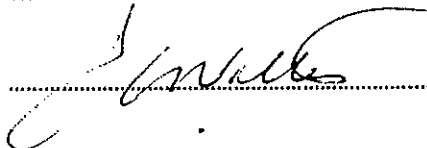
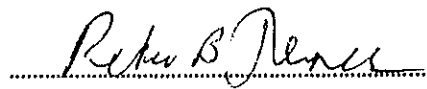


RULES OF

MAHANA RIDGE RESIDENTS' ASSOCIATION INCORPORATED

The amendment to Rule 13 herein has been approved.

 (Member) Elizabeth Walters

 (Member) PETER JONES.

..... (Member)

RULES OF

MAHANA RIDGE RESIDENTS' ASSOCIATION INCORPORATED

The amendment to Rule 13 herein has been approved.

[Handwritten Signature] (Member)

..... (Member)

..... (Member)

RULES OF

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..... (Member)

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Table of Contents

PART I – INTRODUCTION	4
1 Name and Registered Office	4
2 Definitions	4
PART II – OBJECTS, DUTIES AND POWERS	7
3 Objects.....	7
4 Excluded Objects.....	8
5 Acknowledgment of Staged Development	9
6 Duties of Mahana Ridge Residents’ Association.....	9
7 Powers of Mahana Ridge Residents Association	10
8 Limitation of Powers.....	11
PART III – MEMBERSHIP	11
9 Initial Members	11
10 Controlling Member.....	11
11 Register of Owners	11
PART IV – MEMBERS RIGHTS	12
12 Use of Communal Facilities	12
13 Lot Ground Maintenance.....	12
14 Walkways within Mahana Ridge.....	12
PART V – MEMBER OBLIGATIONS	13
15 Compliance	13
16 Restrictive Covenants.....	13
17 Water Systems.....	13
18 Owners to Grant Easements	13
19 Damage to Communal Facilities	14
20 Compliance by Occupiers (Other than Owner).....	14
21 Risk and Indemnity	14
PART VI - OPERATION OF ASSOCIATION	14
22 Administration	14
23 Board of Directors.....	14
24 Powers of the Board	15
25 Manager	16
26 Proceedings of the Board.....	18
27 General Meetings.....	18
28 Votes of Members.....	19
29 Proxy	20
PART VII LEVIES	20
30 Levies.....	20
PART VIII DEFAULT & ENFORCEMENT	21
31 Breach of Obligations	21

PART IX - MISCELLANEOUS 21

32 Dispute Resolution 21

33 Notices 22

34 Accounts 22

35 Cheques/Bills 23

36 Liability of Owners 23

37 Alteration of the Rules 23

38 Winding Up 23

39 Seal 23

PART I – INTRODUCTION

1 Name and Registered Office

- 1.1 The name of the Association is the Mahana Ridge Residents' Association Incorporated.
- 1.2 Mahana Ridge Residents' Association is an incorporated society registered under the Incorporated Societies Act 1908.
- 1.3 The registered office of the Association shall be 6 Brooks View Heights, R D 1 Upper Moutere 7173, or such other place as the Board decides from time to time.

2 Definitions

- 2.1 In these Rules unless the context otherwise requires:

"Act" means the Incorporated Societies Act 1908.

"Accounting Period" means the period from 1 April to 31 March in any given year.

"Annual General Meeting" means the annual general meeting of the Association, convened and conducted in accordance with these Rules.

"Annual Levy" means the annual levy for each Member set by the Board in each Accounting Period in accordance with these Rules.

"Association" means Mahana Ridge Residents' Association Inc., an incorporated society registered under the Incorporated Societies Act 1908.

"Board" means the board of Directors for the time being elected to manage the affairs of the Association, convened and conducted in accordance with these Rules.

"Bylaws" means the bylaws set from time to time in accordance with Clause 6.8.

"Capital Fund" means the fund from which the costs of any Capital Improvements are to be paid.

"Capital Improvements" means repairs to, and the replacement or renewal of, any additions to the Communal Facilities.

"Chairperson" means the chairperson of the Association, appointed in accordance with these Rules.

"Communal Facilities" means any land, Utilities, natural features, buildings, structures, plant, equipment, facilities and other amenities, any planting and landscaping, fencing, signage, letterboxes, screening, hard landscaping, any water permits/consents and discharge consents issued by the TDC for Mahana Ridge, any private roads, private way, walkways, footpaths within Mahana Ridge which are owned, enjoyed, leased, licensed, maintained or otherwise held, levied or operated in whole or in part by the Association from time to time and or any other facilities from time to time transferred to the Association by the Developer or by an Owner.

"Controlling Member" means the Developer and its successors and assigns.

"Developer" means Mahana Ridge Limited and its successors and assigns.

"Mahana Ridge" means the subdivision of land in Old Coach Road, Mahana, Nelson as described in Computer Freehold Registers 567581 and 567582 and any variation or new consent issued by the

TDC relating to land owned by the Developer.

"Director" means an Owner appointed to the Board in accordance with these Rules or otherwise appointed pursuant to clause 23.3 of these Rules.

"Facility Expenses" means in each Accounting Period the sum total of all payments, costs, expenditures, liabilities, local authority rates, taxes and any other expenses incurred by the Association, and which have been properly and reasonably incurred and/or paid:

- (a) in respect of the ownership, provision, operation, maintenance, replacement and repair of the Communal Facilities, including the cost associated with any Major Facility Works;
- (b) costs incurred by the Association relating to the management of the duties and responsibilities of the Association as set out in these Rules and the requirements of the Association as set out in the Restrictive Covenants;
- (c) costs incurred by the Association in ensuring Mahana Ridge and Owners comply with the conditions imposed by the TDC in any resource consent related to Mahana Ridge, including costs levied on the Association by the TDC where the TDC has, under the authority of such consent, undertaken necessary works on the Communal Facilities or Mahana Ridge;
- (d) as required by any resource consent granted in respect of the Communal Facilities to be undertaken by the Association in respect of the maintenance and upkeep of them;

and will include (without limitation) the following:

- (a) costs of establishing and maintaining the Capital Fund; and
- (b) all communal costs incurred by the Association including:
 - a. costs incurred in employing or engaging any person or body to provide any service or carry out any function;
 - b. reasonable administration costs;
 - c. professional costs (such as legal services, accountancy services);
 - d. any other costs reasonably incurred by the Association in carrying out its duties, taking any action authorised to be taken by the Association and pursuant to the Restrictive Covenants:
 - e. costs incurred by the Association in ensuring compliance of the owners' obligations set out herein and in the Restrictive Covenants;
 - f. costs incurred by the Association in taking any action under these Rules to the extent that such costs are not able to be recovered by the Association from the person(s) or body against whom that action is taken; and
 - g. special Levies to cover any unexpected expenditure incurred, in which case, such levy shall be paid as directed by the Association.
 - h. ongoing maintenance and protection of planting and natural landscaping, within Mahana Ridge including planting and landscaping shown on the Landscape Planting Management Plans and which falls within the Communal Facilities and the Lots of each Owner to the extent that it considers this is necessary to protect the appearance and amenity of the Lots and Communal Facilities and where that work has not been undertaken by an Owner, including irrigating, maintaining and replacing trees, pest control (rabbits,

possums, etc) on any Lot to ensure compliance with the TDC resource consents for Mahana Ridge.

- i. all rates levied by the local authority which are at any time levied upon the Communal Facilities;
- j. all premiums and costs payable by the Association in respect of all policies of insurance effected in respect of the Communal Facilities for sums insured up to their full replacement value against loss, damage or destruction by such risks as the Association may deem necessary or desirable, including consequential loss and public risk liability;
- k. the cost of operating, supplying, servicing, maintaining, inspecting, testing and repairing all Communal Facilities from time to time;
- l. all other items of expense which the Association, acting reasonably, considers necessary to incur for the good management and appearance of the Communal Facilities;
- m. any other costs incidental to the above or which the Committee regards as necessary for the attainment of the objects of The Association.

"Initial Members" means those persons who have subscribed to these Rules.

"Invitees" means any invitee, visitor of an Owner who is authorised or approved by an Owner.

"Landscape Planting Management Plans" means any Landscape Planting and Management Plan approved by the Tasman District Council in relation to each stage of the subdivision of Lots in Mahana Ridge.

"Levy" and **"Levies"** means the Annual Levy payable to the Association by the Owners in accordance with clause 30.

"Lot" means all and any of the separate computer registers held to or to be held by Owners comprised in Mahana Ridge but excluding the computer register for the land comprised in the Communal Facilities.

"Major Facility Works" means major works on the Communal Facilities involving the maintenance, replacement, repair to, or substantial renewal of those Communal Facilities on a basis which is expected to be infrequent and to involve large sums of expenditure and whether of a capital or maintenance nature or otherwise.

"Manager" means the person or entity appointed by the Board in accordance with clause 25 to carry out the duties and obligations of the Association.

"Objects" means the objects of the Association contained in clause 3.1.

"Occupier" means the person or persons occupying (permanently or temporarily) or entering on to any Lot or part of a Lot as Owner or under any lease, sublease, licence or other occupancy right and their contractors, employees, agents, workers, visitors and invitees.

"Owner" means each person (whether individually or with others) who is registered as a proprietor of a Lot.

"Registered Office" means the Registered Office of the Association for the time being, as determined in accordance with these Rules.

"Registrar" means the person holding the office from time to time of Registrar of Incorporated Societies under the Act.

"Restrictive Covenants" means the Restrictive Covenants registered against the computer registers issued for the Lots.

"Rules" means these rules including the bylaws as originally stated or as from time to time altered by resolution of the Association.

"TDC" means the Tasman District Council.

"Utilities" means the following utilities and services if they are owned or operated by the Association:-

- (a) Any private walkway or footpath situated within Mahana Ridge and identified as a walkway or footpath on a plan held by the Association pursuant to the Restrictive Covenants.
- (b) *Water Systems (if any)* – supplying water for domestic and irrigation purposes including all pipes, water tanks, bores, pumps and equipment used or to be used now or in the future in the drawing, conveying, treatment/reticulation or storage of water including any replacement pipes and equipment which may be required from time to time on any Owner's Lot and includes the rights and obligations contained in these Rules and any easements or consents held by the Association but does not include any pipes or equipment which are located upon and solely benefit any particular Lot within Mahana Ridge;
- (c) *Stormwater Drainage Systems (if any)* – including all pipes, dams, swales and open drains, natural water courses and equipment used or to be used now or in the future in the conveying, or storage of stormwater including any replacement pipes and equipment which may be required from time to time on any Owner's Lot and includes the rights and obligations contained in these Rules and any easements or consents held by the Association but does not include any pipes or equipment which are located upon and solely benefit any particular Lot within Mahana Ridge;

2.2 Interpretation - In these Rules:

- 2.2.1 words importing the singular include the plural and vice versa;
- 2.2.2 a reference to a person includes any firm, company or other body corporate;
- 2.2.3 words importing one gender include the other gender;
- 2.2.4 reference to a clause means a clause in these Rules; and
- 2.2.5 expressions contained in these Rules bear the same meaning as in the Act (as the Act was expressed at the date on which these Rules became binding on the Association).

PART II – OBJECTS, DUTIES AND POWERS

3 Objects

3.1 The Association will play a key role in preserving the financial and commercial interests of the Owners in maintaining the infrastructure and regulating the Communal Facilities and will promote the following Objects for the benefit of Owners:

- 3.1.1 The control of the Communal Facilities by the Association;

- 3.1.2 to establish a system for undertaking the maintenance, repair and replacement of the Communal Facilities within Mahana Ridge and the development of further facilities within Mahana Ridge to be designated as Communal Facilities;
- 3.1.3 appoint a suitably experienced and qualified person/company/entity to act as a Manager to be responsible for the performance of all duties of the Association as listed in these rules and in the Restrictive Covenants;
- 3.1.4 to ensure that the sharing of costs in respect of the Association's responsibilities shall be allocated between the Owners with the intention being that any levies made upon the Owners shall relate so far as possible only to undertakings of the Association which have a direct benefit to the Owner's Lot;
- 3.1.5 To ensure compliance by the Owners with the Restrictive Covenants and these Rules and any Bylaws;
- 3.1.6 To ensure the compliance with all conditions imposed by the TDC in resource consents for Mahana Ridge;
- 3.1.7 To ensure the proper supply, operation, maintenance, repair, renovation, and replacement of the Communal Facilities;
- 3.1.8 To promulgate and enforce Bylaws to establish codes of behaviour applicable to Owners and to benefit Owners and the Communal Facilities generally;
- 3.1.9 To manage the use of the Communal Facilities;
- 3.1.10 To maintain the Communal Facilities and Mahana Ridge generally as a safe, clean and well-presented environment having regard to the age, appearance and aesthetics of Mahana Ridge as a whole;
- 3.1.11 The full and proper use of the Communal Facilities by Owners and, where appropriate, members of the public;
- 3.1.12 To engage in any other enterprise or activity which the Association considers to be in the interests of the Owners;
- 3.1.13 To preserve the value and integrity of Mahana Ridge;
- 3.1.14 To assist, and co-operate with, the Controlling Member to procure completion of Mahana Ridge;
- 3.1.15 To levy Owners for the purpose of meeting the Objects set out in these Rules and for the costs and expenses incurred in running and managing the Association;
- 3.1.16 To do any other thing incidental or conducive to the attainment of any of the above Objects.

4 Excluded Objects

4.1 The Association does not have, as an Object the following:

- 4.1.1 the pecuniary gain of Owners and no Owner shall be entitled to receive any dividend out of any subscriptions, fees, donations or other income or funds of the Association in accordance with these rules (provided that any Owner may enter into any agreement or arrangement with the Association for the sale or supply of any services for such consideration as may be reasonable and as that person would be entitled to receive if not an Owner); and

4.1.2 will not carry on trading activities or business for profit.

5 Acknowledgment of Staged Development

5.1 Mahana Ridge may be developed in stages, with new Owners becoming members as each stage is completed and Lots within that stage are sold.

5.2 The Association is aware that the Developer may in the future apply to the TDC to vary or obtain resource consents associated with Mahana Ridge. The Association shall not oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take any action that might in any way prevent or hinder the Developer from preventing or completing the development of Mahana Ridge including (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving land owned by the Developer.

6 Duties of Mahana Ridge Residents' Association

6.1 The Owners appoint the Association to manage their collective interests as co-owners of the Communal Facilities and as Owners of individual Lots, each Owner agrees to be bound by these Rules and Bylaws set out herein or made by the Association from time to time and the Restrictive Covenants.

6.2 The Association will, on the Owners' behalf, enforce these Rules. No Owner shall be entitled to take any action in law or otherwise in respect of any matter or thing done or omitted to be done without first, on each occasion, referring the matter or thing to the Board and allowing the Board a reasonable opportunity (having regard to the seriousness and nature of the default) to enforce the terms of the Rules against the defaulting Owner.

6.3 The Association will operate, manage and, where applicable lease, licence the Communal Facilities and all improvements and equipment associated with the Communal Facilities.

6.4 The Association will ensure the proper use, operation, maintenance, repair, renovation and replacement of the Communal Facilities so as to keep the Communal Facilities in good order consistent with standards generally proposed or adopted in facilities of similar nature, and to prevent them from becoming a danger or nuisance, and will undertake such Major Facility Works as are necessary for this purpose. Each Owner agrees and allows the Association (and parties engaged by it) access to the Owner's Lot for the purposes of this rule 6.4. 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 6.4.

6.5 The Association will insure and keep insured:

6.5.1 the Communal Facilities to their full insurable value;

6.5.2 such other assets and interests to such value as the Board considers prudent,

and the Association 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).

6.6 Money paid by the insurer under any insurance policy which covers improvements comprising the Communal Facilities must be applied by the Association in or towards reinstatement of the Communal Facilities.

6.7 The Association will pay all Local Authority rates and other taxes (other than income or value added taxes) and charges levied to the Association with respect to the Communal Facilities.

- 6.8 For the fulfilment of the Purposes and Objects of the Association, the Association may from time to time:
- 6.8.1 Promulgate Bylaws for the use of the Communal Facilities (including any restrictions on use for maintenance or other reasons) and Bylaws concerning the behaviour of Owners and Invitees and Occupiers
 - 6.8.2 Amend and review the Bylaws as appropriate;
 - 6.8.3 Enforce the Bylaws, taking such action in this regard as the Association thinks fit.
 - 6.8.4 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.

7 Powers of Mahana Ridge Residents Association

- 7.1 Subject to the express terms of these Rules, and to the Act, the Association will have all the powers as are expressly set out in these Rules or as are necessary to further the objects and duties set out above.
- 7.2 Without limiting the above, the administration of the Association will be vested in the Association in general meeting, and will be delegated to the Board. The Board may exercise all of the powers, authority and discretions of the Association as permitted by these Rules and do on its behalf at such acts as the Board deem necessary or expedient. The powers, authority and discretions as exercised by the Board are subject always to any limits which may from time to time, be imposed by the Association. The Board 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 Board.
- 7.3 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 Board.
- 7.4 The Association may initiate and pursue legal proceedings for itself or on behalf of any or all of the Members.
- 7.5 To the extent that any Communal Facility has not been vested in ownership in the Association, the Owner thereof will cede control, management, maintenance and replacement of such Communal Facility to the Association which may act in relation thereto as if it was the owner of the Communal Facility in its own name without compensation to the Owner, except that the Association will have no power to mortgage, charge, encumber, transfer or otherwise deal with such Communal Facility.
- 7.6 The Association may, from time to time, grant access to the Communal Facilities to any person for the purpose of constructing, erecting, operating or maintaining the Communal Facilities.
- 7.7 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 Communal Facilities and to fulfil any other duties of the Association.
- 7.8 Any contract, if made between private persons, will be entered into by the Association in writing and signed by the chairperson in accordance with a resolution of the Board.
- 7.9 All other documents and written announcements, requiring execution on behalf of the Association, must be signed by the chairperson.

8 Limitation of Powers

- 8.1 Notwithstanding any other provision of these Rules or any other enabling power, except as otherwise authorised by Special Resolution, the Association's powers will be restricted as follows:
- 8.1.1 The Association may not borrow any money other than short-term borrowing to cover any temporary shortfall in meeting the Association's obligations under these Rules;
 - 8.1.2 The Association will hold all funds with a bank registered under the Reserve Bank of New Zealand Act 1989, and may invest those funds in accordance with section 130(1)(b) of the Unit Titles Act 2010;
 - 8.1.3 Any Communal Facilities designed for a particular purpose will be used only for that purpose.
 - 8.1.4 Notwithstanding any other rule in these Rules, the Association will not expend money other than to further purposes recognised by law.

PART III – MEMBERSHIP

9 Initial Members

- 9.1 The Initial Members of the Association shall:
- 9.1.1 Elect the first Board and exercise all rights of members and Board Members as set out in these Rules;
 - 9.1.2 have no obligations as provided for by the Act, other than those set out in clause 9.1.1, whether for the payment of levies or otherwise; and
 - 9.1.3 be deemed to have resigned, without any act required on the Initial Member's part, at such time as there are fifteen Owners.
- 9.2 As soon as there are fifteen or more Owners, such Owners shall elect a new Board.
- 9.3 Every Owner must also be a member of the Association and, with the exception of the Initial Members, only Owners shall be members of the Association.
- 9.4 Every Owner shall, immediately upon becoming an Owner, provide the Association with the necessary details for maintaining the Register of Owners referred to in clause 11.

10 Controlling Member

- 10.1 The Developer shall be the Controlling Member until such time as computer registers for all of the Lots within Mahana Ridge have issued and all of the Lots owned by the Developer have been sold and the Developer is no longer an Owner, or until the Developer gives the Board notice it no longer wishes to be the Controlling Member.
- 10.2 Notwithstanding any other provisions in these Rules, the Controlling Member shall be entitled to exercise a number of votes equal to one more than the number of votes cast by other Owners eligible to vote at meetings of the Association.

11 Register of Owners

- 11.1 The Association shall maintain a register of Owners recording:
- 11.1.1 For each Owner: name, address, occupation, telephone number and email (at home and at work);

11.1.2 For each Occupier: name, address, occupation, telephone number and email (at home and at work);

11.1.3 Membership: the date on which each Owner became an Owner;

PART IV – MEMBERS RIGHTS

12 Use of Communal Facilities

12.1 Each Owner has the right to use and enjoy the Communal Facilities in accordance with these Rules and the Restrictive Covenants

12.2 Each Owner will ensure the proper use, enjoyment and operation of the Communal Facilities and ensure that the Communal Facilities are used only for their designated or proper purposes.

13 Lot Ground Maintenance

13.1 The Owner will as part of the Design Control Process contained in the Restrictive Covenants, provide the Design Panel with a plan identifying that portion of the Lot that the Owner will be responsible for maintaining (**Curtilage Area**) from the date that design approval is given.

13.2 The Curtilage Area :-

13.2.1 Must include the Building Location Area as defined on the plan of subdivision for the Lot;

13.2.2 **Must include the wastewater disposal field for the Lot;**

13.2.3 Must be an area greater than 3,000m².

13.2.4 Must exclude that part of the Lot defined as Gully Revegetation Planting Area and the Steep Slope /Gully Planting Areas as shown on the Landscape Management Plan for Mahana Ridge dated October 2017 or any plan in substitution;

13.3 The Association will maintain a register identifying the Curtilage Area nominated by each Lot Owner.

13.4 The Association will arrange for that part of each Lot that is not designated as Curtilage Area to be maintained to ensure compliance with the Restrictive Covenants.

13.5 Until such time as an Owner nominates a Curtilage Area, the Association will maintain all the Lot.

13.6 Each Owner grants access to their Lot to the contractor engaged by the Association to undertake the ground maintenance services pursuant to a property maintenance agreement.

13.7 An Owner may change the dimensions and/or area of their Curtilage Area at any time however the Association will not make any adjustment to the Annual Levy invoiced to the Lot Owner.

13.8 All Owners will benefit from all Lots in Mahana Ridge being well maintained and each Owner agrees that the expenses incurred pursuant to any ground maintenance agreement entered into by the Association shall be shared equally between the Lot Owners irrespective of the area of each Lot that is being maintained pursuant to the agreement.

14 Walkways within Mahana Ridge

- 14.1 The Owner of each Lot in Mahana Ridge grants to the Registered Proprietor of each Lot within Mahana Ridge a right of access on foot over those parts of the Owners Lot formed as a walkway/footpath and identified as walkway on the Walkway Plan held by the Association.
- 14.2 The Owner of each Lot will not do anything on their Lot that restricts or interferes with the Registered Proprietors obtaining the benefit of the use of the walkways/footpaths.

PART V – MEMBER OBLIGATIONS

15 Compliance

- 15.1 These Rules will operate to govern the use and enjoyment of Mahana Ridge and will constitute a binding agreement between all the Owners for the use and enjoyment of Mahana Ridge.
- 15.2 Each Owner will pay the levies due by them to the Association, as and when they fall due.
- 15.3 Former Owners will remain liable for unpaid Levies due to the Association by that Owner. The registration of a transfer of an Owner's interest in a Lot does not relieve that Owner from any liability arising prior to the date of registration of that transfer.
- 15.4 Former Owners will not be entitled to any refund of any Levies.

16 Restrictive Covenants

- 16.1 A Restrictive Covenant is to be registered against every Lot in Mahana Ridge which shall provide (among other things):
- 16.1.1 each Owner is deemed to be a Member of the Association and is thereby bound by the Rules and will perform the obligations of a Member of the Association accordingly;
- 16.1.2 an Owner shall resign and be deemed to have resigned from the Association as soon as that Owner is no longer an Owner of a Lot provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be an Owner; and
- 16.1.3 each Owner shall, immediately upon becoming an Owner provide the Association with the necessary details for maintaining the Register of Owners referred to in clause 11.

17 Water Systems

- 17.1 Each Owner shall ensure that water taken from a Water System that forms part of the Communal Facilities shall be used efficiently and without undue waste.
- 17.2 The Association shall not be obliged to deliver more than 50 cubic meter of potable water per month in respect of each Lot.
- 17.3 A decision to restrict water use may be made in anticipation of a water shortage.
- 17.4 The Association shall not be responsible for a lack of water supply or diminution of the water quality for reasons beyond the Association's reasonable control.
- 17.5 The Association, by its Board, may alter the Water Scheme to enhance water distribution.

18 Owners to Grant Easements

- 18.1 Each Owner shall be under an obligation to:

- 18.1.1 allow access by the Association's representatives to the Owner's Lot for the purpose of maintaining, repairing or renewing the Communal Facilities; and
- 18.1.2 grant to the Association any easement necessary for the efficient operation or development of the Communal Facilities including a right of access to the Owner's Lot for the purpose of repair and maintenance.

19 Damage to Communal Facilities

- 19.1 If any of the Communal Facilities reaches a state of disrepair or is damaged as a result of the negligence, wilful act or abnormal use by any Owner (or by the Owner's Invitee, Occupier or other person for whom the Owner is responsible) the Owner by whose action (or by the action of the Owner's Invitee, Occupier or other persons for whom the Owner is responsible) the damage or state of disrepair was caused shall be solely responsible to meet the costs to repair and restore such damage.

20 Compliance by Occupiers (Other than Owner)

- 20.1 A reference to an act or omission by any Owner shall include any act or omission by any Occupier of that Owner's Lot.
- 20.2 Each Owner must take all reasonable steps (including enforcing the terms of any lease/licence) to ensure that their Occupiers comply with these Rules. In any case of persistent default by an Occupier, the Owner must, on demand by the Association, terminate the Occupier's right to occupy the Owner's Lot.
- 20.3 A copy of these Rules and the Bylaws shall be attached to every lease, licence, or other document defining occupancy rights of a Lot and any such document must contain an obligation on the Occupier to observe and comply with these Rules and the Bylaws and the Restrictive Covenants.

21 Risk and Indemnity

- 21.1 The Owners mutually agree and covenant with each other that they will take all reasonable care in using the Communal Facilities and hereby confirm that all rights are exercised at their own risk and no Owner will hold any other Owner or their respective successors in title liable in any way for any loss, damage or injury sustained by that Owner.

PART VI - OPERATION OF ASSOCIATION

22 Administration

- 22.1 The administration of the Association shall be vested in the Association in general meeting, and shall be delegated to the Board and Manager as provided in these Rules.
- 22.2 All documents and written announcements requiring execution or signing on behalf of the Association must be signed by the Chairperson or Manager and in the case of a Manager which is a body corporate, by a duly authorised representative of that body.

23 Board of Directors

- 23.1 The Board shall consist of a maximum of five and a minimum of two Directors.
- 23.2 A Director must be an Owner with the exception that the director appointed by the Developer pursuant to clause 23.3 does not need to be an Owner

- 23.3 Until all the Lots owned by the Developer are sold and the Developer is no longer an Owner, the Developer shall have the right to exclusively appoint one director of the Board and also the right to exclusively remove and/or replace any director appointed by the Developer.
- 23.4 Subject to clause 23.7, a Director shall hold elected position until the earlier of:
- 23.4.1 the next Annual General Meeting following election (when the Board member shall be eligible for re-election);
 - 23.4.2 the date written resignation from position is received by the Association; or
 - 23.4.3 the date of removal from such position by the Board in general meeting;
 - 23.4.4 in the case of the director appointed by the Developer pursuant to clause 23.3, the date that notice of removal is given by the Developer to the director.
- 23.5 Directors (other than the director appointed by the Developer) will be elected or re-elected at general meetings of the Association on a majority vote by the Owners at a general meeting in the manner prescribed by these Rules.
- 23.6 In the event of any casual vacancy on the Board (whether caused by the death, resignation, or ineligibility of a Director or by some other circumstances) the Chairperson shall call for written nominations and, if necessary, conduct a written ballot to fill such casual vacancy at the earliest reasonable opportunity. For the avoidance of doubt, the appointment of any Director as Chairperson shall not create a casual vacancy on the Board.
- 23.7 Each Director shall have power from time to time by written notice to appoint any person to act as an alternate director in place of such Director whenever that Director is unable to attend to his or her duty as a Director as follows:
- 23.7.1 each alternate Director shall be entitled to receive notice of meetings of the Board and to attend and vote at such meetings if the Director by whom such alternate Director was appointed is not present and to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director in so far as that Director by whom he or she was appointed has not exercised or performed them.
 - 23.7.2 shall be entitled to any such alternate Director may be removed or suspended from office by notice in writing to the Association from the Director by whom such alternate Director was appointed or by the resolution of the Board.
 - 23.7.3 Each alternate Director shall, whilst acting as a Director, be responsible to the Association for his or her own acts and defaults and shall not be deemed to be the agent of the Director by whom he or she was appointed.
 - 23.7.4 Directors shall not be entitled to any remuneration for their services as such, but Directors and their alternates shall if approved by the Board be entitled to reimbursement for reasonable out of pocket expenses incurred in connection with the Objects of the Association (other than in attending meetings).
- 24 Powers of the Board**
- 24.1 The affairs of the Association shall be managed by the Board, which may exercise all the powers of the Association and do on its behalf all such acts as it may deem necessary or expedient to achieve the Objects of this Association and as are not by these Rules required to be exercised or done by the Owners in general meeting, and may exercise such authority powers and discretions as may by these Rules be vested in the Board, but subject always to any limits which may from

time to time be imposed by the Owners in general meeting on the exercise by the Board of any such powers.

24.2 To achieve the Objects of the Association the Board may (without limitation to the generality of Rule 24.1):

24.2.1 manage and maintain the Communal Facilities;

24.2.2 contract with, employ or otherwise procure the services of any person, persons, firm, company or other organisation for the purpose of achieving the Objects of the Association

24.2.3 enforce compliance with the Rules;

24.2.4 levy any additional fees or any special contributions the Association may require in order to exercise its power under these Rules;

24.2.5 raise money from reputable established lending institutions in order to carry out the Objects of the Association;

24.2.6 grant and transfer to any person or entity any real property and/or other interest, including title, leasehold estates, easements, rights of way or mortgages, out in, on over or under the Communal Facilities for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder:

(a) roads, streets, footpaths, street lights, driveways, parking area, tracks, paths and fences;

(b) lines, cables, wires, conduits, pipelines or other devices for the creation of service;

(c) sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; or

(d) any similar improvements or facilities.

24.3 The Board may in its discretion, cause the Association to enter into contracts with other residential developments allowing such other residential developments to make use of certain Communal Facilities, provided that:

24.3.1 the Owners receive benefits from the Association's entry into such contracts;

24.3.2 the Association receives no direct monetary profit or pecuniary gains from the contracts; and

24.3.3 no Levies paid by Owners shall be applied to the cost of other residential developments making use of the Communal Facilities.

24.4 Subject to Clause 25.3, the Board may delegate its powers contained in this clause to a Manager in accordance with clause 25.

25 **Manager**

25.1 The Board may appoint a Manager to be responsible for the performance of all duties of the Association as listed in these Rules. Such appointment is to be made on terms and conditions (including salary) as the Board shall deem appropriate.

25.2 The Manager must not be an Owner.

- 25.3 The Developer may appoint the Manager until all of the Lots in Mahana Ridge owned by the Developer are sold and the Developer is no longer an Owner.
- 25.4 The Manager's duties include:
- 25.4.1 ensuring the Objects of the Association are met;
 - 25.4.2 ensuring the duties of the Association contained in these Rules and in the Restrictive Covenants are carried out;
 - 25.4.3 ensuring the Owners comply with their duties and obligations as contained in these Rules and the Restrictive Covenants and the administrative functions contained in clause 25.5; and
 - 25.4.4 ensuring that the Association's obligations to the TDC in respect of any resource consents relating to Mahana Ridge are met.
- 25.5 The Manager is to carry out the administrative functions of the Association including:
- 25.5.1 convening Annual General Meetings and other general meetings of the Association when required to do so in accordance with these Rules and likewise convening meetings of the Board;
 - 25.5.2 giving all such notices as the Association in general meeting or the Board may instruct or which the Association may be required to give to Owners in the manner provided in these Rules;
 - 25.5.3 keeping minutes of all meetings of the Association and of the Board and entering the same in the minute book kept for that purpose;
 - 25.5.4 performing or supervising the performance of the clerical work for, and the maintenance of proper records of, the Association;
 - 25.5.5 maintaining a membership register for the Association;
 - 25.5.6 giving all such notices, certificates or information to the Registrar as may be required by the Act or by the Registrar pursuant to the Act;
 - 25.5.7 issuing and receiving correspondence on behalf of the Association;
 - 25.5.8 receiving all fees, subscriptions, levies and other moneys paid to the Association and issuing receipts;
 - 25.5.9 opening and operating a current bank account in the name of the Association;
 - 25.5.10 making such deposits and investments in the name of the Association as the Board may determine from time to time;
 - 25.5.11 paying all accounts and making all advances passed for payment by the Board;
 - 25.5.12 keeping all financial records of the Association and ensuring their safe-keeping together with any security documents;
 - 25.5.13 reporting to the Board any Owner who shall fail to pay Levies or other moneys properly payable by that Owner to the Association within the prescribed period; and

25.5.14 communicating with the TDC and advising it of the address of the Association from time to time.

26 Proceedings of the Board

- 26.1 The Board may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit. A majority of the members of the Board from time to time shall form a quorum for a meeting. No business of the Board shall be conducted at any time when less than a quorum is present at the same time and place. The Board may meet at any time and the Manager shall, upon the request of the Chairperson or any three members, convene a meeting of the Board.
- 26.2 The Board from time to time shall appoint, remove and replace a Chairperson for such term as it sees fit from one of their number to chair the Board meetings and otherwise exercise the powers of the set out in these Rules.
- 26.3 In the event that there is an even number of Directors the Chairperson shall have a casting vote otherwise, the Chairperson has one vote as a Director, but may not exercise a casting vote.
- 26.4 Resolutions of the Board shall be passed by a majority. Each Board member shall be entitled to exercise one vote. Notwithstanding any contrary provision in these Rules, a resolution in writing signed by such of the Board members as would constitute a quorum at a meeting shall be valid and effectual as if it had passed at a meeting of the Board duly convened and constituted.
- 26.5 All acts properly done by any meeting of the Board or by a person acting as a member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Board member, or that they were disqualified shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Board member.
- 26.6 The Board shall cause proper minutes to be kept of the proceedings of all meetings of the Association and the Board. All business transacted at each such meeting and the minutes of such meeting signed by the Chairperson shall 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.

27 General Meetings

- 27.1 The Association shall in each year hold an Annual General Meeting in addition to any other meetings in that year, and shall specify the meetings as such in the notices calling such meeting. Not more than 18 months shall elapse between the date of one Annual General Meeting and that of the next. Each year's Annual General Meeting shall be held at such time and place as the Board shall determine.
- 27.2 A general meeting other than an Annual General Meeting shall be convened by the Manager whenever required by the Chairperson or the Board or by written requisition signed by not less than 50% of the Owners.
- 27.3 The Association in general meeting may, by resolution of not less than 75% of the Owners present and voting at such meeting, exercise all the powers, authorities and discretions of the Association notwithstanding any such power, authority or discretion may have been vested in the Board by or pursuant to these Rules.
- 27.4 No business shall be transacted at any general meeting of the Association unless a quorum is present when the meeting proceeds to business. A quorum shall be not less than 20% of all Owners eligible to vote at general meetings, present in person or by proxy

- 27.5 A notice of a general meeting of the Association shall be sent to every Owner not less than ten (10) Working Days before the date of such meeting. Such notice shall specify the date, time and venue of such meeting. In the case of a general meeting other than an Annual General Meeting such notice shall specify all business and all notices of motion to be considered at such meeting and no business or notice of motion which is not specified shall be discussed or transacted at such meeting. Notwithstanding any contrary provision in these Rules, the requirements of this Rule relating to notice and limiting the business to be transacted at any meeting may be modified in any particular case with the consent in writing of all Owners entitled to attend a meeting of the Association (provided that the modification of such requirements for any given meeting shall not be so construed or deemed to affect such requirements in any respect of any other meeting of the Association).
- 27.6 The accidental omission to give notice to or the non-receipt of any notice by any Owner or other person entitled to such notice shall not invalidate the proceedings of any general meeting to which such notice relates.
- 27.7 The Chairperson shall be entitled to chair any general meeting of the Association at which he or she is present. If the Chairperson shall not be present or being present shall be unwilling to take the chair then those Directors who are present may choose one of their number to chair such meeting or if for any reason no chairperson is selected by such Directors then those Owners entitled to vote at that meeting may elect any person entitled to be present as chairperson of that meeting.
- 27.8 At any general meeting:
- 27.8.1 a poll may be directed by the Chairperson or the chairperson of that meeting or demanded by any Owner present at the meeting and entitled to vote;
- 27.8.2 a poll may be so directed for either before the declaration of the result of a vote by a show of hands or immediately thereafter before the meeting moves to the next business or it adjourns;
- 27.8.3 the Chairperson or the chairperson of that meeting shall determine whether resolutions are to be put to the vote of the meeting by a show of hands, a poll, or by some other means;
- 27.8.4 in the case of a resolution put to the vote of the meeting by a show of hands, a declaration by the Chairperson that such resolution has been carried or lost, unanimously or by a particular majority, and an entry to that effect in the Association's minute book, shall be conclusive evidence of the fact without further proof of the number or proportion of votes recorded in favour or against such resolution.
- 27.8.5 If within half an hour from the time appointed for holding of a general meeting a quorum is not present, the meeting if convened on the requisition of the Owners, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place, as the Board shall determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Owners present shall be a quorum.

28 **Votes of Members**

- 28.1 Subject to clauses 28.2 and 28.3, each Owner shall be entitled to one vote, which may be exercised either in person or by proxy. An Owner may vote by fax, telephone or email, by addressing such correspondence to the Manager prior to the general meeting. The Manager shall advise the Chairperson of the vote so long as the Manager is satisfied what the vote is for and the likely effect of that vote.

- 28.2 Where there is more than one Owner in respect of any Lot, only one such owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the certificate of title to the Owner's Lot shall be entitled to exercise that vote. On the death of any Owner, and pending the transfer of that Owner's Lot, the executor of that Owner's estate shall be entitled to exercise that owner's vote.
- 28.3 Whilst there is a Controlling Member, the Controlling Member shall have the number of votes one greater than the number of votes able to be exercised by all other Members.
- 28.4 Unless all annual subscriptions and additional fees and levies presently payable by any Owner to the Association have been paid in full, such Owner shall not be entitled to vote at any general meeting of the Association, whether in his or her own right or as proxy for another person.
- 29 **Proxy**
- 29.1 An Owner may exercise the right to vote by proxy in accordance with this clause.
- 29.2 The instrument appointing a proxy shall be in writing and signed by the appointer, and in all respects, shall be in such form as the Board may determine from time to time.
- 29.3 The instrument appointing a proxy shall be delivered to the Registered Office no later than 24 hours before the time fixed for holding the meeting or adjourned meeting at which the person named in such instrument is authorised to vote, failing which the instrument appointing a proxy shall not be treated as valid.

PART VII LEVIES

- 30 **Levies**
- 30.1 All Levies, fees and subscriptions payable to the Association by the Owners must be determined by the Board in the following manner:
- 30.1.1 Prior to or as soon as practicable following the close of the Association's last Accounting Period the Board shall advise each Owner of the Board's estimate of the Facility Expenses for the current Accounting Period supported by such detailed information as may reasonably be requested by the Owner in confirmation of the Board's estimate.
- 30.1.2 The Board's estimate for each Owner shall be paid by equal quarterly instalments in advance on the first day of such period.
- 30.1.3 The Board may at any time notify the Owners of a revised estimate of the Facility Expenses where some unforeseen matter arises which is likely to have a significant effect on the Facility Expenses and such revised estimate shall apply in lieu of the earlier estimate.
- 30.1.4 As soon as practicable after the last day of each Accounting Period but in any event within 60 working days, the Board will provide a statement of actual Facility Expenses for such period and whatever adjustment which may be necessary between the Association and the Owner(s) shall be paid forthwith upon demand after taking into account the total of the payments previously made by the Owner in respect of that period.
- 30.1.5 Nothing in this clause shall prevent the Association from recovering a share of the Facility Expenses from the Owner(s) merely because the Board has failed to notify the Owner promptly of an estimate or of an actual amount.

- 30.1.6 The liability of the Owners shall commence on the date of possession stipulated in each Agreement for Sale and Purchase made between the Developer as vendor and the Owner and shall thereafter run with the land.
- 30.1.7 Owner indemnifies every other Owner who has reasonably incurred any cost in excess of that Owner's liability hereunder.
- 30.1.8 All Levies payable by an Owner to the Association constitutes a debt owed by the Owner to the Association and is recoverable (together with any penalty interest and costs payable under clause 31.1) by the Association accordingly.

