

Residency Agreement

Wishart Christian Village
3 Erindale Close, Wishart, Qld, 4122

Wishart Christian Village Association Inc

and

[insert details]

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RESIDENCY AGREEMENT dated the _____ day of _____ 20_____

BETWEEN:

WISHART CHRISTIAN VILLAGE ASSOCIATION INC of 30/3 Erindale Close, Wishart in the State of Queensland
(**"Scheme Operator"**)

AND

[insert details] (**"Resident"**)

BACKGROUND

- A. The Scheme Operator is the owner and operator of the Retirement Village.
- B. The Scheme Operator has the authority to grant rights to reside in accommodation units in the Retirement Village and to provide the General Services.
- C. The Resident wishes to secure a right to reside in the Accommodation Unit and to access the General Services.
- D. The Resident has received and read the Forms 3 & 4
- E. The Scheme Operator agrees to grant to the Resident a right to reside in the Accommodation Unit and to provide the General Services to the Resident, on the terms of this Agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings respectively set opposite:

- 1.1.1 **'accelerated wear'** means wear that happens more quickly than would have reasonably been expected;
- 1.1.2 **'Accommodation Unit'** means the accommodation unit and any other area (whether internal or external) licensed to the Resident under this Agreement, as specified in **Item 8** and the plan annexed to this Agreement, and includes:
 - 1.1.2.1 all fixtures, fittings and internal partitions;
 - 1.1.2.2 all windows, doors, fly screens, security screens and security grills;
 - 1.1.2.3 carpet and other floor coverings;
 - 1.1.2.4 any furnishings, equipment and appliances which the Scheme Operator provides with the accommodation unit (for example, hot water system, stove, dishwasher, air conditioner); and
 - 1.1.2.5 any alteration the Resident makes to the interior or exterior of the accommodation unit with the Scheme Operator's consent;
- 1.1.3 **'Act'** means the *Retirement Villages Act 1999* (Qld);

- 1.1.4 **'Agreed Value'** means the value of a right to reside in the Accommodation Unit agreed or taken to be agreed between the Resident and the Scheme Operator under clause **11.3**, from time to time, determined on the basis that:
- 1.1.4.1 the Reinstatement Work has been completed;
 - 1.1.4.2 the person to whom the right to reside is granted satisfies the criteria of a New Resident under clause **11.2.1** or **11.2.2**; and
 - 1.1.4.3 the terms of the right to reside are those described in respect of a new right to reside in clause **11.2.4**;
- 1.1.5 **'Agreement'** means this Residency Agreement and includes any schedule, annexure or appendix thereto;
- 1.1.6 **'appurtenances'** means all stop-cocks, hydrants, fire hoses, alarms systems or other fire prevention and extinguishing equipment, air-conditioning systems, water closets, lavatories, grease traps, water apparatus (including hot water systems, rainwater tanks and pumps), wash basins, wash rooms, gas fittings, electrical fittings and other similar apparatus;
- 1.1.7 **'Business Day'** means a day other than a Saturday, Sunday or public holiday in Brisbane;
- 1.1.8 **'Capital Gain'** means the amount, if any, by which the Resale Price exceeds the Ingoing Contribution;
- 1.1.9 **'capital improvement':**
- 1.1.9.1 means the first-time provision of a Capital Item; and
 - 1.1.9.2 to the extent it is not inconsistent with clause **1.1.9.1**, includes a thing that is a capital improvement under a ruling under the *Taxation Administration Act 1953* (Cth) dealing with capital improvement;
- 1.1.10 **'Capital Items'** include:
- 1.1.10.1 all buildings and structures in the Retirement Village owned by the Scheme Operator, other than items that, under this Agreement, the Form 3 and 4 or the Act, are to be maintained, repaired and replaced by the Resident;
 - 1.1.10.2 all plant, machinery and equipment owned by the Scheme Operator and used in the operation of the Scheme; and
 - 1.1.10.3 all village infrastructure owned by the Scheme Operator;
- 1.1.11 **'Capital Loss'** means the amount, if any, by which the Ingoing Contribution exceeds the Resale Price;
- 1.1.12 **'Capital Replacement Fund'** means the fund established by the Scheme Operator in accordance with the Act for replacing the Retirement Village's Capital Items;
- 1.1.13 **'Capital Replacement Fund Contribution'** means the contribution to the Capital Replacement Fund determined and paid by the Scheme Operator in accordance with the Act;

- 1.1.14 **'Commencement Date'** means the commencement date of the Licence, being the date specified in **Item 9**;
- 1.1.15 **'Common Property'** means the roads, pathways, grounds, buildings, facilities, conveniences, equipment, appliances and other parts of the Retirement Village that are from time to time specified in writing by the Scheme Operator to the Resident as available for the common use of all persons from time to time residing in the Retirement Village;
- 1.1.16 **'Cooling-off Period'** means the fourteen (14) day period starting on:
- 1.1.16.1 the date on which the last of the parties to sign the Application to Reside signs the Application to Reside; or
- 1.1.16.2 an earlier date if the Resident has signed a Form 5; or
- 1.1.16.3 if the residence contract referred to in clause **3.1.1.1** is subject to a later event happening or another contract being entered into – the day the later event happens or the other contract is entered into;
- 1.1.17 **'day to day maintenance'**, of a Capital Item, means maintenance of the item that is carried out regularly and with little expense;
- 1.1.18 **'Exit Entitlement'** means the net amount payable by the Scheme Operator to the Resident on the Exit Entitlement Date, calculated in accordance with clause **13.2**;
- 1.1.19 **'Exit Entitlement Date'** means the date on or before which the Scheme Operator must pay the Exit Entitlement to the Resident, being the earliest date that is:
- 1.1.19.1 14 days after the Licence has terminated, the Scheme Operator has granted a new right to reside in the Accommodation Unit to a New Resident in accordance with clause **11** and the Scheme Operator has received the Resale Price from the New Resident or
- 1.1.19.2 No later than 18 months after the termination date, or a later date fixed by the Queensland Civil and Administrative Tribunal (QCAT).
- 1.1.20 **'Exit Fee'** means the amount payable by the Resident to the Scheme Operator under clause **14.1**;
- 1.1.21 **'Form 3'** means the Village Comparison Document to be given to new and prospective residents to provide general information about the retirement village
- 1.1.22 **'Form 4'** means the Prospective Costs Document to be given to new and prospective residents to provide details about a specific unit in the retirement village;
- 1.1.23 **'General Services'** means:
- 1.1.23.1 the services supplied, or made available, to all residents of the Retirement Village, as specified in the Public Information Document;
- 1.1.23.2 any service approved by residents of the Retirement Village in accordance with Section 108 of the Act; and

- 1.1.23.3 any service that is introduced as a cost-effective alternative to a service referred to in clauses **1.1.23.1** or **1.1.23.2**;
- 1.1.24 **'General Services Charge'** means the recurrent charge payable by the Resident for the General Services determined in accordance with clause **4**;
- 1.1.25 **'GST Act'** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.1.26 **'Incoming Contribution'** means the amount specified in **Item 10** which is payable by the Resident to the Scheme Operator for the granting of the Licence;
- 1.1.27 **'Licence'** means the licence to occupy and reside in the Accommodation Unit granted by the Scheme Operator to the Resident under this Agreement;
- 1.1.28 **'maintenance'**, of a Capital Item:
- 1.1.28.1 means the upkeep of the Capital Item in good condition and efficient working order; and
- 1.1.28.2 to the extent it is not inconsistent with clause **1.1.28.1**, includes doing something that, under a ruling under the *Taxation Administration Act 1953* (Cth) dealing with maintenance of Capital Items, is maintenance of the Capital Item;
- 1.1.29 **'Maintenance Reserve Fund'** means the fund established and kept by the Scheme Operator in accordance with the Act for maintaining and repairing the Retirement Village's Capital Items;
- 1.1.30 **'Maintenance Reserve Fund Contribution'** means the recurrent contribution to the Maintenance Reserve Fund payable by the Resident in accordance with clause **6**;
- 1.1.31 **'Manager'** means any person appointed by the Scheme Operator from time to time under clause **9.8.1** to manage the Retirement Village;
- 1.1.32 **'Month'** means calendar month and **'monthly'** means at intervals of one calendar month;
- 1.1.33 **'New Resident'** means the next person to whom a right to reside in the Accommodation Unit is granted subsequent to termination of the Licence;
- 1.1.34 **'Personal Services'** means optional services supplied or made available for the benefit, care or enjoyment of a resident of the Retirement Village;
- 1.1.35 **'Personal Services Charges'** means the charges payable by the Resident for the Personal Services selected by the Resident, determined in accordance with clause **5**;
- 1.1.36 Forms 3 and 4' means the public information document in a form provided for by the Act giving details about the Scheme;
- 1.1.37 **'Reference Table'** means the part of this Agreement headed "Reference Table";
- 1.1.38 **'Reinstatement Work'** means work reasonably necessary to reinstate the Accommodation Unit to a marketable condition having regard to its condition as at the date the Resident commenced occupying the Accommodation Unit and the general condition of other accommodation units in the Retirement Village that are

comparable with the Accommodation Unit, which may include but is not limited to:

- 1.1.38.1 repainting the Accommodation Unit;
- 1.1.38.2 replacing the carpets and other floor coverings in the Accommodation Unit;
- 1.1.38.3 repairing damage to the Accommodation Unit; and
- 1.1.38.4 replacing fixtures, fittings, equipment, appliances, furniture, furnishings and other property in the Accommodation Unit that are made available by the Scheme Operator;

whether required as a result of fair wear and tear or otherwise;

- 1.1.39 **'Relative'** means the Resident's spouse (including a de facto partner within the meaning of section 32DA of the *Acts Interpretation Act 1954* (Q)), mother, step-mother, father, step-father, sister, step-sister, half-sister, brother, step-brother, half-brother, child or step-child;
- 1.1.40 **'repairs'**, to a Capital Item:
 - 1.1.40.1 means the restoration of the item by fixing or replacing parts of the item; and
 - 1.1.40.2 to the extent it is not inconsistent with clause **1.1.40.1**, includes doing something that, under a ruling under the *Taxation Administration Act 1953* (Cth) dealing with repairs to Capital Items, is repairs to the Capital Item;
- 1.1.41 **'replacement'**, of a Capital Item:
 - 1.1.41.1 means the substitution of the same type of item or an equivalent item; and
 - 1.1.41.2 to the extent it is not inconsistent with clause **1.1.41.1**, includes doing something that, under a ruling under the *Taxation Administration Act 1953* (Cth) dealing with replacement of Capital Items, is replacement of the Capital Item;
- 1.1.42 **'Resale Price'** means:
 - 1.1.42.1 if the Resident's Exit Entitlement is to be worked out on the basis of the Agreed Value - the Agreed Value; or
 - 1.1.42.2 otherwise - the ingoing contribution paid to the Scheme Operator by the New Resident in exchange for a right to reside in the Accommodation Unit, subsequent to termination of the Licence;
- 1.1.43 **'Resident'** means the licensee of the Accommodation Unit under this Agreement, being the person specified in **Item 7**;
- 1.1.44 **'Retirement Village'** means the retirement village comprising:
 - 1.1.44.1 the Retirement Village Land;
 - 1.1.44.2 the infrastructure and improvements constructed on the Retirement Village Land and owned by the Scheme Operator at

- the Commencement Date or at any time after the Commencement Date; and
- 1.1.44.3 the plant, machinery, equipment, appliances, furniture, furnishings and other property located on the Retirement Village Land and owned by the Scheme Operator at the Commencement Date or at any time after the Commencement Date;
- 1.1.45 **'Retirement Village Land'** means:
- 1.1.45.1 the land referred to in **Item 2**; and
- 1.1.45.2 any other land used in connection with the Scheme from time to time;
- 1.1.46 **'Scheme'** means the retirement village scheme within the meaning of the Act that is operated at the Retirement Village, the name of which is specified in **Item 1**;
- 1.1.47 **'Scheme Operator'** means the licensor of the Accommodation Unit and the person who controls the operation of the Scheme, being the person specified in **Item 3**;
- 1.1.48 **'Special Resolution'** means a special resolution at a residents meeting, as defined in the Act;
- 1.1.49 **'Specified Rate'** means the official "cash rate" set by the Reserve Bank of Australia from time to time, calculated on daily balances;
- 1.1.50 **'Termination Administration Costs'** means the costs payable by the Resident to the Scheme Operator under clause **14.2**;
- 1.1.51 **'Termination Date'** means the date the Licence terminates under clauses **10.1**, **10.2** or **10.3**;
- 1.1.52 **'Total Operating Costs'** has the meaning given in clause **4.1.2**;
- 1.1.53 **'Tribunal'** means the tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009*;
- 1.1.54 **'Trustee'** means the person whose name and address are specified in **Item 6**, being the person qualified to hold the Ingoing Contribution in trust in accordance with section 46 of the Act;
- 1.1.55 **'Valuer'** means a valuer appointed or selected in accordance with Section 70 of the Act.

1.2 Interpretation

- 1.2.1 Reference to:
- 1.2.1.1 a party includes that party's successors, permitted assigns, agents, executors and administrators;
- 1.2.1.2 a person includes a firm or body corporate;
- 1.2.1.3 singular includes the plural and vice versa;
- 1.2.1.4 any gender includes every gender;

- 1.2.1.5 a statute includes:
 - 1.2.1.5.1 any statute amending, consolidating or replacing the statute; and
 - 1.2.1.5.2 Orders in Council, proclamations, regulations, rules, by-laws and ordinances made under the statute; and
- 1.2.1.6 an *Item* is to an item in the Reference Table.
- 1.2.2 If a party consists of more than one person, this Agreement binds them jointly and each of them severally.
- 1.2.3 The Agreement is governed by the laws of Queensland.
- 1.2.4 If any term of this Agreement is or becomes illegal, invalid, unenforceable, voidable or void, that term will be read down to the extent necessary to give the term its maximum operation permitted by law and to ensure that the term (as read down) is not or does not become illegal, invalid, unenforceable, voidable or void and the term will be deemed to have been replaced accordingly with effect from the date this Agreement was first given to the Resident.
- 1.2.5 If any term of this Agreement is or becomes illegal, invalid, unenforceable, voidable or void and clause **1.2.4** cannot be applied to effectively read down the term, to the extent that it is possible to do so, that term will be deemed severed from this Agreement without affecting or invalidating the remaining provisions of this Agreement.
- 1.2.6 References to authorities, institutes, associations and bodies whether statutory or otherwise shall in the event of any such authority, institute, association or body ceasing to exist or being reconstituted, renamed or replaced or the powers or functions thereof being transferred to any other authority, institute, association or body, be deemed to refer respectively to the authority, institute, association or body established or constituted in lieu thereof and/or as nearly as may be succeeding to the powers or functions thereof.
- 1.2.7 Headings and subheadings in this Agreement have been included for ease of reference and none of the terms of this Agreement are to be construed or interpreted by reference to such headings or subheadings.

2 INGOING CONTRIBUTION AND GRANT OF LICENCE

2.1 Payment of Ingoing Contribution and Grant of Licence

- 2.1.1 The Resident must pay to the Scheme Operator the Ingoing Contribution less any deposit amount previously paid by the Resident, on or before the Commencement Date.
- 2.1.2 The amount in clause **2.1.1** must be paid in the manner required by the Scheme Operator, by bank cheque issued by a bank licensed to carry on and carrying on business under the banking laws of Australia and Queensland or by direct deposit of cleared funds into a bank account nominated by the Scheme Operator.
- 2.1.3 In consideration for the payment of the Ingoing Contribution, the Scheme Operator hereby grants the Resident a licence to occupy and reside in the Accommodation Unit from and including the Commencement Date until the Licence is terminated, whether under this Agreement or otherwise.

- 2.1.4 The rights granted to the Resident by this Agreement, including in respect of the Licence, are contractual only and do not confer any proprietary interest or estate on the Resident. In particular, nothing contained or implied in this Agreement nor any payment or receipt shall in any way create any lease or tenancy or any rights in the nature of a lease or tenancy in favour of the Resident.

2.2 Dealing with Ingoing Contribution

- 2.2.1 Unless:

- 2.2.1.1 the Cooling-off Period has ended;
- 2.2.1.2 any conditions precedent to the Resident's right to reside in the Accommodation Unit have been fulfilled; and
- 2.2.1.3 if the Accommodation Unit has not previously been occupied – the Accommodation Unit is suitable for habitation and the Resident is entitled to vacant possession of the Accommodation Unit;

the Scheme Operator must pay the Ingoing Contribution to the Trustee, who must hold that amount in trust and deal with it as provided in section 46 of the Act.

2.3 When Accommodation Unit not suitable for habitation

- 2.3.1 For the purposes of clause **2.2.1.3**, without limiting when the Accommodation Unit is not suitable for habitation, the Accommodation Unit is not suitable for habitation if:

- 2.3.1.1 reticulated water is not connected to the Accommodation Unit; or
- 2.3.1.2 all sanitary installations are not installed or are not operational in the Accommodation Unit.

