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**CONSTITUTION
of
OMAHA BEACH RESIDENTS SOCIETY INCORPORATED**

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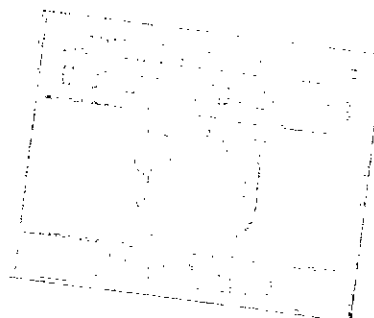
11th

day of

May

2001

[Signature]
Assistant Registrar of Incorporated Societies



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CONSTITUTION OF OMAHA BEACH RESIDENTS SOCIETY

INTRODUCTION

1. NAME

- 1.1 **Name of Society:** The name of the Society shall be *"Omaha Beach Residents Society Incorporated"*.

2. DEFINITIONS AND INTERPRETATION

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

"Act" means the Incorporated Societies Act 1908.

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

"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, being initially those facilities transferred to the Society by the Developer pursuant to the deed of transfer attached as schedule 3 to this Constitution.

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

"Default Interest Rate" means four per cent above the Society's banker's overdraft rate applicable during the continuance of the 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 a Neighbourhood or part, pursuant to rule 15.3.

"Developed Property" means a property within the Precinct:

- (a) for which a separate title (including, without limitation, a unit title or a certificate of title for an estate in fee simple) has issued;
- (b) which has been fully developed as a residential property or for any other permitted use by the Developer, or which is a bare section available for such development; and
- (c) owned by a person other than the Developer.

"Developer" means Omaha Beach Limited promoting and carrying out the development of Omaha Beach and/or any assignee and/or successor in title whether in whole or in part or parts of Omaha Beach.

"District Plan" means the Rodney District Plan.

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

"Initial Price" in respect of any Developed Property, means the price (inclusive of Goods and Services Tax) at which the Developed Property is first sold to any Owner by the Developer, or if the Developed Property has not been sold, the price at which the Developed Property is listed for sale by the Developer.

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

"Manager" means the manager or management company 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 shall from time to time be a member of the Society pursuant to rules 4.1 to 4.8.

"Member's Proportion" means the proportion that the aggregate of the Section Values of the Developed Properties owned by a Member bears to the Total Value.

"Neighbourhood" means a neighbourhood forming part of the Precinct.

"Occupier" means any person occupying any Developed Property under any lease, licence or other occupancy right and shall include all members of an Owner's family.

"Omaha Beach" means the residential and all other development of the land generally as shown on the plan attached as schedule 2 and comprised within Certificate of Title 102B/609 (North Auckland Registry).

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

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

"Owner's Title" means the certificate of title issued for an Owner's Developed Property.

"Precinct" means that part of the land at Omaha Beach generally as outlined and described in the plan attached as schedule 2, but excluding public roads, reserves and any land vested in the Crown, a local authority or any other statutory body unless the subject of an agreement with the Society allowing for its use and enjoyment by a Member as a Communal Facility.

"Rating Valuation" means the capital value of any Developed Property as it appears on the district valuation roll pursuant to the Rating Valuations Act 1998 or any successor to the district valuation roll.

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

"Section Value" means, in respect of each Developed Property:

- (a) the Rating Valuation; or
- (b) if the Rating Valuation is not available, the Initial Price.

"Society" means Omaha Beach Residents Society Incorporated.

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

"Total Value" means the sum total of the Section Values as at a given date.

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 and continued ownership of the Communal Facilities by the Society.
- (b) The proper operation, maintenance, repair, renovation and replacement of the Communal Facilities, the proper landscaping of any landscaped area on any

