

Constitution

Darnley Hall Pty Ltd

ACN 000 099 034

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Preamble

The building known as Darnley Hall Pty Ltd ('Darnley Hall') is a company title building, which means that the company, Darnley Hall Pty Ltd (ACN 000 099 034) is the legal owner of the entire building located at 12 Onslow Avenue, Elizabeth Bay and the land with the title reference 2/176006, including each home unit in the building. The members of Darnley Hall own shares in the Company. The ownership of a group of shares entitles a Member to various rights and imposes various obligations on the Member.

This Constitution sets out the objectives and powers of the Company, as well as the basic rights, obligations and rules for living in Darnley Hall. Together with the House Rules of Darnley Hall, the documents provide a method of regulating life in Darnley Hall for the enjoyment of all residents. Compliance with the Constitution and House Rules will result in shared values and behaviour that is advantageous to all Members of Darnley Hall. Essentially, the Constitution and House Rules have the primary objective of protecting the Company and its Members and thereby protecting the value of the entire building.

The Directors of the Company are elected by the Members at each Annual General Meeting. The Directors are responsible for managing the affairs of the Company, and are empowered to do all things that the Company can do under its Constitution subject to the *Corporations Act* 2001 (Cwlth). The Directors of Darnley Hall, like Directors of companies in general, have a duty to act in the best interests of the whole company and in accordance with the Constitution.

1 The Company

- 1.1. The name of the Company is Darnley Hall Pty Ltd.
- 1.2. The objects of the Company are to control, manage, operate and administer the Property as a block of residential units for the benefit of its Members.
- 1.3. The Company is a proprietary company limited by shares.

2 Interpretation

- 2.1. In this Constitution:

- (a) “**Constitution**” means this Constitution, and any of the replaceable rules stipulated by the *Corporations Act 2001* (Cth) that apply to the Company;
- (b) “**Company**” means Darnley Hall Pty Ltd;
- (c) “**Common Area**” means any part of the Property that is not comprised in a Home Unit;
- (d) “**Corporations Act**” means *Corporations Act 2001* (Cth);
- (e) “**Cosmetic Work**” means:
 - (i) installing or replacing hooks, nails or screws for hanging paintings and other things on any internal walls of a Home Unit or the inner surface of perimeter walls of a Home Unit;
 - (ii) installing or replacing handrails any internal walls of a Home Unit or the inner surface of perimeter walls of a Home Unit;
 - (iii) painting any internal walls of a Home Unit or the inner surface of the ceiling or any perimeter walls of a Home Unit;
 - (iv) filling minor holes and cracks in an internal walls of a Home Unit or the inner surface of the ceiling or any perimeter walls of a Home Unit;
 - (v) laying carpet on the upper surface of any floor in a Home Unit;
 - (vi) installing cupboards or built-in wardrobes in a Home Unit;
 - (vii) installing internal blinds and curtains in a Home Unit;
 - (viii) installing light fixtures within a Home Unit which are non-recessed;
 - (ix) any other work determined by the Directors from time to time to be Cosmetic Work;
- (f) “**Directors**” means all directors of the Company;

- (g) “**Home Unit**” means a cubic space on the Property that is identified in clause 3.2 and is bounded by:
- (i) the upper surface of any floor;
 - (ii) the inner surface of any perimeter wall;
 - (iii) the under surface of any ceiling; and
- includes any fixture or fitting that is attached or annexed to any part of the Home Unit;
- (h) “**Interest Rate**” means a rate that is ten per-cent (10%) per annum, or such or such other amount as an Owners Corporation of a strata scheme is entitled to charge on unpaid contributions under the *Strata Schemes Management Act 2015* (NSW);
- (i) “**Levy**” means a levy made under clause 4.1 of this Constitution;
- (j) “**Levy Contribution**” means any contribution that a Member is required by clause 4.2 of this Constitution to make to a Levy made under clause 4.1 of this Constitution;
- (k) “**Major Renovations**” means any renovation, repair or works other than a Cosmetic Work, including:
- (i) renovating a kitchen, bathroom or laundry within a Home Unit;
 - (ii) installing or replacing wood or other hard floors within a Home Unit;
 - (iii) installing or replacing wiring, cabling, power or access points within a Home Unit;
 - (iv) work involving reconfiguring internal walls within a Home Unit; and
 - (v) any other determined by the Directors from time to time to be Major Renovations;
- (l) “**Member**” means a holder or joint holder of a Share Group. A joint Share Group is entitled to one (1) vote. Neither holder of the Share Group may appoint the other holder as an alternate director;
- (m) “**Percentage of Issued Capital**” means, in respect of each Member, the percentage set opposite that Member’s Share Group in clause 3.2;
- (n) “**Property**” means 12 Onslow Avenue, Elizabeth Bay NSW 2011 with title reference 2/176006;

- (o) **“Rules”** means any rules, regulations or by-laws issued by the Directors under clauses 7.1 or 9.2 from time to time; and
- (p) **“Share Group”** means any of the groups of issued shares in the Company referred to in clause 3.2.

