



\*10053269036\*

# Incorporated Society Alteration of Rules - Certificate

Name of Society

HUKA FALLS RESORT RESIDENTS' ASSOCIATION  
 INCORPORATED

Society Number

1902834

I certify that the alteration has been approved in accordance with the society's rules.

Please tick if the rule alteration includes a name change for the society

Name

Caroline Beaumont

Position

Solicitor for the Society

Signature

*Caroline Beaumont*

Date

23 February 2007

Note: This certificate must be completed by an officer of or solicitor for the society.

Checklist before filing:

Has this certificate been completed by an officer of or solicitor for the society?

Has the copy of the alteration to rules been signed by 3 members of the society?

Is a copy of the rule alteration(s) attached? This can either be a complete copy of the updated rules with the alterations underlined or in bold type, or a copy of the particular rule(s) that were altered.

If the name of the society is being changed, have you checked the name is available by conducting a Register Search at www.societies.govt.nz and www.companies.govt.nz?

Note: Section 6 of the Incorporated Societies Act 1908 requires a society's rules to include the following:

- The name of the society (ending with the word Incorporated)
- The objects for which the society is established
- How people become members of the society and cease being members of the society
- How meetings of the society will be called and held and how voting will take place
- How officers of the society will be appointed
- The control and use of the common seal.
- How the society's funds will be controlled and invested
- The powers (if any) that the society has to borrow money
- How any property of the society will be distributed in the event of the society being wound up
- How the rules of the society can be altered.

Your Contact Details

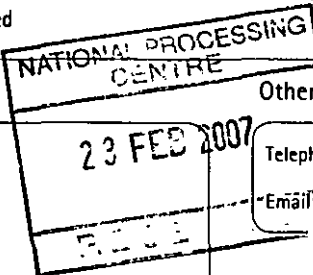
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Caroline Beaumont  
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Other Details

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Email:



**NPC# 10**


Post To

Incorporated Societies Register  
 Companies Office  
 Private Bag 92061  
 Auckland Mail Centre 1020

23 FEB 2007

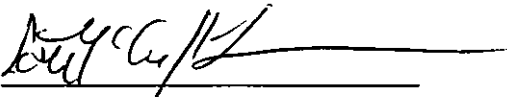


The rules of the Huka Falls Resort Residents' Association Incorporated (No. 1902834) are amended as per the attached copy of the Constitution, signed by three members of the society in accordance with section 21 of the Incorporated Societies Act 1908:



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Nigel Bent



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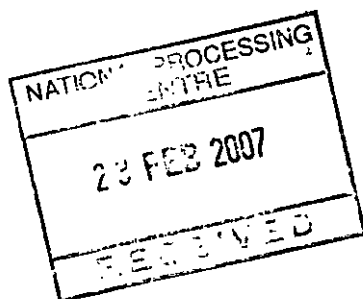
Laura McCulloch



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Suzanne Fisher

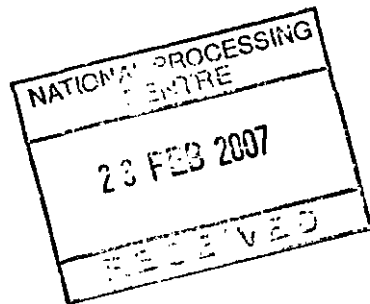
Dated 22 February 2007





# **Huka Falls Resort Residents' Association Incorporated**

## **CONSTITUTION**



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## INTRODUCTION

### 1. Name and Registered Office

- 1.1 **Name:** The name of the Association is "Huka Falls Resort Residents' Association Incorporated".
- 1.2 **Registered office:** The registered office of the Association is at Kensington House, level 3, 52-54 Grafton Road, Auckland, or such other place as the Committee decides from time to time.

### 2. Definitions and Interpretation

- 2.1 **Definitions:** In this document, unless the context otherwise requires:

**Act** means the Incorporated Societies Act 1908;

**Annual General Meeting** means an annual general meeting of the Association, convened and conducted in accordance with this Constitution;

**Association** means the Huka Falls Resort Residents' Association Incorporated, an incorporated society registered under the Act;

**Authority** means any local body government or other authority having jurisdiction or authority over or in respect of any part of Huka Falls Resort or its use;

**Body Corporate** means any body corporate resulting from the subdivision of any part of the Land under the Unit Titles Act 1972;

**Bylaws** means bylaws made by the Association from time to time under rule 4.1;

**Capital Improvements** means the structural repairs to, and replacement or substantial renewal of, the Common Facilities;

**Committee** means the committee of the Association established in accordance with this Constitution in order to manage the affairs of the Association;

**Commercial Member** means a Member whose Property is designated to be used for commercial purposes at Huka Falls Resort by an instrument on the Owner's Title or is reasonably determined by the Association to be, or as being, used primarily for commercial purposes at Huka Falls Resort;

**Common Facilities** means all land, natural features, buildings, structures, plant, equipment, facilities, services and other amenities including:

- (a) any formed roads (whether private or public), private ways, walkways and accessways through Huka Falls Resort (whether public or private), together with associated manoeuvring areas, loading zones, road lighting, traffic control systems and any other access related facilities;
- (b) the landscaping of the Land, the road verges and entranceways and those areas in Huka Falls Resort which are planted out or covered in trees, shrubs or natural ground cover material;
- (c) the fencing, retaining walls, gates, screening walls, seating, signs, stairs, exterior lighting fixtures, and similar external hard landscape items;
- (d) the playgrounds, swimming pools, tennis courts, fields, parks, associated equipment and any other recreational facilities (including buildings);
- (e) the water, energy and telecommunications reticulation systems and their associated pipelines, transformers, switches, lines, cables, ducting, pumps, wells, tanks and related equipment, not otherwise the responsibility of the local authority or a third party utility supplier, from the points of entry of supply to the Land or the points of demarcation with any third party supplier, to the point of entry into a Property;
- (f) the sewerage, waste and stormwater drainage systems and their associated drains, culverts, swales, sediment tanks, pumping equipment, electricity supply and any other drainage related facilities, not otherwise the responsibility of a local authority or a third party utility supplier, from their point of exit from a Property to their points of exit from the Land or the point of demarcation with any third party recipient;
- (g) the signage and directory boards at the main entrance ways to Huka Falls Resort;
- (h) such other facilities serving Huka Falls Resort which, by the passing of a Special Resolution, the Members resolve should be under the control and direction of the Association,

within Huka Falls Resort owned (whether directly or indirectly), leased, licensed, maintained or otherwise used, in whole or in part by the Association from time to time including those facilities from time to time transferred to the Association by the Developer, by any other company which is directly or indirectly controlled by the Developer, or by any company of which the Developer is a subsidiary (whether directly or indirectly);

**Constitution** means the rules and constitution of the Association and any amendments, regulations or bylaws in effect pursuant to this Constitution;

**Design Controls** means the design controls, procedures and guidelines that form part of the Bylaws;



**Design Review Board** means the board from time to time appointed under rule 19.1 to consider design approval applications by Members;

**Developer** means Huka Falls Resort Limited and its transferees and assigns;

**Development Period** means a period which has commenced and which will end twelve (12) months after the development of Huka Falls Resort is complete and the Developer no longer retains any material interest therein as a land developer. For the purposes of this definition, Huka Falls Resort will be deemed complete upon the issue of the last certificate(s) of title for all Properties intended to be constructed by the Developer within Huka Falls Resort;

**Encumbrance** means the encumbrance in favour of the Association noted or to be noted against each Owner's Title;

**Exemption Notice** means the Securities Act (Huka Falls Resort Limited) Exemption Notice (No. 2007/25);

**Facility Expenses** means in each Financial Year the total sum of all rates, taxes, payments, costs, liabilities and expenses incurred by the Association, and which have been properly and reasonably assessed and paid (or assessable and payable) or otherwise incurred:

- (a) In respect of the Common Facilities and the operation of the Association, including the cost of Capital Improvements;
- (b) in the operation of the Association (including the Management Fees and Management Expenses as defined in the Management Agreement);
- (c) in the administration and enforcement of a scheme for the provision of services, benefits, facilities and utilities to the Properties,

and will include (without limitation) the following:

- (i) all rates levied by any Authority which are at any time levied upon the Common Facilities or upon the Association in respect of the Association's interest in the Common Facilities or are paid or payable by the Association as a result of the receipt of any money under this Constitution;
- (ii) all premiums and costs payable by the Association in respect of all policies of insurance effected on the Common Facilities for sums insured up to their full replacement value or, at the option of the Association, to their full value on an indemnity covered basis against loss, damage or destruction by such risks as the Association may deem necessary or desirable, including consequential loss and public risk liability;
- (iii) the cost of operating, supplying, servicing, maintaining, inspecting, testing and repairing all services and utilities from time to time provided to the Owners, the Properties or generally at Huka Falls Resort, including watering equipment and systems, any water features, communications, equipment and systems (including telephone, cable television and satellite television equipment and systems), fire fighting and protection equipment and systems, emergency or other alarm services or systems, security and monitoring services and systems; electrical and plumbing services, waste and rubbish compression and disposal systems and the plant and equipment required for any of such or other services and systems;
- (iv) all charges for lighting, gas and power, and all other forms of energy incurred by the Association in connection with the Common Facilities, and other services or requirements furnished or supplied to the Common Facilities for the general benefit or purposes of the Common Facilities, including maintenance costs of lighting and power systems and equipment;
- (v) all sanitation costs in respect of Huka Falls Resort, including the costs of the removal and disposal of all waste and garbage from all properties contained in Huka Falls Resort;
- (vi) all costs for the provision, at intervals deemed appropriate by the Association, of security services to the Common Facilities or Huka Falls Resort generally;
- (vii) all costs of repairs, maintenance, renovations and landscaping of the Common Facilities, including Common Facilities that are not owned by the Association but that the Association is obliged or agrees to maintain from time to time;
- (viii) all costs and expenses (including the costs of obtaining necessary reports) payable, incurred or suffered by the Association in complying with the Association's obligations under the Building Act 2004;
- (ix) all other items of expense which the Association, acting reasonably, considers necessary to incur for the good management and appearance of the Common Facilities;
- (x) all costs of managing, controlling and administering the Common Facilities, including such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Association;
- (xi) all wages, allowances and other emoluments and any other payments by way of compensation including redundancy compensation paid or allowed to employees engaged for any of the above purposes together with any taxes and levies on the same;

but excluding, for the purposes of calculating each Member's Proportion:

- (A) any such costs or expenses which are the sole responsibility of any Owner; and
- (B) the costs of any Capital Improvements recovered from Transfer Levies set under rule 17.1, which comprise a sinking fund for such Capital Improvements;

**Financial Year** means:

- (a) the period from the date of incorporation of the Association to the following 31 March; and
- (b) each 12 month period commencing on 1 April and ending on the following 31 March or such other period selected by the Committee;

**GST** means goods and services tax charged under the Goods and Services Tax Act 1985;

**Huka Falls Resort** means the residential/commercial development proposed by the Developer, comprising a master planned community to be developed and constructed on the Land;

**Invitee** means any invitee of or any visitor to an Owner or Occupier;

**Land** means:

- (a) Lot 1 on Deposited Plan 58739 Certificate of Title SA50C/824 (South Auckland Land Registry); and
- (b) Lot 2 on Deposited Plan 58739 Certificate of Title SA50C/825 (South Auckland Land Registry); and
- (c) Section 2 Survey Office Plan 58581 Certificate of Title SA49D/637 (South Auckland Land Registry); and
- (d) Section 177 Block II Tauhara Survey District Certificate of Title SA10A/949 (South Auckland Land Registry); and
- (e) Part Section 79 Block II Tauhara Survey District Certificate of Title SA14D/758 (South Auckland Land Registry); and
- (f) such further land which the Developer decides will be incorporated within Huka Falls Resort from time to time during the Development Period;

**Manager** means the person firm or company appointed to manage the Association under rule 21. Where no manager has been appointed, any reference to "Manager" in this Constitution will be deemed, where appropriate, a reference to the Committee, subject to rule 20.1;

**Management Agreement** means the agreement for the management of Huka Falls Resort to be generally in the form attached as Schedule 3;

**Member** means a member of the Association;

**Member's Proportion** means the proportion that the aggregate of the Property Values of the Properties owned by a Member bears to the Total Value except where rule 15.4 applies;

**Occupier** means a person occupying any Property under any lease, licence or other occupancy right and will include the Owner and all members of the Owner's family;

**Owner** means each person registered as a proprietor (whether individually or with others) of a Property;

**Owner's Title** means the certificate of title issued for an Owner's Property;

**Principal Member** means the Developer or any transferee and/or successor whether in whole or in part or parts of Huka Falls Resort, that continues the promotion and carrying out of such development and that the Developer nominates as the Principal Member, and its/their nominated representatives;

**Property** means a property in Huka Falls Resort:

- (a) for which a separate title (including a unit title or certificate of title for an estate in fee simple) has issued; and
- (b) which either:
  - (i) is a bare lot available for immediate development as:
    - (A) a residential property;
    - (B) a commercial property (including commercial accommodation); or
    - (C) any other use permitted within Huka Falls Resort;including, in each case, a lot on which development/construction has started; or
  - (ii) has been fully developed as:
    - (A) a residential property;
    - (B) a commercial property (including commercial accommodation); or
    - (C) any other use permitted within Huka Falls Resort,

but does not include any lot capable of further subdivision.

**Property Value** means:

- (a) where a Property is a 'rating unit' as that term is defined in section 5B of the Rating Valuations Act 1998, then the Property Value will be the 'land value' of the Property as that term is defined in section 2(1) of the Rating Valuations Act 1998 and appearing from time to time in the district valuation roll in accordance with that Act; or

- (b) where a Property is not a 'rating unit', then the Property Value will be such fair proportion of the land value of the rating unit of which the Property forms part as the Committee may determine from time to time;

**Public Reserve** means any public reserve within or adjoining Huka Falls Resort which the Association is required to maintain.

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

**Rental Agency** means such entity as is established or appointed by the Developer to control and administer the letting of the Properties for residential accommodation purposes and if no such entity has been established by the Developer, means the Association or such entity established by the Association for that purpose;

**Residential Member** means a Member whose Property is designated for residential purposes at Huka Falls Resort by an instrument on the Owner's Title or is reasonably determined by the Association to be, or as being, used primarily for residential purposes;

**Special Resolution** means a resolution of the Association in general meeting passed by a majority of not less than 75% of the Members (which must include the Principal Member, if any) entitled to vote in person or by proxy on the question;

**Total Value** is the sum total of the Property Values of all of the Properties as at a given date;

**Transfer Levy** means the levy referred to in rule 17 of this Constitution;

**Working Day** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
- (b) A day in the period commencing on the 25<sup>th</sup> of December in any year and ending on the 2<sup>nd</sup> of January in the following year;
- (c) If the first day of January in any year falls on a Friday, the following Monday;
- (d) If the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

2.2 **Interpretation:** In this Constitution where the context permits:

- 2.2.1 One gender will include the other gender.
- 2.2.2 reference to a person will include a company.
- 2.2.3 reference to a party will include that party's executors administrators successors and assigns.
- 2.2.4 a reference to a statute includes:
  - 2.2.4.1 all regulations under that statute;
  - 2.2.4.2 all amendments to that statute; and
  - 2.2.4.3 any statute substituting for it which incorporates any of its provisions.
- 2.2.5 reference to currency will mean New Zealand dollars (NZ\$) exclusive of GST.
- 2.2.6 GST will be paid by any party in receipt of a taxable supply in addition to any consideration therefore.
- 2.2.7 The table of contents and headings are for convenience only and will not affect the interpretation of this document.
- 2.2.8 References to rules are references to the rules in this Constitution.



