

FERGUSSON HOUSE & VILLAGE LIMITED

COVENANT TRUSTEE SERVICES LIMITED

DEED OF SUPERVISION

DEED OF SUPERVISION

DEED dated 19 April 2021

PARTIES

- (1) **FERGUSSON HOUSE & VILLAGE LIMITED** at Glen Oroua (**Operator**)
- (2) **COVENANT TRUSTEE SERVICES LIMITED** at Auckland (**Statutory Supervisor**)

BACKGROUND

- A The Operator is or intends to become the operator of one or more Villages.
- B The Operator wishes to appoint the Statutory Supervisor (and the Statutory Supervisor wishes to accept appointment) as statutory supervisor and stakeholder on the terms set out in this Deed.

OPERATIVE CLAUSES

PART I: MISCELLANEOUS

1 DEFINITIONS AND CONSTRUCTION

1.1 Definitions

In this Deed unless the context otherwise requires:

Act means the Retirement Villages Act 2003;

Advertisement means any publication to the public or to any section of the public or to any individual of any words, whether written or printed, spoken, or in any electronic form, or of any pictorial representation or design or device, used to promote a Village:

- (a) that is authorised or instigated by, or on behalf of, the Operator or Promoter; or
- (b) that is prepared with the co-operation of, or by arrangement with, the Operator or Promoter,

and includes a Disclosure Statement;

Associated Person has the meaning given to that term in Subpart YB of the Income Tax Act 2007;

Auditor means, at any time, the person or persons appointed by the Operator as its auditor or auditors at that time, being a qualified auditor as defined in the Act;

Bank means a registered bank as that term is used in the Reserve Bank of New Zealand Act 1989;

Code of Practice means the Code of Practice approved from time to time in accordance with section 89 of the Act;

Code of Residents' Rights means the Code of Residents' Rights as adopted by a Village;

Company means a company incorporated or registered under the Companies Act 1993;

Deed of Variation means a Deed in or substantially in the form set out in Schedule 2, pursuant to which the Village information may be updated or the appointment of the Statutory Supervisor may be extended to any additional Village;

Deposit means any money paid by a Prospective Resident or a Resident (including any progress payment) as consideration for the grant of an Occupation Right Agreement to that Prospective Resident or Resident and includes any money received from any person that is properly payable to a Resident;

Development in relation to a Village includes any development or redevelopment of any part of the Land and **Develop** shall have a corresponding meaning;

Director means:

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called;
- (b) in relation to a partnership (other than a limited partnership), any partner;
- (c) in relation to a limited partnership, the general partner;
- (d) in relation to a body corporate established under the Unit Titles Act 2010, any person holding the role of chairperson;
- (e) in relation to any other body, whether corporate or unincorporate, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company; and
- (f) in relation to a trust, a trustee of that trust;

Disclosure Statement means, in relation to a Village, the written document that contains all of the information that it is required to contain by the Act, the Code of Practice and the Regulations and states that it is a disclosure statement for the purposes of the Act;

Dispute Notice means a notice of a dispute as described in Part 4 of the Act;

Distribution in relation to a Company means:

- (a) the direct or indirect transfer of money or property, other than the Company's own shares, to or for the benefit of its shareholder; or
- (b) the incurring of a debt to or for the benefit of its shareholder,

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means and in the case of any other entity means a payment to an owner of that entity analogous to a distribution to a shareholder as described above;

Extraordinary Resolution has the meaning ascribed to that term in Rule 13 of Schedule 4;

Facilities, in relation to a Village, means facilities of a shared or communal kind provided in the Village for the benefit of Residents of the Village and includes recreational facilities and amenities;

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011 or any successor body;

Information Document means, in relation to a Village, this Deed, any Security granted to the Statutory Supervisor, the Disclosure Statement and the Occupation Right Agreement relating to the Village;

Intending Resident means, at any time, a person:

- (a) who has within the last three months:
 - (i) indicated to the Operator or the Operator's agent that he or she is interested in becoming a resident of the Village; or
 - (ii) had discussions with the Operator or the Operator's agent about entering into an Occupation Right Agreement; and
- (b) in respect of whom the Operator or the Operator's agent has a current address, or sufficient other contact details to enable the Operator to send notices to that person;

Land means, in relation to a Village, the land on which the Village is situate;

Manager means, in relation to a Village, a person appointed from time to time by the Operator to manage the operations and running or part of the operations and running of the Village but, for the avoidance of doubt, does not include an employee of the Operator or the Manager with responsibilities for the day to day management of the Village;

Meeting means a meeting of Residents convened in accordance with the provisions of this Deed;

Memorial means the memorial noted on the Land, as referred to in section 21 of the Act;

Net Accrued Interest means interest which has accrued on any Deposit held pursuant to the stakeholder facility in Part IV of this Deed less any RWT;

Occupation Right Agreement means any written agreement or other document or combination of documents that:

- (a) confers on any person the right to occupy a Unit within a Village; and
- (b) specifies any terms or conditions to which that right is subject;

Permitted Disposals means:

- (a) the granting of Occupation Right Agreements;
- (b) disposals on commercial terms in the ordinary course of the Operator's day to day business and/or operations;
- (c) disposals on commercial terms of obsolete assets or assets no longer required for the purpose of the Operator's business and/or operations of a Village but not including disposals of the whole or any part of any real property or any asset which is used in connection with the provision of Facilities or Services to Residents and which is not being replaced with a like asset;
- (d) the exchange of assets for other assets of a similar nature and value (but not including any sale or other disposition of the Village or the majority of the Village assets);
- (e) the payment of cash or the giving of other consideration for any asset acquired on commercial terms with a value no less than the cash or consideration provided;
- (f) the temporary application of funds not immediately required in the Operator's business, in the purchase or making of investments in accordance with the Operator's usual investment policies (as advised to and approved by the Statutory Supervisor), or the realisation of such investments;
- (g) the application of the proceeds of an Occupation Right Agreement for the purpose stated in the Disclosure Statement or other offering document relating to the Village;
- (h) the payment of taxes;
- (i) a disposal required by law;
- (j) the execution and delivery of any security interest permitted under this Deed; or
- (k) any other disposal which the Statutory Supervisor (acting reasonably) may have agreed to;

Promoter in relation to a Village:

- (a) means a person who is instrumental in the development of the Village;
and
- (b) if a body corporate, includes every person who is a chairperson or director of that body corporate; but
- (c) does not include a person:
 - (i) acting solely in his or her professional capacity; or
 - (ii) who has ceased to have any involvement with the Village;

Prospective Resident means a person who is committed in writing to taking up occupancy in a Village pursuant to an Occupation Right Agreement;

Proxy Closing Time means 48 hours before the day and time at which any Meeting is due to be held or such other time as the Statutory Supervisor may agree;

Register means the register of Residents and Occupation Right Agreements as more particularly described in clause 16 of this Deed;

Registered Office means, in respect of any Village, the place that is described as the registered office in the register of retirement villages maintained under the Act and as described in Schedule 1 to this Deed;

Registrar means the Registrar of Retirement Villages appointed under the Act;

Regulations means the Retirement Villages (General) Regulations 2006 and any other regulations made under the Act;

Relevant Document means each Information Document and any Security granted by the Operator to any third party (including any lender to the Operator) and, in relation to a Village, means each document that contains information relating to:

- (a) the Village; or
- (b) money or other property that is or has been managed, supervised, controlled or held in trust by or for the Village;

Resident means, in respect of a Village, any of the following:

- (a) a person who enters into or has entered into an Occupation Right Agreement with the Operator;
- (b) a person who, under an Occupation Right Agreement is, for the time being, entitled to occupy a Unit within the Village, whether or not the agreement is made with that person or some other person; or
- (c) if the Occupation Right Agreement so provides or with the consent of the Operator of the Village, the spouse, civil union partner or de facto partner

of the person referred to in paragraph (b) who is occupying the Unit with that person, or after that person's death or departure from the Village;

Retirement Commissioner means the Retirement Commissioner appointed under the New Zealand Superannuation and Retirement Income Act 2001;

Retirement Village Property means all buildings, plant and equipment that is owned by the Operator including but not limited to all assets, amenities and utilities within the Village boundary;

RWT means resident withholding tax as more particularly defined in Subpart RE of the Income Tax Act 2007;

Security means any mortgage, charge or lien granted by the Operator;

Services means those services provided at a Village which may include:

- (a) gardening, repair or maintenance services;
- (b) nursing or medical services;
- (c) the provision of meals;
- (d) shops and other services for the provision of goods;
- (e) laundry services (not being the provision of facilities for Residents to carry out their own laundry);
- (f) services (for example, hairdressing services) for the personal care of Residents;
- (g) transport services;
- (h) services for recreation or entertainment;
- (i) security services; and
- (j) other services for the care or benefit of Residents;

Statutory Supervisor's Security means a general security agreement over the Operator and/or such security over the Land as the Statutory Supervisor may reasonably request, together with, if applicable, a security sharing and priority deed (each in such form as the Statutory Supervisor may require) and any other Security or Securities given in favour of the Statutory Supervisor, the current Securities (if any) being set out in Schedule 1;

Trust Account means an interest bearing trust account opened by the Statutory Supervisor at a Bank (such Bank having acknowledged that it is a trust account) and operated in accordance with the stakeholder provisions of this Deed;

Unit means a building, or part of a building, that is a house, flat, townhouse, unit, serviced unit or apartment (whether or not it has cooking facilities), villa or similar dwelling erected, or currently used, primarily and principally as a unit of accommodation, and includes any land, improvements or appurtenances belonging to the Unit or usually enjoyed with it; and

Village means a retirement village described in Schedule 1 and any additional retirement village to which this Deed subsequently applies, pursuant to the terms of a Deed of Variation.

1.2 Construction

Except to the extent that the context otherwise requires, any reference in this Deed to:

- (a) an **accounting period** shall be a reference to an accounting period as that term is defined in the Financial Reporting Act 2013;
- (b) a **clause** or **schedule** is a reference to a clause of, or a schedule to, this Deed;
- (c) a **cooling off** period is to the cooling off period provided for in section 28 of the Act or such longer cooling off period as may be provided for in any Occupation Right Agreement;
- (d) a **deed** means this Deed (inclusive of the schedules) as amended from time to time in accordance with its provisions and every other deed or other instrument collateral or supplemental to or varying this Deed;
- (e) **dispose** includes to sell, transfer, or in any manner part with any possession of and **disposition** will have a corresponding meaning;
- (f) a **law** includes common or customary law and any judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure;
- (g) a **person** includes an individual, firm, company, corporation or unincorporated body or persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having a separate legal personality; and
- (h) **written** and **in writing** includes all means of reproducing words in a tangible and permanently visible form.

1.3 Miscellaneous

- (a) Headings are inserted for convenience only and shall be ignored in construing this Deed;
- (b) unless the context otherwise requires, the singular includes the plural and vice versa, and words denoting individuals include other persons and vice versa;
- (c) references to any party shall include such party's successors and assigns (including the successor in title of any Resident in respect of an Occupation Right Agreement);
- (d) a reference to any legislation or to any provision of any legislation includes that legislation or provision as from time to time amended, re-enacted or replaced, and unless the context otherwise requires also includes any statutory regulations, codes of practice, rules, orders or instruments made or issued under any such legislation or provision;

- (e) references to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time;
- (f) the schedules to this Deed shall have the same force and effect as if they were set out in the body of this Deed;
- (g) references to money shall, unless the contrary is stated, be deemed to be references to New Zealand currency;
- (h) a reference to powers, trusts, discretions or duties of the Statutory Supervisor under or pursuant to this Deed shall be deemed to include reference to the powers, trusts, discretions or duties of the Statutory Supervisor under the Act, any Information Document or any other relevant document;
- (i) except where inconsistent with the context, the expression "from time to time" also means at any time;
- (j) where there is more than one person named as Operator under this Deed, the provisions of this Deed relating to the Operator will apply to each of such named persons jointly and severally;
- (k) in this Deed, unless the Statutory Supervisor otherwise determines for any particular purpose, any reference to the **Residents** shall mean the group of persons comprising those Residents living in a particular Village;
- (l) where there is any inconsistency between the Act or the Regulations and this Deed, the Act or the Regulations (as the case may be) shall prevail;
- (m) the meaning of general words is not limited by specific examples introduced by "*including*", "*for example*" or similar;
- (n) any notice required to be given under this Deed must be given in writing in accordance with clause 24; and
- (o) words not otherwise defined in this Deed shall have the defined meaning given to those words in the Act or the Regulations.

