

View Instrument Details



Instrument No 11172210.6
Status Registered
Date & Time Lodged 29 August 2018 14:37
Lodged By Watson, Marcia Anne
Instrument Type Easement Instrument



Affected Computer Registers	Land District
755086	South Auckland
755087	South Auckland
755088	South Auckland
755089	South Auckland
755090	South Auckland
755091	South Auckland
755092	South Auckland
755093	South Auckland
755094	South Auckland
755095	South Auckland
755096	South Auckland
755097	South Auckland
755098	South Auckland
755099	South Auckland
755100	South Auckland
755101	South Auckland
755102	South Auckland
755103	South Auckland
755104	South Auckland
755105	South Auckland
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755107	South Auckland
755108	South Auckland
755109	South Auckland
755110	South Auckland
755111	South Auckland
755112	South Auckland
755113	South Auckland
755114	South Auckland
755115	South Auckland
755116	South Auckland
755117	South Auckland
755118	South Auckland
755119	South Auckland
755120	South Auckland

Annexure Schedule: Contains 36 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument



Grantor Certifications

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

I certify that the Mortgagee under Mortgage 8548080.3 has consented to this transaction and I hold that consent ☒

Signature

Signed by Nicholas James Wilson as Grantor Representative on 28/08/2018 03:34 PM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Nicholas James Wilson as Grantee Representative on 28/08/2018 03:34 PM

***** End of Report *****

6

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

FAIRVIEW ESTATE LIMITED

Grantee

FAIRVIEW ESTATE LIMITED

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, or creates 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 (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenant	Lot 100 DP 503200	Lot 100 DP 503200 being parts	Lot 1 DP 503200 Part 755086
		755086	Lot 2 DP 503200 Part 755087
		755087	Lot 3 DP 503200 Part 755088
		755088	Lot 4 DP 503200 Part 755089
		755089	Lot 5 DP 503200 Part 755090
		755090	Lot 6 DP 503200 Part 755091
		755091	Lot 7 DP 503200 Part 755092
		755092	Lot 8 DP 503200 Part 755093
		755093	Lot 9 DP 503200 Part 755094
		755094	
		755095	
		755096	
		755097	
		755098	
		755099	
		755100	

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

Schedule A Continued

Continue in additional Annexure Schedule, if required

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land Covenant	Lot 100 DP 503200	755101	Lot 10 DP 503200 Part 755095
		755102	Lot 11 DP 503200 Part 755096
		755103	Lot 12 DP 503200 Part 755097
		755104	Lot 13 DP 503200 Part 755098
		755105	Lot 14 DP 503200 Part 755099
		755106	Lot 15 DP 503200 Part 755100
		755107	Lot 16 DP 503200 Part 755101
		755108	Lot 17 DP 503200 Part 755102
		755109	Lot 18 DP 503200 Part 755103
		755110	Lot 19 DP 503200 Part 755104
		755111	Lot 20 DP 503200 Part 755105
		755112	Lot 21 DP 503200 Part 755106
		755113	Lot 22 DP 503200 Part 755107
		755114	Lot 23 DP 503200 Part 755108
		755115	Lot 24 DP 503200 Part 755109
		755116	Lot 25 DP 503200 Part 755110
		755117	Lot 26 DP 503200 Part 755111
		755118	Lot 27 DP 503200 Part 755112
		755119	Lot 28 DP 503200 Part 755113
		755120	Lot 29 DP 503200 Part 755114
			Lot 30 DP 503200 Part 755115
			Lot 31 DP 503200 Part 755116
			Lot 32 DP 503200 Part 755117
			Lot 33 DP 503200 Part 755118
			Lot 34 DP 503200 Part 755119
			Lot 35 DP 503200 Part 755120



FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

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

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1962]~~

~~[the provisions set out in Annexure Schedule]~~

Covenant provisions

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

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

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1962]~~

Annexure Schedule 2

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

ANNEXURE SCHEDULE 2

BACKGROUND

- A. The Grantor is registered as proprietor of the estate described in the First Schedule ("Servient Land").
- B. The Grantee is registered as proprietor of the estates described in the Second Schedule ("Dominant Land").
- C. The Grantor has agreed with the Grantee to accept restrictions upon the Servient Land for the benefit of the Dominant Land.

COVENANTS

- 1. The Grantor for itself and its successors in title to the Servient Land hereby covenants and agrees with the Grantee and its successors in title to the Dominant Land, that the Grantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in the Third Schedule to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, enure for the benefit of, and be appurtenant to, the whole of the Dominant Land and every part thereof.
- 2. This Instrument shall be registered against the estate described in the First Schedule by the Grantor forthwith following execution, and the provisions of this Instrument shall run forever in favour of the registered proprietor of the Dominant Land or any part thereof from time to time.

DEFINITION AND INTERPRETATION

1.1 Definitions

- | | |
|--|--|
| "Association" | the body or organisation comprising all of the owners of Lots comprising the Servient Land and the Dominant Land. |
| "Bank Account" | a bank account to be opened, operated and maintained by the Association with a bank registered in New Zealand. |
| "Bulk Flow Water Meter",
"Back Flow Preventer",
"Check Meters",
"Contaminants",
"Detention Ponds",
"Detention Pond
Facilities",
"Entrance Signs",
"Fire Hydrant"
"Lighting Bollards" and
"Street Improvements" | all have the meanings as ascribed to those terms in the Easements. |
| "Covenants" | the covenants and obligations on the part of the Grantor set out in the Third Schedule of this Instrument. |
| "Easements" | those easements registered for the rights of way or other Services that are provided for the Subdivision and are created by instruments dated on or about the date of this Instrument. |

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

"Easement in Gross"	any easement in gross registered or that may be registered against the titles to the Servient Land in favour of any Service Provider on or about the date of this Instrument.
"Facilities"	the easement facilities servicing the Subdivision as are more particularly set out in the Easements or the Easements in Gross and for the avoidance of any doubt includes (without limitation) those Facilities that are in or on the Easements that service the Subdivision both within Lot 100 and Lot 101.
"Fee"	the annual fee or levy made by the Association from time to time to cover the costs of supply of electricity and other costs associated with the repair, maintenance and replacement of any of the Facilities and includes (without limitation) the costs of engaging contractors for the mowing and maintaining of the grass berms within Lot 100 together with the costs of planting, maintaining and replacing any other Street Improvements within Lot 100.
"Fund"	the fund for administration and operation of the Association and maintenance of the Facilities which is the responsibility of the Association and which is to be held in the Bank Account.
"Lot 100"	lot 100 DP 503200 which is the common owned access lot owned in undivided one thirty fifth shares by the owners of the Dominant Land and the Servient Land.
"Lot 101"	Lot 101 DP 503200 and includes any lot or lots later subdivided from lot 101 over or under which the Easements run and are registered.
"Lots"	lots 1 to 35 inclusive on DP 503200.
"Rules"	the rules set out in Fourth Schedule as may be revised from time to time by the Association.
"Services"	<p>those pipes, lines, cable, conduits and any other equipment required to service the same and make them operable laid, placed and installed under or over the surface of Lot 100 or any other land subject to the Easements including (without limitation) the Detention Ponds on areas "FU" and "FV" on DP 503200 on Lot 101, the Bulk Flow Water Meter, Back Flow Preventer and Fire Hydrant on area "EA" on Lot 1 DP 445143 ("Lot 1") or to be laid, placed or installed under or over the surface of Lot 100, the Detention Ponds Lot 101, Lot 1 or any other land subject to the Easements at any future time as follows:</p> <ul style="list-style-type: none"> (a) the water supply pipes which are to be used to convey potable water supply to the Dominant Land once the relevant Service Provider connects the Dominant Land to the reticulated water supply system; and (b) the telecommunications, computer media, fibre optic and broadband transmission lines and conduits which are to be used to convey telecommunications, data transfer, media supply or broadband supply or such similar services to the Dominant Land once the relevant Service Provider connects the Dominant Land to the reticulated communication services system; and (c) the electricity supply lines, cables, conduits and other equipment to be used to convey electricity supplies to the Dominant Land once the relevant Service Provider connects