## RESIDENTS' ASSOCIATION – OBJECTS, DUTIES AND POWERS

### 3. Objects

#### 3.1 General objects: The Developer intends to:

- 3.1.1 Create a quality development;
- 3.1.2 Establish the Common Facilities in Huka Falls Resort for the benefit of the Members and Huka Falls Resort generally; and
- 3.1.3 Transfer ownership of the Common Facilities to the Association for the benefit of the Members in accordance with a deed of transfer to be prepared by the Developer.

#### 3.2 Specific objects: The Association is formed to play a key role in preserving the financial and lifestyle interests of the Members in maintaining infrastructure and regulating the common access and other cooperative features of Huka Falls Resort, and to promote the following objects for the benefit of Members:

- 3.2.1 The maintenance, preservation and enhancement of the unique character, size and recreational capabilities of Huka Falls Resort as a premium lifestyle community;
- 3.2.2 The ownership, leasing or control and continued ownership, leasing and control of the Common Facilities by the Association;
- 3.2.3 To ensure the proper supply, operation, maintenance, repair, renovation and replacement of the Common Facilities;
- 3.2.4 To promulgate and enforce the Bylaws and covenants to establish codes of behaviour applicable to Members and to benefit Members, the Common Facilities and Huka Falls Resort generally;
- 3.2.5 To create, regulate and implement appropriate Design Controls in respect of each Property to ensure a continuity of building style and prevent the use of different and extreme building themes that are not in harmony with each other. This control is intended to emphasise and highlight the quality and value of property in Huka Falls Resort where houses and commercial facilities blend together and flow on from each other;
- 3.2.6 To manage the use of the Common Facilities and develop further Common Facilities;
- 3.2.7 To maintain the Common Facilities and Huka Falls Resort generally as a safe, clean and well presented environment having regard to the age, appearance and aesthetics of Huka Falls Resort as a whole;
- 3.2.8 The full and proper use of the Common Facilities by Members and, where appropriate, members of the public;
- 3.2.9 To liaise and consult with each Body Corporate within Huka Falls Resort to ensure an integrated management plan for Huka Falls Resort as a whole;
- 3.2.10 To fulfil the meeting and financial reporting requirements of the Securities Act 1978 in relation to a scheme of participatory securities;
- 3.2.11 To engage in any other enterprise or activity which the Association considers to be in the interests of the Members;
- 3.2.12 To preserve the value and integrity of Huka Falls Resort;
- 3.2.13 To assist, and co-operate with, the Developer to procure completion of Huka Falls Resort;
- 3.2.14 To levy Members for the purpose of meeting the objects set out in this rule 3.2; and
- 3.2.15 To do any act or thing incidental or conducive to the attainment of any of the above objects.

#### 3.3 Excluded objects: The Association does not have as an object the following:

- 3.3.1 The pecuniary gain of Members, and (subject to rule 24.1) no Member will be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Association; or
- 3.3.2 The carrying on of trading activities; or
- 3.3.3 The carrying on of business for profit.

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

### 4. Duties of the Association

#### 4.1 Bylaws: For the fulfilment of the purposes and objects of the Association, but subject to rule 4.2, the Association will from time to time:

- 4.1.1 Promulgate the Bylaws for the use of the Common Facilities (including any restrictions on use for security, maintenance or other reasons) and Bylaws concerning the behaviour of Owners, Occupiers and Invitees and Bylaws governing the use of Properties;

- 4.1.2 Amend and review the Bylaws as appropriate;
- 4.1.3 Enforce the Bylaws, taking such action in this regard as the Association thinks fit.
- 4.2 **First Bylaws:** The first bylaws are those Bylaws attached as Schedule 1 to this Constitution.
- 4.3 **Operate and Manage the Common Facilities:** The Association will own, operate, manage and, where applicable lease or let out on hire, the Common Facilities and all improvements located on the Common Facilities.
- 4.4 **Repair of Common Facilities:** The Association will ensure the proper use, operation, maintenance, repair, renovation and replacement of the Common Facilities, so as to keep the Common Facilities in good order consistent with standards generally proposed or adopted in superior communal facilities of similar nature, and to prevent them from becoming a danger or nuisance, and undertake such Capital Improvements as are necessary for this purpose. Each Member agrees and allows the Association (and parties engaged by it under rule 4.9) access to the Member's Property for the purposes of this rule 4.4. However, the Association will make good any damage caused by such access within a reasonable time after completion of any work carried out to give effect to this rule 4.4.
- 4.5 **Insurance:** The Association will effect and maintain all insurances as it considers prudent with respect to the Common Facilities, the Association's affairs and members of the Committee, and will meet all costs of such insurance (which will 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).
- 4.6 **Rates and Taxes:** The Association will pay all local and governmental authority rates and other taxes and charges levied on or with respect to the Common Facilities. The Association has all rights granted by law to contest the legality and the amount of those taxes and charges.
- 4.7 **Books of Account:** The Association will keep books and records of the Association's affairs and make those books and records, together with current copies of the Bylaws, available for inspection by Owners on request during normal business hours.
- 4.8 **Body Corporate Secretary:** The Association and/or the Manager may from time to time act as Body Corporate Secretary for all or some of the Bodies Corporate within the Huka Falls Resort.
- 4.9 **Service contractors and utility suppliers:** The Association may, from time to time, nominate a service contractor (with respect to management, maintenance, security, landscaping or other such services as the Association considers desirable) or a utility supplier (with respect to the supply of utilities to the Common Facilities) as a service contractor or utility supplier (on an exclusive or non-exclusive basis) to Huka Falls Resort. Any Member wishing to contract for services within Huka Falls Resort will, where a service contractor or utility supplier has been nominated in respect of those services or utilities, wherever reasonably possible use that nominated service contractor or utility supplier.
- 4.10 **Register of Members:** The Association will maintain a register of Members recording:
- 4.10.1 The name, address, occupation, contact details (at home and work) of each Member, or if the Member is not a natural person, of a contact person for that Member. No notice of any trust express, implied or constructive will be entered on the register of Members;
- 4.10.2 The name, address, occupation, contact details (at home and work) of each Occupier, or if the Occupier is not a natural person, of a contact person for that Occupier;
- 4.10.3 The date on which each Member became a member of the Association;
- 4.10.4 Where there is more than one Owner of a Property, which of such Owners is entitled to vote in accordance with rule 8.1.4;
- 4.10.5 The name, contact person and contact details of any mortgagee over a Property.
- The Committee will ensure that the register of Members is audited by a qualified auditor after all Properties have been sold by the Developer and thereafter once every two years.
- 4.11 **Public Reserve:** The Association will ensure the proper maintenance of the Public Reserve(s) in accordance with any agreement entered into between the Association, the Developer and the Taupo District Council.
- 4.12 **Transfer of Facilities:** The Association acknowledges that the Developer may, from time to time, transfer land and/or facilities for communal use of the Association, and the Association must accept transfer of such land and/or facilities.
- 4.13 **Incidental Activities:** The Association may carry out any other duty or activity which is necessary or incidental to any other specific duty contained in this Constitution.
- 5. Powers of Association**
- 5.1 **Powers of the Association:** Subject to the express terms of this Constitution, and to the Act, the Association will have all the powers as are expressly set out in this Constitution or as are necessary to further the objects and duties set out above.
- 5.2 **Powers vested in Committee:** Without limiting the above, the administration of the Association will be vested in the Association in general meeting, and will be delegated to the Committee. The Committee may exercise all of the powers, authority and discretions of the Association as permitted by this Constitution and do on its behalf all such acts as the Committee deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may, from time to time, be imposed by the Association. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed will in the exercise of the powers so delegated conform to directions of the Committee.
- 5.3 **Bank Accounts:** The Association will establish an account or accounts at a bank, and any drawings on such account(s) (including any cheque(s) drawn on such account(s)) will be made only under the signature of the Manager or, if there is no Manager, any two members of the Committee.
- 5.4 **Legal Proceedings:** The Association may initiate and pursue legal proceedings for itself or on behalf of any or all of the Members.

- 5.5 **Granting Access:** The Association may, from time to time, grant access to the Common Facilities to any person for the purpose of constructing, erecting, operating or maintaining the Common Facilities.
- 5.6 **Management:** Subject to rule 21.1, the Association may enter into a management agreement or agreements for such period, at such remuneration and on such terms and conditions as the Association may think fit, for the delegation of its responsibilities to ensure the proper operation, repair, maintenance and replacement of the Common Facilities and to fulfil any other duties of the Association.
- 5.7 **Deeds:** Any contract, if made between private persons, will be entered into by the Association in writing and signed by the chairperson or under the common seal of the Association, in each case in accordance with a resolution of the Committee.
- 5.8 **Other Documents:** All other documents and written announcements, requiring execution on behalf of the Association, must be signed by the chairperson.

## 6. Limitation of Powers

- 6.1 **Limitations:** Notwithstanding any other provision of this Constitution or any other enabling power, except as otherwise authorised by Special Resolution, the Association's powers will be restricted as follows:
- 6.1.1 The Association may not borrow any money other than short-term borrowing to cover any temporary shortfall in meeting the Association's obligations under this Constitution;
- 6.1.2 The Association will hold the Common Facilities in its own name and will not mortgage, charge, encumber, transfer or otherwise deal with such Common Facilities provided that where the Association is obliged to grant any interest in or right in respect of the Common Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee;
- 6.1.3 The Association will hold all funds with a Bank registered under the Reserve Bank of New Zealand Act 1989, and will not invest those funds other than in term deposits not exceeding 180 days;
- 6.1.4 All Common Facilities designed for recreational purposes will be used only for such purposes. The Association will procure the noting of a restrictive covenant to that effect against the title for such facilities for the benefit of all Members;
- 6.1.5 Notwithstanding any other rule in this Constitution, the Association will not expend money other than to further purposes recognised by law.

## MEMBERSHIP

### 7. First Members

- 7.1 **First Members:** The first Members of the Association will be those members named in Schedule 2 (the "First Members"). The First Members will be entitled to vote at any meeting of the Association, to elect a Committee, and exercise all rights of Members set out in this Constitution, but will have no obligations as Members. No reference in this Constitution to a Member will be taken as including a reference to the First Members.
- 7.2 **Resignation:** All of the First Members (other than the Principal Member) will be deemed to have resigned from the Association, without any act required by the First Members, at such time as there are more than 15 Owners (other than the Principal Member) as Members.

### 8. Owner Members

- 8.1 **Owners to be Members:** Subject to rule 7.1, each Owner will be a Member, and only Owners will be Members, and for that purpose:
- 8.1.1 The Encumbrance and restrictive covenants will be noted against the Owner's Title in favour of the Association, whereby each Owner covenants to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution and otherwise containing terms required by the Association.
- 8.1.2 Each Member will, prior to settling the sale of a Property, procure the purchaser to enter into, 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 Property), and remain, a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The deed of covenant or encumbrance will be prepared by the Association's solicitors, and the selling or transferring Member will pay the reasonable legal costs and disbursements of the Association's solicitors.
- 8.1.3 The rights, privileges and obligations of a Member are not assignable (except by transfer of the Property to which membership is associated).
- 8.1.4 If there is more than one Owner of a Property, such Owners must collectively constitute one Member and the liability of such Owners, in relation to their membership, will be joint and several.
- 8.1.5 Membership of the Association cannot be terminated and an Owner cannot resign as a Member.
- 8.1.6 A Member ceases to be a Member immediately on the registration of a transfer of the Owner's Title (after the Association has consented to the transfer in terms of rule 10.2.3) provided that such cessation will not relieve a person of any obligation or liability arising before that person ceased to be an Owner.

8.1.7 Each Member will, immediately before ceasing to be an Owner, provide the Association with the details and documents necessary for maintenance of the register of Members pursuant to rule 4.10 in respect of the new Owner of the Property and, upon entry of the details into the register, the new Owner will become a Member.

8.2 **Fee:** The Association will be entitled from time to time to set such reasonable fee in relation to the issue of a membership or transfer of a membership as the Association in its sole discretion determines. If the Association incurs third party costs in relation to the issue, or transfer, of a membership, the applicant or seller will meet those reasonable third party costs.

8.3 **Members of Staged Development:** The Members acknowledge that the Huka Falls Resort may be developed in stages, with new Owners becoming Members as additional land is added to Huka Falls Resort and/or as each stage is completed.

8.4 **Companies and trusts:** Where a company, trust or other non-natural person is an Owner, that company, trust or non-natural person must nominate a natural person (being a Committee Member, officer, trustee or equivalent of that non-natural person) to be the Member for and on behalf of that non-natural person.

8.5 **Categories of membership:** The Association may, at any time, specify categories of membership (including between Residential Members and Commercial Members) to recognise any category of usage that may be appropriate.

## 9. Principal Member

9.1 **Principal Member:** Until Huka Falls Resort is completed, the Developer will be the Principal Member, regardless of whether the Developer is at any time a Member. The purpose of the Principal Member is to ensure that the Developer can develop Huka Falls Resort as a premium development.

9.2 **Limited rights:** The Principal Member will have only the rights and obligations specified in this Constitution, and will have no other rights or obligations as a Member. No reference in this Constitution to a Member will be taken as including a reference to the Principal Member.

9.3 **Resignation of Principal Member:** At the end of the Development Period, the Developer will be deemed to have resigned as Principal Member and, thereafter, there will be no Principal Member.

## 10. Obligations of Members

10.1 **Compliance with Constitution and Bylaws:** Each Member agrees to promptly and fully comply with the terms of this Constitution, the Bylaws and any covenants given in favour of the Association by such Member (whether by separate deed of covenant or as noted against each Owner's Title). No amendment to this Constitution will be made which results in there being any conflict between the provisions of this Constitution (including any rule or Bylaw) and the provisions of any such covenant.

10.2 **Sale of a Property:** Where a Member sells (the "Seller") a Property:

10.2.1 The Seller will, notwithstanding any other provision in this Constitution, remain liable for sums owed to the Association by that Seller including unpaid levies (annual, special or otherwise) and the Transfer Levy;

10.2.2 Without limitation, the Seller will continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Property (the "Purchaser") to the Association until such time as:

10.2.2.1 The transfer of the certificate of title for that Property to the Purchaser is registered at the Land Transfer Office; and

10.2.2.2 The deed of covenant, specified in rule 8.1.2 is received by the Association; and

10.2.2.3 The Seller has complied with its obligations under this rule 10.2;

10.2.3 The Seller must obtain the consent of the Association to the transfer of the Seller's property prior to the date of transfer. Notwithstanding anything else contained in this rule 10.2, the Association may decline to consent to a transfer of the Seller's Property until:

10.2.3.1 the Seller has performed its obligations as a Member as set out in this Constitution, including:

(a) the Seller's payment of all sums owed to the Association in full (including all levies, and fees charged or costs incurred under rule 8.2);

(b) the Seller's provision of the Purchaser's particulars and documentation in accordance with rule 8.1.7, and

10.2.3.2 the Purchaser has given a written acknowledgement to the Association that it has read and understood this Constitution, all the then current Bylaws and any covenants noted against the Owner's Title.

10.2.4 The Seller will not be entitled to any refund of any levies or any other financial contribution paid to the Association.

