

**Schedule 5**  
**Neighbourhood Covenant**

## Covenant Instrument to Note Land Covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

### Covenantor

**FMS CONSTRUCTION LIMITED** a duly incorporated company having its registered office at Porirua and being incorporated under company number 2514292

### Covantee

**FMS CONSTRUCTION LIMITED** a duly incorporated company having its registered office at Porirua and being incorporated under company number 2514292

### Grant of Covenant

**The Covenantor** being the registered owner of the burdened land set out in Schedule A, **grants to the Covantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

### Schedule A

*Continue in additional Annexure Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenant	[ TBC ]	[ TBC ]	[ TBC ]

### Covenant rights and powers (including terms, covenants and conditions)

*Delete phrases in [ ] and insert memorandum number as required;  
continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number \_\_\_\_\_, registered under section 209 of the Land Transfer Act 2017]~~

[Annexure Schedule 1]

## Annexure Schedule

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Continue in additional Annexure Schedule, if required.

### 1 Interpretation

In this instrument unless the context requires otherwise,

“Association” means the Raiha Street Residents’ Association Incorporated;

“Benefited Land” means the Benefited Land(s) set out in Schedule A and being owned by the Covenantee;

“Burdened Land” means the Burdened Land(s) set out in Schedule A and being owned by the Covenantor;

“Covenantee” means the registered owner(s) of any of the Benefited Lands set out in Schedule A at any time and includes any and all successors in title to any of the Benefited Lands set out in Schedule A or any part thereof;

“Covenantor” means the registered owner(s) of any of the Burdened Lands set out in Schedule A at any time and includes any and all successors in title to any of the Burdened Lands set out in Schedule A or any part thereof;

“Developer” means FMS Construction Limited, a registered company incorporated under Company Number 2514292 and having its registered office at Porirua or any other person or entity nominated in writing by FMS Construction Limited;

“Developer’s Landscaping Plan” means the House of Orange Design Limited plan dated 31 July 2020 (Revision C);

“Development” means the multi-lot residential housing development situated at 42 Raiha Street, Porirua;

“Parking Bays” means the designated parking areas located on Lot 100 on Deposited Plan [ ] shown marked [ TBC ] on Deposited Plan [ ].

### 2 Terms of Covenant

- 2.1 The Covenantor for itself and its successors in title to the Burdened Land, which the Covenantor is the registered owner of, covenants and agrees with the Covenantee and its successors in title to the Benefited Land, which the Covenantee is the registered owner of, that the Covenantor will observe and perform the stipulations and restrictions contained below to the intent that each of the stipulations and restrictions shall inure for the benefit of and be appurtenant to the said Benefited Land and every part thereof and to the intent that the said Burdened Land and every part thereof shall be subject to each of the stipulations and restrictions.

### 3 Covenants

The Covenantor hereby covenants that it will at all times hereafter perform and observe all of the covenants, stipulations and restrictions set out below:

#### *Building and Improvements*

- 3.1 The Covenantor hereby covenants in respect of the buildings/improvements being situated and/or undertaken on the Burdened Land that:

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Continue in additional Annexure Schedule, if required.

- (a) Roof colours are to be natural, of low reflectivity (cedar shingles, slate, galvan or other similar steel finish but not including plain galvanised), or dark coloursteel colours (including but not limited to karaka and charcoal).
- (b) All colours are to be natural and inoffensive colours being in the range of whites, creams, browns, tussock, greys or natural greens.
- (c) Joinery shall be in timber, steel or aluminium. Joinery colours (excepting timber) shall match roofing, gutter and spouting colours.
- (d) Any water tanks shall be buried or screened and if screened then the screening is to be coloured as per subclause (b) above.
- (e) The Covenantor will not carry out on any Burdened Land any construction or reconstruction or alteration, addition or refurbishment to any building which results in the exterior appearance and architectural standards of the building not being in keeping with:
  - (i) the exterior appearance and architectural standard of neighbouring dwellinghouses comprised in the Benefited Land(s); and
  - (ii) the original cladding and external paint colours so utilised.
- (f) The Covenantor will not commence construction of any improvements on the Burdened Land prior to obtaining and uplifting a building consent and any other required consents from the relevant local or territorial authority. Any construction shall be carried out in accordance with the relevant consents obtained and in accordance with all applicable building codes and relevant legislation.
- (g) During construction of any improvements on the Burdened Land, the Covenantor will not:
  - (i) Place any building material or waste on the Burdened Land; and
  - (ii) Allow any builders' waste or rubbish to accumulate on the Burdened Land. A refuse skip will be used during any such construction.
- (h) The Covenantor will not erect or permit to be located on the Burdened Land any second-hand or kitset pre-built transportable or relocatable house, caravan, shed or garage for the purpose of permanent or temporary accommodation.

