

**SENIOR TRUST RETIREMENT
VILLAGE INCOME GENERATOR
LIMITED MANAGEMENT
AGREEMENT**

between

**SENIOR TRUST RETIREMENT VILLAGE INCOME
GENERATOR LIMITED**
Company

and

SENIOR TRUST MANAGEMENT LIMITED
Manager

Dated 8 January 2020

TABLE OF CONTENTS

1. INTERPRETATION	1
2. APPOINTMENT OF MANAGER	3
3. SERVICES PROVIDED BY THE MANAGER	5
4. MANAGER STANDARD OF CARE	7
5. MANAGER'S REMUNERATION	7
6. COSTS	8
7. REPLACEMENT OF MANAGER	9
8. TERM AND TERMINATION	9
9. EFFECT OF TERMINATION	11
10. LIMITATION OF LIABILITY	12
11. GENERAL	13
SCHEDULE 1	15

DATED 8 January 2020

PARTIES

1. SENIOR TRUST RETIREMENT VILLAGE INCOME GENERATOR LIMITED
(Company Number 7861299) (the "Company")
2. SENIOR TRUST MANAGEMENT LIMITED
(Company Number 3143986) (the "Manager")

BACKGROUND

- A. The Company was incorporated to lend money in the form of loans to the entities that own and operate Retirement Villages and Aged Care Facilities (Retirement Village and Aged Care Facility operators).
- B. The Manager will provide investment, management and administrative services to the Company under this Agreement.

IT IS AGREED

1. INTERPRETATION

1.1 Definitions: In this Agreement, unless the context requires otherwise:

"Agreement" means this Agreement, including the Background.

"Business Day" means a day (other than a Saturday or Sunday) on which registered banks in Auckland, New Zealand, are generally open for business.

"Commencement Date" means 10 January 2020

"Company" means Senior Trust Retirement Village Income Generator Limited

"Constitution" means the constitution of the Company.

"Funding Agreement" means the Funding Agreement entered into by the parties dated on or about the date of this Agreement, in relation to funding to be provided by the Company to the Manager to enable the Manager to repurchase shares in the Company as and when directed by the Company, to facilitate liquidity for the Company's Shareholders.

"GST" means goods and services tax imposed under the Goods and Services Tax Act 1985 (New Zealand).

"Interest Rate" means a rate of interest equal to 10% per annum.

"Investment Principles" means the Company's investment objectives and its primary investment focus as set out in the Product Disclosure Statement and includes any investment criteria as may be approved by the board of directors of the Company.

"Management Fee" means the management fee calculated in accordance with Schedule 1 and payable by the Company to the Manager under clause 5.

"Management Services" means the investment, management and administration services to be

provided by the Manager to the Company as set out in clause 3.

"Market Value" means the Company Value (as defined in the Product Disclosure Statement for the offer).

"NZ GAAP" means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993 (New Zealand).

"Party" means a party to this Agreement.

"Portfolio" means all of the assets and property of the Company (whether held directly or through a nominee or custodian), which is from time to time under the management of the Manager pursuant to the terms of this Agreement and includes Unallocated Funds.

"Product Disclosure Statement" or **"PDS"** means the document provided to investors inviting investment in the Company dated on or about 10 January 2020

"Share" means an ordinary share in the Company.

"Shareholder(s)" means any holder of Shares.

"Unallocated Funds" means any cash held by or on behalf of the Company and any surplus cash of the Company invested in accordance with clause 3.2 from time to time.

1.2 General Interpretation: In this Agreement, unless the context requires otherwise:

- (a) assets also includes the whole and any part of the relevant person's business, undertaking, investments, revenues and rights (in each case, present and future), and reference to an asset includes any legal or equitable interest in it.
- (b) borrowing includes indebtedness for or in respect of money borrowed or raised by any means (including acceptances, deposits, financial leases, debt factoring with recourse, sale and repurchase arrangements and redeemable preference shares) and for the deferred purchase price of assets and services (other than assets and services obtained in the ordinary course of business on normal trade terms), and borrow shall be construed accordingly.
- (c) costs include costs, charges, expenses, liabilities and associated taxes.
- (d) a reference to any document or agreement (including this Agreement) includes a reference to that document or agreement as amended, novated or replaced from time to time.
- (e) \$ or dollars refers to New Zealand dollars and, unless otherwise specified, all amounts payable by a Party under this Agreement are to be paid in New Zealand currency.
- (f) the dissolution of a person includes the winding-up, liquidation, removal from the register or bankruptcy of that person or an equivalent or analogous procedure under the law of any relevant jurisdiction.
- (g) the headings are for ease of reference only and are to be ignored in the interpretation of this Agreement.
- (h) including and similar words do not imply any limitation.
- (i) indebtedness includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money.