3 COOLING-OFF PERIOD

3.1 Residence Contract created under Application to Reside

- 3.1.1 The Resident acknowledges that:

- 3.1.1.1 for the purposes of section 10(2) of the Act, the Licence arises out of and forms part of the residence contract created when the Scheme Operator gave the Resident notice that the Application to Reside was accepted by the Scheme Operator; and
- 3.1.1.2 the Cooling-off Period started or will start on the date described in the definition of "Cooling-off Period" in clause **1.1.16**.

3.2 Resident may rescind during Cooling-off Period

- 3.2.1 If this Agreement is entered into before the Cooling-off Period ends, the Resident may rescind this Agreement by giving written notice to the Scheme Operator before the Cooling-off Period ends.

3.3 Refund of Ingoing Contribution

- 3.3.1 If this Agreement is rescinded by the Resident under clause **3.2**, the Trustee must immediately refund the Ingoing Contribution to the Resident.

4 GENERAL SERVICES CHARGE

4.1 Calculation of General Services Charge

- 4.1.1 The General Services Charge is the total of the Maintenance Reserve Fund Contribution and the amount determined by the Scheme Operator as the Resident's fair proportion of the estimated Total Operating Costs. The method of determining the General Services Charge as at the date on which the Public Information Document was given to the Resident is described in the Public Information Document given to the Resident. Subject to the Act, the Scheme Operator reserves the right to alter the method of determining the General Services Charge at any time.
- 4.1.2 For the purpose of this clause, '**Total Operating Costs**' means the total of all outgoings, costs and expenses of the Scheme Operator properly and reasonably incurred in connection with the ownership, operation, management and administration of the Retirement Village and the Scheme, including but not limited to:
- 4.1.2.1 rates and taxes (to the extent they are not prohibited at law from recovery from the Resident), charges, assessments, duties, impositions and fees levied, assessed or charged by any public, municipal, governmental or semi governmental agency in respect of the Retirement Village, excluding income tax and capital gains tax;
 - 4.1.2.2 charges for water, gas, oil, electricity, telecommunications, internet, sewerage, waste disposal and other services supplied to the Retirement Village and for the maintenance and repair of all electrical, plumbing, filtration, sewerage and other installations located in the Retirement Village;
 - 4.1.2.3 insurance premiums and excesses paid or payable by the Scheme Operator in connection with insurance policies relating to the Retirement Village and the Scheme against such risks (including consequential loss) as the Scheme Operator deems necessary or desirable from time to time, which may include but are not limited to, reinstatement of the Retirement Village against fire, lightning, storm, tempest, water, earthquake, malicious act, explosion, impact and riot or civil commotion, machinery breakdown, public risk, worker's compensation and professional indemnity insurance;
 - 4.1.2.4 the costs of all services provided to residents of the Retirement Village by the Scheme Operator or any Manager, caretaker, employee or independent contractor employed or engaged by the Scheme Operator;
 - 4.1.2.5 the costs of minor repairs and day to day maintenance (including preventative maintenance) necessary to keep the Retirement Village in good order and condition, including provision at the discretion of the Scheme Operator for future contingencies;
 - 4.1.2.6 the costs of cleaning and day to day maintenance of the exterior of all accommodation units in the Retirement Village and the interior and exterior of all buildings and other improvements other than accommodation units;

- 4.1.2.7 the costs of the day to day maintenance and caretaking of the gardens, landscaping areas, lawns, pathways, roads and other parts of the Common Property;
- 4.1.2.8 the costs of the control and eradication of pests on or in the Common Property and any residence or office used or occupied by the Manager;
- 4.1.2.9 the costs of the day to day maintenance, testing and monitoring of the fire fighting and protection equipment installed in the Retirement Village, including sprinkler systems, hydrants, fire extinguishers and smoke detectors;
- 4.1.2.10 the costs of day to day maintenance, monitoring and responding to the emergency alarm system and the other security services and emergency care services provided to residents of the Retirement Village;
- 4.1.2.11 the outgoings, costs and expenses in respect of the operation and day to day maintenance of any vehicle used in the operation of the Retirement Village or to provide transport services to residents of the Retirement Village, including but not limited to insurance, registration, servicing, oil, petrol and the salaries and wages paid to drivers;
- 4.1.2.12 payments made to or in respect of any Manager, caretaker, security personnel, employee or independent contractor or consultant employed or engaged by the Scheme Operator in connection with the Retirement Village or the Scheme, including but not limited to wages and salaries, superannuation contributions, sick leave, holiday leave, long service leave, payroll tax, workers' compensation insurance premiums and other statutory taxes and charges;
- 4.1.2.13 the costs of providing accommodation, motor vehicle and transport expenses to any Manager, caretaker, security personnel, employee or independent contractor employed or engaged by the Scheme Operator in connection with the Retirement Village or the Scheme;
- 4.1.2.14 expenditure incurred in carrying on the business and operations of the Scheme Operator that relate to the operation, management or administration of the Retirement Village or the Scheme;
- 4.1.2.15 the costs of management, secretarial, legal, audit, book-keeping, accounting, banking and other consultancy services provided in connection with the Retirement Village and the Scheme;
- 4.1.2.16 interest on borrowings by the Scheme Operator in connection with the operation, management and administration of the Retirement Village and the Scheme;
- 4.1.2.17 the costs of complying with the requirements of any government or statutory authority in connection with the operation, management and administration of the Retirement Village and the Scheme;
- 4.1.2.18 the fees of any person engaged to resolve any dispute between the Scheme Operator and one or more residents of the Retirement

- Village in respect of the reasonableness or fairness of the calculation of the General Services Charge;
- 4.1.2.19 any items of expenditure carried forward from any previous accounting period;
- 4.1.2.20 any expenses relating to obtaining, maintaining or renewing an accreditation or certification (howsoever called) under a system of accreditation or certification (howsoever called) relevant to the Retirement Village, whether the system is:
- 4.1.2.20.1 mandatory or optional; or
- 4.1.2.20.2 administered by a public or private body; and
- 4.1.2.21 any other expenditure properly incurred in respect of the operation, management or administration of the Retirement Village or the Scheme;
- but excluding amounts payable:
- 4.1.2.22 directly by the Resident under this Agreement or the Act, or other residents of the Retirement Village;
- 4.1.2.23 the costs of maintaining and repairing the Retirement Village's Capital Items that are properly payable out of the Maintenance Reserve Fund;
- 4.1.2.24 for or towards replacing the Retirement Village's Capital Items that are properly payable out of the Capital Replacement Fund; and
- 4.1.2.25 for or towards costs awarded by the Tribunal against the Scheme Operator.
- 4.1.3 If the amount which the Scheme Operator has received from residents of the Retirement Village on account of estimated Total Operating Costs for any period is less than the actual Total Operating Costs for that period, the Scheme Operator may add the difference to the estimated Total Operating Costs for the next succeeding period, for the purpose of calculating the General Services Charge for that next succeeding period.
- 4.1.4 If the amount which the Scheme Operator has received from residents of the Retirement Village on account of estimated Total Operating Costs for any period is more than the actual Total Operating Costs for that period, the Scheme Operator may deduct the difference from the estimated Total Operating Costs for the next succeeding period, for the purpose of calculating the General Services Charge for that next succeeding period.

4.2 **Current General Services and General Services Charge**

- 4.2.1 The General Services provided, or made available, to the residents of the Retirement Village as at the date on which the Public Information Document was given to the Resident are stated in the Public Information Document given to the Resident.
- 4.2.2 The amount of the General Services Charge which the Resident would be required to pay as at the date on which the Public Information Document was given to the Resident (assuming the Licence commenced on that day) is stated in the Public Information Document given to the Resident.

4.3 Adjustments to General Services Charge

- 4.3.1 The Scheme Operator must calculate adjustments for the General Services Charge and notify the Resident from time to time of the adjusted General Services Charge payable by the Resident.
- 4.3.2 Before increasing the General Services Charge for a particular General Service, the Scheme Operator must consider whether there is a more cost-effective alternative to that General Service.

4.4 Limit on increase

- 4.4.1 Nothing in this clause 4 permits the General Services Charge to be increased beyond the maximum amount permitted by the Act.

4.5 Dispute as to reasonableness

- 4.5.1 A dispute as to the reasonableness or the fairness of the calculation of the General Services Charge may be determined in accordance with clause 25.
- 4.5.2 The General Services Charge calculated and notified to the Resident by the Scheme Operator pursuant to clause 4.3 shall be paid by the Resident on the dates specified in the relevant notice until the amount of the General Services Charge is determined pursuant to this clause 4.5, whereupon any necessary adjustment shall be made between the parties.

4.6 Payment of General Services Charge

- 4.6.1 The Resident must pay the General Services Charge as directed by the Scheme Operator without formal demand and without any deduction or set-off whatsoever.
- 4.6.2 The Resident must pay the General Services Charge by quarterly instalments in advance on the days stated in the Public Information Document, the first of such instalments being payable on the Commencement Date, or at other times nominated by the Scheme Operator.
- 4.6.3 Subject to section 104(4) of the Act, if payment of any General Services Charge is overdue for more than fourteen (14) days, the Resident must also pay interest on the overdue amount at the Specified Rate.

4.7 Continuing obligation to pay General Services Charge

- 4.7.1 Subject to clauses 4.7.2 and 4.7.4, but despite any other term of this Agreement or the termination of the Licence, the Resident must continue to pay the General Services Charge after the Resident permanently vacates the Accommodation Unit until the first of the following events:
 - 4.7.1.1 a new right to reside in the Accommodation Unit is granted to a New Resident and that New Resident pays a New Ingoing Contribution to the Scheme Operator;
 - 4.7.1.2 a period of 90 days elapses after the Resident permanently vacated the Accommodation Unit; or
 - 4.7.1.3 the Tribunal orders the Scheme Operator to pay the Exit Entitlement to the Resident under section 171 of the Act.

- 4.7.2 Subject to clause **4.7.4**, if the events described in clause **4.7.1.1** do not occur within 90 days after the Resident permanently vacated the Accommodation Unit, the Resident must, from the end of that 90 day period, continue to pay a share of the General Services Charge, calculated as follows:
- 4.7.3 Resident's share = General Services Charge x (Ingoing Contribution + 70% of any Capital Gain – Exit Fee – 70% of any Capital Loss) / Resale Price
- 4.7.4 If clause **4.7.2** applies, the Resident ceases to be liable to pay any portion of the General Services Charge when the first of the following events occur:
- 4.7.4.1 the events described in clause **4.7.1.1** occur; or
- 4.7.4.2 nine (9) months after the Resident permanently vacated the Accommodation Unit.

4.8 Broken Periods

- 4.8.1 In the event of the term of the Licence commencing on a day other than the first day or the Resident's obligations to pay the General Services Charge (or a portion of the General Services Charge) ceasing on a day other than the last day of the relevant period for which the Total Operating Costs have been calculated, the Resident will pay to the Scheme Operator in respect of the broken periods prior to the first complete period and subsequent to the last complete period on the first day of each such broken period a proportionate part of the General Services Charge which would otherwise be payable by the Resident.

5 PERSONAL SERVICES CHARGE

5.1 Current Personal Services and Personal Services Charges

- 5.1.1 The Personal Services available to the Resident (if any) as at the date on which the Public Information Document was given to the Resident are stated in the Public Information Document given to the Resident.
- 5.1.2 The method of determining the Personal Services Charges (if any) as at the date on which the Public Information Document was given to the Resident is described in the Public Information Document given to the Resident. The Scheme Operator reserves the right to do any one or more of the following at any time:
- 5.1.2.1 offer one or more Personal Services on such terms as the Scheme Operator determines;
- 5.1.2.2 vary or discontinue one or more Personal Services;
- 5.1.2.3 determine the Personal Services Charges and/or the method of calculating the Personal Services Charges; or
- 5.1.2.4 vary the Personal Services Charges and/or the method of calculating the Personal Services Charges.
- 5.1.3 The amount of the Personal Services Charges (if any) which would be payable by the Resident as at the date on which the Public Information Document was given to the Resident (assuming the Licence commenced on that day) are described in the Public Information Document given to the Resident.

5.2 Adjustments to Personal Services Charges

5.2.1 The Scheme Operator must notify the Resident from time to time of adjustments to the Personal Services Charges.

5.3 Payment of Personal Services Charges

5.3.1 The Resident must pay the Personal Services Charges as directed by the Scheme Operator without any deduction or set-off whatsoever.

5.3.2 Unless otherwise directed by the Scheme Operator, the Resident must pay the Personal Services Charges within fourteen (14) days following receipt by the Resident of the Scheme Operator's invoice for the Personal Services Charges.

5.3.3 If payment of any Personal Services Charges is overdue for more than fourteen (14) days, the Resident must also pay interest on the overdue amount at the Specified Rate.

5.4 Continuing obligation to pay Personal Services Charges

5.4.1 Despite any other provision of this Agreement, including the termination of the Licence, the Scheme Operator may charge the Resident Personal Services Charges up to and including the latest date for which the Scheme Operator is entitled to charge the Resident Personal Services Charges under the Act.

6 MAINTENANCE RESERVE FUND CONTRIBUTION

6.1 Current Maintenance Reserve Fund Contribution

6.1.1 The method of determining the Maintenance Reserve Fund Contribution as at the date on which the Public Information Document was given to the Resident is described in the Public Information Document given to the Resident. Subject to the Act, the Scheme Operator reserves the right to alter the method of determining the Maintenance Reserve Fund Contribution at any time.

6.1.2 The amount of the Maintenance Reserve Fund Contribution which would be payable by the Resident as at the date on which the Public Information Document was given to the Resident (assuming the Licence commenced on that day) is described in the Public Information Document given to the Resident.

6.2 Adjustments to Maintenance Reserve Fund Contribution

6.2.1 The Scheme Operator must calculate adjustments to the Maintenance Reserve Fund Contribution in accordance with the requirements of the Act and notify the Resident from time to time of the adjusted Maintenance Reserve Fund Contribution which the Resident must pay.

6.3 Payment of Maintenance Reserve Fund Contribution

6.3.1 The Resident must pay the Maintenance Reserve Fund Contribution as directed by the Scheme Operator without formal demand and without any deduction or set-off whatsoever.

6.3.2 The Maintenance Reserve Fund Contribution forms part of the General Services Charge.

6.3.3 The Resident must pay the Maintenance Reserve Fund Contribution at the same time as payment of the General Services Charge is due, unless the Maintenance Reserve Fund Contribution is required to be paid at a different time under the

Public Information Document or by notification given to the Resident by the Scheme Operator.

- 6.3.4 Subject to section 104(4) of the Act, if payment of any Maintenance Reserve Fund Contribution is overdue for more than fourteen (14) days, the Resident must also pay interest on the overdue amount at the Specified Rate.

6.4 Continuing obligation to pay Maintenance Reserve Fund Contribution

- 6.4.1 To avoid doubt, clause 4.7 applies to the Maintenance Reserve Fund Contribution.

7 COVENANTS OF THE RESIDENT

The Resident undertakes and agrees with the Scheme Operator:

7.1 Place of residence only

- 7.1.1 To use the Accommodation Unit as a residence of the Resident only and for no other purpose without the Scheme Operator's prior written consent, which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Scheme Operator.

7.2 Use of Accommodation Unit

- 7.2.1 Not to use the Accommodation Unit or any part of the Retirement Village for any illegal, offensive or immoral purpose or in a manner injurious to the reputation of the Retirement Village or the Scheme.
- 7.2.2 Not to use the Accommodation Unit in such a manner as to unreasonably interfere with the use and enjoyment of the Retirement Village by or to cause hazard or nuisance to the Scheme Operator, the Manager, the Scheme Operator's officers, employees, contractors or agents, other residents of the Retirement Village or their guests or occupiers of neighbouring premises.

7.3 Observe fire safety procedures

- 7.3.1 To familiarise himself or herself with and to observe all fire safety procedures (including participating in any fire drills) and non-smoking areas as designated by the Scheme Operator from time to time and to not smoke in the bedrooms of the Accommodation Unit or any other units in the Retirement Village.

7.4 Undue Noise

- 7.4.1 Not to create any noise, and for that purpose, to regulate all equipment, including all musical instruments, televisions, stereos and other electronic or mechanical equipment in the Accommodation Unit or the Retirement Village such that the sound emanating therefrom does not cause annoyance to other residents of the Retirement Village.
- 7.4.2 Not to practice singing or use any musical instrument, television, stereo or other equipment between the hours of 10.00pm and 8.00am so as to be heard outside the Accommodation Unit.

7.5 Maintain, repair and replace

- 7.5.1 To keep the Accommodation Unit clean, tidy and free from rubbish (including cleaning interior and exterior surfaces of windows and removing cobwebs).