Developed Property, 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 Developed Property.
 - (e) The promulgation and enforcement of bylaws and covenants benefiting Members, a Neighbourhood and the Precinct generally.
- 3.2 **Pecuniary gain not to be an object:** The Society does not have as an object the pecuniary gain of Members, and (subject to rule 16.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society.
- 3.3 **Members may contract:** A Member may enter 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 **First Members:** The first Members ("**First Members**") of the Society shall be Graeme Henry Wong, David John Smallbone, Charles Kenneth Grierson Macindoe, Christopher Rodney Morton, Philip Edward Brown, Gregory Paul Gimblett, Olivia Leanne Aro, Elaine Morgan, Hayley Jane MacKenzie, Lisa Jayne Potter, Louise Catherine Titilah, Susan Jane Evans, Hunsha Parsot, Angie Maree Brass and Jane Victoria Wright. These Members shall resign from the Society as soon as there are more than 15 Owners (excluding the Developer) as Members. The First Members shall be entitled to vote at any meeting of the Society, to elect a Committee, and exercise all rights of Members set out in this Constitution, but shall have no obligations as Members.
- 4.2 **Owners to be Members:** Subject to rule 4.1, each Owner shall be a Member, and only Owners shall be Members, and for that purpose:
- (a) **Land covenant:** A covenant shall be noted against each Owner's Title in favour of the Society, whereby each Owner covenants 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 Developed 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 contemporaneously with the transfer of the Developed Property and remain a Member, and to observe and perform the obligations of a Member as set out in this Constitution. The deed of covenant shall be prepared by the solicitors for the Society, and the selling Member shall pay the reasonable legal fees and disbursements of the Society's solicitors.
 - (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 4.4, and shall upon entry of the details into the register, become a Member.
- 4.3 **Developer as Controlling Member:** Until the development of Omaha Beach is fully completed, the Developer shall be the controlling member ("**Controlling Member**") of the Society, regardless of whether the Developer is at any time a Member. The Controlling Member shall have only the rights specified in this Constitution, and shall have no other rights or obligations of a Member. No reference in this Constitution to a Member shall be taken as including a reference to the Controlling Member. As at the date the Developer ceases to own any land within the Precinct, the Developer shall be deemed to have resigned as Controlling Member, and thereafter, there shall be no Controlling Member in respect of the Society. The Controlling Member shall give a power of attorney to Mangatawhiri Limited which shall provide that where the Controlling Member is in breach of its obligation to ensure compliance with rule 15.4, Mangatawhiri Limited may act as the Controlling Member in respect of all matters relevant to rule 15.4.
- 4.4 **Register of Members:** The Society shall maintain a register of Members recording:
- (a) **For each Member:** 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 each Occupier:** 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) **Voting:** where there is more than one Owner of a Developed Property, which of such Owners is entitled to vote in accordance with rule 14. 1.
 - (e) **Mortgagee:** name, contact person, telephone number and facsimile number of any person holding a mortgage over the Member's Developed Property.
- 4.5 **No notice of trust:** No notice of any trust express, implied or constructive will be entered on the register of Members.
- 4.6 **Register to be audited:** The Committee shall ensure that the register of Members is audited once a year by a qualified auditor.
- 4.7 **Not assignable:** The rights, privileges and obligations of a Member are not assignable.
- 4.8 **More than one Owner:** If there is more than one Owner for a Developed Property, such Owners shall collectively constitute one Member.

5. **USE OF COMMUNAL FACILITIES**

- 5.1 **Use of Communal Facilities:** Subject to any rules 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.
- 5.3 **Use of Developed Properties:** Members owning Developed Properties designated for use by all Members by the Developer agree to allow all Members to use or procure that all Members may use those Developed Properties, subject to their normal or standard conditions of use.

6. **OBLIGATIONS OF MEMBERS**

- 6.1 **Levies:** Prior to or as soon as practicable after the commencement of each Expense Year, the Society shall by written notice advise each Member of the Society's estimate ("**Society's Estimate**") of each Member's Proportion of Operating Expenses for that Expense Year, plus such contingency sum as the Society shall, in its sole discretion, fix.
- 6.2 **Payment of levies:** Subject to rule 6.7(c), each Member shall, on the first day of April and October in each Expense Year, or such other intervals as the Society shall determine from time to time, pay one half or such other periodic amount as the Society shall stipulate from time to time of the Society's Estimate applicable to that Expense Year. Payment shall be made by each Member in the manner set out by the Society.
- 6.3 **Statement of Operating Expenses:** As soon as practicable after the end of each Expense Year the Society shall provide to each Member an itemised statement of the actual Operating Expenses for the previous Expense Year or any period in terms of rule 6.7(b), as the case may be. If the Member's Proportion of actual Operating Expenses for the previous Expense Year or any period in terms of rule 6.7(b) is greater than the total of the monthly payments made by the Member pursuant to rule 6.2 or 6.7(c), as appropriate, the Member shall forthwith pay to the Society the difference. If the Member's Proportion of actual Operating Expenses for the previous Expense Year or any period in terms of rule 6.7(b) is less than the total of the monthly payments made by the Member pursuant to rule 6.2 or 6.7(c), as appropriate, the Society shall credit the difference to the Society's Estimate for the then current Expense Year.
- 6.4 **Failure of Society to advise Society's Estimate:** If the Society has failed to advise a Member of the Society's Estimate for an Expense Year before the date the first payment is due under rule 6.2, the Member shall on that date and every other date on which a payment is due under rule 6.2 pay one half of the Society's Estimate applicable to the previous Expense Year. On the Society's Estimate for the Expense Year being advised to that Member:
- (a) Rule 6.2 shall apply thereafter.

- (b) If the aggregate of a Member's payments made under this rule during the Expense Year exceeds the aggregate of payments which should have been made under rule 6.2, the Society shall credit the difference to the Society's Estimate.
- (c) If the aggregate of a Member's payments under this rule during the Expense Year is less than the aggregate of payments which should have been made under rule 6.2, the Member shall immediately pay the Society the difference.