2.2. In this Constitution, unless the contrary intention appears, the singular includes the plural and the plural includes the singular.

3 Share Groups

- 3.1. The issued capital of the Company consists of 31,500 fully paid ordinary shares.
- 3.2. The issued capital of the Company is divided into the Share Groups set out in the table below.

Lot Number/Share Group	Share Numbers	Percentage of Issued Capital	Total Shares	Home Unit Number
1	1-1000	3.17%	1,000	1
2	1001-1650	2.06%	650	1A
3	1651-2150	1.59%	500	2A
4	2151-4550	7.62%	2400	3
5	4551-5350	2.54%	800	4
6	5351-7850	7.94%	2,500	5
7	7851-10350	7.94%	2,500	6
8	10351-13350	9.52%	3,000	7
9	13351-16050	8.57%	2,700	8
10	16051-19300	10.32%	3,250	9
11	19301-22000	8.57%	2,700	10
12	22001-25250	10.32%	3,250	11
13	25251-31500	19.84%	6,250	12

- 3.3. The table shown in clause 3.2 shows the Share Numbers owned by Members of Darnley Hall Pty Ltd. The Share Numbers provide their owner with the right to exclusive use and occupation of the Home Unit associated with the Share Numbers. The respective rights to the exclusive use and occupation conferred by clause 3.2 may be exercised by the respective owner or owners for the time being of the respective groups of shares or subject to the approval of the Directors by his or her tenants.
- 3.4. The right conferred on each Member under clause 3.3 is a personal right only and does not confer on the Member any proprietary right in or over the Property, any part of the Property or the Home Unit. This personal right is a right to occupy in accordance with clause 3.2 and 3.3 of this Constitution.

4 Levies

- 4.1. The Directors may at any time, in their sole discretion, make a Levy on the Members of such amount as the Directors consider to be sufficient to permit the Company to

meet its actual or expected liabilities, incurred or to be incurred, in the management and ownership of the Property.

- 4.2. In the event that the Directors make a Levy on the Members under clause 4.1, each Member will be required to pay a Levy Contribution of such part of the Levy as the Directors, acting reasonably, decide that the relevant Member must pay.

The Directors have a right to levy a member for a charge that has been incurred by the company solely on behalf of that Member or as a result of that Member's neglect or failure to make a payment to the Company or failing to comply with a notice issued by the Company. In exercising this power, the Directors will act only for a proper purpose and in the best interests of the Company.

- 4.3. Without limiting clause 4.2, each Member will usually pay a Levy Contribution to the Company that is calculated by dividing the total amount of the Levy by that Member's Percentage of Issued Capital within twenty-eight (28) days of the date on which that Member is given notice of the Levy in accordance with clause 4.4.

- 4.4. In the event that the Directors make a Levy on the Members under clause 4.1, the Directors must, as soon as is reasonably practicable, give to each Member a notice which:

- (a) identifies the amount of the Levy Contribution which the Member is required to pay; and
- (b) informs the member that the Member must pay the Levy Contribution within twenty-eight (28) days of the date of the notice.

- 4.5. Without limiting clause 4.1, the Directors may at any time in their sole discretion make a Levy on the Members under clause 4.1 to establish:

- (a) an administrative fund to permit the Company to meet its actual or expected liabilities incurred or to be incurred in the day to day management of the Company and the Property;
- (b) a capital works fund to permit the Company to meet its actual or expected liabilities incurred or to be incurred for the renewal, repair or replacement of any part of the Property; or
- (c) a special fund to permit the Company to meet its actual or expected liabilities incurred or to be incurred in the undertaking of specified major works.

- 4.6. The Directors may at any time in their sole discretion cancel a Levy or reduce the amount of a levy, and may refund or credit any Levy Contribution in respect of such a Levy made by a Member.

