

CONSTITUTION OF
OCEANSIDE WAIWHAKAIHO OWNERS' ASSOCIATION LIMITED

DATED

of

2018

1. Statement of Purpose

- 1.1 The Companies Act 1993 (“the Act) provides that certain provisions of the Act may be negated, altered or added to by the constitution of a company.
- 1.2 Section 27 of the Act provides that where a company has a constitution then the company, the board, each director and each Shareholder of a company has the rights, powers, duties and obligations set out in the Act except to the extent that they are negated, altered or added to in accordance with the Act, by that constitution.
- 1.3 Section 30 of the Act provides that a constitution may contain:
- a. Matters contemplated by the Act for inclusion in its constitution; and
 - b. Such other matters as a company may wish to include.
- 1.4 The Company has determined to adopt a constitution and to:
- a. Restrict the activities of the Company to matters relating to:
 - i. the management and maintenance of the Development and the Common Facilities;
 - ii. maintaining the value and integrity of the Development, including exercising any rights of the Developer under the Land Covenants after the end of the Developer Enforcement Period;
 - iii. the maintenance, monitoring, remediation (if necessary), and reporting in relation to the Dune Management Requirements;
 - iv. being a single contact for water billing for the Lots in the Development and levying contributions from Lot Owners to meet such costs.
 - b. Include provisions relating to the rights and obligations of Shareholders in the Company who are required to own a Lot in the Development, provided that the Developer may be a Shareholder without owning a Lot in the Development.
 - c. Provide that the Company does not have a purpose of providing a pecuniary benefit to Shareholders or carrying on of trading activities as objects, provided that nothing shall prevent the Company from returning accumulated reserves to Shareholders.

2. Definitions and Interpretation

- 2.1 Definitions: Unless the context otherwise requires:

“Act” means the Companies Act 1993.

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

“Board” means the Board of Directors of the Company appointed pursuant to the Constitution.

“Business Day” means any day of the week other than”

- a. Saturday, Sunday, good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, New Zealand’s anniversary day and Taranaki Anniversary Day; and
- b. A day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive.

A business day shall be deemed to commence at 9.00 am and to terminate at 5 pm (New Zealand time).

“Common Facilities” means any land, road, footpaths, gardens, utilities, buildings, plant, equipment, fencing and amenities owned, leased, licensed or otherwise held or operated by the Company from time to time and includes, for the avoidance of doubt, the perimeter boundary fencing for the Development.

“Company” means Oceanside Waiwhakaiho Owners’ Association Limited.

“Constitution” means the Constitution of the Company as amended or added to, including all schedules to the Constitution. References to the Constitution shall also include a reference to any Rules created under the Constitution.

“Contribution” means the levy to be paid by each Shareholder as determined from time to time by the Company, pursuant to the Constitution as set out in clause 7.

“Default Interest Rate” means four percent above the Company’s banker’s overdraft rate applicable during the continuance of default.

“Developer” means The Green Limited and/or any assignee and/or successor in title (whether in whole or in part or parts of the Land) engaged in promoting and carrying out the development of the Land and includes its officers, agents and contractors.

“Developer Enforcement Period” means the period ending on the date specified in a notice from the Developer to the Company stipulating that the Developer Enforcement Period is to end.

“Development” means the subdivision proposed by the Developer on the Land.

“District Plan” means the New Plymouth District Council district plan applicable from time to time.

“Dune Management Requirements” means the requirements set out in the Dune Management Plan promulgated by New Plymouth District Council from time to time.

“Emergency Contribution” means a contribution for the purposes of meeting any one-off costs for emergency items of repair or replacement where the same has been approved by the Board as provided by clause 7.6.

“Encumbrance” means the encumbrance in favour of the Company noted against the title of each Lot.

“Financial 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 and includes the broken period commencing on the date of incorporation of this Company, and ending on the 30 June following.

“Invitee” means any invitee of or any visitor to a Residential Lot Owner or Occupier.

“Land” means an estate in fee simple containing 6.4837 hectares (more or less) more particularly previously described in Computer Freehold Register 803378 (Taranaki Registry).

“Land Covenants” means any restrictive Land Covenants registered against the title of any Residential Lot.