- (j) a reference to a party includes the person's executors, administrators, successors and permitted assigns.
- (k) person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or any authority, in each case whether or not having a separate legal personality.
- (l) a security interest includes:
 - (i) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement and other arrangement of any kind, the economic effect of which is to secure a creditor; and
 - (ii) a security interest as defined in section 17(1)(a) of the Personal Property Securities Act 1999 (New Zealand) in respect of which the relevant person is the debtor.
- (m) the singular includes the plural and vice versa.
- (n) a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether made before or after this Agreement).
- (o) subsidiary has the meaning given to it in section 5 of the Companies Act 1993 (New Zealand) provided that a reference to "company" shall include any other legal entity.
- (p) tax includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature (whether or not payable in money) and whatever called (including any interest, penalties, fines and charges in respect of any such tax) imposed by any governmental agency, on whoever imposed, levied, collected, withheld or assessed.
- (q) unless a contrary indication appears, a reference to a time of the day is to New Zealand time.
- (r) unless otherwise provided, where this Agreement provides that a matter is to be approved by the Company, for the avoidance of doubt the matter is to be approved by the board of the Company unless the approval of the Shareholders of the Company is required by the Constitution or the Companies Act 1993.

2. APPOINTMENT OF MANAGER

- 2.1 The Company appoints the Manager, and the Manager accepts appointment, under this Agreement as the sole and exclusive provider of the Management Services to the Company on the terms and conditions contained within this Agreement.
- 2.2 During the term of this Agreement, the Company shall not appoint any other person to provide any Management Services.
- 2.3 The Manager may perform similar services to the Management Services for other persons, provided that the Manager ensures that an appropriate level of time, attention and effort is expended in providing the Management Services to the Company.
- 2.4 Subject to clauses 2.5 to 2.10, for the purpose of performing its obligations under this Agreement, the Manager shall have the powers and authorities of a natural person to enter into lending arrangements and otherwise deal with and manage the Portfolio of the Company and to do all things and execute



all documents necessary for the purpose of entering into lending arrangements or otherwise dealing with and manage the Portfolio of the Company, provided that nothing in this Agreement shall authorise the Manager to act as agent of the Company in excess of the authorities and powers conferred on the Manager pursuant to this Agreement.

- 2.5 The Manager shall not enter into or elect to terminate a lending relationship or sell or otherwise dispose of an asset without the prior approval of the Company.
- 2.6 The Manager shall not establish any borrowing facility, including granting a security interest over the Portfolio to secure the borrowing facility, or draw down any established borrowing facility without the consent of the Company.
- 2.7 Borrowing must not be incurred if, immediately afterwards, the aggregate principal amount of the borrowing of the Company would exceed an amount equal to 20% of the Company Value.
- 2.8 The Manager may appoint any person to provide any Management Services, or perform any of the Manager's obligations, or exercise any of the Manager's powers, under this Agreement, on behalf of the Company, provided that the Manager:
- (a) believes on reasonable grounds that the person is reliable and competent in relation to the matters concerned; and
 - (b) continues to monitor, to the extent reasonable in the circumstances, the person's performance of the Management Services and, obligations or exercise of the Manager's powers.

No such appointment shall relieve the Manager of any of its duties and obligations under this Agreement (or of liability for any failure to perform those duties and obligations).

