
RESIDENCE AND SERVICE CONTRACT FOR UNIT

BLUE HAVEN RETIREMENT VILLAGE (OPTION 2)

THE COUNCIL OF THE MUNICIPALITY OF KIAMA

and

THE RESIDENT

TABLE OF CONTENTS

PARTIES	3
KEY TERMS	3
1.1 OPERATOR:.....	3
1.2 RESIDENT(S):.....	3
1.3 YOUR PREMISES:.....	3
1.4 WHAT IS INCLUDED WITH YOUR PREMISES?	4
1.5 WHAT IS NOT INCLUDED WITH YOUR PREMISES?	4
1.6 KEY DATES:	4
1.7 NATURE OF RESIDENCE RIGHT.....	4
FINANCIAL TERMS	5
A. ENTRY PAYMENT	5
B. DEPOSIT	6
C. LEGAL AND OTHER EXPENSES PAYABLE ON ENTRY.....	6
D. RECURRENT CHARGES.....	6
E. VARIATION OF RECURRENT CHARGES	6
F. OPTIONAL SERVICES	7
G. CAPITAL GAINS AND LOSSES.....	7
H. DEPARTURE FEE.....	7
I. CALCULATION OF PAYMENT ON TERMINATION OF RESIDENCE RIGHT	7
J. TIMING FOR PAYMENT ON TERMINATION OF YOUR RESIDENCE RIGHT	8
K. LIABILITY FOR RECURRENT CHARGES FOR OPTIONAL SERVICES ON TERMINATION	8
L. LIABILITY FOR RECURRENT CHARGES FOR GENERAL SERVICES ON TERMINATION	9
GENERAL TERMS	9
1.1 INTERPRETATION	9
1.2 DEFINITIONS.....	10
2.1 WHAT IS YOUR RIGHT TO TERMINATE DURING THE COOLING-OFF PERIOD?	11
2.2 WHAT WILL WE PAY YOU IF YOU TERMINATE THIS CONTRACT DURING THE COOLING-OFF PERIOD?	12
3.1 WHAT IS YOUR RIGHT TO TERMINATE DURING THE SETTLING-IN PERIOD?	12
3.2 WHAT WILL WE CHARGE YOU IF YOU TERMINATE DURING THE SETTLING-IN PERIOD?	12
3.3 WHAT ARE WE REQUIRED TO PAY YOU?	12
3.4 WHEN ARE WE REQUIRED TO PAY YOU?	12
4.1 WHAT IF THIS CONTRACT IS INCONSISTENT WITH THE DISCLOSURE STATEMENT?.....	12
4.2 CAN I TERMINATE IF THE DISCLOSURE STATEMENT IS FALSE OR MISLEADING?	12
5.1 MEANING OF REQUIRED SERVICES AND FACILITIES.....	13
5.2 CAN WE CHANGE THE SERVICES AND FACILITIES?.....	13
5.3 WHAT OPTIONAL SERVICES WILL WE PROVIDE YOU?	13
6.1 CAN YOU ALTER OR RENOVATE YOUR PREMISES?.....	13
7.1 CAN YOU REQUEST REPAIRS?	13
7.2 WHAT REPAIRS AND MAINTENANCE ARE WE RESPONSIBLE FOR?.....	13
7.3 WHAT REPAIRS AND MAINTENANCE ARE WE NOT RESPONSIBLE FOR?.....	14
7.4 WHAT GENERAL OBLIGATIONS DO YOU HAVE IN RELATION TO REPAIRS AND MAINTENANCE?	14
7.5 WHO IS RESPONSIBLE FOR THE REPLACEMENT OF ITEMS OF CAPITAL?.....	14
8.1 WHEN MAY WE ACCESS THE PREMISES?	14
9.1 HOW DO THE VILLAGE RULES APPLY?.....	15
9.2 WHAT IF A VILLAGE RULE IS INCONSISTENT WITH THIS CONTRACT?	15
10.1 WHAT ARE YOUR GENERAL OBLIGATIONS?.....	15
10.2 WHAT ARE OUR OBLIGATIONS?	15
11.1 WHEN DOES YOUR RIGHT TO OCCUPY YOUR PREMISES END?	16
11.2 WHEN CAN WE TERMINATE THIS CONTRACT?	16
12.1 WHO SETS THE ASKING NEW ENTRY PAYMENT?	17
13.1 CAN YOU ASSIGN THIS CONTRACT?	17
13.2 CAN YOU SUBLET YOUR PREMISES?	17

14.1	WHAT HAPPENS IF YOU ARE TEMPORARILY ABSENT FROM YOUR PREMISES?	17
15.1	IN WHAT CONDITION MUST YOU LEAVE THE PREMISES?.....	17
16.1	HOW ARE NOTICES GIVEN AND RECEIVED?	17
17.1	CAN OUR RIGHTS AND YOUR RIGHTS UNDER THIS CONTRACT BE CHANGED?	18
18.1	HOW ARE DISPUTES RESOLVED?.....	19
18.2	WHERE CAN I GET INFORMATION IF I HAVE A DISPUTE?.....	19
ADDITIONAL TERMS		20
20	OCCUPANCY RIGHTS AND OBLIGATIONS OF THE RESIDENT	22
21	VILLAGE RULES.....	23
22	SERVICES AND FACILITIES.....	24
23	FIXTURES, FITTINGS, FURNISHINGS AND NON-FIXED ITEMS	24
24	REPAIRS AND MAINTENANCE	25
25	ALTERATIONS AND ADDITIONS TO THE PREMISES	25
26	RESIDENT'S PROPERTY AND INSURANCE.....	26
27	TRANSFERS.....	27
28	PAYMENTS BY THE RESIDENT	28
29	ENTRY PAYMENT	28
30	RECURRENT CHARGES	29
31	DEPARTURE FEES	32
32	TERMINATION OF CONTRACT	33
33	REFUND OF PAYMENT TO RESIDENT	36
34	RECEIPT FOR PAYMENT	37
35	REPRESENTATIVE OF THE OPERATOR.....	38
36	NOMINATED REPRESENTATIVE OF THE RESIDENT	38
37	CONTRACT BINDING ON ESTATE OF RESIDENT	38
SCHEDULE ONE		39
SCHEDULE TWO.....		40
SCHEDULE THREE.....		42
SCHEDULE FOUR.....		43
SCHEDULE FIVE		44
ANNEXURES		45
EXECUTION PAGE.....		46

Date:

Parties

THE COUNCIL OF THE MUNICIPALITY OF KIAMA of Council Chambers, 11 Manning Street, Kiama

and

THE RESIDENT

Key Terms

1.1 Operator:

Name of Operator:	The Council of the Municipality of Kiama
Address for service of notices:	11 Manning Street, Kiama NSW 2533

1.2 Resident(s):

Name of Resident 1:	
Name of Resident 2:	
Address for service of notices:	Unit Blue Haven Retirement Village, Kiama 2533
Where there is more than one resident they are joint tenants unless a tenancy in common is indicated in the additional terms or a separate contract.	

1.3 Your premises:

Premises No:	Unit
Trading Name of Village:	Blue Haven Retirement Village
Address of Village:	Kiama 2533

1.4 What is included with your premises?

We grant you the right to occupy or use:

- Garage (Number)
- Carport (Number)
- Parking Space (Number)
- Storage Area (Number)
- The fixtures, furniture, furnishings, fittings and contents supplied with the premises specified in Schedule 3
- Other:
- Attached list/plan

Is there a separate agreement dealing with any of the above inclusions?:

- Yes (See separate Garage / Parking Space / Carport / Storage Area agreements if applicable)
- No

Is an additional fee payable for any of the above inclusions?: Yes No

Note: If yes, the fee payable is set out in the Financial Terms of this agreement.

1.5 What is not included with your premises?

Any air conditioning in the premises or ceiling fans if left by a prior occupant become the personal property of Resident who shall assume full responsibility for the maintenance of these items. Alternatively, the Resident may request the Operator to remove the air conditioning or ceiling fans prior to the Resident taking occupation of the premises.

1.6 Key Dates:

Date you received a copy of this contract:	/	/	
Date this contract is entered into:	/	/	
Agreed date that you may occupy your premises (entry date):	/	/	(if known)
Date from which you must pay us recurrent charges:	/	/	(if known)

1.7 Nature of residence right

You do not own the premises. We grant you the right to occupy the premises on the following basis. The provisions in this contract which apply to the residence right type ticked below will apply to you and us:

- Registered interest holder**
(if above box is ticked, select one or more from the list below)
- Owner of a lot in a strata scheme
- Owner of shares in a company title scheme
- Owner of a lot in a community land scheme
- Registered long term lease with a term of:
.....

- Non-registered interest holder**
- Term (if any):
.....

(Only tick the last box if the term is at least 50 years (including options to renew) or for the life of the lessee, the contract includes provision for the resident to be entitled to 50% or more of the capital gain, and the lease will be registered.)

