

RESIDENTIAL CARE LOAN AGREEMENT AND DEED OF ASSIGNMENT

DATED this

day of

2020

PARTIES

THE SOVEREIGN in right of New Zealand acting by and through the Director-General of Health ("Crown")

XXX ("the Applicant")

XXX ("the Applicant's spouse or partner")

XXX ("the Operator")

INTRODUCTION

- A. A DHB has assessed that the Applicant requires long-term residential care in a Hospital or Rest Home indefinitely.
- B. A Funder pays all or a part of the Cost of LTR Contracted Care for people who are Residents Assessed As Requiring Care and whose Assets have been means assessed under Section 34 and Part 2 of Schedule 2 of the Act as being equal to or less than the Applicable Asset Threshold in Schedule 2 of the Act. The amount the Funder pays is known as the residential care subsidy or Subsidy.
- C. The Operator has licenced to the Applicant the right to occupy the Unit xxx at xxx Village described in the attached Licence.
- D. The Applicant is not eligible for a Subsidy because the means assessment has determined his or her Assets exceed the Applicable Asset Threshold because the Applicant has an interest in the Termination Proceeds of the Licence.
- E. The Crown has agreed to make Advances to the Applicant towards the Cost of LTR Contracted Care provided to the Applicant while he or she is ineligible for a Subsidy, on the terms and conditions contained in this agreement. These Advances will be paid on the Applicant's behalf to the Applicant's Contracted Care Provider.
- F. The Licence provides that:
 - upon its termination, the Operator will take all reasonable steps to enter into a new licence for the Unit with a new licensee at a value determined by the Operator subject to consultation obligations with the Applicant
 - once a new resident has entered into a new licence for the Unit and paid their settlement proceeds in full, the Operator will within 5 working days pay the Termination Proceeds to the Applicant.

AGREEMENT WITH APPLICANT

1. Definitions and interpretation

1.1. Definitions: In this agreement, unless the context otherwise requires:

Act means the Residential Care and Disability Support Services Act 2018.

Address for Service means the following office of the Ministry of Social Development:

[specify address]

Advances means advances made by the Crown, under this agreement, towards the Applicant's Cost of LTR Contracted Care.

Applicant includes, where the context permits, the Applicant's spouse or partner if they hold a joint licence to occupy or occupancy agreement.

DHB means the relevant District Health Board.

Funder has the same meaning as in section 5 of the Act.

Licence means the Applicant's licence to occupy with the Operator attached to this Agreement.

Operator, in relation to a retirement village, has the same meaning as in section 5 of the Retirement Villages Act 2003.

Residential Care Loan Scheme means the residential care loan scheme as notified by the Director-General of Health in the New Zealand Gazette.

Specified Date means the following date: xxx

Specified Limit means the following amount: \$ xxx

Statutory Supervisor means the statutory supervisor appointed by the Operator under a deed of supervision.

Subsidy means a Funder's liability under section 56 of the Act.

Termination Proceeds means the net amount the Operator is obliged to pay the Applicant following the termination of the Licence and the settlement of a new licence to a new resident.

Unit means the property described in the Licence.

1.2. Definitions in Act: Terms not defined in clause 1.1 but defined in the Act have the same meanings in this agreement.

1.3. Interpretation: In this agreement, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa.
- (b) Headings must be ignored.
- (c) References to parties, clauses, annexures and schedules are references to parties, clauses, annexures and schedules to this agreement.

- (d) Where two or more people are bound by a provision in this agreement, then that provision shall bind those people jointly and severally.
- (e) Any reference in this agreement to any statute includes all amendments, revisions, substitutions or consolidations made to that statute from time to time.

2. Advances by the Crown

- 2.1. Subject to this agreement, the Crown will make Advances to the LTR Contracted Care Provider providing the Contracted Care Services to the Applicant.
- 2.2. The Crown will make the Advances only until the earliest of the following events:
 - (a) the Applicant becomes eligible for a Subsidy
 - (b) the Specified Date (if any)
 - (c) the amount of the Advances reaches the Specified Limit (if any).
- 2.3. For the avoidance of doubt, the Crown will treat the Applicant as ineligible for a Subsidy until the close of the day before the day that the Funder becomes liable to pay the Subsidy under section 56 of the Act.
- 2.4. The amount of the Advances will be the weekly Cost of LTR Contracted Care provided to the Applicant (not exceeding the Maximum Contribution), less the Applicant's contribution (if any) made in accordance with clause 6.1.

3. Interest

- 3.1. The Advances will not accrue ordinary interest. However, if the Applicant defaults on a repayment, he or she must pay any default interest that the Crown charges in accordance with clause 7.1(a).

4. Repayment of Advances

- 4.1. The liability of the Applicant (or, if the Applicant has died, the Applicant's Estate) to repay the Advances arises on the earliest of the following dates:
 - (a) The date the Crown gives the Applicant notice:
 - (i) that it has been advised by the Operator that the Applicant's Licence has terminated; and
 - (ii) that it has directed (or intends to direct) the Operator to pay to it some or all of the Termination Proceeds in repayment of the Advances;
 - (b) The date the Statutory Supervisor is legally able to release to the Operator the full settlement monies received from a new resident for a licence for the Unit;
 - (c) Except where paragraph (d) applies, the date 12 months after the Applicant dies;
 - (d) If the Applicant dies and his or her Spouse or Partner also has a Residential Care Loan as a result of an interest in the Termination Proceeds for the Unit, the date 12 months after that Spouse or Partner dies;

(e) If the Applicant is in default under clause 7.1, on the date required by the Crown in accordance with that clause.

4.2. The amount that the Applicant must repay will be determined in accordance with the Residential Care Loan Scheme in effect at the date this agreement was entered into.

4.3. Notwithstanding the terms of the Licence the Applicant consents and directs the Operator to pay the Termination Proceeds to the Crown in accordance with the terms of this agreement.

5. Consideration

5.1. In consideration of the Crown making Advances to the Applicant, the Applicant agrees to assign to the Crown his or her interest in the Termination Proceeds subject only to such deductions that may be properly made by the Operator in accordance with the Licence.

6. Applicant's other obligations

6.1. While the Crown is liable to make advances under this agreement, the Applicant must contribute the New Zealand Superannuation or any other Benefit he or she receives, less the Personal Allowance, towards the Applicant's Cost of LTR Contracted Care.

6.2. The Applicant must:

(a) Put and keep the Unit in good substantial repair and condition in accordance with the terms of the Licence.

(b) If requested in writing, produce to the Crown for inspection the receipt for all service and other fees payable under the Licence.

(c) Comply with all legal requirements that failure to comply with might prejudice the Crown's interest in the Termination Proceeds.

6.3. The Applicant must pay to the Crown, at its request, any monies the Applicant receives as compensation paid in relation to the Unit, to reduce or repay the Advances.

6.4. The Applicant acknowledges that the Crown will not be responsible for any loss that arises directly or indirectly to the Applicant by the acts of demanding payment of the Termination Proceeds or directing the Operator to pay the Termination Proceeds directly to the Crown.

6.5. The Applicant must promptly notify the Ministry of Social Development if:

(a) the Applicant's or the Applicant's Spouse or Partner's financial circumstances change (except for any increase in the amount of Advances owing or in the value of any of the Applicant's or the Applicant's Spouse or Partner's Assets including the Termination Proceeds);

(b) the Applicant's Spouse or Partner dies;

(c) the Applicant's Spouse or Partner becomes a Resident Assessed As Requiring Care;

(d) the Applicant's or the Applicant's Spouse or Partner's relationship status changes (for example, by entering into or ending a marriage, civil union, or de facto relationship); or

- (e) any of the following persons address changes; the Applicant, the Applicant's attorney; or the Applicant's property manager under the Protection of Personal and Property Rights Act 1988.
- 6.6. The Applicant must not assign, transfer or otherwise dispose of any of his or her interests in the Licence or Termination Proceeds or part with possession of the Termination Proceeds without the Crown's written consent.
- 6.7. The Applicant represents and warrants that he or she:
- (a) has the Operator's consent or good right to assign free from encumbrances his or her interest in the Termination Proceeds; and
 - (b) is or was the holder or joint holder of the Licence; and
 - (c) is entitled to the Termination Proceeds under the Licence, and that entitlement is not liable to forfeiture and the only monies owing are those set out in the Licence attached to this Agreement which the Operator is entitled to deduct from the Termination Proceeds.

7. Default

- 7.1. If the Applicant defaults on any of his or her obligations under this agreement, the Crown may serve on the Applicant written notice requiring the Applicant to remedy the default before a specified date, which must not be earlier than one month following the service of notice. If the default is not remedied by the specified date, the Crown may, at any time until the default is remedied and without prejudice to any of its other rights and remedies, exercise any or all of the following remedies:
- (a) Charge default interest at a rate of 10% per year, calculated on a daily basis, on any Advances outstanding, from the date specified in the notice until the Applicant has repaid the Advances in full. Such default interest will form part of the Advances.
 - (b) Charge the Applicant for any enforcement costs it has to pay. Such costs will form part of the Advances.
 - (c) Require the Applicant to repay any or all of the Advances immediately.

8. Power of attorney

- 8.1. The Applicant irrevocably appoints the Crown, and any person authorised by the Crown under clause 9 of this agreement to act on its behalf, to be the Applicant's attorney to do any of the following things:
- (a) Execute any document or do anything else that the Applicant has failed to do under this agreement, or take any other action that, in the Crown's opinion, is necessary to protect its interests under this agreement.
 - (b) Exercise the Applicant's rights and powers (if any) under the Licence.

9. Actions by the Crown

- 9.1. The Crown may execute this agreement and act under this agreement through:

- (a) the Director-General of Health or any employee of the Ministry of Health with delegated authority from the Director-General; or
- (b) any officer of the Ministry of Social Development authorised to act by virtue of his or her office under a power of attorney given by the Director-General of Health to act on his or her behalf in respect of the Subsidy; or
- (c) any other person who is for the time being authorised by or through the Crown to administer the Crown's Residential Care Loan Scheme.

9.2. If any person listed above purports to act under this agreement, that fact will, in the absence of evidence to the contrary, be sufficient evidence of the person's authority to do so.

10. Independent advice

10.1. The Applicant acknowledges that he or she has:

- (a) received independent legal advice before signing this agreement; or
- (b) been advised that he or she is entitled to obtain independent legal advice but has declined to do so.

11. Notices

11.1. The Crown may give any notice for the Applicant under this agreement to the Applicant in person or to any person (other than the Crown) who the Crown is advised is the Applicant's Attorney in relation to Property or Property Manager appointed under the Protection of Personal and Property Rights Act 1988. The written notice may be served in person or by post (ordinary or registered). If postal delivery is used, the notice will be sent to the last notified address of the Applicant or his or her Attorney or Property Manager and will be treated as being received on the fourth day after posting. If the notice is delivered in person, the notice will be treated as being served on that date.

AGREEMENT WITH OPERATOR

12. Pursuant to this Deed, the Operator:

- (a) consents to the assignment of the Applicant's interest in the Termination Proceeds; and
- (b) acknowledges the assignment to the Crown of the Applicant's interest in the Termination Proceeds; and
- (c) undertakes to promptly notify the Ministry of Social Development at the Address for Service of the termination of the Licence; and
- (d) undertakes that, upon the date the Statutory Supervisor is legally entitled to release to the Operator the full settlement monies received from a new resident for a licence for the Unit, it will, at the Crown's direction, direct the Statutory Supervisor to transfer all or part of the Termination Proceeds to the Crown to meet the Applicant's obligations to repay the Advances under this agreement.

13. The Operator confirms that it will provide any Statutory Supervisor with a copy of this agreement once signed by all parties.

Execution

Executed as a Deed

SIGNED on behalf of the Crown by

Legal Executive
Ministry of Social Development
in the presence of:

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by / on behalf of * the Applicant
in the presence of:

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by / on behalf of * the Applicant's
Spouse/Partner
in the presence of:

Witness to signature:

—
Signature of witness

—
Name of witness

—
Occupation

—
City/town of residence

SIGNED on behalf of the Operator
XXX
in the presence of:

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence

- * If you have signed this agreement as attorney for the Applicant, you must also complete the appropriate certificate of non-revocation (and if applicable, non-suspension) of power of attorney at the end of this agreement.

SCHEDULE

UNIT: Villa/Apartment/Unit No xxx

If you have signed the attached agreement as attorney for the Applicant pursuant to an **enduring power of attorney**, you must complete the following certificate.

Note that Statement B in the certificate does not apply as an attorney solely in respect of personal care and welfare cannot sign the agreement.

Certificate of non-revocation and non-suspension of enduring power of attorney

Section 103C, Protection of Personal and Property Rights Act 1988

I, *[full name, address, occupation of attorney]*, certify that—

1 *For this paragraph select the statement that applies.*

Statement A

On *[date]*, *[full name of donor]* granted to me an enduring power of attorney to act in relation to his/her* property.

*Select
one.

Statement B

On *[date]*, *[full name of donor]* granted to me an enduring power of attorney to act in relation to his/her* personal care and welfare.

*Select
one.

Statement C

On *[date]*, *[full name of donor]* granted to me an enduring power of attorney to act in relation to his/her* personal care and welfare and his/her* property.

*Select
one.

- 2 I have not received notice of an event revoking my authority to act under the enduring power of attorney.
- 3 I have not received written notice from *[full name of donor]* suspending my authority to act under the enduring power of attorney.

Date:

Signature of attorney: _____

Notes

Definition of an event revoking the power of attorney

An *event revoking the power of attorney* means any of the following events in which the enduring power of attorney ceases to have effect:

- the donor revokes the power while mentally capable of doing so; or
- the donor dies; or
- the attorney gives notice of disclaimer in accordance with [section 104](#) of the Protection of Personal and Property Rights 1988; or
- the attorney dies, or is adjudged bankrupt, or becomes a patient within the meaning of the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#) detained in a hospital under that Act, or becomes subject to a personal order under [Part 1](#) of the Protection of Personal and Property Rights Act 1988 or a property order under [Part 3](#) of the Protection of Personal and Property Rights Act 1988, or otherwise becomes incapable of acting; or
- in the case of an enduring power of attorney that appoints more than one attorney with joint but not several authority, one of the attorneys dies, or is adjudged bankrupt, or becomes a patient within the meaning of the [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#) detained in a hospital under that Act, or becomes subject to a personal order under [Part 1](#) of the Protection of Personal and Property Rights 1988, or a property order under [Part 3](#) of the Protection of Personal and Property Rights 1988, or otherwise becomes incapable of acting; or
- a Court revokes the appointment of the attorney pursuant to [section 105](#) of the Protection of Personal and Property Rights 1988.

If you have signed the attached agreement as attorney for the Applicant pursuant to an **ordinary power of attorney**, you must complete the following certificate.

CERTIFICATE OF NON-REVOCAION OF POWER OF ATTORNEY

I, *[Full name of attorney]* of *[Place and country of residence]*, *[occupation]* certify:

- 1 That by deed dated *[date of instrument creating the power of attorney]*, *[Full name of donor of power of attorney]* of *[place and country of residence of donor]* appointed me his/ her* attorney.
- 2 That I have not received any notice of any event revoking the power of attorney.

Signed at this day of 2020

* Delete if inapplicable

RESIDENTIAL CARE LOAN AGREEMENT – DISCLOSURE STATEMENT

READ THIS DOCUMENT BEFORE SIGNING THE RESIDENTIAL CARE LOAN AGREEMENT

This Disclosure Statement contains key information concerning the attached Residential Care Loan Agreement (**Agreement**).

It is provided pursuant to section 17 of the Credit Contracts and Consumer Finance Act 2003.

If you do not understand anything in this Disclosure Statement or the Agreement you should seek independent advice before signing the Agreement.

Effective date of statement: [24 June 2020]

Creditor / lender

Name: The Sovereign in right of New Zealand acting by and through the Director-General of Health (**Crown**)

Physical address:

Postal address:

Email: msd.legal.executives@msd.govt.nz

Credit details

Initial unpaid balance: \$ Nil
(The unpaid balance as at the effective date of this Disclosure Statement – provide details)

Subsequent advances: All amounts advanced by the Crown and paid to the provider towards the Cost of LTR Contracted Care for your long-term residential care, while you are ineligible for a residential care subsidy under the Residential Care and Disability Support Service Act 2018.

Payments

You (or your Estate) must repay the Advances (including any default interest and enforcement costs payable following a default) on the earliest of the following dates:

- (a) The date the Crown gives you notice:
 - (i) that it has been advised by the Operator that your Licence has been terminated; and
 - (ii) that it has directed (or intends to direct) the Operator to pay to it some or all of the Termination Proceeds in repayment of the Advances; and
- (b) The date the Operator enters into a licence to occupy agreement with a new licensee in respect of the Unit;
- (c) Except where paragraph (d) applies, the date 12 months after you die.
- (d) If you die and your Spouse or Partner also has a Residential Care Loan as a result of an interest in the Termination Proceeds, the date 12 months after that Spouse or Partner dies:
- (e) If you are in default under clause 7.1, on the date required by the Crown in accordance with that clause.

You may repay all advances at any time without penalty.

The amount you are required to pay will be determined in accordance with the Residential Care Loan Scheme in effect at the date the Agreement was entered into.

Security interest

Property

Under the Agreement, you agree to Assign to the Crown your interest in the Termination Proceeds, subject only to such deductions that may be properly made by the Operator in accordance with the Licence.

UNIT: Villa/Apartment/Unit No xxx

Default interest charges and fees

If you default under the Agreement you will be liable to pay:

- Default interest at the rate of 10% per year calculated on a daily basis on any unpaid advances, and
- Any enforcement costs related to the collection of any unpaid advances and/or default interest.

You must not assign, transfer or otherwise dispose of any of your interests in the Licence or Termination Proceeds or part with possession of the Termination Proceeds without the Crown's written consent.

Right to cancel by Applicant

The Credit Contracts and Consumer Finance Act 2003 gives you a right, for a short time after the terms of this contract have been disclosed to you, to cancel the contract.

How to cancel

If you want to cancel this contract you must give written notice to the creditor.

You must also return to the creditor any advance and any other property that you received under the contract.

Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within three (3) working days after you receive the documents.

If the disclosure documents are sent to you by electronic means (for example, e-mail) you must give notice that you intend to cancel within five (5) working days after the electronic communication is sent.

If the documents are mailed to you, you must give the notice within seven (7) working days after they were posted.

Saturdays, Sundays and national public holidays are not counted as working days.

What you may have to pay if you cancel

If you cancel the contract the creditor can charge you:

- (a) the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports etc); and
- (b) interest for the period from the day you received the advance until the day you repay the advance.

This statement only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think that the creditor is acting unreasonably in any way, you should seek advice immediately.

Continuing disclosure statements

No continuing disclosure statements will be provided, as you are not required to pay either interest charges or credit fees (unless you are in default under the Agreement).

Confirmation of initial disclosure

I confirm that:

1. I have been provided with a copy of this Disclosure Statement before I signed the Agreement or within five working days of the date the Agreement was made; and
2. I was provided with a copy of the Agreement at that time.

XXX