

INTRODUCTION

1. NAME

- 1.1 Name of Association: The name of the Association shall be "Kinloch Golf Resort Owners Association Incorporated".

2. DEFINITIONS AND INTERPRETATION

- 2.1 Definitions: Unless the context otherwise requires, the following words and phrases shall have the meaning set out after them:

"Act" means the Incorporated Societies Act 2022.

"Additional Levy" means any levy fixed pursuant to clause 12.1.

"Annual General Meeting" means a meeting of the Members of the Association held once per year which, among other things, will receive and consider reports on the Association's activities and finances.

"Architectural Review Panel" means the panel of members from time to time appointed under clause 35 to consider design approval applications by Members.

"Association" means the Kinloch Golf Resort Owners Association Incorporated.

"Association Facilities" means any facilities owned by the Association which may be provided for the use and enjoyment of Members as provided for in the Constitution and Rules.

"Bank" means a bank registered under the Reserve Bank of New Zealand Act 1989.

"Business Day" means Working Day. A business day shall be deemed to commence at 9.00 am and to terminate at 5.00pm (New Zealand time).

"Capital Improvements" means landscaping, planting, replanting maintenance and care of any Common Property, and any structural repairs to, maintenance of and the replacement or renewal of any buildings or other capital works on the Common Property or to the Association Facilities.

"Chairperson" means the Officer responsible for chairing General Meetings and committee meetings, and who provides leadership for the Association.

"Committee" means the Association's governing body.

"Committee Member" means those Members appointed pursuant to clause 30.4.

"Common Property" means any land owned by the Association on which there are Association Facilities and any other part of the Land owned by the Association which is intended for the common use and enjoyment as provided for in the Constitution and Rules, being initially those facilities transferred to the

Association by the Developer pursuant to the deed of transfer attached as Schedule B to this Constitution.

"Controlling Member" means the Developer pursuant to clause 8.2g.

"Constitution" means this Constitution as amended or added to, including all schedules to this Constitution.

"Default Interest Rate" means four percent above the Association's banker's overdraft rates applicable from time to time during the continuance of default.

"Deputy Chairperson" means Officer elected or appointed to deputise in the absence of the Chairperson.

"Design Guidelines" means the design guidelines issued by the Architectural Review Panel in respect of a Stage or Stages, pursuant to clause 35.8.

"Developer" means Kinloch Golf Resort Limited promoting and carrying out the development of the Land and the Project and/or any agent or assignee of that company appointed by deed.

"Development" means the subdivision and development, and construction of infrastructure and buildings on the Land,

"District Plan" means the Taupō District Council district plan applicable from time to time,

"Encumbrance" means the encumbrance in favour of the Association to be noted against each title pursuant to clause 8.2 a.

"Expense Year" means each 12-month period commencing on 1 April and ending on 31 March, or such other 12-month period as the Committee from time to time sets.

"General Meeting" means either an Annual General Meeting or a Special General Meeting of the Members of the Association.

"Individual Property" means a property within the Development:

- (a) for which a separate title (including without limitation a unit title or an estate in fee simple) has issued;
- (b) which has been fully developed as a residential property or for any other permitted use by the Developer, or which is a bare section available for such development; and
- (c) which is owned by a person or entity other than the Developer.

"Individual Property Owner" means each person registered as a proprietor (whether individually or with others) of an Individual Property.

“Interested Member” means a Member who is interested in a matter for any of the reasons set out in section 62 of the Act.

"Invitee" means any invitee of or any visitor to an Individual Property Owner or Occupier.

"Land" means an estate is fee simple containing:

- a. 6.0400 hectares more or less being Lot 3 Deposited Plan 68793 comprised in certificate of title 55A/982; and
- b. 255.0700 hectares more or less being Lot 1 Deposited Plan 72534 comprised in certificate of title 58B/560; and
- c. 34.8810 hectares more or less being Lots 1 & 2 Deposited Plan 88289 and Lots 1 & 2 Deposited Plan 68793 comprised in certificate of title 69D/751; and
- d. 15.8910 hectares more or less being Lot 1 Deposited Plan 88333 comprised in certificate of title 69D/931.

"Manager" means the manager or management company of the Association (if any), appointed under clause 34.1 or 34.3. Where no manager has been appointed, any reference to the "Manager" in this Constitution will be deemed to be, where appropriate, a reference to the chairperson of the Committee.

“Matter” means –

1. The Association’s performance of its activities or exercises of its powers; or
2. An arrangement, agreement, or contract (a transaction) made or entered into, or proposed to be entered into, by the Association.

"Member" means a person who has consented to become a Member of the Association and has been properly admitted to the Association who has not ceased to be a Member of the Association.

"Member's Levy" means the levy to be paid by each Individual Property Owner as determined from time to time by the Committee.

"Member's Proportion" means the proportion that the aggregate of the total number of Individual Properties owned by a Member bears to the total number of Individual Properties which may be developed on the Land by the Developer (which will be approximately 226, but may be more or less depending on the commercial requirements of the Developer).

“Notice” to Members includes any notice given by email, post, or courier.

"Occupier" means any person occupying any Individual Property under any lease, licence or other occupancy right and shall include any entity associated with the Individual Property Owner.

"Officer" means a natural person who it:

1. A member of the Committee; or
2. Occupying a position in the Association that allows them to exercise significant influence over the management or administration of the Association, including any Chief Executive or Treasurer.

"Operating Expenses" means the total sum of all rates, taxes, costs and expenses of the Association properly or reasonably assessed or assessable paid or payable or otherwise incurred in respect of the Common Property or Association Facilities and the operation of the Association (including, without limitation, the management expenses and management fee of the Manager), but will exclude any costs payable in respect of Capital Improvements.

"Project" means the Vendor's intended development of the Land including (but not limited to) staged subdivisions, roading, farming and forestry operations, formation of a golf course, waterways, construction of a clubhouse, lodge, sewage treatment facilities and Association Facilities.

"Registrar" means the person holding office from time to time as Registrar of Incorporated Societies in terms of the Act.

"Regional Plan" means the Environment Waikato Regional Plan applicable from time to time.

"Relevant Authority" means any corporation, government, local, statutory or non-statutory authority or body having jurisdiction over the Land or any part of the Land.

"Rules" means those rules set out in Schedule A as added to, amended or modified from time to time by the Association.

"Secretary" means the Officer responsible for the matters specifically noted in this Constitution.

"Special General Meeting" means a meeting of the Members, other than an Annual General Meeting, called for a specific purpose or purposes.

"Special Levy" means a levy established pursuant to clause 12.5b.

"Special Resolution" means a resolution of the Association in general meeting passed by a majority of not less than 75% of such Members as, being entitled to do so, vote in person or by proxy at such general meeting.

"Stage" means any part of the Land which may be subdivided and developed by the Developer at one time.

"Unanimous Resolution" means a resolution passed by all the Members of the Association who are to vote.

"Working Days" mean as defined in the Legislation Act 2019. Examples of days that are not Working Days include, but are not limited to, the following — a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day.

2.2 Interpretation: In this Constitution, unless the context otherwise requires:

- a. words denoting the singular shall include the plural and vice versa;
- b. one gender shall include the other genders;
- c. words denoting person shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, Trust, sate, agency of a state, municipal authority, government or any statutory body in each . case whether or not having separate legal identity;
- d. any covenant or agreement on the part of two or more person shall bind . those persons jointly and severally;
- e. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- f. any reference to 'month' or 'monthly' shall mean, respectively, calendar month or calendar monthly;
- g. reference to clauses are references to clauses in this Constitution;
- h. the table of content, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way; and
- i. reference to any statute, regulation, ordinance or by-law shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

3. OBJECTS

3.1 General: The Association is formed to promote the following objects for the benefit of Members:

- a. Promote and maintain a community which has a high quality standard of living;
- b. To promulgate and enforce the Rules;

- c. The promulgation and enforcement of the Design Guidelines and covenants benefiting Members and the Land generally;
- d. Receive ownership of the Common Property and Association Facilities (if any) from the Developer for the benefit of the Association and its Members;
- e. To provide the Common Property and Association Facilities (if any) for the use and enjoyment of the Members in accordance with the Rules;
- f. The operation, maintenance, repair, renovation and replacement of the Common Property and Association Facilities (if any);
- g. The levying of Members for the purpose of providing funds for and meeting the costs and expenses associated with the Common Property and
- h. Association Facilities (if any) and with the enforcement of this Constitution; and
- i. To do any act or thing incidental or conducive to the attainment of any of the above objects.

3.2 The Association must not operate for the purpose of, or with the effect of –

- a. distributing, any gain, profit, surplus, dividend, or other similar financial benefit to any of its Members (whether in money or in kind); or
- b. having capital that is divided into shares or stock held by its Members; or
- c. holding, property in which its members have a disposable interest (whether directly, or in the form of shares or stock in the capital of the Association or otherwise).

3.3 The Association will not operate for the financial gain of Members simply if the Association –

- a. engages in trade,
- b. pays a Member for matters that are incidental to the purposes of the Association, and the Member is a not-for-profit entity,
- c. distributes funds to a Member to further the purposes of the Association, and the Member—
- d. is a not-for-profit entity, and
- e. is affiliated or closely related to the Association, and

- f. has the same, or substantially the same, purposes as those of the Association.
- g. reimburses a Member for reasonable expenses legitimately incurred on behalf of the Association or while pursuing the Association's purposes,
- h. provides benefits to members of the public or of a class of the public and those persons include Members or their families,
- i. provides benefits to Members or their families to alleviate hardship,
- j. provides educational scholarships or grants to Members or their families,
- k. pays a Member a salary or wages or other payments for services to the Association on arm's length terms (terms reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or are terms less favourable to the Member than those terms and the payment for services, or other transaction, does not include any share of a gain, profit, or surplus, percentage of revenue, or other reward in connection with any gain, profit, surplus, or revenue of the Association),
- l. provides a Member with incidental benefits (for example, trophies, prizes, or discounts on products or services) in accordance with the purposes of the Association.
- m. on removal of the Association from the Register of Incorporated Societies having its surplus assets distributed under s 216 (1)(d) or (2) of the Act to its members.

3.4 Member may contract: The Controlling Member and a Member may enter any agreement or understanding with the Association for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not the Controlling Member or a Member.

3.5 Staged Development: The Land will be developed in stages. The Developer at its sole discretion will decide if any Stage in the future will or will not be subject to this Constitution and the Guidelines.

4. ACT AND REGULATIONS

4.1 Nothing in this Constitution authorises the Association to do anything which contravenes or is inconsistent with the Act, any regulations made under the Act, or any other legislation.

5. REGISTERED OFFICE

- 5.1 The registered office of the Association shall be at such place in New Zealand as the Committee from time to time determines.
- 5.2 Changes to the registered office shall be notified to the Registrar of Incorporated Societies—
- a. at least 5 working days before the change of address for the registered office is due to take effect, and
 - b. in a form and as required by the Act.

6. CONTACT PERSON

- 6.1 The Association shall have at least 1 but no more than 3 contact person(s) whom the Registrar can contact when needed.
- 6.2 The Association's contact person must be:
- a. At least 18 years of age, and
 - b. Ordinarily resident in New Zealand.
- 6.3 A contact person can be appointed by the Committee or elected by the Members at a General Meeting.
- 6.4 Each contact person's name must be provided to the Registrar of Incorporated Societies, along with their contact details, including:
- a. a physical address or an electronic address, and
 - b. a telephone number.
- 6.5 Any change in that contact person or that person's name or contact details shall be advised to the Registrar of Incorporated Societies within 20 Working Days of that change occurring, or the Association becoming aware of the change.

