

DATED 20 December 2018, as most recently amended on 25
March 2019

NEGATIVE PLEDGE DEED

The Negative Pledge Group

Each Beneficiary under the Security Trust Deed

DEED made on 20 December 2018, as most recently supplemented on 25 March 2019

BY: The companies listed in Schedule 1 together with any other company that enters into a Deed in favour of the Beneficiaries whereby the negative pledge and other undertakings contained herein are given in favour of a Beneficiary (together the "**Negative Pledge Group**")

IN FAVOUR OF: Each Beneficiary under the Security Trust Deed from time to time (the "**Beneficiary**")

BACKGROUND

- A. The Negative Pledge Group are subsidiaries of Metlifecare Limited (the "**Company**").
- B. In consideration of the Beneficiaries agreeing to provide certain financial accommodation to the Company, the Negative Pledge Group have agreed to give the negative pledge and other undertakings contained in this Deed.

IT IS AGREED AS FOLLOWS

1. INTERPRETATION

1.1 **Definitions:** Except to the extent the context requires otherwise, in this Deed:

"**Intangible Assets**" means future tax benefits, goodwill, patents, trademarks and other assets of a like nature which according to NZ GAAP are regarded as intangible assets;

"**NZ GAAP**" means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013;

"**Permitted Security Interest**" means in relation to any member of the Negative Pledge Group:

- (a) any Security Interest granted in favour of a statutory supervisor in accordance with the registration of a retirement village by that member of the Negative Pledge Group under the Retirement Villages Act 2003;
- (b) each general security agreement, mortgage and security sharing and priority deed entered into between that member of the Negative Pledge Group and an Obligor;
- (c) liens arising solely by operation of law and in the ordinary course of business;
- (d) a Security Interest created in respect of assets acquired where such creation is for the sole purpose of financing the acquisition of that asset;
- (e) any Security Interest that is created or provided by:

- (i) a transfer of an account receivable or chattel paper;
- (ii) a lease for a term of more than 1 year; or
- (iii) a commercial consignment,

in each case that does not secure payment or performance of an obligation;

- (f) a netting or set-off arrangement entered into in the ordinary course of a member of the Negative Pledge Group's banking arrangements for the purpose of netting debit and credit balances;
- (g) a Security Interest created with the prior written consent of the Majority Beneficiaries; or
- (h) any other Security Interest the Security Trustee may agree in writing from time to time to be a Permitted Security Interest;

"Related Person" means a related company (as defined in the Companies Act 1993) other than any such company which is a member of the Negative Pledge Group;

"Security Interest " means any security interest (as defined in the Personal Property Securities Act 1999), mortgage, charge, encumbrance, lien, pledge, hypothecation, financial lease, deferred purchase, sale and repurchase, sale and leaseback, title retention, flawed asset arrangement, or any other security or arrangement (however described) which in effect is, or has the commercial effect (in terms of securing payment or performance of an obligation) of, an encumbrance over any property, assets or revenues;

"Security Trust Deed" means the security trust deed dated on or about 20 December 2018 between, among others, the Company and the Security Trustee.

"Statutory Supervisor" means the statutory supervisor appointed pursuant to the Retirement Villages Act 2003; and

"Total Tangible Assets" means at any time and in relation to any member of the Negative Pledge Group, the aggregate of the book values of all tangible assets of that member ("tangible assets" being defined as all assets of that member other than Intangible Assets) as would be disclosed in a statement of financial position of that member if one were drawn up at that time.

1.2 **Interpretation:** Except to the extent that the context requires otherwise, the interpretation provisions in clauses 1.2 and 1.3 of the Security Trust Deed are incorporated into this Deed as if set out in full mutatis mutandis and form part of this Deed. In addition, any reference in this Deed to:

"assets" includes properties, revenues and rights of every description present, future and contingent;

"dispose" of any property includes to sell, lend, lease, discount, factor, subordinate, give, transfer or otherwise part with possession of in any way, or to grant an option in respect of or any right or

interest (legal or equitable) in that property (other than the creation of any Security Interest) or to agree to do any of the foregoing (and "**disposal**" shall be construed accordingly); and

"**environmental law**" includes any law which relates in any way to (a) the environment, (b) the safety, health or use of land, water, buildings or any other property or (c) substances or activities which may affect or otherwise harm the environment or be hazardous, and shall include but not be limited to the Resource Management Act 1991, the Building Act 1991, the Building Act 2004 and any heritage or historic places laws;

2. NEGATIVE PLEDGE

Each member of the Negative Pledge Group undertakes that it will not, without the prior written consent of the Majority Beneficiaries, create or permit to exist any Security Interest over all or any of its assets or revenues other than any Permitted Security Interest.