### *Restrictions on Land Use*

3.2 The Covenantor further covenants that the Covenantor shall not:

- (a) Use the Burdened Land for any other use than residential.
- (b) Use the Burdened Land for any purpose which is illegal.
- (c) Erect or construct on the Burdened Land any fencing in addition to the original fencing constructed in accordance with the Developer's Landscaping Plan. For the avoidance of doubt, a like for like replacement (if so required) is permitted in respect of such fencing.
- (d) Make any changes to the landscaping of the Burdened Land that are not in keeping with the Developer's Landscaping Plan. For the avoidance of doubt, a like for like replacement (if so required) is permitted in respect of the landscaping.

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*Continue in additional Annexure Schedule, if required.*

- (e) Allow unrestricted storm water run-off and shall provide for all storm water falling on roofs and buildings to be collected and disposed of.
- (f) Allow any signs on any Burdened Land other than:
  - (i) no more than two real estate signs necessary for the sale of the Burdened Land; and
  - (ii) a sign indicating the number of the Burdened Land and the name of its owner.
- (g) Allow any external lighting to materially affect any neighbouring Benefited Land.
- (h) Allow the exterior painting and other exterior surface materials of any building situated on the Burdened Land to deteriorate and shall maintain the same to a reasonable standard appropriate to a high quality residential neighbourhood and will not allow any buildings or structures on a Burdened Land to become dilapidated or to fall into disrepair or allow any nuisance or disturbance to be caused to any owner or occupier of neighbouring Benefited Land(s).
- (i) Allow any broom, gorse, thistles, other noxious weeds, undergrowth, dried or rank grass to grow or remain on the Burdened Land and maintain the Burdened Land in a clean and tidy condition, clear of long grass and rubbish.
- (j) Allow on the Burdened Land any activity which creates a nuisance, disturbance or damage to any owner or occupier of any neighbouring Benefited Land(s).
- (k) Permit or allow or suffer any rubbish to accumulate upon the Burdened Land, but to keep the Burdened Land in a neat and tidy condition and to deposit all rubbish within the designated areas located within the Development.
- (l) Park in the Parking Bays situated within the Development.
- (m) Bring on to raise, breed or keep any animals, reptiles, poultry or livestock on the Burdened Land except to keep a maximum of two (2) animals limited to two (2) cats or one (1) cat and one (1) dog only and is in keeping with the local or territorial authority's regulations. Animals shall not be allowed to become a nuisance to others adjoining or near the relevant Burdened Land allotment and shall be controlled by the Covenantor so as to prevent them from roaming the said Burdened Land allotment at will. For the avoidance of doubt, the Covenantor shall not raise or keep two (2) dogs on the Burdened Land.

#### 4 Visitor Parking

- 4.1 The Covenantor shall ensure that any visitor park that is used by their guest(s) or invitee(s) within the Parking Bays is not used for a period of time greater than seven (7) consecutive nights, without first obtaining the written consent of the Association, not to be unreasonably withheld or delayed. If, in the Association's opinion, the Covenantor and/or the Covenantor's guest(s) or invitee(s) is in breach of this clause, the Association may arrange for the offending vehicle to be towed at the Covenantor's cost.