Additional terms: Additional terms may be added to the standard terms prescribed under the *retirement village laws* at the end of the contract.

Retirement village laws: This contract is subject to the provisions of the *retirement village laws*. For information on your rights and responsibilities under the *retirement village laws* contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.

Terms in italics are defined in clause 1.2 of this contract.

Financial Terms

Note: The additional terms may set out more detail about the *entry payment* and other amounts payable as detailed below and, where there is more than one operator, the additional terms may specify which operator is to receive or make a payment.

A. Entry payment

Are you required to pay an *entry payment*?

Yes (continue to the remainder of item A) No [delete or cross out the remainder of item A]

You must pay an *entry payment* in total of \$..... as your:

Entry payment

[Delete or cross out the below if the entry payment is not divided into components]

Where an entry payment is payable, it consists of the following components:

Loan \$.....

The holding deposit of \$10,000 which you have already paid will form part of this amount.

When is the full *entry payment* due?

Prior to taking occupation of the premises.

Can the *entry payment* be paid in instalments?

Yes (refer to additional terms for payment frequency/dates) No

Is any of the *entry payment* non-refundable? Yes (\$.....) No

Is any interest payable if the *entry payment* is not paid by the date due?

Yes (see additional terms) No

[Delete or cross out the below if no separate additional fee applies for any inclusions]

In addition to the *entry payment*, you must pay the following fees for the inclusions detailed in the Key Terms:

Garage \$**[insert cost]**

B. Deposit

Are you required to pay a deposit on signing this contract? Yes (\$.....) No

C. Legal and other expenses payable on entry

You must pay to us on entry the following legal and other expenses incurred in connection with the preparation of this contract: (maximum \$50)

Contribution to our legal expenses incurred in preparing this contract \$ NIL

Other expenses [specify] NIL

D. Recurrent charges

You must pay to us recurrent charges as follows:

Current frequency of payment: <input type="checkbox"/> Weekly <input type="checkbox"/> Fortnightly <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Other:
Current rate of recurrent charges for your premises: \$..... per week

E. Variation of recurrent charges

We may vary your recurrent charges as follows:

Method of Variation (choose one method only)	
<input type="checkbox"/> Fixed formula	<input checked="" type="checkbox"/> Non-fixed formula
Your recurrent charges will be varied in accordance with: <input type="checkbox"/> <i>variation in CPI</i> <input type="checkbox"/> variations in (single/couple) [delete or cross out whichever is not applicable] age pension <input type="checkbox"/> other [specify] The first variation will be on: After the first variation, variations will occur every: The new amount of the recurrent charges will not take effect earlier than 14 days after we have given you notice of the new amount.	We may vary the amount of recurrent charges payable from time to time (no more than once in a 12 month period): 1.1 by giving you 14 days' notice in writing, if the increase does not exceed the <i>variation in CPI</i> , or 1.2 by giving you at least 60 days' notice in writing and seeking and obtaining the consent of residents affected by the proposed increase or an order of the <i>Tribunal</i> , if the increase exceeds <i>the variation in CPI</i> .

F. Optional services

Do your recurrent charges include optional services? (optional services may include, for example, meals, laundry services and home cleaning) Yes No
 If yes, at the time of entry, the amount of recurrent charges attributable to the provision of optional services is \$..... This amount may change in the future.

G. Capital gains and losses

If you are entitled to a percentage of capital gain, or are responsible for a percentage of capital loss, this may form part of the termination payment calculated in accordance with item I.

Capital gain/capital loss structure

Are you entitled to a % of any capital gain? Yes: (_%) No
 Are you responsible for a % of any capital loss? Yes: (_%) No

H. Departure fee

Does a departure fee form part of the payment on termination of this contract?

Yes (continue to the remainder of item H) No [delete or cross out remainder of item H]

If yes, this may form part of the termination payment calculated in accordance with item I. The departure fee is calculated on a daily basis (but does not accrue and is not payable on a daily basis). The box below shows you how your departure fee is calculated:

	What is the departure fee % based on? <input checked="" type="checkbox"/> the <i>entry payment</i> <input type="checkbox"/> the <i>new entry payment</i> <input type="checkbox"/> other (provide details):					
	Departure fee structure <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Time</th> <th style="text-align: left;">Percentage</th> </tr> </thead> <tbody> <tr> <td>Years one to five (inclusive)</td> <td>6% per year</td> </tr> </tbody> </table>	Time	Percentage	Years one to five (inclusive)	6% per year	The maximum departure fee percentage you will pay is 30 % if the period between the entry date and the date you <i>permanently vacate</i> is five years or more.
Time	Percentage					
Years one to five (inclusive)	6% per year					
<input type="checkbox"/>	Different departure fee structure [delete or cross out if not applicable] (insert full details if the departure fee is not the above structure):					

I. Calculation of payment on termination of residence right

The amount payable on termination is calculated as follows:

<input type="checkbox"/>	<p>Payment on termination calculation</p> <p>After termination of this contract (refer to Item J for specific detail about timing):</p> <ol style="list-style-type: none"> 1. We will repay you the: <ul style="list-style-type: none"> <input type="checkbox"/> Unearned rent (refer to the additional terms for how this is calculated) <input checked="" type="checkbox"/> Loan (Item A) <input type="checkbox"/> Lease premium (Item A) 2. We will pay you: <ul style="list-style-type: none"> <input type="checkbox"/> Your share of any capital gain (Item G) <input type="checkbox"/> Other (specify): 3. You must pay us (or we may set off and deduct from the amounts we must pay you described in 1 and 2 above): <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Departure fee (Item H) <input type="checkbox"/> Your share of any capital loss (Item G) <input type="checkbox"/> Any non-refundable component of the <i>entry payment</i> (Item A) <input checked="" type="checkbox"/> Other (specify: see clause 33)
<input type="checkbox"/>	<p>Different payment on termination calculation [delete or cross out if not applicable] (insert full details if the calculation does not fit within the above structure):</p>

J. Timing for payment on termination of your residence right

<input checked="" type="checkbox"/>	<p>We must pay you the amount of your payment on termination of your residence right:</p> <ol style="list-style-type: none"> 1. within 14 days after the date on which we receive full payment of the <i>new entry payment</i>, or 2. within 14 days after the date on which an incoming resident takes up residence in your premises with our consent, or 3. within 6 months after the date you <i>permanently vacate</i> your premises, whichever occurs first, except where we are required to pay you earlier under the <i>retirement village laws</i>.
-------------------------------------	--

If more than one resident is a party to this contract, a payment will only be made after both residents have *permanently vacated* your premises.

K. Liability for recurrent charges for optional services on termination

If you move out of your premises, your liability to pay recurrent charges for optional services ceases from the date you move out. If you die, your liability ends from the date we are notified. However, you will be liable for services provided before that date.

L. Liability for recurrent charges for general services on termination

<input type="checkbox"/>	You must pay the full rate of recurrent charges for general services for 42 days immediately after the date you <i>permanently vacate</i> your premises, or until a new resident enters into a contract with us to occupy your premises or moves into your premises, or you <i>permanently vacate</i> the premises after receiving notice of our intention to apply to the <i>Tribunal</i> for an order terminating this contract, whichever occurs first.
<input checked="" type="checkbox"/>	You are not liable to pay recurrent charges for general services after the date upon which you permanently vacate the premises.

General Terms

1. INTERPRETATION AND DEFINITIONS

1.1 Interpretation

- (a) Except as otherwise provided for in the additional terms:
- (i) when the words "you" or "your" appear in this contract, it refers to the Resident and includes his or her executors or administrators but only to the extent necessary to enable them to discharge their duties;
 - (ii) where the Resident is more than one person, the words "you" or "your" apply jointly to the Residents and to each of them.
- (b) When this contract uses the words "we", "us" or "our", it refers to the Operator and where the context allows, its employees and agents. If there is more than one operator, use of the word "we", "us" or "our" does not of itself imply any relationship between any of those operators, such as a partnership. The relationship of the operators to each other, and certain rights and obligations between each of them and you may be set out in the additional terms.
- (c) Expressions which are not defined in this contract but which have a defined meaning in the *retirement village laws* have the same meaning in this contract.
- (d) Headings and the table of contents are for convenience only and do not form part of this contract or affect its interpretation.
- (e) Unless expressly stated otherwise in this contract:
- (i) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
 - (ii) If the last day of a period of time prescribed or allowed by this contract for the doing of any thing falls on a day which is not a *business day*,

the thing may be done on the first day following that day which is not a *business day*.

- (f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (g) The meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation.