3. OTHER UNDERTAKINGS

3.1 Disposal of Assets: No member of the Negative Pledge Group shall dispose of, whether by a single transaction, or by a series of transactions whether related or not, within any twelve month period, the whole or any material part of its assets except in good faith and for proper value and where the book value of the assets disposed of, when aggregated with all other disposals required to be taken into account under this clause, does not, in relation to any member of the Negative Pledge Group exceed 5% of Total Tangible Assets. The following disposals shall not be taken into account under this clause:

- (a) a disposal in the ordinary course of business;
- (b) a disposal of obsolete assets or assets no longer required for the purpose of the relevant Negative Pledge Group member's business or operations;
- (c) the payment of cash for any asset acquired in the ordinary course of business;
- (d) the exchange of assets for other assets of similar nature and value, or the sale of assets for cash which is to be, and is, applied in or towards the purchase of similar assets within 3 months, or used to reduce the indebtedness of the relevant Negative Pledge Group member;
- (e) the application of the proceeds of an issue of securities (as defined in the Financial Markets Conduct Act 2014) for the purpose stated in the product disclosure statement or other offering document relating to that issue; or
- (f) a disposal with the prior written consent of the Majority Beneficiaries,

where the relevant transaction was entered into in good faith and for proper value on an arm's length basis. Nothing in this clause 3.1 shall permit the disposal by any member of the Negative Pledge Group of its shareholding (or any part of it) in any of its subsidiaries, disposal of which will

in all cases require the prior written consent of the Majority Beneficiaries, with such instructions to provide consent not to be unreasonably withheld.

3.2 **Related Party Transactions:** Each member of the Negative Pledge Group undertakes that it will not (other than with the prior written consent of the Majority Beneficiaries):

- (a) dispose of any assets to, or enter into any contract or arrangement for the provision of any services or assets to, a Related Person, other than in a bona fide transaction for proper value entered into on an arm's length basis and on reasonable commercial terms; or
- (b) purchase any assets from, or enter into any contract or arrangement for the provision of any assets or services by, a Related Person, other than in a bona fide transaction for proper value entered into on an arm's length basis and on reasonable commercial terms.

4. REPRESENTATIONS AND WARRANTIES

4.1 **Representations and Warranties:** Each member of the Negative Pledge Group represents and warrants to each Beneficiary that:

- (a) it is a company duly incorporated and validly existing under the laws of New Zealand with indefinite corporate existence, capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted;
- (b) it has power, and all necessary corporate action (including passing all resolutions) has been taken to authorise it to enter into, execute and deliver, exercise its rights and perform its obligations under this Deed;
- (c) its obligations under this Deed are legal, valid and binding and enforceable against it;
- (d) its entry into and performance of its obligations under this Deed do not and will not violate or contravene any applicable law or its constitutive documents nor cause any limit on its powers or the powers of its directors to be exceeded; and
- (e) all action, conditions and things (including the obtaining of consents and other requirements) required to be taken, fulfilled and done to ensure:
 - (i) that it is able to lawfully enter into and perform its obligations under this Deed;
 - (ii) that those obligations are legal, valid, binding and enforceable against it; and
 - (iii) that this Deed is admissible in evidence in the courts of New Zealand,

have been taken, fulfilled and done and are in full force and effect.

- 4.2 **Repetition:** The representations and warranties contained in clause 4.1 will be deemed to be repeated on each day during the term of this Deed by reference to the facts and circumstances then existing.

5. FUTURE NEGATIVE PLEDGE COMPANIES

Each subsidiary of the Company which is to become a member of the Negative Pledge Group after the date of this Deed becomes party to this deed by delivering a duly executed supplemental deed to the Beneficiaries (or, where represented by a Beneficiary Representative, that person), such deed to be substantially in the form set out in Schedule 2.

6. CONTINUING PLEDGE

The covenants and agreements contained or implied in this Deed shall not be discharged, avoided, satisfied or varied by the payment at any time of any moneys owing to the Beneficiaries under the Financing Documents or any settlement of account or by any other matter or thing whatsoever, but shall continue in force and shall be binding upon the Negative Pledge Group until the earlier of this Deed being specifically released and discharged by the Majority Beneficiaries and the Security Trustee delivering releases of the Security Documents executed by the Security Trustee to the relevant Obligor in accordance with clause 8.1 of the Security Trust Deed.