2 APPLICATION OF DEED

2.1 Application to Villages

This Deed and the appointment of the Statutory Supervisor under this Deed shall apply to each Village described in Schedule 1 and in each Deed of Variation.

2.2 Offer of Occupation Right Agreements

The parties acknowledge that the Operator operates and manages one or more Villages, providing residential accommodation together with Services or Facilities or both predominantly for persons in their retirement or persons in retirement and their spouses or partners and that in accordance with this activity the Operator will offer Occupation Right Agreements subject to and in accordance with the provisions of this Deed.

2.3 Statutory Supervisor's warranty

The Statutory Supervisor warrants that it holds a licence that covers the Village issued under Part 2 of the Financial Markets Supervisors Act 2011.

2.4 Trusts

The Operator and the Statutory Supervisor declare that they are entering into this Deed for the benefit of the Residents and that the covenants of the Operator contained in this Deed are for the benefit of the Residents and the Statutory Supervisor and will be held on trust by the Statutory Supervisor for itself and the Residents and enforced by the Statutory Supervisor for the benefit of itself and the Residents in accordance with the provisions of this Deed and pursuant to the Act.

PART II: STATUTORY SUPERVISOR PROVISIONS

3 APPOINTMENT OF STATUTORY SUPERVISOR

3.1 Appointment

The Operator appoints the Statutory Supervisor (and the Statutory Supervisor accepts appointment) as statutory supervisor pursuant to the Act and on the terms set out in this Deed.

3.2 Term of appointment

The Statutory Supervisor will continue to act as statutory supervisor pursuant to this Deed until its appointment is terminated in accordance with this Deed.

3.3 Termination conditions

- (a) The Statutory Supervisor's appointment may be terminated in respect of any or all of the Villages in any manner described in clauses 3.4 to 3.7 below.
- (b) No termination will be effective unless the Registrar has first consented in writing to that termination under section 39(1) of the Act unless:
 - (i) the Statutory Supervisor has given the Operator at least 12 months' notice in writing of an intention to terminate the appointment;
 - (ii) the termination has been brought about by the operation either of section 23 or of section 38 of the Financial Markets Supervisors Act 2011; or
 - (iii) there is no requirement for the Operator to appoint a replacement statutory supervisor,and in any event, the appointment of the Statutory Supervisor will continue until the requirements of this clause 3.3(b) have been complied with.
- (c) The Registrar's consent is not required where a statutory supervisor is replacing the Statutory Supervisor appointed by the FMA pursuant to section 22 of the Financial Markets Supervisors Act 2011 although a notice to the FMA pursuant to section 23(4) of that same Act is necessary.

3.4 Termination by Operator

The Operator may terminate the appointment of the Statutory Supervisor:

- (a) without reason, on not less than six months' prior written notice to the Statutory Supervisor;
- (b) pursuant to section 23 of the Financial Markets Supervisors Act 2011; or
- (c) pursuant to section 38 of the Financial Markets Supervisors Act 2011.

3.5 Termination by Statutory Supervisor

The Statutory Supervisor may terminate its appointment without reason, on not less than six months' prior written notice to the Operator.

3.6 Termination by Residents

Subject (if required by the Act) to the due appointment of a new statutory supervisor, the Residents may terminate the appointment of the Statutory Supervisor for a Village by Extraordinary Resolution of those Residents residing in that Village called for such purpose and such termination shall take place three months after the date on which the Extraordinary Resolution is passed or on such other date as may be referred to in the Extraordinary Resolution.

3.7 Automatic termination

Subject (if required by the Act) to the due appointment of a new statutory supervisor, the appointment of the Statutory Supervisor will be terminated immediately if:

- (a) an order is made, or an effective resolution is passed, for dissolution or liquidation of the Statutory Supervisor other than for the purposes of a solvent reconstruction or amalgamation;
- (b) a receiver, liquidator or provisional liquidator is appointed of, or an encumbrancer takes possession of, or exercises its power of sale in respect of, the whole or any material part of the assets of the Statutory Supervisor;
- (c) a recommendation is made by the FMA or the Registrar of Companies to appoint a statutory manager under the Corporations (Investigation and Management) Act 1989 in respect of the Statutory Supervisor, or the Statutory Supervisor or any associated person of it (as that term is defined in such Act) is declared at risk pursuant to the provisions of that Act;
- (d) the Statutory Supervisor ceases or threatens to cease to carry on all or substantially all of its business or operations other than for the purpose of a solvent reconstruction or amalgamation;
- (e) the Statutory Supervisor (where an individual) commits an act of bankruptcy, dies or becomes of unsound mind;
- (f) the Statutory Supervisor is unable to pay its debts as they fall due or is deemed or presumed unable to pay its debts as they fall due or stops or suspends payments to creditors generally;
- (g) the Statutory Supervisor ceases to hold a licence under the Financial Markets Supervisors Act 2011 that covers the Village;
- (h) the Statutory Supervisor has been removed and replaced by the FMA pursuant to section 22 of the Financial Markets Supervisors Act 2011; or
- (i) the FMA has appointed a replacement statutory supervisor pursuant to section 37 of the Financial Markets Supervisors Act 2011.

4 APPOINTMENT OF A REPLACEMENT STATUTORY SUPERVISOR

4.1 Operator's power

- (a) The power to appoint a new statutory supervisor will be vested in the Operator, but no new statutory supervisor will be appointed unless such person holds a licence that covers the Village issued under Part 2 of the Financial Markets Supervisors Act 2011.
- (b) If the FMA issues a notice pursuant to section 18(3)(b) or section 21(1)(b) of the Financial Markets Supervisors Act 2011 notifying the Operator that the Statutory Supervisor's licence that covers the Village is due to expire, the Operator will promptly use its best endeavours to terminate the appointment of the Statutory Supervisor and to appoint a new statutory supervisor that holds a licence that covers the Village.
- (c) If the FMA issues a notice pursuant to section 32(2) of the Financial Markets Supervisors Act 2011 notifying the Operator that the Statutory Supervisor's licence that covers the Village is to be removed, cancelled or varied such that it will no longer cover the Village, the Operator will terminate the appointment of the Statutory Supervisor and appoint a new statutory supervisor that holds a licence that covers the Village on or before the final removal date (as that term is defined in section 33(1)(b) of the Financial Markets Supervisors Act 2011).
- (d) Upon any vacancy in the office of statutory supervisor arising, the Operator will promptly exercise its power to appoint a new statutory supervisor that holds a licence that covers the Village issued under Part 2 of the Financial Markets Supervisors Act 2011.

4.2 New statutory supervisor

- (a) The new statutory supervisor will execute a deed undertaking to be bound by all the obligations of the Statutory Supervisor under this Deed, and as from the date of the appointment the new statutory supervisor will be vested with all the rights, powers, immunities, duties and obligations of its predecessor as if it had been originally named as a party to this Deed.
- (b) The removed or retiring Statutory Supervisor will, from such date, be released from complying with the obligations under this Deed but will remain liable for any antecedent breach of covenant or duty.
- (c) All indemnities given to any removed or retiring Statutory Supervisor will survive such removal or retirement in respect of actions of the Statutory Supervisor or matters occurring prior to the date of its removal or retirement.

5 PROVISIONS CONTAINING STATUTORY SUPERVISOR'S DUTIES

5.1 General duties

The Statutory Supervisor covenants to:

- (a) provide the stakeholder facility more particularly described in Part IV of this Deed;

- (b) monitor the financial position of each Village;
- (c) report annually to the Registrar and to the Residents on the performance of its duties and the exercise of its powers;
- (d) subject to being satisfied that it is in order for it to do so, provide the certificate required pursuant to section 13(3)(c) of the Act; and
- (e) perform any other duties that are imposed by the Act, the Regulations, this Deed or as may be imposed on the Statutory Supervisor under any other Act.

5.2 Duties relating to the Village

The Statutory Supervisor covenants:

- (a) to exercise reasonable care and skill to ascertain whether the financial position of each Village, the security of the interests of the Residents, and the management of each Village is adequate; and
- (b) that if the Statutory Supervisor believes that any of the matters referred to in clause 5.2(a) above are inadequate, the Statutory Supervisor will do everything that it is empowered to do under section 43 of the Act unless it is satisfied that the inadequacy does not materially prejudice the interests of the Residents.

5.3 Duty to act as representative

The Statutory Supervisor must represent the interests of Residents in negotiations with any receiver, liquidator or statutory manager and:

- (a) the Statutory Supervisor, when acting as the Residents' representative, has complete discretion to make decisions on behalf of Residents and is not liable to any person for any decisions taken by it; and
- (b) in making any decision, the Statutory Supervisor may seek the opinion of, or instructions from, Residents at any time.

5.4 Duty relating to breach of Code of Residents' Rights

If a Resident brings any alleged breach of a right referred to in the Code of Residents' Rights to the attention of the Statutory Supervisor, the Statutory Supervisor:

- (a) may make such investigations and recommendations as it thinks fit; but
- (b) shall not be obliged to do anything and shall not have any liability to any person for failing to make any investigation or recommendation.

6 PROVISIONS RELATING TO STATUTORY SUPERVISOR'S POWERS

6.1 Power to direct operations

If the Statutory Supervisor believes the financial position of the Village, the security of the interests of the Residents, or the management of the Village is inadequate, the Statutory Supervisor may:

- (a) consult with the Operator and the Operator will attend at such consultation, at the request of the Statutory Supervisor;
- (b) direct the Operator to supply to all Residents (or their nominated representatives) such information as the Statutory Supervisor may specify;
- (c) direct the Operator to operate the Village in a specified manner; or
- (d) apply to the Court for an order or orders under section 43(1)(c) of the Act.

6.2 Power to restrict Advertisement distribution

The Statutory Supervisor may direct that an Advertisement that the Statutory Supervisor considers is inconsistent with the Act, the Regulations, the Disclosure Statement, the Occupation Right Agreement or the Code of Practice, not be published or distributed to the public.

6.3 Power to make statement

- (a) Where the Registrar and the Statutory Supervisor believe it is in the interests of Residents or potential or Intending Residents to do so, and if authorised by the Registrar, the Statutory Supervisor will be entitled to make a public statement concerning the financial position of the Village, the security of the interests of Residents, or the management of the Village.
- (b) The Statutory Supervisor will make such public statement in such manner as is authorised by the Registrar.

6.4 Power to require supply of information

- (a) The Statutory Supervisor will be entitled to receive (and the Operator will send to the Statutory Supervisor) all notices and other communications relating to a Village or which any Resident is entitled to receive.
- (b) Without limiting clause 6.4(a), the Statutory Supervisor may require the Operator to provide to the Statutory Supervisor information relating to the financial position of a Village or the Operator, the security of the interests of Residents, or the management of the Village.
- (c) The Operator must provide the information referred to in clause 6.4(b) within 10 working days of receiving the request.

6.5 Power to seek directions

The Statutory Supervisor may at any time:

- (a) apply to the Court for an injunction or order under sections 80, 81 or 82 of the Act; and
- (b) assent to, approve of or oppose any application to the Court made by or at the instance of any other person.