10.3 **Lease of Property:** For the purpose of this rule 10.3, the term "lease" means any change in possession of a Property for consideration including any form of lease, tenancy, licence or assignment and includes providing accommodation to any paying guest, and the term "tenant" means any person taking possession under a lease:

10.3.1 No Member will lease the Member's Property for any period shorter than 32 days other than through the Rental Agency. Where this rule 10.3.1 applies, Members must not advertise the Member's Property for lease other than through the Rental Agency. This rule 10.3.1 will not apply to a lease to friends or family of the Member, being persons known to the Member who have not been introduced to the Member's Property through any form of marketing, provided that the Member notifies the Rental Agency of the names and contact details of the tenant under such lease;

- 10.3.2 Any Property leased through the Rental Agency pursuant to this rule will be leased by the Rental Agency on behalf of the Member at the market rent applicable for that type of Property in Huka Falls Resort and otherwise on normal residential letting and commission conditions applicable as between landlord/rental agent and landlord/tenant;
- 10.3.3 No Member will lease the Member's Property for any period of 32 days or longer ("lease period") without first notifying the Rental Agency of such lease and the names and contact details of the tenant. The Rental Agency is permitted to disclose those details to the Association to enable the Association to monitor and manage security within Huka Falls Resort.
- 10.4 **Assignment or subletting:** Any assignment or subletting of the type or in the manner referred to in s109(2) of the Property Law Act 1952 will be a breach of the provisions of this Constitution.
- 10.5 **Payment of Rates and Compliance with Obligations:** Each Member acknowledges that it is still liable to pay rates and charges levied by the Taupo District Council and Environment Waikato Regional Council (or their respective successors) and to otherwise comply with all legal obligations in respect of the Member's Property.
- 10.6 **Agreement to grant easements:** Each Member agrees to grant, or consent to grant, any easements, encumbrances and/or covenants in favour of the Association over or under the Member's Property which are necessary to permit the Association access to that Property to give effect to this Constitution and any Bylaw.
- 11. Compliance by Occupiers and Invitees**
- 11.1 **Application to Occupiers and Invitees:** A reference to an act or omission by any Member will include any act or omission by any mortgagee in possession of that Member's Property, the Occupiers of the Member's Property, and any Invitees.
- 11.2 **Details of Occupiers:** A Member must advise the Association of details of the Occupiers of the Member's Property.
- 11.3 **Compliance with Constitution and Bylaws:** Each Member must ensure Occupiers comply with this Constitution and the Bylaws. In any case of persistent default by an Occupier, the Member will on demand by the Association, terminate the Occupier's right to occupy the Property. A copy of this Constitution, the Bylaws and any covenants given in favour of the Association by that Member will be attached to every lease, licence, or other document defining occupancy rights.
- 12. Members' Assistance to Developer for Common Facilities**
- 12.1 **Future Development:** The Members acknowledge that development of Huka Falls Resort is ongoing. The Association is required to allow the Developer such access to, and interests in, the Common Facilities as are necessary or desirable for the development of Huka Falls Resort to proceed, and to allow the Developer to add, replace, alter or remove structures and services forming part of the Common Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. The Members further acknowledge that the provisions of this rule 12.1 do not limit any other obligations agreed to by a Member or otherwise binding on a Member. The Association and each Member individually agrees:
- 12.1.1 To grant and now grants to the Developer access to the Common Facilities and the Member's Property with such vehicles, machinery and tools as the Developer desires for the purpose of proceeding with the development. However, the Developer will:
- 12.1.1.1 Make good any damage caused by the Developer accessing a Member's Property under the provisions of this rule 12.1;
- 12.1.1.2 In so doing, will not unreasonably interfere with that Member's quiet enjoyment of that Member's Property.
- 12.1.2 To grant and now grants such easements in favour of the Developer, any Member and/or the Association over or under the Member's Property as are required for Huka Falls Resort to proceed or as may be necessary or desirable for development of Huka Falls Resort, that easement to include terms equivalent to those set out in rule 12.1.1;
- 12.1.3 Not to prevent, hinder or obstruct the use by the Developer of the Common Facilities, the addition, replacement, alteration or removal where not required of structures and/or services forming part of the Common Facilities by the Developer, or the granting of any interests in the Common Facilities by the Association to the Developer;
- 12.1.4 Not to oppose, or permit or take part in any opposition to the development of Huka Falls Resort;
- 12.1.5 To support any resolution to amend this Constitution, where the Association is bound by agreement with the Developer, to procure such amendment;
- 12.1.6 To sign any document or do any other thing reasonably necessary to support any resource consent or other authorisation applied for by or on behalf of the Developer in respect of Huka Falls Resort;
- 12.1.7 To permit the Association to temporarily close the Common Facilities as may be required for the development to proceed or as may be necessary or desirable for the development of Huka Falls Resort.
- 12.2 **Encumbrance:** The Encumbrance must be noted against each Owner's Title in favour of the Association. The Association must not, except by Special Resolution and with the prior written consent of the Principal Member (if there is one), agree to any alteration of the terms of the covenants as first noted against each such Owner's Title.
- 13. Use of Common Facilities by Members, Occupiers and Invitees**
- 13.1 **Use of Common Facilities:** Subject to this Constitution and the Bylaws relating to the use of the Common Facilities, and subject to rule 13.4, each Member and Occupier will be entitled to use the Common Facilities for the proper purposes for which they were designed.

- 13.2 **Use by Invitees:** A maximum of four (4) Invitees per Property will be entitled to use the Common Facilities at any one time, unless the prior consent of the Manager is obtained.
- 13.3 **Designated Use of Common Facilities:** The Association may from time to time determine that:
- 13.3.1 Some or all of the Common Facilities ("Designated Facilities") are to be available for the use by one or more of the Members ("Designated Members") and by Occupiers of those Designated Member Properties and their Invitees, where such Properties are located within one or more discrete areas within Huka Falls Resort and have common interests by reason of their proximity, use, size and/or demand on the Common Facilities; and
- 13.3.2 Other Members ("Non-Designated Members") and their Occupiers and Invitees are not entitled to use those Designated Facilities, and in those circumstances Designated Facilities will only be available for use by Designated Members and their Occupiers and Invitees.
- 13.4 **User Charges for Use:** The Association will be entitled to set a user fee or charge for persons who wish to use any of the Common Facilities. The Manager will collect or arrange for the collection of the user fees and charges on behalf of the Association and these will be paid into the Association's bank account and will form part of its general assets provided that the Developer, Principal Member and Manager will be entitled to use the Common Facilities at any time and invite any number of guests to view or use the Common Facilities and will not be required to pay any user fees and charges.
- 13.5 **Restrictions and Reservations:** The Association will be entitled to refuse any person (including a Member) access to the Common Facilities if in its sole discretion it considers that:
- 13.5.1 the Common Facilities are at or near full capacity;
- 13.5.2 to do so is in the interests of safety; or
- 13.5.3 admittance of any further persons would interfere with the use and enjoyment of the Common Facilities by Members and Occupiers using the Common Facilities at that time.
- 13.6 **No warranty as to capacity:** The Association makes no warranty as to the availability and capacity of the Common Facilities or their suitability for use as recreational facilities.
- 13.7 **Ownership of the Common Facilities:** From the date that the ownership of any of the Common Facilities is transferred to the Association, the Developer will not be responsible for the upkeep, maintenance or improvement of the Common Facilities nor will it be required to provide any further facilities, equipment, services, fixtures, fittings or chattels for the Common Facilities.
- 13.8 **Persons not entitled to use Common Facilities:** No person, other than those persons described in rules 13.1 to 13.3, will be entitled to use the Common Facilities.
- 14. Breach of Obligations**
- 14.1 **Breach of obligations:** Upon any breach of this Constitution or any Bylaw by a Member ("Defaulting Member"):
- 14.1.1 Where damage has been caused to the Common Facilities or any other Member's Property, the Defaulting Member will immediately make good such damage or, at the option of the Association or other Member, as the case may be, reimburse the Association/Member for the costs of such making good;
- 14.1.2 If the breach continues for three (3) Working Days after notice is given by the Association or the Manager to the Defaulting Member to remedy the breach, the Association/Manager may do anything, including paying money, necessary to remedy the breach;
- 14.1.3 All money paid and expenses incurred by the Association or Manager (including any legal costs) in remedying, or attempting to remedy, a breach of this Constitution or any Bylaw by a Defaulting Member, or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Association in respect of such breach, will be a debt due from the Defaulting Member to the Association;
- 14.1.4 If any money payable, by a Defaulting Member to the Association or the Manager, is in arrears and unpaid for five (5) Working Days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money will be payable on demand and will bear interest at the rate of 5% above the Association's banker's overdraft rate (or in the absence of such rate such other benchmark lending rate (as nominated by the Association)) applicable during the continuance of the default computed on a daily basis from the due date until the date of payment in full.
- 14.1.5 After receipt of a default notice under rule 14.1.2, the Defaulting Member will not be entitled to exercise the rights and benefits of membership of the Association (including any right to vote at a general meeting) and will not be entitled to use the Common Facilities (except roads and access ways). This rule will not relieve the Defaulting Member from the obligation to pay all monies due to the Association or the Manager under the terms of this Constitution.
- 14.2 **Enforcement of covenants:** Without prejudice to rules 14.1.1 to 14.1.5, each Member acknowledges that there are, or are likely to be, covenants and/or encumbrances registered over the Owner's Title in favour of the Association. In the event of the Defaulting Member's breach of the Constitution and/or any Bylaw, the Association may:
- 14.2.1 take action to enforce the terms of the relevant covenants;
- 14.2.2 take action to enforce the terms of any encumbrance, including the power of sale;
- 14.2.3 take any other action at law or in equity that may be available to the Association for the enforcement of this Constitution.
- 14.3 **Principal Member may take action:** Notwithstanding any other rule in this Constitution, the Principal Member is irrevocably authorised to, at any time and in its sole discretion, on behalf and in the name of the Association, take action, including court or tribunal proceedings, against any

Defaulting Member to enforce or require remedy of a breach by the Defaulting Member of this Constitution. The Principal Member will not be required to obtain the prior consent of the Association to any such action, proceeding or claim but will upon request inform the Association about any action, proceeding or claim and the Association will give its full co-operation to the Principal Member, including the prompt reimbursement of the Principal Member's costs (including solicitor/own client costs) of any such action, proceeding or claim.

- 14.4 **Persistent default of an Occupier:** In the event of persistent default by an Occupier of a Member's Property of this Constitution or the Bylaws, the Member will, on demand by the Association and at the Member's cost, and where legally possible, terminate the Occupier's rights to use and occupy the Member's Property.

## FACILITY EXPENSES

### 15. Computation and Payment of Levies

- 15.1 **Levies to be fair:** Each Financial Year, the Association will set the levies described in this rule 15 and rule 16. All levies must be set in a way that is fair and equitable to the Association and to all Members, including the Residential Members, the Commercial Members, and any category of Membership specified in rule 8.5, and any group(s) of Designated Members (as defined in rule 13.3.1). The levies for a Financial Year will be set taking into account the estimated Facility Expenses for the Financial Year and any contingency sums/special levies contemplated under rule 16.2.
- 15.2 **Estimate of Facility Expenses:** Prior to or as soon as practicable after the commencement of each Financial Year, the Association will set an annual levy and, by written notice, advise each Member of the Association's estimate ("Association's Estimate") of each Member's Proportion of the Facility Expenses for that Financial Year, plus any contingency sum or special levy as the Association, in its sole discretion, elects for that Financial Year.
- 15.3 **Payment of Facility Expenses:** Subject to rule 15.8, each Member will by automatic payment or direct debit, on the first of each month in the Financial Year, pay 1/12<sup>th</sup> of the Association's Estimate applicable to that Financial Year. Payment will be made in the manner set by the Association.
- 15.4 **Excluded Property:** For the purposes of setting and collecting levies under this rule 15, rule 16 and, where applicable, rule 17:
- 15.4.1 The Association must not levy any Property:
- 15.4.1.1 Before the earlier of the date the Developer notifies the Association that it may levy such Property from, or the date that is 15 months after the date the property meets the definition of Property, whichever date first occurs;
- 15.4.1.2 While the Owner of the Property is the Principal Member,  
(an "Excluded Property").
- 15.4.2 References to "Property" in this rule 15 will be deemed to exclude any Excluded Property, and any defined terms that require reference back to the definition of Property when used in this rule 15 will likewise be deemed to exclude any Excluded Property. By way of example, the calculation of Member's Proportion will not include any Excluded Property.
- 15.5 **Statement of Facility Expenses:** As soon as practicable after the end of each Financial Year the Association will provide each Member with an itemised statement of the actual Facility Expenses for the just completed Financial Year or any period in terms of rule 15.7.2, as the case may be. If the Member's Proportion of the actual Facility Expenses for the previous Financial Year or any period in terms of rule 15.7.2 is greater than the total of the monthly payments made by the Member under rule 15.3 or 15.7.3, the Member will within one month of notification pay to the Association the difference. If the Member's Proportion of the actual Facility Expenses for the previous Financial Year or any period in terms of rule 15.7.2 is less than the total of the monthly payments made by the Member under rule 15.3 or 15.7.3, the Association will credit the difference to the Association's Estimate for the then current Financial Year.
- 15.6 **Estimate not available:** If the Association has failed to advise a Member of the Association's Estimate for the Financial Year before the date on which the first payment is due under rule 15.3, the Member will on that date and every other date on which a payment is due under rule 15.3 pay 1/12<sup>th</sup> of the Association's Estimate applicable to the previous Financial Year. On the Association's Estimate for the Financial Year being advised to that Member:
- 15.6.1 Rule 15.3 will apply thereafter;
- 15.6.2 If the aggregate of a Member's payments made under this rule during the Financial Year exceeds the aggregate of payments which should have been made under rule 15.3, the Association will credit the difference in accordance with rule 15.5;
- 15.6.3 If the aggregate of a Member's payments made under this rule during the Financial Year is less than the aggregate of payments which should have been made under rule 15.3, the Member will immediately pay the difference in accordance with rule 15.5.
- 15.7 **New Properties:** Where in any Financial Year new Properties ("New Properties") become available:
- 15.7.1 The Association will provide to all Members (excluding the Owners of the New Properties) ("Existing Members") an itemised statement of the actual Facility Expenses for the period from the commencement of the current Financial Year to the date the New Properties became available ("Period"). The date of availability will be determined by the Manager. If the amount of an Existing Member's Proportion of Facility Expenses for the Period is greater than the total of the monthly payments made or due for that Period, the Existing Member will within one month of notification pay to the Association the difference. If the amount of an Existing Member's Proportion of Facility Expenses for the Period is less than the total of the monthly payments made or due for that Period, the Association will credit the difference to the Association's Estimate for the balance of the term of the current Financial Year;
- 15.7.2 As soon as practicable after the date the New Properties become available, the Association will by written notice advise all Members of the Association's Estimate of each Member's Proportion of Facility Expenses for the balance of the term of the current Financial Year;

15.7.3 Each Member will, on the first of each month until the end of the current Financial Year, pay an equal proportion of the Association's Estimate given under rule 15.7.2.

15.8 **Charge against the Property:** If a levy or any instalment of the Association's Estimate is in arrears, the defaulting Member may be required by the Association to pay a late charge including interest at the rate of 5% above the Association's banker's overdraft as the Association may determine. That late charge (plus any reasonable handling costs) is to be a charge against the Member's Property to which the levy relates and will be added to that levy.

15.9 **Personal Obligation:** Levies are the personal and individual debt of the Member. No diminution or abatement of levies is allowed for inconveniences arising from making of repairs or improvements to the Common Facilities. A Member is not exempted from liability for any levies through non-use of Common Facilities or otherwise.

15.10 **Certificate of Indebtedness:** The Association will, on the application of a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a certificate of the indebtedness of the Member to the Association calculated to the date specified in the application. The statement will show:

15.10.1 the Association's Estimate of such Member's Proportion of Facility Expenses for the current Financial Year;

15.10.2 the manner and time of payment of the Association's Estimate;

15.10.3 payments made by the Member on account of Facility Expenses in the current Financial Year;

15.10.4 payments due from the Member on account of Facility Expenses in the current Financial Year and not paid by the Member; and

15.10.5 the amount of any Transfer Levy of the Member which is then recoverable or will be recoverable for a given sale price by the Association pursuant to rule 17;

15.10.6 any accumulated unpaid default interest;

15.10.7 whether or not it has received notice that any proceedings are pending against the Association,

and, in favour of any person dealing with that Member, the certificate will be conclusive evidence of the matters certified therein. The Member may only apply for a certificate of indebtedness once in any year and on each occasion that a Member transfers ownership of a Property.