7. BENEFIT OF THIS DEED

- 7.1 The Negative Pledge Group acknowledge and declare that for the purposes of the Contracts and Commercial Law Act 2017 the negative pledge and other undertakings given or made by each member of the Negative Pledge Group under or pursuant to this Deed in each case constitute promises that confer and are intended to confer benefits on the Beneficiaries and, subject to clause 7.2, may be relied upon and enforced by each Beneficiary against each member of the Negative Pledge Group as if each Beneficiary were a party to this Deed.

- 7.2 Notwithstanding clause 7.1, no Beneficiary who is represented by a Beneficiary Representative is entitled to enforce this deed or any rights under this deed other than through its Beneficiary Representative.

8. MISCELLANEOUS

- 8.1 This Deed shall be governed by and construed in accordance with New Zealand law.
- 8.2 This Deed shall be a Financing Document for the purposes of the Security Trust Deed.

EXECUTED as a deed

[Execution blocks omitted from conformed copy]

SCHEDULE 1

NEGATIVE PLEDGE GROUP

1. Forest Lake Gardens Limited
2. Hibiscus Coast Village Holdings Limited
3. Hillsborough Heights Village Holdings Limited
4. Longford Park Village Holdings Limited
5. Longford Park Village Limited
6. Metlifecare 7 Saint Vincent Limited
7. Metlifecare Bayswater Limited
8. Metlifecare Coastal Villas Limited
9. Metlifecare Crestwood Limited
10. Metlifecare Dannemora Gardens Limited
11. Metlifecare Edgewater Limited
12. Metlifecare Greenwich Gardens Limited
13. Metlifecare Greenwood Park Limited
14. Metlifecare Highlands Limited
15. Metlifecare Kapiti Limited
16. Metlifecare Oakridge Limited
17. Metlifecare Papamoa Beach Limited
18. Metlifecare Pinesong Limited
19. Metlifecare Powley Limited
20. Metlifecare Somervale Limited
21. Metlifecare The Avenues Limited
22. Metlifecare The Orchards Limited
23. Metlifecare The Poynton Limited
24. Waitakere Group Limited.
25. Metlifecare Gulf Rise Limited.

SCHEDULE 2

NEGATIVE PLEDGE GROUP SUPPLEMENTAL DEED

This Supplemental Deed is made on

BY

[] a duly incorporated company having its registered office at [] (the “**Subsidiary**”)

IN FAVOUR OF

Each Beneficiary as defined in the Negative Pledge Deed referred to below

BACKGROUND:

- A. The Subsidiary is a subsidiary of Metlifecare Limited (the “**Borrower**”).
- B. In consideration of the Beneficiaries agreeing to provide certain financial accommodation to the Borrower, the Negative Pledge Group have agreed to give the negative pledge and other undertakings contained in the negative pledge deed dated [●] 2018 (the “**Negative Pledge Deed**”).
- C. The Subsidiary wishes to execute this Supplemental Deed in order to become party to the Security Trust Deed and a member of the Negative Pledge Group.

BY THIS DEED the Subsidiary agrees as follows:

- 1 **Definitions:** To the extent applicable, the definitions and provisions contained in clause 1 of the Negative Pledge Deed apply to and are incorporated in this Supplemental Deed.
- 2 **Guarantor:** The Subsidiary declares for the benefit of each Beneficiary, that it is a member of the Negative Pledge Group and will be deemed to be a party under the Negative Pledge Deed which shall apply to the Subsidiary as a member of the Negative Pledge Group.
- 3 **Provisions of Negative Pledge Deed to Apply:** There are deemed to be incorporated in this Supplemental Deed all of the provisions of the Negative Pledge Deed relating to or affecting the Negative Pledge Group in the same manner and to the same extent as if set out in full and made applicable to the Subsidiary. This Supplemental Deed is supplementary to the Negative Pledge Deed and accordingly section 14 of the Property Law Act 2007 shall apply. The Subsidiary covenants with each Beneficiary duly and punctually to observe fulfil and perform and to be bound by all the provisions imposed on or relating to it under this Supplemental Deed or the Negative Pledge Deed.
- 4 **Delivery:** For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this document will be delivered by the Subsidiary immediately on the earlier of:
 - (a) physical delivery of an original of this document, executed by the Subsidiary, into the custody of each Beneficiary Representative and any Unrepresented Beneficiary or their solicitors; or

- (b) transmission by the Subsidiary or its solicitors (or any other person authorised in writing by the Subsidiary) of a facsimile, photocopied or scanned copy of an original of this document, executed by the Subsidiary, to each Beneficiary Representative and any Unrepresented Beneficiary or their solicitors.

EXECUTED as a Deed for and on behalf of
[name of Subsidiary] by:

Director

Name of Director

Director

Name of Director