6.6 Supplemental powers

In addition to the provisions of the law relating to statutory supervisors and to facilitate the discharge of its duties hereunder, but subject always to the provisions of the Act, it is expressly declared that:

- (a) **Third party advice:** The Statutory Supervisor may, without liability for loss, receive, obtain and act on, or decline and elect not to act on:
 - (i) the opinion or advice of or any information obtained from any engineer, architect, quantity surveyor, barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant (including the Auditor) or other expert, whether obtained by the Operator or the Statutory Supervisor or otherwise, and although the same may subsequently be found to contain some error or not be authentic; and
 - (ii) a certificate signed by any two Directors on behalf of the Operator (or, in the case of an Operator which is a limited partnership, a certificate signed by two directors of the general partner), as to any fact or matter prima facie within the knowledge of the Operator or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to or would not adversely affect the interests of the Residents or that moneys are properly payable to any person,

and may, without liability for loss, require any of the above to be provided to it before proceeding to exercise any power or discretion, or give any consent or approval, under any Information Document.

- (b) **Resolution:** The Statutory Supervisor will not be responsible for acting or relying upon, and shall be entitled, without liability to any person, to act or rely upon any resolution purporting to have been passed at any Meeting which the Statutory Supervisor believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid because of a defect in the convening of the Meeting or the proceeding at the Meeting or for any other reason.
- (c) **Responsibility:** The Statutory Supervisor will have only such duties and obligations as are set out in the Act, the Regulations and this Deed. In particular, the Statutory Supervisor will have no obligation to review any title documentation to any Unit. The Statutory Supervisor will not be responsible for any loss suffered by any Resident or Intending Resident or any other person as a result of or in connection with any action or omission by the Operator or of any of its officers, employees or agents or in respect

of any defect in the title to any Unit. The Statutory Supervisor will have no obligation in connection with any body corporate matters that may apply to any Village.

- (d) **Information:** The Statutory Supervisor will have no responsibility to check any information or documentation provided or made available by the Operator, so long as the Statutory Supervisor has no reason to believe that such information or documentation is not genuine, is incorrect or misleading (but subject always to the Statutory Supervisor's obligations under section 13(3)(c)(ii) of the Act).
- (e) **Discretion:** Except as otherwise expressly provided in this Deed or the Act, the Statutory Supervisor:
 - (i) shall in regard to all powers, authorities and discretions vested in it by any Information Document, have absolute discretion as to the exercise or non-exercise thereof and as to the commencement or conduct of any action, proceeding or claim, and shall not be responsible for any loss or cost that may result from the exercise or non-exercise thereof, except in the case of breach of duty, breach of trust or other fiduciary obligation that involves gross negligence, bad faith or wilful misconduct by the Statutory Supervisor; and
 - (ii) may refrain from exercising any discretion, power or authority vested in it by any Information Document provided, in the opinion of the Statutory Supervisor it is reasonable to do so, until it has a direction to act from the Residents given by Extraordinary Resolution, and the Statutory Supervisor will not be responsible for any loss or cost that may result from the delay in exercise, or non-exercise, of the relevant discretion, power or authority.
- (f) **Determinations conclusive:** As between itself and the Residents as a whole, the Statutory Supervisor may determine all questions and doubts arising in relation to any of the provisions of this Deed and every such determination, whether made upon such a question actually raised, or implied in the acts or proceedings of the Statutory Supervisor, shall be conclusive and shall bind the Statutory Supervisor and all Residents.
- (g) **Delegation:** The Statutory Supervisor may, whenever it thinks it is expedient to do so:
 - (i) delegate at any time to any person any of the obligations, powers, authorities or discretions vested in the Statutory Supervisor by any Information Document, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Statutory Supervisor may think fit, provided that a substantial delegation of the role of the Statutory Supervisor shall only be to a person that holds a licence that covers the Village issued under Part 2 of the Financial Markets Supervisors Act 2011; and
 - (ii) authorise such person as it thinks fit to act as its representative at any Meetings.

7 STATUTORY SUPERVISOR'S INDEMNITY

7.1 General indemnity

Subject to clause 7.2 the Statutory Supervisor shall be indemnified by the Operator, the Residents and from the Village assets in respect of liabilities and expenses incurred in the execution or purported execution of the powers, trusts, duties or discretions of the Statutory Supervisor under this Deed or the Act, and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of, the Information Documents.

7.2 Limit on indemnity

The indemnities for the Statutory Supervisor in this Deed shall not apply to a claim arising out of breach of duty, breach of trust or other fiduciary obligation that involves gross negligence, bad faith or wilful misconduct by the Statutory Supervisor.

8 STATUTORY SUPERVISOR'S FEES AND COSTS

In consideration of the Statutory Supervisor acting as statutory supervisor and stakeholder under this Deed, the Operator will:

- (a) pay to the Statutory Supervisor such fees as shall from time to time be agreed in writing between the Operator and the Statutory Supervisor; and
- (b) reimburse to the Statutory Supervisor, on request, costs, losses and expenses incurred by or on behalf of the Statutory Supervisor in carrying out, performing and exercising its rights, duties and powers under this Deed.

9 MISCELLANEOUS PROVISIONS RELATING TO STATUTORY SUPERVISOR

9.1 Waiver

- (a) The Statutory Supervisor may at any time by notice in writing to the Operator waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Operator of any provision expressed or implied in this Deed, or the terms of the offer of the Occupation Right Agreements (except any matter required to be complied with by law), provided the Statutory Supervisor is satisfied that the interests of the Residents will not be materially prejudiced by such waiver. Any such waiver shall not prejudice the rights of the Statutory Supervisor or the Residents in respect of any other breach.
- (b) Any waiver by the Statutory Supervisor in accordance with clause 9.1(a) shall be binding on all Residents.

9.2 Fiduciary relationship

Nothing expressed in this Deed or implied by law shall prohibit the Statutory Supervisor or any of its related companies (all hereafter in this clause, where the context permits, being included in the expression "Statutory Supervisor") or the

officers or members of the Statutory Supervisor, from being a Resident, Intending Resident, or a shareholder, stockholder or other creditor of the Operator, or (in the case where the Statutory Supervisor conducts a private client trustee business) from acting in any representative capacity for a Resident. The Statutory Supervisor (and officers and members of the Statutory Supervisor) may enter into any transactions with the Operator and shall not be accountable to the Operator, the Residents or any other person for any profits arising from any such transactions.

PART III: OPERATOR PROVISIONS

10 PROVISIONS RELATING TO OPERATOR'S DUTIES

10.1 General compliance covenants

The Operator covenants to manage the operation of each Village and to:

- (a) use reasonable care and skill in ensuring that the affairs of each Village are conducted properly and efficiently;
- (b) use reasonable care and skill in the exercise and performance of the Operator's powers, functions and duties;
- (c) account properly for all money received by the Operator;
- (d) keep with one or more Banks, accounts in the name of each Village;
- (e) pay into an account referred to in clause 10.1 (d) money received by the Operator in connection with that Village and to apply those moneys in the proper and efficient management of the Village and in accordance with this Deed;
- (f) accept the Statutory Supervisor as a representative of the interests of the Residents of a Village in any matter relating to the Village; and
- (g) comply with the Operator's obligations under the Act and the Regulations.

10.2 Covenants relating to the Village

The Operator covenants:

- (a) to keep each Village in good order and condition;
- (b) to pay or cause to be paid within a reasonable period after they become due all rents, rates, taxes, duties, assessments, liabilities and outgoings assessed or levied against each Village;
- (c) in consultation with the Statutory Supervisor to make and adhere to a long term plan for maintaining and refurbishing each Village and all Retirement Village Property; and
- (d) to establish and maintain, if required, a separate account at a Bank that is used only for the collection and distribution of any moneys from Residents to be applied towards the cost of repairs, maintenance, renovations and replacements (including items of a capital nature) of a substantial but infrequent or irregular nature and pay into and distribute from that account all receipts and payments on account of those costs.

10.3 Covenants relating to Occupation Right Agreements

- (a) The Operator covenants:
 - (i) to make offers of Occupation Right Agreements only in accordance with all relevant provisions of the Information Documents;
 - (ii) to make offers of Occupation Right Agreements, and to enter into Occupation Right Agreements only where the registration of the relevant Village under the Act is current; and
 - (iii) to advise each Intending Resident of the requirement for them to obtain independent legal advice before entering into an Occupation Right Agreement.
- (b) The Operator covenants to comply with all of its duties and responsibilities under the Occupation Right Agreements, including those provisions of the Occupation Right Agreements which require the Operator to:
 - (i) keep the Village in good condition and order;
 - (ii) make and adhere to a long-term plan for maintaining and refurbishing the Village and all Retirement Village Property; and
 - (iii) insure the Village under a comprehensive policy that allows for full replacement of the Retirement Village Property following an insured event. The type and extent of insurance cover must be to the satisfaction of the Statutory Supervisor and must note the interests of the Statutory Supervisor as a security holder for itself and on behalf of the Residents.
- (c) The Operator covenants to give to the Statutory Supervisor prior to any redemption of an Occupation Right Agreement, sufficient information (in such form as the Statutory Supervisor may agree from time to time) to enable the Statutory Supervisor to be satisfied that the redemption is in accordance with this Deed and the Occupation Right Agreement.
- (d) The Operator covenants to adopt the Code of Residents' Rights for each Village.

10.4 Covenants relating to Operator's termination of Occupation Right Agreements

- (a) Where the Operator is required to give to the Resident any notices prior to terminating any Occupation Right Agreement, it will copy those notices (and any responses from the Resident) to the Statutory Supervisor and will give to the Statutory Supervisor, on request, such other information as may be required by the Statutory Supervisor to enable it to supervise the termination process.
- (b) Before the Operator terminates any Occupation Right Agreement, the Operator must first have confirmed in writing to the Statutory Supervisor that it has complied with its notice obligations under clause 10.4(a) above and with all provisions of the Occupation Right Agreement and the Code of Practice.

10.5 Covenants relating to voidable Occupation Right Agreements

If any Occupation Right Agreement is voidable and the Resident elects to avoid that Occupation Right Agreement in accordance with section 31 of the Act:

- (a) the Operator will promptly pay all refund payments due and payable to the Resident, subject to any relevant provisions of the Act; and
- (b) the Operator will indemnify the Statutory Supervisor against all costs, claims, damages, expenses or losses which the Statutory Supervisor may suffer or incur in connection with any refund obligation.

10.6 Covenants relating to Code of Practice

The Operator covenants (subject to any applicable exemption under section 93 of the Act) to:

- (a) comply with the Operator's obligations under the Code of Practice;
- (b) give effect to the Code of Practice in each Occupation Right Agreement and acknowledges and agrees that the Code of Practice is enforceable as a contract with a Resident and prevails over any less favourable provision in an Occupation Right Agreement;
- (c) make a copy of the Code of Practice available to every Resident on request and to every Intending Resident, before that Intending Resident enters into an Occupation Right Agreement; and
- (d) advise the Residents of the name of the Statutory Supervisor, how to contact the Statutory Supervisor and as to the manner in which Residents may contact the Statutory Supervisor about an alleged breach of a right or a complaint.

10.7 Covenants relating to disputes

- (a) The Operator will comply with all of its obligations relating to dispute resolution under the Act, the Regulations, the Code of Practice and the Information Documents, including the Operator's obligation to receive Residents' complaints and give a response within a reasonable timeframe.
- (b) The Operator covenants to forward to the Statutory Supervisor a copy of each Dispute Notice as soon as practicable after the Dispute Notice has been given if:
 - (i) the Operator considers that the outcome of the dispute may affect:
 - A. a significant number of the Village's Residents;
 - B. the general operation of the Village; or
 - C. the Operator's rights and obligations under this Deed; or
 - (ii) the Dispute Notice has been given under section 53(3) of the Act.

- (c) The Operator further covenants that, immediately after forwarding a Dispute Notice to the Statutory Supervisor, it will advise the parties to the dispute that the Statutory Supervisor has been notified of the dispute.

10.8 Covenants relating to insurance

The Operator covenants:

- (a) to insure, and keep insured, all Retirement Village Property, all capital improvements or additional fittings provided by Residents, and all Units that are owned by Residents in accordance with the requirements of the Code of Practice;
- (b) to pay all insurance premiums as they fall due;
- (c) not to do or permit any act to be done that may invalidate such insurance;
- (d) to note the interests of the Statutory Supervisor (for itself and on behalf of the Residents) as the holder of the Statutory Supervisor's Security on all insurance policies; and
- (e) to provide the Statutory Supervisor annually with copies of all policies of insurance (including all schedules thereto).

11 PROVISIONS RELATING TO OPERATOR'S FINANCIAL OBLIGATIONS

11.1 Covenant to keep accounting records

The Operator covenants to keep accounting records in accordance with the Act and all other applicable legislation.

11.2 Audit and supply of accounting records

The Operator will:

- (a) ensure that the accounting records relating to the Operator and (subject to clause 11.9) each Village are audited at least once a year by a qualified auditor;
- (b) give to the Statutory Supervisor a copy of the most recent audited financial statements of:
 - (i) each Village (subject to clause 11.9); and
 - (ii) the Operator,as soon as those financial statements are available and in any event within five months from the end of the applicable accounting period;
- (c) give to the Residents free of charge on request, a copy of the most recent audited financial statements of:
 - (i) the Village (subject to clause 11.9); and

- (ii) the Operator;
- (d) complete six-monthly financial statements of the Operator and each Village (subject to clause 11.9) in a form satisfactory to the Statutory Supervisor and give to the Statutory Supervisor a copy of those statements (which need not be audited unless an audit is required by applicable legislation) as soon as these are available and in any event no later than three months from the end of the applicable six monthly financial period; and
- (e) on the written request of the Statutory Supervisor, provide to the Statutory Supervisor (or procure the provision to the Statutory Supervisor of) such other financial or accounting information as the Statutory Supervisor, acting reasonably, may require. This information may include Village operating accounts, accounts from any company owning the Land and auditor's certificates in relation to that company.

11.3 Report from Auditor

The Operator covenants to obtain and provide on an annual basis to the Statutory Supervisor, within the timeframe specified in clause 11.2(b), a report from the Auditor to the effect that:

- (a) the financial statements of the Operator and each Village comply with this Deed, the Act and all other applicable legislation;
- (b) the Auditor has perused the Operator's certificates provided pursuant to clause 11.6(a) for the past year and, to the best of its knowledge and belief, based upon generally accepted auditing procedures carried out for the purposes of expressing an opinion in respect of the Operator's annual financial statements, confirm that they are fairly stated; and
- (c) to the best of its knowledge and belief, based upon generally accepted auditing procedures carried out for the purposes of expressing an opinion in respect of the Operator's annual financial statements, either there are no matters which it considers warrant the attention of the Statutory Supervisor or, if there are, the details of such matters.

11.4 Auditor to supply information

The Operator must ensure that the terms of engagement of its Auditor provide that:

- (a) the Auditor will comply with its obligations under clause 11.3 above;
- (b) the Auditor will comply (at the Operator's expense) with any reasonable request by the Statutory Supervisor, the FMA, the Registrar, or the Retirement Commissioner that the Auditor answer questions or provide other information to such persons in relation to any Village; and
- (c) the Auditor will comply within 20 working days after receiving a request referred to in (b) above or within such further period that the person making the request allows.

11.5 Forecast statements

The Operator covenants that it will, in relation to each Village and following prior consultation with the Statutory Supervisor:

- (a) prepare at the commencement of each accounting period and forward to the Statutory Supervisor:
 - (i) a forecast statement of operating expenditure for the Village, specifying any amounts which are to be met by Residents for the ensuing year; and
 - (ii) such other forecast information for such period as the Statutory Supervisor, acting reasonably, may request; and
- (b) prepare at the commencement of each accounting period and forward to the Statutory Supervisor, a forecast statement of all income and expenditure, including amounts repayable to Residents and their estates.

11.6 Directors' certificate

- (a) The Operator will within 30 days after the expiry of each quarterly accounting period supply to the Statutory Supervisor a certificate signed by two Directors (or, in the case of a limited partnership, signed by two Directors of the general partner), containing such matters relating to the Operator and the Village and compliance with the Information Documents as the Statutory Supervisor may reasonably require, including the matters more particularly set out in Schedule 3 or such other matters as may be agreed in writing from time to time between the Operator and the Statutory Supervisor.
- (b) The Statutory Supervisor will be entitled to request and, if so, the Operator covenants to supply promptly, such further information as the Statutory Supervisor may reasonably require with respect to any matter which is the subject of the certificate to be supplied in accordance with clause 11.6(a).

11.7 Powers of inspection

- (a) The Operator acknowledges and agrees that the Registrar or any person authorised by the Registrar (which may include the Statutory Supervisor):
 - (i) for the purpose of:
 - A. ascertaining whether any Village or the Operator complies, or has complied, with the Act;
 - B. ascertaining whether the Registrar should exercise any of its rights or powers under the Act; or
 - C. detecting offences against the Act; and
 - (ii) if, in the Registrar's opinion, it is in the public interest to do so, may:
 - A. inspect and take copies of Relevant Documents;

- B. take possession of Relevant Documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or
- C. retain Relevant Documents for a period that is, in all the circumstances, reasonable if there are reasonable grounds for believing that they are evidence of the commission of an offence.

(b) Nothing in clause 11.7(a) above requires any person to produce a document if that person could refuse to produce that document in proceedings on the grounds of any privilege available in a Court of law.

11.8 Disclosure of reports

Where the Statutory Supervisor is the person authorised by the Registrar pursuant to clause 11.7(a), it will comply with all disclosure obligations in section 98 of the Act.

11.9 Additional financial reporting requirements

Where the financial statements of an Operator include the activities of:

- (a) more than one Village; or
- (b) another trading entity that operates independently of the Village,

then, unless the Statutory Supervisor otherwise agrees in writing with the Operator, the Operator will prepare financial statements under the Act in respect of each Village as well as in respect of the Operator.

12 PROVISIONS RELATING TO OPERATOR'S OTHER NOTICE OBLIGATIONS

12.1 Notice to Residents and Intending Residents

- (a) The Operator covenants promptly to give written notice to each Resident and Intending Resident of any matter that would or might have a material impact on:
 - (i) the occupancy right or rights to quiet enjoyment of the Resident or Intending Resident; or
 - (ii) the charges levied on the Resident or Intending Resident for his or her occupancy right or right to Services and Facilities within a Village.
- (b) Where the Operator has given notice to any Resident or Intending Resident pursuant to clause 12.1, the Operator must at the same time give a copy of that notice to the Statutory Supervisor.
- (c) The Operator covenants to give to Residents, free of charge and upon request, a copy of:
 - (i) the Code of Residents' Rights;

- (ii) the Code of Practice; and
 - (iii) the most recent audited financial statements of the Operator and, if applicable, the Village.
- (d) The Operator covenants to give to Residents, within three months of the start of each accounting period, the financial statements prepared pursuant to clause 11.5.
- (e) The Operator covenants to make available to each Intending Resident (before that person becomes a Prospective Resident), free of charge and upon request, a copy of:
- (i) the most recent audited financial statements of the Operator and, if applicable, the Village; and
 - (ii) the most recent forecast statements prepared pursuant to clause 11.5.
- (f) At the request of, or following consultation with, the Statutory Supervisor the Operator covenants to disclose to each Prospective Resident, in a form approved by the Statutory Supervisor, details of any significant change in the financial position of the Operator and, if applicable, the Village, since the financial position stated in the most recent audited financial statements of the Operator and, if applicable, the Village.

12.2 Notice to Statutory Supervisor

The Operator covenants promptly to give written notice to the Statutory Supervisor of any of the following:

- (a) any proposal by the Operator to undertake any Development or to acquire any contiguous land for development;
- (b) the receipt by the Operator of a notice from the Registrar of suspension of the registration of a Village;
- (c) any request by the Operator to the Registrar for cancellation of the registration of a Village;
- (d) any decision by the Registrar to exempt the Operator from the requirement to appoint a statutory supervisor;
- (e) any proposal to appoint a new statutory supervisor;
- (f) any decision by the Registrar to exempt the Operator from the requirement to comply with a provision in the Code of Practice;
- (g) any proposed increase in secured liabilities held by any person over any part of a Village;
- (h) any proposed increase in the maximum sum available to the Operator of a Village under any credit facility;

- (i) any actual or threatened action by a creditor, mortgagee or a holder of any Security in respect of a Village against the Operator in respect of that person's security or any sum over \$1,000 (or such increased amount as may from time to time be prescribed by the Act or the Regulations);
- (j) any decision by an insurer to refuse to insure a Village or any part of it;
- (k) any actual or threatened legal proceedings against a Village or the Operator that affect the interests of any Resident or Intending Resident;
- (l) any action by a creditor to put the Operator or a Village in receivership, liquidation or bankruptcy;
- (m) any change in the Registered Office or address to which communications should be sent to the Operator;
- (n) the election, retirement, death and appointment of any Director;
- (o) notice of cancellation of any Occupation Right Agreement during the cooling off period under the Act;
- (p) the existence of any default on its part in respect of any borrowing or under any loan facility agreement which it may have entered into, immediately it becomes aware of any such default;
- (q) if any guarantee provided in support of the Operator's borrowings is, or is likely to be, withdrawn; and
- (r) any proposal to sell the Village or any part of the Village.

12.3 Copy Notice to Residents

Where the Operator has given any notice to the Statutory Supervisor pursuant to clause 12.2, the Operator must (unless otherwise agreed by the Statutory Supervisor, acting reasonably) also promptly on the written request of the Statutory Supervisor give a copy of that notice to each affected Resident and Intending Resident.

12.4 Copy of communications with Residents

The Statutory Supervisor will be entitled to receive (and the Operator will copy to the Statutory Supervisor) every communication from the Operator relating to a Village, that a Resident of the Village is entitled to receive.

12.5 Updating Village Information

The Operator covenants to give notice to the Statutory Supervisor promptly upon any of the information in Schedule 1 becoming inaccurate, outdated or incomplete and to enter into a deed supplemental to this Deed correcting and updating Schedule 1.

13 PROVISIONS LIMITING OPERATOR'S ACTIVITIES

13.1 Advertisements

The Operator must comply with the provisions of the Act, the Regulations and all other relevant legislation in relation to all Advertisements.

13.2 Delegation

The Operator may, if it thinks it is expedient in the interests of Residents to do so, delegate at any time to any person any of the obligations, powers or authorities of the Operator under this Deed to any Manager or other person upon such terms and conditions and under such restrictions as the Operator thinks fit. The Operator will continue to be responsible for the actions of its Manager or delegate and in particular will be responsible for any loss to any Resident incurred by the misconduct or default of the Manager or other delegate.

13.3 Distributions

The Operator may from time to time make Distributions to an Associated Person provided that:

- (a) where there have been financial ratios or other preconditions or restrictions ("Limits") agreed between the Operator and the Statutory Supervisor, such Distribution shall not cause those financial ratios or other Limits to be exceeded or breached;
- (b) the Operator is not, at the time of making the Distribution, and will not, immediately after making the Distribution, be in breach of its obligations under any Information Document; and
- (c) the Operator, immediately after the Distribution, will (in the case of a company) satisfy the solvency test as defined in section 4 of the Companies Act 1993 and (in any other case) will remain solvent after the Distribution.

13.4 Associated Person transactions

The Operator may not, without the prior written consent of the Statutory Supervisor, enter into any transaction or accept or supply any Services to or from any Associated Person, except on an arms-length basis and for proper commercial value.

13.5 Engaging staff

The Operator must comply with each Information Document and with all applicable employment laws when engaging any staff or contractors.