- 7.5.2 To maintain (and, if necessary, repair and replace) all fixtures, fittings, appurtenances, equipment, appliances, furniture, furnishings, plate glass and property belonging to the Resident in or forming part of the Accommodation Unit, whether required by fair wear and tear or otherwise.
- 7.5.3 To promptly maintain, repair and replace property in the Retirement Village that is:
 - 7.5.3.1 deliberately damaged or destroyed by the Resident or any agent, contractor, licensee or visitor of the Resident; or
 - 7.5.3.2 subjected to accelerated wear or damaged or destroyed due to the act, omission, negligence or default of the Resident or any agent, contractor, licensee, invitee or visitor of the Resident.
- 7.5.4 To keep all pipes, drains and conduits originating within the Accommodation Unit in a clean, clear and free flowing condition between their points of origin and their entry into any trunk drain (whether such pipes, drains or conduits are situated inside or outside the Accommodation Unit) and, at the Resident's own expense, to employ licensed tradesmen to clear any blockages which may occur therein.
- 7.5.5 To replace all broken or faulty light bulbs and tubes in or forming part of the Accommodation Unit (whether situated inside or outside the Accommodation Unit).
- 7.6 **Access**
 - 7.6.1 To permit the Scheme Operator with or without workmen and others at all reasonable times to have access to the Accommodation Unit for the purpose of:
 - 7.6.1.1 inspecting the state of repair and cleanliness of the Accommodation Unit, and, if deemed necessary or desirable by the Scheme Operator, to give the Resident notice to execute such repairs or works as the Scheme Operator may require (being repairs or works for which the Resident is responsible under this Agreement);
 - 7.6.1.2 to perform such maintenance, repair and other work as the Resident may have failed to perform within a reasonable time of having been given notice to do so;
 - 7.6.1.3 to perform any alterations, additions or other works which may be required of the Scheme Operator by law or which the Scheme Operator may wish to carry out for ensuring the safety and preservation of the Accommodation Unit;
 - 7.6.1.4 erecting, laying or installing in or under or over the Accommodation Unit any poles, masts, posts, drains, conduits, pipes, mains, cables, electric or other wires which may from time to time be required for any existing or future services to the Accommodation Unit or any part thereof;
 - 7.6.1.5 inspecting, removing, installing, maintaining, repairing, replacing, altering or adding to any water, gas, electrical, telephone, plumbing or other services to the Accommodation Unit or any part thereof;

7.6.1.6 locking any door or window in the Accommodation Unit left unlocked or unfastened at times when the Accommodation Unit is unoccupied; or

7.6.1.7 at any time after a notice of termination has been given under clause **10.1** or **10.2**:

7.6.1.7.1 allowing prospective new residents of the Accommodation Unit to inspect the Accommodation Unit; and

7.6.1.7.2 performing Reinstatement Work;

provided that, except in the case of emergency (as to which the Scheme Operator will be the sole judge) the Scheme Operator will exercise its rights under this clause **7.6.1** in such a manner as to minimise so far as may be practicable any inconvenience or interruption to the Resident's use and enjoyment of the Accommodation Unit.

7.6.2 To allow the Scheme Operator to hold a master key to the Accommodation Unit, to enable the Scheme Operator to have access to the Accommodation Unit in accordance with the Scheme Operator's rights under this Agreement.

7.6.3 Not to change the locks to any doors forming part of the Accommodation Unit without the Scheme Operator's consent.

7.7 **Emergency access**

7.7.1 If in the sole opinion of the Scheme Operator an emergency exists, whether in the Accommodation Unit or elsewhere, to permit the Scheme Operator and its employees to enter the Accommodation Unit at any time to deal with that emergency.

7.7.2 To pay for all repairs and other works necessary as a result of the Scheme Operator and its employees entering the Accommodation Unit to deal with an emergency.

7.7.3 Not to do anything that will obstruct or restrict the Scheme Operator or its employees from entering the Accommodation Unit in an emergency.

7.8 **Scheme Operator's insurance policies**

7.8.1 Not to do anything directly or indirectly likely to:

7.8.1.1 invalidate or vitiate any policies of insurance effected by the Scheme Operator; or

7.8.1.2 increase the rate of premium or excess payable on those policies.

7.8.2 To pay for any damage, loss or extra expense to the Scheme Operator resulting from the Resident not complying with clause **7.8.1**.

7.9 **Utilities and Services**

7.9.1 To pay all charges for utilities and services supplied in respect of the Accommodation Unit, including electricity, gas, water, telecommunications and internet:

7.9.1.1 for those utilities and services described in the Public Information Document – in the manner described in the Public Information Document; and

7.9.1.2 for other utilities and services – in the manner reasonably determined by the Scheme Operator from time to time;

7.9.1.3 such payments to be made:

7.9.1.4 for invoices issued by the relevant supplier or authority – by the due date therefor; and

7.9.1.5 for invoices issued by the Scheme Operator - within fourteen (14) days of the invoice.

7.10 **Pets**

7.10.1 Not to keep in the Accommodation Unit, or elsewhere in the Retirement Village, any animal without the Scheme Operator's prior written consent, which may be granted or withheld in the Scheme Operator's absolute discretion.

7.10.2 To acknowledge that any consent by the Scheme Operator under clause **7.10.1** is specific to the approved animal only and does not apply to any replacement of the animal.

7.10.3 To comply with all reasonable conditions imposed by the Scheme Operator concerning the keeping of any animal.

7.10.4 To comply with the Scheme Operator's directions revoking consent to keep an animal in the Accommodation Unit or elsewhere in the Retirement Village, the Scheme Operator being entitled to revoke its consent if the animal creates a nuisance which does not cease within a reasonable time after notice thereof is given by the Scheme Operator to the Resident.

7.11 **Notice of damage, accident or defects**

7.11.1 To give to the Scheme Operator notice about any damage to or defect in:

7.11.1.1 the Accommodation Unit;

7.11.1.2 the fixtures, fittings, equipment, appliances, furniture, furnishings or other property in or forming part of the Accommodation Unit that are made available by the Scheme Operator; or

7.11.1.3 the sewer connections, water pipes, electricity, telecommunications and gas installations in, on, fixed to or designed to be used with the Accommodation Unit (whether situated inside or outside the Accommodation Unit);

as soon as the Resident becomes aware of it.

7.12 **Alterations or additions**

7.12.1 Not, without the Scheme Operator's prior written consent, to make alterations or additions, whether structural or otherwise, to the interior or exterior of the Accommodation Unit, including, without limitation:

7.12.1.1 painting;

- 7.12.1.2 installation or replacement of any appliances, air conditioning, blinds, awnings, fly screens, security screens, security grills or other fixtures whatsoever; and
- 7.12.1.3 any alteration or interference with the sewer connections, water pipes, electricity, telecommunications and gas installations in, on, fixed to or designed to be used with the Accommodation Unit (whether situated inside or outside the Accommodation Unit).

The Scheme Operator's consent may be granted, withheld or granted subject to conditions in the Scheme Operator's absolute discretion, provided that such consent will not be unreasonably withheld nor granted subject to arbitrary or unreasonable conditions if the relevant alterations or additions are required by law.

- 7.12.2 To comply with any terms and conditions of consent imposed by the Scheme Operator.
- 7.12.3 To ensure that all works are done by an appropriately qualified and licensed contractor or tradesperson approved by the Scheme Operator, and, if required by the Scheme Operator:
 - 7.12.3.1 to give the Scheme Operator evidence that the contractor or tradesperson holds policies of insurance in respect of the work he or she will perform, including public liability insurance, satisfactory to the Scheme Operator;
 - 7.12.3.2 to submit full detailed drawings and specifications of proposed works and particulars of the materials proposed to be used to the Scheme Operator for approval;
 - 7.12.3.3 to ensure that the work is conducted under the supervision of the Scheme Operator's architect, engineer or other agent, whose fees shall be reimbursed by the Resident; and
 - 7.12.3.4 to indemnify the Scheme Operator against all injury or damage to the Accommodation Unit, the Retirement Village or any neighbouring premises caused in or about the execution of the works.

7.12.4 Not to remove, damage, destroy or otherwise deal with any alterations or additions to the Accommodation Unit at the termination of the Licence, unless required by the Scheme Operator.

7.12.5 Not to claim compensation from either the Scheme Operator or the New Resident in relation to the alterations or additions.

7.13 Sales

7.13.1 Not to sell or auction anything in the Accommodation Unit or elsewhere in the Retirement Village without the Scheme Operator's prior written consent.

7.14 Structural damage

7.14.1 Not to bring into the Accommodation Unit any item which may, in the reasonable opinion of the Scheme Operator, be likely to cause structural damage to the Accommodation Unit.

- 7.14.2 Without limiting the generality of clause **7.14.1**, to observe the maximum floor loading weights nominated by the Scheme Operator and not to permit the floors of the Accommodation Unit to be broken, strained or damaged by overloading the same in any manner howsoever. In particular, the Resident will not install any safes or other heavy equipment except in such positions and subject to such conditions as the Scheme Operator may approve in writing.

7.15 Statutory obligations

- 7.15.1 Not to allow the Accommodation Unit to be used so as to breach any statute or to be kept in an unsanitary condition at any time.
- 7.15.2 To perform and observe all duties and obligations in relation to the Accommodation Unit imposed under any statute.
- 7.15.3 To comply, at the Resident's expense, with the requirements of any notice issued by a local or statutory authority which applies to the Accommodation Unit.
- 7.15.4 To permit the Scheme Operator to comply with the relevant statute or notice if the Resident fails to do so and to pay the Scheme Operator's costs of complying with such statute or notice.
- 7.15.5 To indemnify and keep indemnified the Scheme Operator from and against all suits, actions, causes, claims and demands arising from failure to comply with the covenants in clauses **7.15.1**, **7.15.2** and **7.15.3**;

provided that nothing in this clause will require the Resident to effect any alterations or additions to the Accommodation Unit.

7.16 Hanging Clothes

- 7.16.1 Not to place or hang any clothes or other articles outside of the Accommodation Unit other than on a clothes line in a place approved by the Scheme Operator.

7.17 Advertisements

- 7.17.1 Not to display any placard, advertisement or sign in or upon the outside of the Accommodation Unit or elsewhere at the Retirement Village, without the prior written consent of the Scheme Operator.

7.18 Garbage disposal

- 7.18.1 To maintain a receptacle for garbage within the Accommodation Unit or on such part of the Common Property as may be authorised by the Scheme Operator in a clean and dry condition and adequately covered, unless the Scheme Operator provides some other means of garbage disposal;
- 7.18.2 To cause all wet refuse (if any) to be removed from the Accommodation Unit and placed in the receptacle daily;
- 7.18.3 To ensure that all wet refuse is properly wrapped before it is placed in the receptacle and, in the case of tins or other containers, completely drained.
- 7.18.4 Not to deposit or throw upon the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of another resident of the Retirement Village or any person using the Common Property.
- 7.18.5 Not to throw or allow to fall out of the Accommodation Unit any paper, rubbish, cigarette butts or other substance whatsoever.

- 7.18.6 Not to burn any refuse, whether in the Accommodation Unit or elsewhere in the Retirement Village.
- 7.18.7 To use the Resident's best endeavours to keep clean such parts of the Common Property as immediately adjoin the Accommodation Unit.
- 7.18.8 To otherwise comply with all regulations relating to garbage and the position of garbage receptacles in or about the Accommodation Unit or elsewhere in the Retirement Village.

7.19 Storage

- 7.19.1 Not, without the Scheme Operator's prior written consent, to store any goods or chattels outside the Accommodation Unit except in a place specifically set aside by the Scheme Operator for that purpose.
- 7.19.2 To use the garage (if any) only for the purposes of storing the Resident's motor vehicle or goods and chattels unless the Scheme Operator consents in writing to another use.

7.20 Visitors

- 7.20.1 Not to permit any person other than the Resident to occupy the Accommodation Unit without the Scheme Operator's prior written consent, unless the person is at least 18 years of age and the person's occupancy of the Accommodation Unit is for a duration of less than one (1) month in any twelve (12) month period.
- 7.20.2 To acknowledge that the consent referred to in clause **7.20.1** may be revoked at any time or made subject to conditions which the Scheme Operator may in its absolute discretion determine and the Resident will promptly and at all times comply with such conditions and revocation.
- 7.20.3 To remain in occupation of the Accommodation Unit at all times while any person other than the Resident is staying in the Accommodation Unit unless the Scheme Operator otherwise consents.
- 7.20.4 To ensure that visitors comply with the rules and regulations of the Retirement Village and that they do not interfere with the rights and enjoyment of other residents at the Retirement Village.
- 7.20.5 To acknowledge that the Scheme Operator may exclude and restrain any person from entering the Accommodation Unit or the Retirement Village other than bona fide visitors of the Resident who comply with the rules and regulations of the Retirement Village. Without in any way limiting the meaning of the term "bona fide", any person who is in breach of the rules and regulations of the Retirement Village and who having been notified of such breach commits a further breach of the rules and regulations (whether of a like nature or not) will for the purpose of this clause be deemed not to be bona fide.
- 7.20.6 Whenever requested by the Scheme Operator, to direct any person situated on or purporting to enter the Retirement Village who does not observe the rules and regulations of the Retirement Village or is deemed not to be bona fide to leave or refrain from entering the Retirement Village.
- 7.20.7 Not to permit any person of unsound mind or drunken state to reside in or be about the Accommodation Unit.
- 7.20.8 Not to take in any boarders or lodgers.

7.21 Resident's insurance policies

- 7.21.1 To ensure that the contents of the Accommodation Unit (other than such items as are from time to time owned by the Scheme Operator) are kept insured with a reputable insurer against loss, theft, damage or destruction for not less than their replacement value.
- 7.21.2 To maintain with an insurer satisfactory to the Scheme Operator (acting reasonably) a policy of public liability insurance in respect of the Accommodation Unit, for an amount of at least \$20,000,000 per occurrence (or such higher amount as the Scheme Operator may reasonably require from time to time).
- 7.21.3 To promptly provide written evidence of the currency of the insurance policies referred to in this clause **7.21** to the Scheme Operator upon request.

7.22 Encumbrances

- 7.22.1 Not, without the Scheme Operator's prior written consent, to mortgage, charge or otherwise encumber the Accommodation Unit or the Resident's interest in the Accommodation Unit.

7.23 Assignment

- 7.23.1 Not to assign this Agreement or the Licence or sublicense, transfer or otherwise part with or share possession of the Accommodation Unit.

7.24 Car parking

- 7.24.1 Not to park any motor vehicle on any part of the Retirement Village other than an area (if any) set aside by the Scheme Operator for that purpose.
- 7.24.2 Not to obstruct the roads, pathways, entrances, exits and driveways in or about the Retirement Village or to use them for any purpose other than for reasonable ingress and egress to and from the Accommodation Unit or the Retirement Village.
- 7.24.3 Not to prevent or hinder the access of any other resident of the Retirement Village to their accommodation unit.

7.25 Use of motor vehicle

- 7.25.1 Not to drive any unregistered motor vehicle while at the Retirement Village.
- 7.25.2 Not to drive any vehicle unless licensed to do so.
- 7.25.3 Not to drive on any part of the Retirement Village Land other than the roads and driveways on which the Scheme Operator allows residents of the Retirement Village to drive.
- 7.25.4 To adhere to the speed limits in the Retirement Village and, if no such speed limits have been set or notified, to at all times maintain a speed reasonably appropriate in the circumstances.
- 7.25.5 To comply with all signs, traffic notices and directions of the Scheme Operator relating to the use of motor vehicles at the Retirement Village.
- 7.25.6 Not to cause any danger, nuisance, inconvenience or annoyance to any other resident, occupier or user of the Retirement Village through the use of any motor vehicle.

- 7.25.7 To ensure that any motor vehicle brought onto or kept in the Retirement Village is in sound mechanical condition at all times.
- 7.25.8 To maintain policies of compulsory third party and third party property insurance in relation to any motor vehicle which the Resident operates in the Retirement Village.
- 7.25.9 Upon the termination of the Licence, to remove any motor vehicle of the Resident from the Retirement Village and to acknowledge that, in default of this obligation, the Scheme Operator may remove any such motor vehicle and store and garage the same at the risk and expense of the Resident.

7.26 Unapproved plants

- 7.26.1 To co-operate with the Scheme Operator in preserving the gardens and landscaping in the Retirement Village and not to damage any lawn, garden, tree, shrub, plant or flower being part of the Retirement Village.
- 7.26.2 Not to grow in any part of the Retirement Village, any species of plants, shrub or tree nor use any part of the Common Property as a garden without obtaining the Scheme Operator's prior written consent.

7.27 Removal of Resident's property

- 7.27.1 On the termination of the Licence (or if the Licence is terminated pursuant to clause **10.3**, 30 days after the death of the sole or surviving Resident as the case may be), to remove from the Accommodation Unit, at the Resident's expense, all fixtures, fittings, furniture, furnishings, chattels and other property belonging to the Resident.
- 7.27.2 To repair any holes, cracks or other damage resulting from such removal.
- 7.27.3 To acknowledge that, in default of the Resident fulfilling its obligations under this clause **7.27**, the Scheme Operator may remove and arrange storage of the Resident's property without being guilty of conversion and repair any damage resulting from such removal and recover any costs of the Scheme Operator in doing so as a debt payable by the Resident.
- 7.27.4 To acknowledge that, except in the case of negligence by the Scheme Operator, the Scheme Operator will not be liable to any person for any loss or damage caused to the property removed during such removal or storage.
- 7.27.5 To acknowledge that, if the Resident does not claim the removed property within fourteen (14) days of receiving written notice from the Scheme Operator advising the Resident where the property is stored, such removed property is deemed to have been abandoned and becomes the property of the Scheme Operator and, to that extent, the Scheme Operator may sell or otherwise dispose of the property or any part thereof to meet any costs owing to the Scheme Operator under this clause **7.27**.

