



**CONSTITUTION
OF
OMAHA BEACH RESIDENTS SOCIETY INCORPORATED**

CONTENTS

	PAGE NO
1. NAME	1
2. DEFINITIONS AND INTERPRETATION	1
3. OBJECTS	3
4. MEMBERSHIP	4
5. USE OF COMMUNAL FACILITIES	6
6. LEVIES	6
7. OTHER OBLIGATIONS	8
8. BREACH OF OBLIGATIONS	9
9. OBLIGATIONS OF THE SOCIETY	10
10. LIMITATIONS OF THE SOCIETY	10
11. COMMITTEE	11
12. MANAGER	13
13. GENERAL MEETINGS	14
14. VOTING	15
15. DESIGN CONTROL COMMITTEE	16
16. GENERAL	17
SCHEDULE – SOCIETY BYLAWS	
1. USE	20
2. PROHIBITED ACTS	20
3. CLOSING OF COMMUNAL FACILITIES	20
4. KEYS/ACCESS CARDS	20
5. CONDUCT AND NOISE	21
6. MEMBERS' RESIDENCES	21
7. DESIGN APPROVAL	22

CONSTITUTION OF OMAHA BEACH RESIDENTS SOCIETY INCORPORATED

INTRODUCTION

1. NAME

1.1 Name of Society: The name of the Society is *“Omaha Beach Residents Society Incorporated”*.

1. DEFINITIONS AND INTERPRETATION

2.1 Definitions: In these rules, unless the context otherwise requires:

“Act” means the Incorporated Societies Act 1908.

“Annual Levy” means the annual levy payable by each Member in accordance with rule 6.3.

“Bank” means a bank registered under the Reserve Bank of New Zealand Act 1989.

“Bylaws” means the bylaws of the Society from time to time in force under rule 9.1.

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

“Committee” means the committee members from time to time elected to manage the affairs of the Society pursuant to this Constitution.

“Communal Facilities” means all land, buildings, plant, equipment, facilities and amenities including any private roads and walkways within the Precinct owned, leased, licensed or otherwise held or operated by the Society (as the Society may determine) from time to time, or any of them, as the context may require.

“Constitution” means this Constitution as amended or added to, including the schedule.

“Default Interest Rate” means four percentage points above the Society’s banker’s prime business overdraft rate applicable during the continuance of the relevant default.

“Design Control Committee” means the committee members from time to time appointed under rule 15.1 to consider design approval applications by Members.

“Design Guidelines” means the design guidelines issued by the Design Control Committee in respect of the Precinct, a Neighbourhood or part thereof pursuant to rule 15.5.

“District Plan” means the district plan which controls use and development of the Precinct.

“Financial Year” means each 12 month period commencing on 1 July in a year and ending on 30 June in the following year, or such other 12 month period as the Committee may from time to time specify.

“Invitee” means any invitee of, or any visitor to, an Owner or Occupier or mortgagee in possession of a Property.

“Land Covenants” means in respect of any Property the restrictive covenants in favour of the Society which are registered against the Owner’s Title to that Property.

“Manager” means the manager of the Society (if any), appointed under rule 12.1. 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.

“Member” means each person who is from time to time a member of the Society pursuant to rules 4.1 or 4.2.

“Neighbourhood” means any of the residential areas within the Precinct known as The Cove, The Dunes, The Sands, The Shores and Omaha Beach however named from time to time.

“Occupier” means any person occupying a Property under any lease, licence or other occupancy right and shall include all members of an Owner’s immediate family.

“Operating Expenses” means the total sum of all rates, taxes, costs and expenses of the Society paid or payable, or otherwise incurred in respect of the Communal Facilities and the operation of the Society (including, without limitation, the management expenses and management fee of the Manager and any provision for any of the foregoing which the Committee considers necessary or desirable).

“Owner” means each person registered as a proprietor (whether individually or with others) of a Property.

“Owner’s Title” means the registered legal title of an Owner in respect of the Owner’s Property.

“Precinct” means that part of the land at Omaha situated east of the causeway and south of Broadlands Drive generally known as Omaha South and including in particular the Neighbourhood and the adjoining reserves and beach areas.

“Property” means a property within the Precinct:

- (a) for which a separate registered legal title has issued; and
- (b) which has been fully developed as a residential property or which is a bare section available for such development.

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

“Society” means Omaha Beach Residents Society Incorporated.

“Special Levy” means a levy imposed on Members by the Committee under rule 6.2.

“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 meeting.

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, association, 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 clause 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 bylaws amending, consolidating or replacing the same.