MEMBERS

7. MINIMUM NUMBER OF MEMBERS

- 7.1 The Association shall maintain the minimum number of Members required by the Act.

8. TYPES OF MEMBERSHIP

- 8.1 First Members: The first Members ("First Members") of the Association will be the Developer, William Arthur Forster Ormerod, Anna Karen Martin, Amy Laura Willacy Watterson, Justine Louise Westlake, Julie-Ann Watts, Catherine Anne Ormerod, Sally Jane Georgetti, Robert John McElwee, Warren Ross Barclay, Allison Jane Mackenzie, Paul Frederick Seton and John Andrew Gowans Seton. These Members will resign from the Association as soon as there are more than 20 Individual Property Owners (excluding the Developer). The First Members will be entitled to vote at any meeting of the Association, to elect a Committee, and exercise all rights of Members set out in this Constitution, but will have no obligations as Members.
- 8.2 Individual Property Owners to be Members: Subject to clause 8.1, each Individual Property Owner must be a Member, and only Individual Property Owners will be Members, and for that purpose:
- a. Encumbrance: An encumbrance must be noted against each title in respect of each Individual Property. Under the encumbrance each Individual Property Owner covenants to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution.
 - b. Deed of Covenant on Assignment: Each Member must prior to the sale of an Individual Property procure the Purchaser to enter into, execute and deliver to the Association a deed of covenant in favour of the Association (to be generally in the form annexed as Schedule C), wherein the Purchaser covenants to become contemporaneously with the transfer of the Individual Property and remain a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The deed of covenant will be prepared by the solicitors for the Association, and the selling Member must pay the reasonable legal fees and disbursements of the Association's solicitors.
 - c. Deemed Resignation: A Member will be deemed to have resigned from the Association immediately that Member is no longer an Individual Property Owner, provided that such resignation will not relieve a person of any obligation or liability arising before that person ceased to be a Member.
 - d. New Individual Property Owner to provide details: Each Individual Property Owner must, immediately upon becoming an Individual Property Owner, (and thereafter as any details change), provide the Association with details necessary for maintenance of the register of Members, and will upon entry of the details into the register, become a Member.
 - e. Occupier's details to be provided: A Member must advise the Association of the details of the Occupier of the Member's Individual Property as are requested by the Association, and if required by the Association must procure the Occupier before it enters into occupation of the Individual Property to enter into a deed of covenant with the Association (in a form

acceptable to the Association), covenanting to be bound by this Constitution. Each Member must take all reasonable steps (including enforcing the terms of any lease) to ensure the Occupier complies with this Constitution and the Rules. In any case of persistent default by an Occupier of this Constitution or the Rules, the Individual Property Owner must on demand by the Association, terminate the Occupier's right to occupy the Individual Property. A copy of this Constitution and the Rules must be attached to every lease, licence, or other document defining occupancy rights.

f. Leases: When creating a lease or tenancy or parting with possession of an Individual Property or any part of an Individual Property the Individual Property Owner must:

- 1 Notify the Association of the name and address of the proposed lessee or Occupier;
- 2 Ensure that proposed lessee or Occupier has a copy of the Encumbrance, the Constitution, the Rules and the Design Guidelines current at that time;
- 3 Ensure that the proposed lessee or Occupier enters into a deed of covenant with the Association, in the form required by the Association, confirming that the lessee or Occupier will abide by the provisions of the Encumbrance, the Constitution, the Rules and the Design Guidelines; and
- 4 Ensure that any lease or right to occupy, or tenancy granted by the Individual Property contains the following clauses:
 - i The Lessee, (and in the context of this clause, Lessee includes any Tenant, Licensee or Occupier) is aware and must comply with Encumbrance 6496391.11 (as amended from time to time), the Constitution of the Association, the Design Guidelines and any lawful directives in the Rules of the Kinloch Golf Resort Owners . Association Incorporated ("the Association in respect of the Individual Property;

ii The Lessor must:

- a Promptly and properly exercise all of its rights and comply with all of its obligations as a Member of the Association and will ensure as far as is reasonable that the Lessee does not suffer any loss or damage or is not prejudiced by the Lessor's failure to do so.

- b If necessary at the cost in all things of the Lessee take all reasonable steps to enforce for the benefit of the Lessee any rights which the Lessor may have under the Encumbrance, the Constitution the Design Guidelines and the Rules of the Association against the proprietor or occupier of any other Individual Property in connection with matters which in the reasonable opinion of the Lessee adversely affect the Lessee 's occupation of the Individual Properly.

5 The Lessee acknowledges that the terms of this Lease must at all times be read subject to the terms of the Encumbrance, the Constitution, Rules and the Design Guidelines. The Lessee and its servants, agents, invitees and guests must at all times comply with the provisions of the Encumbrance, the Constitution, Rules and the Design Guidelines and must indemnify and keep the Lessor indemnified against any breach of those obligations and requirements. The Lessee must if called upon to do so by the Lessor execute a separate deed of covenant with the Association pursuant to which the Lessee must covenant with each and every Member of the Association to comply with the terms of the Encumbrance, the Constitution, Rules and the Design Guidelines during the terms of this Lease.

6 To the extent the Encumbrance, the Constitution, Rules and the Design Guidelines require that any act be done or act refrained from being done or that any consent be obtained under the terms of the Encumbrance, the Constitution or the Design Guidelines before an act is done or refrained from being done then those provisions of the Encumbrance, the Constitution and the Design Guidelines shall take precedence to the provisions of this Lease which must be read subject to them in all respects.

g. Developer as controlling Member: Until the development of the Land and/or the Project is fully completed, the Developer will be the controlling Member ("Controlling Member") of the Association, regardless of whether the Developer is at any time a Member. The Controlling Member will have only the rights specified in this Constitution, and will have no other rights or obligations of a Member. No reference in this Constitution to a Member will be taken as including a reference to the Controlling Member. As at the date the Developer ceases to own any part of the Land, the Developer will be deemed to have resigned as Controlling Member, and thereafter, there

will be no Controlling Member in respect of the Association. The Association will not be entitled to remove the Controlling Member for any reason other than the wilful misconduct or criminal act of the Controlling Member.

h. Register of Members: The Association must maintain a register of Members recording:

- 1 For each Member: name, address, occupation, telephone number, email address and similar details for a third party to be contacted in the event of absence or emergency.
- 2 For each Occupier: name and, in the case of an impersonal entity, a contact person, address, occupation, telephone number and similar details for a third party to be contacted in the event of absence or emergency.
- 3 Membership: the date upon which each Member became a Member.
- 4 Voting: where there is more than one Individual Property Owner of an Individual Property, such Individual Property Owners are entitled to vote.
- 5 Mortgagee: name, contact person, telephone number and facsimile number of any person holding a mortgage over the Member's Individual Property.

i. No notice of trust: No notice of any trust express, implied or constructive will be entered on the register of Members.

j. Not assignable: The rights, privileges and obligations of a Member are not assignable.

9. BECOMING A MEMBER: CONSENT

9.1 Every applicant for membership must consent in writing to becoming a Member, this includes any person who signs an Authority and Instructions form authorising transfer of any part of the land to them.

10. BECOMING A MEMBER: PROCESS

10.1 An applicant for membership must complete and sign any application form, or supply any information, as may be reasonably required by the Committee regarding an application for membership and will become a Member on acceptance of that application by the Committee.

- 10.2 The signed written consent of every Member to become a Association Member shall be retained in the Association's membership records.

11. MEMBERS' OBLIGATIONS AND RIGHTS

- 11.1 Every Member shall provide the Association in writing with that Member's name and contact details (namely, physical or email address and a telephone number) and promptly advise the Association in writing of any changes to those details.
- 11.2 All Members shall promote the interests and purposes of the Association and shall do nothing to bring the Association into disrepute.
- 11.3 Any Member that is a body corporate or trustee of a trust shall provide the Committee, in writing, with the name and contact details of the person who is the organisation's authorised representative, and that person shall be deemed to be the organisation's proxy for the purposes of voting at General Meetings.
- 11.4 The Committee may decide what access or use Members may have of or to any premises, facilities, equipment or other property owned, occupied or otherwise used by the Association, and to participate in Association activities, including any conditions of and fees for such access, use or involvement.

12. MEMBERS: LEVIES

- 12.1 The annual subscription and any other fees including levies for membership for the then current financial year shall be set by resolution of a General Meeting (which can also decide that payment be made by periodic instalments).
- 12.2 Any Member failing to pay the annual subscription (including any periodic payment), any levy, or any capitation fees, within 15 Working Days of the date the same was due for payment shall be considered as unfinancial and shall (without being released from the obligation of payment) not be entitled to participate in any Association activity or to access or use the Association's premises, facilities, equipment and other property until all the arrears are paid.
- 12.3 Levies: Prior to or as soon as practicable after the commencement of each Expense Year, the Association will by written notice advise each Member of the Association's Member's Levy for that Expense Year, plus such contingency sum as the Association, in its sole discretion, fixes.
- 12.4 Payment of levies: Subject to anything contained in this Constitution, each Member must, on the first day of April and October in each Expense Year, or such other intervals as the Association may determine from time to time, pay one half or such

other periodic amount as the Association stipulates from time to time of the Member's Levy applicable to that Expense Year. Payment must be made by each Member in the manner set out by the Association.

12.5 Statement of Operating Expenses: As soon as practicable but in any event within three months of the end of the Expense Year the Association must provide to each Member an itemised statement of the actual Operating Expenses for the previous Expense Year or any other relevant period, as the case may be. If the Member's Levy of actual Operating Expenses for the previous Expense Year or any other period, as appropriate, is less than the actual Member's Proportion of the Operating Expenses, the Member must forthwith pay to the Association the difference. If the Member's Proportion of actual Operating Expenses for the previous Expense Year or any other period is less than the total of the payments made by the Member pursuant to clause 5.2, the Association must credit the difference to the Member's Levy for the then current Expense Year.

12.6 Failure of Association to advise Association's Estimate: If the Association fails to advise a Member of the Member's Levy for an Expense Year before the date the first payment is due under clause 12.2, the Member must on that date and every other date on which a payment is due under clause 12.2 pay one half of the Member's Levy applicable to the previous Expense Year. Upon the Member's Levy for the Expense Year being advised to that Member:

- a. Clause 12.2 will apply; and
- b. If the aggregate of a Member's payments made under this clause during the Expense Year exceeds the aggregate of payments which should have been made under clause 12.2, the Association must credit the difference to the Member's Levy; or
- c. If the aggregate of a Member's payments under this clause during the Expense Year is less than the aggregate of payments which should have been made under clause 12.2, the Member must immediately pay the Association the difference.