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

“Objects” means the objects of the Company as set out in clause 3.

“Occupier” means any person occupying any Residential Lot under lease, licence or other occupancy right and shall include any entity associated with the Owner and all members of an Owner’s family when there is a dwelling.

“Operating Expenses” means the total sum of all rates, taxes, costs and expenses of the Company properly or reasonably assessed or assessable paid or payable or otherwise incurred in respect of the Common Facilities, Dune Management Requirements and the operation of the Company, but will exclude:

- a. any such costs relating to any Residential Lot;
- b. local authority rates levied against individual Residential Lots; and
- c. any costs payable in respect of Capital Improvements.

“Owner” means any person or entity which owns a Residential Lot. Where the same person or persons are the registered proprietor of more than one Residential Lot that person or persons shall constitute a separate Owner in respect of each Residential Lot owned by that persons or persons. Each Owner must also be a Shareholder.

“Registered Office” means the Registered Office of the Company for the time being, as determined in accordance with Constitution.

“Registrar” means the person holding office from time to time as Registrar of Companies in terms of the Act.

“Relevant Authority” shall have the same meaning as “Local Authority”.

“Residential Lot(s)” means each of the lots for development in the Development being Lots 1-7 and 10-18.

“Resource Consent” means the resource consent(s) providing for, or relating to, the Development including, without limitation, consent order of the Environment Court in ENV-2017-WLG-000007 dated 17 October 2017 and any variation to it.

“Rules” means any Rules created under the Constitution, as added to, amended or modified from time to time by the Company.

“Shareholder” means each person who shall from time to time be a Shareholder of the Company.

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

“Unanimous Resolution” means a resolution of all the Shareholders of the Company who are entitled to vote.

2.2 Interpretation: 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 Company, organisation, trust, state, 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 persons 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 the Constitution or the rules, as the case may be;
- h. any table of contents, the section headings and clause heading 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 bylaw shall be deemed to extend to all statutes, regulations, ordinances or Rules amending consolidating or replacing the same.

3. Objects

3.1 The Company is formed to promote the following objects:

- a. to manage and maintain the Development and the Common Facilities;

- b. to attend to the maintenance, monitoring, remediation (if necessary), and reporting in relation to the Dune Management Requirements and otherwise to ensure compliance with the requirements of the Resource Consents;
 - c. to maintain the value and integrity of the Development, including exercising any rights of the Developer under the Land Covenants after the end of the Developer Enforcement Period;
 - d. to be a single contact for water billing for the Residential Lots in the Development and levying contributions from Lot Owners to meet such costs;
 - e. to promulgate and enforce the Rules;
 - f. to levy Owners for the purpose of providing funds for and meeting the costs and expenses associated with the operation of the Company and the performance of these Objects;
 - g. do any act or thing incidental or conducive to the attainment of any of the above objects.
- 3.2 The Company shall manage the Owners' collective interests in the Common Facilities and each Owner agrees to be bound by the Constitution and the Rules of the Company which will operate to govern their use and enjoyment and which will constitute a binding agreement between the Owners. The Company will, on the Owners' behalf, comply with and enforce the Constitution of the Company
- 3.3 Subject to the Constitution and the Rules, each Owner, Occupier and their Invitees shall be entitled to make full use of the Common Facilities.

4. Restriction on Business of Company

- 4.1 Unless Shareholders agree otherwise by Special Resolution, the Company shall only carry on the activities necessary to achieve its Objects
- 4.2 The Company shall have all powers and authorities necessary at all times for the attainment of its Objects including, without limitation:
- a. to levy Contributions as provided for in clause 7 of the Constitution.
 - b. to enter at any time in an emergency without notice, or in a non-emergency situation after twenty-four hours' written notice, without being liable to an Owner or any other person or entity, upon a Residential Lot or any improvement thereon, for the purpose of enforcing the Constitution or for the purpose of maintaining or repairing any area, improvements or other facility.
 - c. to commence and maintain legal action, or to restrain and enjoin any breach or threaten breach of the Constitution. The Company is also authorised to settle claims, enforce the Encumbrance and take all such action as it may deem necessary or expedient to enforce the Constitution.
 - d. to grant and transfer to any person or entity any real property and/or other interest, including title, leasehold estates, easements, rights of way, out in, on over or under the Common Facilities for the purpose of constructing, erecting, operating, maintaining thereon, therein or thereunder:
 - i. roads, streets, footpaths, driveways, parking area, tracks, planting, paths and fences;
 - ii. lines, cables, wires, conduits, pipelines or other devices for the creation of services;