7.28 Pest control

- 7.28.1 To take all proper precautions to keep the Accommodation Unit free of rodents, vermin, insects, pests, birds, and wildlife and to employ for that purpose, at the Resident's expense, from time to time as reasonably required, competent pest exterminators.

7.29 Antennae and heating

- 7.29.1 Not to erect on or about the Accommodation Unit, any aerial, antenna or other similar structure likely to be seen from outside the Accommodation Unit without the Scheme Operator's prior written consent.
- 7.29.2 Not to install any additional heating or airconditioning system for the Accommodation Unit without the Scheme Operator's prior written consent.

7.30 Marking walls, floor and ceiling

- 7.30.1 Not to mark or drive screws or nails into or otherwise damage or deface the floor, walls and ceilings of the Accommodation Unit without the Scheme Operator's prior written consent.

7.31 Electrical appliances

- 7.31.1 Not to use any form of light, power or heat other than electric current or gas supplied through meters, provided that this clause will not prevent the use of auxiliary power or lighting (other than exposed flame) during any period of power failure or power restrictions.
- 7.31.2 Not to install or use, without the Scheme Operator's prior written consent, any electrical equipment or device in the Accommodation Unit which overloads any electrical point, cable, switchboard, or sub-board through which electricity is conveyed to the Accommodation Unit. If the Scheme Operator's consent under this clause is obtained, any additional power points or other alterations which may be necessary will be effected by the Scheme Operator at the Resident's expense. The Scheme Operator may require, as a condition to granting its consent, that the Resident deposit with the Scheme Operator the estimated cost of such additions or alterations before work is commenced.
- 7.31.3 Not to operate in the Accommodation Unit or the Retirement Village any radio transmitter, two-way radio, short wave radio, telecommunications device or electronic equipment which interferes with any domestic appliance or any apparatus lawfully in use on the Common Property or in any other accommodation unit in the Retirement Village.

7.32 Notify Scheme Operator of absences

- 7.32.1 To notify the Scheme Operator if the Resident will be absent from the Retirement Village overnight or for longer periods.

7.33 Collections and notices

- 7.33.1 Not to collect money for appeals or presentations without the Scheme Operator's prior written consent. If such consent is granted, the collection will be performed on the basis that no direct approach is to be made to any resident of the Retirement Village, but collection boxes suitably marked will be placed in suitable locations as specified by the Scheme Operator.
- 7.33.2 Not to erect notices anywhere in the Retirement Village except on designated notice boards and then only with the Scheme Operator's prior written consent.

7.34 Co-operation

- 7.34.1 To co-operate with the Scheme Operator in the exercise and performance of the Scheme Operator's duties and to comply with the reasonable requests of the Scheme Operator.

7.35 Health and personal records

- 7.35.1 To notify the Scheme Operator of any significant developments in the state of the Resident's health.
- 7.35.2 To immediately notify the Scheme Operator if the Resident contracts an infectious disease or in the event of an infectious disease occurring in the Accommodation Unit and to thoroughly fumigate and disinfect the Accommodation Unit at the Resident's expense and to the satisfaction of the Scheme Operator or the local health inspector.
- 7.35.3 To acknowledge that, if the Resident suddenly becomes ill or incapacitated, the Scheme Operator may:
 - 7.35.3.1 engage any medical or other assistance for the Resident's benefit which the Scheme Operator reasonably considers necessary; and
 - 7.35.3.2 have the Resident taken from the Accommodation Unit to a hospital or other care facility.
- 7.35.4 To pay the costs associated with any action of the Scheme Operator under clause **7.35.3**.
- 7.35.5 To notify and update the Scheme Operator from time to time in respect of:
 - 7.35.5.1 the name, address and contact numbers of the following:
 - 7.35.5.1.1 the Resident's next of kin;
 - 7.35.5.1.2 the executors appointed in the Resident's Will;
 - 7.35.5.1.3 any person holding a Power of Attorney of which the Resident is donor; and
 - 7.35.5.1.4 the Resident's personal physician; and
 - 7.35.5.2 the location of the Resident's Will and any Powers of Attorney of which the Resident is a donor.
- 7.35.6 Not to abuse any drug or alcoholic substance.
- 7.35.7 Upon request by the Scheme Operator from time to time, to allow an appropriate person nominated by the Scheme Operator to assess the Resident's care needs under section 22-4 of the *Aged Care Act 1997* (Cth) to ensure that the Accommodation Unit is suitable for the Resident, provided that:
 - 7.35.7.1 the Scheme Operator gives the Resident reasonable notice of the assessment; and
 - 7.35.7.2 the day and time on which the assessment is to take place are reasonable; and
 - 7.35.7.3 the assessment is to take place in the Accommodation Unit or another reasonable place nominated by the Scheme Operator.

7.36 Observing Rules and Regulations

- 7.36.1 To acknowledge that the Scheme Operator may, from time to time, make, amend and revoke such rules and regulations as the Scheme Operator considers

appropriate or necessary for the safety, preservation, cleanliness, reputation, good management or control of the Retirement Village and the residents of the Retirement Village, provided that such rules and regulations do not derogate from the Resident's rights under this Agreement.

7.36.2 To comply with all rules and regulations made or amended by the Scheme Operator in accordance with clause **7.36.1**.

7.36.3 To acknowledge that all rules and regulations made or amended by the Scheme Operator in accordance with clause **7.36.1** prevail over any by-laws made by the residents of the Retirement Village under the Act to the extent of any inconsistency.

7.37 Water usage

7.37.1 Not to waste water and to ensure that all water taps in or forming part of the Accommodation Unit are turned off promptly after use.

7.38 Explosives and flammable substances

7.38.1 Not to use or store in the Accommodation Unit or elsewhere in the Retirement Village any explosives or any flammable or corrosive fluids, gases or chemicals other than those:

7.38.1.1 of a nature and quantity normally used or intended to be used for domestic purposes and confined in proper containers: or

7.38.1.2 kept in a fuel tank of a motor vehicle or internal combustion engine.

7.39 Use of appurtenances

7.39.1 Not to interfere with or use the appurtenances in or forming part of the Accommodation Unit or elsewhere in the Retirement Village for any purpose other than those for which they were constructed and not to place therein any tea leaves, sweepings, rubbish, rags or other unsuitable substances.

7.40 Costs of Scheme Operator's consent

7.40.1 To pay to the Scheme Operator on demand all costs, including legal costs (as between solicitor and own client) incurred by the Scheme Operator in relation to the consideration of any request by the Resident for the Scheme Operator's consent to any matter under this Agreement.

7.41 Obstruction of Common Property

7.41.1 Not to obstruct any part of the Common Property (particularly the pathways, walkways, driveways, entrances, passageways and stairways therein) by leaving or placing therein or thereon any article or thing or by any meeting of persons and not to otherwise interfere with the use and enjoyment of the Common Property by other residents of the Retirement Village or their invitees.

7.42 No caveat

7.42.1 Not to lodge a caveat over the whole or any part of the Retirement Village Land.

7.43 Not to cause, permit or allow

- 7.43.1 If this Agreement requires the Resident not to do something, not to permit, suffer or allow that thing to be done nor to do anything which may result in that thing being done.

8 INDEMNITY AND RELEASE

8.1 Resident's risk

- 8.1.1 The Resident occupies the Accommodation Unit and enters and uses the Retirement Village at the Resident's risk.
- 8.1.2 Notwithstanding any implication or rule of law to the contrary, the Scheme Operator will not in any circumstances be liable to the Resident for loss or damage caused by any malfunction, failure to function or interruption of or to the water, gas, telecommunications, internet, electricity or other services provided to the Accommodation Unit or the Retirement Village or for the blockage of any sewers, wastes, drains, gutters, downpipes or stormwater drains from any cause whatsoever.
- 8.1.3 The Resident releases the Scheme Operator from all actions, claims, demands, losses, damages, costs and expenses arising directly or indirectly, whether during or after the term of the Licence, in connection with:
- 8.1.3.1 damage to or loss of any property or injury to or the death of any person, except (subject to clause **8.1.2**) to the extent it is caused or contributed to by the negligence or default of the Scheme Operator or its employees, contractors or agents; or
 - 8.1.3.2 the Scheme Operator doing anything which the Scheme Operator is required or permitted to do under this Agreement or the Act.

8.2 Indemnity

- 8.2.1 The Resident indemnifies and releases the Scheme Operator from and against all actions, claims, demands, losses, damages, costs and expenses which the Scheme Operator may sustain or incur or for which the Scheme Operator may become liable, whether during or after the term of the Licence, in respect of or arising in connection with:
- 8.2.1.1 damage to or loss of any property or injury to or death of any person occasioned or contributed to by the act, omission or neglect of the Resident or any agent, contractor, licensee, invitee or visitor of the Resident;
 - 8.2.1.2 damage to or loss of any property or injury to or death of any person occurring in or caused or contributed to by anything occurring in the Accommodation Unit, except to the extent that it is caused or contributed to by the negligence or default of the Scheme Operator or its employees, contractors or agents;
 - 8.2.1.3 the Scheme Operator paying any amount or doing anything which the Resident is obliged to pay or do under this Agreement, but which the Resident has not paid or done or which, in the Scheme Operator's reasonable opinion, the Resident has not done properly; or

- 8.2.1.4 the Resident's breach of any provision of this Agreement (whether positive or negative, express or implied), which also includes any act or omission of any agent, contractor, licensee, invitee or visitor of the Resident if that act or omission would be a breach of this Agreement if it were an act or omission of the Resident.

8.3 Limitation of Scheme Operator's Liability

- 8.3.1 Notwithstanding any term of this Agreement or any implication or rule of law to the contrary, the Scheme Operator will not be liable for any damage or loss which the Resident or any invitee or visitor of the Resident may suffer by the act, neglect or default of the Scheme Operator which, as between the Resident and the Scheme Operator, the Scheme Operator might be legally liable to do, unless the Resident shall have given to the Scheme Operator seven (7) days' notice in writing of the Scheme Operator's act, neglect or default and the Scheme Operator has, without reasonable cause, failed within a further period of twenty eight (28) days thereafter to take proper steps to rectify such act, neglect or default.

9 COVENANTS OF THE SCHEME OPERATOR

9.1 Scheme Operator to comply

- 9.1.1 If the Resident pays all amounts payable under this Agreement and complies with all its obligations under this Agreement, the Scheme Operator must comply with the obligations imposed on the Scheme Operator by this Agreement.

9.2 Minimise interference

- 9.2.1 Subject to the provisions of this Agreement, the Scheme Operator must use reasonable endeavours to minimise any interference by the Scheme Operator with the Resident's use and occupation of the Accommodation Unit.
- 9.2.2 The Scheme Operator may from time to time improve, redevelop, renovate, extend or further construct the Retirement Village and utilise passageways, pathways and roads giving entry to and exit from the Retirement Village. Any interference to the Resident's use and occupation of the Accommodation Unit or interruption to the supply of services to the Accommodation Unit due to building operations occurring in the Retirement Village, and the use by tradespersons and others of Common Property during building operations, does not breach the Scheme Operator's covenant in Clause **9.2.1**.
- 9.2.3 In conducting any such building operations, the Scheme Operator must, to the extent that is practicable in the circumstances, endeavour to minimise any inconvenience to or interference with the Resident's use and occupation of the Accommodation Unit.
- 9.2.4 The Scheme Operator may take such actions as it considers necessary to sell rights to reside in other accommodation units in the Retirement Village, including maintaining one or more display units and erecting signage within the Retirement Village. Such actions do not breach the Scheme Operator's covenant in Clause **9.2.1**.

9.3 Provide Services

- 9.3.1 Subject to the Act, the Scheme Operator must provide the General Services and the Personal Services selected by the Resident (if any) to the Resident.

9.4 Common Property

9.4.1 Subject to the limitations and restrictions contained in this Agreement and any rules and regulations from time to time in force, the Scheme Operator permits the Resident and all persons lawfully authorised by the Resident, in common with any other persons from time to time residing at the Retirement Village as the Scheme Operator in its discretion determines, to use the Common Property.

9.4.2 Without limiting clause **9.4.1**, the Scheme Operator may, from time to time and in the Scheme Operator's discretion, make, amend and revoke rules and regulations relating to all or part of the Common Property, including rules and regulations relating to permitted hours of use, booking procedures and user charges.

9.5 Insure

9.5.1 The Scheme Operator must effect and maintain insurance in respect of the Retirement Village (other than accommodation units owned by residents), the Common Property and other improvements, to the full replacement value thereof. All insurance policies effected and maintained pursuant to this clause **9.5.1** must:

9.5.1.1 cover, to the greatest practicable extent:

9.5.1.1.1 damage from earthquake, explosion, fire, lightning, storm, tempest, water, impact, malicious act or riot and breakage of glass;

9.5.1.1.2 costs incidental to the reinstatement or replacement of insured buildings, including the costs of taking away debris and the fees of architects and other professional advisers; and

9.5.1.1.3 public liability; and

9.5.1.2 provide for the reinstatement of property to its condition when new.

9.5.2 The Scheme Operator may take out any other insurance required by law or which the Scheme Operator considers necessary or desirable for the benefit of the Retirement Village or the Scheme.

9.5.3 Details of the insurance policies maintained by the Scheme Operator under clause **9.5.1** as at the date on which the Public Information Document was given to the Resident are set out in the Public Information Document given to the Resident.

9.5.4 Any insurance policies maintained by the Scheme Operator under clauses **9.5.1** or **9.5.2** may be subject to an excess. However, the amount of the excess must not contravene the Act.

9.6 Maintain, repair and replace

9.6.1 Subject to Clause **9.6.2**, the Scheme Operator must:

9.6.1.1 keep in a state of good and serviceable repair and properly maintain the Retirement Village (including the Common Property), fair wear and tear excepted; and

9.6.1.2 when appropriate, replace the Retirement Village's Capital Items.

- 9.6.2 Subject to Clause **9.6.5**, nothing in this Agreement requires the Scheme Operator to:
- 9.6.2.1 bear the costs of any particular capital improvement to the Accommodation Unit performed at the Resident's written request, such costs to be borne by the Resident;
 - 9.6.2.2 bear the cost of any particular capital improvement to the Retirement Village, which is the subject of a written request pursuant to a Special Resolution, such cost to be borne jointly by all persons who were residents of the Retirement Village at the time the Special Resolution was passed; or
 - 9.6.2.3 maintain, repair or replace anything which is to be maintained, repaired or replaced by the Resident under this Agreement, the Public Information Document or the Act or which is to be maintained, repaired or replaced by other residents of the Retirement Village under their licences, the Public Information Document or the Act.
- 9.6.3 Nothing in clause **9.6.2.1** or **9.6.2.2** requires the Scheme Operator to effect any capital improvement the subject of a written request by the Resident or pursuant to a Special Resolution, it being a matter solely for the Scheme Operator's discretion whether to effect such capital improvement.
- 9.6.4 If, under clause **4.7.4**, the Resident ceases to be liable to pay any portion of the General Services Charge, then from the date that occurs:
- 9.6.4.1 the Resident ceases to be liable, under clause **9.6.2.1** or **9.6.2.2**, for the cost of a capital improvement; and
 - 9.6.4.2 the Scheme Operator becomes liable for the Resident's share of the cost of the capital improvement.
- 9.6.5 To avoid doubt, the Scheme Operator may repaint the exterior (or parts of the exterior) of any accommodation unit in the Retirement Village or any items fixed to the exterior of an accommodation unit in the Retirement Village (including the Accommodation Unit). Unless clause **7.5.3** applies to the repainting, the costs of the repainting must be paid from the Maintenance Reserve Fund.
- 9.7 Pay Total Operating Costs**
- 9.7.1 The Scheme Operator must pay promptly as and when they fall due all costs, expenses and charges comprising the Total Operating Costs out of the General Services Charges paid by the Resident and general services charges paid by other residents of the Retirement Village.
- 9.8 Engage Manager**
- 9.8.1 The Scheme Operator may from time to time engage a Manager to manage the Retirement Village, including doing any one or more of the following:
- 9.8.1.1 receive charges payable under this Agreement, to pay all costs, expenses and charges comprising the Total Operating Costs;
 - 9.8.1.2 ensure the maintenance and good repair of the Retirement Village, including the Common Property;

9.8.1.3 attend to the comfort and reasonable requests of the residents of the Retirement Village; and

9.8.1.4 undertake any other duties required by the Scheme Operator.

9.8.2 All rights, powers and remedies either expressly or impliedly conferred upon the Scheme Operator by this Agreement may be exercised by or on behalf of the Scheme Operator by the Manager or any officer or employee of the Scheme Operator or Manager.

9.8.3 The Scheme Operator is solely responsible for appointing and dismissing of the Manager.

9.9 **Emergency call system**

9.9.1 The Scheme Operator will provide a general emergency call system for the Retirement Village. At the Scheme Operator's discretion, the emergency call system may be monitored off-site.

9.9.2 If the general emergency call system for the Retirement Village operates through the telephone system, the Resident must at all times, at the Resident's expense, maintain in the Accommodation Unit an operational telephone line and handset connected to the emergency call system.

9.9.3 Subject to the Resident complying with clause **9.9.2** (if applicable), the Scheme Operator agrees to install, maintain and have monitored a general emergency call system to the Accommodation Unit. The Resident must do everything reasonably necessary to enable the Scheme Operator to comply with its obligations under this clause **9.9.3**.

