**2.        Occupation of Dwelling**

- 2.1**        You have chosen to live in your Dwelling in the Village. Subject to the fulfilment of any Conditions, Settlers grants to you, and you accept a licence to occupy your Dwelling under this Agreement and you agree to comply with the terms of this Agreement.
- 2.2**        Your licence to occupy the Dwelling is a contract which grants you a personal and non-assignable right to occupy your Dwelling subject to the terms of this Agreement and to use (together with the other residents) the community facilities and common areas in the Village. It does not grant you any interest in the Land.
- 2.3**        Your right to occupy your Dwelling begins on the Commencement Date and will continue for your life except where clause 10 applies. Where this Agreement is subject to Conditions, you and Settlers may extend the Commencement Date by agreement in writing.
- 2.4**        This Agreement is a personal licence to you to occupy the Dwelling. If this Agreement was initially granted to two of you, then you will both hold the benefits of this Agreement jointly. You will also bear joint and several responsibility for all obligations pursuant to this Agreement.
- 2.5**        Where the Agreement is granted to two of you and one of you dies, the interest of the person who has died automatically transfers to the survivor. No transfer to your personal representative following your death is permitted.
- 2.6**        Where the Agreement is granted to two of you and (in Settler's sole opinion having made reasonable enquiries) one of you permanently ceases to occupy the Dwelling for any reason other than appears under clause 2.5, the joint rights and interest of the Resident who has ceased to occupy is transferred to the Resident that remains in occupation.

- 2.7** If the Agreement was only granted to one person (you) and you marry or enter into a civil union or for any reason wish to live in the Dwelling with another person, Settlers may at Settler's sole discretion:
- 2.7.1** Require this Agreement to be varied to take account of the joint and several occupancy;
  - 2.7.2** Require this Agreement to be terminated and replaced with a new occupation right agreement signed by both you and your spouse/partner;
  - 2.7.3** Decline to amend this Agreement in which case you shall be treated as the sole Resident for the purposes of this Agreement, and if declined:
    - (a) A spouse may stay with you as a permanent Visitor until this Agreement is terminated; and
    - (b) Any other person may only stay with you on the terms allowed by Settlers (at its sole discretion).

Settlers will also require both you and your spouse / partner / other person staying with you to agree to any additional fees or charges that may be payable as a consequence of that person staying with you.

- 2.8** Where the application form for the Dwelling is subject to certain conditions being satisfied, then this Agreement is also subject to satisfaction of those conditions. This Agreement will be deemed to be unconditional on confirmation that the application form for the Dwelling is unconditional (subject to clauses 10.1.1 and 26.1 of this Agreement and the terms of the Retirement Villages Act 2003).
- 2.9** You may have up to two friends or relatives stay with you for no longer than one (1) calendar month per year without the prior consent of Settlers although you must advise Settlers of the names of the Visitors staying with you and the duration of their stay. If you wish more than two Visitors to stay with you, or you wish Visitors to stay with you for longer than one (1) calendar month per year, you must obtain Settlers' prior written consent as set out in clause 5.21. You are responsible for all Visitors staying with you (whether consented to by Settlers or otherwise) as is more particularly set out in clause 5.21.
- 2.10** You may have a pet live with you with the prior consent of Settlers and subject to the policies and rules of the Village. Before granting such consent, the pet will be inspected by the Onsite Village Manager and you will be required to provide any veterinary records, proof of registration, or other documents that Settlers requires. Only the specific pet consented to by Settlers may stay with you and the consent does not extend to any additional or replacement pet, which must be separately consented to in terms of this clause. You are responsible for your pet and if it damages the Dwelling or any part of the Village, you agree that you will be responsible to the Village for making good the damage. You must ensure that your pet does not:
- 2.10.1** Cause damage to the Dwelling or facilities; or
  - 2.10.2** Cause injury, harm or distress to Settlers or another resident, or an employee or guest of Settlers;

- 2.11** If the pet that has been approved in terms of clause 2.10 has continuing or escalating behavioural, health or conduct problems that Settlers considers detrimentally affects the interests of other residents or employees of Settlers, Settlers may serve notice on you to:
- 2.11.1** Remove the pet from the Village within the period specified (which may be on the next Working Day following the service of the notice) where Settlers reasonably considers that the behavioural or health problem or conduct problem is incapable of remedy in a manner acceptable to the Village and other residents; or
  - 2.11.2** Remedy the situation in the manner specified by Settlers in the timeframe required by Settlers; or
  - 2.11.3** Provide to Settlers any reasonable assurances in the form it may require that such problems will be appropriately managed or not be continued or repeated (as relevant).
- 2.12** In the event that you do not comply with Settlers' notice under the preceding clause then, subject only to the requirement that Settlers must comply with the Code of Practice at all relevant times, that failure to comply will be deemed to be a material breach for the purposes of clause 10.1.7.
- 3. Payments**
- 3.1** The payments you must make are:
- 3.1.1** The Licence Payment which must be paid on or before the Commencement Date;
  - 3.1.2** Payment of the Village Outgoings Payment;
  - 3.1.3** Charges for Additional Services which may be incurred by you on a "user pays" basis during the term of this Agreement and which relate to items or services that you incur or contract for with Settlers that are not covered by the Licence Payment or the Village Outgoings Payment;
  - 3.1.4** In respect of utility and other related charges, you must pay for electricity, and other similar services or utilities as set out in clause 3.6 or in respect of any direct maintenance or repair to your Dwelling commissioned by you from Settlers (and all related materials required to undertake that maintenance or repair);
  - 3.1.5** The Village Contribution on the Final Payment Date;
  - 3.1.6** An Administration Payment on the Final Payment Date;
- 3.2** The Village Outgoings Payment referred to in clause 3.1.2 must be paid by direct debit monthly from your bank account and you agree to sign and provide Settlers and/or your bank with the necessary forms to enable such payment to be made. The

Village Outgoings Payment is payable monthly in advance on the first day of each month.

- 3.3** The Village Outgoings Payment is subject to review by Settlers. Subject to clause Settlers notifying the Statutory Supervisor, Settlers may change the Village Outgoings Payment to reflect any increase in the Village Outgoings by giving you at least four (4) weeks' written notice. Settlers will notify you of any change in the Village Outgoings Payment and the reasons for it. Any material change that is proposed to the Village Outgoings Payment will be subject to proper consultation with the residents that are affected by such change.
- 3.4** Charges for Additional Services are invoiced monthly and payment is due within seven (7) days from the date of the Invoice.
- 3.5** Settlers reserves the right to Invoice you separately for any Village Outgoings Payment, Charge for Additional Services or any other cost or charge payable by you that is not taken into account and paid for by direct debit.
- 3.6** In respect of payments for utilities, the following applies:
- 3.6.1** Settlers shall arrange the provision of electricity to all Dwellings and will invoice you for the costs involved in respect of the provision of electricity to the Dwelling. The provision of electricity must be paid by direct debit monthly in arrears from your bank account and you agree to sign and provide Settlers and/or your bank with the necessary forms to enable such payment to be made.
- 3.6.2** You will be responsible for organising and paying for the cost of telephone and internet services to the Dwelling.
- 3.7** You *may* (but are not obliged to do so) make an Optional Additional Payment on the following terms :
- 3.7.1** You must elect to make the Optional Additional Payment on the date you sign this Agreement which is to take effect from the Commencement Date and which will be set out in Item C of Schedule B of this Occupation Right Agreement;
- 3.7.2** If you elect to make the Optional Additional Payment you agree to pay to Settlers an additional amount equivalent to 5% of the Licence Payment;
- 3.7.3** Where you have elected to pay the Optional Additional Payment on the Commencement Date, following termination of this Agreement, Settlers will pay you the lesser of:
- (a) An amount equivalent to 50% of the amount that the Licence Payment paid by a new resident for your Dwelling exceeds the Licence Payment paid by you pursuant to this Agreement; or
  - (b) An amount equivalent to the Village Outgoings Payment actually paid by you from the Commencement Date through until the Termination Date.

Only the Village Outgoings Payment is subject to the above election. Any other costs payable by you, including, without limitation any Charge for Additional Services contracted for by you are not subject to this election.

#### **4. Carparking**

- 4.1** Where this Agreement relates to a two or three bedroom apartment and while you continue to own your own car, as well as hold a valid New Zealand driver licence, you will be allocated a single carpark for your own personal use.
- 4.2** Where this Agreement relates to a one bedroom apartment and while you continue to own your own car, as well as hold a valid New Zealand driver licence, you will be allocated a single carpark for your own personal use, but only if a carpark is available.
- 4.3** Where you have been allocated a carpark in accordance with clause 4.1 or 4.2 above, you may only use the carpark for parking your own car and not for parking any other vehicle such as a caravan, boat, trailer or motor home without obtaining consent from Settlers. Settlers may relocate you to any other carpark at any time on reasonable notice. Your rights to use any allocated carpark will end where you cease to own your own car and/or cease to hold a valid New Zealand driver licence, at which time Settlers may, at the discretion of Settlers and upon providing you with reasonable notice, allocate your carpark to another resident.
- 4.4** For the avoidance of doubt, where this Agreement relates to a townhouse, your Dwelling incorporates a garage and you will not be allocated a carpark elsewhere in the Village.

