

**DRAFT #7**

**CONSTITUTION  
OF  
MARINA OWNERS LIMITED**

ACN 010 468 498

**A Company Limited by Guarantee**

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## PART I - INTRODUCTION

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless a contrary intention appears:

- (a) **"ASIC"** means the Australian Securities and Investments Commission.
- (b) **"Common Seal"** means the Common Seal of the Company and includes any official seal of the Company.
- (c) **"Company"** means Marina Owners Limited.
- (d) **"Constitution"** means the Constitution of the Company for the time being in force, and a reference to a particular Clause is a reference to a particular Clause in this Constitution.
- (g) **"Corporations Law"** means the Corporations Law and/or any statutory modification amendment or re-enactment thereof for the time being in force or any later Act relating to companies and for the time being in force in lieu thereof in the place of incorporation of the Company and a reference to a particular provision of the Corporations Law is a reference to that provision as so modified, amended or re-enacted or contained in any such later Act.
- (h) **"Directors"** or **"the Board"** means the whole or any number of the Directors of the Company for the time being assembled at a meeting of Directors, being not less than a quorum, or such one or more of them as shall have authority to act for the Company.
- (i) **"Director"** means any person acting as a Director, howsoever called.
- (j) **"Eligible Person"** means a person who is the owner of a berth at the Marina and is therefore entitled to membership of the Company.
- (k) **"Head Lease"** means the head lease registered number 0/233106
- (l) **"Sub-Lease"** means the agreements between the Company and each ordinary Member by virtue of leasing a marina berth.
- (m) **"Meeting"** means any meeting of members comprising an annual general meeting or general meeting duly convened such meeting may be held electronically on the determination of the Board.
- (n) **"Ordinary Member or Member"** means a natural person, Trustee, body corporate or incorporated association admitted to membership of the Company in accordance with this Constitution hereof.
- (o) **"Office"** means the registered office for the time being of the Company.
- (p) **"Person"** and words importing "persons" includes partnerships, associations (whether incorporated or not), corporations and bodies corporate.
- (q) **"Register"** means the Register of members kept pursuant to the Corporations Law.
- (r) **"Replacement Rules"** means internal administration provisions of the Corporations Law that do not apply to the Company
- (s) **"Policies and Regulations"** means the regulations of the Company, approved and adopted from time to time by the Board pursuant to the power afforded by Clause

33.2 hereof.

- (t) **"In Writing or Written"** means printing, typewriting and all other means of representing or reproducing words in visible form.
- (u) **"Marina"** means Kawana Waters Marina at Orana Street, Buddina which expressions includes the freehold and leasehold land owned by the members and/or the Company and also includes the administration of the on-water improvements and the Head Lease.

1.2 Terms used in this Constitution and not defined in Clause 1.1 shall have the meaning ascribed to them in the Corporations Law.

1.3 Words importing the singular include the plural and vice versa.

1.4 Words importing the masculine include the feminine and the neuter and vice versa.

1.5 The index and headings shall not affect the construction of this Constitution.

## **2. REPLACEABLE RULES**

2.1 The provisions of the Corporations Law relating to a Company's internal administration which are described as replaceable rules do not apply to the Company except insofar as they are repeated in this Constitution.

## **3. REGISTERED OFFICE**

3.1 The Office of the Company shall be at such place as the Directors shall from time to time appoint.

## **4. OBJECTS OF THE COMPANY**

4.1 The objectives of the Company are:

- (a) To operate the Marina known as Kawana Waters Marina and to provide services to members, guests and visitors as the Company shall from time to time determine.
- (b) To borrow raise or secure funds for the purpose of the Company in such manner and upon such terms as to satisfy Company capital requirements and obligations and for such purpose charge all or any part of the property of the Company both present and future and to pay interest on any funds so provided.
- (c) To operate a berth rent pool or similar arrangement for Members who wish to participate.
- (d) Such other objectives as may be permitted by the Corporations Law and as the Directors shall determine from time to time.