6.5 **Special levies:** The Committee:

- (a) **Sinking fund:** shall from time to time fix an additional levy to be paid by each Member at the same time and proportions as the money payable under Rule 6.2 of the Society's Estimate for that Member, to be set aside as a sinking fund to allow for and meet the costs of Capital Improvements; and
- (b) **Special levy:** may from time to time fix such special levies, payable by each Member at such times as are set by the Society, as the Society considers are necessary for it to meet its obligations under this Constitution,

provided that any levy payable by a Member under this rule shall be equal to that Member's Proportion of the total estimated cost to be provided for and met from the proceeds of the levies paid by all Members.

6.6 **Staged development:** The Members acknowledge that Omaha Beach is to be developed in stages, with new Owners becoming Members as each stage is completed.

6.7 **New Developed Properties:** Where in any Expense Year new Developed Properties become available:

- (a) The Society shall provide to all Members (excluding the Owners of the new Developed Properties) ("**Existing Members**") an itemised statement of the actual Operating Expenses for the period from the commencement of the current Expense Year to the date the new Developed Properties became available ("**Period**"). The date of availability shall be determined by the Manager. If the amount of an Existing Member's Proportion of Operating Expenses for the Period is greater than the total of the payments made or due for that Period, the Existing Member shall forthwith pay to the Society the difference. If the amount of an Existing Member's Proportion of Operating Expenses for the Period is less than the total of the payments made or due for that Period, the Society shall credit the difference to the Society's estimate for the balance of the term of current Expense Year pursuant to rule 6.7(b).
- (b) As soon as practicable after the date the new Developed Properties became available, the Society shall by written notice advise all Members of the Society's estimate of each Member's Proportion of Operating Expenses for the balance of the term of the current Expense Year.
- (c) Each Member shall, on the day provided for under Rule 6.2 until the end of the current Expense Year, pay an equal proportion of the Society's estimate given pursuant to rule 6.7(b).

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

- (a) Notwithstanding any other rule in this Constitution, the Vendor shall remain liable for sums owed to the Society by that Vendor.
- (b) The Vendor shall continue to be liable as a primary and principal debtor for all indebtedness of the purchaser of the Developed Property to the Society until such time as the deed of covenant specified in rule 4.2(a) is received by the Society.
- (c) The purchaser of the Developed Property shall be liable as a Member for all indebtedness of the Vendor to the Society in respect of the Developed Property purchased and a certificate of the Society given pursuant to rule 6.9 shall be conclusive as to the sum of this indebtedness.

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

- (a) the Society's estimate of such Member's Proportion of Operating Expenses for the current Expense Year;
- (b) payments made by the Member on account of Operating Expenses in the current Expense Year;
- (c) payments due from the Member on account of Operating Expenses in the current Expense Year, and not paid by the Member; and
- (d) any accumulated unpaid default interest.

6.10 Covenants and bylaws: Each Member agrees to promptly and fully comply with any bylaws made by the Society from time to time, and any covenants given in favour of the Society by such Member (whether by separate deed of covenant or as noted against each Owner's Title). In the event of there being any conflict between the provisions of this Constitution (including any rule or bylaw) and the provisions of any restrictive covenant registered against the title to the Developed Property, the provisions of this Constitution (including any rule or bylaw) shall prevail and be given priority over the provisions of any such restrictive covenant.

6.11 Mortgagee of Developed Property: Before granting any mortgage over a Developed 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 the Constitution upon exercising any powers as mortgagee.

7. MEMBERS' ASSISTANCE TO DEVELOPER

7.1 Future development: The Members acknowledge that development of the Precinct is ongoing, and that the Society is required to allow the Developer such access to, and interests in, the Communal Facilities as are necessary or desirable for the development to proceed, and to allow the Developer to add, remove or alter structures and services forming part of the Communal Facilities, and to procure that its Members amend this Constitution if such amendment is necessary or desirable for the development to proceed. Each Member agrees:

- (a) to, and hereby allows, the Developer access to the Developed Property of that Member for the purpose of proceeding with the development;
- (b) to, and hereby grants, such easements in favour of the Developer any Member and/or the Society over or under the Member's Developed Property as are required for the development to proceed or as may be necessary or desirable for development of the Precinct;
- (c) not to prevent, hinder or obstruct the use by the Developer of the Communal Facilities, the addition, removal or alteration of structures or services forming part of the Communal Facilities by the Developer, or the granting of any interests in the Communal Facilities by the Society to the Developer;
- (d) that neither the Member nor the Society shall oppose, or take part in any opposition to, the development of Omaha Beach or the Precinct;
- (e) to support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer, to procure such amendment.