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

the Dominant Tenements to the reticulated electricity supply system; and

- (d) the pipelines, Detention Ponds and Detention Pond Facilities and other Facilities in respect to the rights to drain water from the Dominant Land as are registered under the Easements; and
- (e) the sewerage and wastewater discharge pipelines and other Facilities in respect to the rights to drain sewage and wastewater from the Dominant Land as registered under the Easements.

"Service Provider" (without limitation) all or any of:

- (a) Western Bay of Plenty District Council the body charged with the provision of water, storm water and waste water services in the region where the Subdivision is situated;
- (b) Powerco Limited and or any other electricity distributor or lines operator licensed under the Electricity Act 1992;
- (c) Chorus New Zealand Limited and any other telecommunications, data impulse and media supply or lines operator licensed under the Telecommunications Act 2001; and
- (d) the Grantor in respect of the rights granted under the Easements.

"Subdivision" the residential lots numbered 1-35 inclusive and Lot 100 on DP 503200.

1.2 Interpretation

Service Provider includes (without limitation) all contractors, employees and agents of the Service Providers and their successors in title and their contractors, employees and agents.

Any reference to an Act is deemed to include reference to any regulations made under the Act, any act passed in substitution for the Act and any regulations made under any new act.

FIRST SCHEDULE (Servient Land)

Certificate of Title
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FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

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**SECOND SCHEDULE
(Dominant Land)**

Certificate of Title
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FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

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THIRD SCHEDULE

The Grantor shall not:

1. Interfere with or permit any other person to interfere with or damage or destroy the Services and the Facilities and shall, if doing anything on Lot 100 or in the Subdivision, ensure that the Services and Facilities are not interfered with or damaged or destroyed in any manner whatsoever.
2. Do anything that will interrupt or interfere with the usual supply of the Services or the operation of the Facilities.
3. Obstruct Lot 100 and impede the ingress and egress of any person or vehicle over Lot 100 to the Dominant Land and in that regard, the Grantor acknowledges that the rights set out in Schedule 4 of the Land Transfer Regulations, Section 298 of the Property Law Act 2007 and Schedule 5 of the Property Law Act 2007 apply to Lot 100 as if those provisions were set out herein at length.
4. Breach or cause a breach of the terms of any Easement in Gross registered in respect of Lot 100 or any part of it.
5. Breach or cause a breach of the terms of any Easement servicing the Subdivision or any part of it.
6. Interfere with or damage the Check Meter installed on their Lot or within Lot 100 adjacent to their Lot.
7. Interfere with the day to day administration of the Association nor interfere with the Association's management of matters relating to the Easements, Facilities and the Services.

The Grantor shall:

8. If carrying out any work on Lot 100 that may inadvertently cause interference with or damage to the Services or the Facilities immediately take all such steps as are necessary to ensure that the Services and Facilities are repaired so that the utilities and or amenities provided through the Services or Facilities may be reinstated.
9. Permit any Service Provider access on and over Lot 100 to carry out any work necessary to maintain, reinstate or replace the Services or Facilities.
10. Treat the Services and the rights associated with them as if they were rights to convey water, drain water, drain sewage, convey electricity and convey telecommunications and computer media in accordance with the rights and powers implied relating to the same in Schedule 4 of the Land Transfer Regulations 2002 and

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

in all respects the Services will be deemed to be the Easement Facility and the Dominant Land and Servient Land will be deemed to be the Grantee and Grantor respectively.

11. Join the Association and remain as a member of the Association at all times while remaining as owner of a Lot comprising the Dominant Land in the Subdivision.
12. Pay the Fee as prescribed by the Association from time to time relating to the provision of the Services and the operation, maintenance, repair and replacement of the Facilities and the administration of the Association, it being acknowledged that as at the date of this Instrument the Fee is set at \$750.00 per Lot per annum.
13. Pay any special levies or special fees as raised by the Association from time to time relating to the provision of the Services and the operation, maintenance, repair and replacement of the Facilities.
14. Comply with any reasonable directions or instructions made by the Association in respect of the use of Lot 100, the Services, the Facilities and or the Easements.
15. Comply with the Rules as if the same were set out in full in this Third Schedule on the basis that the Rules form part of the Covenants.
16. Whether as Grantor or Grantee, comply with the terms and conditions of the Easements.
17. Pay to the Association or to such third party nominated by the Association the charges made for water consumption to their Lot based on the terms of these Covenants and the Rules.
18. Appoint the Association to undertake the day to day administration of matters relating to the Easements and where necessary the Easements in Gross and without limitation allow the Association in priority to the Grantor and Grantee to:
 - (a) instruct contractors and others to maintain the Check Meters, Detention Ponds the Detention Pond Facilities, the Entrance Signs, the Lighting Bollards and the Street Improvements;
 - (b) pay for electricity relating to the Entrance Signs, the Lighting Bollards and the Street Improvements from the Fund on the basis that the costs shall be allocated to each Lot on a one thirty fifth basis;
 - (c) pay for the water usage charged by the Service Provider from the Fund on the basis of the reading of the Bulk Flow Water Meter with recovery for the costs of water supply from the Owner of each Lot on the basis of the reading of the Check Meters and the charge being made to each Lot owner on the basis of the percentage of use recorded on the Check Meter for the Lot against the total consumption charged by the Service Provider as recorded at the Bulk Flow Water meter;
 - (d) act for them in relation to any breach of the terms of the Easements or this Instrument as their duly authorised agent.
19. Without limiting clause 18, pay to the Association such levies or charges as may be required to properly enable the Association to carry out and implement the delegated responsibilities under this Instrument.
20. Appoint the Association to act for them in respect of any breach of the terms of any of the Easements or the Covenants in this Instrument.

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

21. At all times indemnify and keep the Grantee and the registered proprietors of the Dominant Land together with the Association indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any statutory breach by the Grantor in respect of any breach or non-observance by the Grantor of the Covenants.

