

CONSTITUTION
OF
BROADWAY PARK RESIDENTS SOCIETY
INCORPORATED

**2nd AMENDMENT:
EFFECTIVE FROM JULY 29TH, 2009**

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INTRODUCTION

1. NAME

1.1 The name of the Society shall be Broadway Park Residents Society Incorporated.

2. DEFINITIONS AND INTERPRETATION

Definitions

2.1 In these rules, unless the context otherwise requires:

“**Act**” means the Incorporated Societies Act 1908.

“**Adverse Proposed Change**” means the building of the road above the rail corridor as proposed in the Draft Newmarket’s Future Framework document of December 2003.

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

“**Broadway Park**” means the residential development on the site generally bounded by Remuera Road and Middleton Road, Newmarket, Auckland, as shown on the plan attached as schedule 3 to this Constitution.

“**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 (being the Recreation Centre at 8 Middleton Road and the Fitness Centre at 20 James Cook Crescent), plant, equipment, facilities and amenities owned, leased, licensed or otherwise held or operated by the Society (as the Society may determine) from time to time including all roads and walkways within Broadway Park, being initially those facilities transferred to the Society by the Developer pursuant to a deed of transfer.

“**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.

“**Developed Property**” means a property within Broadway Park:

- (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; and
- (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 owned otherwise than by the Developer.

“**Developer**” means Tasman Retirement Village Limited promoting and carrying out the development of Broadway Park or any assignee or successor in title.

“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.

“Government Valuations” means the capital value of any Developed Property as it appears on the district valuation roll pursuant to the Valuation of Land Act 1951.

“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.

“Key” means any type of access device, or swipe card, as issued by the Society to an Owner or Occupier for the purpose of access to the Communal Facilities.

“Manager” means the manager appointed under rule 12.1 or rule 12.2.

“Member” means each person who shall from time to time be a member of the Society pursuant to rules 4.1 to 4.6.

“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.

“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.

“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, the Public Reserve, and the operation of the Society (including, without limitation, the Management Expenses, the Management Fee, as defined in the agreement referred to in rule 12.1), 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 Broadway Park and adjacent areas such as Middleton Road, Newmarket Rail Yards and Endeavour Park.

“Public Reserve” means any public reserve within or adjoining Broadway Park which the Society is required to maintain.

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

“Secretary” means the Secretary appointed from time to time under rule 12.2.

“Section Value” means, in respect of each Developed Property:

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

“Society” means Broadway Park 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.

Interpretation

2.2 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

General

- 3.1 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 promulgation and enforcement of rules and covenants benefiting Members and Broadway Park generally.
 - e) The maintenance of the Public Reserve.
 - f) The scrutinising and monitoring of, and taking of active steps to oppose, the Adverse Proposed Change.
 - g) The scrutinising and monitoring of, and, subject to the Controlling Member's rights (if there is one) the taking of appropriate action in respect of, any activity or proposed activity within the Precinct that may affect the standard of living or quality of life of a Member as owner of a Developed Property.

Pecuniary gain not to be an object

- 3.2 The Society does not have as an object the pecuniary gain of Members, and (subject to rules 15.1) no Member shall be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Society.

Members may contract

- 3.3 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

First Members

- 4.1 The first Members ("**First Members**") of the Society shall be Neville Christopher Mahon, Christopher Lorillard Norrie, Murray McCallum Noble, Laurence Michael Goodman, Trevor Martin Bolland, Gregory John Shanahan, Philip Charles Creagh, Brett Evan Cran, Edlyn Moy, Christopher Stafford Turner, Donald William Crump, Jennifer Anne Orsborn, Geoffrey Richard Busch, Scott Graham Macky, Scott David Campbell. These Members shall resign from the Society as soon as there are more

than fifteen 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.

Owners to be Members

- 4.2 Subject to rule 4.1, each Owner shall be a Member, and only Owners shall be Members, and for that purpose:
- (a) 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. 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.
 - (b) A Member shall be deemed to have resigned from the Society immediately that Member is no longer a Owner, provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a Member.
 - (c) 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.

Developer as Controlling Member

- 4.3 Until the development of Broadway Park 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. Upon development of Broadway Park being completed, the Developer shall be deemed to have resigned as Controlling Member, and thereafter, there shall be no Controlling Member in respect of the Society.

Register of Members

- 4.4 The Society shall maintain a register of Members recording:
- (a) **For each Member:** 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.
 - (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.

Not assignable

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

More than one Owner

- 4.6 If there is more than one Owner for a Developed Property, such Owners shall collectively constitute one Member.

5. USE OF COMMUNAL FACILITIES AND PUBLIC RESERVE

- 5.1 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 Subject to rule 5.3, no person, other than those persons set out in rule 5.1, shall be entitled to use the Communal Facilities.
- 5.3 The Society shall allow access to the Public Reserve and the railway crossing to Broadway, Newmarket by members of the public, on such accessway as may from time to time be determined by the Society.
- 5.4 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

Levies

- 6.1 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 Subject to rule 6.7(c), each Member shall, on the first of each month in each Expense Year, pay one twelfth of the Society's Estimate applicable to that Expense Year, or in a manner determined by the Committee.
- 6.3 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 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 twelfth 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.

Special levies

- 6.5 The Committee:
- (a) shall from time to time fix an additional levy to be paid by each Member together with the payment determined 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) 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, and without limitation, such special levies may be raised in order for the Society to meet its commitment to technology set out in rule 9.6.

provided that any levy payable by a Member under this clause 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 (except that, in the case of any special levy to fund active steps by the Society in relation to the Adverse Proposed Change, the levy may, at the discretion of the Committee, be the same for each member, and may not exceed in total \$100 per Member).

Staged development

- 6.6 The Members acknowledge that Broadway Park is to be developed in stages, with new Owners becoming Members as each stage is completed.
- 6.7 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 Committee. If the amount of an Existing Member's Proportion of Operating

Expenses for the Period is greater than the total of the monthly 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 monthly 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 first of each month until the end of the current Expense Year, pay an equal proportion of the Society's estimate given pursuant to rule 6.7(b).

Sale of Developed Property

6.8 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 The Society shall, on application by a Member, or any person authorized 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.

Covenants and rules

- 6.10 Each Member agrees to promptly and fully comply with any rules 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).
- 6.11 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 JOINT VENTURE

Future development

- 7.1 The Members acknowledge that development of Broadway Park 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 Broadway Park;
 - (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 Broadway Park;
 - (e) to support any resolution to amend this Constitution, where the Society is bound by agreement with the Developer, to procure such amendment.

Covenants

- 7.2 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

Occupiers and Invitees

- 8.1 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.

Consequences

- 8.2 Upon any breach of this Constitution by a Member ("**Offending Member**"):
- (a) Where damage has been caused to the Communal Facilities or the Public Reserve, 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

Rules

- 9.1 The Society shall promulgate, amend and distribute to Members from time to time rules for the use of the Communal Facilities (including any restrictions on use for security, maintenance or other reasons), rules concerning the behaviour of Owners, Occupiers and Invitees, and rules governing the use of Developed Properties. Until further change, such rules shall be those rules attached as schedule one to this Constitution.

Repair of Communal Facilities

- 9.2 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.

Insurance

- 9.3 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).

Service contractors and utility suppliers

- 9.4 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 Broadway Park. Any Member wishing to contract for services within Broadway Park, 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.

Public Reserve

- 9.5 The Society shall ensure the proper maintenance of the Public Reserve, in accordance with any agreement entered into between the Society, the Developer and the Auckland City Council.

Technology

- 9.6 The Society shall be committed to securing the provision of utilities to Members by the best technology available, and shall seek to upgrade such technology wherever possible.

Adverse Proposed Change

- 9.7 The Society shall take active and lawful steps to scrutinise, monitor and oppose the Adverse Proposed Change.

10. LIMITATIONS OF THE SOCIETY

No indebtedness

- 10.1 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.

No encumbrances

- 10.2 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.

No investments

- 10.3 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.

No improper use

- 10.4 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

Powers

- 11.1 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.

Bank accounts

- 11.2 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 Secretary and one other member of the Committee.

Documents

- 11.3 All documents and written announcements requiring execution on behalf of the Society must be signed by the chairperson.

Composition

- 11.4 The Committee shall comprise the following persons:
- (a) a Secretary;
 - (b) the Manager;
 - (c) the representative of the Controlling Member (if there is one); and
 - (d) a minimum of six and a maximum of ten general Committee members, as determined by the Society in general meeting before election of Committee members.

Committee members

- 11.5 The Committee (other than the Secretary, Manager and representative of the Controlling Member (if there is one)) 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 A Committee member shall hold elected position until the earliest of:
- (a) the next annual general meeting following election (when the Committee member shall be eligible for re-election);
 - (b) the date written resignation from position is received by the Society;
 - (c) the date of removal from such position by the Society in general meeting; or
 - (d) the date of cessation of membership.
- 11.7 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 any Member to fill the vacancy until the position is filled by the Society in general meeting.
- 11.8 Notwithstanding any other rule in this Constitution, the representative of the Controlling Member shall remain as a general Committee member, for so long as there is a Controlling Member, and the Society shall not be entitled to remove him or her from that position for any reason whatsoever.

Duties of Secretary

11.9 The 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.

Conduct of Meetings

11.10 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.

Chairperson

- 11.11 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 neither the Secretary, Manager, nor the Controlling Member shall be chairperson) to chair Committee meetings and otherwise exercise the powers of the chairperson set out in this Constitution.
- 11.12 In the case of a tie in votes the chairperson may exercise a casting vote.

Seal

- 11.13 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 any two members of the Committee.

Voting

- 11.14 Resolutions of the Committee shall be passed by majority. Each Committee member shall be entitled to exercise one vote, provided that neither the Secretary nor the Manager shall 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 votes able to be cast by the other Committee Members present (including appointed proxies) 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.

Validity of Committee's actions

- 11.15 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.

Committee minutes and records

- 11.16 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

12. MANAGER AND SECRETARY

First manager

- 12.1 The first manager shall be Park Properties Management Limited, which shall manage the Society in accordance with the management agreement attached as Schedule 2 to this Constitution. On expiry or termination of the management agreement, a manager shall be appointed by the Committee under rule 12.2.

Duties

- 12.2 Subject to rule 12.1, the Committee shall appoint, remove and replace a 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. The Committee shall also appoint, remove and replace a Secretary from time to time to carry out the duties of the Secretary as detailed in rule 11.9 and such other duties as the Committee may, in its discretion, lawfully determine. The Committee, in its discretion, may determine the remuneration to be paid to any Manager and any Secretary appointed pursuant to this rule.

13. GENERAL MEETINGS

Annual general meeting

- 13.1 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.

Special general meetings

- 13.2 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.

Powers of the Society in general meeting

- 13.3 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.

Quorum

- 13.4 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 not be 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).

Notice of general meeting

- 13.5 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.

Failure to give notice

- 13.6 The accidental omission to give notice, or the non-receipt of such notice by any Member, shall not invalidate the proceedings at any such meeting.

The chairperson

- 13.7 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.

Adjournment

- 13.8 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.

Adjourned meetings

- 13.9 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

One Member one vote

- 14.1 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 Broadway Park, and such Owners are collectively a Member pursuant to rule 4.6, 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 Broadway Park shall be entitled to exercise that vote. On the death of any Member, and pending the transfer of that Member's property within Broadway Park, the executor of that Member's estate shall be entitled to exercise that Member's vote.

Controlling Member's vote

- 14.2 The Controlling Member (if there is one) shall be entitled (other than where a Special Resolution is required by this Constitution) to exercise a number of votes equal to one more than the votes able to be cast by the number of Members present (including appointed proxies) at any general meeting. The Controlling Member shall not be entitled to vote on any Special Resolution.

Corporation representatives

- 14.3 Any corporation which is a Member may, by resolution of its directors or other governing body, authorize 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.

No Vote if fees unpaid

- 14.4 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.

Voting at meetings

- 14.5 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 if required by this Constitution.
- (e) In the case of a tie in votes, the chairperson may exercise a casting vote.

Good faith

- 14.6 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.

GENERAL

15. GENERAL

Dissolution

- 15.1 The Society may be wound up in accordance with section 24 of the Act. Upon the winding up of the Society, ownership of the Communal Facilities shall vest in 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 titles to the Communal Facilities in the Members.

Alteration of Constitution

- 15.2 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 rescision shall have been given to all Members in accordance with this Constitution.
- 15.3 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).
- 15.4 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 rules 4.2, 4.3, 5.1, 7.1, 7.2, 9.1, 12.1 and 15.1 or so as to detrimentally affect the rights of the Controlling Member.
- 15.5 No such amendment, addition or rescision shall be valid unless and until accepted by the Registrar.

Registered office

- 15.6 The registered office shall be situated at a place nominated by the Committee.

Liability of Members

- 15.7 No Member shall be under any liability in respect of any contract or other obligation made or incurred by the Society.

- 15.8 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.
- 15.9 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 these Rules.
- 15.10 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.
- 15.11 All Members and the Society acknowledge that Christopher Lorillard Norrie is a joint venture partner in the Developer as trustee of the Middleton Trust. Christopher Lorillard Norrie shall be under no personal liability for the obligations of the Developer as a Member, Controlling Member or otherwise. The liability of Christopher Lorillard Norrie shall at all times and for all purposes be limited to the assets of the Middleton Trust.

Indemnity

- 15.12 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.

Arbitration

- 15.13 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.

Approval

- 15.14 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.

SCHEDULE 1 SOCIETY RULES

Rules governing Communal Facilities have been determined by the Committee under the authority given in the Constitution rules 9.1 and 11.1. It shall be the responsibility of every Member, or Occupier of a Developed Property of a Member, to understand and abide by these Rules.

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 considered necessary for security reasons, or for the purpose of maintaining and repairing Communal Facilities.

4. **Roads**

- 4.1 Members, Occupiers and Invitees are strictly prohibited from parking, at all times, on all footpaths, grass berms and grassed areas on the private roads of Furneaux Way, John Stokes Terrace, Joseph Banks Terrace and Maui Grove. Members, Occupiers and Invitees are strictly prohibited from parking at all times on places designated as no parking or standing areas on the private roads of Furneaux Way and Joseph Banks Terrace. Any vehicle or vehicles parked in Furneaux Way, John Stokes Terrace, Joseph Banks Terrace and Maui Grove that is found to be in violation of either of these parking directions, shall be liable to be removed, without warning, and at any time by a towing company authorised by the Society. The owner or user of any vehicle so removed shall be responsible for paying the towing company's charges for such removal and storage.

Rules governing Owners, Occupiers and Invitees

5. Keys

- 5.1 No Member shall make or retain any duplicates or copies of any Key relating to the Communal Facilities. Access to the Communal Facilities at the Fitness Centre and the Communal Facilities and Tennis Courts at the Fitness and Recreation Centres shall only be by the Key as issued by the Manager at that time. There shall be one Key issued to each eligible household. The Committee shall have the sole discretion at all times on the number of Keys that will be on issue to each eligible household.
- 5.2 No person shall be allowed by any Member to use their Key, other than the Member and his or her immediate family, or an Occupier of the property of the Member within Broadway Park (as recorded in the register of Members) and his or her immediately family.
- 5.3 If any Key is lost, stolen, destroyed or mutilated, the Member shall immediately report such to the Manager.

6. Conduct and noise

- 6.1 No Member shall engage in, or allow any person to engage in, any form of criminal activity within Broadway Park.
- 6.2 No Member shall make or permit any improper or unseemly noises within Broadway Park, nor act in any fashion so as to annoy or disturb any other Member.
- 6.3 If intoxicating liquor is consumed within Broadway Park, the Member shall ensure that all laws governing the consumption of intoxicating liquor are complied with.
- 6.4 Consumption of alcoholic products or the use of illegal drugs by a Member, Occupier of the Property of a Member and Invitees within the Fitness Centre and Recreation Centre is strictly prohibited at all times.
- 6.5 The Society reserves the right to exclude or evict from Broadway Park 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.
- 6.6 No Member shall burn any material or substance within Broadway Park or do anything which may create a fire hazard or contravene fire regulations.
- 6.7 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.

7. Radio and television aerials

- 7.1 No Member shall erect or fix, or cause to be erected or fixed to any residence within Broadway Park, or any part thereof, any radio or television mast or antenna.
- 7.2 Each Member shall at all times keep and maintain operative a telephone line to each dwelling on a Developed Property and agrees that all suppliers of utilities to a dwelling may use that telephone line for the purpose of "polling" any meter of the consumption of such utilities.

8. **Members' residences**

- 8.1 Each Member shall have the duty to keep each property which they own within Broadway Park 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 Broadway Park. Without limiting the generality of the foregoing, Members shall arrange for regular watering, fertilizing and cutting of grass areas, watering, fertilizing and pruning trees, removal of weeds and rubbish and the repair and maintenance of all buildings, driveways, footpaths and landscaping features upon the lot.
- 8.2 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.
- 8.3 No Member shall use or permit to be used a Developed Property for any purpose other than for residential use without the prior written consent of the Society, and in no case shall a Developed Property be used for a purpose not permitted under current local body planning requirements.
- 8.4 No Member shall erect, or have attached, any notice or sign on a Developed Property or the Communal Facilities without the prior written consent of the Society. It shall be the responsibility of members, when offering their property for sale, to inform the Real Estate Agent appointed to handle the sale of their property of these signage rules. (By extension, this means that once a member has obtained permission to erect a sign he/she may direct a real estate agent to proceed within the rules.)
- 8.5 (a) Properties for sale by offer, auction or tender may on receiving the required written consent of the Society allow the property sign to be displayed during the marketing period, with a maximum duration of 30 days. If the property is sold within that period, the sign must be removed within 5 days following the sale. Where a property is not sold within the duration of 30 days, the sign may continue to be displayed for a further 30 days subject to the verbal consent of the Society.
- (b) Property Sale Signs must be attached only within the member's property and not on Society land or gardens.
- (c) All Directional Arrows must be removed immediately after the Open Home period for that day of each Property and not left overnight.
- 8.6 Each Member shall properly secure that Member's Developed Property when it is not occupied.
- 8.7 No Member shall allow any animal, bird or pet (collectively "**Pet**") to cause a nuisance to any other Member.
- 8.8 Without limiting the generality of rule 8.7, 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 the high density urban environment of Broadway Park;

- (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.

8.9 Each Member shall be liable for the costs of repairing any damage caused by that Member's Pet(s).

9.0 No Member or Occupier of a property of a member shall allow any Developed Property to become infested by vermin or insects.

10.0 COMMUNAL FACILITIES (Refer – Constitution Rules 5.1, 5.2, 5.3 and 5.4)

- (a) Entry to the Fitness Centre or Recreation Centre shall only be by Key – (Rule 5.1).
- (b) The Manager shall be responsible for the issue of one key only to each eligible Household at such time as a representative of that Household has received, read and signed for the rules that apply for the Fitness and Recreation Centres.

Schedule 1 SOCIETY RULES

1ST Revision – **Effective from April 1, 2009**