5 Responsibilities of Members

- 5.1. Each Member must keep the Home Unit set opposite that Member's Share Group in clause 3.2 in a good state of repair and cleanliness and shall make good from time to time all wear and tear.
- 5.2. No Member may use the Home Unit set opposite that Member's Share Group in clause 3.2 for any purpose other than as a private residence or a private residence containing a home office.
- 5.3. Each Member must personally bear the cost of:
 - (a) any utility or service that is supplied to that Member's Home Unit for the benefit of the Member or any invitees to or other occupants of that Member's Home Unit;
 - (b) any council rates or charges in respect of that Member's Home Unit; and
 - (c) any other cost which the Company resolves each member must personally bear by ordinary resolution passed in a general meeting.
- 5.4. Each Member must:
 - (a) comply with the Rules;
 - (b) take all reasonable steps to ensure that any invitees to that Member's Home Unit have been made aware of the Rules; and
 - (c) take all reasonable steps to ensure that any invitees who reside in that Member's Home Unit for greater than five (5) days comply with the Rules.
- 5.5. Each Member must indemnify the Company for any loss or damaged suffered by the Company as a result of or in connection with:
 - (a) any act or omission by the Member in or in respect of that Members Home Unit;
 - (b) any act or omission by any invitees to that Member's Home Unit; and
 - (c) without limiting clause 5.5(a), any works, repairs or renovations carried out by or at the instruction of the Member.
- 5.6. Each Member must refrain from using the Home Unit set opposite that Member's Share Group in clause 3.2 or any part of the Common Area:
 - (a) in any manner or for any purpose that causes a nuisance or hazard to any person occupying any other Home Unit or using any part of the Common Area or that interferes unreasonably with any other person's use or enjoyment of another Home Unit or any part of the Common Area; and

- (b) in any manner that unreasonably obstructs any part of the Common Area.

6 Maintenance Powers and Responsibilities of the Company

- 6.1. The Company must keep the Common Areas in a good state of repair and cleanliness and shall make good from time to time all wear and tear to the Common Areas.
- 6.2. The Directors, or any person authorised by the Directors, may, upon the provision of reasonable notice to the Member, enter a Home Unit to:
 - (a) effect any work necessary, in the reasonable opinion of the Directors, in order to repair or renew any part of the Common Areas;
 - (b) effect any work necessary, in the reasonable opinion of the Directors to remove or mitigate any risk:
 - (i) to the health and safety of Members and residents on the Property;
 - (ii) of damage to any part of the Common Areas or any other Home Unit
 - (c) test any fire safety device or installation, or inspect any electrical, gas or plumbing installation, for the purpose of ascertaining whether the installations are compliant with any law; or
 - (d) determine whether a Member has breached one of his or her obligations under clause 5.
- 6.3. The Directors may exercise the Company's power under clause 6.2:
 - (a) without providing notice to the Member who owns the Share Group to which the Home Unit relates, in circumstances where the Directors consider there to be an imminent risk:
 - (i) to the health and safety of Members and residents on the Property;
 - (ii) of damage to any part of the Common Areas or any other Home Unit; and
 - (b) in all other cases, only after having provided adequate and reasonable notice to the Member who owns the Share Group to which the Home Unit relates.

7 Leasing and Licensing Home Units

- 7.1. Without limiting clause 9.2, the Directors may from time to time make, alter or revoke Rules regulating the leasing and licensing of Home Units by members.
- 7.2. A Member must not lease, licence or otherwise allow a third party to occupy the Home Unit set opposite that Member's Share Group in clause 3.2:
 - (a) otherwise than in accordance with Rules issued by the Directors under clause 7.1; or

- (b) in the event that no such Rules are issued, without the consent in writing of the Directors and subject to such terms and conditions as the Directors see fit to impose.
- 7.3. The Directors may only withhold consent, under clause 7.2(b), or any rules issued by the Directors pursuant to clause 7.1, on reasonable grounds.
- 7.4. In the event that a Member leases, licences or otherwise allows a third party to occupy the Home Unit set opposite that Member's Share Group in clause 3.2, the Member must:
 - (a) take all reasonable steps to ensure that the lessee, licensee or occupant has been given a copy of the Rules;
 - (b) taken all reasonable steps to ensure that the lessee, licensee or occupant has signed the Licence to Occupy;
 - (c) take all reasonable steps to ensure that lessee, licensee or occupant complies with the Rules; and
 - (d) indemnify the Company for any loss or damaged suffered by the Company as a result of any act or omission of a lessee, licensee or occupant.
- 7.5. Nothing in clause 7.2 prevents a Member from allowing a member of his or her immediate family or a person with whom he or she is in a domestic relationship to occupy the Home Unit set opposite that Member's Share Group in clause 3.2.