12.7 Additional Levies: The Committee:

- a. Sinking fund: may from time to time fix an additional levy to be paid by each Member at the same time and proportions as the money payable under clause 12.2 of the Member's Levy for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements or as a reserve fund for the interim, meeting any costs of enforcement of the Association's rights and of exercising the Association's powers and obligations under this Constitution, which costs are to be paid prior to the Association being able to make and receive payment of any Special Levy; and

- b. Special Levy: may from time to time fix such special levies, payable by each Member at such as are set by the Association, as the Association considers are necessary for it to meet its obligations under this Constitution;
 - c. provided that any levy payable by a Member under this clause will be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members.
- 13. Member's Proportion: The levies referred to above shall be calculated by the Association on the basis of that Member's Proportion. The Member's Levy shall not be increased by more than the amount of the increase in the Consumer Price Index (All Groups) published by the Department of Statistics for the year immediately prior to the date the Member's Levy is charged, unless such increase is approved at an annual general meeting of the Association. For the avoidance of doubt the Developer shall pay such levies in relation to the Land of which it is the registered proprietor and which have not been the subject of an unconditional sale and purchase agreement.
- 13.1 Staged Development: The Members acknowledge that the Land may be developed in stages, with new Individual Property Owners becoming Members as each Stage is developed.
- 13.2 New Individual Properties: Where in any Expense Year new Individual Properties become available:
 - a. The Association will provide to all Members (excluding the Individual Property Owners of the new Individual Properties) ("Existing Members") an itemised statement of the actual Operating Expenses for the period from the commencement of the current Expense Year to the date the new Individual Properties became available ("Period"). The date of availability will be determined by the Manager. If the amount of an Existing Member's Proportion of Operating Expenses for the Period is greater than the total of the payments made or due for that period, the Existing Member must forthwith pay to the Association the difference. If the amount of an Existing Member's Proportion of Operating Expenses for the period is less than the total of the payments made or due for that period, the Association must credit the difference to the Association's estimate for the balance of the term of the current Expense Year.
 - b. As soon as practicable after the date the new Individual Properties became available the Association must by written notice advise all Members of the Association's estimate of each Member's Proportion of Operating Expenses for the balance of the term of the current Expense Year.
 - c. Each Member must, on the day provided for under clause 12.2 until the end of the current Expense Year, pay an equal proportion of the Association's estimate.

13.3 Sale of Individual Property: Where a Member ("Vendor") sells an Individual Property:

- a. Notwithstanding any other clause in this Constitution, the Vendor will remain liable for sums owed to by the Association by that Vendor.
- b. The Vendor will continue to be liable as a primary and principal debtor for all indebtedness for the purchaser of the Individual Property to the Association until such time as the deed of covenant specified in clause 8.2b is received by the Association.
- c. The purchaser of the Individual Property will be liable as a Member for all indebtedness of the Vendor to the Association in respect of the Individual Property purchased and a statement of the Association given pursuant to clause 13.4 will be conclusive as to the sum of this indebtedness.

13.4 Association to Provide Statement: The Association must, on the application of any Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Association calculated to the date specified in the application. The statement must show:

- a. the Member's Levy and any Additional Lew for the current Expense Year;
- b. payments made by the Member on account of the Member's Levy and any Additional Levy in the current Expense Year;
- c. Payments due from the Member on account of the Member's Levy and any Additional Levy in the current Expense Year, and not paid by the Member;
- d. Payments due from the Member on account of any payments made or required to be made by the Association to remedy any breach by the Member of this Constitution, Rules or the Design Guidelines; and
- e. Any unpaid default interest.

13.5 Covenants and Rules: Each Member agrees to promptly and fully comply with any Rules made by the Association from time to time, and any covenants given in favour of the Association by such Member (whether by separate deed of covenant or as noted against each title). In the event of there being any conflict between the provisions of this Constitution (including any clause or Rule) and the provisions of any restrictive covenant registered against the title to the Individual Property, the provisions of this Constitution (including any clause or Rule) shall prevail and be given priority over the provisions of any such restrictive covenant.

13.6 Mortgagee of Individual Property: Before granting any mortgage over an Individual Property, a Member must procure the intended mortgagee to enter into a deed with the Association (at the cost. of the Member) covenanting to observe

and perform all the clauses of the Constitution upon exercising any powers as mortgagee.

- 13.7 No Objection to and Support of the Development: No Member shall cause or permit any objection to the ongoing Development on the Land and shall whenever required provide and procure full support to any actions taken by the Controlling Member in relation to the Development including (by way of example only and not in limitation) submitting and processing applications for resource and building consents and general construction, landscaping and earthmoving activities.

14. MEMBERS' ASSISTANCE TO DEVELOPER

- 14.1 Future Development: The Members acknowledge that development of the Land and the Project is ongoing, and that the Association is required to allow the Developer such access to, and interests in the Land, as necessary or desirable for the development to proceed, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. Each Member agrees:

- a. to, and will allow, the Developer access to the Individual Property of that Member for the purpose of proceeding with the development;
- b. to, and will grant, such easements in favour of the Developer and Member and/or the Association over or under the Member's Individual Property as are required for the development to proceed or as may be necessary or desirable for development of the Stage;
- c. that neither the Member nor the Association will oppose, or take part in any opposition to, the development of the Land or any part of the Land; and
- d. to support any resolution to amend this Constitution, where the Association is bound by agreement with or has been so directed by the Developer, to procure such amendment.

- 14.2 Encumbrance: The Encumbrance must be noted against each title to each Individual Property in favour of the Association. The Association must not, except by Special Resolution and with the prior written consent of the Controlling Member (if there is one), agree to the alteration of the terms of the covenants as first noted against each title.

15. BREACH OF OBLIGATIONS

- 15.1 Occupiers and Invitees: A reference to an act or omission by any Member, in this Constitution, the Design Guidelines or Rules will include any act or omission by any mortgagee in possession of that Member's Individual Property, the agents,

contractors, employees and Invitees of the Member, the Occupier and/or the mortgagee in possession of that Member's Individual Property.

15.2 Consequences: Upon any breach of this Constitution by a Member ("Offending Member"):

- a. Where damage has been caused to the Common Property or Association Facilities, the Offending Member must make good such damage.
- b. If such default continues for seven days after notice is given by the Association to the Offending Member to remedy the default, the Association may do anything, including paying money, necessary to remedy the default.
- c. All money paid and expenses incurred by the Association (including any legal costs of the Association) in remedying, or attempting to remedy, any breach by an Offending Member of this Constitution, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Association in respect of such breach, will be a debt due from the Offending Member to the Association.
- d. If any money payable by an Offending Member to the Association (including but not limited to a Member's Levy or Additional Levy) is in arrears and unpaid for seven days (whether or not a formal demand for payment has been made and without any formal demand being necessary) such money shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full.

15.3 Action by Controlling Member: The Controlling Member may take whatever action it deems (entirely at its discretion) necessary or desirable in relation to any breach of this Constitution by a Member including by way of example and not limitation) legal proceedings in the name of the Association, physical works necessary to rectify a breach and any other action to rectify or remedy a breach by a Member. Any costs, loss or damage incurred or suffered by the Controlling Member in taking any such action, shall be reimbursed or paid by the Association immediately upon demand by the Controlling Member. The Association hereby indemnifies and will keep indemnified the Controlling Member against any cost, loss or damage incurred or suffered by the Controlling Member as a result of any action taken by the Controlling Member under this clause.

16. OBLIGATIONS OF THE ASSOCIATION

16.1 Rules: The Association shall promulgate Rules for the use of the Land, the Common Property and Association (including any restrictions on use for security, maintenance or other reasons) and concerning the behaviour of Individual Property

Owners, Occupiers and Invitees. The first such Rules will be those Rules attached as Schedule A to this Constitution. The Association may:

- a. amend and review the Rules from time to time as appropriate; and
- b. enforce the Rules, taking such action as the Association considers appropriate.

16.2 Repair of the Common Property: The Association must ensure the proper operation, maintenance (including landscaping, weeding and care of plants), repair, renovation and replacement of the Common Property and Association Facilities, and will undertake such Capital Improvements as are necessary for this purpose.

16.3 Insurance: The Association must effect and maintain all insurance as it considers prudent, and must ensure that all costs of such insurance are paid on time (which will include all valuations and other professional fees required or deemed desirable for the purposes of such insurance and the cost of certificates relating to such insurance).

17. LIMITATIONS OF THE ASSOCIATION

17.1 No indebtedness: The Association may not borrow any money, other than short term borrowing to cover any temporary shortfall in meeting the Association's obligations under this Constitution, except by Special Resolution. Notwithstanding any other clause to the contrary, on any vote of the Association or the Committee relating to the borrowing of money, the Developer will not have a casting vote but will have one ordinary vote.

17.2 No encumbrances: The Association must hold the Common Property and Association Facilities in its own name and must not mortgage, charge, encumber, transfer or otherwise deal with the Common Property or the Association Facilities, except by Special Resolution, provided that where the Association is to grant any interest in or right in respect of the Common Property or the Association Facilities by any agreement with or directive by the Developer, such interest or rights may be granted by the Committee.

17.3 No investments: The Association must hold all funds with a Bank, and must not invest those funds other than by deposit with a Bank, except by Special Resolution.

18. CEASING TO BE A MEMBER

18.1 A Member ceases to be a Member—

- a. by resignation from that Member's class of membership by written notice signed by that Member to the Committee, or
- b. on termination of a Member's membership following a dispute resolution process under this Constitution, or
- c. on death (or if a body corporate on liquidation or deregistration, or if a partnership on dissolution of the partnership), or

- d. by resolution of the Committee where—
 - 1 The Member has failed to pay a subscription, levy or other amount due to the Association within 20 Working Days of the due date for payment.
 - 2 In the opinion of the Committee the Member has brought the Association into disrepute.
- 18.2 with effect from —
- a. the date of receipt of the Member's notice of resignation by the Committee (or any subsequent date stated in the notice of resignation), or
 - b. the date of termination of the Member's membership under this Constitution, or
 - c. the date of death of the Member (or if a body corporate from the date of its liquidation or deregistration, or if a partnership from the date of its dissolution), or
 - d. the date specified in a resolution of the Committee and when a Member's membership has been terminated the Committee shall promptly notify the former Member in writing.

19. OBLIGATIONS ONCE MEMBERSHIP HAS CEASED

- 19.1 A Member who has ceased to be a Member under this Constitution—
- a. remains liable to pay all subscriptions and other fees to the Association's next balance date,
 - b. shall cease to hold himself or herself out as a Member of the Association, and
 - c. shall return to the Association all material provided to Members by the Association (including any membership certificate, badges, handbooks and manuals).
 - d. shall cease to be entitled to any of the rights of a Association Member.

20. BECOMING A MEMBER AGAIN

- 20.1 Any former Member may apply for re-admission in the manner prescribed for new applicants, and may be re-admitted only by resolution of the Committee.
- 20.2 But, if a former Member's membership was terminated following a disciplinary or dispute resolution process, the applicant may be re-admitted only by a resolution passed at a General Meeting on the recommendation of the Committee.

GENERAL MEETINGS

21. GENERAL MEETINGS

- 21.1 Annual General Meeting: In addition to any other meetings in that year, the Association must hold an annual general meeting each year. Not more than 18 months must elapse between the date of one annual general meeting and that of the next. The Committee will determine the time and place of each year's annual general meeting.
- 21.2 Special General Meetings: A general meeting other than an annual general meeting may be requested by the Committee, or by written requisitions signed by not less than 25% of current Members. The secretary must call a special general meeting within 15 Business Days of receiving an effective request.
- 21.3 Powers of Association in General Meeting: The Association in general meeting may, by resolution, exercise all powers, authorities and discretions of the Association notwithstanding that any such power, authority or discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person or by proxy at general meetings, together with the Controlling Member (if there is one), will be as valid and effectual as if it had been passed at a general meeting of the Association duly convened and constituted.
- 21.4 Quorum: No business may be transacted at any general meeting of the Association unless the quorum is present when a meeting proceeds to business. Quorums must not be less than 20% of all Members eligible to vote at general meetings, present in person or by proxy, together with the Controlling Member (if there is one).
- 21.5 Notice of General Meeting: A notice of general meeting of the Association must be sent to every Member not less than 10 Business Days before the date of such meeting. Such notice must specify the date, time and venue of such meeting. In the case of a general meeting other than an annual general meeting such notice must specify all business and all notices of motions to be considered at such meeting. No business or notice of motion which is not specified may be discussed or transacted at such meeting.
- 21.6 Failure to Give Notice: Where notice of a meeting has been given, the accidental omission to give notice to, or the non-receipt of notice by, any Member, will not invalidate the holding of the meeting or the proceedings at any such meeting.
- 21.7 The Chairperson: The chairperson at any meeting must be:
- a. the Chairperson of the Association; or
 - b. if the chairperson is not present or is unwilling to take the chair, then those Committee Members who are present may choose one of their number to chair the meeting; or

- c. if or any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.