#### **5. Your Obligations**

##### **You must:**

- 5.1** Make all the payments referred to in this Agreement;
- 5.2** Occupy your Dwelling and utilise it as a residence only;
- 5.3** Look after and maintain:
- 5.3.1** The inside of your Dwelling, including carpets;
- 5.3.2** The Operator's Chattels specified at Item H, Schedule B of this Agreement;
- and return the same to Settlers on termination of this Agreement, in the same condition as they were in when you first occupied your Dwelling (Fair Wear and Tear excluded).
- 5.4** Provide at your own expense for your own needs, including suitable clothing, personal necessities and all of your own chattels and (unless otherwise agreed with Settlers in writing) all of your own Fittings;
- 5.5** Be liable for any costs, charges or expenses incurred with Settlers by a Visitor and compensate Settlers for any loss or damage which it may suffer because of your wilful damage or carelessness or that of any Visitor except where Settlers is insured



against that loss or damage, in which case you will be responsible for payment of any excess payable by Settlers. You will also compensate Settlers where anything you or your Visitors have done or omitted to do has made Settlers' insurance unable to be claimed or void;

- 5.6 Have a doctor or other suitably qualified medical adviser and pay for all costs incurred;
- 5.7 Comply with any rules issued by Settlers and ensure that your Visitors also comply with those rules;
- 5.8 Allow Settlers entry to your Dwelling at reasonable times for the purposes of inspection or carrying out any repairs;
- 5.9 Advise Settlers in writing of any defect or need of repair of your Dwelling; and
- 5.10 Insure all of your personal belongings and arrange and pay for your own comprehensive motor vehicle insurance (if applicable).

**You must not:**

- 5.11 Lodge a caveat in respect of the Land;
- 5.12 Transfer, or grant (or purport to grant) a security, encumbrance, mortgage or charge in respect of your Dwelling, this Agreement or your interest in this Agreement or the Exit Payment;
- 5.13 Damage your Dwelling or do anything which might affect or avoid Settlers' insurance;
- 5.14 Make excessive noise or disturb or annoy or be a nuisance to other residents or Settlers;
- 5.15 Keep animals or pets without the written consent of Settlers as set out in clauses 2.10 to 2.12;
- 5.16 Make any changes to your Dwelling or any garden area located within the Village without the written consent of Settlers. However if you have a disability and you require physical alterations to be made to your Dwelling so that your Dwelling meets your needs, you must give Settlers notice in writing specifying what alterations you require to be made. Settlers will then consult with you regarding the alterations and will then arrange for the alterations to be undertaken at your cost. Settlers reserves the right following termination, to reinstate your Dwelling to the condition it was in prior to the alterations being made and you will be responsible for the costs of restoring and reinstating the Dwelling and/or any garden area to such original condition (except where termination occurs in accordance with clause 13.8 or clause 13.9);
- 5.17 Erect or install outside your Dwelling any aerials or audible burglar alarms without the written consent of Settlers;
- 5.18 Park any vehicle except where shown by Settlers;

- 5.19** Do anything to block the drains or pipes, or leave rubbish except in the approved rubbish containers;
- 5.20** Damage, deface or spoil any part of the Land or buildings in the Village;
- 5.21** Subject to clause 2.9, you must not rent out, sublet or permit others to stay in your Dwelling. However, with the prior written consent of Settlers (which may be revoked at any time), Settlers may permit you to:
- 5.21.1** Have a companion, de-facto partner or carer stay with you;
- 5.21.2** Have someone stay in the Dwelling to mind it while you are away; and
- 5.21.3** Any person who stays with you in the Dwelling must abide by the Village rules and this Agreement. You agree that you are fully responsible for and liable for any person that stays with you and, without limiting the foregoing, you shall pay any additional applicable charges that may be required by Settlers as a result of that person's occupation in the Dwelling or as a result of that person acquiring or commissioning any services from Settlers; and
- 5.21.4** Settlers may require a written acknowledgement from the person staying with you that they will abide by the Village rules and meet all of Settlers' relevant charges incurred as a consequence of that person staying with you prior to providing Settlers' written consent to their occupation.

A breach of any of the obligations set out in this clause 5 by you or a Visitor of yours will be deemed to be a material breach for the purposes of clause 10.1.7.

## **6. Settlers' Obligations**

Settlers must:

- 6.1** Provide the services and facilities in Schedule B;
- 6.2** Pay all the costs of running the Village in Schedule C;
- 6.3** Take out and keep in force a comprehensive insurance policy that must cover loss or damage to or destruction caused by fire, accident or natural disaster of all:
- (a) Village property including Dwellings;
- (b) Capital improvements or additional fixtures provided by residents (which must be approved by Settlers in accordance with this Agreement);
- in accordance with clause 22 of the Code of Practice. ;
- 6.4** Look after and maintain the exterior of the Village as well as the interior of all common areas in the Village and keep the Village in good condition and order;
- 6.5** Maintain all plant and equipment in a clean tidy and safe working order and condition, and maintain any other improvements on the land and common areas;

- 6.6** Respond urgently where immediate or emergency maintenance arises or is made known to Settlers;
- 6.7** Reply to requests for non-urgent maintenance within five (5) Working Days of written notice from you to the Onsite Village Manager which should include your preferred time frame for undertaking such work. Settlers shall respond to such notices as soon as reasonably practicable and shall provide an estimate to you of the expected time frame for the maintenance to be carried out;
- 6.8** Provide in your Dwelling for your use, the Operator's Chattels set out in Schedule B, although you are required to keep and maintain the Operator's Chattels in good order and repair thereafter;
- 6.9** Provide on request and free of charge, copies of the most recent audited financial statements of Settlers and as delivered by Settlers under:
- 6.9.1** Section 18 of the Financial Reporting Act 1993 prior to the time in which Settlers must comply with clause 6.9.2; or
- 6.9.2** Section 35B of the Retirement Villages Act 1993 (or an enactment referred to by section 35F of that Act as applicable) and a copy of the most recent financial such statements required to be prepared by Settlers under section 35C of the Act (if any);
- 6.9.3** You shall continue to be entitled to receive such audited financial statements after termination of this Agreement until such time as you have been repaid all monies to which you are entitled under this Agreement less any deductions this Agreement provides for.
- 6.10** Prepare at the beginning of each accounting period (as defined in the Financial Reporting Act 1993) forecast statements and provide a copy of such forecast statements to each resident within three (3) months of the start of the accounting period, forecasting the operating expenditure relating to the Village, all expenditure relating to the Village including amounts repayable to residents, former residents and their estate, all income relating to the Village and the amounts of operating expenditure that must be met by the residents of the Village;
- 6.11** Use reasonable care and skill to ensure that the affairs of the Village are conducted properly and efficiently and in the exercise and performance of its powers, functions and duties;
- 6.12** Obtain compliance schedules and warrants of fitness for buildings in accordance with the Building Act 2004 and any related regulations;
- 6.13** Make and adhere to a long term plan for maintaining and refurbishing the Village and its facilities and report on how such costs are to be met and funds allocated at each annual general meeting of residents, such report to include the responsibilities for the costs of maintenance of the dwellings;
- 6.14** Promptly inform you of matters that may or will have a material impact on your rights under this Agreement, including rights to quiet enjoyment or in respect of any fees, charges or rights to services and facilities within the Village that may or will materially affect you and Settlers will consult with you about all such matters;

- 6.15** Periodically review maintenance agreements and consult all residents in writing if the review results in proposed changes to those services that reduce services or benefits being provided to residents;
- 6.16** Establish and maintain a separate bank account to be named “Residents’ Contribution to Maintenance Account” for the purposes only of holding residents’ contributions to long term maintenance and to be used in accordance with the maintenance agreement and long term maintenance plan;
- 6.17** Consult all residents:
- 6.17.1** About the establishment, proposed amendment of or addition to rules for the operation of the Village and Settlers will advise you of the changes to rules before you are bound by them;
- 6.17.2** Before appointing (on a permanent basis) a new Village manager; or
- 6.17.3** If Settlers decides to dispose of its interest in the Village, and it shall also ensure that any purchaser consults with all residents before such sale or disposal. This consultation will take place at a time directed by the Statutory Supervisor or if there is no Statutory Supervisor, at an appropriate time that is a reasonable time before settlement of the transaction;
- 6.18** Have and maintain:
- 6.18.1** Written policies and procedures for communicating with residents and intending residents who speak English as a second language or who have limited ability to communicate;
- 6.18.2** A process for you and other residents to contact it about concerns and issues and in which Settlers must acknowledge and respond to within a reasonable time. You will be given written details of the name of a contact person at Settlers and when that person is available to you and how to contact them. You will be informed of any change to this process; and
- 6.18.3** A process for you to contact the Statutory Supervisor about an alleged breach of a right or to make a complaint. You will be informed in writing of the name of the Statutory Supervisor and how to contact the Statutory Supervisor and of any change to this process;
- 6.19** Meet all requirements of the Code of Practice (subject to any exemption Settlers may obtain) and Settlers acknowledges that those requirements shall be binding upon Settlers in the same way as if they were set out in this Agreement. Settlers will also diligently and in good faith observe and adhere to the Code of Residents’ Rights. Settlers will take all necessary steps to ensure you have access to copies of the Code of Practice and Code of Residents’ Rights and shall make sure these are available to residents by (without limitation) ensuring copies are kept in Settlers’ library for ready access by residents and that notices regarding accessing these documents are prominently displayed on the Village notice board;
- 6.20** Settlers is not responsible for:

**6.20.1** Insuring your personal belongings, including your car. You must maintain full insurance cover for such items; or

**6.20.2** Any loss or damage to your property or Fittings under any circumstances and without limitation, whether due to actions of a third party, accident, theft, fire, natural disaster, your acts or the acts of other residents or in any other way.