- iii. sewers, water systems, storm water drainage systems and pipelines; or
 - iv. any similar improvements or facilities.
 - e. to enter into contracts with any persons or entities on such terms and provisions as the Board shall determine, and to acquire, own and dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- 4.3 To the fullest extent permitted by law, the Company shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, or legal proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Company against expenses (including legal fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, or proceedings if it is found and determined by the Board or a court that such person:
 - a. acted in good faith and in a manner which person reasonably believed to be in, or not opposed to, the best interests of the Company; or
 - b. with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

The termination of any such action, or legal proceedings by settlement, shall not itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Company, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer committee member, employee, servant or agent of the Company, against any liability asserted against such person as such, whether or not the Company would have the power to indemnify such person against such liability hereunder or otherwise.

5. Matters in Act Where Specific Authority Required

- 5.1 Share Repurchase:
 - a. The Company is expressly empowered and permitted to purchase or otherwise acquire any Shares issued by the Company in accordance with the Act.
 - b. Where a Shareholder has transferred a Residential Lot and has not at the same time transferred the Share in the Company held by that Shareholder to the transferee of that Residential Lot then the Board may repurchase that Share on the basis that:
 - i. all Shareholders will hold a Share only in conjunction with their ownership of a Residential Lot; and
 - ii. no Shareholder will transfer a Residential Lot to any party without at the same time transferring their Share in the Company to the same party.

The terms of the offer and consideration offered for any Share shall be fair and reasonable to the remaining Shareholders but subject at all times to section 61(4) of the Act provided that the parties agree, for all purposes,

that each Share shall have a value of, and be transferred for the sum of \$1.00

5.2 Indemnities and Insurance

- a. The Company may effect insurance for a Director or employee of the Company or a related company in respect of:
 - i. Liability, not being criminal liability, for any act or omission in his or her capacity as a director employee; or
 - ii. Costs incurred by that Director or employee in defending or settling any claim or proceeding related to any such liability; or
 - iii. Costs incurred by that Director or employee in defending any criminal proceedings in which he or she is acquitted.
- b. Particulars of any indemnity given, or insurance entered into for any Director or employee shall be entered in the interests register.
- c. The definition in section 162(9) of the Act shall apply to clauses 5.2(a) and (b).

5.3 Share Transfers

- a. The instrument of transfer of any Share shall be executed by or on behalf of the Transferor and the Transferee and the Transferor shall remain a holder of the Share until the name of Transferee is entered in the Register as the holder of that Share. Any transfer of a Share shall be in such form as may be approved from time to time by the Board.
- b. At any time the Board may, by notice in writing, require any Transferee to lodge with the Company within 21 days of the date of such notice a Statutory Declaration and/or such other written advice as the Board may desire disclosing full details of the beneficial ownership of any Share.
- c. If any declaration received under clause 5.3(b) shows that the Residential Lot and the Share are held by different beneficial owners the Board may require the Share to be transferred to the same beneficial owner. If the Shareholder fails to carry out such transfer within a reasonable period, then:
 - i. the Company may forthwith repurchase the Share held by that Shareholder; and/or
 - ii. transfer the Share to the beneficial owner of the Residential Lot.
- d. Notwithstanding any provisions to the contrary contained in the Constitution, no Shareholder shall transfer a Share except in accordance with the following restrictions:
 - i. if, at any time a Shareholder shall dispose of a Residential Lot then at the same time the Shareholder shall also transfer with that Residential Lot and to the same party to whom that Residential Lot is being transferred ("Transferee") the Share held by that Shareholder in the Company.
 - ii. Upon the Board being satisfied that:
 - aa. The Residential Lot to which the Share related has been transferred to the same Transferee; and
 - bb. Any declaration of the beneficial interest required under clause 5.3(b) has been delivered to the Board and shows the transferee is the beneficial owner of the Residential Lot and the share; and