REMEDY ON BREACH

22. If there should be any breach of any of the Covenants contained in this Instrument and without prejudice to any other liability which the Grantor may have to the Grantee and any person or persons having the benefit of such Covenants the Grantor will upon written demand being made by the Grantee or the Association:
- (a) pay to the person making such demand as liquidated damages the sum of \$1,000.00 (One Thousand Dollars) per day for every day that such breach or non-observance continues after the date upon which written demand has been made; and
 - (b) upon receiving reasonable notice from the Grantee and or the Association do or cause to be done anything necessary to remedy any such breach; and
 - (c) In the event that the Grantor does not comply with paragraph (b) of this clause within a reasonable period of time after demand has been made then the Grantor hereby irrevocably the Grantee, the Association or the registered proprietor making demand together with their employees and agents to enter and remain upon Lot 100 to do anything necessary to remedy any breach at the Grantor's cost and without being liable for any damage or deterioration occasioned to Lot 100 in exercising these powers; and
 - (d) allow the Grantee the right to lodge a caveat against the Servient Land in breach to protect the sum of any unpaid debt owing to the Grantee on the basis that any unpaid debt shall be deemed to constitute a contractual charge over the Servient Land owing to the Grantee until such time that any debt is fully discharged or otherwise satisfied; and
 - (e) all expenses and costs incurred in enforcing the Covenants, shall constitute a debt due that all shall be a charge against the Lot and shall be recoverable as liquidated damages by the Grantee and or the Association acting as agent for the Grantee.

PROVIDED HOWEVER that the Grantee and or the Association shall not be required to or be obliged to enforce all or any of the Covenants stipulations and restrictions contained in this Instrument nor be liable to the Grantor for any breach thereof by any registered proprietor of any other Lot having similar rights.

EXTINGUISHMENT OR MODIFICATION OF COVENANTS

23. Notwithstanding any rule of law or equity to the contrary:
- (a) for the purposes of s42 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s70 of the Land Transfer Act 1952, and s317 of the Property Law Act 2007 ("PLA"), these Covenants and the easements included therein will extinguish and be of no further effect if the Western Bay of Plenty District Council ("Council") takes Lot 100 as legal road by way of transfer, dedication or otherwise ("Road Taking") and takes control and responsibility for the Services as public utilities. A notice from Council confirming completion of the Road Taking and the adoption of the Services as public utilities shall be sufficient for the Registrar General of Land ("RGL") to remove the Covenants from the identifiers for the Dominant Tenements and Servient Tenements

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

("Land") and the Grantor and Grantee agree that the RGL need not make any further enquiry;

- (b) if the Road Taking extinguishes some but not all of the Covenants in this Easement Instrument and if the Council adopts some but not all of the Services as public utilities, then the Grantor and Grantee shall take such steps and do such things as are reasonably required to modify or vary the Covenants under s317 of the PLA and shall register such order or instrument evidencing the modification or variation of the Covenants on the Identifiers to the Land;
- (c) the Grantor and the Grantee will forthwith upon request from the other following receipt of notice from Council as to the Road Taking and the adoption of the Services, execute surrenders of this Easement Instrument and lodge the same with Land Information New Zealand for registration. The Grantee shall, at its cost, obtain the consent of its mortgagee(s) (if any) pursuant to s90E(3) of the Land Transfer Act 1952 to the surrender of this Easement Instrument and shall procure a certificate pursuant to s242(e) of the Resource Management Act 1991 authorising the surrender of this Easement Instrument if so required;
- (d) if so required, the Grantor and Grantee will forthwith upon request from the other do all such things and take all such steps as may be necessary to make and prosecute an application under s316 of the PLA for an order under s317 of the PLA extinguishing or modifying the Covenants created by this Easement Instrument; and
- (e) if the Covenants are extinguished in full on the Road Taking and adoption by Council of the Services then the Association will be wound up and liquidated and funds from the Bank Account distributed in accordance with the Rules.

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

FOURTH SCHEDULE

**RULES OF
THE DRIVE OWNERS ASSOCIATION**

1. Definitions and Interpretation

1.1 In these Rules, except where a contrary intention appears from the context:

"Association" the Drive Owners Association being the body comprising all Owners of Lots within the Subdivision.

"Act" the Incorporated Societies Act 1908 and any act passed in substitution for it.

"Bank Account" a bank account to be opened, operated and maintained by the Association with a bank registered in New Zealand.

"Back Flow Preventer, Bulk Flow Water Meter, Check Meters, Contaminants, Detention Ponds, Detention Pond Facilities, Entrance Signs, Fire Hydrant, Lighting Bollards and Street Improvements" all have the meanings as ascribed to those terms in the Easements or the Covenant Instrument(as the case may be)

"Committee" a committee of the Association comprising:

- a chairperson;
- a secretary (who may also be the treasurer);
- a treasurer;
- up to 3 other committee members.

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

“Control Period”	the earlier of the following dates or events: <ul style="list-style-type: none"> • two years after the date of deposit of DP 503200 at Land Information New Zealand; or • when the Developer has sold and settled 33 of the 35 Lots; or • the date the Developer relinquishes control by notice in writing to the Owners.
“Covenant Instrument”	the instrument of which these Rules form part.
“Default Interest Rate”	12% per annum.
“Developer”	Fairview Estate Limited at Auckland
“Easements”	the rights of way easements and other easements over Lot 100 and Lot 101 and other parts of the land serving the Subdivision as granted by the Grantor to various Members by instruments in their capacities as owners of the Lots, but not including the Easements in Gross.
“Easements in Gross”	the easements in gross granted by the Grantor over Lot 100 and Lot 101 and other parts of the land serving the Subdivision as were registered on or about the same date as the date of registration of the Instrument containing these Rules and which are designed to service the Subdivision.
“Expenses Year”	each 12 month period commencing on 1 July one year and ending on 30 June in the following year, or such other 12 month period as the Association may from time to time decide.
“Facilities”	the easement facilities servicing the Subdivision as are more particularly set out in the Easements or the Easements in Gross and for the avoidance of any doubt includes (without limitation) those Facilities that are in or on the Easements that service the Subdivision both within Lot 100 and Lot 101.
“Grantor”	the various parties named in the Easement Instruments.
“Lot 100”	lot 100 DP 503200 being the common owned access lot serving the Lots.

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

"Lot 101"	lot 101 DP 503200 and includes any lot or lots later subdivided from lot 101 over or under which the Easements pass and are registered.
"Lot" and "Lots"	any lot or lots in the Subdivision that may now or at any time in the future be granted the benefit of one or more of the Easements or be subject to the Covenant Instrument.
"Member"	each person who shall from time to time be a member of the Association pursuant to rule 4.
"Member's Proportion"	in relation to each Member such annual administrative charge levied by the Association acting reasonably together with such charge or charges as the Association may consider appropriate to ensure that the objects of the Association may be fulfilled.
"Operating Expenses"	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 maintenance, upkeep, repair and improvement of Lot 100, the maintenance upkeep and repair of the Easements and the Facilities and the operation of the Association (including, without limitation, the management expenses and management fees of the Association. The total of all Operating Expenses shall be divided by the total number of Lots that have the right to use and enjoy the relevant Facility and the levy payable will be the Lot share of the total Operating Expenses.
"Owner"	the registered owner for the time being of a Lot and where a development has been undertaken on any Lot shall mean the legal entity or the collective group of persons for the time being registered as the proprietors of the fee simple of the Lot on which the development has been undertaken.
"Registered Office"	the office of the Association for the time being.
"Rules"	these rules, as amended or added to from time to time, including all schedules (if any) to these rules.
"Secretary"	the secretary for the time being of the Association appointed in accordance with these Rules. The first Secretary shall be the Developer.
"Services"	has the same meaning as is ascribed in the Covenant Instrument.