**6.21** Settlers shall provide you with the relevant Certificate/s of Currency in respect of the insurance policies it maintains upon request.

## **7. Staff**

The names and positions of key staff are in Schedule E.

## **8. Emergency Procedures**

Emergency management and fire evacuation requirements and procedures are in Schedule G and personal security requirements and procedures which relate to the Village and current at the date of this Agreement are set out in Schedule F.

## **9. Development, Maintenance, Enhancement and Transfer of Village**

**9.1** You acknowledge that Settlers may maintain, enhance, improve, extend, add to, reduce or alter the Village and in so doing will carry out such work with as little noise and inconvenience to you as practicable.

**9.2** Settlers must obtain the written consent of the Statutory Supervisor where the proposed work constitutes a material alteration to the Village. The Statutory Supervisor's consent must not be unreasonably or arbitrarily withheld.

**9.3** You agree that you will not make any objection or claim compensation in respect of any further development we undertake and you will sign any consents and surrenders which are necessary for the development. You further agree that you will make no objection to building works associated with such further development, or to any dust, noise or other nuisance which may arise from such works. You agree not to commence any action or proceeding for an injunction or damages relating to such works.

**9.4** You agree that should Settlers sell or dispose of the Village you will sign a deed of novation of this Agreement in favour of the new operator or owner of the Village, which will include a term that Settlers will be released from any on-going obligation to you but the new operator or owner will be obliged to fulfil the obligations of Settlers in its place. You irrevocably appoint the Statutory Supervisor to be your attorney to execute the deed of novation and if called upon will sign a separate power of attorney appointing the Statutory Supervisor to execute such documents on your behalf.

## **10. Termination**

**10.1** Your right to live in your Dwelling shall come to an end if this Agreement is terminated as set out below:

- 10.1.1** You, or any authorised person on your behalf, cancel the Agreement in accordance with clause 26 of this Agreement;
- 10.1.2** Subject to clause 10.3, you die, or if there are two of you, the surviving Resident dies. The Termination Date will be your date of death or if there are two of you, the Termination Date will be the date the surviving Resident dies;
- 10.1.3** You, or any authorised person on your behalf, give one (1) month's written notice to Settlers that you no longer wish to live in your Dwelling and you leave your Dwelling at the expiry of that time as set out in clause 10.3;
- 10.1.4** Subject to clause 10.3, where you are the sole resident in your Dwelling and are permanently admitted to a residential rest-home or hospital;
- 10.1.5** The Agreement terminates in accordance with clause 13.8 or clause 13.9;
- 10.1.6** A medical practitioner (who in the first instance should be your own regular medical practitioner, but who may otherwise be another medical practitioner appointed by Settlers, provided they are independent of Settlers) after assessing you, certifies to Settlers, that your physical or mental health is such that you or other residents cannot live safely in your or their dwellings (as applicable). This assessment must take into account the care, support and facilities available in the Village (including the opportunity to transfer to a Dwelling providing a higher level of care and support services) or services that may be contracted for by Settlers from third parties to support you to remain in your Dwelling. You may, as part of being consulted on the proposed termination, obtain a second medical opinion at your cost and present that to Settlers.
- 10.1.7** You have materially breached this Agreement and you have not remedied the default (where the default is capable of remedy) within one (1) month of receiving a Termination Notice from Settlers, provided that Settlers has complied with the Code of Practice;
- 10.1.8** Subject to clause 2.6 you have, in Settlers' sole opinion (and following reasonable enquiry by Settlers) permanently abandoned the Dwelling and you have not reoccupied the Dwelling within one (1) month of receiving a Termination Notice from Settlers, provided that Settlers has complied with the Code of Practice;
- 10.1.9** Subject to the requirement that Settlers must comply with the Code of Practice at all relevant times, if you have intentionally or recklessly caused or allowed, or are highly likely to cause or allow:
- (a) Serious damage to the Dwelling or any other part of the Village; or
  - (b) Serious injury, harm or distress is caused to Settlers, or other residents, or is caused to employees or guests of Settlers or you;

Settlers will notify you of its intention to terminate this Agreement unless the damage, injury, harm or distress (or causes or likely causes of such damage, injury, harm or distress) are remedied in a specified time that Settlers assesses is reasonable in the circumstances (if such matters are

capable of remedy). If you have not within the time period specified in the Termination Notice from Settlers:

- (a) Remedied the situation; and
- (b) Provided to Settlers any reasonable assurances that it may require that such problems will be appropriately managed or not be continued or repeated (as relevant);

Without limiting the foregoing, you acknowledge and agree that distress or harm can be caused to Settlers or other persons by continuing or escalating behavioural, health or conduct problems; and

**10.1.10** Subject to compliance with the Code of Practice, Settlers may terminate this Agreement if you are or have been at any time convicted of or charged with a serious criminal offence unless:

- (a) The offence you have been convicted of or charged with occurred prior to entry into this Agreement; and
- (b) Was fully disclosed to Settlers by you in writing; or
- (c) Section 14 of the Criminal Records (Clean Slate) Act 2004 applies.

**10.2** In the event of termination you (or where relevant, your executor, attorney or other duly appointed representative) will be given a Termination Notice ending your right to live in your Dwelling. The Termination Notice will comply with the Code of Practice and will specify the Termination Date.

**10.3** Where you terminate this Agreement under clause 10.1.1, 10.1.3 or 10.1.4:

**10.3.1** In accordance with the Code of Practice, the Termination Date will be the later of the date you have advised in a written notice of termination that you provide to Settlers or the date on which you stop living in the Dwelling and have (subject to clause 10.3.2(b)) removed all of your possessions; and

**10.3.2** You will be required to provide written confirmation to Settlers that you have vacated the Dwelling as provided for in your Termination Notice. You acknowledge and agree that in the event:

- (a) You do not confirm that you have vacated the premises, notwithstanding a Termination Notice you have provided, but it appears to Settlers that you have vacated, then Settlers will be required to provide notice to you in accordance with clause 10.1.8 for termination to occur;
- (b) Once you provide written notice to Settlers that you have vacated the premises, you agree that all of your personal possessions that may remain at the Dwelling or Village after Termination Date have been abandoned by you and Settlers may deal with them as it sees fit.

**10.4** In all cases of termination other than termination under clauses 10.1.2 or 10.1.8 you agree that you or your personal representative shall:

- 10.4.1** On or before Termination Date shall return all keys, security cards or other access codes or devices relating to the Village to Settlers and confirm in writing that there are no copies of such keys that have not been returned and you agree that if you do not do so, Settlers may change the locks of the Dwelling and replace any other security or access devices at your cost;
- 10.4.2** Accompany and assist Settlers' representative with a final inspection on Termination Date (or by agreement with Settlers, on a date no later than five (5) days following Termination Date) and shall complete and agree a final inspection form. You agree that, if you or your representative not attend as required by this clause, Settlers' inspection notes shall be taken as a true and complete record of damage and state of the Dwelling on Termination Date; and
- 10.4.3** You agree that you will retain a solicitor to assist you and advise you with all matters relating to termination and will provide details of the solicitor acting for you in respect of termination (if different from the solicitor that certified your entry into this Agreement).
- 10.5** If this Agreement has been terminated under clauses 10.1.2 or 10.1.8 Settlers will notify your personal representative in writing that it is storing your personal belongings. If your personal belongings are not uplifted from storage within ten (10) Working Days of the date of the written notice from Settlers, you agree that Settlers may treat such personal belongings as abandoned by you (or your personal representatives, as relevant) and deal with them as Settlers sees fit.

## **11. Payments on Termination**

- 11.1** Where you terminate this Agreement or if this Agreement terminates as set out in clauses 10.1.1 to 10.1.3 or under clause 10.1.5, Settlers must pay you the Exit Payment on the Final Payment Date. Where Settlers has initiated termination under clauses 10.1.6 to 10.1.10 and terminates this Agreement in accordance those clauses, Settlers must pay you the Exit Payment within five (5) Working Days of the Termination Date.
- 11.2** Subject to clause 13.9, the Exit Payment will comprise of an amount equal to the Licence Payment paid by you, plus any amount Settlers has agreed to pay you pursuant to clause 3.7.3, less the following deductions made by Settlers by way of set off:
- 11.2.1** The Village Contribution;
- 11.2.2** Any charge that may arise through loss on entering into a new occupation right agreement (clause 12.7);
- 11.2.3** Any actual costs of Settlers in refurbishing the Dwelling (not being due to Fair Wear and Tear). The cost of refurbishment is set by Settlers in its sole discretion upon inspection of the Dwelling following termination. Settlers shall thereafter notify you of the costs of refurbishment and shall arrange for the Dwelling to be refurbished as soon as practicable following such notification to you;



**11.2.4** Administration Payment being 2% of the Licence Payment including GST (if any); and

**11.2.5** Any other amount due and owing to Settlers under this Agreement.

**11.3** If payment of the Exit Payment is to be made to your personal representatives following your death, then Settlers must be supplied with a copy of either probate or letters of administration before making payment. If payment of the Exit Payment is to be paid to any other person, persons or entity (such as your family trust), then Settlers must be provided with written authority from you to make payment to that person, persons or entity before making payment.