- cc. A transfer in the form approved by the Board and signed by all parties thereto has been delivered to the Company; and
- dd. The Transferee entering any deed document or agreement required by the Board to evidence that the Transferee is bound by the provisions of the Constitution
then the Board shall approve the transfer of the Share to the Transferee provided that such approval shall be given at the cost in all respects of the Transferor.
- e. The Board shall have the absolute right to decline to register any transfer of a Share where the Transferor of such share has not at the same time transferred to the same Transferee the Residential Lot to which that Transferor is entitled and the provisions of clause 5.3(d) have not been satisfied. The Board shall comply with section 84(4) of the Act when so declining any transfer.
- f. The Board may also refuse to register the transfer of a Share or decline to recognise any instrument of transfer where:
 - i. The Company has a lien on the Share.
 - ii. The proposed Transferor or Transferee is indebted or under any liability to the Company;
 - iii. The proposed Transferee is not a person who is ordinarily resident in New Zealand and there is a requirement at law to provide a consent, authorisation or other authority to so register the transfer of the Share under any Act, regulation or other statutory Regulation and that consent, authorisation or other authority is not forthcoming.

6. Shareholding

- 6.1 Each Owner must be a Shareholder, and, subject to clause 6.2, only Owners will be Shareholders, and for that purpose:
- a. Encumbrance: An encumbrance must be noted against the title in respect of each Residential Lot. Under the Encumbrance each Owner covenants to become and remain a Shareholder, and to perform the obligations of a Shareholder as set out in the Constitution.
 - b. Deed of Covenant on Assignment: Each Owner must, prior to the sale of a Residential Lot, procure the Purchaser to enter into, execute and deliver to the Company a deed of covenant in favour of the Company, by which the Purchaser covenants to become, contemporaneously with the transfer of the Residential Lot, and remain a Shareholder, and to observe and perform the obligations of a Shareholder as set out in the Constitution. The deed of covenant will be prepared by the solicitors for the Company, and the selling Owner must pay the reasonable legal fees and disbursements of the Company's solicitors.
 - c. New Owners to provide details: Each Owner must, immediately upon becoming an Owner, (and thereafter as any details change), provide the Company with details necessary for maintenance of the register of shareholders pursuant to clause 6.3, and will upon entry of the details into the register, become a Shareholder.
 - d. Occupier's details to be provided: An Owner must advise the Company of the details of the Occupier of the Owner's Residential Lot as are requested by the Company, and if required by the Company must procure the Occupier before it enters into occupation of the residential Lot to enter into

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

- e. Leases: When creating a lease or tenancy or parting with possession of residential Lot or any part of a Residential Lot the Owner must:
 - i. Notify the Company of the name and address of the party;
 - ii. Ensure that the proposed lessee or Occupier has a copy of the Encumbrance, the Constitution and the Rules current at that time; and
 - iii. Ensure that the proposed lessee or Occupier enters into a deed of covenant with the Company, in the form required by the Company, confirming that the lessee or Occupier will abide by the provisions of the Encumbrance, the constitution, the rules and the design Guidelines.
- 6.2 Developer as Shareholder: Notwithstanding that it may not own any Residential Lot, the Developer may be a Shareholder of the Company, although it is not obliged to do so. If the Developer elects to be a Shareholder pursuant to this clause, it shall have the same voting rights, in all respects, as it would have if it owned one Residential Lot.
- 6.3 Register of Shareholders: The Company must maintain a register of shareholders recording:
 - a. For each Shareholder: name, address, occupation, telephone number, email address and facsimile number (at home and work) and similar details for a third party to be contacted in the event of absence or emergency.
 - b. For each Occupier: name and, in the case of an impersonal entity, a contact person, address, occupation, telephone number and facsimile number (at home and work) and similar details for a third party to be contacted in the event of absence or emergency.
 - c. Shareholding: the date upon which each Shareholder became a Shareholder.
 - d. Voting: where there is more than one Owner of a Residential Lot, such Owners are entitled to vote in accordance with clause 13.
- 6.4 No notice of trust: No notice of any trust express, implied or constructive will be entered on the register of Shareholders.
- 6.5 Register to be Maintained: The Board shall ensure that the register of Shareholders is maintained.
- 6.6 Not assignable: The rights, privileges and obligations of a Shareholder are not assignable.
- 7. Obligations of Shareholders**