8 Renovations and Repairs

- 8.1. Without limiting clause 9.2, the Directors may from time to time make, alter or revoke Rules regulating the carrying out of repairs, improvements, renovations and maintenance work by Members.
- 8.2. Each Member may carry out Cosmetic Work on the Home Unit set opposite that Member's Share Group in clause 3.2 and any part of the Common Area that is physically connected to any part of that Home Unit, other than for repainting the external walls, windows, or doors of the external areas within each lot. without the consent of the Directors.
- 8.3. A Member must not carry out Major Renovations to the Home Unit set opposite that Member's Share Group in clause 3.2 and any part of the Common Area connected to that Home Unit without the consent in writing of the Directors and subject to such terms and conditions as the Directors see fit to impose. Prior to reaching a decision on the application the Directors will consult Members whose apartments are contiguous to that of any Members who seek approval for any major renovation.
- 8.4. The Directors may require any Member who carries out any repairs, improvements, renovations and maintenance work of any kind on any Home Unit or part of the Common Area otherwise than in accordance with clauses 8.2 and 8.3 to take such

steps as the Directors see fit to rectify the unauthorised work and return the Home Unit or Common Area to the condition that it was in prior to the unauthorised work.

- 8.5. Each Member who carries out any repairs, renovations and maintenance work of any kind on any Home Unit or part of the Common Area:
- (a) indemnifies the Company for any loss or damaged suffered by the Company as a result of the repairs, renovations and maintenance or anything done or omitted to be done in connection with the repairs, improvements, renovations and maintenance work; and
 - (b) warrants that the repairs, improvements, renovations and maintenance work will be carried out in a competent and proper manner.
- 8.6. Each Member when carrying out Cosmetic Work or Major Renovations must personally bear the cost of carrying out any Cosmetic Works or Major Renovations.
- 8.7. Each Member carrying out Cosmetic Work or Major Renovations must indemnify the Company and each of its Directors and Members against any loss or damage arising from or associated in any way with the Cosmetic Work or Major Renovations, including loss or damage associated with:
- (a) the skill or care with which the Cosmetic Work or Major Renovations were carried out;
 - (b) the materials used to carry out the Cosmetic Work or Major Renovations;
 - (c) a failure of the Cosmetic Work or Major Renovations to comply with any development approval or law;
 - (d) any damage caused to any part of the Company's Property during or as a result of the Cosmetic Work or Major Renovations.

9 Directors

- 9.1. The Directors may exercise all the powers of the Company except any powers that this Constitution or any law requires the Company to exercise in general meeting.
- 9.2. Without limiting clause 9.1, the Directors may from time to time make, alter or revoke Rules regulating the operation and management of the Company and the Property.
- 9.3. The Directors may from time to time confer on a single director, or a sub-committee of directors, any of the powers that the Directors can exercise, subject to such conditions as the Directors think fit.
- 9.4. The office of a Director will automatically be vacated if the Director:
- (a) becomes bankrupt or enters into a compromise with his or her creditors;

- (b) in the reasonable opinion of the other Directors, loses his or her legal capacity, including by reason of a mental or cognitive illness;
- (c) ceases to be a Member of the Company;
- (d) is absent from 3 consecutive meetings of the Directors without special leave of absence from the Directors and the Directors as a result declare his or her office to be vacant;
- (e) is convicted of a serious indictable offence; or
- (f) is prohibited from being a Director by law.

9.5. The Company in general meeting may by ordinary resolution:

- (a) appoint a person as a Director;
- (b) remove a Director from office; and
- (c) appoint another Director in his or her place.

9.6. Subject to this constitution, the Company in general meeting may appoint new Directors, and may increase or reduce the number of Directors in office, and may also determine in what rotation such increased or reduced number is to go out of office.

9.7. The Company must at all times have at least two (2) Directors and no more than seven (7) Directors.

9.8. A Director who is eligible to vote at a Directors' meeting may appoint any person who is approved by the majority of the other Directors as an alternate Director to exercise some or all of the director's powers for a specified period. The appointment must be made in writing and will not be valid until it is approved by the other Directors.

9.9. An alternate Director appointed under clause 9.8 may exercise all the powers and rights of his or her appointor in the absence of the appointing Director and shall be subject to the same terms and conditions affecting the appointing Director.

9.10. A joint holder of a Share Group must resolve that only one holder is nominated as Director. The holder nominated as Director must permanently hold that position and cannot alternate with the other Member named in the joint Share Group.