15.11 **Information for estimates during Development Period:** The Association will provide to a Member, within five (5) Working Days of receiving a request, a statement of the levies that are estimated to be or were payable by that Member under this rule 15 for the period commencing from incorporation of the Association and ending on 31 December 2012 that:

15.11.1 comprises estimates, historical data or both;

15.11.2 is itemised in relation to the different Common Facilities and services provided in relation to Huka Falls Resort;

15.11.3 contains a statement in relation to each of the Common Facilities and services as to whether the levy is fixed, variable or based on the Member's Proportion;

15.11.4 contains a statement as to which of the Common Facilities and services were, or are expected to be, provided in each Financial Year within the period;

15.11.5 contains a statement as to what stage of development Huka Falls Resort is at, at the end of each Financial Year within the period;

15.11.6 contains, if a levy is based on the Member's Proportion, a statement of a formula by which the levy can be calculated together with a worked example; and

15.11.7 contains a statement of the principal assumptions on which any estimates are based.

## 16. Special and Differential Levies

16.1 **Capital Improvements levy:** The Association may, from time to time, fix an additional levy to be paid by each Member together with the monthly instalments of the Association's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements.

16.2 **Special levies:** The Association may make a special levy, payable by any or each Member at such times as are set by the Association, as the Association considers necessary, including:

16.2.1 for it to meet its obligations under this Constitution;

16.2.2 where costs are incurred as a result of a Member's breach of any provisions of this Constitution provided that in the case of wilful or negligent damage caused by, or purposeful work undertaken at the request of, one or more but not all of the Members or their agents, contractors, employees, residents or invitees (not being maintenance or repair), then such cost will be at the sole expense of the Member(s) creating the damage or requesting the work;

16.2.3 where circumstance and fairness dictates that particular costs should be otherwise allocated then such costs will be fairly allocated between the Members having the benefit thereof.

16.3 **Levies for Designated Members:** Where the Association has made a determination under rule 13.3, the Association may in setting or fixing any annual levy or special levy, to the extent that the amount to be set or fixed relates to any Designated Facility, calculate the amount required from Members on the basis that only Designated Members are liable to contribute to that levy and that Non-Designated Members are not required to contribute to that levy. For the purposes of this rule 16.3, where any levy is set or fixed in relation to a Designated Facility a Member's Proportion



will mean that proportion which the Property Values of the Property or Properties owned by a Designated Member bear to the sum total of the Property Values of all Properties owned by all of the relevant Designated Members.

## 17. Transfer Levy

- 17.1 **Transfer Levy:** A Member may not sell, assign, gift, transfer or otherwise dispose of their Property or any part or interest in the Property to any other person, firm or company unless such Member has first paid to the Association in cash on the date of settlement or on such other terms and conditions as the Association will agree a levy equal to one percent (1%) of the gross transaction value (the "Transfer Levy").
- 17.2 **Assessing the Transfer Levy:** The term "gross transaction value", for the purposes of rule 17.1, means at the option of the Association the actual gross sale price received by the Member for each Property and improvements on each Property in money or money's worth or the market value of the Property and improvements to be determined by a registered public valuer agreed to by the Member and the Association and failing agreement by two valuers, one appointed by each party, and their umpire and otherwise in accordance with the Arbitration Act 1996 and its amendments.
- 17.3 **Exceptions:** Notwithstanding the above provisions of this Constitution, the Transfer Levy will not be payable on any of the following transactions:
- 17.3.1 inter Huka Falls Resort transactions (namely where the Member is contemporaneously purchasing a replacement Property within Huka Falls Resort);
  - 17.3.2 inter party transactions (that is to say, a transaction between Owners who are already joint tenants or tenants in common of a Property);
  - 17.3.3 immediate family transactions (that is to say transactions between spouses or de facto partners or parents and their children);
  - 17.3.4 estate planning transactions (that is to say transactions between an Owner and a trustee of an inter vivos trust settled by one or more of those Owners where the trust is substantially for the benefit of that Owner and their descendants);
  - 17.3.5 the transmission of the Property on the death of an Owner to a trustee or executor but not the subsequent transfer of the Property to the Owner's beneficiaries;
  - 17.3.6 mortgages; or
  - 17.3.7 leases for less than three (3) years.
- 17.4 **Transfer Levies used for Capital Improvements only:** Transfer Levies paid to the Association must be held by the Association in trust and used exclusively as a sinking fund for the Capital Improvements.

## OPERATION OF THE RESIDENTS' ASSOCIATION

### 18. The Committee

- 18.1 **Composition:** The powers and duties of the Association may be exercised and performed by the Committee comprising:
- 18.1.1 A chairperson (who will be chosen from the general Committee members subject to rule 18.3);
  - 18.1.2 A treasurer/secretary; and
  - 18.1.3 Subject to rule 18.1.4, a minimum of five and a maximum of nine general Committee members, as determined by the Association in general meeting before election of Committee members;
  - 18.1.4 While the First Members of the Association remain Members, a minimum of one and a maximum of three general Committee members, as nominated by the Principal Member.
- 18.2 **Powers:** The administration of the Association will be vested in the Association in general meeting, and will be delegated to the Principal Member until the end of the Development Period and, following that, will be vested in the Committee in accordance with this rule 18. The Committee may exercise all of the powers, authority and discretions of the Association as permitted under this Constitution and do on its behalf all acts as it deems necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may from time to time be imposed by the Association. The Committee may delegate any one or more of its powers to a sub-committee of Committee members, a Committee member, the Manager or any other person(s). In exercising the Committee's delegated powers, any delegate must comply with any directions that the Committee may impose.
- 18.3 **Committee members:** The chairperson will be the nominee of the Principal Member at its option (if there is one) or, where there is none, the chairperson will be elected by the Committee at every annual general meeting. The treasurer/secretary will be the Manager, or, where no Manager has been appointed, such person as the Committee will appoint from time to time. Subject to rule 18.1.4, the balance of the Committee will be elected by the Association at every Annual General Meeting, and may be elected at any other time by the Association in general meeting.
- 18.4 **Retirement:** A Committee member will hold elected position until the earliest of:
- 18.4.1 The next Annual General Meeting following election (when the Committee member will be eligible for re-election);
  - 18.4.2 The date written resignation from position is received by the Association;
  - 18.4.3 The date of removal from such position by the Association in general meeting; or

- 18.4.4 The date of cessation of membership.
- 18.5 **Casual Vacancy:** In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership from the Association, or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Association in general meeting.
- 18.6 **Duties of treasurer/secretary:** The treasurer/secretary will:
- 18.6.1 Convene general meetings when requested to do so in accordance with this Constitution;
  - 18.6.2 Attend all meetings of the Committee and have full speaking rights at such meetings;
  - 18.6.3 Give all notices required to be given by these rules or as directed from time to time by the Association or the Committee;
  - 18.6.4 Keep minutes at all general meetings and Committee meetings and enter into the minute book:
    - 18.6.4.1 the time, date and venue of such meeting;
    - 18.6.4.2 all business considered and resolutions passed at such meeting;
  - 18.6.5 Hold in safe custody the common seal of the Association;
  - 18.6.6 Receive, and issue receipts for, all annual and special levies, additional fees and any other moneys paid to the Association;
  - 18.6.7 Operate and maintain a current bank account in the name of the Association;
  - 18.6.8 Pay all accounts properly incurred by or on behalf of the Association;
  - 18.6.9 Report immediately to the Association any Member who fails to pay special levies or additional fees within the prescribed period;
  - 18.6.10 Keep all financial records and any security documents in safe custody;
  - 18.6.11 Compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Association; and
  - 18.6.12 Compile the financial statements immediately following each Financial Year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as is reasonably practicable after each audit is completed and, in any event, no later than five (5) months of the end of the Financial Year.
- 18.7 **Conduct of Meetings:** The Committee may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business, as it thinks fit. A majority of members of the Committee from time to time will constitute a quorum for a Committee meeting. No business of the Committee will be conducted at any time when less than a quorum is present at the same time and place. The Committee may meet at any time and the treasurer/secretary will, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.
- 18.8 **Chairperson:** Subject to rule 18.3, the Committee from time to time will appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 18.9 **Casting Vote:** Subject to rule 18.11 in the case of an equality of votes the chairperson may exercise a casting vote.
- 18.10 **Seal:** The Committee will obtain a common seal for the use of the Association and will provide for its safe custody. The common seal will not be used except by resolution of the Committee. Every instrument to which the common seal is affixed will be signed by any two members of the Committee.
- 18.11 **Voting:** Resolutions of the Committee will be passed by the majority. Each Committee member will be entitled to exercise one vote, provided the treasurer/secretary will not be entitled to vote. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by all of the Committee members will be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.
- 18.12 **Validity of Committee's action:** All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, will be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.
- 18.13 **Committee Minutes and Records:** The Committee will cause proper minutes to be kept of the proceedings of all meetings of the Association and of the Committee. All business transacted at such meetings signed by the chairperson will be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.
- 19. The Design Control Board**
- 19.1 **Composition:** The Design Control Board will comprise the Principal Member and, after the resignation of the Principal Members, the following persons:
- 19.1.1 A representative of the Association appointed by the Association from time to time;
  - 19.1.2 A landscape architect with appropriate qualifications and expertise appointed from time to time by the Association;

19.1.3 An architect appointed from time to time by the Association or, if the Association is unable or unwilling to make that appointment, by the Institute of Architects (Taupo).

19.2 **Design Controls:** The Design Control Board may revise and publish from time to time the Design Controls in respect of any home, commercial premises or other development within Huka Falls Resort. Each Member will fully comply with the Design Controls and any other rule relevant to design control.

19.3 **Design approval:** Before commencing any alteration, addition or modification to any building or other structure (including fencing, garden features) within Huka Falls Resort, the Member must first submit the design for the proposed work to the Design Control Board for its written approval in accordance with the Design Controls. The Design Control Board may refuse any plans which, in its reasonable opinion, do not comply the Design Controls.

19.4 **Approval costs:** All costs of the design approval process will be met by the Design Control Board unless the Design Control Board considers, in its sole discretion, that negotiation relating to disputed designs is in wide variation to the Design Controls in the event of which the Member seeking approval will pay the Design Control Board the hourly rate equivalent to an arm's length architect's fee to consult and make recommendations to make such design compliant.

## 20. Principal Member

20.1 **Principal Member:** Until Huka Falls Resort is fully completed and while the Principal Member is in office in accordance with rule 9.1:

20.1.1 The full government and control of the Association will be vested in the Principal Member, which may exercise all the powers, authorities and discretions vested in the Committee and in addition may exercise all the powers of the Association which are not by statute required to be exercised by the Association in general meeting;

20.1.2 The Principal Member will be entitled to exercise the number of votes equal to one more than the number of Members voting in person or by proxy at any meeting of the Association and, for the avoidance of doubt but subject to rule 24.3, this right may without limitation be exercised on any matters requiring a Special Resolution;

20.1.3 Any minute entered in the minute book of the Association's proceedings signed by the Principal Member will, in any matter not expressly required by the statute to be done by the Association in general meeting, have the effect of a resolution of the Association;

20.1.4 The Committee will be under the control of the Principal Member, whose opinion will prevail in the event of any difference of opinion, and they will be bound to conform to the Principal Member's directions in regard to the Association's business. For the avoidance of doubt, the Committee will act in an advisory role to the Principal Member to enable the Principal Member to form its opinions and make decisions under this rule.

20.2 **Effect on Meetings:** Notwithstanding anything contained or implied in this Constitution:

20.2.1 So long as the Principal Member is in office, no resolution that is passed by the Association in general meeting or by the Committee will have any force unless the resolution is in writing and signed by the Principal Member; and

20.2.2 So long as the Principal Member is in office, it is not necessary to hold the formal meetings of the Committee, but any resolution signed by the Principal Member will be as valid and effectual as if it were a resolution unanimously passed at any meeting of the Committee.

20.3 **Right to Convene General Meetings:** The Principal Member may at any time convene upon such notice as he/she/it thinks fit a general meeting of the Association and, to the extent permissible by law, may regulate all proceedings at such meetings and from time to time determine the quorum for any meeting whether of Members or of the Committee, notwithstanding anything to the contrary to this Constitution.

20.4 **Principal Member Provisions Paramount:** This Constitution in so far as it relates to the proceedings and powers of the Committee and/or the Association will in all respects be read subject to the provisions relating to the Principal Member in this rule 20. Should there be any inconsistency or contradiction, the provisions relating to the Principal Member in this rule 20 will be paramount.

## 21. Manager

21.1 **First Manager:** The first manager will be appointed by the Principal Member, which will manage the Association in accordance with the Management Agreement.

21.2 **Duties:** Subject to rule 21.1 and following the resignation, expiry of term or dismissal of the first Manager (and its successors and assigns), the Committee will appoint, remove and replace a Manager from time to time to carry out such of the obligations of the Association, and exercise such of the discretions and powers of the Association, as the Committee sees fit. Such appointment will be for the term, at the remuneration and on such terms and conditions as the Committee may agree with the Manager.

21.3 **Rights and responsibilities:** The Manager may enter into contract with the Members to provide management and other services to the Members including the provision of utilities, services and consumable items, and the Manager will also be responsible for (amongst other things):

21.3.1 the appointment and management of landscaping contractors to maintain Huka Falls Resort;

21.3.2 management of the security arrangements for Huka Falls Resort and employment of relevant contractors (if necessary);

21.3.3 the monitoring and enforcement of the Bylaws, including the control of behaviour of Residents and visitors to Huka Falls Resort to a level deemed generally acceptable by a majority of Members;

21.3.4 coordination of rubbish collections for Huka Falls Resort;

21.3.5 coordination of minor repairs/maintenance with subcontractors;

- 21.3.6 management of the provision of external services to a Property (e.g. gas, electricity, water, sewer, telecommunications, fibre optics);
- 21.3.7 the bulk purchase of utility services for Huka Falls Resort;
- 21.3.8 operation and maintenance of an 'intranet' for communications between Members of Huka Falls Resort;
- 21.3.9 management of a booking system (if required) for any Common Facilities;
- 21.3.10 maintenance of the cleanliness of all Common Facilities through employment of external contractors;
- 21.3.11 the operation of the Rental Agency within Huka Falls Resort.

The scope of services supplied by the Manager may be altered by the Committee in a fair and equitable manner. Should the scope of services be materially altered, the management fee for the affected Properties will be adjusted, up or down, in a fair and equitable manner. Likewise, the scope of services offered by the Manager may be varied with the approval of the Committee.

- 21.4 **Reporting:** The Manager must report on a regular basis to the Committee.