- 2.9 The Manager may with board approval deal with companies and other entities related to the Manager, which shall be entitled to charge fees, brokerage and commissions provided that the dealings are in the ordinary course of Company business and on terms no less favourable to the Company than would have been achieved if they had been negotiated with an unrelated party at arms' length. No adjustment to the Management Fee is to be made for any amounts paid to a company or person related to the Manager in accordance with this clause.
- 2.10 Nothing in this Agreement will require the Manager to act in a manner inconsistent with the duties of the Manager or any of its related companies or associates to any clients or customers of any of them nor to offer any particular investment opportunity to the Company.
- 2.11 The Manager may not assign, transfer, or otherwise deal with all or any of its rights or obligations under this Agreement without the prior approval of the Company.
- 2.12 The Manager may appoint (as advisers to the Manager and/or Company) such legal, accounting, investment banking, specialist consultant and other advisers as it considers necessary or desirable for performing its obligations, or exercising its powers, under this Agreement. The costs and expenses of such advice shall be allocated in accordance with clause 7. No such appointment shall relieve the Manager of responsibility for performing its obligations under this Agreement (or of any liability for any failure to perform those obligations), but the Manager may rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given, by any such adviser, provided that it relates to matters which the Manager believes on reasonable grounds to be within the competence of the person who has either prepared the

information or provided the professional or expert advice.

3. SERVICES PROVIDED BY THE MANAGER

3.1 The Manager shall provide the following Management Services:

- (a) identify investment opportunities:
 - (i) endeavour to identify and select investment opportunities which adhere to the Investment Principles;
 - (ii) where the Manager identifies an investment opportunity that meets the Investment Principles and the Company has sufficient funds to invest in that opportunity, use its best endeavours to arrange for the Company to invest in that investment opportunity.
- (b) subject to clause 2.6 and 2.7, arrange borrowing for the Company;
- (c) monitor the performance of the Portfolio;
- (d) manage and negotiate on behalf of the Company in respect of any divestment of assets;
- (e) monitor adherence to the terms of the term loan agreement entered into by the borrowers;
- (f) upon instructions from the Board, exercise any security rights on behalf of the Company under the term loan agreement, including but not limited to taking all actions, remedies or procedures available to the Company (including any demand, notice, enforcement, realisation or attempted enforcement or realisation of a security interest or any guarantee or indemnity) under the Company's security;
- (g) undertake the repurchase and on-sale of Shares at the direction of the Company, as anticipated under the Funding Agreement, including by providing disclosure as directed by the Company.

3.2 The Manager may on behalf of the Company, invest surplus cash with any New Zealand registered bank or any other rated institution that has a credit rating of at least BBB from Standard & Poors (or an equivalent rating from another internationally recognised rating agency).

3.3 The Manager shall assist with and report on the affairs and operations of the Company, as follows:

- (a) assist the Company to prepare the annual report that includes:
 - (i) audited financial statements of the Company prepared in accordance with NZ GAAP (if the Company elects to appoint an auditor); and
 - (ii) a commentary on the Portfolio.
- (b) within 20 Business Days after the end of each financial quarter deliver a quarterly report to all directors of the Company, that includes a brief discussion of the existing Portfolio and additions to the Portfolio for the relevant quarter; and
- (c) produce and deliver such other information about the Company as may be reasonably requested.

3.4 The Manager shall:

- (a) arrange for the provision of general administrative and back office functions for the Company either by employing staff to manage such processes internally, or by outsourcing functions to third parties (including parties related to the Manager), in either case at the sole cost of the Company. Such functions may include:
 - (i) accounting and tax compliance;
 - (ii) legal compliance;
 - (iii) Registry functions;
 - (iv) Anti Money Laundering;
 - (v) shareholder distributions;
 - (vi) accounts payable and accounts receivable management;
 - (vii) human resource management and payroll management;
 - (viii) preparing, filing and maintaining documents (including records of all transactions entered into by the Company);
 - (ix) public relations and shareholder communications;
 - (x) marketing and promotions;
 - (xi) brokerage;
 - (xii) arranging insurance cover for the Directors' & Officers and Company;
 - (xiii) office facilities and information systems; and
 - (xiv) other administrative and operational requirements of the Company;
- (b) arrange for meetings of the board of directors of the Company as required by the relevant directors, such meetings to be at the cost of the Company.

3.5 The Manager shall oversee any litigation in respect of which the Company has any interest (either as plaintiff, defendant or in any other capacity).