9.11. If the number of Directors falls below the minimum fixed by clause 9.7, the remaining Director or Directors may not exercise the powers of the Directors except:

- (a) in the case of an emergency;
- (b) to cause the Company to comply with a mandatory legal requirement; or

- (c) to call a general meeting of the Members of the Company for the purpose of electing further Directors.
- 9.13. To the extent permitted by law, every Director and former Director of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such a Director.
- 9.14. To the extent permitted by law, the Company may resolve to pay to insure its Directors against all costs, expenses and liabilities incurred as such a Director.
- 9.15. All acts done by a Director, a Directors' meeting or a committee of Directors shall, even if it is discovered afterwards that there was a defect in the appointment, voting or continuance in office of any Director, be as valid as if every Director:
 - (a) had been duly appointed;
 - (b) had continued in office;
 - (c) was duly qualified to be a Director; and
 - (d) had been entitled to vote.
- 9.16. The Directors may at any time appoint any person as a Director to fill a casual vacancy. Any Director so appointed must have his or her appointment confirmed by resolution passed at the next general meeting of the Company held after the appointment is made. If the appointment is not confirmed at that meeting, the person ceases to be a Director of the company at the end of that meeting.

10 Proceedings of Directors

- 10.1. Unless the Directors determine otherwise, the quorum for a Directors' meeting is two (2) Directors. That quorum must be present at all times during the meeting.
- 10.2. A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director in writing.
- 10.3. A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing consent. A Director may only withdraw his or her consent within a reasonable period before the meeting.
- 10.4. The Directors may elect a Director to chair their meetings. The Directors may determine the period for which the Director is to be the chair. The Directors must elect a Director present to chair a meeting, or part of it, if a Director has not already been elected to chair the meeting, or a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
- 10.5. A resolution of the Directors may be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 10.6. Except as provided under clause 10.5, each Director is entitled to cast one vote on each resolution put at a Directors' meeting.

- 10.7. A Director is not entitled to be present at any Directors' meeting or vote on any resolution unless all sums presently payable by the Director in respect of a Share Group held by the Director have been paid, including any Levy Contributions.
- 10.8. The Directors may pass a resolution without a meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 10.9. The Directors must cause minutes to be kept of proceedings and resolutions of Directors' meetings.
- 10.10. A Director of the Company who has a material personal interest in a matter that relates to the affairs of the Company must not:
- (a) vote on a matter or transaction that relates to that interest; and
 - (b) be present during any part of a Directors' meeting at which a matter or transaction that relates to that interest is discussed
- unless he or she is permitted to do so under clause 10.11.
- 10.11. A Director of the Company may vote on a matter or transaction that relates to a material personal interest, and be present during part of the Directors' meeting at which a matter or transaction that relates to that interest is discussed, if either:
- (a) the Director disclosed the nature and extent of the interest under s 191(1) of the Corporations Act; or
 - (b) the interest was exempt from disclosure under s 191(2) of the Corporations Act; and
 - (c) the other Directors resolve to allow the Director to vote or be present, as the case may be.
- 10.12. A Director who has complied with s 191(1) of the Corporations Act, by firstly disclosing the nature and extent of the interest and secondly, the other Directors have resolved that the Director could vote or be present during the director meeting of the disputed issue, may keep a benefit received by him or her under a transaction of the Company in which he or she had a material personal interest.
- 10.13. Nothing in clause 10.10, 10.11 and 10.12 prevents a Director from earning an income or fee from activities that they have undertaken for the Company which does not arise from their role as a Director.

11 Members

- 11.1 The Company must cause a register of Members to be kept in accordance with the Corporations Act.

12 General Meetings of Members

- 12.1. A general meeting of the Members of the Company may be called by a valid resolution of the Directors of the Company.
- 12.2. The Directors of the Company must call a general meeting of the members of the Company within 21 days if Members with at least 5% of the votes that may be cast at a general meeting submit to the secretary of the Company a request that:
 - (a) is in writing;
 - (b) states any valid resolution to be proposed at the meeting; and
 - (c) is signed by the members making the request.
- 12.3. Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, such a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- 12.4. At least 21 days' notice must be given of a general meeting of the Company's Members. Such notice must be given in writing to each member entitled to vote at the meeting and to each Director. Notice need only be given to one Member of a joint membership.
- 12.5. Members with at least 5% of the votes that may be cast at a general meeting of the Company may give notice to the Company of a resolution that they wish to propose at the general meeting.
- 12.6. A general meeting may be called or held using any technology consented to by all the Members. The consent may be a standing consent. A Member may only withdraw his or her consent within a reasonable period before the meeting.
- 12.7. The quorum for a general meeting of the Company's Members is four (4) Members, including Members attending by proxy or by body corporate representative. The quorum must be present at all times during the meeting.
- 12.8. The Company Secretary may be appointed by the Directors to chair any General Meeting.
- 12.9. A Member is not entitled to be present or to vote at any general meeting where that Member has outstanding levy notice/s that have an amount that is greater than 3 months in respect of their share group.
- 12.10. Subject to any rights or restrictions attached to any class of shares, at a meeting of Members of the Company:
 - (a) on a show of hands, each Member has one vote; and
 - (b) on a poll, each Member has one vote for each share that they hold. A Share Group with a joint membership is entitled to one (1) vote.
- 12.11. If a Share Group is held jointly or in common and more than one Member votes in respect of that Share Group, only the vote of the Member whose name appears first in the register of members counts.
- 12.12. A resolution put to a vote at a meeting of the Company's Members must be decided on a show of hands which may be followed by poll.