9.9.4 If the Resident uses the general emergency call system for the Retirement Village for a purpose other than a genuine emergency, the Resident must reimburse the Scheme Operator for any costs incurred by the Scheme Operator as a result.

9.10 **Control, management and compliance**

9.10.1 The Scheme Operator must control, manage and administer the Retirement Village and the Scheme in compliance with the Act.

9.10.2 The Scheme Operator must do all things reasonably necessary to ensure that all residents of the Retirement Village comply with:

9.10.2.1 the terms of their residence contracts;

9.10.2.2 any rules and regulations made from time to time by the Scheme Operator in connection with the Retirement Village; and

9.10.2.3 any order or direction lawfully made or given with respect to any works, acts or things required to be done to or in a resident's accommodation unit.

9.11 **Maintenance Reserve Fund and Capital Replacement Fund**

9.11.1 The Scheme Operator must:

9.11.1.1 pay all Maintenance Reserve Fund Contributions received under clause **6** into the Maintenance Reserve Fund, to be held on trust solely for the benefit of residents of the Retirement Village; and

9.11.1.2 keep, maintain and use the Maintenance Reserve Fund in compliance with the Act.

9.11.1.3

9.11.2 The Scheme Operator must:

9.11.2.1 pay Capital Replacement Fund Contributions into the Capital Replacement Fund in amounts and at times to comply with the Act; and

9.11.2.2 keep, maintain and use the Capital Replacement Fund in compliance with the Act.

9.12 Financial statements

9.12.1 If the Resident requests, the Scheme Operator must give to the Resident, within the timeframe specified in the Act:

9.12.1.1 a quarterly financial statement that complies with section 112 of the Act; and

9.12.1.2 an audited annual financial statement about the Retirement Village's operation that complies with section 113 of the Act.

10 TERMINATION OF THE LICENCE

10.1 Termination by Resident

10.1.1 The Resident may terminate the Licence at any time during the term of the Licence by giving one (1) month's written notice to the Scheme Operator. If the notice states the date on which the Resident wishes to vacate the Accommodation Unit, the Termination Date is the date stated in the notice. If the notice does not state the date on which the Resident wishes to vacate the Accommodation Unit, the Termination Date is the date one month after receipt of the notice by the Scheme Operator.

10.2 Termination by the Scheme Operator

10.2.1 The Scheme Operator may terminate the Licence by giving not less than fourteen (14) days' written notice to the Resident if the Resident:

10.2.1.1 has intentionally or recklessly:

10.2.1.1.1 injured a person while the person is in the Retirement Village;

10.2.1.1.2 seriously damaged the Accommodation Unit; or

10.2.1.1.3 seriously damaged property of another person in the Retirement Village; or

10.2.1.2 is likely, intentionally or recklessly, to do something mentioned in clause **10.2.1.1**.

10.2.2 The Scheme Operator may terminate the Licence by giving not less than two (2) months' written notice to the Resident where:

10.2.2.1 the Resident has committed a material breach of this Agreement;

- 10.2.2.2 the Scheme Operator reasonably believes the Resident has abandoned the Resident's right to reside in the Retirement Village;
or
- 10.2.2.3 the Scheme Operator and a person who has assessed the Resident's care needs under section 22-4 of the *Aged Care Act 1997* (Cth) reasonably believe that the Accommodation Unit is now unsuitable for the Resident.
- 10.2.3 A notice given by the Scheme Operator under clauses **10.2.1** or **10.2.2** must state the grounds on which the Licence is being terminated and the day by which the Resident must vacate the Retirement Village.
- 10.2.4 Without limiting the generality thereof, the Resident commits a material breach of this Agreement for the purposes of clause **10.2.2.1**, if the Resident:
 - 10.2.4.1 fails to pay the Ingoing Contribution to the Scheme Operator on or before the Commencement Date;
 - 10.2.4.2 fails to pay any monies (other than the Ingoing Contribution) payable by the Resident under this Agreement within fourteen (14) days after those monies become payable (whether legally or formally demanded or not);
 - 10.2.4.3 breaches clause **7.20.1**, **7.20.2**, **7.20.3**, **7.20.8** or **7.35.7**;
 - 10.2.4.4 fails to remedy any breach of its obligations under this Agreement or under any rule or regulation pertaining to the Retirement Village within a reasonable time of being given written notice by the Scheme Operator to remedy the breach;
 - 10.2.4.5 commits any indictable offence; or
 - 10.2.4.6 becomes bankrupt or assigns the Resident's estate for the benefit of the Resident's creditors generally.
- 10.2.5 Without limiting the generality thereof, the Resident will, for the purposes of clause **10.2.2.2**, be considered to have abandoned the Resident's right to reside in the Retirement Village if:
 - 10.2.5.1 the Resident ceases to occupy the Accommodation Unit for a continuous period of at least thirty (30) days without the written consent of the Scheme Operator, which consent will not be unreasonably withheld; or
 - 10.2.5.2 without the consent of the Scheme Operator, allows another to occupy the Accommodation Unit without the Resident being present for a period of fourteen (14) days.
- 10.2.6 If the Resident comprises joint Residents, the Scheme Operator may terminate the Licence under clauses **10.2.1** or **10.2.2** if any of the circumstances set out in those clauses occurs in relation to any one of the Residents.
- 10.3 **Termination on Resident's death**
 - 10.3.1 If the Resident is a sole Resident, the Licence terminates on the death of the Resident.

- 10.3.2 If the Resident comprises joint Residents, the Licence terminates on the death of the survivor of them.

10.4 Vacant possession on termination

- 10.4.1 On the termination of the Licence the Resident must immediately return all keys to the Accommodation Unit and deliver up vacant possession of the Accommodation Unit to the Scheme Operator, failing which the Scheme Operator may re-enter and take possession of the Accommodation Unit.

10.5 Breaches before termination

- 10.5.1 Termination of the Licence for any reason does not affect a party's right of action or other remedy against the other party for any previous breach of the Licence.

11 RE-SELLING RIGHT TO RESIDE IN ACCOMMODATION UNIT

11.1 Scheme Operator has exclusive right to re-sell right to reside

- 11.1.1 If:

- 11.1.1.1 the Resident gives notice of termination to the Scheme Operator under clause **10.1**;
- 11.1.1.2 the Scheme Operator gives notice of termination to the Resident under clause **10.2**; or
- 11.1.1.3 the Licence is terminated by the death of the Resident under clause **10.3**;

then, subject to clause **11.5**, the Scheme Operator has the exclusive right to find a person who satisfies the requirements of clause **11.2** to accept a new right to reside in the Accommodation Unit and must use its best endeavours to do so.

- 11.1.2 The Scheme Operator may at its discretion engage a real estate agent to find a person who satisfies the requirements of clause **11.2** to accept a new right to reside in the Accommodation Unit.

11.2 New resident and new right to reside

- 11.2.1 Subject to clauses **11.2.2** and **11.2.3**, the Scheme Operator may only grant a new right to reside in the Accommodation Unit to a person if:

- 11.2.1.1 the Scheme Operator reasonably believes the person is at least sixty-five (65) years old or, in the case of joint grantees of a new right to reside, at least one of them is at least sixty-five (65) years old and the other(s) are at least sixty (60) years old;
- 11.2.1.2 the Scheme Operator reasonably believes that the Accommodation Unit is of a type that is suitable for the person;
- 11.2.1.3 subject to clause **11.6**, the person pays a New Ingoing Contribution equal to or greater than the Agreed Value; and
- 11.2.1.4 while the owner of the Retirement Village Land or the Scheme Operator is Wishart Christian Village Association Inc, the person becomes a member of Wishart Christian Village Association Inc upon becoming a resident of the Retirement Village.

- 11.2.2 Despite clause **11.2.1**, the Scheme Operator may grant a new right to reside in the Accommodation Unit to a person who does not satisfy the requirements of clause **11.2.1**, but who:
- 11.2.2.1 is acceptable to the Scheme Operator;
 - 11.2.2.2 will not, in the reasonable opinion of the Scheme Operator, detract from the character of the Retirement Village as a place where older members of the community or retired persons reside; and
 - 11.2.2.3 while the owner of the Retirement Village Land or the Scheme Operator is Wishart Christian Village Association Inc – becomes a member of Wishart Christian Village Association Inc upon becoming a resident of the Retirement Village.
- 11.2.3 The Scheme Operator may vary the age restrictions referred to in clause **11.2.1.1** at any time.
- 11.2.4 The terms of the new right to reside will be those referred to in the Public Information Document applying to the Retirement Village at the time the new right to reside is granted, or such other terms as the Scheme Operator and the New Resident may agree upon.

11.3 **Agreed Value**

- 11.3.1 Immediately one of the events in clause **11.1.1** occurs, the Resident and the Scheme Operator must negotiate in good faith and, if possible, agree in writing on the Agreed Value.
- 11.3.2 If the Resident and the Scheme Operator have not agreed on the Agreed Value within 30 days after the Termination Date, the Scheme Operator must obtain a valuation of a right to reside in the Accommodation Unit (determined on the basis set out in clause **1.1.4**) within a further fourteen (14) days from a Valuer, in which event the Resident and the Scheme Operator are taken to have agreed that the valuation is the Agreed Value.
- 11.3.3 If the Scheme Operator has not located a person who satisfies the criteria of a New Resident under clause **11.2.1** or **11.2.3** to accept a new right to reside in the Accommodation Unit within six (6) months after the Termination Date and the Resident has not been paid an Exit Entitlement, the Resident and the Scheme Operator must reconsider the Agreed Value at least every three months and, if possible, agree in writing on a new Agreed Value, which may be the same Agreed Value as previously agreed upon or determined. If the Resident and the Scheme Operator cannot agree on the new Agreed Value, the Scheme Operator must obtain a new valuation of a right to reside in the Accommodation Unit (determined on the basis set out in clause **1.1.4**) from a Valuer within fourteen (14) days, in which event the Resident and the Scheme Operator are taken to have agreed that the new valuation is the Agreed Value.

11.4 **Information to be provided to Resident**

- 11.4.1 The Scheme Operator must promptly give to the Resident details of each offer the Scheme Operator receives regarding the grant of a new right to reside in the Accommodation Unit.
- 11.4.2 At the Resident's request, the Scheme Operator must give information about the following to the Resident as soon as practicable after the end of each month until a new right to reside in the Accommodation Unit is granted:

- 11.4.2.1 all enquiries the Scheme Operator receives relating to the right to reside in the Accommodation Unit;
- 11.4.2.2 the steps the Scheme Operator is taking to promote the sale of a new right to reside in the Accommodation Unit; and
- 11.4.2.3 the following particulars of all other available rights to reside in accommodation units in the Retirement Village:
 - 11.4.2.3.1 the number of rights to reside;
 - 11.4.2.3.2 the size of the accommodation units;
 - 11.4.2.3.3 the selling prices of the rights to reside; and
 - 11.4.2.3.4 how long the rights to reside have been available for sale.

11.5 Resident may engage real estate agent after 6 months

- 11.5.1 If the Scheme Operator has not located a person who satisfies the criteria of a New Resident under clause **11.2.1** or **11.2.2** to accept a new right to reside in the Accommodation Unit within six (6) months after the Termination Date and the Resident has not been paid an Exit Entitlement, the Resident may engage a real estate agent to locate such a person.
- 11.5.2 If the Resident engages a real estate agent under clause **11.5.1**, the Scheme Operator may continue to endeavour to find a person to accept a new right to reside in the Accommodation Unit, but is not obliged to do so.

11.6 Grant of new right to reside at less than Agreed Value

- 11.6.1 The Resident may require the Scheme Operator to grant a new right to reside in the Accommodation Unit to a person who offers a Resale Price that is less than the Agreed Value, but who otherwise satisfies the criteria of a New Resident under clause **11.2.1** or **11.2.2**. In such event, the Resident must on the Exit Entitlement Date, pay to the Scheme Operator an amount equivalent to 30% of the difference between the Agreed Value and the Resale Price.
- 11.6.2 The Scheme Operator may elect to grant a new right to reside in the Accommodation Unit to a person who offers a Resale Price that is less than the Agreed Value, but who otherwise satisfies the criteria of a New Resident under clause **11.2.1** or **11.2.2**. In such event, the Scheme Operator must, on the Exit Entitlement Date, pay to the Resident an amount equivalent to 70% of the difference between the Agreed Value and the Resale Price.

11.7 Costs of granting new right to reside

- 11.7.1 Subject to Clause **11.7.3**, the Resident must pay to the Scheme Operator a share of any costs incurred by the Scheme Operator in finding or attempting to find a person to accept a new right to reside in the Accommodation Unit, including the costs of any valuations obtained under clause **11.3** and the fees, charges and commissions payable to any real estate agent engaged by the Scheme Operator under clause **11.1.2**, calculated as follows:
- 11.7.2 Resident's share = Costs referred to above x (Ingoing Contribution + 70% of any Capital Gain – Exit Fee – 70% of any Capital Loss) / Resale Price

- 11.7.3 If the Resident engages a real estate agent under clause **11.5.1**, the Resident must pay the real estate agent's costs and commission (if any).

12 REINSTATEMENT OF ACCOMMODATION UNIT

12.1 Agreed Reinstatement Work

- 12.1.1 Immediately one of the events set out in clause **11.1.1** occurs, the Resident and the Scheme Operator must negotiate in good faith and, if possible, agree in writing on the Reinstatement Work.

12.2 Itemised quote

- 12.2.1 If the Resident and the Scheme Operator cannot agree in writing on the Reinstatement Work within 30 days after the Termination Date:
- 12.2.1.1 the Scheme Operator must, within 44 days after the Termination Date, obtain from an appropriately qualified tradesperson and give to the Resident an itemised quote for performing the work which the Scheme Operator considers to be the Reinstatement Work; and
 - 12.2.1.2 the Resident may, within 44 days after the Termination Date, obtain from an appropriately qualified tradesperson and give to the Scheme Operator an itemised quote for performing the work which the Resident considers to be the Reinstatement Work.

12.3 Dispute

- 12.3.1 If the Resident disputes the itemised quote for performing the work which the Scheme Operator considers to be the Reinstatement Work, a retirement village dispute, within the meaning of the Act, exists and may, upon the impetus of either party, be resolved through the dispute resolution procedures provided in the Act.

12.4 Completion of Reinstatement Work

- 12.4.1 If the Resident and the Scheme Operator agree on the extent and costs of the Reinstatement Work, the Scheme Operator must use all reasonable endeavours to ensure that the Reinstatement Work is completed within ninety (90) days after the Resident vacates the Accommodation Unit after termination of the Licence or such other date as the Resident and the Scheme Operator may agree upon.
- 12.4.2 If the extent of the Reinstatement Work is determined by the Tribunal pursuant to clause **12.3**, the Scheme Operator must use all reasonable endeavours to ensure that the Reinstatement Work is completed within ninety (90) days after the Resident vacates the Accommodation Unit after termination of the Licence or such other date as is ordered by the Tribunal.

12.5 Costs of Reinstatement Work

- 12.5.1 The cost of the labour and materials for the Reinstatement Work must be paid by:
- 12.5.1.1 to the extent that the Reinstatement Work is required because the Resident caused accelerated wear to the Accommodation Unit's interior or deliberate damage to the Accommodation Unit – the Resident; and

12.5.1.2 otherwise – the Resident and the Scheme Operator in the following shares:

12.5.1.2.1 the Resident – 70%; and

12.5.1.2.2 the Scheme Operator – 30%.

12.6 Resident to pay other costs associated with Reinstatement Work

12.6.1 The Resident must pay the costs of:

12.6.1.1 the Reinstatement Work (other than the costs referred to in clause **12.5**);

12.6.1.2 any itemised quote obtained under clause **12.2**; and

12.6.1.3 unless the Tribunal orders otherwise, the costs of resolving any dispute in respect of the Reinstatement Work and obtaining the determination of the Tribunal.

13 PAYMENTS UPON DEPARTURE

13.1 Payment of Exit Entitlement

13.1.1 Subject to clauses **15** and **21**, the Scheme Operator must pay the Exit Entitlement to the Resident on or before the Exit Entitlement Date.

13.2 Calculation of Exit Entitlement

13.2.1 Subject to clauses **13.2.4**, **15** and **21**, the Exit Entitlement is calculated as follows:

13.2.1.1 the Ingoing Contribution;

13.2.1.2 plus 70% of any Capital Gain;

13.2.1.3 less 70% of any Capital Loss;

13.2.1.4 less the Exit Fee;

13.2.1.5 less the Termination Administration Costs;

13.2.1.6 less the Resident's share of any costs incurred by the Scheme Operator in finding or attempting to find a person to accept a new right to reside in the Accommodation Unit, calculated under clause **11.7.1**;

13.2.1.7 less any costs associated with the Reinstatement Work payable by the Resident under clause **12.5** or **12.6**;

13.2.1.8 less any outstanding General Services Charges, Maintenance Reserve Fund Contributions or Personal Services Charges (if any) (including any interest thereon);

13.2.1.9 less any other amounts payable by the Resident to the Scheme Operator under this Agreement, the Act, the residence contract referred to in clause **3.1.1.1** or any other agreement between the Scheme Operator and the Resident relating to the Resident's

residence in and use of the Retirement Village and/or the provision of goods or services to the Resident.