3.6 If required by the Company, the Manager shall:

- (a) recommend and facilitate the appointment of an auditor ("**Auditor**") to audit the financial statements of the Company, and facilitate the annual re-appointment of the person so appointed or the appointment of a new auditor by the relevant shareholders of the Company annually;
- (b) ensure that the Auditor or any other persons appointed to inspect or audit the financial statements of the Company are given access on request at all reasonable times to all records, documents, and other information held by or on behalf of the Manager which relate to the operations of the Company; and
- (c) ensure that all questions of the Auditor relating to the Company are answered fully and in a timely manner.

The Auditor's costs shall be borne by the Company.

4. MANAGER STANDARD OF CARE

4.1 The Manager shall at all times:

- (a) act in good faith at all times in its relations with the Company;
- (b) subject to the terms of this Agreement (including clauses 2.3, 2.9 and 2.10), act bona fide in what the Manager believes to be in the best interests of the Company in a proper, efficient and businesslike manner;
- (c) exercise due care in exercising the rights, powers and authorities granted to it, and in performing its obligations, under this Agreement;
- (d) use and employ an appropriate level of skill and resources in performing the obligations of the nature specified in this Agreement;
- (e) comply with all applicable legal requirements;
- (f) promptly advise and provide reasonable particulars to the Company of any event having a significant adverse effect on the financial position of the Portfolio of which the Manager is aware; and
- (g) provide the Management Services in a manner consistent with the Investment Principles.

5. MANAGER'S REMUNERATION

- 5.1 Subject to clause 5.2, the Company shall pay to the Manager the Management Fee calculated quarterly in arrears on the first Business Day of each quarter. The date of calculation of Management Fees in respect of each quarterly period shall be the last day of each quarter. The Manager will endeavor to value the Portfolio as at 5:00 p.m. on each calculation date however, if for any reason, this is not practical then the next readily available time when market data permits will be determined as the date of calculation. Payment in respect of any period which is not a complete quarter shall be reduced on a pro-rata basis to reflect the actual number of days elapsed during such period.
- 5.2 If the Manager and the Company agree, the Management Fees payable may be accrued and deferred. In such event, at the option of the Manager, the Company shall pay to the Manager interest on the amount of the fees so deferred at the Interest Rate for the period from the due date until the date of payment of the relevant fees calculated on a daily basis.
- 5.3 The Company will pay to the Manager any GST chargeable on supplies made by the Manager under this Agreement in addition to, and at the time of payment of, the relevant fee in respect of such supply.
- 5.4 The Management Fee may be adjusted upon agreement between the Company and the Manager. An adjustment to the Management Fee in favour of the Manager shall be approved by the Shareholders by special resolution at a general meeting of Shareholders.
- 5.5 If any audit conducted pursuant to clause 3.6 determines that there has been an under or overpayment of Management Fees or costs then:
- (a) in the event of any overpayment the amount concerned may only be deducted from the next instalment of Management Fees payable and if the amount concerned exceeds the amount of

the next instalment of Management Fees payable then the Manager agrees that all further Management Fees will not be payable by the Company until the overpayment has been repaid in full. For the avoidance of doubt, the Company shall not be entitled to recover from the Manager, and the Manager shall not be obliged to refund to the Company, any overpayment of Management Fees or costs other than in accordance with this clause 5.5(a); and

- (b) in the event of any under payment the amount concerned shall be added to the next instalment of Management Fees payable to the Manager.

6. PROCUREMENT FEES

- 6.1 The Manager is entitled to charge the borrower a procurement fee in respect to the establishment of a loan facility. The amount of the procurement fee is at the discretion of the Manager.

7. COSTS

- 7.1 The Manager shall bear, and shall not be entitled to be reimbursed for, costs it incurs in relation to the establishment and maintenance of its general office infrastructure and overheads related to that infrastructure, including:

- (a) the remuneration of the Manager's employees (other than their remuneration while seconded to the Company) and subcontractors;
- (b) costs of insurance for the Manager;
- (c) travel and accommodation for the Manager's employees (other than while seconded to the Company);
- (d) rental or other lease costs for the Manager's premises;
- (e) the cost of office consumables and equipment owned or used by the Manager;
- (f) telecommunications costs relating to the Manager's employees (other than while seconded to the Company);
- (g) entertainment costs of the Manager.