#### 5 Future Development

- 5.1 The Covenantor covenants with the Developer that the Covenantor will not oppose, object to, frustrate or take any action or encourage or cause others to oppose, object to, frustrate or take any action that might in any way prevent or hinder the Developer from progressing and completing any development, subdivision and/or zone change, resource consent or approval needed or sought in respect of any land in which the Developer has an interest in.

## Annexure Schedule

Insert type of instrument

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*Continue in additional Annexure Schedule, if required.*

- 5.2 In the event that the Developer makes any consent application which requires or may require the Covenantor's approval under a District Plan the Covenantor will at the request of the Developer provide its unqualified written approval in respect of any such application and no later than five (5) working days from the date that the Developer has made such request.
- 5.3 Notwithstanding clause 5.2 above, in the event that the Covenantor is unwilling or unable to provide its written approval as an affected party, the registration of this land covenant against the Covenantor's record of title shall constitute the Covenantor's written approval for the purposes of section 104(3) of the Resource Management Act 1991 or any other relevant legislation (whether in substitution or otherwise) and the Developer shall be entitled to provide a copy of this land covenant so registered to the local authority as evidence that written approval is given.<sup>1</sup>
- 5.4 In addition to the obligation set out at clause 5.3 above, the Covenantor shall not at any time withdraw its written approval and shall not in any way directly or indirectly object, procure support or encourage any objection from a third party, make any claim or demand, take any action or proceedings to the Developer's consent application.

## 6 Disputes

- 6.1 If a dispute in relation to this instrument arises between the Covenantor and the Covenantee:
- (a) The party initiating the dispute must provide full written particulars of the dispute to the other party; and
  - (b) The parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
  - (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties):
    - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
    - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

## 7 Severability

- 7.1 If any term or obligation provided for in this instrument shall be unenforceable for any reason, including uncertainty, the parties agree that the unenforceable term or obligation is severed from this covenant without affecting the enforceability any of the remaining terms or obligations. In the event of any such severance, the parties shall use their best endeavours to negotiate and agree upon a replacement term or obligation with the intent that, to the greatest extent possible the covenant shall achieve the economic, legal and commercial objectives of the unenforceable term or obligation.

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<sup>1</sup> Refer to the ruling of the Environment Court in the decision of *Loneburn Planning Limited v Queenstown Lakes District Council* [2014] NZEnvC267 which held that registration of a land covenant constituted affected party approval under section 104(3) of the Resource Management Act 1991.

## **Schedule 6**

### **Incorporated Society Constitution and Rules**

The Incorporated Societies Act 1908

# Constitution

of

# Raiha Street Residents' Association Incorporated

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The Incorporated Societies Act 1908

**Constitution**

of

**Raiha Street Residents' Association Incorporated**

**1. Definitions**

1.1 In this Constitution, unless the context otherwise requires:

“**Access Lot(s)**” means Lots [ TBC ] on Deposited Plan [ TBC ].

“**Act**” means the Incorporated Societies Act 1908 or any other legislation enacted in substitution thereof.

“**Annual General Meeting**” means the general meeting held by the Association each year in terms of this Constitution.

“**Association**” means the Raiha Street Residents' Association Incorporated.

“**Bank**” means a bank operating in, and in accordance with, the laws of New Zealand.

“**Committee**” means the Committee pursuant to this Constitution.

“**Constitution**” means this Constitution as amended from time to time.

“**Contributions**” mean all payments due from the Members (or any particular Member) under the Land Covenant, this Constitution and the Rules (including as a result of breach of the Land Covenant, this Constitution or the Rules).

“**Development**” means the multi-lot residential development situated at 42 Raiha Street, Porirua comprising the Freehold Lots, the Access Lot(s), the Rain Garden Lots and such other land or improvements owned or under the control of the Association.

“**Freehold Lots**” means Lots [ TBC ] on Deposited Plan [ TBC ].

“**Land Covenant**” means the land covenant in gross registered against the record of title to the Freehold Lots under instrument number [ TBC ].

“**Member**” means any person who holds a membership of the Association. A Proprietor of a Freehold Lot is automatically a Member pursuant to the Land Covenant and as dealt with in more detail by clause 4 below.

