



Adelene

A member of PACE Aged Care

Adelene Village Contract



Retirement Village Contract

Retirement Villages Act 1999, section 43

Village: Adelene Village

Operator:

Adelene Village
1 Birch Road Wyoming NSW 2250

Resident 1:

Resident 2:

ADELENE VILLAGE

1 Birch Rd, Wyoming NSW 2250 PO Box 430, Gosford NSW 2250

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Key Terms

Operator(s):

Name of Operator(s): Adelene Village
(Where there is more than one operator, refer to the additional terms for the rights and responsibilities of each operator)

Address for service of notices: Mr PR Walsh
PO Box 430
GOSFORD NSW 2250
(unless the Operator notifies the Resident of a change of address)

Resident(s):

Name of Resident 1:

Name of Resident 2:

Address for service of notices:

Where there is more than one resident they are joint tenants unless a tenancy in common is indicated in the additional terms or in a separate contract (if applicable).

AND

(Insert details of any other contracting party)

(Name) N/A

(Address) N/A

Your premises:

Premises Number: Unit , 1 Birch Road, Wyoming NSW 2250

Trading Name of Village: Adelene Village

Address of Village:

1 Birch Road
Wyoming NSW 2250

What is included with your premises?

We grant you the right to occupy or use:

- Garage (Number)
- Deck: Schedule 7 as per Quote Dated 31/07/2014 from Coastal Construction & Building(Attached)
- Other: Schedule Two
Blinds to Lounge, Dining & Bedrooms Stove, Rangehood, Cooktop, Flyscreens, Hot Water Service, Carpet & IXL Tastic

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What is not included with your premises?

(attach list if space is insufficient)

Fixtures/Fittings/Furnishings/Other:

Key dates:

Date you received a copy of this contract: dd/mm/yy (Sent by Post)

Date this contract is entered into: dd/mm/yy

Agreed date that you may occupy your premises (entry date): dd/mm/yy

Date from which you must pay us recurrent charges: dd/mm/yy

Nature of residence right

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

Registered interest holder

Term (if any).....

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

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

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

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Financial Terms

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

A. Entry payment

Are you required to pay an entry payment (“the Ingoing Contribution”)?

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

You must pay an entry payment in total of \$260,000.00 as your:

- Ingoing contribution
(Delete or cross out the below if the ingoing contribution is not divided into components)

Where an ingoing contribution is payable, it consists of the following components:

- Loan \$260,000.00

The holding deposit of \$5,000.00 which you have already paid will form part of this amount.

When is the full *entry payment* due? dd/mm/yy

Can the entry payment be paid in instalments?

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

Is any of the entry payment non-refundable?

- Yes 30% Retention over a maximum of 5 years calculated on a daily basis or (6% per annum calculated on a daily basis) of the ingoing contribution – Refer Schedule 4
 No

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

- Yes (see additional terms)
 No

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

Garage: \$5,000.00 The Resident shall have the right to use Garage No.

Under the Terms & Conditions in Schedule Six.

B. Deposit

Are you required to pay a deposit on signing this contract?

- Yes (\$5,000.00)
 No

Deposit figure is negotiable.

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C. Legal and other expenses payable on entry N/A

- You must pay to us on entry the following legal and other expenses incurred in connection with the preparation of this contract: (maximum \$200)
- Contribution to our legal expenses incurred in preparing this contract
\$
- Other expenses (specify)

D. Recurrent charges

You must pay to us recurrent charges as follows:

Current frequency of payment: Weekly Fortnightly Monthly Other:

Current rate of recurrent charges for your premises: \$364.00 per Month in Advance

Recurrent Charges will be paid pursuant to a direct debit authority which the Resident shall give to the Operator.

E. Variation of recurrent charges

We may vary your recurrent charges as follows:

Method of Variation (choose one method only)	
<input checked="" type="checkbox"/> Fixed formula	<input type="checkbox"/> Non-fixed formula (Refer Schedule 3)
Your recurrent charges will be varied in accordance with: <input checked="" type="checkbox"/> <i>variation in CPI</i> <input type="checkbox"/> variations in (single/couple) (delete or cross out whichever is not applicable) age pension <input type="checkbox"/> other [specify]	We may vary the amount of recurrent charges payable from time to time (no more than once in a 12 month period): a) by giving you 14 days' notice in writing, if the increase does not exceed the <i>variation in CPI</i> , or b) by giving you at least 60 days' notice in writing and seeking and obtaining the consent of residents affected by the proposed increase or an order of the <i>Tribunal</i> , if the increase exceeds <i>the variation in CPI</i> .
The first variation will be on: After the first variation, variations will occur every: The new amount of the recurrent charges will not take effect earlier than 14 days after we have given you notice of the new amount.	

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F. Optional Services

Do your recurrent charges include optional services? (optional services may include, for example, meals, laundry services and home cleaning)

- Yes
- No

If yes, at the time of entry, the amount of recurrent charges attributable to the provision of optional services is \$ N/A This amount may change in the future.

G. Capital gains and losses

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

Capital gain/capital loss structure

Are you entitled to a % of any capital gain? Yes (___%) No

Are you responsible for a % of any capital loss? Yes (___%) No

H. Departure Fee

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

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

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

What is the departure fee % based on?

- the *entry payment*
- the new *entry payment*
- other (provide details):

Departure fee structure

Time	Percentage
Entry Date to 5 years	6 % per year

The maximum departure fee percentage you will pay is 30% if the period between the entry date and the date you permanently vacate is 5 years or more.

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The method of calculating the departure fee is set out in Schedule Four.

I. Calculation of payment on termination of residence right

The amount payable on termination is calculated as follows:

- Payment on termination calculation**
After termination of this contract (refer to Item J for specific detail about timing):
- 1. We will repay you the:**
- Unearned rent (refer to the additional terms for how this is calculated)
 - Loan (Item A)
 - Lease premium (Item A)
- 2. We will pay you:**
- Your share of any capital gain (Item G)
 - Other (specify):
- 3. You must pay us (or we may set off and deduct from the amounts we must pay you described in 1 and 2 above):**
- Departure fee (Item H)
 - Your share of any capital loss (Item G)
 - Any non-refundable component of the entry payment (Item A)
 - Other:
 - Accrued or outstanding Recurrent Charges, if any, payable by the Resident.
 - Any amount payable by the Resident in respect of repairs to the Premises;
 - Any other amount payable by the Resident under this Contract or any other Contract with the Operator.

If any part of the Ingoing Contribution will be paid by a party other than the Resident, the person(s) who will be entitled to any refund payable under clause 21.01 of the Contract Conditions is/are:-

*the Resident *as to a..... N/A share

* * as to a share

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J. Timing for payment on termination of your residence right

- | | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <p>We must pay you the amount of your payment on termination of your residence right:</p> <ol style="list-style-type: none">1. within 14 days after the date on which we receive full payment of the <i>new entry payment</i>, or2. within 14 days after the date on which an incoming resident takes up residence in your premises with our consent, or3. within 6 months after the date you <i>permanently vacate</i> your premises, whichever occurs first, except where we are required to pay you earlier under the <i>retirement village laws</i>. |
|-------------------------------------|--|

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

K. Liability for recurrent charges for optional services on termination

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

L. Liability for recurrent charges for optional services on termination

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <p>You must pay the full rate of recurrent charges for general services for 42 days (6 weeks) immediately after the date you <i>permanently vacate</i> your premises, or until a new resident enters into a contract with us to occupy your premises or moves into your premises, or you <i>permanently vacate</i> the premises after receiving notice of our intention to apply to the <i>Tribunal</i> for an order terminating this contract, whichever occurs first.</p> |
|-------------------------------------|---|

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General Terms

1. Interpretation and Definitions

1.1 Interpretation

(a) Except as otherwise provided for in the additional terms:

(i) when the words "you" or "your" appear in this contract, it refers to the Resident and includes his or her executors or administrators but only to the extent necessary to enable them to discharge their duties;

(ii) where the Resident is more than one person, the words "you" or "your" apply jointly to the Residents and to each of them.

(b) When this contract uses the words "we", "us" or "our", it refers to the Operator and where the context allows, its employees and agents. If there is more than one operator, use of the word "we", "us" or "our" does not of itself imply any relationship between any of those operators, such as a partnership. The relationship of the operators to each other, and certain rights and obligations between each of them and you may be set out in the additional terms.

(c) Expressions which are not defined in this contract but which have a defined meaning in the *retirement village* laws have the same meaning in this contract.

(d) Headings and the table of contents are for convenience only and do not form part of this contract or affect its interpretation.

(e) Unless expressly stated otherwise in this contract:

(i) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

(ii) If the last day of a period of time prescribed or allowed by this contract for the doing of any thing falls on a day which is not a *business* day,

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

(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(g) The meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation.

1.2 Definitions

business day means a day which is not:

(a) a Saturday or Sunday, or

(b) a public holiday or a bank holiday, in New South Wales.

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

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

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and blinds); and non-fixed items (e.g. whitegoods, portable air conditioners, fans, tables and chairs).

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

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

permanently vacate means the occurrence of one of the following:

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

registered interest holder means a resident who:

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

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

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

retirement village laws means:

- (a) the Retirement Villages Act 1999 (NSW), and
- (b) the Retirement Villages Regulation 2009 (NSW),

as amended or substituted from time to time.

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

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

Tribunal means the NSW Civil & Administrative Tribunal.

variation in CPI means the difference between:

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

2. Cooling-off period

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

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

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

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

3. Settling-in period

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

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

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

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

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

3.3 What are we required to pay you?

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

3.4 When are we required to pay you?

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

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4. Disclosure statement

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

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

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

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

5. Services and Facilities

5.1 Meaning of required services and facilities

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

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

Any additional or optional services that will be made available to the Resident on a “user pays” basis, and the cost of those services as at the date of preparation of this Contract, are listed in Schedule One.

The facilities in the Village that are available for the use of the Resident are listed in Schedule One.

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

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

This Contract distinguishes between general services and optional services. The retirement villages’ legislation provides that the Contract must include a statement that the Tribunal has power to override a determination by the Operator that a service is a general service or an optional service, as the case may be, in the event of a dispute.

The retirement villages legislation requires the Resident’s attention to be drawn to the fact that services and facilities may be reduced or (except for those required by the development consent to be provided for the life of the Village) withdrawn or otherwise varied but only if the residents of the Village pass a special resolution in accordance with the provisions of the retirement villages legislation or if an administrator is appointed under the Act and the administrator varies them with the consent of the Director General of the Department of Fair Trading.

The retirement villages’ legislation provides that the Resident will have no right to compensation if services or facilities are reduced or withdrawn or otherwise varied in accordance with a special resolution of the residents.

The Operator will not be obliged to provide optional services unless the Resident complies with the conditions subject to which the optional services are made available or provided. The Operator or other provider may from time to time vary charges in respect of optional services. Any variation of Recurrent Charges for optional services will be made in accordance with the provisions of the retirement villages legislation relating to variation of Recurrent Charges.

5.2 Can we change the services and facilities?

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

5.3 What optional services will we provide you?

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

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6. Alterations and Additions

6.1 Can you alter or renovate your premises?

- (a) You may add, remove or alter any fixtures and fittings, or renovate your premises, but only with our prior written approval which we will not unreasonably refuse. We may include reasonable conditions in our consent. If we do not consent to your proposal, you may apply to the *Tribunal* to seek an order allowing you to proceed with your proposal.
- (b) Despite (a), our consent is not required to remove or alter any fixtures or fittings that were added by you unless the removal or alteration of the fixtures or fittings is likely to cause significant damage to the premises.
- (c) to make renovations or to add, remove or alter any fixtures or fittings prescribed by the regulations;
- (d) that these provisions do not authorise:
 - (i) a person to add, remove or alter any fixtures or fittings in, or renovate any residential premises within the Village if consent to do so is required under any Act of Parliament and consent has not been obtained;
 - (ii) a person to carry out development within the meaning of the Environmental Planning and Assessment Act, 1979 in contravention of that Act.

The Resident may at any time before permanently vacating the Premises remove any fixture that the Resident has added to the Premises.

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

7. Repairs, maintenance and capital replacement

7.1 Can you request repairs?

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

7.2 What repairs and maintenance are we responsible for?

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

- (a) the age of the item,
- (b) the prospective life of the item,
- (c) the money paid to us by the residents under a village contract (including entry payments), and

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- (d) the amount of money available to be used for the purpose of maintenance in accordance with the approved annual budget for recurrent charges.

7.3 What repairs and maintenance are we not responsible for?

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

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

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

- (a) You must notify us of the need for maintenance to be carried out on, or the replacement of, an *item of capital* for which we are responsible and that is located within your premises as soon as you become aware of the need for the maintenance or replacement of the item.
- (b) You must reimburse us in respect of any damage (other than fair wear and tear) caused by you or a person you invited to the village to an *item of capital* for which we are responsible.
- (c) You must not hinder or obstruct us or a person authorised by us from carrying out capital maintenance or capital replacement in respect of an *item of capital* for which we are responsible.
- (d) Decking areas form the responsibility of the resident whereby they must be kept clean, uncluttered and all woodwork is to be treated on an annual basis for weather protection.

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

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

8. Operator's Access to Premises

8.1 When may we access the premises?

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

- (a) if you consent, or
- (b) in an emergency, or if we have reasonable cause for concern about the health or safety of a person that we believe is on your premises, or
- (c) to carry out urgent repairs, or
- (d) to carry out general maintenance, but only if we have given you 7 days' notice, or
- (e) if the *Tribunal* orders you to give us access, or
- (f) to install a smoke alarm that is legally required to be installed or to replace a battery in any smoke alarm, but only if we have given you 2 days' notice, or
- (g) in any other circumstances that may be prescribed from time to time under the *retirement village laws*.

Adelene Village Contract

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

9. Village Rules

9.1 How do the village rules apply?

If there are village rules:

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

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

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

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

10. General behaviour of operator and resident

10.1 What are your general obligations?

You must:

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

The Resident agrees:-

- (a) not to use the Premises, or cause or permit the Premises to be used, for any illegal purpose;
- (b) not to cause or permit a nuisance;
- (c) not to damage, or do or cause or permit anything which will cause damage to, the Premises (other than fair wear and tear) or any property belonging to the Operator or the Village or any other resident;

Adelene Village Contract

- (d) to notify the Operator as soon as practicable of any damage to the Premises;
- (e) to notify the Operator as soon as practicable of any damage to other property of the Operator caused by the Resident or for which the Resident is responsible;
- (f) to notify the Operator as soon as practicable of any burst water service or blocked or broken lavatory system or roof or gas leak or dangerous electrical fault in the Premises or failure or breakdown of any essential service on or to the Premises or any fault or damage that causes the Premises to be unsafe or not secure; and
- (g) not to hinder or obstruct the Operator or a person authorised by the Operator from carrying out maintenance or capital replacement in respect of an item of capital for which the Operator is responsible.

10.2 What are our obligations?

We must:

- (a) not interfere or cause or permit interference, with the reasonable peace, comfort or privacy of a resident, and
- (b) take all reasonable steps to ensure that all residents meet their obligations under their contracts, the village rules and *the retirement village laws*, so that a resident does not unreasonably interfere with the peace, comfort and quiet enjoyment of his or her residents, and
- (c) not interfere with the right of any resident to autonomy over his or her personal, financial and other matters and over his or her possessions, and
- (d) not inhibit any resident from exercising self-reliance in matters relating to his or her personal, domestic and financial affairs, and
- (e) use our best endeavours to ensure that each resident lives in an environment free from harassment and intimidation.

11. Termination

11.1 When does your right to occupy your premises end?

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

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

Adelene Village Contract

11.2 When can we terminate this contract?

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

12. Finding a new resident when you leave

12.1 Who sets the asking new entry payment?

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

13. Assignment and subletting your premises

13.1 Can you assign this contract?

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

13.2 Can you sublet your premises?

You agree that you may not assign, sublet or let others move in to your premises without notifying us and obtaining our consent. This does not apply to temporary visitors and guests. The Resident will not permit any other person to stay in the Premises as a guest of the Resident for more than 28 days (4 weeks) or to commence living in the Premises with the Resident without first obtaining the consent in writing of the Operator.

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

Adelene Village Contract

14. Temporary Absence

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

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

15. Condition of premises on termination

15.1 In what condition must you leave the premises?

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

16. Resident's property and Insurance

16.1 Who is responsible for loss, damage, etc. of property belonging to the Resident?

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

16.2 Does the Resident need to take out Insurance?

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

16.3 Are motorised wheelchairs & scooters permitted?

The Resident must obtain approval from the CEO for the use of a motorised wheelchair or scooter that the Resident, Family or Friends in the Village. As part of approval of the use of a motorised wheelchair or scooter, insurance for an amount of not less than \$5,000,000 in respect of any liability arising from the use of the motorised wheelchair or scooter must be obtained.

Adelene Village Contract

17. Transfers

17.1 Is the Resident able to transfer to other residential premises within the Village?

- (a) The Resident may request a transfer to other residential premises within the Village or to other accommodation for older people run by the Operator.
- (b) The Operator will consider any such request but does not make and promise that the Operator will agree to the transfer or be able to provide the alternate accommodation.

17.2 What happens if the Resident is no longer able to live in their premises due to state of health or for any other sufficient reason?

If in the opinion of the Operator it is desirable by reason of the Resident's state of health or for any other sufficient reason that the Resident should transfer to a hospital or nursing home or other accommodation which the Operator considers will be more suitable, the Operator will, after consultation with the Resident and where appropriate, the Resident's medical practitioner, endeavour to assist the Resident and the Resident's family to arrange the transfer. If the Operator and the Resident are unable to agree, the Operator may exercise any rights, which the Operator may have, to apply to the Tribunal for an order terminating this Contract.

17.3 What happens if the Resident needs to transfer to residential care?

The Operator does not promise that the Resident will be able to transfer to a facility of the Operator in which residential care is provided under the Aged Care Act 1997 of the Commonwealth when the Resident wishes or needs to transfer. Places in such facilities are allocated on a "needs" basis and entry is subject to an assessment for admission by a Commonwealth approved assessment authority and availability at the time.

17.4 What information must be given to the Resident if they move from the premises to other within the retirement village?

- a) If the Resident transfers from the Premises to other premises in the Village or to other accommodation in a retirement village under the management or control of the Operator (the "substitute premises):-
- b) the Operator will notify the Resident of the amount of refund due to the Resident under this Contract and of the ingoing contribution and current recurrent charges and any other charges for the substitute premises before the Resident commences living in the substitute premises;
- c) the ingoing contribution for the substitute premises shall be the amount of any refund due or to become due to the Resident under this Contract unless the Operator notifies the Resident of a higher ingoing contribution for the substitute unit;
- d) the Operator may retain the refund due to the Resident under this Contract on account of the ingoing contribution payable to the Operator for the substitute premises in accordance with paragraph (b);
- e) if the ingoing contribution for the substitute premises is more than the refund due or to become due to the Resident under this Contract, the difference will be paid by the Resident before the Resident commences living in the substitute premises;
- f) the Resident will enter into a new contract in respect of the substitute premises; and

Adelene Village Contract

- g) the retirement village legislation provides that the Resident shall be taken to have a continuous residence right for the purpose of the calculation of departure fees.

17.5 What must the Resident be told if the move to Residential Care that is managed or controlled by the Operator?

If the Resident transfers to substitute premises that are managed or controlled by the Operator and are premises in which the Resident will be provided with residential care under the Aged Care Act 1997 of the Commonwealth:-

- a. the provider of residential care will advise the Resident of the amount of any accommodation bond or charge and the resident fees payable by the Resident;
- b. the accommodation bond for the substitute premises shall be the amount of any refund due or to become due to the Resident under this Contract unless:
 - i. the Operator notifies the Resident of a higher accommodation bond for the substitute unit; or
 - ii. the maximum accommodation bond permissible under the Aged Care Act 1997 is lower than the refund;
- (c) the Operator may retain so much of the refund due to the Resident under this Contract as is required to pay the accommodation bond payable to the Operator for the substitute premises in accordance with paragraph (b);
- (d) the Resident will enter into accommodation bond and residence agreements which comply with the Aged Care Act;
- (e) if the accommodation bond for the substitute premises is more than the refund due or to become due to the Resident under this Contract, the difference will be paid by the Resident in accordance with the accommodation bond agreement; and
- (f) any retentions from the accommodation bond in respect of the substitute premises shall be in addition to any non-refundable amount of the Ingoing Contribution under this Contract and any departure fee payable pursuant to this Contract.

17.6 Does the Resident still have to pay recurrent charges?

If the Resident transfers to other premises within the Village or to premises in another retirement village operated by the Operator, the Resident will pay recurrent charges at the rate applicable from time to time and any other amounts which fall due.

17.7 Does the Resident have to pay fees when moved to Residential Care?

If the Resident transfers to premises used for the provision of residential care within the meaning of the Aged Care Act 1997 of the Commonwealth, the Resident will pay resident fees payable from time to time at the maximum rate permissible under the Aged Care Act 1997.

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18. Notices

18.1 How are notices given and received?

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

19. Representative of the operator

19.1 Does the Operator nominate an authorised representative?

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

Adelene Village Contract

20. Nominated representative of the resident

20.1 Can the Resident authorise a person to represent them in dealings with the Operator?

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

21. Changes in contract

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

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

22. Dispute resolution

22.1 How are disputes resolved?

If a dispute arises between you and us or between you and another resident we encourage you to notify us so we can try to resolve it but you do not have to do so if you do not wish to. If there is a dispute you have the right under the *retirement village laws* to apply to the *Tribunal* and you are not required to notify us before you do so.

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

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

Adelene Village Contract

23. Refund of payment to resident

23.1 How is a refund calculated?

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

- (a) any part of the Ingoing Contribution which is not refundable;
- (b) any departure fee payable under this Contract (including any fee that is calculated in relation to the period, or part of the period during which the Resident had a continuous residence right in the Village for the purpose of calculating the departure fee);
- (c) accrued or outstanding Recurrent Charges, if any, payable by the Resident;
- (d) any interest payable by the Resident under this Contract in respect of the Ingoing Contribution or on Recurrent Charges or any other amount payable under this Contract which have or has not been paid on the date or dates on which they or it became due for payment
- (e) any amount payable by the Resident in respect of repairs to the Premises; and
- (f) any other amount payable by the Resident under this Contract or any other contract with the Operator.

23.2 When is a refund due?

The Operator will pay any refund due no later than:-

- (a) the date that is 14 days after the date on which the Operator receives full payment under a residence contract with an incoming resident in respect of the Premises, or
- (b) the date that is 14 days after the date on which the Operator enters into a residential tenancy agreement with an incoming tenant of the Premises, or
- (c) the date that is 14 days after the date on which a person takes up residence in the Premises with the consent of the Operator after the Resident has permanently vacated the Premises, or
- (d) if the Tribunal terminates this Contract – the date that is one month after the date of termination, or
- (e) if the Resident permanently vacates the Premises after receiving notice of the Operator's intention to apply to the Tribunal for an order terminating this Contract – the date that is one month after the date on which the Resident permanently vacates, or
- (f) the date that is 6 months after the date on which the Resident permanently vacates the Premises.

whichever date occurs first, or such earlier date as the Operator and the Resident may agree.

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

If the Operator is of opinion that the Operator will not be able to enter into a residence contract with another person in respect of the Premises within the time specified in clause 21.02(f), the Operator may apply to the Tribunal for an order extending the time allowed for payment or allowing payment by installment.

Adelene Village Contract

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

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

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

Adelene Village Contract

Additional Terms

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

Additional terms may be inserted here, but only if:

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

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

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

Yes (see additional terms)

No

If whole or any part of the Ingoing Contribution is paid on a date after the Proposed Date of Occupancy, the Resident shall pay to the Operator interest at the rate of **9.73%** per annum (being the current bank overdraft index rate) on so much of the deferred amount as shall from time to time remain unpaid, the interest to be calculated from the earlier of the Proposed Date of Occupancy or the date on which the Resident commences living in the Premises, until the date on which the deferred amount, and all accrued interest is paid, and in the meantime the interest to be paid monthly in arrears, the first payment falling due one (1) calendar month after the date from which interest is calculated.

Annexures

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

- a copy of the disclosure statement that we gave you (mandatory)
- your premises condition report (mandatory unless your premises are not yet constructed, you are a *registered interest holder* or you are moving into premises with a current resident)
- a list of services and facilities we provide, see page 5 of disclosure statement. (mandatory)
- the village rules (if any) (mandatory)
- list of inclusions (Schedule Two)
- list of exclusions
- village site plan
- your premises floor plan
- other (specify):

Adelene Village Contract

Schedule One

Services and Facilities

- A. List and description of services which will be provided or made available to the Resident by or on behalf of the Operator.
- Annual auditing of the accounts of the village, cleaning and maintenance of common areas and facilities, insurance of the village to full replacement value, maintenance and care of common area lawns and gardens, management and administration services, payment of all rates, taxes and charges including charges for gas, water and electricity relating to common areas and facilities, public liability cover to the value of \$20 million in respect of any one occurrence \$20 million aggregate during any one policy period, village nurse 5 days per week, security officer on site 7 nights per week.
- B. List of any additional or optional personal services which will be made available to the Resident on a user pays' basis and the cost of those services at the date of preparation of this Contract.
- Wound dressings \$10.00
- For more extensive wound management and specialised dressings, resident would have to bear the full cost of supplies and attendance.
- C. List of facilities in the Village which are available for use of the Resident.
- Activities room, arts and crafts room, auditorium, barbecue available, bus available for outings, community room / centre, hairdressing room for visiting hairdresser, library, village bus, visitor parking, and indoor bowls.
- D. List of any services and facilities that development consent for the Village requires to be provided for the life of the Village.
- N/A
- E. List and identification of services or facilities which will be provided or made available in future and the dates on which they will be provided or made available.
- N/A

Note: Services and facilities may from time to time be changed in accordance with this Contract and the retirement villages' legislation.

Adelene Village Contract

Schedule Two

Fixtures, Fittings and Furnishings and Non fixed items

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

Blinds to Lounge, Dining and Bedrooms. Stove, Rangehood, Cooktop, Flyscreens, Hot Water Service, Carpet and IXL Tastic.

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Schedule Three

Variation of Recurrent Charges will not be varied according to a Fixed Formula

*In accordance with the annual budget, accepted by the residents, the recurrent charges will be determined on a per unit basis dependent upon contract arrangements.

Adelene Village Contract

Schedule Four

Method of Calculation of Departure Fee

ASA Calculator of Non-refundable Portion of Ingoing Contribution

\$260,000.00	A) Ingoing Contribution
30%	B) Non-refundable % of Ingoing Contribution
\$78,000.00	C) Maximum Non-refundable Ingoing Contribution
365	D) Days in year
5	E) Term in Years for Non-refundable %
1,825	F) Term in Days of Non-refundable % (D x E)
\$42.7397	G) Non-refundable amount calculated on daily basis ((A x B)/F))
\$0.05479	H) Non-refundable amount as daily % of Ingoing Contribution (G/C)%
16 EXAMPLE	(a) NON-REFUNDABLE AMOUNT OF INGOING CONTRIBUTION DUE
1,460	Days of Residency
\$62,400.00	Non-refundable amount of Ingoing Contribution due
\$197,600.00	Balance of Ingoing Contribution

Adelene Village Contract

Schedule Five

Complaints procedure and dispute resolution options

Resident and / or representative and other interested parties have access to internal and external complaint mechanism.

Application can be made to external agencies, i.e. the NSW Civil & Administrative Tribunal, should a complaint / dispute not be able to be resolved internally.

Application forms are available from any Tribunal Registry and can be contacted on **13 32 20** or on website **www.fairtrading.nsw.gov.au**

Adelene Village Contract

Schedule Six

Use of Garage

NOW IT IS HEREBY agreed and acknowledged:

1. The Resident will have the exclusive use of Garage No
2. The right to the use of the garage will continue until either:
3.
 - i The Resident ceases to be a resident of the Village, or
 - ii. The Resident ceases to use the garage for the purposes of garaging a car
4. As consideration for the use of the garage the resident will pay to the Village the sum of \$5,000
5. On the Resident surrendering their use of the garage the Village will repay to the Resident the sum of \$5,000 less a Fee of 6% per annum on a pro rata basis for a maximum of 5 years. This amount will be paid within the period of 14 days.

OR

Not applicable at date of contract

Adelene Village Contract

Schedule Seven

Construction of Decks

NOW IT IS HEREBY agreed and acknowledged:

1. The Resident has agreed to the Construction of N/A.
2. The Resident has agreed to pay the amount of \$N/A.
3. Upon handing back the Unit the Resident agrees to a Departure Fee of 6% per annum on a pro rata basis for a maximum of 5 years.

Adelene Village Contract

Schedule Eight

Fixtures and Fittings and extras installed by resident

Outcome

To create a policy whereby existing fixtures and fittings remain the property of the Adelene Village (the Company) and approved extras installed by the Resident become the property of Adelene Village (the Company) if not removed prior to the Resident vacating the unit.

Definitions

Fixture and Fittings

Retirement Villages Regulations 2009 - Section 5 states that the following items in a retirement village, including those in residential premises in the village, are prescribed for the purposes of the definition of item of capital in section 4 (1) of the Act:

- (a) fixtures (for example, stoves, hot water systems and floor coverings)
- (b) fittings (for example, light fittings, taps and sanitary fittings)

Extras

Refers to any item that has been approved by Management for installation. This approval must be sought and given prior to any works being completed.

Policy

Fixtures and Fittings

- a) All fixtures and fittings remain the property of the Operator.
- b) The Operator has the authority to order the removal of partitioning work and/or installations under the Lease or the Contract (Lease Clause 18 (k) and fixtures (Clause 19 (b)) if it considers circumstances warrant this action.
- c) Where a single fixture is installed or replaced by a Resident it becomes the property of the Operator without any compensation to the Resident.

Extras

- a) Approved "extras" installed by the Resident become the property of Adelene Retirement Village (the Operator) if not removed prior to the Resident vacating the unit.
- b) All requests for the installation of "extras" must be in writing addressed to the Chief Executive Officer. No works can commence until approval has been given.
- c) The Lease or the Contract gives residents the right to remove "extras" but also states that they are obliged to make good any damage when and if the "extras" are removed.
- d) "Extras" can be left in the unit after vacating only if approval to do so has been given by the Chief Executive Officer. All requests must be in writing.

Adelene Village Contract

EXECUTED as an agreement

Signed by the Resident(s)

Resident 1

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

Resident 2

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

.....
Signature of Resident 1

.....
Signature of Resident 2

.....
Print Name

.....
Print Name

.....
Date

.....
Date

.....
Signature of Witness (Resident 1)

.....
Signature of Witness (Resident 2)

.....
Print Name

.....
Print Name

.....
SIGNED for and on behalf of the Operator by :

The Common Seal of Adelene Retirement Village
was hereunto affixed pursuant to a resolution
passed by the Board in the

.....
presence of :

.....
Honorary Secretary

COMMON SEAL (Appropriate signing clause for any other parties to be inserted if applicable)