21.8 Adjournment: If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting must be dissolved. In any other case the meeting must stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 10 Business Days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Controlling Member (if there is one) will constitute a quorum.

21.9 Adjourned Meetings: No business other than that business which might have been transacted at the meeting from which the adjournment took place, may be transacted at any adjourned meeting. Members will not be entitled to receive any notice in respect of adjourned meetings.

22. PROCEDURE FOR ALL GENERAL MEETINGS

22.1 The Committee shall give all Members at least 5 Working Days' written Notice of any General Meeting and of the business to be conducted at that General Meeting.

22.2 That Notice will be addressed to the Member at the contact address notified to the Association and recorded in the Association's register of members. The General Meeting and its business will not be invalidated simply because one or more Members do not receive the Notice of the General Meeting.

22.3 Only financial Members may attend, speak and vote at General Meetings—

- a. in person, or
- b. by a signed original written proxy (an email or copy not being acceptable) in favour of some individual entitled to be present at the meeting and received by, or handed to, the Committee before the commencement of the General Meeting, or
- c. through the authorised representative of a body corporate as notified to the Committee, and
- d. no other proxy voting shall be permitted.

22.4 No General Meeting may be held unless at least 50 percent of eligible financial Members attend throughout the meeting and this will constitute a quorum.

22.5 If, within half an hour after the time appointed for a meeting a quorum is not present, the meeting – if convened upon request of Members – shall be dissolved.

In any other case it shall stand adjourned to a day, time and place determined by the Chairperson of the Association, and if at such adjourned meeting a quorum is not present those Members present in person or by proxy shall be deemed to constitute a sufficient quorum.

- 22.6 A Member is entitled to exercise one vote on any motion at a General Meeting in person or by proxy, and voting at a General Meeting shall be by voices or by show of hands or, on demand of the chairperson or of 2 or more Members present, by secret ballot.
- 22.7 Unless otherwise required by this Constitution, all questions shall be decided by a simple majority of those in attendance in person or by proxy and voting at a General Meeting or voting by remote ballot.
- 22.8 Any decisions made when a quorum is not present are not valid.
- 22.9 The Association may pass a written resolution in lieu of a General Meeting, and a written resolution is as valid for the purposes of the Act and this Constitution as if it had been passed at a General Meeting if it is approved by no less than 75 percent of the Members who are entitled to vote on the resolution. A written resolution may consist of 1 or more documents in similar form (including letters, electronic mail, or other similar means of communication) each proposed by or on behalf of 1 or more Members. A Member may give their approval to a written resolution by signing the resolution or giving approval to the resolution in any other manner permitted by the Constitution (for example, by electronic means).
 - a. General Meetings may be held at one or more venues by Members present in person and/or using any real-time audio, audio and visual, or electronic communication that gives each Member a reasonable opportunity to participate.
 - b. All General Meetings shall be chaired by the Chairperson. If the Chairperson is absent, the meeting shall elect another member of the Committee to chair that meeting.
 - c. Any person chairing a General Meeting has a deliberative and, in the event of a tied vote, a casting vote.
 - d. Any person chairing a General Meeting may —
 - 1 With the consent of a simple majority of Members present at any General Meeting adjourn the General Meeting from time to time and from place to place but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.

- 2 Direct that any person not entitled to be present at the General Meeting, or obstructing the business of the General Meeting, or behaving in a disorderly manner, or being abusive, or failing to abide by the directions of the chairperson be removed from the General Meeting, and
 - 3 In the absence of a quorum or in the case of emergency, adjourn the General Meeting or declare it closed.
- e. The Committee may propose motions for the Association to vote on ('Committee Motions'), which shall be notified to Members with the notice of the General Meeting.

23. VOTING

- 23.1 Voting: Each Member present at a general meeting of the Association (not at that time being in breach of the Constitution, the Design Guidelines or the Rules) will be entitled to one vote for each Individual Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Individual Property Owner in respect of any Individual Property, and such Individual Property Owners are collectively a Member, only one Individual Property Owner will be entitled to vote. In the absence of agreement between the Individual Property Owners as to who may exercise this vote, the Individual Property Owner appearing first on the title to the Individual Property will be entitled to exercise that vote. On the death of any Member, and pending the transfer of that Member's Individual Property, the executor of that Member's estate will be entitled to exercise that Member's vote. At any general or special meeting of the Association, the Controlling Member (if there is one) will be entitled to exercise the number of votes equal to one more than the votes exercised by the Members voting in person or by proxy.
- 23.2 Corporation Representatives: Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Association, and the person so authorised will be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member, and references in the Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this clause, and such person may also stand for election to the Committee.
- 23.3 No Vote if Fees Unpaid: Unless all of the Member's levy, any Additional Levies and additional fees or costs including interest presently payable by the Member to the Association or the Architectural Review Panel have been paid in full, the Member will not be entitled to vote at any general meeting of the Association, whether in his own right or as proxy for another person.
- 23.4 Voting at Meetings: At my general meeting:

- a. A resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote.
- b. Resolutions put to the vote will be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
 - 1 The Chairperson of the meeting; or
 - 2 At least give Members present in person or by proxy.
- c. In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or an entry to that effect in the Association's minute book, will be conclusive evidence of that fact, without further proof of the number or proportion of votes recorded in favour of or against such resolution.
- d. Resolutions must be passed by a majority of votes, except where Special Resolution or the unanimous resolution of all Members is required by this Constitution.
- e. In the case of an equality of votes, the chairperson may exercise the casting vote.

23.5 Good Faith: Members must, in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Association, and that each Member will bear that Member's Levy of all Operating Expenses and of all costs and expenses to be met by levies made by the Association under clause 12.5, irrespective of whether any expenditure by the Association benefits all Members.

24. MINUTES

24.1 The Association must keep minutes of all General Meetings.

25. ANNUAL GENERAL MEETINGS: WHEN THEY WILL BE HELD

25.1 An Annual General Meeting shall be held once a year on a date and at a location and/or using any electronic communication determined by the Committee and consistent with any requirements in the Act, and the Constitution relating to the procedure to be followed at General Meetings shall apply.

25.2 The Annual General Meeting must be held no later than the earlier of the following—

- a. 6 months after the balance date of the Association
- b. 15 months after the previous annual meeting.

26. ANNUAL GENERAL MEETINGS: BUSINESS

26.1 The business of an Annual General Meeting shall be to—

- a. confirm the minutes of the last Annual General Meeting and any Special General Meeting(s) held since the last Annual General Meeting,
- b. adopt the annual report on the operations and affairs of the Association,
- c. adopt the Committee's report on the finances of the Association, and the annual financial statements,
- d. set any subscriptions for the current financial year,
- e. consider any motions of which prior notice has been given to Members with notice of the Meeting, and
- f. consider any general business.

26.2 The Committee must, at each Annual General Meeting, present the following information—

- a. an annual report on the operation and affairs of the Association during the most recently completed accounting period,
- b. the annual financial statements for that period, and
- c. notice of any disclosures of conflicts of interest made by Officers during that period (including a summary of the matters, or types of matters, to which those disclosures relate).

27. SPECIAL GENERAL MEETINGS

27.1 Special General Meetings may be called at any time by the Committee by resolution.

27.2 The Committee must call a Special General Meeting if it receives a written request signed by at least 50 percent of Members.

27.3 Any resolution or written request must state the business that the Special General Meeting is to deal with.

27.4 The rules in this Constitution relating to the procedure to be followed at General Meetings shall apply to a Special General Meeting, and a Special General Meeting shall only consider and deal with the business specified in the Committee's resolution or the written request by Members for the Meeting.

COMMITTEE

28. COMMITTEE COMPOSITION

28.1 The Committee will consist of 3 Officers.

28.2 A majority of the Officers on the Committee must be either:

- a. Members of the Association; or
- b. Representatives of body corporates that are Members of the Association.

29. FUNCTIONS OF THE COMMITTEE

29.1 From the end of each Annual General Meeting until the end of the next, the Association shall be managed by, or under the direction or supervision of, the Committee, in accordance with the Incorporated Societies Act 2022, any Regulations made under that Act, and this Constitution.

30. POWERS OF THE COMMITTEE

30.1 The Committee has all the powers necessary for managing — and for directing and supervising the management of — the operation and affairs of the Association, subject to such modifications, exceptions, or limitations as are contained in the Act or in this Constitution.

30.2 Bank accounts: The Association must establish a bank account, and any drawings on that account must be made only under the signature of the Manager and one other Member of the Committee.

30.3 Documents: All documents and written announcements requiring execution on behalf of the Association must be signed by the chairperson or that person's nominee.

30.4 Composition: The Committee must comprise the following persons:

- a. A Chairperson;
- b. A Secretary; and
- c. A minimum of 3 and a maximum of 7 general Committee Members or such other number of general Committee Members as determined by the Association in general meeting, before election of Committee Members.

- 30.5 Committee Members: The Manager will be the chairperson as appointed under clause 34.3 or, such other person as the Committee appoints from time to time under clause 34.1. The Controlling Member (if there is one) will be a general Committee Member. The balance of the Committee will be elected by the Members at every annual general meeting, and may be elected at another time by the Members in the general meeting, provided that the Members may only elect persons as members of the Committee, and may not elect any person specifically as chairperson.
- 30.6 Duration of Membership: A Committee Member will hold an elected position until the earliest of:
- a. the first annual general following the date of incorporation of the Association, when one half of the Committee Members, as agreed and failing agreement, as determined by the chairperson, will resign, but will be eligible for re-election;
 - b. at each subsequent general meeting a Committee Member who has served two consecutive years since being elected shall resign, but will be eligible for re-election;
 - c. the date written resignation from the position is received by the Association;
 - d. the date of removal from such position by the Association in general meeting; or
 - e. the date of the cessation of Membership.
- 30.7 Casual Vacancies on Committee: In the event of a casual vacancy on any position on the Committee (whether caused by death, cessation of a Membership from the Association, or some other means) the remaining Committee Members may appoint another Member to be a Committee Member. Any Committee Member so appointed holds office until the next following general meeting and is then eligible for re-election.
- 30.8 Duties of Secretary: The secretary must:
- a. Convene general meetings when requested to do so in accordance with this Constitution;
 - b. Attend all meetings of the Committee and have full speaking rights at such meetings;
 - c. Give all notices required to be given by these clauses or as directed from time to time by the Association or the Committee;

- d. Keep minutes at all general meetings and Committee meetings and enter into the minute book, the time, date and venue of the meeting, all business considered and resolutions passed at the meeting;
- e. Hold in safe custody the common seal of the Association;
- f. Receive, and issue receipts for all annual levies, additional fees, and any other moneys paid to the Association;
- g. Operate and maintain a current bank account in the name of the Association;
- h. Pay all accounts properly incurred by or on behalf of the Association;
- i. Report immediately to the Association any Member who fails to pay annual levies or additional fees within the prescribed period;
- j. Keep all financial records and any security documents in safe custody;
- k. Compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Association; and
- l. Compile the financial statements immediately following each financial year as required by the Act, and provide, if required by resolution passed by the Committee or a resolution passed at a Special General Meeting, for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed.