- 7.2 Except as otherwise set out herein, the Company shall pay and discharge and shall reimburse the Manager in respect of all fair and reasonable expenses incurred by the Manager or any authorised subcontractor of the obligations of the Manager in connection with the Management Services, including, without limitation:

- (a) all direct and out of pocket costs, charges, expenses and liabilities associated with or incurred by or on behalf of the Company in connection with the duties of the Manager under this Agreement including, but not limited to, costs of legal, accounting and other advisers engaged by the Manager, all expenses incurred in connection with the purchase, retention or sale of assets by the Manager and all other expenses that are directly related to the particular Portfolio or proposed investments, whether or not actually consummated;
- (b) all costs associated with the periodic valuation of the Company and the Portfolio;
- (c) all costs associated with the raising of debt (including principal and financing costs payable to

financiers);

- (d) costs of administration, company secretarial, audit and accounting, registry function, Anti-money laundering, statutory compliance and record keeping services necessary for the Company;
- (e) all on-going expenses incurred in maintaining the purpose and benefit of the legal and tax structure including costs of completing and filing tax returns;
- (f) expenses related to shareholder meetings and the production and distribution of any statutory reports to shareholders;
- (g) all expenses and costs incurred by the Manager doing any act specifically requested by the Company outside the scope of the Management Services; and
- (h) all costs incurred relating to the liquidation of the Company (where applicable), including the cost of the liquidator.

8. REPLACEMENT OF MANAGER

- 8.1 The Manager may be replaced and this Agreement terminated without cause by a resolution of the Shareholders where the percentage of shares held by Shareholders resolving to replace the Manager is greater than or equal to 75% of all of the Shareholders.
- 8.2 If the Manager is replaced and if this Agreement is terminated in accordance with clause 8.1, a termination fee will be payable to the Manager which is the lesser of:
- (a) 25% of the value of the total amount of all fees and remuneration anticipated to be made to the Manager under the terms of this Agreement for the entire term of this Agreement (assuming this Agreement is for a fixed term of 5 years from the Commencement Date); and
 - (b) 45% of the value of the total amount of all fees and remuneration anticipated to be made to the Manager under the terms of this Agreement for the period from the date of termination of this Agreement in accordance with clause 8.1 to the date being 5 years after the Commencement Date.
- 8.3 In order to calculate the termination fee payable by the Company to the Manager under clause 8.2, the Company will instruct an independent audit, legal or valuation entity to make a reasonable estimate of what the anticipated fees and remuneration would be under clause 8.2. To ensure there are no conflicts of interest, the entity selected to make the reasonable estimate must have had no engagement with the Manager, principals of the Manager or the Company during the five years immediately preceding the date of termination of this Agreement.

9. TERM AND TERMINATION

- 9.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement. The initial term of this Agreement shall be for 10 years, unless terminated earlier in accordance with clauses 8.1, 9.2, 9.4 or 9.5. The parties may agree to renew this Agreement for further terms of 10 years at the expiry of the initial and each other term provided however that the Company shall only be entitled to decline to renew this Agreement

for an additional term at the expiry of each term (in circumstances where the Manager is prepared to agree to renew this Agreement) if:

- (a) the Company and the Manager have first discussed in good faith the Manager's performance of the Management Services for a period of not less than 10 Business Days;
- (b) notwithstanding such consultation the Company continues to be dissatisfied with the Manager's performance of the Management Services the Company refers the question of such performance to an independent expert (appointed by agreement between the parties, but if they cannot within 10 Business Days of commencing discussion in that regard agree that appointment, appointed by the President of the Auckland District Law Society) to review and critique the performance of the Manager under this Agreement; and
- (c) following such review and critique in accordance with clause 9.1(b), the summarised results of that review are forwarded to all Shareholders, and the non-renewal by the Company of the appointment of the Manager under this Agreement is thereafter authorised and approved by the Shareholders by ordinary resolution in a general meeting.

9.2 Subject to clause 9.3, the Company shall be entitled to terminate this Agreement:

- (a) if the Manager fails, neglects or refuses to carry out or perform any material function or action required under this Agreement, and the Company suffers or incurs a material loss as a result of such inaction; or
- (b) if the Manager consistently fails to perform the Management Services to the standard required by clause 5.1(c).

9.3 Prior to the Company exercising any rights of termination under clause 9.2 it shall give the Manager written notice setting out details of the alleged failure or failures to perform and/or neglect and, where possible (for the purposes of clause 9.2(a)), quantify the material loss incurred as a result of such breach. If the Manager does not, in respect of a matter capable of remedy, use its best endeavours to effect a remedy within 20 Business Days of the date of such notice or, if a matter is not capable of remedy, then the Company shall be entitled by further written notice to immediately terminate this Agreement.

9.4 Either the Manager or the Company (the "Non-Defaulting Party") may terminate this Agreement immediately by written notice to the other Party (the "Defaulting Party"), if the Defaulting Party commits or becomes subject to any of the following events:

- (a) goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved by the Non-Defaulting Party);
- (b) a receiver or receiver and manager is appointed in respect of any of the assets of the Defaulting Party;
- (c) an application is made to the Court or a meeting is called for the purposes of instigating or considering proceedings intended to achieve a result described in clause 9.4(a) or 9.4(b) (unless the Defaulting Party satisfies the Non-Defaulting Party in its reasonable opinion that the application or call for meeting is frivolous or vexatious);
- (d) the Defaulting Party ceases to be able to pay its debts as they come due;
- (e) the Defaulting Party enters into any arrangement or composition with its creditors generally

(other than with the prior consent of the Non-Defaulting Party);

- (f) the Defaulting Party is declared to be at risk or a statutory manager of the Defaulting Party is appointed under the Corporations (Investigation & Management) Act 1989;
- (g) the Defaulting Party commits a material breach of this Agreement and the consequences of that specific breach are not explicitly set out elsewhere in this Agreement, and (if the breach is capable of remedy) the Defaulting Party fails to remedy the breach within 20 Business Days after receipt of written notice from the Non-Defaulting Party requiring it to remedy the breach; and
- (h) the Defaulting Party is guilty of gross negligence which has or has the potential to have a material adverse effect on the other Party.

9.5 The Manager may resign from its appointment as manager by giving 90 days written notice of its intention to resign to the Company. This Agreement will terminate upon the resignation of the Manager taking effect, subject to clauses 10.1 and 10.2.

9.6 From the date of termination under clauses 9.2, 9.4, or 9.5 no further Management Fee shall be payable to the Manager, except such fees and other amounts as are due and payable up to the date of such termination.

10. EFFECT OF TERMINATION

10.1 On termination of this Agreement, the Manager shall:

- (a) deliver or cause to be delivered to the Company, all property of the Company including all investments in the Portfolio held by the Manager, all data, information records, certificates accounting records, correspondence, and all other records relating to the Portfolio, and the affairs of the Company in the possession or under the control of the Manager;
- (b) deliver to the Company all forms of proxy, letters of authority, mandates or powers of attorney which may have been issued to it by the Company; and

10.2 The termination of this Agreement does not affect any:

- (a) transaction properly entered into prior to termination;
- (b) claim by the Manager in respect of fees accrued and costs incurred in respect of the period up to termination;
- (c) other claim which any Party may have against the other Party; or
- (d) clauses which expressly or by implication are intended to survive termination, including clauses 9, 10 and 11.

10.3 The Manager may deal with the Portfolio for up to 5 Business Days from the effective date of termination of this Agreement in order to vest control of the Portfolio in the Company and during that time the Manager:

- (a) may enter into transactions to settle or otherwise extinguish or offset obligations incurred by the Manager in relation to the Company before that date;
- (b) must, with respect to obligations not capable of settlement before transfer of the Portfolio, create provision for such contingent liability as will arise, notify the Company of that provision,

and direct the Company to hold sufficient assets to satisfy that liability; and

- (c) may deal with the Portfolio in accordance with the instructions from a new manager appointed by the Company or on instruction from the Company.

10.4 Other than as provided above, the Manager is under no obligation to do anything in connection with the Portfolio or management of the Portfolio after the effective date of termination.

11. LIMITATION OF LIABILITY

11.1 No warranty is given by the Manager as to the performance or profitability of the Portfolio, any cash or any other asset forming part of, or constituting the assets of the Company or in respect of any distributions nor does the Manager make any representations concerning any of these matters.

11.2 The Manager, and its affiliates, officers (including directors and managers), partners, employees, consultants, sub-contractors, advisors and agents, shall not be liable for any loss or damage whatsoever which the Company or any Shareholder may sustain or suffer as a result of the exercise or performance by the Manager (or failure of the Manager to exercise or perform or any error of judgement by the Manager in respect thereof) of any of the powers, obligations and duties of the Manager under this Agreement or loss of opportunity whereby the value of any assets in the Portfolio would have increased, or for any decline in the values of any assets in the Portfolio howsoever arising, except to the extent that such loss, damage or decline is due to its gross negligence, intentional fraud, dishonesty or wilful default, or any action not taken in good faith to promote the best interests of the Company, of the Manager or of their officers, employees, advisors or agents.

11.3 The Company indemnifies and shall keep indemnified the Manager, and its affiliates, officers (including directors and managers), partners, employees, consultants, sub-contractors, advisors and agents, (each an "indemnified party") from and against any and all costs, obligations, losses or suits, of any kind or nature whatsoever in connection with the services provided by any of them pursuant to this Agreement and each of them is on demand indemnified out of the assets of the Company against any and all claims, liabilities (including in contract or tort), including:

- (a) amounts paid in satisfaction of judgements, in compromise settlements, fines, and penalties; and

- (b) counsel fees reasonably incurred,

in connection with the defence or disposition of any action, suit or other proceeding, whether civil or criminal, before or threatened to be brought before any arbitrator, mediator, court or administrative or legislative body, in which an indemnified party may be or may have been involved as a party or otherwise or with which it or they may be or may have been threatened, while in office or thereafter (and the reasonable costs and expenses, including but not limited to legal costs, in relation to enforcement of the indemnity) ("indemnified costs") provided that the indemnity contained in this clause shall not cover or extend to any indemnified costs resulting from the gross negligence, intentional fraud, or wilful default of an indemnified party.

11.4 Each indemnity in this Agreement is a continuing obligation separate and independent from the other obligations of the Parties and survives termination of this Agreement.

12. GENERAL

12.1 Authorised Persons:

- (a) the persons who are authorised to make any written communication or take action on behalf of the Company under this Agreement ("**Authorised Persons**") are the directors of the Company from time to time. Any written communication or action taken on behalf of the Company must be authorised by any of the Authorised Persons.
- (b) the Manager is not obliged to take any action if a communication or action is not made by an Authorised Person nor to enquire as to the identity of any person if it reasonably believes such person is an Authorised Person.
- (c) if the Manager receives any instruction or notice in circumstances where it is reasonable for the Manager to assume it was from an Authorised Person, the Manager is not liable for any properly performed action or omission by the Manager in reliance on that instruction or notice.

12.2 The Manager, and its officers (including directors and managers), employees, advisors, sub-contractors or agents shall not be liable for any loss of or damage to the Portfolio or for any failure, interruption or delay to fulfil its duties under this Agreement, if the loss, damage, failure, interruption or delay is caused directly or indirectly by any force majeure event beyond its reasonable control. The Manager and its directors must use their reasonable efforts to minimise the effects of the events referred to in this clause.

12.3 The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right given to that Party does not operate as a waiver of that power or right to preclude any other or further exercise of it or the exercise of any other power or right under this Agreement. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

12.4 No variation of this Agreement will be of any force or effect unless it is in writing and signed by each Party.

12.5 A Party must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each of the other Parties.

12.6 Each Party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

12.7 Unless this Agreement expressly provides otherwise, this Agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.

12.8 This Agreement is governed by the law of New Zealand. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

12.9 This Agreement may be signed:

- (a) in any number of counterparts, each of which is deemed an original, but all of which together constitute a single instrument; and

- (b) on the basis of an exchange of signed facsimile or scanned electronically transmitted copies of the execution pages, and signing of this Agreement by that method is a valid and sufficient execution.

SIGNED for and on behalf
of SENIOR TRUST RETIREMENT VILLAGE)
INCOME GENERATOR LIMITED)



Director

08/01/20
Date

SIGNED for and on behalf
of SENIOR TRUST
MANAGEMENT LIMITED)



Director

08/01/20
Date



SCHEDULE 1

CALCULATION OF FEES

1. MANAGEMENT FEE

- 1.1 The Management Fee shall be an amount equivalent to 3% plus GST (if any) of the Company Value as determined in accordance with clause 5.