## **PART II - MEMBERSHIP**

### **5. GENERAL**

- 5.1 A person who becomes an Ordinary Member agrees to observe and perform the provisions this Constitution and any Regulations determined by the Board.
- 5.2 Unless otherwise approved by Ordinary Members in a Meeting the number of Sub-Lease or berths registered to an Ordinary Member will be ten (10) maximum nor shall Members of the same family group or associated companies or trusts be entitled to hold any more than ten (10) Sub-Leases or berths. Definition of family groups and associated companies and trusts will be that as defined in the Corporations Law.
- 5.3 Ordinary Members shall be those members who hold a registered sub-lease of a Marina berth under the Company's Head Lease.
- 5.4 The number of Ordinary Members of the Company shall be 130 or such number that represents the number of Marina berths available by way of Sub-Leases at any one time.
- 5.5 A Member may hold more than one membership of the Company where that Member holds more than one berth such that the number of memberships will always equal the number of berths in the Marina.

### **6. ADMISSION OF MEMBERS**

- 6.1 Any person, being an Eligible Person, shall be entitled to membership of the Company in accordance with this Clause.
- 6.2 Admission to membership shall be subject to and subsequent to the Board of Directors approval of a transfer of Sub-Lease to an Eligible Person. Nothing herein requires the Board to approve the transfer of a Sub-Lease.
- 6.3 Persons who are the holders of Sub-Leases of Marina berths shall be admitted to ordinary membership of the Company.
- 6.4 Every application for membership shall be accompanied by such documents, payments and information as the Company shall require from time to time.
- 6.5 On approval of the applicant to membership the Company Secretary shall cause the applicant's name and such other particulars as may be required to be entered in the Register.

### **7. MEMBERS RIGHTS PRIVILEGES AND DUTIES**

- 7.1 (a) The membership of the Company shall be divided into the following classes of membership and number of Members:

| <b>Class</b> | <b>No. of Members</b>  |
|--------------|--|
| “Ordinary”   | 130 or such number that represents the number of marina berths available by way of Sub-Leases at any one time. |

- 7.2 All Members shall, so far as they are able, take part in the activities of the Company and shall aid the Company in the attainment of its objects from time to time.
- 7.3 All Members admitted to membership shall be deemed to have accepted and be bound by this Constitution (including all variations, amendments and alterations of this Constitution).
- 7.4 All Members shall take all necessary and reasonable steps to ensure that resolutions of the Board and the Company at a Meeting from time to time are carried out and observed by them.
- 7.5 All Members shall meet all subscriptions, fees, levies and other financial obligations in a proper and timely manner, as determined by the Board from time to time.
- 7.6 Ordinary Members shall have the right to:
- (a) either personally or by their proxy or attorney attend and vote at Meetings of the Company; and
  - (b) exercise such other rights as are granted by this Constitution or by law.
  - (c) have full rights to attend Meetings of the Company and exercise all rights as Members.

## **8. CESSATION OF MEMBERSHIP**

- 8.1 Any Ordinary Member selling or transferring their Sub-Lease and which sale has been authorized by the Board will be deemed to have ceased to be a Member.
- 8.2 A Member ceasing membership in accordance with Clause 8.1 hereof shall pay to the Company all levies, fees and all other monies accruing at the date of sale or transfer of Sub-Lease.
- 8.3 Pursuant to Clause 8.2 any levy fee or other amount due to the Company (or any other part thereof) remaining unpaid the Company Secretary shall give notice to the Member in default:
- (a) of the amount or amounts then not paid;
  - (b) of the date or dates on which that amount or amounts became due for



payment;

8.4 The Board may (in addition to any other right it may exercise under this Constitution) resolve to suspend or expel any Member for:

- (a) any serious and substantial misconduct;
- (b) action or omissions deliberately and substantially injurious to the Company;
- (c) any matter which in the reasonable opinion of the Board is substantially contrary to the interests of the Company;
- (d) for failure to comply with any of this Constitution, the Regulations or any Codes of Conduct or Ethics; or
- (e) suffering an Insolvency Event.

8.5 Upon the occurrence of any of the events in Clause 8.4 hereof, the Company Secretary shall give not less than fourteen (14) days' notice to the Member of any intention that the Board proposes to take action pursuant to this Clause. The notice shall specify:

- (a) the alleged circumstances upon which the Board seeks to rely;
- (b) the date, time and place at which the Board will give consideration to the matter;
- (c) that the Member shall be given an adequate opportunity to respond to the notice.
- (d) in the event of expulsion the Member expelled must sell and dispose the berth sub-leased by the Member and pending that sale assigns to the Company the use and rights associated with that berth.

## **9. REGISTER OF MEMBERS**

9.1 The Company must record in the Register:

- (a) the full names addresses and contact details of each Member;
- (b) such other information as the Board may from time to time determine;
- (c) the Company must keep the Register at the Office and may keep a copy thereof at such other places as the Board may from time to time approve.