## 22. General Meetings

- 22.1 **Annual General Meeting:** In addition to any other meetings in that year, the Association will hold an Annual General Meeting each year. Not more than 18 months will elapse between the date of one Annual General Meeting and that of the next. The Committee will determine the time and place of each year's Annual General Meeting.
- 22.2 **Special General Meetings:** A general meeting other than an Annual General Meeting may be requested by the Committee, or by written requisitions signed by not less than 25% of the Members, or by written notice of the Principal Member (if there is one). The secretary will call a special general meeting within 15 Working Days of receiving an effective request.
- 22.3 **Powers of the Association In general meeting:** The Association in general meeting may, by resolution, exercise all powers, authorities and discretions of the Association notwithstanding that any such power, authority and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person or by proxy at general meetings together with the Principal Member (if there is one), will be as valid and effectual as if it had been passed at a general meeting of the Association duly convened and constituted.
- 22.4 **Quorum:** No business will be transacted at any general meeting of the Association unless the quorum is present when a meeting proceeds to business. Quorums will be not less than 20% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy and the Principal Member (if there is one).
- 22.5 **Notice of General Meeting:** A notice of general meeting of the Association will be sent to every Member not less than 10 Working Days before the date of such meeting. Such notice will specify the date, time and venue of such meeting. In the case of a general meeting, other than an Annual General Meeting, such notice will specify all business and all notices of motions to be considered at such meeting. No business or notice of motion which is not specified will be discussed or transacted at such meeting.
- 22.6 **Failure to give notice:** The accidental omission to give notice, or the non-receipt of such notice by any Member, will not invalidate the proceedings at any such meeting.
- 22.7 **The Chairperson:** The chairperson at any general meeting will be:
  - 22.7.1 The chairperson of the Association; or
  - 22.7.2 If the chairperson is not present or is unwilling to take the chair, then those Committee members who are present may choose one of their number to chair the meeting; or
  - 22.7.3 If for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.
- 22.8 **Adjournment:** If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting will be dissolved. In any other case the meeting will stand adjourned to the same day in the next week, at the same time and place, or to such other day and such other time and place as the Committee will determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present together with the Principal Member (if there is one) will constitute a quorum.
- 22.9 **Adjourned Meetings:** No business other than that business which might have been transacted at the meeting from which the adjournment took place, will be transacted at any adjourned meeting. Members will not be entitled to receive any notice in respect of adjourned meetings.

## 23. Voting

- 23.1 **One Member one Vote:** Each Member present at a general meeting of the Association (not at that time being in breach of the Constitution) will be entitled to one vote for each Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of a Property, and such Owners are collectively a Member pursuant to rule 8.1.4 only one such Owner will be entitled to vote. In the absence of agreement between such Owners as to who will exercise this vote, the Owner appearing first on the certificate of title to the Property will be entitled to exercise the vote. On the death of any Member, and pending the transfer of the Member's Property, the executor of that Member's estate will be entitled to exercise that Member's vote.
- 23.2 **Corporation representatives:** Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Association, and the person so authorised will be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member, and

references in this Constitution to a Member being present in person will mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.

- 23.3 **No vote if fees unpaid:** Unless all levies and additional fees presently payable by the Member to the Association have been paid in full, the Member will not be entitled to vote at any general meeting of the Association, whether in his/her/its own right or as a proxy for another person. This rule will not apply to the Principal Member, however to the extent that money is apportioned to the Principal Member, the Principal Member will be liable to pay those moneys.
- 23.4 **Voting at meetings:** At any general meeting:
- 23.4.1 A resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote;
- 23.4.2 Resolutions put to the vote will be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
- 23.4.2.1 the chairperson of the meeting; or
- 23.4.2.2 at least five Members present in person or by proxy.
- 23.4.3 In the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost or any entry to that effect in the Association's minute book, will be conclusive evidence of that fact, without further proof of the number or proportion of votes recorded in favour of or against such resolution;
- 23.4.4 Resolutions will be passed by a majority of votes, except where a Special Resolution or the unanimous resolution of all Members is required by the Constitution;
- 23.4.5 In the case of a tie in votes, the chairperson may exercise a casting vote.
- 23.5 **Good Faith:** Members will, in exercising any vote at any general meeting, or as a Committee member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Association, and that each Member will bear that Member's Proportion of all Facility Expenses and of all costs and expenses to be met by levies made by the Association under rule 15 and/or 16, irrespective of whether any expenditure by the Association benefits all Members.
- 23.6 **Appointment of Mediator:** An independent mediator will be appointed to act in a dispute between any Members and the Developer concerning the Developer's compliance with this Constitution when exercising its powers or performing its duties as the Principal Member if 25% or more of all Members vote to appoint a mediator. The Members in question must promptly give full written particulars of the failure ("dispute") to the Principal Member, and the dispute will be referred to mediation. The mediation process is:
- 23.6.1 the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the President of the New Zealand Law Society or the President's nominee;
- 23.6.2 the parties must co-operate with the mediator in an effort to resolve the dispute;
- 23.6.3 if the dispute is settled, the parties must sign a copy of the terms of settlement;
- 23.6.4 if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
- 23.6.5 the cost of the mediator's fee and costs including travel, room hire, refreshments etc must be met as to half by the Association and as to half by the Principal Member;
- 23.6.6 the terms of settlement are binding on the parties;
- 23.6.7 the terms of settlement may be tendered in evidence in any legal proceedings;
- 23.6.8 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.
- 24. General**
- 24.1 **Dissolution:** The Association may be wound up in accordance with section 24 of the Act. Upon the winding up of the Association:
- 24.1.1 ownership of the Common Facilities will vest in; and
- 24.1.2 the then balance of any sinking fund collected for Capital Improvements or other purposes under rule 16 will be distributed to, the Members as tenants in common in shares equal to the Member's Proportion as at the date of winding up, and the Association will take all necessary steps to vest legal title to the Common Facilities in the Members.
- 24.2 **Alteration of Constitution:** This Constitution will not be amended, added to or rescinded except at an Annual General Meeting, or a general meeting convened for that purpose, and unless written notice of the proposed amendment, addition or rescission will have been given to all Members in accordance with this Constitution. Notwithstanding any other rule in this Constitution, this Constitution will not be amended, added to or rescinded without the prior written consent of the Principal Member (if there is one) or so as to alter, add to or rescind rules 4.1, 4.2, 8.1, 9, 10.1, 12.1, 14.2, 14.3, 15.4, 15.9, 18.1, 18.2, 18.3, 19, 20, 21.1 and 24.2 or otherwise so as to detrimentally affect the rights of the Principal Member.
- 24.3 **Alteration of Certain Rules:** Notwithstanding rule 24.2, rules 15.11 and 23.6 or any rule or part of a rule that would, if amended, have the effect of altering these rules so that a condition in the Exemption Notice would no longer be met must be approved by a Special Resolution (excluding the

Developer and Principal Member) provided that rules 3.3 and 18.6.2 are not to be amended, added to or rescinded under any circumstances whatsoever.

- 24.4 **Introduction, Alteration or Cancellation of Bylaws:** If the Committee wishes to promulgate new Bylaws, or vary or cancel any Bylaws, the Bylaw will not be effective until it is approved by the Members by Special Resolution and the prior written consent of the Principal Member (if there is one).
- 24.5 **Acceptance by Registrar:** No such amendment, addition or rescission will be valid unless and until accepted by the Registrar.
- 24.6 **Liability of Members:** No Member will be under any liability in respect of any contract or other obligation made or incurred by the Association.
- 24.7 **Association to Indemnify:** The Association will indemnify and keep indemnified:
- 24.7.1 each Member against any liability properly incurred by such Member in respect of the affairs of the Association, to the extent of the property owned by the Association; and
  - 24.7.2 members of the Committee from and against any liability in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Association, except where criminal liability is adjudged in respect of that Committee member.
- 24.8 **Action in Law:** No action in law or otherwise will lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule will prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.
- 24.9 **Member to Indemnify Association:** Each Member will indemnify and keep indemnified the Association from and against any action, claim, demand, loss, damage, cost, 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 this Constitution or the Bylaws by the Member.
- 24.10 **Dispute Resolution:** Without detracting from rule 23.6, any difference or dispute which may arise between a Member and the Association concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution will be first referred to mediation and then if resolution is still not achieved, to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator will be determined by the arbitrator. The arbitration will be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such mediation and arbitration will be a condition present to the commencement of any action at law.
- 24.11 **Approval:** Where in this Constitution any reference is made to the approval or consent of the Association or the Principal Member:
- 24.11.1 Such approval or consent will be given at the sole discretion of the Association, or the Principal Member, as appropriate;
  - 24.11.2 No approval or consent given on any occasion by either of the Association or the Principal Member will serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
  - 24.11.3 Such reference will mean the prior written approval or consent of the Association or the Principal Member as appropriate.



## Bylaws

### FOR HUKA FALLS RESORT

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#### 1. INTRODUCTION

- 1.1 **Constitution:** These Bylaws are those adopted by the Association under the provisions of the Constitution.
- 1.2 **Effective date:** These Bylaws come into force and effect on and from 1 January 2007. The Bylaws may be added to, amended or modified from time to time as provided for in the Constitution.
- 1.3 **Interpretation:** Terms and expressions used in these Bylaws are defined and guidelines for interpretation are set out in the Constitution. All references to Member(s), in these Bylaws, is deemed to include reference to Occupier(s) and Invitee(s) unless the context otherwise requires.
- 1.4 **Objectives:** The Members have agreed upon Objectives for the development, management and operation of Huka Falls Resort, in the form of principles and guidelines to apply to the development and then operation of Huka Falls Resort over time intended to encourage and allow for coordination, preservation and enhancement of amenity and value for all as follows through:
- 1.4.1 High levels of design, design standards and specifications;
- 1.4.2 High level environmental standards – balancing commercial with ecologically sustainable principles, e.g. through the efficient use of energy;
- 1.4.3 Professional and consistent management apply to all parts of the Common Facilities;
- 1.4.4 High quality product and presentation which is premium in every class of property represented in Huka Falls Resort – entertainment, commercial, retail and residential;
- 1.4.5 Building and growing a place of harmony and community within Huka Falls Resort.
- 1.5 **Purpose of the Bylaws:** The Bylaws are one of the tools, together with legal structural design, precise contracting and professional management, by which the standards and requirements to apply to the development, management, operation and use of Huka Falls Resort will be maintained and observed.
- 1.6 **Application of the Bylaws:** The Bylaws apply to:
- 1.6.1 All Properties in which the Members have an interest and to the land owned, leased, licensed or otherwise held by the Association from time to time; and
- 1.6.2 All Members and Occupiers of, and Invitees to, Huka Falls Resort.

#### 2. CONDUCT IN HUKA FALLS RESORT

- 2.1 **Considerate behaviour:** Each Member will make no noxious, noisy, improper, offensive or unlawful use of any Property or the Common Facilities, and will use the Member's Property and the Common Facilities only for the purposes for which they were designed. No Member will undertake any activity which is or may become a nuisance, cause unreasonable embarrassment, disturbance or annoyance to the other Members in the use and enjoyment of their Properties.
- 2.2 **No obstruction:** No Member will fetter, obstruct or impede the use of any Common Facilities by any other Member or any contractor engaged by the Association. For example, no Member will park or stand or will permit to be parked or stood on the Common Facilities any vehicle except with the consent in writing of the Manager. No Member will obstruct or deposit or throw anything on any path, hallway, stairway, corridor, lobby, entrance way or lift in any building, or fire escape, or any of the Common Facilities, or any appurtenances or conveniences, or obstruct any lights, skylights, windows or other means of illumination of any part of the Common Facilities or any building generally
- 2.3 **Don't void insurance:** No Member will do any act which may prejudice or add to the premium payable in respect of any insurance of the Common Facilities.
- 2.4 **Social gatherings:** Following on from 2.1 above, and with regard to the Resource Management Act, Members must not hold social gatherings or functions in or on the Member's Property which will or are reasonably likely to cause any noise which interferes with the peace and quietness of any neighbouring properties at any time and, in any event, no gathering or function is to be held after 10 pm (Sunday to Thursday) and 12 midnight (Friday and Saturday). Furthermore, under no circumstance is the Member allowed to use, or permit the use of, any part of the Common Facilities for a private function. This is to take account of the fact that Huka Falls Resort is a predominantly residential development and "excessive" or "unreasonable" noise and/or late night vehicle traffic is inconsiderate and will not be tolerated. This Bylaw exists to prevent the need for neighbours having to call out noise control officers employed by local councils, law enforcement officers, and/or enter into disputes with each other. In the event of any unavoidable noise in a Property, at any time, the Member will take all practical means to minimise

annoyance of the neighbours by closing all doors, windows and curtains of the Property and also such further steps as may be within the Member's power for the same purpose.

- 2.5 **Vehicle repairs:** No Member is to undertake any vehicle or mechanical repairs (other than minor repairs, for example to a bicycle, lawnmower or vacuum cleaner) within the Member's Property or on any part of the Common Facilities.
- 2.6 **Don't litter:** No Member will drop any litter in or on the Common Facilities.
- 2.7 **Don't damage the Common Facilities:** No Member will do any act which detracts from the attractiveness or state of repair of the Common Facilities. If any damage or loss occurs, the Member will immediately report such damage to the Manager.
- 2.8 **Temporary structures:** No structures of a temporary nature, including any trailer, tent, motor home, garden shed, aviary, kennel or other outbuilding, may be installed or used on any Property or the Common Facilities at any time.
- 2.9 **Signs and placards:** No sign, placard, banner or emblem of any kind may be kept or placed on any Property or mounted, painted or attached to any part of the Property, fence, or other improvement on such Property so as to be visible from public view.
- 2.10 **Decency:** No Member will engage in, or allow any person to engage in, any criminal activity within Huka Falls Resort and under no circumstances will the Member use or allow use of the Member's Property for any activity or purpose that is unlawful, immoral or indecent or which offends commonly accepted standard of decency. By way of example, any of the following is expressly prohibited:
  - 2.10.1 Escort agency, brothel, massage parlour and/or sauna;
  - 2.10.2 "rap" parlour;
  - 2.10.3 Striptease;
  - 2.10.4 Topless bar and/or restaurant;
  - 2.10.5 The showing or supply of pornographic films or videos from Properties belonging to Commercial Members.
- 2.11 **Schools:** No Member will engage in, or allow any person to engage in, any activity or purpose that will, or is reasonably likely to cause disruption to the Members or increase the demand on the Common Facilities. By way of example, any of the following is expressly prohibited:
  - 2.11.1 Language schools;
  - 2.11.2 Music or swimming schools;
  - 2.11.3 Kindergarten, early child care centre, or before/after-school care facilities.
- 2.12 **Don't cause disturbance:** No Member will make or permit any improper or unseemly noises within Huka Falls Resort, nor act in any fashion so as to annoy or disturb any other Member. All televisions, stereos, musical instruments, and other noise levels, must be kept at a reasonable volume, so as not to disturb other Members. Furthermore, no horns, bells, whistles or other sound devices, except for security devices which are used exclusively to protect persons and property, are to be placed in or used in Huka Falls Resort.
- 2.13 **Consumption of alcohol:** If intoxicating liquor is consumed within Huka Falls Resort, the Member will ensure all laws governing the consumption of intoxicating liquor are complied with.
- 2.14 **No bonfires, fireworks etc:** There are to be no exterior fires in Huka Falls Resort except for barbecue fires in contained receptacles, adequately designed for such purpose and located on a Member's Property. No Member will burn any material or substance within Huka Falls Resort, or light or display any fireworks or domestic explosives of any kind, or do anything which may create a fire hazard or contravene fire regulations.
- 2.15 **Rubbish disposal:** No Member will store or dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contractors. Properly secured and sealed rubbish bags for disposal will be placed only where approved by the Manager and used only for the purpose for which they are provided.
- 2.16 **No skateboarding or rollerskating:** No Member will skateboard or rollerblade or scooter within Huka Falls Resort.
- 2.17 **Smoke free:** No Member may smoke in any part of the Common Facilities.
- 2.18 **No nudity:** No Member is to sunbathe, naked or semi-naked, on any part of the Common Facilities.
- 2.19 **Residential use:** No Residential Member will conduct any commercial activity from the Property (including the garage) or store on that Property any plant or equipment used for commercial activities, without the written consent of the Manager.
- 2.20 **No dangerous substances:** No Member will permit anything to be done nor bring nor keep anything in the Property which may create a fire hazard or which may contravene the fire regulations or the rules, regulations, ordinances or by-laws of any Relevant Authority.
- 2.21 **No auctions:** No Member will permit any auction, sale, garage sale or similar activity to be conducted or take place in any Property or on the Common Facilities.