**“Neighbourhood Covenant”** means the land covenant registered under instrument number [ TBC ].

**“Occupier”** means the tenants, licensees, employees, agents, invitees and persons under the control of the Proprietor and, where the context permits, includes the Proprietor.

**“Proprietor”** means the registered owner of a Freehold Lot and, where the context permits, includes Occupiers.

**“Rain Garden Lots”** means Lots [ TBC ] on Deposited Plan [ TBC ].

**“Registrar”** means the person who is the Registrar of Incorporated Societies.

**“Rules”** mean any rules created by the Association including the rules annexed to this Constitution at Schedule 1 as amended from time to time.

**“Special General Meeting”** means any general meeting of the Association that is not an Annual General Meeting.

**“Special Resolution”** means a resolution of the Association passed in a general meeting by a majority of not less than 75% of the Members entitled to vote at that general meeting.

## 2. Interpretation

2.1 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 persons shall include any individual, company, body corporate or incorporated society and other organisations that are a legal person. For organisations that are not a legal person, such as trusts, the trustees shall be treated as the persons. Obligations of persons shall extend to the executors of that person’s estate and any mortgagee in possession of their Freehold Lot;
- (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 it;
- (f) any reference to “month” or “monthly” shall mean, respectively, calendar month or calendar monthly;

- (g) references to sections are references to sections in this Constitution;
- (h) the section headings and clause headings have been inserted for convenience and shall not form part of this Constitution or affect its interpretation in any way; and
- (i) reference to any statutes, regulations or by-laws includes statutes, regulations or by-laws amending, consolidating or replacing the same.

### **3. Objects**

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

- (a) to provide a means whereby Proprietors and Occupiers can use and enjoy the Development;
- (b) to provide for the management and control of the use of the Development by Proprietors and Occupiers;
- (c) to provide for the proper operation, maintenance, repair, and replacement of the Development when required;
- (d) to provide for the enforcement and regulation of the Rules, this Constitution, the Land Covenant, Neighbourhood Covenant and any other interest registered against the record of title to the Freehold Lots;
- (e) to provide for the levying of Members for the purpose of providing funds for the objects of, and meeting the costs and expenses of, the Association;
- (f) to have as its Members all Proprietors of the Freehold Lots and to ensure that all such Proprietors comply with all obligations of Members;
- (g) to undertake any other activity or work relating to the Development, and ancillary to the above objects, as the Association may by Special Resolution resolve; and
- (h) to promote the comfort, health, safety, security and welfare of the Proprietors and Occupiers.

3.2 The financial gain of Members is expressly excluded as an object of the Association. No Member shall be entitled to receive any income or funds of the Association except for reimbursement from the Association for expenses incurred on behalf of the Association at rates and prices not exceeding market rates and on other terms and conditions as would be reasonable for dealings with a third party on an arms length basis.

#### **4. Membership**

- 4.1 Each Proprietor shall be a Member and only Proprietors shall be Members. Each Member shall be bound by the Constitution and pay the Contributions levied by the Association.
- 4.2 A person becomes a Member automatically when their name is registered as an owner of one of the Freehold Lots and ceases to be a Member automatically when their name is removed as a proprietor of one of the Freehold Lots. Where a Member is an owner of more than one Freehold Lot, that Member will have one (1) vote for each Freehold Lot so owned and will pay the Contribution levied for each Freehold Lot.
- 4.3 Membership in the Association may not be severed from the ownership of the Freehold Lots or in any way transferred, pledged, mortgaged or alienated except together with the title to the Freehold Lots.
- 4.4 When a Member is conveying title to a Freehold Lot, that Member shall notify any purchaser of the Freehold Lot of its automatic membership in the Association.
- 4.5 Where there is more than one Proprietor of a Freehold Lot, all Proprietors shall be Members but, for the purpose of voting and receiving notices, the person who shall vote and who shall be issued with notices under the Land Covenant, this Constitution or the Rules or any other interest registered against the Freehold Lot, including the Neighbourhood Covenant, shall be the first person listed on the record of title for the Freehold Lot ("Senior Member").
- 4.6 When a Member is a company or other organisation, it must resolve in the manner with which it makes decisions to appoint a person to act as its representative to be placed on the register of Members, for receiving notices and for acting on behalf of the organisation at general meetings. That person may act at general meetings in every way as if they were a Member of the Association personally.
- 4.7 When a Member is a trust, the trustees shall be treated as if they are each a Member of the Association personally except for any trustee who is acting in a professional capacity. Where a Member of the Association is a professional trustee, the liability of the said trustee shall be limited to the extent of the assets which they hold as trustee.
- 4.8 The rights, privileges and obligations of a Member are not assignable.