## **10. LIABILITY OF MEMBERS**

10.1 If upon the winding up or the dissolution of the Company there remains unsatisfied debts and liabilities each Member's liability is limited to \$10.00.

## **PART III - MEETINGS OF THE COMPANY**

### **11. GENERAL**

- 11.1 An annual general meeting of the Company shall be held in accordance with the provisions of the Corporations Law.
- 11.2 The Directors shall convene a General Meeting of the Company:
- (a) on the requisition of a majority of Directors;
  - (b) on the requisition of such other person as shall be entitled to requisition such meeting under the Corporations Law; or
  - (c) upon the Board so resolving; and
  - (d) the Directors shall comply with any provisions of the Corporations Law with respect to the convening of such Meetings.
- 11.3 Subject to the provisions of the Corporations Law relating to special resolutions, special notice and agreements for shorter notice, fourteen (14) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of the Meeting and the general nature of the business to be transacted at the Meeting shall be given to such persons as are entitled to receive such notices from the Company pursuant to this Constitution.
- 11.4 The accidental omission to give the notice required by this Constitution to any of the members or the non-receipt of such notice by any Member shall not invalidate any resolution passed at a Meeting or adjournment thereof.
- 11.5 Every notice given to such persons as are entitled to receive such notices from the Company pursuant to the provisions of this Constitution shall be accompanied by a form of proxy in a form substantially in accordance with this Constitution. The form of proxy shall be blank as far as the person primarily to be appointed as proxy is concerned.

### **12. QUORUM AT MEETINGS**

- 12.1 No business shall be transacted at any Meeting unless a quorum of members is present at the time when the Meeting proceeds to business.
- 12.2 For the purpose of determining whether a quorum is present, a person attending as a proxy shall be deemed to be a Member.
- For the avoidance of doubt separate membership with its rights and privileges extend to the owner of each berth sub-lease so that each such owner is treated as a separate Member for each berth that he, she or it owns.
- 12.3 Unless otherwise provided in this Constitution a quorum for any Meeting shall be at least twenty (20) of the members entitled to attend and vote.

- 12.4 If a quorum is not present within 30 minutes or such other time as the Chair or other person designated by this Constitution to be the Chair shall determine:
- (a) where the Meeting was convened upon the requisition of the Board, the Meeting shall be dissolved; and
  - (b) in any other case:
    - (i) the Meeting shall stand adjourned to such day, and at such time and place, as the Chair or such other person designated by this Constitution to be the Chair determines, or if no such determination is made, to the same day in the next week at the same time and place; and
    - (ii) if at the adjourned Meeting subsequent to Clause (b) (i) a quorum of the members entitled to attend and vote is not present within half an hour from the time appointed for the Meeting, the Meeting shall be dissolved.

### **13. CHAIR AT MEETINGS**

- 13.1 The person currently the Chair of the Board shall act as Chair of that Meeting.
- 13.2 If the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the Meeting or is unwilling to act or if there is not a Chair, the members present shall elect one of their number to be Chair of the Meeting.
- 13.3 Unless otherwise provided in this Constitution, the form, conduct and procedure of any Meeting shall be at the discretion and under the control of the Chair, who shall at all times exercise his discretion so as to ensure the Meeting is conducted in a fair and proper manner, and that every Member present and entitled to do so has a reasonable opportunity to be heard.

### **14. ADJOURNMENTS OF MEETINGS**

- 14.1 The Chair may with the consent of any Meeting at which a quorum is present, and shall if so directed by the Meeting, adjourn the Meeting from time to time and from place to place, but no business shall be transacted of which due notice has not been given at any adjourned Meeting other than the business left unfinished at the Meeting in which the adjournment took place.
- 14.2 When a Meeting is adjourned for thirty (30) days or more, notice of the adjourned Meeting shall be given as in the case of the original Meeting.
- 14.3 Except as provided by Clause 14.2 hereof, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Meeting.

### **15. VOTING RIGHTS OF ORDINARY MEMBERS**

- 15.1 An Ordinary Member may vote in person or by proxy or by attorney and on a show of hands or on a poll.