30.9 Conduct of Meetings: The Committee may meet together, adjourn and otherwise regulate its meeting and procedures for conducting its business as it thinks fit. A majority of the Members of the Committee from time to time, provided that such majority includes the Controlling Member (if there is one), will form a quorum for a Committee meeting. No business of the Committee may be conducted at any time when less than a quorum is present at the same time and place. The Committee may meet at any time and the secretary must, upon the request of the chairperson or any three Committee Members, convene a meeting of the Committee.

30.10 Chairperson: The Committee from time to time may appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.

30.11 Chairperson to have Casting Vote: In the case of an equality of votes, the chairperson may exercise a casting vote.

- 30.12 Voting: Resolutions of the Committee must be passed by majority, Each Committee Member will be entitled to exercise one vote, provided that the secretary will not be entitled to vote and further provided that the Controlling Member (if there is one) will be entitled to exercise a number of votes equal to one more than the number of other Committee Members present at any Committee meeting. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee Members as would constitute a quorum at a Committee meeting will be as valid and effectual as if it has been passed at a meeting of the Committee duly convened and constituted.
- 30.13 Validity of Committee's Actions: All acts properly done by any meeting of the Committee or by any person acting as a Committee Member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee Member, or that they were disqualified, will be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee Member.
- 30.14 Committee Minutes and Records: The Committee must cause proper minutes to be kept of the proceedings of all meetings of the Association and of the Committee. All business transacted at such meetings signed by the chairperson will be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

31. SUB-COMMITTEES

- 31.1 The Committee may appoint sub-committees consisting of such persons (whether or not Members of the Association) and for such purposes as it thinks fit. Unless otherwise resolved by the Committee—
- a. the quorum of every sub-committee is half the members of the sub-committee but not less than 2,
 - b. no sub-committee shall have power to co-opt additional members,
 - c. a sub-committee must not commit the Association to any financial expenditure without express authority from the Committee, and
 - d. a sub-committee must not further delegate any of its powers.

32. GENERAL MATTERS: COMMITTEES

- 32.1 The Committee and any sub-committee may act by resolution approved during a conference call using audio and/or audio-visual technology or through a written ballot conducted by email, electronic voting system, or post, and any such resolution shall be recorded in the minutes of the next Committee or sub-committee meeting.

- 32.2 Other than as prescribed by the Act or this Constitution, the Committee or any sub-committee may regulate its proceedings as it thinks fit.

33. CASUAL VACANCIES ON COMMITTEE

- 33.1 In the event of a casual vacancy on any position on the Committee (whether caused by death, cessation of a Membership, or by other means), the remaining Committee Members may appoint another Member to be a Committee Member. Any Committee Member so appointed holds office until the next following general meeting and is eligible for re-election.

34. MANAGER

- 34.1 Duties: Subject to clause 34.3 the Committee may, by majority agreement appoint, remove and replace a person as the Manager from time to time to carry out such of the obligations of the Association, and exercise such of the discretions and powers of the Association, as the Committee sees fit to administer and support the Association.
- 34.2 Rights: The Manager may enter into contracts with the Members and Occupiers to provide management and other services to the Members and Occupiers including the provision of utilities, services and consumable items.
- 34.3 Appointment: While the Developer is the Controlling Member the Manager will be a party appointed by the Controlling Member. The Association will not be entitled to remove the Manager for any reason other than the wilful misconduct or criminal act of the Manager.

35. ARCHITECTURAL REVIEW PANEL

- 35.1 Members: The Architectural Review Panel may have up to five members.
- 35.2 Controlling Member: While the Controlling Member owns any part of the Land it may appoint up to 3 members (inclusive of the Controlling Member) to the Architectural Review Panel. The following applies to appointments and revocations by the Controlling Member:
- a. The people appointed need not be Members of the Association;
 - b. The appointment lasts until the person resigns or the appointment is revoked by the Controlling Member;
 - c. The Controlling Member must give the Association notice of an appointment or a revocation of an appointment;

- d. If the number of members appointed by the Controlling Member is less than three then the Controlling Member may make new appointments; and
- e. The appointments may be by the Association once the Controlling Member no longer owns any part of the Land or the Project.

35.3 Association Appointments: The Association may appoint only two members of the Architectural Review Panel until the Controlling Member:

- a. No longer owns any part of the Land or Project; or
- b. Gives the Association a written notice waiving its appointment rights under clause 35.2.

35.4 When the Controlling Member no longer owns any part of the Land or Project, the Association may appoint all the members of the Architectural Review Panel.

35.5 Appointments: The following applies to appointments and appointment revocations by the Association:

- a. Appointments and revocations of appointment are by Committee resolution;
- b. The people appointed need not be Members of the Association; and
- c. An appointment lasts until the person resigns or the appointment is revoked by the Association.

35.6 Records of Members: The of the Association must keep a record of current members of the Architectural Review Panel. The record must include:

- a. A postal address, telephone number and facsimile number (if available) as notified by the Members from time to time;
- b. The date of appointment of the member;
- c. Written evidence of the appointment of the member; and
- d. The meetings attended by the member.

35.7 Chairperson: While the Controlling Member owns some Land, the chairperson of the Architectural Review Panel will be a member specified from time to time by the Controlling Member in written notice to the Association. Otherwise, the chairperson of the Architectural Review Panel will be a member decided from time to time by resolution of the Committee.

- 35.8 Design Guidelines: The Architectural Review Panel will publish from time to time Design Guidelines for a Stage or any part of a Stage and may change the Design Guidelines from time to time.
- 35.9 Design Approval: Before commencing any building or development on the Individual Property or obtaining any consent from any Relevant Authority to build or develop within the Stage, a Member must first submit the design of the proposed building or development to the Architectural Review Panel for its approval, which must not be unreasonably withheld or delayed where the design complies with and is submitted in accordance with, in the following order of priority:
- a. The District Plan and/or the Regional Plan, which ever applies to the Land from time to time;
 - b. The relevant Design Guidelines; and
 - c. Any Rules made under clause 16.1 of this Constitution.
- 35.10 Costs: All costs of the design approval process (including without limitation, any disbursements or professional charges of a member of the Architectural Review Panel) must be met by the Member seeking the approval.
- 35.11 Bond: Upon lodging any design for approval by the Architectural Review Panel, a Member must:
- a. Sign a bond in a form and on terms acceptable to the Association, to be prepared at the expense of the Member; and
 - b. Deposit with the Association a refundable bond of \$5,000 (adjusted annually by the movement in the consumer price index [all groups] for the preceding year) or such other amount as the Architectural Review Panel determine reasonable -
- to secure the obligations of the Member under this Constitution and the Design Guidelines. Nothing in this clause will prevent the Controlling Member from requiring a purchaser of an Individual Property when settling the purchase of the Individual Property, to sign a bond and pay the deposit provided for above, notwithstanding that the purchaser, or the successor in title to the purchaser, may not lodge a design for approval until a subsequent date.
- 35.12 Right to disapprove plans: The Architectural Review Panel retains the right to refuse to approve any plans which in its reasonable opinion do not meet the minimum standards of quality as outlined in this Constitution of the Rules and the Design Guidelines.

- 35.13 Approval Process: The Architectural Review Panel and the Member must comply with the approval process set out in the Design Guidelines before undertaking any work to the Individual Property.
- 35.14 No Waiver of Future Committee: The approval of the Architectural Review Panel to any works is not a waiver of the right to approve conditionally or reject any similar works subsequently submitted to approval.
- 35.15 No Liability for Association or Architectural Review Panel: Neither the Architectural Review Panel, nor any Member of the Architectural Review Panel, nor the Association is liable to any applicant for any loss, damage or injury arising out of or in any way connected with any recommendation, approval (conditional or unconditional) or disapproval given unless due to the wilful misconduct, bad faith, or criminal act of the Architectural Review Panel, its members, the Association or their duly authorised representatives.
- 35.16 Approvals (conditional or unconditional) of any application will not be construed as compliance by the works with any laws about construction of the works, the structural soundness of the works, or any other approvals required for the works.

COMMITTEE MEETINGS

36. PROCEDURE

- 36.1 The quorum for Committee meetings is at least half the number of members of the Committee.
- 36.2 A meeting of the Committee may be held either—
- a. by a number of the members of the Committee who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - b. by means of audio, or audio and visual, communication by which all members of the Committee participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 36.3 A resolution of the Committee is passed at any meeting of the Committee if a majority of the votes cast on it are in favour of the resolution. Every Officer on the Committee shall have one vote.
- 36.4 The members of the Committee shall elect one of their number as chairperson of the Committee. If at a meeting of the Committee, the chairperson is not present, the members of the Committee present may choose one of their number to be

chairperson of the meeting. The chairperson does have a casting vote in the event of a tied vote on any resolution of the Committee.

- 36.5 Except as otherwise provided in this Constitution, the Committee may regulate its own procedure.

37. FREQUENCY

- 37.1 The Committee shall meet as required at such times and places and in such manner (including by audio, audio and visual, or electronic communication) as it may determine and otherwise where and as convened by the Chairperson or Secretary.

- 37.2 The Secretary, or other Committee member nominated by the Committee, shall give to all Committee members not less than 5 Working Days' notice of Committee meetings, but in cases of urgency a shorter period of notice shall suffice.

OFFICERS

38. QUALIFICATIONS OF OFFICERS

- 38.1 Every Officer must be a natural person who—

- a. has consented in writing to be an officer of the Association, and
- b. certifies that they are not disqualified from being elected or appointed or otherwise holding office as an Officer of the Association.

- 38.2 Officers must not be disqualified under section 47(3) of the Act from being appointed or holding office as an Officer of the Association, namely—

- a. a person who is under 16 years of age
- b. a person who is an undischarged bankrupt
- c. a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993, or any other similar legislation
- d. A person who is disqualified from being a member of the governing body of a charitable entity under the Charities Act 2005
- e. a person who has been convicted of any of the following, and has been sentenced for the offence, within the last 7 years—

- 1 an offence under subpart 6 of Part 4 of the Act

- 2 a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961)
 - 3 an offence under section 143B of the Tax Administration Act 1994
 - 4 an offence, in a country other than New Zealand, that is substantially similar to an offence specified in subparagraphs (1) to (3)
 - 5 a money laundering offence or an offence relating to the financing of terrorism, whether in New Zealand or elsewhere
- f. a person subject to:
- 1 a banning order under subpart 7 of Part 4 of the Act, or
 - 2 an order under section 108 of the Credit Contracts and Consumer Finance Act 2003, or
 - 3 a forfeiture order under the Criminal Proceeds (Recovery) Act 2009, or
 - 4 a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act.
- g. a person who is subject to an order that is substantially similar to an order referred to in paragraph (6) under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations (if any) of the Act.

38.3 Prior to election or appointment as an Officer a person must—

- a. consent in writing to be an Officer, and
- b. certify in writing that they are not disqualified from being elected or appointed as an Officer either by this Constitution or the Act.