## **5. Register of Members**

5.1 The Association shall maintain a register of Members recording:

**For each Member:**

- (a) full name;
- (b) home address;
- (c) telephone number (at home and at work and cell phone);
- (d) email address;
- (e) the same details for a third party to be contacted in the event of absence or emergency;
- (f) the date (and this may be only the year) upon which each Member first became a Member and the date on which any Member by virtue of purchase of any additional Freehold Lot becomes the holder of a further membership; and
- (g) current proof of payment of the insurance policy and the policy details in respect of the improvements on each Member's Freehold Lot.

**For each Occupier:**

- (h) full name;
- (i) home address;
- (j) telephone number (at home and at work and cell phone);
- (k) email address; and
- (l) the same details for a third party to be contacted in the event of absence or emergency.

5.2 The Association may use the register of Members to further any of its objects.

5.3 No notice of any trust shall be entered on the register of Members. Only organisations that constitute a legal person shall be placed on the register of Members (including companies, body corporates and incorporated societies).

## **6. Membership Obligations and Rights**

6.1 Each Member must:

- (a) comply with the terms of this Constitution, the Neighbourhood Covenant, the Land Covenant, the Rules and any other interest registered against their Freehold Lot;
- (b) once they cease to be a Member, remain personally liable for any breaches of this Constitution, the Neighbourhood Covenant, the Land Covenant, the Rules and any other interest registered against the Freehold Lot caused by that Member which occurred while they were a Member;
- (c) pay all Contributions;
- (d) upon payment of the annual payment due from that Member to the Association, provide the Association treasurer with the information set out under clause 5.1;
- (e) update their details that are required to maintain the register of Members as they become out of date; and
- (f) provide the Association with details of any Occupiers of the Member's Freehold Lot (and update those details as they become out of date) as required to maintain the register of Members.

6.2 Each Member acknowledges that their Freehold Lot is subject to the Land Covenant to secure the performance of all obligations of Members.

6.3 Each Member is entitled to:

- (a) use of the Development under the terms in the Neighbourhood Covenant, this Constitution, the Rules and any other interest registered against the Freehold Lot which provides for this; and
- (b) inspect the Association's records.

## **7. Breach of Obligations**

7.1 A reference to an act or omission by any Member shall include any act or omission by:

- (a) any mortgagee in possession of that Member's Freehold Lot; and
- (b) any Occupiers of the Member's Freehold Lot.

7.2 The Association may use any of the powers granted to it under the Land Covenant, this Constitution and the Rules to remedy any failure by any Member to comply with any of their obligations as a Member including late payment of any Contribution.

7.3 No Member will be entitled to vote unless all Contributions are paid in full at the time of the vote in question.

7.4 The default interest rate for late payment of any Contributions shall be set by the Association from time to time.

## **8. Occupiers**

8.1 Each Member must take all reasonable steps to ensure that any Occupier acts in compliance with the Land Covenant, the Neighbourhood Covenant, this Constitution, the Rules and any other interest registered against the Freehold Lot.

8.2 Every lease, tenancy, licence or other document or informal agreement providing occupancy rights of a Freehold Lot must contain an obligation not to do anything which is in breach of the Land Covenant, the Neighbourhood Covenant, this Constitution, the Rules or any other interest registered against the Freehold Lot.

