

ESK HILLS

BAY VIEW

NAPIER

AGREEMENT FOR SALE AND PURCHASE

PURCHASER:

.....
.....

PH:

MOBILE:.....

EMAIL :

FAX:

LOT NUMBER:

AGREEMENT dated the day of 200

PARTIES

EAST HILLS One Limited/AMP Napier No.1 Limited ('Vendor')

..... ('Purchaser')
(insert full name)

PARTICULARS AND CONDITIONS OF SALE

**ESK HILLS
BAY VIEW, NAPIER
NEW ZEALAND**

Lot	Purchase Price (including GST)
Lot (insert Lot number)	Purchase Price (total) \$

Deposit:

**Payment of Balance
of Purchase Price :**

The balance of the Purchase Price shall be paid and satisfied in cash in one sum on the Settlement Date

It is agreed that the Vendor sells and the Purchaser purchases an estate in fee simple in the Lot upon the Particulars and Conditions of Sale set out above and the further Particulars and Conditions of Sale together contained in this Agreement.

EXECUTION

Signature of Vendor

Signatures of Purchaser(s)

.....
EAST HILLS One limited/AMP Napier No1 Limited
by its duly authorised representative

.....
.....

Solicitor for the Vendor: **BRAMWELL GROSSMAN & PARTNERS**
210 Queen Street East
PO Box 500 (DX MA75045)
Hastings

Phone: (06) 873-2900
Fax: (06) 876-9435

Solicitor for the Purchaser:
Phone:
Fax:
Email:

Vendor's Details:

EAST HILLS One Limited/AMP Napier No1 Limited

Address: 21 Browning Street
PO Box 1073
Napier

Phone: (06) 833-6450
Fax: (06) 834-1980

Attention: Gerard Logan
Email: Gerard@easthills.co.nz

Purchaser's Details:

Purchaser: Address:
Phone:
Fax:
Attention:
Mobile:
Email:

Important Notice to All Purchasers:

This is an important document. You should seek independent professional advice before signing.

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Schedules to this Agreement

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FURTHER PARTICULARS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this part of the Agreement, the following words shall have the meaning set out opposite them:

"Agreement" the Particulars and Conditions of Sale of the Lot and the Further Particulars and Conditions of Sale set out in this Agreement, together with all schedules attached.

"Business Day" any day in New Zealand other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac, Day, the Sovereign's Birthday, Labour Day, Waitangi Day and the Provincial Anniversary of Hawke's Bay; and
- (b) A day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year.

A Business Day shall be deemed to commence at 9.00 am and to terminate at 5.00pm (New Zealand time).

"Common Facilities" has the same meaning as set out in the Constitution.

"Common Facilities Lots" any Lot owned by the Society on which there are Common Facilities.

"Consent" approval of the Development and the Scheme Plan by the Relevant Authority and all related statutory permits consents and approvals including the relevant land use consent.

"Constitution" the constitution of the Society in relation to the management of all of the Lots to be created within the Land and the ownership of the Common Facilities Lots and any Common Facilities, a draft of which is annexed to this Agreement as Schedule 4.

"Council" Napier City Council and Hawke's Bay Regional Council.

"Covenants" the covenants in favour of the Society for registration against the identifier to the Lot, annexed to this Agreement as Schedule 6.

"Deposit" the amount referred to in clause 2.1.

"Design Guidelines" the set of design guidelines for building on the Lot annexed hereto as Schedule 5

"Development" the construction of the works on the Land in substantial accordance with the Plans and Specifications and implementation of the Consent.

"GST" goods and services tax chargeable in accordance with the GST Act.

"GST Act" the Goods and Services Tax Act 1985.

"Interest Rate for Late Settlement"	15% per annum.
"Land"	an estate in fee simple comprised in identifier 140515.
"Land Titles Plan"	the subdivisional plan of the Land of which the Lot forms part, the deposit of which will create a separate legal title to the Lot, such plan to be prepared and completed by the Vendor at the sole cost of the Vendor generally in accordance with the Scheme Plan and the Consent. A copy of the Land Titles Plan (4 pages) (not yet approved as to survey) for stage 1 of the Vendor's subdivision is annexed as Schedule 3
"Lot"	the estate in fee simple described in the Particulars and Conditions of Sale.
"Particulars and Conditions of Sale"	the Particulars and Conditions of sale and the further Particulars and Conditions of sale set out in this Agreement.
"Plans and Specifications"	the Plans and Specifications annexed to this Agreement as Schedule 2.
"Purchaser"	the person, persons or corporation named as the Purchaser on the front page of this Agreement and his, her or its personal representatives, administrators, liquidators or successors.
"Purchase Price"	the Purchase Price specified in the Particulars and Conditions of Sale.
"Relevant Authority"	any government, local, statutory or non-statutory authority or body having jurisdiction over the Land or over the Development.
"Rules"	the set of rules annexed to the Constitution.
"Scheme Plan"	the Scheme Plan for subdivision of the Land, a copy of which is attached as Schedule 1 and any subsequent or amended scheme plan prepared for the staged development of the land.
"Settlement Date"	the fifth Business Day after the date that a search copy (as defined by section 172A of the Land Transfer Act 1952) of the identifier to the Lot is available;
"Society"	Esk Hills Residents Society Incorporated to be incorporated by the Vendor for purposes relating to the control, management, administration, use and enjoyment of the Lot, the Land, the Common Facilities Lots (including the ownership of the Common Facilities) in accordance with the rules set out in the Constitution.
"Society Land"	all of the Lots shown on the Scheme Plan
"Stakeholder"	Bayleys Real Estate, Napier or Bramwell Grossman & Partners, Solicitors, Hastings
"\$"	the lawful currency of New Zealand.
"Vendor"	East Hills One Limited and AMP Napier No.1 Limited JV and its successors and assigns.

Governing Law

1.2 This Agreement is governed by the laws of New Zealand, and the parties submit to the exclusive jurisdiction of New Zealand courts in respect of any dispute or proceeding arising out of this Agreement.

Headings

1.3 Headings, subheadings and the table of contents are included for ease of reference and none of the provisions of this Agreement are to be construed or interpreted by reference to such headings, subheadings or the table of contents.

Conflict

1.4 If there is a conflict between the provisions of this Agreement and the provisions of any of the schedules to this Agreement, the provisions of this Agreement shall prevail; otherwise the schedules to this Agreement shall have the same force and effect as if they were set out in the body of this Agreement.

Statutes and Regulations

1.5 References to statutes, regulations, ordinances, or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them.

Language

1.6 All communications and documents relating to and in connection with this Agreement shall be in English.

Amendments

1.7 This Agreement may only be amended, supplemented or novated by the parties in writing.

Words, References and Derivatives

1.8 In this Agreement, unless the context otherwise requires:

- (a) words importing a particular gender include any other gender;
- (b) the singular shall include the plural and vice versa;
- (c) "person" includes a body corporate;
- (d) whenever a body corporate is a party, the words designating such body corporate shall extend to and include such body corporate, its successors and permitted assigns;
- (e) where two or more parties are bound by a provision then, whether those parties are referred to individually or together, the provisions shall bind those parties jointly and each of them severally;
- (f) derivatives of any defined term have a corresponding meaning to that of the defined term.
- (g) references to clauses and schedules are references to clauses and schedules in this Agreement.

New Zealand Dollars

1.9 The Purchaser and the Vendor acknowledge that the Purchase Price, Deposit and any other sums referred to in this Agreement are expressed to be and are payable in New Zealand Dollars.

2. PAYMENT AND INVESTMENT OF DEPOSIT

Deposit Payment

2.1 The Purchaser shall pay to the Stakeholder a Deposit in the manner set out on the front page of this Agreement (time being of the essence). The Deposit shall be payable to the Stakeholder to be held in an interest bearing trust account with a registered bank, in the name of the Stakeholder for the benefit of both parties. The Vendor shall not be entitled to cancel this Agreement for non-payment of the Deposit unless the Vendor has first given to the Purchaser three Business Days notice in writing of the Vendors intention to cancel and the Purchaser has failed within that time to remedy the default. No notice of cancellation

shall be effective if before notice is received by the Purchaser or the Purchaser's solicitor the Deposit is paid.

Deposit Release

2.2 On the Settlement Date or, if the Vendor becomes entitled earlier, the Deposit (and all interest accrued on it less withholding tax) shall be paid to the Vendor, and this clause is sufficient authority to the Stakeholder to make that payment.

3. PAYMENT OF PURCHASE PRICE

Payment

3.1 The Purchaser shall pay the Purchase Price set out in the Particulars and Conditions of Sale as follows:

- (a) the Deposit to the Stakeholder in the manner set out in clause 2.1 of this Agreement (time being of the essence); and
- (b) the balance to the Vendor in the manner set out in the Particulars and Conditions of Sale.

4. COMPLETION OF DEVELOPMENT

Subdivision

4.1 To achieve the Development the Vendor shall subdivide the Land generally in accordance with the Scheme Plan.

5. SETTLEMENT AND POSSESSION

Settlement Date

5.1 Settlement shall be effected and completed on the Settlement Date.

Time for Settlement

5.2 Settlement shall be effected before 3.00 pm on the Settlement Date

Interest Rate for Late Settlement

5.3 If for any cause whatsoever save the default of the Vendor any portion of the Purchase Price or any other money is not paid upon the due date for payment the Purchaser shall pay to the Vendor interest at the Interest Rate for Late Settlement on such unpaid money from the due date for payment until actual payment; but nevertheless this stipulation is without prejudice to any of the Vendors rights or remedies including the right to claim for additional expenses and damages. For the purposes of this clause a payment made on a day other than a Business Day or after termination of a Business Day or after the time for settlement on the Settlement Date (as the case may be) shall be deemed to be paid on the next following Business Day and interest shall be computed accordingly.

Settlement

5.4 Upon the balance of the Purchase Price interest and other money if any due under this Agreement being paid or satisfied as provided in this Agreement, the Vendor shall concurrently hand to the Purchaser a registrable transfer instrument of the Lot, to be prepared by and at the expense of the Purchaser and tendered to the Vendor or the Vendor's solicitor a reasonable time prior to the Settlement Date together with all other instruments in registrable form which may be required for the purpose of registering the transfer instrument together with all instruments of title.

Transfer

5.5 The Vendor may at the Vendor's option prepare the transfer instrument and provide the same to the Purchaser for approval,

6. APPORTIONMENT OF OUTGOINGS AND INCOMINGS

Apportionment

- 6.1 All outgoings and incomings in respect of the Lot will be apportioned on the Settlement Date so that the Vendor bears and pays all outgoings up to and including the Settlement Date and after that date the Purchaser will bear and pay all outgoings in respect of the Lot and so that the Vendor receives all incomings up to and including the Settlement Date and after that date the Purchaser will receive all incomings in respect of the Lot.

Assessments

- 6.2 Until separate assessments of outgoings including rates are issued or available in respect of the Lot, the Lot will be treated as liable for the same proportion of those outgoings levied or paid against the Land or against the Lot and other lots comprised in the Development as the area of the Lot bears to the total area of the Land.

7. CONDITIONS AND FORCE MAJEURE

Conditions

- 7.1 This Agreement is conditional upon the identifier to the Lot having issued by the date being 12 months from the date of this Agreement.
- 7.2 If the condition mentioned in clause 7.1 is not fulfilled or waived by the date for fulfilment (time being of the essence) then either party may thereafter at any time before the conditions are fulfilled or waived cancel this Agreement.

Force Majeure

- 7.3 In the event that war, civil disorders, monetary or economic developments, acts of Government or other factors beyond the reasonable control of the Vendor whether similar or not ("specified event") shall prevent the Vendor from commencing or continuing construction of the Development or render it impracticable for the Vendor to commence or continue construction of the Development, then the Vendor may by notice in writing to the Purchaser advise of the specified event and either:
- (a) cancel this Agreement; or
 - (b) advise the Purchaser that the date referred to in clause 7.1 is extended by the period that the specified event causes a delay in completion of the Development.

Deposit on Cancellation

- 7.4 If this Agreement is cancelled pursuant to this clause 7, the Purchaser shall be entitled to the return of the Deposit together with interest earned on the Deposit (less withholding tax) from the date of investment of the Deposit equal to the rate from time to time paid by the Stakeholder's bank for upon demand deposits (non compounded) lodged through the Stakeholder's trust account.

8. TITLE, BOUNDARIES ETC

Acknowledgement as to Title

- 8.1 The Purchaser acknowledges that a separate identifier has not yet issued for the Lot.

Vendor to have Scheme Plan approved and to Deposit Land Titles Plan

- 8.2. The Vendor shall, at the Vendor's expense in all things, as promptly as possible:-
- (a) implement the Consent granted by the Relevant Authority;
 - (b) complete all necessary work to enable deposit of the Land Titles Plan;
 - (c) deposit the Land Titles Plan in the Hawke's Bay Registry of Land Information New Zealand;
 - (d) obtain an identifier to the Lot.

Transfer

- 8.3 The Purchaser shall not be entitled to a transfer of the Lot or to call for settlement in accordance with the provisions of this Agreement until:
- (a) all conditions precedent (if any) have been satisfied or waived; and

- (b) the Vendor has not elected to exercise its right to cancel this Agreement; and
- (c) a new identifier to the Lot has issued, and a search copy (as defined by section 172A of the Land Transfer Act 1952) is available.

No Warranty

- 8.4 The Vendor gives no warranty to the Purchaser as to when the Land Titles Plan will be deposited in the Hawke's Bay Registry of Land Information New Zealand, nor as to when the Purchaser may be able to register a transfer instrument of the Lot to the Purchaser.

Requisitions

- 8.5 Subject to the provisions of this Agreement the Purchaser is deemed to have accepted the Vendors Title, Easements, Encumbrances, Rights and Obligations.
- 8.6 The Vendor reserves the right to grant or receive the benefit of any easements, rights, leases or licences, building line restrictions or other encumbrances, consent notices, rights or obligations which may be required in order to satisfy any conditions of any Consent, or which in the sole discretion of the Vendor are deemed to be necessary or desirable in respect of the Land. The Purchaser accordingly shall take title to the Lot subject to or with the benefit of any such easements, building line restrictions, encumbrances, rights or obligations, and shall execute all documents (with the inclusion of all terms considered reasonably desirable by the solicitors for the Vendor) and do such acts and things as may be required to obtain the deposit of the Land Titles Plan, the implementation of any such easements, rights, leases and licences, building line restrictions, encumbrances, consent notices or other rights or obligations in respect of the Land or the Lot.

Measurements

- 8.7 All measurements and areas are subject to any variation which may be found necessary upon checking by the Relevant Authority, the Vendor's surveyor, the District Land Registrar and Land Information New Zealand and neither party shall be entitled (except as provided for in this clause) to bring any claim whatsoever against the other based on any such variation of measurements, nor shall either party be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on such variation except in circumstances where the area of the Lot as indicated in the Scheme Plan and the final measured area of the Lot differ by more than 10%. If the final measured area of the Lot is more than 10% less than the area of the Lot indicated in the Scheme Plan the Purchase Price for the Lot shall be adjusted down by agreement and failing agreement by arbitration under the Arbitration Act 1996. Notwithstanding any such claim the Purchaser shall pay to the Vendor on settlement the full amount required to settle without deduction, set-off or reservation on any account whatsoever.

Variations to Scheme Plan

- 8.8 The Vendor may at any time alter the Scheme Plan and any subsequent plan relating to the Development (including the alteration variation or cancellation of any proposed easement shown on any such plan) in such manner as the Vendor considers appropriate having regard to the circumstances, and except as provided in clause 8.7 the Purchaser shall not be entitled to claim any compensation, damages, right of set-off or to make any objection or requisition based on such alteration, variation or cancellation. The Purchaser acknowledges that the location of any other lot on the Scheme Plan is not an essential term and that the Vendor may in its sole and absolute discretion reconfigure relocate or alter in number any such lots notwithstanding any specific description in the Particulars of Sale or the Scheme Plan.

Errors and Misdemeanors

- 8.9 No error or misdescription of the Land or the Lot shall annul the sale but, unless the Purchaser's remedies are limited by this Agreement, compensation if demanded in writing before Settlement Date but not otherwise, shall be made or given as the case may require.

No Caveat

8.10 The Purchaser shall not lodge a caveat against the Vendors title to the Land prior to the deposit of the Land Titles Plan.

Right to Cancel if Archeological Site located within the Lot

8.11 Except as provided in this clause 8.11 any archeological site wholly or partially located within the Lot shall not entitle the Purchaser to claim any compensation, damages, right of set off or make any objection or requisition or otherwise to cancel this Agreement. The Purchaser acknowledges that the Land has been the subject of a preliminary survey and that the known archeological sites located on the Land as at the date of the survey are identified and highlighted on the Plans and Specifications. As the Vendor proceeds with the Development further archeological sites may be discovered. If an archeological site is discovered and is located partly or wholly within the Lot, the following provisions shall apply:

- (a) where the archeological site does not limit the construction of a dwelling on the Lot, the Purchaser shall take title to the Lot subject to the archeological site and any restrictions, rights or obligations that may apply to the archeological site or access thereto as the Relevant Authority may impose. The Purchaser shall not be entitled to claim any compensation, damages, right of set off or to make any objection or requisition in respect of the same;
- (b) where the archeological site does limit the construction of a dwelling on the Lot, the Vendor shall forthwith:
 - (i) notify the Purchaser of the location of the archeological site;
 - (ii) provide the Purchaser with independent verification from the Relevant Authority (or, if applicable, the Tangata Whenua) as to the existence and location of the archeological site and any restrictions, rights or obligations which are proposed; and
 - (iii) advise the Purchaser of the manner in which the location of the archeological site affects the ability to construct a dwelling on the Lot. Upon receipt of the same, the Vendor and the Purchaser shall consult together in good faith in an attempt to reach agreement which will allow the Purchaser to develop the Lot in a manner acceptable to the Purchaser and protective of the archeological site and complying with any rights, restrictions or obligations that might apply to the archeological site. Where the Vendor and the Purchaser are able to reach agreement, the same shall be recorded in writing and signed by the parties ("Variation"). Where the Vendor and the Purchaser are unable to reach agreement then, notwithstanding any other provisions of this Agreement to the contrary, their dispute shall not be subject to arbitration or reference to any court for resolution and in such case either party may give to the other or its solicitor a written notice of cancellation whereupon this Agreement shall be at an end and the provisions of clause 7.4 shall apply.

9. ESK HILLS RESIDENTS SOCIETY INCORPORATED

Introduction

9.1 The Purchaser acknowledges that the Vendor shall establish and maintain a residents society for the purpose of monitoring, managing and administering the design approval process for buildings to be erected on the Land in accordance with the provisions of the District Plan, the Constitution, the Covenants, the Design Guidelines and the Rules. The purposes of the Society shall also include and extend to other purposes such as, and without limitation, the ownership and maintenance of the Common Facilities.

Society

9.2 The Purchaser acknowledges that the Vendor will procure the incorporation of the Society, and the owners of Lots within the Society Land except for the Common Facilities Lots must be members of the Society. The Purchaser acknowledges that each of the properties within the Society Land except for the Common Facilities Lots will become subject to a scheme for the benefit of each Lot within the Society Land except for the Common Facilities Lots so that

each owner and any occupier of each of the Lots within the Society Land except for the Common Facilities Lots, shall be bound by the provisions in this section of the Agreement. The Purchaser acknowledges that the Purchaser must become and remain a member of the Society and fulfill the obligations of a member of the Society as set out in the Constitution, including paying any levies set by the Society from time to time and complying with the directions of the Society, including the lawful directions of any manager of the Society.

Common Facilities

9.3 The Vendor proposes that:

- (a) the Society shall own the Common Facilities Lots and the Common Facilities; and
- (b) residents as members of the Society shall be entitled to the use and enjoyment of the Common Facilities in accordance with the Constitution. The Vendor agrees, prior to Settlement Date, to transfer the Common Facilities Lots and any Common Facilities within the Common Facilities Lots to the Society.

Covenants

9.4 The Purchaser, for the Purchaser and the Purchaser's successors in title, covenants with, and for the benefit of the Society, the Vendor and the Vendor's successors in title so as to bind the Lot in favour of the Society and, at the Vendor's discretion, any other part of the Land, that the Purchaser shall:

- (a) join as a member of the Society and remain a member while owning the Lot and fulfill and continue to fulfill the obligations of a member of the Society as set out in the Constitution (including ensuring that any proposed transferee of the Lot executes a deed of covenant in favour of the Society (at the cost of the Purchaser) agreeing to be bound by the Constitution as a member of the Society).
- (b) if required by the Society before granting any mortgage or charge over the Lot, procure the intended mortgagee or chargeholder to enter into a deed of covenant with the Society (at the cost of the Purchaser) covenanting to observe and perform all the rules of the Constitution upon exercising any power as mortgagee or chargeholder.
- (c) where the Society appoints a manager or secretary, not to suffer or permit the appointment of a manager or secretary of a body corporate, other than a manager or secretary who is also the manager or secretary of the Society from time to time, who shall be responsible for carrying out the management and duties of the body corporate.

Registration of Restrictive Covenants

9.5 The restrictive covenants (including but not limited to the Covenants) giving effect to the provisions contained in this section of the Agreement shall be registered against the identifier for the Lot prior to the Purchaser taking title to the Lot, together with any other provisions that the Vendor may reasonably require to give effect to the scheme for the Development. The Purchaser shall take title to the Lot subject to the Covenants without requisition, right to compensation or set off.

Draft Constitution and Rules

9.6 Annexed to this Agreement as Schedule 4 is a draft of the Constitution of the Society including a draft set of Rules. The Purchaser acknowledges that the Constitution and the Rules may be subject to such changes as the Vendor may reasonably require to give effect to the provisions of this Agreement and the Vendor's development proposals for the Land or any part of the Land.

Design Guidelines and Covenants

9.7 The Purchaser acknowledges that the Design Guidelines annexed as Schedule 5 and the Covenants annexed as Schedule 6 may be subject to such changes as the Vendor may reasonably require to give effect to the provisions of this Agreement and the Vendor's development proposals for the Land or any part of the Land.

10 VENDOR'S WARRANTIES AND UNDERTAKINGS

Warranties

10.1 The Vendor warrants and undertakes that on Settlement Date there are no arrears of general or water rates or charges outstanding on the Lot.

Undertakings

10.2 The Vendor undertakes that:

- (a) any adjustments are paid or will immediately following Settlement Date be paid to the dates shown on the Vendor's statement of apportionments;
- (b) immediately after Settlement Date the Vendor shall give notice of sale in accordance with section 106 of the Rating Powers Act 1988 to the Relevant Authority;
- (c) where the Vendor has done or caused or permitted to be done on the Land any works for which a permit or building consent was required by law, such permit or consent was obtained for those works and they were completed in accordance with that permit or consent and, where appropriate, a code compliance certificate pursuant to the Building Act has or will be obtained for the works but not as a precondition to settlement;
- (d) if the Vendor receives any notice or demand from any Relevant Authority in relation to the Land or the Lot after the date of this Agreement the Vendor will, if not obliged under this Agreement to make payment or comply with such notice or demand forthwith deliver it to the Purchaser or the Purchaser's solicitor and if the Vendor fails to do so the Vendor shall be liable for any penalty incurred.

11 DEFAULT

Settlement Notice

11.1 If the sale is not settled on the Settlement Date either party may at any time thereafter (unless the Agreement has first been cancelled or become void) serve on the other party notice in writing (hereafter called a "Settlement Notice") to settle in accordance with this clause; but the Settlement Notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the Settlement Notice or is not so ready able and willing to settle only by reason of the default or omission of the other party to the Agreement. If the Purchaser is in possession a Settlement Notice may incorporate or be given with a notice under Section 50 of the Property Law Act 1952.

Service

11.2 Upon service of a Settlement Notice the party on whom the Settlement Notice is served shall settle within 5 Business Days after the date of service of the Settlement Notice (excluding the day of service) and in respect of that period time shall be of the essence but without prejudice to any intermediate right of cancellation by either party.

Vendor's Remedies

11.3 If the Purchaser does not comply with the terms of the Settlement Notice served by the Vendor then:

- (a) without prejudice to any other rights or remedies available to the Vendor at law or in equity the Vendor may:
 - (i) sue the Purchaser for specific performance; or
 - (ii) cancel this Agreement and pursue either or both of the following remedies:
 - (aa) forfeit and retain for the Vendor's own benefit the entire Deposit paid by the Purchaser;
 - (bb) sue the Purchaser for damages;
- (b) where the Vendor is entitled to cancel the Agreement the entry by the Vendor into a conditional or unconditional contract for the resale of the Lot or any part thereof by the Vendor shall take effect as a cancellation of the Agreement by the Vendor if the

- Agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation;
- (c) the damages claimable by the Vendor under clause 11.3(a)(ii)(bb) shall include all damages claimable at common law and equity and shall also include (but shall not be limited to) any loss incurred by the Vendor on any bona fide resale contracted within one year from the date by which the Purchaser must settle in compliance with the Settlement Notice. The amount of that loss may include:
 - (i) interest on the unpaid portion of the Purchase Price at the Interest Rate for Late Settlement from the Settlement Date to the settlement of such resale;
 - (ii) all costs and expenses, reasonably incurred on any resale or attempted resale;
 - (iii) all outgoings (other than interest) on or maintenance expenses in respect of the Lot from the Settlement Date to the settlement of such resale-
 - (d) any surplus money arising from a resale as aforesaid shall be retained by the Vendor.

Purchaser's Remedies

- 11.4 If the Vendor does not comply with the terms of a Settlement Notice served by the Purchaser then the Purchaser may without prejudice to any other rights or remedies available to the Purchaser at law or in equity:
- (a) sue the Vendor for specific performance; or
 - (b) without prejudice to any right of the Purchaser to damages give notice in writing to the Vendor cancelling the Agreement and requiring the Vendor forthwith to repay to the Purchaser the Deposit and any other money paid on account of the Purchase Price together with interest earned on such sums (less withholding tax) equal to a rate from time to time paid by the Stakeholder's bank for upon demand deposits (non compounded) lodged through the Stakeholder's trust account from the date or dates of payment by the Purchaser until repayment.

Extension

- 11.5 The party serving a Settlement Notice may at the request or with the consent of the other party extend the term of the Settlement Notice for one or more specifically stated period or periods of time and thereupon the term of the Settlement Notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence of the agreement accordingly. An extension may be given either before or after the expiry of the period of the Settlement Notice.

Specific Performance

- 11.6 Nothing in this clause shall preclude a party from suing for specific performance without giving a Settlement Notice.

Expiry of Notice

- 11.7 A party who serves a Settlement Notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that Settlement Notice.

12 POWER OF ATTORNEY

- 12.1 In consideration of the Vendor entering into this Agreement the Purchaser does hereby irrevocably nominate constitute and appoint the Vendor or any nominee of the Vendor to be the true and lawful attorney of the Purchaser for the purposes of executing all documents and plans and to perform all acts matters and things as may be necessary to complete the Development.

13 SALES OF THE LOTS GENERALLY

- 13.1 The Purchaser will not object (and waives any right to do so) to methods employed by the Vendor in an endeavour to sell or lease other lots forming part of the Development including, without limitation, as to the use of signs, the placement of signs on the Development and the maintenance of display homes and/or a sales office, provided that the Vendor does not cause

unreasonable interference to the comfort and convenience of the Purchaser and its use and enjoyment of the Lot.

14 GENERAL Assignment

- 14.1 The Purchaser shall not assign, transfer, or otherwise dispose of or alienate the benefit of this Agreement, without the prior written consent of the Vendor, which consent shall not be unreasonably, or arbitrarily, withheld or delayed.
- 14.2 If the Vendor consents to the assignment, transfer, disposal of, or alienation of, the benefit of this Agreement by the Purchaser, the Purchaser shall at the cost of the Purchaser, prepare and have executed a deed in a form acceptable to the Vendor, pursuant to which the assignee, transferee or disposee covenants with the Vendor that the assignee, transferee or disposee is bound by the provisions contained or implied in this Agreement and on the part of the Purchaser to be observed and performed provided however that the Purchaser executing this Agreement shall at all times remain liable for all obligations on the part of the Purchaser hereunder.
- 14.3 The Vendor shall be free to assign, transfer, or otherwise dispose of or alienate the benefit of this Agreement to a third party on such terms and conditions as it thinks fit.

Costs

- 14.4 Each party shall pay its own costs of and incidental to the negotiation, preparation, execution and delivery of this Agreement.

Sole Agreement

- 14.5 The parties acknowledge that this Agreement, and the schedules and attachments to this Agreement, together with any approvals and consents in writing provided for in this Agreement and given prior to the execution of this Agreement, contain the entire Agreement between the parties, notwithstanding any negotiations or discussions prior to the execution of the Agreement, and notwithstanding anything contained in any brochure, report or other document. The Purchaser acknowledges that it has not been induced to execute this Agreement by any representation, verbal or otherwise, made by or on behalf of the Vendor, which is not set out in this Agreement.

Severability

- 14.6 If any provision of this Agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions shall not be affected by that event and each provision shall be valid and enforceable to the fullest extent permitted by law.

Lowest Price Clause

- 14.7 The Purchase Price for the Lot is the lowest price that the parties would have agreed upon for the Lot under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 1994 and on that basis no income or expenditure arises under those rules.

Liability

- 14.8 Where the Purchaser executes this Agreement with the provision for a nominee, or as agent for an undisclosed principal, or on behalf of a company to be formed, the Purchaser shall at all times remain liable for all obligations on the part of the Purchaser hereunder.

Notices

- 14.9 Any notice permitted or required to be given under this Agreement shall be in writing and shall either be:
- (a) delivered;
 - (b) mailed by pre-paid registered mail; or
 - (c) sent by facsimile transmissions

to the addressee at the addressee's last known address or facsimile number in New Zealand or, in the case of a corporation, to its registered office or, to the addressee's solicitor if details of such solicitor have been completed in this Agreement.

- 14.10 Any notice required to be given under this Agreement or implied by statute shall be valid and effectual if given under the hand of the party, the party's solicitor, or any authorised representative for the time being of the party, and if the party is a corporation, by its general manager, company secretary or a director.
- 14.11 Any notice sent by registered mail shall be deemed to have been received on the third Business Day following the date of mailing. A notice sent by facsimile transmission during a Business Day between 9.00 am and 5.00pm (New Zealand time) shall be deemed to be received upon completion of an error free transmission and in every other case shall be deemed to be received at 9.00 am (New Zealand time) on the next Business Day after it is sent.

DATED APRIL 200

CONSTITUTION

OF

ESK HILLS RESIDENTS SOCIETY INCORPORATED

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1 CONSTITUTION, NAME AND REGISTERED OFFICE

- 1.1** The Society is constituted by resolution dated _____(date)
- 1.2** The name of the Society is **The Esk Hills Residents Society** ("the Society").
- 1.3** The Registered Office of the Society shall be at such place as the Committee from time to time determines.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions In these Rules, unless the context otherwise requires

"Act" means the Incorporated Societies Act 1908

"Architect" means a person holding current registration under the Architects Act 1963 or its substitute.

"Bank" means a Bank registered under the Reserve Bank of New Zealand Act 1989.

"By-law" means any rule, including amendments thereto, made and published, from time to time by the Society pursuant to Rule 4.1(c) the initial by-laws for the Society being attached hereto as Schedule 1.

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

"Committee" means the officers elected to manage the affairs of the Society pursuant to this constitution.

"Communal Facilities" means all land, buildings, plant, equipment, facilities and amenities including rights of way, easements and any private roads and walkways within the Estate owned, leased, licensed, or otherwise held or operated by the Society (as the Society may determine) from time to time, being initially that land and those facilities transferred to the Society by the Developer pursuant to a Deed of Transfer a copy of which is attached and listed in Schedule 4 to this Constitution.

"Compliance Deposit" means those moneys required to be paid to the Design Review Panel pursuant to Rule 9.9.1 in addition to design approval fees.

"Constitution" means this Constitution as amended or added to, including all schedules to this Constitution.

"Controlling Member" means the Developer.

"Covenants" means those covenants and encumbrances registered against owner's titles or against the Society's titles within the Estate.

"Default Interest Rate" means five per cent (5%) above the Society's banker's overdraft rate applicable during the continuance of the default.

"Design Review Panel" means the body appointed from time to time under Rule 9.1 to consider design approval applications by Members and recommend design guidelines to the Society.

Design Guidelines" means the design guidelines issued by the Design Review Panel pursuant to Rules 9.5 and 9.6 the initial Design Guidelines being attached as Schedule 2.

“Developer” means East Hills (2001) Limited and its transferees and assigns carrying out development at Esk Hills.

“District Plan” means the Proposed City of Napier District Plan or its substitute.

“Esk Hills” means the residential and other development of the land generally as shown on the Master Plan and presently comprised within Certificate of Title 140515.

“Estate” means that part of Esk Hills generally as outlined and described in the Master Plan attached as Schedule 3, but excluding public roads, reserves and any land vested in the Crown, a local authority or any other statutory body unless the subject of an agreement with the Society allowing for its use and enjoyment by a Member as a Communal Facility.

“Expense Year” means each 12 month period commencing on 1 July and ending on 30 June or such other 12 month period as the Committee from time to time sets.

“Financial Member” means a Member not barred from voting at Society meetings under Rule 6.5.

“Homestead Envelope” means that area of land within each homestead section identified title by the Developer as the restricted area for the construction of any dwelling or accessory buildings or structure.

“Homestead Section” means a lot within the Estate.

- (a) For which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued,
- (b) Which has been fully developed as a residential lot or for any other permitted use or which is a bare lot available for such development or use, and

“Homestead Section Residual Area” means the area of a Homestead Section outside the Homestead Envelope.

“Invitee” means any invitee of or any visitor to an Owner or Occupier.

“Land” means the land now known as Esk Hills and shown on Scheme Plan prepared by Shanley & Co, Hastings dated 26th August 2003.

“Land Covenants” means those covenants and encumbrances registered against members Lots under which the Lots owned by the Society or Lots owned by other individual members obtain a benefit.

“Lot” means a freehold lot, section or piece of land within Esk Hills for which a separate title or identifier has issued.

“Manager” means the manager or management company of the Society (if any), appointed under Rule 14.15. Where no manager has been appointed, any reference to the “Manager” in this Constitution shall be deemed to be, where appropriate, a reference to the chairperson of the Committee.

“Master Plan” means the Developer’s Master Plan for the Esk Hills subdivision. The current Master Plan is annexed hereto as Schedule 3. The Master Plan may change from time to time to incorporate subsequent consent conditions as Esk Hills is developed.

“Member” means each person who shall from time to time be a Member of the Society pursuant to Rules 5.1 to 5.3 (inclusive).

“Member’s Proportion” means the proportion that the Society operating expenses that is deemed to be applicable to each Lot.

“Neighbourhood” means a neighbourhood forming part of the Estate.

“Occupier” means any person occupying any Homestead section under any lease, licence or other occupancy right and shall include all Members of an Owner’s family.

“Operating Expenses” means the total sum of all rates, taxes, costs and expenses of the Society properly or reasonably assessed or assessable paid or payable or otherwise incurred in respect of the Communal Facilities and the operating of the Society (including, without limitation, the management expenses and management fee of the Manager), but shall exclude any costs payable in respect of Capital Improvements.

“Owner” means each person registered as a proprietor of a Homestead Section or a Villa Section (whether individually or with others) of a Homestead section.

“Owners Title” means the certificate of title issued for an Owner’s Homestead Section or a Villa Section.

“Postal Ballot” includes the sending and receiving of ballot forms by fax or email.

“Queen Elizabeth the Second Trust” means the Trust established by the Queen Elizabeth the Second National Trust Act 1977

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

“Resource Consent” means all local and territorial authority resource consents obtained or to be obtained by the developer or the owner in respect of any land within Esk Hills.

“Rules” means these rules of the Esk Hills Residents Society Incorporated including amendments and modifications thereto.

“Society” means Esk Hills Residents Society Incorporated.

“Special Levy” means that levy imposed pursuant to Rule 6.6 of this Constitution.

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

“Urban Designer” means a person who has tertiary qualifications in urban and environmental design.

“Villa Section” means those lots on the Developer’s Master Plan identified as suitable for the construction of a Villa and restricted to having one main building constructed thereon.

2.2 Interpretation In this Constitution, unless the context otherwise requires

- (a) Words denoting the singular shall include the plural and vice versa
- (b) One gender shall include the other genders
- (c) Words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, society, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity,

- (d) Any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally,
- (e) Reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation,
- (f) Any reference to "month" or "monthly" shall mean, respectively, calendar month or calendar monthly,
- (g) References to Rules are references to Rules in this Constitution,
- (h) The table of contents, the section headings and Rule headings have been inserted for convenience and a quick guide to the provisions of this Constitution and shall not form part of this Constitution or affect its interpretation in any way,
- (i) Reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

3 OBJECTS

3.1 The primary objects of the Society are to:

- (a) To perpetuate and promote a living environment that allows Members to live within a closely settled semi-rural environment in a manner which ensures full enjoyment of the natural advantages of the area while encouraging controlled individual expression within that environment.
- (b) To acquire, own, hold, manage, repair, renovate and replace the Communal Facilities for the benefit of all Members and their invitees.
- (c) To maintain some areas of land held by the Society for the preservation of native species of flora and fauna.
- (d) Represent and promote the interests of Members of the Society, and
- (e) Do any act or thing incidental or conducive to the attainment of any of the above objects.

3.2 Without detracting from the primary objects, the secondary objects of the Society are to:

- (a) Control the design of all improvements, buildings, dwellings landscaping and works of any kind on any Homestead section or any Communal Facility,
- (b) Provide funds for the meeting of the objects of the Society, and
- (c) Make and enforce regulations, by-laws and covenants to advance the attainment of any of the above objects.

4 POWERS AND LIMITATIONS

4.1 In addition to its statutory powers, the Society may:

- (a) Levy Members for the purpose of providing funds for and meeting the objects of the Society,
- (b) Use such of its funds to pay the costs and expenses of furthering or carrying out its objects, and for that purpose may employ such people as may seem expedient,

- (c) Make and enforce regulations, by-laws and covenants to advance the attainment of any of the primary and secondary objects of the Society.
- (d) Purchase, hire or otherwise acquire, exchange and sell, lease or otherwise dispose of property, rights or privileges to further or carry out its objects as may seem expedient including transferring all or part of the Communal Facilities to the Department of Conservation or its successors or the Napier City Council or its successors or Queen Elizabeth the Second Trust or granting to that said Trust an open space covenant over all or part of the communal facilities either in perpetuity or for a limited time;
- (e) Invest in any investment in which a trustee might invest, and
- (f) Borrow or raise money by debenture, bonds, mortgage and other means, with or without security, but such borrowing powers shall not be exercised other than by resolution of a General Meeting of which proposed resolution at least ten clear days' written notice was given by circulation to all Members or by notification in the public notices column of a local daily (excluding Sundays) newspaper,
- (g) Effect and maintain insurances considered prudent with respect to the common facilities and the Society's affairs.
- (c) Assist the Developer in developing Esk Hills as a premium quality, ecologically sensitive, life-style development.

Limitations

4.2 Notwithstanding any other provision, the Society shall not expend any money:

- (a) Other than to further purposes recognised by law, nor
- (b) For the sole personal or individual benefit of any Member.

4.3 Any transactions between the Society and any Member, officer or Member of the Committee, or any associated persons shall be at arms' length and in accordance with prevailing commercial terms on which the Society would deal with third parties not associated with the Society, and any payments made in respect of such transactions shall be limited to:

- (a) A fair and reasonable reward for services performed,
- (b) Reimbursement of expenses properly incurred,
- (c) Usual professional, business or trade charges, and
- (d) Interest at no more than current commercial rates.

5 MEMBERSHIP

5.1 First Members

The first Members ("first Members") of the Society shall be:

East Hills (2001) Limited, Gerard Joseph Logan, Stella Pamela McLeod, Graham Hunter Throp, Malcolm Lawrence Walker, Malcolm Ian Taylor, Dinah Mary Kennedy, Maurice John Casey, Patricia Cheryl Eccleton, Kenneth Neil Duffell, Leanne Irwin, Carole Elizabeth Bone, Judith Mary Margaret Burt, Andrea Jane Gaudie, Robert Bruce Macdonald.

These Members shall resign from the Society as soon as there are more than 15 Owners (excluding the Developer) as Members. The first Members shall be entitled to vote at any meeting of the Society, to elect a Committee, and exercise all rights as Members set out in this constitution, but shall have no obligations as Members.

5.2 Owners to be Members

- (a) Subject to Rule 5.1 each Owner shall be a Member, and only Owners with the exception of the controlling Member shall be Members.
- (b) **Deemed Resignation**
A Member shall be deemed to have resigned from the Society immediately that Member is no longer an Owner, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
- (c) **New Owner to Provide Details**
Each Owner shall, immediately upon becoming an Owner, (and thereafter as any details change), provide the Society with the details necessary for the maintenance of the Register of Members pursuant to Rule 6.1, and shall upon entry of the details into the Register become a Member.
- (d) **No more than one Member per Homestead section**
If there is more than one owner of a Homestead section, such owners shall collectively constitute one Member.

5.3 Developer as Controlling Member

Until the development of Esk Hills is fully completed, the Developer shall be the Controlling Member ("Controlling Member") of the Society, regardless of whether the Developer is at any time a Member. The Controlling Member shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member. No reference in this Constitution to a Member shall be taken as including a reference to the Controlling Member. As at the date the Developer ceases to own any land within the Estate, the Developer shall be deemed to have resigned as Controlling Member, and thereafter, there shall be no Controlling Member in respect of the Society.

- 5.4** All Members shall promote the interests and the objects of the Society and shall do nothing to bring the Society into disrepute.

5.5 Register of Members

The Society shall maintain a Register of Members which records:

- (a) **Member details**
The name, address, occupation, telephone number, email address, facsimile number (home and work) for each Member and in addition the contact details of a third party whom the Member nominates can be contacted in the event of an emergency or the absence of the Member. In the event there are multiple owners of a Homestead section they shall nominate one address for the purposes of service pursuant to Rule 20.
- (b) **Occupier**
The name, address, occupation, telephone number, email address, facsimile number (home and work) for each Occupier and in addition the contact details of a third party whom the Occupier nominates can be contacted in the event of an emergency or the absence of the Occupier.
- (c) **Date of Membership**
The date on which the Member became a Member or ceased to be a Member.
- (d) **Voting**
Each Member shall be entitled to a single vote on any one issue. In the absence of agreement between joint owners as to which owner should exercise the vote the owner appearing first on the certificate of title to the property shall be so entitled. On the death of any Member, and pending transfer of that Members property, the executor of that Member's estate shall be entitled to vote.

(e) **Mortgage**

The name, contact details including telephone and facsimile numbers, of any person holding a mortgage over the Member's Homestead section.

5.6 No Notice of Trust

No notice of any Trust whether express or implied will be entered on the Register of Members.

5.7 Register to be Audited

The Committee shall ensure that the Register of Members is audited once a year by a qualified auditor.

5.8 Not Assignable

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

5.9 Liability of Members and Indemnification

No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society. The Society shall indemnify each Member against any liability properly incurred by such Member in respect of the affairs of the Society to the extent of property owned by the Society.

6 LEVIES AND FINANCIAL OBLIGATIONS

6.1 Fixing Annual Levy

Each Member shall be obliged to pay to the Society an annual levy as set by the Society being each Member's Proportion of the Operating Expenses for the coming year. As soon as practicable after the commencement of each Expense Year the Society shall advise Members in writing of the Society's estimate ("Society's Estimate") of each Member's Proportion for that Expense Year, plus such contingency sum as the Society shall, in its sole discretion, fix. The annual levy for each Member shall be the total of the Society's estimate for the whole of the Estate plus the contingency sum divided by the number of Homestead and Villa Sections allocated within the Estate under the Master Plan.

6.2 Payment of Levies

Each Member shall on the 1st day of September and the 1st day of March in each Expense Year, or such other intervals as the Society shall determine from time to time, pay one half or such other periodic amount as the Society shall stipulate of the Society's estimate applicable to that Expense Year for each Member. The manner of payment by each Member shall be determined by the Society.

6.3 Statement of Operating Expenses

As soon as practicable after the end of each Expense Year the Society shall provide each Member with an itemized statement of the actual Operating Expenses for the previous Expense Year or any periods in terms of Rule 6.8. If the Member's Proportion of actual Operating Expenses is greater than the Operating Expenses levy paid by the Member then the Member shall immediately pay the difference to the Society. If the Member's Proportion of actual Operating Expenses is less than the Operating Expenses levy paid by the Member then the Society shall immediately credit the difference to the Member's share of the Society's Estimate for the current Expense Year.

6.4 Failure to advise Society's Estimate

If the Society has failed to advise the Members of the Society's Estimate for the Expense Year before the first payment is due under Rule 6.2 then the payment due shall be half the Society's Estimate of the Operating Expenses for the previous Expense Year. Immediately upon being advised of the Society's Estimate for the current Expense Year Rule 6.2 shall operate. If the Member has already made payment pursuant to Rule 6.4 and these payments are less than would have been paid had Rule 6.2 been operating at the time of payment then

the Member shall immediately pay the difference to the Society. If the Member has already made payment pursuant to Rule 6.4 and these payments are in excess of what would have been paid had Rule 6.2 been operating at the time of payment, then the Member shall be credited with the difference against the Members remaining share of the Society's Estimate for the current Expense Year.

6.5 Failure to pay levies

Any Member failing to pay any annual or special levy within one calendar month of the date the same was set to be paid shall be considered as non-financial and shall (without being released from the obligation of payment) have no voting rights at any Society meeting until all the arrears are paid. If levies are unpaid for a period of three (3) months or more the Member grants to the Society a right to caveat the Member's property within the Estate in order to secure payment of those levies.

6.6 Special Levies

In addition to the annual Levy the Committee may fix additional levies:

(a) **Capital Improvement Levy**

To be paid by each Member at the same time and in the same proportions as the levy payable under Rule 6.1 of the Society's Estimate for that Member, and to be set aside to meet the Capital Improvements which the Society considers necessary; and / or

(b) **Special Levy**

Payable by each Member at such times as are set by the Society, as the Society considers are necessary to meet its obligations under this Constitution.

6.7 Staged Development and Levy Payments

The Members acknowledge that Esk Hills is to be developed in stages, with new Owners becoming Members as each stage is completed. The developer is to meet the levies of any unsold Homestead Sections and Villa Sections adjusted to the date of sale.

6.8 Sale of Homestead Sections or Villa Sections

Where a Member ("Vendor") sells a Homestead Section or Villa Section

(a) Notwithstanding any other Rule in this Constitution, the Vendor shall remain liable for sums owed to the Society by that Vendor

(b) The Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Homestead Section or Villa Section to the Society until such time as the deed of covenant specified in Rule 7.3 is received by the Society

(c) The purchaser of the Homestead section shall be liable as a Member for all indebtedness of the Vendor to the Society in respect of the Homestead Section or Villa Section purchased and a certificate of the Society given pursuant to Rule 6.9 shall be conclusive as to the sum of this indebtedness

6.9 Society to provide Statement

The Society shall, on application by a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a statement of the indebtedness of the Member to the Society calculated to the date specified in the application. The statement shall show

(a) The Society's estimate of such Member's Proportion of Operating Expenses and any special levies pursuant to Rule 6.6 for the current Expense Year,

(b) Payments made by the Member on account of Operating Expenses and any special levies pursuant to Rule 6.6 in the current Expense Year,

- (c) Payments due from the Member on account of Operating Expenses and any special levies pursuant to Rule 6.6 in the current Expense Year, and not paid by the Member, and
- (d) Any accumulated unpaid default interest

7 COVENANTS AND BY-LAWS

7.1 Covenants and By-laws

Each Member agrees to promptly and fully comply with this Constitution and any By-laws made by the Society from time to time, and any covenants given in favour of the Society by such Member (whether by separate deed of covenant or as noted against each Owner's Title).

In the event of there being any conflict between the provisions of this Constitution (including any Rule or bylaw) and the provisions of any restrictive covenant registered against any title, the provisions of this Constitution (including any Rule or bylaw) shall prevail and be given priority over the provisions of any such restrictive covenant.

7.2 Land Covenant as to Membership

A Covenant shall be noted against each Owner's Title in favour of the Society, whereby each Owner covenants to become a Member, to remain a Member and to perform the obligations of a Member as set out in this Constitution.

7.3 Proposed Purchasers

Each Member shall prior to settling the sale of a Homestead or Villa Section procure the purchaser to enter into, execute and deliver to the Society a deed of covenant in favour of the Society, wherein the purchaser covenants to become contemporaneously with the transfer of their Section a Member and to remain a Member and to observe and perform all the obligations of a Member as set out in this Constitution. The deed of covenant shall be prepared by the solicitors for the Society, and the selling Member shall pay the reasonable legal fees and disbursements of the Society's solicitors.

7.4 Mortgagee of Homestead or Villa Section to be bound by Constitution

Before granting any mortgage over a Homestead or Villa Section, a Member shall procure the intended mortgagee to enter into a deed with the Society (at the cost of the Member) covenanting to observe and perform all the Rules of the Constitution upon exercising any powers as mortgagee.

7.5 Covenants as to Land Use

- 7.5.1** Each Member covenants with the Society to be bound by the land covenants registered against their respective titles within Esk Hills.

7.6 Alteration to Covenants

The Society shall not, except by Special Resolution and with the prior written consent of the Controlling Member (if there is one), agree to the alteration of the terms of the covenants as first noted against each Owner's Title.

8. MEMBERS' ASSISTANCE TO DEVELOPER

8.1 Future Development

Each Members acknowledges that development of the Estate is ongoing, and that the Society is required to allow the Developer such access to, and interests in, the Communal Facilities as are necessary or desirable for the development to proceed, and to allow the Developer to add, remove or alter structures and services forming part of the Communal

Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. Each Member agrees

- (a) To, and hereby allows, the Developer access to the Homestead section of that Member for the purpose of proceeding with the development,
- (b) To and hereby allows the developer to proceed unhindered with the necessary consents for and the building of Villas on Villa Sections as identified by the Master Plan;
- (c) To, and hereby grants, such easements in favour of the Developer any Member and/or the Society over or under the Members Homestead section as are required for the development to proceed or as may be necessary or desirable for development of the Estate,
- (d) Not to prevent, hinder or obstruct the use by the Developer of the Communal Facilities, the addition, removal or alteration of structures or services forming part of the Communal Facilities by the Developer, or the granting of any interests in the Communal Facilities by the Society to the Developer,
- (e) That neither the Member nor the Society shall oppose, or take part in any opposition to, the development of Esk Hills or do anything inimical in any way whatsoever to any application by the Developer for resource or any other consent relative to the subdivision or development of Esk Hills;
- (f) To support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer, to procure such amendment.

9 DESIGN CONTROL AND DESIGN REVIEW PANEL

9.1 Design Review Panel

There shall be a Design Review Panel whose Members shall be the following persons:

- (a) A representative of the Society appointed from time to time by the Committee.
- (b) An Architect appointed from time to time by the Committee.
- (c) Two Urban Designers appointed from time to time by the Committee one of whom may be a landscape designer.
- (d) A representative of the Controlling Member appointed by the Controlling Member for so long as there is a Controlling Member.

The Society shall be responsible for the fees of professionals appointed pursuant to 9.1(b) and (c) above.

9.2 Initial Design Review Panel

The initial Members of the Design Review Panel shall be appointed by the Controlling Member until with the exception of the Controlling Member by the Society, those initial Members are removed and replaced. When 70% of the Lots in Esk Hills have been sold or at the discretion of the Controlling Member the Society shall assume responsibility for the appointments to the Design Review Panel.

9.3 Length of Appointments to Design Review Panel

In order to achieve continuity appointments to the Design Review Panel shall be for three years but may at the discretion of the appointor(s) be extended as required.

9.4 Duties of Design Review Panel

It is the duty of the Design Review Panel to consider and act upon such proposals or plans submitted pursuant to Rule 9.7; to adopt and publish Design Guidelines pursuant to Rule 9.5, to set the design approval fees and any compliance deposit and perform such other duties as from time to time are delegated to it by the Society.

9.5 Design Guidelines

- (a) The Design Review Panel shall make and publish design guidelines for the Estate, and may change the design guidelines from time to time.
- (b) The approval by the Design Review Panel of any plans, drawings or specifications for any work done or proposed in connection with any other matter requiring the approval of the Design Review Panel shall not be deemed to constitute a waiver of any right to withhold approval on any similar plan, drawing or specification or matter whenever subsequently or additionally submitted for approval.

9.6 Initial Design Guidelines

The initial design guidelines adopted by the Society are as attached in Schedule 2.

9.7 Design Approval

Before commencing any building or development for which a building consent is required within the Estate a Member must first submit the design of the proposed building or development to the Design Review Panel for its written approval along with the design approval fees. The approval of the Design Review Panel shall not be unreasonably withheld or delayed where the design complies with the design guidelines.

9.8 Design Approval Fees

All costs of the design approval process including without limitation any disbursements or professional charges of the members of the Design Review Panel shall be met by the Member seeking approval. Such costs shall be charged to the Member as design approval fees.

9.9 Compliance Deposit

- (a) Upon approving any plans for work on any Homestead or Villa Section the Design Review Panel may require the lodgment of a deposit which shall be held in Trust by the Society until the Design Review Panel is satisfied that the work is completed in accordance with the approved plans.
- (b) In the event that the work fails to be undertaken in accordance with the approved plans the Society may apply the compliance deposit towards the rectification of the work so that it complies with the approved plans or towards the Society's costs legal or otherwise in requiring compliance with the approved plans.

9.10 The Society may at any time exercise its right to stop any building or development work on a Member's Homestead or Villa Section that has commenced without the approval of the Design Review Panel or is not in accordance with the plans approved by the Design Review Panel.

10 COMMUNAL FACILITIES

10.1 Entitlement to use

Subject to any Rules or by-laws of the Society each Member, Occupier and Invitee shall be entitled to make full use of the Communal Facilities.

10.2 Prohibited use

Subject to the terms of any resource consent or to any Agreement between the Society and any person in respect of the Communal Facilities, no person other than those persons provided for in Rule 10.1 shall be entitled to use the Communal Facilities.

10.3 Occupiers and Invitees of members entitled

Members owning Developed Properties designated for use in part or in whole by the Society agree to allow all Members, occupiers or their invitees to use those Developed Properties subject to their normal or standard conditions of use.

11 BREACH OF OBLIGATIONS

11.1 Occupiers and Invitees

A reference to an act or omission by any Member, shall include any act or omission by any mortgagee in possession of that Member's Homestead section or the Occupiers of such Member's Homestead section, the Invitees of such Occupier and the Invitees of such Member or the mortgagee in possession of that Members Homestead section.

11.2 Occupiers to comply with constitution

A Member must advise the Society of such details of the Occupiers of the Member's Homestead section as are requested by the Society. If required by the Society the Member shall require such Occupiers before they enter into occupation of the Homestead section to enter into a deed of covenant with the Society (in a form acceptable to the Society), covenanting to be bound by this Constitution and any by-laws made pursuant to it. Each Member must take all reasonable steps (including enforcing the terms of any lease) to ensure Occupiers comply with this Constitution. In any case of persistent default by an Occupier of this Constitution or any by-laws, the Owner shall on demand by the Society, terminate the Occupiers right to occupy the Homestead section. A copy of this Constitution and any by-laws shall be attached to every lease, licence, or other document defining occupancy rights.

11.3 Consequences

- (a) Upon any breach of this Constitution by a Member ("Offending Member") or Occupier ("Offending Occupier")
 - (i) Where damage has been caused to the Communal Facilities, the Offending Member or Offending Occupier shall make good such damage
 - (ii) If such default continues for seven days after notice is given by the Society to the Offending Member or the Offending Occupier to remedy the default, the Society may do anything, including paying money, necessary to remedy the default
 - (iii) All money paid and expenses incurred by the Society (including any legal costs of the Society) in remedying, or attempting to remedy any breach by an Offending Member or Offending Occupier of this Constitution, or incurred in the exercise or attempted exercise, or enforcement or attempted enforcement of any power, right or remedy of the Society, shall be a debt due from the Offending Member or subject to Rule 11.3(b) below the Offending Occupier to the Society.
 - (iv) If any money payable by an Offending Member or Offending Occupier to the Society is in arrears and unpaid by seven days (whether or not formal demand for payment has been made and without any formal demand being necessary) such money shall be payable on demand and shall bear interest at the default Interest Rate, computed on a daily basis from the due date until the date of payment in full.

- (b) Members shall be responsible for any monies payable under Rule 11.3(a) by their Offending Occupiers. Before penalty interest begins to accrue on an Offending Occupier's debt pursuant to Rule 11.3(iv) the Society shall give the Offending Occupier's Member 5 working days notice of the debt owed and its intention to levy penalty interest.
- (c) If debts accrued under Rule 11.3(a) are unpaid for a period of three (3) months or more the Member grants to the Society may exercise its right to caveat the Member's property within the Estate in order to secure payment of those debts.

11.4 Complaints about Members

Any complaint about any Member, whether from another Member or any other person, shall be lodged in writing with the Secretary, and the procedures set out below shall be observed:

- (a) The Committee shall have the following discretions:
 - (i) If the nature of the complaint indicates that the subject matter should be dealt with by any Court or tribunal, the Committee may decline to investigate or deal with the complaint until any such body has dealt with the issues which are the subject of the complaint. If the decision of any such body:
 - Effectively disposes of the complaint, the Committee may decide to take no further action, or may on the basis of that decision without further investigation take such action as it deems appropriate, with or without calling on the complainant or Member to provide further information or to make submissions, or
 - Does not effectively dispose of the complaint, the Committee may decide to undertake such further investigations as it thinks fit, and then follow the procedures set out in Rule 11.4(b)(i) to (vii).
 - (ii) The Committee may decline to investigate or consider the complaint if the nature of the complaint indicates that the subject matter is petty, frivolous, or inconsequential.
 - (iii) The Committee may decline to investigate or consider the complaint if, during enquiries being made by or on behalf of the Committee, it becomes apparent to the Committee that it is not appropriate further to investigate or consider the complaint.
 - (iv) If the investigation or consideration of the complaint is likely to require extensive enquiries, a considerable time input, or advice to the Committee from professional advisers, the Committee may at any time:
 - Decline further to investigate or consider the complaint, or
 - Require the complainant to deposit with the Society such sum as the Committee thinks fit to reimburse the Society wholly or partly for the costs of those making the enquiries or considering the complaint and/or the Society's professional adviser's fees before further investigating or considering the complaint.
- (b) The following procedures shall be observed when a complaint is investigated and considered:
 - (i) The Member shall be given a copy of the complaint,
 - (ii) The Member shall have the opportunity to provide a detailed written response to the complaint within not less than two weeks after receiving a copy of the complaint or such further time as may be allowed by the Committee or any special committee established by it for the purpose of hearing and deciding upon the complaint,

- (iii) Further enquiries may be made by or on behalf of the Committee or any such special committee, and the results of those enquiries shall be made known to the complainant and the Member,
- (iv) The Committee or any such special committee shall allow the complainant and the Member the opportunity to be heard by the Committee or any such special committee (and no person who has any direct or indirect interest in the complaint or who is in any way biased shall hear and determine the complaint),
- (v) The Committee or any such special committee may:
 - Dismiss the complaint, or
 - Uphold the complaint and do one or more of the following:
 - Reprimand or admonish the Member, and/or
 - Suspend the Member's voting rights for a specified period,
 and/or
 - Impose a fine on the Member.
- (vi) The Committee or any such special committee shall respect the confidentiality of the proceedings, and
- (vii) The decision and any reasons which may be given (without any obligation to give such reasons) for that decision shall be conveyed to the complainant and the Member in writing, and may at the discretion of the Committee or any such special committee be conveyed to Members.

11.4.3 The decisions of the Committee or any special committee hearing deciding upon any complaint under this Rule shall be final and binding on the complainant and the Member complained against, and shall not be subject to any review or challenge.

12 OPERATION OF THE SOCIETY

12.1 Committee to run Society

A Committee shall, in addition to all other duties described in these Rules, generally oversee and direct the affairs and business of the Society.

12.2 Committee

The following persons shall form the Committee of the Society:

- (a) Five (5) persons appointed or elected pursuant to Rule 12.3.
- (b) The Secretary and Treasurer or Secretary/Treasurer appointed pursuant to Rule 13.6.
- (c) A representative of the Controlling Member until such time as the Controlling Member chooses to no longer be part of the Committee.

12.3 Initial appointments to Committee

(a) Until there are 15 persons entitled to membership of the Society pursuant to Rule 5.2.1 the initial members of the Committee appointed under Rule 12.2(a) shall be appointed by the Controlling Member from the persons who are named as the First Members under Rule 5.1.

(b) Subsequent Election of Committee Members

Once there are 15 members of the Society pursuant to Rule 5.2.1 there shall be an election at the Annual General Meeting immediately following that event at which the five positions under Rule 12.2(a) shall be filled. Subject to Rule 12.3.4 each such

elected Member shall serve for a maximum term of two years. All Financial Members may stand for re-election.

(c) **Term of Office**

A Committee member elected pursuant to Rule 12.3(b) shall hold that elected position until the earliest of:

- (i) The first Annual General Meeting following the meeting referred to in Rule 12.3(b) when two of those elected pursuant to this Rule as shall agree, and failing agreement as determined by lot, shall resign, but shall be eligible for re-election. At each subsequent Annual General Meeting a Committee member who has served two consecutive years since being elected shall resign, but shall be eligible for re-election;
- (ii) The date written resignation from the position is received by the Society; or
- (iii) The date of cessation of Membership of the Society.

12.4 Chairman

The Committee shall from time to time appoint, remove and replace a Chairman for such term as it sees fit from one of their number to chair Committee meetings and otherwise exercise the powers of the chairman set out in this Constitution.

12.5 Conduct of Committee Elections

The election of Committee Members shall be conducted as follows:

- (a) Written nominations for nominees for the positions described in Rule 12.2(a), accompanied by the written consent of each nominee, shall be received by the Secretary not less than 21 clear days before the date of the Annual General Meeting. Only Financial Members at the date of nomination are entitled to be nominated or to make nominations.
- (b) Not less than 10 clear days before the date of the Annual General Meeting the Secretary shall post, fax or email to all Members a voting paper listing all Committee nominees and such information (not exceeding one side of an A4 sheet of paper) as may be supplied to the Secretary by or on behalf of each nominee in support of the nomination.
- (c) If there are insufficient valid nominations received under sub Rule 12.5(a) above, but not otherwise, further nominations may be received from the floor at the Annual General Meeting.
- (d) Votes shall be cast in such manner as the chairman of the Annual General Meeting shall determine.
- (e) The Secretary and some other Member (who is not a nominee) designated by the Chairman of the Annual General Meeting shall act as scrutineers for the counting of the votes and destruction of any voting papers.
- (f) In the event of any vote being tied the tie shall be resolved by the incoming Committee.

12.6 Secretary/Treasurer

The Secretary and Treasurer or Secretary/Treasurer (who need not be a Member) shall be appointed by the Committee. The person appointed may be remunerated at current market rates for the performance of the duties of Secretary or Treasurer or both.

12.7 Casual Vacancies

If a vacancy in the position of a Committee Member occurs between Annual General Meetings that vacancy shall be filled by the Committee and appointees under this Rule need not be current Members.

12.8 Removal of Committee Members

Any officer or other Member of the Committee may be removed by a resolution of a General Meeting of which prior notice was given in the notice of meeting and which is passed by a two thirds majority of those present and voting.

12.9 Controlling Member

Notwithstanding any other rule in this Constitution, the Controlling Member shall remain a general Committee member for so long as the Controlling Member chooses to do so and the Society shall not be entitled to remove the Controlling Member from that position for any reason.

13. PROXY VOTING

13.1 Members may vote by written proxy in favour of another financial Member present for the election of any nominated Member to the Society Committee.

13.2 Members may vote by written proxy in favour of another financial Member present or by signed vote on any issue to be voted upon at a General Meeting of the Society except that of the election of members to the Committee.

13.3 The Committee shall establish the procedures for the form and receipt of proxy votes.

14 MANAGEMENT BY THE COMMITTEE

14.1 From the end of each Annual General Meeting until the end of the next, the Society shall be administered, managed and controlled by the Committee, which shall be accountable to the Members for the implementation of the policies of the Society as approved by any General Meeting.

14.2 Subject to these Rules and the resolution of any General Meeting, the Committee may exercise all the Society's powers, other than those required by statute or by these Rules to be exercised by the Society in General Meeting.

14.3 The Committee shall meet at least monthly (but need only meet once in the December/January period) at such times and places and in such manner (including by telephone or video conference) as it may determine and otherwise where and as convened by the Chairman or Secretary.

14.4 Committee resolutions

Resolutions of the Committee in meeting shall be passed by simple majority. Each Committee Member shall be entitled to one vote provided that the Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of other Committee members present at any meeting and provided further that if the Secretary/treasurer is not a financial member of the Society they shall not be entitled to vote. Notwithstanding any contrary provision in the Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted.

14.5 Minutes and records

The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and the Committee. All business transacted at such meetings and signed by the Chairman shall be accepted as a true and accurate record of the business transacted at such meetings without further proof of the facts contained in such minutes.

14.6 Chairman

All Committee meetings shall be chaired by the Chairman or in their absence some other Committee Member elected for the purpose by the meeting.

14.7 Co-opted Committee Members

The Committee may co-opt any person to the Committee for a specific purpose, or for a limited period, or generally until the next Annual General Meeting.

14.8 Quorum

The quorum for Committee meetings is at least half the number of the Committee Members but shall always include the Controlling Member whilessoever that Controlling Member is part of the Committee.

14.9 Only Committee Members elected under Rule 12.3(b) or appointed under Rule 12.3(a) who are present in person or by telephone or video link shall be counted in the quorum and entitled to vote.

14.10 Sub Committees

The Committee may appoint sub committees consisting of such persons (whether or not Members of the society) and for such purposes as it thinks fit. Unless otherwise resolved by the Committee:

- (a) The quorum of every sub committee is half the Members of the sub committee,
- (b) No sub committee shall have power to co-opt additional Members,
- (c) No sub committee may commit the Society to any financial expenditure without express authority, and
- (d) No sub committee may delegate any of its powers.
- (e) A sub committee may act by resolution approved by no less than two thirds of the members.

14.11 By Laws

The Committee from time to time may make and amend regulations, by-laws and policies for the conduct and control of Society activities, but no such regulations, by-laws and policies shall be inconsistent with these Rules or inconsistent with land Covenants binding the Society. These Rules, and such regulations, by-laws and policies shall be available at all reasonable times for inspection by Members, and copies shall be provided (at cost) to any Member on request.

14.12 Other than as prescribed by statute or these Rules, the Committee may regulate its proceedings as it thinks fit.

14.13 Honoraria and Expenses

Members:

- (a) Of the Committee shall receive such honoraria as may be set by resolution of a General Meeting, and
- (b) Of the Committee and of subcommittees shall be entitled to be reimbursed by the society for any reasonable actual expenses incurred by them on behalf of the society as approved by resolution of the Committee.

14.14 Interpretation of Rules

Subject to statute, these Rules and the resolutions of General Meetings, the decisions of the Committee on the interpretation of these Rules and all matters dealt with by it in accordance with these Rules and on matters not provided for in these Rules shall be final and binding on all Members.

14.15 Resignation

Each Committee Member or Sub Committee Member shall within one calendar month of submitting a resignation or ceasing to hold office deliver to that officer's successor all books, papers and other property of the Society possessed by such former officer.

14.16 Manager

The Committee may employ any person or company to administer or manage the affairs of the Society. That Manager may also act as the Society's Secretary/Treasurer.

14.17 Validity of Committee's actions. All acts properly done at 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 Member, or that they were disqualified, shall be valid as if every person had been duly appointed or had duly continued in office and was qualified to be a Committee member.

14.18 Indemnity for Committee Members

(a) No Officer or Member of the Committee shall be liable for the acts or defaults of any other Officer or Member of the Committee or any loss occasioned thereby, unless occasioned by their wilful default or by their wilful acquiescence.

(b) The Officers, Committee and each of its Members shall be indemnified by the Society for all liabilities and costs incurred by them in the proper performance of the functions and duties, other than as a result of their wilful default.

15 SECRETARY AND/OR TREASURER

15.1 The Secretary shall record the minutes of all General meetings and Committee meetings

15.2 The Secretary shall hold the Society's records, documents, and books.

15.3 The Secretary shall deal with and answer correspondence and perform such other duties as directed by the Committee.

15.4 The Committee shall have the power in its discretion to suspend or remove the Secretary and/or the Treasurer from office.

15.5 The Treasurer shall keep such books of account as may be necessary to provide a true record of the Society's financial position, report on the Society's financial position to each Committee meeting, and present an annual Statement of Accounts (Income and Expenditure Account and Balance Sheet) to the Annual General Meeting together with a budget for the next financial year.

15.6 The Committee shall maintain bank accounts in the name of the Society, and all cheques and withdrawal forms shall be signed by two Members of the Committee or the Secretary and countersigned by a Member of the Committee.

15.7 All money received on account of the Society shall be banked within seven days of being received.

- 15.8** All accounts paid or for payment shall be submitted to the Committee for approval of payment.
- 15.9** The Society's financial year shall commence on 1st July of each year and end on 30th June in the following year.
- 15.10** The Annual General Meeting each year may appoint an auditor (who is a Member of the New Zealand Institute of Chartered Accountants and not a Member of the Society) to audit the annual accounts of the Society and provide a certificate of correctness of the same, and if any such auditor is unable to act the Committee shall appoint a replacement auditor.

16 EXECUTION OF DOCUMENTS

- 16.1** The Society shall have a Common Seal which shall be retained by the Secretary.
- 16.2** Documents shall be executed for the Society pursuant to a resolution of the Committee:
- (a) By affixing the Common Seal witnessed by the Chairman and countersigned by some other Member of the Committee, or
 - (b) Where the document is not required by statute to be executed under common seal, by the Chairman and some other Member of the Committee signing on behalf of the Society.

17 GENERAL MEETINGS AND MISCELLANEOUS

17.1 Powers of Society in General Meeting

The Society in General Meeting may, by resolution, exercise all powers, authorities and discretions of the Society 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 Controlling Member (if there is one), shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.

17.2 Date of Annual General Meeting

The Annual General Meeting shall be held no later than 30th October in each year at a time and place fixed by the Committee. Members shall be advised 28 days before the Annual General Meeting of the date chosen by the Committee and the closing date for the receipt of nominations for the election of Officers.

17.3 Special General Meetings

Special General Meetings may be called by the Committee or by written requisition to the Secretary signed by not less than a quarter of the Members entitled to vote.

17.4 Motions for AGM

Any Member wishing to give notice of any motion for consideration at the Annual General Meeting or at any General Meeting shall forward written notice of the same to the Secretary not less than 21 clear days before the date of the meeting for any notice of motion. The Committee may consider all such notices of motion and provide recommendations to Members in respect thereof.

17.5 Agenda for AGM and Special Meetings

At least 10 clear days before any General Meeting the Secretary shall post to all Members written notice of the business to be conducted at the General Meeting (including in the case of Annual General Meetings copies of the Annual Report, Statement of Accounts, a list of and information about nominees, and notice of any motions and the Committee's

recommendations in respect thereof). The failure for any reason of any Member to receive such notice shall not invalidate the meeting or its proceedings.

17.6 General Meetings

General meetings may be attended by all Members but only Members not barred by Rules 6.5 or 11.4(b)(v) are entitled to vote. Each Member present at a general meeting shall be entitled to one vote in accordance with Rules 5.2.4 and 5.6.4 provided that the Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of other members present at any general meeting.

17.7 Quorum

The quorum for General Meetings is 20% of all Members entitled to vote or 10 Members whichever is the less.

17.8 Adjournment for failure of quorum

If a quorum is not present within a half hour of the nominated time for the commencement of a general meeting convened on the request of Members the meeting shall be dissolved. In any other case the meeting shall be adjourned to the same day and time the week following or to such other day and at such other time and place as the Committee shall determine such date to be no more than 14 days from the date of the original meeting. If at the adjourned meeting a quorum is not present within a half hour of the time appointed for the meeting the members present together with the Controlling Member shall constitute a quorum.

17.9 All General Meetings shall be chaired by the Chairman or in the Chairman's absence by some other Committee Member elected for the purpose by the Meeting, and any such chairperson shall have a deliberative and casting vote.

17.10 Controlling Member's vote

At any general or special meeting of the Society, the Controlling Member (if there is one) shall be entitled to exercise the number of votes equal to one more than the votes exercised by the Members voting in person or by proxy.

17.11 Voting at general meetings

At any general meeting:

- (a) A resolution may be put to the vote by the chairman or by any member present at the meeting entitled to vote.
- (b) Resolutions put to the vote shall be determined by voices and the identifying of any proxy votes by a show of hands or, on demand of the chairperson or of any financial Member present, by secret ballot, and on any secret ballot each financial Member shall be entitled to one vote.
- (c) Unless otherwise required by these Rules, all questions shall be determined by a simple majority of those present and voting at the General Meeting.
- (d) To determine any issue already lawfully before a General Meeting (including any election or amendment to these Rules) the meeting may resolve to hold a postal ballot in accordance with the procedures set out in paragraph (e) of this Rule.
- (e) To determine any issue (including any amendment to these Rules) the Committee may resolve to hold a postal ballot in accordance with the procedures set out in paragraph (e) of this Rule.
- (f) In respect of postal ballots held under this Rule:
 - (i) Only financial Members may vote in any postal ballot,
 - (ii) The resolution to hold a postal ballot shall set a closing date and time for ballots to be received by the Secretary, but the closing date shall be no earlier

than seven days after the date ballot papers are sent out to financial Members (excluding the date of posting),

- (iii) In respect of any motion to amend these Rules by postal ballot, the motion shall be accompanied by reasons and recommendations from the Committee, and such motion must be passed by a two-thirds majority of those voting,
 - (iv) Voting in a postal ballot may be by ballots returned to the Secretary by mail, delivery, facsimile or email,
 - (v) The Secretary shall declare the result of the postal ballot, and
 - (vi) The result of any postal ballot shall be as effective and binding on Members as a resolution passed at a General Meeting.
- (b) A resolution passed by the required majority at any General Meeting or by postal ballot binds all Members, irrespective of whether they were present at the General Meeting where the resolution was adopted or whether they voted.

17.12 The business of the Annual General Meeting shall be:

- (a) Minutes of the previous General Meeting(s),
- (b) Annual Report of the Committee,
- (c) Statement of Accounts,
- (d) Election of the Officers,
- (e) Motions of which notice has been given,
- (f) Approval of a budget for the next financial year, and
- (g) General business.

17.13 Good faith

Members shall, 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 Society, and that each member shall bear that Members Proportion of all Operating Expenses and all costs and expenses to be met by levies made by the Society under Rule 6, irrespective of whether any expenditure by the Society benefits all members.

17.14 Approval

Where in this Constitution any reference is made to the approval or consent of the Society or the Developer:

- (a) Such approval or consent shall be given at the sole discretion of the Society or the Developer as appropriate,
- (b) No approval or consent given on any occasion by either the Society or the Developer shall serve as precedent for, or be binding in any way with respect to any future application for consent or approval, and
- (c) Such reference shall mean the prior written approval or consent of the Society or the Developer, as appropriate.

17.15 Mediation

Any difference or dispute which may arise between a Member and the Society concerning this Constitution or any act or thing to be done, suffered omitted under this Constitution, or concerning the construction of this Constitution shall be referred to Mediation with a single Mediator of the parties can agree upon one but otherwise two Mediators one chosen by the

Member and the other by the Society. If no agreement can be reached then the dispute shall be referred to an arbitrator who shall have jurisdiction to determine the matter. The arbitration shall be conducted in accordance with the Arbitration Act 1996 or any Act in substitution thereof. Such arbitration shall be a condition precedent to the commencement of any action at law by a Member against the Society.

18 ALTERATION OF RULES

- 18.1** This Constitution shall not be amended, added to or rescinded except at an Annual General Meeting or a Special General Meeting convened for that purpose and passed by a 75% majority of those Members present and voting. Notice of any proposed amendment, addition to or recession to the Constitution shall be given to all Members in accordance with this Constitution.
- 18.2** Any proposed motion to amend or replace these Rules or to change the Society's rights under land covenants in its favour shall be signed by at least five Members entitled to vote and given in writing to the Secretary at least 28 clear days before the General Meeting at which the motion is to be considered, and accompanied by a written explanation of the reasons for the proposal.
- 18.3** At least 14 clear days before the General Meeting at which any such proposal to amend, add to or rescind this Constitution is to be considered the Secretary shall post written notice to all Individual Members and Corporate Members of the proposed motion, of the reasons for the proposal, and of any recommendations from the Committee in respect thereof.
- 18.4** Notwithstanding any other rule herein, this Constitution shall not be amended, added to or rescinded so as to alter, add to or rescind Rules 3.2(a), 3.2(c), 4.1(c), 4.1(h), 5.2.1, 5.3, 7.1, 7.2, 7.5.1 to 7.5.10 (inclusive), 8.1, 10.1, 12.1, 12.2(c), 12.9, 14.4, 17.10 and this Clause 18.4.

19 SERVICE OF NOTICES

- 19.1** All notices, demands or other written documentation required by this constitution to be delivered or served on a member may be delivered either personally, by mail, by facsimile transmission or by email. If delivery is by mail, it shall be deemed to have been delivered twenty four (24) hours after a copy has been deposited in the New Zealand post mail, postage pre paid, addressed as follows:
- (a) If to the Society – to its registered office.
 - (b) If to the Design Committee – to the registered office of the Society.
 - (c) If to a Member – to the current address for that Member on the register of Members.
 - (d) If to an Occupier – to the property within the Estate being occupied by the Occupier.

If the delivery is by email or by facsimile transmission it shall be deemed to have been delivered upon electronic confirmation that the email or transmission has been successfully sent to the email or facsimile address for that Member or Occupier held by the Society.

20 WINDING UP

- 20.1** The Society may be wound up under the provisions of the Incorporated Societies Act 1908.
- 20.2** If the Society is wound up, the surplus assets after payment of all debts, costs and liabilities shall be disposed of as follows:
- (a) The ownership of the Communal Facilities shall vest in, and

- (b) Any funds remaining in Society bank accounts collected under Rule 6 shall be distributed to the members as tenants in common in shares equal to the Members proportion as at the date of winding up, and the Society shall take all necessary steps to vest legal title to the Communal Facilities in the Members.

Schedule 1

Esk Hills Residents Society Incorporation By-Laws

DEFINITIONS

1. Definitions

The definition used with the Constitution of the Esk Hills Residents Society are applicable to these By-Laws.

COMMUNAL FACILITIES

2. Use

2.1 No Member shall make improper, offensive or unlawful use of any of the Communal Facilities, and shall use the Communal Facilities only for the purposes for which they were designed.

2.2 No Member shall fetter, obstruct or impede the use of any Communal Facilities by any other member.

2.3 No Member shall place anything in or on Communal Facilities without the approval of the Committee or the Manager if one is appointed.

2.4 No Member shall do any act which may prejudice or add to the premium payable in respect of any insurance of the Communal Facilities.

2.5 Dogs are permitted within the Communal facilities provided they are accompanied at all times and under the control of their owners or a designated agent. Those accompanying dogs are responsible for the removal of all dog defecations from the common facilities.

3. Prohibited Acts

3.1 No Member shall drop any litter in or on the Communal Facilities.

3.2 Camping on the Communal Facilities is prohibited.

3.3 No Member shall do any act which detracts from the attractiveness or state of repair of the Communal Facilities. Any Member who discovers any damage to the Communal Facilities shall immediately report such damage to a Committee Member of the Society.

4. Closing of Communal Facilities

4.1 The Committee shall be entitled to close any or all of the Communal Facilities as the Committee considers necessary for security or safety reasons, or for the purpose of maintaining and repairing Communal Facilities.

WITHIN THE ESTATE

5. Parking

- 5.2 No Member shall park any vehicle on the roads or on the Communal Facilities, other than in spaces specified by the Committee from time to time as suitable for that purpose.

6. Conduct and Noise

- 6.1 No Member shall engage in, or allow any person to engage in, any criminal activity within Esk Hills.
- 6.2 No Member shall make or permit any improper or unseemly noises within Esk Hill nor act in any fashion so as to annoy, offend or disturb any other Member.
- 6.3 If intoxicating liquor is consumed within Esk Hills, the Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.
- 6.4 The Society reserves the right to exclude or evict from Esk Hills any person who in the opinion of the Society is under the influence of intoxicating liquor, drugs or substances, or who in any manner acts in violation of the Constitution of these Rules. This right has been delegated to the treasurer/secretary or manager.
- 6.5 No Member shall burn any material or substance within Esk Hills or do anything which may create a fire hazard or contravene fire regulations.
- 6.6 No Member shall dispose of any rubbish except into bins or receptacles provided by the Society for removal on usual days by the local authority or by independent contractors.

7. Radio and Television Aerials

- 7.1 No member shall erect or fix, or cause to be erected or fixed to any residence within Esk Hills, or any part thereof, any radio or television mast, antenna or satellite dish without the prior written consent of the Society.

WITHIN HOMESTEAD AND VILLA SECTIONS

8. Member's Homestead and Villa Sections

- 8.1 Members shall ensure that all improvements on their land are maintained and present an attractive appearance to the public roadway.
- 8.2 Members shall not permit the accumulation of unsightly rubbish or materials on their land.
- 8.3 Members shall not allow their property to detract from the general standards of visual attractiveness established within Esk Hills.
- 8.4 Members of Homestead Sections shall arrange for regular watering, fertilising and cutting of grass areas, pruning of trees, removal of weeds and rubbish and the repair and maintenance of their Homestead Section Residual Area including driveways and footpaths across this area to the Homestead Envelope.

8.5 No Member other than the Developer of Ask Hills shall erect any notice or sign without the prior written consent of the Society.

9. Pets

9.1 In order to preserve and to prevent an adverse impact on the natural fauna, bird life and flora of Esk Hills, each Member shall ensure that:

(a) The keeping of any mustelids, rodents or animals classified by the New Zealand Department of Conservation as pests, within the estate is prohibited.

(b) Members may bring their existing pet cat to Esk Hills but may not replace that cat.

(c) The consent of the Society will be obtained for the keeping of any pet other than a dog, cat or bird.

(d) The number and size of any pet is reasonable give the size of the Member's Homestead Section or Villa Section provided that no more than two of any animal is kept as a pet on each Homestead Section.

(e) When pets are outside the boundaries of the Member's Homestead Section, pets are under control and supervision.

(f) No pet shall make any noise so as to disturb or otherwise cause a nuisance.

(g) All pets are maintained in a healthy and clean condition and all laws and regulations relating to the keeping of such pets are complied with.

(h) No dangerous pets are to be kept within that Member's Homestead Section or Villa Section.

9.2 Each Member shall be liable for the costs of repairing any damage caused by that Member's pets.

9.3 No Member shall allow any Homestead Section or Villa Section to become infested by vermin or insects.

SCHEDULE 4

BETWEEN

EAST HILLS (2001) LIMITED

AND

ESK HILLS RESIDENTS SOCIETY INCORPORATED

DEED OF TRANSFER OF COMMUNAL FACILITIES

DEED dated this

day of

2004

PARTIES:

EAST HILLS (2001) LIMITED ("Developer")

ESK HILLS RESIDENTS SOCIETY INCORPORATED ("Society")

INTRODUCTION:

- A The Developer intends to develop Esk Hills, a residential development at Bay View, Napier on a site comprised in Certificate of Title 140515.
- B The Developer wishes to transfer property to the Society, which property shall be for the common use of all residents of Esk Hills. The Society shall hold, own and maintain that property in accordance with the Constitution of the Society.

COVENANTS:

1 DEFINITIONS

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

"Communal Facilities" means all land, buildings, plant, equipment, facilities and amenities including rights of way, easements and any private roads and walkways within the Estate owned, leased, licensed, or otherwise held or operated by the Society (as the Society may determine) from time to time.

"Development" means the construction of Esk Hills as a complete residential development.

2 RESERVATION

- 2.1** The Society acknowledges that whilst it is the intention of the Developer to construct the Communal Facilities, the Developer reserves the right not to proceed with the construction of the Communal Facilities, to vary those facilities designated as Communal Facilities, and to vary the location and specifications of the Communal Facilities.
- 2.2** This deed shall oblige the Developer only to assign such Communal Facilities as it completes, and shall not oblige the Developer to construct any Communal Facilities, or to construct any Communal Facilities to any particular specification or in any particular location.
- 2.3** The Developer expressly disclaims any liability to the Society in respect of anything and of the consequences of anything done or omitted to be done by any person in reliance upon any Communal Facilities being constructed, or constructed to any particular specification or in any particular location.

3 TRANSFER

- 3.1** The Developer shall, as each stage of the Development is completed, transfer to the Society any Communal Facilities constructed which are intended to be used by residents of properties within that stage, subject to such encumbrances as the Developer sees fit.
- 3.2** The Developer warrants that any Communal Facilities transferred to the Society shall be complete, and that all work in respect of such Communal Facilities shall be to a proper and professional standard.
- 3.3** The Developer covenants for the purposes of clause 3.1 that it shall promptly make, do and execute all deeds, documents and actions required of it by the Society to effect the assignment to the Society of Communal Facilities.
- 3.4** The Developer shall indemnify and keep indemnified the Society against any and all stamp duty or similar duty, impost or tax, for which the Society may become liable as a result of the transfer of Communal Facilities pursuant to clause 3.1, provided that should the Society reasonably believe it may become liable for any such stamp duty or similar duty, impost or tax, the parties shall seek a ruling on this point from the Commissioner of Inland Revenue and shall co-operate fully in taking all steps necessary for this purpose (including making submissions in respect of, and objecting to, this ruling) before the transfer of the Communal Facilities.
- 3.5** The Society shall hold Communal Facilities in accordance with its Constitution, and generally for the benefit of the residents of Esk Hills.

4 DEVELOPMENT RIGHTS

- 4.1** The Society shall ensure that its constitution:
- (a) Allows the Developer access to the properties of residents of Esk Hills as required to further the Development.
 - (b) Requires residents of Esk Hills to grant easements in favour of the Developer, any other residents and/or the Society (as nominated by the Developer) across any resident's property as required to further the Development.
 - (c) Requires members of the Society to support any resolution to amend the Constitution, where the Society is required to make such amendment pursuant to clause 4.4.
- 4.2** The Society hereby grants to the Developer the right to:
- (a) Access and remain on the Communal Facilities with such vehicles, machinery and tools as the Developer may desire.
 - (b) Temporarily close any Communal Facilities.
 - (c) Add, remove or alter structures or services forming part of the Communal Facilities, as required to further the Development.
- 4.3** The Society shall, when called upon by the Developer, grant such easements or rights in respect of the Communal Facilities in favour of any person nominated by the Developer, as required to further the Development.

- 4.4 The Society shall amend its Constitution, when advised by the Developer that such amendment is necessary or desirable for the Development to proceed.

5 SOCIETY'S OBLIGATIONS

- 5.1 Until the Developer certifies to the Society that the Development is complete, the Society shall:
- (a) Cause the Communal Facilities to be maintained to the standard specified by the Developer, and
 - (b) Enforce any covenants granted by any resident of Esk Hills in favour of the Society, when called upon to do so by the Developer.

6 OPERATING EXPENSES

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

7 GOOD FAITH

- 7.1 The parties shall act in good faith, and shall use their best endeavours to promote the mutual interests of the parties in the development and maintenance of Esk Hills as a high quality residential development.
- 7.2 The Developer shall exercise its voting rights as Controlling Member (as defined in the Society's Constitution) so as to ensure that:
- (a) Esk Hills is developed and completed in accordance with the requirements of all statutes, regulations and regulatory authorities.
 - (b) The Communal Facilities are maintained to a standard commensurate with the Developers promotion of Esk Hills as a high quality residential development.
 - (c) Residents of Esk Hills comply with any covenants granted in favour of the Society.
 - (d) The Development proceeds smoothly and efficiently, in accordance with the plans of the Developer.

and otherwise for the benefit of residents of Esk Hills.

8 ASSIGNMENT

- 8.1 This deed may be assigned by the Developer, provided that the assignee enters into a Deed with the Society 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 residential properties within Esk Hills, 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 Society irrevocably appoints the nominee of the Developer, as the attorney of the Society, to execute and perform any act, deed, matter or thing as fully and effectually as the Society could do, where the Society 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 agreement.

EXECUTED AS A DEED

EAST HILLS (2001) LIMITED by:

Signature of Director

Name of Director

Signature of Director

Name of Director

THE COMMON SEAL of:
ESK HILLS RESIDENTS SOCIETY INCORPORATED

Signature of Committee Member

Name of Committee Member

Signature of Committee Member

Name of Committee Member

ESK HILLS RESIDENTS SOCIETY

“Covenantor”

EAST HILLS (2001) LIMITED

“Covenantee”

DEED OF COVENANT
[Protection of Common Areas]

In the Matter of the Property Law Act 1952

And

In the Matter of Land registered under the
Land Transfer Act 1952

PARTIES

Covenantor: **Esk Hills Residents Society**

Covantee: **East Hills [2001] Limited**

INTERPRETATION

In this Deed the following terms have the following meanings:

"Covantees" includes all persons executing this Deed as Covantee and jointly and severally if more than one and their executors, administrators, assigns and successors in title the successive owners of the Covantee's Land and their tenants, licensees and invitees.

"Covenantor" means and includes all persons executing this Deed as Covenantor and jointly and severally if more than one and their executors, administrators, assigns and successors in title the successive owners of the Covenantor's Land and their tenants, licensees and invitees.

"Developer" means East Hills (2001) Limited and its transferees and assigns carrying out development at Esk Hills.

"District Plan" means the Proposed City of Napier District Plan or its substitute.

"Esk Hills" means the residential and other development of the land comprised in Certificate of Title 14015.

"Homestead Envelope" means that area of land within each Homestead Section identified by the Developer as the restricted area for the construction of any dwelling or accessory buildings or structure.

"Homestead Section" means a lot within the land comprised in Certificate of Title 140515 which has been developed as a residential lot or which is a bare lot available for such development.

"Queen Elizabeth the Second National Trust" means the Trust established by the Queen Elizabeth the Second National Trust Act 1977.

BACKGROUND

- A. The Covenantor is the registered proprietor of that land detailed in Schedule A (the Covenantor's Land).
- B. The Covenantee is the registered proprietor of the land detailed in Schedule B (The Covenantee's Land).
- C. The Covenantor and the Covenantee have agreed to covenant with each other as follows with the intent that the restrictions and obligations set out in this Deed shall apply to the Covenantor's Land for the benefit of the Covenantee's Land and to the Covenantee's Land for the burden of the Covenantor's Land and shall be enforceable inter se.

COVENANTS

- 1. The Covenantor covenants and agrees with the Covenantee for the benefit of and to be appurtenant to the Covenantee's Land, that the Covenantor will henceforth and at all times hereafter observe and perform all and singular the stipulations, covenants and restrictions detailed below ("the Covenants") to the end and intent that each of the Covenants shall endure for the period stipulated in Clause 12 below for the benefit of the Covenantee's Land and every part of the Covenantee's Land.
- 2. Subject to Clauses 3 and 4 below, the Covenantor covenants and agrees to maintain the Covenantor's land as recreational reserve areas for the common use and benefit of the Covenantee.
- 3. Nothing in these Covenants shall preclude the Covenantor from transferring to the Department of Conservation or its substitute, or to the Napier City Council or its substitute or to the Queen Elizabeth the Second Trust the whole or part of the Covenantor's land on such terms and conditions as may be agreed between the Covenantor and the said Department, Council or Trust whether those agreed conditions would otherwise be a breach of these Covenants.
- 4. Nothing in these Covenants shall preclude the Covenantor from granting to the Queen Elizabeth the Second Trust an open space covenant over the whole or part of the Covenantor's land either in perpetuity or for a limited time on such terms and conditions as may be agreed between the Covenantor and the said Trust whether or not those agreed conditions would be a breach of these Covenants.
- 5. The Covenantor will at no time:
 - (a) Subject to Clause 6 cut down any existing trees on the Covenantor's Land.
 - (b) Plant any trees or vegetation likely to interfere unreasonably with views as they exist at the date of this deed at ground level from any Homestead Envelope owned by the Covenantee.
- 6. Clause 5(a) shall not apply to any trimming or removal of a tree for safety reasons

7. (a) Subject to Clause (b) below and after the completion of each stage of the development of Esk Hills, the Covenantors shall not further subdivide (as currently defined in Section 218(1) of the Resource Management Act 1991) any of the Covenantor's land whether by way of boundary adjustment, cross-lease, unit title development or otherwise.
- (b) Subclause (a) above shall not apply to any minor boundary adjustment which does not include the moving of any building platforms more than to a minor degree and/or does not result in the creation of any additional homestead section or the right to build any additional dwellings or structures.
8. (a) Subject to subclause (b) below, the Covenantor shall at no time build or allow to be built on any building or structure on the Covenantor's land.
- (b) The Covenantor may erect an implement shed or Community Facilities on one or more of the lots comprised in the Covenantor's land subject to obtaining any Resource Consent. Any implement shed or Community Facility to be constructed shall be of a quality and style commensurate with the standard of the building within Esk Hills.
9. The Covenantor will register this Deed against the Covenantor's Land to provide notice of the Covenants to any future purchasers or owners of the Covenantor's Land.
10. (a) The Covenants shall endure for a period of sixty (60) years from the date of this Deed for the benefit of the Covenantee's Land as set out in this Deed and shall be enforceable against the Covenantor's Land during that period by any one or more of the Covenantees at any time.
- (b) Upon the expiry of that period of sixty (60) years this Deed shall be deemed to have been cancelled by agreement and shall thereafter have no force or effect.