### 3 PETS

- 3.1 **Only family pets:** No animals, livestock or poultry of any kind may be raised, bred or kept on any Property except for domestic dogs, cats or other household pets which are kept for the purpose of providing companionship for the Member's family. Animals are not to be raised, bred or kept for commercial purposes or for food.
- 3.2 **Control and supervision:** All permitted pets must be under constant control and supervision of the Member, and for this purpose:
- 3.2.1 All dogs will be on a leash when outside the boundaries of a Member's Property;
  - 3.2.2 All pet debris and droppings will be immediately picked up and disposed of;
  - 3.2.3 No pet will make any noise as to disturb or otherwise cause a nuisance;
  - 3.2.4 All pets will be maintained in a healthy condition, and all laws and regulations relating to the keeping of pets are complied with; and
  - 3.2.5 All pets must be properly tagged for identification.
- 3.3 **Number of pets:** No Member may keep more than 1 large/medium breed dog or 2 small/toy breed dogs and/or 2 domestic cats within the Member's Property.

### 4 BUILDING APPEARANCE AND DESIGN CONTROLS

- 4.1 **Attractive appearance:** Each Member has a duty to keep the Property and all improvements on it in premium condition and in an attractive condition, and will not permit the accumulation of unsightly rubbish, equipment, implements or materials on the Property.
- 4.2 **Building standards:** No building may be erected, altered or maintained on a Property unless it complies with all applicable standards and the Design Controls and with the requirements of the Design Review Board.
- 4.3 **Building colours:** No Member is to alter in any manner whatsoever the colour and exterior appearance of the building erected on the Property except in accordance with the Design Controls and with the written permission of the Design Review Board.
- 4.4 **Antennae, satellite dishes and solar collectors:** No Member may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collecting panels or equipment on a Property unless such apparatus is erected and maintained in such a way that it is screened from public view.
- 4.5 **Window treatments:** No Member will:
- 4.5.1 cover or coat any window or door with aluminium foil, reflective film or similar treatment;
  - 4.5.2 erect or display blinds, louvers, or curtains visible from the outside of the Property unless the colour and design of those blinds, louvers and curtains are in accordance with the range of window treatments listed in the Design Controls or are approved by the Design Review Board. No Member may install, renovate and/or replace blinds or curtains without complying with the Design Controls. The Member will as often as the need arises (in the opinion of the Manager) replace at the Member's own cost any blinds, louvers and curtains.
- 4.6 **Repair of broken windows:** All windows are to be kept clean and if broken or cracked shall be promptly replaced by the Member at his/her expense with fresh glass of the same or better quality and weight as at present.
- 4.7 **Seasonal decorations:** Outdoor seasonal decorations must be in working order, good repair and unobtrusive. Decorations will be set up and taken down in a timely manner.
- 4.8 **Air-conditioning:** No air-conditioning apparatus is to be installed on the exterior front wall or window of any Property. No evaporative cooler will be installed on the front wall or window of any Property.
- 4.9 **Clean exteriors:** Each Member is to maintain or cause to be maintained in clean and sanitary condition and in good repair the exteriors of the Property.
- 4.10 **Washing and clothes hanging devices:** No clothing, bedding or other articles will be hung on the windows, balconies or on the outside of the Property or its windows.

### 5 GARDEN MAINTENANCE

- 5.1 **Grass and weeds:** All grass, hedges, shrubs, vines and planting of any type is to be kept trimmed and, at regular intervals, mowed, trimmed and cut so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and plants that die are to be removed and replaced with comparable plants. No weeds, vegetation or waste materials are to be placed or permitted to accumulate on any part of the Property.
- 5.2 **Trees:** No living tree having height of 2 metres or more or having a trunk measuring 8cms or more in diameter at ground level is permitted on a Property.
- 5.3 **Fences:** No fence, wall or hedge may be erected or maintained on that part of a Property except with the approval of the Association.

## 6 ROADS

- 6.1 **Roads:** The roads, accessways, tracks, walkways and footpaths within Huka Falls Resort will only be used for the purpose of access by Members to their Properties, any commercial properties in Huka Falls Resort open to the public or the Members, and the Common Facilities.
- 6.2 **Notification of vehicle registrations:** Each Member will provide the Manager with the registration number of all vehicles belonging to the Member which will be used on any roads within Huka Falls Resort.
- 6.3 **Parking restrictions:** No Member will park any vehicle on the roads, tracks, paths or any other parts of the Common Facilities, other than in spaces specified by the Association from time to time as suitable for that purpose.
- 6.4 **Prohibited vehicles:** No camper vans, vans, trucks over one ton, trailers, vehicles with advertising signage, recreational vehicles (including boats, watercraft, jet skis, motor homes, travel trailers) buses, aircraft, motorcycles, motor scooters, motorised gardening equipments, garden implements, equipment or tools may be kept on any Property unless the same is fully enclosed within the garage located on the Property. This Bylaw does not apply to:
- 6.4.1 commercial vans and pick-ups, service and delivery vehicles temporarily visiting a Property during normal business hours, or acting under instructions from the Manager,
  - 6.4.2 vehicles and equipment temporarily parked on a Property in connection with the maintenance of a Property,
- and remaining for such period of time as is reasonably necessary to provide the service or to make the delivery to a Property or the Common Facilities. Any vehicle, boat or equipment kept, stored or parked in breach of this Bylaw or the parking rules referred to in clause 6.3 above may be towed, without notice, by or on behalf of the Association and at the owner's cost and expense.
- 6.5 **Speed restrictions:** No vehicle will travel in excess of 30km per hour within Huka Falls Resort except in the case of emergency.

## 7 - KEYS AND ACCESS CARDS

- 7.1 **Keys and cards:** No Member will key or retain any duplicates or copies of any keys or access cards relating to the Common Facilities. Additional keys and access cards can be provided by the Manager on payment of a fee charged by the Manager. In the interests of effective security, the Manager has the right (at the Manager's discretion) to restrict the number of keys and access cards available for use.
- 7.2 **Invitees have restricted access:** No Invitee will be allowed by a Member to use a key or access card, other than in the presence of the Member of his/her immediately family.
- 7.3 **Lost keys:** If any key or access card is lost, stolen, destroyed or damaged, the Member is to report such to the Manager immediately.

## 8 EVICTION AND CLOSING THE COMMON FACILITIES

- 8.1 **Eviction:** The Association reserves the right to exclude or evict from the Common Facilities any person (including a Member) who, in the opinion of the Association is under the influence of intoxicating liquor, drugs or other substances, or who acts in a manner that breaches the Constitution or the Bylaws. This right may be delegated to the Manager.
- 8.2 **Closure:** The Manager may close any or all of the Common Facilities as the Manager considers necessary for security reasons, or for the purposes of maintaining or repairing the Common Facilities.
- 8.3 **Notice of closure:** The Manager will endeavour to give reasonable notice to the Members of any proposed closure unless the situation requires immediate closure in which case the Manager is not required to give notice.

## **SCHEDULE 2 First Members**

Patrick Marinus Fontein

Suzanne Colette Fisher

Nigel John Bent

Lara Kate Wiley

Laura Ann May McCulloch

Kelly Gallagher

Callum Angus Stewart McGregor

Simon Matthew Pullar

Rachel Anna Louise Venables

Evan Crighton

Sharon Jane Bellamy

Kerry Lynch

Huka Falls Resort Limited

# Management Agreement

## FOR HUKA FALLS RESORT

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DATED this                    day of                    2006.

### PARTIES

1.        **HUKA FALLS RESORT RESIDENTS' ASSOCIATION INCORPORATED ("Association")**

and

2.        **[HUKA FALLS RESORT MANAGEMENT SERVICES LIMITED] ("Manager")**

together the "Parties", and individually a "Party".

### BACKGROUND

- A.        The Association owns, holds, operates, maintains and manages and/or will own, hold, operate, maintain and manage certain communal property and facilities (defined as the "Common Facilities" in the Constitution) in accordance with the Constitution.
- B.        The Constitution requires the Association to operate and maintain the Common Facilities for the benefit of the Members, such Members being property owners in Huka Falls Resort.
- C.        The Association has resolved to appoint the Manager to perform certain duties and provide certain services for the management and maintenance of the Common Facilities and Huka Falls Resort generally.
- D.        The Manager has agreed to accept that appointment and to manage the Association on the terms set out in this Agreement.

### THE PARTIES AGREE AS FOLLOWS:

#### 1.        **Definitions**

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

**Agreement** means this agreement and includes all schedules and appendices, as the same may be amended by the Parties from time to time;

**Association** includes the Association's successors, transferees and assigns;

**Association's Representative** means the person appointed by the Association from time to time to liaise with the Manager;

**Commencement Date** means [                    ] [the date of this Agreement];

**Common Facilities** means any land, roads, footpaths, gardens, buildings, structures, plant, equipment, facilities, services and amenities and, in particular, any swimming pools and tennis courts to be owned, leased, licensed or otherwise held, operated or managed by the Association (as the Association may determine) from time to time as the same are more particularly described in the Constitution;

**Constitution** means the constitution of the Association, a copy of the current form being annexed as Schedule 1;

**Expiry Date** means that date being 10 years from the Commencement Date;

**Force Majeure Event** means any of the following events:

- (a) act of God;
- (b) any act of a public enemy, war, civil unrest, or act of military authority;
- (c) fire, flood, earthquake, landslide, or other elements of nature;
- (d) epidemic;
- (e) any act of a third party (not being an employee, agent or sub-contractor of that party) engaged in terrorist activity or sabotage;
- (f) results in the provision of the Services to the Association being unlawful or impossible; and
- (g) any other event outside the control of the affected Party,

provided that the following will not be Force Majeure Events on which a Party is entitled to rely:

- (h) an event that was reasonably foreseeable;
- (i) any strike, lockout or other labour dispute of the workforce of that Party, its subcontractors or suppliers;
- (j) an event where the event could have, or it is likely that the event could have, been prevented, avoided, overcome or mitigated by the affected Party by:
  - (i) implementation of contingency plans agreed between the Parties or which either Party has represented it has in place; or
  - (ii) exercising a reasonable standard of care;
- (k) an event for which the Party affected is or was directly responsible;
- (l) any act or omission of a subcontractor or supplier of a Party unless and to the extent that the subcontractor or supplier was itself affected by an event, which if it occurred in relation to that party would have been a Force Majeure Event;
- (m) the insolvency of either Party, or a subcontractor or supplier of either Party, or lack of funds for any reason;

**GST** means goods and services tax charged under the Goods and Services Tax Act 1985;

**Huka Falls Resort** means the construction of a complete residential and commercial development, known or to be known as Huka Falls Resort;

**Initial Term** means the period of 10 years starting on the Commencement Date and, subject to the terms of this Agreement, ending on the Expiry Date;

**Insolvency Event** means, in relation to a Party:

- (a) the presentation of an application for the liquidation of that Party that is not discharged within 30 days of its filing or which is not demonstrated to the other Party prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in, or towards, the making of any compromise, proposal or deed of arrangement with all or some of that Party's creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, or similar official, to that Party;
- (d) that Party being unable to pay its debts as they fall due in the ordinary course of business;

- (e) the suspension or threatened suspension by that Party of the payment of its debts;
- (f) the enforcement of any security against the whole, or a substantial part, of that Party's assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

**Management Expenses** means the costs and expenses of the Manager in fulfilling its obligations pursuant to this Agreement;

**Management Fee** means the fee payable to the Manager under clause 6;

**Manager** includes its successors, transferees and assigns together with, where the context requires, includes its agents, employees and contractors;

**Manager's Representative** means the person appointed by the Manager from time to time for the purposes of section 7;

**Relevant Authority** means any government, local, or statutory or non-statutory authority or body having jurisdiction over Huka Falls Resort and/or the Common Facilities;

**Services** means the facilities management and associated services to be performed by on or behalf of the Manager as listed in Schedule 2.

Other capitalised terms have the meanings ascribed to them in the Constitution.

**1.2 Interpretation:** In this Agreement, unless the contrary intention appears:

- 1.2.1 headings are for convenience only and do not affect the interpretation of this Agreement;
- 1.2.2 words importing:
  - 1.2.2.1 the singular include the plural and vice versa;
  - 1.2.2.2 any gender includes the other genders;
  - 1.2.2.3 if a word or phrase is defined, the same words and phrases have corresponding definitions;
- 1.2.3 a reference to:
  - 1.2.3.1 a person includes a firm, unincorporated association, corporation and a government or statutory body or authority and vice versa;
  - 1.2.3.2 a person includes its legal personal representatives, successors and assigns;
  - 1.2.3.3 a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 1.2.3.4 a part, section, clause, annexure, exhibit or schedule are references to parts, sections, clauses, annexures, exhibits or schedules of or to (as the case may be) this document;
- 1.2.4 a right includes a benefit, remedy, discretion, authority or power;
- 1.2.5 an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- 1.2.6 provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
- 1.2.7 time is to local time in New Zealand;
- 1.2.8 \$ or dollars is a reference to the lawful currency of New Zealand;
- 1.2.9 this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
- 1.2.10 writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic and facsimile transmission;

1.2.11 the word "including" means including, without limiting the generality of the foregoing.

1.3 **Rule of Construction:** This Agreement will not be construed to the disadvantage of any Party or Parties on the basis that they or anyone associated with, or of which they exercise any control, put it forward.

## 2. **Appointment**

2.1 **Manager to provide Services:** The Association appoints the Manager for the Initial Term to provide the Services.

2.2 **Acceptance of appointment:** The Manager accepts the appointment on the terms set out in this Agreement.

## 3 **Status of the Manager**

3.1 **No partnership:** The relationship between the Association and the Manager is that of principal and agent. Nothing in this Agreement will be treated as creating a joint venture, partnership relationship or create a trust between the Parties. Neither Party will have the authority to act for or to incur any obligation on behalf of the other Party except as expressly provided in this Agreement or any agreement entered into pursuant to this Agreement.

3.2 **Manager not responsible for Association:** The Manager will not by reason of its management of the Association be responsible for any of the Association's legal, equitable, statutory or other obligations.

3.3 **Manager not liable for loss through breach of Bylaws:** The Manager is not liable for any damage or loss caused through a breach of the Bylaws by any Member, Occupier, Invitee or any other person in or about Huka Falls Resort.

## 4 **Services**

4.1 **Performance of the Services:** The Manager will use all reasonable endeavours to:

4.1.1 perform or procure the Services and ensure that the Services are performed to the best standards in the applicable industry;

4.1.2 manage the Association in accordance with sound commercial practice and in accordance with any reasonable directions (not inconsistent with the terms of this Agreement) which may from time to time be given to the Manager by the Association;

4.1.3 account to the Association for the Common Facilities in the possession, custody or control of the Manager;

4.1.4 when requested, advise the Association in relation to any correspondence, reports, enquiries and complaints relating to the Common Facilities or the Services;

4.1.5 supervise any contractors or employees of the Manager who are engaged/employed by the Manager to perform any Services on behalf of the Manager and ensure that such Services are carried out in accordance with the terms of their contract;

4.1.6 keep itself fully apprised and advise the Association of the condition, layout, construction, location, character, plan and operation of any lighting, drainage, sewerage, power, communication, security or other systems and equipment installed on the Common Facilities;

4.1.7 if the Association resolves, and at its request and cost, buy, sell, replace, erect, construct, repair, exchange, lease, hire or otherwise acquire and install fixtures, fittings, equipment, improvements and additions to the Common Facilities;

4.1.8 liaise with the Association's Representative on a regular basis and work in coordination with the requirements of the Association;

4.1.9 administer the Association's accounts and levy Members on behalf of the Association and, if instructed, any Body Corporate.