13.6 Appointing Manager

Without limiting clause 13.2, the Operator may appoint a Manager for a Village. The Manager may act on behalf of the Operator in fulfilling such activities relating to the management or day-to-day operation of the Village as the Operator may think fit. The Operator will have full authority to set the terms of

engagement, dismissal and remuneration of the Manager (subject to any other restrictions in this Deed).

13.7 Setting fees and charges

- (a) The Operator may set and change fees and charges for Residents or Intending Residents only in accordance with the consultation requirements of the Code of Practice.
- (b) The Operator will be entitled to charge a management fee and be reimbursed for all its costs and expenses arising from or incidental to its acting as the manager of the Village. The Operator will consult with the Statutory Supervisor before setting or varying its management fee.

13.8 Information Documents

The Operator must:

- (a) advise the Statutory Supervisor promptly of any change of circumstances that makes the Information Documents or any one of them likely to be misleading or deceptive, and advise the Statutory Supervisor of the steps that the Operator will take to correct this circumstance;
- (b) advise the Statutory Supervisor of and give the Statutory Supervisor a chance to comment on any change to any of the Information Documents before the Information Document or changed Information Document is registered, published or made available to any person;
- (c) advise the Statutory Supervisor of each breach of any Information Document promptly upon becoming aware of such breach; and
- (d) comply with all statutory requirements in respect of the filing or registering of all Information Documents.

13.9 Grant of Security

The Operator will at the request of the Statutory Supervisor and at the cost of the Operator grant the Statutory Supervisor's Security as security for the due performance by the Operator of all covenants entered into in this Deed for the benefit of Residents, Prospective Residents and Intending Residents, including repayment of all moneys due to departing Residents pursuant to Occupation Right Agreements.

13.10 Appointment/Retirement of Directors

The Operator covenants that it will ensure that at all times it has no fewer than two Directors (except in the case of a limited partnership).

14 ACTIVITIES OF OPERATOR REQUIRING CONSENT OF STATUTORY SUPERVISOR

14.1 Borrowing and granting Security

The Operator will not, without the prior written consent of the Statutory Supervisor, borrow any money (except for re-borrowing within facility limits and pursuant to a facility agreement already agreed to by the Statutory Supervisor)

or vary the terms of any borrowing in any material way, or grant any Security over its assets or the assets, business or undertaking of it or a Village.

14.2 Guaranteeing

The Operator will not, without the prior written consent of the Statutory Supervisor, grant any indemnity or guarantee of the obligations (financial or otherwise) of any third person.

14.3 Disposal of Village

The Operator will not, without the prior written consent of the Statutory Supervisor, dispose of the Village or the Land or any assets associated with or used in connection with the Village or the Land, except for Permitted Disposals.

14.4 Change of business or control

The Operator will not, without the prior written consent of the Statutory Supervisor:

- (a) take or permit any action (including the registration of any share transfer) which would alter or have the effect of altering the control of the Village or the Operator;
- (b) carry on any business other than as operator of a retirement village, rest home or geriatric hospital (and also including the granting of Occupation Right Agreements); or
- (c) alter its constitutional documents in any manner which could be detrimental to compliance with this Deed or to the interests of Residents.

14.5 Development of Village

The Operator will not, without the prior written consent of the Statutory Supervisor, Develop a Village or any material part of a Village.

14.6 Winding up

The Operator will not, without the prior written consent of the Statutory Supervisor:

- (a) wind itself up;
- (b) take any steps towards winding up any Village; or
- (c) cancel registration of a Village.

14.7 Appointment of Auditor

The Operator will not, without the prior written consent of the Statutory Supervisor:

- (a) appoint an auditor to be the Auditor of the Operator or, if applicable, the Village;

- (b) agree to or vary the terms of engagement for the audit of the Operator or, if applicable, the Village; or
- (c) terminate the appointment of the Auditor of the Operator or, if applicable, the Village.

14.8 Terms of Statutory Supervisor's consent

Where the consent of the Statutory Supervisor is required under any of clauses 13.4 and clauses 14.1 to 14.7, that consent may not be unreasonably withheld, but may be given on or subject to such conditions as the Statutory Supervisor may think fit including conditions requiring:

- (a) consent of Residents (either by Extraordinary Resolution or in the Statutory Supervisor's discretion some other majority) to be obtained;
- (b) advice to or consultation with Residents;
- (c) guarantees or undertakings from shareholders, owners or Directors of the Operator;
- (d) compliance with ongoing additional reporting or monitoring programmes;
- (e) in the case of any proposed disposal of a Village as referred to in clause 14.3:
 - (i) the purchaser to agree to adhere to the long term plan for maintaining and refurbishing the Village, established pursuant to clause 10.2(c); and
 - (ii) moneys held in the account established pursuant to clause 10.2(d) being transferred, if necessary, to a new account established by the purchaser of the Village for the same purpose;
- (f) in the case of any proposed borrowing or the granting of any guarantees, the imposition of financial covenants or ratios, limits on the amount borrowed or guaranteed and certificates from the Auditor confirming compliance with financial covenants and ratios; or
- (g) anything else which the Statutory Supervisor, acting reasonably, may require.

15 BREACH OF DEED

In the event of the Operator not complying with and observing the covenants, obligations, provisions or conditions in this Deed or in any Security given to the Statutory Supervisor, the Statutory Supervisor may do any or all of the following either in conjunction with each other or separately:

- (a) summon a meeting of Residents for the purpose of giving to the Statutory Supervisor their opinions or directions in relation to the exercise of the Statutory Supervisor's powers;
- (b) having given the Operator seven days' prior written notice, enforce the terms of this Deed or any Security;

- (c) make application to the Court pursuant to section 43(1)(c) of the Act for orders to be granted under section 43A of the Act; or
- (d) exercise any other statutory remedy available to the Statutory Supervisor.

16 THE REGISTER

16.1 Establishment of Register

The Operator will, in respect of each Village, maintain a Register of Residents, which may be in electronic form. The Operator may, with the consent of the Statutory Supervisor, appoint an agent to keep the Register of Residents on its behalf.

16.2 Entries in Register

The Operator or, if applicable, its agent shall enter in the Register and shall regularly update the following details:

- (a) the names and addresses of the Residents;
- (b) the number of Occupation Right Agreements for the time being issued to Residents;
- (c) the issue date and the issue price of each Occupation Right Agreement;
- (d) any identifying characteristic (including the description of the Unit and the certificate of title reference if applicable) of each Occupation Right Agreement;
- (e) transfers or changes of ownership of Occupation Right Agreements;
- (f) all cancellations and/or surrenders of Occupation Right Agreements; and/or
- (g) such other particulars as may be agreed between the Operator and the Statutory Supervisor.

16.3 Inspection of Register

The Register shall be kept or maintained at the Registered Office of the Operator (or at such other place as may be agreed between the Operator and the Statutory Supervisor) and the Statutory Supervisor will be at liberty at all reasonable times during usual office hours:

- (a) to inspect the Register; and
- (b) to take copies of and extracts from the same.

16.4 Closure of Register

The Operator or, if applicable, its agent may close the Register for up to 20 days in each year. Notice of closure of the Register shall be given to the Statutory Supervisor.

PART IV: STAKEHOLDER FACILITY

17 APPLICATION TO PROSPECTIVE RESIDENTS

17.1 Appointment

- (a) By executing this Deed the Operator appoints the Statutory Supervisor and the Statutory Supervisor agrees to act as stakeholder pursuant to this Deed.
- (b) As the stakeholder the Statutory Supervisor confirms that it is, and covenants at all times to remain, an authorised Financial Service Provider approved to act in accordance with Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (c) The Operator will ensure that every Prospective Resident shall appoint the Statutory Supervisor as stakeholder in accordance with the terms of this Deed.

17.2 Moneys held on trust

- (a) The Statutory Supervisor as stakeholder shall receive and hold each Deposit (together with all Net Accrued Interest) on trust for the benefit of the relevant Prospective Resident, the Operator and any departing Resident in accordance with their respective interests therein.
- (b) All payments required on settlement of any new or transferred Occupation Right Agreement will be made through the Trust Account referred to in clause 17.3.

17.3 Trust Account

- (a) For the purpose of its role as stakeholder, the Statutory Supervisor will open and maintain a Trust Account on terms which recognise that all Deposits and all Net Accrued Interest payable in relation to Occupation Right Agreements and which are paid into the Trust Account are trust funds and on such other terms (not being inconsistent with the provisions hereof) as the Statutory Supervisor and the Bank may otherwise agree.
- (b) The Statutory Supervisor will, promptly upon receipt, deposit every Deposit received in relation to any Occupation Right Agreement in the Trust Account.
- (c) The Statutory Supervisor will not deposit any moneys (other than Deposits and Net Accrued Interest payable in relation to settlements of Occupation Right Agreements) in the Trust Account.
- (d) The Statutory Supervisor will ensure that the Trust Account is audited at least annually by an appropriately qualified auditor. A copy of the audit report for the Trust Account must be made available upon request to any Resident, Intending Resident or Prospective Resident, and to the Operator.

17.4 Records

The Statutory Supervisor will keep such records as shall enable it to readily identify:

- (a) each Prospective Resident's IRD tax number (if this has been supplied);
- (b) the amount of each Deposit received in respect of an Occupation Right Agreement;
- (c) the Net Accrued Interest on each Deposit from time to time; and
- (d) the RWT or other applicable tax from time to time deducted from amounts held.

18 APPLICATION OF MONEYS

18.1 Payments generally

The Operator, each Resident and each Prospective Resident acknowledge that the Deposit and the Net Accrued Interest paid in relation to any Occupation Right Agreement may become payable in accordance with the terms of the Occupation Right Agreement and/or the Act as follows:

- (a) on settlement of any Occupation Right Agreement;
- (b) on cancellation during the cooling off period;
- (c) where an Occupation Right Agreement is voidable pursuant to section 31 of the Act and the Resident elects to avoid that Occupation Right Agreement within the prescribed period (as that term is used in the Act); and
- (d) on cancellation or termination of an Occupation Right Agreement in circumstances other than those described in clauses 18.1 (b) and (c) above.

18.2 Payment on settlement

- (a) Following settlement of the licensing, sale or other disposition of a Unit to a Resident, the Statutory Supervisor will release the Deposit and the Net Accrued Interest to the Operator, or as the Operator may direct.
- (b) Directions from the Operator referred to in clause 18.2(a) above must be in writing (in such form as the Statutory Supervisor may reasonably request) and must clearly identify the person to whom payments of the Deposit and the Net Accrued Interest are to be made.

18.3 Payment on cooling off

- (a) If any Occupation Right Agreement is cancelled by any Resident within the cooling off period prescribed by the Act or the Occupation Right Agreement, the Operator will immediately on its receipt give a copy of the notice of the cancellation to the Statutory Supervisor and the Statutory Supervisor will, provided that no Dispute Notice has been given pursuant

to section 31(3)(b)(i) of the Act, release the Deposit together with any Net Accrued Interest to the Prospective Resident.

- (b) If a Dispute Notice is given pursuant to section 31(3)(b)(i) of the Act, the Statutory Supervisor will hold any relevant Deposit together with any Net Accrued Interest pending resolution of the dispute.

18.4 Payment on voidable Occupation Right Agreement

- (a) If any Occupation Right Agreement is voidable pursuant to section 31 of the Act and the Resident exercises his or her right to avoid that Occupation Right Agreement within the prescribed period (as that term is used in the Act) upon receipt of notice from the Resident avoiding the Occupation Right Agreement, and provided that no dispute notice is given pursuant to section 31(3) of the Act, the Statutory Supervisor will release any Deposit still held in relation to that Occupation Right Agreement together with any Net Accrued Interest to the Prospective Resident.
- (b) If a Dispute Notice is given pursuant to section 31(3) of the Act, the Statutory Supervisor will hold any relevant Deposit together with any Net Accrued Interest pending resolution of the dispute.