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

"Special Resolution"	a resolution of the Association passed with the support of not less than 80% of the Owners.
"Subdivision"	the residential lots numbered 1-35 inclusive on DP 503200 and Lot 100 on DP 503200.
"Working day"	has the same meaning as ascribed to "working day" in Part 1 Section 4 of the Property Law Act 2007.

1.2 In these Rules, unless the context otherwise requires:

- (a) words importing the singular number include the plural and vice versa and words importing the masculine gender also include the feminine gender;
- (b) references to clauses, sub-clauses, paragraphs and schedules are references to clauses, sub-clauses, paragraphs and schedules in these Rules;
- (c) words denoting a person shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, Government, or any statutory body, in each case whether or not having separate legal identities;
- (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) references to any statute, regulation, ordinance or by-law shall be deemed to extend to other statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same;
- (h) references to rules are references to rules in this Rules.

2. Name

- 2.1 The name of the Association is the Drive Owners Association until changed by Special Resolution.

3. Association

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

FAIRVIEW ACCESS LOT COVENANTS (LOT 100)

- (a) The coordinated management for the repairs, maintenance, upkeep and improvement of Lot 100, and without limitation, the roads, kerbing, footpaths and Street Improvements erected or placed thereon;
- (b) The coordinated management for the repairs, maintenance, upkeep and improvement of Services (to the extent that such are not managed and maintained by the Grantors of the Easements or Easements in Gross;
- (c) The full and proper use of Lot 100, the Services and the Facilities by Members;
- (d) The promulgation and enforcement of by-laws and covenants benefiting Members generally relating to the Subdivision;
- (e) To preserve a well maintained, tidy and secure environment in the Subdivision;
- (f) To maintain the Detention Ponds, the Detention Pond Facilities, the Entrance Signs, the Lighting Bollards and Street Improvements serving the Subdivision and to manage and coordinate the provision of electricity to the Entrance Signs and Lighting Bollards and to pay the electricity suppliers for such supplies;
- (g) To maintain the supply of potable water to the Subdivision as part of the Services and to manage the Bulk Water Meter, the Back Flow Preventer, the Fire Hydrant and Check Meters as required by the Easements and the Covenant Instrument where this is not done by the Council, to such extent as the Association may determine (and provided this is permitted by the Council and the terms of the Easements);
- (h) To open, maintain and operate a Bank Account in the name of the Association;
- (i) The levying of Members for the purposes of borrowing funds for, and meeting the costs of, any expenses referred to above;
- (j) To provide for the levying of Owners for the purpose of providing funds for, and meeting the Operating Expenses of the Association;
- (k) To undertake any other activity or work relating access to the Subdivision and or the immediate environment , and ancillary or incidental to the above objectives, as the Association may from time to time resolve by unanimous resolution; and
- (l) To ensure performance by Members of the terms and conditions of the grants of the Easements, and to perform and observe the terms and conditions of the Easements and the Easements in gross as duly authorized agent for the Members.

3.2 The Association must not carry out any other activities.

3.3 The Association does not have, as an object, the pecuniary gain of Members

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and (subject to rule 3.4) no Member shall be entitled to receive any dividend out of any levy, fee, donation, or other income or funds of the Association.

- 3.4 A Member may enter into 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 as if that person were not a Member provided that the arrangements are concluded in accordance with the terms of these Rules.
- 3.5 The Association is unincorporated but may, by Special Resolution resolve to incorporate under the Act, and if it resolves to incorporate it may adopt such rules as the Members by Special Resolution determine as appropriate.

4. Membership

Owners to be Members

- 4.1 One Owner of each Lot shall be a Member and only Owners shall be Members and, for that purpose:
- (a) **Deed of Covenants on Assignment:** each Member shall, prior to settling the sale of a Lot, procure the purchaser to enter, execute and deliver to the Association a deed of covenant in favour of the Association, wherein the purchaser covenants to become, contemporaneously with the transfer of the Lot, and remain, a Member, and to observe and perform the obligations of a Member, as set out in these Rules. The deed of covenant shall be prepared by the solicitors for the Association, and the selling Member shall pay the reasonable legal fees and disbursements of the Association's solicitors;
 - (b) **Deemed Resignation:** a Member shall be deemed to have resigned from the Association immediately that Member is no longer an Owner, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceases to be a Member;
 - (c) **New Owner to Provide Details:** each Owner shall, immediately upon becoming an Owner (and thereafter, as any details change), provide the Association with the details necessary for maintenance of the Register of Members, pursuant to rule 4.2 and shall, upon entry of the details into the Register, become a Member; and
 - (d) **Additional Owners may be Members:** notwithstanding that only one Owner from each Lot is required to be a Member, other Owners of the Lot may, if they so wish, join the Association as a Member. Where additional Owners of a Lot join as Members the provisions of sub-clause (b) above will apply.

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Register of Members

4.2 The Association shall maintain a Register of Members recording:

(a) for each Member:

- name;
- address;
- occupation;
- telephone number; and
- e-mail address.
- at home and at work, and similar details for a third party to be contacted in the event of absence of emergency;

(b) for each Occupier:

- name;
- address;
- occupation;
- telephone number; and
- e-mail address.

at home and at work, and similar details for a third party to be contacted in the event of absence of emergency;

(c) the date upon which each Member became a Member;

(d) where there is more than one Owner of a Lot, only one of such Owners is entitled to vote in accordance with rule 4.5;

Register to be Audited

4.3 The Committee shall ensure that the Register of Members is audited once a year.

Not Assignable

4.4 The rights, privileges and obligations of a Member are not assignable.

More than one Owner

4.5 If there is more than one Owner of a Lot, such Owners shall collectively constitute one Member and voting shall be on the basis of one vote per Lot.

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Owner is Corporate Body or Trust

- 4.6 Where the Owner is a Corporate Body or a Trust the following provisions shall apply:
- (a) in the case of a Corporate Body, the director or directors shall join the Association as a Member; and
 - (b) in the case of a Trust, the trustee or trustees shall join the Association as a Member.

5. Use of the Facilities

- 5.1 Subject to any rules of the Association relating to the use of the Facilities each Member and the Occupier of any Lot shall be entitled to the full benefit of the same in accordance with the terms of the Easements, and or any other instrument or document governing the use and enjoyment of the same.

Not to Interfere with Facilities

- 5.2 No Member or Occupier of a Lot shall be entitled to interfere with any part of the Facilities, except with the written permission and written direction of the Association and or the Grantor which may not be unreasonably withheld or delayed.

6. Obligations of Members

Levies

- 6.1 Prior to, or as soon as practicable, after the commencement of each Expense Year, the Association shall, by written notice, advise each Member of the Association an estimate ("Estimate") of each Member's Proportion of Operating Expenses for that Expense Year, plus such contingency sum as the Association may, in its sole discretion, acting reasonably and responsibly fix. All levies, fees or charges payable to the Association shall be determined only by a resolution of the Members passed in accordance with these Rules and for the avoidance of doubt levies are attributable on a "per Lot" basis and not on a per "Member basis".

Payment of Levies

- 6.2 Each Member shall, on the 15th day of March and September in each Expense Year, or such other intervals as the Association shall reasonably determine from time to time, pay one-half, or such other periodic amount as the Association shall stipulate from time to time, of the Estimate applicable to that Expense Year. Payment shall be made by each Member in the manner set out by this Rules.