- 4.2 Variations and additions to the Services:**
- 4.2.1 The Association may, from time to time, request a variation to the Services that:
- 4.2.1.1 increases or decreases any quantity or quality of any Services required; or
  - 4.2.1.2 omits or changes the Services required; or
  - 4.2.1.3 requires any additional services not required under this Agreement to be provided.
- 4.2.2 Upon receiving a variation request the Manager will nominate the price, if any, for each variation request as follows:
- 4.2.2.1 by providing a unit rate or a fixed price, as requested; or
  - 4.2.2.2 by calling for subcontract prices; or
  - 4.2.2.3 by a combination of any of 4.2.2.1 and 4.2.2.2 above.
- 4.2.3 If the Association accepts the Manager's nominated pricing, a variation will be forwarded to the Association's Representative for signing and returning to the Manager's Representative.
- 4.2.4 Minor adjustments to the Services that:
- 4.2.4.1 increase or decrease any quantity or quality of any Services required, up to an accumulative value of plus or minus \$1,000.00; or
  - 4.2.4.2 omit or change the Services required with no monetary impact;
- may be agreed between the Parties without the need for a request for variation as set out above and will be recorded in a register held by the Manager's Representative. Every 12 months the register will be reviewed and the Agreement may be adjusted, to reflect the changes to the Services delivered.
- 4.3 Powers:** Subject to any limitations contained in this Agreement, the Manager may:
- 4.3.1 exercise all powers, authority and discretions of the Association as set out in the Constitution, and do on its behalf all such acts as it deems necessary or expedient;
  - 4.3.2 enter into agreements with other persons for the provision of services and/or materials for the proper performance of the Services and be reimbursed by the Association for the cost of these services and materials;
  - 4.3.3 take any action that the Manager deems necessary or desirable either in its own name or in the name of the Association to ensure and maintain compliance with the Constitution and the Bylaws by the Members or any Member individually and be reimbursed by the Association for the cost (including solicitor and own client costs) for any such action.
- 4.4 Limitations:** Subject to clause 4.6, the Manager will not be entitled, without the prior approval of the Association:
- 4.4.1 to enter into any agreement, arrangement, transaction or contract on behalf of the Association;
  - 4.4.2 to carry out any Capital Improvements;
  - 4.4.3 to promulgate any Bylaws;
  - 4.4.4 to allow any person, other than a Member, Occupier or Invitee, to use the Common Facilities;
  - 4.4.5 to initiate any action at law or equity, or to enter into any dispute resolution or mediation on behalf of the Association.
- 4.5 Satisfaction of obligations:** If the Manager has used all reasonable endeavours to carry out the Services then the Manager will have satisfied its obligations under this Agreement.



- 4.6 **Exceptional circumstances:** There will be no limits on the Manager's authority where the Manager, in its reasonable opinion, decides that to delay a decision or an action while awaiting the approval of the Association would be detrimental to the best interests of the Association, provided that the Manager will have first given notice of the intended decision or action to the Association's Representative either by telephone, facsimile or e-mail and will have waited a reasonable time from the giving of such notice without having received a response from that Representative or the Committee (after having made reasonable efforts to obtain such approval during that period).
- 4.7 **Exclusion of liability:** The Manager is not liable to the Association if the Manager permits or fails to do anything it is obliged to do, if the doing or permitting or failure arises from the Association failing to make the appropriate decision.

## 5 The Association's obligations

- 5.1 **Obligations and duties:** The Association must:
- 5.1.1 permit the Manager to manage the Association without interruption or disturbance by the Committee, or the Association's agents, employees or contractors;
  - 5.1.2 grant the Manager and all persons authorised by the Manager the right to:
    - 5.1.2.1 enter on to the Common Facilities at all times;
    - 5.1.2.2 temporarily close the Common Facilities; and
    - 5.1.2.3 add, remove, modify or alter structures and/or services forming part of the Common Facilities,in connection with the fulfilment of the Manager's duties and obligations;
  - 5.1.3 provide the Manager with copies of all documents necessary to enable the Manager to perform its obligations under this Agreement including current copies of the Bylaws, current plans and any other document identifying the location and character of the services and amenities installed or erected on the Common Facilities;
  - 5.1.4 provide (or reimburse) the Manager with all materials and parts used or supplied in carrying out the Services;
  - 5.1.5 appoint the Association's Representative;
  - 5.1.6 give its full support and cooperation to any action the Manager may elect to take under clause 4.3.3; and
  - 5.1.7 promptly do all things which may be reasonably necessary to enable the Manager fully and effectively to manage the Association in the manner contemplated including arranging the execution of all notices, paper and documents required by the Manager to enable the Manager to carry out the Services.
- 5.2 **No conflicting service provider to be appointed:** The Association must not, without the prior written consent of the Manager, employ or contract with any other person to perform any duty or provide any services that the Manager is entitled to perform or provide under this Agreement.
- 5.3 **Requirement for consent:** If any statute, the Constitution or any Bylaw requires the Association to obtain a consent or authorisation prior to the performance of any duty or obligation under this Agreement then the Association must use its best endeavours to obtain such consent or authorisation at its cost and keep the Manager informed of its endeavours.
- 5.4 **No action to adversely affect Manager:** The Association must not pass any resolution varying or rescinding (or purporting to vary or rescind) the Constitution or Bylaws in any way which may compromise or adversely affect the Manager's rights and obligations under this Agreement.

## 6 Management Fee

6.1 **Calculation:** The Management Fee will be calculated as follows:

6.1.1 prior to or as soon as is reasonably practicable after the commencement of each Financial Year, the Manager will prepare an estimated statement of the receipts and payments for that Financial Year, showing the Manager's estimate of the Management Expenses for the Financial Year and the Facilities Expenses to be paid by the Association for that year (exclusive of the Management Fee).

6.1.2 the Management Fee for any given month will be equal to 1/12<sup>th</sup> of the aggregate of:

6.1.2.1 the Management Expenses for that Financial Year (as estimated by the Manager pursuant to clause 6.1.1); and

6.1.2.2 10% of the Facility Expenses (exclusive of the Management Fee) for that Financial Year (as estimated by the Manager pursuant to clause 6.1.1).

6.1.3 as soon as practicable after the end of each Financial Year, the Manager will provide the Association with an itemised statement of the actual Management Expenses and the Facility Expenses for the previous Financial Year. The Management Fee which has been paid on the basis of the Manager's estimations will be adjusted by the difference between the estimated and actual Management Expenses and the Facility Expenses and any payment or refund (as the case may be) will be made between the Manager and the Association without delay.

6.2 **Payment of Management Fee:** The Association must pay the Management Fee plus GST without deduction, reservation or set-off whatsoever to the Manager in equal monthly instalments in advance on the Commencement Date and the first day of each month until the Expiry Date.

## 7 Manager to employ own staff

7.1 **Employment:** The Manager must:

7.1.1 provide the employees and contractors necessary to enable it to perform the Services; and

7.1.2 be responsible for the payment of wages, salaries, benefits and entitlements to its employees and the costs, charges and entitlements of the contractors.

## 8 Attendance at Meetings

8.1 **Manager to attend meetings:** The Association will permit the Manager and the Manager's Representative to attend meetings of the Association.

8.2 **Ability to be heard at meetings:** The Manager and the Manager's Representative will be entitled to be heard on any matter or question in relation to the Services which may arise at any such meeting.

## 9 Instructions to Manager

9.1 **Issuing instructions:** All directions and instructions given by the Association to the Manager must be given by the Association's Representative and, if required by the Manager, must be given in writing.

9.2 **Conferring:** In relation to the performance of the Services by the Manager, the Manager may confer from time to time with the Association's Representative and will confer in good faith if requested by the Association's Representative.

## 10 Agreement with Members individually

10.1 **Separate agreements:** The Manager may enter into agreement with Members for the provision of additional services to those Members upon such terms and conditions as may be agreed between those parties.

## 11 Assignment

- 11.1 **Assignment:** The Manager may assign the whole (but not part) of its interest in this Agreement if, before the proposed assignment:
- 11.1.1 the Manager notifies the Association of its intention to assign;
  - 11.1.2 the Manager provides evidence to the Association to show that the proposed assignee has the appropriate experience and resources to fulfil the obligations of the Manager under this Agreement; and
  - 11.1.3 the proposed assignee executes a deed of covenant (if required by the Association) agreeing with the Association to be bound by this Agreement as if the proposed assignee was the Manager.
- 11.2 **Documentation:** The instrument is to be prepared by the Manager's solicitors at the expense of the Manager.
- 11.3 **Release on assignment:** Upon the assignment, the Manager will be released and discharged from any further liability under this Agreement but without prejudice to the rights and remedies of either Party arising in respect of any matter or thing occurring prior to the date of the assignment.

## 12 Subcontracting

- 12.1 **Ability to subcontract:** The Manager may engage or employ any contractor, subcontractor or agent for the provision of the Services (in whole or any part).
- 12.2 **No release of liability:** The contracting or subcontracting by the Manager of any of its duties or obligations under this Agreement in whole or in part will not relieve the Manager in any way whatsoever from its responsibility for due performance of this Agreement in accordance with its terms and conditions.

## 13 Option for New Agreement

- 13.1 **New Agreement:** The Manager may require the Association to enter into a new agreement subject to the provisions contained in this Agreement.
- 13.2 **12 months' notice required:** If the Manager wishes to exercise its rights under clause 13.1, then the Manager must give notice of the exercise of that right to the Association not earlier than 12 months prior to the Expiry Date.
- 13.3 **Terms of new agreement:** The new agreement is to be identical to this Agreement except that:
- 13.3.1 the commencement date of the new agreement is to be the day after the Expiry Date;
  - 13.3.2 the term of the new agreement is to be 10 years, with a further right to renew for a further term of 10 years;
  - 13.3.3 the expiry date of the new agreement is to be the last day of the term of the new agreement;
  - 13.3.4 this clause 13 is omitted from the final agreement (so that the final Expiry Date is 30 years from the Commencement Date).

## 14 Failure to Perform Services

- 14.1 **Failure by the Manager:** Where the Association, acting reasonably, believes that the Manager has failed to comply with the requirements of any Service, the Association may notify the Manager in writing (which will be a notice of breach issued in accordance with clause 18.3.1) specifying:
- 14.1.1 the time, location and extent of such failure to comply, including whether it related to quality or quantity;
  - 14.1.2 the name of the person reporting the failure to comply; and

14.1.3 where the failure is capable of being rectified, the Association's requirement and reasonable timeframe required for the Manager to make good and if necessary rework the Services at the Manager's cost in all respects.

14.2 **Rectification:** If within 20 Working Days of receipt of such notice from the Association, the Manager's Representative has not disputed the matters contained in the notice or agreed an alternative solution with the Association's Representative, then the Manager will rectify the failure as required by the Association. If the Association's Representative and the Manager's Representative are unable to agree on an alternative solution then either Party may invoke the dispute resolution procedure.

14.3 **Additional obligations:** Where the Manager is required to make good or rework any Service:

14.3.1 the replacement cost of approved parts required by the Manager in making good or reworking the Service will be met by the Manager; and

14.3.2 the making good or reworking will be carried out by the Manager without interfering with the provision of any other Services agreed to be undertaken by the Manager and will not be a reason for failing to deliver any Service.

14.4 **Disputes:** Any dispute arising out of a requirement to rectify or rework a Service will be dealt with in accordance with the dispute resolution provisions.

## 15 Force Majeure

15.1 **Relief:** Neither Party will be liable for any delay nor failure to perform its obligations pursuant to this Agreement if such delay or failure is due to Force Majeure.

15.2 **Suspension of obligations:** If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

15.3 **Termination:** If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

## 16 Delay in Payment

16.1 **Default interest:** The Association must pay the Manager interest on any amount that has become due for payment and remains unpaid from and including the date it becomes due for payment, during the period it remains unpaid, on demand or at times notified by the Manager, calculated on daily balance at the rate equal to 4% per annum above the Manager's bankers' indicator rate quoted from time to time.

## 17 Dispute Resolution

17.1 **Initiating the process:** Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives is to be settled according to clause 17.2.

17.2 **Formal process:** The order for resolution of a dispute will be:

17.2.1 **Good Faith:** The Parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement.

17.2.2 **Notice:** A Party will, as soon as reasonably practicable, give the other Party notice of any dispute in connection with this Agreement.

17.2.3 **Internal Dispute Resolution:** Any dispute will be referred:

17.2.3.1 initially to the Association's Representative and the Manager's Representative, who will endeavour to resolve the dispute within 10 Working Days of the giving of the notice; and

17.2.3.2 if the Association's Representative and the Manager's Representative do not resolve the dispute within the time referred to in clause 17.2.3.1, to the Chairman of the Association or his/her nominee and the Managing Director of the Manager or his/her nominee who will endeavour to resolve the dispute within a further 10 Working Days.

- 17.2.4 **Mediation:** If, following the relevant internal dispute resolution procedures set out in clause 17.2.3.2, the Parties fail to resolve the dispute then the Parties will try to settle their dispute by mediation before resorting to litigation. Either Party may initiate mediation by giving written notice to the other Party. The mediator will be agreed by the Parties but if the Parties cannot agree on one within five Working Days after the mediation has been initiated, then the mediator will be selected by the President of LEADR Inc. (Lawyers Engaged in Alternative Dispute Resolution) or its successor.
- 17.2.5 **No Arbitration:** Clause 17.2 provides for a form of alternative dispute resolution and is not a reference to arbitration.
- 17.2.6 **Equitable relief:** Nothing in this clause will prevent a Party from seeking urgent equitable relief before an appropriate court.

## 18 Termination

- 18.1 **Limits on Termination:** Except as expressly provided in this Agreement and to the extent not prohibited by law, neither Party will have any right under this Agreement, or at law or in equity, to terminate this Agreement (whether in whole or in part). The remedies of either Party for breach of this Agreement by the other, that are not grounds for termination available to that Party under this clause 18, are limited to such other remedies expressly provided for and available to that Party under this Agreement, or by recourse to order of the Courts for damages, declaratory relief, injunctive relief or specific performance.
- 18.2 **Termination without cause by the Manager:** The Manager may terminate this Agreement by giving six months' written notice to the Association to that effect.
- 18.3 **Termination for fault:** Either Party may terminate this Agreement, without prejudice to any of their other rights or remedies, by written notice to the other Party if:
- 18.3.1 the other Party commits or allows to be committed any breach of the terms of this Agreement, or any agreement collateral to this Agreement and fails to remedy the breach or fails to provide a solution to the breach acceptable to the non-defaulting Party within 40 Working Days of receiving written notice of such breach or such other timeframe agreed by the Parties; or
  - 18.3.2 the other Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of Insolvency Event; or
  - 18.3.3 the other Party abandons or repudiates this Agreement.

## 19 Disengagement

- 19.1 **Consequences:** On termination of this Agreement for any reason (including expiry of the Initial Term (where not renewed) or any renewal term):
- 19.1.1 the Association will be entitled to require the Manager to continue to perform the Services for a period of up to six months, on the same terms and conditions of this Agreement;
  - 19.1.2 the Manager will do all things reasonably necessary to effect the orderly transition and migration to the Association or any third party service provider nominated by the Association of the Services from the Manager;
  - 19.1.3 the Manager will deliver to the Association all records and information (in any form or medium) relating to the Association and/or Huka Falls Resort in the possession, power or control of the Manager,

provided that if the Manager is the terminating party then the Manager will not be required to comply with this clause 19.1 until all money properly due for payment in respect of the Services has been paid, in full, to the Manager.

## 20 Warranty as to the correctness of information supplier to Manager

- 20.1 **Reliance on information:** The Manager is entitled to rely on information concerning the management and administration of Huka Falls Resort certified by any person authorised by the Association and the

Association through that authorised person warrants that any such information is, prima facie, true and accurate.

20.2 **Association to indemnify:** The Association indemnifies the Manager against any loss or damage caused to any person by the provision of any information which is incorrect or inaccurate.

20.3 **Conclusive evidence:** Any certificate under the hand of the Association or under the hand of an authorised representative of the Association will be conclusive evidence of the facts contained in that certificate and the Manager need not be concerned to enquire as to the validity or accuracy of such facts.