3. OBJECTS

3.1 General: The Society is formed to promote the following objects for the benefit of Members:

- (a) The ownership or control of the Communal Facilities by the Society for the benefit of Members.
- (b) The proper operation, maintenance, repair, renovation and replacement of the Communal Facilities, the proper landscaping of any area within the Precinct and the levying of Members for the purpose of providing funds for, and meeting the costs and expenses of, such work.
- (c) The full and proper use of the Communal Facilities by Members.

- (d) The control of the design of all improvements, buildings, dwellings, landscapes and works of every kind on any Property.
- (e) The promulgation and enforcement of bylaws and covenants benefiting Members, a Neighbourhood and the Precinct generally.
- (f) Taking any action which may reasonably be expected to promote the health, safety, welfare, or well-being of the Members of the Society, whether of a recreational nature or otherwise.

3.2 Pecuniary gain not to be an object: The Society does not have as an object the pecuniary gain of Members, and no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society except on the dissolution of the Society in accordance with rule 16.1.

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

MEMBERSHIP

4. MEMBERSHIP

4.1 Members: Subject to these rules, at the date of adoption of this Constitution by the Society the Members of the Society are the persons whose names appear in the register of Members on that date.

4.2 Owners to be Members: Each Owner shall be a Member, and only Owners shall be Members, and for that purpose:

- (a) **Membership encumbrance:** An encumbrance is or shall be noted against each Owner's Title in favour of the Society, whereby each Owner is bound to become and remain a Member, and to perform the obligations of a Member as set out in this Constitution.
- (b) **Deed of covenant on assignment:** Each Member shall, prior to settling the sale of a Property, 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 a Member contemporaneously with the transfer of the Property, and so long as that Member remains Owner of that Property, to remain a Member and observe and perform 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 reasonable legal fees and disbursements of the Society's solicitors.

- (c) **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.
- (d) **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 maintenance of the register of Members pursuant to rule 4.3, and shall upon entry of the details in the register, become a Member.

4.3 Register of Members: The Society shall maintain a register of Members recording:

- (a) **For each Member:** the name, address, occupation, telephone number, email address and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
- (b) **For Occupiers:** where particulars have been given to the Society under rule 8.1, the name, address, occupation, telephone number and facsimile number (at home and at work) and similar details for a third party to be contacted in the event of absence or emergency.
- (c) **Membership:** the date upon which each Member became a Member.
- (d) **Mortgagee:** the name, contact person, telephone number and facsimile number of any person holding a mortgage over the Member's Property.

4.4 No notice of trust: No notice of any trust express, implied or constructive shall be entered on the register of Members.

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

4.6 More than one Owner: If there is more than one Owner of a Property, such Owners shall, except where inconsistent with the context, collectively constitute one Member for the purposes of this Constitution.

5. USE OF COMMUNAL FACILITIES

5.1 Use of Communal Facilities: Subject to any rules or Bylaws of the Society relating to the use of the Communal Facilities, each Member, Occupier and Invitee shall be entitled to make full use of the Communal Facilities.

5.2 Persons not entitled to use Communal Facilities: Subject to the terms of any resource consent relating to the Communal Facilities or any agreement between the Society and any person in respect of the Communal Facilities, no person (other than those persons set out

in rule 5.1), shall be entitled to use the Communal Facilities, provided that where a Communal Facility is located on land not owned by the Society, such as (by way of example and without limitation) land owned by a local authority or other person, this restriction may not apply and will be subject to the terms of any agreement with the land owner.

6. LEVIES

6.1 Annual Levy: Prior to, or as soon as practicable after, the commencement of each Financial Year the Committee shall fix the amount of an annual levy to be paid by each Member in order to defray the estimated Operating Expenses of the Society in respect of that Financial Year and the Society shall give each Member written notice of the amount so fixed and the date by which the levy is payable.

6.2 Special Levies: The Committee may, from time to time, fix Special Levies to be paid by Members, which may be either:

- (a) a Capital Improvements levy which the Committee considers should be set aside as a fund, or part of a fund, to allow for and meet the costs of Capital Improvements; or
- (b) a special levy which the Committee considers is necessary for the Society to meet its obligations under this Constitution; or
- (c) a supplementary expense levy to assist the Society in defraying the amount by which the actual Operating Expenses incurred in the immediately preceding Financial Year exceeded the aggregate amount of the Annual Levies received by the Society in respect of that Financial Year,

any such Special Levy to be subject to the approval of Members by Special Resolution.