- 12.13. On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 12.14. If a poll is demanded, the poll must be taken when, and in the manner that, the chair, in his or her absolute discretion, directs.
- 12.14.1 A poll vote maybe demanded by any Member present at the meeting.
- 12.14.2 Any Member present at the meeting may request a poll vote either before the vote is taken, before the voting results on a show of hands are declared, or immediately after the voting results on a show of hands are declared.
- 12.15. A Member of the Company who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint another Member as the Member's proxy to attend and vote for the Member at the meeting.
- 12.16. The appointment of a proxy will not be valid unless the appointing Member has complied with all requirements set out in the Corporations Act or stipulated by the Directors from time to time, including all requirements to give notice to the Company.
- 12.17. Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes, the appointing Member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) transfers the Share Group in respect of which the proxy was given.
- 12.18. A body corporate which is a Member may appoint a natural person who is a Director or officer of that body corporate as a representative to exercise all or any of the powers the body corporate may exercise at meetings of the Company's Members.

13 Recovery of Unpaid Levy Contributions

13.1 Interest on Unpaid Levy Contributions

In the event that a Member fails to pay a Levy Contribution prior to the time for payment specified in clause 4.2, the Company may require the Member to pay interest, which shall compound daily, at the Interest Rate until such time as the Levy Contribution is paid in full.

13.2. Forfeiture

The Directors may, as an alternative to the mechanism described in clause 13.3:

- (a) cause the Company to issue a default notice to a Member who has failed to pay a Levy Contribution within twenty-eight (28) days of the time for payment of that Levy Contribution specific in clause 4.2;

- (b) cause the Company to forfeit the Share Group held by a Member who has received a default notice under clause 13.2(a) and is still in default twenty-eight (28) days after having received that notice, the consequences of which are that:
 - (i) the Member's Share Group will be forfeited and the Member will cease to be a Member of the Company;
 - (ii) the Member will remain liable to pay any outstanding Levy Contribution and any interest that has accrued on any outstanding Levy Contribution;
 - (iii) the Directors may cause the Company to commence legal proceedings for the recovery of vacant possession of the Home Unit to which the Share Group forfeited under clause 13.2(b)(i) relates;
 - (iv) the Directors may reissue the Share Group forfeited under clause 13.2(b)(i) for the best reasonably obtainable market price; and
 - (v) the Directors must apply the proceeds of any reissue of the Share Group under clause 13.2(b)(iv) to the discharge of the liability of the Member in default to the Company, the legal costs incurred by the Company in connection with any action under clause 13.2(b)(iii) and the costs associated with the reissue of the Share Group under clause 13.2(b)(iv), and remit the residue to the former Member whose Share Group were forfeited under clause 13.2(b)(i).
- (c) at any time prior to the sale or disposal of a Share Group forfeited under clause 13.2(b) annul the forfeiture of the Share Group on such conditions as they think fit.

13.3. Suspension of Occupancy Rights

The Directors may, as an alternative to the mechanism described in clause 13.2:

- (a) cause the Company to issue a default notice to a Member who has failed to pay a Levy Contribution within twenty-eight (28) days of the time for payment of that Levy Contribution specific in clause 4.2;
- (b) cause the Company to suspend the rights granted under clause 3.3 to a Member who has received a default notice under clause 13.3(a) and is still in default twenty-eight (28) days after having received that notice, the consequences of which are that:
 - (i) the Member will remain liable to pay any outstanding Levy Contribution and any interest that has accrued on any outstanding Levy Contribution;
 - (ii) the Directors may cause the Company to commence legal proceedings for the recovery of vacant possession of the Home Unit set opposite that Member's Share Group in clause 3.2;

- (iii) notwithstanding any provision to the contrary in this Constitution, the Directors may cause the Company to lease the Home Unit set opposite that Member's Share Group in clause 3.2 for the best obtainable market rent for such period as the Directors think fit;
- (iv) the Directors must apply the proceeds of any lease under clause 13.3(b)(iii) to the discharge of the liability of the Member in default to the Company, the legal costs incurred by the Company in connection with any action under clause 13.3(b)(ii) and the costs associated with the entry into the lease under clause 13.3(b)(iii), and remit the residue to the Member; and
- (v) the rights of the Member that were suspended under clause 13.3(b) will be revived when his or her liability to the Company is paid in full.