## **12. Consequences of Termination**

**12.1** On termination:

**12.1.1** You and anyone living with you must leave the Dwelling;

**12.1.2** You must continue to pay the Village Outgoings Payment until the date on which a new occupation right agreement with a new resident is entered into for the Dwelling, provided however that if such date is not within either six (6) months of the Termination Date (or any later date that you stop living in the Dwelling and remove your possessions), Settlers shall from that date reduce such charges by 50%. However, if termination is due to the Dwelling being damaged or destroyed through no fault of your own and is in the opinion of Settlers uninhabitable, clause 13 will apply and the Village Outgoings Payment may:

(a) Be suspended (if you take up temporary accommodation) and then transferred to a new Dwelling that you occupy; or

(b) Cease to be payable in accordance with clause 13; and

**12.1.3** Until the Dwelling to which your Agreement relates is sold, for so long as you are charged and continue to pay the Village Outgoing Payment and are not in breach of any other obligation under this Agreement, you will continue to be able to utilise all of Settlers' general facilities in terms of this Occupation Right Agreement (but may not occupy or re-occupy your Dwelling once vacated) until such date that a new resident settles the purchase of a new occupation right agreement for the Dwelling.

**12.2** Settlers controls the sale and marketing of the Dwelling following termination of this Agreement. Settlers will make all reasonable efforts and take proper steps to find a new resident and enter a new occupation right agreement for your Dwelling with the new resident in a timely manner and for the best price reasonably obtainable. Settlers will respond to all enquiries about the Dwelling in a timely and helpful way and Settlers will not give preference to finding residents for a dwelling in the Village that has not previously been occupied by a resident under an occupation right agreement. Settlers will consult you or your personal representative (as the case may be) about when your Dwelling goes on the market together with the general nature of the marketing plan. There are no additional charges relating to the marketing and sale that you will be liable to pay. Settlers will give you monthly updates on marketing to ensure you are informed about progress with marketing.

- 12.3** You have the right to introduce a new resident but Settlers will not be obliged to accept any such prospective resident who does not meet the normal entry criteria for the Village or whose offer to buy does not meet market value or conditions.
- 12.4** If a new occupation right agreement has not been entered into within one (1) months of the Termination Date, Settlers will report to you in writing (if it has not done so before) and continue to provide written monthly reports until a new occupation right agreement is entered into. The reports will state the steps taken to market the Dwelling and the progress made towards finding a new resident.
- 12.5** If a new occupation right agreement has not been entered into within six (6) months of the Termination Date, Settlers will obtain, at its expense, a written valuation of the Dwelling by an independent registered valuer who has experience in valuing retirement village dwellings. The written valuation will establish a licence payment amount at which to market the Dwelling. If you do not agree with the valuation, you may, at your cost, obtain a second written valuation from a similarly qualified independent registered valuer. Settlers will market the Dwelling at the licence payment amount established by Settlers' valuer, unless you obtain a second valuation, in which case Settlers will consider the second valuation in determining a suitable licence payment amount at which to market the Dwelling.
- 12.6** Capital Gain and Capital Loss. A Resident is not entitled to any capital gain and the operator will not charge any capital loss when a new Resident enters into an Occupation Right Agreement for the Residential Unit.
- 12.7** Following termination and after you have permanently vacated the Dwelling, Settlers may enter into a rental agreement for the Dwelling with a temporary resident prior to entering into a new occupation right agreement in respect of the Dwelling. While the Dwelling is rented, you will not be liable to Settlers for the Village Outgoings Payment. Settlers will be entitled to the full rent received.
- 12.8** Following termination, Settlers may agree with you in writing to buy your interest in the Dwelling in accordance with the Code of Practice.

### **13. Damage or Destruction to Dwelling**

- 13.1** If your Dwelling or a part of it is destroyed or damaged by any risk against which Settlers is insured, Settlers shall spend the insurance money received to fully repair or reinstate your Dwelling as soon as is practicable, unless:
- 13.1.1** It cannot meet all legal requirements, permits and other consents necessary to be able to repair and/or reinstate your Dwelling; and
- 13.1.2** It is (in Settlers' sole opinion) commercially and legally impracticable to repair and reinstate the Dwelling having regard to the extent of the damage to the entire Village, including its common property and other amenities and the total insurance proceeds likely to be received to reinstate the Village; and
- 13.1.3** The Insurance Money received from the insurer is insufficient to repair or reinstate the Dwelling.

Settlers will consult you in regards to the above matters and its decision as to whether the Dwelling will be repaired or reinstated as set out in clause 13.7.

- 13.2** If your Dwelling or any part of the Village is destroyed or so badly damaged that you cannot live in the Dwelling safely, or if you are required to move out of your Dwelling to enable damage assessments, repairs and reinstatement of your Dwelling or repairs to any part of the Village to be properly, safely and conveniently carried out, Settlers may give you written notice of the date on which you are required to give possession of your Dwelling to Settlers and you must vacate your Dwelling:
- 13.2.1** Until your Dwelling has been fully repaired or reinstated; or
  - 13.2.2** You agree to transfer to another Dwelling in terms of clause 13.7 of this Agreement; or
  - 13.2.3** This Agreement is terminated as provided in clause 13.8 or clause 13.9.
- 13.3** Settlers shall take reasonable steps to endeavour to minimise disruption to you in the event that you must vacate your Dwelling in terms of clause 13.2.1 and shall, within one (1) calendar month of the date you are required to give possession of your Dwelling to Settlers in terms of that clause:
- 13.3.1** Arrange for you or provide temporary accommodation to you;
  - 13.3.2** Otherwise advise you it is unable to do so.
- 13.4** If Settlers provides or arranges temporary accommodation for you while your Dwelling is being repaired or reinstated or is unsafe and being assessed in respect of such repair or reinstatement:
- 13.4.1** Your existing Village Outgoings Payment shall be suspended at the date you stop living in your Dwelling but you shall be required to meet the actual costs of the temporary accommodation Settlers arranges for you or provides to you provided that such costs shall be no higher than the amount you were paying in respect of the Village Outgoings Payment;
  - 13.4.2** You will continue to meet your own costs payable under clause 3.1.5 as if the temporary accommodation were your Dwelling and except as provided in this clause 13, shall continue to be bound by the same obligations in respect of the temporary accommodation provided to you as if it were your Dwelling;
  - 13.4.3** You will continue to pay a Charge for Additional Services only if you continue to receive Additional Services;
  - 13.4.4** Your Village Contribution and Administration Payment will continue to amortise during the period Settlers provides you temporary accommodation; and
  - 13.4.5** Once your Dwelling is repaired or reinstated and you resume possession of your Dwelling, all suspended payments shall resume from the date of such possession of your Dwelling.

- 13.5** Settlers is not required to and shall be under no liability to provide such temporary accommodation if it is not able to do so, beyond notifying you in accordance with clause 13.3 that such accommodation cannot be provided.
- 13.6** Any repair or reinstatement under clauses 13.1 and 13.2 shall be undertaken as soon as practicable and to the same general standard of the Dwelling prior to such repair and replacement but otherwise may be carried out as Settlers thinks fit based on availability of materials at the time of such repair and reinstatement and in order to comply with relevant legislation and legal requirements in respect of such repairs or reinstatement.
- 13.7** Settlers will consult with you to decide whether it is practicable to repair or replace the Dwelling based on its assessment of the matters set out in clauses 13.1.1 and 13.1.2 and will provide you with notice of its decision in writing. Should Settlers consider that it is not practicable to repair or reinstate the Dwelling, then either:
- 13.7.1** Settlers may offer to transfer you to another dwelling or unit owned by Settlers (either pre-existing or yet to be constructed) at, or in reasonable proximity to Settlers, in accordance with clause 14.6; or
- 13.7.2** This Agreement is terminated and clause 13.9 shall apply; and
- 13.7.3** You will pay any costs involved in respect of any temporary accommodation provided to you in terms of clause 13.4 up until the date of transfer or termination in terms of this clause 13.7 but your existing Village Outgoings Payment shall be suspended at the date you stop living in your Dwelling.
- 13.8** In the event that Settlers offers to transfer you to another dwelling in terms of clause 13.7 and you decline to transfer, then you are deemed to have terminated this Agreement in terms of clause 10.1.1 and the Exit Payment available to you will be calculated in accordance with clause 11.
- 13.9** In the event that your Dwelling is not repaired or reinstated and no transfer is offered to you by Settlers and this Agreement terminates in accordance with clause 13.7.2, you will be entitled to be repaid the Licence Payment in full (and a refund of any Optional Additional Payment Settlers has agreed to pay you pursuant to clause 3.7). This is to be payable without deduction of those payments detailed in clauses 11.2.1 (Village Contribution), 11.2.2 (capital loss), 11.2.3 (refurbishment) and clause 11.2.4 (Administration Payment). You may still be required to pay any other amounts that may be outstanding pursuant to this Agreement as set out in clause 11.2.5.
- 13.10** Settlers shall pay all amounts due to you in terms of 13.9 within ten (10) Working Days after the date Settlers or the Statutory Supervisor receives from the insurer of the Village the full Insurance Money relating to your Dwelling.
- 13.11** Nothing in this Agreement prevents you from having (if you choose to do so) your own insurance policy to assist you with the costs of temporary accommodation or facilities in the event of damage or destruction to your Dwelling.
- 14. Transfer to Another Dwelling**
- 14.1** At your written request to Settlers and subject to availability, you may move from your Dwelling to another dwelling or another type of dwelling ("Replacement Dwelling")

which is vacant and available for occupation at the Village. Where the transfer is to a dwelling where additional services will be required by you, you will have priority over outside applicants. If you wish to transfer due to medical requirements or reasons, the transfer is subject to the appropriate Additional Services being available and you and a medical officer nominated by Settlers assessing that the dwelling you wish to transfer to will be suitable for you with the appropriate Additional Services, and enable you to maintain independent living at Settlers.