6.3 Payment of levies: Each Member shall, on or before the due date specified by the Society, pay the amount of each Annual Levy and each Special Levy to the Society in the manner specified by the Society for payment of such levy.

6.4 Sale of Property: Where a Member ("Vendor") sells a Property:

- (a) notwithstanding any other rule in this Constitution, the Vendor shall remain liable for all 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 Property to the Society until such time as the deed of covenant specified in rule 4.2(b) is received by the Society; and

- (c) the purchaser of the Property shall be liable as a Member for all unpaid indebtedness of the Vendor to the Society in respect of the Property purchased and a statement from the Society given pursuant to rule 6.5 shall be conclusive as to the amount of such indebtedness.

6.5 Society to provide statement: The Society shall, on application by a Member, or any person authorised in writing by a 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 amount of the Annual Levy for the current Financial Year;
- (b) the payments made, or due and unpaid, by the Member on account of the Annual Levy in respect of the current Financial Year;
- (c) the payments due and unpaid by the Member in respect of any Special Levies or other indebtedness of the Member to the Society; and
- (d) any accumulated unpaid default interest.

7. OTHER OBLIGATIONS

7.1 Covenants and Bylaws: Each Member shall promptly and fully comply with these rules, with all Bylaws made by the Society from time to time, and with all covenants in favour of the Society by such Member (whether by separate deed of covenant or as Land Covenants 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 Land Covenant registered against the Owner's Title to a Property, the provisions of the Land Covenant shall prevail and be given priority over the provisions of this Constitution (including any rule or Bylaw).

7.2 No alteration to Land Covenants: The Society shall not, except by Special Resolution, agree to the alteration of the terms of the Land Covenants as first noted against each Owner's Title.

7.3 Mortgagee of Property: Before granting any mortgage over a Property, 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 this Constitution upon exercising any powers as mortgagee.

8. BREACH OF OBLIGATIONS

8.1 Occupiers and Invitees: A reference to an act or omission by any Member shall include any act or omission by any Occupier or mortgagee in possession of that Member's Property or by any Invitee of that Member or Occupier or mortgagee in possession. If so required by

the Society at any time, a Member shall promptly advise the Society of details of the Occupier (if any) of the Member's Property, and if required by the Society shall procure such Occupier to enter into a deed of covenant with the Society (in a form acceptable to the Society), covenanting to be bound by this Constitution. Each Member must take all reasonable steps (including enforcing the terms of any lease, licence or other occupancy right) to ensure Occupiers of that Member's Property comply with this Constitution. In any case of persistent default of this Constitution by an Occupier, the Owner shall on demand by the Society, terminate the Occupier's right to occupy the Property.

8.2 Consequences: Upon any breach of this Constitution by a Member ("Offending Member"):

- (a) Where damage has been caused to the Communal Facilities, the Offending Member shall make good such damage.
- (b) If such default continues for seven days after notice is given by the Society to the Offending Member to remedy the default, the Society may do anything, including paying money, necessary to remedy the default.
- (c) 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 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 in respect of such breach, shall be a debt due from the Offending Member to the Society.

8.3 Default interest: If any money payable by a Member to the Society is in arrears and unpaid for 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.

THE SOCIETY

9. OBLIGATIONS OF THE SOCIETY

9.1 Bylaws: The Society shall promulgate, amend and distribute to Members from time to time Bylaws for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), Bylaws concerning the behavior of Owners, Occupiers and Invitees, and Bylaws governing the use of Properties. Upon the adoption of this Constitution such Bylaws are the Bylaws attached in the schedule to this Constitution.

9.2 Repair of Communal Facilities: The Society shall ensure the proper operation, maintenance, repair, renovation and replacement of the Communal Facilities, and shall undertake such Capital Improvements as are necessary for this purpose.

- 9.3 Insurance:** The Society shall effect and maintain all such insurances as it considers prudent with respect to the Communal Facilities and the Society's affairs, and shall meet all costs of such insurance (which shall include all valuations and other professional fees required or deemed desirable for the purposes of such insurances and the cost of certificates relating to such insurances).
- 9.4 Achieving objects:** The Society may, from time to time, take any action which in the opinion of the Committee is reasonably appropriate in order to achieve, or assist in achieving, the objects of the Society as set out in rule 3.1.