13.4 Legal Action

The Directors may, as an alternative or in addition to the mechanisms described in clauses 13.2 and 13.3:

- (a) instruct a debt collection agency or commercial agent to recover an outstanding Levy Contribution and any interest that has accrued on that Levy Contribution from the Member;
- (b) commence legal proceedings, or instruct solicitors to commence legal proceedings, against the Member to recover those amounts as a debt from the Member;
- (c) recover from the Member any fees charged by a lawyer, debt collection agency or commercial agent in connection with the recovery of those amounts; and
- (d) without limiting clause 13.4(c), recover any legal costs incurred in commencing and prosecuting any legal proceedings to recover those amounts on an indemnity basis.

14 Lien

- 14.1. In addition to any other rights conferred by this Constitution or the law, the Company has a first and paramount lien on every Share Group registered in the name of a Member and upon the proceeds of sale of the Share Group for all money payable in respect of that Share Group, including without limitation a Levy Contribution and interest accrued on a Levy Contribution.
- 14.2. The registration of a transfer of a Share Group will not operate as a waiver of any lien of the Company which may exist in respect of a Share Group.
- 14.3. The Directors may at any time exempt a Share Group wholly or in part from the provisions of this Constitution concerning the Company's lien.
- 14.4. Subject to clauses 14.5 and 14.6 the Company may sell, in such manner as the Directors think fit, any a Share Group on which the Company has a lien.

- 14.5. A Share Group on which the Company has a lien shall not be sold unless:
- (a) a sum in respect of which the lien exists is presently payable; and
 - (b) at least twenty-eight (28) days prior to the date of the sale, the Company has given notice in writing to the Member or the person entitled to the Share Group by reason of the death, or bankruptcy of the Member or under any law relating to mental health or financial management, stating and demanding payment of the amount in respect of which the lien exists and which is presently due and payable.
- 14.6. The Directors must apply the proceeds of any reissue of the Share Group under clause 14.4 to the discharge of the liability of the Member in default to the Company, the legal, real estate agency and other costs incurred by the Company in connection with any with the sale of the Share Group, and remit the residue to the former Member whose Share Group were forfeited under clause 13.2(b)(i).

15 Transfer of Share Groups

- 15.1. A Member's Share Group may be transferred by instrument in writing in such form as the Directors may from time to time approve.
- 15.2. Subject to clause 15.3, a Member shall not transfer his or her Share Group to any person or corporation unless such person or corporation has been approved by the Directors.
- 15.2.1 Prior to listing their shares for sale, a Member must provide the potential incoming Member with the Company's Constitution, House Rules, Renovations Deed, Renovations Deed Poll, Licence to Occupy, most recent financial statement and the last approved Company Minutes of a General Meeting.
- 15.3. The Directors may only refuse to approve a transferee under clause 15.2 on reasonable grounds in the best interests of the Company.
- 15.4. A transfer of a Share Group under clause 15.1 will not be effective until the transferee is registered in the register of Members in respect of that Share Group. A transfer of a Share Group must be registered if:
- (a) the Directors approve the transferee under clause 15.2;
 - (b) the transferee delivers to the registered office of the Company:
 - (i) the instrument of transfer, duly stamped in accordance with any applicable law;
 - (ii) the certificate for the Share Group or satisfactory evidence of the loss or destruction of the certificate as the Directors are entitled to require under this Constitution;
 - (iii) where the register of members discloses a mortgage or charge over the Share Group, the consent in writing of any mortgagee or chargee of that Share Group or a discharge of the mortgage or charge; and
 - (iv) any other information which the Directors may reasonably require.

- 15.5. All instruments of transfer which are registered will be retained by the Company. Any instrument of transfer which the Directors may decline to register must, except in case of fraud, be returned on demand in writing to the person who lodged it with the Company.
- 15.6. The Directors may charge the transferor or transferee of a Share Group a fee to cover the costs associated with the transfer process.
- 15.7. The transferor of a Share Group will remain the holder of the Share Group until the name of the transferee is registered in the register of members in respect of the Share Group.