- 14.2** Settlers will consult with you (and your family or representative if requested) and will provide you with advice on all available options as a transferring resident. If the transfer is due to medical or related health reasons, you have the right to an independent assessment (including a needs assessment) completed at your own cost. A needs assessment may be required in order to access subsidies administered by government agencies such as the Ministry of Health and Work and Income.
- 14.3** If you transfer to another Dwelling within the Village, you agree that this Agreement is terminated by you and you will enter into a new occupation right agreement with Settlers in respect of the Replacement Dwelling. That new occupation right agreement may provide for different terms of occupation or different fees and charges than this Agreement. Settlers also reserves the right to charge you the Administration Fee. Your right to transfer will be subject to:
- 14.3.1** A new resident entering into an occupation right agreement in respect of your Dwelling and making full payment to Settlers of the Licence Payment in respect of that occupation right agreement and your Dwelling. Settlers may waive this requirement at its sole discretion;
- 14.3.2** Receipt by Settlers of a signed termination of this Agreement in a form prepared by Settlers and provided to you; and
- 14.3.3** You agreeing to the terms of and signing a new occupation right agreement for the Replacement Dwelling you are transferring to and payment by you of the licence payment applicable in respect of that occupation right agreement and the cooling off period expiring in respect of that new occupation right agreement.
- 14.4** Once the new occupation right agreement is signed for the Replacement Dwelling, and the unconditional and cooling off period for that new agreement has expired, you will be responsible for the physical transfer of you and your personal belongings to the Replacement Dwelling, although Settlers may at your cost, provide such assistance as is necessary. Settlers will not charge any other costs incurred by the transfer except for those referred to in this Agreement.
- 14.5** Settlers will assist you manage the costs and cash flow consequences of any agreed transfer as follows:
- 14.5.1** In the event that Settlers waives the requirement in clause 14.3.1, then Settlers will not require you to pay the licence payment relating to the Replacement Dwelling you are transferring to until a new resident settles its agreement in respect of the Dwelling you are transferring from; and
- 14.5.2** The total amount of the village contribution that would ordinarily be payable under the new occupation right agreement for the Replacement Dwelling you

are transferring to will be reduced by the amount of the Village Contribution that has already amortised in terms of this Agreement in respect of the Dwelling at the time of transfer.

Settlers may be able to be able to assist you with other transfer costs or consequences and endeavours to maintain relationships with lenders to enable it to do so. You should enquire with Settlers as to any other transfer assistance it may be able to provide to you at the time you are considering the transfer.

**14.6** If you transfer due to damage or destruction related to your Dwelling or the Village in accordance with clause 13.7.1, then you may be transferred to another Dwelling owned by Settlers in the same general proximity as the Village in which case clauses 14.1 to 14.7 shall apply to the transfer.

**14.7** Nothing in this clause 14 affects your obligations under the other terms of this Agreement and in particular clauses 3, 11 and 12.

## **15. Interest for Late Payment**

You will pay interest at the rate of 2% per annum above Settlers' own bank's overdraft interest rate on any amounts which you are liable to pay, without prejudice to any of Settlers' other rights or remedies. Interest shall be calculated on a daily basis from the due date until the date of actual payment.

## **16. Rules**

Settlers may issue rules for the control and management of the Village and you will receive a copy of these rules and will be kept informed of any changes. The rules do not form part of this Agreement and in the event of any conflict, the terms of this Agreement prevail.

## **17. Complaints Procedure/Dispute Resolution**

**17.1** Settlers operates a complaints facility and a complaints procedure in accordance with the Retirement Villages Act 2003 for dealing with complaints by residents, and Settlers shall provide you with a written copy of that procedure.

**17.2** Any complaint you have can be referred to the complaints facility either verbally or in writing and should be provided to Settlers' Onsite Village Manager. Settlers prefers written complaints since it finds they prevent potential misunderstandings and assists in resolving matters more efficiently for all parties concerned.

**17.3** Settlers will promptly acknowledge and respond to your complaint in writing and will provide you with regular updates on the progress of your complaint. A decision must be reached within twenty (20) Working Days of the complaint being made.

**17.4** Settlers will contact you for an informal discussion between the concerned parties and there may also be investigation and/or mediation.

**17.5** If the complaint is resolved by mutual agreement it will be recorded in writing and signed by and copied to all parties and the complaints process will be complete.

- 17.6** If the complaint is not resolved Settlers will make a decision and advise all parties in writing with reasons and intended action.
- 17.7** If Settlers has a complaint concerning you Settlers must first notify you of that complaint. Settlers must then make reasonable efforts to resolve its complaint with you.
- 17.8** If you are not satisfied with the decision twenty (20) Working Days after you referred the complaint to Settlers' Onsite Village Manager, and if the matter is one under which you may give a dispute notice in terms of section 53 of the Retirement Villages Act 2003, you may require the matter to be resolved by a disputes panel by giving Settlers and/or any other party a dispute notice (Settlers can provide you with a standard form of dispute notice you can complete). Likewise, if Settlers is unable to resolve a complaint concerning you, twenty (20) Working Days after Settlers notified you of the complaint, Settlers may require the matter to be resolved by a disputes panel by giving you and any other party a dispute notice.
- 17.9** After receipt of a dispute notice by you or where Settlers has provided you with a dispute notice, Settlers must appoint a disputes panel. The disputes panel will be selected from the list of people who the Retirement Commissioner has approved for appointment as a member of a disputes panel. The hearing and resolution of any dispute referred to a disputes panel will be conducted in accordance with the Retirement Villages Act 2003 and the Regulations made pursuant to that Act.
- 17.10** Notwithstanding any other provision in this Agreement, if, following the complaints process set out in clauses 17.1 to 17.6, there is still a dispute concerning the disposal of your Dwelling, that dispute shall be dealt with in accordance with this clause 17.10. You may give Settlers a dispute notice regarding the resolution of a dispute concerning any alleged breach by us of this Agreement or the Code of Practice in disposing of the Dwelling but (as set out in the Retirement Villages Act 2003) you cannot give Settlers a dispute notice until nine (9) months after the Dwelling has become available to Settlers for disposal in accordance with this Agreement or the Code of Practice.

## **18. Dealing with Residents**

- 18.1** Settlers, those employed by Settlers and those who provide services to Settlers at the Village, shall:

**18.1.1** Treat all residents with courtesy;

**18.1.2** Respect the rights of residents; and

**18.1.3** Not in any manner exploit you or the other residents.

## **19. Meetings**

- 19.1** Settlers must call meetings of residents by written notice to each resident specifying the time, place and agenda of the meeting, with such notice being provided to the resident at least ten (10) Working Days before the relevant meeting. Settlers must call meetings in the following circumstances:

**19.1.1** An annual general meeting within six (6) months after the end of an accounting period for which financial statements must be prepared for

Settlers or the Village for the purpose of considering the financial statements and maintenance report, the Statutory Supervisor's report and any other matters;

**19.1.2** On request by the Statutory Supervisor or by at least 10% of the Village residents for the purposes of giving the Statutory Supervisor the residents' opinions or directions relating to the exercise of the Statutory Supervisor's powers;

**19.1.3** In the event that there is no Statutory Supervisor of the Village, on the request of at least 10% of Village residents for the purposes of giving Settlers the residents' opinions or directions;

**19.1.4** If this Agreement or other such documents require Settlers to get the residents' collective consent and to enable residents to give their opinions or directions if asked; and

**19.1.5** If in the opinion of Settlers it is reasonable to hold an informal meeting of residents to discuss matters affecting them or the Village.

**19.2** Procedure to be followed at formal meetings is detailed in Schedule I.

**19.3** Settlers must take part in consultation concerning residents' interests with a resident or group of residents or their representative. Consequent on consultation and deliberation Settlers will convey its decision with reasons to the residents. You or a group of residents have the right to appoint a person or people to represent your views in the consultation process.

**19.4** You together with other residents have the right to form a Residents' Committee with its own rules and the committee may convene meetings with Settlers, the Statutory Supervisor or their representatives who will be expected to meet with the committee where reasonable.

## **20. Deed of Supervision**

Settlers acknowledges that it is bound by and covenants that it will comply with the terms of the Deed of Supervision.

## **21. Indemnity of Statutory Supervisor**

**21.1** You indemnify the Statutory Supervisor for the time being and every attorney, agent or other person appointed by the Statutory Supervisor pursuant to the Deed of Supervision:

**21.1.1** In respect of all expenses and liabilities reasonably incurred by the Statutory Supervisor acting in good faith in the execution or purported execution of the duties of the Statutory Supervisor pursuant to the Deed of Supervision or of any powers, trusts, authorities or discretions pursuant to the Deed of Supervision;

**21.1.2** Against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done in relation to the Deed of Supervision other than a claim arising out of the wilful or negligent default or



breach of trust in the manner and to the extent set out in the Deed of Supervision.

- 21.2** You acknowledge and agree that the above indemnity is intended to confer a benefit on the Statutory Supervisor pursuant to the provisions of the Contracts (Privity) Act 1982.

**22. Procedure if there ceases to be a Statutory Supervisor**

If there ceases to be a Statutory Supervisor of the Village then Settlers will promptly appoint a new Statutory Supervisor with the required qualification in accordance with the procedures set out in the Retirement Villages Act 2003 and the Deed of Supervision, or if it is decided not to appoint a new Statutory Supervisor in accordance with the Deed of Supervision, then Settlers will apply to the Registrar of Retirement Villages under the Retirement Villages Act 2003 for an exemption from having a Statutory Supervisor for the Village and if approved will abide by all conditions required by the Registrar of Retirement Villages in granting the exemption.

**23. Enduring Powers of Attorney**

On or before the Commencement Date you must provide Settlers with a copy of enduring powers of attorney given by you in respect of your property and personal care and welfare. The powers of attorney must remain valid in the case of your mental incapacity. You must also provide Settlers with the contact details of the attorney. If you appoint additional attorneys or if attorneys are removed or replaced, you must advise Settlers of the changes as soon as possible and provide us with copies of the relevant documents appointing or replacing attorneys no later than ten (10) Working Days following any such change. You agree that Settlers shall not be required to act on the instructions any purported attorney that has not been notified to Settlers in terms of this clause until such time as Settlers has had reasonable time and documentation to be able to fully authenticate any such power of attorney or person purporting to act in accordance with it.

**24. Privacy Act**

You agree that Settlers may collect personal information about you from any health or other agency in connection with your physical and mental health or otherwise relevant to your suitability to continue to live in your Dwelling at Settlers and authorise any such agency to disclose information relating to your health or suitability to Settlers. You also agree that Settlers may release information to your attorneys or any independent medical practitioner or medical officer retained by Settlers.

**25. Costs and Remedy for Breach**

You agree that Settlers may remedy any breach of this Agreement by you, should you fail to do so when required or rectify any damage caused by you in respect of the Dwelling or the Village and you agree to meet and pay for all of Settlers' costs, claims, damages, losses or expenses directly or indirectly incurred by Settlers ("Costs") due to or arising out of or relating to your breach of this Agreement or Settlers remedying any such breach (including but without limitation, any debt collection costs and Settlers' own solicitor/client costs) and you hereby indemnify Settlers for all such Costs.

## 26. Rights of Cancellation

- 26.1** After you sign this Agreement you may cancel this Agreement, without having to give any reason by written notice given not later than fifteen (15) Working Days after you sign this Agreement.
- 26.2** Where this Agreement relates to a Dwelling which is to be built or completed after the date you sign this Agreement, then, if the Dwelling is not finished within six (6) months after the proposed date for completion (referred to in this Agreement as the Commencement Date), you may cancel this Agreement. You can do this by giving written notice to Settlers at any time after expiry of that six (6) month period.
- 26.3** Your notice of cancellation must be in writing and must clearly indicate your intention to cancel this Agreement.
- 26.4** The notice of cancellation must be given to:
- 26.4.1** Settlers; or
  - 26.4.2** The real estate agent or other person who dealt with you on behalf of Settlers when you signed this Agreement (unless Settlers notifies you that such person has ceased to act on Settlers' behalf); or
  - 26.4.3** Any other person who Settlers has notified you is authorised to receive communications on Settlers' behalf.
- 26.5** If you cancel this Agreement you are entitled to a refund of the deposit and any other payments made by you for the grant of the occupation right granted by this Agreement. This refund will be without deduction (other than tax) and will include any interest earned on the deposit. You are entitled to receive the refund within ten (10) Working Days after your notice of cancellation.
- 26.6** If you cancel this Agreement, Settlers is entitled to reasonable compensation for services provided to you under this Agreement, and for damage to any Dwelling or facilities in the Village for which you are responsible.

## 27. Glossary

In this Agreement capitalised terms have the following meanings:

**"Agreement"** means this Occupation Right Agreement;

**"Administration Payment"** means the payment of 2% of the Licence Payment (including GST if any) made by you to Settlers following termination and in accordance with clause 11.2.4 of this Agreement;

**"Charge for Additional Services"** means the charge for any services (including but not limited to medical, nursing and housekeeping or any other domestic aid and those services as set out in Schedule E) which are requested by you on a user pays basis and which are not covered by the Village Outgoings Payment. These charges will be fixed where reasonably practicable when you request the services but in any event will be invoiced to you no later than the 10th of the month following the supply of the services to you;

**"Code of Practice"** means the code of practice from time to time approved under the Retirement Villages Act 2003;

**"Code of Residents' Rights"** means the code of residents rights from time to time approved under the Retirement Villages Act 2003;

**"Commencement Date"** means the date set out in Schedule B or any variation of that date that may be agreed by the Resident and Settlers in writing or in terms of clause 2.3;

**"Conditions"** means any condition or conditions that must be satisfied prior to this Agreement taking full effect and commencing on the Commencement Date and which (if there are such conditions) are set out in Schedule B of this Agreement;

**"Deed of Supervision"** means the Deed of Supervision between Settlers and the Statutory Supervisor as amended from time to time;

**"Dwelling"** means a townhouse or apartment provided to you by this Agreement and identified in Schedule B;

**"Exit Payment"** means the payment made to you by Settlers following termination in accordance with clauses 11.1 and 11.2 of this Agreement;

**"Fair Wear and Tear"** means deterioration or damage attributable to normal use and/or the normal operation of natural forces but excludes deterioration or damage attributable to smoking, incontinence, the use of mobility aids and any damage attributable to you, your Visitors or any pet of yours that is not due to normal and reasonable use of your Dwelling. For the avoidance of doubt, you are responsible to repair and maintain all of the Operator's Chattels except where the Operator's Chattels need replacement due to Fair Wear and Tear or are covered by warranty;

**"Final Payment Date"** means the date not later than five (5) Working Days after the last of:

- (a) Settlers receiving full settlement of a new resident's licence payment;
- (b) Settlers holding an occupation right agreement satisfactory to it for the dwelling, properly signed by a new resident;
- (c) If it is necessary to obtain payment from Settlers' insurers in order for Settlers to meet its obligations to you, the Final Payment Date is the date ten (10) Working Days after the date on which Settlers (or the Statutory Supervisor) receives full payment from its insurers for the loss or damage to the Dwelling.

**"Fittings"** means any fittings at the Dwelling at the commencement of the Agreement, including, without limitation, curtains or drapes, ornamentation or pictures, light bulbs, electrical cables and all other similar readily removable and replaceable items;

**"Insurance Money"** means that part of any insurance proceeds paid to Settlers upon damage to the Dwelling which in the opinion of Settlers and the Statutory Supervisor, are fairly attributable to the Dwelling;

**"Invoice"** means an invoice which shall in all respects comply with the provisions of the Code of Practice and shall include particulars of the items charged, whether the item charged is for services or outgoings and itemisation of what the charge covers, when the charge was incurred, the dollar amount of the charge and the total amount to pay, the due date for payment and the method of payment, what steps may be taken to query the charge and where the invoice is to be paid by direct debit or automatic payment, a statement that says that the invoice is for notification only and that the amount will be paid automatically unless queried by a specified date;

**"Land"** means the land at 550 Albany Highway, Albany, Auckland as set out in Schedule A;

**"Licence Payment"** means the sum of money paid by you to Settlers on the issue of this Agreement of the amount set out in Schedule B in consideration of the right to receive the Exit Payment;

**"Onsite Village Manager"** means the person named as the Onsite Village Manager in schedule F or any other person acting in that role from time to time;

**"Operator's Chattels"** means all chattels, fixtures, fittings and equipment including whiteware provided by Settlers as part of the dwelling referred to in Schedule B but excluding your personal effects, furniture and fittings;

**"Optional Additional Payment"** is a payment the Resident may elect to make on entering into this Occupation Right Agreement as is set out fully in clause 3.7;

**"Resident"**, **"you"** and **"your"** refers to the person signing this Agreement as Resident but if two people sign this Agreement, refers to both of you jointly and severally and, where the context allows or requires, includes duly and appropriately appointed and authorised personal representatives of a person signing this Agreement;

**"Settlers"** means Settlers Albany Limited, the operator of the Village;

**"Statutory Supervisor"** means Covenant Trustee Services Limited and any successor or replacement appointed in terms of clause 22;

**"Termination Date"** means the date the occupation right terminates under any of the provisions of this Agreement or under any separate agreement reached between you and Settlers;

**"Termination Notice"** means a written notice to you ending your right to live in the Dwelling on the Termination Date. The Termination Notice will specify the period of applicable notice being one month in respect of clauses 10.1.6, 10.1.7, 10.1.8 and

10.1.10 and as much notice as is reasonable under the circumstances in respect of clause 10.1.9;

**"Village"** means the residential retirement village known as Settlers Albany owned and operated by Settlers;

**"Village Contribution"** means that sum of money payable by you on termination of this Agreement calculated in accordance with the formula set out in Schedule B and as a contribution to Settlers' general costs incurred in the supply of accommodation, community facilities and common areas for use by residents of the Village and all related matters;

**"Village Manager"** means Premier Lifestyle Villages Limited as described in Schedule E.

**"Village Outgoings"** means those expenses of the Village described in Schedule C;

**"Village Outgoings Payment"** means the regular monthly fee payable by the resident as a proportionate contribution towards Village Outgoings as determined from time to time by Settlers in its sole discretion and in consideration of the supply by Settlers of accommodation and Common Areas that are appurtenant to the Dwelling, and which together with the Village Contribution is intended to cover or recover all costs incurred by Settlers in respect of all aspects of running the Village while you are a Resident;

**"Visitor"** means any visitor of yours (for whatever reason) at the Village; and

**"Working Day"** means any day of the week other than a Saturday, a Sunday or statutory holiday in Auckland. A Working Day will be deemed to commence at 9am and end at 5pm. Any act done pursuant to 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 A****(THE LAND)**

Name of Village: Settlers Albany

Registration Number: 2231872

Street Address of Village: 550 Albany Highway, Albany, Auckland

Legal Description of Land: Estate in fee simple being 5.1123 hectares more or less being Section 2 Survey Office Plan 474941 comprised and described in Certificate of Title 674854;

Contact address for service of Village: C/- McVeagh Fleming, Level 14, 1 Queen Street, Auckland

Settlers Telephone Number: 09 415 2617

Settlers Fax Number: 09 415 2618

Email address: operator@settlers.co.nz

**SCHEDULE B**  
**(YOUR DWELLING AND TERMS)**

Resident: [.....]

Date of Birth: [.....]

Resident: [.....]

Date of Birth: [.....]

**A. Your Dwelling:**

- Type: Townhouse/Apartment
- Dwelling Number: [.....]

**B. Licence Payment: \$[.....]****C. Optional Additional Payment: (Clause 3.7)** *(insert 5% of Licence Payment)***D. Commencement Date: [.....]***(Must be at least fifteen (15) Working Days from the date the resident signs this Agreement)***E. Village Contribution:**

- The Village Contribution for all dwellings is calculated at 10% of the Licence Payment for the first year of occupation from the Commencement Date followed by 7.5% of the Licence Payment for each year thereafter (adjusted proportionately on a per month basis in the case of any incomplete year) to a maximum of 25% of the Licence Payment.
- Calculation of the Village Contribution stops on the earlier of:
  - The expiry of 3 years; or
  - The Termination Date.

**F. Village Outgoings Payment** (applies to all dwellings): **\$703.30.**

NB. The Village Outgoings Payment is payable monthly in advance and on a weekly basis equates to **\$162.30** per week.

**G. Administration Payment: \$[.....]**

(being 2% of the Licence Payment including GST (if any)).

\_\_\_\_\_ (initials)

**H. Operator's Chattels:**

[Oven Dishwasher Cooktop Rangehood Wastemaster Microwave Heat Pump Carpet Curtain Tracks Voiles] For the avoidance of doubt, drapes (including making and supply) are not provided as an Operator's Chattel.

**I. Services and Facilities:**

Settlers offers the following services, which are provided in consideration of your Village Outgoings Payment: gardening, lawn mowing, repair and maintenance, emergency call out service. Other services such as housekeeping, hairdressing, laundry services, delivery of medication transport are available at varying charges.

The following facilities are available: community area with main lounge, dining facilities and a commercial kitchen for meal preparation, residents lounge with tea/coffee and bar facilities, stage/dance floor for resident functions/entertainment, TV area, doctor/nurse rooms (health clinic), administration offices, indoor swimming pool, indoor spa pool, gym, hobby space and multi-purpose activities room, billiards and pool tables and lounge, outdoor bowling green and croquet lawn, cinema, library and lounge area, separate lounge/private meeting/function room available for private meetings, art/indoor bowls room.

**J. Conditions:**

(For Settlers to delete the inapplicable provision:)

(a) This Agreement is unconditional.

**OR**

(b) This Agreement is conditional upon:

\_\_\_\_\_ (initials)



**SCHEDULE C**  
**(OUTGOINGS AND EXPENSES)**

The Village Outgoings Payment is a contribution towards the recovery of all costs, charges, expenses and other outgoings incurred by Settlers in owning, managing, operating and maintaining the Village, including (but without limitation):

- General rates and water rates and other Local Authority or Government duties, fees, imposts and taxes (excluding those for undeveloped land and income tax of Settlers);
- The costs of compliance with any statute, regulation, by-law or other lawful obligation in respect of the Village;
- Appropriate fees and expenses of the Statutory Supervisor and auditor and any other cost, expense or outgoing reasonably incurred by Settlers and paid or payable in respect of the Village;
- The costs of preparation and filing of the Disclosure Statement;
- A portion of the management fee paid to the Village Manager in respect of the management services provided;
- Insurance premiums and all of the related costs of comprehensively insuring the buildings and other assets within the Village and maintaining, reviewing or updating that insurance;
- All charges for electricity, light, power, fuel, telephone, sewage, garbage collection, equipment, leases and other services or requirements furnished or supplied to the Village for the general benefit or purposes of the Village and its residents not otherwise separately levied or charged to and payable by particular residents;
- The costs of internal and external maintenance of all buildings within the Village other than internal maintenance of dwellings, responsibility for which rests with a particular resident;
- The cost of maintenance of lawns, grounds, drives and paths together with common facilities and areas in the Village;
- The cost of operating, supplying, maintaining, inspecting, testing and repairing all services and facilities (including facilities for the personal care or convenience of residents generally to the extent that these are not met by direct charges to residents utilising the same) from time to time provided by Settlers for the benefit of residents;
- The costs of transport and consumables;
- The cost of staffing and administration of the Village;
- Provision for cost of Village maintenance, renovations, repairs and replacements which are of a substantial but infrequent or irregular nature; and

Any other expenditure reasonably or properly incurred by it in the ownership, management and maintenance of the Village and the provision of services and facilities to the residents.

## SCHEDULE D

### (CHARGES FOR ADDITIONAL SERVICES AND UTILITIES)

#### Additional Services

The following additional services are available to be purchased at the Village.

- Repairs to the interior of the Dwellings.
- Housekeeping is available for purchase in 15 minute increments, and which comprises:
  - cleaning of kitchen, bathroom and toilet;
  - vacuuming of carpet;
  - mop of hard surfaces;
  - dusting of cabinets and tops; and
  - removal of rubbish.
- Laundry Services is available for purchase in 15 minute increments, and which comprises:
  - strip and replace bed linen;
  - replacement of towels, face cloths and tea towels; and
  - collection of personal clothing, washing, drying, folding and placement of items in linen cupboard.
- Delivery of Medication:  
Settlers also offers a medication delivery service. There is no charge for delivering medication once a day. You can elect to have medication delivered on a regular basis two, three or four plus times a day and your Charge for Additional Services will increase accordingly.
- Such other Additional Services which may be provided to you at your request at Settlers' discretion.

***[Charges for the above services are based on prevailing market rates and are invoiced to the Resident monthly on a user pays basis – a complete schedule of charges for Additional Services is available from Settlers on request].***

NB. Settlers is a "lifestyle" village which promotes independent living and as such the services listed above under "Charges for Additional Services" are the extent of the care and support available to be provided into your independent living dwelling. However, if your needs are such that you require a greater level of care, Settlers has a priority access agreement with a care facility and hospital run by Fairview Care Limited (which is situated at Fairview Lifestyle Village in Albany which is very close to Settlers). Fairview Care Limited provides Settlers' residents with priority access to care and hospital facilities immediately behind residents of Fairview and ahead of the general public. The Fairview hospital provides a range of continuing care and medical services, subject to a bed being available.

**Utilities** (refer to clause 3.1.4 of this Agreement)

Utilities are payable as follows:

Residents of all dwellings must arrange for their own supply of telephone and internet service and are responsible for payment for this service directly to the supplier.

For all dwellings (apartments and townhouses) electricity is charged based on metered usage within the apartment. Through our bulk purchasing power we have negotiated a favourable rate per kw currently \$0.18 (+GST). Any change to this rate will be advised to the residents by providing them with one month's notice of the rate increase.

Electricity charges will be invoiced by Settlers to the resident, and are payable monthly in arrears by direct debit.

Charges for electricity are reviewed on an annual basis and any increase will be notified to the resident one month prior to an increase in charges. Residents will be consulted in respect of any material changes in such charges, which will ordinarily be a change that is not a normal change made in line with inflation, or due to increases in Settlers' own costs of providing the services increasing.

**Other Charges**

In the event that you require Settlers to undertake maintenance or repairs on your behalf, you will be charged the cost of such repairs and related materials upon the date that Settlers receives all of its trade, service and materials invoices relating to that maintenance or repair. No surcharge is applied and you are required to pay all such invoices seven (7) days after date of invoice.

**SCHEDULE E****(STAFF)****Settlers must:**

1. Have and maintain written policies processes and procedures for staff selection, training and on-going supervision including details of appropriate qualifications and experience for staff employed for specific positions and the need for recognised first aid qualification for particular staff positions.
2. Have an induction process to familiarise staff with the Code of Practice and require all staff to complete the induction process.
3. Provide on-going training and supervision to achieve and maintain staff competence.
4. Provide supervision by suitably qualified and experienced staff members for any staff member who fails to meet the requirements of his or her position who shall be required to take part in training to meet such requirements.

**Key management and staff at the date of this Agreement are:****Village Manager:**

Premier Lifestyle Villages Limited

Directors of Manager: Scott Vernon and David McFarlane

Address for Service: C/- McVeagh Fleming, Level 14, 1 Queen Street, Auckland

Email: operator@settlers.co.nz

The Manager (through its personnel and principals) has significant retirement village management expertise and skills.

**Key Contact People for day to day enquiries:**

Onsite Village Manager: Keith Thorpe

PO Box 300-213

Albany

Auckland 0632

Phone: 09 415 2617

Fax: 09 415 2618

Mobile Phone Keith: 027 788 0156

Email: keith.thorpe@settlersalbany.co.nz; manager@settlersalbany.co.nz

Qualifications & Experience: 10 years as CEO of Youthtown with experience in facility management, HR and establishing key stakeholder relationships in public and private sector.

Other Languages: N/A

Normal Hours: 8.30 am to 5.00 pm Monday to Friday

**Other Key Staff**

Nurses: Elaine Smith and Lyn Godsell (Registered Nurses)

The nurses alternate shifts of four days/nights on and four days/nights off, to ensure there is always a qualified nurse on duty.

Housekeeping Team Leader: Robyn Pasalic

Normal Hours: 8.30 am to 5.00 pm Monday to Friday

Maintenance Manager: Katie Parkyn

Normal Hours: 7.30 am to 12.00 pm Monday and Friday;  
7.30 am to 4.00 pm on Tuesday, Wednesday  
and Thursday

Head Gardener: Philip Smith

Normal Hours: 8.00 am to 4.30 pm Monday to Friday.

**SCHEDULE F****(SAFETY AND PERSONAL SECURITY OF RESIDENTS)****Settlers must:**

1. Have and maintain a written policy setting out how the physical environment (grounds, facilities, common areas and Dwellings) codes of behaviour and management practices at the Village maintain and enhance the safety and personal security of residents including those with disabilities, written copies of which must be provided to residents and intending residents;
2. Have and maintain the following processes, procedures and systems to maintain and enhance the safety and security of residents:
  - 2.1 A process for reviewing the safety and personal security of residents and for responding to all safety and security issues raised by them;
  - 2.2 A policy providing for personal security of residents in the Dwellings;
  - 2.3 Systems for residents and others to report accidents, incidents and hazards in the Village and systems and procedures for security if no staff members are present (or a full number of staff is not present) at the Village;
  - 2.4 Appropriate lighting in the Village with reference to the size, location and layout of the Village, including its grounds, facilities, common areas and Dwellings;
  - 2.5 Heating systems in all habitable spaces in accordance with the Building Code;
3. Maintain at the level advertised in promotional material any safety or security policy, process, procedures or system.

**SCHEDULE G****(FIRE PROTECTION AND EMERGENCY MAINTENANCE)****Settlers must:**

1. Have and maintain a written policy relating to fire protection and emergency maintenance complying with applicable statutory requirements and the Code of Practice, a written copy of which must be given to residents;
2. Have an induction process in which all staff must take part to familiarise staff and residents of the fire protection and emergency management policy and associated systems and procedures;
3. Have measures and systems in place to protect the Dwellings, facilities and indoor areas in the Village from fire;
4. Fit and maintain at least one smoke alarm complying with the relevant legislation in every dwelling, facility and indoor area in the Village;
5. Have in place equipment for dealing with fire and other emergencies in accordance with the Fire Safety and Evacuation of Buildings Regulations 2006 and an operative evacuation scheme or procedure in respect thereof, written copies of which must be given to the residents together with a copy of the fire and evacuation drill records on request and inform intending residents of their right to this information. Settlers must regularly check and review the evacuation scheme or procedure;
6. Train and advise staff of their responsibilities for the operation of the evacuation scheme and ensure fire and evacuation drills are carried out regularly with written records in respect thereof kept at the Village;
7. Have and maintain a written procedure to deal with emergencies including:
  - 7.1 Emergency response systems and how and when such systems are monitored;
  - 7.2 The emergencies covered by the procedure;
  - 7.3 Written instructions to residents on how to use the emergency procedures when in the Village and what to do while waiting for help;
  - 7.4 How and when the systems are checked but not less than every three (3) months;
  - 7.5 The people to respond to emergency and their qualifications in respect of emergency situations;
  - 7.6 Any costs to the residents in respect thereof; and
- 7.7 The expected response time.

**SCHEDULE H**  
**(PROCEDURE AT MEETINGS)**

1. Settlers must by written notice to you specifying the time, place and agenda of the meeting not less than ten (10) Working Days before the meeting.
2. Settlers must in the notice of the meeting, if a matter is to be decided by a vote of residents at the meeting, state the number of residents that need to attend to meet the quorum and confirm and advise how the residents can use a representative or cast proxy votes.
3. The meetings must be chaired by:
  - 3.1 The Statutory Supervisor (if there is one); or
  - 3.2 A person appointed in accordance with the conditions (if any) of an exemption (if any) of Settlers from appointing a Statutory Supervisor; or
  - 3.3 A person appointed by the majority of residents who are at the meeting if an appointment has not been made under clauses 3.1 or 3.2 of this Schedule above.
4. Settlers must ensure the minutes of the meeting are provided to residents.
5. Settlers must give the residents at a meeting, orally or in writing, information that relates to the affairs of the Village and which has been requested with reasonable notice by a resident of the Village.



**SIGNATURES**

**SIGNED BY SETTLERS ALBANY LIMITED**

by two Directors

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

Date Agreement signed by Settlers: \_\_\_\_\_

<b>SIGNED BY:</b>	)	_____
[.....]	)	_____
[.....]	)	_____
In the presence of:	)	

\_\_\_\_\_  
Solicitor of the High Court of New Zealand

Date Agreement signed by Resident: \_\_\_\_\_

## CERTIFICATE OF NON-REVOCATION AND NON-SUSPENSION OF ENDURING POWER OF ATTORNEY

*Section 103C, Protection of Personal and Property Rights Act 1988*

***NB. If signing for the Resident as attorney, this certificate of non-revocation of power of attorney must be completed.***

I, \_\_\_\_\_, certify that:

*For this paragraph select the statement that applies:*

### Statement A

On \_\_\_\_\_, \_\_\_\_\_ (Resident) granted to me an enduring power of attorney to act in relation to his/her property.

### Statement B

On \_\_\_\_\_, \_\_\_\_\_ (Resident) granted to me an enduring power of attorney to act in relation to his/her personal care and welfare.

### Statement C

On \_\_\_\_\_, \_\_\_\_\_ (Resident) granted to me an enduring power of attorney to act in relation to his/her personal care and welfare and his/her property.

I have not received notice of an event revoking my authority to act under the enduring power of attorney.

I have not received written notice from \_\_\_\_\_ (Resident) suspending my authority to act under the enduring power of attorney.

**Date:**

**Signature of Attorney:**

### Notes

#### Definition of an Event Revoking the Power of Attorney

An event revoking the power of attorney means any of the following events in which the enduring power of attorney ceases to have effect:

- the donor revokes the power while mentally capable of doing so; or
- the donor dies; or
- the attorney gives notice of disclaimer in accordance with section 104 of the Protection of Personal and Property Rights 1988; or
- the attorney dies, or is adjudged bankrupt, or becomes a patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 detained in a hospital under that Act, or becomes subject to a personal order under Part 1 of the Protection of Personal and Property Rights Act 1988 or a property order under Part 3 of the Protection of Personal and Property Rights Act 1988, or otherwise becomes incapable of acting; or
- in the case of an enduring power of attorney that appoints more than one attorney with joint but not several authority, one of the attorney's dies, or is adjudged bankrupt, or becomes a patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 detained in a hospital under that Act, or becomes subject to a personal order under Part 1 of the Protection of Personal and Property Rights 1988, or a property order under Part 3 of the Protection of Personal and Property Rights 1988, or otherwise becomes incapable of acting; or
- a Court revokes the appointment of the attorney pursuant to Section 105 of the Protection of Personal and Property Rights 1988.

**LAWYER'S CERTIFICATE**

Name of Village: Settlers Albany

Registration number of Village: 2231872

I, \_\_\_\_\_ Solicitor, certify that:

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

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Street address: \_\_\_\_\_

Tel: \_\_\_\_\_

Postal address: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_