18.5 Payment on cancellation

If any Occupation Right Agreement or the settlement of any Occupation Right Agreement is cancelled or avoided other than in accordance with clauses 18.3 or 18.4 above:

- (a) in circumstances that allow the Prospective Resident or the Resident to retain the Deposit, the Statutory Supervisor will (subject to clause 18.8) release the Deposit and any Net Accrued Interest to the Prospective Resident or Resident as the case may be; and
- (b) in circumstances that allow the Operator to retain the Deposit, the Statutory Supervisor will (subject to clause 18.8) release the Deposit, any Net Accrued Interest and any other relevant capital sum to the Operator.

18.6 Making payments

- (a) The Statutory Supervisor may act on any directions from and may pay any moneys payable by it pursuant to this clause 18 to a solicitor or other agent appointed in writing acting or purporting to act on behalf of the Operator, the Prospective Resident or the departing Resident (as the case may be).
- (b) The receipt by such solicitor or other agent appointed in writing shall be a sufficient release of the Statutory Supervisor's obligation to pay moneys to the Operator, the Prospective Resident or the Resident (as the case may be) and the Statutory Supervisor will have no obligation to enquire into or see to the further application of such moneys.

18.7 Operator's obligation

The Operator will advise the Statutory Supervisor in writing immediately upon any Deposit and/or Net Accrued Interest becoming payable to any person pursuant to the terms of an Occupation Right Agreement or otherwise.

18.8 Pre-condition to making any payment

- (a) The Statutory Supervisor will not be obliged to make any payments pursuant to Part IV of this Deed unless and until it has received such evidence or certificates so that it is satisfied as to the identity of the correct payee.
- (b) Without limiting clause 18.8(a), where payment is to be made to the Operator, the Statutory Supervisor will not be required to make any payment until it has received written advice from the Operator or a solicitor or other approved agent of the Operator confirming:
 - (i) that the cooling off period prescribed by the Act has expired;
 - (ii) that the Operator has not received notice that the Registrar has suspended or cancelled registration of the Village;
 - (iii) that the Prospective Resident has entered into an Occupation Right Agreement which complies with the requirements of all Information Documents;
 - (iv) that the Prospective Resident has received a Disclosure Statement, a copy of the Code of Residents' Rights, a copy of the Occupation Right Agreement and independent legal advice; and
 - (v) such other matters as the Statutory Supervisor, acting reasonably, may require or may have specifically agreed to in any particular case before releasing any Deposit or other capital sums.

19 STATUTORY SUPERVISOR'S POWERS AND DISCRETIONS

19.1 Reliance on information

Without limiting clause 18.8, the Statutory Supervisor may, in making any payment under Part IV of this Deed, without liability for loss accept and rely on a certificate signed by the Operator, or a solicitor or other approved agent acting or purporting to act on behalf of the Operator, as to:

- (a) the settlement date of any Occupation Right Agreement;
- (b) any relevant event requiring payment to have occurred;
- (c) the person properly entitled to payment;
- (d) the amount of any payment; and
- (e) any of the matters referred to in clause 18.8.

19.2 Expert advice

- (a) By way of facilitating the discharge of its duties under Part IV of this Deed, it is agreed and declared that the Statutory Supervisor may, if it thinks fit (and notwithstanding any other provision of this Deed), or in the exercise of its stakeholder duties take advice from a barrister, solicitor, chartered accountant or other expert.
- (b) The Statutory Supervisor may, without liability for loss, act in reliance on the opinion of or any information obtained from any barrister, solicitor, chartered accountant or other expert.

20 STATUTORY SUPERVISOR'S INDEMNITY AS STAKEHOLDER

20.1 Additional indemnity as stakeholder

- (a) Without prejudice to the right of indemnity by law given to trustees or elsewhere in this Deed, the Statutory Supervisor will be entitled to be indemnified by the Operator, each Prospective Resident and each Resident and from the Deposit, the Net Accrued Interest and any other applicable capital sum:
 - (i) in respect of all liabilities and expenses reasonably incurred by the Statutory Supervisor in the execution of any power, authority or discretion herein expressed or implied in Part IV of this Deed and in relation to that Deposit and Net Accrued Interest; and
 - (ii) against all actions, proceedings, costs, damages, expenses and claims and demands in respect of any action or omission thereto relating, other than a claim arising out of the Statutory Supervisor's fraud, wilful default or gross negligence.
- (b) The provisions of the indemnity in clause 20.1 (a) shall survive termination of this Deed.

20.2 Limitation of liability

The Statutory Supervisor will not be liable to the Operator, any Resident or any Prospective Resident by reason of any loss, cost or expense to the Operator or that Resident or Prospective Resident (as the case may be) arising directly or indirectly out of any act or omission of the Statutory Supervisor in the execution or purported execution of any power, authority or discretion expressed or implied in Part IV of this Deed (other than a claim arising out of the fraud, wilful default or gross negligence of the Statutory Supervisor), including any such loss, cost or expense arising out of:

- (a) any delay in investing a Deposit due to circumstances beyond the Statutory Supervisor's reasonable control;
- (b) any failure on the part of the Bank with which the Trust Account is maintained; or
- (c) any costs deducted by the Bank for handling a Deposit or other sum in the Trust Account or any interest accruing thereon.

21 RETIREMENT OR TERMINATION

21.1 Manner of retirement or termination

- (a) The Statutory Supervisor's role as stakeholder will terminate on the earlier of the Statutory Supervisor ceasing to be an authorised Financial Service Provider or at the same time as the Statutory Supervisor ceases to act as statutory supervisor under this Deed.
- (b) The role of the Statutory Supervisor as stakeholder may not cease or be terminated other than pursuant to clause 21.1 (a) above and any new Statutory Supervisor will be deemed to be also appointed a stakeholder pursuant to this Deed.

21.2 Transfer of trust moneys

- (a) The Statutory Supervisor will upon ceasing to act as stakeholder under this Deed transfer all moneys in the Trust Account together with all Net Accrued Interest to the new stakeholder.
- (b) Where there is no new stakeholder, the Statutory Supervisor will deal with all moneys in the Trust Account together with all Net Accrued Interest in accordance with the directions of the Registrar.

22 WITHHOLDING TAX

The parties agree that it is appropriate for, and direct the Statutory Supervisor to, deduct RWT from time to time on interest earned on the Deposit at the non-declaration rate applicable pursuant to Subpart RE 12 and clause 3 of Part D of Schedule 1 of the Income Tax Act 2007.

PART V: MISCELLANEOUS

23 MEETINGS

- (a) Meetings of the Residents will be convened and held in accordance with the rules set out in Schedule 4 of this Deed and in accordance with the Act, the Regulations and the Code of Practice.
- (b) The Statutory Supervisor may at any time veto or disregard any resolution from such meeting except to the extent that such resolution gives directions or expresses opinions to the Statutory Supervisor in relation to the exercise of the Statutory Supervisor's powers.
- (c) The Operator will supply to Residents at any Meeting, such oral or written information relating to the affairs of the Village as any Resident has given reasonable notice to the Operator to supply.

24 INSPECTION OF REGISTER AND NOTICES

- (a) The place of business in New Zealand where the Register may be inspected and communications and notices may be addressed and served is the registered office from time to time of the Operator.
- (b) Any notice, approval and consent required to be given in terms of this Deed will be sufficiently given to or served on the Operator or the Statutory Supervisor as the case may be, if it is sent in a prepaid letter or by e-mail transmission at the addresses specified below or such other address as may be notified by one party to the other from time to time:

The Statutory Supervisor:

Covenant Trustee Services Limited
Level 6, 191 Queen Street
Auckland 1010

email : team@covenant.co.nz

The Operator:

Fergusson House & Village Limited
678 Taikorea Road, RD 3
Glen Oroua 4473

Attention : Stanley Alexander

email : sga.aiasl@gmail.com

- (c) A notice served by post will be deemed to have been served at the expiration of three working days after it is posted. Any notice sent by e-mail transmission during a working day between 9.00am and 5.00pm will be deemed to be received upon completion of an error-free transmission and in every other case will be deemed to be received and served at 9.00am on the next working day after it is sent.

- (d) Any notice hereunder to any Resident will be sufficiently given to or served if the notice is sent in a pre-paid letter to the last known address of the Resident.

25 ARBITRATION

If at any time hereafter any dispute, doubt or question will arise between any of the parties to this Deed touching the construction, meaning or effect of this Deed or the rights and liabilities of any or all of the Operator or the Statutory Supervisor, then every such dispute or question may, without limiting any other proceedings or alternative means of dispute resolution that may be undertaken, be referred to the arbitration of a single arbitrator if one can be agreed upon or failing agreement to the arbitration of an arbitrator nominated by the President for the time being of the New Zealand Law Society and every arbitration pursuant to this clause will be in accordance with the provisions of the Arbitration Act 1996.

26 STATUTORY SUPERVISOR MAY CONCUR IN CERTAIN ALTERATIONS

The Statutory Supervisor may concur with the Operator in making any modification or addition to this Deed:

- (a) if in the opinion of the Statutory Supervisor the same is made to correct a manifest error or is of a formal or technical nature or is necessary in order to comply with any law and is not materially prejudicial to the general interests of the Residents;
- (b) if the same is, in the case of a provision of this Deed affecting only the interests of Residents of a particular Village, authorised by an Extraordinary Resolution of Residents of that Village;
- (c) if in the opinion of the Statutory Supervisor the same is not or is not likely to become materially prejudicial to the general interests of the Residents; or
- (d) that varies this Deed by way of a Deed of Variation.

27 COUNTERPART EXECUTION

27.1 Two or more Counterparts

This Deed may be executed in two or more counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument.

27.2 Facsimile

This Deed may be executed by facsimile copies signed by the parties provided that forthwith after transmission of the executed Deed each party will forward to the others the original executed copies for the purposes of forming the counterparts referred to in clause 27.1. Notwithstanding the foregoing, facsimile copies of the executed Deed will constitute sufficient evidence that an original of the Deed has been executed.

27.3 PDF File

This Deed may be executed by copies signed by the parties and then scanned into a portable document formatted electronic file (**PDF file**) provided that forthwith after transmission of the executed Deed as a PDF file each party will forward to the others the original executed copies for the purpose of forming the counterparts referred to in clause 27.1. Notwithstanding the foregoing, PDF file copies of the executed Deed will constitute sufficient evidence that an original of the Deed has been executed.

28 REPLACEMENT DEED OF SUPERVISION

28.1 Replacement

This Deed replaces and supersedes the Deed of Supervision dated 19 November 2007 between (inter alia) Fergusson Retirement Village Limited and (now) Covenant Trustee Services Limited (**Original Deed**).

28.2 Survival

Where the Original Deed contains a provision that is not included in this Deed, and where that provision is more favourable to any party than a provision in this Deed, the provision from the Original Deed will survive termination of the Original Deed.

28.3 Limitation

The provisions of this clause 28 will not apply to a Resident where that Resident has entered into an Occupation Right Agreement on or after the date of this Deed.

29 GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

This Deed has been executed and delivered on the date specified on page 2.

Signed for and on behalf of:
FERGUSSON HOUSE & VILLAGE LIMITED
by:

Director

Director

Signed for and on behalf of **COVENANT TRUSTEE SERVICES LIMITED** by the affixing of its common seal in the presence of:

Witness Signature 

Jan-Marie Signal

Witness Name

Registered Legal Exec.

Occupation

Auckland

Address



Authorised Signatory




Authorised Signatory



This Deed has been executed and delivered on the date specified on page 2.

Signed for and on behalf of:
FERGUSSON HOUSE & VILLAGE LIMITED
by:



Director



Director

Signed for and on behalf of **COVENANT TRUSTEE SERVICES LIMITED**
by the affixing of its common seal in the presence of:

Witness Signature

Witness Name

Occupation

Address

Authorised Signatory

Authorised Signatory

SCHEDULE 1

DESCRIPTION OF VILLAGE

Name of Village

Fergusson Retirement Village (registered number 2074977)

Physical location of the Village

1 Carlton Street, Glenholme, Rotorua 3010

Registered office of the Village

678 Taikorea Road, RD3, Glen Oroua 4473

Units in the Village

As at the date of this Deed of Supervision there are seven single bedroom independent living Units, five two-bedroom independent living Units, and two Studio Units at the Village.

Services and Facilities at the Village

Common areas and facilities at the Village, as provided by the Operator from time to time.

Services as set out in a Resident's Occupation Right Agreement or as offered by the Operator from time to time.

Liabilities of the Operator

Liability to pay Residents an exit payment, and to provide services and facilities, each as more particularly described in each Resident's Occupation Right Agreement.

Liability to Kiwibank Limited (secured by general security agreement in favour of the lender) and to the Statutory Supervisor (secured by encumbrance and general security agreement in favour of the Statutory Supervisor).

General unsecured trade creditors.

Development of the Village

Construction of the Village in its current form is complete. Any redevelopment of the Village will require the Operator to consult with Residents.

Ownership structure of the Village

The Operator owns the freehold interest in the land on which the Village is situated.

DESCRIPTION OF OCCUPATION RIGHTS

Number of Units

At the date of this Deed of Supervision there are 14 completed Units.

Terms of offer of Units / Nature of Occupation Right

The Operator offers a Resident the right to live in a Unit, and to receive services, in exchange for an entry payment. Residency is by way of a right to occupy, the terms of which are described in the Occupation Right Agreement entered into between the Resident and the Operator.

Following termination of the Occupation Right Agreement, the Operator must pay the Resident the exit payment, the terms of which are described in the Resident's Occupation Right Agreement.

Persons who may become Residents

Persons predominantly in their retirement at the time of entry into the Village.

Holding by more than one Resident

An Occupation Right Agreement may be held by more than one person as joint tenants. The Operator will not permit an Occupation Right Agreement to be held by more than one person as tenants in common.

Residents' rights to borrow

A Resident may not use their right to occupy a Unit as security for any borrowing.

Circumstances and manner of termination/transmission/renewal and/or replacement of Occupation Right Agreements

The Occupation Right Agreement will terminate on the death of the last surviving Resident, and can be terminated (by the Resident or the Operator) upon notice in the circumstances and in the manner more particularly described in the Occupation Right Agreement.

If an Occupation Right Agreement is held by more than one Resident as joint tenants, and one Resident dies, the Occupation Right Agreement will automatically be transmitted by operation of law to the surviving joint tenant(s).

Amounts payable on termination/transmission/renewal and/or replacement of Occupation Right Agreements

Following termination of the Occupation Right Agreement, the Operator must pay the Resident the exit payment, the calculation of which is described in the Resident's Occupation Right Agreement. Generally, the exit payment will be the entry payment reduced by certain agreed deductions and any amounts properly owed to the Operator by the Resident, although in certain specific circumstances described in the Occupation Right Agreement the exit payment may equal the entry payment.

An exit payment is not generally payable unless and until the Operator has found a replacement resident to pay an entry payment for the right to enter into a new Occupation Right Agreement for the Unit, and the statutory cooling-off period has expired, although in certain specific circumstances described in the Occupation Right Agreement the Operator must pay the exit payment to the Resident within a stated period of time.

The transmission of an Occupation Right Agreement to surviving joint tenant(s) does not trigger the right for the Resident or the surviving joint tenant(s) to receive the exit payment.

INSOLVENCY PROVISIONS

Liabilities of Residents on insolvency or winding up of Operator

A Resident has no liability arising as a result of the insolvency or winding up of the Operator that is in addition to the Resident's liabilities to the Operator as generally described in the Occupation Right Agreement.

Liability of Residents on winding up Village

A Resident has no liability arising as a result of the winding up of the Village that is in addition to the Resident's liabilities to the Operator as generally described in the Occupation Right Agreement.

SECURITY

Details of Statutory Supervisor's Security

The Statutory Supervisor holds an encumbrance registered as a first charge over the freehold titles to the land on which the Village is situated. The encumbrance secures the performance of the services provided to the Residents by the Operator, the amounts owed to the Statutory Supervisor and amounts collectively owed to the Residents by the Operator.

The Statutory Supervisor also holds a general security registered as a second charge over the non-real assets of the Operator. The primary purpose of this general security is to give the Statutory Supervisor the right to appoint a receiver of the Operator, if necessary.

SCHEDULE 2
DEED OF VARIATION

DEED dated

PARTIES

- (1) **FERGUSSON HOUSE & VILLAGE LIMITED** at Glen Oroua (**Operator**)
- (2) **COVENANT TRUSTEE SERVICES LIMITED** at Auckland (**Statutory Supervisor**)

BACKGROUND

- A The Operator and the Statutory Supervisor are parties to the Deed of Supervision.
- B The Operator [has acquired an additional retirement village and has appointed the Statutory Supervisor to act as statutory supervisor for that Village in accordance with the Deed of Supervision][wishes to update the information in Schedule 1 to the Deed of Supervision]*.
- C [The Statutory Supervisor has accepted the appointment referred to in paragraph B subject to and on the terms of this Deed]*.

OPERATIVE CLAUSES

1 DEFINITIONS AND CONSTRUCTION

- (a) **Deed of Supervision** means the Deed dated [] between the Operator and the Statutory Supervisor, as amended from time to time.
- (b) Words and phrases defined in the Deed of Supervision shall have the same meaning as in this Deed, unless the context otherwise requires.

2 AMENDMENT TO DEED OF SUPERVISION

- *(a) The Deed of Supervision is hereby amended by deleting Schedule 1 and replacing it with the Annexure attached to this Deed.

OR

- *(a) The Deed of Supervision is hereby amended by adding an additional page to Schedule 1 immediately following existing Schedule 1, in the form of the Annexure attached to this Deed.

* *Delete or complete as applicable*

- (b) On and from the date of this Deed all references to the term "Village" in the Deed of Supervision shall mean each Village or the amended details of each Village set out in the Deed of Supervision as amended by this Deed.
- (c) Subject to paragraphs (a) and (b) above, the provisions of the Deed of Supervision remain in full force and effect.

This Deed has been executed on the date specified on page 1.

Signed for and on behalf of
FERGUSON HOUSE & VILLAGE LIMITED
by:

Director

Director

Signed for and on behalf of
COVENANT TRUSTEE SERVICES LIMITED
by the affixing of its common seal in the presence of:

Authorised Signatory

Witness Signature

Witness Name

Authorised Signatory

Occupation

Address

ANNEXURE
DESCRIPTION OF VILLAGE

Name of Village

Physical location of the Village

Registered office of the Village

Units in the Village

Services and Facilities at the Village

Liabilities of the Operator

Development of the Village

[Include an indication as to whether the Village is complete and any plans of the Operator for altering or developing the Village.]

Ownership structure of the Village

DESCRIPTION OF OCCUPATION RIGHTS

Number of Units

Terms of offer of Units / Nature of Occupation Right

Persons who may become Residents

Holding by more than one Resident

Residents' rights to borrow

Circumstances and manner of termination/transmission/renewal and/or replacement of Occupation Right Agreements

Amounts payable on termination/transmission/renewal and/or replacement of Occupation Right Agreements

INSOLVENCY PROVISIONS

Liabilities of Residents on insolvency or winding up of Operator

Liability of Residents on winding up Village

SECURITY

Details of Statutory Supervisor's Security

SCHEDULE 3

DIRECTORS' CERTIFICATE

The quarterly directors' certificate shall include the following:

- 1 A statement as to any matters which since the date of the last such certificate (or in the case of the first certificate, since the date of this Deed) have in their opinion occurred adversely to affect the interests of the Residents.
- 2 A statement made to the best of the knowledge and belief of the Directors, after having made all due enquiry, as to whether or not:
 - (a) the Operator has observed and performed all relevant provisions of the Information Documents;
 - (b) there has been any material change in any accounting method or method of valuation of assets or liabilities of the Village or the Operator;
 - (c) any material trading or capital loss has been sustained by the Operator or a Village and, if so, particulars thereof;
 - (d) any proceedings have been issued against the Operator;
 - (e) any material liabilities including contingent liabilities not previously disclosed to the Statutory Supervisor have been incurred by the Operator and, if so, the amount of those liabilities and whether or not any contingent liability has or is likely to mature within the succeeding twelve months which will materially affect the Operator in its ability to perform its obligations pursuant to the provisions of this Deed;
 - (f) there has been any change in the nature of the business of the Operator and, if so, particulars of that change;
 - (g) there has been any investment by the Operator in the share capital of any person or a loan to or guarantee of the obligations of any person by the Operator;
 - (h) any circumstances have arisen which render adherence to the existing method of valuation of any part of the assets of the Operator or of a Village misleading or inappropriate and, if so, particulars of those circumstances;
 - (i) there has been any change in the share capital or ownership of the Operator;
 - (j) the Operator has complied with all periodic reporting requirements of any lender from time to time and has duly complied with all covenants and financial ratios contained in each Security and each facility agreement with the lender;
 - (k) the Operator has complied with clause 13.1 of the Deed of Supervision for each Advertisement;

- (l) the Operator has increased its borrowings or borrowed money or provided the assets, business or undertaking of the Village as security for any liability otherwise than in accordance with clause 14.1 of the Deed of Supervision;
 - (m) any Distributions have been made by the Operator;
 - (n) all Resident levies have been applied in accordance with this Deed, the Occupation Right Agreement and the Disclosure Document; and
 - (o) all amounts due to any Resident under, or in relation to, an Occupation Right Agreement have been paid where such amounts have become due for any reason.
- 3 A statement that the Disclosure Statement at the date of the certificate is not false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.
- 4 A statement that having considered such budgets, reports and projections as they deem necessary, the Directors are of the opinion that the Operator will perform all of its obligations to the Residents which fall to be performed in the forthcoming twelve months.
- 5 A statement that the Register has been properly maintained in accordance with clause 16 of this Deed.
- 6 A statement that the Operator has maintained insurance for the Village and the Retirement Village Property as required by the Act, the Regulations and the Code of Practice, that all insurance premiums have been paid and that, if applicable, the interest of the Statutory Supervisor as security holder has been noted on the insurance policy.
- 7 A list as at the end of the quarter detailing all Units not previously the subject of an Occupation Right Agreement for which an Occupation Right Agreement is available including the date on which marketing of each Unit commenced and the payment being sought for that Unit.
- 8 A list as at the end of the quarter detailing all previously occupied Units that are at that time available for occupation including the name of the outgoing Resident, the date on which the Resident's Occupation Right Agreement terminated, the date on which the Unit was made available for refurbishment and re-licensing by the outgoing Resident and the date on which marketing of the Unit commenced and the payment being sought for the Occupation Right Agreement.
- 9 A list at the end of the quarter of all Occupation Right Agreements issued during that quarter.

SCHEDULE 4

RULES FOR MEETINGS OF RESIDENTS

1 INTERPRETATION

- 1.1 Words defined in clause 1.1 of this Deed will have the same meaning in these Rules.
- 1.2 Unless an issue concerns all Villages which the Operator manages, all Meetings will be Meetings of Residents in only one Village and these Rules will be interpreted accordingly.

2 CONVENING OF MEETINGS

2.1 Annual General Meeting

The Operator will in each and every year convene an Annual General Meeting of the Residents of a Village. The Annual General Meeting will be held to receive the audited financial statements of the Operator and, if applicable, the Village for the preceding year, the Statutory Supervisor's report, the maintenance report (as referred to under the Code of Practice) and to discuss any other matters. Each Annual General Meeting will be held on a date no later than 6 months following the end of each financial year of the Operator.

2.2 Operator to call Meeting

- (a) The Operator may at any time of its own volition convene a Meeting of the Residents.
- (b) The Operator must call a Meeting for the purpose of seeking Residents' consent if the Act, the Regulations, this Deed, the Code or the Occupation Right Agreements require the consent of Residents for any proposed action.
- (c) If asked, in writing, by either the Statutory Supervisor or not less than 10% of the Residents of any Village, the Operator must call a Meeting to enable Residents to give their opinions or directions.

2.3 Statutory Supervisor to call Meeting

- (a) The Statutory Supervisor may at any time of its own volition, or at the request of the Operator, convene a Meeting of the Residents of a Village for the purpose of the Residents giving the Statutory Supervisor their opinions or directions relating to the exercise of the Statutory Supervisor's powers.
- (b) The Statutory Supervisor will, at the request of at least 10% of the Residents of any Village, call a Meeting of Residents of that Village for the purpose of the Residents giving the Statutory Supervisor their opinions or directions relating to the exercise of the Statutory Supervisor's powers.

3 PLACE

All Meetings will be held in the Village or such other venue as may be agreed upon between the Operator and the Statutory Supervisor.

4 NOTICE

4.1 Persons entitled to receive notice

Notice of every Meeting will be given in the manner provided in clause 24 of the Deed of Supervision or clause 4.3 of this Schedule 4 to:

- (a) every Resident;
- (b) every person to whom, to the actual knowledge of the Operator as at that date, an interest in any Occupation Right Agreement has devolved by reason of his or her being a legal personal representative or an assignee in bankruptcy of a Resident where the Resident but for his or her death or bankruptcy would in accordance with the foregoing paragraphs be entitled to receive notice of the Meeting;
- (c) where the Meeting is called by the Operator, to the Statutory Supervisor; and
- (d) where the Meeting is called by the Statutory Supervisor, to the Operator.

4.2 Formal requirements for notice

- (a) At least ten working days' notice of every Meeting must be given. The notice period will be exclusive of the day on which it is given or deemed to be given and of the day for which it is given. The agenda and all papers to be considered at the meeting must be attached to the notice.
- (b) The notice of Meeting must specify the place and appointed time of the Meeting and the general nature of the business to be transacted (including an agenda and all papers to be considered at the Meeting). It will not be necessary to specify in the notice the text of the resolutions to be proposed, except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case the text of the proposed resolution must be set out.
- (c) The notice of Meeting must include a statement that a Resident entitled to attend and vote at the Meeting is entitled to appoint a representative or proxy to attend and vote instead of him or her and that such representative or proxy need not be a Resident.
- (d) The notice of Meeting must state the number of Residents that need to attend to form a quorum.
- (e) The accidental omission to give notice to or the non-receipt of notice by any person entitled thereto will not invalidate the proceedings at any Meeting.

4.3 Method of giving notice

Any notice may be given either by personal delivery or by leaving it or sending it to the last known address or usual place of residence or business of the addressee. If posted, a notice is deemed (in the absence of evidence to the contrary) to have been received at the time when it would in the ordinary course of post be delivered.

5 QUORUM

5.1 Quorum requirements

No business will be transacted at any Meeting unless a quorum is present at the commencement of business. In the case of all Meetings, other than adjourned Meetings, the quorum will be 25% of Residents entitled to be present in person or by representative and to vote. The quorum for an adjourned Meeting will be 10% of Residents entitled to be present in person or by representative and to vote.

5.2 Adjourned Meeting

If within 30 minutes, or such longer time not exceeding 60 minutes as the chairperson of the Meeting will decide after the appointed time a quorum is not present, the Meeting if convened upon the request of Residents will be dissolved. In any other case it will stand adjourned to such day and time not being less than ten days thereafter and to such place as may be appointed by the chairperson and at such adjourned Meeting all the Residents present in person or by representative (provided there are not less than 10% of Residents entitled to be present in person or by representative and to vote) will be a quorum for the transaction of business (including the passing of Extraordinary Resolutions of Residents).

5.3 Notice of adjourned Meeting

Notice of any adjourned Meeting at which an Extraordinary Resolution is to be submitted will be given in the same manner as for an original Meeting and such notice will state that not less than 10% of Residents entitled to be present in person or by representative and to vote will form a quorum.

5.4 Method and notice of adjournment

The chairperson may with the majority consent of any Meeting at which a quorum is present and will, if so directed by the Meeting, adjourn the Meeting from time to time and from place to place for any period not exceeding 30 days. If the Meeting is to be adjourned for a period of more than 14 days' notice of any such adjourned Meeting of the Residents will be given in the same manner as for an original Meeting.

5.5 Business at adjourned Meeting

No business will be transacted at any adjourned Meeting except business which might have been lawfully transacted at the Meeting from which the adjournment took place.

6 CHAIRPERSON

A person nominated by the Statutory Supervisor will preside as chairperson at every Meeting and if no such person is nominated or if at any Meeting the person nominated is not present within 15 minutes after the appointed time the Residents present will choose one of their number to chair the Meeting by ordinary majority vote.

7 RIGHT TO ATTEND AND SPEAK

Any director, officer, solicitor or representative of the Statutory Supervisor may attend and speak at any Meeting.

8 PERSONS ENTITLED TO VOTE

8.1 Manner of voting

Subject to these rules, a Resident may vote personally or by his or her representative.

8.2 Vote by representative

In these rules "representative" means a person appointed by an instrument by way of proxy or by power of attorney. The following persons will be entitled to vote in person or by representative:

- (a) the persons registered as at the Proxy Closing Time as Residents in the Register; and
- (b) the persons who are entitled to receive notice of the Meeting pursuant to clause 4.1 (b) of these Rules in respect of an interest in an Occupation Right Agreement devolving upon them respectively.

8.3 Closing of Register

For the purpose of establishing voting entitlements at a Meeting, the Register will be closed at the close of business on the day which is five working days preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant Meeting has been closed or adjourned.

9 PROXIES

9.1 Instrument of proxy

- (a) The instrument appointing a proxy will be in writing under the hand of the appointor or his or her attorney duly authorised in writing.
- (b) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified in such other manner as the Statutory Supervisor will approve will be deposited at such place as the Statutory Supervisor may direct or (if no such place is appointed) then at the registered office of the Operator not later than the Proxy Closing Time and subject as hereinafter provided in default the instrument of proxy will not be treated as valid **PROVIDED THAT** the Statutory Supervisor may in its absolute

discretion accept as valid any instrument of proxy notwithstanding that such instrument or any power of attorney or other authority is received or produced at a place other than that specified above or out of time.

- (c) An instrument of proxy may be in any usual or common form or in such other form as the Statutory Supervisor may approve and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.

9.2 **Identity of proxy**

A person appointed to act as a proxy need not be a Resident and a holder of a proxy will have the right to speak at any Meeting in respect of which he or she is appointed.

9.3 **Proxy at adjourned Meeting**

A proxy whether in a usual or common form or not will, unless the contrary is stated thereon, be valid for any adjournment of the Meeting to which the proxy relates. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy will be valid after the expiration of 12 months from the date of its execution but this provision will not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

9.4 **Proxy in favour of chairperson**

An instrument of proxy in favour of the chairperson of the Meeting or the chairperson (howsoever expressed) will be as valid and effectual as though it were in favour of a named person and will constitute the person who chairs the Meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointor.

10 **RESIDENT MAY APPOINT ATTORNEY**

Any Resident may by power of attorney appoint an attorney (who need not be a Resident) to vote and act on his or her behalf at any Meeting. An attorney will be entitled to produce evidence of his or her appointment at any time before the appointed time for the Meeting. An attorney if so empowered may appoint a proxy for the Resident granting the power of attorney.

11 **RIGHTS OF REPRESENTATIVES**

A representative will have the right to demand or join in demanding a poll and will (except and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the Meeting for the Resident concerned.

12 **VOTING PROCEDURE AND POLLS**

12.1 **Method of voting**

- (a) A resolution put to the vote of a Meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Statutory Supervisor

or any representative of the Statutory Supervisor or by five Residents present in person and entitled to vote. Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- (b) On a show of hands each Resident present at the Meeting and entitled to vote (whether personally or as a representative) will have one vote only. On a poll there will be one vote for each Occupation Right Agreement. Residents occupying the same dwelling pursuant to one Occupation Right Agreement may elect (in writing) before any meeting commences, which of them is entitled to exercise a vote on any poll. If no such election is made, the Resident whose name appears first on the Occupation Right Agreement only will be entitled to vote on any poll, unless the Chairman otherwise decides at any meeting.
- (c) If a poll is duly demanded it will be taken in such manner as the chairperson may direct and the result of such poll will be deemed to be the resolution of the Meeting at which the poll was demanded.
- (d) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which he or she may be entitled as a Resident or on behalf of Residents.
- (e) A poll demanded on the election of a chairperson or on a question of adjournment will be taken forthwith. A poll demanded on any other question will be taken either immediately or at such time (not being more than thirty (30) days from the date of the Meeting) and place as the chairperson may direct. The result of such poll will be deemed to be the resolution of the Meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- (f) The demand for a poll will not prevent the continuance of a Meeting for the transaction of business other than the question on which the poll has been demanded.
- (g) On a poll, votes may be given either personally or by representative.
- (h) A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form will be valid notwithstanding the previous death, insanity or revocation of the proxy or power or attorney or other form of appointment or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation is received by the Statutory Supervisor or the Operator at its registered office before the commencement of the Meeting or adjourned Meeting at which the proxy is used.

13 EXTRAORDINARY RESOLUTIONS

13.1 Meaning of Extraordinary Resolution

The expression "Extraordinary Resolution" means a resolution passed at a Meeting duly convened and held in accordance with the provisions herein contained at which persons representing 75 percent or more of the number of Residents voting thereat upon a show of hands or if a poll is duly demanded then not less than 75 percent of the votes given on such a poll voted in favour of the resolution.

13.2 Powers exercisable by Extraordinary Resolution

Without limiting the rights, powers and discretions conferred on the Statutory Supervisor by this Deed, a Meeting of the Residents will, in addition to all other powers which by this Deed are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary Resolution namely:

- (a) power to give any sanction, assent, release or waiver of any breach or default by the Operator under any of the provisions of this Deed;
- (b) subject to the Act, power to discharge, release or exonerate the Statutory Supervisor from all liability in respect of any act or omission for which the Statutory Supervisor has or may become responsible under this Deed; and
- (c) power to remove the Statutory Supervisor.

13.3 Extraordinary Resolution binding on Residents

- (a) An Extraordinary Resolution passed at a Meeting duly convened and held in accordance with these Rules will be binding upon all Residents and the Operator whether present or not present at the Meeting.
- (b) The Operator and the Statutory Supervisor (subject to the provisions of its indemnity contained in this Deed) will be bound to give effect to every Extraordinary Resolution.
- (c) The passing of any Extraordinary Resolution, as between the Statutory Supervisor and the Residents, will be conclusive evidence that the circumstances justify the passing of that resolution, the intention being that it will rest with the Meeting to determine, without appeal, whether or not the circumstances justify the passing of the resolution.

14 MINUTES TO BE KEPT

- (a) Minutes of all resolutions and proceedings at every Meeting will be made by the Operator or, if the Operator is not present at such Meeting by some person appointed by the chairperson of such Meeting, and duly entered in books from time to time provided for that purpose at the expense of the Operator.

- (b) Any such minutes, if purporting to be signed by the chairperson of the Meeting at which such resolutions were passed or proceedings had or by the chairperson of the next succeeding Meeting, will be prima facie evidence of the matters in those minutes, until the contrary is proved.
- (c) Every such Meeting in respect of the proceedings of which minutes have been made will be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had.
- (d) Copies of minutes will be kept at the Village and furnished to the Statutory Supervisor and each Resident by the Operator.

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