



Russell Kennedy
Lawyers

BAPTIST VILLAGE BAXTER LIMITED
ACN 006 640 544
of 8 Robinsons Road, Frankston South, Victoria, 3199
("Owner")

##[INSERT FULL NAME OF INCOMING RESIDENT(S)] AND
Resident's Premises: Unit ##[Unit] Rosebud Village, 287-323 Bayview Road, Rosebud, Victoria 3939
("Resident")

Regulation 14(1)

ROSEBUD VILLAGE RESIDENCE CONTRACT

COOLING-OFF RIGHT

Under section 24 of the **Retirement Villages Act 1986**, you may cancel this contract at any time before the expiry of 3 clear Business Days after you have signed this contract, by:

- giving a notice of cancellation to the Owner or our agent; or
- sending the notice to the Owner at the above mentioned address for service of notices or to the address of our agent.

If you cancel, the Owner may retain \$100 or 0.2% of the in-going contribution, whichever is greater.

Date contract signed: 20##

Name and address of Village owner: **BAPTIST VILLAGE BAXTER LIMITED**
ACN 006 640 544
of 8 Robinsons Road, Frankston South, Victoria,
3199
(referred to in this Contract as "**Owner**")

Address for service of notices: As above

Name and address of Resident: ##[Name of Resident] AND
of ##[Address] Unit ##[Unit] Rosebud Village,
287-323 Bayview Road, Rosebud, Victoria 3939
(referred to in this Contract as "**Resident**")

Address of Resident's Premises: Unit ##[Unit] Rosebud Village, 287-323 Bayview
Road, Rosebud, Victoria 3939
(referred to in this Contract as "**Resident's
Premises**")

Date of Resident's occupation of Resident's
premises/~~date of Resident's right to occupy
premises (delete whichever is inapplicable):~~ _____

Date contract commences *(if different from
above):* _____
(referred to in this Contract as "**Commencement
Date**")

Term of contract/~~date contract expires (delete
whichever is inapplicable):~~ 99 years, unless terminated earlier in accordance
with this Contract.

Garage, storeroom and parking entitlements: #[include details of storeroom included with
Lease]

Fixtures, Fittings and Furnishings provided by
the Village owner with the Resident's Premises
are as follows: As listed in Schedule Two

OPERATIVE WORDS

- 1 The Owner is the owner of the Village.
- 2 In consideration of the payment of the Capital Sum and the covenants made by the Resident under this Contract, the Owner grants a lease of the Resident's Premises on and from the Commencement Date.
- 3 The Resident must enter into the Management Contract.

PRESCRIBED TERMS UNDER REGULATION 13 OF THE RETIREMENT VILLAGES (CONTRACTUAL ARRANGEMENTS) REGULATIONS 2017

4 Primacy of the Retirement Villages Act 1986 and regulations

This Contract must comply with the **Retirement Villages Act 1986**, the regulations made under that Act and any other applicable legislation, and is void to the extent of its inconsistency with that Act, those regulations and other applicable legislation, including any inconsistency with these prescribed terms.

5 Basic obligations of the Owner

The Owner must:

- (a) give exclusive and vacant possession of the Resident's Premises in a clean and tidy condition; and
- (b) use best endeavours to ensure that the Owner's tenants, employees and invitees or other persons lawfully on Village premises comply with the by-laws relating to the Village; and
- (c) obtain the Resident's consent to enter the Resident's Premises unless in an emergency or if a Resident's safety or property is endangered, subject to any other term that enables entry for reasonable cause on reasonable notice; and
- (d) give receipts for payments made by the Resident and keep a record of such payments.

6 Basic obligations of the Resident

The Resident must:

- (a) use best endeavours to ensure that the Resident's invitees or other persons lawfully on the Resident's Premises comply with the by-laws relating to the Village; and
- (b) respect the rights of other residents and persons in the Village; and
- (c) not interfere with other residents' reasonable peace, comfort and privacy; and
- (d) respect the rights of the Owner, its employees and agents to work free from harassment and intimidation; and

- (e) not adversely affect the occupational health and safety of people working in the Village; and
- (f) if the Owner exercises a right to relocate the Resident to other premises with the consent of the Resident, not withhold consent unreasonably.

7 Basic rights of the Resident

The Resident has the right:

- (a) to any payment that the Owner is liable to make consequent on the Resident leaving the Village or dying, unaffected by termination of the residence contract, whether for breach of contract or otherwise; and
- (b) to remove any fixture that the Resident has added to the Resident's Premises (for which there is no agreement to leave in place) at any time before permanently vacating the premises, subject to making good any damage caused by the removal.

8 General

- (a) These prescribed terms, and any other terms prescribed under the **Retirement Villages Act 1986** or regulations, take precedence over any inconsistent terms of this Contract or any inconsistent By-laws relating to the Village.
- (b) The Owner and the Resident must deal with each other in good faith.

MATTERS REQUIRED BY REGULATION 11 OF THE RETIREMENT VILLAGES (CONTRACTUAL ARRANGEMENTS) REGULATIONS 2017 TO BE ADDRESSED

9 Costs payable on entry [refer to regulation 11(2)(j)]

- 9.1 The Resident must pay the Capital Sum to the Owner on or before the Commencement Date. The Resident is not entitled to possession of the Resident's Premises until this amount has been paid in full.
- 9.2 No interest is payable to the Resident in relation to the Capital Sum.

10 Costs payable during residency [refer to regulation 11(2)(k)]

Charges under Management Contract

- 10.1 From the Commencement Date, the Resident must duly and punctually pay any recurrent costs and charges as set out in the Management Contract. The Management Contract sets out how these amounts are calculated and the date they cease to be payable after this Contract terminates.

Rates and Taxes

- 10.2 From the Commencement Date, the Resident must pay all rates taxes, charges and outgoings which are separately assessed against the Resident's Premises by any relevant authority (including all municipal rates, water rates and state land tax) either:
 - (a) directly to the authority by the relevant due date for payment; or

- (b) to the Owner upon demand if the Owner has paid those amounts on the Resident's behalf.

10.3 Such amounts continue to be payable until the earlier of:

- (a) 14 days after the Owner receives the New Capital Sum from the New Resident;
- (b) 14 days after the New Resident takes up permanent occupation of the Resident's Premises; and
- (c) 6 months after this Contract is terminated and the Resident has provided vacant possession of the Resident's Premises to the Owner.

Utilities

10.4 The Resident must pay all charges for gas, electricity, telecommunications, water consumption and all other utilities and services assessed against the Resident's Premises either:

- (a) directly to the relevant provider by the relevant due date for payment; or
- (b) to the Owner upon demand if the Owner has paid those amounts on the Resident's behalf or provided the relevant utilities and services to the Resident.

10.5 Such amounts continue to be payable by the Resident upon termination of this Contract until the earlier of:

- (a) 14 days after the Owner receives the New Capital Sum from the New Resident;
- (b) 14 days after the New Resident takes up permanent occupation of the Resident's Premises; and
- (c) 6 months after this Contract is terminated and the Resident has provided vacant possession of the Resident's Premises to the Owner.

Personal Services

10.6 The Resident must pay to the Owner, any charges for the provision of any Personal Services provided by the Owner by way of:

- (a) direct debit from the Resident's Bank Account; or
- (b) as otherwise notified by the Owner or the Manager to the Resident in writing from time to time.

10.7 The charges for any Personal Services may be varied from time to time by the Owner depending on the Personal Services provided and the costs of providing those services. The Owner will notify the Resident of any such variation and the variation will apply from the date the Owner gives notice of the variation to the Resident.

10.8 Upon termination of this Contract, any charges for any Personal Services provided to the Resident continue to be payable to the Owner until the expiration of 28 days after the Resident provides vacant possession of the Resident's Premises to the Owner.

11 Costs payable on departure [*refer to regulation 11(2)(l)*]

11.1 Upon the earliest to occur of the following:

- (a) 14 days after the Owner receives the New Capital Sum from the New Resident;
- (b) 14 days after the New Resident takes up permanent occupation of the Resident's Premises; and
- (c) 6 months after this Contract is terminated and the Resident has provided vacant possession of the Resident's Premises to the Owner,

the Resident must pay the amounts set out in clause 11.2.

11.2 On the date set out in clause 11.1, the Resident must pay the following amounts to the Owner:

- (a) the Deferred Fee;
- (b) the Administrative Fee;
- (c) the Asset Replenishment Fee which the Owner will pay to the Maintenance Fund;
- (d) all costs reasonably incurred by the Owner in carrying out any works to the Resident's Premises to bring the Resident's Premises to the condition required under clause 14 of the Management Contract;
- (e) all costs reasonably incurred by the Owner for legal costs, the costs of advertising and marketing fees, and any fees paid to any estate agent engaged to re-let the Resident's Premises;
- (f) any Maintenance Charges or other moneys owing by the Resident to the Owner or the Association under this Contract, the Management Contract or otherwise; and
- (g) any GST which the Owner is liable to pay on the amounts referred to in clauses 11.2(a) to 11.2(f).

12 Owner's legal costs [*refer to regulation 11(2)(i)*]

Each party must bear their own legal costs and any other charges in relation to the preparation and completion of this Contract.

13 Costs of renovation or reinstatement [*refer to regulation 11(2)(q)*]

The Resident must reimburse the Owner for any costs the Owner incurs for reinstatement works which may be required to be carried out to the Resident's Premises in order to bring the Resident's Premises to the standard required in the Management Contract.

14 Resident's exit entitlement [*refer to regulation 11(2)(m) and (n)*]

14.1 Upon the earliest to occur of the following:

- (a) 14 days after the Owner receives the New Capital Sum from the New Resident;

- (b) 14 days after the New Resident takes up permanent occupation of the Resident's Premises; and
- (c) 6 months after this Contract is terminated and the Resident has provided vacant possession of the Resident's Premises to the Owner,

the Owner must pay to the Resident:

- (d) an amount equal to the Capital Sum
- (e) less the fees, costs and charges set out in clause 11.2

14.2 The effect of clause 14.1 is that:

- (a) if the New Capital Sum is higher than the Capital Sum ("**Capital Gain**"), the Capital Gain is for the benefit of the Owner;
- (b) if the Capital Sum is higher than the New Capital Sum ("**Capital Loss**"), the Capital Loss is borne by the Owner.

14.3 The Owner may retain the balance of the New Capital Sum (or if the Resident's Premises are sold, the proceeds of sale) for its own use absolutely.

14.4 Payment under clause 14.1 must be made:

- (a) to the Resident, or if there is more than one person named as the Resident, to the Residents in equal proportions or as the Residents may direct; or
- (b) if the Resident is deceased, to the Resident's legal personal representatives after receipt by the Owner of a certified copy of the grant of probate of the Resident's will or letters of administration of the Resident's estate.

15 Maintenance of the Resident's Premises [*refer to regulation 11(2)(p)*]

The Resident must comply with the Resident's covenants as set out in the Management Contract in relation to the maintenance of the Resident's Premises and clause 26 of this Contract.

16 Village insurance [*refer to regulation 11(2)(o)*]

The insurances as set out in the Management Contract will be procured by the Owner and/or the Association in relation to the Village.

17 Any restrictions relating to the Resident's Premises [refer to regulation 11(2)(a) to (g)]

17.1 **Compliance with Management Contract**

The Resident must comply with the Management Contract.

17.2 **Alterations and Additions [Note Reg. 11 (2)(a)]**

The Resident must comply with the obligations set out in the Management Contract with regard to alterations and additions to the Resident's Premises and clause 26 of this Contract.

17.3 **Transfer to other Units [Note: Reg. 11(2)(b)]**

The Resident has no right to transfer to other Units in the Village or to other types of accommodation.

17.4 **Design, construction of Resident's Premises [Note: Reg 11(2)(c)]**

If the Resident's Premises are incomplete, the Resident has no ability to determine the design, construction and furnishing of the Resident's Premises except with the Owner's consent.

17.5 **Use of Resident's Premises [Note: Reg. 11(2)(d)]**

The Resident must not use or permit the Resident's Premises to be used for any purpose other than as a private residence. The Resident must not use the Resident's Premises for any illegal purpose or allow the Unit to be used so as to cause any breach of any Act of Parliament or any regulation or by-law. Other restrictions on the use of the Resident's Premises are set out in the By-laws and in Schedule Four.

17.6 **Car Parking [Note: Reg. 11(2)(e)]**

The Resident must not:

- (a) use or allow to be used any car park area which the Resident may be permitted to use for any purpose other than for parking a motor vehicle in a fair and reasonable manner. The parking of any motor vehicle larger than a sedan or station wagon shall be deemed to be an unreasonable use;
- (b) assign or sublet any right to use a car park area without the Owner's prior written consent; or
- (c) use any area for car parking purposes within the Village which is not designated for car parking.

17.7 **Pets [Note: Reg. 11 (2)(e)]**

The Resident must not keep any bird or animal at the Resident's Premises or the Village without the prior written approval of the Owner which may be given or withheld at the Owner's absolute discretion.

17.8 **Guests [Note: Reg. 11(2)(e)]**

The Resident must:

- (a) not allow any other person to reside in the Resident's Premises for any period of time in excess of one month in any calendar year without the prior consent of the Owner;
- (b) not permit any person to occupy the Resident's Premises for a period of more than 2 days while the Resident is absent without the prior consent of the Owner; and
- (c) advise the Owner within 24 hours of the arrival of any guest of the Resident intending to occupy the Resident's Premises..

17.9 Dealing with interest in Resident's Premises [Note: Reg. 11(2)(f)]

The Resident must not, without the Owner's prior written consent:

- (a) transfer, assign, sublet or otherwise part with possession of the Resident's Premises. Section 144 of the Property Law Act 1958 does not apply to this Contract; and/or
- (b) mortgage, charge or otherwise encumber the Resident's interest in the Resident's Premises (with the exception of the charge given under the Management Contract).

17.10 Access to Resident's Premises [Note: Reg. 11(2)(g)]

- (a) The Resident must permit the Owner at all reasonable times (except in the case of emergency in which case clause 17.10(b) applies) to:
 - (i) enter the Resident's Premises to enable the Owner to comply with any of its obligations under this Contract or the Management Contract;
 - (ii) carry out any maintenance work to the Resident's Premises or any other resident's premises or any other part of the Village;
 - (iii) to read any meter or measuring device or inspect any installation for the provision of utility services to the Resident's Premises, or any other resident's premises or any other part of the Village;
 - (iv) enter the Resident's Premises to examine its state and condition. If the Resident fails to comply with the Resident's obligations under this Contract, the Resident must also allow access by such workmen as the Owner may consider necessary for the purpose of maintaining the Resident's Premises in a reasonable and safe state of repair and condition at the Resident's cost; and
 - (v) show prospective residents through the Resident's Premises if the circumstances set out in clause 18.2 arise.

However, the Owner must not use such right of inspection to harass or embarrass the Resident or to interfere with the Resident's right of quiet enjoyment beyond what is necessary for the proper maintenance and repair of the Resident's Premises. The Resident acknowledges that the grounds upon which the Owner may access the Resident's Premises under this clause are reasonable.

- (b) The Resident must permit the Owner to deal with any emergency which appears, in the reasonable opinion of the Owner, its officers, servants or

agents, to exist. In that event, the Owner, its officers, servants or agents may enter the Resident's Premises at any time and by whatever means as the Owner, its officers, servants or agents may deem appropriate.

17.11 Relocation [*Note Reg. 11(h)*]

The Owner may require the Resident to relocate from the Resident's Premises in the circumstances set out in clause 27 (where the Resident's Premises are damaged or destroyed).

17.12 Other restrictions

Other restrictions in relation to the Resident's Premises are set out in the Management Contract.

18 Termination and amendment of the Contract [*refer to regulation 11(2)(r) and (s)*]

18.1 This Contract commences on the Commencement Date and continues for a term of 99 years, unless terminated earlier under clause 18.2.

18.2 This Contract will terminate on the happening of any of the following events:

- (a) on the death of the Resident, or if more than one person is named as Resident, on the death of the last of the survivors;
- (b) 30 days after the date of the Resident's written notice to the Owner of the Resident's intention to terminate this Contract. If there is more than one Resident, this notice must be given by each of them unless, in the Owner's opinion, they are incapable of doing so, in which case, the notice may be given by the persons who are so capable;
- (c) if two qualified medical practitioners (one appointed by the Owner and the other nominated by the Resident) certify in writing that the Resident needs care of a kind not available at the Village, this Contract terminates after the Owner has complied with section 16(5) of the Act (a summary of which is set out in Schedule Five. For the purpose of the medical assessment, the Resident agrees to be examined and assessed by the Owner's medical practitioner and to be bound by his or her decision in consultation with the Resident's medical practitioner and the Owner; or
- (d) if the Resident breaches this Contract, this Contract terminates after the expiry of the notices served by the Owner under sections 16(2) and (3) of the Act (a summary of which is set out in Schedule Five).

18.3 After this Contract has been properly executed by the parties, the Resident has the right to refuse to any amendments which the Owner may wish to make to this Contract.

19 The Village by-laws [*refer to regulation 11(2)(t) – unless set out in the management contract*]

The Resident must comply with the Village By-Laws. As at the date of this Contract the Village By-Laws are those set out in the Management Contract.

**OTHER TERMS – WHICH MUST NOT INCLUDE ANY TERM PROHIBITED
BY THE RETIREMENT VILLAGES ACT 1986 OR REGULATIONS**

20 Residence Documents

20.1 The Resident acknowledges, warrants and confirms that:

- (a) the Resident received a copy of the factsheet and disclosure statement (both as defined in the Act), this Contract, the Management Contract and the Village By Laws (if any) (together "**Residence Documents**") at least 21 days before entering into this Contract;
- (b) the Resident has had the opportunity to seek independent legal, financial and any other advice the Resident deems necessary in relation to the Residence Documents provided to the Resident;
- (c) the Resident has had the opportunity to inspect the Resident's Premises and the Village, and is satisfied with the condition, appearance and state of repair of the Resident's Premises and the Village;
- (d) all information provided by the Resident to the Owner before signing this Contract is true and correct at the time the information was provided; and
- (e) the Owner has not made any representations to the Resident to the effect that medical care will be available to the Resident at the Village, or that the Resident may reside in or have priority on any waiting list to enter any residential aged care facilities owned or operated by the Owner.

20.2 The date of this Contract, the Occupation Date and the Commencement Date are as set out in page 2 of this Contract. However, if after this Contract has commenced, and for any reason whatsoever, any of these dates have not been so inserted, the Owner or the Owner's legal practitioner is deemed authorised by the Resident to insert the relevant dates into page 2 of this Contract. In that event, the Owner or the Owner's legal practitioner must notify the Resident that the relevant dates have been inserted according to this clause.

21 Resident's covenants

The Resident covenants with the Owner to:

- 21.1 enter into the Management Contract on or before the Commencement Date;
- 21.2 perform and observe the covenants imposed on the Resident under this Contract, including those specified in Schedule Three

22 Owner's covenants

The Owner covenants with the Resident to perform and observe the covenants imposed on the Owner under this Contract, including those specified in Schedule Four.

23 Use of Common Facilities

The Owner permits the Resident to use the Common Facilities in common with other residents residing in the Village. However, the Resident must comply with the following conditions:

- (a) the Resident must comply with any particular rules, such as hours of use and booking procedures set by the Owner or the Association from time to time; and
- (b) the Resident must not alter any part of the Common Facilities without the Owner's or, if applicable the Association's consent, which may be given or refused in the Owner's absolute discretion.

24 Disposal of the Resident's Premises

After termination of this Contract:

- (a) the Owner will use its reasonable endeavours to locate a new resident for the Resident's Premises who qualifies for occupancy at the Village and on the terms then applying to residence contracts and management contracts for the Village; and
- (b) the Owner will assist the New Resident to procure the New Resident's membership to the Association.

25 Cost of additional services

If a notice has been served on the Resident pursuant to section 16(5) of the Act (a summary of which is set out in Schedule Five) the Owner may, at the Resident's cost, provide such additional services as the Resident may require until such time as the Resident vacates the Village. In that event, the Owner is entitled to deduct such costs from any money payable by the Owner to the Resident under this Contract.

26 Acknowledgement of condition of Resident's Premises

26.1 The Resident acknowledges that:

- (a) a previous resident may have carried out alterations, additions or improvements ("**alterations**") to the Resident's Premises;
- (b) the onus is on the Resident to ascertain what, if any, alterations have been carried out to the Resident's Premises; and
- (c) the Owner accepts no responsibility for the repair or maintenance of the alterations.

26.2 The Resident must repair and maintain the alterations. The Resident's failure to ascertain whether the alterations (if any) have been carried out by a previous resident does not release the Resident from its obligations under this clause.

26.3 If the Resident is unwilling or unable to effect any necessary repair or maintenance works to the alterations, the Owner may remove the alterations at the Owner's cost.

27 Damage to Resident's Premises

27.1 If the Resident's Premises or any part of it is at any time destroyed or damaged so as to render it substantially unfit for the Resident's occupation, the Owner may, at its absolute discretion, choose to reinstate the Resident's Premises as soon as reasonably possible. Until reinstatement has been completed, the Owner may, at its absolute discretion, and by written notice to the Resident, choose to:

- (a) relocate the Resident to other premises in the Village of similar value to the Resident's Premises; or
- (b) make any alternative arrangements as may be mutually agreed by the parties.

27.2 If the Owner chooses not to reinstate the Resident's Premises, this Contract comes to an end from the date that the Owner notifies the Resident of its decision not to reinstate the Resident's Premises. Termination of this Contract does not affect any rights of the parties which may have accrued before the date of termination.

28 Resident's goods

Subject to any legislation to the contrary, if upon the termination of this Contract there remains in the Resident's Premises any goods or chattels belonging to the Resident:

- 28.1 the Owner may give to the Resident or the Resident's legal personal representative 14 days' written notice to remove those items;
- 28.2 if the Resident or the Resident's legal personal representative fails to comply with that notice, the Owner may then, at the Resident's expense:
 - (a) arrange storage of those items; or
 - (b) sell those items and pay the net sale proceeds to the Resident or the Resident's legal personal representative;
 - (c) the Owner is not liable for any loss suffered by the Resident as a result of any reasonable action taken by the Owner under this clause; and
 - (d) the Owner is entitled to deduct from any money payable to the Resident under this Contract any expenses it incurs in storing and/or selling those items.

29 Interest on late payment

If the Resident defaults in payment of any money due under this Contract, then interest at the rate being 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* computed upon the money overdue during the period of default shall be paid by the Resident to the Owner without necessity for a demand and without prejudice to any other rights or remedies of the Owner.

30 Resident's releases and indemnities

- 30.1 The Resident occupies the Resident's Premises and the Village at the Resident's own risk. The Resident releases to the full extent permitted by law, the Owner and its agents, contractors and employees, in the absence of negligence on their part, from all claims resulting from any accident, damage or injury suffered by the Resident in the Village. This includes personal injury to the Resident and loss of or damage to the Resident's property.
- 30.2 The Resident indemnifies the Owner against all claims, damages and expenses arising from:
 - (a) the negligent use, misuse or waste by the Resident or any invitee of the Resident of the water, electricity, gas and other services and facilities in and to the Resident's Premises;

- (b) overflow of water originating from the Resident's Premises and caused or contributed to by the Resident or any invitee or agent of the Resident; and
- (c) loss, damage or injury to property or person caused or contributed to by the Resident or any invitee of the Resident.

31 Loss or damage

The Resident must pay all losses and expenses incurred by the Owner (other than any costs incurred by the Owner in enforcing this Contract) as a result of any breach of this Contract by the Resident.

32 Goods and services tax

Each amount, of whatever description, payable by the Resident to the Owner under this Contract is expressed exclusive of GST. In addition to any amounts payable, the Resident must, to the extent permitted by law, pay to the Owner on demand, a sum equivalent to the GST payable, if any, by the Owner in respect of that amount.

33 Notice

Any notice required to be served under this Contract shall be sufficiently served on the relevant party if it is posted to or left at the following address:

To the Owner: the Owner's address stated in this Contract, or such other address advised by the Owner to the other parties in writing from time to time

To the Resident: the Resident's Premises.

In the case of service by post, service is deemed to have been effected two clear Business Days after posting.

34 Applicable law

This Contract is governed by the laws of Victoria.

35 Alterations to Village

Subject to the Owner's compliance with its obligations under this Contract, the Resident acknowledges that nothing in this Contract will prevent the Owner from at any time extending, reducing or altering the Village, including making any alterations to the general layout, siting and sizing of resident premises, the Common Facilities or the overall size of the Village.

36 Winding up of Association and Owners Corporation

If:

36.1 the Association is wound up; and

36.2 the Lot Owners resolve (following consultation with the Residents) or the Victorian Civil and Administrative Tribunal orders that the Owners Corporation be dissolved,

then the Owner may request and the Resident agrees to do all things, and sign all documents, that the Owner and the Association reasonably requires to enable the Association to be wound up and the Plan of Subdivision to be amended or cancelled as required under the *Subdivision Act 1988 (Vic)*.

37 Privacy

- 37.1 The Resident may be required to disclose Personal Information to the Owner.
- 37.2 The Resident consents to the Owner's collection, use and disclosure of the Resident's Personal Information in accordance with this Contract, the Privacy Act and the privacy policy adopted by the Owner for the collection, use and disclosure of Personal Information of residents.
- 37.3 The Owner must collect, use and disclose any Personal Information provided by the Resident as set out in this Contract, the Privacy Act and the Owner's Privacy Policy.

38 Further assurances

The parties all agree that they will sign all further documents and do all things necessary for giving effect to the terms of this Contract.

39 Accrued rights

The termination of this Contract shall not affect any rights of the parties which may have accrued before the date of termination.

40 Legal Personal Representatives

This Contract shall be binding upon the Resident's Personal Representatives.

41 General

- 41.1 The parties agree that they will sign all further documents and do all things necessary in order to give effect to the terms of this Contract.
- 41.2 No variation or waiver of any provision of this Contract has any force or effect unless confirmed in writing and signed by the parties. The agreed variation or waiver shall be effective only to the extent for which it may be made or given.
- 41.3 No failure, delay or indulgence on the part of either party in exercising any of that party's rights under this Contract operates as a waiver of such right. A single or partial exercise of any such right does not preclude any other or future exercise of that right, or the exercise of any other right under this Contract.
- 41.4 If any provision of this Contract is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions are and continue to be valid and enforceable in accordance with their terms.
- 41.5 Any provision of this Contract capable of having effect after termination of this Contract continues to have full force and effect notwithstanding such termination.

42 Special conditions

The parties agree to comply with any special conditions set out in item 5 of Schedule One.

43 Definitions

- 43.1 "**Act**" means the *Retirement Villages Act 1986 (Vic)*.

- 43.2 "**Administrative Fee**" means the fee in the amount set out in item 2 of Schedule One, being the fee payable to the Owner for services rendered by the Owner during and up to the granting of a new licence of the Resident's Premises including opening the Resident's Premises from time to time for inspection by prospective new residents, liaising and co-ordinating with the cleaners and other workmen in cleaning and carrying out necessary refurbishment or repair works to the Resident's Premises, interviewing and meeting with prospective new residents to ensure their suitability to life in the Village, and promoting and advertising the Resident's Premises.
- 43.3 "**Asset Replenishment Fee**" means the Resident's additional contribution towards major maintenance works or works of a capital nature to the Village, of a substantial or infrequent nature, and is fixed at the amount specified in item 3 of Schedule One.
- 43.4 "**Association**" means Rosebud Retirement Village Services Association Inc. (No. A0034012Z) and any successor.
- 43.5 "**Business Day**" means a day other than a Saturday, Sunday or public holiday in Melbourne.
- 43.6 "**By-Laws**" or "**Village By-Laws**" means any rules or regulations for the Village as amended or adopted from time to time.
- 43.7 "**Capital Sum**" means the amount specified in item 1 of Schedule One.
- 43.8 "**Commencement Date**" means the date this Contract commences, being the date set out on page 2 of this Contract.
- 43.9 "**Common Facilities**" means those areas, facilities or amenities of the Village set aside by the Association or the Owner for the enjoyment and common use of all the residents of the Village from time to time, but excludes any building intended for the exclusive occupancy of any resident and any administration areas.
- 43.10 "**Common Property**" means those areas and facilities on the Plan described as common property and set aside for the common use of all residents.
- 43.11 "**Contract**" means this contract including any schedules or annexures to this contract.
- 43.12 "**Deferred Fee**" means an amount equal to the amount set out in item 4 of Schedule One.
- 43.13 "**Eligible Resident**" means a retired person as defined in the Act, who is capable of independent living, is ambulant and suitable to reside in the Resident's Premises, and if required by the Owner, has been assessed by a medical practitioner as being so suitable to reside at the Resident's Premises.
- 43.14 "**Financial Year**" means each 12 month period commencing on the 1 July and terminating on the next succeeding 30 June.
- 43.15 "**Fixtures, Fittings and Furnishings**" means the fixtures, fittings and furnishings owned by the Owner in the Resident's Premises described in Schedule Two.
- 43.16 "**GST**" means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.

- 43.17 "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 43.18 "**input tax credit**" has the meaning ascribed to it by:
- (a) the GST Act; or
 - (b) if the GST Act is repealed or no longer contains a definition of "input tax credit" but a GST is still levied, the term, if any, in the Act which imposes the GST that most closely approximates the meaning ascribed to the term "input tax credit" by the GST Act (at the date of this Contract).
- 43.19 "**Land**" means all the land in the Plan upon which the Village is built.
- 43.20 "**Lot Owners**" means all the members of the Owners Corporation.
- 43.21 "**Maintenance Charge**" has the meaning given in the Management Contract.
- 43.22 "**Management Contract**" means the management contract dated on or about the same date of this Contract and entered into between the Resident, the Owner and the Association.
- 43.23 "**Maintenance Fund**" has the meaning given in the Management Contract.
- 43.24 "**New Capital Sum**" means the new Capital Sum received from a New Resident in respect of the Resident's Premises.
- 43.25 "**New Resident**" means a new occupant of the Resident's Premises to be procured by the Owner, and who" must be an Eligible Resident.
- 43.26 "**Occupation Date**" means the date of the Resident's right to occupy the Resident's Premises, being the date set out on page 2 of this Contract.
- 43.27 "**Owner**" means the party so named on page 2 of this Contract and includes any successors or assigns.
- 43.28 "**Owners Corporation**" means owners corporation plan no. RP15252.
- 43.29 "**Personal Information**" has the meaning given in the Privacy Act.
- 43.30 "**Personal Representative**" means has the same meaning as that term has for the purposes of the *Administration and Probate Act 1958* (Vic).
- 43.31 "**Personal Services**" means additional services which the Owner or the Association may from time to time make available to the Resident on a user pays basis.
- 43.32 "**Plan**" means plan of strata subdivision RP15252.
- 43.33 "**Privacy Act**" means the *Privacy Act 1988* (Cth) and includes the Australian Privacy Principles as defined in that Act.
- 43.34 "**Regulations**" means the *Retirement Villages (Contractual Arrangements) Regulations 2017* (Vic).
- 43.35 "**Resident**" means the party so named on page 2 of this Contract and if there is more than one person named, includes the survivor or survivors of them.

- 43.36 "**Resident's Premises**" means the premises so described on page 2 of this Contract.
- 43.37 "**Unit**" means a unit in the Village, and where the context permits, includes the Resident's Premises.
- 43.38 "**Village**" means the retirement village known as Rosebud Village located at 287-323 Bayview Road, Rosebud, Victoria, 3939 and all improvements built on the Land.
- 43.39 "**Village Manager**" means the person or corporation appointed by the Owner to manage the day-to-day affairs of the Village.

44 Interpretation

In this Contract, unless the contrary intention appears:

- 44.1 the singular includes the plural and vice versa;
- 44.2 words importing one gender include other genders;
- 44.3 a reference to a document or instrument, including this Contract, includes that document or instrument as novated, altered or replaced from time to time;
- 44.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 44.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 44.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 44.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
- (a) two or more parties; or
- (b) a party comprised of two or more persons,
- is made or given and binds those parties or persons jointly and severally;
- 44.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 44.9 a recital, schedule, annexure or description of the parties forms part of this Contract;
- 44.10 if an act must be done on a specified day that is not a business day, the act must be done instead on the next business day;
- 44.11 if an act required to be done under this Contract on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 44.12 all monetary amounts are in Australian dollars;

- 44.13 a party that is a trustee is bound both personally and in its capacity as trustee;
- 44.14 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- 44.15 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Contract.

SCHEDULE TWO

Fixtures, Fittings and Furnishings provided by the Owner with the Resident's Premises:

Item	Tick if provided
Fixed floor coverings	
Internal window furnishings (curtains, blinds, shutters)	
Hot water system	
Heater or heating system	
Stove/cooktop	
Light fittings	
Taps and bathroom fittings	
Ceiling fan	
Clothes line (in rear courtyard/garden)	
Ducted heating or cooling system	
External window furnishings (blinds, awnings)	
Flyscreens to windows or doors	
Power and telecommunications fittings (including data connection points)	
Rangehood	
Reverse cycle air-conditioning/heating system (including condenser)	
Security screen door	
Smoke detectors/alarms	
Solar energy equipment	
Telephone handset	
Water tank	
Emergency call duress buttons and pendant	
Oven/stove/cooktop	

**SCHEDULE THREE
COVENANTS BY THE RESIDENT**

The Resident covenants as follows:

1 Electricity and telephone services

to use the Village phone and electricity networks as required. The Resident acknowledges that these networks are integral to the overall security system for emergency alarms and fire detection within the Village;

2 Interference with services and service networks

not to interfere with the telephone, electricity, gas or other service installation or network in the Resident's Premises, or to install any other telephone, electricity or other service network at the Resident's Premises without the prior written consent of the Owner or the Association;

3 Damage to Resident's Premises or village

to make good at the Resident's cost, any damage which may be caused by the Resident to the Resident's Premises or to any part of the Village by reason of any act or omission on the part of the Resident;

4 By-laws

to comply and ensure that the Resident's guests and invitees comply with the by-laws, and with any resolutions of the residents committee or the Association;

5 Reimbursement for repairs

to reimburse the Owner upon demand the cost of any repairs or other works carried out by the Owner arising from the deliberate or negligent act of the Resident or any guest or invitee of the Resident;

6 No nuisance

not to do or allow the Resident's guests or invitees to do anything within the Village which may be a nuisance, annoyance or disturbance to or harm the staff, other residents and their guests and neighbours of the Village or anything illegal;

7 No dangerous goods

not to store or permit to be stored in the Resident's Premises or any part of the Common Facilities any dangerous materials or goods;

8 Insurance policies

not to do or permit to be done anything which may in the reasonable opinion of the Owner:

8.1 invalidate or contravene the terms of any insurance policy affecting the Village or the activities carried on at the Village;

8.2 render cover under such policies to be denied; or

8.3 cause the premiums in respect of those policies to be increased;

9 Fire regulations

to comply with all fire regulations applicable to the Resident's Premises and the Village;

10 No auction

not to hold or permit to be held any sale or auction in the Resident's Premises or on any part of the Common Facilities without the prior written consent of the Owner;

11 Signs

not to display or allow to be displayed at the Resident's Premises any placard, advertisement or sign;

12 Absences

not to leave the Resident's Premises unoccupied for any period of time that would result in the Resident's Premises no longer being the Resident's principal place of residence unless prior written notice has been given to the Owner;

13 Will and power of attorney

to advise the Owner of:

13.1 the name and address of the executor appointed in the Resident's will (if any);
and

13.2 any power of attorney made by the Resident and to whom the power is granted;

14 Illness

to notify the Owner of any infectious or contagious illness that affects the Resident or any occupier of the Resident's Premises;

15 Gardens and plants

15.1 not to, without the prior written consent of the Owner:

15.1.1 alter, modify or interfere with any gardens established at the Village or remove any plants that have been planted at the Village by or on behalf of the Owner;

15.1.2 plant any plants that have been declared noxious weeds by any local government, statutory or other relevant authority;

15.1.3 alter, modify or interfere with the shape of existing lawn areas by way of plants or otherwise;

15.1.4 interfere with lawn mowing carried out by or on behalf of the Owner;

15.1.5 remove, extend or interfere with any retaining walls, safety barrier fencing erected above any retaining walls or other like structures erected at the Village by or on behalf of the Owner;

15.2 to landscape and maintain designated garden beds within the Resident's Premises including, keeping garden beds free of weeds;

16 No caveat

in consideration of the Owner complying with Part 5 of the Act (which provides for a statutory charge over the title to the Unit in favour of the Resident), not to lodge a caveat or any form of security against any of the titles to the Village.

**SCHEDULE FOUR
COVENANTS BY THE OWNER**

The Owner covenants as follows:

1 Quiet enjoyment

- 1.1 to allow the Resident to occupy the Resident's Premises without any interruption or disturbance by the Owner or any persons claiming through under or in trust for the Owner so long as the Resident complies with the terms of this Contract;
- 1.2 provided the by-laws are complied with by the Resident, to allow the Resident to use and enjoy the Common Facilities together with other residents of the Village;

SCHEDULE FIVE

SUMMARY OF SECTIONS 16(2), (3) AND (5) OF THE RETIREMENT VILLAGES ACT 1986

16(2) If a resident is in breach of the agreement, the Owner may serve on the resident a notice ("**first notice**") specifying the breach and:

- (a) requiring the breach to be remedied; or
- (b) if the breach is not capable of being remedied, requiring the resident to cease committing the breach;

within 28 days after the date of service of the first notice.

16(3) If:

- (a) The Owner has served on the resident the first notice;
- (b) the resident has not complied with the first notice at the end of the 28 day period after the date of service of the first notice; and
- (c) the breach specified in the first notice is substantial.

The Owner may serve on the resident a second notice ("**second notice**") specifying the breach and requiring the resident to leave the village on or before a specified date. This date must be at least 60 days after the service of the second notice.

16(5) If:

- (a) the residence contract authorises the giving of the notice by The Owner; and
- (b) the notice includes a certificate signed by two medical practitioners, one of whom is nominated by the resident, stating that the resident needs care of a kind which is not available to a resident of an independent living unit at the village;

The Owner may serve on the resident a notice requiring the resident to leave the village within 14 days after the service of that notice.

EXECUTED as a contract.

SIGNED for and on behalf of **THE OWNER**)
in the presence of:)

.....

.....
Witness

SIGNED by **THE RESIDENT** in the presence)
of:)

.....

.....
Witness

SIGNED by **THE RESIDENT** in the presence)
of:)

.....

.....
Witness

SIGNED by **THE RESIDENT** by duly)
appointed attorney _____)
_____)
who certifies that he/she is authorised to)
execute this document under power of)
attorney dated _____)
and at the date of execution he/she has)
received no notice of revocation of the power)
of attorney in the presence of:)

.....

Signature of attorney

.....
Witness

.....
Witness name

SIGNED by **THE RESIDENT** by duly)
 appointed attorney _____)
 _____)
 who certifies that he/she is authorised to)
 execute this document under power of)
 attorney dated _____)
 and at the date of execution he/she has)
 received no notice of revocation of the power)
 of attorney in the presence of:)

.....
 Signature of attorney

.....
 Witness

.....
 Witness name

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