10. LIMITATIONS OF THE SOCIETY

- 10.1 No indebtedness:** The Society shall not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Society's obligations under this Constitution, except with the approval of Members by Special Resolution.
- 10.2 No encumbrances:** The Society shall hold its interests in the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with any such interest, except with the approval of Members by Special Resolution.
- 10.3 No investments:** The Society shall hold all funds in a Bank account maintained in accordance with rule 11.2, and shall not invest those funds other than by deposit with a Bank, except with the approval of Members by Special Resolution.
- 10.4 No improper use:** All Communal Facilities designed for recreational purposes shall be used only for such purposes. The Society shall, where practicable, procure the noting of a restrictive covenant to that effect against the title for such facilities for the benefit of all Members.

OPERATION OF THE SOCIETY

11. COMMITTEE

- 11.1 Powers:** The administration of the Society shall be vested in the Society in general meeting, and shall be delegated to the Committee. The Committee may exercise all the powers, authority and discretions of the Society as permitted by this Constitution and do on its behalf all such acts as they deem necessary or expedient. The powers, authority and discretions as exercised by the Committee are subject always to any limits which may from time to time be imposed by the Society. The Committee may delegate any of its powers to committees consisting of such member or members of their body as they think fit or to the Manager. Any committee so formed shall in the exercise of the powers so delegated conform to directions of the Committee.

11.2 Bank account: The Society shall maintain a bank account in New Zealand with a Bank approved by the Committee, and any drawings on that account shall be made only with the authority of either the Manager and one Committee member, or of two Committee Members.

11.3 Documents: All deeds and other documents and instruments requiring execution on behalf of the Society must be signed by two Committee members.

11.4 Composition: The Committee shall comprise the following persons:

- (a) a chairperson;
- (b) a treasurer/secretary; and
- (c) a minimum of three and a maximum of seven general Committee members or such other number of general Committee members as may be determined from time to time by the Society in general meeting before an election of Committee members.

On the adoption of this Constitution by the Society, each person holding office as a Committee member shall be deemed to have been appointed in accordance with this Constitution.

11.5 Appointment of members: The Committee members shall be appointed as follows:

- (a) The chairperson shall be a general Committee member elected as chairperson by the other general Committee members in accordance with rule 11.12.
- (b) The treasurer/secretary shall be the person who is Manager under rule 12.1 or, if at any time there is no such Manager, such other person as the Committee shall appoint from time to time.
- (c) The general Committee members shall be elected by the Society at annual general meetings in accordance with rule 11.7. The Society in general meeting may also elect a Member at any other time to fill a casual vacancy or a vacancy arising from an increase in the maximum number of Committee members fixed pursuant to rule 11.4(c). To be eligible for election as a general Committee member a person must be a financial Member of the Society.

11.6 Duration of membership: A Committee member shall hold his or her elected position until the earliest of:

- (a) the conclusion of the second annual general meeting of the Society after he or she was first elected or last re-elected, as the case may be, but he or she shall, if standing, be eligible for re-election;

- (b) the date written resignation from his or her position is received by the Society;
- (c) the date of removal from his or her position by the Society in general meeting; or
- (d) other than the treasurer/secretary, the date of cessation of his or her membership of the Society.

11.7 Election of general Committee members: At each annual general meeting an election shall be held to fill the vacancies created by the retirement of Committee members at that meeting under rule 11.6(a) and to fill any casual vacancies. If the number of eligible candidates whose election or re-election is approved by ordinary resolution of Members exceeds the number of vacancies, the election shall be determined by ballot. No person other than a Committee member retiring by rotation shall be eligible for election as a general Committee member at any meeting of the Society unless a notice in writing of the intention to propose such person, signed by at least two financial Members, has been given to the Society, together with the written consent of such person to the nomination, not less than 21 days prior to the date of the meeting at which the candidate is to be proposed.

11.8 Casual vacancies on Committee: In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership of the Society, or some other means) the remaining Committee members may appoint another Member to fill the vacancy until the position is filled by the Society in general meeting.

11.9 Duties of treasurer/secretary: The treasurer/secretary shall:

- (a) convene general meetings when requested to do so in accordance with this Constitution;
- (b) attend all meetings of the Committee and have full speaking rights at such meetings;
- (c) give all notices required to be given by these rules or as directed from time to time by the Society or the Committee;
- (d) keep minutes at all general meetings and Committee meetings and enter in the minute book:
 - (i) the time, date and venue of such meeting; and
 - (ii) all business considered and resolutions passed at such meeting;
- (e) hold in safe custody the common seal of the Society;

- (f) receive, and issue receipts for, all Annual Levies, Special Levies, and any other moneys paid to the Society;
- (g) operate and maintain a current bank account in the name of the Society in accordance with rule 11.2;
- (h) pay all accounts properly incurred by or on behalf of the Society;
- (i) report promptly to the Society any Members who fail to pay Annual Levies or Special Levies within the prescribed period;
- (j) keep all financial records and security documents of the Society in safe custody;
- (k) compile all proper accounting records of the Society from time to time, as required by law or by the Committee, which give a true, fair and complete account of the financial affairs and transactions of the Society; and
- (l) compile the financial statements of the Society immediately following each Financial Year as required by law and generally accepted accounting practice in New Zealand, and provide for the auditing of those financial statements and the distribution of them to Members as soon as reasonably practicable after each audit is completed.