## **9. Association Powers and Obligations**

9.1 The Association has the powers and obligations set out in the Rules and in the Land Covenant.

9.2 The Association may make Rules covering all aspects of its functions and all matters concerning the Development.

9.3 All documents including correspondence and written announcements requiring execution on behalf of the Association must be signed by the chairman or secretary.

## **10. Bank Accounts**

10.1 The Association shall hold all funds with a Bank and shall not invest those funds other than by deposit with a Bank, except by Special Resolution.

10.2 The Association shall establish any necessary bank accounts and any drawings on those accounts must require two signatures of the chairman, secretary or treasurer or, if there is an administrator, of the administrator.

## **11. Contributions**

11.1 The Association shall arrange Contributions in accordance with the Rules and the Land Covenant.

11.2 After expiration of each financial year, the Association shall provide a report to the Members as to expenses actually incurred and carry forward the debit for payment shortfall or credit for surplus to the next levy.

11.3 The Association may discount a payment amount due from Members as an incentive for Members to pay it by a certain time.

## **12. Committee**

12.1 The Committee may exercise all the powers, authority and discretions of the Association as permitted by this Constitution subject to any limitations that the Association places on the Committee.

12.2 The Committee may delegate any of its powers to sub-committees consisting of such member or members of the Committee as they think fit or to any administrator. Any sub-committee or administrator must comply with the directions of the Committee in the exercise of its delegated powers.

12.3 The Committee shall be elected by the Association at every Annual General Meeting. The number of Committee members shall also be decided by the Association at every Annual General Meeting before the Committee Members are elected.

12.4 A Committee member shall hold elected position until the earliest of:

- (a) the next Annual General Meeting following election (when the Committee member shall be eligible for re-election);
- (b) the date written resignation from such position is received by the Association;
- (c) the date of removal from such position by the Association in general meeting;
- (d) the date of cessation of membership; or
- (e) death, adjudication of insolvency, being certified as mentally incapable under the Protection of Personal and Property Rights Act 1988 or becoming a patient under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

12.5 In the event of casual vacancy in any position on the Committee for any reason, the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Association in general meeting.

12.6 The Committee shall comprise the following persons:

- (a) a chairman;

- (b) a treasurer;
- (c) a secretary
- (d) in lieu of clause 12.6(b) and 12.6(c), a treasurer/secretary;
- (e) a minimum of three and a maximum of seven general Committee members (the actual number to be determined by the Association before the election at the Annual General Meeting).

12.7 Office holders shall be elected by the members of the Committee and shall hold that office until:

- (a) they cease to be a Committee member in accordance with this Constitution;
- (b) they resign as an office holder by notice in writing to the Association; or
- (c) the other members of the Committee elect a replacement for that office as above.

12.8 The Committee member holding office as secretary shall:

- (a) convene general meetings and Committee meetings when requested to do so in accordance with this Constitution;
- (b) attend all general meetings and all meetings of the Committee;
- (c) give all notices required to be given by this Constitution, the Land Covenant, the Neighbourhood Covenant, the Rules or any other interest registered against the Freehold Lots or as directed by the Association or the Committee.
- (d) keep minutes at all general meetings and Committee meetings and enter into the minute book (the minute book may be in electronic form);
  - (i) the time, date and venue of such meeting; and
  - (ii) all business considered and resolutions passed at each meeting; and
  - (iii) hold the common seal of the Association in safe custody.

12.9 The Committee member holding office as treasurer shall:

- (a) receive, and issue receipts for, all Contributions and any other moneys paid to the Association;

- (b) operate and maintain the bank accounts in the name of the Association;
- (c) pay all accounts properly incurred by or on behalf of the Association;
- (d) report immediately to the Association any Member who fails to pay Contributions within the prescribed period;
- (e) keep all financial records and any security documents in safe custody;
- (f) compile all accounting records 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
- (g) compile the financial statements immediately following each financial year as required by the Act and this Constitution and provide for the reviewing of those records and the distribution of the reviewed financial statements to Members.