1.2 Definitions

business day means a day which is not:

- (a) a Saturday or Sunday, or
- (b) a public holiday or a bank holiday,

in New South Wales.

entry payment means the amount of the purchase price, entry payment or assignment fee payable by you as set out in the Financial Terms section of this contract.

item of capital means any building or structure in the village; any plant, machinery or equipment used in the operation of the village; any part of the infrastructure of the village; fixtures (e.g. benches, built-in cupboards, floor coverings, hot water systems and stoves); fittings (for example, light fittings, taps and sanitary fittings); furnishings (for example, curtains and blinds); and non-fixed items (e.g. whitegoods, portable air conditioners, fans, tables and chairs).

new entry payment means the amount provided by the next resident in connection with your premises after you leave.

non-registered interest holder means a resident who is not a *registered interest holder*.

permanently vacate means the occurrence of one of the following:

- (c) you (or a person on your behalf) delivers up vacant possession of your premises to us following your vacation of the premises,
- (d) the executor or administrator of your estate delivers up vacant possession of your premises to us following your death,
- (e) the *Tribunal* makes an order declaring that your premises were abandoned by you (and you are taken to have permanently vacated your premises on the day specified in the order),
- (f) if you are a *registered interest holder*, you die or move out of your premises, or
- (g) if the residence right for your premises was obtained by another person for the purpose of allowing you to live at your premises, or by a corporation, and you live at your premises with their consent, when you die or move out of the premises.

registered interest holder means a resident who:

- (h) is the registered proprietor of the premises,
- (i) is the owner of a lot in a strata scheme,

- (j) is the proprietor of a lot in a community land scheme,
- (k) is the owner of shares in a company title scheme for the premises, or
- (l) has a *registered long-term lease* that includes a provision that entitles the resident to at least 50 per cent of any capital gain.

registered long-term lease means a lease registered under the Real Property Act 1900 (NSW) that has a term of at least 50 years (including any option to renew), or is for the life of the lessee.

rescission notice means a notice given by you or your legal representative that says that you rescind this contract.

retirement village laws means:

- (m) the *Retirement Villages Act 1999* (NSW), and
- (n) the *Retirement Villages Regulation 2017* (NSW),

as amended or substituted from time to time.

settling-in period means the period between the date of this contract and the later of the following:

- (o) 90 days after the date on which you are entitled to occupy your premises under this contract (or other relevant contract which is a residence contract for the purposes of the *retirement village laws*), or
- (p) if you occupy the premises before you are entitled to do so under the contract described in (a), 90 days after you first occupy your premises, or
- (q) any other date that we may agree with you in writing.

Tribunal means the NSW Civil and Administrative Tribunal.

variation in CPI means the difference between:

- (r) the Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician most recently before the recurrent charges were last varied or, if the recurrent charges have never been varied, as published 12 months prior to (b), and
- (s) the Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician most recently before the written notice of the proposed variation is given.

2. COOLING-OFF PERIOD

2.1 What is your right to terminate during the cooling-off period?

Before midnight on the 7th *business day* after the date you gave us a signed copy of this contract you are able to rescind this contract by giving us a *rescission notice*. You waive the right to rescind if you move into your premises.

2.2 What will we pay you if you terminate this contract during the cooling-off period?

If you rescind this contract during the cooling-off period, then this contract becomes void and we must repay you all money that has been paid to us under this contract by you as soon as is reasonably practicable (and no later than 1 month) after you give us the *rescission notice*.

3. SETTLING-IN PERIOD

3.1 What is your right to terminate during the settling-in period?

You may terminate this contract during the *settling-in period* by *permanently vacating* your premises.

3.2 What will we charge you if you terminate during the settling-in period?

If you terminate this contract during the *settling-in period*, we may only charge you:

- (a) the fair market rent, but only if you have occupied your premises,
- (b) the reasonable costs incurred by us in adding, removing or altering any fixtures or fittings, or making any renovations to your premises at your request, but only if you have occupied your premises, and
- (c) an administration fee of not more than \$200.
- (d) the cost of any repairs for damage to your premises in excess of fair wear and tear.

3.3 What are we required to pay you?

If you terminate the contract within the *settling-in period*, we must refund the *entry payment* and any recurrent charges you paid us.

3.4 When are we required to pay you?

We must pay you the amount you are entitled to under clause 3.3 within 14 days after you terminate this contract or within such time as the *Tribunal* may order.

4. DISCLOSURE STATEMENT

4.1 What if this contract is inconsistent with the disclosure statement?

If any term of this contract (other than those which have been prescribed in the *retirement village laws*) is inconsistent, to your detriment, with the disclosure statement provided to you in accordance with the *retirement village laws*, this contract is to be interpreted (as far as practicable) as if it contained the information in the disclosure statement instead of the inconsistent term.

4.2 Can I terminate if the disclosure statement is false or misleading?

If the information in the disclosure statement is false or misleading in a material particular, you may apply to the *Tribunal* within 3 months of commencing occupation of your premises, for an order allowing you to rescind this contract.

5. SERVICES AND FACILITIES

5.1 Meaning of required services and facilities

We must provide you with a particular service or facility which we are required to provide to the residents for the life of the village in accordance with the terms of our development consent (*required services and facilities*).

5.2 Can we change the services and facilities?

Other than the *required services and facilities*, we may add a new service or facility or reduce, withdraw or otherwise vary the services and facilities if residents pass the change by special resolution in accordance with the *retirement village laws*.

5.3 What optional services will we provide you?

A list of optional services is included in the list of services and facilities annexed to this contract. Unless Item F in the Financial Terms section indicates that *recurrent charges* includes optional services, payment for these services and facilities is on a user pays basis.

6. ALTERATIONS AND ADDITIONS

6.1 Can you alter or renovate your premises?

- (a) You may add, remove or alter any fixtures and fittings, or renovate your premises, but only with our prior written approval which we will not unreasonably refuse. We may include reasonable conditions in our consent. If we do not consent to your proposal, you may apply to the *Tribunal* to seek an order allowing you to proceed with your proposal.
- (b) Despite (a), our consent is not required to remove or alter any fixtures or fittings that were added by you unless the removal or alteration of the fixtures or fittings is likely to cause significant damage to the premises.

7. REPAIRS, MAINTENANCE AND CAPITAL REPLACEMENT

7.1 Can you request repairs?

You may request us to carry out necessary repairs and maintenance to your premises if we are responsible for those repairs and maintenance under the *retirement village laws* or the terms of this contract.

7.2 What repairs and maintenance are we responsible for?

Subject to clause 7.3, we must maintain each *item of capital* for which we are responsible in a reasonable condition, having regard to:

- (a) the age of the item,
- (b) the prospective life of the item,

- (c) the money paid to us by the residents under a village contract (including entry payments), and
- (d) the amount of money available to be used for the purpose of maintenance in accordance with the approved annual budget for recurrent charges.

7.3 What repairs and maintenance are we not responsible for?

We are not responsible for *items of capital* that:

- (a) you own, or
- (b) require repair because of damage (fair wear and tear excepted) caused by you or a person that you invited to the village.

7.4 What general obligations do you have in relation to repairs and maintenance?

- (a) You must notify us of the need for maintenance to be carried out on, or the replacement of, an *item of capital* for which we are responsible and that is located within your premises as soon as you become aware of the need for the maintenance or replacement of the item.
- (b) You must reimburse us in respect of any damage (other than fair wear and tear) caused by you or a person you invited to the village to an *item of capital* for which we are responsible.
- (c) You must not hinder or obstruct us or a person authorised by us from carrying out capital maintenance or capital replacement in respect of an *item of capital* for which we are responsible.

7.5 Who is responsible for the replacement of items of capital?

We must bear the cost of capital replacement in respect of an *item of capital* for which we are responsible under the *retirement village laws*.

8. OPERATOR'S ACCESS TO PREMISES

8.1 When may we access the premises?

We (or anyone authorised by us), may access your premises at any reasonable time in the following circumstances:

- (a) if you consent, or
- (b) in an emergency, or if we have reasonable cause for concern about the health or safety of a person that we believe is on your premises, or
- (c) to carry out urgent repairs, or
- (d) to carry out general maintenance, but only if we have given you 7 days' notice, or
- (e) if the *Tribunal* orders you to give us access, or
- (f) in any other circumstances that may be prescribed from time to time under the *retirement village laws*.

- (g) to carry out a general inspection of your premises, but only if:
 - (i) we have given you 7 days' notice, and
 - (ii) a general inspection has not been carried out more than once in the immediately preceding 12 months.

9. VILLAGE RULES

9.1 How do the village rules apply?

If there are village rules:

- (a) you must comply with the village rules and use your best endeavours to ensure compliance with the village rules by any person who is lawfully in your premises or who you invite to the village, and
- (b) we must comply with the village rules and use our best endeavours to ensure compliance with the village rules by our residents, our tenants, employees and any other person that we invite to the village.

9.2 What if a village rule is inconsistent with this contract?

If a village rule is consistent with the *retirement village laws* but inconsistent with a term of this contract, the village rule prevails to the extent of the inconsistency.

10. GENERAL BEHAVIOUR OF OPERATOR AND RESIDENT

10.1 What are your general obligations?

You must:

- (a) not interfere or cause or permit interference, with the reasonable peace, comfort or privacy of another resident, and
- (b) respect our rights and the rights of our agents and employees, to work in an environment free from harassment or intimidation, and
- (c) not act in a manner that adversely affects the health and safety of persons working in the village.

10.2 What are our obligations?

We must:

- (a) not interfere or cause or permit interference, with the reasonable peace, comfort or privacy of a resident, and
- (b) take all reasonable steps to ensure that all residents meet their obligations under their contracts, the village rules and the *retirement village laws*, so that a resident does not unreasonably interfere with the peace, comfort and quiet enjoyment of his or her residents, and

- (c) not interfere with the right of any resident to autonomy over his or her personal, financial and other matters and over his or her possessions, and
 - (d) not inhibit any resident from exercising self-reliance in matters relating to his or her personal, domestic and financial affairs, and
 - (e) use our best endeavours to ensure that each resident lives in an environment free from harassment and intimidation.
-

11. TERMINATION

11.1 When does your right to occupy your premises end?

This contract terminates and your right to occupy your premises ends on the earliest of the following dates:

- (a) the date on which you *permanently vacate* your premises,
- (b) the date of disclaimer (for example, if we accept your renunciation of this contract),
- (c) the date of the death of the last surviving resident under this contract,
- (d) the date specified by the Tribunal,
- (e) if we give you a notice that we are terminating this contract because it has been frustrated (for example, because the premises become uninhabitable), on the 8th day after the date specified in the notice, or
- (f) any earlier date of termination specified in the additional terms.

11.2 When can we terminate this contract?

- (a) We can only terminate this contract, for the following reasons, if we obtain a decision from the *Tribunal* to allow the termination:
 - (i) on the grounds of your physical or mental incapacity, or
 - (ii) for breach of contract or a village rule, or
 - (iii) if you are causing serious injury or damage to any part of the village, our employees or to any other resident, or
 - (iv) for upgrade or change of use of the village.
- (b) We may give you a notice of termination if this contract has been frustrated (i.e. if your premises are, otherwise than as a result of a breach of this contract, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process). You may seek an order of the *Tribunal* preventing the termination of the contract on this basis if you consider that the premises have not been rendered wholly or partly uninhabitable (as the case may be).

12. FINDING A NEW RESIDENT WHEN YOU LEAVE

12.1 Who sets the asking new entry payment?

Unless the additional terms provide otherwise, the amount we ask the next resident to pay as a *new entry payment* will be determined by us, we may appoint an agent of our choice and the process of finding a new resident for your premises will be handled by us.

13. ASSIGNMENT AND SUBLETTING YOUR PREMISES

13.1 Can you assign this contract?

You may not assign this contract without notifying us and obtaining our consent.

13.2 Can you sublet your premises?

You agree that you may not assign, sublet or let others move in to your premises without notifying us and obtaining our consent. This does not apply to temporary visitors and guests.

14. TEMPORARY ABSENCE

14.1 What happens if you are temporarily absent from your premises?

If you plan to be away from the village for more than 28 days you must let us know. You will not be liable to pay recurrent charges for optional services for the days you are away after 28 days of absence.

15. CONDITION OF PREMISES ON TERMINATION

15.1 In what condition must you leave the premises?

- (a) You must leave your premises as nearly as possible in the same condition (fair wear and tear excepted) as set out in the annexed condition report, allowing (subject to the reasonable conditions of our consent) for any renovations or alterations to fixtures or fittings made with our consent. If you do not, we may require you to bear the cost of any repairs required.
- (b) You are not required to refurbish your premises or pay for the cost of any improvement to your premises in excess of that required to reinstate your premises to the condition it was in (fair wear and tear excepted) at your entry date.

16. NOTICES

16.1 How are notices given and received?

- (a) A notice or other document given to you under this contract may be given:

- (i) by delivering it personally to you, by sending it by post to the residential premises occupied by you and addressed to you, or in such other manner as may be approved by the *Tribunal*, and
 - (ii) provided that it is not a termination notice, by leaving it in the mailbox at your last known address (rather than sending by post), sending it to the email address you have provided or giving it to any person apparently at or above the age of 16 years at your residential premises in the retirement village.
- (b) A notice or other document given to us under this contract may be given:
- (i) by delivering it personally to us, by sending it by post to our usual place of business, or in such other manner as may be approved by the *Tribunal*, and
 - (ii) provided that it is not a termination notice, by leaving it in the mailbox at our last known address (rather than sending by post), sending it to our email address or giving it to one of our employees.
- (c) The *retirement village laws* set out the specific requirements for the giving of notices to protected persons within the meaning of the NSW Trustee and Guardian Act 2009 and to operators in receivership or administration and those requirements also apply to this contract.
- (d) A notice given to a person in accordance with this clause is treated as having been given and received:
- (i) if delivered in person, by hand or by email, on the day of delivery, or
 - (ii) if sent by post (unless evidence sufficient to raise doubt is adduced to the contrary), on the second *business day* after it was posted, or
 - (iii) if given in a manner approved by the *Tribunal*, when the *Tribunal* deems it to have been given and received.
- (e) A party may change its address for service by giving notice of that change to each other party.
- (f) A notice given to a person you have appointed as your agent to receive notices in accordance with the *retirement village laws* will be deemed to have been given to you, if given in accordance with this clause.

17. CHANGES IN CONTRACT

17.1 Can our rights and your rights under this contract be changed?

- (a) You are not obliged to agree to amend or terminate this contract and enter into a new one because of changes in legislation (unless the legislation requires the amendment or termination) or for any other reason.
- (b) If we propose a change to this contract we must pay the reasonable costs of a legal practitioner of your choosing to explain the proposed change to you and to provide a certificate in accordance with the requirements of the *retirement village laws*.

- (c) Your rights and responsibilities and our rights and responsibilities under this contract may change if the *retirement village laws* are amended.
-

18. DISPUTE RESOLUTION

18.1 How are disputes resolved?

If a dispute arises between you and us or between you and another resident we encourage you to notify us so we can try to resolve it but you do not have to do so if you do not wish to. If there is a dispute you may:

- (a) seek information from NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or by calling 13 32 20, or
- (b) apply to the *Tribunal* for an order to be made under the *retirement village laws*.

You are not required to notify us before you do so.

18.2 Where can I get information if I have a dispute?

If a dispute arises, you may seek information from NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or by calling 13 32 20.

ADDITIONAL TERMS

NOTE: ANY ADDITIONAL TERMS ARE NOT REQUIRED BY LAW AND ARE NEGOTIABLE BEFORE YOU SIGN THIS CONTRACT.

Additional terms may be inserted here, but only if:

- (a) they do not contravene the *retirement village laws* or any other law, and
- (b) they are not inconsistent with the standard terms prescribed under the *retirement village laws*.

19. DEFINITIONS AND INTERPRETATION

19.1 In these Additional Terms clauses 19 – 37, the following definitions apply:

“**Aged Care Act**” means the Commonwealth Aged Care Act 1997 as amended from time to time.

“**Annexure**” means an annexure to the Contract.

“**condition report**” means the residential premises condition report which is Annexure A to the Contract.

“**consent of the residents**” has the meaning set out in the retirement village laws.

“**Contract**” means this contract.

“**departure fee**” means the amount payable by the Resident to the Operator upon termination of the Contract in accordance with clause 31.

“**Disclosure Statement**” means the statement required by the retirement village laws a copy of which is Annexure B to the Contract.

“**entry payment**” means the same as in clause 1.2.

“**general services**” means, unless the retirement village laws provide otherwise, services provided, or made available, by or on behalf of the Operator to all residents.

“**items of capital**” means the same as in clause 1.2.

“**Operator**” means the Council of the Municipality of Kiama and any successor and/or assign of the Operator; so far as the law permits.

“**person with a disability**” means a person of any age who, as a result of an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, has substantially limited opportunities to enjoy a full or active life.

“personal services” means, unless the retirement village laws provides otherwise, optional services provided, or made available, by or on behalf of the Operator to individual residents of the Village.

“Premises” means the unit at the Village specified in Schedule One and includes the fixtures, furniture, furnishings, fittings and contents supplied with the unit specified in Schedule Three.

“Proposed Date of Occupancy” means the date of payment of the entry payment.

“recurrent charges” means the recurrent charges payable by the Resident under the Contract, as varied from time to time.

“refund payment” means the amount payable under clause 33.

“Resident” means the person or persons named as the Resident in Schedule One.

“Resident’s Agent” means the person nominated for the purpose of receiving notices or other documents to be given to the Resident specified in Schedule One.

“Residents Committee” has the same meaning as in the retirement village laws.

“the retirement village laws” means the same as in clause 1.2

“Schedule” means a schedule to the Contract.

“special resolution” has the meaning set out in the retirement village laws.

“substitute premises” means premises referred to in clause 27.

“Tribunal” means the same as in clause 1.2.

“Village” means Blue Haven Retirement Village, Havilah Place, Kiama.

“Village Rules” means all documents published by the Operator setting out rules for occupation of the premises and the Village generally as amended from time to time.

- 19.2 Words importing the singular or plural number include the plural and singular numbers respectively and words importing one (1) gender include the other gender and each of them.
- 19.3 Where the Resident comprises more than one (1) person, agreements and undertakings by the Residents are by them jointly and severally.
- 19.4 Where there is any inconsistency between the General Terms clauses 1 – 18 and these Additional Terms clauses 19 – 37, the General Terms prevail to the extent of any inconsistency.

20 OCCUPANCY RIGHTS AND OBLIGATIONS OF THE RESIDENT

20.1 Limit to guests

The Resident will not permit any other person to stay in the premises:-

20.1.1 who is under the age of eighteen (18) years of age,

20.1.2 as a guest of the Resident for a period of more than three (3) weeks; or

20.1.3 as a permanent occupant

without first obtaining the consent in writing of the Operator.

(Note: Consent may be granted subject to conditions. The conditions will be at the discretion of the Operator and may include matters such as entry into a contract with the proposed occupant or a new contract with both the Resident and the proposed occupant to replace the Contract, payment of an additional entry payment or additional recurrent charges or variations to the terms and conditions of the Contract.)

20.2 Use of Premises

The Resident will use the Premises for the purpose of a residence and will use any garage, carspace or storage area forming part of the Premises in conjunction with that use.

20.3 Use of Village

While the Resident lives in the Premises, the Resident will be able to share the use of the other parts of the Village which are made available for use by residents and other authorised people at the times and subject to the conditions on which they are made available.

20.4 Restrictions on use of the premises and the Village

20.4.1 The Resident agrees:-

20.4.1.1 not to use the Premises, or cause or permit the Premises to be used, for any illegal purpose;

20.4.1.2 not to cause or permit a nuisance;

20.4.1.3 not to damage, or do or cause or permit anything which will cause damage to, the Premises (other than fair wear and tear) or any property belonging to the Operator or the Village or any other resident;

20.4.1.4 to notify the Operator as soon as practicable of any damage to the Premises;

20.4.1.5 to notify the Operator as soon as practicable of any damage to other property of the Operator caused by the Resident or for which the Resident is responsible;

- 20.4.1.6 to notify the Operator as soon as practicable of any burst water service or blocked or broken lavatory system or roof or gas leak or dangerous electrical fault in the Premises or failure or breakdown of any essential service on or to the premises or any fault or damage that causes the premises to be unsafe or not secure;
- 20.4.1.7 to keep the interior and fixtures and fittings of the Premises clean free of insects and vermin and in good repair; and
- 20.4.1.8 to notify the Operator in writing if the Resident becomes aware of any infectious illness in or about the Premises and to disinfect the premises at the Residents own expense to the satisfaction of the Operator.

20.4.2 The Resident will respect the rights of other residents of, and other persons in, the Village. In particular, the Resident:-

- 20.4.2.1 must not interfere or cause or permit any interference with the reasonable peace, comfort or privacy of another resident;
- 20.4.2.2 must respect the rights of the Operator and its agents and employees to work in an environment free from harassment or intimidation; and
- 20.4.2.3 must not act in a manner that adversely affects the health and safety of persons working in the Village and other residents and members of the Village community.

20.5 Warranty as to age

20.5.1 As the Village was approved pursuant to State Environmental Planning Policies to provide housing for seniors and people with a disability, the Resident warrants that the Resident (or at least one of the Residents) is over the age of fifty five (55) years or is a person with a disability.

20.5.2 The Resident acknowledges that this warranty is fundamental to the Contract and that if the warranty is false, the Operator can apply for an order terminating the Contract under Clause 11.2.

20.6 Proposed Date of Occupancy

The Resident may live in the Premises from the Proposed Date of Occupancy unless the Resident and the Operator agree in writing to a different date.

21 VILLAGE RULES

21.1 Compliance

21.1.1 The Resident will use the Resident's best endeavours to ensure compliance with the Village Rules by:-

21.1.1.1 any other person who is lawfully on the premises (other than a person who has a right of entry to the premises without the Resident's consent), and

21.1.1.2 any other person who is in the Village at the Resident's invitation.

21.1.2 The Operator will use the Operator's best endeavours to ensure compliance with the Village Rules by:-

21.1.2.1 residents,

21.1.2.2 employees of the Operator, and

21.1.2.3 any other persons who are in the Village at the Operator's invitation.

21.2 **Amendment of Village Rules**

The Village Rules may be amended from time to time subject to the provisions of the retirement village laws, including provisions relating to amendments which impose additional costs.

22 **SERVICES AND FACILITIES**

22.1 The services which will be provided or made available to the Resident by or on behalf of the Operator, are listed and described in Schedule Two.

22.2 Any additional or optional personal services which may be made available to the Resident on a "user pays" basis and the cost of those services as at the date of preparation of the Contract are listed in Schedule Two.

22.3 The facilities in the Village which are available for the use of the Resident are listed in Schedule Two.

22.4 The services or facilities that any development consent for the Village requires to be provided for the life of the Village are identified in Schedule Two.

22.5 If it is proposed that any services or facilities will be provided or made available in the future, they are listed and identified with the date(s) when they will be provided and made available in Schedule Two.

22.6 The Operator will not be obliged to provide personal services unless the Resident complies with the conditions subject to which the personal services are made available or provided. The Operator or other provider may from time to time vary charges in respect of personal services. Any variation of recurrent charges for personal services will be made in accordance with the provisions of the retirement village laws.

23 **FIXTURES, FITTINGS, FURNISHINGS AND NON-FIXED ITEMS**

23.1 Ownership and responsibility

23.1.1 The fixtures, fittings and furnishings and any other non-fixed items that are provided with the premises are listed in Schedule Three. They are the property of the Operator.

23.1.2 The Operator must maintain and repair the items from revenue raised by the recurrent charges.

23.1.3 The Resident must not remove any of the items from the Premises.

23.2 Carpet

The replacement, maintenance and repair of any carpet fitted to the Premises is the responsibility of the Operator. However, the Resident must reimburse the Operator in respect of any damage (other than fair wear and tear) caused by the Resident to the carpet.

23.3 Maintenance of furnishings

23.3.1 The Resident must keep all furnishings supplied by the Operator clean and in the same state of repair as they were at the commencement of occupancy (reasonable wear and tear and damage by fire, lightning, earthquake, storm and tempest excepted) and must replace missing, damaged or destroyed furnishings with furnishings of a similar quality and value.

23.3.2 On the termination of the Contract the Resident must give up possession of the furnishings positioned in the same rooms in which they were situated at the commencement of the Contract.

24 REPAIRS AND MAINTENANCE

24.1 The retirement village laws provide:-

24.1.1 that the Operator of a retirement village must maintain items of capital in the Village in a reasonable state of repair having regard to matters specified in the legislation; and

24.1.2 that the Operator's obligation does not extend to repairs of damage (fair wear and tear excepted) caused by a resident of the Village or by an invitee of a resident.

24.2 The Resident may request the Operator to carry out necessary repairs and maintenance which are within the Operator's responsibility by serving notice in writing on the Operator.

24.3 When the Resident permanently vacates the Premises, the Resident must leave the Premises (including all fixtures, fittings, furnishings and other items provided with the Premises) as nearly as possible in the same condition (fair wear and tear excepted) as set out in the Contract condition report which is Annexure C.

25 ALTERATIONS AND ADDITIONS TO THE PREMISES

25.1 **Unauthorised changes to the Premises**

The Resident agrees:-

- 25.1.1 not to attach any fixture or renovate, alter or add to the Premises without first obtaining the Operator's consent in writing;
- 25.1.2 to remove any fixture attached by the Resident if the Operator so requires;
- 25.1.3 to repair any damage caused by attaching and/or removing any fixture attached by the Resident or making or removing any alteration or addition or to compensate the Operator for the cost of repair;
- 25.1.4 not to alter the electricity and telephone supply;
- 25.1.5 not to drive nails or screws into any part of the woodwork or walls except in proper plugs for the support of fixtures;
- 25.1.6 not to install a television antenna, or any other cabling; and
- 25.1.7 not to erect or construct anything in or on any part of the exterior of the Village.

The Resident will promptly comply with a notice given by the Operator to the Resident in respect of a matter referred to in this sub-clause.

25.2 **Removal of unauthorised fixtures**

- 25.2.1 The Resident may at any time before permanently vacating the premises remove any fixture that the Resident has added to the premises provided that the Resident complies with clause 25.1.3.
- 25.2.2 If the Resident fails, before permanently vacating the premises, to remove any fixture that the Resident has added to the premises, the fixture shall become the property of the Operator without compensation to the Resident unless the Operator gives notice in writing to the Resident within twenty-eight (28) days of the Resident permanently vacating the Premises, requiring the Resident to remove the fixture and/or to repair any damage caused by installation and/or removal of the fixture or to compensate the Operator for the cost of removal and repair.

26 RESIDENT'S PROPERTY AND INSURANCE

26.1 **Operator not liable**

The Operator will not be responsible for loss, damage, maintenance or repair of any property belonging to the Resident or any other resident except in the case of loss or damage caused by negligent act or omission of the Operator or an employee or agent of the Operator.

26.2 **Resident's insurance**

It is the Resident's responsibility to take out and maintain any insurance which the Resident may require in respect of the Resident's furniture, furnishings and contents of the Premises and any other personal property of the Resident.

26.3 Motorised wheelchairs and other vehicles

26.3.1 The Resident agrees that neither the Resident nor any guest or invitee of the Resident will use a motorised wheelchair in the Village unless the Resident or the guest or invitee is insured for an amount of not less than **TEN MILLION DOLLARS** (\$10,000,000) in respect of any liability arising from the use of the motorised wheelchair. The Resident must, upon request, provide satisfactory evidence of a current insurance policy in respect of any motorised wheelchair.

26.3.2 If a Resident uses a vehicle other than a motorised wheel chair it is the responsibility of the Resident to insure it. The Operator is not responsible for any damage caused by that vehicle.

27 TRANSFERS

27.1 Requests for transfer

27.1.1 The Resident may request a transfer to other residential premises within the Village or to other accommodation for older people run by the Operator.

27.1.2 The Operator will consider any such request but does not promise that the Operator will agree to the transfer or be able to provide the alternative accommodation.

27.2 Transfer due to poor health

If, in the opinion of the Operator, it is desirable by reason of the Resident's state of health or for any other sufficient reason that the Resident should transfer to a hospital or nursing home or other accommodation which the Operator considers will be more suitable, the Operator may apply to the Tribunal for an order terminating the Contract.

27.3 No guarantees re Operator facilities

The Operator does not promise that the Resident will be able to transfer to a facility of the Operator in which residential care is provided under the Aged Care Act when the Resident wishes or needs to transfer. Places in such facilities are allocated on a "needs" basis and entry is subject to an assessment for admission by a Commonwealth approved assessment authority and availability at the time.

27.4 Transfer to other facilities controlled by the Operator

If the Resident transfers from the Premises to other premises in the Village or to other accommodation in a retirement village under the management or control of the Operator:-

- 27.4.1 the Operator must notify the Resident of the amount of refund due to the Resident under the Contract and of the entry payment and current recurrent charges and any other charges for the substitute premises before the Resident commences living in the substitute premises.
- 27.4.2 the entry payment for the substitute premises shall be the amount of any refund due or to become due to the Resident under the Contract unless the Operator notifies the Resident of a higher entry payment for the substitute premises.
- 27.4.3 the Operator may retain the refund due to the Resident under the Contract on account of the entry payment payable to the Operator for the substitute premises in accordance with clause 27.4.2.
- 27.4.4 if the entry payment for the substitute premises is more than the refund due or to become due to the Resident under the Contract, the difference will be paid by the Resident before the Resident commences living in the substitute premises.
- 27.4.5 the Resident will enter into a new contract in respect of the substitute premises.
- 27.4.6 the retirement village laws provide that the Resident shall be taken to have a continuous residence right for the purpose of the calculation of departure fees.
- 27.4.7 the Resident will pay recurrent charges at the rate applicable from time to time and any other amounts which fall due.

28 PAYMENTS BY THE RESIDENT

The Resident agrees to pay:-

- 28.1 the entry payment;
- 28.2 recurrent charges;
- 28.3 any other charges for personal services which are payable on a 'user pays' basis and which are not payable on a recurrent basis;
- 28.4 any charges for electricity, gas, telephone or water usage which are separately metered in respect of the Premises and invoiced to the Resident; and
- 28.5 departure fees to the extent that they exceed any amount otherwise refundable to the Resident.

29 ENTRY PAYMENT

29.1 Interest and refunds

- 29.1.1 Interest is not payable to the Resident while the Operator has the use of the entry payment.

29.1.2 The Contract specifies whether any part of the entry payment is not refundable.

29.2 Entitlement to a refund of the entry payment

29.2.1 If more than one person is named as "Resident", they will be regarded as joint tenants unless otherwise specified in Schedule One. This means that:-

29.2.1.1 any amount which is paid by the parties in respect of the entry payment is regarded as belonging to both of them and they are not entitled to separate shares; and

29.2.1.2 if either dies, the survivor will be entitled to any refund payable in respect of so much of the entry payment as has been paid by them or either of them after the Contract is terminated and the Premises are permanently vacated.

29.2.2 Alternatively, Schedule One may specify that the parties are tenants in common. This means that the amount which they have paid in respect of the entry payment, is regarded as belonging to each of them in the shares specified in Schedule One and each of them is entitled to share any refund of the entry payment paid by them in those proportions when the refund becomes payable.

29.2.3 When more than one person is named as Resident, if either dies or leaves and the other continues to reside in the Premises, no one will be entitled to any refund until the Contract is terminated and the Premises have been permanently vacated.

29.3 Refund on early death

If only one person is named as Resident and dies after expiry of the cooling off period but before taking up residence in the Premises, the Operator will refund the entry payment and all other money paid by the Resident under the Contract.

30 RECURRENT CHARGES

30.1 Initial payment

The Resident must pay a proportion of recurrent charges calculated from a date being the first to occur of:

- the Proposed Date of Occupancy; and
- the date on which the Resident enters into occupation of the Premises

until the end of that month

30.2 Subsequent payments

After the initial payment, recurrent charges must be paid monthly in advance on the first day of each month by direct debit into an account nominated by the Operator or by such other means as nominated from time to time by the Operator.

30.3 Different rates of recurrent charges

Different rates of recurrent charges may from time to time be payable by different residents within the Village. In determining recurrent charges payable by new residents and in proposing any variations of recurrent charges (other than those determined by fixed formula) the Operator may, at the Operator's discretion, take into account matters such as the size of premises in the Village, the number of persons residing in premises in the Village, the facilities and services provided to them, goods and services tax payable in respect of taxable supplies and, when the Operator considers it appropriate, the means of residents and any changes to their means.

30.4 Suspension of recurrent charges

If the Resident is absent from the Village for any reason for 28 consecutive days, the Resident will not be liable for recurrent charges for personal services in respect of the remainder (if any) of that period of absence.

30.5 Interest

If recurrent charges are not paid on the date on which they fall due for payment, interest will accrue and be payable on the amount unpaid from time to time at the maximum rate of interest prescribed by the retirement village laws or, if no rate is so prescribed, at the rate from time to time prescribed under the Uniform Civil Procedure Rules for payment of interest on a judgment debt.

30.6 Variation of recurrent charges

Recurrent charges will not be varied according to a fixed formula. Principles concerning their variation are:

30.6.1 The recurrent charges may be varied annually on the 1st day of July in each year.

30.6.2 There is no upper limit on any proposed increase.

30.6.3 The Operator will give the Resident at least 60 days' written notice of any proposed variation.

30.6.4 The notice of the proposed variation must comply with the retirement village laws.

30.6.5 Subject to clause 30.6.6, the basis for variation of recurrent charges will be that, after variation, the recurrent charges will provide sufficient income to meet the costs and make the provisions which are referred to in clause 30.7.

30.6.6 The amount cannot be varied unless the residents consent to the variation or the Tribunal orders the variation to take effect.

30.7 Use of recurrent charges

- 30.7.1 The retirement village laws make provision for a process by which the residents may approve the ways in which the income of the Operator from recurrent charges may be expended and disputes relating to the proposed items of expenditure may be resolved by the Tribunal.
- 30.7.2 The income of the Operator from recurrent charges must normally be used to meet, or make reasonable provision for, the costs of operating the Village which shall, without limiting the generality of that expression, be taken to include costs relating to:-
- 30.7.2.1 provision of facilities which are not fixed items of capital;
 - 30.7.2.2 provision of services to residents except where the costs of personal services are met from fees paid on a 'user pays' basis;
 - 30.7.2.3 repair and maintenance of buildings and other items of capital and provisions for those purposes;
 - 30.7.2.4 replacement of non-fixed items of capital and provision for their replacement;
 - 30.7.2.5 meeting fire safety requirements except insofar as they require provision or replacement of, or alterations or additions or improvements to, fixed items of capital;
 - 30.7.2.6 insurances (excluding insurance of contents and other property which belong to residents);
 - 30.7.2.7 rates, taxes, charges and assessments payable to any Government, local government or statutory authority (including any goods and services tax payable in respect of taxable supplies to residents which is not specifically reimbursed by the resident to whom the taxable supply is provided);
 - 30.7.2.8 compliance with requirements of any Government, local government or statutory authority relating to the Village and its operation except costs of providing or replacing, or making alterations, additions, or improvements to, fixed items of capital;
 - 30.7.2.9 cleaning common areas of the Village and upkeep of the grounds;
 - 30.7.2.10 water, electricity and gas charges except for units where they are separately metered and payable by the residents in those units;
 - 30.7.2.11 pest control;

- 30.7.2.12 administration and staff;
- 30.7.2.13 motor vehicles and transport;
- 30.7.2.14 Village security;
- 30.7.2.15 contributions payable for any of the abovementioned matters which are centralised or shared with any other retirement village, facility, organisation or business;
- 30.7.2.16 other expenses which it is reasonable for the Operator to incur in connection with the operation and management of the Village or for the benefit of residents; and
- 30.7.2.17 reasonable provisions for contingencies in respect of any of the abovementioned matters

but excluding the cost of any matter which the retirement village laws exclude from being financed from recurrent charges.

30.7.3 Subject to clause 30.7.1, the income of the Operator from recurrent charges can also be used:-

- 30.7.3.1 (in the case of recurrent charges paid by residents who do not pay entry payments) to replace fixed items of capital or to make provision for their replacement from a proportion of the income from the recurrent charges as approved from time to time;
- 30.7.3.2 to purchase or make provision for the purchase of new or additional non-fixed items of capital; and
- 30.7.3.3 to acquire items of capital that the Village does not already possess if the residents by special resolution request the Operator to provide them and the Operator agrees to do so.

31 DEPARTURE FEES

31.1 Payment

- 31.1.1 A departure fee is payable to the Operator on or after termination of the Contract.
- 31.1.2 The departure fee will be paid by deduction from any amount which would otherwise be refundable from the entry payment.
- 31.1.3 If no entry payment has been paid, the departure fee must be paid by the Resident on or before the date on which the Premises are permanently vacated.

31.2 Calculation of departure fee

- 31.2.1 The departure fee is calculated on a daily basis in accordance with Schedule Five.
- 31.2.2 The period for calculation of the departure fee commences on the date when the Resident is taken to have had a continuous residence right and ends on the date when the Premises are permanently vacated.
- 31.2.3 The Resident is taken to have had a continuous residence right from the first to occur of:-
- the Proposed Date of Occupancy; and
 - the date on which the Resident enters into occupation of the Premises.
- 31.2.4 The Resident will be taken to have permanently vacated the Premises when the Resident ceases living in the Premises and vacates the Premises so that the Premises are available, if required and subject to any desired cleaning and refurbishment, for use and occupation by an incoming resident except where the retirement village laws provide that the Resident shall be taken to have permanently vacated at an earlier date.
- 31.2.5 If the Resident moves to other residential premises in the Village (or in another retirement village that is managed or controlled by the Operator) the Resident shall be taken to have a continuous period of residence for the purpose of the calculation of the departure fee.

32 TERMINATION OF CONTRACT

32.1 Date of termination

Subject to clause 11, this Contract terminates:-

- 32.1.1 on the date on which the Resident permanently vacates the Premises being a date that is (except as otherwise provided in the retirement village laws or in the Contract) at least one month after the date on which the Resident gives the Operator written notice of intention to vacate the Premises; or
- 32.1.2 on the date on which the Resident permanently vacates the Premises; or
- 32.1.3 on the date on which the Resident permanently vacates the Premises after receiving notice of the Operator's intention to apply to the Tribunal for an order terminating the Contract; or
- 32.1.4 on disclaimer (for example, on renunciation by the Resident accepted by the Operator); or
- 32.1.5 on the death of the last surviving Resident under the contract; or

- 32.1.6 on the date specified by the Tribunal in an order declaring that the Resident has abandoned the Premises; or
- 32.1.7 on the date on which the Contract is terminated by the Tribunal;
- 32.1.8 if the Contract is frustrated:
 - 32.1.8.1 on the 8th day after the date specified in the notice of termination unless application is made to the Tribunal within the time allowed (or the notice of termination is withdrawn within that time); or
 - 32.1.8.2 on the date specified by the Tribunal.

32.2 **Effect on rights of parties**

Termination of the Contract does not affect any other right or obligation of a party under the Contract or any other contract unless the Tribunal determines otherwise.

32.3 **Termination on damage etc to Premises**

- 32.3.1 If the Premises are destroyed, or rendered wholly or partly uninhabitable otherwise than as a result of a breach of the Contract or any other contract between the parties, or if they cease to be lawfully usable for the purpose of residence or are appropriated or acquired by any authority by compulsory process:-
 - 32.3.1.1 the Resident or the Operator may give immediate notice of termination to the other party to the Contract; and
 - 32.3.1.2 the recurrent charges payable pursuant to the Contract will abate according to the degree to which the Premises are uninhabitable provided that if the Operator and the Resident do not agree regarding abatement or the extent to which recurrent charges should abate, either party may apply to the Tribunal for an order determining the matter.
- 32.3.2 If the Operator advises the Resident (or the Resident advises the Operator) no later than 7 days after receiving a notice of termination under clause 32.3.1.1 that he or she considers that the Premises have not been rendered wholly or partly uninhabitable (as the case may be), either party may apply to the Tribunal for an order determining the matter.

32.4 **Termination on application to the Tribunal**

- 32.4.1 The Operator or the Resident may apply to the Tribunal for an order terminating the Contract if the Operator or Resident is of the opinion that the Premises are unsuitable for occupation by the Resident because of the Resident's physical or mental incapacity.

- 32.4.2 The Operator may apply to the Tribunal for an order terminating the Contract if the Resident breaches the Contract or breaches a Village Rule.
- 32.4.3 The Resident may apply to the Tribunal for an order terminating the Contract if the Operator breaches the Contract or breaches a Village Rule.
- 32.4.4 The Operator may apply to the Tribunal for an order terminating the Contract on the ground that the Resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit:-
 - 32.4.4.1 serious damage to any part of the Village; or
 - 32.4.4.2 injury to the Operator or an employee of the Operator or any other resident.
- 32.4.5 The Operator may apply to the Tribunal for an order terminating the Contract on the ground that:-
 - 32.4.5.1 for the purpose of improving the Village, the Operator intends to carry out such substantial works in the Village as require the Premises to be permanently vacated; or
 - 32.4.5.2 it is appropriate that the land on which the Village is situated should be used for a purpose other than a retirement village.

32.5 Removal of personal property by Resident

- 32.5.1 Upon termination of the Contract for any reason the Resident must remove his personal property from the Premises.
- 32.5.2 If the Resident does not remove his personal property within fourteen (14) days after termination of the Contract the Operator may, after giving notice as required by the retirement village laws, apply to the Tribunal for an order authorising the removal, destruction, disposal or sale of the goods, or sell or dispose of the Resident's personal property in accordance with the retirement village laws.
- 32.5.3 The Operator:-
 - 32.5.3.1 may remove and dispose of perishable foodstuffs or goods that would be unsafe or unhealthy to store, immediately after the former resident vacated the residential premises where the Contract has been terminated by an order of the Tribunal or immediately after termination in any other case; and
 - 32.5.3.2 in relation to all other uncollected goods, must leave them at the residential premises or arrange storage of them in a secure place for:

32.5.3.2.1 at least 30 days after the Operator has given notice under the retirement village laws in the case where the Operator has a forwarding address for the Resident; or

32.5.3.2.2 in the case where the Operator does not have a forwarding address for the Resident, at least 30 days after the former resident vacated the residential premises (if a Tribunal order terminated the Contract) or in any other case, at least 30 days after the date that the Contract was terminated.

32.5.4 During the 30 day period referred to in clause 32.5.3.2, the Resident may claim the uncollected goods and the Operator must deliver them to the Resident free of charge (less any removal or storage charge).

32.5.5 After the expiry of the 30 day period referred to in clause 32.5.3.2, the Operator:

32.5.5.1 must send any uncollected personal documents to the Resident's forwarding address but if the operator does not have a forwarding address for the Resident, the operator must return the personal documents to their place of origin where possible and retain the rest of the personal documents in a secure place for six (6) months and then dispose of them as the Operator regards as appropriate;

32.5.5.2 may donate an individual item worth less than one hundred Australian dollars (\$100) to a charitable organisation or otherwise dispose of it; and

32.5.5.3 must sell by public auction any item worth over one hundred Australian dollars (\$100) and give the Resident the balance of the proceeds of sale (less any reasonable costs for removal, storage and sale).

32.5.6 If the Operator has complied with the retirement village laws, it will not be liable for loss or damage to any part of the Resident's personal property as a result of storage, sale or removal.

33 REFUND OF PAYMENT TO RESIDENT

33.1 Calculation of amount

After the Contract is terminated and the Premises are permanently vacated, the Operator will refund to the person who is entitled to the refund the amount calculated by deducting from the amount of the entry payment:-

33.1.1 any part of the entry payment which is not refundable;

33.1.2 any departure fee payable under the Contract;

- 33.1.3 accrued or outstanding recurrent charges, if any, payable by the Resident;
- 33.1.4 any interest payable by the Resident under the Contract in respect of the entry payment or for recurrent charges or any other amount payable under the Contract which were not paid on the due date;
- 33.1.5 any amount payable by the Resident in respect of repairs to the Premises; and
- 33.1.6 any other amount payable by the Resident under the Contract or any other contract with the Operator.

33.2 Statement

The Operator will give to the Resident a statement setting out the manner in which the refund payment is calculated and containing such information as the retirement village laws may require.

33.3 Extension of time for payment

If the Operator is of the opinion that it will not be able to enter into a residence contract with another person in respect of the Premises within six (6) months after the date on which the Resident permanently vacates the Premises, the Operator may apply to the Tribunal for an order extending the time allowed for payment or allowing payment by instalments.

33.4 Payment to Resident's Estate

If the Resident dies, no refund payment will be made except as directed by an executor granted probate of the Resident's last will by the Supreme Court of NSW ("the Court") or an administrator pursuant to letters of administration of the Resident's Estate appointed by the Court.

If the refund payment is payable to the executor or administrator of the Resident's Estate and the Operator is unable to ascertain the identity of the executor or administrator, the Operator may apply to the Tribunal for an order regarding the payment.

33.5 Partial refund

If two or more persons are named as the Resident in this Contract, a partial refund shall not be payable if one of them vacates the Premises unless the Contract provides otherwise or the Operator and one or both of the persons named as Resident agree in writing otherwise.

33.6 Debt to Operator

If the Resident is or becomes liable to pay to the Operator an amount which exceeds the refund which would otherwise be payable by the Operator to the Resident after termination, the Resident must make the payment promptly.

34 RECEIPT FOR PAYMENT

- 34.1 If the Resident is one person, the receipt of the Resident is sufficient discharge to the Operator for the refund payment.
- 34.2 If the Resident comprises persons who lent jointly, the receipt of the Resident who last occupied the unit is sufficient discharge to the Operator for the refund payment.
- 34.3 If the Resident comprises persons who lent as tenants in common, the receipt of each Resident is sufficient discharge to the Operator for that Resident's share of the refund payment.
- 34.4 If so required by the Operator, the executor or administrator of the Estate of a deceased Resident must sign a release in favour of the Operator prior to payment of the refund payment due to the Estate of the deceased Resident.

35 REPRESENTATIVE OF THE OPERATOR

The Operator may from time to time authorise a person to represent the Operator for the purposes of the Contract or for any particular purpose. Any authority given by the Resident to the Operator may be exercised by the authorised person.

36 NOMINATED REPRESENTATIVE OF THE RESIDENT

- 36.1 The Resident may by notice to the Operator authorise a person to represent the Resident in dealings with the Operator and, where appropriate, with staff of the Village. The Resident's Agent will be the person to whom matters affecting the Resident may be referred in the event of the Resident's illness or unavailability.
- 36.2 The use of the nominated representative will be at the Resident's discretion.
- 36.3 If the Resident desires, the nominated representative will be invited to participate in any major consultation between the Resident and the Operator.
- 36.4 The nomination will continue until the Resident notifies the Operator that the nomination is cancelled.

37 CONTRACT BINDING ON ESTATE OF RESIDENT

Upon the death of the Resident, the executor or administrator of that person's Estate shall be bound by that person's obligations under the Contract but shall not personally be entitled to occupy the Premises unless the person has a resident's right under the retirement village laws.

SCHEDULE ONE

ESSENTIAL PARTICULARS OF THE CONTRACT

Date of the Contract	
The Resident	(if more than one, as joint tenants)
The premises	Unit as shown on plan Annexure D
Date of supply of disclosure Statement and Information about the Retirement Village Industry	Disclosure Statement
	Retirement Village Information

SCHEDULE TWO

SERVICES AND FACILITIES

- A. List and description of services which will be provided or made available to the Resident by or on behalf of the Operator.

The Operator must:-

1. regularly clean and keep clean the entrances, stairways, lifts, lobbies, hallways and doors and attend to the lighting of all parts of the Village and grounds intended for common use where lights have been installed by the Operator;
2. maintain all common areas including lawns, gardens, paths, stairways, the village centre, reception areas and the external areas of all buildings and common facilities;
3. maintain all gardens within the Village;
4. maintain all clothes lines installed in drying areas in the Village intended for use by Residents;
5. remove all surplus waste materials from any maintenance and repair operations;
6. regularly place in the garbage area for collection by the Operator as the Local Government authority all garbage or rubbish bins or containers except those which are the responsibility of the Resident; and
7. monitor and respond to the emergency call system provided by the Operator.

- B. List of any additional or optional personal services which will be made available to the Resident on a user pay basis and the cost of those services at the date of preparation of this Contract.

Nil

- C. List of Facilities in the Village which are available for use of the Resident.

Village Centre

Stage 5 – Sky Lounge

Conservatory

Level 1 Function Room

Level 7 Craft room/hairdressing salon

D. List of any services and facilities that a development consent for the Village requires to be provided for the life of the Village.

Nil

E. List and identification of services and facilities which will be provided or made available in future and the dates on which they will be provided or made available.

Nil

Note:

Services and facilities may from time to time be changes in accordance with this Contract and the retirement village laws

SCHEDULE THREE

FIXTURES, FITTINGS AND FURNISHINGS AND NON FIXED ITEMS

The following fixtures, fittings and furnishings and other non-fixed items (if any) are provided in the premises:

Washing machine

Clothes dryer

Light fittings

Lining (backing) curtains or vertical blinds

Emergency call pendant

Oven

Cook top (where installed)

Range hood

Security screen door (main entry)

Fly screens

Bathroom exhaust fan

The following fixtures, fittings and furnishings and other non-fixed items (if any) are **not** provided in the premises:

Air conditioning

Curtains

SCHEDULE FOUR

**VARIATION OF RECURRENT CHARGES ACCORDING TO A FIXED
FORMULA**

Not applicable

SCHEDULE FIVE

METHOD OF CALCULATION OF DEPARTURE FEE

Subject to clause 33.1, following permanent vacation the Operator must refund to the Resident the entry payment less 6% of the entry payment for each year of occupation by the Resident calculated on a daily basis. The maximum deduction will be 30% of the entry payment.

Example 1

If the amount of the entry payment is \$250,000.00 and the Resident dies and permanent vacation occurs 1 year and 97 days after the date of the Contract then the amount to be repaid is \$231,013.70 calculated as follows:-

Amount of entry payment	\$250,000.00
x 6% = \$15,000.00	
1 year 97/365 days x \$15,000.00 =	<u>\$18,986.30</u>
Balance payable	<u>\$231,013.70</u>

Example 2

If the Resident is transferred out of the Village and permanent vacation occurs 3 years and 128 days after the date of the Contract and the amount of the entry payment is \$500,000.00, the amount to be repaid is \$399,479.45 calculated as follows:-

Amount of entry payment	\$500,000.00
x 6% = \$30,000.00	
3 years 128/365 days x \$30,000.00 =	<u>\$100,520.55</u>
Balance payable	<u>\$399,479.45</u>

Example 3

If the amount of the entry payment is \$400,000.00 and the Resident dies and permanent vacation occurs 12 years and 25 days after the date of the Contract then the amount to be repaid is \$280,000.00 calculated as follows:-

Amount of entry payment	\$400,000.00
x 30% =	<u>\$120,000.00</u>
Balance payable	<u>\$280,000.00</u>

ANNEXURES

The following documents are annexed to this contract (tick whichever applicable):

- a copy of the disclosure statement that we gave you (mandatory)
- your premises condition report (mandatory unless your premises are not yet constructed, you are a *registered interest holder* or you are moving into premises with a current resident)
- a list of services and facilities we provide (mandatory)
- the village rules (if any) (mandatory)
- list of inclusions
- list of exclusions
- village site plan
- your premises floor plan
- other (specify):

Execution page

Executed as a contract

Signed for and on behalf of THE COUNCIL OF THE MUNICIPALITY OF KIAMA by its authorised officer in the presence of:

Signature of Witness

Authorised Officer

Name of Witness (print)

Address of Witness

Signed by NAME OF RESIDENT 1 in the presence of:

Signature of Witness

NAME OF RESIDENT 1

Name of Witness (print)

Address of Witness

I have obtained independent legal advice on this contract

I have decided not to obtain independent legal advice on this contract

Signed by NAME OF RESIDENT 2 in the presence of:

Signature of Witness

NAME OF RESIDENT 2

Name of Witness (print)

Address of Witness

I have obtained independent legal advice on this contract

I have decided not to obtain independent legal advice on this contract