16 Transmission of Share Group

16.1. Death of Member

- (a) In the case of the death of a Member:
- (i) the survivor or survivors where the deceased was a joint holder;
 - (ii) the legal personal representative of the deceased where the deceased was a sole holder; or
 - (iii) the mortgagee or chargee of the Share Group noted in the register of members,
- shall be the only persons recognised by the Company as having any title to the deceased's interest in the Share Group.
- (b) The estate of a deceased joint holder will be jointly and severally liable in respect of any Share Group which has been jointly held by the deceased with other persons.
- (c) The Directors may require such evidence to prove the death of the Member, or a person's status as a legal personal representative, mortgagee or charge, as they think fit.

16.2. Registration of Transmission

Any person entitled to a Share Group in consequence of the death or bankruptcy of any Member, or under any law relating to mental health or financial management, may upon such information being produced as may from time to time properly be required by the Directors elect in writing either to:

- (a) be registered personally as holder of the Share Group; or
- (c) have some other nominated person registered as the transferee of the Share Group in accordance with clause 15.

17 Share Certificates

- 17.1. Each Member shall be entitled to one share certificate for his or her Share Group in the form prescribed by Directors from time to time.
- 17.2. In the event that a Member loses his or her share certificate, the Directors may issue a new share certificate to the Member if the Member:
- (a) provides a statutory declaration or other signed statement in a form acceptable to the Directors affirming that:
 - (i) the Member has not been able to locate the share certificate after having made a reasonable effort to search for the certificate; and
 - (ii) the Member has not pledged, mortgaged, otherwise encumbered or disposed of the share certificate;
 - (b) pays to the Company such fee as the Directors reasonably require the Member to pay for the purposes of permitting the Company to meet the cost of issuing the new share certificate.

18 Variation of Class Rights

The Company cannot vary or cancel the rights attached to Share Groups in a class of shares unless:

- (a) the Members of the Company pass a special resolution to vary or cancel the rights in general meeting; and
- (b) either:
 - (i) the Members holding Share Groups in the class pass a special resolution consenting to the variation or cancellation at a separate meeting of only those Members who hold Share Groups in the class; or
 - (ii) at least 75% of the Members holding Share Groups in the class consent to the variation or cancellation in writing in a form acceptable to the Directors.

19 Capital

19.1 Power to Alter Capital

In addition to any powers that it has to alter its capital under the Corporations Act, the Company may by resolution passed in general meeting:

- (a) convert all or any of the shares on issue into a larger or smaller number of shares, and require any amount unpaid on the shares which are converted to be divided equally among the replacement shares;

- (b) cancel any shares which have been forfeited and reduce the amount of its share capital by the amount of the shares cancelled;
- (c) convert any class of shares into any other class of shares;
- (d) issue new shares; and
- (e) reduce its share capital.

19.2 Share Buy-backs

The Company may buy back its own shares in accordance with the Corporations Act.

19.3 Capitalisation of Profits

The Company may capitalise its profits, including by issuing new shares.

20 Reserve

The Directors may at any time set aside out of the profits of the Company such sums as they think proper as reserves which may at the discretion of the Directors be applied for any purpose to which the profits of the Company may properly be applied.

21 Accounts

21.1 The Directors shall cause proper financial records to be kept and distribute copies of financial reports and a Directors' report in the circumstances required by the Corporations Act.

21.2 A Director must be permitted to inspect the accounts within a reasonable time after making a request to the chair of the Directors in writing.

21.3 To the extent permitted by law, the Directors may determine:

- (a) whether;
- (b) to what extent;
- (c) at what times and places;
- (d) on what conditions,

the accounts and any other records of the Company will be open to the inspection of Members not being Directors.

22 Notices

22.1 Each Member must supply an email and postal address to the Company for the sending of notices.

22.2 A Member may serve a notice on the Company by:

- (a) leaving it at, or sending it by post to, its registered office; or
- (b) emailing it to the email address of the chair of the Directors.

22.3 The Company may serve a notice on a Member by:

- (a) leaving it, or sending it by post to, the postal address of the Member; or
- (b) emailing it to the email address of the Member.

22.4 A notice that is sent by post will be deemed to be received at 5:30pm on the date five days after the date on which the letter was posted.

22.5 A notice may be given by the Company to the joint holders of shares by giving notice to the joint holder first named in the register of members. Such notice shall be taken to be notice to all joint holders.

23 Dealings with Property

The Company must not:

- (a) sell or dispose of;
- (b) grant rights to exclusive use or occupation over; or
- (c) charge, mortgage or encumber,

the Property or any part of the Property unless the dealing is approved in advance by a special resolution of the Members.

24 Conversion to Strata Title

The Company must not take any step associated with converting the Property to strata title unless the conversion is approved by a special resolution passed by 75% of all Members at an extraordinary general meeting.