### **13. Committee Meetings**

- 13.1 The secretary shall, upon the request of the chairman or any three Committee members, convene a meeting of the Committee including, where appropriate, in the manner outlined at clause 14.5.
- 13.2 A quorum for any Committee meeting shall be the majority of the members of the Committee at that time. No business of the Committee shall be conducted unless a quorum is present (however, presence can include being present by phone or electronic means or by written resolution (as below) at the discretion of the Committee).
- 13.3 Each member of the Committee shall have one vote and resolutions of the Committee shall be passed by a majority of votes.
- 13.4 In the case of a tie in votes, the chairman may exercise a casting vote.
- 13.5 A resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid as if it had passed at a meeting of the Committee meeting as above.
- 13.6 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, shall be as valid as if every such person had been duly appointed or had duly continued in office as a Committee member.
- 13.7 The Committee shall obtain a common seal for the use of the Association:

- (a) The common seal shall not be used except by resolution of the Committee; and
- (b) Every instrument to which the common seal is affixed shall be witnessed by any three members of the Committee, one of whom shall be the chairman, the secretary or the treasurer.

13.8 Other than the above, the Committee may regulate its meeting procedures and the conducting of its business as it sees fit.

#### **14. General Meetings**

14.1 In addition to any other meetings in a year, the Association shall hold an Annual General Meeting each year.

14.2 Not more than 18 months shall elapse between the date of one Annual General Meeting and the next. The Committee will determine the time and place of each year's Annual General Meeting.

14.3 The agenda items to be addressed at the Annual General Meeting shall include:

- (a) Chairman's report;
- (b) Election of the Committee members;
- (c) Approval of the Association's financial statements;
- (d) An update on any maintenance completed to the Development;
- (e) Levies to be raised to complete maintenance to the Development; and
- (f) Any other general business items.

14.4 Any meeting other than an Annual General Meeting shall be a special general meeting ("Special General Meeting"). A Special General Meeting may be called by:

- (a) the Committee; or
- (b) by a request in writing signed by not less than five Members (in which case the chairman must call a Special General Meeting within 21 days of receiving the above request or earlier, at the discretion of the Chairman, if an emergency meeting is required).

14.5 When an emergency exists in New Zealand or at any other time deemed appropriate by the Committee the Association may hold an Annual General Meeting or Special General Meeting by way of teleconference or by audio-visual link. All other provisions contained within this Constitution that relate to holding

an Annual General Meeting or Special General Meeting and voting therein shall continue to apply mutatis mutandis to any meeting held in accordance with this clause.

## **15. Quorum**

15.1 No business of any general meeting shall be conducted unless a quorum is present. A quorum is 25% of the Members eligible to vote at general meetings present in person or by proxy (however, presence can include being present by phone or electronic means or by written resolution (as below) at the discretion of the Association).

15.2 If a quorum is not present within half an hour from the time appointed for the holding of a general meeting:

- (a) the meeting shall be dissolved;
- (b) the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Committee shall determine (that date must not be later than 14 days from the date of the adjourned meeting) ("Adjourned Meeting");
- (c) if at the Adjourned Meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum; and
- (d) no business, other than that business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any Adjourned Meeting.

## **16. Resolutions**

16.1 Making resolutions in a general meeting or in writing is the way the Association exercises all powers, authorities and discretions of the Association.

16.2 A resolution that is not a Special Resolution shall be passed by a majority of not less than 50% of the Members entitled to vote at that general meeting.

16.3 A Special Resolution shall be passed by a majority of not less than 75% of the Members entitled to vote at that general meeting.

16.4 However, a resolution in writing signed by 75% of the Members entitled to vote at a general meeting shall be as valid as if it had passed at a general meeting.

## **17. Notice**

17.1 Notice of a general meeting must be sent to all Members by the secretary at the email address they have provided for the register of Members not less than

15 working days before that date of that general meeting. The notice must specify the date, time and venue of the general meeting.

17.2 For both an Annual General Meeting or a Special General Meeting, the business and notices of motions to be considered at the meeting is required to be set out in the said notice. In the case of a Special General Meeting only, no business or notice of motion which was not specified in the notice for that Special General Meeting shall be considered at that meeting.