PART VIII DEFAULT & ENFORCEMENT

31 Breach of Obligations

- 31.1 Upon any breach of these Rules and/or the Restrictive Covenant by an Owner (or their Invitees) or an Occupier:
 - 31.1.1 If such default continues for seven (7) days after notice is given by the Association to the Owner to remedy the default, the Association may do anything, including paying money, necessary to remedy the default:
 - 31.1.2 all money paid and expenses incurred by the Association (including any legal costs of the Association) in remedying or attempting to remedy any breach by an Owner of these Rules or incurred in the exercise, or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Association in respect of such breach, shall be a debt due from the Owner to the Association;
 - 31.1.3 if any money payable by an Owner to the Association is in arrears and unpaid for seven (7) days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall be payable on demand and shall bear interest at the rate of 5% above the Association's banker's overdraft rate (or in the absence of such rate other benchmark lending rate as nominated by the Board) applicable during the continuance of the default, computed on a daily basis from the due date until the date of payment in full.
 - 31.1.4 A reference to an act or omission by any Owner shall include any act or omission by any Occupier of a lot or Invitees of such occupier.
 - 31.1.5 Each Invitee and Occupier shall be deemed to have knowledge of the Rules and each Owner is responsible and shall be held liable for acquainting the Invitee and Occupier with the Rules. In the case of Occupiers of a Lot, each relevant Owner must take all reasonable steps (including enforcing the terms of any lease/licence) to ensure Occupiers comply with these Rules. In any case of persistent default by an Occupier of these Rules, the Owner shall on demand by the Association, terminate an Occupier's right to occupy the Lot.
 - 31.1.6 A copy of these Rules shall be attached to every lease, licence or other document defining occupancy rights and any such document must contain an obligation on the occupier to observe and comply with the Rules.

PART IX - MISCELLANEOUS

32 Dispute Resolution

- 32.1 Any disputes arising under these Rules, the Restrictive Covenants or in connection with the Association shall be referred to mediation at first instance
- 32.2 If the dispute is not resolved by mediation in accordance with clause 32.1, the matter shall be referred to and finally resolved by arbitration of a sole arbitrator under the Arbitration Act 1996 upon the written request of any party served on the other party.
- 32.3 The arbitrator referred to in clause 32.2 shall be appointed by the parties to the dispute or, failing agreement as to the arbitrator, a person to be appointed by the President or Vice-President of the Nelson District Law Society or the nominee of such person.

33 Notices

- 33.1 All notices and other communications required under these Rules shall be in writing and shall be delivered by hand, by properly addressed prepaid fastpost or airmail postage, by facsimile transmissions or by e-mail and, in the case of notices to or communications with:
- 33.1.1 any Owner, shall be addressed to that Owner at its address as set out in the register of owners (referred to in clause 7), or at such other address as the Owner may from time to time notify the Secretary in writing;
- 33.1.2 the Association, the Chairperson, the Manager, the Board, shall be addressed to the intended recipient, care of the Registered Office.
- 33.2 Any notice or communication given in terms of Rule 33.1 shall be deemed to have been delivered:
- 33.2.1 in the case of delivery by prepaid fastpost or airmail postage, if:
- 33.2.2 posted within New Zealand to a destination within New Zealand, two (2) Working Days after posting;
- 33.2.3 posted within New Zealand to a destination outside New Zealand, five (5) Working Days after posting;
- 33.2.4 posted outside New Zealand to a destination within New Zealand, five (5) Working Days after posting;
- 33.2.5 in the case of transmission by facsimile, on receipt by the sender of a transmission report showing full transmission free of error to the intended recipient; and
- 33.2.6 in the case of email, when the email is sent.
- 33.3 The Association shall not be held liable in any way for failure to give notice to any Owner provided it has delivered such notice by any means specified under these Rules to the last address provided by the Owner to the Association.

34 Accounts

- 34.1 The Board shall cause proper accounts to be kept with respect to:
- 34.1.1 all sums of money received and expended by the Association and the matters in respect of which the receipts and expenditure take place;
- 34.1.2 any sales and purchase of goods by the Association; and

- 34.1.3 the assets and liabilities of the Association.
- 34.2 The Association's accounts shall be kept by the Manager (or such other person as may from time to time be designated by the Board) who shall produce them to the Board or any Director, on demand.
- 34.3 The financial statements of the Association ~~must be audited annually and~~ must be distributed to the Owners as soon as reasonably practicable after ~~each audit is~~ completed.
- 34.4 The Manager shall from time to time cause to be prepared and to be laid before the Board and/or the Association in general meeting such income and expenditure accounts, balance sheets and reports as are from time to time required by the Board.
- 34.5 A copy of all balance sheets, accounts and reports which are to be laid before the Association in general meeting, together with a copy of the auditor's report (if any), shall be sent to every Owner not less than ten (10) Working Days before the date of the relevant general meeting.
- 35 Cheques/Bills**
- 35.1 All cheques, bills of exchange and promissory notes shall be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Association by the Chairperson and either the Manager or some other officer authorised by the Board, or in such other manner as the Board determines from time to time.
- 36 Liability of Owners**
- 36.1 Except as otherwise provided by the Act, no Owner or Initial Member shall be under any liability in respect of any contract or other obligation made or incurred by the Association.
- 37 Alteration of the Rules**
- 37.1 These Rules, and any by-laws made under these Rules, shall not be amended, added to or rescinded except by resolution of not less than 75% of the current Owners entitled to vote at an Annual General Meeting or a general meeting convened for that purpose and unless written notice of the proposed amendment, addition or rescission shall have been given to all Owners in accordance with these Rules. No such amendment, addition or rescission shall be valid unless it has been accepted by the Registrar.
- 38 Winding Up**
- 38.1 The Association may be wound up in accordance with section 24 of the Act. If, upon such winding up, there remains, after satisfaction of all debts and liabilities of the Association, any property or assets (including the Communal Facilities), such property or assets shall vest in the Owners as tenants in common.
- 39 Seal**
- 39.1 The Board shall obtain a common seal for the use of the Association and shall provide for its safe custody. The common seal shall not be used except by resolution of the Board. Every instrument to which the common seal is affixed shall be witnessed by any two members of the Board.

