



**“Edinburgh Quarter Residents’
Association Inc”**



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**BODY CORPORATE
ADMINISTRATION**



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BODY CORPORATE ADMINISTRATION

WHY CHOOSE BCA?

Established in 1978 - 33 years in operation

Two very experienced directors working at the coal face and available 24/7

Glenn has extensive knowledge and experience in the insurance industry

Diverse staff – described as United Nations if we weren't BCA! – dedicated to show their skills

Tap into a great network of suppliers without bias of choice

We understand and demonstrate ability to accommodate multi-faceted client's needs and adapt to difficult situations (e.g., debt collection) with pragmatic solutions

Both directors have mediation skills demonstrating classic problem-solving techniques to bring difficult parties to the table and facilitating meaningful results

Lower administration fees yet still provide cost effective solutions

Recent testimonials speak for themselves

Quick Q&A Residents' Association

Q. Do I need to insure my home?

A. Your home is covered under the Residents' Association insurance.

Q. Does the RA cover my household contents?

A. No, householders will need to make their own arrangements for Household Contents Insurance.

Q. What type of insurance cover does the RA have?

A. Replacement insurance, if your home were to burn down, it would be replaced with like.

Q. What can I do if my neighbour is being noisy or creating a disturbance?

A. See Schedule E-Bylaws - Section 2 – Conduct in Percy Street

Q. Who should I contact if I have any queries or a complaint regarding the Residents' Association?

A. See Section 42 – Disputes

Q. Does the RA build into the yearly cost a Long-Term Maintenance fund?

A. See Section 26 – Special and Particular Levies

Q. How often will the communal grounds be maintained, and the outer buildings cleaned?

A. Communal grounds monthly, outer buildings a yearly washdown.

Q. Who reviews and sets the yearly fee for the Residents' Association?

A. The Manager of the Residents' Association

Certificate of Insurance



Attention: Glenn Kwok Date: 26th of September, 2023

INSURED

Insured name: Edinburgh Quarter Residents' Association Incorporated

Interested parties: Citrus Living Edinburgh Limited as owner and insured. First Mortgage Trust as First Mortgagee

Policy number: 15-NEW-BPK

Policy type: Material Damage

PERIOD OF INSURANCE

From: 22/09/2023 to 22/09/2024 4.00 pm

SUM INSURED

Location: 126-128 Edinburgh Street, Christchurch

Description	Sum Insured
Building and Site Works, including Common Areas	\$ 5,580,000 RV
Landlords Chattels	\$ 50,000 per unit

EXCESS

Standard: \$500

Theft: \$2,500

Burglary: \$1,000

Other: Natural Disaster (above EQC): 1% of Site value, min \$1,000

SPECIAL CONDITIONS (IN ADDITION TO STANDARD POLICY WORDING):

NZI - Marsh Multidwelling Extension

This certificate provides limited details. The insurance in this certificate is subject to the terms, exceptions, conditions and warranties of the NZI Residential Buildings (Multi-Dwelling) NZ5073/05 Policy Wording as modified by the endorsements and clauses noted in the Special Conditions above (if any) and the Policy Schedule. A copy of the Policy Wording is available on request. In the event of inconsistency between this certificate and the Policy Wording and Policy Schedule, the latter two documents will apply.

Signed for NZI – A business division of IAG New Zealand Limited

Joanna Pickettley

Signature

Date 26/09/2023



Certificate of Incorporation

EDINBURGH QUARTER RESIDENTS' ASSOCIATION INCORPORATED

50180852

NZBN: 9429051603977

This is to certify that EDINBURGH QUARTER RESIDENTS' ASSOCIATION INCORPORATED was incorporated under the Incorporated Societies Act 1908 on the 14th day of September 2023

Registrar of Incorporated Societies
14th day of September 2023



To check the validity of this certificate visit
<https://app.businessregisters.govt.nz/sber-businesses/verify/9429051603977/IncorporatedSociety-98897106.html>

Certificate generated on 14 September 2023 02:36 PM NZST

Edinburgh Quarter Residents'
Association Incorporated

CONSTITUTION

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PART I - INTRODUCTION

1 Name and Registered Office

- 1.1 *Nature* - the Association is an incorporated society registered under the Incorporated Societies Act 1908.
- 1.2 *Name* - The name of the incorporated society shall be the Edinburgh Quarter Residents' Association Incorporated.
- 1.3 *Registered office* - The registered office of the Association shall be Level 3, 115 Queens Street, Auckland or such other place as the Committee decides from time to time.

2 Definitions

- 2.1 *Definitions* - In this document unless the context otherwise requires:

"Act" means the Incorporated Societies Act 1908;

"Annual General Meeting" means the annual general meeting of the Association, convened and conducted in accordance with these Rules.

"Annual Levy" means the annual levy for each Member set by the Committee in each Financial Year in accordance with Part VII of these Rules;

"the Association" means the Edinburgh Quarter Residents' Association Incorporated, an incorporated society registered under the Incorporated Societies Act 1908;

"Authority" means any local body government or other authority or council-controlled organisation of any authority having jurisdiction or authority over or in respect of any part of Edinburgh Quarter Residents' Association Incorporated or its use;

"Capital Improvements" means the structural repairs to replacement or substantial renewal of the Common Facilities;

"Covenant" means a covenant instrument (referred to in rule 8.3.1 in favour of the Association registered against each Lot), which provides security for compliance by the Members with their obligations under these Rules

"Bylaws" means bylaws made by the Association from time to time under rule 4.9;

"Committee" means the committee of the Association established in accordance with Part VI of these Rules;

"Common Facilities" means the common facilities and services (and associated machinery) within 126 Edinburgh Street, Spreydon, Christchurch owned, leased, licensed, maintained, entitled by easement or otherwise legally enjoyed in whole or in part by the Association or any registered proprietor of any Lot, including:

- (a) *Street lighting* – any street lighting fixtures and associated equipment such as utility meters, intended to form part of the Common Facilities;
- (b) *Water supply & meters* – any private infrastructure relating to water supply, treatment and water meters and associated equipment installed for the purposes of shared water supplies and intended to form part of the Common Facilities;

- (c) *Roadways, walkways and accessways* – privately and jointly owned formed roads, walkways and accessways with associated manoeuvring areas, loading zones and any other access related facilities;
- (d) *Stormwater Facilities* – such facilities at Edinburgh Quarter Residents’ Association Incorporated for the retention or detention of stormwater, including but not limited to stormwater tanks;
- (e) *Other Facilities or Services* - such other facilities or services serving Edinburgh Quarter Residents’ Association Incorporated which by the passing of a Special Resolution, the Members resolve should be under the control and direction of the Association;

within Edinburgh Quarter Residents’ Association Incorporated (whether directly or indirectly), including those facilities from time to time transferred to the Association by the Developer, by any other company which is directly or indirectly controlled by the Developer, or by any company of which the Developer is a subsidiary (whether directly or indirectly) or, required to be managed by the Association by any Authority.

“Constitution” means the rules and constitution of the Association and any amendments, regulations or bylaws in effect pursuant to this constitution;

“Controlling Member” means the Developer and its successors and assigns;

“Developer” means Citrus Living Edinburgh Limited (NZBN 942904900323) and its successors and assigns;

“Development Period” means a period which has commenced and which will end six (6) months after the development of Edinburgh Quarter Residents’ Association Incorporated is complete and the Developer no longer retains any material interest therein as a land developer, and for the purposes of this definition Edinburgh Quarter will be deemed to be complete on the issue of the last record(s) of title for all properties intended to be constructed or on sold by the Developer within Edinburgh Quarter Residents’ Association Incorporated ;

“Facility Expenses” means in each Financial Year the sum total of all payments, costs, expenditures, liabilities, rates, taxes and any other expenses incurred by the Association, and which have been properly and reasonably incurred and/or paid in respect of the provision, operation and maintenance of the Common Facilities and will include (without limitation) the following:

- (a) all rates levied by any Authority which are at any time levied upon the Common Facilities or Lots or are paid or payable by the Association as a result of the receipt of any money under these Rules;
- (b) all premiums and costs payable by the Association in respect of all policies of insurance effected in respect of the Common Facilities and Lots for sums insured up to their full replacement value against loss, damage or destruction by such risks as the Association may deem necessary or desirable, including consequential loss and public risk liability;
- (c) the cost of operating, supplying, servicing, maintaining, inspecting, testing, reading and repairing all services and utilities from time to time provided to the Common Facilities at Edinburgh Quarter, including water supply equipment and systems, private water meters, electrical supply equipment and systems, waste and rubbish and disposal systems and the plant and equipment required for any of such or other services and systems;
- (d) all charges for lighting, gas and power, and all other forms of energy incurred by the Association in connection with the Common Facilities, and other services or requirements furnished or supplied to the Common Facilities for the general benefit or purposes of the Common Facilities, including maintenance costs of lighting and power systems and equipment;

- (e) all sanitation costs in respect of Edinburgh Quarter Residents' Association Incorporated including the costs of the removal and disposal of all waste and garbage from the Common Facilities at 126 Edinburgh St, Spreydon, Christchurch (if any);
- (f) all costs of repairs, maintenance and renovations of the Common Facilities, including Common Facilities that are not owned by the Association but that the Association is obliged or agrees to maintain from time to time;
- (g) all other items of expense which the Committee, acting reasonably, considers necessary to incur for the good management and appearance of the Common Facilities;
- (h) all costs of managing, controlling and administering (including invoicing) the Common Facilities, including such costs that consist of wages, allowances or other emoluments paid to persons employed by or contracted to the Association;
- (i) any other costs incidental to the above or which the Association regards as necessary for the attainment of its objects.

"Financial Year" means each 12-month period commencing on 1 September and ending on the following 31 August or such other period selected by the Committee;

"GST" means goods and services tax charged under the Goods and Services Tax Act 1985;

"Land" means:

- (a) the land comprised in Records of Title CB252/284 and CB3B/28 Canterbury Register
- (b) such further land which the Developer decides will be incorporated within Edinburgh Quarter from time to time during the Development Period;

"Levy" and **"Levies"** means the Annual Levy and any special or particular levies due for payment by a Member to the Association in accordance with Part VII of these Rules;

"Long Term Maintenance Fund" means a fund established from time to time to meet the expenses anticipated by the Long Term Maintenance Plan (if any);

"Long Term Maintenance Plan" means a ten (10) year plan for future maintenance works, Major Facility Works, and Capital Improvements to Common Facilities;

"Lot" means any of Lots 1 – 18 (inclusive) derived from the subdivision of the Land for which a separate record of title has issued;

"Lot Share" in relation to a Lot means the share of Facility Expenses payable by that Lot;

"Major Facility Works" means major works on Common Facilities involving the maintenance, replacement, repair to, or substantial renewal of those Common Facilities on a basis which is expected to be infrequent and to involve large sums of expenditure and whether of a capital or maintenance nature or otherwise;

"Manager" means the person, firm or company appointed to manage the Association. The first Manager to be appointed is Body Corporate Administration Limited;

"Member" means an Owner who is a member of the Association and who is a registered proprietor for the time being of a Lot, and the Controlling Member;

“Occupier” means the person or persons occupying (permanently or temporarily) or entering on to any Lot or part of a Lot as Owner or under any lease, sublease, licence or other occupancy right and their contractors, employees, agents, workers, visitors and invitees;

“Owner” means a person who is registered as a proprietor (whether individually or with others) of an interest in land at 126 Edinburgh Street, Spreydon, Christchurch for which a separate title or identifier has been issued;

“Ordinary Resolution” means a resolution of the Association in general meeting passed by a majority of not less than 51% of the Members (which must include the Controlling Member, if any) present and who are entitled to vote in person or by proxy on the question;

“Edinburgh Quarter Residents’ Association Incorporated” means the planned residential development existing and proposed on the Land to be developed and constructed by the Developer;

Practical Completion Certificate means the certificate issued by the Project Manager on Practical Completion of the townhouse in the Development.

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

“Rules” means these rules of the Association and any amendments, regulations or bylaws in effect pursuant to these Rules;

“Special Resolution” means a resolution of the Association in general meeting passed by a majority of not less than 75% of the Members (which must include the Controlling Member, if any) present and who are entitled to vote in person or by proxy on the question;

“Voting Entitlement” means one vote for each Lot;

“Working Day” means any day of the week other than:

- (i) Saturday, Sunday, Waitangi Day, Matariki, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, and Labour Day, and
- (ii) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive;
- (iii) the day observed as Canterbury Anniversary Day;

2.2 *Extent of working day* - A Working Day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

2.3 *Acts outside of the working day* - Any act done pursuant to these Rules by a party after 5.00 pm on a Working Day, or on a day which is not a Working Day, shall be deemed to have been done at 9.00 am on the next succeeding Working Day. Where two or more acts (including service of notices) done pursuant to these Rules are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for the first sentence of this clause.

2.4 *Effect of headings* - Headings are included for convenience only and do not affect the interpretation of these Rules.

2.5 *Statutes and regulations* - Any reference to a statute includes reference to regulations, orders or notices made under or pursuant to such statute and reference to a statute or regulation includes references to

all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to.

- 2.6 *Alternative terms* - Words importing the singular number shall include the plural, the masculine gender shall include the feminine, persons shall include companies, and vice versa.
- 2.7 *Schedules and annexures* - The Schedules and Annexures to these Rules form part of these Rules.
- 2.8 *References to currency* - All references to currency are to \$NZD exclusive of GST (if any) unless expressly specified to the contrary.
- 2.9 *References to "including"* - Reference to "including" or "includes" are not words of limitation.
- 2.10 *GST* - Goods and Services Tax shall be paid by any party in receipt of a taxable supply in addition to any consideration therefore.

PART II - OBJECTS, DUTIES AND POWERS

3 Objects

- 3.1 *General object* - These Rules establish a system for the management, control, maintenance of the Common Facilities and insurance in relation to the Lots for the benefit of the Members.
- 3.2 *Specific objects* - the Association will play a key role in preserving the financial and commercial interests of the Members in maintaining and regulating the Common Facilities and other cooperative features of Edinburgh Quarter and will promote the following objects for the benefit of Members:
 - 3.2.1 the maintenance, preservation and enhancement of the unique character, size and capabilities of the Association;
 - 3.2.2 to procure and maintain a comprehensive insurance policy for the improvements located on the Lots and Common Facilities on a collective basis;
 - 3.2.3 the control of the Common Facilities by the Association;
 - 3.2.4 to ensure the proper supply, operation, maintenance, repair, renovation and replacement of the Common Facilities;
 - 3.2.5 to promulgate and enforce Bylaws to establish codes of behaviour applicable to Members and to benefit Members, the Common Facilities, Lots and generally;
 - 3.2.6 to manage the use of the Common Facilities and develop further Common Facilities;
 - 3.2.7 to maintain the Common Facilities and the Association generally as a safe, clean and well-presented environment having regard to the age, appearance and aesthetics of Edinburgh Quarter (as developed by the Developer) as a whole;
 - 3.2.8 the full and proper use of the Common Facilities by Members and, where appropriate, members of the public;
 - 3.2.9 to engage in any other enterprise or activity which the Association considers to be in the interests of the Members;
 - 3.2.10 to preserve the value and integrity of Edinburgh Quarter;

- 3.2.11 to assist, and co-operate with, the Controlling Member to procure completion of Edinburgh Quarter;
 - 3.2.12 to levy Members for the purpose of meeting the objects set out in these Rules and for the costs and expenses incurred in running and managing the Association;
 - 3.2.13 to do any other thing incidental or conducive to the attainment of any of the above objects.
- 3.3 *Excluded objects* - the Association does not have as an object the following:
- 3.3.1 the pecuniary gain of Members, and no Member will be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Association; or
 - 3.3.2 the carrying on of trading activities; or
 - 3.3.3 the carrying on of business for profit.

4 Duties of the Association

- 4.1 *Operate and Manage the Common Facilities* - the Association will operate and manage the Common Facilities and all improvements and equipment associated with the Common Facilities.
- 4.2 *Repair of Common Facilities* - the Association will ensure the proper use, operation, maintenance, repair, renovation and replacement of the Common Facilities, so as to keep the Common Facilities in good order consistent with standards generally proposed or adopted in facilities of similar nature, and to prevent them from becoming a danger or nuisance, and will undertake such Major Facility Works as are necessary for this purpose. Each Member agrees and allows the Association (and parties engaged by it) access to the Member's Lot for the purposes of this rule 4.2. However, the Association will make good any damage caused by such access within a reasonable time after completion of any work carried out to give effect to this rule 4.2.
- 4.3 *Access to Shared Common Facilities*— where any Common Facilities are located on a Member Lot, the Member agrees and allows the Association (and parties engaged by it) access to that Member's Lot for the purpose of administering the use and supply of the Common Facilities, including but not limited to carrying out water and electricity meter readings for the purpose of invoicing and recovering costs from the Member based on their usage of the supply, infrastructure and associated administration. The Association is also authorised to receive invoices from any relevant utility supplier for the purposes of administering the Common Facilities.
- 4.4 *Insurance*: Effect and maintain all insurances as it considers prudent with respect to:
- 4.4.1 the improvements located in the Lots;
 - 4.4.2 the Common Facilities;
 - 4.4.3 and the Association's affairs.
- The Association will procure and maintain a comprehensive insurance policy for the improvements on the Lots and adequate insurance for the Common Facilities (on either a replacement basis or a sum insured basis reasonably sufficient to replace the improvements and Common Facilities).
- 4.5 *Insurance premiums*: The Association 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) and will take any other action to ensure that the

insurance is maintained. On request, the Association will provide copies of the insurance policy to a Member within 5 Working Days of such request.

- 4.6 *Insurance provider*: The Association may by special resolution change its insurance provider.
- 4.7 *Treatment of insurance proceeds* - Money paid by the insurer under any insurance policy which covers the Lots or Common Facilities must be applied by the Association in or towards reinstatement of the Lots or Common Facilities or otherwise in accordance with a special resolution of the Association.
- 4.8 *Rates and Taxes* - the Association will pay all Authority rates and other taxes (other than income or value added taxes) and charges levied to Members on or with respect to the Common Facilities and Lots. The Members hereby grant the Association all rights granted by law to contest the legality and the amount of those taxes and charges.
- 4.9 *Bylaws* - For the fulfilment of the purposes and objects of the Association, but subject to rule 4.10, the Association will from time to time:
 - 4.9.1 promulgate Bylaws for the use of the Lots and Common Facilities (including any restrictions on use for security, maintenance or other reasons) and Bylaws concerning the behaviour of Owners and Occupiers and Bylaws governing the decoration and use of Lots within Edinburgh Quarter;
 - 4.9.2 amend and review the Bylaws as appropriate;
 - 4.9.3 enforce the Bylaws, taking such action in this regard as the Association thinks fit.
- 4.10 *Current Bylaws* - The bylaws are attached as Schedule E.
- 4.11 *Books of Account* - the Association will keep books and records of the Association's affairs and make those books and records, together with current copies of the Bylaws, available for inspection by Owners on request during normal business hours.
- 4.12 *Service Contractors and Utility Suppliers* - the Association may, from time to time, nominate a service contractor (with respect to management, maintenance, security or other such services as the Association considers desirable) or a utility supplier (with respect to the supply of utilities to the Common Facilities) as a service contractor or utility supplier (on an exclusive or non-exclusive basis) to Edinburgh Quarter.
- 4.13 *Register of Members* - the Association will maintain a register of Members recording:
 - 4.13.1 the name, address, occupation, contact details (at home and work) of each Member, or if the Member is not a natural person, of a contact person for that Member. No notice of any trust expresses, implied or constructive, will be entered on the register of Members;
 - 4.13.2 the name, address, occupation, contact details (at home and work) of each Occupier, or if the Occupier is not a natural person, of a contact person for that Occupier;
 - 4.13.3 the date on which each Member became a member of the Association;
 - 4.13.4 where there is more than one Owner of a Lot, which of such Owners is entitled to vote in accordance with these Rules;
 - 4.13.5 the name, contact person and contact details of any mortgagee over a Lot.

- 4.14 *Audit of Register of Members* - The Committee will ensure that the register of Members is audited by a qualified auditor after all Lots have been sold by the Controlling Member and thereafter once every two years.
- 4.15 *Incidental Activities* - the Association may carry out any other duty or activity which is necessary or incidental to any other specific duty contained in these Rules.
- 4.16 *Long Term Maintenance Plan* – Where determined by the Association to be necessary and practically feasible, the Association may establish and regularly maintain and update a Long Term Maintenance Plan which must cover a period of at least ten (10) years from the date of the plan or the last review of the plan. The Association may maintain an operating account for the purpose of the Long Term Maintenance Fund.

5 Powers of the Association

- 5.1 *Powers of the Association* - Subject to the express terms of these Rules, and to the Act, the Association will have all the powers as are expressly set out in these Rules or as are necessary to further the objects and duties set out above.
- 5.2 *Powers vested in Committee* - Without limiting the above, the administration of the Association will be vested in the Association in general meeting, and will be delegated to the Committee. The Committee may exercise all of the powers, authority and discretions of the Association as permitted by these Rules and do on its behalf such acts as the Committee 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 Association. 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 will in the exercise of the powers so delegated conform to directions of the Committee.
- 5.3 *Bank Accounts* - the Association will establish an account or accounts at a bank, and any drawings on such account(s) (including any cheque(s) drawn on such account(s)) will be made only under the signature of any two members of the Committee.
- 5.4 *Granting Access* - the Association may, from time to time, grant access to the Common Facilities to any person for the purpose of constructing, erecting, operating or maintaining the Common Facilities.
- 5.5 *Investments*: Invest any money for the time being held by it in any of the modes of investment for the time being authorised by law for the investment of trust funds;
- 5.6 *Contract*: Enter into agreements with contractors, workers, authorities and such other persons as may be necessary to carry out the Associations duties under this instrument;
- 5.7 *Loans*: Borrow any money necessary to enable it adequately to perform its duties or exercise its powers, provided that any loan is approved by Special Resolution of the Association;
- 5.8 *Right to Contract*: Enter into any agreement with a Grantee, Occupier or invitee for the provision of amenities or services by it to a Lot or to the Grantee, Occupier or invitee;
- 5.9 *Management*: Enter into a management agreement or agreements for such period, at such remuneration and upon such terms and conditions as the Association may think fit, for the delegation of its responsibilities to ensure the proper operation, repair, maintenance and replacement of the Common Facilities and to fulfil any other duties of the Association.
- 5.10 *Limitations* - Notwithstanding any other provision of these Rules or any other enabling power, except as otherwise authorised by Special Resolution, the Association's powers will be restricted as follows:

- 5.10.1 any Common Facilities designed for a particular purpose will be used only for that purpose;
- 5.10.2 no investments other than by deposit with a major trading bank, except by Special Resolution;
- 5.10.3 notwithstanding any other rule in these Rules, the Association will not expend money other than to further purposes recognised by law.

PART III - MEMBERSHIP

6 Incorporation Member

- 6.1 *Incorporation Members* - The incorporation members of the Association are those listed at the time of Incorporation (**Incorporation Members**). The Incorporation Members shall be entitled to vote at any meeting of the Association, to elect a Committee (subject to clause 19.9), and exercise all rights of Members set out in these rules, but shall have no obligations as Members except when any such Member is also an Owner.
- 6.2 *Cessation of Membership* - The Incorporation Members may continue as Members only for so long as is reasonably necessary to satisfy the membership requirements of the Act and will be deemed to have been removed as Members when the requisite number of Lots have been transferred from the Developer to purchasers. In any event, the Incorporation Members must cease to be Members on or the end of the Development Period.

7 Controlling Member

- 7.1 *Controlling Member* - Until it resigns, the Controlling Member will be a member of the Association to ensure that the subdivision and redevelopment of Edinburgh Quarter is completed.
- 7.2 *Limited Rights* - The Controlling Member will have only the rights and obligations specified in these Rules, and will have no other rights or obligations as a Member. No reference in these Rules to a Member will be taken as including a reference to the Controlling Member unless specifically stated.
- 7.3 *Resignation of Controlling Member* – Earlier (in its discretion) or at the end of the Development Period, the Controlling Member must by written notice resign as Controlling Member (and in the absence of written notice, will be deemed to have resigned), and thereafter there will be no Controlling Member.
- 7.4 *Control vested in Controlling Member* - Until the end of the Development Period and while the Controlling Member is in office, the full government and control of the Association will be vested in the Controlling Member, which may exercise all the powers of authorities and discretions vested in the Committee and in addition may exercise all the powers of the Association which are not by statute required to be exercised by the Association in general meeting;

8 Owner Members

- 8.1 *Owners to be Members* - The registered owner of each Lot will be a Member, and subject to the other provisions of this Part III, only such registered owners will be Members.
- 8.2 *Covenant* - The Covenant is or will be registered against the title to each Lot in favour of the Association.
- 8.3 *Mutual Rights and Obligations between Owners (inter se) and between Owners and the Association* - The mutual rights and obligations contained in the Covenant will run with the Lots and will automatically bind each Member to the following obligations:
 - 8.3.1 The Covenant will be registered against the title to each Member's Lot in favour of the Association, whereby each Member covenants to become and remain a Member, and to

perform the obligations of a Member as set out in these Rules and otherwise containing terms required by the Association;

- 8.3.2 Each Member will, prior to completing the sale of a Lot, procure the purchaser to enter into, execute and deliver to the Association a deed of covenant in favour of the Association, wherein the purchaser covenants (contemporaneously with the transfer of the Lot) to become and remain a Member, and to observe and perform the obligations of a Member as set out in these Rules. The deed of covenant will be prepared by the Association's solicitors, and the selling or transferring Member will pay the reasonable legal costs and disbursements of the Association's solicitors;
 - 8.3.3 Membership of the Association is appurtenant to and runs with ownership of a Lot;
 - 8.3.4 Membership of the Association may not be severed from the ownership of a Lot or in any way transferred, pledged, mortgaged or alienated except together with title to the Lot;
 - 8.3.5 The rights, privileges and obligations of a Member are not assignable (except by transfer of the Lot to which membership is associated).
 - 8.3.6 If there is more than one Owner of a Lot, such Owners must collectively constitute one Member and the liability of such Members will be joint and several.
 - 8.3.7 Membership of the Association cannot be terminated and a Member cannot resign as a Member, except as provided by these Rules.
 - 8.3.8 A person ceases to be a Member immediately on the registration of a transfer of the Member's Lot, provided that such cessation will not relieve a person of any obligation or liability arising before that person ceased to be a Member.
 - 8.3.9 Each Member will, immediately before ceasing to be a Member, provide the Association with the details and documents necessary for maintenance of the register of Members pursuant to rule 4.13 in respect of the new registered proprietor of the Lot and, upon entry of the details into the register, the new registered proprietor will become a Member.
- 8.4 *Companies and Trusts* - Where a company, trust or other non-natural person is a registered proprietor of a Lot, that company, trust or non-natural person must nominate a natural person (being a director, officer, trustee or equivalent of that non-natural person) to be the Member for and on behalf of that non-natural person.

PART IV - MEMBER RIGHTS

9 Use of Common Facilities by Members, Occupiers and Invitees

- 9.1 *Use of common facilities* - Subject to these Rules and the Bylaws relating to the use of the Common Facilities, each Member and Occupier and their contractors, employees, agents, workers and invitees will be entitled to use the Common Facilities for the proper purposes for which they were designed.
- 9.2 *Rules of use* - The Association may by Special Resolution, amend and promulgate Rules for the use of the Common Facilities (including any restrictions on use for security, maintenance or other reasons) and rules concerning the behaviour of Members, Occupiers and invitees while accessing the Common Facilities and Lots.
- 9.3 *Restrictions and reservations* - the Association will be entitled to refuse any person (including a Member) access to the Common Facilities, or take any other appropriate action if in its sole discretion it considers that:

- 9.3.1 to do so is in the interests of safety or security; or
 - 9.3.2 admittance of any further persons would interfere with the use and enjoyment of the Common Facilities by Members and Occupiers using the Common Facilities at that time; or
 - 9.3.3 if there is a failure by a Member or its invitees to comply with the Rules or Encumbrance relating to the Common Facilities.
- 9.4 *No warranty as to capacity* - the Association makes no warranty as to the availability and capacity of the Common Facilities or their suitability for use.

PART V - MEMBER OBLIGATIONS

10 Compliance with Rules

- 10.1 *Compliance with constitution and bylaws* - Each Member will promptly and fully comply with the terms of these Rules and the Bylaws.

11 Payment of Levies

- 11.1 *Members will pay levies* - Each Member will pay the Levies due by them to the Association, as when they fall due.

12 Compliance with Covenant

- 12.1 *Compliance with covenant* - Each Member will promptly and fully observe and comply with the obligations imposed on them by the Covenant.
- 12.2 *Registration of covenant* - The Covenant must be registered against each Owner's title in favour of the Association. The Association must not, except by Special Resolution and the prior consent of the Controlling Member (if there is one), agree to any alteration of the Covenant as first registered against each Owner's Title.
- 12.3 *Conflict with these rules* - If there is a conflict between the provisions of these Rules (including any Bylaws) and the provisions of the Covenant, the provisions of these Rules (including any Bylaws) will prevail.

13 Liability of Members

- 13.1 *No liability for debts of the Association* - Membership of the Association will not of itself impose on the members any liability in respect of any contract, debt, or other obligation made or incurred by the Association.
- 13.2 *Separate liabilities not affected by these rules* - Nothing in these Rules affects the liability of a Member to the Association under a contract or for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the Member.
- 13.3 *Liability for unpaid levies* - Former Members will remain liable for unpaid Levies due to the Association by that Member. The registration of a transfer of a Member's interest in a Lot does not relieve that Member from any liability arising prior to the date of registration of that transfer.
- 13.4 *No refunds for former members* - Former Members will not be entitled to any refund of any Levies.

14 Proper Use

- 14.1 *Members to use common facilities only for designated purposes* - The Members will ensure the proper use, enjoyment and operation of the Common Facilities only for their designated or proper purposes.

15 Compliance by Occupiers (other than Members)

- 15.1 *Members liable for acts of occupiers and invitees* - A reference to an act or omission by any Member shall include any act or omission by any Occupier of that Member's Lot.
- 15.2 *Members to advise the Association of occupier details* - A Member must advise the Association of details of all Occupiers of the Member's Lot and each Occupier will be deemed to have knowledge of these Rules and the Bylaws and each Member is responsible and shall be held liable for acquainting the Occupier with these Rules and the Bylaws.
- 15.3 *Members to ensure compliance by occupiers* - Each Member must take all reasonable steps (including enforcing the terms of any lease/licence) to ensure that their Occupiers comply with these Rules. In any case of persistent default by an Occupier, the Member must, on demand by the Association, terminate the Occupier's right to occupy the Member's Lot.
- 15.4 *Copy of these rules to be made available to occupiers* - A copy of these Rules and the Bylaws shall be attached to every lease, licence, or other document defining occupancy rights of a Lot and any such document must contain an obligation on the Occupier to observe and comply with these Rules and the Bylaws.

16 Members Assistance for Common Facilities

- 16.1 *Access for development and maintenance* - The Members acknowledge that development and maintenance of Edinburgh Quarter is ongoing. The Members will allow the Association access to and across their Lots to the Common Facilities as may be necessary or desirable and to add, replace, alter or remove structures and services forming part of the Common Facilities. the Association and each Member individually agrees:
- 16.1.1 To grant the Association access to the Common Facilities and the Member's Lot with such vehicles, machinery and tools as the Manager directs for the purpose of maintenance or Major Facility Works to the Common Facilities. The Association will:
- (a) make good any damage caused by the Association accessing a Member's Lot;
- (b) not unreasonably interfere with that Member's quiet enjoyment of the Member's Lot,
- 16.1.2 To grant, surrender or take such easements in favour of the Association or any other Member as maybe required by the Association to properly convey legal rights to Members to use or retire a Common Facility or to undertake any Major Facility Works;
- 16.1.3 Not to prevent, hinder or obstruct the use by the Association or any Member of the Common Facilities or the addition, replacement, alteration or removal (where not required) of structures and/or services forming part of the Common Facilities by the Association, or the granting of any interests in the Common Facilities by the Association to a Member or Members;
- 16.1.4 Not to oppose, or permit to take part in any opposition to the development of Edinburgh Quarter Residents' Association Incorporated;
- 16.1.5 To support any resolution to amend this Constitution, where the Association is bound by agreement with the Developer, to procure such amendment;

- 16.1.6 To permit the Association to temporarily close or not provide any Common Facility as may be required for maintenance or Major Facility Works to be effected or as may be necessary or desirable;
- 16.1.7 To sign any document or do any other thing reasonably necessary to give effect to any obligation contained within these Rules, or to support any resource consent, building consent or other authorisation applied for by or on behalf of the Association in respect of Edinburgh Quarter.

17 Risk and Indemnity

- 17.1 The Members mutually agree and covenant with each other that they will take all reasonable care in using the Common Facilities and hereby confirm that all rights are exercised at their own risk and no Owner or Member will hold any other Owner or Member or their respective successors in title liable in any way for any loss, damage or injury sustained by that Owner or Member.

PART VI - OPERATION OF THE ASSOCIATION

18 The Controlling Member

- 18.1 *Modified provisions while Controlling Member in office* - While a Controlling Member is in office, these Rules will take effect subject to the following provisions:
 - 18.1.1 The full government and control of the Association will be vested in the Controlling Member, which may exercise all the powers, authorities and discretions vested in the Committee and in addition may exercise all the powers of the Association which are not by statute required to be exercised by the Association in general meeting;
 - 18.1.2 The Controlling Member will be the chairperson of all meetings of the Association (unless it is agreed at the beginning of the meeting that a suitably qualified person chair the meeting);
 - 18.1.3 The Controlling Member must be present (or have appointed a proxy) for there to be a valid quorum for a meeting (including one that has been adjourned) of the Association;
 - 18.1.4 The Controlling Member will be entitled to exercise the number of votes required to pass or reject (as it sees fit) any Ordinary Resolution or Special Resolution;
 - 18.1.5 Any minute entered in the minute book of the Association's proceedings signed by the Controlling Member, in any matter not expressly required by statute to be done by the Association in general meeting, will have the effect of a resolution of the Association;
 - 18.1.6 The Committee will be under the control of the Controlling Member, whose opinion will prevail in the event of any difference of opinion, and they will be bound to conform to the Controlling Member's directions in regard to the Association's business. For the avoidance of doubt, the Committee will act in an advisory role to the Controlling Member to enable the Controlling Member to form its opinions and make decisions under this rule.
- 18.2 *Effect on meetings* - Notwithstanding anything contained or implied in these Rules:
 - 18.2.1 So long as the Controlling Member is in office, no resolution that is passed by the Association in general meeting or by the Committee will have any force unless the resolution is in writing and signed by the Controlling Member; and
 - 18.2.2 So long as the Controlling Member is in office, it is not necessary to hold the formal meetings of the Committee, but any resolution or document signed by the Controlling Member will be

as valid and effectual as if it were a resolution unanimously passed at any meeting of the Committee.

- 18.3 *Right to convene general meetings* - The Controlling Member may at any time convene upon such notice as he/she/it thinks fit a general meeting of the Association and, to the extent permissible by law, may regulate all proceedings at such meetings and from time to time determine the quorum for any meeting whether of Members or of the Committee, notwithstanding anything to the contrary to these Rules.
- 18.4 *Controlling Member to use reasonable endeavours to give notice of vote* - If the Controlling Member intends to exercise a vote in accordance with clause 18.1.4, the Controlling Member shall use reasonable endeavours to notify Members in advance of its intention to exercise such vote. Every such notice shall outline the matter at issue together with a statement of intention from the Controlling Member as to the vote it intends to cast. Prior to the vote, Members will have the right to provide written submissions to the Controlling Member regarding the matter at issue. The Controlling Member shall in good faith consider all submissions prior to exercising its vote.
- 18.5 *Controlling Member provisions paramount* - These Rules in so far as they relate to the proceedings and powers of the Committee and/or the Association will in all respects be read subject to the provisions relating to the Controlling Member in this rule 18. Should there be any inconsistency or contradiction, the provisions relating to the Controlling Member in this rule 18 will be paramount.

19 The Committee

- 19.1 *Powers* - Subject only to the powers of the Association exercised in general meeting, and the powers delegated to the Controlling Member (if one is in office) the management of the Association will be vested in a Committee in accordance with this rule 19. The Committee may exercise all of the powers, authority and discretions of the Association as permitted under these Rules and do on its behalf all acts as it deems 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 Association.
- 19.2 *Composition* - The powers and duties of the Association may be exercised and performed by the Committee comprising:
- 19.2.1 A chairperson (who will be chosen from the general Committee members subject to rule 1, Schedule B);
- 19.2.2 A treasurer/secretary; and
- 19.2.3 A minimum of three and a maximum of seven general Committee members;
- 19.2.4 The Manager, who is a person or company appointed by the Committee to provide operational management to the Association.
- 19.2.5 A person appointed by the Controlling Member, for the duration of the Development Period.
- 19.3 *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 to chair Committee Meetings and otherwise exercise the powers of the Chairperson set out in this instrument.
- 19.4 *Number of votes* - Each Committee Member shall have one vote.
- 19.5 *Majority* - At Committee Meetings all matters of general business shall be determined by a simple majority of votes. In the case of equality of votes the Chairperson for the time being of the meeting shall have a casting vote.

- 19.6 *Election* - The general Committee members will be elected by the Association at every Annual General Meeting, and may be elected at any other time by the Association in general meeting.
- 19.7 *Delegation of powers* - The Committee may delegate any one or more of its powers to a sub-committee of Committee members, a Committee member, the Manager or any other person(s). In exercising the Committee's delegated powers, any delegate must comply with any directions that the Committee may impose.
- 19.8 *Treasurer/secretary/Manager* - The treasurer/secretary will be the Manager, or, where no Manager has been appointed, such person as the Committee will appoint from time to time.
- 19.9 *Retirement* - A Committee member will hold elected position until the earliest of:
- 19.9.1 The next Annual General Meeting following the election (when the Committee member will be eligible for re-election);
 - 19.9.2 The date written resignation from the position is received by the Association;
 - 19.9.3 The date of removal from such position by the Association in general meeting; or
 - 19.9.4 The date of cessation of membership.
- 19.10 *Casual Vacancy* - In the event of a casual vacancy in any position on the Committee (whether caused by death, cessation of membership from the Association, or some other means) the remaining Committee members may appoint another member to fill the vacancy until the position is filled by the Association in general meeting.
- 19.11 *Duties of treasurer/secretary* - The treasurer/secretary will:
- 19.11.1 Convene general meetings when requested to do so in accordance with these Rules;
 - 19.11.2 Attend all meetings of the Committee and have full speaking rights at such meetings;
 - 19.11.3 Give all notices required to be given by these rules or as directed from time to time by the Association or the Committee;
 - 19.11.4 Keep minutes at all general meetings and Committee meetings and enter into the minute book:
 - (a) the time, date and venue of such meeting;
 - (b) all business considered and resolutions passed at such meeting;
 - 19.11.5 Hold in safe custody the common seal of the Association;
 - 19.11.6 Receive, and issue receipts for, at annual and special levies, additional fees and any other moneys paid to the Association;
 - 19.11.7 Operate and maintain a current bank account in the name of the Association;
 - 19.11.8 Pay all accounts properly incurred by or on behalf of the Association;
 - 19.11.9 Report immediately to the Association any Member who fails to pay special levies or additional fees within the prescribed period;

- 19.11.10 Keep all financial records and any security documents in safe custody;
- 19.11.11 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 Association; and
- 19.11.12 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 is reasonably practicable after each audit is completed and, in any event, no later than five (5) months of the end of the Financial Year,
- 19.12 *Proceedings at committee meetings* - The provisions of Schedule B of these Rules govern the calling and holding of Committee meetings.
- 19.13 *Further duties of Committee in relation to Financial Management* – the Committee or its delegate pursuant to clause 19.7 will be responsible for the following:
 - 19.13.1 Levy Members’ contributions, collect levies and pay accounts on behalf of the Association.
 - 19.13.2 Collection of all the Association levies and other charges due and deposit of the same in the Association’s nominated bank account.
 - 19.13.3 Payment of all outgoings incurred in relation to the Association’s operation of Edinburgh Quarter from levies and income collected from the Members in accordance with the approved budgets and as approved by the Association.
 - 19.13.4 The withholding of any surplus accumulated in the dedicated the Association’s Accounts required for the payment of specific outgoings in the immediate future prior to the collection of any additional income.
 - 19.13.5 To establish and maintain a fund for valuation fees, insurance premiums, repairs and maintenance and administration expenses. To establish a maintenance reserve fund sufficient to meet planned maintenance requirements and related contingencies of the Association for maintenance provisioning.
 - 19.13.6 To prepare Annual Accounts in accordance with acceptable New Zealand Institute of Chartered Accountants standards, to maintain accounting records for the Inland Revenue Department and independent audits.
 - 19.13.7 Prepare and report to the Association Annual General Meeting an income and expenditure statement separated into categories corresponding with those in the budgets for that year and an Arrears Report showing details of any members having balances owing at the end of the current period, showing the amount owing, type of charge, and when it was payable.
 - 19.13.8 To provide on an annual basis a Budget Report which will comprise income and expenditure budgets to be submitted for approval to the Association Annual General Meeting and for these to be implemented at the commencement of the new period. The income schedule is to show the apportionment of levies to the Members for that year in accordance with the Members levies.
- 19.14 *Further duties of Committee in relation to secretarial services* - the Committee or its delegate pursuant to clause 19.7 will be responsible for the following:
 - 19.14.1 To maintain a Register of Members of the Association.

- 19.14.2 To actively encourage the formation of the Committee and to facilitate regular Committee meetings as required.
- 19.14.3 To give notice of, hold and prepare minutes of the Annual General Meeting, all Committee meetings and any Special General Meetings called to administer Edinburgh Quarter as directed by the Association.
- 19.14.4 To convene meetings of the Association or the Committee for the purposes of administration and application of the Association policy and rules, to provide the Association or the Committee with information and administrative support for this purpose. To communicate the Association or Committee decisions and policy on behalf of the Association to the Members.
- 19.14.5 To arrange an annual valuation for insurance purposes, obtain insurance cover of Edinburgh Quarter for full replacement value and to make any necessary claims on behalf of the Association.
- 19.14.6 To supply certificates certifying the payment of the Association levies as required whenever a Lot is sold or mortgaged to authorised parties.
- 19.14.7 To maintain regular contact with all Members and to report on any matters affecting Edinburgh Quarter and to provide impartial professional advice and recommendations on commercial and Association matters to Lot Owner Members.

20 Design Controls

- 20.1 *Design controls* - The Association or the Controlling Member may revise and publish from time to time the Design and Standards Controls within Edinburgh Quarter Residents' Association Incorporated to ensure that the development retains its character as a master planned community and to ensure the maintenance of value and amenity to the Members. Such design controls and maintenance standards when adopted will be incorporated within the Rules. Each Member will fully comply with the Design and Standards Controls and any other rule relevant to design control.

21 The Manager

- 21.1 *First manager appointed by Controlling Member* - The first Manager of the Association will be the person, firm or company appointed as Manager by the Controlling Member. The Manager's rights, powers, obligations, remuneration and responsibilities may be recorded in a management agreement entered into between the Association and the first Manager.
- 21.2 *Appointment of subsequent managers* - Following the resignation, expiry of term or dismissal of the first Manager (and its assigns and successors), the Committee shall have the power to appoint, remove and replace subsequent Managers from time to time to carry out such of the obligations and exercise such of the discretions and powers of the Association, as the Committee thinks fit. The appointment of subsequent Managers may be for the term, at the remuneration and on such terms and conditions as the Committee may agree with the Manager.
- 21.3 *Scope of services of manager* - Without limiting the generality of the services, the Manager shall provide the services described in Schedule C.
- 21.4 *Scope of services may be altered by committee* - The scope of services of the Manager may be altered by the Committee.
- 21.5 *Reporting* - The Manager must report on a regular basis to the Committee.

22 General Meetings

22.1 *Exercise of powers by members* - Powers reserved to Members by these Rules and all residual governance rights (i.e. those not reserved to any other person or body) may be exercised:

22.1.1 at a meeting of Members; or

22.1.2 by a resolution in lieu of a meeting pursuant to clause 23.1.

22.2 *Power can be exercised by ordinary resolution* - Unless otherwise specified in these Rules, a power reserved to Members may be exercised by an Ordinary Resolution. An ordinary resolution is a resolution that is approved by a simple majority of the votes of those Members (including the Controlling Member, if any) entitled to vote and voting on the question.

22.3 *Exercise of some powers require special resolution* - The following powers must be exercised by Special Resolution, being a resolution approved by a majority of 75 percent of the votes of those Members (including the Controlling Member, if any) entitled to vote and voting on the question:

22.3.1 to alter the Association's Constitution or Bylaws;

22.3.2 to wind up the Association;

22.4 *Calling of annual general meeting* - The Committee must call an Annual General Meeting of Members to be held:

22.4.1 not later than five (5) months after the balance date of the Association; and

22.4.2 not later than fifteen (15) months after the previous Annual General Meeting.

22.5 *Calling of special general meeting* - A special general meeting of Members:

22.5.1 may be called at any time by:

(a) the Committee;

(b) the Controlling Member (if there is one); or

(c) a person who is authorised by these Rules to call the meeting;

22.5.2 must be called by the Committee within 20 Working Days of written request by Members who may between them exercise 10% of the votes available to be exercised at an annual general meeting of the Association.

22.6 *Proceedings at general meetings* - The provisions of Schedule A of these Rules govern the calling and holding of meetings of Members.

23 Resolutions in Lieu of Meeting

23.1 *Resolution in lieu of meeting* - A resolution in writing signed by Members who would be entitled to vote on that resolution at a meeting of Members (including the Controlling Member, if any) and who together hold not less than 75% of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of those Members.

23.2 *Resolution may consist of more than one document* - Any resolution in writing under the preceding clause may consist of one or more documents in similar form (including letters, telegrams, cables,

facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Members.

- 23.3 *No meeting is required if all done by resolution* - It shall not be necessary for the Association to hold an Annual General Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 23.1.
- 23.4 *Notice of resolution must be given* - Within five (5) working days of a resolution being passed under clause 23.1, the Association must send a copy of the resolution to every Member who did not sign the resolution or on whose behalf the resolution was signed.
- 23.5 *No prior notice of resolution is necessary* - A resolution may be signed under clause 23.1 without any prior notice being given to Members.

24 Indemnity

- 24.1 *Indemnity for officers etc.* - To the fullest extent permitted by law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or legal proceedings (whether civil, criminal, administrative, or investigative) by reason of the fact that that person is or was an officer, Controlling Member, committee member, member, employee, servant or agent of the Association, against expenses (including legal fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person in connection with that action, or proceedings if it is found and determined by the Committee or a Court that the person:
- 24.1.1 acted in good faith and in a manner which that person reasonably believed to be in, or not opposed to, the best interests of the Association; or
- 24.1.2 with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.
- 24.2 *Release of officers, committee etc.* - By these Rules, the Lot Owners release the Association and the members of the Committee from liability for any omission or improper exercise by any appointed manager of any delegated duty, power, or function.
- 24.3 *Officers insurance* - The Association will purchase and maintain insurance on behalf of any person who is or was an officer, Controlling Member, committee member, employee, servant, or agent of the Association, against any liability asserted against that person or incurred by that person in any such capacity, or arising out of the status of that person, whether or not the Association would have the power to indemnify such person against that liability under these Rules or otherwise.

PART VII - LEVIES

25 Annual Levies

- 25.1 *Power to levy members* - the Association may levy the Members for the costs of and associated with fulfilling the objectives set out in the Rules, and in carrying out the duties prescribed by and in exercising the powers reserved to it by these Rules.
- 25.2 *Levies to be fair* - Each Financial Year, the Association will set the Annual Levies described in this rule. All Annual Levies must be set in a manner which is fair and equitable to the Association and to all Members and any other category of membership or groups of Members. The Annual Levies for a Financial Year will be set considering the estimated Facility Expenses for the Financial Year and any contingency sums/special levies contemplated under rule 26.

- 25.3 *Further matters to consider when setting fair levies* - the Association must consider the following principles when setting Levies in a way which is fair and equitable:
- 25.3.1 Where the local authority rates or taxes charged to each Lot differ, the Association may charge Levies to reflect this.
 - 25.3.2 Where the Common Facilities are being used exclusively by one or more but not all Members (or their agents, contractors, employees, Occupiers, residents or invitees), then for so long as those Members (or their agents, contractors, employees, Occupiers, residents or invitees) have exclusive use thereof, those Members shall bear solely all costs relating to the Common Facilities;
 - 25.3.3 In the case of wilful or negligent damage caused by or purposeful work undertaken at the request of one or more but not all Members or their agents, contractors, employees, Occupiers, residents or invitees (not being maintenance or repair), then such cost shall be at the sole expense of the Member(s) creating the damage or requesting the work;
 - 25.3.4 Where costs are incurred as a result of a Member(s) breach of Rules; and
 - 25.3.5 Where circumstance and fairness dictate that particular costs should be otherwise allocated then such costs shall be fairly allocated between the Members having the benefit thereof.
 - 25.3.6 Notwithstanding any other provision contained in this instrument, where a Member has been denied the right to use the Common Facilities (for whatever reason), then such Member will not be required to bear any cost relating to the Common Facilities.
- 25.4 *The levy estimate* - Prior to or as soon as practicable after the commencement of each Financial Year or part thereof, the Association will by written notice advise each Member of the Association's estimate ("**the Levy Estimate**") of such Member's share of the Facility Expenses for that Financial Year, plus such contingency sum as the Association shall, in its sole discretion elect for that Financial Year. The Association may in its discretion during a Financial Year, increase or decrease any Member's Levy Estimate to consider that Member's use of particular Common Facilities.
- 25.5 *Payment of levy estimate* - Each Member shall pay the applicable Levy Estimate on a yearly basis with the due date of 30th September in each Financial Year. Payment shall be made in advance and in the manner as set by the Committee.
- 25.6 *Delay in advising levy estimate* - If the Association has failed to advise a Member of the Levy Estimate for a Financial Year before the date the first payment is due in any Financial Year, the Member will on that date and every other date on which a payment is due pay the Levy Estimate applicable to the previous Financial Year until otherwise advised by the Association.
- 25.7 *Statement of facility expenses* - As soon as practicable after the end of each Financial Year the Association will provide each Member with an itemised statement of the actual Facility Expenses for the just completed Financial Year (or part thereof). If the Member's proportion of the actual Facility Expenses for the previous Financial Year is greater than the total of the monthly payments made by the Member under rule 25.5, the Member will within one month of notification pay to the Association the difference. If the Member's proportion of the actual Facility Expenses for the previous Financial Year is less than the total of the monthly payments made by the Member under rule 25.5, the Association will credit the difference to the Member's liability for payments due in the then current Financial Year.
- 25.8 *Late charges* - If a levy or any instalment of the Levy Estimate is in arrears, the defaulting Member may be required by the Association to pay a late charge including interest at the rate of 5% above the Association's banker's overdraft rate, as the Association may determine. That late charge (plus any

reasonable handling costs) shall be levied against the Member's Lot to which the levy relates and will be added to that levy.

25.9 *Personal obligation* - Levies are the personal and individual debt of the Member. No diminution or abatement of levies is allowed for inconveniences arising from making of repairs or improvements to the Common Facilities. A Member is not exempted from liability for any levies through non-use of Common Facilities or otherwise.

25.10 *Levy certificate* - the Association will, on the application of a Member, or any person authorised in writing by such Member, provide the Member or authorised person with a levy certificate calculated to the date specified in the application. The statement will show:

25.10.1 the Levy Estimate of such Member's proportion of Facility Expenses for the current Financial Year;

25.10.2 the manner and time of payment of the Levy Estimate;

25.10.3 payments made by the Member on account of Facility Expenses in the current Financial Year;

25.10.4 payments due from the Member on account of Facility Expenses in the current Financial Year and not paid by the Member; and

25.10.5 the amount of any other Levies of the Member which are then recoverable or will be recoverable pursuant to rule 26;

25.10.6 any accumulated unpaid default interest;

25.10.7 whether or not it has received notice that any proceedings are pending against the Association,

and, in favour of any person dealing with that Member, the certificate will be conclusive evidence of the matters certified therein. The Member may only apply for a levy certificate once in any year and on each occasion that a Member transfers ownership of a Lot.

26 Special and Particular Levies

26.1 *Infrequent large expenditure levy* - the Association may, from time to time, fix a levy to be paid by each Member in addition to the monthly instalments of the Levy Estimate for that Member, to be set aside as a sinking fund to allow for and to meet the cost of Major Facility Works or for the purpose of maintaining the Long Term Maintenance Funds as determined by the Long Term Maintenance Plan.

26.2 *Special levies* - If the Levy Estimates collected by the Association in any Financial Year prove insufficient for any reason, including non-payment of any individual levies, the Association may make a special levy and recover the same from the Members in the same manner as the Annual Levies.

27 Obligations on Sale

27.1 *Liability of vendor member* - Where a Member ("**Vendor**") sells his, her or its interest in a Lot:

27.1.1 the Vendor shall, notwithstanding any other provision in these Rules, remain liable for sums owed to the Association in respect of that Lot to the date the Association is notified of the settlement of the sale;

- 27.1.2 the registration of a transfer of a Vendor's interest in any Lot does not relieve that Vendor from any liability arising prior to the date the Association is notified of the settlement of the sale;
- 27.1.3 the Vendor shall not be entitled to any refund of any Levies or any other financial contribution paid to the Association;
- 27.1.4 The purchaser shall receive the benefit of any levies (special or otherwise) paid by that Vendor or its predecessors in title.
- 27.2 *Liability of purchaser member* - The purchaser of the Vendor's Lot shall be liable as a Member for any indebtedness of the Vendor to the Association provided that this sub-clause does not apply where that purchaser obtains a levy certificate pursuant to clause 25.10 prior to becoming a registered proprietor of the Lot certifying that no outstanding Levies are payable in respect of that Lot.
- 27.3 *Levy certificate is conclusive* - A levy certificate pursuant to clause 25.10 shall be conclusive as to the sum of any outstanding Levy payable in respect of a Lot.

PART VIII - DEFAULT AND ENFORCEMENT

28 Default Notice

- 28.1 *Action in the event of default* - On any breach of these Rules, the Bylaws, or the Encumbrance by a Member or by an Occupier of the Member), the Association may take the following action against the Member ("**the Offending Member**"):
- 28.1.1 the Association at any time thereafter during the continuance of such breach, may serve a default notice on that Offending Member at his or her last known address requiring the breach to be remedied, together with payment of any accrued interest, costs, charges and expenses incurred by the Association by reason of such default.
- 28.1.2 the default notice shall fix a further day (not being less than ten (10) working days from the date of the notice) on or before which the breach is to be remedied. The default notice shall state that, in the event if the default is not remedied, the Offending Member's Lot will be subject to a right of sale under the Encumbrance.
- 28.1.3 if such breach continues after expiry of the date for compliance specified in the default notice, the Association may:
 - (a) do anything, including paying money, necessary to remedy the default;
 - (b) act to enforce the terms of the Covenant;
 - (c) recover any costs, charges, expenses or damages from the Offending Member;
 - (d) take any other action at law or in equity that may be available to the Association for the enforcement of these Rules.

29 Consequences of Default

- 29.1 *No membership benefits after un-remedied default notice* - After receipt of a default notice under rule 28.1 and while the default continues, the Offending Member will not be entitled to exercise the rights and benefits of membership of the Association (including any right to vote at a general meeting) and will not be entitled to use the Common Facilities. This rule will not relieve the Offending Member from the obligation to pay all monies due to the Association or the Manager under the terms of these Rules.

- 29.2 *Controlling Member may act* - Notwithstanding any other provision of these Rules, the Controlling Member is irrevocably authorised, at any time and in its sole discretion, on behalf and in the name of the Association, to act, including court or tribunal proceedings, against any Offending Member to enforce or require remedy of a breach of these Rules by the Offending Member. The Controlling Member will not be required to obtain the prior consent of the Association to any such action, proceeding or claim but will upon request inform the Association about any action, proceeding or claim and the Association will give its full co-operation to the Controlling Member, including the prompt reimbursement of the Controlling Member's costs (including solicitor/own client costs) of any such action, proceeding or claim.

30 Damage caused by Default

- 30.1 *Damage to common facilities and other property* - Where damage has been caused by an Offending Member to the Common Facilities or any other Member's Lot, the Defaulting Member will immediately make good such damage or, at the option of the Association or other Member, as the case may be, reimburse the Association/Member for the costs of such making good.

31 Recovery of Monies Paid

- 31.1 *Recovery of expenses* - All money paid and expenses incurred by the Association (including administration costs, legal costs and other expenses resulting from the default) in remedying or attempting to remedy any breach by an Offending Member or incurred in the exercise or attempted exercise or enforcement or attempted enforcement of any power, right or remedy of the Association in respect of such breach, shall be a debt due from the Offending Member to the Association.

32 Default Interest

- 32.1 *Interest payable on arrears* - If any money payable by an Offending Member to the Association is in arrears and unpaid for five (5) working 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 rate of 5% above the Association's banker's overdraft rate (or in the absence of such rate such other benchmark lending rate as nominated by the Committee) applicable during the continuance of the default computed on a daily basis from the due date until the date of payment in full.

33 Loss of Use Rights

- 33.1 After receipt of a default notice under clause 28, a Member will not be entitled to exercise the rights and benefits of his or her membership and will not be entitled to use the Common Facilities (except roads and access ways).

34 Covenant

- 34.1 *Mutual default under covenant* - Default by a Member under these Rules shall be deemed a breach by the Member of his, her or its obligations under the Covenant and vice versa.

PART IX - MISCELLANEOUS

35 Amendment of Rules

- 35.1 *Rules may be amended by special resolution of members* - These Rules may be amended, varied, added to or rescinded by Special Resolution of the Members.
- 35.2 *Currency of Rules* - For the purposes of establishing what constitutes an amendment to the Rules of the Association, a certificate signed by the manager or Chairperson of the Committee for the time being of

the Association certifying as to the current Rules of the Association shall be conclusive evidence for all purposes including proof in courts of law that the Rules so certified are the Rules of Association at the time of certification.

- 35.3 *Rules may be amended by Controlling Member* - These Rules may be amended by a resolution signed in writing by the Controlling Member (if there is one).
- 35.4 *Amendment cannot affect rights of Controlling Member* - Notwithstanding any other rule in these Rules, these Rules shall not be amended, added to or rescinded so as to alter add to or rescind rules affecting the rights of the Controlling Member (if there is one).
- 35.5 *Amendments to be in writing* - Any amendment or variation shall be evidenced by an instrument in writing executed in accordance with section 21 of the Act, or amendments or re-enactments thereof.
- 35.6 *Amendments effective on notice* - All Members shall be bound by any such amendment or variation upon the Association sending notice thereof in writing by ordinary mail sent to the address contained in the register of Members maintained by the Association.
- 35.7 *Acceptance by registrar* - No such amendment, addition or rescission will be valid unless and until accepted by the Registrar.

36 Contracts

- 36.1 *Entry into contracts* - A contract or other enforceable obligation may be entered into by the Association as follows:
- 36.1.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Association in writing signed under the name of the Association by:
- (a) the Controlling Member (if any);
 - (b) two or more Committee Members (one of whom must be the Controlling Member, if there is one);
 - (c) if there is only one Committee Member, by that Committee Member whose signature must be witnessed;
 - (d) the Manager;
 - (e) one or more attorneys appointed by the Association; or
 - (f) under common seal.
- 36.2 *Obligations which must be in writing* - An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Association in writing by a person acting under the Association's express or implied authority.
- 36.3 *Obligations not required to be in writing* - An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Association in writing or orally by a person acting under the Association's express or implied authority.
- 36.4 *Common seal* – The Committee shall obtain a common seal for use of the Association. 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 Committee Members (unless there is only one, and in which case, one Committee Member whose signature must be witnessed).

37 Registered Office

- 37.1 *Registered office* - The registered office of the Association shall be at the address listed in clause 1.3 or such other place nominated by the Committee from time to time.
- 37.2 *Register of members* - The register of Members shall be maintained at the registered office of the Association.

38 Life of Society and Liquidation

- 38.1 *The Association will continue while development exists* - the Association shall continue in existence while Edinburgh Quarter (and the properties therein) in their present legal format exists.
- 38.2 *Winding up* - Notwithstanding any other provision in these Rules, the Association may be wound up in accordance with section 24 of the Act provided that the consent of the Local Authority is obtained (if required), except that in subsection (1) of that section, the term resolution means a Special Resolution; and, for the purposes of that subsection, the resolution shall be taken to be confirmed at the subsequent general meeting if the confirmation is carried by a further Special Resolution. This provision shall be in substitution for the requirements of section 24(2) of the Act.
- 38.3 *Payment out of surplus assets* - In the event of liquidation of the Association, the Association's assets shall be converted into cash and after payment of costs and of liquidation the balance shall be shared amongst the Members in proportion to their respective Annual Levies paid in the Financial Year preceding the date of liquidation.

39 Notices

- 39.1 *Notices* - All notices and other communications required under these Rules shall be in writing and shall be delivered by hand or by properly addressed prepaid post or airmail postage or sent by email and, in the case of notices to or communications with:
- 39.1.1 any Member, shall be addressed to that Member at the address of that Member's Lot or at such other address, or email address as the Member may from time to time notify the Manager in writing;
- 39.1.2 the Association, the Committee or the Manager, shall be addressed to the intended recipient at the registered office of the Association.
- 39.2 *Deemed delivery* - Any notice or communication given in terms of this clause shall be deemed to have been delivered:
- 39.2.1 in the case of delivery by prepaid post or airmail postage, if:
- (a) posted within New Zealand to a destination within New Zealand, 2 working days after posting;
 - (b) posted within New Zealand to a destination outside New Zealand, 5 working days after posting;
 - (c) posted outside New Zealand to a destination within New Zealand, 5 working days after posting; and

39.2.2 in the case of transmission by email, on sending the email to the intended recipient.

39.3 *No liability for failure to give notice in proper form* - the Association shall not be held liable in any way for failure to give notice to any Member provided it has delivered such notice by any means specified under these Rules.

40 Bylaws

40.1 *Introduction, alteration or cancellation of bylaws* - If the Committee wishes to promulgate new Bylaws, or vary or cancel any Bylaws, the Bylaw will not be effective until it is approved by a majority of Members present and who are entitled to vote in person or by proxy at a meeting of Members.

41 Liabilities and Indemnities

41.1 *Liability of members* - No Member will be under any liability in respect of any contract or other obligation made or incurred by the Association.

41.2 *the Association to indemnify* - the Association will indemnify and keep indemnified:

41.2.1 members of the Committee from and against any liability in respect of any act or omission in their capacity as a Committee member, to the extent of property owned by the Association, except where criminal liability is adjudged in respect of that Committee member.

41.3 *Action in law* - No action in law or otherwise will 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. Nothing in this rule will prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.

41.4 *Member to indemnify the Association* - Each Member will indemnify and keep indemnified the Association from and against any action, claim, demand, loss, damage, cost, expense and liability which the Association may suffer or incur, or for which the Association may become liable, in respect of or arising from any breach of these Rules or the Bylaws by the Member.

42 Disputes

42.1 *Dispute resolution* - Any difference or dispute which may arise between a Member and the Association concerning these Rules or any act or thing to be done, suffered or omitted under these Rules, or concerning the construction of these Rules will be resolved between the parties in good faith. In the event a resolution is not reached, then the dispute will be referred to mediation in accordance with the following:

42.1.1 The parties to the dispute shall appoint a mediator and if they fail to agree the mediator will be appointed by the President of the Auckland District Law Society or the President's nominee;

42.1.2 The parties must co-operate with the mediator in an effort to resolve the dispute;

42.1.3 The mediator may engage an appropriately qualified expert to give an opinion on technical matters;

42.1.4 If the dispute is settled, the parties must sign a copy of the terms of settlement;

42.1.5 Unless the mediator awards otherwise, each party must pay a share of the costs of the mediator's fee and costs including travel, room hire, refreshments and qualified expert's fees;

- 42.1.6 The terms of settlement will be binding on the parties;
- 42.1.7 The terms of settlement may be tendered in evidence in any legal proceedings, but written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation process prior to settlement shall not be admissible in any arbitration or legal proceedings;
- 42.1.8 If the dispute is not resolved within ten (10) Working Days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease and either party may then commence arbitral proceedings.
- 42.2 *Arbitration* – If any dispute shall arise between the Association and a Member which is incapable of remedy by mediation, then such dispute 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 will be determined by the arbitrator. The arbitration will be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such mediation and arbitration will be a condition precedent to the commencement of any action at law.
- 43 Approvals**
- 43.1 *Approval* - Where in these Rules any reference is made to the approval or consent of the Association or the Controlling Member:
- 43.1.1 Such approval or consent will be given at the sole discretion of the Association, or the Controlling Member, as appropriate;
- 43.1.2 No approval or consent given on any occasion by either of the Association or the Controlling Member will serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and
- 43.1.3 Such reference will mean the prior written approval or consent of the Association or the Controlling Member as appropriate.

SCHEDULE A - PROCEEDINGS AT MEETINGS OF MEMBERS

1 Chairperson

- 1.1 If the Committee Members have elected a chairperson of the Committee, and the chairperson of the Committee is present at a meeting of Members, he or she must chair the meeting unless it is agreed at the start of the meeting that the Manager shall chair the meeting.
- 1.2 If no chairperson of the Committee has been elected or if, at any meeting of Members, the chairperson of the Committee is not present for the commencement of the meeting, the Members present may choose one of their number or the Manager to be chairperson of the meeting.

2 Notice of Meetings

- 2.1 Written notice of the time and place of a meeting of Members must be sent to every Member entitled to receive notice of the meeting and to every Committee Member and auditor of the Association not less than ten (10) working days before the meeting.
- 2.2 The notice must state:
 - 2.2.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it; and
 - 2.2.2 the text of any special resolution to be submitted to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver.
- 2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by a Member does not invalidate the proceedings at that meeting.
- 2.5 If a meeting of Members is adjourned for less than thirty (30) days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

3 Methods of Holding Meetings

- 3.1 A meeting of Members may be held either:
 - 3.1.1 by a number of Members, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - 3.1.2 by means of audio, or audio and visual, communication by which all Members participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

4 Quorum

- 4.1 No business may be transacted at a meeting of Members if a quorum (1/3rd [one third] of Members) is not present.
- 4.2 A quorum for a meeting of Members is present if Members or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Committee Members may appoint, and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Members or their proxies present are a quorum.

5 Business

- 5.1 The business of an Annual General Meeting shall be:
- 5.1.1 receiving any minutes of the previous Association's Meeting(s);
 - 5.1.2 the Chairperson's report on the business of the Association;
 - 5.1.3 a report on the finances of the Association, and the Annual Financial Statements;
 - 5.1.4 election of Committee Members;
 - 5.1.5 motions to be considered; and
 - 5.1.6 any general business.

6 Voting

- 6.1 In the case of a meeting of Members held under clause 3.1.1 of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- 6.1.1 voting by voice;
 - 6.1.2 voting by show of hands; or
 - 6.1.3 secret ballot.
- 6.2 In the case of a meeting of Members held under clause 3.1.2 of this Schedule, unless a poll is demanded, voting at the meeting shall be by the Members signifying individually their assent or dissent by voice.
- 6.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 6.4.
- 6.4 At a meeting of Members, a poll may be demanded by:
- 6.4.1 not less than five (5) Members having the right to vote at the meeting; or
 - 6.4.2 the chairperson of the meeting.
- 6.5 A poll may be demanded either before or after the vote is taken on a resolution.
- 6.6 If a poll is taken, Members are entitled to exercise the Voting Entitlement for each Lot owned by them. If a Lot is owned by more than one Member, such Members are only able to cast their Voting Entitlement in one way. If they cannot agree on how they should vote, then the first named person on the Certificate of Title for that Lot shall be entitled to vote. Members may vote in person or by proxy.
- 6.7 The chairperson of a Members' meeting is not entitled to a casting vote.

6.8 The secretary or Manager is not entitled to a casting vote (unless the Manager is also a Committee Member).

6.9 A proxy to vote at a meeting of the Association confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Member has the same effect as a demand by the Member.

7 Proxies

7.1 A Member may exercise the right to vote either by being present in person or by proxy.

7.2 A proxy for a Member is entitled to attend and be heard at a meeting of Members as if the proxy were the Member.

7.3 A proxy must be appointed by notice in writing signed by the Member and the notice must state whether the appointment is for a particular meeting or a specified term.

7.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

8 Postal Votes

8.1 A Member may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.

8.2 On a postal vote, Members are entitled to exercise the Voting Entitlement (on each resolution) for each Lot owned by them. If a Lot is owned by more than one Member, such Members are only able to exercise their Voting Entitlement in one way. If they cannot agree on how they should vote or if conflicting postal votes are received, then the first named person on the Certificate of Title for that Lot shall be entitled to vote or to have their vote counted.

8.3 The notice of a meeting at which Members are entitled to cast a postal vote must state the name of the person authorised by the Committee to receive and count postal votes at that meeting.

8.4 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Committee Member is deemed to be so authorised.

8.5 Members may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the votes to which he or she is entitled are to be voted, to a person authorised to receive and count postal votes at that meeting. The notice must reach that person before the start of the meeting.

8.6 It is the duty of a person authorised to receive and count postal votes at a meeting:

8.6.1 to collect together all postal votes received by him or her or by the Association; and

8.6.2 in relation to each resolution to be voted on at the meeting, to count:

(a) the number of Members voting in favour of the resolution, and the Voting Entitlement exercised by Members voting in favour of the resolution;

(b) the number of Members voting against the resolution, and the Voting Entitlement exercised by Members voting against the resolution; and

- (c) to sign and present to the chairperson of the meeting, a certificate which sets out the results of the counts required by this subclause.

8.7 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:

8.7.1 on a vote by show of hands, count each Member who has submitted a postal vote for or against the resolution (including all Members who share ownership of a Lot);

8.7.2 on a poll, count the Voting Entitlement exercised by Members who have submitted a postal vote for or against the resolution.

8.8 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.

8.9 The chairperson of a meeting must ensure that a certificate of postal votes held by him or by her is annexed to the minutes of the meeting.

9 Minutes

9.1 The Committee must ensure that minutes are kept of all proceedings at meetings of Members.

9.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

10 Loss of Voting Right if Levies Unpaid

10.1 If a sum due to the Association has not been paid by a Member, that Member may not exercise a vote at a Member's meeting.

11 Other Proceedings

11.1 Except as provided in this Schedule, a meeting of Members may regulate its own procedure.

SCHEDULE B - PROCEEDINGS OF THE COMMITTEE

1 Chairperson

- 1.1 The Committee may elect one of their number as chairperson of the Committee.
- 1.2 The Committee Member elected as chairperson holds that office until he or she dies or resigns or the Committee elect a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the Committee the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the Committee present may choose one of their number to be chairperson of the meeting.

2 Notice of Meeting

- 2.1 A Committee Member or, if requested by a Committee Member to do so, an employee of the Association, may convene a meeting of the Committee by giving notice in accordance with this clause.
- 2.2 Not less than two (2) days' notice of a meeting of the Committee must be sent to every Committee Member who is in New Zealand, and the notice must include the date, time, and place of the meeting and the matters to be discussed.
- 2.3 An irregularity in the notice of a meeting is waived if all Committee Members entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Committee Members entitled to receive notice of the meeting agree to the waiver.

3 Methods of Holding Meetings

- 3.1 A meeting of the Committee may be held either:
 - 3.1.1 by a number of the Committee who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - 3.1.2 by means of audio, or audio and visual, communication by which all Committee Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4 Quorum

- 4.1 A quorum for a meeting of the Committee is a majority of the Committee Members.
- 4.2 No business may be transacted at a meeting of Committee Members if a quorum is not present.

5 Voting

- 5.1 Every Committee Member has one vote.
- 5.2 The chairperson does not have a casting vote.
- 5.3 A resolution of the Committee is passed if it is agreed to by all Committee Members present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4 A Committee Member present at a meeting of the Committee is presumed to have agreed to, and to have voted in favour of, a resolution of the Committee unless he or she expressly dissents from or votes against the resolution at the meeting.

6 Minutes

- 6.1 The Committee must ensure that minutes are kept of all proceedings at meetings of the Committee.

7 Unanimous Resolution

- 7.1 A resolution in writing, signed or assented to by all Committee Members then entitled to receive notice of a Committee meeting, is as valid and effective as if it had been passed at a meeting of the Committee duly convened and held.
- 7.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Committee Members.
- 7.3 A copy of any such resolution must be entered in the minute book of Committee proceedings.

8 Other Proceedings

- 8.1 Except as provided in this Schedule, the Committee may regulate its own procedure.

SCHEDULE C - DUTIES OF MANAGER

To provide a cohesive facilities management service to the Association.

1 General Duties

- 1.1 Appoint and manage landscaping contractors to maintain Edinburgh Quarter Residents' Association Incorporated;
- 1.2 Management, monitoring and enforcement of the Rules;
- 1.3 Control the behaviour of residents and visitors to the Association to a level deemed generally acceptable by a majority of residents;
- 1.4 Coordinate rubbish collection for Common Facilities at the Association;
- 1.5 Coordinate minor repairs/maintenance with subcontractors;
- 1.6 Manage the provision of external services to each and any Common Facilities (e.g. electricity and water), and carry out any necessary acts to ensure those services are administered, including meter readings, receipt of utility invoices, apportionment and recovery of costs relating to those external services;
- 1.7 On instruction of the Association, call meetings, issue agendas, provide secretarial services, take minutes and issue communications/circulars to members on behalf of the Association.
- 1.8 Provide reports, property information, call tenders and investigate options for maintenance service contracts and operational requirements of the Association.
- 1.9 Instigate policy decisions of the Association and establish long range planning and financial strategies to accumulate funds for future maintenance/improvements as approved by the members of the Association.

2 Public Relations and Representation

- 2.1 To promote a positive and harmonious working relationship between Members, Occupiers and neighbouring owners, acting always in the best interests of the Owners.
- 2.2 To mediate between Members when required from time to time in an impartial and professional manner.

3 Risk Management

- 3.1 Arrange and control security services as considered appropriate to the extent that the Association shall be kept in a proper and secure manner at all reasonable times. To liaise with the Association to ensure a co-ordinated approach is maintained on behalf of the Association.
- 3.2 Arrange and organise where necessary Civil Defence and emergency evacuation procedures as appropriate.
- 3.3 To advise on the types of insurance cover and the sums required to be insured for Edinburgh Quarter Residents' Association Incorporated and to liaise with such insurance company or insurance broker as may be nominated or approved by the Association in order to procure the required cover.
- 3.4 To process claims under the insurance policies relating to Edinburgh Quarter Residents' Association Incorporated in accordance with the requirements of the insurer.

- 3.5 Use its best endeavours to advise Edinburgh Quarter Residents' Association Incorporated from time to time on any matters relating to resource management matters affecting the Association with the Manager's recommendation thereon and if requested so to do by the Association, to assist where necessary in the preparation and processing of any application for consent under any resource management plan or application for re-zoning or to object to any application for consent or re-zoning which would affect the Association and report to the Association on the result of any such application or objection with the Manager's recommendation thereon.

4 Common Facilities

- 4.1 To protect the common interests of the Owners and their assets.
- 4.2 Arrange, organise and supervise all maintenance and repairs required by the Association for which the Association is responsible so that it is maintained to an appropriate standard.
- 4.3 Prepare, arrange, review and programme preventative maintenance of the Association and ancillary areas such as yard, terraces and landscaping and common areas.
- 4.4 Liaise with the local authorities as required, in respect of rates, water rates, drainage and any resource management issues affecting the Association.
- 4.5 Regularly and at not less than yearly intervals carry out a thorough inspection of the Association and the ancillary areas to the Association and report in writing on the state and condition and repair thereof to the Association.
- 4.6 Arrange and organise to ensure compliance with the Building Act 2004 on the part of the Association.

SCHEDULE D – DEED OF COVENANT FORM

Deed of Covenant

[Purchaser's name]

**Edinburgh Quarter Residents' Association
Incorporated**

This Deed is dated the

day of

2023

PARTIES

[Purchaser's name]

(Purchaser)

Edinburgh Quarter Residents' Association Incorporated

(Association)

BACKGROUND

- A. The Purchaser is to become the registered proprietor of the property at Lot []
126 Edinburgh Street, Spreydon, Christchurch contained in Records of Title CB252/284 and CB3B/28 Canterbury Register (**Property**).
- B. The Property has a Covenant registered against its title in favour of the Association, which provides:
- i. A requirement that each registered proprietor covenants to become and remain a member and perform the obligations of a member as set out in the constitution of the Association for as long as the registered proprietor owns the property.
 - ii. Each member shall, prior to settling of the sale of a Property at 126 Edinburgh Street, Spreydon, Christchurch procure the purchaser to enter into, execute and deliver to the Association a Deed of Covenant in favour of the Association. This Deed of Covenant will be prepared by the solicitors for the Association and the selling member shall pay the reasonable legal fees and disbursements of the Association's solicitors.
 - iii. A member shall be deemed to have resigned from the Association if that member is no longer a registered owner of property at 126 Edinburgh Street, Spreydon, Christchurch provided that such resignation shall not relieve a person of any obligation or liability arising before that person ceased to be a member.
 - iv. Each purchaser shall immediately upon becoming a registered proprietor of property at 126 Edinburgh Street, Spreydon, Christchurch (and thereafter if any details change) provide the Association with the details necessary for maintenance of the register of members and shall upon entry of the details into the register, become a member.
- C. The Purchaser has agreed to execute this Deed to ensure compliance with the Encumbrance.

INTERPRETATION

5 Definitions

5.1 *Definitions* - In this document unless the context otherwise requires:

"Bylaws" means bylaws made by the Association from time to time under rule 4.7 of the Constitution;

"Constitution" means the rules and constitution of the Association from time to time and any amendments, regulations or bylaws.

DEED

6 Covenants

6.1 The Purchaser:

- 6.1.1 agrees to become, and remain, a member of the Association while the Purchaser is the registered proprietor of the Property;
- 6.1.2 acknowledges that the Purchaser has searched the Incorporated Societies Register maintained by the New Zealand Companies Office and has read the Constitution and Bylaws and agrees to be bound by, and to comply with the Constitution and Bylaws; and
- 6.1.3 acknowledges that the Purchaser has searched Land Information New Zealand and read the Covenant instrument and agrees to be bound by and comply with the Covenant.

- 6.2 Without limiting the generality of the foregoing, the Purchaser shall upon selling the Property procure the subsequent purchaser, as a precondition of sale, to enter into a similar deed of covenant with the Association as set out herein and in accordance with the Constitution.

7 Counterparts

- 7.1 This Deed may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed an original, but all of which together are to constitute a binding and enforceable Deed between the parties.

SIGNATURES

Signed by _____)
[Purchaser's name] _____)
in the presence of: _____)

Witness signature

Witness name

Witness occupation

Witness town of residence

Signed on behalf of)
Edinburgh Quarter Residents')
Association Incorporated) _____
in the presence of:) [Authorised Signatory]
of the Association Committee

Witness signature

Witness name

Witness occupation

Witness town of residence

SCHEDULE – INFORMATION FOR REGISTER OF MEMBERS

Edinburgh Quarter Residents' Association Incorporated

1. Member's Details

Name:

Address:

Occupation:

Home ph:

Work ph:

Email:

Date of membership:

Party authorised to exercise member's vote:

Mortgage:

Contact Person:

Telephone/Fax No's:

2. Emergency Contact of Member:

Name:

Address:

Occupation:

Home ph:

Work ph:

Email:

3. Occupier's Details (if any):

Name:

Address:

Occupation:

Email:

4. Property Manager (where applicable)

Company :

Address :

Name :

Mobile Ph:

Email :

SCHEDULE E - BYLAWS

1 Introduction

- 1.1 *Rules* - These Bylaws are those adopted by the Association under the provisions of the Rules.
- 1.2 *Interpretation* - Terms and expressions used in these Bylaws are defined and guidelines for interpretation are set out in the Rules. All references to Member(s), in these Bylaws, is deemed to include reference to Occupier(s) and Invitee(s) unless the context otherwise requires.
- 1.3 *Application of the Bylaws* - The Bylaws apply to:
 - 1.3.1 Edinburgh Quarter Residents' Association Incorporated; and
 - 1.3.2 All Members and Occupiers of, and invitees to, Edinburgh Quarter Residents' Association Incorporated.

2 Conduct in Edinburgh Quarter Residents' Association Incorporated

- 2.1 *Considerate behaviour* - No Member will make any noxious, noisy, improper, offensive or unlawful use of any Lot or the Common Facilities, and will use the Member's Lot and the Common Facilities only for the purposes for which they were designed. No Member will undertake any activity which is or may become a nuisance, cause unreasonable embarrassment, disturbance or annoyance to the other Members in the use and enjoyment of their Lot.
- 2.2 *No obstruction* - No Member will fetter, obstruct or impede the use of any Common Facility by any other Member or any contractor engaged by the Association.
- 2.3 *Don't void insurance* - No Member will do any act which may prejudice or add to the premium payable in respect of any policy of insurance for the Common Facilities.
- 2.4 *Social gatherings* - Members must not hold social gatherings or functions on the Common Facilities which will or are reasonably likely to cause any noise which interferes with the peace and quietness of any neighbouring properties without prior approval from the adjacent Lot owners
- 2.5 *Vehicle repairs* - No Member is to undertake any vehicle or mechanical repairs (other than minor repairs and maintenance, for example to domestic vehicles, motorbikes, bicycles and lawnmowers) within the Member's property or on any part of the Common Facilities, including public road reserve.
- 2.6 *Don't Litter* - No Member will drop any litter in or on the Common Facilities.
- 2.7 *Don't damage the Common Facilities* - No Member will do any act which detracts from the attractiveness or state of repair of the Common Facilities. If any damage or loss occurs, the Member will immediately report such damage to the Manager.
- 2.8 *Temporary structures* - No structures of a temporary nature, including any trailer, tent, motor home, garden shed, aviary, kennel or other outbuilding, may be installed or used on any property or the Common Facilities without the express approval of the Manager.
- 2.9 *Extensions* – No additional buildings or extensions are to be erected, parked or constructed on the front yard including any building, garage, carport, caravan, hut, shed, tent or other structure/appliances. This includes air-conditioning units. Sunrooms and conservatories. Additional structures/buildings at the rear of the property are not to be added, however may be approved by the Association upon application taking into account their location and impact on the neighbourhood. A garden shed (max 3m x 3m) located in the rear yard may be approved by the Association upon application.

- 2.10 *Signs and placards* – Signage can be unappealing aesthetically. No signs, placard, banner or emblem of any kind may be kept or placed on any property or mounted, painted or attached to any part of the property, fence, or other Improvement on such property so as to be visible from public view other than temporary real estate signs directly associated with the sale or rental of a Members property or approved by the Association Committee. Such a sign shall not be larger than 500mm x 500mm.,
- 2.11 *Don't cause disturbance* - No Member will make or permit any improper or unseemly noises within Edinburgh Quarter, nor act in any fashion so as to annoy or disturb any other Member. All televisions, stereos, musical instruments, and other noise levels, must be kept at a reasonable volume, so as not to disturb other Members. Furthermore, no horns, bells, whistles or other sound devices, except for security devices which are used exclusively to protect persons and property, are to be placed in or used in Edinburgh Quarter.
- 2.12 *Consumption of alcohol* – No intoxicating liquor will be consumed within the Common Facilities at Edinburgh Quarter without prior approval from the Manager.
- 2.13 *Rubbish disposal* - No Member will store or dispose of any rubbish except into bins or receptacles for removal on usual days by the local authority or by independent contractors, properly secured and sealed rubbish bags for disposal will be placed only where approved by the Manager and used only for the purpose for which they are provided.
- 2.14 *Residential use* - No Member will conduct any commercial activity from the property (including the garage) or store on that property any plant or equipment used for commercial activities, without the express approval of the Association Committee.
- 2.15 *No dangerous substances* - No Member shall burn any substance or will permit anything to be done nor bring nor keep anything in the property which may create a fire hazard or which may contravene the fire regulations or the rules, regulations, ordinances or by-laws of any Authority.
- 2.16 *No auctions* - No Member will permit any auction, sale, garage sale or similar activity to be conducted or take place in any property or on the Common Facilities other than the sale or auctions of the Member's properties.
- 2.17 *Only family pets* - No animals, livestock poultry or reptiles of any kind may be raised, bred or kept on any property except for one domestic dog and one domestic cat which are kept for the purpose of providing companionship for the Member's family. Animals are not to be raised, bred or kept for commercial purposes or for food. Such domestic cat or dog shall not unreasonably interfere with the quiet enjoyment of the other Members or occupants of any property or which may create a nuisance. A Member is not permitted to keep on or about the property any dog which is in whole or part appears to be a Pit Bull Terrier, Rottweiler, Japanese Akita, Japanese Tosa, Dogo Argentino or Brazilian Fila.
- 2.18 *Collection of Rubbish or Other Articles* - The Member shall not throw or permit to be thrown or to be dropped or to fall any rubbish or other article or substance from or out of the Lot or the Common Facilities and shall keep their respective road frontage clean, tidy and litter free.
- 2.19 *Common Facility Cleanliness* - The Member will keep clean and rubbish free such parts of the Common Facilities as immediately adjoin its Lot.
- 2.20 *Security* - The Member will use its best endeavours to protect its Lot from theft and robbery and shall keep all doors windows and other openings closed and securely fastened when the Lot is not in use. Each Member shall properly secure that Member's Property when it is not occupied.
- 2.21 *Closing of Common Facilities* - The Member shall observe any reasonable closing of the Common Facilities by the Association and any direction prohibiting the Member from entering or remaining thereon at such hours as the Association may reasonably determine and at all other times at which Edinburgh Quarter (or any part thereof) or Common Facilities are required to be closed by operation of law.

- 2.22 *Nuisance* - The Member and persons under the control of the Member shall not make any improper or unseemly noises in Edinburgh Quarter or interfere in any way with other Members or persons in Edinburgh Quarter or defile Edinburgh Quarter.
- 2.23 *Statements* - The Member will not issue statements, verbal or written to the media in respect of Edinburgh Quarter, the Association Committee or the Manager.
- 2.24 *Criminal Activity* - No Member shall engage in, or allow any person to engage in, any criminal activity within Edinburgh Quarter.
- 2.25 *Rental* - Any Member wishing to rent out their property under the Residential Tenancies Act will advise the Association in advance of the commencement of the tenancy and supply contact details for the tenant. The Association required the tenant to adhere to the Bylaws in the same manner as Members. Sanctions to breaches of the Bylaws will be the responsibility of the Owner.
- 2.26 *Alarm Sirens* – No alarm siren is to be installed or attached to the exterior of the dwelling. An internal alarm may be installed but it may need to be monitored by an independent company. This avoids loud sirens disturbing the peace of the neighbours.
- 2.27 *Graffiti* - Any tagging or graffiti on dwellings, buildings or structures must be removed within 48 hours. It is the owner's responsibility to ensure this occurs.
- 2.28 *Washing Line* - Where no washing line was erected at the date of issue of the Code Compliance Certificate, any erected washing line/s shall not be visible from the road, access way or pathway. If a washing line was installed at the date of issue of the Code Compliance Certificate and was visible from the road, access way or pathway, any replacement washing line shall be no more visible than the original.
- 2.29 *Window Coverings* - Curtains or other window coverings (or a reasonable standard/quality) must be installed on all windows of the dwelling within one calendar month of registering ownership.
- 2.30 *Bylaw* – Should a Bylaw be breached or otherwise not observed, a written notice can be made to the owner. The owner will pay up to \$100 for each day the breach continues (liquidated damages), in addition to the Association's estimate of any other actual damages suffered/ This could involve removing items, buildings or structures that are not permitted by the Bylaws.
- 2.31 *Caveat* - The Association may register a caveat over the owner's title should the owner continues to be in breach and for any unpaid debt.

3 Building Appearance and Construction

- 3.1 *Attractive appearance* - Each Member has a duty to keep its Lot and all improvements on it in premium condition and in an attractive condition, and will not permit the accumulation of unsightly rubbish, equipment, implements or materials on the Lot.
- 3.2 *Construction rules* – during the construction period mentioned in Bylaw 3.2 the Member will:
 - 3.2.1 comply with all statutes, regulations, bylaws and other requirements affecting the development on the Lot and procure that its contractors to do the same;
 - 3.2.2 ensure that its contractors provide portable toilet facilities and keep building materials and the Lot in an orderly manner and within the boundary of the Lot;
 - 3.2.3 comply with any direction from the Association Committee or Manager requiring compliance with this Bylaw.

- 3.2.4 *Antennae, satellite dishes and solar collectors* - No Member may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collecting panels or equipment on a property unless such apparatus is erected and maintained in such a way every effort is made to screen it from public view within the existing property environment.
- 3.3 *Residents' Society* - The Residents' Society shall be formed after the issue of the Developer's Practical Completion Certificate.
- 3.4 *Repair of broken windows* - All windows are to be kept clean and if broken or cracked shall be promptly replaced by the Member at his/her expense with fresh glass of the same or better quality and weight as at present.
- 3.5 *Clean exteriors* - Each Member is to maintain or cause to be maintained in clean and sanitary condition and in good repair the exteriors of the property.
- 3.6 *Washing etc.* - No clothing, bedding or other articles will be hung on the windows, balconies or on the outside of the property or its windows other than on an approved washing line. Any addition of external washing lines must be submitted to the Committee for approval when the building design is approved.
- 4 Garden Maintenance**
- 4.1 *Grass and weeds* - All grass, hedges, shrubs, vines and planting of any type located on a Member's property including the grass verges and berm adjoining that Member's property are to be kept trimmed and at regular intervals, mowed, trimmed and cut so as to maintain them in a neat and attractive manner. Trees, shrubs, vines and plants that die are to be removed and replaced with comparable plants. No weeds, vegetation or waste materials are to be placed or permitted to accumulate on any part of the property.
- 4.2 *Trees* – Trees located on a Member's property and any grass verges and berms adjoining that Member's property are to be kept trimmed and maintained by that Member to ensure that they do not interfere with neighbouring properties. The Association Committee or Manager in its discretion can require a Member to remove any overgrown or poorly maintained vegetation.
- 4.3 *Fences* - No fence, wall or hedge may be erected or maintained on that part of a property except with the approval of the Association.
- 5 Car Parking**
- 5.1 Members shall not park or permit guests, residents, invitees or contractors to park any vehicle on any road reserve, access way, common area or front yard apart from on a properly constructed parking bay or driveway.
- 5.2 Parking bays and street-side parking are not to be used for long periods of parking by residents (i.e. vehicles that are permanently parked and not moved for many days).
- 5.3 Parking bays and street-side parking are only designed for passenger cars or vans of similar size. Residents are not to park or permit to be parked any bus, commercial vehicle, truck, camper van, boat or similar vehicle on any road or street within Edinburgh Quarter.
- 5.4 Vehicles parked within Edinburgh Quarter must hold current warrant of fitness.
- 6 Closing the Common Facilities**
- 6.1 *Closure* - The Manager may close any or all of the Common Facilities as the Manager considers necessary for security reasons, or for the purposes of maintaining or repairing the Common Facilities.

- 6.2 *Notice of closure* - The Manager will endeavour to give reasonable notice to the Members of any proposed closure unless the situation requires immediate closure in which case the Manager is not required to give notice.