38.4 Note that only a natural person may be an Officer and each certificate shall be retained in the Association's records.

39. OFFICERS' DUTIES

39.1 At all times each Officer:

- a. shall act in good faith and in what he or she believes to be the best interests of the Association,
- b. must exercise all powers for a proper purpose,

- c. must not act, or agree to the Association acting, in a manner that contravenes the Act or this Constitution,
- d. when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account, but without limitation:
- e. the nature of the Association,
- f. the nature of the decision, and
- g. the position of the Officer and the nature of the responsibilities undertaken by him or her
- h. must not agree to the activities of the Association being carried on in a manner likely to create a substantial risk of serious loss to the Association or to the Association's creditors, or cause or allow the activities of the Association to be carried on in a manner likely to create a substantial risk of serious loss to the Association or to the Association's creditors, and
- i. must not agree to the Association incurring an obligation unless he or she believes at that time on reasonable grounds that the Association will be able to perform the obligation when it is required to do so.

40. ELECTION OR APPOINTMENT OF OFFICERS

40.1 The election of Officers shall be conducted as follows.

- a. Officers shall be elected during Annual General Meetings. However, if a vacancy in the position of any Officer occurs between Annual General Meetings, that vacancy shall be filled by resolution of the Committee (and any such appointee must, before appointment, supply a signed consent to appointment and a certificate that the nominee is not disqualified from being appointed or holding office as a Officer (as described in the 'Qualification of Officers' rule above). Any such appointment must be ratified at the next Annual General Meeting.
- b. A candidate's written nomination, accompanied by the written consent of the nominee with a certificate that the nominee is not disqualified from being appointed or holding office as a Officer (as described in the 'Qualification of Officers' rule above) shall be received by the Association at least 10 Working Days before the date of the Annual General Meeting. If there are insufficient valid nominations received, further nominations may be received from the floor at the Annual General Meeting.

- c. Votes shall be cast in such a manner as the person chairing the meeting determines. In the event of any vote being tied, the tie shall be resolved by the incoming Committee (excluding those in respect of whom the votes are tied).
- d. Two Members (who are not nominees) or non-Members appointed by the Chairperson shall act as scrutineers for the counting of the votes and destruction of any voting papers.
- e. The failure for any reason of any financial Member to receive such Notice of the general meeting shall not invalidate the election.
- f. In addition to Officers elected under the foregoing provisions of this rule, the Committee may appoint other Officers for a specific purpose, or for a limited period, or generally until the next Annual General Meeting. Unless otherwise specified by the Committee any person so appointed shall have full speaking and voting rights as an Officer of the Association. Any such appointee must, before appointment, supply a signed consent to appointment and a certificate that the nominee is not disqualified from being appointed or holding office as an Officer (as described in the 'Qualification of Officers' rule above).

41. TERM

41.1 An Officer shall be removed as an Officer by resolution of the Committee or the Association where in the opinion of the Committee or the Association —

- a. The Officer elected to the Committee has been absent from 2 committee meetings without leave of absence from the Committee.
- b. The Officer has brought the Association into disrepute.
- c. The Officer has failed to disclose a conflict of interest.
- d. The Committee passes a vote of no confidence in the Officer.

with effect from (as applicable) the date specified in a resolution of the Committee or Association.

42. CONFLICTS OF INTEREST

42.1 An Officer or member of a sub-committee who is an Interested Member in respect of any Matter being considered by the Association, must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified)—

- a. to the Committee and or sub-committee, and

- b. in an Interests Register kept by the Committee.
- 42.2 Disclosure must be made as soon as practicable after the Officer or member of a sub-committee becomes aware that they are interested in the Matter.
- 42.3 An Officer or member of a sub-committee who is an Interested Member regarding a Matter—
 - a. must not vote or take part in the decision of the Committee and/or sub-committee relating to the Matter unless all members of the Committee who are not interested in the Matter consent; and
 - b. must not sign any document relating to the entry into a transaction or the initiation of the Matter unless all members of the Committee who are not interested in the Matter consent; but
 - c. may take part in any discussion of the Committee and/or sub-committee relating to the Matter and be present at the time of the decision of the Committee and/or sub-committee (unless the Committee and/or sub-committee decides otherwise).
- 42.4 However, an Officer or member of a sub-committee who is prevented from voting on a Matter may still be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.
- 42.5 Where 50 per cent or more of Officers are prevented from voting on a Matter because they are interested in that Matter, a Special General Meeting must be called to consider and determine the Matter, unless all non-interested Officers agree otherwise.
- 42.6 Where 50 per cent or more of the members of a sub-committee are prevented from voting on a Matter because they are interested in that Matter, the Committee shall consider and determine the Matter.

RECORDS

43. REGISTER OF MEMBERS

- 43.1 The Association shall keep an up-to-date Register of Members.
- 43.2 For each current Member, the information contained in the Register of Members shall include —
 - a. Their name, and
 - b. The date on which they became a Member (if there is no record of the date they joined, this date will be recorded as ‘Unknown’), and

- c. Their contact details, including —
 - 1 A physical address or an electronic address, and
 - 2 A telephone number.

43.3 The register will also include each Member's —

- a. postal address
- b. email address (if any)
- c. occupation
- d. whether the Member is financial or unfinancial

43.4 Every current Member shall promptly advise the Association of any change of the Member's contact details.

43.5 The Association shall also keep a record of the former Members of the Association. For each Member who ceased to be a Member within the previous 7 years, the Association will record:

- a. The former Member's name, and
- b. The date the former Member ceased to be a Member.

44. INTERESTS REGISTER

44.1 The Committee shall at all times maintain an up-to-date register of the interests disclosed by Officers and by members of any sub-committee.

45. ACCESS TO INFORMATION FOR MEMBERS

45.1 A Member may at any time make a written request to the Association for information held by the Association.

45.2 The request must specify the information sought in sufficient detail to enable the information to be identified.

45.3 The Association must, within a reasonable time after receiving a request —

- a. provide the information, or
- b. agree to provide the information within a specified period, or

- c. agree to provide the information within a specified period if the Member pays a reasonable charge to the Association (which must be specified and explained) to meet the cost of providing the information, or
- d. refuse to provide the information, specifying the reasons for the refusal.

45.4 Without limiting the reasons for which the Association may refuse to provide the information, the Association may refuse to provide the information if —

- a. withholding the information is necessary to protect the privacy of natural persons, including that of deceased natural persons, or
- b. the disclosure of the information would, or would be likely to, prejudice the commercial position of the Association or of any of its Members, or
- c. the disclosure of the information would, or would be likely to, prejudice the financial or commercial position of any other person, whether or not that person supplied the information to the Association, or
- d. the information is not relevant to the operation or affairs of the Association, or
- e. withholding the information is necessary to maintain legal professional privilege, or
- f. the disclosure of the information would, or would be likely to, breach an enactment, or
- g. the burden to the Association in responding to the request is substantially disproportionate to any benefit that the Member (or any other person) will or may receive from the disclosure of the information, or
- h. the request for the information is frivolous or vexatious, or
- i. the request seeks information about a dispute or complaint which is or has been the subject of the procedures for resolving such matters under this Constitution and the Act.

45.5 If the Association requires the Member to pay a charge for the information, the Member may withdraw the request, and must be treated as having done so unless, within 10 Working Days after receiving notification of the charge, the Member informs the Association —

- a. that the Member will pay the charge; or
- b. that the Member considers the charge to be unreasonable.

- 45.6 Nothing in this rule limits Information Privacy Principle 6 of the Privacy Act 2020 relating to access to personal information.

FINANCES

46. CONTROL AND MANAGEMENT

- 46.1 The funds and property of the Association shall be—
- a. controlled, invested and disposed of by the Committee, subject to this Constitution, and
 - b. devoted solely to the promotion of the purposes of the Association.
- 46.2 The Committee shall maintain bank accounts in the name of the Association.
- 46.3 All money received on account of the Association shall be banked within 5 Working Days of receipt.
- 46.4 All accounts paid or for payment shall be submitted to the Committee for approval of payment.
- 46.5 The Committee must ensure that there are kept at all times accounting records that—
- a. correctly record the transactions of the Association, and
 - b. allow the Association to produce financial statements that comply with the requirements of the Act, and
 - c. would enable the financial statements to be readily and properly audited (if required under any legislation or the Association's Constitution).
- 46.6 The Committee must establish and maintain a satisfactory system of control of the Association's accounting records.
- 46.7 The accounting records must be kept in written form or in a form or manner that is easily accessible and convertible into written form. And the accounting records must be kept for the current accounting period and for the last 7 completed accounting periods of the Association.

47. BALANCE DATE

- 47.1 The Association's financial year shall commence on 1 July of each year and end on 30 June (the latter date being the Association's balance date).

DISPUTE RESOLUTION

48. MEANINGS OF DISPUTE AND COMPLAINT

48.1 A dispute is a disagreement or conflict involving the Association and/or its Members in relation to specific allegations set out below.

48.2 The disagreement or conflict may be between any of the following persons—

- a. 2 or more Members
- b. 1 or more Members and the Association
- c. 1 or more Members and 1 or more Officers
- d. 2 or more Officers
- e. 1 or more Officers and the Association
- f. 1 or more Members or Officers and the Association.

48.3 The disagreement or conflict relates to any of the following allegations—

- a. a Member or an Officer has engaged in misconduct
- b. a Member or an Officer has breached, or is likely to breach, a duty under the Association's Constitution or bylaws or the Act
- c. the Association has breached, or is likely to breach, a duty under the Association's Constitution or bylaws or the Act
- d. a Member's rights or interests as a Member have been damaged or Member's rights or interests generally have been damaged.

48.4 A Member or an Officer may make a complaint by giving to the Committee (or a complaints subcommittee) a notice in writing that—

- a. states that the Member or Officer is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
- b. sets out the allegation(s) to which the dispute relates and whom the allegation or allegations is or are against; and
- c. sets out any other information or allegations reasonably required by the Association.

48.5 The Association may make a complaint involving an allegation against a Member or an Officer by giving to the Member or Officer a notice in writing that—

- a. states that the Association is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
 - b. sets out the allegation to which the dispute relates.
- 48.6 The information setting out the allegations must be sufficiently detailed to ensure that a person against whom an allegation or allegations is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.
- 48.7 A complaint may be made in any other reasonable manner permitted by the Association's Constitution.
- 48.8 All Members (including the Committee) are obliged to cooperate to resolve disputes efficiently, fairly, and with minimum disruption to the Association's activities.
- 48.9 The complainant raising a dispute, and the Committee, must consider and discuss whether a dispute may best be resolved through informal discussions, mediation, arbitration, or a tikanga-based practice. Where mediation or arbitration is agreed on, the parties will sign a suitable mediation or arbitration agreement.
- 49. HOW COMPLAINT IS MADE
- 49.1 A Member or an Officer may make a complaint by giving to the Committee (or a complaints subcommittee) a notice in writing that—
 - a. states that the Member or Officer is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
 - b. sets out the allegation or allegations to which the dispute relates and whom the allegation is against; and
 - c. sets out any other information reasonably required by the Association.
- 49.2 The Association may make a complaint involving an allegation or allegations against a Member or an Officer by giving to the Member or Officer a notice in writing that—
 - a. states that the Association is starting a procedure for resolving a dispute in accordance with the Association's Constitution; and
 - b. sets out the allegation to which the dispute relates.
- 49.3 The information given under subclause (1b.) or (2b.) must be sufficient to ensure that a person against whom an allegation is made is fairly advised of the allegation or allegations concerning them, with sufficient details given to enable that person to prepare a response.