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

8. 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 mortgagee in possession of that Member's Developed Property or the Occupiers of such Member's Developed Property, the Invitees of such Occupier and the Invitees of such Member or the mortgagee in possession of that Member's Developed Property. A Member must advise the Society of such details of the Occupiers of the Member's Developed Property as are requested by the Society, and if required by the Society shall procure such Occupiers before they enter into occupation of the Developed Property 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) to ensure Occupiers comply with this Constitution. In any case of persistent default by an Occupier of this Constitution, the Owner shall on demand by the Society, terminate the Occupier's right to occupy the Developed Property. A copy of this Constitution shall be attached to every lease, licence, or other document defining occupancy rights.

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.

- (d) If any money payable by an Offending 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 behaviour of Owners, Occupiers and Invitees, and bylaws governing the use of Developed Properties. The first such bylaws shall be those bylaws attached as schedule 1 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 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 **Service contractors and utility suppliers:** The Society may, from time to time, nominate a service contractor (with respect to security, landscaping or other such services as the Society considers desirable) or a utility supplier (with respect to the supply of utilities to Developed Properties) as an exclusive service contractor or utility supplier to the Precinct. Any Member wishing to contract for services within Omaha Beach, or to have utilities supplied to a Developed Property, shall, where a service contractor or utility supplier has been nominated in respect of those services or utilities, only use that service contractor or utility supplier.

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 by Special Resolution. Notwithstanding any other rule to the contrary, on any vote of the Society or the Committee relating to the borrowing of money, the Developer shall not have a casting vote but shall have one ordinary vote.
- 10.2 **No encumbrances:** The Society shall hold the Communal Facilities in its own name and shall not mortgage, charge, encumber, transfer or otherwise deal with such Communal Facilities, except by Special Resolution, provided that where the Society is obliged to grant any interest in or right in respect of the Communal Facilities by any agreement with the Developer, such interests or rights may be granted by the Committee.

- 10.3 **No investments:** The Society shall hold all funds with a Bank, and shall not invest those funds other than by deposit with a Bank, except 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 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 of 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 accounts:** The Society shall establish a bank account, and any drawings on that account (including any cheque drawn on that account) shall be made only under the signature of the Manager and one other member of the Committee.
- 11.3 **Documents:** All documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson or that person's nominee.
- 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 determined by the Society in general meeting, before election of Committee members.
- 11.5 **Committee members:** The treasurer/secretary shall be the Manager or, where no Manager has been appointed, such other person as the Committee shall appoint from time to time. The Controlling Member (if there is one) shall be a general Committee member. The balance of the Committee shall be elected by the Society at every annual general meeting, and may be elected at any other time by the Society in general meeting, provided that the Society shall only elect persons as members of the Committee, and shall not elect any person specifically as chairperson.
- 11.6 **Duration of membership:** A Committee member shall hold elected position until the earliest of:
- (a) the first annual general meeting following the date of incorporation of the Society, when one half of the Committee members, as shall agree and failing agreement, as shall be determined by the chairperson, shall resign, but shall be eligible for re-election;

- (b) at each subsequent annual general meeting a Committee member who has served two consecutive years since being elected shall resign, but shall be eligible for re-election;
- (c) the date written resignation from position is received by the Society;
- (d) the date of removal from such position by the Society in general meeting; or
- (e) the date of cessation of membership.

11.7 Casual vacancies on Committee: In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership from 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.

11.8 Manager and Controlling Member: Notwithstanding any other rule in this Constitution, the Manager shall remain as treasurer/secretary, and the Controlling Member shall remain as a general Committee member, for so long as they remain Manager and Controlling Member respectively, and the Society shall not be entitled to remove either from those positions for any reason whatsoever.

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 into the minute book:
 - (i) the time, date and venue of such meeting;
 - (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, additional fees, and any other moneys paid to the Society;
- (g) operate and maintain a current bank account in the name of the Society;
- (h) pay all accounts properly incurred by or on behalf of the Society;
- (i) report immediately to the Society any Member who fails to pay annual levies or additional fees within the prescribed period;
- (j) keep all financial records and any security documents in safe custody;
- (k) compile all proper accounting records from time to time as required by the Act or by the Committee which give a true, fair and complete account of the financial affairs and transactions of the Society; and

- (l) compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members as soon as reasonably practicable after each audit is completed.
- 11.10 **Conduct of Meetings:** The Committee may meet together, adjourn and otherwise regulate its meeting and procedures for conducting its business as it thinks fit. A majority of the members of the Committee from time to time, provided that such majority includes the Controlling Member (if there is one) 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 secretary shall, upon the request of the chairperson or any three Committee members, convene a meeting of the Committee.
- 11.11 **Chairperson:** The Committee from time to time shall appoint, remove and replace a chairperson for such term as it sees fit from one of their number (provided that the Controlling Member shall not be chairperson) to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 11.12 **Chairperson to have casting vote:** In the case of a tie in votes, the chairperson may exercise a casting vote.
- 11.13 **Seal:** The Committee shall obtain a common seal for the use of the Society and shall provide for its safe custody. The common seal shall not be used except by resolution of the Committee. Every instrument to which the common seal is affixed shall be signed by any two members of the Committee.
- 11.14 **Voting:** Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote, provided that the treasurer/secretary shall not be entitled to vote and further provided that the Controlling Member (if there is one) shall be entitled to exercise a number of votes equal to one more than the number of other Committee members present at any Committee 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.
- 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 signed by the chairperson shall be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.
12. **MANAGER**
- 12.1 **Duties:** The Committee may by agreement appoint, remove and replace a person the 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 meeting:** 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 will 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 current Members. The secretary shall call a special general meeting within 14 days of receiving an effective request.
- 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 and discretion may have been delegated to the Committee by or pursuant to this Constitution. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by 75% of the Members entitled to vote in person or by proxy at general meetings, together with the Controlling Member (if there is one), shall be as valid and effectual as if it had been passed at a general meeting of the Society duly convened and constituted.
- 13.4 **Quorum:** No business shall be transacted at any general meeting of the Society unless the quorum is present when a meeting proceeds to business. Quorums shall be not less than 20% of all Members or 10 Members (whichever is the lesser) eligible to vote at general meetings, present in person or by proxy, together with the Controlling Member (if there is one).
- 13.5 **Notice of general meeting:** A notice of general meeting of the Society shall be sent to every Member 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 any such meeting.
- 13.7 **The chairperson:** The chairperson at any general meeting shall be:
- (a) the chairperson of the Society; or
 - (b) if the chairperson is not present or is unwilling to take the chair, then those committee members who are present may choose one of their number to chair the meeting; or
 - (c) 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 together with the Controlling Member (if there is one) shall constitute a quorum.

- 13.9 **Adjourned meetings:** No business other than that 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 Developed 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 any property within the Precinct, and such Owners are collectively a Member pursuant to rule 4.8, only one such Owner shall be entitled to vote. In the absence of agreement between such Owners as to who shall exercise this vote, the Owner appearing first on the certificate of title to the property within the Precinct shall be entitled to exercise that vote. On the death of any Member, and pending the transfer of that Member's property within the Precinct, the executor of that Member's estate shall be entitled to exercise that Member's vote.

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

- 14.3 **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, and 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.

- 14.4 **No vote if fees unpaid:** Unless all annual levies and additional fees presently payable by the Member to the Society have been paid in full, the Member shall not be entitled to vote at any general meeting of the Society, whether in his own right or as a proxy for another person.

- 14.5 **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 or 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 Special Resolution or the unanimous resolution of all Members is required by this Constitution.

(e) In the case of a tie in votes, the chairperson may exercise a casting vote.

14.6 **Good faith:** Members shall, in exercising any vote at any general meeting, or as a Committee Member, exercise such vote in good faith with a view to ensuring that all Members are treated equally by the Society, and that each Member shall bear that Member's Proportion of all Operating Expenses and of all costs and expenses to be met by levies made by the Society under rule 6.5, irrespective of whether any expenditure by the Society benefits all Members.

15. DESIGN CONTROL COMMITTEE

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

- (a) a representative of the Society appointed from time to time by the Committee;
- (b) an urban planning consultant appointed from time to time by the Committee;
- (c) an architect appointed from time to time by the Committee; and
- (d) a representative of the Controlling Member appointed by the Controlling Member, for so long as there is a Controlling Member.

15.2 **Initial Design Control Committee:** The initial members of the Design Control Committee shall be appointed by the Controlling Member until removed and replaced (with the exception of the Controlling Member) by the Society.

15.3 **Design guidelines:** The Design Control Committee shall 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.

15.4 **Plan Change 76:** Notwithstanding rule 15.5, 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 their nominee.
- 15.5 **Design approval:** Subject to rule 15.4, before commencing any building or development within the Precinct or obtaining any 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 15.4, Plan Change 76;
 - (b) from the expiry of the 20 year term provided for in rule 15.4, the District Plan;
 - (c) any bylaws made under rule 9.1 of this Constitution; and
 - (d) the relevant Design Guidelines.
- 15.6 **Conflict:** If there is any conflict between the provisions of this Constitution and the provisions of the memorandum of transfer in favour of the Society creating land covenants registered against each Owner's Title, the provisions of the Land Covenants shall prevail.
- 15.7 **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.

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:
- (a) ownership of the Communal Facilities shall vest in; and
 - (b) the contents of any sinking fund collected by the Committee in accordance with rule 6.5(a) shall be distributed to,
- the Members as tenants in common in shares equal to the Member's Proportion as at the date of winding up, and the Society shall take all necessary steps to vest legal title to the Communal Facilities in the Members.
- 16.2 **Alteration of Constitution:** This Constitution shall not be amended, added to or rescinded except at an annual general meeting, or a general meeting convened for that purpose, and unless written notice of the proposed amendment, addition or rescission shall have been given to all Members in accordance with this Constitution.
- 16.3 **Alteration by Special Resolution:** No rule, including this one, shall be amended, added to or rescinded except by Special Resolution, and with the written consent of the Controlling Member (if there is one).

16.4 **Rights of Controlling Member:** 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, 5.1, 7.1, 7.2, 9.1, 12.1, 14.2 and 16.1; or

(b) this rule 16.4,

so as to detrimentally affect the rights of the Controlling Member.

16.5 **Rules 15.4 and 15.6:** 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 15.4 and 15.6; or

(b) this rule 16.5.

16.6 **Acceptance by Registrar:** No such amendment, addition or rescission shall be valid unless and until accepted by the Registrar.

16.7 **Registered office:** The registered office shall be situated at a place nominated by the Committee.

16.8 **Liability of Members:** No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society.

16.9 **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.

16.10 **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 wilful default of the person against whom such action is taken.

16.11 **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.

16.12 **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.

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

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

**THE COMMON SEAL of OMAHA BEACH
RESIDENTS SOCIETY INCORPORATED**
was affixed in the presence of:



Signature of Committee Member

CHRISTOPHER MORTON
Name of Committee Member

Signature of Committee Member

CHARLES MACINDOE
Name of Committee Member

SCHEDULE 1
SOCIETY BYLAWS

Bylaws governing Communal Facilities

1. Use

- 1.1 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 purpose 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 duplicates 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 (as recorded in the register of members) 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 allow any 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 Precinct 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 have the duty to keep each property which they own within the Precinct and all improvements to those properties (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 a 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, and shall duly and punctually pay all rates, taxes, charges and other outgoings payable in respect of that Member's Developed Properties.
- 6.3 No Member shall erect any notice or sign on a Developed Property or the Communal Facilities without the prior written consent of the Society.
- 6.4 Each Member shall properly secure that Member's Developed 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 bylaw 6.5, each Member shall ensure, that:
 - (a) the number and size of any Pets are reasonable given the size of the Member's Developed Property and any high density residential environment at Omaha Beach;
 - (b) when Pets are outside the boundaries of the Member's Developed Property, Pets are under the control and supervision, and for this purpose, all dogs are on a leash;
 - (c) all Pet droppings are immediately picked up and disposed of;
 - (d) no Pet shall make any noise so as to disturb or otherwise cause a nuisance;

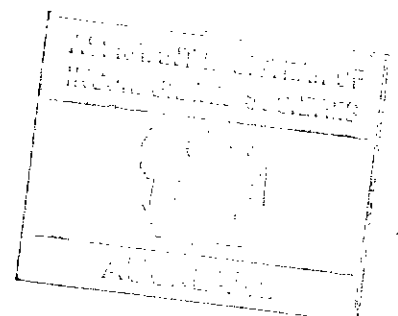
- (e) all Pets are maintained in a healthy and clean condition, and all laws and regulations relating to the keeping of such Pets are complied with;
 - (f) no dangerous Pets are kept within that Member's Developed Property.
- 6.7 Each Member shall be liable for the costs of repairing any damage caused by that Member's Pets.
- 6.8 No Member shall allow any Developed Property to become infested by vermin or insects.
- 6.9 No member shall erect or permit to be erected on any Developed Property any aerals, satellite dishes or other communication receivers of any kind whatsoever, other than those approved by the Society which permission may in the Society's absolute discretion be withheld should it consider that these do not conform to the standards desirable for the development of a Neighbourhood or the Precinct.

7. DESIGN APPROVAL

- 7.1 **Bond:** Upon lodging any design for approval by the Design Control Committee, a Member shall:
- (a) sign a bond in a form and on terms acceptable to the Society, to be prepared at the expense of the Member; and
 - (b) deposit with the Society a refundable bond of \$5,000 or such other amount as the Design Control Committee may reasonably determine,

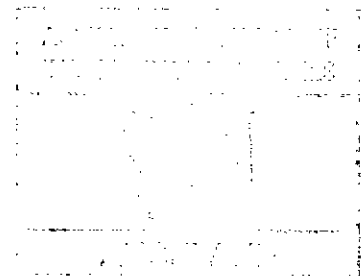
to secure the obligations of the Member under section 7 of these bylaws. Nothing in this bylaw shall prevent the Controlling Member from requiring a purchaser of a Developed Property when settling the purchase of the Developed Property, signing a bond and paying the deposit provided for above, notwithstanding that the purchaser, or the successor in title to the purchaser, may not lodge a design for approval until a subsequent date.

- 7.2 **Right to disapprove plans:** The Design Control Committee retains the right to refuse to approve any plans which in its reasonable opinion do not meet the minimum standards of design quality as outlined in these bylaws.
- 7.3 **Approval process:** The Design Control Committee and the Member shall comply with the approval process set out in the Design Guidelines before undertaking any work to the Lot.



SCHEDULE 2
MAP OF OMAHA BEACH

SCHEDULE 3
DEED OF TRANSFER



**OMAHA BEACH LIMITED
OMAHA BEACH RESIDENTS SOCIETY
INCORPORATED**

DEED FOR TRANSFER OF COMMUNAL FACILITIES

RuddWatts&Stone

LAWYERS

PARTIES**OMAHA BEACH LIMITED ("Developer")****OMAHA BEACH RESIDENTS SOCIETY INCORPORATED ("Society")****INTRODUCTION**

- A. The Developer intends to develop the Precinct, a residential development on a site generally as shown on the plan annexed to the constitution of the Society.
- B. The Developer wishes to transfer property to the Society, which property shall be for the common use of all residents of the Precinct. The Society shall hold, own and maintain that property in accordance with its constitution of the Society.

COVENANTS**1. DEFINITIONS**

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

"Communal Facilities" means all road, accessways and such other land and facilities as are intended for common use by all residents within the Precinct, all as initially shown on the plan annexed to the constitution of the Society and otherwise as determined by the Developer.

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

2. RESERVATION

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

3. TRANSFER

- 3.1 The Developer shall, as each stage of the Development is completed, transfer to the Society any Communal Facilities constructed which are intended to be used by

residents of properties within that stage, subject to such encumbrances as the Developer sees fit.

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

4. DEVELOPMENT RIGHTS

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

5. SOCIETY'S OBLIGATIONS

5.1 Until the Developer certifies to the Society that the Development is complete, the Society shall:

- (a) cause the Communal Facilities to be maintained to the standard specified by the Developer; and
- (b) enforce any covenants granted by any resident of the Precinct in favour of the Society, when called upon to do so by the Developer.

6. OPERATING EXPENSES

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

7. GOOD FAITH

7.1 The parties shall act in good faith, and shall use their best endeavours to promote the mutual interests of the parties in the development and maintenance of the Precinct as a high quality residential development.

7.2 The Developer shall exercise its voting rights as Controlling Member (as defined in the Society's constitution) so as to ensure that:

- (a) the Precinct is developed and completed in accordance with the requirements of all statutes, regulations and regulatory authorities;
- (b) the Communal Facilities are maintained to a standard commensurate with the Developer's promotion of the Precinct as a high quality residential development;
- (c) residents of the Precinct comply with any covenants granted in favour of the Society;
- (d) the Development proceeds smoothly and efficiently, in accordance with the plans of the Developer,

and otherwise for the benefit of residents of the Precinct.

8. ASSIGNMENT

8.1 This deed may be assigned by the Developer, provided that the assignee enters into a deed with the Society under which the assignee agrees to be bound by the terms of this deed.

9. CONTRACTS (PRIVITY) ACT 1982

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

10. **POWER OF ATTORNEY**

- 10.1 The Society irrevocably appoints the nominee of the Developer, as the attorney of the Society, to execute and perform any act, deed, matter or thing as fully and effectually as the Society could do, where the Society is required to execute or perform such act, deed, matter or thing by the provisions of this deed, and the parties agree to execute a full and proper power of attorney in this respect immediately upon execution of this agreement.

EXECUTED AS A DEED

OMAHA BEACH LIMITED by:

Signature of director

Name of director

Signature of director

Name of director

**THE COMMON SEAL of OMAHA BEACH
RESIDENTS SOCIETY INCORPORATED**
was affixed in the presence of:

Signature of Committee Member

Name of Committee Member

Signature of Committee Member

Name of Committee Member



CERTIFICATE OF INCORPORATION
of

OMAHA BEACH RESIDENTS SOCIETY INCORPORATED
(AK/1139217)

This is to certify that OMAHA BEACH RESIDENTS SOCIETY INCORPORATED was incorporated under the Incorporated Societies Act 1908 on the 11th day of May 2001.



Neville Harris

Neville Harris
Registrar of Incorporated Societies
18 May 2001

OMAHA BEACH RESIDENTS SOCIETY INCORPORATED

Meeting of the Members

Dated this 11th day of May 2001

Resolved

1. **Name:** That the name of the Society be the Omaha Beach Residents Society.
2. **Registration:** That the Society be incorporated in accordance with the provisions of the Incorporated Societies Act 1908.
3. **Registered Office:** That the registered office of the Society be:

c/o Hartford Group Limited
Building B, Level 3
14 Viaduct Harbour Avenue
Maritime Square
Auckland
4. **Constitution:** That the rules of the Society be the rules set out in the annexed constitution, being rules which comply with section 6 of the Incorporated Societies Act 1908.
5. **Bankers:** That The National Bank of New Zealand Limited be the bankers to the Society.
6. **Committee:** The following persons are hereby elected the committee of the Society:
 - (a) The manager of the Society being the treasurer/secretary is Paul MacNicol of MacNicol and Co, Chartered Accountants, PO Box 44, Warkworth.
 - (b) The following persons being general committee members:
 - (i) Philip Edward Brown;
 - (ii) Christopher Rodney Morton;
 - (iii) Charles Kenneth Grierson Macindoe being the representatives of Omaha Beach Limited as developer under the constitution.
7. **Design Control Committee:** The following persons are hereby elected to the Design Control Committee ("DCC") of the Society:
 - (a) The chairman of the DCC is Charles Kenneth Grierson Macindoe;
 - (b) The town planner of the DCC is Douglas Leighton of Boffa Miskell Ltd, Landscape Architects and Environmental Planners, PO Box 91-250, Auckland ;
 - (c) The architect of the DCC is Brent Hulena of Hulena Co Architects, 23 Davis Crescent, Newmarket, Auckland;
 - (d) The secretary/treasurer of the DCC is Paul MacNicol of MacNicol and co, Chartered Accountants, PO Box 44, Warkworth.

8. Approval of and Authority to Sign Documents:

8.1 That the following documents, annexed hereto and listed below, having been produced to the meeting are approved and any two members of the Committee are hereby authorised, where necessary, to affix the common seal of the Society to each document and witness the affixation:

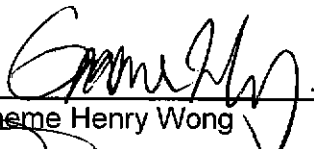
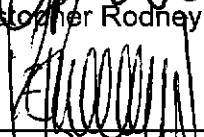

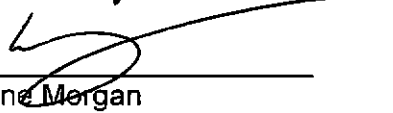
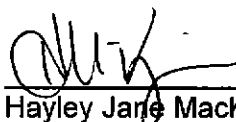

- (a) The Constitution of Omaha Beach Residents Society Incorporated, attached under resolution 4 above;
- (b) Deed of Transfer of Communal Facilities pursuant to the Constitution between Omaha Beach Limited and the Society;
- (c) Memorandum of Transfer pursuant to the Constitution by Omaha Beach Limited to the Society of Lot 801 Deposited Plan 206443;
- (d) Easement Certificate creating right of way, underground power, water, gas and telephone services over Lot 801 in favour of Lots 12 – 17 together with pedestrian right of way over Lot 106 in favour of Lots 104, 105, 107, 108 and 109, over Lot 86 in favour of Lots 85, 87 and 88, over Lot 68 in favour of Lots 67, 69 and 70, over Lot 23 in favour of Lots 22 and 23, over Lot 20 in favour of Lots 19 and 21, over Lot 17 in favour of Lots 16 and 18, over Lot 29 in favour of Lots 28 and 30, over Lot 26 in favour of Lots 25 and 27;
- (e) Further Deed of Covenant between Mangatawhiri Limited, the Society and Omaha Beach Limited pursuant to the provisions of the Deed of Agreement for Land Covenants made between Mangatawhiri Limited, Manapouri Developments Limited and Omaha Beach Limited dated 21 December 1999;
- (f) Deed by each of:
 - (i) Omaha Beach Limited;
 - (ii) Omaha Beach NU1 Limited;
 - (iii) Omaha Beach NU2 Limited; and
 - (iv) Omaha Beach NU3 Limited

as Covenantor to the Society creating land covenants pursuant to the provisions of the Deed of Agreement for Land Covenants made between Mangatawhiri Limited, Manapouri Developments Limited and Omaha Beach Limited dated 21 December 1999;

- (g) Memoranda of Encumbrance of:
 - (i) Omaha Beach Limited;
 - (ii) Omaha Beach NU1 Limited;
 - (iii) Omaha Beach NU2 Limited; and
 - (iv) Omaha Beach NU3 Limited

as encumbrancer to the Society as encumbrancee creating the Society's Encumbrance pursuant to the provisions of the Deed of Agreement for Land Covenants made between Mangatawhiri Limited, Manapouri Developments Limited and Omaha Beach Limited dated 21 December 1999.

- (v) Deed of Land Covenant between Omaha Beach Limited and Omaha Beach Residents Society Incorporated creating the height restrictions and veiw shafts.


Graeme Henry Wong
David John Smallbone
Charles Kenneth Grierson Macindoe
Christopher Rodney Morton
Philip Edward Brown
Gregory Paul Gimblett
Olivia Leanne Aro
Elaine Morgan
Hayley Jane MacKenzie
Lisa Jayne Potter
Louise Catherine Titilah
Susan Jane Evans
Hunsha Parsot
Angie Maree Brass
Jane Victoria Wright