- 15.2 Every Member present has one vote for each membership held by that Member.
- 15.3 An ordinary resolution put to the vote at a Meeting may be passed by a simple majority on a show of hands. In the event that a show of hands is not a clear determinate of the resolution, the Chair or a simple majority of the Meeting may call for a division and formal count to be conducted.
- 15.4 A declaration shall be made by the Chair that Resolution has been:
- (a) carried;
  - (b) carried unanimously;
  - (c) carried by a particular majority; or
  - (d) lost; and
  - (e) an entry to that effect in the Company's minute book is prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 15.5 Each Ordinary Member shall be entitled to one (1) vote for each membership held.
- 15.6 In the case of a membership consisting of a partnership or two or more natural persons, the first named person on the Register shall be recognized for voting purposes.

## **16 CASTING VOTE**

- 16.1 In every case of an equality of votes the Chair shall have a second or casting vote.

## **17. PROXIES**

- 17.1 Any person who is entitled to attend and vote at any Meeting of the Company may appoint a person (entitled to attend and vote) as his proxy to attend, speak and vote at the Meeting on his behalf.
- 17.2 Proxies shall be accepted if they are in a form prescribed by the Board from time to time or in any reasonably acceptable format.

## **18. POWERS OF ATTORNEY**

- 18.1 Any Member may by power of attorney appoint an attorney to attend, act and vote at any Meetings of the Company on behalf of such Member as his or its proxy without any special appointment other than such power of attorney.
- 18.2 Such attorney shall be appointed in writing under the hand and seal of the Member and attested by one (1) witness, or if the Member is a body corporate or association, under its common or official seal or under the hand of its duly authorized officer or attorney.
- 18.3 An attorney so appointed as aforesaid may, within the limits of his power of attorney,

whether himself as a Member of the Company or not, appoint in writing as proxy on behalf of the Member, a person (whether a member of the Company or not) who shall be deemed to be the proxy of such Member.

- 18.4 Any attorney so appointed as aforesaid, whether himself a Member of the Company or not, may on behalf of his Member, within the limits of his power of attorney, sign any consent which the member would under this Constitution be required or entitled to sign.
- 18.5 Any attorney so appointed as aforesaid and any substitute attorney or proxy appointed there under may attend and take part in the proceedings of and vote at all Meetings of the Company so long as the power of attorney shall remain in force in the same manner as the Member himself could do if he were personally present.

## **19. APPOINTING INSTRUMENT TO BE DEPOSITED WITH COMPANY**

19.1 The following instruments shall be deposited at the Office:

- (a) any instrument appointing a proxy pursuant to Clause 18 hereof, together with the power of attorney or other authority, if any, under which it is signed;
- (b) any power of attorney pursuant to Clause 18 hereof; or
- (c) any certificate appointing a representative of a body corporate in accordance with Section 250D of the Corporations Law.

19.2 Any such instrument shall be deposited with the Company not less than two (2) clear business days before the time for holding the Meeting or adjourned Meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than two (2) clear business days before the time appointed for the taking of the poll.

19.3 Any instrument which is not deposited with the Company in the manner and within the time provided in this Clause shall not be treated as valid.

19.4 A copy of any of the instruments referred to in Clause 19.1 may be deposited at the Office PROVIDED THAT such copy has been certified as being a true and correct copy by either a Justice of the Peace, solicitor or notary public.

## **20. REVOCATION AND INVALIDITY OF INSTRUMENTS**

20.1 A vote given in accordance with the terms of the instrument appointing a proxy, attorney or representative shall be valid, subject to Clauses 17.0 and 18.0 hereof, notwithstanding;

- (a) the death of the Member;
- (b) the unsoundness of mind of the Member;
- (c) the Member suffering an Insolvency Event;
- (d) the revocation of the instrument or the power of attorney under which the instrument was executed;

PROVIDED THAT no intimation in writing of any such event shall have been received at the Office or by the Chair before the Meeting or the adjourned Meeting takes place or the poll is taken.

## **PART IV - THE BOARD OF DIRECTORS**

### **21. CONSTITUTION OF THE BOARD**

- 21.1 The Company may from time to time by resolution passed at a Meeting increase or reduce the number of Directors.
- 21.2 Unless and until the Company shall otherwise resolve the number of Directors shall be five (5).
- 21.3 The Directors may only be Ordinary Members of the Company or in the case of trustee or corporate members may be officeholders or trustee/s.