## 21 Warranties as to Authorisation

21.1 **Association has authority to enter Agreement:** The Association warrants that it has the authority to enter into this Agreement.

21.2 **Signatory warranty:** Each Party warrants that the persons signing this Agreement are duly authorised to do so on behalf of the Manager and the Association.

## 22 Indemnity

22.1 **Indemnity:** Except in the event of the wilful default of the Manager, the Association indemnifies and holds harmless the Manager and each of its employees, officers, agents and contractors, on an after-tax basis, from and against all claims, demands, losses, costs, damages and expenses (including reasonable legal costs on a solicitor and own client basis) properly incurred by the Manager in carrying out its duties and obligations or as instructed from time to time by the Association.

## 23 Safety and security

23.1 **Manager not insurer:** The Association acknowledges that the Manager is not the insurer or guarantor of the security or safety of the Common Facilities, or any person or any property on the Common Facilities.

23.2 **Indemnity:** The Association indemnifies the Manager from and against all claims, demands and liability which may arise from the Association's failure to provide adequate security within the Common Facilities or by reason of any ineffective security measures taken by the Association.

## 24 Costs

24.1 **Each Party liable for own costs:** Each Party will be responsible for its own costs of and incidental to the negotiation, preparation and signing of this Agreement but any stamp duty payable in this Agreement will be paid by the Manager and if not paid by the Manager may be paid by the Association and recovered from the Manager as a liquidated debt payable on demand.

## 25 Notices

25.1 **Notices and Communications:** Each notice or other communication under this Agreement is to be made in writing by facsimile or by personal delivery to the addressee at its facsimile number or address, and marked for the attention of the person from time to time designated by the addressee to the other Party. The initial facsimile number, address and relevant person of each party are set out in clause 25.2.

25.2 **Addresses and Facsimile Numbers:** The addresses, contact person and facsimile numbers of the Parties are:

**[Full Legal Name of Association's Representative]**

Address: [•]  
[•]

Attention: [•]  
Copy to: [•]

Facsimile: [•]

**[Full Legal Name of Manager]**

Address: [•]  
[•]

Attention: [•]  
Facsimile: [•]

or any replacement address or facsimile number notified to the other Party by notice from time to time.

25.3 **Deemed delivery:** A communication will be deemed to be received:

25.3.1 in the case of a facsimile, when confirmed by facsimile confirmation slip and if dispatched after 5.00 p.m. (in the place of receipt) on the next business day after the date of dispatch; and

25.3.2 in the case of personal delivery, when delivered.

25.4 **E-Mail:** Except for sign-offs or invoices, the Parties may also send notices and other communications to each other by electronic mail. Receipt of a notice served by electronic mail will be deemed to have occurred only when a reply acknowledging receipt is sent by a recipient. The time of dispatch will be deemed the same as the time of receipt. Notices dispatched by electronic mail will be deemed to have been received and dispatched at the following respective addresses of the Parties (or any replacement address notified to the other party by notice from time to time):

**[Full Legal Name of Association]:**

E-Mail address: [•]  
Attention: [•]

**[Full Legal Name of Manager]:**

E-Mail address: [•]  
Attention: [•]

25.5 **Agents for Service:** The Parties each irrevocably appoint the persons at the following addresses as the respective Parties agents for service of any legal proceedings:

**[Full Legal Name of Association]**

Address: [•]  
[•]  
[•]  
Attention: [•]

**[Full Legal Name of Manager]**

Address: [•]  
[•]  
[•]  
Attention: [•]

26 **Counterparts:** This Agreement may be signed in any number of counterparts all of which, when taken together, constitute one and the same instrument. A Party may enter into this Agreement by executing any counterpart.

27 **Severability:** If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision will be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible then such provision will be severed from this Agreement without affecting the enforceability, legality or validity of any other provision of this Agreement.

28 **Waiver:** Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach will not be, or be deemed to be, a waiver of any other, or subsequent, breach.

29 **Entire agreement:** This Agreement:

29.1 constitutes the entire agreement between the Parties; and

29.2 supersedes and extinguishes all prior agreements and understandings between the Parties,

relating to the subject matter of this Agreement.

- 30 **Amendments in writing:** No amendment to this Agreement will be effective unless it is in writing and signed by authorised signatories of each of the Parties.
- 31 **Governing law and jurisdiction:** This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. Each Party irrevocably submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under, or in connection with, this Agreement.

## SIGNING

**THE COMMON SEAL** by **THE HUKA FALLS RESORT RESIDENTS' ASSOCIATION INCORPORATED** was affixed in the presence of:

Signed: \_\_\_\_\_  
(Signature)

Signed: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Name of Committee Member)

Name: \_\_\_\_\_  
(Name of Committee Member)

**[HUKA FALLS RESORT MANAGEMENT SERVICES LIMITED]** by:

Signed: \_\_\_\_\_  
(Signature)

Signed: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Authorised Signatory)

Name: \_\_\_\_\_  
(Authorised Signatory)



**SCHEDULE 1**  
**THE CONSTITUTION**

## **SCHEDULE 2**

### **THE SERVICES**

#### **1. Membership**

- 1.1 Maintaining the register of Members in accordance with rule 4.10 of the Constitution;
- 1.2 Ensuring that each Member forwards a deed of covenant as specified in rule 8.1.2 of the Constitution.

#### **2. Levies**

- 2.1 Keeping a record of the Property Value of each Property;
- 2.2 As required, calculating each Member's Proportion of the Facility Expenses for any given period;
- 2.3 As required, providing an estimate of the total Facility Expenses;
- 2.4 Advising each Member of, and receiving payment from Members in respect of, each Member's Proportion and accounting for such payments to the Association;
- 2.5 Keeping full and complete records of:
  - 2.5.1 Facility Expenses;
  - 2.5.2 Estimates of Facility Expenses and each Member's Proportion;
  - 2.5.3 Payments from Members on account of Facility Expenses;
  - 2.5.4 The indebtedness of each Member;
- 2.6 Providing a statement of indebtedness of any Member to the Association;
- 2.7 Providing a certificate of indebtedness to a Member, or any person authorised by the Member, in accordance with rule 15.10 of the Constitution;
- 2.8 Reconciling estimated and actual Facility Expenses, and advising Members of any further payments required or credits being given in respect of the Facility Expenses;
- 2.9 Making recommendations to the Committee as to the level of, or due dates for payment, of any levies under rule 16 (Special and Differential Levies).

#### **3. Bodies Corporate**

- 3.1 Perform the functions of any Body Corporate Secretary as delegated by the relevant Body Corporate from time to time;
- 3.2 if requested by any Body Corporate, collect levies and other monies due to the Body Corporate from applicable Owners on behalf of the Body Corporate.

#### **4. Rules and Covenants**

- 4.1 Enforcing the Bylaws and making recommendations to the Association as to any addition or amendments to the Bylaws;
- 4.2 Enforcing any contract to which the Association is a party.

#### **5. Committee**

- 5.1 Participating fully as a member of the Committee, and performing all functions of the treasurer/secretary as set out in the Constitution.

**6. Common Facilities**

- 6.1 Ensuring the proper operation, maintenance, repair, renovation and replacement of the Common Facilities;
- 6.2 Caretaking and keeping tidy the Common Facilities through employment of external contractors;
- 6.3 Recommending to the Committee as to what Capital Improvements should be undertaken, and carrying out those Capital Improvements approved by the Committee;
- 6.4 Provide full and proper cooperation to the Principal Member in completing the development of Huka Falls Resort;
- 6.5 Effect all insurances necessary pursuant to rule 4.5;
- 6.6 manage any booking system (if required) for any Common Facilities.

**7. Services**

- 7.1 Appoint and manage landscaping contractors to maintain the Common Facilities;
- 7.2 Appoint and manage lawn mowing contractors, and garden waste removal contractors, to maintain the grassed areas within Common Facilities and individual (unfenced) Properties.
- 7.3 Manage the security arrangements for Huka Falls Resort and employment of relevant contractors (if necessary);
- 7.4 Coordinate rubbish collections for Huka Falls Resort;
- 7.5 Coordinate minor repairs/maintenance with subcontractors;
- 7.6 Manage the provision of external services to a Property (e.g. gas, electricity, water, sewer, telecommunications, fibre optics);
- 7.7 Bulk purchase of utility services for Huka Falls Resort;
- 7.8 Make recommendations to the Committee as to any service contractors to be nominated by the Association;
- 7.9 Operate the Rental Agency within Huka Falls Resort.

**8. Keys/Access Cards**

- 8.1 Controlling any keys or access cards issued by the Association and providing for the copying of keys/access cards.

**9. General**

- 9.1 Be responsible for the day to day management of the Association;
- 9.2 Endeavour to improve the efficiency of the Association;
- 9.3 Provide technical know-how and expertise to enable the Association to improve and sustain the quality of life in Huka Falls Resort;
- 9.4 Deposit immediately all sums received on behalf of the Association to the credit of the Association in such bank account(s) as may from time to time be designated by the Association;
- 9.5 Ensure that the Association honours any contract to which it is a party, and that the Association operate in accordance with law and the requirements of any Relevant Authority.

The scope of services supplied by the Manager may be altered by the Committee in a fair and equitable manner. Should the scope of services be materially altered, the management fee for the affected Properties will be adjusted, up or down, in a fair and equitable manner. Likewise, the scope of services offered by the Manager may be varied with the approval of the Committee.

## Common Facilities Transfer Deed

### FOR HUKA FALLS RESORT

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DATED this                      day of                      200[ ].

#### PARTIES

1.        **HUKA FALLS RESORT LIMITED** of Auckland (“Developer”)

and

2.        **HUKA FALLS RESORT RESIDENTS’ ASSOCIATION INCORPORATED** (“Association”)

together the “Parties”, and individually a “Party”.

#### BACKGROUND

- A.        The Developer intends to develop Huka Falls Resort, a residential and commercial development on a site in Taupo by way of staged subdivision, development and construction.
- B.        The Developer wishes to transfer property to the Association, which property will be for the common use of all residents of Huka Falls Resort. The Association will own, hold, operate, maintain and manage that property in accordance with its constitution.

#### THE PARTIES AGREE AS FOLLOWS:

##### 1.        Definitions

1.1        **Definitions:** In this deed, unless the context requires otherwise:

**Common Facilities** means any land, roads, footpaths, gardens, buildings, structures, plant, equipment, facilities, services and amenities and, in particular, any swimming pools and tennis courts to be owned, leased, licenses or otherwise held, operated or managed by the Association (as the Association may determine) from time to time;

**Constitution** means the constitution of the Association;

**Huka Falls Resort** means the construction of a complete residential and commercial development, known or to be known as Huka Falls Resort.

##### 2.        Reservation

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

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

- 2.3 The Developer expressly disclaims all and any liability to the Association in respect of anything and of the consequences of anything done or omitted to be done by any person in reliance on any Common Facilities being constructed or constructed to any particular specification or in any particular location.

### **3 Transfer**

- 3.1 The Developer will, as each stage of Huka Falls Resort is completed, transfer to the Association any Common Facilities constructed and completed which are intended to be used by residents of properties within that stage, but subject to such encumbrances as the Developer sees fit.
- 3.2 The Developer warrants that any Common Facilities transferred to the Association will be complete, and that all work in respect of the Common Facilities will be to a proper and professional standard.
- 3.3 The Developer covenants, for the purpose of clause 3.1, that it will promptly make, do and execute all deeds, documents and actions required by the Association to effect the assignment to it of the Common Facilities.
- 3.4 The Association will hold the Common Facilities in accordance with its Constitution, and generally for the benefit of the residents of Huka Falls Resort.

### **4 Development Rights**

- 4.1 The Association will ensure that the Constitution:
- 4.1.1 Allows the Developer access to the properties of residents of Huka Falls Resort as required to further the development of Huka Falls Resort;
  - 4.1.2 Requires residents of Huka Falls Resort to grant easements in favour of the Developer, and other resident and/or the Association (as nominated by the Developer) across any resident's property as required by the Developer to further the development of Huka Falls Resort;
  - 4.1.3 Requires the members of the Association to support any resolution to amend the Constitution, where the Association is required to make such amendment pursuant to clause 4.4.
- 4.2 The Association, by this deed, grants to the Developer the right to:
- 4.2.1 Access and to remain on the Common Facilities with such vehicle, machinery and equipment as the Developer may desire; and
  - 4.2.2 Temporarily close the Common Facilities; and
  - 4.2.3 Add, remove, modify or alter structures and/or services forming part of the Common Facilities,
- as required to further the development of Huka Falls Resort.
- 4.3 The Association will, when called upon by the Developer, grant such easements or rights in respect of the Common Facilities in favour of any person nominated by the Developer, as required to further the development of Huka Falls Resort.
- 4.4 The Association will amend the Constitution, when advised by the Developer that such amendment is necessary or desirable for Huka Falls Resort to proceed.

### **5 Association's Obligations**

- 5.1 Until the Developer certifies to the Association that Huka Falls Resort is complete, the Association will:

5.1.1 Cause the Common Facilities to be maintained to the standard specified by the Developer; and

5.1.2 Enforce any covenants granted by any resident of Huka Falls Resort in favour of the Association, when called upon so to do by the Developer.

[5.2 The Association acknowledges that the Developer is required by the terms of a proposed Development Agreement to be entered into with the Taupo District Council to construct a public reserve, vest title to the public reserve in the Taupo District Council, and maintain that public reserve for a given period. The Association agrees that upon the Development Agreement (in such form as is agreed to by the Developer) being signed, it will fully and punctually fulfill the obligations of the Developer to maintain the public reserve in terms of the Development Agreement.]

## **6 Facility Expenses**

6.1 The Developer acknowledges that during the development of Huka Falls Resort, it may in carrying out any works, add to the costs of maintaining and repairing the Common Facilities transferred to the Association and agrees to, within 30 days of written demand being made by the Association, make payment to the Association in reimbursement of such additional costs, provided that the Developer may require the Association to provide invoices verifying expenditure in respect of the additional costs.

## **7 Good Faith**

7.1 The Parties will act in good faith, and will use their best endeavours to promote the mutual interests of the Parties in the development and maintenance of Huka Falls Resort as a residential and commercial development.

7.2 The Developer will exercise its voting rights as Principal Member (as defined in the Constitution) so as to ensure that:

7.2.1 Huka Falls Resort is developed and completed in accordance with the requirements of all applicable statutes, regulations and requirements of regulatory authorities;

7.2.2 The Common Facilities are maintained to a standard commensurate with the Developer's promotion of Huka Falls Resort;

7.2.3 Residents of Huka Falls Resort comply with any covenants granted in favour of the Association; and

7.2.4 The development of Huka Falls Resort proceeds smoothly and efficiently, in accordance with the plans of the Developer,

and otherwise for the benefit of the residents of Huka Falls Resort.

## **8 Assignment**

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

## **9 Contracts (Privity) Act 1982**

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

## **10 Power of Attorney**

10.1 The Association irrevocably appoints the Developer as the attorney of the Association, to execute and perform any act, deed, matter or thing as fully and effectually as the Association could do, where

the Association is required to execute or perform such act, deed, matter or thing by the provisions of this deed, and the Parties agree to execute a full and proper power of attorney in this respect immediately upon execution of this deed.

**SIGNING**

**HUKA FALLS RESORT LIMITED** by:

Signed: \_\_\_\_\_  
*(Signature)*

Signed: \_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
*(Authorised Signatory)*

Name: \_\_\_\_\_  
*(Authorised Signatory)*

**THE COMMON SEAL** by **THE HUKA FALLS RESORT RESIDENTS' ASSOCIATION INCORPORATED** was affixed in the presence of:

Signed: \_\_\_\_\_  
*(Signature)*

Signed: \_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
*(Name of Committee Member)*

Name: \_\_\_\_\_  
*(Name of Committee Member)*