Statement of Operating Expenses

- 6.3 As soon as practicable after the end of each Expense Year, the Association shall provide to each Member an itemized statement of the actual Operating Expenses for the previous Expense Year. If the Member's Proportion of actual Operating Expenses for the previous Expense Year is greater than the total of the monthly payments made by the Member pursuant to rule 6.2, the

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Member shall forthwith pay to the Association the difference. If the Member's Proportion of actual Operating Expenses for the previous Expense Year is less than the total of the monthly payments made by the Member, the Association shall credit the difference to the Association's Estimate of the then current Expense Year. The Association may vary the proportion of any of the Operating Expenses payable to ensure that each Member pays a fair proportion of that Operating Expense based on usage (if applicable), particularly (but without limitation) the use of water and the payment thereof will be determined by Check Meters and charged to each Owner accordingly.

Failure of Association to Advise Estimate

- 6.4 If the Association fails to advise a Member of the Estimate for an Expense Year before the date that the first payment is due under rule 6.2, the Member shall, on that date, and every other date on which a payment is due under rule 6.2, pay the Member's Proportion of the Estimate for the previous Expense Year. Upon the estimate for the current Expense Year being advised to that Member:
- (a) Rule 6.2 shall apply thereafter;
 - (b) If the aggregate of a Member's payments made under this rule during the Expense Year exceeds the aggregate of payments which should have been made under rule 6.2, the Association shall credit the difference to the Estimate;
 - (c) If the aggregate of a Member's payments made under this rule during the Expense Year is less than the aggregate of payments which should have been made under rule 6.2, the Member shall immediately pay the difference to the Association.

Special Levies

- 6.5 The Association may from time to time fix:
- (a) an additional levy to be paid by each Member, at the same time and in the same proportions as the money payable under rule 6.2 of the Estimate for that Member, to be set aside and used as a sinking fund to meet the costs of any capital improvements that may be incurred in respect of the Facilities or in respect of the provision of improved Facilities;
 - (b) such special levies, payable by each Member at such times as set out by the Association, as the Association considers are necessary for it to meet its obligations under these Rules,

provided that any levy payable by a Member under this rule shall be equal to that Member's Proportion of the total estimated costs to be provided for and met from the proceeds of the levies paid by all Members.

Association to Provide Statements

- 6.6 The Association shall, on the application by a 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

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Association, calculated to the date specified in the application. This statement shall be:

- (a) the Association's estimate of such Member's Proportion of all Operating Expenses for the current Expense Year;
- (b) payments made by the Member on account of Operating Expenses in the current Expense Year;
- (c) payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
- (d) any accumulated unpaid default interest.

In addition, the Association must provide to a prospective purchaser of a Lot, within seven Working days of receiving a request, a copy of the most recent financial statements of the Association.

The Association shall be entitled to charge a reasonable fee to any Member requesting such a statement.

Covenants and By-laws

- 6.7 (a) Each Member agrees to promptly and fully comply with any by-laws 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 the title to any Lot). In the event of there being any conflict between the provisions of these Rules (including the relevant by-law) and the provisions of any Covenant registered against the title to any Lot, the provisions of these Rules (including any relevant by-law) shall prevail and be given priority over the provisions of any such Covenant.
- (b) Without limitation to the provision of clause 6.7 (a), the Association shall from time to time promulgate by-laws relating the use and management of the Facilities and the Services, provided that no such by-law shall conflict with the terms of the Easements.

Access

- 6.8 Every Member shall allow the Association, the Association's contractors and their respective employees and agents access to the Member's Lot (where such entry is necessary) at all reasonable times and on reasonable notice (other than in the course of an emergency, where notice shall not be required) to enable work to be carried out on the Facilities.

Application of Funds

- 6.9 All moneys paid to the Association by the Members must be applied only for one or more of the activities referred to in clauses 3.1 and 8.3.

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Audited or Reviewed Statements

- 6.10 Unless resolved otherwise by Special Resolution, the financial statements of the Association complying with the Financial Reporting Act 1993 must be audited or reviewed annually and distributed to Members as soon as reasonably practicable after each audit or review is completed and, in any event, no later than five months after the balance date of the Association.
- 6.11 Notwithstanding rule 6.10, No Audit or Review will be required prior to the end of the Control Period.

7. Breach of Obligations

Occupiers and Invitees

- 7.1 A reference to an act or omission by any Member shall include any act or omission by any mortgagee in possession of that Member's Lot, or the Occupier of a Lot, the invitees of such Occupier, and the invitees of such Member or any mortgagee in possession of the Lot.
- 7.2 A Member must advise the Association of such details of the Occupiers of the Member's Lot as are requested by the Association, and if required by the Association, shall procure such Occupiers, before they enter into occupation of the Lot, to enter into a deed of covenant with the Association (in a form acceptable to the Association) covenanting not to do anything or omit to do anything which could constitute a breach of these Rules.
- 7.3 Each Member must take all reasonable steps (including enforcing the terms of any lease) to ensure Occupiers comply with these Rules. In any case of persistent default by an Occupier of these Rules, the Owner shall, on demand by the Association, terminate the Occupier's right to occupy the Lot.
- 7.4 A copy of these Rules must be attached to every lease, licence or other document defining occupancy rights for any Lot.

Consequences of Breach

- 7.5 Upon any breach of these Rules by a Member ("Offending Member"):
- (a) where damage has been caused to the Facilities, any Member must make good such damage;
 - (b) if such default continues for seven Working 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 Rules, 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 shall be a debt due from the

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Offending Member to the Association; and

- (d) if any money payable by an Offending Member to the Association is in arrears or unpaid within seven Working days (whether or not formal demand for payment has been made, and without any formal demand being necessary), such money shall 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.

8. Powers

General Powers

- 8.1 The Association shall have such powers as are reasonably necessary to enable it to undertake the duties set out in these Rules. Further duties and responsibilities may from time to time be given to the Association by Special Resolution of the Members passed at a special general meeting called for the purpose.

Specific Powers

- 8.2 Without limiting the generality of clause 8.1, the Association shall have the following specific powers, to:
- (a) establish and maintain a fund to meet all the costs of the Association properly incurred by the Association in respect of the Facilities, the Easements, the Easements in Gross and in particular in respect of:
- the provision of security, lighting and road signs in relation to the above and other signage in relation to the Facilities and Easements and without limitation, the Entrance Signs and Lighting Bollards;
 - the maintenance of Lot 100 including but not limited to the roadway, kerbing, footpaths and the Street Improvements (provided the Council permits any such works in relation to the same);
 - any redevelopment of or improvement to any planted or landscaped areas on Lot 100 this is permitted by Council and the Association has elected to do so;
 - the maintenance, repair and improvement of the Detention Ponds and the Detention Pond Facilities;
 - the maintenance, repair and improvement of the Bulk Flow Water Meter, the Back Flow Preventer, the Fire Hydrant and the Check Meters;
 - the management and control of responses to the deposit of any Contaminants in to the Detention Ponds or the pipelines running to them;
 - any reasonable incidental management and administration costs; and

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- the maintenance, repair, replacement, and operation of the Facilities;
- (b) determine the amounts required by the Association for the aforesaid purposes;
- (c) raise amounts so determined by levying the Owners from time to time on the basis of a fair and just proportion of the same (and where appropriate such fair and just proportion shall be the Member's Proportion) provided however there will need to be very special circumstances to depart from the basis of apportioning the Operating Expenses as is set out in these Rules;
- (d) enter onto the Lots to read the Check Meters and to invoice the Owners for water consumed for each Lot on the basis of the reading of the Check Meters;
- (e) recover as a debt due to the Association in any court of competent jurisdiction any contribution levied by the Association in accordance with the provisions of these Rules and or any charges for water invoiced on the basis of the Check meters as and when it becomes payable by an Owner in terms of the relevant determination;
- (f) promulgate, amend and distribute to Members from time to time, by-laws for the use of the Facilities and Services (including any restrictions on use for security, maintenance or other reasons), by-laws concerning the behaviour of Owners, Occupiers and invitees, and by-laws covering the use of the Lots. The first such by-laws shall be those by-laws attached as Schedule 1 to these Rules;
- (g) ensure the proper operation, maintenance, repair, renovation or replacement of the Facilities, and shall undertake such capital improvements as are necessary for this purpose in accordance with any applicable resource consent and with the resource consent process;
- (h) effect and maintain all insurances as it considers prudent with respect to the Facilities and the Association's affairs, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances, and the cost of certificates relating to such insurances);
- (i) serve notice on an Owner specifying any default by that Owner in complying with its duties and obligations under this Rules;
- (j) where the Owner fails for a period of 15 Working days to comply with any notice to remedy the default, then the power any time thereafter without notice to remedy that default and to recover all moneys spent and costs and expenses incurred by the Association (including legal costs and expenses) in so doing;
- (k) charge any Owner in breach of the Rules, in addition to all or any other remedial actions, as liquidated damages, the sum of \$1,000.00 for each week (pro-rated on a daily basis) that the breach subsists

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after demand has been made and written notice has been given of the requirement to pay liquidated damages;

- (l) charge interest on any moneys which are owing by an Owner to the Association on any account whatsoever if the same remain unpaid for 15 Working days after the due date for payment at the Default Interest Rate. This power may be exercised by the Association without prejudice to any other rights, powers or remedies which it may have;
- (m) enter into an agreement with the Grantor and or the Developer or such other party as the Association may determine from time to time for the provision of any services or the undertaking of any of the duties of the Association from time to time at such remuneration and upon such terms as the Association may from time to time determine having regard to the reasonable costs and expenses of providing such services or undertaking the relevant duties of the Association to the intent that the remuneration and terms shall be set in accordance with normal commercial practice;
- (n) borrow money to enable it to perform its duties and responsibilities from time to time;
- (o) invest any money from time to time held by it in any of the modes of investment for the time being authorised by law for the investment of trust funds;
- (p) open a current account at a Bank and establish its own procedure for the operation of such account;
- (q) provide and maintain such signage at the entrance and other prominent positions within the Land as the Association deems necessary;
- (r) take such steps as the Association reasonably deems necessary to enforce these Rules against the Owners;
- (s) undertake any activity or do anything in furtherance of its objects.

Duties of the Association

8.3 Subject to rule 8.9, the Association will use its reasonable endeavours to:

- (a) control, manage and administer the Easements and the Easements in Gross and do all things reasonably necessary for the enforcement of the provisions of these Rules, the Covenant Instrument and the advancement of the objects of the Association;
- (b) provide, maintain, co-ordinate and monitor such security services, lighting and signage as the Association deems appropriate for the Easements, Lot 100 and where appropriate Lot 101 provided that the Grantor first provides consent in respect of any matter in Lot 101;
- (c) keep a record of this Rules at the registered office of the Association and supply to any Owner upon request a copy of this Rules;

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Not to carry out other Activities

- 8.4 The Association must not carry on any other activities.

Limitations of the Association

- 8.5 The Association shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Association's obligations under these Rules, except by Special Resolution. However, the Association is entitled to borrow any money required to cover the failure of any Member to pay a levy payable by that Member. Such borrowing may be authorised by resolution of the Association passed with the support of not less than 50% of the Owners.
- 8.6 The Association shall hold all funds in the Bank Account, and shall not invest those funds other than by deposit with the bank, except by Special Resolution.
- 8.8 All Facilities and Services shall only be used for their further purposes for which they were designed.

Disclaimer

- 8.9 The Association will use all reasonable endeavours to perform its duties and achieve the objectives of the Association from time to time, but will not be responsible for any loss, damage or liability whatsoever suffered by any Owner or any other person arising out of the failure on the part of the Association to achieve its objectives, perform its duties, or exercise its powers. Nor will the Association or the Grantor be liable for any loss, damage or liability caused to or suffered by any Owner or any other person unless the same arises out of the willful act, default or gross negligence of the Association or the Grantor. The Association shall not be responsible for any breach of any use of any Lot or any zoning or any other applicable land use criteria or government or Council acts/ regulations or by-laws.
- 8.10 Despite anything to the contrary expressed or implied in these Rules, the Association will only be obliged to use its reasonable endeavours to achieve the objects of the Association, or to exercise the powers of the Association to perform the duties of the Association.

9. Administration of the Association

- 9.1 An Annual General Meeting of the Association shall, in addition to any other meeting, be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding Annual General Meeting. The first Annual General Meeting of the Association shall be held before 30 November 2019. At least 15 Working days' notice of every Annual General Meeting of the Association specifying the place, the date and the hour of the meeting and the proposed agenda shall be given to all Owners.
- 9.2 All meetings of the Association other than Annual General Meetings shall be called Special General Meetings.
- 9.3 At least 10 Working days' notice of every Special General Meeting of the Association specifying the place, the date and the hour of the meeting and the

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proposed agenda shall be given to all Owners.

- 9.4 At any meeting of the Association, Owners entitled to exercise the voting power in respect of not less than one third of the Lots shall constitute a quorum. An Owner may attend any meeting in person or be represented by one who holds a written appointment to act as the Owner's representative.
- 9.5 Save as otherwise provided herein no business shall be transacted at any meeting of the Association unless:
 - (a) during the Control Period at least one representative of the Developer and a quorum is present at the time; and
 - (b) after the Control Period has ended, a quorum is present at the time.
- 9.6 If within half an hour from the time appointed for a meeting of the Association a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same place and time. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Owners present and entitled to vote at the expiration of that half hour shall constitute a quorum.
- 9.7 At any meeting of the Association a Chairman shall be elected at the commencement of the meeting.
- 9.8 All matters at any meeting of the Association, other than those matters requiring to be determined by Special Resolution, shall be determined by simple majority of votes. In the case of an equality of votes the Chairman shall have a casting as well as a deliberate vote. In all other cases no party shall have a casting vote.
- 9.9 One vote only shall be exercised in respect of each Lot. A subdivision of any Lot into separate lots shall result in the registered proprietors for the time being of each such separate lot having one vote in respect of each new Lot or Lots. A company lease, cross lease or unit title development or other such division of a Lot shall result in votes only being able to be exercised in respect of the underlying fee simple title to the Lot on which such division has taken place.
- 9.10 No Owner shall be entitled to exercise a vote unless all amounts due and payable in terms of these Rules have been duly paid.
- 9.11 Notwithstanding anything to the contrary in these Rules:
 - (a) anything that may be done by the Association by way of resolution passed at a meeting of the Association may also be done by resolution passed without a meeting or any previous notice being required by means of an entry in its minute book signed by each Owner;
 - (b) it shall not be necessary for the Association to hold an Annual General Meeting if everything required to be done at that meeting by resolution is within the time prescribed for the holding of the meeting done by means of an entry in its minute book in accordance with this provision;

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- (c) any such entry must be signed by Owner or on behalf of an Owner by his representative duly authorised in writing.

For the purposes of this rule a memorandum passed or otherwise permanently affixed to the minute book purporting to have been signed for the purpose of becoming an entry therein shall be deemed to be an entry accordingly and any such entry may consist of several documents in like form each signed by or on behalf of one or more of the Owners.

10. Committee

Election of Committee

- 10.1 The Committee will be elected each year at the annual general meeting of the Association.
- 10.2 Nominations for the Committee must be:
- (a) in writing;
 - (b) signed by the Members as nominator, or where the Member is nominating themselves for the Committee, signed by the nominator and a second Member; and
 - (c) received by the secretary at least 5 Working days before the annual meeting.

Committee's Responsibilities

- 10.3 The powers and duties of the Association must be exercised and performed by the Committee, subject to any restriction imposed or restriction given at a general meeting of the Association. However, any expenditure over \$2,500, not being expenditure which the Association is legally obliged or previously authorized to pay or incur, must be referred to a general meeting.
- 10.4 At least 5 Working days prior written notice of all Committee meetings must be given to each Committee member. However, this notice may be waived for any Committee meeting or meetings if all the Committee members agree to the waiver.
- 10.5 The chairperson will chair all Committee meetings.
- 10.6 If the chairperson is not present within 15 minutes of the start time, the deputy chairperson will chair the Committee meeting.
- 10.7 If neither the chairperson or the deputy chairperson is present at the Committee meeting within 15 minutes of the start time, those present may elect a chairperson for that Committee meeting.
- 10.8 Subject to the rest of this clause, no business may be transacted at a Committee meeting unless:
- (a) during the Control Period at least one representative of the Developer are present at the meeting; and

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- (b) after the end of the Control Period a quorum for Committee members (being 4 members of the Committee) is present.

10.9 If a during the Control Period two representatives of the Developer are not present, or if at all times a quorum is not present within 30 minutes of the start time for the Committee meeting, the Committee meeting will be adjourned to:

- (a) the same day in the following week at the same time and place; or
- (b) to a date, time and place fixed by those of the Committee who are present;
- (c) the chairperson may adjourn a Committee meeting from time to time and from place to place, but no business can be transacted during such adjourned Committee meeting other than the business left unfinished at the Committee meeting from which the adjournment took place;
- (d) the chairperson must adjourn the meeting as above if directed to do so by the Committee meeting;
- (e) voting at each Committee meeting will be by either:
 - voting by voice; or
 - voting by show of hands;

The chairperson will decide which method is used, but must comply with any requests for voting by a show of hands made by a Committee member;

- (f) a declaration by the chairperson of a Committee meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact;
- (g) the chairperson of each Committee meeting will not be entitled to a second or casting vote;
- (h) each Committee member present has one vote;
- (i) all decisions of Committee meetings will be made by a majority of the votes of the Committee members present and entitled to vote unless the rules provide otherwise;
- (j) minutes must be kept of all proceedings at all Committee meetings;
- (k) Committee meetings may be held by telephone conference call (or audio/visual communication) provided each of the Committee members
- (l) participating can at all times during the meeting hear and communicate with all of the other participating Committee members;
- (m) the inadvertent omission of any procedure or requirement for any Committee meeting will not invalidate the proceedings at that meeting.

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11. Execution of Documents

- 11.1 Any document, contract or thing requiring signature by the Association shall be deemed to be signed by it and to bind all of its Owners as aforesaid and a record of all such documents shall be kept by the Association and be available for inspection by the Owners at any Annual General Meeting or Special General Meeting called for the purpose.

12. Alteration of Rules

- 12.1 These Rules shall only be amended, added to or rescinded in the manner specifically provided herein, and where no such manner is provided in respect of any particular rule or rules then by Special Resolution of the Association at either a Special General Meeting called for the purpose or at an Annual General Meeting.

13. Privity of Contract

- 13.1 All the Owners for the time being acknowledge that membership of the Association in compliance with these Rules is for the benefit of all the other Owners and each of such Owners is intended to and shall have the right to enforce compliance with these Rules against all other members notwithstanding that there may be no privity of contract between them, such right to enforce being acknowledged and intended in accordance with the provisions of Section 12 of Part 2 sub-part 1 of the Contract and Commercial Law Act 2017.

14. Sale of any Lot

- 14.1 If an Owner sells a Lot, then:
- (a) notwithstanding any rule, the vendor Owner shall remain liable for sums owed to the Association by the vendor Owner to the date of settlement of a sale;
 - (b) the vendor Owner shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Lot to the Association until such time as the vendor Owner complies with its obligations under rule 4.2 (b);
 - (c) any Owner selling that Owner's Lot shall be obliged to procure the incoming purchaser acquiring that Lot to enter into, execute and deliver to the Association an acknowledgement in a form required by the Association that the purchaser is a member of the Association effective from the date the incoming purchaser becomes the beneficial owner of the Lot;
 - (d) the purchaser of the Lot shall be liable for all indebtedness of the vendor Owner to the Association in respect of the Lot purchased and a statement of the indebtedness prepared by Association and given to the purchaser shall be conclusive as to the sum of this indebtedness.

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15. **Dispute Resolution**

- 15.1 Subject to clause 15.7, where any question, dispute, controversy, claim or difference ("Dispute") arises concerning or in any way arising out of this Rules, the parties must, without resorting to litigation, make a genuine effort to resolve the Dispute using the procedures set out in this rule.
- 15.2 The party initiating the Dispute must provide a written notice ("Dispute Notice") to the other party and nominate in the Dispute Notice its representative for the negotiations. The party receiving the Dispute Notice must then promptly give written notice to the other party naming its representative for the negotiations. Each representative nominated must have authority to settle or resolve the Dispute.
- 15.3 If the parties are unable to resolve the Dispute by discussion and negotiation within 5 Working days of receipt of the Dispute Notice, then the Dispute must be referred to mediation within a further 3 Working day period.
- 15.4 A party must use the following mediation procedure to resolve any Dispute before commencing arbitration proceedings:
 - (a) The parties must appoint a mediator and, if the parties fail to agree, the mediator must be appointed by the President of the New Zealand Law Society (Waikato Bay of Plenty Branch) or the President's nominee;
 - (b) The parties must cooperate with the mediator in an effort to resolve the Dispute;
 - (c) If the Dispute is settled, the parties must sign a copy of the terms of settlement ("Settlement Agreement");
 - (d) If the Dispute is not resolved within 10 Working days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
 - (e) Each party must pay an equal share of the costs of the mediator's fee and costs including, without limitation, travel, room hire and refreshments;
 - (f) The terms of the Settlement Agreement are binding on the parties and override the terms of these Rules if there is any conflict;
 - (g) The Settlement Agreement may be tendered in evidence in any subsequent mediation or arbitration or legal proceedings;
 - (h) The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible in any arbitration or legal proceedings; and
 - (i) Either party may commence arbitration proceedings when mediation ceases as set out above.

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- 15.5 If a Dispute is referred to arbitration, then it must be finally resolved in accordance with the Arbitration Act 1996 and the following provisions will prevail in the event of any inconsistency with the Arbitration Act, to the extent permitted by law:
- (a) the Dispute must be determined by a sole arbitrator;
 - (b) in respect of the First Schedule to the Arbitration Act, the parties "otherwise agree" to the following:
 - (Article 3 – in addition to the stated methods of giving notice, fax and e-mail transmissions are also permitted;
 - Article 11 (2) – in the absence of agreement, the arbitrator (who must not be the mediator) must be appointed by the President of the New Zealand Law Society Waikato Bay of Plenty Branch).
 - Article 26 – the arbitrator may not appoint any expert to advise except with the written consent of the parties to the Dispute;
 - Article 31 (5) – any sum directed to be paid by award will carry interest as from the date of the award at the Default Interest Rate; and

in respect of the Second Schedule to the Arbitration Act the following provisions will not apply:
 - (c) Clause 1 – default appointment of arbitrator; and
 - (d) Clause 2 (2) – consolidation of arbitral proceedings which do not all have the same arbitral tribunal.
- 15.6 Pending resolution of any Dispute, the parties must continue to perform their obligations under these Rules.
- 15.7 Nothing in rules 15.2 to 15.6 inclusive will preclude or prevent a party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.
16. **Conflict of Interest and Restriction on Private Pecuniary Gain**
- 16.1 No Member or any person associated with a Member shall participate in or materially influence any decision made by the Association or Committee in respect of the payment of any income, benefit or advantage whatsoever to or on behalf of that Member or a person associated with that Member.
- 16.2 Any income paid, or benefit or advantage granted to a Member or any person associated with a Member shall be reasonable and relative to the amount paid or extent of the benefit or advantage

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granted which would be paid or granted in an arm's length transaction (being the open market value).

- 16.3 Where a Member or any person or business associated with them or their immediate family derives, or might derive personal or financial gain or a benefit from the transaction or the matter which is the subject of a resolution of voting members at a meeting, they shall declare that interest to the meeting. At the discretion of the chairperson, the Member may participate in the discussion, but the Member shall abstain from voting on the relevant matter. Such Member, having declared their interest, may be counted in the quorum present for the meeting.

17 Notices

- 17.1 Any notices required to be given under this Rules and must be delivered or served by one of the following means:
- (a) **Notices under Sections 245 or 246 Property Law Act 2007:** in the manner prescribed by section 353 of that Act; or
 - (b) **Other Notices:** in all other cases, unless otherwise required by sections 354 to 361 of the Property Law Act 2007:
 - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (ii) by personal delivery, or by posting by registered post or ordinary mail, or by facsimile, or by email to the address maintained by the Association in accordance with rule 4.4 a.

Method of Service

- 17.2 Any Notice given in terms of clause 17.1 (b) (ii) will be deemed to be delivered or served and received by the other party:
- (a) **Email:** when acknowledged by the addressee by return email or otherwise in writing. For the avoidance of doubt a computer generated automated "Out of Office" response or such similar response does not constitute a return email for the purposes of this rule;
 - (b) **Personal Delivery:** on personal delivery, and where the other party is a company, then personal delivery in the manner as provided for in section 387 (1) or section 388 of the Companies Act 1993
 - (c) **Ordinary Mail:** four Working days' after being posted by prepaid mail; or
 - (d) **Registered Mail or Delivery:** two Working days' after being posted by prepaid registered post or delivery; and any Notice given or served after 5.00 pm on a Working day, or on a day that is not a Working day, shall be deemed to have been served on the next succeeding Working day.

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Validity of Notices

17.2 Any Notice to be delivered or served under these Rules may be given by:

- (a) **Attorney, etc:** any attorney, officer, employee or solicitor for the party serving or giving the Notice; or
- (b) **Authorised person:** the party serving the Notice or any other person authorised by that party.

18. Registered Office

18.2 The Registered Office shall be situated at a place nominated by the Association.

19. Liability of Members

19.1 No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Association.

20. Association to Indemnify Members

20.1 The Association shall indemnify each Member against any liability properly incurred by such Member in respect of the affairs of the Association, to the extent for the property owned by the Association (if any).

21. No Action in Favour of Members

21.1 No action in law or otherwise shall lie in favour of any Member against any other Member. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the willful default of the person against whom such action is taken.

22. Member to Indemnify Association

22.1 Each Member shall indemnify, and keep indemnified, the Association from and against any action, claim, demand, loss, damage, costs, expense and liability which the Association may suffer or incur, or for which the Association may become liable in respect of, or arising from, any breach of these Rules by the Member.

23. Liquidation

23.1 On a liquidation of the Association, each Member has the right to share pro rata with all other Members in a distribution of any surplus assets of the Association.

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SCHEDULE 1

ASSOCIATION BY-LAWS

General Operating Controls

1. Lot 100

- 1.1 No Owner shall use Lot 100 or the Facilities in such a manner as to unreasonably interfere with their use and enjoyment by other Owners or the public (where the public has rights of use) and in particular no Owner shall drive or permit to be driven on any such areas any vehicle or machinery of a weight or nature which is likely to cause damage. Every Owner shall be responsible for any loss or damage or, injury to any such area caused or contributed to by the Owner, its lessees, servants, agents or invitees.

2. Use

- 2.1 Each Member shall make no improper or offensive or unlawful use of Lot 100 and the Facilities, and shall use the same only for the purposes for which they were designed.
- 2.2 No Member shall fetter, obstruct or impede the use of Lot 100 and the Facilities by any other Member or the Council and the public at large where the Council and the public at large have the right to use the same.
- 2.3 No Member shall place anything in or on Lot 100 without the approval of the Association and the Grantor.
- 2.4 Each Member shall comply with the terms of the Easements.
- 2.5 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Facilities.

3. Prohibited Acts

- 3.1 No Member shall drop any litter or Contaminants in or on Lot 100 and the Facilities or do any other act or thing in relation to the same other than in accordance with the terms of the Easements, the Easement in Gross or any other instruments or agreements governing the same. Any Member who discovers any Contaminants being discharged into the Facilities or Services or on Lot 100 shall immediately report such damage to the Association
- 3.2 No Member shall do any act which detracts from the attractiveness or state of repair of Lot 100, the Street Improvements, the Entrance Signs or the Lighting Bollards and the Facilities. Any Member who discovers any damage to the same shall immediately report such damage to the Association.
- 3.3 No Member shall do any act or thing that interferes with the grants made under the Easements in Gross.

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4. Closing of Areas and Facilities

- 4.1 The Association and the Grantor shall be entitled to close any part or all of Lot 100 and the Facilities, as they consider necessary, for security reasons, or for the purposes of maintaining and repairing the same provided however such closures (if any) shall be for the shortest period possible to ensure the maintenance or repair may be carried out and shall be in accordance with the terms of the Easements, the Easement in Gross or any other instruments or agreements governing the same.
- 4.2 No Member shall allow any animal on Lot 100 that may cause risk to any other Member or Occupier.

5. Members to Procure Compliance by Occupiers

- 5.1 Each Member shall ensure compliance of the terms of the Easements, Easements in Gross and the By-Laws by any person who is an Occupier of their Lot.