### **22. DIRECTOR ELECTION**

- 22.1 Directors shall be elected for terms described in Clause 22.9.
- 22.2 The Board of Directors will determine the election methodology.
- 22.3 Each year at the General Meeting one third of Directors whose service expires will retire from the Board and may re-nominate.
- 22.4 Thirty (30) days before the Meeting the Company Secretary will call for nominations for Director positions by circulating all Ordinary Members by email.
- 22.5 The Company Secretary will provide information to retiring Directors and aspiring candidates to include:
- Nomination form including consent to act as a Director
  - Personal information statement
  - Statement of candidate's profile (CV)
  - Timetable leading up to the Meeting
  - Copy of Directors' responsibilities
- 22.6 Election materials and campaigning by candidates seeking election or re-election shall be banned from Marina premises.
- 22.7 Company staff will not promote, endorse, facilitate or campaign for any candidate.
- 22.8 Elections will be held by secret ballot and any tied position of votes will incur a re-count by another secret ballot of Members present at the Meeting
- 22.9 By way of transition the first election after the institution of this Constitution will cause five (5) Directors to be elected and the highest polling two (2) Directors will hold office for 3 years, the 3<sup>rd</sup> and 4<sup>th</sup> polling for two (2) years and the lowest polling for one (1) year only. Subsequent elections will proceed as in this manner.
- 22.10 Pursuant to Clause 24.1 hereof and a vacancy being created on the Board of Directors the Board may resolve to appoint a Director to fill the vacant position for the period of the unexpired term of the retiring Director.

### **23. BOARD OFFICE BEARERS**

- 23.1 The Chair will be elected by Directors at the first meeting of the Board of Directors convened after a Meeting in which Director elections were declared.
- 23.2 The Company Secretary will be appointed by Directors at the first meeting of the Board of Directors convened after the Meeting that appointment being either a Director or person or entity qualified for the role.
- 23.3 An Executive Director may from time to time be appointed by the Board of Directors to fulfill the position of marina manager in which case the appointee will not receive a director honorarium and be additional to that number of Directors determined in Clause 21.2
- 23.4 An Independent Director may be appointed by the Board of Directors in which case the appointed Director will be additional to that number determined in Clause 21.2.

## **24 VACATION OF OFFICE OF DIRECTOR**

- 24.1 The office of the Director shall become vacant if the Director:
- (a) ceases to be a Director by virtue of the Corporations Law;
  - (b) becomes prohibited from being a Director by reason of any order made under the Corporations Law;
  - (c) suffers an Insolvency Event;
  - (d) becomes of unsound mind or a person whose person estate is liable to be dealt with in any way under the law relating to mental health;
  - (e) resigns his office upon giving fourteen (14) days' notice in writing to the Company of his intention to do so;
  - (f) shall without leave of absence first obtained absent himself from three (3) consecutive meetings of the Board;
  - (g) is no longer a Member of the Company.
- 24.2 Subject to the provisions of the Corporations Law, the Company at a Meeting may by resolution remove any Director before the expiration of his term of office and may appoint a person as a Director in his stead.

## **25. QUALIFICATION OF DIRECTORS**

- 25.1 Every Director will be a natural person.
- 25.2 Every Director will be a Member of the Company or a person described in Clauses 23.3 and 23.4.

## **26. TERM OF OFFICE OF DIRECTORS**

- 26.1 Term of office of Directors will be that described in Clause 22.9.
- 26.2 A retiring Director shall retain office until the conclusion of the Meeting at which his successor is elected.
- 26.3 The Board may fill a casual vacancy from time to time but that any Director so appointed will remain in office for the unexpired term of the retiring Director.
- 26.4 Nominations for election to the office of Director shall be accepted not later than thirty

(30) calendar days before the date of a Meeting at which Directors will be elected or re-elected.

## **27. REMUNERATION OF DIRECTORS**

- 27.1 The Directors shall be entitled to be paid remuneration according to the provisions of the Corporations Law.
- 27.2 The Board of Directors or members may seek a change in remuneration by the Company Secretary circulating a Notice of Motion to Members in general meeting nominating the total annual remuneration pool (sum) to be paid to Directors.
- 27.3 The Notice of Motion shall specify the remuneration pool and Members will reject or approve the Motion without amendment.
- 27.4 The Board of Directors shall determine at its first Board meeting after a general meeting the allocation of the remuneration pool to Directors and Office Bearers.
- 27.5 The remuneration sum approved under Clause 27.1 shall continue without change until a further Notice of Motion is approved by members.
- 27.6 The Directors shall be entitled to be paid all reasonable expenses incurred by them in connection with the business of the Company or in the execution of their duties as Directors.
- 27.7 Any Director may by himself or his business entity, contract with the Company for the provision of goods and services to the Company, and a Director or his business entity shall be entitled to remuneration for those goods or services as if he was not a Director provided that nothing herein contained will authorize a Director or his business entity to act as auditor to the Company.

## **28. DIRECTORSHIPS IN OTHER COMPANIES**

- 28.1 Subject to this Constitution a Director of the Company may be or become a Director of any other company, whether promoted by the Company or not, and no Director who is or becomes a Director in another company shall be accountable for any benefits received as a director or member of such other company PROVIDED THAT a Director shall not, without the approval of the Board accept, hold or retain the office of director of any other company which in the opinion of the Directors is for the time being in active competition with or carrying out activities which are contrary to the interests of the Company.

## **29. DIRECTORS' MEETINGS**

- 29.1 The Directors may meet together in person or by electronic device, PROVIDED THAT at all times the Directors shall be able to hear and may be heard by all other Directors at the meeting, for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 29.2 The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be three (3).
- 29.3 The Company Secretary shall upon the requisition of one (1) Director convene a meeting of the Board of Directors.
- 29.4 Unless otherwise decided by the Directors, reasonable notice of every meeting of Directors shall be given by delivering the same to, or by letter, email, facsimile or other form of visible communication to each Director at an address notified by him to the Company Secretary as his address for receipt of notice.



- 29.5 If, prior to any meeting of Directors, the Company Secretary is advised by the Chair or by any other Director that any urgent or contentious business is or may be transacted at such meeting, notice of such meeting shall be given by letter, email, facsimile, or other form of visible communication to the address of a Director. The notice under this Clause shall contain a statement of the general nature of the urgent or contentious business to be transacted.
- 29.6 Questions arising at any meeting of the Directors shall be determined by a majority of votes and such a determination shall be deemed a determination of the Board of Directors.
- 29.7 In case of an equality of votes the Chair of the meeting shall not have a casting vote and the resolution shall be deemed to have lapsed.
- 29.8 A resolution in writing that is signed and dated by all the Directors shall be as valid and effectual as if it had been duly passed at a meeting of Directors duly convened and constituted. Any such resolution may consist of several documents in like form each signed by one (1) or more Directors.
- 29.9 A resolution pursuant to Clause 29.8 shall be deemed to have been passed on the day (according to the dates of signing) when the resolution shall have been signed by all the Directors. If a signed copy of the resolution is returned to the Secretary undated, the Secretary shall fill in the date on which it was received and the same shall be deemed to have been signed on that day.
- 29.10 For the purposes of Clauses 29.8 and 29.9 hereof:
- (a) a facsimile or other form of visible communication issued by a Director shall be deemed to be signed and dated by such Director; and
  - (b) a reference to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
- 29.11 A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution or by or under statute for the time being vested in or exercisable by the Directors generally.

### **30. CHAIR OF DIRECTORS**

- 30.1 The Directors may from time to time appoint a Chair of Directors or Chair and may entrust to and confer upon such Chair of Directors or Chair all or any of the powers of the Directors (excepting the powers to borrow or otherwise raise money or issue debentures) that they may think fit. But the exercise of all powers by such Chair of Directors or Chair shall be subject to such regulations and restrictions as the Directors may from time to time make and impose and the said powers may at any time be withdrawn, revoked or varied.
- 30.2 The Chair of Directors shall be entitled if present to take the chair at meetings of the Directors. If he is not present within fifteen (15) minutes after the time appointed for the meeting, then the Directors shall choose one of their number to be Chair of the meeting.
- 30.3 The Chair may be removed at any time by resolution of which notice shall have been given to all Directors not less than fourteen (14) days before the meeting of Directors at which the resolution is proposed.

### **31. DEFECTIVE APPOINTMENT OF DIRECTORS**

- 31.1 All acts done at a meeting of the Directors or of a committee of the Directors or by any person acting bona fide as a Director shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified and had continued to be a Director, notwithstanding that it be afterwards discovered that there was some

defect in the appointment or continuance in office of any of such Directors or persons acting as aforesaid or that any of them were disqualified or had vacated office.

## **32. MINUTES OF MEETINGS**

32.1 The Directors shall cause minutes to be made and faithfully entered in books or electronic storage provided for that purpose:

- (a) of all appointments of officers;
- (b) of names of Directors present at all meetings of the Company ex-officio and non-director attendees;
- (c) all proceedings at all meetings of the Company.

Such minutes shall be considered accepted and authorized upon the inclusion of such minutes into the Company's electronic records .

32.2 The minutes of a meeting as provided in Clause 32.1 hereof shall be sufficient evidence without further proof of the facts therein stated.

## **33. GENERAL POWERS OF DIRECTOR**

33.1 The management and control of the business and affairs of the Company shall be vested in the Directors who may exercise all such powers and all such acts and things as the Company is by its Constitution or otherwise authorized to exercise and do and are not by this Constitution or by statute directed or required to be exercised or done by the Company at a Meeting.

33.2 The Board of Directors may from time to time prescribe such Policies and Regulations of the Company as it sees fit. The Board may amend, modify, add to, delete from or cancel any Policy or Regulation at any time as it sees fit. Such Policies or Regulations shall not be inconsistent with this Constitution or the Corporations Law.

33.3 The powers of the Board of Directors under this Clause shall be subject to the provisions of the Corporations Law and of this Constitution, and to any Policies or Regulations from time to time and at all times to resolutions made by the Company in Meeting PROVIDED THAT no Policy or Regulations so made shall invalidate any prior act of the Board of Directors which would have been valid if such Policy or Regulation had not been made.

33.4 The Board of Directors shall, in exercising its powers, recognize and act to protect as far as possible the interests of a Member where those interests may clearly differ from those of other members of the Company.

33.5 So far as will be practicable and not inconsistent with the provisions of this Constitution, any power authority or discretion vested in the Board of Directors may be exercised at any time and from time to time as they think fit.

### **34. INTERESTED DIRECTORS**

34.1 For the purposes of this Constitution, an interest of a Director may arise in either of the following ways:

- (a) an interest of the kind set forth in Section 232A(1) of the Corporations Law (herein called "a Material Personal Interest"); or
- (b) an interest of the kind set forth in Section 243G of the Corporations Law (herein called "a Financial Benefit").

### **35. DIRECTORS' INTERESTS**

35.1 Directors shall, subject to this Constitution and the Corporations Law, be entitled to have or acquire:

- (a) a Material Personal Interest; or
- (b) a Financial Benefit.

### **36. DIRECTORS' MATERIAL PERSONAL INTERESTS**

36.1 Where the interest of a Director is a Material Personal Interest, then the rights of the Director shall be the same as if the Material Personal Interest was an Interest PROVIDED THAT:

- (a) the Director holding the Material Personal Interest shall not:
  - (i) vote;
  - (ii) be present; or
  - (iii) be counted in the quorum,

at a meeting of the Board which is considering an agenda item involving the Material Personal Interest of the Director;

- (b) the restrictions contained in Clause 35. I (a) hereof shall not apply:
  - (i) if the Board (other than the Director who holds a Material Personal Interest) pass a resolution that:
    - A. specifies the Director, the Material Personal Interest and the subject matter, and
    - B. states that they are satisfied that the Material Personal Interest should not disqualify the Director from considering or voting on the matter; or

- (ii) if the Commission has granted an exemption pursuant to Section 232B of the Corporations Law permitting the same; and

### **37. DIRECTORS' FINANCIAL BENEFITS**

- 37.1 If the interest of a Director constitutes a Financial Benefit, then the Director shall only be permitted to hold or acquire that interest if the Director, the Board and the Company (as the case may be) comply with the provisions set out in Chapter 2E of the Corporations Law.

## **PART V - GENERAL ADMINISTRATION**

### **38. ATTORNEYS FOR COMPANY**

- 38.1 The Directors may from time to time by resolution, power of attorney or writing under the common seal appoint any corporation, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or agent of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may think fit, and any such appointment may contain such provisions for the protection and convenience of persons dealing with any such attorney or agent as the Directors may think fit and may also authorize any such attorney or agent to delegate all or any of the powers, authorities, and discretions vested in him.

### **39. EXECUTION OF DOCUMENTATION**

- 39.1 The Company has a Common Seal and the Directors shall provide for the safe custody of the seal.
- 39.2 No document, writing or other material shall be executed by the Company except pursuant to the authority of the Directors or of a committee of the Directors authorized in that behalf.
- 39.3 Without limiting the manner in which the Company may execute any agreement, deed, share certificate (if any) or other document, the Company may execute any such document either with or without the use of a Common Seal. Every document which is executed shall be signed (whether with or without the common seal) by at two (2) directors, a Director and Company Secretary or a Director and another person specifically authorized by the Directors for that purpose.