- 7.1 Contributions: Each Financial Year, all Shareholders must pay the Contribution to the Company at the time, and in the manner, as set out in this Constitution. For the Financial Year ending 31 March 2019, the Contribution payable by each Shareholder shall be \$2,000 plus GST (if any) per Residential Lot. In each subsequent Financial Year, the amount of the Contribution will increase by an amount equivalent to the percentage change in the Consumers Price Index – All Groups unless Shareholders agree, by Special Resolution to set the Contribution for that year at a different amount, in which case that different amount shall be the amount of the Contribution payable. The Company will notify each Shareholder of the amount of the Contribution payable at the commencement of each Financial Year.
- 7.2 Separately metered utilities: If any utilities or services provided by, or charged to, the Company are separately metered at each Residential Lot (including, but not limited to, water), the Owner shall be responsible for paying those separately metered amounts at cost, in addition to Contributions payable under clause 7.1. Any such amounts shall be payable within ten working days of receipt of invoice. The Company may charge Default Interest on overdue amounts.
- 7.3 Payment of Contributions: Subject to anything contained in the Constitution, each Shareholder must, on the first day of July and December in each Financial Year, or such other intervals as the Company determine from time to time, pay one half or such other periodic amount as the Company stipulates from time to time on the Shareholder's Contribution applicable to that Financial Year. Payment must be made by each Shareholder in the manner set out by the Company. The Company may charge Default Interest on overdue amounts.
- 7.4 Statement of Operating Expenses: As soon as practicable but in any event within 5 months of the end of the Financial Year, the Company must provide to each Shareholder an itemised statement of the actual Operating Expenses for the previous Financial Year or any other relevant period, as the case may be.
- 7.5 Interim Payments: If the Company failed to advise a Shareholder of the Shareholder's Contribution for a Financial Year before the date the first payment is due under clause 7.3, the Shareholder must on that date and every other date on which a payment is due under clause 7.3 pay one half of the Shareholder's Contribution applicable to the previous Financial Year. On the Shareholder's Contribution for the Financial Year being advised to that Shareholder, the amount (if any) by which the amounts paid differ from the Shareholder's Contribution shall be debited or credited to that Shareholder's account, and the difference shall be off-set against, or added to, the next payment due.
- 7.6 Emergency Contributions: The Board may from time to time borrow such sums as the Board shall determine from a Bank or such other respectable financial institution in order to undertake emergency works in accordance with the Objects. The Board may levy emergency contributions from Shareholders to cover such costs.
- 7.7 Developer's Contribution: For the avoidance of doubt, the Developer shall pay such Contributions in relation to the Residential Lots of which it is the registered

proprietor and which have not been the subject of an unconditional sale and purchase agreement.

- 7.8 Purpose of Contributions: The Company shall utilise all Contributions levied solely to meet the objects set out at clause 3.1. The Company notes that its intention, for the first five years after its incorporation, is that meeting the costs of the Dune Management Requirements shall be the priority for the Company in spending accumulated funds.
- 7.9 Sale of Residential Lot: Where a Shareholder (“Vendor”) sells a Residential Lot:
- a. Notwithstanding any other clause in the Constitution, the Vendor will remain liable for sums owed to by the Company by that Vendor.
 - b. The Vendor will continue to be liable as primary and principal debtor for all indebtedness for the purchaser of the Residential Lot to the Company until such time as the deed of covenant specified in clause 7.1b is received by the Company.
 - c. The purchaser of the Residential Lot will be liable as a Shareholder for all indebtedness of the Vendor to the Company in respect of the residential Lot purchased and a statement of the Company given pursuant to clause 7.10 will be conclusive as to the sum of this indebtedness.
- 7.10 Company to provide Statement: The Company must, on the application of any Shareholder, or any person authorised in writing by such Shareholder, provide the Shareholder or authorised person with a statement of the indebtedness of the Shareholder to the Company calculated to the date specified in the application. The statement must show:
- a. the Shareholder’s contribution for the current Financial Year;
 - b. payments made by the Shareholder on account of the Shareholder’s Contribution in the current Financial Year;
 - c. Payments due from the Shareholder on account of the Shareholder’s Contribution in the current Financial Year, and not paid by the Shareholder;
 - d. Payments due from the Shareholder on account of any payments made or required to be made by the Company to remedy any breach by the Shareholder of the, Encumbrance, the Constitution or the Rules; and
 - e. Accumulated unpaid default interest.
- 7.11 Covenants and Rules: Each Shareholder agrees to promptly and fully comply with the Constitution and any Rules made by the Company from time to time, and any covenants given in favour of the Company by such Shareholder (whether by separate deed of covenant or as noted against each Title).

8. Encumbrance

- 8.1 Encumbrance: The Encumbrance must be noted against each title to each Residential Lot in favour of the Company. The Company must not, except by Special Resolution, agree to the alteration of the terms of the Encumbrance as first registered against each title.

9. Breach of Obligations

- 9.1 Occupiers and Invitees: A reference to an act or omission by any Shareholder, in the Constitution, or the Rules will include any act or omission by any mortgagee in possession of that Shareholder's Residential Lot, the agents, contractors, employees and Invitees of the Shareholder, the Occupier and/or the mortgagee in possession of that Shareholder's Residential Lot.
- 9.2 Consequences: Upon any breach of the Constitution or the Rules by a Shareholder ("Offending Shareholder"):
- a. Where damage has been caused to the Common Facilities, the Offending Shareholder must make good such damage.
 - b. If such default continues for seven days after notice is given by the Company to the Offending Shareholder to remedy the default, the Company may do anything, including paying money, necessary to remedy the default.
 - c. All money paid and expenses incurred by the Company (including any legal costs of the Company on a solicitor/client basis) in remedying, or attempting to remedy, any breach by an Offending Shareholder of the Constitution or the Rules, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Company in respect of such breach, will be a debt due from the Offending Shareholder to the Company.
 - d. If any money payable by an Offending Shareholder to the Company (including but not limited to a Shareholder's Contribution) 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 will be payable on demand and shall bear interest at the Default Interest Rate, computed on a daily basis from the due date until the date of payment in full.

10. Rules

- 10.1 Rules: The Company may promulgate any Rules for the Common Facilities or the Development (including any restrictions on use for security, maintenance or other reasons) as it sees fit, provided that such Rules are in accordance with the Objects. Any such rules shall be binding on Owners, Occupiers and Invitees and the Company may enforce the Rules by taking such action as the Company considers appropriate. Any rules promulgated by the Developer shall be deemed to be adopted by the Company at the end of the Developer Enforcement Period unless Shareholders agree otherwise by Special Resolution.

11. General Meetings

- 11.1 Annual General Meeting: In addition to any other meetings in that year, the Company 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 Board will determine the time and place of each year's annual general meeting.
- 11.2 Special General Meeting: A general meeting other than an annual general meeting may be requested by the Board, or by written requests signed by not less than

20% of current Shareholders. The Board must call a special general meeting within 15 Business Days of receiving an effective request.

- 11.3 Resolution in Lieu of Meeting: Notwithstanding any contrary provision in the Constitution, a resolution in writing signed by 75% of the Shareholders entitled to vote in person or by proxy at general meetings, will be as valid and effectual as if it had been passed at a general meeting of the Company duly convened and constituted.
- 11.4 Quorum: No business may be transacted at any general meeting of the Company unless the quorum is present when a meeting proceeds to business. The quorum shall be the Shareholders present in person or in proxy who are able between them to exercise 50% of the total votes that could be cast if all Shareholders were present together with the Developer (if before the end of the Developer Enforcement Period).
- 11.5 Notice of General Meeting: A notice of general meeting of the Company must be sent to every Shareholder 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 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.
- 11.6 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 shareholder, will not invalidate the holding of the meeting or the proceedings at any such meeting.
- 11.7 The Chairperson: The chairperson at any meeting must be:
 - a. the chairperson of the Company; or
 - b. if the chairperson is not present or is unwilling to take the chair, then the Shareholders who are present may choose one of their number to chair the meeting, with such appointment to be determined by a majority of Shareholders present in person or by proxy.
- 11.8 Adjournment: If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened at the request of Shareholders, 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 Board 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 Shareholders present together with the Developer (if before the end of the Developer Enforcement Period) will constitute a quorum.
- 11.9 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. Shareholders will not be entitled to receive any notice in respect of adjourned meetings.

12. **Voting**

- 12.1 Voting: Subject to clause 6.2, each Shareholder present at a general meeting of the Company (not at that time being in breach of the Constitution, the Encumbrance or the Rules and not owing any money to the Company, whether Contribution or otherwise, due and unpaid), will be entitled to one vote for every Residential Lot owned in accordance with the provisions of the Constitution. On the death of any Shareholder, and pending the transfer of the Shareholder's Residential Lot, the executor of that Shareholder's estate will be entitled to exercise that Shareholder's vote.
- 12.2 Proxies: A proxy shall not be valid unless it is received by the Company within a time before the start of the meeting specified by the Board such specified time not to exceed 48 hours before the start of the meeting.
- a. A proxy may be appointed generally or for a specified period or specified meeting. An instrument appointing a proxy shall be in the form set out in Appendix C with a proxy named either by name or by reference to an office which he may hold.
 - b. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 12.3 Voting at Meetings: At any general meeting:
- a. resolutions must be passed by Special Resolution or, if the Constitution requires, by Unanimous Resolution; and
 - b. the chairperson shall not have a casting vote.
- 12.4 Good Faith: Shareholders must, in exercising any vote at any general meeting, exercise such vote in good faith with a view to ensuring that all Shareholders are treated equally by the Company.

13. **Appointment of Directors**

- 13.1 The first Directors of the Company shall be Kerry Hamilton and Sara Hamilton.
- 13.2 Each Shareholder shall be entitled to appoint one director for each Residential Lot owned provided that, for the avoidance of doubt, if the Developer elects to be a Shareholder pursuant to clause 6.2, the Developer may appoint a Director as if it held one Residential Lot.
- 13.3 Any Director may appoint any person approved by the other Directors and not being a Director, to be an alternate or substitute Director during his absence or inability to act as a Director. Any appointment or revocation shall be by notice in writing to be delivered to the registered office of the Company. The appointee, while he holds office as an alternate Director, shall be entitled to:
- a. receive all notices of meetings of the Directors and all papers, minutes or documents sent to Directors; and
 - b. attend and vote at any meetings of Directors but only in the place of the Director for whom he or she is an alternate. Any appointment may be revoked at any time by the appointer.

13.4 A Director (except for the Developer, if the Developer elects to be a Shareholder pursuant to clause 6.2) must be a Residential Lot Owner and a Shareholder or, if the Residential Lot Owner and Shareholder is a company or a trust be a Shareholder, director, trustee or beneficiary of such company or trust.

13.5 A Director may retire from his office at any time by tendering to the Company a notice in writing of his resignation or by announcing the same at a meeting of the Board of the Company. A resignation by notice as aforesaid shall take effect as from the time of receipt of such notice at the registered office of the Company unless a later date is specified in the notice. A notice of resignation may be given by telegram, facsimile, electronic transfer or other similar means.

14. **Proceedings of Directors**

14.1 Quorum: Until otherwise determined, a majority of Directors shall form a quorum. If a quorum shall not be present at a meeting then the meeting may be adjourned for at least 72 hours and notice of the day, time and place for such adjourned meeting shall be given to all Directors either verbally or in writing at least 48 hours prior to the time of such adjourned meeting.

14.2 Notice of Adjourned Meetings: Every Director in New Zealand shall be given not less than seven days' notice of a meeting either verbally or in writing. A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, power and discretions by or under the Constitution of the Company or the Act for the time being vested in or exercisable by the Directors generally.