11.10 Conduct of Meetings: The Committee may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit. A majority of the members of the Committee from time to time shall form a quorum for a Committee meeting. No business of the Committee shall be conducted at any time when less than a quorum is present at the same time and place. The Committee may meet at any time and the treasurer/secretary shall, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.

11.11 Resolutions in lieu of meeting: Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Committee members as would constitute a quorum at a Committee meeting shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and constituted provided that a copy of the proposed resolution has been sent to each Committee member not less than five days prior to the date on which the numbers of votes for and against the resolution are to be counted. Any such resolution may consist of one or more documents in similar form (including letters, facsimiles, electronic mail or other similar means of communication) each signed or assented to by one or more Committee members.

11.12 Chairperson: The Committee shall, within two months after the conclusion of each annual general meeting, elect one of their number to be chairperson, to chair committee meetings and otherwise exercise the powers of the chairperson set out in this constitution. The person so appointed shall hold office until:

- (a) a successor is elected by the Committee following the annual general meeting in the next succeeding year; or
- (b) the person is removed as chairperson at any time by a majority vote of the other Committee members; or
- (c) the person resigns, dies or otherwise ceases to hold office as a Committee member.

Any casual vacancy in the position of chairperson shall be filled by the Committee within two months after the vacancy occurs and pending the appointment of a successor the person who has been longest on the Committee shall act as interim chairperson.

11.13 Voting: A resolution of the Committee proposed at a meeting shall be passed if approved by the affirmative vote of a majority of the Committee members present at the meeting and entitled to vote on the matter. Each Committee member present at a meeting and entitled to vote on a matter, shall be entitled to exercise one vote on the matter. The treasurer/secretary shall not be entitled to vote on any resolution of the Committee. In the case of a tie in votes, the Chairperson may exercise a casting vote.

11.14 Seal: The Society shall have a common seal and the Committee shall provide for its safe custody. The common seal shall not be used except when authorised by the Committee and every instrument to which the common seal is affixed shall be signed by any two members of the Committee.

11.15 Validity of Committee's actions: All acts properly done by any meeting of the Committee or by any person acting as a Committee member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Committee member, or that they were disqualified, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Committee member.

11.16 Committee minutes and records: The Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Society and of the Committee. All business transacted at such meetings, as recorded in minutes signed by the chairperson of the relevant meeting or the next succeeding meeting, shall, except in the case of manifest error, be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

12. MANAGER

12.1 Duties: The Committee may by agreement appoint, remove and replace a person as Manager from time to time, to carry out such of the obligations of the Society, and exercise such of the discretions and powers of the Society, as the Committee shall see fit.

13. GENERAL MEETINGS

13.1 Annual general meetings: In addition to any other meetings in that year, the Society shall hold an annual general meeting each year. Not more than 18 months shall elapse between the date of one annual general meeting and that of the next. The Committee shall determine the time and place of each year's annual general meeting.

13.2 Special general meetings: A general meeting other than an annual general meeting may be requested by the Committee, or by written requisitions signed by not less than 25% of Members. The treasurer/secretary shall, within 14 days of receiving an effective request or sufficient written requisitions, call a special general meeting to be held within a further 30 days thereafter.

13.3 Powers of the 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 or discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision of this Constitution, a resolution in writing signed by not less than 75% of the Members entitled to vote in person or by proxy at general meetings shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.

13.4 Quorum: No business shall be transacted at any general meeting of the Society unless a quorum is present when the meeting proceeds to business. A quorum shall be not less than 20% of all Members or 20 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy.

13.5 Notice of general meeting: A notice of a general meeting of the Society shall be sent to every Member, together with a form of notice of appointment of proxy, not less than 10 working days before the date of such meeting. Such notice shall specify the date, time and venue of such meeting. In the case of a general meeting other than an annual general meeting such notice shall specify all business and all notices of motions to be considered at such meeting. No business or notice of motion which is not specified shall be discussed or transacted at such meeting.