49.4 A complaint may be made in any other reasonable manner permitted by the Association's Constitution.

50. PERSON WHO MAKES COMPLAINT HAS RIGHT TO BE HEARD

50.1 A Member or an Officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

50.2 If the Association makes a complaint—

- a. the Association has a right to be heard before the complaint is resolved or any outcome is determined; and
- b. an Officer may exercise that right on behalf of the Association.

50.3 Without limiting the manner in which the Member, Officer, or Association may be given the right to be heard, they must be taken to have been given the right if—

- a. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- b. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- c. an oral hearing (if any) is held before the decision maker; and
- d. the Member's, Officer's, or Association's written or verbal statement or submissions (if any) are considered by the decision maker.

51. PERSON WHO IS SUBJECT OF COMPLAINT HAS RIGHT TO BE HEARD

51.1 This clause applies if a complaint involves an allegation that a Member, an Officer, or the Association (the 'respondent')—

- a. has engaged in misconduct; or
- b. has breached, or is likely to breach, a duty under the Association's Constitution or bylaws or this Act; or
- c. has damaged the rights or interests of a Member or the rights or interests of Members generally.

51.2 The respondent has a right to be heard before the complaint is resolved or any outcome is determined.

51.3 If the respondent is the Association, an Officer may exercise the right on behalf of the Association.

51.4 Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if—

- a. the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
- b. the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- c. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- d. an oral hearing (if any) is held before the decision maker; and
- e. the respondent's written statement or submissions (if any) are considered by the decision maker.

52. INVESTIGATING AND DETERMINING DISPUTE

52.1 The Association must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its Constitution, ensure that the dispute is investigated and determined.

52.2 Disputes must be dealt with under the Constitution in a fair, efficient, and effective manner and in accordance with the provisions of the Act.

53. ASSOCIATION MAY DECIDE NOT TO PROCEED FURTHER WITHOUT COMPLAINT

53.1 Despite the 'Investigating and determining dispute' rule above, the Association may decide not to proceed further with a complaint if—

- a. the complaint is considered to be trivial; or
- b. the complaint does not appear to disclose or involve any allegation of the following kind:
 - 1 that a Member or an Officer has engaged in material misconduct:
 - 2 that a Member, an Officer, or the Association has materially breached, or is likely to materially breach, a duty under the Association's Constitution or bylaws or the Act:
 - 3 that a Member's rights or interests or Members' rights or interests generally have been materially damaged:

- c. the complaint appears to be without foundation or there is no apparent evidence to support it; or
- d. the person who makes the complaint has an insignificant interest in the matter; or
- e. the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the Constitution; or
- f. there has been an undue delay in making the complaint.

54. ASSOCIATION MAY REFER COMPLAINT

54.1 The Association may refer a complaint to—

- a. a subcommittee or an external person to investigate and report; or
- b. subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

54.2 The Association may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

55. DECISION MAKERS

55.1 A person may not act as a decision maker in relation to a complaint if 2 or more members of the Committee or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be—

- a. impartial; or
- b. able to consider the matter without a predetermined view.

ALTERATIONS TO THE CONSTITUTION

56. AMENDING THIS CONSTITUTION

56.1 All amendments must be made in accordance with this Constitution. Any minor or technical amendments shall be notified to Members as required by section 31 of the Act.

56.2 The Association may amend or replace this Constitution at a General Meeting by a resolution passed by a two-thirds of majority of those Members present and voting.

56.3 That amendment may be approved by a resolution passed in lieu of a meeting but only if authorised by this Constitution.

- 56.4 Any proposed resolution to amend or replace this Constitution shall be signed by at least 51 per cent of eligible Members and given in writing to the Committee at least 15 Working Days before the General Meeting at which the resolution is to be considered and accompanied by a written explanation of the reasons for the proposal.
- 56.5 At least 5 Working Days before the General Meeting at which any amendment is to be considered the Committee shall give to all Members notice of the proposed resolution, the reasons for the proposal, and any recommendations the Committee has.
- 56.6 When an amendment is approved by a General Meeting it shall be notified to the Registrar of Incorporated Societies in the form and manner specified in the Act for registration, and shall take effect from the date of registration.

LIQUIDATION AND REMOVAL FROM THE REGISTER

57. RESOLVING TO PUT ASSOCIATION INTO LIQUIDATION

- 57.1 The Association may be liquidated in accordance with the provisions of Part 5 of the Act.
- 57.2 The Committee shall give 20 Working Days written Notice to all Members of the proposed resolution to put the Association into liquidation.
- 57.3 The Committee shall also give written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice shall include all information as required by section 228(4) of the Act.
- 57.4 Any resolution to put the Association into liquidation must be passed by a two-thirds majority of all Members present and voting.

58. RESOLVING TO APPLY FOR REMOVAL FROM THE REGISTER

- 58.1 The Association may be removed from the Register of Incorporated Societies in accordance with the provisions of Part 5 of the Act.
- 58.2 The Committee shall give 20 Working Days written Notice to all Members of the proposed resolution to remove the Association from the Register of Incorporated Societies.

58.3 The Committee shall also give written Notice to all Members of the General Meeting at which any such proposed resolution is to be considered. The Notice shall include all information as required by section 228(4) of the Act.

58.4 Any resolution to remove the Association from the Register of Incorporated Societies must be passed by a two-thirds majority of all Members present and voting.

59. SURPLUS ASSETS

59.1 If the Association is liquidated or removed from the Register of Incorporated Societies, no distribution shall be made to any Member other than in accordance with this clause.

59.2 On the liquidation or removal from the Register of Incorporated Societies of the Association, the Association or any member, or any class of persons prescribed by the regulations made under the Act for such purpose, may apply to the Registrar under s216(2) of the Act for a direction under s216(1)(d) of the Act that:

- a) the land held by the Association vests in the members as tenants in common in equal shares; and
- b) any funds held by the Association for the purpose of the maintenance of any common facilities are to be deposited to the Public Trust, with a direction that such funds are held for the continued maintenance of the common facilities; or
- c) If the Registrar is satisfied that there is no longer any need for the funds to be held, that the funds are distributed pursuant to s216(1)(d) of the Act.

59.3 However, in any resolution under this rule, the Association may approve a different distribution to a different not-for-profit entity from that specified above, so long as the Association complies with this Constitution and the Act in all other respects.

SCHEDULE A

ASSOCIATION RULES

The following shall be known as the Rules of the Kinloch Golf Resort Owners Association Incorporated, these may be added to, amended or modified from time to time as provided for in the Constitution*

RULES GOVERNNG OWNERS, OCCUPIERS AND INVITEES

1. Interpretation

1.1 For the purposes of these Rules:

- a. Any reference to "Member" shall be deemed to include a reference to "Occupier" and/or "Invitee";
- b. Any obligation imposed on a Member shall bind the Member to procure performance of that obligation by the Member's Occupiers and/or Invitees; and
- c. Any reference to "Common Property" shall not include the golf course, clubhouse, lodge and villas (if any), which may be developed as part of the lodge development.

2. Conduct and Noise

2.1 No Member shall engage in, or allow any person to engage in, my criminal activity.

2.1 No Member shall make or permit any improper or unseemly noises, nor act in any fashion so as to annoy or disturb any other Member.

2.2 If intoxicating liquor is consumed, the Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.

2.3 The Association reserves the right to exclude or evict any person who in the opinion of the Association is under the influence of intoxicating liquor, drugs or substances, or who in any manner acts in violation of the Constitution or these Rules. This right may be delegated to the Manager.

24 No Member shall burn any material or substance or do anything which may create a fire hazard or contravene fire regulations.

2.5 No Member shall dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contactors.

2.6 No Member shall allow any rubbish, plant or equipment and material, noxious substances, livestock, animals or birds (other than pets permitted pursuant to clause 4.1) on the land which may cause objection to neighbouring Individual Property Owners or detract from the general appearance of the Individual Property or permit weeds, undergrowth or long or rank grass to accumulate on the Individual Property.

3 Member's Individual Property

3.1 Each Member shall have the duty to keep that Member's Individual Property and all improvements thereto (including all fences) in high standard and in an attractive condition and shall not permit the accumulation thereon of unsightly rubbish or materials.

3.2 Each Member shall at all times comply with the requirements of all statutes, regulations and local authorities, and shall duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Individual Property.

3.3 No Member shall erect any notice or sign on an Individual Property without the prior written consent of the Association.

3.4 Each Member shall properly secure any residence or building on that Member's Individual Property when it is not occupied,

3.5 No Member shall allow or erect an external clothesline on their Individual Property.

3.6 No Member shall allow the Individual Property to be occupied or used for residential purposes by the erection of temporary structures or placing of caravans or any similar facility,

3.7 Trees are not allowed to grow to a height exceeding 4 metres on any part of an Individual's Property or to a height where a tree of any greater height will impede the views from any other Individual Property.

3.8 No Member shall allow any water tanks to be located on any Individual Property.

3.9 No Member shall allow any dwelling to be occupied until construction has been completed.

3.10 No Member shall, without the written consent of the Association (for the withholding of which no reason shall be required to be given) conduct any commercial activity on any Individual Property, or garage or store on the Individual Property any plant or equipment other than that normally required for residential use.

3.11 No Member shall with regard to the adjoining golf course operation lodge or permit to be lodged any objection to activities, or maintenance thereof including

noise levels, operation of machinery, lights, disturbance and golf related nuisance or damage.

4 Pets

- 4.1 No Member shall keep or allow any animal on the areas comprising the Common Property or Association Facilities. Notwithstanding this general prohibition, a Member may take an animal over and across the Common Property and Association Facilities if the animal is on a leash or under some other form of control and the Member shall be responsible for immediate removal of any droppings. A Member may keep within its Individual Property any animals permitted by any relevant Authority by-laws provided such animals do not unreasonably interfere with the peaceful enjoyment of other Members.

5 Aerials

- 5.1 No Member shall erect or permit to be erected on any Individual Property any aerials, satellite dishes or other communication receivers of any kind whatsoever, other than those approved by the Association which permission may in the Association's absolute discretion be withheld should it consider that these do not confirm to a desirable standard.

RULES GOVERNING COMMON PROPERTY AND ASSOCIATION FACILITIES

6 Use

- 6.1 Each Member shall make no improper, offensive or unlawful use of any Common Property or Association Facilities, and shall use the Common Property and Association Facilities only for the purposes for which they were designed and in particular the following conditions shall apply:
- a. The Association Facilities may only be used by a Member, an Invitee of a Member or any other person entitled to use them between the hours nominated from time to time by the Committee of the Association; and
 - b. Children under the age of 12 years may use the Association Facilities only if accompanied by and supervised by an adult.
- 6.2 No Member shall fetter, obstruct or impede the use of any Common Property or Association Facilities by any other Member.
- 6.3 No Member shall place anything in or on the Common Property or Association Facilities without the approval of the Manager.

- 6.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Common Property or the Association Facilities.

7 Roads

- 7.1 The roads and footpaths shall only be used for the purpose of access by Members, to a Member's Individual Property.

- 7.2 Each Member shall provide the Manager with the registration number of all vehicles belonging to that Member.

- 7.3 No Member shall park any vehicle on the roads or any other Common Property or Association Facilities, other than in spaces specified by the Manager from time to time as suitable for that purpose.