- 13.2.2 The Scheme Operator may set off any amounts payable by the Resident under clauses **11.6.1** and **13.2** against any amounts payable by the Scheme Operator under clauses **11.6.2**, **13.1.1** or **13.2**.
- 13.2.3 At the same time the Scheme Operator pays the Exit Entitlement to the Resident, the Scheme Operator must give the Resident a written statement showing how the Exit Entitlement was calculated and which otherwise complies with Section 63 of the Act. The statement, if signed by an authorised officer of the Scheme Operator, is prima facie proof of any amount referred to in it.
- 13.2.4 Despite clause **13.1.1**, the Scheme Operator may choose to pay the Exit Entitlement to the Resident at any time before the Scheme Operator has granted a new right to reside in the Accommodation Unit to a New Resident in accordance with clause **11** and the Scheme Operator has received the Resale Price from the New Resident. In such event, the Exit Entitlement will be calculated as if the Resale Price was equivalent to the Agreed Value.
- 13.2.5 If the calculation of the Exit Entitlement produces a negative amount, the Resident must pay the net amount to the Scheme Operator.

13.3 Evidence of Resident's death

- 13.3.1 If this Agreement has been terminated under clause **10.3**, the Resident must, before the Scheme Operator pays the Exit Entitlement to the Resident and in exchange for such payment, deliver to the Scheme Operator:
- 13.3.1.1 evidence, to the absolute satisfaction of the Scheme Operator, that a Grant of Probate or Letters of Administration have issued or been resealed in Queensland to the personal representative of the Resident; and
- 13.3.1.2 an office copy of the Certificate of Death of the Resident.

13.4 Part 3, Division 5 of the Act

- 13.4.1 Nothing in this Agreement affects the rights and obligations of the parties contained in Part 3, Division 5 of the Act.

13.5 Joint Residents

- 13.5.1 If the Resident comprises more than one person, such persons:
- 13.5.1.1 must hold their respective interests under the Licence and this Agreement jointly;
- 13.5.1.2 hereby acknowledge that their entitlement to the Exit Entitlement or any portion thereof is extinguished upon their death;
- 13.5.1.3 hereby acknowledge that, upon the death of one or more of such persons and the subsequent termination of the Licence, it will be lawful and proper for the Scheme Operator to pay the Exit Entitlement to the survivor or survivors of such persons or, in the case of termination of the Licence pursuant to clause **10.3**, to the Personal Representative of the last survivor of such persons; and

- 13.5.1.4 hereby acknowledge that the payment of the Exit Entitlement by the Scheme Operator in accordance with clause **13.5.1.3** represents good discharge and satisfaction of the Scheme Operator's liability to pay the Exit Entitlement to the Resident under this Agreement.

14 EXIT FEE, TERMINATION ADMINISTRATION COSTS

14.1 Calculation of Exit Fee

- 14.1.1 The Resident agrees to pay an Exit Fee to the Scheme Operator on the Exit Entitlement Date.
- 14.1.2 The Exit Fee is the relevant percentage of the Ingoing Contribution which is set out in **Item 11**.
- 14.1.3 Regardless of clause **14.1.2**, but subject to clause **13.2.1.3**, the Exit Fee must not exceed the percentage specified in **Item 12** of the Ingoing Contribution.

14.2 Payment of Termination Administration Costs

- 14.2.1 The Resident agrees to pay the Termination Administration Costs to the Scheme Operator on the Exit Entitlement Date, being all costs of and incidental to termination of the Licence and/or this Agreement.
- 14.2.2 The amounts of certain expenses comprising the Termination Administration Costs as at the date on which the Public Information Document was given to the Resident are set out in the Public Information Document given to the Resident.

15 DAMAGE OR DESTRUCTION OF ACCOMMODATION UNIT AND RETIREMENT VILLAGE

15.1 Restoration of damaged Accommodation Unit

- 15.1.1 If, during the term of the Licence, the Accommodation Unit is partially destroyed or damaged so that the Accommodation Unit is substantially unfit for use and occupation by the Resident, then the Scheme Operator must:
- 15.1.1.1 as soon as practicable repair, replace and make good the whole of the destroyed or damaged portion of the Accommodation Unit; and
- 15.1.1.2 ensure the Accommodation Unit is restored as nearly as possible to its condition immediately before the damage or destruction.
- 15.1.2 The General Services Charge and the Maintenance Reserve Fund Contribution, or a proportionate part thereof according to the nature and extent of the damage, abates from the time of the damage or destruction until the Accommodation Unit has been repaired, reinstated or made fit for use and occupation. However, this clause **15.1.2** does not apply if:
- 15.1.2.1 the Resident caused the damage or destruction; or
- 15.1.2.2 the Scheme Operator offers the Resident alternative accommodation within the Retirement Village while the Scheme Operator carries out the works referred to in clause **15.1.1**.
- 15.1.3 The Resident's obligations to maintain and repair the Accommodation Unit so far as they relate to the damage or destruction are suspended from the time of the damage or destruction until the Accommodation Unit has been repaired, reinstated or made fit for use and occupation.

15.2 Destruction of Accommodation Unit

- 15.2.1 Subject to clause **15.2.4**, if, during the term of the Licence, the Accommodation Unit, in the opinion of the Scheme Operator, is totally destroyed or damaged so extensively that the repair or making good of the damage is impracticable or undesirable, then the Scheme Operator must rebuild or reconstruct the Accommodation Unit:
- 15.2.1.1 substantially in accordance with its original design; or
 - 15.2.1.2 to some other design the Scheme Operator considers desirable.
- 15.2.2 The General Services Charge and the Maintenance Reserve Fund abate from the time of the damage or destruction until the Accommodation Unit has been restored to a state fit for use and occupation by the Resident. However, this clause **15.2.2** does not apply if:
- 15.2.2.1 the Resident caused the destruction or damage; or
 - 15.2.2.2 the Scheme Operator offers the Resident alternative accommodation within the Retirement Village while the Scheme Operator carries out the works referred to in clause **15.2.1**.
- 15.2.3 The Resident's obligations to maintain and repair the Accommodation Unit are suspended from the time of the damage or destruction until the Accommodation Unit is restored to a state fit for use and occupation by the Resident.
- 15.2.4 If, in the opinion of the Scheme Operator, the rebuilding or reconstruction of the Accommodation Unit is impracticable or undesirable, or if the proceeds of any policy of insurance over the Accommodation Unit are inadequate to enable the Scheme Operator to rebuild or reconstruct the Accommodation Unit, the Scheme Operator may terminate the Licence with immediate effect by written notice to the Resident.

15.3 Damage to Retirement Village

- 15.3.1 If:
- 15.3.1.1 parts of the Retirement Village other than the Accommodation Unit are destroyed or damaged; and
 - 15.3.1.2 in the opinion of the Scheme Operator the rebuilding or reconstruction of those parts of the Retirement Village is impractical or undesirable;

the Scheme Operator may terminate the Licence with immediate effect by written notice to the Resident.

15.4 Exit Entitlement payable upon termination of Licence due to damage and destruction

- 15.4.1 If the Scheme Operator terminates the Licence pursuant to clause **15.2.4** or **15.3**, the Scheme Operator must, within fourteen (14) days after receiving the proceeds due to the Scheme Operator from its policy of insurance covering the damaged or destroyed property, pay the Resident the Exit Entitlement, calculated as if:
- 15.4.1.1 the Resale Price is equivalent to the Agreed Value (assuming that the Accommodation Unit had not been damaged or destroyed and no Reinstatement Work had been carried out); and

15.4.1.2 no amount is deducted under clause **13.2.1.6**.

15.4.2 To avoid doubt, clauses **13.2.2** and **13.2.5** apply to any Exit Entitlement calculated pursuant to clause **15.4.1**.

15.5 **Effect of Termination**

15.5.1 Any termination of the Licence under this clause **15** does not affect one party's right of action or other remedy against the other party for any previous breach of this Agreement.

16 **MEMBERSHIP OF ASSOCIATION**

16.1 While the owner of the Retirement Village Land or the Scheme Operator is Wishart Christian Village Association Inc, the Resident must become a member of Wishart Christian Village Association Inc upon becoming a resident of the Retirement Village.

17 **ACKNOWLEDGMENTS**

17.1 **No representations**

17.1.1 The Resident acknowledges that the Scheme Operator has not given or made any promises, representations, warranties or undertakings, express or implied, about the suitability of the Accommodation Unit for any purpose for which it may be used by the Resident. All warranties (if any) as to the suitability, fitness and adequateness of the Accommodation Unit implied by law are (to the extent that it is lawful to do so) hereby expressly negated.

17.2 **Condition of Accommodation Unit**

17.2.1 The Resident acknowledges that, immediately before the Commencement Date, the Resident inspected the Accommodation Unit and is satisfied with the condition, appearance and state of repair of the Accommodation Unit.

17.3 **Public Information Document**

17.3.1 The Resident acknowledges that the Scheme Operator gave the Resident a copy of the Public Information Document before the Resident signed this Agreement.

17.4 **Independent legal advice**

17.4.1 The Resident acknowledges that prior to the Resident executing this Agreement or any document forming part of the residence contract referred to in clause **3.1.1.1**, the Scheme Operator advised the Resident to seek independent legal advice as to the content of that residence contract, including this Agreement.

17.5 **Entire Agreement**

17.5.1 The Resident acknowledges that this Agreement, the Public Information Document and the Application to Reside contain the entire agreement between the Resident and the Scheme Operator and that there are no other oral or collateral agreements between the parties relating to the Accommodation Unit or the Retirement Village despite any negotiations or discussions between the parties prior to the execution of this Agreement. No representation made by the Scheme Operator, its servants or agents concerning the Accommodation Unit or the Retirement Village will be an implied term of this Agreement or form the subject matter of a separate agreement subsidiary to or collateral with this Agreement. The Resident further acknowledges not having been induced to execute this Agreement by any representation which is not included in this

Agreement, the Public Information Document or the Application to Reside, oral or otherwise, made by or on behalf of the Scheme Operator, its servants or agents.

17.6 Provision of health care

17.6.1 The Resident acknowledges:

17.6.1.1 No arrangements have been or will be made by the Scheme Operator as to the provision of nursing care in the Accommodation Unit and the Resident further acknowledges that it is the Resident's responsibility to arrange the same;

17.6.1.2 No arrangements have been or will be made by the Scheme Operator on the Resident's behalf as to the provision of nursing or medical care in a hospital or aged care facility and the Resident further acknowledges that it is the Resident's own responsibility to arrange the same; and

17.6.1.3 The Scheme Operator may, if the Resident requests, co-ordinate visits by a medical practitioner to the Accommodation Unit or the Retirement Village on a regular basis, subject to the Resident meeting any fees and costs of the medical practitioner.

18 COSTS OF DOCUMENTS

18.1 The Resident must pay to the Scheme Operator on demand:

18.1.1 the usual and proper administrative costs of the Scheme Operator and legal costs of the Scheme Operator's solicitors (as between solicitor and own client) of and incidental to the preparation, negotiation, execution and stamping of this Agreement, the Public Information Document given to the Resident and any ancillary documents;

18.1.2 all stamp duties payable on this Agreement and any ancillary documents;

18.1.3 the cost of preparation of any plan of the Accommodation Unit; and

18.1.4 the cost of obtaining the consent of any mortgagee of the Retirement Village Land.

19 OTHER FORMS OF OCCUPANCY RIGHTS

19.1 The Scheme Operator reserves the right to grant such occupancy rights in respect of accommodation units in the Retirement Village as the Scheme Operator determines in its absolute discretion, whether such occupancy rights are governed by the Act or not. To avoid doubt, such occupancy rights may include, without limitation, leases or tenancy agreements in exchange for the payment of rent, without the payment of an ingoing contribution.

20 SALE OF RETIREMENT VILLAGE

20.1 **Scheme Operator to obtain covenant from purchaser**

20.1.1 The Scheme Operator may at any time during the term of the Licence sell the Retirement Village provided it first obtains from the purchaser a covenant to observe and be bound by the terms of this Agreement and by the terms of any other contract or document that constitutes the residence contract between the Scheme Operator and the Resident within the meaning of the Act.

20.2 Release

20.2.1 On completion of the sale, the Scheme Operator is fully released and discharged from all of its obligations under this Agreement and any other contracts referred to in clause **20.1.1**, except breaches by the Scheme Operator which occurred before completion of the sale.

20.3 Benefit of Resident's covenants

20.3.1 Upon completion of the sale, the purchaser will have the benefit of all covenants and agreements on the part of the Resident under this Agreement and any other contracts referred to in clause **20.1.1** and the Resident will, at the Scheme Operator's cost, enter into such covenants with the purchaser in this regard as the Scheme Operator may reasonably require.

21 TERMINATION OF SCHEME

21.1 If, during the term of the Licence, the Scheme Operator gives the Resident notice that it intends to cease to operate the Scheme following the termination of all then current rights to reside in accommodation units in the Retirement Village, the Scheme Operator:

21.1.1 is not obliged to find a New Resident; and

21.1.2 must, within 14 days after the termination of the Licence, pay the Resident the Exit Entitlement, calculated as if:

21.1.2.1 the Resale Price is equivalent to the Agreed Value (assuming that no Reinstatement Work had been carried out); and

21.1.2.2 no amount is deducted under clause **13.2.1.6**.

21.2 To avoid doubt, clauses **13.2.2** and **13.2.5** apply to any Exit Entitlement calculated pursuant to clause 21.1.

22 NOTICES AND CONSENTS

22.1 Notices and Consents to be in writing

22.1.1 A notice or consent given under this Agreement must be in writing.

22.1.2 A notice or consent given by the Scheme Operator is valid if signed by an officer of the Scheme Operator or the Manager.

22.2 Serving notices

22.2.1 The Scheme Operator may serve a notice or consent under this Agreement on the Resident by:

22.2.1.1 giving it to the Resident personally;

22.2.1.2 leaving it at, or posting it by prepaid post to, the Accommodation Unit; or

22.2.1.3 faxing it to any facsimile number of the Resident of which the Scheme Operator has previously been notified by the Resident.

22.2.2 The Resident may serve a notice under this Agreement on the Scheme Operator by:

- 22.2.2.1 leaving it at, or posting it by prepaid post to, the address of the Scheme Operator specified in **Item 4**; or
 - 22.2.2.2 faxing it to the Scheme Operator's facsimile number specified in **Item 4**.
 - 22.2.3 Any notice or consent under this Agreement served in accordance with this clause is taken to be received:
 - 22.2.3.1 if hand delivered, on delivery;
 - 22.2.3.2 if sent by post, on the second Business Day after posting; or
 - 22.2.3.3 if sent by facsimile, when the sender's facsimile machine generates a message confirming successful transmission of the notice;
- provided that, if the notice or consent would otherwise be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, the notice or consent is taken to be received at 9.00am on the next following Business Day.
- 22.2.4 The Resident and the Scheme Operator may only change an address or facsimile number for the service of notices or consents under this Agreement by notice to the other party.
 - 22.2.5 This clause **22.2** does not in any way limit the manner in which or the time by which a notice referred to in clause **3.2** may be given under the Act.

23 CONVERSION TO COMMUNITY TITLES SCHEME

23.1 Consent to establishment of community titles scheme

- 23.1.1 The Resident consents to the Scheme Operator at any time preparing and establishing a community titles scheme ("CTS") under the *Body Corporate and Community Management Act 1997* over the Retirement Village provided that:
 - 23.1.1.1 the area, location and dimensions of the lot appearing on the plan of subdivision for the CTS corresponding to the Accommodation Unit are substantially the same as the area, location and dimensions of the Accommodation Unit; and
 - 23.1.1.2 the plan of subdivision is prepared and registered at the Scheme Operator's expense.

23.2 Resident to do all acts

- 23.2.1 The Resident agrees, when required by the Scheme Operator, to do all things and to execute all documents the Scheme Operator reasonably requires to enable:
 - 23.2.1.1 the CTS to be established; and
 - 23.2.1.2 the plan of subdivision to be prepared, approved by the local authority and registered on the Land Title Register.
- 23.2.2 Without limiting the generality of clause **23.2.1**, the Resident's obligations under that clause include:
 - 23.2.2.1 agreeing to terminate the Licence; and

23.2.2.2 accepting from the Scheme Operator a new licence of the lot in the plan of subdivision corresponding to the Accommodation Unit, containing similar or substantially the same terms, covenants and conditions as this Agreement.

24 GST

24.1 Definitions

24.1.1 Unless the context otherwise dictates, words or expressions used in this clause **24** which are defined in the GST Act bear the same meaning in this clause **24**.

24.2 Resident's liability for GST

24.2.1 Despite any other provision of this Agreement, an amount payable by the Resident to the Scheme Operator in respect of a supply under or in connection with this Agreement which is a taxable supply represents the GST-exclusive value of the supply and the Resident must, in addition, pay to the Scheme Operator the GST payable in respect of the supply at the same time as the Resident is required to pay the consideration for the supply.