13.6 Failure to give notice: Where notice of a meeting has been given, the accidental omission to give notice to, or the non-receipt of notice by, any Member, shall not invalidate the holding of the meeting or the proceedings at the meeting.

13.7 Chairperson: The chairperson at any general meeting shall be:

- (a) the chairperson of the Society; or
- (b) if the chairperson will not be present at the meeting, or is not present within 15 minutes after the time appointed for the meeting, another Committee member appointed by the Committee; or
- (c) if the chairperson is unwilling to act as chairperson for any particular item of business, the Committee members may select one of their number or an independent, suitably qualified person to act as chairperson for that item of business; or
- (d) if for any reason no chairperson is selected by the Committee, any Member appointed by a majority of Members present in person or by proxy.

13.8 Adjournment: If a quorum is not present within half an hour from the time appointed for the holding of a general meeting convened on requisition of Members, the meeting shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Committee shall determine (such date not to be later than 14 days from the date of the adjourned meeting). If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

13.9 Adjourned meetings: No business other than the business which might have been transacted at the meeting from which the adjournment took place, shall be transacted at any adjourned meeting. Members shall not be entitled to receive any notice in respect of adjourned meetings.

14. VOTING

14.1 One Member one vote: Each Member present at a general meeting of the Society (not at that time being in breach of the Constitution) shall be entitled to one vote for each Property of which that Member is a registered proprietor, which may be exercised either in person or by proxy. Where there is more than one Owner in respect of a Property, and such Owners are collectively a Member pursuant to rule 4.6, only one such Owner shall be entitled to vote on a resolution at a meeting. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the registered title to the Property shall be entitled to exercise that vote. On the death of any Member, and pending the transfer of that Member's Property, the executor of that Member's estate shall be entitled to exercise that Member's vote.

14.2 Corporation representatives: Any corporation which is a Member may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which that person represents as that corporation could exercise if it were an individual Member. References in this Constitution to a Member being present in person shall mean and include a representative appointed pursuant to this rule, and such person may also stand for election to the Committee.

14.3 No vote if fees unpaid: Unless all Annual Levies and Special Levies presently payable by a Member to the Society have been paid in full, that Member shall not be entitled to vote at any general meeting of the Society, whether in that Member's own right or as a proxy for another person.

14.4 Voting at meetings: At any general meeting:

- (a) a resolution may be put to the vote by the chairperson or by any Member present at the meeting and entitled to vote;
- (b) resolutions put to the vote shall be decided on voices or a show of hands, unless a poll is demanded on or before declaration of the result of the voices or show of hands by:
 - (i) the chairperson of the meeting; or
 - (ii) at least five Members present in person or by proxy;
- (c) in the case of a resolution put to the vote of the meeting by voices or a show of hands, a declaration by the chairperson that such resolution has been carried or lost and an entry to that effect in the Society's minute book, shall be conclusive evidence of that fact, without further proof of the number or proportion of votes recorded in favour of or against such resolution;
- (d) resolutions shall be passed by a majority of votes, except where a Special Resolution is required by this Constitution; and
- (e) in the case of a tie in votes, the chairperson may exercise a casting vote.

14.5 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 as fairly as reasonably practicable by the Society having regard to its objects, irrespective of whether any expenditure by the Society may benefit some Members more than others.

15. DESIGN CONTROL COMMITTEE

15.1 Composition: The Design Control Committee shall comprise the following persons:

- (a) up to two representatives of the Society appointed (and subject to removal) from time to time by the Committee one of whom (nominated by the Committee) shall be the Chairperson of the Design Control Committee;
- (b) an urban planning consultant appointed (and subject to removal) from time to time by the Committee;
- (c) an architect appointed (and subject to removal) from time to time by the Committee; and
- (d)
- (e) if the Committee from time to time considers it desirable to do so, an additional architect appointed (and subject to removal) by the Committee.

15.2 Quorum: No business may be transacted at a meeting of the Design Control Committee if a quorum of not less than three Design Control Committee members (or their respective alternates) is not present within 30 minutes after the time appointed for the meeting.

15.3 Meeting of the Design Control Committee: A meeting of the Design Control Committee may be requested by any member of that committee. The Design Control Committee member requesting a meeting must send each other member written notice of the proposed meeting not less than five working days prior to the date of such meeting specifying the date, time, venue and purpose of the meeting.

15.4 Design guidelines: The Committee shall in consultation with the Design Control Committee publish from time to time Design Guidelines for the Precinct, a Neighbourhood or any part thereof and may change the Design Guidelines from time to time.

15.5 Plan Change 76: Notwithstanding rule 15.6, for a term of 20 years from 23 January 2000 (“Relevant Date”), each Member shall, in respect of any building or development within the Precinct, comply with the rules in Plan Change 76 of the District Plan operative as at the Relevant Date (“Plan Change 76”) and not deviate therefrom without first obtaining the written consent of the Society, which consent may be given or withheld in the sole and absolute discretion of the Society. The Society shall not give consent to any non-compliance with or any deviation from, or waive compliance with, Plan Change 76 without first obtaining the written certification of an expert that the proposed non-compliance or deviation from Plan Change 76 will not have a materially adverse impact on the efficacy of Plan Change 76. Where the Society has obtained the expert’s certificate, the Society may give its consent. For the purposes of this clause:

- (a) a Member’s obligation under this clause shall be to comply with and not to deviate from the rules in Plan Change 76 as they are at the Relevant Date, notwithstanding any later variation or amendment of Plan Change 76 and/or the District Plan during the 20 year term; and
- (b) the “expert” shall be an independent professional planning consultant nominated by the President or Vice-President of the Auckland District Law Society, or by his or her nominee.

15.6 Design approval: Subject to rule 15.5, before requesting resource or building consent from any local authority to build or develop within the Precinct, a Member must first submit the design of the proposed building or development to the Design Control Committee for its written approval, which shall not be unreasonably withheld or delayed where the design complies with, in the following order of priority:

- (a) during the 20 year term provided for in rule 15.5, Plan Change 76;
- (b) from the expiry of the 20 year term provided for in rule 15.5, the development controls in the District Plan applying to the Precinct;
- (c) any bylaws made under rule 9.1; and
- (d) the relevant Design Guidelines.

15.7 Conflict: If there is any conflict between the provisions of this Constitution and the provisions of the Land Covenants registered against each Owner’s Title, the provisions of the Land Covenants shall prevail.

15.8 Costs: All costs of the design approval process (including without limitation, any disbursements or professional charges of a member of the Design Control Committee) shall be met by the Member seeking the approval, in accordance with the Design Guidelines and for that purpose such Member shall comply with the provisions of the Bylaws relating to

the provision of a bond to the Society as security for such costs, disbursements and charges.

GENERAL

16. GENERAL

- 16.1 Dissolution:** The Society may be wound up in accordance with section 24 of the Act. Upon the winding up of the Society, the surplus assets of the Society (if any) after payment of all costs, debts and liabilities of the Society shall be distributed to, or for the benefit of, the Members in such fair, equitable and practical manner as may be approved by Special Resolution of the Members or, failing any such resolution, as may be determined by the Registrar.
- 16.2 Alteration of Constitution:** This Constitution shall not be amended, added to or rescinded except by Special Resolution at an annual general meeting, or a general meeting convened for that purpose, and unless written notice of the proposed amendment, addition or rescission shall have been given to all Members in accordance with this Constitution.
- 16.3 Rules 15.5 and 15.7:** Notwithstanding any other rule in this Constitution, this Constitution shall not be amended, added to or rescinded so as to alter, add to or rescind:
- (a) rules 15.5 and 15.7; or
 - (a) this rule 16.3,
- 16.4 Acceptance by Registrar:** No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar.
- 16.5 Registered office:** The registered office of the Society shall be situated at a place nominated by the Committee.
- 16.6 Liability of Members:** No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society.
- 16.7 Society to indemnify Members:** 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.
- 16.8 No action in favour of Members:** No action in law or otherwise shall lie in favour of any Member against any other Member or the Committee, or any Committee member in respect of any act or omission pursuant to this Constitution. Nothing in this rule shall prevent an action in respect of any loss or expense arising from the willful default of the person against whom such action is taken.

16.9 Member to indemnify Society: Each Member shall indemnify and keep indemnified the Society from and against any action, claim, demand, loss, damage, cost, expense and liability which the Society may suffer or incur, or for which the Society may become liable, in respect of or arising from any breach of this Constitution by the Member.

16.10 Arbitration: 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 or omitted under this Constitution, or concerning the construction of this Constitution shall be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration shall be a condition precedent to the commencement of any action at law.

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

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

SCHEDULE

SOCIETY BYLAWS

Bylaws governing Communal Facilities

1. Use

- 1.2 Each Member shall make no improper, offensive or unlawful use of any Communal Facilities, and shall use the Community Facilities only for the purposes for which they were designed.
- 1.2 No Member shall fetter, obstruct or impede the use of any Communal Facilities by any other Member.
- 1.3 No Member shall place anything in or on Communal Facilities without the approval of the Manager.
- 1.4 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. Prohibited Acts

- 2.1 No Member shall drop any litter in or on the Communal Facilities.
- 2.2 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 the Manager.

3. Closing of Communal Facilities

- 3.1 The Manager shall be entitled to close any or all of the Communal Facilities as the Manager considers necessary for security reasons, or for the purposes of maintaining and repairing Communal Facilities.

Rules governing Owners, Occupiers and Invitees

4. Keys/access cards

- 4.1 No Member shall make or retain any duplicate or copies of any keys or access cards relating to Communal Facilities. Additional keys or access cards can be provided by the Manager on payment of the fee charged by the Manager. In the interests of effective security the Manager shall have the right (at the Manager's sole discretion) to restrict the number of keys or access cards issued.

4.2 No person shall be allowed by any Member to use a key or access card, other than the Member and his or her immediate family, or an Occupier of the Property of the Member within the Precinct and his or her immediate family.

4.3 If any key or access card is lost, stolen, destroyed or mutilated, the Member shall immediately report such to the Manager.

5. Conduct and noise

5.1 No Member shall engage in, or encourage, assist or otherwise knowingly allow any other person to engage in, any criminal activity within the Precinct.

5.2 No Member shall make or permit any improper or unseemly noises within the Precinct, nor act in any fashion so as to annoy or disturb any other Member.

5.3 If intoxicating liquor is consumed within the Precinct, the Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.

5.4 The Society reserves the right to exclude or evict from the Communal Facilities 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 or these rules. This right has been delegated to the Manager.

5.5 No Member shall burn any material or substance within the Precinct or do anything which may create a fire hazard or contravene fire regulations.

5.6 No Member shall dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contractors.

6. Members' residences

6.1 Each Member shall keep the Property which they own within the Precinct and all improvements to that Property (including all fences) in a well maintained and attractive condition and shall not permit the accumulation thereon of unsightly rubbish or materials or in any other way permit the appearance of the Property to detract from the general standards established for the Precinct.

6.2 Each Member shall at all times comply with the requirements of all statutes, regulations and local authorities applicable to that Member's Property, and shall duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Property.

6.3 No Member shall erect any notice or sign on that Member's Property or the Communal Facilities, other than reasonable real estate and/or builders signs when relevant, without the prior written consent of the Society.

- 6.4 Each Member shall properly secure that Member's Property when it is not occupied.
- 6.5 No Member shall allow any animal, bird or pet (collectively "Pet") to cause a nuisance to any other Member.
- 6.6 Without limiting the generality of clause 6.5 of these Bylaws, each Member shall ensure that:
- (a) the number and size of any Pets are reasonable given the size of the Member's Property and any high density residential environment within the Precinct;
 - (b) when Pets are outside the boundaries of the Member's Property, the Pets are under appropriate control and supervision, and for this purpose all dogs are on a leash when required by the Auckland Council bylaws;
 - (c) all Pet droppings are immediately picked up and disposed of;
 - (d) no Pet shall be permitted to make prolonged or frequently reoccurring noise so as to disturb or otherwise cause a nuisance;
 - (e) 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;
 - (f) no dangerous Pets are kept within that Member's Property.
- 6.7 Each Member shall be liable for the costs of repairing any damage caused by that Member's Pets.
- 6.8 No Member shall allow that Member's Property to become infested by vermin or insects.
- 6.9

7. DESIGN APPROVAL BOND

- 7.1 Bond: Each Member shall either:
- (a) lodge with the Society a refundable cash bond of \$5,000 (or such other sum as specified by the Design Control Committee from time to time); or
 - (b) take an assignment of the member's interest in such a cash bond lodged by a predecessor in title to the Member's Property,
- as security for payment of costs payable under the Design Guidelines to the Society for approval by the Design Control Committee of the design of any proposed building or other structure or

appurtenance to be constructed or erected on the Property. The Society shall apply the bond in or towards satisfaction of the costs payable by the Member to the Society from time to time under the Design Guidelines and if at any time the bond is applied wholly or partly in satisfaction of any amount payable by the Member to the Society under the Design Guidelines the Society may require the Member to restore the amount of the bond and/or meet any additional costs by paying the requisite amount to the Society. Upon satisfaction of the Member's obligations under the Design Guidelines any unutilised amount of the bond will be refunded to the Member, without interest.