Dated 2004

EXECUTED by the Covenantor)
ESK HILLS RESIDENTS SOCIETY)
 in the presence of:)

EXECUTED by the Covenantee)
EAST HILLS [2001] LIMITED)
 in the presence of:)

SCHEDULE A

**All the parcels of land intended to be the communal walkway and reserve areas.
Excludes the jointly owned access strips.**

SCHEDULE B

**Stage 1 – Initially the Homestead Sections and access lots owned by East Hills
(2001) Limited which are for transfer to Owners.**

**As each Stage of Esk Hills is developed the Schedule will change to include the
Titles which represent the Homestead Sections, access lots and Villa Sections
within the staged development of Esk Hills.**

EAST HILLS (2001) LIMITED

“Covenantor”

EAST HILLS (2001) LIMITED

“Covenantee”

DEED OF COVENANT

[To Protect Integrity of Subdivision]

Homestead Sections, Villa Sections= residential lots

In the Matter of the Property Law Act 1952

And

In the Matter of Land registered under the
Land Transfer Act 1952

PARTIES

Covenantor: **East Hills (2001) Limited**

Covantee: **Initially East Hills (2001) Limited – Owners of homestead section**

INTERPRETATION

In this Deed the following terms have the following meanings:

Accessory Building free standing garages, workshops, sleep-outs and other buildings excluding garden sheds that are not dwellings and are not greater than 130 metres square in gross floor area.

Architect means a person holding current registration under the Architects Act 1963 or its substitute.

Communal Facilities means all land, buildings, plant, equipment, facilities and amenities including rights of way, easements and any private roads and walkways within the Estate owned, leased, licensed, or otherwise held or operated by the Society (as the Society may determine) from time to time, being initially that land and those facilities transferred to the Society by the Developer pursuant to a Deed of Transfer a copy of which is attached as Schedule 1 to the Constitution of the Society.

Covantee includes all persons executing this Deed as Covantee and jointly and severally if more than one and their executors, administrators, assigns and successors in title, the successive owners of the Covantee's Land and their tenants, licensees and invitees.

Covenantor means and includes all persons executing this Deed as Covenantor and jointly and severally if more than one and their executors, administrators, assigns and successors in title, the successive owners of the Covenantor's Land and their tenants, licensees and invitees.

Design Review Panel means the body appointed under the Constitution of the Esk Hills Residents Society from time to time to

	consider design approval applications by Members of the Society.
<i>Design Guidelines</i>	means the design guidelines issued by the Design Review Panel constituted under the Esk Hills Residents Society.
<i>Developer</i>	means East Hills (2001) Limited and its transferees and assigns carrying out development at Esk Hills.
<i>District Plan</i>	means the Proposed City of Napier District Plan or its substitute.
<i>Dwelling</i>	means a structure of more than 150 square metres intended for human habitation that includes a kitchen or area intended for use as a kitchen but excludes a carport or garage.
<i>Esk Hills</i>	means the residential and other development of the land comprised in Certificate of Title 140515.
<i>Esk Hills Residents Society</i>	means the Esk Hills Residents Society Incorporated.
<i>Earthworks</i>	means the removal, deposit, or redistribution of any material, rock or soil within a Homestead Section which alters the natural ground level by more than 1.2 metres.
<i>Homestead Envelope</i>	means that area of land within each Homestead Section identified by the Developer as the restricted area for the construction of any dwelling or accessory buildings or structure.
<i>Homestead Section</i>	means a lot within the land comprised in Certificate of Title 140515 which has been developed as a residential lot or which is a bare lot available for such development.
<i>Homestead Section Residual Area</i>	means the area of a homestead section outside the homestead envelope.
<i>Main Dwelling</i>	means the principal home or residence for each homestead section.
<i>Master Plan</i>	means the plan or set of plans prepared by the Developer and identified as the Master Plan and which shows the overall layout of the Esk Hills development including roads, sections and communal facilities and which may from time to time be redefined or amended by the Developer.
<i>Occupier</i>	means any person occupying any Homestead Section or Villa Section under any lease, licence or other

	occupancy right and shall include all members of an owner's family.
<i>Owner</i>	means each person registered as a proprietor (whether individually or with others) of a Homestead or Villa Section.
<i>Owner's Title</i>	means the Certificate of Title issued for an Owner's Homestead Section.
<i>Secondary Dwelling</i>	means a secondary dwelling on certain homestead sections identified in the Master Plan that is no more than 80 metres square in gross floor area.
<i>Society</i>	means the Esk Hills Residents Society Incorporated under the Incorporated Societies Act 1908.
<i>Urban Designer</i>	means a person who has tertiary qualifications in urban and environmental design.
<i>Utility Installations</i>	means water tanks, clotheslines, rubbish storage facilities, re-cycling facilities, gas bottles, swimming pool pumps or filters, water softeners or other above ground mechanical or electrical equipment.
<i>Villa Section</i>	means those lots on the Developer's Master Plan identified as suitable for the construction of a Villa and restricted to having one main building constructed thereon.

BACKGROUND

- A. The Covenantor is the registered proprietor of that land detailed in Schedule A (the Covenantor's Land).
- B. The Covenantee is the registered proprietor of the properties detailed in Schedule B (the Covenantee's Land).
- C. The Covenantor and the Covenantee have agreed to covenant with each other as follows with the intent that the restrictions and obligations set out in this Deed shall apply to the Covenantor's Land for the benefit of the Covenantee's Land and to the Covenantee's Land for the burden of the Covenantor's Land and shall be enforceable inter se.

COVENANTS

1. The Covenantor covenants and agrees with the Covenantee for the benefit of and to be appurtenant to the Covenantee's Land, that the Covenantor will henceforth and at all times hereafter observe and perform all and singular the stipulations, covenants and restrictions detailed below ("the Covenants") to the end and intent that each of the Covenants shall endure for sixty years (60) for the benefit of the Covenantee's Land and every part of the Covenantee's Land.

2. The Covenantor agrees to hold, convey, lease, rent, use, maintain, occupy and improve all land referred to in Schedule A subject to limitations, restrictions, covenants and conditions contained herein.
3. The Covenantor and its assigns shall become and remain Members of the Esk Hills Residents Society and the Covenantee and its assigns covenant and agree to be bound by all rules pertaining to the Covenantee's land promulgated by the Esk Hills Residents Society.
4. The Covenantor and its assigns covenants as follows:
 - (a) To allow the Developer access to the Covenantor's land for the purpose of proceeding with the development of Esk Hills;
 - (b) To allow the Developer to proceed unhindered with the necessary consents for and the building of Villas on those lots identified by the Developer as Villa Sections;
 - (c) To, and hereby grants, such easements in favour of the Developer, any Member and/or the Society over or under the Covenantor's land as are required for the development to proceed or as may be necessary or desirable for development of Esk Hills;
 - (d) Not to prevent, hinder or obstruct the use by the Developer of the Communal Facilities, the addition, removal or alteration of structures or services forming part of the Communal Facilities by the Developer, or the granting of any interests in the Communal Facilities by the Society to the Developer,
 - (e) Not to oppose, or take part in any opposition to, the development of Esk Hills or do anything inimical in any way whatsoever to any application by the Developer for resource or any other consent relative to the sub-division or development of Esk Hills;
 - (f) To support any resolution to amend the Constitution of the Esk Hills Residents Society where the Society is bound by agreement with the Developer to procure such amendment;
 - (g) Not to bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of the lands surrounding Esk Hills that are being used for agricultural, horticultural or viticultural activities; or make or lodge, or be a party to; or finance or contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation or the operations of rural activity on the surrounding land, including without limitation, any action to require the surrounding landowners/occupiers to modify the rural operations carried out on their land.

RESTRICTIONS ON USE OF HOMESTEAD SECTION

6. The Covenantor's land shall be for the exclusive use and benefit of the Owner subject to all the following limitations and restrictions:
 - (a) Further sub-division of the Covenantor's land is prohibited.

Within the Homestead Envelope

- (b) Any construction or reconstruction of, or the refurbishing or alteration of any part of the exterior of, or any improvement upon any homestead envelope is absolutely prohibited until and unless the Owner of such developed area first obtains approval from the Design Review Panel.
- (c) No application to the Napier City Council or other appropriate territorial authority for resource or building consent shall be made unless the Owner first obtains the written approval of the Design Review Panel.
- (d) All applications for approval by the Design Review Panel must be submitted in accordance with the requirements laid down in the Design Guidelines of the Esk Hills Residents Society.
- (e) All new dwellings and accessory buildings and any subsequent external additions or alterations to the same shall be designed by an Architect.
- (f) The placement of re-located or kitset dwellings on a Homestead Section is prohibited.
- (g) The parking of boats, caravans or motor-homes is restricted to within the Homestead Envelope and the parking must be within an enclosed or screened area located to minimise visibility from the road or other Owner's Homestead Envelopes.
- (h) No homestead section may include more than one Main Dwelling, one Secondary Dwelling and an Accessory Building.
- (i) A fenced service yard shall be provided within each Homestead Envelope which encloses or screens all garbage, recycling or rubbish receptacles, clotheslines and other utility installations.
- (j) Garden sheds or any structure over 2 metres in height or 5 m² in area must be approved by the Design Review Panel and must be of similar quality and design to the principal dwelling and each Homestead Envelope is restricted to one garden shed or similar structure.
- (k) Satellite dishes must be under 1 metre in circumference.
- (l) Fences, walls and retaining walls shall be no higher than 2 metres and their construction and appearance must be of comparable quality to the main dwelling but must not be constructed in such a way as to present a fortress façade to the road.
- (m) The light source of external lighting specifically but not limited to spotlights, installed within the Homestead Envelope shall not be visible from a neighbouring dwelling.
- (n) All service utilities e.g. power, telephone, water shall be located below ground.

- (o) Modifications to the ground levels, grading and drainage patterns approved for each Homestead Envelope are not permitted unless specifically approved in writing by the Design Review Panel.
- (p) All site and roof drainage must be either retained on site or directed to reticulated drainage or swales in accordance with the approved subdivision plan.
- (q) The area within the Homestead Envelope not occupied by buildings or paving is to be landscaped with a combination of grass, groundcovers, shrubs and trees and all landscaping work is to be completed within 12 months of the dwelling being occupied.

Outside the Homestead Envelope

- (r) No paving other than driveways and pathways or parking areas linking the public roadway to the Homestead Envelope may be located outside the Homestead Envelope.
- (s) Except driveways or pathways, underground services and waste water disposal systems any building, construction or landscaping work including the construction of walls and fences outside the Homestead Envelope is prohibited without the specific written approval of the Design Review Panel.
- (t) No earthworks or grading other than the minimum required for driveways or underground services is permitted outside the Homestead Envelope.
- (u) The parking of and storage of vehicles larger than six (6) metres in length is prohibited outside Building Envelopes.
- (v) All areas disturbed during construction of inter alia dwellings, driveways and the laying of services, are to be re-instated to match the surrounding area within three (3) months of the completion of such work.
- (w) Existing native vegetation (e.g. Kanuka) shall be preserved, protected and maintained and shall not be removed without the prior written approval of the Society.
- (x) The planting of trees and shrubs in the Homestead Section Residual Area shall be limited to species which do not exceed five (5) metres in height and which do not unreasonably interfere with the view from a neighbouring Homestead Envelope.

RESTRICTIONS ON THE USE OF VILLA SECTIONS

- 7. The Owners of Villa Sections covenant to be bound by the above covenants relating to Homestead Sections mutatis mutandis:
6(a), 6(b), 6(c), 6(d), 6(e), 6(f), 6(i), 6(k), 6(l), 6(m), 6(n), 6(o), 6(p), 6(q).
- 8. The owners of Villa Sections further covenant:
 - (a) Parking outside dwelling structures on Villa Sections shall be limited to one boat or caravan or motor home or motor vehicle not exceeding five (5) metres in length.

- (b) The planting of trees or shrubs on Villa Sections shall be limited to species which do not unreasonably interfere with views from a neighbouring Villa Section or access to sunlight of a neighbouring Villa Section.

ENFORCEMENT

- 9. The Covenantor grants to the Society the right to:
 - (a) Stop any building or development work on the Covenantor's land which has not been approved by the Design Review Panel, or if approved is not being built or developed in accordance with the plans approved by the Design Review Panel; and
 - (b) To caveat the Covenantor's land to secure unpaid levies, fines or debits for damage to communal facilities owing to the Society.
 - (c) To enter onto the Covenantor's land and complete or rectify the work to the satisfaction of the Society at the Covenantor's expense.

Nothing shall stop the Covenantee from enforcing the covenant rights described herein.

TIME FRAME

- 10. The Covenantor will register this Deed against the Covenantor's Land to provide notice of the Covenants to any future purchasers or owners of the Covenantor's Land.
 - (a) The Covenants shall endure for a period of sixty (60) years from the date of this Deed for the benefit of the Covenantee's Land as set out in this Deed and shall be enforceable against the Covenantor's Land during that period by any one or more of the Covenantee's at any time.
 - (b) Upon the expiry of that period of sixty (60) years this Deed shall be deemed to have been cancelled by agreement and shall thereafter have no force or effect.

Dated 2004

EXECUTED by the Covenantor)
EAST HILLS (2001) LIMITED)
in the presence of:)

EXECUTED by the Covenantee)
EAST HILLS (2001) LIMITED)
in the presence of:)

SCHEDULES:

- A All Homestead Sections and Villa Sections including the access lots except that of the Covenantees**

- B All Homestead Sections, Villa Sections and access lots except those of the Covenantors**