

# Occupancy Agreement

Vermont Elderly Peoples Homes Inc

and

The Person or Persons named and described as the  
Resident in the Schedule hereto

**Middletons  
Lawyers**

Melbourne office  
Ref: 1611009

## Date

## Parties

1. **Vermont Elderly Peoples Homes Inc** of 678 Mitcham Road, Vermont in the State of Victoria (**VEPH**)
2. The person or persons named and described as the Resident in Schedule A.

## Whereas:

- A. VEPH is the owner of the following parcels of land (**Sites**) upon which it operates a number of independent living units (**Units**):
  - (a) Kirkpatrick Homes, 8 Orion Street, Vermont, described in Certificate of Title Volume 8255 Folio 097;
  - (b) Pinnaroo Court, 79 Glenburnie Road, Vermont, described in Certificate of Title Volume 9438 Folio 272; and
  - (c) Dandevue Village, 678 Mitcham Road, Vermont, described in Certificate of Title Volume 10021 Folio 234.
- B. The Resident wishes to be accommodated in one of the Units and VEPH has agreed to accommodate the Resident in one of the Units.
- C. VEPH and the Resident have agreed that the resident will be accommodated in the Unit on the terms and conditions contained in this Agreement.

## Operative Provisions:

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Agreement the following expressions shall have the meaning hereinafter specified unless the context otherwise requires:

**the Act** means the Retirement Villages Act 1986;

**Communal Facilities** means the facilities available to all Residents including, but not limited to a meeting room at each site which may be in existence at the date of this Agreement or which may be constructed in the future and being the facilities delineated for the purpose of identification on the plan attached;

**Commencement Date** means the date referred to in Schedule A;

**Ingoing Contribution** means the sum named and described as such in Schedule C;

**Premises** means the Unit being part of one of the Sites, together with the right to use in common with others the driveways, paths, lawns, and Common Facilities set aside on the Sites for the common use of all Residents.

**Resident** means and includes the person or persons named and described as such in Schedule A and his executors administrators and successors in title;

**Residents** means and includes all the Residents from time to time of all of the Units at VEPH;

**Service Fee** means the sum named and described as such in Schedule C and includes such sum adjusted from time to time in accordance with the provisions of the Act;

**Unit** means the premises named and described as such in Schedule A (and being the premises delineated for the purpose of identification on the plan attached hereto);

## 1.2 Interpretation

- (a) When two or more Residents are parties hereto the covenants agreements conditions and stipulations on their part herein contained refer to and shall bind them and any two or greater number of them jointly and each of them severally.
- (b) Unless the context otherwise requires words importing the singular number shall include the plural and words importing the masculine gender shall include the feminine and neuter genders and vice versa respectively.
- (c) References herein to any Act of Parliament, Regulation or Rule or to any specific provision thereof include a reference to the corresponding provisions of any statutory modification or re-enactment of such Act Regulation or Rule or to the corresponding provision thereof for the time being in force.
- (d) Each word, phrase, sentence, paragraph and clause ("a provision") of this Agreement is severable. If a Court determines that a provision is unenforceable, illegal or void then the Court may sever that provision which:
  - (i) becomes inoperative; and
  - (ii) will not affect the other provisions of this Agreement.

## 2. Lease

- (a) In consideration of the payment of the Ingoing Contribution by the Resident and the covenants and agreements made in this Agreement by the Resident, VEPH leases the Unit to the Resident for the Term and on the conditions set out in this Agreement.

## 3. Resident Covenants

The Resident hereby covenants and agrees:

- (a) to pay the non- refundable Ingoing Contribution in the amount and in the manner as set out in Schedule C;
- (b) to duly and punctually pay (or cause to be paid) to VEPH the Service Fee in the amount and in the manner as set out in Schedule C;
- (c) the covenant to pay the Service Fee shall be a continuing covenant and the liability to pay shall continue notwithstanding that the Resident shall not be in physical occupation of the Unit;
- (d) the following accounting procedures shall be adopted in relation to payment of the Services Fees:

- (i) all moneys shall be paid into a bank account as advised in writing by VEPH to the Resident from time to time;
  - (ii) moneys shall be applied firstly towards the provision of those services set out in Schedule B and the surplus (if any) shall be the sole property of VEPH;
  - (iii) proper books of account shall be kept and maintained by VEPH detailing all income and expenditure;
- (e) to observe and procure that any invitee of the Resident observes the Rules and Regulations set out in Schedule D hereto or in effect from time to time it being understood that subject to section 37 of the Act, such Rules and Regulations may from time to time be varied, added to, deleted or amended by VEPH whenever it reasonably deems such variations, additions, deletions or amendments to be necessary and in the best interests of the Residents provided that no addition, variation, deletion or amendment shall be inconsistent with the Resident's right to peaceably possess and enjoy the Unit;
- (f) not to permit any person other than the Resident to reside in the Unit for more than 3 consecutive days without first obtaining the written consent of VEPH.
- (g) to keep and maintain the Unit in good repair. This includes:
- (i) repairing damage caused by fair wear and tear;
  - (ii) making good any deliberate damage or lack of repair to the Unit or to be responsible for the cost of doing so;
  - (iii) 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;
  - (iv) immediately bringing to the attention of VEPH any apparent defect in the structure of the floors, walls or roof of the Unit; and
  - (v) undertaking, after prior notice to VEPH, any repairs and maintenance which are necessary as a result of the Resident's occupancy of the Unit except where they are in respect of defects attributable to poor workmanship or negligence by the builder, or duly its servants or agents and are insured by the builder pursuant to the Building Act 1993;
- (h) not to install in the Unit any electrical equipment without the prior written consent of VEPH;
- (i) not to do or allow to be done in the Unit or keep anything in the Unit which may invalidate or violate the conditions of any insurance policy relating to VEPH or which may increase the premiums payable-in respect of the Unit;
- (j) to be responsible for any breach by any visitor or guest, trades person or representative of the Resident of any of the rules and regulations of VEPH or any provision of this agreement, and to pay or compensate VEPH the cost of making good any damage caused by such visitor or guest.

#### **4. Residence Documents**

The Resident acknowledges that at least 21 days prior to signing this Agreement he received:

- (a) a copy of this Agreement, with Schedules A, B, C and D attached;

- (b) a copy of any other documents that the Resident signs at the same time he signs this Agreement; and
- (c) a disclosure statement;
- (d) the by-laws of VEPH.

## 5. Licence

- (a) In consideration of the covenants and agreements on the part of the Resident herein contained VEPH hereby grants to the Resident during currency of this Agreement from the Commencement Date a licence to occupy the Unit, and the right to the reasonable use and enjoyment of the Communal Facilities in common with all other Residents and any other persons approved by VEPH to use the Communal Facilities.
- (b) The licence granted to the Resident pursuant to clause 5(a) of this Agreement is personal to the Resident and the Resident shall not transfer, assign, dispose or otherwise deal with the benefit of the licence.
- (c) The Resident agrees that the licence granted to the Resident pursuant to clause 5(a) of this Agreement does not give the Resident any legal or equitable estate or interest in the Unit or any part of VEPH, the legal possession of which shall always remain with VEPH, and the Resident further agrees that it shall not lodge a caveat against VEPH or any part of VEPH.

## 6. Covenants by VEPH

VEPH covenants with the Resident as follows:

- (a) to grant to the Resident during the currency of this Agreement the right to the reasonable use and enjoyment in common with all other Residents and any other approved persons of the Communal Facilities subject to any rules and regulations relating to the use of the Communal Facilities;
- (b) to comply with all of its obligations under the Act including without limitation the obligation pursuant to Section 33 of the Act requiring VEPH to convene an Annual General Meeting of the residents;
- (c) to pay the municipal and other statutory rates and charges in respect of those parts of VEPH which are not separately assessed or apportionable against the Unit and to pay on behalf of the Resident rates and charges separately assessed;
- (d) to maintain and repair the Communal Facilities;
- (e) to keep insure and keep insured the whole of the Premises against damage by fire, against public risk and other such reasonable risks as may from time to time be determined by VEPH;
- (f) that proper books of account will be kept and maintained detailing all income and expenditure;

## 7. Term

VEPH and the Resident agree that the Term of this Agreement shall be the period commencing on the Commencement Date and ceasing on the happening of any of the following events:

- (a) upon the Resident vacating and surrendering up possession of the Premises to VEPH;
- (b) upon the death of the Resident, or in the case of more than one resident occupying the Premises, upon the death of the second of those persons;
- (c) upon the Resident, or in the case of more than one resident, both of them, being assessed by at least 2 medical or other health practitioners of whom 1 must be independent of the Resident and VEPH (whose certificate to that effect shall be conclusive) as requiring residence in a low care or high care Aged Care Facility or a hospital on a permanent basis;
- (d) upon VEPH discovering that it was induced to enter into this Agreement by reason of any material misrepresentation (whether innocent or fraudulent) made by or on behalf of the Resident;
- (e) upon the termination of this Agreement pursuant to Clause 8 hereof.

## **8. Termination Because Of Default By The Resident**

- (a) If a Resident is in breach of a provision of this Agreement VEPH may serve on the Resident a notice specifying the breach and:
  - (i) requiring the breach to be remedied; or
  - (ii) 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 notice.
- (b) If:
  - (i) VEPH has served on a Resident a notice under Clause 8(a); and
  - (ii) the resident has not complied with the notice at the end of 28 days after the date of service of the notice; and
  - (iii) the breach specified in the notice is substantial:

VEPH may serve on the Resident a notice specifying the breach and requiring the Resident to vacate the premises at the expiry of 60 days after the date of service of the notice, at which time this Agreement shall be determined.

- (c) If this Agreement is terminated pursuant to clause 7(c) of this Agreement then VEPH may serve on a Resident a notice requiring the Resident to leave the Facility within 14 days after the service of such notice.

## **9. Disputes**

If a dispute arises between Residents, or between a Resident and the VEPH, the dispute will be dealt with by VEPH in accordance the provisions of Part 6A, Division 3 of the Act.

## **10. Notices**

- (a) A notice may be given by VEPH to the Resident either personally or by delivering it to the Unit or by sending it by post to him at the Unit or at his address as set out in Schedule A hereto or as notified in writing to VEPH from time to time. Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been

effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post.

A notice may be given by VEPH to the joint occupier of a Unit by giving the notice to either one of such residents.

- (b) A notice may be given by the Resident to VEPH either personally or by delivering it to VEPH's office or by sending it by post to VEPH at its address as set out above or as notified in writing to the Resident from time to time. Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post.

## **11. GST**

If a goods and services tax as defined in A New Tax System (Goods and Services Tax) Act or similar value added tax ("GST") is at any time levied or imposed on or in respect of any supply made under or in accordance with the Agreement the amount payable for that supply under the Agreement will be increased by the amount of the GST so levied or imposed.

**Executed** as an Agreement.

Executed on behalf of **Vermont Elderly** )  
**Peoples Homes (Inc.)** )  
)  
)

.....  
Signature of Committee Member

.....  
Full Name of Committee Member

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.....  
Usual Address

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Signature of Committee Member

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Full Name of Committee Member

.....

.....  
Usual Address

**Signed Sealed and Delivered** by **Party Name** )  
in the presence of )  
)

.....  
Signature

.....  
Signature of Witness

.....  
Name of Witness  
(Please Print)



**Signed Sealed and Delivered by Party Name** )  
in the presence of )  
)

.....  
Signature

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Signature of Witness

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Name of Witness  
(Please Print)

## Schedule A

**The Resident:**

**The Unit:**

**Commencement Date:**

## Schedule B

### Services to be provided by VEPH

#### 1. Accounting

- Expense budget preparation
- Annual auditing

#### 2. Collections

- Collection & banking of all Service Fees

#### 3. Legal

- Legislative obligations/updating/reporting including:
  - establish and maintain records of the Body Corporate
  - provision of Body Corporate Certificate when requested in accordance with Subdivision (Body Corporate) Interim Regulations 2000 laws
- take out and pay the premiums and charges for the following insurance policies:
  - damage to and destruction of the Premises and Assets (other than the personal private property of residents), for their full reinstatement and replacement value;
  - removal of debris;
  - breakdown of machinery;
  - breakage of glass; and
  - public risk for \$20 million

#### 4. Maintenance

Repair and maintain and undertake as required:

- Garden beds, edges and lawns to common property
- External painting of buildings
- External street lighting
- Paths, driveways and car park
- Signage
- Cleaning of the Communal Facilities
- All day to day maintenance and repair of the Communal Facilities vested in the Body Corporate

- Comply with notices requiring repairs or work to the Communal Facilities.

## **5. Amenity Controls**

- Traffic
- Parking
- Communal lighting

## Schedule C

### Fees

1. **Service Fee** in the sum of \$260 per calendar month.

The amount of the service fee shall not be increased except in accordance with the provisions of Section 38 of the Act. Fees are usually reviewed in July each year.

The Services Fee is payable monthly on the fifteenth day, half in arrears and half in advance, commencing on the date of occupation of the Serviced Suite by the Resident, namely the                    day of                    20xx.

2. **Interest on late Payment**

Any amount not paid by or on behalf of the Resident within 14 days of the amount becoming due and payable shall bear interest from the date upon which the amount is due and payable at the rate prescribed by the Penalty Interest Rates Act from time to time.

3. **Ingoing Contribution:**                    \$

## Schedule D

### VEPH

#### Rules And Regulations

Unless and until the undermentioned Rules and Regulations are altered deleted varied or added to they shall be binding upon each Resident and each Resident hereby covenants with VEPH jointly and severally:

- (a) not to do or suffer to be done in or upon any Unit and/or the Communal Facilities or any part thereof any act matter or thing which shall be a nuisance or annoyance to the other residents of VEPH;
- (b) not to keep any bird or animal in the Unit, without the prior written approval of VEPH;
- (c) not to obstruct or permit the obstruction of any parts of the common areas or any appurtenances or conveniences thereto or therein;
- (d) not to cover or obstruct any lights skylights windows or other means of illumination of the common areas of VEPH;
- (e) not to throw or permit to be thrown or to be deposited or to fall any article or substance whatsoever from or out of the Unit onto the common areas or any part thereof;
- (f) not to burn any rubbish or waste upon the Unit or the common areas or any part thereof;
- (g) not to share the Unit with any other person without the prior consent in writing of VEPH or its representative;
- (h) not to use or permit the Unit to be used for any purpose other than residential occupation or for any purpose which may be illegal or injurious to the reputation of VEPH;
- (i) not to make or suffer to be made undue noise in or about the Unit, the Communal Facilities or the common areas;
- (j) not to use or suffer or permit to be used in the Unit any machine, equipment or instrument operated by electricity which causes interference with wireless, or television or computer reception in any other Unit unless such machine, equipment or instrument is effectively fitted with a device which prevents interference with wireless, television or computer reception by the Resident of any other Unit;
- (k) not to violate the provisions of any applicable Statutes or by-laws and regulations;
- (l) VEPH (or its representative) may prohibit any person (including an Resident) from entering or remaining on any of the Communal Facilities or the common areas between the hours of 9:00 p.m. and 7:00 a.m. and without affecting the preceding provisions of this Rule VEPH (or its representative) may close lock off or otherwise control the Communal Facilities or common areas from time to time and may take all such actions as it deems necessary for the purposes aforesaid and in particular may take such actions as it deems necessary to prevent unauthorised persons from using any part of VEPH;

- (m) to permit VEPH to enter upon and view the condition of the Unit and to give or leave at the Unit notice to the Resident of all serious defects and serious wants of repair then and there found and within one calendar month thereof (or with such shorter period (if any) specified in such notice) to repair and make good to the reasonable satisfaction of VEPH all defects and wants of repair specified in such notice and in default of compliance with such notice VEPH may make good the same and the costs and expenses incurred by VEPH in so doing shall be forthwith payable by the Resident to VEPH;
- (n) to permit VEPH or his nominated representative to enter upon the Unit in the case of an emergency (as to which the bona fide decision of VEPH or his nominated representative shall be unimpeachable) to enable VEPH to provide or assist in the provision of personal or medical services for any Resident of the Unit;
- (o) not to use the Communal Facilities driveways paved areas lawns or gardens for any purpose other than those for which they were constructed;
- (p) not to permit any clothes or other articles to hang from or be placed on the outside of the Unit other than in positions which shall be approved by VEPH;
- (q) not to do or suffer to be done any act or thing by reason or in consequence of which any increased or extra premium may become payable for the insurance of the buildings erected at the Retirement Village or any part or parts thereof against loss or damage by fire or for any other insurance policy effected by VEPH in accordance with its covenants in that behalf or by reason or in consequence of which any policy for such insurance may become void or voidable;
- (r) not to display or permit to be displayed any placard, advertisement, or sign in or upon the Unit;
- (s) not to paint or permit to be painted or make or permit to be made alterations or additions whether structural or otherwise to the exterior of the Unit or any part thereof without the prior consent in writing of VEPH first had and obtained and then only on the terms and subject to the conditions as in any such written consent may be specified;
- (t) not to make any structural alterations additions or modifications to the interior or the exterior of the Unit without the prior written consent of VEPH;
- (u) to observe and perform any regulations relating to garbage disposal and the placing of any garbage tins on the common property that VEPH may make from time to time;
- (v) to observe and perform any regulations VEPH may make from time to time as to the use of any facilities or conveniences in the Communal Facilities or on the common property provided for use by the Residents of the Retirement Village;
- (w) not to park or leave or permit to be parked or left any motor vehicle on the common property (except for in a designated parking area) and not to otherwise obstruct or interfere with the use and enjoyment of the common property or any part thereof by any other person entitled to the use and enjoyment thereof, or allow any such obstruction or interference;
- (x) to notify VEPH of any absence of the Resident from the Unit for any period exceeding one night;
- (y) to notify VEPH of any illness or infectious disease of the Resident;

- (z) to be responsible for and pay within the time period specified, all fees costs and charges imposed by VEPH including but not limited to the Service Fees and any special levies or impositions imposed or charged from time to time by VEPH for a specific expense or purpose;