17.3 Accidental omission to give the above notice, or the non-receipt of such notice by any Member, shall not invalidate the proceedings at any general meeting.

## **18. Chairman**

18.1 The chairman at any general meeting shall be:

- (a) the chairman of the Association;
- (b) if the chairman 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 for any reason no chairman is selected by the Committee, any Member appointed by a majority of Members or by proxy shall be the chairman.

## **19. Voting**

19.1 Votes may be made by proxy or by postal vote. The proxy appointment form and the postal voting form are at Schedules 2 and 3 of this Constitution.

19.2 At any general meeting:

- (a) a resolution may be put to the vote by the chairman or by any Member present at the meeting and entitled to vote;
- (b) resolutions put to the vote shall be decided on voices or a show of hands or, in the case of a postal vote, by the number of voting forms so received:
- (c) in the case of a resolution put to the vote of the meeting by voices or a show of hands, or by the number of postal voting forms so returned, a declaration by the chairman or an entry to in the Association's minute book, shall be conclusive evidence of the outcome of the vote, without further proof of the number or proportion of votes recorded in favour of or against that resolution;

- (d) resolutions shall be passed in accordance with clauses 16.2 to 16.4 of this Constitution except where a Special Resolution or the unanimous resolution of all Members is required by this Constitution; and
- (e) in the case of a tie in votes, the chairman may exercise a casting vote.

## **20. Minutes of both Committee and Association**

- 20.1 The Committee shall keep minutes of the proceedings of all meetings of the Association and of the Committee (and these minutes may be kept in electronic form).
- 20.2 These minutes, once circulated amongst and accepted by the Committee Members, shall be recorded as a correct and accurate account of the business transacted at the meetings without any further proof of the facts contained in the minutes.

## **21. Dissolution**

- 21.1 The Association may be wound up in accordance with section 24 of the Act.
- 21.2 Any moneys held by the Association after payment of expenses of winding up and provision for liabilities shall be donated for some public community benefit proposed by the Committee and approved by Special Resolution of the Association.

## **22. Alteration of Constitution**

- 22.1 This Constitution or the Rules shall not be amended, added to or rescinded except at an Annual General Meeting or a Special General Meeting convened for that purpose and unless written notice of the proposed amendment, addition or rescission shall have been given to all Members in accordance with this Constitution.
- 22.2 No clause of this Constitution, including this one, or any provision set out in the Rules, shall be altered or removed except by Special Resolution.

## **23. Notices**

- 23.1 All notices in this Constitution must be in writing and will be properly served if delivered personally to a meeting of the Association or emailed or posted to an address specified by the Association to the Members for this purpose.
- 23.2 If a notice is served on a person, it will be properly served if given to the person in person, if posted to their residential address on the register of Members or emailed to their email address on the register of Members.

**24. Indemnity and Liability**

- 24.1 To the fullest extent possible under the law, no Member or Committee member shall be liable for any act done by the Committee or the Association.
- 24.2 Liability is also excluded throughout the Rules.
- 24.3 The Association shall indemnify each member of the Committee in terms of the Rules except where any cost, loss, damage, expense, liability, claim or cause of action incurred by the Association so arises due to that Committee member's gross negligence, wilful misconduct or fraudulent behaviour.
- 24.4 No action in law or otherwise shall lie in favour of any Member against the Committee, any Committee member or any officer of the Committee in respect of any act or omission by them in the conduct or purported conduct of their rights or obligations or their alleged or actual breach of any duty under this Constitution or the Rules. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.

**25. Mediation**

- 25.1 If any dispute or difference shall arise between any Member and the Association, the parties shall use their best endeavours to resolve the dispute or difference in the spirit of co-operation and goodwill.
- 25.2 If the parties are unable to resolve the matter themselves, they will participate in mediation with a mutually acceptable third party appointed, if necessary, by the president of the New Zealand Law Society.
- 25.3 If the mediation above is not successful, the matter may be dealt with in terms of the Rules.