24.3 Reimbursement

24.3.1 If this Agreement requires the Resident to pay, reimburse or contribute to an amount paid or payable by the Scheme Operator in respect of an acquisition from a third party for which the Scheme Operator is entitled to an input tax credit, the amount for payment, reimbursement or contribution will be the amount paid or payable by the Scheme Operator, less the amount of the Scheme Operator's input tax credit, plus, if the Scheme Operator's recovery from the Resident is a taxable supply, the GST payable in respect of that supply.

25 DISPUTE RESOLUTION

25.1 Dispute resolution under the Act

25.1.1 If a dispute concerning the terms, covenants and conditions of this Agreement arises between the Resident and the Scheme Operator, either party may have recourse to the dispute resolution process described in the Act, including the internal dispute resolution procedures referred to in 25.1.2 and/or the Act and having the dispute referred to a mediator and/or the Tribunal in accordance with the Act.

25.2 Parties' rights under the Act preserved

25.2.1 To remove any doubt, if a provision of this Agreement requires or permits a dispute between the Resident and the Scheme Operator concerning the terms, covenants and conditions of this Agreement to be referred to a specified person for arbitration or determination, such provision does not limit either party's rights to use the dispute resolution process set out in the Act

25.3 General

25.3.1 Dispute resolution for a retirement village dispute between a resident and a scheme operator is available under the provisions of the Act. This dispute resolution process does not apply to disputes between residents or to disputes relating to the operation of a body corporate.

25.3.2 An attempt to resolve a dispute must first be made by the parties as an internal process. Parties are encouraged to use this process early to open up

communication. If the dispute cannot be resolved, the parties can seek to have the dispute mediated and, if mediation is not successful, a dispute can be referred to the Commercial and Consumer Tribunal.

25.4 Preliminary negotiation

25.4.1 This first step is an internal negotiation process as follows:

25.5 Internal Dispute Resolution Process

25.5.1 The internal dispute resolution process within this village is:

25.5.2 In accordance with Part 9 of the Act, the internal dispute resolution process for the retirement village is as follows:

25.5.2.1 A party to the dispute (**'first party'**) must give the other party to the dispute (**'second party'**) written notice:

- stating the matters in dispute; and
- nominating a day, no earlier than 14 days after the notice is given ('nominated day') for the parties to meet within the village to attempt to resolve the dispute.

25.5.2.2 The second party must give the first party a written response to the notice within 7 days after receiving the notice.

25.5.2.3 On the nominated day, or another day within 7 days after the nominated day and agreed by the parties, the parties must meet in the retirement village and attempt to resolve the dispute.

25.5.3 Mediation

25.5.4 Disputes can be resolved by mediation, which is also an informal process. An application must be made to the principal registrar at the Queensland Civil and Administrative Tribunal for a mediator to be appointed to assist the parties to resolve the dispute. A mediator is then appointed to assist the parties to resolve the dispute. Details about the Queensland Civil and Administrative Tribunal are set out below.

25.5.5 The types of disputes that can be mediated under the Act are all disputes other than:

- disputes that are subject to arbitration;
- disputes that are subject to an arbitration award;
- disputes that are either before a court or that have been decided by a court;
- disputes between residents; or
- disputes relating to the operation of a body corporate.

25.5.5.1 Mediation can only be used if the parties have tried to resolve the dispute using the internal negotiation process first.

25.5.5.2 A lawyer or agent may represent each party at a mediation conference unless the mediator thinks a lawyer or agent should not represent a party. The mediation conference is held in private and no official record is kept.

25.5.5.3 A party to the dispute cannot be compelled to attend mediation.

25.5.5.4 Other persons may take part in the mediation if the mediator thinks the person has a sufficient interest in the dispute.

25.5.5.5 If an agreement is reached on the dispute, the parties must sign a mediation agreement.

25.5.6 Tribunal Hearings

25.5.7 If:

- the parties cannot reach agreement; or
- one party does not attend mediation; or
- if the dispute is not settled within four months; or
- if a party claims another party to a mediation agreement has not complied with the agreement within the specified time or within 2 months of the agreement if no time is specified, a party can apply to the Queensland Civil and Administrative Tribunal to hear the dispute.

25.5.8 A resident may make an application for a tribunal order without internal negotiation or mediation first occurring if the resident:

- is threatened with removal or is removed from the retirement village;
- is threatened with deprivation or is deprived of the right to reside;
- is threatened with restriction or is restricted in use of the retirement village land under the residence contract.

25.5.8.1 A resident can also ask for an order by the tribunal to have the residence contract set aside if the scheme operator gives the resident false or misleading documents and the resident is materially prejudiced by it.

25.5.8.2 A resident can ask for an order by the tribunal that the scheme operator pay the resident's exit entitlement if the scheme operator does not comply with provisions relating to resale of the accommodation unit where those provisions apply, and the resident is materially prejudiced by it.

25.5.8.3 Tribunal hearings are open to the public unless the tribunal orders otherwise.

25.5.8.4 Parties to a dispute will usually have to pay their own costs for a tribunal hearing unless the tribunal decides otherwise in the interests of justice.

25.5.8.5 Individuals must conduct their own case, but a resident can be represented by another resident or relative who is not a lawyer, or, if the tribunal allows, by a lawyer.

25.5.8.6 A group of residents may apply jointly about a matter arising from similar circumstances.

25.5.8.7 The tribunal can hear disputes other than those that are or have been subjected to arbitration or that are or have been decided by a court. The tribunal can also hear disputes that involve an amount of less than \$250,000.

- 25.5.8.8 A fee is payable for an application to the tribunal. The amount of the fee is set under the *Queensland Civil and Administrative Tribunal Regulation 2009*. Information about the fee can be obtained by contacting the Queensland Civil and Administrative Tribunal.

25.6 Parties' rights under the Act preserved

- 25.6.1 To remove any doubt, if a provision of this Agreement requires or permits a dispute between the Resident and the Scheme Operator concerning the terms, covenants and conditions of this Agreement to be referred to a specified person for arbitration or determination, such provision does not limit either party's right to use the dispute resolution process set out in the Act.

26 STATUTORY CHARGE

- 26.1 The statutory charge (if any) created and registered over the Retirement Village Land under the Act relevant to the Resident's interest in the Accommodation Unit is specified in **Item 5**.

27 GENERAL

27.1 No waiver

- 27.1.1 No delay on the part of the Scheme Operator in exercising any of its rights or remedies under this Agreement, the Act or implied by law shall be deemed to constitute a waiver of the Scheme Operator's rights or remedies.
- 27.1.2 No term of this Agreement will be deemed to have been waived by the Scheme Operator unless such waiver has been notified to the Resident in writing.
- 27.1.3 Any waiver by the Scheme Operator of any default or breach by the Resident of this Agreement will not in any circumstances be construed or operate as:
- 27.1.3.1 a licence to the Resident to repeat or continue such default or breach: or
 - 27.1.3.2 a waiver of any subsequent default or breach, whether of a similar nature or not.

27.2 No deduction

- 27.2.1 All monies payable by the Resident to the Scheme Operator under this Agreement will be paid without any set-off or deduction whatsoever to such person on behalf of the Scheme Operator or to the credit of the Scheme Operator at such bank or other financial institution as the Scheme Operator may from time to time direct in writing.

27.3 Interest

- 27.3.1 If payment of any monies payable by the Resident to the Scheme Operator under this Agreement is overdue for more than fourteen (14) days, the Resident must also pay interest on the overdue amount at the Specified Rate.
- 27.3.2 If the Scheme Operator obtains judgement against the Resident in any Court or tribunal of competent jurisdiction, the Resident must also pay interest at the Specified Rate on such portion of the judgement as remains unsatisfied from time to time from the date of judgement until the date on which the judgement becomes satisfied in full.

27.4 Grant of Easements

27.4.1 The Scheme Operator may, for the purpose of providing public or private access to or egress from the Retirement Village or other land adjacent thereto ("Adjacent Land") or the support of structures erected or to be erected on the Retirement Village or Adjacent Land or the provision of services (including water, drainage, gas, electricity, telecommunications or internet) to the Retirement Village or Adjacent Land, enter into any arrangements or agreements with any of the owners, lessees, tenants or occupiers of Adjacent Land or with any public or other authority and for such purposes may dedicate, transfer, grant or create easements in favour of such persons and/or authorities upon such terms and conditions as the Scheme Operator thinks fit and the rights of the Resident under this Agreement will be subject to any such arrangement or agreement provided that, in exercising its rights under this clause, the Scheme Operator will not enter into any arrangement or agreement or dedicate, transfer, grant or create any easement, right or privilege in favour of any person other than the Resident which substantially and permanently derogates from the Resident's rights under this Agreement.

27.5 Superior interests

27.5.1 The Resident will at all times during the term of the Licence permit any person having an estate or interest in the Retirement Village Land superior to or concurrent with the Scheme Operator to exercise the Scheme Operator's or such other person's powers to enter and view the Accommodation Unit and to carry out repairs, renovations, maintenance and other work therein and otherwise to exercise and perform their lawful rights and obligations in relation to the Accommodation Unit.

27.6 Alteration to designation of Common Property

27.6.1 The Scheme Operator may, from time to time:

- 27.6.1.1 discontinue the designation of an area as Common Property;
- 27.6.1.2 restrict access to part of the Common Property; or
- 27.6.1.3 make alterations to Common Property (including changing the size, location and nature of any of the areas designated as Common Property);

27.6.1.4 provided always that the means of ingress to and egress from the Accommodation Unit on foot or by motor vehicle from and to public streets will remain no less adequate than those prevailing at the Commencement Date.

27.7 No merger

27.7.1 Any provision of this Agreement which can take effect after termination of the Licence or this Agreement remains in force after such termination.

28 SPECIAL TERMS

28.1 Any special terms of this Agreement are set out in **Item 13** and, to the extent permitted by the Act, prevail over the other provisions of this Agreement in the event of any inconsistency.

29 RIGHTS OF RELATIVES

29.1 Application of clause 29.2

29.1.1 Clause **29.2** applies if a Relative has a right to reside in the Accommodation Unit under section 70B(2) of the Act.

29.2 Variations to *Item 11* and clauses 12.4.1, 12.4.2 and 14.1

29.2.1 Clauses **12.4.1** and **12.4.2** apply as if the references in those clauses to "ninety (90) days after the Resident vacates the Accommodation Unit after termination of the Licence" read "ninety (90) days after the Relative's right to reside in the Accommodation Unit under section 70B(2) of the Act ends".

29.2.2 Clause **14.1** and **Item 11** apply as if the heading to the left-hand column in **Item 11** read "Length of time between the Commencement Date and the sooner of the following dates:

- (a) the date the Relative vacates the Accommodation Unit; or
- (b) the day that is three (3) months after the Termination Date".

29.3 Application of clauses 29.4 and 29.5

29.3.1 Clauses **29.4** and **29.5** apply if:

29.3.1.1 a Relative has a right to reside in the Accommodation Unit under section 70B(2) of the Act; and

29.3.1.2 sections 70B(5)(a) to (d) of the Act apply.

29.4 Variations to clauses 11.3.2, 11.3.3, 11.5.1 and 12.1 to 12.4

29.4.1 Clauses **11.3.2**, **11.3.3**, **11.5.1** and **12.2** apply as if the references to "the Termination Date" in those clauses read "the date the Relative gives the Scheme Operator a written advice under section 70B(5)(d) of the Act".

29.4.2 Clauses **12.1** to **12.4** apply as if references in those clauses to "the Resident" read "the Relative".

29.5 Minimise inconvenience

The Scheme Operator must use its best endeavours to ensure that the Reinstatement Work is performed in such a manner as to minimise, as far as is reasonably possible, any inconvenience to the Relative.

REFERENCE TABLE

Item 1	Scheme Name	Wishart Christian Village	
Item 2	(Clause 1.1.46) Retirement Village Land address and real property description (Clause 1.1.45)	3 Erindale Close, Wishart QLD 4122 Lot 8 on RP852181, County of Stanley, Parish of Bulimba, Title Reference 18582060 and Lot 1 on SP175138, County of Stanley, Parish of Bulimba, Title Reference 50557072	
Item 3	Scheme Operator (Clause 1.1.47)	Wishart Christian Village Association Inc	
Item 4	Scheme Operator's address and facsimile number for service of notices (Clause 22.2.2)	30/3 Erindale Close, Wishart QLD 4122 Facsimile: 07 3219 2386	
Item 5	Statutory Charge (Clause 26)	Dealing Number: 706289387	
Item 6	Trustee's name and address (Clause 1.1.54)	Ian W Bartels & Associates 1408 Logan Road Mt Gravatt Qld 4122	
Item 7	Resident (Clause 1.1.43)	[insert details]	
Item 8	Accommodation Unit (Clause 1.1.2)	[insert details]	
Item 9	Commencement Date (Clause 1.1.14)	[insert details]	
Item 10	Ingoing Contribution (Clause 1.1.26)	[insert details]	
Item 11	Exit Fee (Clauses 14.1.2 and 29.2.2)	Length of time between the Commencement Date and the date the Resident ceased to reside in the Accommodation Unit pursuant to termination of the Licence	The Exit Fee is the percentage set out below multiplied by the Ingoing Contribution
		Not more than 1 year	2.5%
		More than 1 year but not more than 2 years	5%
		More than 2 years but not more than 3 years	7.5%
		More than 3 years but not more than 4 years	10%
		More than 4 years but not more than 5 years	12.5%
		More than 5 years but not more than 6 years	15%
		More than 6 years but not more than 7 years	17.5%
		More than 7 years but not more than 8 years	20%
		More than 8 years but not more than 9 years	22.5%
		More than 9 years but not more than 10 years	25%

More than 10 years but not more than 11 years	27.5%
More than 11 years but not more than 12 years	30%
More than 12 years	30%

However, if the period referred to above is not a whole number of years and is less than 12 years, the Exit Fee will be worked out on a daily basis in accordance with the Act.

Item 12 Maximum Exit Fee

(Clause 14.1.3)

30%

Item 13 Special Terms

(Clause 28)

[Insert details or “Not applicable”]

ANNEXURE A

**PLAN OF THE RETIREMENT VILLAGE
(SHOWING APPROXIMATE LOCATION OF THE ACCOMMODATION UNIT)**

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Application to Reside

THIS AGREEMENT IS MADE BETWEEN:

The person(s) referred to as “Scheme Operator” in the Reference Schedule (referred to in this Application as “**we**” or “**us**”); and

The person(s) referred to as “Applicant(s)” in the Reference Schedule (referred to in this Application as “**you**”).

1 **APPLICATION**

2

- 2.1 By signing this Application and giving it to us, you apply for a right to reside in the Accommodation Unit in exchange for paying us the Ingoing Contribution.

3 **DEPOSIT**

4

- 4.1 You must pay the Deposit at the same time as you give this Application to us.
4.2 You must pay the Deposit to the Trustee in the manner we require. If you pay the Deposit by cheque, bank cheque or money order, it must be made payable to “Ian W Bartels & Associates Trust Account”, unless we advise otherwise.
4.3 The Trustee will hold the Deposit in its trust account and deal with the Deposit in accordance with section 46 of the Act.
4.4 If Settlement occurs:
4.4.1 we are entitled to the Deposit; and
4.4.2 the Deposit becomes part of the Ingoing Contribution.

5 **RESIDENCE CONTRACT**

6

- 6.1 You acknowledge and agree that:
6.1.1 if we give you notice that we accept this Application, a residence contract within the meaning of section 10 of the Act is immediately created between you and us on the terms of this Application;
6.1.2 the date of this Application and the date of the Residence Contract is the date on which we give you notice that we accept this Application;
6.1.3 you may withdraw this Application by giving notice to us at any time before we give you notice that we accept this Application;
6.1.4 you may rescind the Residence Contract by giving us written notice before the Cooling-off Period ends; and
6.1.5 if you withdraw this Application under clause 3.1.3 or rescind the Residence Contract under clause 3.1.4, the Trustee will refund to you the Deposit, any other amount you have paid towards the Ingoing Contribution and any Variation Bond.

7 **VARIATIONS, PRE-SETTLEMENT INSPECTION AND CERTIFICATE OF SATISFACTION**

7.1

7.2 **Variations**

7.3

- 7.4 We will make the Variations to the Accommodation Unit as soon as practicable after the Cooling-off Period has expired and (if clause 5 applies) you have:
7.4.1 notified us that a sale of Your Property has settled; or
7.4.2 satisfied us that you will be able to pay the Balance Amount on the Settlement Date and agreed in writing that your right to terminate the Residence Contract under clause 5.3 is at an end.
7.5 You must pay any Variation Bond to the Trustee when you must pay the Deposit.
7.6 If Settlement occurs, the Variation Bond will be applied to the Balance Amount.

- 7.7 If the Residence Contract is terminated before the Commencement Date for any reason whatsoever (except our default or under clause 3.1.4):
- 7.7.1 you must immediately pay us any costs we have incurred in performing any Variations and any estimated costs we reasonably expect to incur in placing the Accommodation Unit in the condition it would have been in if the Variations had not been performed; and
 - 7.7.2 any Variation Bond will be applied to the amount you owe us under clause 4.4.1, with any surplus being payable to you.
- 7.8 To avoid doubt, the Variations Costs, the Variation Bond and the amounts described in clause 4.4.1 do not form part of the Deposit or the Ingoing Contribution.
- 7.9 You acknowledge that the Variations may not be completed by the Commencement Date. You are not entitled to Object if the Variations are not completed by the Commencement Date.
- 7.10 If the Variations have not been completed by the Commencement Date, you will allow us (and our employees, contractors and agents) to access the Accommodation Unit in order to complete the Variations.
- 7.10.1

7.10.2 **Pre-settlement Inspection and Certificate of Satisfaction**

7.10.3

- 7.11 Before Settlement, you must conduct a Pre-settlement Inspection at a time mutually convenient to you and our representative. During the Pre-settlement Inspection, you must complete, sign and date a Form 6.
- 7.12 You acknowledge that we are not obliged to rectify any matters which you identify in Form 6 and that you accept the Accommodation Unit on an “as is” basis.

8 **SALE OF YOUR PROPERTY**

9

- 9.1 This clause 5 only applies if details of Your Property and Your Sale Date have been inserted in the Reference Schedule.
- 9.2 You must:
- 9.2.1 use your best endeavours to settle a sale of Your Property on or before Your Sale Date;
 - 9.2.2 if you enter into or have entered into a contract to sell Your Property, notify us promptly of the following (and give us appropriate evidence if we request it):
 - 9.2.2.1 that you have entered into the contract;
 - 9.2.2.2 whether the contract is conditional or not; and
 - 9.2.2.3 if the contract is conditional, when the contract becomes unconditional; and
 - 9.2.3 notify us promptly once a sale of Your Property has settled.
- 9.3 If a sale of Your Property has not settled on or before Your Sale Date, you may terminate the Residence Contract by giving us notice. Your right to terminate the Residence Contract under this clause 5.3 automatically expires on the second Business Day after Your Sale Date.
- 9.4 If you have not notified us on or before Your Sale Date that a sale of Your Property has settled, we may terminate the Residence Contract by giving notice to you unless, before we terminate the Residence Contract, you:
- 9.4.1 satisfy us that you will be able to pay the Balance Amount on the Settlement Date; and
 - 9.4.2 agree in writing that your right to terminate the Residence Contract under clause 5.3 is at an end.
- 9.5 If the Residence Contract is terminated under clause 5.3 or 5.4, the Trustee will refund to you the Deposit and any other amount you have paid towards the Ingoing Contribution.

10 **RESIDENCY AGREEMENT**

11

- 11.1 Provided Settlement occurs, you and we must enter into the Residency Agreement, which will commence on the Commencement Date.
- 11.2 We must prepare the Residency Agreement in duplicate and give it to you a reasonable time before the Settlement Date.
- 11.3 You irrevocably authorise us and our solicitors to complete the Residency Agreement by:

- 11.3.1 inserting the Commencement Date as the commencement date of the Residency Agreement; and
- 11.3.2 inserting any other particulars or making any corrections which may be required as a matter of formality.

12 **SETTLEMENT**

13

- 13.1 Between 9.00 am and 5.00 pm on the Settlement Date and at a place we nominate, you must:
 - 13.1.1 return the Residency Agreement (in duplicate) to us or our solicitor, properly signed, dated and witnessed; and
 - 13.1.2 pay us the Balance Amount in the manner we require, by bank cheque issued by a bank licensed to carry on and carrying on business under the banking laws of Australia and Queensland or by direct deposit of cleared funds into a bank account nominated by us.
- 13.2 Subject to clause 7.3, if you comply with your obligations under clause 7.1, we must give you vacant possession of the Accommodation Unit on the Settlement Date in exchange for your compliance with clause 7.1.
- 13.3 If we are unable to give you vacant possession of the Accommodation Unit on the Settlement Date, we may extend the Settlement Date by giving notice to you. We may do this on one or more occasions, but the total period of any extension(s) must not be more than sixty (60) days. You cannot Object to any extension of the Settlement Date under this clause 7.3.
- 13.4 Despite anything else in this Application, if the Settlement Date falls on a day which is not on a Business Day, it instead falls on the next Business Day.
- 13.5 If you do not comply with clause 7.1, we may terminate the Residence Contract by giving notice to you. If this happens, the Deposit will be forfeited to us.
- 13.6 Clause 7.5 does not affect any other rights we may have under the Residence Contract, the Residency Agreement, at law or in equity.

14 **NOTICE**

15

- 15.1 This clause 8 applies only to notices referred to in this Application.
- 15.2 A notice must be in writing.
- 15.3 A notice given by our solicitor or any manager we have appointed for the Retirement Village is deemed to be given by us. A notice given by your solicitor is deemed to have been given by you and with your authority.
- 15.4 We may give you a notice by:
 - 15.4.1 giving it to you personally;
 - 15.4.2 faxing it to your fax number or your solicitor's fax number referred to in the Reference Schedule (or any other fax number you notify to us); or
 - 15.4.3 leaving it at ,or posting it by pre-paid post to, your address or your solicitor's address referred to in the Reference Schedule (or any other address you notify to us).
- 15.5 Subject to clause 8.8, you may only give us a notice by:
 - 15.5.1 faxing it to our fax number or our solicitor's fax number referred to in the Reference Schedule (or any other fax number we notify to you); or
 - 15.5.2 posting it by registered post to our address or our solicitor's address referred to in the Reference Schedule (or any other address we notify to you).
- 15.6 Subject to clause 8.7, a notice is taken to have been given:
 - 15.6.1 if given personally, when given;
 - 15.6.2 if posted by us or given by you by registered post, on the second Business Day after posting; or
 - 15.6.3 if faxed, when the sender's fax machine generates a message confirming successful transmission of the notice.
- 15.7 If, under clause 8.6, a notice would otherwise be taken to have been given on a day which is not a Business Day or after 5.00 pm on a Business Day, the notice is instead taken to have been given on the next Business Day.

15.8 This clause 8 does not limit the way in which or the time by which a notice referred to in clause 3.1.4 may be given under the Act.

16
17
18

ACKNOWLEDGEMENTS

18.1 You acknowledge that:

- 18.1.1 before you signed this Application, we gave you a copy of Form 3 - the Village Comparison Document, Form 4 - the Prospective Costs Document and the Residency Agreement and recommended that you obtain independent legal advice regarding Form 3, Form 4, and the Residency Agreement;
- 18.1.2 you have not relied on any representation (whether express or implied) made by us or on our behalf which is not contained in this Application, Form 3 - Village Comparison Document, Form 4 - Prospective Costs Document (Form 4) or the Residency Agreement;
- 18.1.3 any representation referred to in clause 9.1.2 does not form part of the Residence Contract and this Application, Form 3 - Village Comparison Document, Form 4 - the Prospective Costs Document and the Residency Agreement contain the entire agreement between you and us regarding their subject matter.

18.2 You warrant that your personal details in the Reference Schedule are true and correct.

18.3 You warrant that, if the *Foreign Acquisitions and Takeovers Act 1975* (Cth) requires the Treasurer to consent to you entering into the Residence Contract, the Treasurer has given that consent.

19 **ASSIGNMENT**

20

20.1 The Residence Contract is personal to you. You must not assign your interest in the Residence Contract.

20.2 We may assign our interest in the Retirement Village. If we do, we must ensure the assignee agrees to be bound by the Residence Contract. Once the assignment has taken effect:

- 20.2.1 we are fully released and discharged from all our obligations under the Residence Contract, except for any breaches we have committed before then; and
- 20.2.2 our assignee has the benefit of all your obligations under the Residence Contract.

20.3 If clause 10.2 applies, you must promptly do anything (including signing any documents) which we reasonably require in connection with the assignment or to give effect to clause 10.2.

21

22 **TERMINATION**

23

23.1 We may terminate the Residence Contract by giving notice to you if:

- 23.1.1 the warranty given by you (or any of you) in clause 9.3 is incorrect; or
- 23.1.2 before the Commencement Date:
 - 23.1.2.1 there is only one of you and you die;
 - 23.1.2.2 there is more than one of you and all of you die;
 - 23.1.2.3 you (or any of you) become of unsound mind;
 - 23.1.2.4 you (or any of you) commit an indictable offence; or
 - 23.1.2.5 you (or any of you) become bankrupt or assign your estate for the benefit of your creditors generally.

23.2 If we terminate the Residence Contract under clause 11.1 before the Commencement Date:

- 23.2.1 you must pay us the amount of any legal expenses we have incurred in connection with the Residence Contract; and
- 23.2.2 the Trustee will refund to you the Deposit and any other amount you have paid towards the Ingoing Contribution (less any amount referred to in clause 11.2.1, which the Trustee will pay to us).

23.2.3

24 **GENERAL**

25

25.1 If there is more than one of you, you must hold your interest in the Residence Contract as joint tenants. However, whether there is more than one of you or not, your rights under the

Residence Contract are contractual only and nothing in this Application grants you a proprietary interest in the Accommodation Unit.

- 25.2 Any term of this Application which can take effect after Settlement remains in force after Settlement.
- 25.3 Unless otherwise stated, any termination of the Residence Contract does not affect a party's rights arising from any previous breach of the other party's obligations.
- 25.4 A waiver by us is only effective if it is express and in writing. Any such waiver relates only to the particular breach or occurrence it describes, not to any other or later breach or occurrence (whether similar or not).
- 25.5 We may set off any amounts you must pay us under the Residence Contract against any amounts we must pay you under the Residence Contract. You cannot set off any amounts we must pay you under the Residence Contract against any amounts you must pay us under the Residence Contract.
- 25.6 If you are late in paying any amount payable by you under the Residence Contract, you must also pay us interest on the overdue amount at the Specified Rate.
- 25.7 This Application and the Residence Contract are governed by the laws of Queensland.
- 25.8 If any provision of this Application is or becomes illegal, invalid, unenforceable, voidable or void, that provision will be read down to the extent necessary to give the provision its maximum operation permitted by law and to ensure that the provision (as read down) is not or does not become illegal, invalid, unenforceable, voidable or void and the provision will be deemed to have been replaced accordingly with effect from the date of this Application.
- 25.9 If any provision of this Application is or becomes illegal, invalid, unenforceable, voidable or void and clause 12.8 cannot be applied to effectively read down the provision, to the extent that it is possible to do so, that provision will be deemed severed from this Application without affecting or invalidating the remaining provisions of this Application.
- 25.10 You must not lodge a caveat over the whole or any part of the Retirement Village.
- 25.11 Time is of the essence of clauses 2.1, 4.2 and 7.1 (except regarding any agreement on a time of day for Settlement).

25.12

26 **GOODS AND SERVICES TAX (GST)**

27

- 27.1 Unless the context otherwise requires, terms used in this clause 13 which are defined in the GST Act have the same meaning in this clause 13.
- 27.2 Despite any other term of the Residence Contract, an amount payable by you to us in respect of a taxable supply under or in connection with the Residence Contract represents the GST-exclusive value of the supply and you must, in addition, pay us the GST payable in respect of the supply, at the same time and in the same manner as you must pay the amount otherwise payable for the supply.

27.3

27.4

28 **SPECIAL CONDITIONS**

29

- 29.1 If the Reference Schedule contains any Special Conditions, those Special Conditions form part of this Application and, to the extent permitted by the Act, prevail over the other terms of this Application if there is any inconsistency.

29.2

30 **INTERPRETATION**

31

- 31.1 In this Application, unless the context otherwise requires, references to:
- 31.1.1 terms defined in the Definitions Schedule have the corresponding meanings shown in the Definitions Schedule;
 - 31.1.2 terms shown in bold in the Reference Schedule have the corresponding meanings shown in the Reference Schedule;
 - 31.1.3 other grammatical forms of defined terms have a corresponding meaning;
 - 31.1.4 a party include that party's successors, permitted assigns, agents, executors and administrators;
 - 31.1.5 a person include a firm or body corporate;
 - 31.1.6 the singular include the plural and vice versa;

- 31.1.7 any gender include every gender;
 - 31.1.8 time mean Brisbane time; and
 - 31.1.9 a statute include:
 - 31.1.9.1 any statute amending, consolidating or replacing the statute; and
 - 31.1.9.2 Orders in Council, proclamations, regulations, rules, by-laws and ordinances made under the statute.
- 31.2 Headings and subheadings in this Application have been included for ease of reference only and none of the terms of this Application are to be construed or interpreted by reference to its headings or subheadings.

Definitions Schedule

In this Application, unless the context otherwise requires:

“**Act**” means the *Retirement Villages Act 1999* (Q);

“**Application**” means this document, including any schedule, annexure or appendix attached to or referred to in this document and which is intended to form part of this document;

“**Balance Amount**” means:

- (a) the Ingoing Contribution;
- (b) less the Deposit and any other amounts you have already paid towards the Ingoing Contribution;
- (c) plus the Transaction Costs;
- (d) plus the Variation Costs;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in Brisbane;

“**Commencement Date**” means the earlier of:

- (a) the date you start occupying the Accommodation Unit; and
- (b) the date on which Settlement occurs;

“**Cooling-off Period**” means the fourteen (14) day period starting on:

- (a) the date on which the last of the parties to sign this Application signs this Application; or
- (b) if the Residence Contract is subject to a later event happening or another contract being entered into, the day the later event happens or the other contract is entered into;

“**Definitions Schedule**” means this Definitions Schedule attached to and forming part of this Application;

“**Form 3**” means the Village Comparison Document to be given to new and prospective residents to provide general information about the retirement village;

“**Form 4**” means the Prospective Costs Document to be given to new and prospective residents to provide details about a specific unit in the retirement village;

“**Form 5**” means the Precontractual Disclosure Waiver document to be used if a resident waives the 21-day precontractual disclosure period

“**Form 6**” means the Entry Condition Report document which is completed during the Pre-Settlement Inspection ;

“**Form 7**” means the Exit Condition Report document which is completed within 14 days of a resident’s termination date Document to be given to new and prospective residents to provide general information about the retirement village;

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Foreign Person**” means a person who is a foreign person within the meaning of section 21A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or a person to whom section 26A of that Act applies;

“**month**” means calendar month;

“**Object**” includes delaying Settlement, withholding payment of the Balance Amount (or any part of it), claiming compensation or damages or terminating the Residence Contract;

“**Pre-settlement Inspection**” means an inspection of the Accommodation Unit which you conduct while accompanied by our representative;

“**Reference Schedule**” means the Reference Schedule attached to and forming part of this Application;

“Residence Contract” means the residence contract referred to in clause 3.1.1;
“Residency Agreement” means a licence to occupy the Accommodation Unit in the form described as “Residency Agreement” and contained in Form 4;
“Settlement” means us giving you vacant possession of the Accommodation Unit in exchange for your compliance with clause 7.1;
“Settlement Date” means the latest of:
 (a) the first Business Day after the end of the Cooling-off Period;
 (b) if clause 5 applies, the day on which a sale of Your Property settles; or
 (c) if applicable, the Earliest Settlement Date referred to in the Reference Schedule;
“Specified Rate” means the official “cash rate” set by the Reserve Bank of Australia from time to time, calculated on daily balances;
“Trustee” means our solicitors;
“Variations” means alterations or additions which you and we agree we will make to the Accommodation Unit, as described in the Reference Schedule;
“we”, “us” and “our” (whether beginning with a capital letter or not) are references to the Scheme Operator; and
“you” and “your” (whether beginning with a capital letter or not) are references to the Applicant(s).

Reference Schedule

Retirement Village: Wishart Christian Village 3 Erindale Close WISHART QLD 4122				
Scheme Operator: Wishart Christian Village Association Inc				
Scheme Operator’s contact details: Address: 30/3 Erindale Close WISHART QLD 4122 Phone No: 07 3219 2386 Fax No: 07 3219 2386 Email Address: admin@wcva.org.au				
Scheme Operator’s solicitor: Ian W Bartels & Associates				
Scheme Operator’s solicitor’s contact details: Address: 1408 Logan Road MT GRAVATT QLD 4122 Phone No: 07 3849 8000 Fax No: 07 3849 5517 Email Address: info@ianbartels.com.au				
Applicant(s): insert details				
Mr/Mrs/Ms	Surname	Christian Name/s	Date of Birth	Foreign Person?
Applicant(s)’ contact details: insert details Address:				

Phone No: 07 3349 1100 Fax No: Email Address:	
Applicant(s)' solicitor: [insert details]	
Applicant(s)' solicitor's contact details: [insert details] Address:	
Phone No: Fax No: Email Address:	
Accommodation Unit: Unit No. xx in the Retirement Village, as shown generally in Form 4 and more particularly defined in the Residency Agreement	
Ingoing Contribution: \$xxx,xxx.xx	
Deposit: \$1000.00	
Transaction Costs: \$500.00	
Your Property: [insert details]	
Your Sale Date: [insert details]	
Earliest Settlement Date: [insert details]	
Variations	Variation Costs
	\$
	\$
	\$
Total:	\$
Variation Bond: \$	

Special Conditions:

This contract is subject to the applicant entering into a contract for the sale of your property at **[insert details]** within sixty (60) days from the date hereof and the settlement of that sale within ninety (90) days from the date hereof.

Signatures

Your Signature(s)

.....
Applicant

.....
Witness

Date:

.....
Applicant

.....
Witness

Date:

Our Signature

We accept this Application.

.....
For and on behalf of
Wishart Christian Village Association Inc

Date: