

LICENCE AGREEMENT - INDEPENDENT LIVING UNIT

Unit ##, The Village Baxter, 8 Robinsons Road, Frankston South

IMPORTANT NOTICE TO RESIDENTS ON COOLING OFF PERIOD

YOU MAY BEFORE THE EXPIRATION OF THREE CLEAR BUSINESS DAYS AFTER YOU HAVE SIGNED THIS AGREEMENT GIVE NOTICE THAT YOU WISH TO TERMINATE THIS AGREEMENT

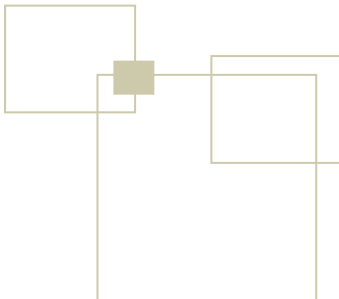
BAPTIST VILLAGE BAXTER LIMITED

and

THE RESIDENT

 **RUSSELL KENNEDY**

MEMBER OF THE KENNEDY STRANG LEGAL GROUP



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THIS AGREEMENT is made the date specified in Item 1 of the First Schedule

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

AND The person or persons named in
Item 2 of the First Schedule as the Resident
("Resident")

RECITALS

- A BVB is the owner and operator of the Village.
- B BVB owns the Unit described in Item 3 of the First Schedule which forms part of the Village. ("Village")
- C BVB agrees to grant and the Resident agrees to take a licence of the Unit in the Village referred to in Item 3 of the First Schedule ("Unit") on the terms set out in this agreement.

THE PARTIES AGREE as follows:

1 DEFINITIONS

- 1.1 "**Act**" means the *Retirement Villages Act 1986* (Vic);
- 1.2 "**Administrative Fee**" means BVB's fee, set out in Item 9 of the First Schedule, for services rendered by BVB during and up to the granting of a new licence of the Unit including opening the Unit 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 Unit, interviewing and meeting with prospective new residents of the Unit to ensure their suitability to life in the Village, and promoting and advertising the Unit
- 1.3 "**Asset Replenishment Fee**" means the Resident's 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 8 of the First Schedule;
- 1.4 "**BVB**" means Baptist Village Baxter ACN 006 640 544 and includes its assigns and successors in title;
- 1.5 "**By-laws**" means the by-laws, rules and regulations of the Village (as amended from time to time) and the By-Laws as at the date of this agreement are set out in the Fifth Schedule;
- 1.6 "**Capital Sum**" means the amount specified in Item 6 of the First Schedule;
- 1.7 "**Chattels**" means BVB's chattels in the Unit and described in Item 4 of the First Schedule;
- 1.8 "**Commencement Date**" means the commencement date of this agreement specified in Item 5 of the First Schedule;

- 1.9 “**Common Amenities and Common Areas**” means those amenities and facilities of the Village designated from time to time by BVB for the common use of all the residents of the Village;
- 1.10 “**Deferred Fee**” means a fee payable by the Resident to BVB after termination of this agreement pursuant to clause 5.2, being the amount specified in Item 10 of the First Schedule;
- 1.11 “**Deposit Moneys**” means such part of the Capital Sum as is paid by the Resident to BVB prior to or upon the signing of this agreement;
- 1.12 “**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;
- 1.13 “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999*;
- 1.14 “**input tax credit**” has the meaning ascribed to it by:
- 1.14.1 the GST Act; or
- 1.14.2 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 lease);
- 1.15 “**New Capital Sum**” means the new capital sum paid by a New Resident to BVB for the grant of a new occupancy of the Unit;
- 1.16 “**New Resident**” means a new occupant of the Unit who must be a person or persons acceptable to BVB who qualifies for residency at the Village;
- 1.17 “**Manager**” means the person, persons or corporation appointed by BVB to manage the Village;
- 1.18 “**Occupancy Agreement**” means this agreement and any schedule or annexure referred to or attached to this agreement;
- 1.19 “**Operating Costs**” means the operating costs of the Village. This includes but is not limited to:
- 1.19.1 all rates, taxes, charges, fees and other similar outgoings which are now or may after this agreement be rated, taxed charged or imposed in respect of the whole or part of the Village by any relevant authority (unless such rates, charges, fees or outgoings are separately assessed in respect of the Unit which are payable by the Resident and in respect of any other unit at the Village which are payable by any other resident);
- 1.19.2 any GST payable by BVB with respect to the supply by BVB of any goods, services or other things to the Resident of a kind referred to in clause 1.19.1, or clauses 1.19.3 to 1.19.15 inclusive;
- 1.19.3 all charges for gas, electricity, water and all other utilities and services of the Village except any utilities in respect of the Unit which are payable by the Resident and in respect of any other unit in the Village which are payable by any other resident; ;

- 1.19.4 fire protection systems for the Village including the Common Amenities and Common Areas;
- 1.19.5 garbage and waste disposal;
- 1.19.6 cleaning and lighting of the Common Amenities and Common Areas and the administration building including any staff areas;
- 1.19.7 gardening, lawn mowing and landscaping of the Common Amenities and Common Areas;
- 1.19.8 maintenance, repairs and replacements to the Common Amenities and Common Areas and the internal and external surfaces of any building or structure at the Village excluding any outdoor structures erected by a resident of the Village;
- 1.19.9 all premiums for insurances in respect of the Village (including the Common Amenities and Common Areas) including fire insurance, contents insurance (up to the maximum amount of \$10,000 for each unit or such other amount determined by BVB in its absolute discretion from time to time), public liability insurance, workers compensation in respect of employees employed by BVB for the Village and any other insurances deemed necessary by BVB;
- 1.19.10 caretaking expenses and the cost of maintaining the security of the Village (including the emergency call system);
- 1.19.11 the salary or fee of the manager and any other staff appointed by BVB including long service leave and superannuation entitlements and their associated costs;
- 1.19.12 all costs associated with the maintenance, operation and lease of any Village motor vehicles;
- 1.19.13 subject to clause 4.6, the shortfall (if any) of the estimated expenses and outgoings of the Village for the previous financial year of the Village;
- 1.19.14 the cost of administration and general management of the Village; and
- 1.19.15 any other expenditure reasonably and properly incurred by BVB in the operation of the Village;

less the value of any input tax credits accrued by BVB with respect to the purchase of any goods, services or other things, the cost of which forms part of the Operating Costs;

- 1.20 **“Premises”** and **“premises”** means the Unit described in item 3 of the First Schedule;
- 1.21 **“Periodic Charge”** means the charge payable by the Resident to BVB as the Resident’s contribution towards the Operating Costs;
- 1.22 **“Personal Representatives”** has the same meaning as that term has for the purposes of the *Administration and Probate Act 1958* (Victoria);
- 1.23 **“Regulations”** means the *Retirement Villages (Contractual Arrangements) Regulations 2006*;

- 1.24 “**Unit**” means the unit in the Village referred to in Item 3 of the First Schedule;
- 1.25 “**Village**” means the land from time to time comprising the retirement village and ancillary facilities known as The Village Baxter .

In this agreement where the context so requires, words and numbers which import the singular number include the plural, and vice versa, and references to any gender should be read as references to all genders.

2 GRANT OF LICENCE

In consideration of the payment of the Capital Sum and the covenants made by the Resident under this agreement, BVB grants to the Resident a licence to occupy the Unit and to use the Chattels from the Commencement Date.

3 CAPITAL SUM

The Resident must pay the Capital Sum to BVB at the time stated in Item 6 of the First Schedule. The Resident shall not be entitled to possession of the Unit until the Capital Sum has been paid in full.

4 PERIODIC CHARGE

- 4.1 The Resident shall pay to BVB the Periodic Charge, payable monthly (or at such other interval as BVB may at its discretion determine) in advance.
- 4.2 The Periodic Charge payable as at the date of this agreement is the amount set out in Item 7 of the First Schedule.
- 4.3 The Periodic Charge shall continue to be payable until the earliest of the following:
- 4.3.1 the date that BVB receives a New Capital Sum in full;
 - 4.3.2 the date the New Resident takes up occupation of the Unit; and
 - 4.3.3 the expiration of 6 months after the Resident’s right of occupancy pursuant to this agreement comes to an end and vacant possession of the Unit has been delivered to BVB.
- 4.4 The Periodic Charge may be increased by BVB subject always to the provisions of the Act.
- 4.5 The parties agree that the Periodic Charge shall be applied first towards the Operating Costs. If there is a surplus after payment of the Operating Costs, such surplus shall be retained by BVB for the purpose of future major maintenance works or works of a capital nature to the Village.
- 4.6 If the total Periodic Charge (for any one financial year) collected from all the residents of the Village is insufficient to cover the Operating Expenses for that financial year (“**the shortfall**”), BVB shall at its option, either:
- 4.6.1 include such shortfall as an expense item in the budget or expenses and outgoings for the succeeding financial year; or
 - 4.6.2 impose a special levy on the residents to cover such shortfall pursuant to section 38(6) of the Act.

5 TERM

- 5.1 The Resident's right to occupy the Unit under this agreement commences on the Commencement Date and continues until it comes to an end in accordance with this clause.
- 5.2 The Resident's right to occupy the Unit will cease on the happening of any of the following events:
- 5.2.1 99 years from the Commencement Date;
 - 5.2.2 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;
 - 5.2.3 at the end of 30 days after the date on which the Resident gives written notice to BVB of the Resident's intention to terminate the Resident's right of occupancy by leaving the Unit. If there is more than one Resident, this notice must be given by each of them. If, however, there is more than one Resident and, in BVB's opinion a Resident is incapable of doing so the notice may be given by the Resident who is so capable;
 - 5.2.4 if two qualified medical practitioners (one appointed by BVB and the other nominated by the Resident) certify in writing that the Resident needs care of a kind not available at the Village, the Lease shall terminate after BVB has complied with Section 16(5) of the Act (a summary of which is set out in the Fourth Schedule). For the purpose of the medical assessment, the Resident agrees to be examined and assessed by BVB's medical practitioner and to be bound by the certificate provided by the two medical practitioners;
 - 5.2.5 if the Resident breaches any term of this agreement, the right of occupancy shall terminate after the end of the notices served by BVB under Sections 16(2) and (3) of the Act (a summary of which is set out in the Fourth Schedule).

6 DISPOSAL OF UNIT

- 6.1 After termination of this agreement pursuant to clause 5.2, BVB shall use its reasonable endeavours:
- 6.1.1 to grant a new licence of the Unit to members of the public who qualify for residency at the Village on terms then applying to licences granted by BVB at the Village; or
 - 6.1.2 if the Unit has been created as a lot on a plan of subdivision following subdivision of the Village by BVB, to sell the Unit to a purchaser.
- 6.2 BVB shall be entitled to take such steps as it considers appropriate in order to procure the best possible New Capital Sum or sale price (as the case may be) for the Unit. The Resident must not make any claim or demand or take any proceedings against BVB in respect of any action taken by BVB in granting a new licence of the Unit or in selling the Unit. All moneys payable to BVB by the New Resident shall be paid on dates to be fixed by BVB in consultation with the New Resident.

7 PAYMENTS

- 7.1 On termination of this agreement under clause 5.2, BVB shall pay to the Resident a sum equal to the Capital Sum paid by the Resident under this agreement less:
- 7.1.1 the Deferred Fee;
 - 7.1.2 the Administrative Fee;
 - 7.1.3 the Asset Replenishment Fee;
 - 7.1.4 the costs or expenses reasonably incurred by BVB in rectifying any breaches by the Resident under this agreement or any other monies payable by the Resident under this agreement;
 - 7.1.5 the reasonable costs incurred in granting a new licence, including any commissions payable to any estate agent engaged by BVB for that purpose;
 - 7.1.6 any Periodic Charges or other moneys owing by the Resident to BVB under this agreement or otherwise; and
 - 7.1.7 any GST which BVB is liable to pay on the amounts referred to in clauses 7.1.1 to 7.1.6 inclusive.
- 7.2 Subject to any relevant requirement in the Act, payment under clause 7.1 must be made within:
- 7.2.1 14 days after BVB receives the New Capital Sum;
 - 7.2.2 14 days after a new resident takes up permanent occupancy of the Unit;
or
 - 7.2.3 6 months after the Resident has delivered up vacant possession of the Unit to BVB;
- whichever is the earlier.
- 7.3 The balance of the New Capital Sum or if the Unit is sold, the sale price (as the case may be) shall be retained by BVB as its absolute property.
- 7.4 Payment under clause 7.1 must be made by BVB:
- 7.4.1 to the Resident, or if there is more than one person named as the Resident in Item 2 of the First Schedule, to the Residents in equal proportions or as the Residents may direct; or
 - 7.4.2 if the Resident is deceased, to the Resident's legal personal representatives after receipt by BVB of a certified copy of the grant of probate of the Resident's will or letters of administration of the estate of the Resident.

8 COVENANTS BY THE RESIDENT

The Resident covenants with BVB to perform and observe the covenants specified in the Second Schedule. The Resident agrees that any breach by the Resident of a covenant specified in the Second Schedule is to be regarded as a substantial breach of the provisions of this agreement.

9 COVENANTS BY BVB

BVB covenants with the Resident to perform and observe the covenants specified in the Third Schedule.

10 CARPORT OR GARAGE

The Resident may apply to BVB for the right to occupy, use or construct a carport or a lock-up garage. If BVB in its discretion grants such rights, it may do so on such terms as it may in its sole discretion determine from time to time. The Resident covenants to observe and perform all such terms imposed by BVB.

11 COST OF ADDITIONAL SERVICES

If this agreement is terminated pursuant to clause 5.2.4 and the Resident refuses to leave the Unit, BVB may at its absolute discretion, provide such special or additional services to the Resident as may be required or deemed by BVB to be required by the Resident. However, the cost of providing such services shall be borne by the Resident. BVB shall be entitled to deduct such costs from any money payable to the Resident under clause 7.1 of this agreement.

12 DAMAGE TO UNIT OR CHATTELS

If upon termination of this agreement it is found that the Unit or the Chattels have suffered damage not as a result of normal fair wear and tear, BVB shall be entitled to repair such damage at the cost of the Resident and to deduct such costs from any money payable to the Resident under clause 7.1 of this agreement.

13 DAMAGE TO UNIT

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

- 13.1 relocate the Resident to another unit in the Village; or
- 13.2 make any alternative arrangements as may be mutually agreed by the parties.

If BVB chooses not to reinstate the Unit, this agreement shall come to an end from the date BVB notifies the Resident of its decision not to reinstate the Unit. The termination of this agreement shall not affect any rights of the parties which may have accrued before the date of termination.

14 RESIDENT'S GOODS

Subject to any legislation to the contrary, if upon the termination of this agreement there remains in the Unit any goods or chattels belonging to the Resident:

- 14.1 BVB may give to the Resident or the Resident's legal personal representative 14 days' written notice to remove those items;
- 14.2 if the Resident or the Resident's legal personal representative fails to comply with that notice, BVB may then at the Resident's expense:
 - 14.2.1 arrange storage of those items;
 - 14.2.2 sell those items and pay the net sale proceeds to the Resident or the Resident's legal personal representative; or

14.2.3 dispose of those items;

14.3 BVB shall not be liable for any loss suffered by the Resident as a result of any reasonable action taken by BVB under this clause; and

14.4 BVB shall be entitled to deduct from any money payable to the Resident under this agreement any expenses it may have incurred in storing, selling or disposing of those items.

15 ADDITIONAL RESIDENT

15.1 Where the Resident is only one person and BVB at the written request of the Resident and another person, agrees in writing to add the name of that other person ("**second resident**") to Item 2 of the First Schedule, the second resident shall be required to sign this agreement and shall thereafter be deemed to be and have always been one of the parties to this agreement. However, BVB shall be entitled to refuse the Resident's and the second resident's request if BVB is of the opinion that the second resident is not suitable to become a resident of the Village.

15.2 For the avoidance of doubt, the parties confirm that upon the signing of this agreement by the second resident, the Resident and the second resident are deemed to be jointly and severally bound by all the terms of this agreement.

16 EXISTING IMPROVEMENTS

16.1 The Resident acknowledges that:

16.1.1 a previous resident may have carried out alterations, additions or improvements ("**improvements**") to the Unit;

16.1.2 the onus is on the Resident to ascertain what, if any, improvements have been carried out to the Unit;

16.1.3 whether or not BVB agreed to the improvements being carried out, BVB accepts no responsibility for the repair or maintenance of the improvements.

16.2 The Resident shall be responsible for the repair and maintenance of the improvements. The Resident's failure to ascertain what improvements have been carried out to the Unit shall not affect the Resident's obligation to maintain and repair the improvements.

16.3 If the Resident is unwilling or unable to effect any necessary repairs or maintenance works to the improvements, BVB shall be entitled to remove the improvements at its own cost.

17 COOLING OFF PERIOD

The Resident may, before the end of 3 clear business days after the date on which the Resident signs this agreement, by notice in writing to BVB, terminate this agreement. In that event, all moneys paid by the Resident to BVB shall be refunded to the Resident except the sum of \$100 or 0.2% of the Capital Sum (whichever is greater) which amount shall be retained by BVB absolutely. For the purposes of this clause, "business day" means a day which is not a holiday within the meaning of Section 44(3) of the *Interpretation of Legislation Act 1984*.

18 WARRANTY

The Resident warrants to BVB that the information supplied to BVB by the Resident in the Resident's application to enter into this agreement is correct and is not misleading.

19 ACKNOWLEDGMENT CONCERNING MEDICAL, HOSTEL OR NURSING HOME CARE

The Resident acknowledges that no representations have been made to the Resident regarding any entitlement to medical, hostel or nursing home care in the Village or to any priority in respect of these matters.

20 ALTERATIONS TO VILLAGE

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

21 INTEREST ON LATE PAYMENT

If the Resident defaults in payment of any money due under this agreement, then interest at 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 BVB without necessity for a demand and without prejudice to any other rights or remedies of BVB.

22 RESIDENT'S RELEASES AND INDEMNITIES

- 22.1 The Resident occupies the Unit and uses the Common Amenities and Common Areas at the Resident's own risk. The Resident releases to the full extent permitted by law, BVB 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.
- 22.2 The Resident indemnifies BVB against all claims, damages and expenses arising from:
- 22.2.1 the negligent use, misuse or waste by the Resident or any invitee or agent of the Resident of the water, electricity, gas and other services and facilities in and to the Unit;
 - 22.2.2 overflow of water originating from within the Unit and caused or contributed to by the Resident or any invitee or agent of the Resident; and
 - 22.2.3 loss, damage or injury to property or person caused or contributed to by the Resident or any invitee or agent of the Resident.
- 22.3 If at any time a majority of the residents of the Village request or require BVB to act in a manner inconsistent with the terms of this agreement, BVB shall not be deemed in default of its obligations under this agreement nor be held liable for any loss suffered by the Resident if it acts in accordance with that request or requirement.

23 GOODS AND SERVICES TAX

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

24 NOTICE

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

To BVB: BVB's address stated in this agreement or such other address advised by BVB to the Resident in writing

To the Resident: the Unit

In the case of service by post, service shall be deemed to have been effected two clear business days after posting.

25 FURTHER ASSURANCES

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

26 TERMINATION

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

27 GENERAL

27.1 Where the Resident consists of more than one person, all obligations of the Resident pursuant to this agreement shall bind the parties jointly and severally.

27.2 No variation or waiver of any provision of this agreement shall have 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.

27.3 No failure, delay or indulgence on the part of either party in exercising any of that party's rights under this agreement shall operate as a waiver of such right. A single or partial exercise of any such right shall not preclude any other or future exercise of that right, or the exercise of any other right under this agreement.

27.4 All clauses under this agreement are severable and each shall have effect notwithstanding any invalidity of another.

27.5 Clause headings are for convenience of reference only and shall not affect the construction of this agreement.

EXECUTED as an agreement.

SIGNED by)
for and on behalf of **BAPTIST VILLAGE**)
BAXTER LIMITED in the presence of:)

Witness

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

Witness

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

Witness

FIRST SCHEDULE

Item 1	Date of agreement	The	day of	2008
Item 2	The Resident(s):	1) ##		
		2) ##		
		of ##		
Item 3:	The Unit	Unit ## , The Village Baxter, 8 Robinsons Road, Frankston South		
Item 4:	The Chattels			
Item 5	Commencement Date:	The	day of	2008
Item 6	Capital Sum:	###	payable on ##	
Item 7:	Periodic Charge at the date of this agreement	###		
Item 8	Asset Replenishment Fee:	\$2,000 for each year of the term of this agreement (or part thereof) to a maximum of \$10,000.		
Item 9	Administrative Fee:	\$	(being 2.5% of the Capital Sum)	
Item 10	Deferred Fee:	6% of the Capital Sum for each year or part of a year (rounded up to the next whole year) from the Commencement Date until the date of termination of this agreement, provided the Deferred Fee shall be no less than 12% and no more than 30% of the Capital Sum		

SECOND SCHEDULE
COVENANTS BY RESIDENT

The Resident covenants with BVB as follows:

Periodic Charges

- 1 to duly and punctually pay to BVB the Periodic Charge from the Commencement Date on the days and in the manner notified by BVB in writing from time to time;

Asset Replenishment Charge

- 2 to pay the Asset Replenishment Charge in accordance with clause 7.1;

Rates, taxes

- 3 to pay all rates, taxes, charges and outgoings which are separately assessed against the Unit by any relevant authority including all municipal rates, water rates and state land tax;

Utility charges

- 4 to pay all charges for gas, electricity, telephone, water and all other utilities and services separately assessed against the Unit;

BVB's access to Unit

- 5 to permit BVB or the Manager at all reasonable times (except in the case of emergency) to:
- 5.1 enter the Unit to examine its state and condition. For the purpose of the inspection, the Resident must admit such workmen as BVB or the Manager may consider necessary for the purpose of maintaining the Unit in a reasonable state of repair and condition;
 - 5.2 enable BVB to comply with any of its obligations under this agreement.

However, BVB shall 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 condition of the Unit;

Emergencies

- 6 to permit BVB to deal with any emergency which appears, in the reasonable opinion of BVB, its officers, servants or agents, to exist. In that event, BVB, its officers, servants or agents may enter the Unit at any time and by whatever means as BVB, its officers, servants or agents may deem appropriate;

Structural alterations, additions or other installations

- 7 not to make any structural alterations or additions to the interior or exterior of the Unit or construct any installations including awnings, air-conditioners, water tanks, carports or lock-up garages or the enclosure of any verandah without the written consent of BVB.
- 8 If consent is given, such additions, alterations or installations:
- 8.1 must be undertaken at the expense of the Resident and undertaken by appropriate licensed tradespersons in a proper and workmanlike manner;
 - 8.2 shall become and remain the property of BVB;
 - 8.3 must be maintained and kept in a good state of repair at the expense of the Resident; and
 - 8.4 may, at the option of BVB, be removed and the Unit reinstated to its previous condition as at the commencement of this agreement (fair, wear and tear excepted) by BVB at the expense of the Resident upon termination of this agreement.

- 9 The Resident acknowledges and agrees that any request for consent pursuant to this covenant must be made in writing and must be made using the BVB "Request for Consent Form" (if any).

No painting of Unit

- 10 not to paint the interior or exterior of the Unit without the written consent of BVB;

Electricity and Telephone Services

- 11 to use the Village phone and electricity networks which are integral to the overall security system for Residents emergency alarms and fire detection;

Interference with services and service networks

- 12 not to interfere with the telephone, electricity, gas or other service installation or network in the Unit nor install any other telephone, electricity or other service network at the Unit without prior written consent from BVB;

Keep Unit in good repair

- 13 to leave the Unit, Chattels and all the fixtures and fittings in the Unit clean, tidy and in good repair and condition at the time the Resident permanently vacates the Unit. If, in the reasonable opinion of BVB, the Resident has breached this covenant, BVB is hereby authorised to enter the Unit and carry out the necessary repairs. If BVB carries out such repairs, BVB is to be reimbursed for the cost of such works from any monies due to the Resident pursuant to clause 7.1;

Maintenance and repair

- 14 to keep the Unit, the Chattels and all fixtures and fittings in the Unit clean, tidy and in good repair and condition. This includes:
- 14.1 repairing damage caused by the Resident or through fair wear and tear;
 - 14.2 to maintain the interior of the Unit and replace any items such as fixed floor coverings and window furnishings which in BVB's reasonable opinion require replacing;
 - 14.3 keeping the Unit and the Chattels free from rubbish and vermin;
 - 14.4 maintaining the garden of the Unit with the exception of lawn mowing and maintaining the retaining walls constructed by BVB at the Village;
 - 14.5 ensuring that no paving is installed to any of the garden areas of the Unit;
 - 14.6 ensuring that no works are carried out or anything else is done which may affect the structure of the floors, walls and roof of the Unit; and
 - 14.7 immediately bringing to the attention of the Manager or BVB any apparent defect in the structure of the floors, walls or roof of the Unit;

but specifically excludes maintaining the exterior of the Unit unless the maintenance is required as a result of neglect or misuse by the Resident;

Damage to Unit or Village

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

By-Laws

- 16 to comply and ensure that the Resident's guests and invitees comply with the By-Laws;

Reimbursement for repairs

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

Use of Unit

- 18 not to use or permit the Unit to be used for any purpose other than as a residence and not to excessively use or allow to be excessively used alcohol, drugs or similar substances in the Unit;

No nuisance

- 19 not to do or allow to be done at the Unit or within the Village anything
- 19.1 which in BVB's or the Manager's reasonable opinion, may be a nuisance, annoyance or disturbance to the staff, other residents and neighbours of the Village; or
- 19.2 anything illegal;

No dangerous goods

- 20 not to store or permit to be stored in the Unit or any part of the Common Amenities or Common Areas any dangerous materials or goods;

Insurance policies

- 21 not to do or permit to be done anything which may in the reasonable opinion of BVB:
- 21.1 invalidate or contravene the terms of any insurance policy affecting the Village or the activities carried on at the Village;
- 21.2 render cover under such policies to be denied; or
- 21.3 cause the premiums in respect of those policies to be increased;

Fire regulations

- 22 to comply with all fire regulations applicable to the Unit and the Village;

No pets

- 23 not to bring or keep in the Unit any bird, animal or reptile. However, BVB or the Manager may in its absolute discretion give permission for the Resident to keep a bird, animal or reptile at the Unit. Such permission may be revoked by BVB or the Manager in its absolute discretion at any time and without being required to give reasons;

No auction

- 24 not to hold or permit to be held any sale or auction in the Unit or on any part of the Common Amenities or Common Areas without the prior written consent of BVB or the Manager;

No assignment

- 25 not to assign, sublet or otherwise part with possession of the Unit or any garage or carport or other parking area that the Resident is permitted to use without BVB's prior written consent. Section 144 of the *Property Law Act 1958* shall not apply to this agreement;

Signs

- 26 not to display or allow to be displayed at the Unit any placard, advertisement or sign;

Guests

- 27 not to allow any other person to reside in the Unit for any period of time in excess of 4 weeks in any calendar year without the prior written consent of BVB or the Manager;
- 28 not to permit any person to occupy the Unit for a period of more than 7 days while the Resident is absent without the prior written consent of BVB or the Manager;

- 29 to advise BVB or the Manager within 24 hours of the arrival of any guest of the Resident intending to occupy the Unit and, unless the written consent of BVB or the Manager is first obtained, not allow any such person to remain or reside at the Unit;

Carparking

- 30 not to use or permit to be used:
- 30.1 any garage, carport or parking bay provided in the Village in which the Resident may be permitted to use for any purpose other than for parking a motor vehicle in a fair and reasonable manner; and
 - 30.2 any area for carparking purposes that has not been designated for such purpose including grassed areas or other areas within the Village that would restrict emergency access to the Unit or the Village.

Absences

- 31 not to leave the Unit unoccupied for a continuous period of 60 days at any one time without giving written notice to BVB or the Manager;

Unreasonable demands

- 32 not to make unreasonable demands of BVB, the Manager or any staff engaged by BVB;

Power of Attorney and Will

- 33 to advise BVB or the Manager of any power of attorney made and to whom the power is given and to make a valid will and to advise BVB of the location of such will;

Costs

- 34 to pay any stamp duty and other charges imposed on this agreement and also all losses, costs and expenses incurred by BVB as a result of any breach of this agreement by the Resident;

Illness

- 35 to notify the Manager or BVB of any infectious or contagious illness that affects the Resident or any occupier of the Unit

Motorised Wheelchairs or Scooters

- 36 if the Resident owns or uses a motorised wheelchair or scooter, to maintain adequate insurance of that wheelchair or scooter including cover for loss or damage and personal injury or property damage to third parties;

Gardens and Plants

- 37 not to, without the prior written consent of BVB:
- 37.1 alter, modify or interfere with any gardens established at the Village or remove any plants that have been planted at the Village by BVB or an authorised employee, contractor or agent of BVB;
 - 37.2 plant any plants that have been declared noxious weeds by any local government, statutory or other relevant authority;
 - 37.3 alter, modify or interfere with the shape of existing lawn areas by way of plants or otherwise;
 - 37.4 interfere with lawn mowing carried out by BVB or an authorised employee, contractor or agent of BVB;
 - 37.5 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 BVB or an authorised employee, contractor or agent of BVB;

- 38 to landscape and maintain designated Unit garden beds to the reasonable satisfaction of BVB or the Manager including, keeping Unit garden beds free of weeds;

Compliance with Law

- 39 not to use or allow the Unit to be used so as to cause any breach of any Act of Parliament or any regulation or by-law;

Compliance with orders

- 40 to comply with any order or direction lawfully made or given under any Act of Parliament or any regulation or by-law with respect to anything to be done on or to the Unit;

No caveat

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

THIRD SCHEDULE
COVENANTS BY BVB

BVB covenants with the Resident as follows:

Quiet enjoyment

- 1 to allow the Resident to occupy the Unit without any interruption or disturbance by BVB or any persons claiming through, under or in trust for BVB so long as the Resident pays the Periodic Charge and complies with the terms of this agreement;

Common Amenities and Common Areas

- 2 provided the By-laws of the Village are complied with by the Resident, to allow the Resident and other residents of the Village to use and enjoy the Common Amenities and Common Areas designated from time to time by BVB for use by the Resident. The Common Amenities and Common Areas currently designated include, the following:
- 2.1 driveways, pathways, gardens, lawns and other open areas designated as common areas;
 - 2.2 community centres/amenities buildings;
 - 2.3 bowling green and croquet green;
 - 2.4 glass-houses and workshops;
- and BVB may, in its absolute discretion allow such amenities and facilities to be used by the public for the payment of a fee. The amount of such fee shall be determined by BVB in its absolute discretion and shall be applied towards the Operating Costs of the Village.

Insurance

- 3 to insure and keep insured all buildings and other improvements at the Village to their replacement value and to effect any other insurances required by law;
- 4 to insure and keep insured the Chattels and other contents of the Unit to a value of \$10,000 or such other amount as determined by BVB in its absolute discretion against fire, theft and such other risks as BVB may determine;
- 5 to effect such other insurance as it is required by law to effect or as it may deem expedient and to pay premiums on any policies of insurance effected by it;

Maintenance and repair

- 6 to use its best endeavours to ensure the maintenance and good repair of the Common Amenities and Common Areas. However, this duty does not include any maintenance and repair which is the responsibility of the Resident under this agreement, or which is required as a result of the deliberate act or neglect of the Resident, or which is the responsibility of any other resident;

Rates and taxes

- 7 to pay all municipal and other statutory rates and charges in respect of the Village that are not separately assessed against the Unit or any other unit at the Village;

Periodic charge

- 8 to collect and apply the Periodic Charge towards the Operating Costs;

Asset Replenishment Fee

- 9 to collect the Asset Replenishment Fee from the residents in accordance with clause 7.1;

Manager and staff

10 to employ a Manager and such other employees as may appear to BVB to be necessary for the proper and efficient management of the Village;

Call system

11 to maintain an emergency call system and arrange for the answering, twenty-four hours a day, of all reasonable calls made by the Resident;

Welfare of Resident

12 unless requested not to do so by the Resident, to assist the Resident in settling in as a resident of the Village and to use its best endeavours to promote the physical, mental, moral and spiritual welfare of the Resident;

Management of Village

13 to manage and administer the Village and do all things reasonably necessary to ensure the compliance by all residents with any By-Laws of the Village and the terms of their respective licence agreements;

FOURTH SCHEDULE**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, BVB may serve on the Resident a notice ("**the 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) BVB 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;

BVB may serve on the Resident a second notice ("**the 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 agreement authorises the giving of the notice by BVB 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;

BVB may serve on the Resident a notice requiring the Resident to leave the Village within 14 days after the service of that notice.

**FIFTH SCHEDULE
By-Laws**

BY-LAWS APPLICABLE TO THE VILLAGE

1. INTERPRETATION

As per Clause 1 in Occupancy Agreement.

2. UNOCCUPIED UNITS

The Resident shall advise BVB if he intended to be or is likely to be absent from the demised premises for any period exceeding seven days.

The Resident shall not without first advising BVB in writing of his intention to do so allow the Premises to remain unoccupied for any one continuous period in excess of sixty days.

3. CHARGE FOR UTILITIES

The Resident shall be liable for and shall pay on or before the due date all telephone service and rental charges and charges for use or consumption of gas and electricity where separately metered that may be payable in respect of the Premises.

4. CARE OF PREMISES

The Resident shall maintain the Premises and every part thereof tidy and free from rubbish and vermin and in a state of good repair (fair wear and tear, damage by fire, storm and tempest or act of God excepted) and shall leave the Premises in good repair. Further, the Resident covenants to exercise proper and reasonable care when using any of the common facilities of the Village.

5. ALTERATION TO PREMISES

The Resident shall not, without the prior consent in writing of BVB, and then only on the terms and subject to the conditions as in any such written consent may be specified, paint or permit to be painted, or make or permit to be made alterations or additions whether structural or otherwise to the interior or exterior of the Premises or any part thereof. Such alterations or additions shall become and remain the property of BVB without financial compensation to the resident unless BVB in its discretion otherwise determines.

6. ACCESS AND INSPECTION OF PREMISES

The Resident shall permit BVB, its servants or agents to enter the premises after due notice without interference by the Resident if it is:

- reasonably believed that a potential risk or emergency situation exists, or
- necessary to view the state of repair of the premises.

If it is considered by BVB that the condition of the premises is not consistent with fair wear and tear or has sustained damage due to a negligent act of the Resident, such repairs to the premises will be at the cost of the Resident.

7. DAMAGE TO VILLAGE PROPERTY

The Resident may be required at his own cost to make good any damage which may be caused to the Premises or to any part of the Village by reason of any act or omission or by

reason of any neglect or negligence on the part of the Resident or any guest or visitor of the Resident.

When the cost of repair or replacement of damaged property is believed to be covered by insurance, BVB undertakes to lodge a claim under the relevant policy. The decision of insurers will determine whether any act or omission constitutes neglect or negligence.

8. UNREASONABLE DEMANDS

The Resident shall not make unreasonable demands on the time of any of the staff or employees.

9. PREMISES FOR RESIDENTIAL USE ONLY

The Resident shall during the continuance of the Term use the Premises for residential purposes only unless the Resident shall have first obtained the written consent of the BVB.

10. WRONGFUL USE OF PREMISES

The Resident shall not use the Premises or any part of the Village or permit the same to be used for any illegal purposes or in breach of any By-Laws of the Village. Nor shall the Resident act in such a manner as unreasonably to interfere with the use and enjoyment of the Village or to cause a disturbance, nuisance or a hazard, or to be offensive to another Resident or his family or visitors or to employees of or contractors to BVB or to owners or occupiers of any property adjoining the Village.

11. STORAGE OF GOODS

The Resident shall not store or permit to be stored on the Premises, or any part of the Village, any material or goods other than material or goods reasonably required by the Resident for use for household or recreational purposes unless BVB first consents thereto and which consent may be revoked by BVB at any time. Nor shall the Resident do or permit anything to be done which may in any way invalidate or violate the terms of any relevant insurance policy or which might cause the premium thereon to be increased.

12. PETS

The Resident shall not keep or permit to be kept on the Premises or on any part of the common areas any animal or bird without the prior written consent of BVB. The Resident acknowledges the right of BVB to revoke or withdraw such consent if any pet creates a nuisance which does not cease within a reasonable time after notice thereof is given by BVB to the Resident. The Resident shall ensure that proper control is maintained over pets brought into the Village by his visitors, and in the case of a dog, such animal must be restrained on a leash at all times.

13. SALES

The Resident shall not without the prior written consent of BVB permit any public sale whether by auction or otherwise to be held or conducted on the Premises or on any part of the common areas.

14. SUB-TENANCIES

The Resident shall not grant any occupancy right or sub-licence or sub-let the Premises or assign any of his rights and entitlements hereunder without the express consent of BVB, and the provisions of Section 144 of the Property Law Act 1958 as amended or re-enacted from time to time (if applicable) are hereby expressly excluded.

15. GUESTS STAYING IN VILLAGE

The Resident shall not permit any person to occupy the Premises for any aggregate period longer than four weeks in any twelve months without the prior consent of BVB. During this time the Resident shall also reside on the Premises unless BVB consents to his absence.

16. VISITORS

Residents are encouraged to have their family and friends within the Village, but are requested to ask their guests to show full consideration for the common areas and for the safety and property of residents.

17. VEHICLE USE

The Resident and his visitors shall ensure that vehicles are parked in the garages, carports or parking bays provided around the Village and not driven or parked on the grassed areas or in any place which would restrict emergency access. Speed limits as indicated by signs within the Village must be observed by residents and visitors.

18. BREACHES BY VISITORS OR GUESTS

The Resident shall be responsible for the behaviour of any of his visitors or guests and for their breach of any of the By-Laws herein contained.

19. COSTS OF RECTIFYING BREACH

The Resident shall pay any costs, charges and expenses which BVB may reasonably incur or expend in consequence of any default by the Resident in the performance or observance of any By-Law herein contained.

20. REMOVAL OF BELONGINGS

On the death of a Resident BVB may, after a seven day period (for Hostel Residents) and after a fourteen day period for (Independent Living Unit Residents), enter the Premises to remove therefrom to place in storage any or all personal belongs of the Resident at the cost of the estate. BVB may exercise a similar right if a Resident transfers to any other section of the Village or to any external institution and appears reasonably to BVB to be unlikely to retain to occupancy of the Premises.

If it is not reasonably practicable for BVB to obtain either the express permission of the Resident or of his notified next of kin or executor BVB shall require no further or other permission than is expressed herein.

21. WILLS

The Resident shall make a valid Will and keep BVB informed of its location.

22. VILLAGE AMENITIES AND ACTIVITIES

In any case in which entitlement to the use and control of village amenities or activities areas has been granted to a resident club or association, the Resident shall make use of those amenities or facilities only in accordance with the proper rules and directions of that club or association and shall pay any prescribed club fee.

23. GAMBLING

Gambling will not be permitted in the common areas of the Village. However approval may be granted to conduct a limited raffle according to the following criteria:

1. Prize value to maximum of \$200.00.
2. All proceeds of the raffle must be used within the Village.
3. Each raffle must be approved by the Village Baxter Residents Committee.
4. The Committee shall approve only a limited number of raffles per year.

24. ALCOHOL

Alcoholic beverages shall not be kept, served or consumed within any of the common areas of the Village.

25. GENERAL

These By-Laws have been drawn up to ensure that Residents have full rights to live together in harmony in the Village. It is recognised that only a limited number of definitions have been included in By-Law 1 and should it be necessary at any time to define other words or terms herein BVB will endeavour to ensure that its rulings are fair and reasonable with due regard to the comfort and well being of the Residents.

26. AMENDMENTS TO BY-LAWS

The addition of any new By-Law the revocation or alteration of an existing By-Law may be made only in accordance with the provisions of the Retirement Villages Act 1986.