14.3 A meeting of Directors may be held by means of audio and visual communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting. If a Director's meeting is held by means of audio or audio and visual communication then:

- a. At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.
- b. A Director may not leave the meeting by disconnecting his or her communication medium unless he or she has previously obtained the express consent of the Chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during that meeting unless he or she has previously obtained the express consent of the Chairperson to leave the meeting.

14.4 The continuing Directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the number fixed by or pursuant to the Constitution of the Company as the minimum number of Directors (being three Directors), the continuing Directors or Director may act for the purposes of increasing the number of Directors to that number or of summoning a meeting of the Company but for no other purposes.

14.5 The Directors may delegate any of their powers as set out in Section 130 of the Act.

- 14.6 All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 14.7 The Board and any committee or delegate under clause 14.5 shall cause minutes to be made in books provided for the purpose of recording:
- a. the names of the Directors present at each meeting of the Directors and of any committee of the Directors.
 - b. all Resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

Any such minutes of any meeting of the Directors or of any committee or of the Company if purporting to be signed by the Chairperson of such meeting or by the Chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.

- 14.8 The board may from time to time and at any time by power of attorney execute in accordance with Section 180(1)(a) of the Act appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for such period and subject to such conditions as they may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 14.9 Notwithstanding any provision of this Constitution to the contrary, all decisions of Directors shall be made by a majority of 75% or more of Directors present, eligible to vote and voting **PROVIDED THAT:**
- a. any Director appointed by a Shareholder who is, at the time of the vote, in breach of the Constitution, the Encumbrance or the Rules, or who owes any money to the Company, whether Contribution or otherwise, due and unpaid, shall not have a vote; and
 - b. any Director appointed by any Shareholder owning more than one Residential Lot shall have one vote for every Residential Lot owned by the Shareholder who appointed that Director.

15 General

- 15.1 Alteration of Constitution: The Constitution and the Rules may not be amended except at a general meeting convened for that purpose, and unless written notice of the proposed amendment has been given to all Shareholders. The Constitution and the Rules may only be amended by Special Resolution.
- 15.2 Power of Attorney: For the purposes of carrying out any act relating to the Company and subject to the prior approval of the Shareholders by Special Resolution, each Shareholder appoints the Company as the attorney of the Shareholder and in the Shareholder's name to sign all transfers, surrenders,

- assignments, deeds, documents, and other instruments as may be necessary to carry out any of the directions or resolutions contained in such Special Resolutions so as to give effect to the same.
- 15.3 Registered Office: The registered office will be situated at a place nominated by the Board.
- 15.4 Liability of Shareholders: Neither the Developer nor any Shareholder will be under any liability in respect of any contract or other obligation made or incurred by the Company.
- 15.5 Company to Indemnify Shareholders: The Company must indemnify the Developer or any Shareholder against any liability properly incurred by such Shareholder in respect of the affairs of the Company, to the extent of property owned by the Company.
- 15.6 No Action in favour of Shareholders: No action in law or otherwise will lie in favour of the Developer or any Shareholder against any other Shareholder, the Board in respect of any act or omission pursuant to the Constitution and these Rules. Nothing in this Rule will prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 15.7 Shareholder to Indemnify Company: Each Shareholder must indemnify and keep indemnified the Company, the Board and Design Control Committee from and against any action, claim, demand, loss damage, cost expense and liability which the Company may suffer or incur, or for which the Company, the Board, and Design Control Committee may become liable in respect of or arising from any breach of the Constitution and these Rules by the Shareholder.
- 15.8 Arbitration: Any difference or dispute which may arise between a Shareholder and the Company concerning the Constitution and these Rules or any act or thing to be done, suffered or omitted under the Constitution and these rules, or concerning the construction of the Constitution and these Rules, shall be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference. Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration shall be a condition precedent to the commencement of any action at law.
- 15.9 Approval: Where in the Constitution and these Rules any reference is made to the approval or consent of the Company of the Developer:
- a. such approval or consent may be given at the sole discretion of the Company, or the developer, as appropriate;
 - b. no approval or consent given on any occasion by either the Company or Developer will serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
 - c. such reference will mean the prior written approval or consent of the Company or the Developer, as appropriate.