

# Residence agreement

The Seventh-day Adventist Church

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Seventh-day Adventist Aged Care (South Queensland)  
Limited (**Operator**)

..... (**Resident**)

# Residence agreement

## The Seventh-day Adventist Church

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# Information table

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Date .....

## Parties

Operator **Seventh-day Adventist Aged Care (South Queensland) Limited** ACN 104 195 922

Referred to as **We, our, us**  
Notice details 19 Eagle Terrace, Brisbane, Queensland  
Facsimile (07) 3218 7790

Resident .....

Referred to as **You, your**  
Notice details Unit No .....  
Village Name .....Adventist Retirement Village  
Village address ...571 Cleveland-Redland Bay Rd Victoria Point 4165

The Unit Address Unit ..... which is an Independent Living Unit ('ILU') type of unit.  
Village Name .....Adventist retirement village  
Village address .....571 Cleveland-Redland Bay Rd Victoria Point 4165.

Deposit **\$5,000**

Balance Ingoing \$.....

Contribution

Total Ingoing \$.....

Contribution ('Your Ingoing Contribution')

Commencement Date delete the following options that are not applicable

**Option 1:** / / (must not be a date prior to the cooling off period expiring)

**Option 2:** ~~30 days after the date you received your Public Information Document.~~

**Option 3:** ~~If The Unit is not constructed or able to be lawfully occupied on the date you received your Public Information Document, the Commencement Date means the date 14 days after we notify you The Unit is completed.~~

**Option 4:** ~~If at the time of entering this residence agreement, The Unit is licensed to a third party (ie an outgoing resident) the Commencement Date means the later of:~~

- (i) ~~the Commencement Date as defined above; and~~
- (ii) ~~one day after the date this residence agreement of The Unit to the third party ends.~~

Exit Fee                      The Exit Fee is the Exit Fee Percentage set out below of the Total Ingoing Contribution that you paid us for the licence of The Unit.

Exit Fee Percentage	Period from the Commencement Date to the Exit Date	Exit Fee Percentage that applies
	1 year or less	10%
	2 years or less but more than 1 year	15%
	3 years or less but more than 2 years	19%
	4 years or less but more than 3 years	22%
	5 years or less but more than 4 years	24%
	more than 5 years	25%

# Special conditions

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## Special conditions

- A. Ingoing Contribution
- (1) The Operator and Resident agree to replace clause 5.1 of the Residence Agreement with the following:
- 5.1
- (a) Payable on the Commencement Date
- On or before the Commencement Date, you must pay us our costs and expenses with respect to the preparation, execution, stamping and registration of this agreement, which are the amounts shown in the Public Information Document.
- (b) Payment of Balance
- On or before 5pm on the earlier of:
- (a) the date ninety (90) days after the Commencement Date; and
- (b) the day of settlement of the Resident's property at  
.....
- you must pay us the Total Ingoing Contribution, less any deposit you have already paid. Your payment must be by bank cheque issued by a bank licensed to carry on business in Australia or direct deposit as directed by us.
- (2) The Operator and Resident further agree to replace clause 17.4(a) of the Residence Agreement with the following:
- 'not paying the Total Ingoing Contribution on or before 5.00pm on the earlier of:
- (i) the date ninety (90) days after the Commencement Date; and
- (ii) the day of settlement of the Resident's property at  
.....
- (3) The Operator and Resident further agree to add the following words as a new paragraph to the end of clause 17.4:
- 'In the event we terminate this Residence Agreement under clause 17.4(a); at the beginning of clause 21.3 the following sentence is to be added 'Your Exit Entitlement equals the amount of the Total Ingoing Contribution that you have paid to us on the date this Residence Agreement terminates'.
- (4) The Operator and Resident further agree to replace the sentence in clause 21.1 with the words ' Subject to clause 24.5 we must repay you any portion of the Total Incoming Contribution that you have already paid, on the Exit Entitlement Date.'

# Agreed terms

## 1. Overview

### 1.1 About this residence agreement

This residence agreement gives you a licence to occupy The Unit from the Commencement Date stated in the Information Table until this agreement is terminated by either party exercising a right under this residence agreement or under a law.

This residence agreement also sets out the terms of our relationship with you while you live in the Village. Among other things, it:

- (a) describes the services we provide and the charges you pay; and
- (b) includes the rules you agree to comply with while living in the Village; and
- (c) sets out what happens when you leave the Village.

This residence agreement is not a lease and does not give you any estate or interest in the land.

### 1.2 Ownership of the village

The Village is owned by Australasian Conference Association Limited ACN 000 003 930 in its capacity as the corporate trustee for The Seventh-day Adventist Church.

The Seventh-day Adventist Church makes provision for the accommodation and care of the aged, and while it has been established for use by members of the Church, other people may also be admitted as residents.

The Seventh-day Adventist Church has granted a long-term lease of the Village to the Operator.

### 1.3 Our role as Operator

You acknowledge that we are responsible for the management and operation of the Village and that we want to ensure that the Village is maintained to a high standard and continues to operate as a registered retirement village for the benefit of current and future residents.

### 1.4 How this residence agreement is written

A number of the terms we use in this residence agreement have been defined. You can tell the defined terms because they are capitalised, for example: Village. The definitions can be found in clause 2.

We have also used terms that are consistent with the *Retirement Villages Act 1999*.

### 1.5 Obligation to act reasonably

Both you and we must not unreasonably withhold a consent unless this residence agreement says that the consent can be refused at the absolute discretion of the person whose consent is sought.

### 1.6 Communications and notices

If this residence agreement says that a notice must or may be given then:

- (a) the notice must be written;
- (b) if it is to you, it may be delivered to, or left at, The Unit; and
- (c) if it is to us, it must be delivered to the Manager's office in the Village (if any) or at our address stated in the Information Table.

## 2. Definitions and interpretation

### 2.1 Definitions

The following terms have these meanings in this residence agreement:

**Act** means the *Retirement Villages Act 1999*.

**Balance Ingoing Contribution** means the Balance Ingoing Contribution shown in the Information Table of this residence agreement.

**Capital Gain** means the amount, if any, by which the Resale Price exceeds your Total Ingoing Contribution.

**Capital Loss** means the amount, if any, by which your Total Ingoing Contribution exceeds the Resale Price.

**Capital Replacement Fund** means the fund established by us in accordance with the Act for replacing our capital items in the Village.

**Commencement Date** means the commencement date as shown in the Information Table of this residence agreement.

**CPI** means the All Groups Consumer Price Index for Brisbane published by the Australian statistician.

**Community Facilities** means the buildings and surrounding facilities, lawns, gardens and other areas that we own or lease and that we make available for use by Residents from time to time, including a community centre.

**Deposit** means the amount as shown in the Information Table of this residence agreement.

**Exit Date** means the date you cease to reside in The Unit, which is the later of:

- (a) the date this residence agreement expires or is terminated; and
- (b) the date that you vacate The Unit,

or any other date that the Act specifies as the date as at which the exit fee for a residence contract is to be, or may be, calculated.

**Exit Entitlement** means the amount you are paid after your right to reside in The Unit terminates and we enter into a new residence agreement for The Unit. The amount of the Exit Entitlement is calculated under Clause 21.

**Exit Entitlement Date** means the date on or before which we must repay the percentage of the Total Ingoing Contribution to you, being the date that is 14 days after your right to reside in The Unit has terminated, we have entered into a new residence agreement of The Unit with a new Resident and we receive the Resale Price from the new Resident.

**Exit Fee** means the amount you must pay us under clause 21, which is calculated in the way shown in the Information Table

**Exit Fee Percentage** has the meaning given in the Information Table.

**Expiry Date** means the date that is 99 years after the Commencement Date.

**Financial Year** means a period we specify as a financial year for the Village.

**General Services Charge** means the amount you pay under clause 15.

**Information Table** means the part of this document described as 'Information Table'.

**Management Facilities** means the parts of the Village that we use from time to time for administrative and operation purposes. The Management Facilities include any Manager's residence and any other staff accommodation in the Village. These areas are generally not open for use by Residents.

**Manager** means the person (if any) appointed by us from time to time under clause 13.4 to manage the Village.

**Maintenance Reserve Fund** means the fund established and kept by us in accordance with the Act for maintaining and repairing our capital items in the Village.

**Operating Costs** has the meaning given in Schedule A.

**Operator** means the entity as shown in the Information Table.

**Personal Services** means optional services supplied or made available by us for the benefit, care or enjoyment of a Resident and for which we charge additional fees.

**Pre-termination Notice** means a notice from you stating that you would like to leave the Village and you want us to find a new Resident for The Unit.

**Public Information Document** means the public information document required under the Act for the Village. A reference to "your Public Information Document" means the Public Information Document you were given before you agreed to enter into this residence agreement. A reference to "the Public Information Document" means the Public Information Document current for the Village from time to time.

**Reinstatement Work** has the meaning given in clause 19.

**Resale Price** means the Total Ingoing Contribution payable to us by a new Resident under a residence agreement in respect of The Unit.

**Resale Value** means the amount agreed or determined from time to time under clause 18 as the value of a licence of The Unit.

**Resident** means a person who lives in the Village in a Unit and includes you. Our employees and contractors who live in the Village are not Residents.

**Termination Date** means the date this residence agreement is validly terminated by either party under this residence agreement or the Act.

**Total Ingoing Contribution** means the amount specified in the Information Table.

**Trustee** means Deacons, being a person qualified to hold the Total Ingoing Contribution in trust in accordance with the Act. Payments to the Trustee should be addressed to Deacons Trust Account. Deacons are at 175 Eagle Street, Brisbane, Queensland.

**Unit** means an accommodation unit in the Village that is intended for occupation and use by a Resident. The manager's residence (if any) is not a Unit. **The Unit** means the Unit licensed to you under this residence agreement and includes:

- (a) all built-in cupboards and benches;
- (b) any car park, garage carport included in this residence agreement or provided to you under this residence agreement or a separate agreement;
- (c) all windows, doors, fly screens and security screens and bars;
- (d) the plumbing fixtures;
- (e) the furnishings and fittings we provide in The Unit;

- (f) the carpet and other floor coverings;
- (g) the light, power and telecommunications fittings and wiring;
- (h) the equipment and appliances that are provided with The Unit, such as the hot water system, stove, dishwasher and air conditioning (if it is installed); and
- (i) any alteration to the inside or outside of The Unit that is consented to by us.

**Village** means retirement village as described in the Information Table, which is a registered retirement village under the Act and comprises:

- (a) all of the land included in the Village as described from time to time in the Public Information Document;
- (b) all other land we use for the management and operation of the Village;
- (c) the improvements on that land from time to time; and
- (d) all of the plant, equipment and other property we have in the Village from time to time for the purpose of operating the Village.

**Village Operating Costs** means the Operating Costs that relate to the whole Village.

**Village Rules** means the rules or bylaws we make under clause 9.

**Visitor** means a person who is not a party to this residence agreement as a Resident who you invite to stay or live in The Unit (with our written permission), and includes your relative or carer.

## 2.2 Interpretation

In this residence agreement, unless the contrary intention appears:

- (a) a reference to this residence agreement or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to we, us or our includes a reference to our executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) a reference to you includes your executors, administrators and successors;
- (g) an agreement on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them; and
- (i) headings are inserted for convenience and do not affect the interpretation of this residence agreement.

## **2.3 Special terms**

Any special terms to this residence agreement are set out in the Special Conditions section of this agreement. If there is an inconsistency between a special term and any other provision of this residence agreement, the special term will prevail to the extent of the inconsistency.

## **3. Cooling-off period**

### **3.1 Your cooling-off period**

The Act gives you a 14 day cooling-off period during which you can change your mind about entering into this residence agreement.

You acknowledge that the cooling off period started on the day this Residence Agreement was signed or, if it was subject to a later event occurring or another contract being entered into, the day that later event occurred or the other contract was entered into and ends or ended 14 days later.

### **3.2 You can rescind during the cooling-off period**

Before the cooling-off period ends you may rescind this residence agreement by giving written notice to us before the cooling-off period ends.

If you rescind this residence agreement during the cooling-off period then the Trustee must immediately refund any part of the Total Ingoing Contribution held by us to you.

We are entitled to retain a portion of money paid to us or any other stakeholder to cover costs associated with professional legal fees that may have been incurred on your behalf.

## **4. Deposit**

### **4.1 Payment of deposit**

You must pay the Deposit to the Trustee on the date of this agreement. The Trustee must hold the Deposit in trust until the Deposit may be paid to a party in accordance with this agreement.

### **4.2 Refund of deposit**

If this agreement is rescinded or terminated then the Deposit must be refunded to you. However, if the rescission or termination is a result of your default, the Deposit must be paid to us.

## **5. Total Ingoing Contribution**

### **5.1 Payable on or before Commencement Date**

On or before the Commencement Date, you must pay us:

- (a) any outstanding amount of the Total Ingoing Contribution; and
- (b) our costs and expenses with respect to the preparation, execution, stamping and registration of this agreement, which are the amounts shown in the Public Information Document.

Your payment must be by bank cheque issued by a bank licensed to carry on business in Australia or direct deposit as directed by us.

Time is of the essence with regard to your obligation to pay the Total Ingoing Contribution.

### **5.2 Hold money in trust**

We must pay the Total Ingoing Contribution to the Trustee to hold in trust until:

- (a) any pre-conditions to the commencement of this residence agreement have been satisfied; and
- (b) your cooling-off period has expired (see clause 3).

The Trustee will then pay the Total Ingoing Contribution to us.

## 6. Execution and Completion of the Residence Agreement

### 6.1 Execution of the Residence Agreement

If you have not already done so, you must properly execute and return this residence agreement to us within 7 days of receipt.

### 6.2 Completion of the Residence Agreement

You authorise us and our solicitor to complete the Residence Agreement and associated documents by:

- (a) inserting the Commencement Date, the expiry date (which is 99 years after the Commencement Date), the correct title particulars, the property description and a survey plan identifying The Unit; and
- (b) completing or amending the Residence Agreement as we deem necessary to enable the Residence Agreement to be stamped (if required)

We may terminate this agreement by notice to you if you do not comply with this clause 6.

## 7. Our services

### 7.1 Operating the Village

We must operate the Village so that it is a residential community for older and retired people.

### 7.2 Community facilities

You and your invited guests may use the Community Facilities while you are a Resident. However, you must comply with, and must ensure that your invited guests comply with, the following conditions:

- (a) you must comply with this residence agreement and Village Rules we make under it;
- (b) for some facilities in the Community Facilities, we will from time to time specify particular Village Rules, such as hours of use and booking procedures; you must comply with those rules;
- (c) some facilities in the Community Facilities may be subject to user charges, you can only use those facilities if you pay the charges we specify from time to time;
- (d) you must not damage anything in the Community Facilities or cause accelerated wear to the Community Facilities; and
- (e) you must not alter the Community Facilities, nor do any gardening, plant new plants or remove existing plants, without our consent, which we may give or refuse at our absolute discretion.

### 7.3 Changes to the Community Facilities

We may from time to time:

- (a) make alterations to the Community Facilities; and

- (b) close all or part of the Community Facilities for refurbishment, repair or maintenance purposes; and
- (c) introduce or change user charges for the use of facilities in the Community Facilities.

#### **7.4 Emergency call system**

We must provide a 24 hour emergency call system, which may operate through the telephone system. If the 24 hour emergency call system does operate through the telephone system, you must have a telephone line and handset to connect to the emergency call system and the telephone connection is your responsibility.

The emergency call service is for emergencies only. We may charge a service fee for any calls you make that are not genuine emergencies.

### **8. The Unit**

#### **8.1 Retirement village residence only**

You agree that you will only use The Unit as a residence and not for any other purpose. In particular, you must not operate a business or conduct any activities relating to a business from The Unit without our consent. If consent is granted to operate such a business you must provide a certificate of currency to show that you have the appropriate insurances to cover personal and public liability.

#### **8.2 Courtyard garden**

If we give you a licence to use a courtyard, garden or other area outside The Unit then the terms of this residence agreement that apply to the use and occupation of The Unit also apply to your use of this outside area, including the cleaning and maintenance obligations and the restrictions on alterations. When this residence agreement terminates your agreement to use the outside area also terminates.

#### **8.3 Gardens**

If The Unit includes a garden then you must keep the garden in good condition and you must comply with our directions about the types of plants that you may grow in the garden.

#### **8.4 Your garage or carport**

Your garage or carport may only be used for the following things:

- (a) parking a motor vehicle, motorcycle or boat; and
- (b) if it is an enclosed garage:
  - (i) as a home workshop (but noise restrictions still apply); and
  - (ii) for storing your personal possessions.

We give no warranty about the suitability of a garage or carport for the uses described in paragraph (b) and you acknowledge that the use of a garage or carport will be solely at your risk.

#### **8.5 Garbage**

We will tell you when and how garbage is collected from the Village and The Unit and you must comply with those procedures. You must not allow garbage to accumulate in The Unit or in any place in the Village other than in the bins provided. You must not place your household garbage in bins other than those provided to you at The Unit for that purpose. Any garbage that might become smelly or attract vermin or animals should be wrapped or put into a sealed bag so that the smell is avoided or reduced.

## **8.6 Pest control**

You must:

- (a) take reasonable steps to keep The Unit free of pests and termites;
- (b) not do anything that may attract pests or termites to The Unit;
- (c) have pest control and termite treatments carried out in The Unit whenever we reasonably require you to do so; and
- (d) not do anything that may invalidate a warranty given under a pest control or termite treatment.

You must have annual termite inspections and pest treatments for cockroaches and any other pest we require. The termite inspections and pest treatments must be obtained from contractors we approve. We will tell you when these inspections and treatments are due and you must give us written evidence that they have occurred.

## **8.7 Hazardous substances**

You must not keep hazardous substances in The Unit, including in your garage or carport.

## **8.8 Telephone service**

You must at all times have an operative telephone service in The Unit.

## **8.9 Payment for telephone, electricity and other services**

You are responsible for obtaining and paying for the electricity supply, gas, telephone service and pay television service for The Unit.

If the water supply to The Unit has a separate meter then we may, in our absolute discretion, require you to pay the water charges. You must pay these within 14 days after we give you a statement showing the water consumption for The Unit and the way the charge is calculated. If you are billed directly by the supplying authority then you must pay the bills on time.

If you are supplied with electricity to The Unit from a bulk supply that we have obtained for the Village, you must buy that electricity from us. The amount of electricity you consume will be determined from readings by us of the submeter metering The Unit. The price to be charged for electricity will be at the rate and according to the conditions imposed by the authority from which we buy the electricity for consumers of the same category, using the same amount of electricity as you.

## **8.10 Outside appearance**

You must not:

- (a) hang washing to dry outside of The Unit, other than on a clothes line that we have approved; or
- (b) put up any signs that are visible from outside The Unit.

## **8.11 Insurance**

It is your responsibility to insure:

- (a) your property in The Unit;
- (b) for public liability claims brought as a result of any incident occurring in The Unit; and
- (c) for workers compensation claims brought by any employee or contractor that you engage to carry out work or provide services in The Unit.

At our request, you must give us evidence that you have taken out the insurances required under this clause.

### **8.12 Visitors**

You must register all guests who stay overnight or longer at the administrative office of the Village.

With our prior approval:

- (a) you may have guests stay in The Unit for up to 14 consecutive nights. However, you may have a Visitor live in The Unit with you for longer than 30 days in any 12 month period, if we consent, however we may give or deny our consent in our absolute discretion. If we consent to a Visitor staying for longer than 30 days then we can revoke that consent at any time at our absolute discretion.
- (b) you may allow a Visitor to use The Unit if you are not staying there at the same time.
- (c) you may have more than 4 guests stay overnight in The Unit on any one night.

### **8.13 Dealing with The Unit and Village land**

You must not:

- (a) lodge a caveat over any land that forms part of the Village;
- (b) assign your interest in The Unit;
- (c) grant a lease or other tenancy or occupation right over or give any other person possession of all or part of The Unit; or
- (d) grant a mortgagee or charge over your interest in The Unit.

### **8.14 Laws**

You must not breach any laws relating to the use or occupation of The Unit. If, under a law, The Unit has to be altered or other work done to it then we will arrange for a contractor to do that work and you must pay the cost. You must allow the contractor or us access to The Unit to undertake the work.

## **9. General rules about behaviour**

### **9.1 Noise and nuisances**

You must not use The Unit or any part of the Village for any purpose that is illegal or that may unreasonably interfere with the use and enjoyment of the Village by another Resident. For example, you must not:

- (a) make or allow noise that may annoy or disturb other Residents or their Visitors or any neighbours outside the Village;
- (b) play musical instruments, stereos, radios or televisions too loudly. You must make sure that your musical instruments, television, stereo and other equipment cannot be heard outside The Unit; and
- (c) not do anything or keep anything that may be annoying or hazardous to other people in the Village or the neighbourhood.

### **9.2 Driving and parking**

You must comply with the following rules about driving in the Village:

- (a) you may only drive on the roads and driveways;

- (b) you must have an appropriate driver's licence for any vehicle you operate;
- (c) you must comply with the speed limits, road signs and other road rules we set in the Village;
- (d) your car must be registered and road-worthy;
- (e) you must have a current third party property damage insurance policy in place for any motor vehicle you operate.

You may only park in the Village if you have an agreement to use one of the car parks. Visitor parking is for visitors only.

### **9.3 Principles of The Seventh-day Adventist Church**

You must respect:

- (a) the principles of The Seventh-day Adventist Church; and
- (b) the religious principles and practices of all other residents, and must ensure that any visitors of the resident do the same.

### **9.4 Will and enduring power of attorney**

If you have not already done so, we recommend you make a will and advise us:

- (a) where the Will is kept;
- (b) the name and address of the executor (s) of your will; and
- (c) any changes made to the above.

We also recommend that you make an enduring power of attorney (for financial and health/personal matters) and that details of the attorney be provided to us.

### **9.5 Laws**

You must not do anything illegal in the Village.

### **9.6 No smoking and fire safety**

- (a) In the interests of health and safety a 'no smoking' policy operates throughout the Village. You must not smoke in The Unit or anywhere in the Village.
- (b) You must participate in any fire drills we have, though we will take account of any infirmity or disability you have.
- (c) You must observe fire safety procedures of the Village that we designate from time to time.

### **9.7 Pets**

Except for fish in a tank, you may not have pets in the Village without our consent. We may give or refuse this consent at our absolute discretion. If we consent to a pet then:

- (a) that consent is particular to the approved pet only, and does not extend to a replacement of that pet.
- (b) you must comply with conditions of that consent; and
- (c) we may revoke the consent if the pet is a nuisance, in which case you must remove the pet from the Village.

We may introduce a pet policy, which will set out general guidelines for the ownership and control of pets in the Village. You must comply with the provisions of any pet policy we have in place.

### **9.8 Absences from the Village**

When absent from the Village for three nights or more, you must advise the Administrative office (in an emergency, your neighbour) of your anticipated absence from the Village and of your contact details in the event of an emergency.

### **9.9 Other things you must not do**

You must not do any of the following things without our consent:

- (a) collect money from other Residents for charities or other reasons;
- (b) put notices anywhere in the Village, including on notice boards; or
- (c) anything that may invalidate, or increase the premium for, an insurance policy that we have in respect of The Unit or the Village.

### **9.10 Village Rules**

We may make rules or bylaws about Units, the use and enjoyment of the Community Facilities and behaviour in the Village. We may replace or amend these Village Rules from time to time. You must comply with these Village Rules as long as they do not conflict with your rights under this residence agreement.

### **9.11 Responsibility for Visitors and others**

You must make sure that your Visitors, guests and contractors comply with this residence agreement and the Village Rules.

## **10. Health**

### **10.1 Keep us informed**

It is important that we know about the health and well-being of all residents, therefore you must promptly notify us of any significant developments in the state of your health.

### **10.2 Infectious diseases**

If you contract an infectious disease then you must:

- (a) notify us immediately; and
- (b) take any steps we require to limit the possibility that the disease will be transmitted to other people.

### **10.3 Sudden illnesses**

If you suddenly become ill then we may:

- (a) arrange for a doctor to assess your condition;
- (b) arrange appropriate medical assistance and treatment for you; and
- (c) have you taken to hospital or another appropriate health care facility.

You must pay any costs we incur doing these things.

### **10.4 Assessment of care needs**

We may require you to have your care needs assessed from time to time by a doctor or other appropriate person we specify so that we can ensure The Unit is suitable for you. To exercise this

right, we must give you a notice appointing a reasonable day and time on which the assessment will take place. If, because of reasonable grounds, you will not be available at the time we appoint then you may nominate another time and day. The time and day you nominate must be within seven days of the day we nominated unless you have a good reason to nominate a day outside that period. The assessment must take place at The Unit or another reasonable place we specify.

## **10.5 Higher care**

- (a) You authorise us to temporarily transfer you to a hospital or other medical institution as we consider appropriate at any time.
- (b) If you, in our opinion, following:
  - (i) consultation with your next of kin or attorney; or
  - (ii) if necessary, your medical advisor and a medical officer we nominate;become incapable of residing in The Unit, we may arrange accommodation for you in:
  - (i) other suitable quarters;
  - (ii) a hostel or nursing home;
  - (iii) other accommodation we manage; or
  - (iv) in such hospital or institution we determine.
- (c) You must pay the authority managing the home, hospital or other institution to which you are relocated the usual charges payable by a person so accommodated.

## **11. Our obligations about repair and maintenance**

### **11.1 Legal obligations on us**

The Act requires us to hold money in bank accounts for particular maintenance, repair and replacement costs.

### **11.2 Maintenance Reserve Fund**

We must have a Maintenance Reserve Fund to pay for maintenance and repairs to our capital items in the Village. The Maintenance Reserve Fund is not used to pay for repairs that are your responsibility under this residence agreement, or the responsibility of other Residents under their residence agreements.

### **11.3 Payments to the Maintenance Reserve Fund**

Each year an amount is determined for payment into the Maintenance Reserve Fund based on a quantity surveyor's estimate of the future maintenance and repair costs to which the fund relates. The Residents pay all of the money that must go into the Maintenance Reserve Fund. This is done by each Resident paying a Maintenance Reserve Fund contribution as part of the General Services Charge.

We must hold the contributions to the Maintenance Reserve Fund in the way required under the Act. Any interest we earn is to be retained in the Maintenance Reserve Fund.

We reserve the right to change the method of calculation used for the Maintenance Reserve Fund contribution at anytime.

#### **11.4 Maintenance Reserve Fund insufficient**

If there is not enough money in the Maintenance Reserve Fund to pay for necessary maintenance and repair work of our capital items in the Village then:

- (a) we must pay the cost of that work; and
- (b) we may recover the cost from future amounts paid into the Maintenance Reserve Fund (but we may not charge interest on the costs we pay).

#### **11.5 Capital Replacement Fund**

We must also have a Capital Replacement Fund to pay for replacement of our capital items in the Village. The Capital Replacement Fund is not used to pay for replacements that are your responsibility under this residence agreement, or the responsibility of other Residents under their residence agreements. We may use the money in the Capital Replacement Fund for any purpose allowed under the Act.

#### **11.6 Payments to Capital Replacement Fund**

Each year an amount is determined for payment into the Capital Replacement Fund based on a quantity surveyor's estimate of future costs of replacing capital items. We must pay these annual amounts into the Capital Replacement Fund.

The Capital Replacement Fund contributions must be held in a separate bank account that complies with the requirements of the Act. The interest earned on this account is to be retained in the Capital Replacement Fund.

If we are paid by our insurer for the destruction of capital items then that money must be paid into the Capital Replacement Fund.

#### **11.7 You do not contribute to the Capital Replacement Fund**

You are not required to contribute to the Capital Replacement Fund.

#### **11.8 Work to The Unit covered by our insurance**

If The Unit is damaged and the damage is covered by our insurance or the insurance for the Village then:

- (a) we will arrange for The Unit to be restored to the condition it was in before the damage occurred (or as close to that condition as can reasonably be achieved); and
- (b) until The Unit is restored, the General Services Charge is reduced in proportion to the extent of the damage (based on your ability to keep using The Unit).

The reduction under clause 11.8(b) does not apply if you caused the damage.

#### **11.9 Other Units**

We must comply with our repair obligations with respect to the other Units and must use reasonable endeavours to have other Residents comply with their maintenance and repair obligations.

#### **11.10 Looking after the Community Facilities**

We must keep the Community Facilities clean. Lawns must be mown as required and the gardens must be kept in good condition. The buildings, equipment, paths and driveways that are Community Facilities must be kept in good condition and repaired or replaced when necessary.

Our cleaning and maintenance obligations do not apply to any areas that we have given a Resident a licence to use as a private garden, courtyard or other private outside area.

## 12. Your obligations about alterations, maintenance and replacement

### 12.1 Alterations and damage

You must not:

- (a) make any alterations to the inside or outside of The Unit without our written consent which we may give or refuse at our absolute discretion. This includes painting, installing or changing appliances, antennae, satellite dishes, heating, air conditioning, awnings, security doors and grills and any other similar item; or
- (b) damage to The Unit; or
- (c) do anything that might cause structural damage to The Unit, in particular, you should get our approval before bringing any unusually heavy items into The Unit.

### 12.2 Notice of damage and problems

You must immediately notify us of any:

- (a) damage to The Unit or the furnishings, fixtures, fittings and appliances provided in The Unit; and
- (b) problems with the plumbing, electrical wiring, gas pipes or appliances provided in The Unit.

### 12.3 Your maintenance and repair obligations

You must keep The Unit clean, well maintained and in good repair.

### 12.4 Other repair and replacement that you must pay for

You must pay the costs we incur for replacing things in the Village that:

- (a) you deliberately damage or destroy; or
- (b) are subjected to accelerated wear because of your actions.

Payments under this clause 12.4 must be made within 28 days after we give you evidence of the cost we incurred.

### 12.5 General rules about alterations and work to The Unit

If alterations are made to The Unit then:

- (a) you must maintain them in a good condition;
- (b) you are not entitled to claim any contribution to the cost from us or the next occupant of The Unit; and
- (c) when you leave The Unit:
  - (i) you are not allowed to remove any alterations or items made to your unit; and
  - (ii) we may remove any alterations or items made to The Unit at your cost and make good any damage caused to The Unit by the removal.

If you are allowed or required to remove the alterations or items you have installed under this clause you must pay for the works needed to repair any damage caused to The Unit by the removal.

### 12.6 Alternative accommodation

We may at any time substitute any other Unit or other accommodation we manage for The Unit:

- (a) upon medical advice;

- (b) after consultation with you; or
- (c) after consultation with your next of kin or attorney;

if we consider that substitution is in the best interest of you or of other occupants of the Village.

You must relocate in accordance with our directions, but no substitution pursuant to the above will be made before 14 days from the date of the last consultation.

## **13. Our general obligations and rights**

### **13.1 Not to interfere**

We must not interfere with your occupation of The Unit or your rights under this residence agreement unless we are specifically allowed to do so under this residence agreement or a law.

### **13.2 Insurance**

We must ensure that the Village is always insured to its full replacement value and we must have any other insurance we are required to have under a law. We may have other insurance for the Village as we see fit. Details of our insurance policies are given in your Public Information Document.

The insurance we take out may be subject to any excess permitted under the Act. Any such excess payable by us for a claim under a policy of insurance will be included in the Operating Costs.

### **13.3 Village Operating Costs**

We must pay the Village Operating Costs as they fall due.

### **13.4 Managing the Village**

We must manage the Village as required under the Act and this residence agreement. Our management obligation includes:

- (a) doing everything we reasonably can to ensure other Residents in the Village comply with their residence agreements; and
- (b) keeping and using the Maintenance Reserve Fund and the Capital Replacement Fund as required under the Act.

We may engage a Manager from time to time to manage the Village and otherwise perform our obligations and exercise our rights under this residence agreement on our behalf. We may also engage contractors and agents to provide services on our behalf.

### **13.5 Our entry rights**

We may enter The Unit at reasonable times during the day to view the condition of The Unit. Except if we reasonably believe that an emergency exists, we must give you at least two days notice before entering The Unit under this clause.

### **13.6 Entry in an emergency**

If we reasonably believe that an emergency exists we may enter The Unit at any time without giving you any prior notice so that we can deal with the emergency.

### **13.7 We can have a master key**

You agree to us holding a master key to The Unit to allow us to enter The Unit in accordance with our rights under this residence agreement.

### **13.8 When we may do works in The Unit**

We may do the following work in The Unit:

- (a) repairs and maintenance needed to deal with an emergency; and
- (b) work that we are obliged to do under this residence agreement.

### **13.9 Notice before we do work in The Unit**

If we do work in The Unit then, unless it is for an emergency:

- (a) we must give you at least 7 days notice before doing the work; and
- (b) we may only do the work at reasonable times of the day.

If the work is for an emergency then we may do the work at any time without giving you prior notice.

### **13.10 Our obligations when we do work in The Unit**

When we do any work in The Unit we must:

- (a) do our best to minimise inconvenience to you; and
- (b) repair any damage we cause and clean up the mess we make.

### **13.11 Cost of our work in The Unit**

You must pay us the reasonable costs of work we do under clause 13.8 unless the work we do is our responsibility under this residence agreement.

### **13.12 Other work in the Village**

We may:

- (a) alter or extend the Community Facilities; and
- (b) close the Community Facilities so that we can do repair work or other work we are allowed to do under this residence agreement.

If we do work in the Community Facilities then we must do the work promptly so that the Community Facilities can be reopened as soon as reasonably possible.

We may expand the Village or redevelop parts of the Village. If we do this then we must do our best to minimise inconvenience to you.

## **14. If The Unit is destroyed or damaged**

### **14.1 Our choices**

If The Unit is destroyed (which includes damage to such an extent that restoring it is impractical) then we may choose to either:

- (a) rebuild The Unit, in which case clause 14.2 applies; or
- (b) terminate this residence agreement by giving you a notice.

### **14.2 If we rebuild**

If we rebuild The Unit then it need not match the original design, but must:

- (a) be the same size or larger, unless we are required by an authority to build it smaller;
- (b) have the same number of bedrooms and substantially the same facilities, equipment and appliances; and

- (c) be built to substantially the same or better quality.

### **14.3 Your termination rights**

If The Unit is destroyed then you may terminate this residence agreement by giving us a notice if:

- (a) we do not notify you of our choice under clause 14.1 within one month after The Unit is destroyed; or
- (b) we notify you that we will rebuild The Unit but we do not start rebuilding it, or complete rebuilding it, within a reasonable time.

### **14.4 What happens on termination**

If we terminate this residence agreement under clause 14.1 or you terminate it under clause 14.3 then we must pay your Exit Entitlement, and you must pay us the amounts set out in clause 21.3, calculated on the following basis:

- (a) we are taken to have entered into a new residence agreement for The Unit for a Resale Price equal to the Resale Value that would have applied if The Unit had not been destroyed (and assuming it was not reinstated); and
- (b) no amount is to be deducted for Reinstatement Work (which is a normal deduction, see clause 21.3(d)); and
- (c) the cost of finding a new Resident (which is a normal deduction, see clause 21.3(b)); and
- (d) the 14 day period for determining your Exit Entitlement Date starts on the day after we receive payment from our insurer for the destruction of The Unit.

### **14.5 General Services Charge**

You need not pay the General Services Charge from the date The Unit is destroyed to the date the new Unit is ready for occupation or this residence agreement is terminated. This clause 14.5 does not apply if:

- (a) you caused the destruction of The Unit; or
- (b) we offer you replacement accommodation in the Village until your new Unit is ready for occupation.

## **15. General services charge**

### **15.1 What is the General Services Charge**

The General Services Charge is an amount you must pay us each Financial Year as a contribution to the Operating Costs and the Maintenance Reserve Fund.

### **15.2 What are the Operating Costs**

The Operating Costs are the expenses we incur in connection with the ownership, operation, management and administration of the Village. More detail of the Operating Costs is provided in Schedule A.

### **15.3 Budget for Operating Costs**

Before each Financial Year, we will prepare a budget of Operating Costs. If you ask, we will give you a copy of the budget.

#### **15.4 Your contribution to the Operating Costs**

Your contribution to the Operating Costs in each Financial Year is a proportion of the budgeted Operating Costs for the relevant Financial Year (including changes) as calculated pursuant to clause 3.19 of the Public Information Document.

#### **15.5 Amount of your General Services Charge**

The amount you pay for the General Services Charge each Financial Year equals the budgeted Operating Costs and Maintenance Reserve Fund amount for that Financial Year apportioned by us based on the number of Units in the Village and the unit type and floor area of the Units in the Village.

We reserve the right to vary the method of calculation of the General Services Charge.

#### **15.6 How is the General Services Charge payable**

The General Services Charge is payable by instalments in advance as described in clause 16.1.

We will notify you of your instalments (and any changes to them) when we give you the Operating Costs budget for each Financial Year and any budget changes.

#### **15.7 Annual statements of Operating Costs**

At the end of each Financial Year, we will prepare a statement showing the actual Operating Costs for the Financial Year. If the amount we have been paid for the Financial Year in accordance with the budget of Operating Costs is less than the actual Operating Costs then the shortfall will be added to the budget for the next Financial Year. If the amount we have been paid for the Financial Year in accordance with the budget of Operating Costs is greater than the actual Operating Costs then the surplus will be added to the budget for the next Financial Year.

#### **15.8 Limit on increase in General Services Charge**

The Act limits our ability to increase the General Services Charge. The general rule is that we cannot increase the total of the General Services Charges for the Village for a Financial Year by more than the increase in the CPI for the previous Financial Year. There are exceptions to the general rule:

- (a) the Residents can authorise a greater increase in a charge for a general service by special resolution passed at a Residents' meeting; and
- (b) we may increase a charge for a general service by a greater amount if needed because the increase in any of the following costs is greater than the increase in the consumer price index:
  - (i) rates, taxes and charges on the Village land or its use; and
  - (ii) wages and salaries that are set under an industrial relations award or agreement made under State or Commonwealth law; and
  - (iii) insurance premiums or insurance excesses paid; and
  - (iv) Maintenance Reserve Fund contributions.

#### **15.9 Audit and financial statements**

Each Financial Year we will prepare a financial statement about the Village's operation, including the Operating Costs and have it audited. The auditor must be a registered company auditor or an accountant that is a member of The Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia.

If you ask, we must give you within the time periods required by the Act:

- (a) a quarterly financial statement about:
  - (i) the income and expenditure of the Capital Replacement Fund and the Maintenance Reserve Fund; and
  - (ii) the expenditure involved in providing each general service; and
- (b) a copy of the annual audited financial statement about the Village's operation.

## 16. General requirements about payments

### 16.1 How and when

Payments of the General Services Charge and for Personal Services must be made in advance on the first day of each month, or any other day we notify you. We will tell you how and where to make those payments.

### 16.2 Interest for late payments

If you are more than 14 days late paying the General Services Charge or for Personal Services, you must also pay us interest on the overdue amount. The interest rate is the greater of:

- (a) 3% per annum above the rate our principal banker charges for an account overdrawn by \$50,000 or more; and
- (b) 12 percent per annum.

A certificate from an officer of our principal banker is conclusive evidence of the rate referred to in clause 16.2(a).

### 16.3 Taxes and other Charges

Despite anything otherwise contained in this residence agreement, we may deduct from any money received or payable by us pursuant to this residence agreement the amount of any financial institutions duty and bank account debits tax and the cost of all bank cheques paid or payable by reason of each transaction.

## 17. Termination

### 17.1 Notice of intention to terminate

If you want to leave the Village then you may notify us and we will make arrangements to find a new Resident for The Unit. This notice is called a Pre-termination Notice. Your Pre-termination Notice should say when you would like to leave the Village.

If you give us a Pre-termination Notice then we will make arrangements to find a new Resident for The Unit. This will include:

- (a) determining the reinstatement work that is needed for The Unit (see clause 19);
- (b) determining the Resale Value of The Unit (see clause 18);
- (c) finding a new Resident for The Unit (see clause 20); and
- (d) agreeing when your residence agreement should terminate so that you can continue to occupy The Unit until the new Resident is found.

A Pre-termination Notice under clause 17.1 does not terminate this residence agreement.

## **17.2 Our rights to terminate on 14 days notice**

We may terminate this residence agreement by giving you at least 14 days written notice if you:

- (a) intentionally or recklessly:
  - (i) injure a person while the person is in the Village;
  - (ii) seriously damage The Unit, a part of the Village or property in the Village; or
- (b) are likely to do something mentioned in clause 17.2(a).

In these circumstances the Termination Date is the date stated in our notice.

## **17.3 Our rights to terminate on 2 months notice**

We may terminate this residence agreement by giving at least 2 months written notice if:

- (a) you materially breach this residence agreement; or
- (b) we reasonably believe you have abandoned your right to reside in the Village;
- (c) we, and a person who has assessed your care needs under clause 10.4, reasonably believe that The Unit is now unsuitable for you.

In these circumstances the Termination Date is the date stated in our notice.

## **17.4 What is a material breach**

For clause 17.3(a), a material breach of this residence agreement includes but is not limited to:

- (a) not paying the Total Ingoing Contribution on or before the Commencement Date;
- (b) not paying the General Services Charge or Personal Service charge within 14 days after they are payable (whether or not we have formally demanded payment);
- (c) having a Visitor live in The Unit in breach of clause 8.12; and
- (d) refusing to submit to an assessment of your care needs as required under clause 10.4
- (e) you are convicted of a serious criminal act.

If there is more than one of you, we may terminate this residence agreement under clauses 17.2 or 17.3 if any of the circumstances set out in those clauses occurs in relation to any one of you.

## **17.5 Termination notice to comply with the Act**

A notice we give under clauses 17.2 or 17.3 must comply with section 53 of the Act.

## **17.6 Termination on death**

This residence agreement terminates on the date you die. If there is more than one of you then this residence agreement terminates when the last of you dies.

In these circumstances the Termination Date is the date of death.

## **17.7 Your right to terminate**

You may terminate your right to reside in the Village at any time by giving us at least 1 month's written notice. Your notice should state when you want to leave the Village.

In these circumstances the Termination Date is the later of:

- (a) 1 month after your notice to terminate is received by us; and
- (b) the date nominated in your notice as the date you desire to terminate your right to reside in The Unit.

## **17.8 What happens when this residence agreement is terminated**

When this residence agreement is terminated, then unless the Act provides otherwise:

- (a) you must give us vacant possession of The Unit on the Termination Date (if you do not give us vacant possession then we may re-enter and take possession of The Unit);
- (b) the Resale Value must be agreed or determined (see clause 18);
- (c) The Unit must be reinstated to a marketable condition (see clause 19) unless The Unit has been destroyed;
- (d) we will attempt to find a new Resident for The Unit (see clause 20); and
- (e) we must repay your Total Ingoing Contribution and you must pay us your Exit Fee and any other fees and costs under clause 21 on the Exit Entitlement Date.

## **17.9 Rights that are not affected by termination**

The termination of this residence agreement does not affect:

- (a) rights about breaches that occurred before the termination; and
- (b) the rights and obligations of the parties under clauses 8, 12, and 15 to 22.

## **17.10 Property left in The Unit**

If you do not remove all of your property from The Unit when you leave it then:

- (a) we may remove that property and store it;
- (b) we may charge you reasonable removal and storage costs; and
- (c) if you have not collected your property within 14 days from when you left The Unit, we may dispose of that property as we see fit.

# **18. Resale Value**

## **18.1 What is the Resale Value?**

The Resale Value means the fair market value of a licence of The Unit determined on the basis that:

- (a) The Unit has been, or will be, reinstated as required under clause 19; and
- (b) the new Resident and the terms of the new residence agreement will be as required under clause 20.

## **18.2 Determining the Resale Value**

When a Pre-termination Notice is given, or this residence agreement is terminated or otherwise ends, you and we must negotiate in good faith and, if possible, agree in writing on the Resale Value.

If you and we have not agreed on the Resale Value within 30 days of the Termination Date, or any different date specified in the Act, then we must have a valuer determine the Resale Value within a further 14 days. The valuer must be selected in accordance with the Act. The valuer's valuation is the Resale Value.

## **18.3 Resale Value to be updated as required by the Act**

The Resale Value must be updated if and when required under the Act.

## 18.4 Your share of valuation costs

You must pay us a share of the costs of any valuations obtained under clauses 18.2 and 18.3.

Your share of those costs is calculated with the following formula:

$$\text{Your share} = \frac{\text{costs of valuations} \times (\text{Resale Price} - (\text{Exit Fee} + \text{our share of any Capital Gain} - \text{our share of any Capital Loss}))}{\text{Resale Price}}$$

## 19. Reinstatement

### 19.1 Meaning of Reinstatement Work

Reinstatement Work means the work reasonably necessary to be done to reinstate The Unit to a marketable condition having regard to:

- (a) the condition of The Unit when you entered occupation of The Unit; and
- (b) the general condition of other Units in the Village that are comparable with The Unit.

Reinstatement Work may include:

- (c) cleaning;
- (d) repainting;
- (e) replacing carpets and other floor coverings;
- (f) repairing damage, including damage done by the removal of alterations to The Unit;
- (g) treating The Unit for insects and pests (including fleas); and
- (h) replacing fixtures, fittings, equipment, appliances, furniture, furnishings (including screens and awnings) and other property provided by us in The Unit.

### 19.2 Negotiation about Reinstatement Work

When you give us a Pre-termination Notice, or this residence agreement is terminated, you and we must negotiate in good faith and, if possible, agree in writing on the Reinstatement Work. The time period for this process starts on the day of service of your or our notice.

### 19.3 Tradesperson's quote to be obtained if we do not agree

If you and we do not agree on the Reinstatement Work within 30 days of the Termination Date then we must have a tradesperson provide an itemised quote for the work we consider to be Reinstatement Work. The tradesperson must be appropriately qualified for the work. This quote must be obtained and given to you within a further 14 days. If, within 14 days after we give you this quote, you give us a notice rejecting the quote then clause 19.4 applies.

### 19.4 Independent decision on Reinstatement Work

If this clause 19.4 applies then the Reinstatement Work is to be determined by a person who is:

- (a) agreed between you and us; or
- (b) if we do not agree, appointed by the President for the time being of the Queensland Division of the Australian Property Institute.

### 19.5 Doing the Reinstatement Work

The Reinstatement Work is to be completed within:

- (a) 90 days after you vacate The Unit; or

(b) if you and we agree on another time, the time agreed.

If you are still occupying The Unit when the Reinstatement Work needs to be done, you agree to allow us to enter The Unit for the purpose of completing the Reinstatement Work.

### **19.6 You must pay us the costs we incur:**

- (a) obtaining the quote required under clause 19.3; and
- (b) having the Reinstatement Work determined under clause 19.4; and
- (c) paying for the Reinstatement Work to be done under clause 19.7.

### **19.7 Your share of the Reinstatement Work**

You must pay us a share of the costs we incur in doing the Reinstatement Work. Your share of those costs is calculated with the following formula:

$$Y = \text{costs of Reinstatement Work} \times \text{percentage of Capital Gain you are entitled to be paid under this residence agreement}$$

Notwithstanding the above you must pay the cost of the Reinstatement Work to the extent you cause accelerated wear to The Unit or deliberate damage to The Unit.

### **19.8 Relative residing after Termination Date**

If your relative has a right to reside in The Unit under the Act after the Termination Date, the provisions of the Act dealing with the rights and obligations of the scheme operator (us), the former resident (you) and your relative in relation to negotiating and determining Reinstatement Work, doing Reinstatement Work and paying for Reinstatement Work are to prevail over anything in this clause 19. In particular, we are not required to perform any obligations that are set out in this clause 19 unless we are expressly required to do so under the Act.

## **20. Requirements about new residents**

### **20.1 Requirements for new residents**

The new Resident for The Unit must be a person we approve.

We will approve persons who satisfy the following criteria:

- (a) we reasonably believe he or she is able to receive the aged pension or, if there is two of them, one must be able to receive the aged pension; and
- (b) we reasonably believe that The Unit is suitable for the person (or both of them).

However, we reserve the right to vary any age limit or criteria set out in clause 20.1(a) or accept a person who does not satisfy the criteria, but who we believe is a suitable resident for the Village.

**20.2 Licensing The Unit**

When you give us a Pre-termination Notice, or this residence agreement is terminated, we must use reasonable endeavours to find a new Resident to enter into a new residence agreement for The Unit.

When seeking new Residents for Units, we must not favour you, other Residents or ourselves and each Unit available for occupation must be offered fairly and on its merits.

**20.3 Our exclusive right to find a new Resident**

We have the exclusive right to find a new Resident until six months after the Termination Date. After that period ends, you may appoint a real estate agent to find a new Resident. A new Resident found by your real estate agent must still meet the criteria in clause 20.1. If you appoint a real estate agent then:

- (a) you must immediately notify us of the name of the real estate agent you have appointed; and
- (b) we are no longer obliged to find a new Resident for The Unit.

**20.4 Terms of residence agreement for new Resident**

The new residence agreement entered with the new Resident for The Unit must:

- (a) be in a form provided for in the Public Information Document that applies at the relevant time; and
- (b) be granted for the Resale Value (unless you or we have decided to accept a lower Resale Price, see clause 20.6).

**20.5 Information we must give you**

We must promptly give to you details of each offer for The Unit we receive. At your request, we must give you the following information as soon as practicable after the end of each month until there is a new Resident for The Unit:

- (a) all enquiries we receive about The Unit;
- (b) the steps we are taking to find a new Resident for The Unit; and
- (c) details of the number, size and Resale Values of the other Units available in the Village and the length of time for which those Units have been available.

**20.6 Licensing at less than the Resale Value**

Either you or we may decide to accept a new residence agreement for a Resale Price that is less than the Resale Value.

If you decide to accept a Resale Price less than the Resale Value you must pay us the difference between the Resale Price and the Resale Value. This payment must be made when we pay your Exit Entitlement.

**20.7 Costs of finding a new Resident**

You must pay us a share of the costs we incur finding a new Resident for The Unit. Your share is calculated with the following formula:

$$\begin{array}{rcl}
 \text{Your share} & = & \text{costs of finding a new Resident} \quad \times \quad \frac{(\text{Resale Price} - (\text{Exit Fee} + \text{our share of any Capital Gain} - \text{our share of any Capital Loss}))}{\text{Resale Price}}
 \end{array}$$

If you appoint a real estate agent then you must pay all the agent's commission and costs.

## **20.8 Relative residing after Termination Date**

If your relative has a right to reside in The Unit under the Act after the Termination Date, then notwithstanding anything in this clause 20:

- (a) your relative will have a right to enter into a new licence of The Unit if certain requirements set out in the Act are met;
- (b) our obligation to use reasonable endeavours to find a new Resident under clause 20.2 will only start if and when we know that your relative will not be entering into a new licence of The Unit; and
- (c) our six month exclusive right to find a new Resident under clause 20.3 will only start when the Act provides that it will start.

## **21. Payments following termination**

### **21.1 Repayment of Total Ingoing Contribution**

Subject to clause 24.5 we must repay you your Total Ingoing Contribution on the Exit Entitlement Date.

### **21.2 Exit Fee**

The Information Table shows how your Exit Fee is calculated.

### **21.3 What you must pay to us**

When we repay your Total Ingoing Contribution, you must pay us:

- (a) the Exit Fee (calculated as shown in the Information Table);
- (b) your share of the cost of finding the new Resident (see clause 20.7);
- (c) the General Services Charge (or part of it) for the period specified in clause 21.4;
- (d) the costs associated with Reinstatement Work you must pay under clause 19.6;
- (e) any amounts you owe to us under any other agreements we have with you about the provision of services or goods to you in the Village; and
- (f) the costs and expenses we incur with respect to the termination of this residence agreement, including legal costs and our other costs of preparing, stamping and registering any necessary documents and any stamp duty and registration fees; and
- (g) any other amounts you must pay us under this residence agreement, such as outstanding amounts for the General Services Charge, reinstatement costs you must pay under clause 19 and any amounts under clauses 20.6 and 20.7.

These payments must be made when we pay your Total Ingoing Contribution. In practice, we will deduct your payments to us from your Total Ingoing Contribution. We may set off any amounts payable by you to us under this clause against the amount we must repay to you under clause 21.1.

### **21.4 Continuing obligation to pay the General Services Charge after termination**

If this residence agreement is terminated then:

- (a) for the period up to and including the 90th day after you vacate the Unit, you must pay the full General Services Charges; and

- (b) from the 91st day until the sooner of:
- (i) the date we enter into a new residence agreement with the new Resident of The Unit; and
  - (ii) nine (9) months after you vacate The Unit,
- you must pay a share of the General Services Charge calculated as follows:

$$\text{Your share} = \text{costs of finding a new Resident} \times \frac{(\text{Resale Price} - (\text{Exit Fee} + \text{our share of any Capital Gain} - \text{our share of any Capital Loss}))}{\text{Resale Price}}$$

## 22. GST

### 22.1 Meanings in GST Act apply

**GST** means the goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* and related Acts.

### 22.2 GST and this residence agreement

The amounts this residence agreement requires you to pay do not include any GST. At the date of this residence agreement, GST applies to some of the services we provide under this residence agreement. The application of GST may change in the future.

A payment that is subject to GST means a payment that:

- (a) you must make under this residence agreement; and
- (b) that is for, or partly for, services we provide that are subject to GST.

If a payment is subject to GST then that payment must be increased by the amount of the GST. The intention is that, after paying the GST, we should receive the amount this residence agreement says is payable to us.

### 22.3 Accounting for GST credits

Some of your payments under this residence agreement are to reimburse us for our expenses or a share of our expenses, for example, the Operating Costs. When we calculate these reimbursements, we must deduct the amount of the input tax credits to which we are entitled because we incurred those expenses.

## 23. Conversion to freehold title

### 23.1 Your consent

If we wish to establish a community titles scheme under the *Body Corporate and Community Management Act 1997* over the Village you must consent to us doing so.

### 23.2 The Unit will be a lot

The area, location and dimensions of the lot appearing on the plan of subdivision for the community titles scheme corresponding to The Unit must be substantially the same as the area, location and dimensions of The Unit.

### 23.3 Plan of subdivision

The plan of subdivision and related documents must be prepared and registered at our expense. The by-laws in the community management statement must not take away the rights you have under this residence agreement.

### 23.4 Documents to be signed

You must do all things and sign all documents we reasonably require to enable:

- (a) the community titles scheme to be established;
- (b) the plan of subdivision to be prepared and approved by the local authority; and
- (c) the plan of subdivision to be registered at the Department of Natural Resources.

### **23.5 New residence agreement**

Your obligations under clause 23.4 include, if required by us:

- (a) terminating your residence agreement; and
- (b) accepting from us a new residence agreement of the lot corresponding to The Unit that contains substantially the same terms as this residence agreement.

## **24. Other matters**

### **24.1 Consents must be written**

If this residence agreement says that something can only be done with our consent then that consent must be in writing.

### **24.2 Dealing with The Unit**

You must not mortgage The Unit without our written consent.

You must not assign your residence agreement, sublicense or lease The Unit, or allow another person to live in The Unit without our written consent. We can give or refuse this consent in our absolute discretion.

### **24.3 When this residence agreement ends**

This residence agreement continues in force until all obligations under it have been complied with.

### **24.4 Public Information Document**

You acknowledge that we gave you a copy of your Public Information Document before you signed this residence agreement.

### **24.5 Notice of intention to cease Village**

If we notify you that we intend to cease operating the Village then:

- (a) we must continue to operate the Village until this residence agreement is terminated; and
- (b) we need not find a new Resident for The Unit when this residence agreement is terminated; and
- (c) we must pay your Exit Entitlement, and you must pay us the amounts set out in clause 21.3, calculated on the following basis:
  - (i) we are taken to have entered into a new licence for The Unit for a Resale Price equal to the Resale Value determined on the assumption that The Unit has not been reinstated; and
  - (ii) no amount is to be deducted for Reinstatement Work (which is a normal deduction, see clause 21.3(d)) and the cost of finding a new Resident (which is a normal deduction, see clause 21.3(b)); and
  - (iii) the 14 day period for determining your Exit Entitlement Date starts on the later of:
    - (A) date we give you the notice under this clause 24.5; and
    - (B) the Termination Date.

## **24.6 Sale of the Village**

We may at any time sell the Village to another person ('Purchaser'), and assign our rights and obligations under this residence agreement to the Purchaser. We can do this without your consent, but, before doing so, we must have the Purchaser sign a deed under which it agrees to comply with this residence agreement as operator. When that deed is signed by the Purchaser, the sale of the Village is completed and we give you a written notice stating that we have assigned our rights and obligations under this residence agreement to the Purchaser, then we are fully released from all obligations under this residence agreement arising after the date of the completion of the Sale and all our rights and obligations under this residence agreement are assigned to the Purchaser.

## **24.7 Dispute resolution under the Act**

You and we have rights under Part 9 of the Act to have disputes about rights and obligations under this residence agreement referred to a mediator and/or to a tribunal established under the Act.

A provision of this residence agreement requiring a dispute to be referred to a specified person does not limit your and our rights to use the dispute resolution process in Part 9 of the Act.

## **24.8 Resident's risk**

You occupy The Unit and enter and use the Village at your own risk.

## **24.9 Indemnity**

You are liable for and irrevocably and unconditionally indemnify us against all liability, loss, penalties, payments, costs, charges and expenses directly or indirectly arising from or incurred in connection with:

- (a) damage to or loss of any property or injury to or the death of any person:
  - (i) to the extent it is caused or contributed to by the negligence or wrongful act of you or a person who is your agent, contractor, licensee, invitee or visitor; or
  - (ii) occurring in, or caused or contributed to by anything occurring in, The Unit, except to the extent it is caused or contributed to by the negligence or default of us or our agents, contractors and employees; and
- (b) our doing anything that you must do under this residence agreement but which you have not done or have not done properly; and
- (c) your breach of this residence agreement, which includes anything done by your agent, contractor, licensee, invitee or visitor that would be a breach of this residence agreement if done by you.

## **24.10 Release**

You release us from and agree that we are not liable for any liability, loss, penalties, payments, costs, charges and expenses you directly or indirectly incur in connection with:

- (a) damage to or loss of any property or injury to or the death of any person except to the extent it is caused or contributed to by the negligence or wrongful act of us or our agents, contractors and employees; or
- (b) anything we are required or permitted to do under this residence agreement; or
- (c) damage to or loss of any property or injury to or the death of any person in the village resident's workshop or occurring on an activity or outing outside of the village organised by us; or

- (d) a service or facility provided by an authority, us or any other person to your Unit or the Village not being available or not working properly.

#### **24.11 Power of attorney for residence agreement termination**

You irrevocably appoint us, and each of our officers, as your attorney to execute a surrender of this residence agreement after it is terminated. We may not use this power of attorney for any other purpose. A certificate from the attorney is sufficient evidence that this residence agreement has been terminated.

#### **24.12 Property Law Act provisions negated**

The obligations, rights and powers implied by Sections 105 and 107 of the *Property Law Act 1974* do not apply to this residence agreement.

#### **24.13 Costs**

You must pay our legal costs and expenses for the preparation, negotiation, execution, stamping and registration of this residence agreement, the Public Information Document and any ancillary documents. The amount you must pay is set out in the Public Information Document. You must also pay any stamp duty and registration fees on this residence agreement.

You must pay all the costs you incur complying with your obligations under this residence agreement.

# Schedule A - Operating Costs

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## A1. Operating Costs

### What are the Operating Costs

The Operating Costs are the total of all expenses we incur in connection with the ownership, operation, management and administration of the Village, other than:

- (a) amounts payable directly by you or another Resident;
- (b) the direct costs of providing Personal Services;
- (c) costs for maintaining and repairing the Village's capital items that are payable out of the Maintenance Reserve Fund; or
- (d) costs for capital items that are payable out of the Capital Replacement Fund.

### Specific inclusions in the Operating Costs

The Operating Costs include the costs of:

- (a) rates, charges and taxes we have to pay to a government, council or public authority in respect of the Village, but not income tax, capital gains tax or GST;
- (b) body corporate levies we must pay with respect to the Village;
- (c) water, gas, oil, electricity, communications, sewerage, waste disposal and other services supplied to the Village, common areas and administration areas (but excluding individual units);
- (d) insurance for the Village, including for public risk, fire, lightning, storm, tempest, flood, earthquake, malicious act, explosion, impact and riot or civil commotion and such other risks we think necessary to cover against from time to time;
- (e) cleaning that Residents are not obliged to do;
- (f) lawn mowing and gardening, including replacing dead plants, mulching, spraying and fertilising;
- (g) services we provide to Residents of the Village (except for services for which we directly charge);
- (h) minor repairs and day to day maintenance (including preventative maintenance) necessary to keep the Village in good order and condition, including provision at our discretion for future contingencies;
- (i) expert reports relevant to the operation of the Village;
- (j) fire fighting and protection equipment and services, including sprinkler systems, hydrants, fire extinguishers and smoke detectors;
- (k) monitoring and responding to the emergency call system and the other security services and emergency care services in the Village;
- (l) the operation and day to day maintenance of vehicles used for the operation of the Village or transport of residents of the Village, including insurance, registration, servicing, oil and petrol;
- (m) plant, equipment and software;

- (n) contractors we engage from time to time;
- (o) a reasonable share of any off-site administration and management costs;
- (p) wages, salaries, employee benefits, payroll tax, workers' compensation insurance premiums and other employment costs for our employees relating to the Village;
- (q) administration, management, accounting, audit, legal and banking costs for the operation of the Village;
- (r) staff education and in-service training;
- (s) interest on borrowings we have in connection with the operation, management and administration of the Village;
- (t) complying with laws and the requirements of authorities relating to the operation, management and administration of the Village;
- (u) auditors/experts engaged to resolve any dispute between us and Residents (including you) in respect of the reasonableness or fairness of the calculation of the General Services Charge;
- (v) expenditures carried forward from any previous accounting period;
- (w) any excess payable under an insurance policy (as referred to in clause 13.2);
- (x) costs of obtaining the opinions or reports of experts or consultants;
- (y) all costs of or incidental to resolving disputes including the mediation of disputes between a Resident and the Operator unless the mediator decides otherwise.

# Signing page

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**EXECUTED** as an agreement.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

**SIGNED** by **SEVENTH-DAY ADVENTIST AGED** )  
**CARE (SOUTH QUEENSLAND) LIMITED** by its )  
authorised representative in the presence of )

**Dated**

-----  
Witness

/ /

**THE RESIDENT** whose name or names appear in )  
Item 1 of the Information Table of this Agreement in )  
the presence of )

**Dated**

-----  
Signature of witness

/ /

-----  
Name of witness

**THE RESIDENT** whose name or names appear in )  
Item 1 of the Information Table of this Agreement in )  
the presence of )

**Dated**

-----  
Signature of witness

/ /

-----  
Name of witness (print)

The Stakeholder acknowledges having received the deposit specified in Item 6 of Schedule 1 and agrees to hold it as a Stakeholder as provided in this Agreement.

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