8 Prohibited Acts

- 8.1 No Member shall drop any litter in or on the Common Property or Association Facilities.

- 8.2 No Member shall do any act which detracts from the attractiveness or state of repair of the Common Property or Association Facilities, Any Member who discovers any damage to the Common Property or Association Facilities shall immediately report such damage to the Manager.

9 Closing of Association Facilities

- 9.1 The Manager shall be entitled to close any or all of the Association Facilities as the Manager considers necessary for security reasons, or for the purpose of maintaining and repairing Association Facilities. .

- 9.2 The Manager shall endeavour to give reasonable notice to the Members of such closure unless the situation requires immediate closure in which case the Manager shall not be required to give notice.

10 Keys/Access Cards

- 10.1 No Member shall make or retain any duplicates or copies of any keys or access cards relating to the Association Facilities. Additional keys or access cards can be provided by the Manager, on payment of the fee charged by the Manager. In the interests of effective security the Manager shall have the right (at the Manager's sole discretion) to restrict the number of keys or access cards used.

- 10.2 No person shall be allowed by any Member to use a key or access card, other than the Member and his or her immediate family, or an Occupier of the Member's Individual Property (as recorded in the register of Members) and his or her immediate family,

- 10.3 If any key or access card is lost, stolen, destroyed or mutilated, then the Member shall immediately report such to the Manager.

KINLOCH GOLF RESORT LIMITED

KINLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED

DEED OF TRANSFER OF COMMON PROPERTY

CLAYMORE LAW
BARRISTERS & SOLICITORS
CLAYMORE HOUSE
63 FORT STREET
AIEUAND
PH: (9) 379 3163
FAX: (9) 379 3164
Email: general@claymore.co.nz

DEED dated

2005

PARTIES

KINLOCH GOLF RESORT LIMITED together with its successors in title
("Developer")

KINLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED
("Association")

INTRODUCTION

- A. The Developer is developing the property situated at Kinloch Road and Whangamata Road, Taupo into a residential development by way of staged subdivision, development and construction of infrastructure on the property ("Project")
- B. The Developer wishes to transfer property to the Association, which property shall be for the common use of all residents of the Project. The Association shall hold, own, operate, manage and maintain that property in accordance with the Constitution of the Association.

COVENANTS

1. Definitions

1.1 In this deed, unless the context otherwise requires:

"Association Facilities" means any facilities owned by the Association which may be provided for the use and enjoyment of members of the Association as provided for in the Constitution and the Rules.

"Common Property" means all road, accessways and such other land and facilities as are intended for common use by all residents within the Project and as otherwise determined by the Developer.

2. Reservation

- 2.1 The Association ~~acknowledges~~ that whilst it is the intention of the Developer to construct the Association Facilities, the Developer reserves the right to not proceed with the construction of the Association Facilities, to vary those facilities designated as Association Facilities and to vary the location and specifications of the Association Facilities.

2.2 This deed shall oblige the Developer only to transfer such Common Property and/or assign such Association Facilities as it completes, and shall not oblige the Developer to construct any Association Facilities, or to construct any Association Facilities to any particular specification or in any particular location.

2.3 The developer expressly disclaims any liability to the Association in respect of anything and of the consequences of anything done or omitted to be done by any person in reliance upon any Association Facilities being constructed, or constructed to any particular specification or in any particular location.

3. Transfer

3.1 The Developer shall, as each stage of the Project is completed, transfer to the Association any Common Property and/or assign any Association Facilities which is intended to be used by residents of properties within that stage, subject to such encumbrances as the Developer sees fit.

3.2 The Developer warrants that any Association Facilities transferred to the Association shall be complete, and that all work in respect of such Association Facilities shall be to a proper and professional standard.

3.3 The Developer covenants for the purposes of clause 3.1 that it shall promptly make, do and execute all deeds, documents and actions required of it by the Association to effect the assignment of Association Facilities and transfer of Common Property.

3.4 The Developer shall indemnify and keep indemnified the Association against any and all stamp duty or similar duty, impost or tax, for which the Association may become liable as a result of the transfer or assignment pursuant to clause 3, 1, provided that should the Association reasonably believe it may become liable for any such stamp duty or similar duty, impost or tax, the parties shall seek a ruling on this point from the Commissioner of Inland Revenue and shall co-operate fully in taking all steps necessary for this purpose (including making submissions in respect of, and objecting to, this ruling) before the transfer or assignment.

3.5 The Association shall hold Common Property and Association Facilities in accordance with its Constitution, and generally for the benefit of the residents of the Project.

4. Development Rights

4.1 The Association shall ensure that its constitution:

- a. allows the Developer access to the properties of residents of the Project as required to further the Project;

- b. requires residents of the Project to grant easements in favour of the Developer, any other resident and/or the Association (as nominated by the Developer) across any resident's property as required by the Developer to further the Project;
- c. requires the members of the Association to support any resolution to amend the Constitution, where the Association is required to make such amendment pursuant to clause 4.4.

4.2 The Association hereby grants to the Developer the right to:

- a. access and remain on the Common Property with such vehicles, machinery and tools as the Developer may desire;
- b. temporarily close any Association Facilities or Common Property; and
- c. add, remove or alter structures or services forming part of the Common Property or Association Facilities;

as required to further the Project.

4.3 The Association shall, when called upon by the Developer, grant such easements or rights in respect of the Common Property in favour of any person nominated by the Developer, as required to further the Project.

4.4 The Association shall amend its Constitution, when advised by the Developer that such amendment is necessary or desirable for the Project to proceed.

5. Association's Obligations

5.1 Until the Developer certifies to the Association that the Project is complete, the Association shall:

- a. cause the Association Facilities to be maintained to the standard specified by the Developer; and
- b. enforce any covenants granted by any resident of the Project in favour of the Association, when called upon to do so by the Developer.

6. Operating Expenses

6.1 The Developer acknowledges that during the Project, it may, as a result of carrying out any works, increase the cost to the Association of maintaining and repairing the Common Property or Association Facilities transferred to the Association. The Developer agrees to, within 30 days of written demand being made by the Association, make payment to the Association in reimbursement of such additional costs, provided that the Developer may require the Association to provide invoices verifying expenditure in respect of the additional costs.

7. Good Faith

7.1 The parties shall act in good faith, and shall use their best endeavours to promote the mutual interests of the parties in the development and maintenance of the Project as a high quality development.

8. Assignment

8.1 This deed may be assigned by the Developer, provided that the assignee enters into a deed with the Association under which the assignee agrees to be bound by the terms of this deed.

9. Contracts (Privity) Act 1982

9.1 In terms of section 4 of the Contracts (Privity) Act 1982, this deed is for the benefit of all registered proprietors of residential properties within the Development, and the obligations of the Developer pursuant to this deed may be enforced by any such registered proprietor.

10. Power of Attorney

10.1 The Association irrevocably appoints the nominee of the Developer, as the attorney of the Association, to execute and perform any act, deed, matter or thing as fully and effectually as the Association could do, where the Association is required to execute or perform such act, deed, matter or thing by the provisions of this deed.

10.2 The parties agree to execute a full and proper power of attorney in this respect immediately upon execution of this agreement.

EXECUTION

SIGNED by KINLOCH GOLF RESORT LIMITED by:

Directors signature

Directors full name (please
print)

Director's signature

Director's full name (please print)

THE COMMON SEAL of
KINLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED was
affixed in the presence of:

Signature of Committee Member

Name of Committee Member

Signature of Committee Member

Name of Committee Member

[name]

Purchaser

1<NLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED

Association

DEED OF COVENANT

CLAYMORE LAW
BARRISTERS & SOLICITORS
CLAYMORE HOUSE
63 FORT STREET
AUCKLAND
PH: (9) 3793163

FAX: (9) 379 3164 Email: general@claymore.co.nz

DEED dated

2005

PARTIES

[name] ("Purchaser")

KINLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED
("Association")

INTRODUCTION

- A. The Purchaser has agreed to purchase a property at Kinloch being lot [number] Deposited Plan 347410 comprised in Certificate of Title [number] (South Auckland Registry) ("Land").
- B. The land covenant registered against the title to the Land in favour of Kinloch Golf Resort Owners Association Incorporated ("Association") requires purchasers to enter into a covenant, inter alia, that:
- a. "Each owner shall not commence any building or development on the Land, or obtain any consent from any local authority to build on or develop the Land, without submitting the design of the proposed building or development to the design control committee of the Association for the consent of the committee, which shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:
 - i, District plan of Taupo District Council;
 - ii. The Constitution and Rules of the Association; and
 - iii. Any relevant design guidelines published by the Association.
- C. The encumbrance registered against the title to the Land provides inter alia that the Purchaser as the Encumbrancer covenant for itself and its successors in title with the Association as the Encumbrancee during the term of that encumbrance that upon becoming the registered proprietor of the Land, the Purchaser shall join as a member of the Association and remain a member while the registered proprietor of the Land and fulfil and continue to fulfil the obligations of the member as set out in the constitution of the Association, including, ensuring that:
- a. any transferee of the Land executes a deed of covenant in favour of the Association agreeing to be bound by the constitution as a member of the Association; and
 - b. before granting any mortgage or charge over the Land procure the intended mortgagee or chargeholder to enter into a deed of covenant with the Association (at the cost of the purchaser) covenanting to observe and

perform all the rules of the constitution upon exercising any power as mortgagee or chargeholder

D. This Deed gives effect to the foregoing.

COVENANTS

1. The Purchaser hereby acknowledges and confirms the provisions of the land covenant and agrees to be bound by and comply with the same. Without limitation, the Purchaser shall not commence any building or development on the Land, or obtain any consent from any local authority to build on or develop the Land, without submitting the of the proposed building or development to the design control committee of the Association for the consent of the committee, which shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:
 - (a) District plan of Taupo District Council;
 - (b) the Constitution and Rules of the Association; and
 - (c) any relevant design guidelines published by the Association.
2. The Purchaser hereby agrees to be a member of the Association and acknowledges and confirms the provisions of the Constitution and the Encumbrance and agrees to be bound by and comply with the same. Without limitation, the Purchaser shall:
 - (a) upon selling the Land, procure the subsequent purchaser, as a precondition of the sale, to enter into a similar deed of covenant with the Association as set out herein; and
 - (b) before granting any mortgage or charge over the Land procure the mortgagee to enter into a similar deed of covenant with the Association as set out herein.
3. The mortgagee whose consent is annexed to this deed hereby covenants with the Association that in the event of the mortgagee exercising any of the mortgagee's rights, powers or remedies under any mortgage of the Land, the mortgagee shall comply with the rules of the constitution of the Association as if the mortgagee were a member of the Association.

EXECUTION

SIGNED by
[name] in the
presence of:

THE COBNON SEAL of
KNLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED was
affixed in the presence of: _____

Signature of Committee Member

Name of Committee Member

Signature of Committee Member

Name of Committee Member

MORTGAGEE'S CONSENT

SIGNED for and on behalf of THE)
MORTGAGEE in the presence of:)

INFORMATION FOR REGISTER OF MEMBER OF KINLOCH GOLF RESORT OWNERS ASSOCIATION INCORPORATED

1. Member's Details:

Name:

Address:

Telephone No.: _____ Work _____ Residential _____

Fax No.:

Email:

Date of Membership:

Party authorised to exercise Member's Vote:

Mortgagee:

Contact Person:

Telephone/Fax No:

2. Occupier:

Contact Name:

Address:

Telephone No. : Work Residential

Fax No.: