
A Submission to:

**Legislative Council, Parliament of Victoria
Standing Committee on Legal and Social Issues**

INQUIRY INTO THE RETIREMENT HOUSING SECTOR

Title: **Are we protected?**

Type: Individual Submission from a *resident of a Residential Village* in Victoria, relating to Terms of Reference (1) (b) (3) and (4).

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Are we protected?

Introduction

- Since 2014, I have been a homeowner and site tenant in a purpose built **residential village** known as an affordable Manufactured Home Estate (MHE). The demographic of this over-55s village includes an average age of maybe low-mid 70's; a majority of women; a few residents still in degrees of employment, with pensioners making up the overwhelming majority.
- This places us under the legislative/ regulatory framework of Part 4A of the Residential Tenancies Act, (RTA) 1997, and Amendment Act 2012, and the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2010.

My submission asks the big question associated with 1(b), 3 and 4 of Terms of Reference:

How well do existing laws and regulations protect over-55s from situations that may be experienced as exploitative or unfair, as well as demoralizing?

The following 'situations' will raise some issues about the plights and rights of residents as village homeowners and site tenants, and generate recommendations for change that will be presented at the end of this submission:

1. **The Deferred Management Fee**
2. **Electricity Tariffs and Solar Panels**
3. **Home Insurance**

Two sources will be used for raising issues – my home village and a newer village in the area that has recently generated much publicity, held information days etc. and runs a website.

1. The Deferred Management Fee (DMF)

Village 1: Home Village

i. How is the DMF justified?

The attached 2014 lease justifies it in this way:

“ ... a deferred maintenance/management fee... shall be a contribution payable in arrears for all operating expenses for the care, upkeep, maintenance and management of the Village during the period of this lease.”

Under the Lessor's Duties, this is confirmed:

“The Lessor shall make every reasonable effort to:

- a. keep the unleased areas of the Village clean, tidy and well maintained.*
- b. adequately repair, maintain and insure all facilities in the Village provided for the benefit of residents”*

The first spotlighted issue is not apparent until the **purpose** of the DMF is compared with the **purpose** given to explain the monthly Rent/Contribution Fee

According to the attached “*WHAT DO MY SITE FEES COVER?*” from the Village Enquiry booklet, monthly rent ‘covers’ items of operating expenses including salaries, administration of village, maintenance and upkeep of communal buildings, facilities, grounds, gardens, utilities, insurance of communal areas, council land rates...and a whole lot more, which presumably is intended to justify the monthly Rent as indicated below:

Rent/Site Contribution Fees: -Single Person (S) & Couple (C)

		Weekly		Monthly		Annual	
		S	C	S	C	S	C
RENT	2014	\$133.97	\$159.41	\$582.1	\$692.8	\$6,985.6	\$8,289.3
"	2016	\$150.05	\$176.07	\$654	\$765.1	\$7,847.5	\$9,180.8

Questions raised by this situation:

What credibility has the DMF when it is expressed in this context of apparent duplication?

What shadows does it throw on the validity of this aspect of the Contract and the Contract itself?

ii. How is the DMF calculated when the Unit is sold?

In the wording of the Lease – and variations have occurred in leases over time - the math is:

“To avoid any doubt the calculation is: (End sale price x 6% (for year one)) + (End sale price x 3% x the number of the remaining years or part thereof (no greater than 11)) plus GST.”

In this contract, the DMF is capped after 12 years, claiming 39% of the Sale Price, plus GST, plus the further imposed Administration Sales cost of 2.5% of the Sale Price – bringing this aspect of ‘exit’ fees upwards to the lofty height of 41.5% of the Sale Price.

Comments:

* Our Village is attractive to investors – stable, low risk.... The DMF and rent are valued highly by the new owners – as potential investors are told:

“The asset structure is unique as it gains its income from a very predictable site rent (underpinned by the commonwealth rental assistance program) paid by the residents and a deferred management fee payable on sale of the home.” (Website June, 2016)

* A serious side effect of exploitative DMFs is that pensioners who, a decade ago, banked on the Sale Price of their home to ease them into the next step of assisted living and aged care facilities, now believe that this will not happen: not only because the DMF+ takes a slab, but also because the ‘price of aged care’ has risen and waiting lists for pensioners are growing.

This is a **demoralizing** aspect of ‘plights and rights of homeowners.’

* The RTA does not deal with DMFs, the residents committees they have ‘allowed’ to exist have no teeth, VCAT as a conflict resolution instrument is remote, non-consultative in process, and not seen as relevant to what is needed – i.e. treating the cause and not the symptom.

* So legislative change and an Ombudsman are overdue and reflects governmental failure to protect the rights of its vulnerable citizens. But would the Ombudsman be hamstrung without significant legislative change occurring first to make processes relevant and constructive? Or would his weighty opinion accelerate the process of legislative change?

Village 2: Another Residential Village in the area

i. How is the DMF justified?

“The original intention of a DMF scheme, some 30 plus years ago, was to allow retirees to buy a lifestyle villa for less than the market value of an equivalent villa... We charge a DMF, also known as a Facilities Fee, which helps cover our initial investment in the land and the construction of the village infrastructure and community facilities.” (Website)

On appearances, the ‘DMF’ does not duplicate the ‘cover’ of Monthly Rental (quoted as \$340 fortnightly - irrespective of single/double; which is around \$739 monthly and \$8864 yearly).

ii. How is the DMF calculated?

“DMF charged on the purchase price of the home. DMF calculated at 4% for each year that you live at the village, or part thereof. DMF capped at five (5) years or 20% maximum. Administration fee on selling, \$550.” (Website)

Compared with *Home Village*, the ‘DMF’ above is charged on the purchase price, not on the sale price and is known at the outset; is capped at 20% not 39%, and allows for capital growth on home; administration fee for sale is \$550, not 2.5% of sale price of e.g. \$250k = \$6,250. Buy-in prices are higher, houses bigger; modern design; double garage, resort facilities

This comparison shows how newer entrants to the Victorian ‘residential villages’ market place will change the landscape and reproduce DMF wine in attractive new bottles for those now buying into a more competitive market. New ‘protections’ may be needed to protect the trusting, and the vulnerable resident-tenants of this sector, as competitors jostle for market share or domination.

2. Electricity Tariffs and Solar Panels (for issues of transparency and accountability)

Comments

- **Electricity Tariffs & Embedded network**

Within many residential villages such as *Home Village*, operators supply and sell electricity through an embedded network. My usage is individually metered, the ‘Electricity Fee’ on the Tax Invoice, and with a unit price \$0.242 per kWh
The other item on the Invoice, termed Supply Charge of \$46.22: a “*Quarterly Network Fee for Supply Charge from Powercor*” for ‘*maintenance of poles, lines and electricity infrastructure*’. A ‘rebate’ is applied for and received each year for annual power bills from Human Services.

My greatest concern as a resident is the lack of comprehensive information about the way this embedded system *works for residents*, knowing that we don’t have choice in our electrical retailer, or the option of off-peak usage, or, because we are a third party to the arrangement, we don’t have access to the Energy and Water Ombudsman.

However, because the cost to residents is far lower than we were used to ‘in the suburbs’, there is no general concern about this, as operators are not to charge site tenants more than what they themselves are charged by their supplier. But information about this aspect is not available.

- **Solar Panels - benefits to residents**

At a recent meeting of residents, I asked a visiting interstate senior manager of the company,

“We know that we can draw off electricity from our 6 solar panels for a few hours during the day. But apart from this –

- a. What happens to the electricity generated by over 1000+ solar panels across the Village?*
- b. If it is sold back into the grid, at what rate is it sold and who receives the proceeds?”*

No information was forthcoming.

- The **“*other Residential Village*”** has an embedded system and solar panels; the energy generated by the panels is not sold back to the grid but *goes back into the embedded system and is used to power community facilities.*
- In **“*Home Village*”**, we do not know what happens, but according to the excerpt from the attached document *‘WHAT DO MY SITE FEES COVER?’* they cover:
 - *“All community Centre water, light and power*
 - *Electricity supply to Common areas, Roads, Community Centre and Gym”*
- *It is possible that collectively we are producing the electricity and then paying for it monthly, but this may not be so.*
- *Transparency and accountability of ‘operators’ are key issues to support the rights of residents as homeowners and site tenants in all of our residential villages.*

3. Home Insurance

- At **“*Home Village*”** insurance of units is arranged by the Village – One bedroom \$368.12 and Two bedroom \$390.70 An offer to the visiting senior Manager for residents to also get quotes for the Village and submitting them, was refused. And because there were indications that the premiums are too high, a question - asking to reveal the premiums/quotes they had negotiated - was rejected on the grounds that it was the company’s “intellectual property.”
- At the **“*other Residential Village*”** insurance is the responsibility of homeowners.

The issue of Home Insurance highlights again, the need for transparency and accountability of village operators.

See Recommendations – next page

RECOMMENDATIONS

1. That the integrity, fairness and impact of all creative configurations of the DMF(or substitute)-rental relationship in the different brands of residential villages that are developing across the State, be examined.
2. That ways be investigated to protect the rights of residents as homeowners and as site tenants in any “DMF”-and-rental situation that abuse their rights and dignity
3. That the RTA framework, or an alternative, be reformed to allow the establishment of a stand-alone *residential village* section in its purview
4. That within this section, an instrument or mechanism that regulates the use of reasonable DMFs or initial Facilities/Establishment Fees, that institutes the ‘capping’ principle and compensates the lessee significantly for any misuse by operators by % decreases in DMF
5. Following on from the above, and if the DMFs or alternatives have ongoing legitimacy and with no overlap in what monthly rent covers, that a model ‘lease’ be developed that *defines specifically, the responsibilities attached to these fees, and describes the Key Performance Indicators (KPIs) - in behavioural terms and in specific contexts – that would indicate that they were being carried out* (This would help to measure the fulfillment of the Lessor’s contractual responsibilities and for owners *to be accountable* in order to claim the DMF - just as the Lessee’s duty is to comply to specific rules of conduct in the village or vacate, having their lease terminated.)
6. That support groups such as HAAG (Housing for the Aged Action Group) be utilized and funded to complement this initiative by developing educational materials based on applying a model lease to examples in fictional or real case studies, showing how these principles would operate in practice.

(For example: In my contract, one of the “Cessation of the Right to Occupy” criterion is: “Incapacity and ill-health - if a resident appears to (Lessor) to have become incapacitated or is suffering from ill- health and appears to be having difficulty living independently and undertaking normal daily tasks and /or requires assistance for their personal care, (Lessor) will require and advise the resident, the resident's family or Power of Attorney that an assessment is required... etc.)

The Lessor is responsible for taking a decision...What responsible and preceding actions and procedures – to cover all residents, would facilitate the successful discharge of this duty?

7. That the issue of transparency and accountability of owner-managers – akin to due diligence and duty of care – be linked to the role of residents committees in protecting the interests and welfare of residents as homeowners and site tenants
8. That residents committees be established as legal entities to protect interests of residents
9. That managers of residential villages be required to be qualified with not only management qualifications and experience, but in the requirements of the demographic of residents in residential villages AND that training be provided for residents committees (as legal entities) in their roles and responsibilities AND that the role that not only groups like HAAG could play in the latter, but also the role that local Councils who run programs on e.g. ‘Being on a committee’ could play - be investigated
10. That, in new legislative recommendations, an Ombudsman be appointed for the sector to process and guide dispute resolution for which VCAT is not designed to implement
11. That, when the package of proposed legislative reform - relating to the whole retirement sector, which builds upon and improves on the reforms already undertaken by other States - is completed, that Victoria initiates a leadership role in taking steps to make the reforms part of an Australia-wide campaign

(Owners-operators are going national, so must the reforms. And if Victoria assumes leadership responsibility in this regard - noting how COAG operated for necessary water management policy implementation across the States of Australia in drought time when the interstate river systems were in crisis - the way is paved for the establishment of standards to support and protect the rights and dignity of the expanding demographic of over 55s, pensioners and retirees - nationwide.)

Dorothy Lorraine Bell
June 29, 2016

..... RESIDENTIAL VILLAGE
LEASE

THIS LEASE is made on the date set out in Item 1 of the Schedule

BETWEEN: **(Lessor)**

AND **THE RESIDENT OR RESIDENTS** (“the Resident”/”Lessee”)
specified in Item 2 of the Schedule of the other part.

WHEREAS:

- A. **(Lessor)** are the registered proprietors of the whole of the land contained in Certificate of Title Volume___ Folio___ and improvements and known as xxx Village (“the Village”).
- B. (Lessor) has established and is conducting the business of a Residential Village on the land which business includes the leasing of parts of the land known as sites on which may be placed relocatable homes.
- C. (Lessor) has agreed to grant a Lease to the Resident of the site described in the Schedule and on the terms and conditions hereinafter contained.

NOW THE PARTIES HERETO AGREE:**1. PRECONDITIONS ELIGIBILITY REQUIREMENT**

An eligible resident will be a person approved by (Lessor) as being a suitable person to occupy a unit at the (Lessor), provided that such approval shall not be unreasonably withheld in respect of a reputable, responsible and solvent person or persons who satisfies the following conditions:

- (a) **If there is only one proposed occupant** – that person is not less than 55 years of age;
- (b) **If there are two proposed occupants:**
 - (i) in the case of a married couple both are not less than 55 years of age;
 - (ii) in the case of two occupants both occupants are not less than 55 years of age.
- (c) **If there is only one proposed occupant** – that person is of a reasonable state of health and if so requested by (Lessor) provide a certificate from a legally qualified medical practitioner and if necessary, supported by an assessment from the Aged Care Assessment Team ("ACAT") to the effect that the person is in his or her opinion suitable to reside at (Lessor);
- (d) **If there are two occupants** – both such persons comply with sub-clause 1(c) and are capable of properly providing for the care and attention of the other.

LEASE

(Lessor) Leases to the eligible resident the site set out and defined in item 3 of Schedule 1 and the attached plan to commence upon settlement of the purchase of a relocatable home by the Lessee to be located on the site. The period of this Lease shall be the earlier of:

- (a) for the term of ninety nine (99) years;
- (b) a term of twelve (12) months thereafter;
- (c) termination in accordance with clause 10, 11 and or 13 herein as applicable.

2. PAYMENTS

The Resident shall:

- (a) pay to (Lessor) the monthly site occupancy fee in advance and as set out in Item 4 of Schedule 1 and as may be varied as set out hereafter. The Resident to provide a signed direct debit authority to effect payment via direct debit by (Lessor).
- (b) pay the deferred management fee as and when payable as set out hereafter.
- (c) pay electricity charges attributable to site usage as apportioned and advised by (Lessor). The Resident to provide a signed direct debit authority to effect payment via direct debit by (Lessor)
- (d) pay for and keep current the insurances hereinafter stated. The Resident to provide a signed direct debit authority to effect payment via direct debit by (Lessor).
- (e) pay all and any other amounts advanced to or for the benefit of the Resident by (Lessor).
- (f) pay the Administration Sales Cost at the time of sale of the relocatable home pursuant to clause 8(d) of the Resale Agreement a copy of which is attached hereto and called Annexure A.
- (g) pay all and any garbage/rubbish collection and removal charges attributable to site usage as apportioned and advised by (Lessor).
- (h) pay any fire levy attributable to site usage as apportioned and advised by (Lessor).

3. PERMITTED USE AND OCCUPATION OF THE SITE AND COMMON AREA USE.

- (a) The site shall be used solely for residential purposes and subject to the Village's Regulations as set out in Item 5 of Schedule 1 and as amended from time to time and the only permitted structure erection or building allowed on the site shall be a relocatable home owned by the Resident ("the Home") of a type quality and finish approved by (Lessor).
- (b) The Resident shall not construct erect affix or put upon the site or the outer surface of the Home any fitting improvement or thing (including any fence, carport, clothesline, external blinds or television antenna) without the prior written consent of (Lessor).
- (c) The Resident shall maintain and keep tidy to the satisfaction of the (Lessor) his/her site and the Home on site and any additions to the site and building which have been consented to by (Lessor).
- (d) The Resident shall ensure that the hot water unit, heater and stove are adequately maintained at all times and serviced at least every 3 years. The Resident shall place all service receipts in the Red Folder.
- (e) The Resident shall be entitled to use in common with other lessees of sites and subject to the Village's regulations, the common access ways, areas and other facilities of the Village during the period of this Lease.
- (f) The Resident shall not do or allow to be done by any occupant or visitor anything in the Village that would adversely affect the owners insurances in relation to the Village.
- (g) The Resident shall not do or allow to be done by any occupant or visitor anything in the Village that would be a nuisance to the other Lessees/Residents of the Village or their visitors.

- (h) The Resident shall not conduct himself or herself or allow his or her visitor to conduct himself or herself in any abusive or vulgar manner at the Village.
- (i) The Resident shall pay for any damage to the Village or its facilities or to other Residents caused by the Resident or any person occupying the site or any visitor of the Resident.
- (j) The Resident shall ensure that (Lessor) has a duplicate key to the home at all times. If the Resident changes the locks to the home it must be matched to the master key.
- (k) The Resident shall insure any items placed on or in the storage area or common property and shall upon request provide (Lessor) with a copy of the current Certificate of Insurance.
- (l) The Resident shall under no circumstances light any fire or cause any fire to be lit at the Home and/or on site and/or at or on any property pertaining to the Village.

4. VARIATION OF SITE OCCUPANCY FEE

(a) i. *CPI Adjustment*

In each and every year on 1st January (Lessor) may elect to adjust the site occupancy fee (rent) by CPI Adjustment and, in the event of that election, the rent as from 1st January is to be increased by reference to the movement in the Consumer Price Index.

$$NR = R \times \frac{CPIB}{CPIA}$$

Where: NR = rent after adjustment
R = rent before adjustment
CPIB = Consumer Price Index figure for the July to September quarter preceding the adjustment date
CPIA = Consumer Price Index figure for the July to September quarter preceding the most recent previous adjustment and if no previous adjustment has occurred the quarter preceding a date 12 months prior to the first available adjustment date after commencement of this Agreement.

So as to remove any doubt if (Lessor) does not exercise its right of election to adjust the rent in any year then any increase in rent that would have resulted if it so elected may be required to be paid along with other increases which result from the movement in the CPI when (Lessor) next makes its election to adjust the rent.

If the Consumer Price Index is discontinued or suspended the formulae for calculation of the adjustment shall be that which the Senior Office Bearer of the Australian Property Institute - Victorian Division decides is appropriate in the circumstances which decision shall be binding.

OR

ii. Fixed Increase

In each and every year on 1st January (Lessor) **may**, in lieu of an election to adjust by CPI, elect to adjust the site occupancy fee (rent) by way of fixed increase and, in the event of such an election, election the rent as from 1st January is to be increased by 3.5%.

So as to remove any doubt if (Lessor) does not exercise its right of election to adjust the rent in any year then any increase in rent that would have resulted if it so elected may be required to be paid along with other increases which result from the fixed increase when (Lessor) next makes its election to adjust the rent.

(Lessor) may elect either variation by way of CPI adjustment OR Fixed Increase under this clause at their sole discretion.

(b) **Review to Market**

In addition to and following the CPI or Fixed Increase review in accordance with clause 4(a) (i) or (ii) (whether elected or not) herein (Lessor) may elect to carry out a Review of Rental to Market every three years from 1 January 2013 (eg 1 January 2016, 1 January 2019 and so on and so forth) ('market review date').

The review procedure on each market review date is –

- 4(b)(i) Each review of rent may be initiated by either party. If the Act applies, the review is compulsory.
- 4(b)(ii) A party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the Rent for the review period. Unless the Act applies, if the party receiving the notice does not object in writing to the proposed rent within 14 days, it becomes the Rent for the review period.
- 4(b)(iii) The Valuer is to be a qualified Valuer who must also be a practicing real estate agent and who acts as an expert and not an arbitrator appointed by agreement between the Lessor and the Lessee and failing agreement appointed by the President or Senior Office Bearer for the time being of the Real Estate Institute of Victoria Limited.
- In determining the current market rent for the Premises the Valuer must –
- (a) consider any written submissions made by the parties within 21 days of their being informed of the Valuer's appointment, and
 - (b) determine the current market rent as an expert and, unless the Act applies –

- (c) assume that the Premises are available to be leased on the same conditions as those contained in this lease including any options for renewal, but with the tenant in possession,
 - (d) take into account the conditions of this lease including the permitted use,
 - (e) assume that the Lessee has met all its obligations under this lease,
 - (f) ignore the Lessee's Installations and all improvements made by the Lessee to the Premises without obligation to do so,
 - (g) take into account current market rents for comparable premises in the locality.
- (4)(b)(iv) The Valuer must determine a current market rent at least equal to the Rent immediately before review.
- (4)(b)(v) The Valuer must make the determination of the current market rent and inform the parties in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 21 days allowed for submissions by the parties.
- (4)(b)(vi) If –
- (a) no determination has been made within 45 days of the parties
 - (i) appointing the Valuer, or
 - (ii) being informed of the Valuer's appointment, or
 - (b) the Valuer resigns, dies, or becomes unable to complete the valuation, then the parties immediately appoint a replacement Valuer.
- (4)(b)(vii) The Valuer's determination binds both parties.
- (4)(b)(viii) The Lessor and Lessee must bear equally the Valuer's fee for making the determination. If either pays more than half the fee, the difference may be recovered from the other.
- (4)(b)(ix) Until the determination is made by the Valuer, the Tenant must continue to pay the same Rent as before the review date. Within 7 days of being informed of the Valuer's determination, the parties must make any necessary adjustments.

- (4)(b)(x) Unless the Act applies, no rent review may take place unless started within 12 months after any review date, otherwise a delay in making a rent review does not prevent the review from taking place and being effective from the review date.

5. DEFERRED MANAGEMENT FEE

- (a) In consideration for the grant of this lease the Resident agrees to pay to (Lessor) a deferred maintenance/management fee which sum shall be a contribution payable in arrears for all operating expenses for the care, upkeep, maintenance and management of the Village during the period of this lease.
- (b) The sum in 5(a) shall be the end sale price of the Home multiplied by 6% for the first year and 3% for each following year or part thereof multiplied by the number of the years that the Resident remains the owner of the Home, the Home remains on the site and the lease is not terminated transferred or surrendered; which number for the purpose of this calculation cannot exceed 11 years, plus GST. To avoid any doubt the calculation is:

$$(\text{End sale price} \times 6\% (\text{ for year one })) + (\text{End sale price} \times 3\% \times \text{the number of the remaining years or part thereof (no greater than 11)}) \text{ plus GST.}$$
- (c) If the Resident is the owner of the home for less than one year, for the purpose of the deferred management fee calculation, the Resident is taken to be the owner of the home for one year and therefore the formula should be as follows:

$$(\text{End sale price} \times 6\%) \text{ plus GST.}$$
- (d) The deferred management fee calculated under 5(b) shall be paid at the time of:

- (i) settlement of the sale of the Home; or
 - (ii) one month prior to the Home being removed from the site (which removal may only occur upon provision to (Lessor) of sixty days written notice of the intended removal); or
 - (iii) termination, transfer or surrender of this lease.
whichever first occurs.
- (e) For the purposes of this section “end sale price” means:
- (i) the sale price in a Contract of Sale of the home (on or around the time of assignment transfer surrender or termination of this Lease) pursuant to the terms of which settlement is completed; or
 - (ii) in the event that the Home is moved from the site or the lease is terminated in circumstances of dispute between the parties with no immediate prospect of a Contract of Sale of the home, the average sale price achieved in the previous eighteen months on homes in the Village of the same or similar home design/model or at the option of (Lessor) the price determined by a valuation of the home by a valuer appointed by the President for the time being of the Real Estate Institute of Victoria the costs of which are to be shared equally by the Resident and (Lessor).
- (f) So as to secure the obligation of the Resident to pay the deferred management fee the Resident hereby charges all of his or her rights, title and interest including future rights, title and interest in the Home in favour of (Lessor).
- (g) In the case of a resident moving from one unit to another within the village, the parties agree that the date for the commencement of the calculation of years referred to in clause 5(b) hereof shall be the date of settlement of the original unit and not the date of this Agreement. The parties agree that the resident has been in continual residence of the premises since the original entry date into the village.

6. INSURANCES

The Lessee accepts the building insurance (for replacement value) for the relocatable Home on the Site and Public Risk Insurance (for a minimum of \$20 million) in relation to the relocatable home and the Site on which it is located. This insurance arrangement is obligatory on the part of the Lessee.

7. (LESSOR) DUTIES

(Lessor) shall make every reasonable effort to:

- (a) keep the unleased areas of the Village clean, tidy and well maintained.
- (b) adequately repair, maintain and insure all facilities in the Village provided for the benefit of the Residents.
- (c) pay all rates, charges and other expenses imposed upon the Village and not directly assessed or charged to any Resident.
- (d) comply with all obligations imposed upon it by the Residential Tenancies Act 1997 ("the Act") and any amendments thereto.

8. INSPECTION

(Lessor) and any person authorised as its agent may enter the site or the Home on site if there is an emergency and immediate entry is necessary to save life or property or otherwise as permitted by law.

9. REGULATIONS

The Resident shall at all times abide by and ensure that occupants of the site and visitors abide by the Village's regulations imposed on the Resident which are as set out in Item 5 of the Schedule and which may be amended from time to time. The Regulations as set out and as may be amended are obligations of the Resident under this Lease.

10. CESSATION OF RIGHT TO OCCUPY.

The right of the resident to reside at (Lessor), to use the communal facilities and occupy the unit ceases and determines on the happening of anyone or more of the following events:

(a) **Disqualification as an eligible resident** - if the resident ceases to qualify as an eligible resident for any reason including without limitation:

- (i) if the resident dies;
- (ii) if the resident sells or disposes of any interest in the unit without the prior consent in writing of (Lessor); or
- (iii) if it is ascertained that there has been a material failure to disclose any information relevant to a determination by (Lessor) as to whether the resident qualified as an eligible resident.

(b) **Incapacity and ill-health** - if a resident appears to (Lessor) to have become incapacitated or is suffering from ill- health and appears to be having difficulty living independently and undertaking normal daily tasks and /or requires assistance for their personal care, (Lessor) will require and advise the resident, the resident's family or Power of Attorney that an assessment is required to be undertaken by the Aged Care Assessment Team ("ACAT") and the resident will have an assessment undertaken as soon as practicable.

11. DEFAULT BY RESIDENT

- (a) If the Resident:
- (i) fails to pay the site occupancy fees or other dues within fourteen days of when due under this Lease; or
 - (ii) persistently breaches the regulations; or

- (iii) persistently breaches obligations imposed on Residents under the Act; or
- (iv) removes the Home from the site without giving sixty days written notice of the intended removal; or
- (v) removes a Home from the site with the intention of permanently leaving the site vacant (which intention shall be implied from no written notification of intention being provided to (Lessor) within thirty days of the removal of the Home from the site); or
- (vi) breaches any other obligation under this Lease and

if in the case of a breach of any part of (a) the breach or latest breach continues for fourteen days after (Lessor) gives the Resident written notice requiring the breach to be remedied then in any of the cases (a)(i),(ii), (iii), (iv), (v) or (vi) (Lessor) may terminate the lease and retake possession of the site.

- (b) In the event of termination by (Lessor) of this lease then to better secure (Lessor)' rights in respect of the termination the Resident hereby appoints (Lessor) to be its true and lawful attorney (sufficient proof of which shall be a statutory declaration by an authorised officer of (Lessor)) to:
 - (i) execute a transfer or surrender of this lease.
 - (ii) to sell the Home on behalf of the Resident on usual terms and conditions for sales as if there had been no breach of this Lease.
 - (iii) do all things necessary in respect of the Home, fittings and chattels to assist in the sale of the Home.

- (iv) account to the Resident for the net proceeds of sale after deduction of all costs in carrying out and putting into effect the authorised acts under this power.

12. ASSIGNMENT OR SUB LETTING

The Resident agrees not to transfer or assign or sub let the rights he has under this Lease except to a purchaser of the Home, and then only with the prior written consent of (Lessor) which shall not be unreasonably withheld. Section 144 of the Property Law Act 1958 shall not apply to this Lease.

13. RESIDENTS FURTHER RIGHTS (INCLUDING RIGHT OF TERMINATION)

- (a) In addition to any other rights given to the Resident under this Lease the Resident has all the rights given to a Resident under the Act.
- (b) This Lease may be terminated by the Resident by giving no less than two months written notice to (Lessor) and by the Resident and (Lessor) entering into a Surrender of Lease and Resale Agreement (being in the standard format used by (Lessor)).

14. RESIDENTS RELEASES AND INDEMNITIES

- (a) The Resident agrees that he or she leases the site at his or her own risk and releases to the full extent permitted by law (Lessor) and its agents contractors and employees from all claims resulting from any accident, damage or injury occurring on the site or in the Home on the site including personal injury to the Resident or any visitor, guest or occupant and the Resident agrees that in the absence of any negligence as stated, (Lessor) has no liability for any loss or injury to the Resident, the site or the Home or Residents personal property.
- (b) The Resident indemnifies (Lessor) from and against all claims and losses which they may become liable in respect of:

- (i) the negligent use by the Resident or any visitor, guest or occupant of the water, electricity, gas, lighting and other services and facilities to the Home.
- (ii) overflow of water (excluding rain water) from within the Home, caused or contributed by any act or omission of the Resident or any visitor, guest or occupant.
- (iii) loss, damage or injury to property or person caused or contributed to by the use of the site or Home by the Resident, visitor, guest or occupant.
- (iv) loss, damage or injury to property or person at the Home or at the site or in the common areas caused or contributed by any act or omission of the Resident or any visitor, guest or occupant residing with the Resident at the time of the act or omission.

15. NON LIABILITY OF (LESSOR)

(Lessor) is not liable for any damage or loss the Resident may suffer due to any act or neglect of (Lessor) or any other persons on its behalf carrying out the powers contained in this Lease or with respect to the Home because (Lessor) neglects to do anything to the Village which it may be legally liable to do unless the Resident has given (Lessor) written notice to do the thing and (Lessor) has without reasonable cause failed within a reasonable time to act.

16. NOTICE

Any notice that must be served under this Lease will be sufficiently served if in the case of (Lessor) it is posted to or left at the address specified in this Lease and in the case of Resident will be sufficiently served if posted to or left at the Home or site. If a notice is served by post, service will be deemed to have occurred two clear business days after posting.

17. NO WAIVER

Any further time given to the defaulting party to perform or comply with or forbearance to strictly enforce any of the provisions in this Agreement shall not be

treated by the defaulting party to be a waiver and the party not in breach shall be absolutely entitled to sue the defaulting party for damages or rely on the earlier breach to exercise its rights under this Agreement at any future date or compel the defaulting party to specifically comply with the term(s) or condition(s) where further time was given or in which forbearance was exercised as if no such further time was given or forbearance exercised.

18. COVENANTS TO BE JOINT AND SEVERAL

Where covenants are given under this Lease by two Residents those covenants are jointly and severally given in respect of the whole of the subject matter in this Lease.

19. GST

- (a) For the purpose of this Lease GST means any consumption tax by Government whether at point of sale or some other occurrence by whatever name which operates during the term of this Lease and includes (without limitation) a goods and services tax, a broad-based consumption tax or indirect tax and value-added tax.
- (b) This Lease is to be treated as taxable for the purpose of GST, with the benefit of any zero rating available under any applicable transitional agreement.
- (c) Each amount of whatever description specified as payable by the Resident to (Lessor) under this Lease is expressed net of GST. In addition to the amount payable, the Resident must pay to (Lessor) on demand the GST payable by (Lessor) in respect of that amount.

20. CONSENTS, TITLES OFFICE REGISTRATION AND COSTS

- 20.1 The parties acknowledge that this Lease may be registered on the Village title at the Land Titles Office. The Resident shall pay the reasonable legal fees of (Lessor) in relation to:

- (a) the preparation, execution, stamping (if required) and lodging of the Caveat.
- (b) the preparation execution stamping (if required) and registration of a Withdrawal of Caveat.
- (c) Should the resident elect to formally register the leasehold interest on title, the resident shall pay all reasonable legal costs and fees in regard to such registration including preparation, execution, stamping and lodging, production fees and the costs of obtaining any necessary consents. The resident shall also pay all costs including preparation, execution, stamping and lodging and production fees in regard to a Surrender of the Lease.

20.2 If the resident requires consent from a third party for the Lease, the resident shall pay all of the reasonable legal costs and fees in regard to such consent including bank fees, production fees and the costs of obtaining any necessary consents.

21. COOLING OFF PERIOD

- (a) The Resident may within 5 clear business days of signing the Lease give written notice to (Lessor) rescinding the Lease. Such notice must be given to (Lessor) or (Lessor)' agent or left at (Lessor) or its agent's address for service.
- (b) Should the Resident exercise its rights contained in clause 22 (a), the Resident will be entitled to a refund of all moneys paid by the Resident under this Lease, less the sum of \$100 or the prescribed amount, whichever is the greater.
- (c) The Resident acknowledges having received the Important Notice to Site Tenants in accordance with section 206J of the Act which is set out in Schedule 2.

22. LEASE AGREEMENT CONSIDERATION PERIOD

22.1 The Resident acknowledges that –

- (a) in accordance with the provisions of section 206I of the Act, the Resident received a copy of the proposed Lease, the Home Purchase Agreement, the Re-Sale Agreement, the Consumer Affairs Victoria Booklet entitled “Movable Dwellings, A guide for residents, owners and managers”, and all other ancillary documents, at least 20 days prior to entering into this Lease; and
- (b) The Resident has had the opportunity to seek independent legal, financial and other advice as the Resident considered appropriate, about the Lease.

22.2 The Resident otherwise waives all and any of his or her rights under section 206I of the Act.

SCHEDULE 1

ITEM 1 DATE:

ITEM 2 NAME OF RESIDENT:

ITEM 3 SITE NUMBER: As delineated and set out in the attached.

ITEM 4 SITE OCCUPANCY FEE:

Single Occupancy Rate (Gross) per month
(in advance & subject to review)

Double Occupancy Rate (Gross) per month
(in advance & subject to review)

INSURANCE FEE

One Bedroom Fee per annum

Two Bedroom Fee per annum

Fire levy Govt Fee per annum

ITEM 5 REGULATIONS

Site Use:

1. Motor vehicles are not to travel more than ten (10) kilometres per hour in the Village.
2. Each Resident's motor vehicle is to be parked at all times on his/her site.
3. Visitors' motor vehicles are to be parked in provided parking bays.
4. No loud music at any time in any home or elsewhere in the Village.
5. Lawn mowers are not to be used except between 8.30 a.m. and 5.00 p.m.
6. No Resident or visitor shall be allowed to conduct any business in the Village without consent of management.
7. No outside games will be played in the Village except in the appropriate facilities provided.
8. To keep each home and site clean and tidy, including the front and rear garden adjoining the site.
9. To use each home and site only for residential purposes.
10. To properly maintain each home and all of the utility services of each home.
11. To maintain security for each home by keeping each home properly locked and secured at all times.
12. To reimburse (Lessor) for insurance premium paid for replacement value and public risk insurance in respect of the home and the site. Such insurances to be taken in the names of (Lessor) and the Resident.
13. Not to build on or in any way develop the site without the written permission of (Lessor).
14. Not to add to or make any structural alteration to the home without the permission of (Lessor).
15. Not to store any materials outside the home.
16. Not to allow any annoyance, nuisance, or dangerous or offensive activity to be carried on at the site.
17. Not to commit or permit any breach of any legislation.

18. Not to bring in or keep any animals on the site or in the Village unless with prior written permission of management.
19. Not to use any flammable liquids or hazardous materials or to store them at the site or home.
20. Not to interfere with any of the Village equipment or services.
21. Not to hang clothing, bedding or any other articles on the windows, decks, or on the outside of the home.
22. Not to store a caravan or trailer or boat on site without the consent of (Lessor).
23. To allow (Lessor) or its authorised representative to enter the site or the home if there is an emergency and immediate entry is necessary to save life or property or otherwise as permitted by law.
24. Not to assign their rights concerning the site or the home without the consent of (Lessor) which may be withheld.
25. To comply with the reasonable requests and directions of (Lessor) concerning any matter.
26. To advise (Lessor) of any Power of Attorney made by the Resident and to whom the power is given and if requested provide a copy to (Lessor).
27. To advise (Lessor) if the Resident is to be absent from the unit for any period exceeding one month.
28. Not to display or permit to be displayed on the home any placard, advertisement or sign.
29. To immediately notify (Lessor) of any illness or infectious disease that is contracted by or in any way affects the Resident, visitor or other occupant of the home.
30. Not to allow visitors to visit and stay in the Resident's home for a period greater than four weeks in any one year period without obtaining written consent from the Manager, which may be denied, and upon any terms and conditions thereafter required by (Lessor). The visitor may be required to become a licensed occupier of the site along with the Resident in which case the site occupancy fee may be increased.
31. The Resident shall water the front lawn and garden within the Site on a regular basis.

Village Use

1. To obey all Village speeding limits.
2. To clean barbecues and other Village equipment and tidy each area after its use.
3. To always personally supervise any child twelve (12) years and under while that child is in the Village.
4. To accompany all visitors while they are in recreational areas or using Village equipment.
5. To comply with the directions of (Lessor) for the use of the boom gate, security key card, access number or any other requirement as directed by (Lessor).
6. Not to use or permit the use of any unregistered vehicle in the Village.
7. To use the site and the Village at his/her own risk and to indemnify (Lessor) against any damages, costs, actions, demands or proceedings resulting from any accident damage or injury occurring on the site or in the Village and involving the Resident or any guest of the Resident or other person for whom the Resident is responsible.

Schedule 2

FORM 2A**Residential Tenancies Act 1997**

(Section 206I(2))

RESIDENTIAL TENANCIES REGULATIONS 2008

(Regulation 8C)

IMPORTANT NOTICE TO SITE TENANTS**Cooling off period****Section 206J****Residential Tenancies Act 1997**

You may end this site agreement within 5 business days of the day that you sign the site agreement.

You must either give the site owner or the site owner's agent **written** notice that you are ending the site agreement or leave the notice at the address for service of the site owner or the site owner's agent specified in the site agreement to end this site agreement within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 if you end the site agreement in this way.

Annexure A**Resale Agreement**

8(d) The Administration Sales cost (plus GST) as specified in Item 7 and which shall not exceed 2.5% of the gross sale price is deductible at settlement in all circumstances in payment to (Lessor) for its assistance and no matter whether the sale arises from:

- (i) exercise of option by (Lessor); or
- (ii) the assistance work and efforts of (Lessor); or
- (iii) the work and efforts of any appointed Real Estate Agent or consultant; or
- (iv) the work and efforts if any of the Resident.

EXECUTED as a Deed.

SIGNED by **(LESSORS)**
by being signed by the person
authorised to sign on behalf of the Company

.....
Director or company appointee

SIGNED SEALED AND DELIVERED by the)
RESIDENT in the presence of:)

..... Witness

SIGNED SEALED AND DELIVERED by the)
RESIDENT in the presence of:)

..... Witness

***WHAT DO MY SITE FEES COVER?**

- All local City Council Land Rates. You do not pay house rates
- Water rates and Melbourne Parks and Gardens charges
- Managers, relief managers and gardeners wages
- Administration of the Village
- Resort style facilities maintenance and upkeep: Pool, Theatre, Library, Gym, Bowling Green, Café and Snooker tables
- All community Centre water, light and power
- Maintenance of pipeline for the supply of recycled water for all gardens and lawns within the village
- Electricity supply to Common areas, Roads, Community Centre and Gym
- Electronically controlled security access to village
- Public liability and building insurance for all community assets i.e., Workshop, Vegetable garden, Community Centre, Gym, Swimming pool, Bowling green
- Use of all Community facilities
- Cleaning and maintenance of all common facilities and buildings, pool, parks, gym and Community Centre etc.
- Gardening and maintenance of all common areas
- The mowing of all resident's front lawns and park areas
- A veggie patch for the keen gardeners
- Upkeep of Caravan and Boat storage areas

(*from Village Enquiry Brochure 2016, 'What do my site fees cover?')