#### **40. BILLS OF EXCHANGE**

40.1 All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all electronic banking, shall be signed, drawn, accepted, endorsed, or otherwise executed or approved, as the case may be, by any two Directors or in such other manner as the Directors from time to time determine. The Board may delegate and authorize small payments to be made by staff.

#### **41. SECRETARY**

41.1 The Company Secretary shall:

- (a) act as Secretary or cause an appropriate person to act as Secretary of the Company's Board for any meeting of the Board or other Meeting;
- (b) receive reports from and communicate to members information on matters of common interest;
- (c) as far as practicable keep himself fully informed and appraised of developments in the Corporations Law and in particular of other bodies whose objects and functions are comparable with the Company;
- (d) maintain personal contact with all Directors;
- (e) render such other services as may be proper under the direction of the Board;
- (f) arrange for the preparation of corporate plans, reports and budgets as may be required by the Board from time to time;
- (g) help organize and facilitate the induction and professional development of Directors;
- (h) advise the Board on governance matters and monitor that Board procedures are followed;
- (i) ensure that the business at board meetings is accurately captured in minutes.

#### **42. PUBLIC OFFICER**

42.1 The Public Officer shall be a person that the Board will appoint from time to time.

### **PART VI - FINANCIAL STATEMENTS**

### **43. ACCOUNTS**

43.1 The Directors shall cause the Company to:

- (a) keep such accounting records that explain the transactions and financial position of the Company;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the Company to be prepared from time to time; and
- (c) keep its accounting records in a manner as will enable the accounts of the Company to be conveniently and properly audited in accordance with the Corporations Law.

43.2 Subject to any law to the contrary, the Directors shall lay before each annual general meeting of the Company:

- (a) a balance sheet made up to the end of the Company's financial year giving a true and fair view of the state of affairs of the Company as at the end of that financial year, and
- (b) a profit and loss account for the last financial year of the Company, being a profit and loss account that gives a true and fair view of the state of affairs of the Company as at the end of that financial year,

such balance sheet and profit and loss account to comply with the requirements of the Corporations Law.

43.3 The Company shall by way of note attached to the balance sheet send to members such details required to be specified by the Corporations Law of any material contracts involving Directors' interests, and which is either still subsisting at the end of the financial year or, if not then subsisting, has been entered into since the end of the previous financial year.

43.4 For the purposes of Clause 43.3 "contract" shall be deemed to include any agreement or arrangement whether formal or informal, and whether expressed or implied, and includes an agreement that is not enforceable by legal proceedings whether or not it was intended to be so enforceable. A contract with a related corporation of the Company shall be taken into account as if it were a contract with the Company.

### **44. DIRECTORS REPORT**

44.1 The Directors shall cause to be attached to every balance sheet a report made in accordance with a resolution of the Directors and signed by not less than two (2) Directors with respect to the profit and loss of the Company for that financial year and the state of the Company's affairs as at the end of that financial year, stating the

matters required by the Corporations Law.

#### **45. DISTRIBUTION OF ACCOUNTS**

45.1 An electronic or printed copy of such profit and loss account, balance sheet and report, together with such other material as is required to be sent by Section 314(1) of the Corporations Law, shall be sent direct to every person entitled to receive notice of Meetings of the Company at least fourteen (14) days before the date of the Meeting at which they are to be considered.

#### **46. INSPECTION OF BOOKS OF ACCOUNT**

46.1 The books of account and records shall be kept at the Office or at such other place or places as the Directors think fit and will at all times be open to inspection by the Directors.

46.2 Subject to the provisions of the Corporations Law the Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the books of account and records of the Company or any of them shall be open to the inspection of the Members.

46.3 No Member, not being a Director, shall be entitled to inspect any accounts, records, books or documents of the Company except as provided by the Corporations Law or authorized by the Directors or by a resolution of the Company at a Meeting.

#### **47. ACCOUNTS CONCLUSIVE**

47.1 Every account of the Company when approved by a Meeting shall be conclusive.

#### **48. AUDIT**

48.1 An Auditor or Auditors may be appointed in accordance with the Corporations Law and his or their duties shall be regulated in accordance with the Corporations Law.

48.2 An Auditor appointed pursuant to clause 48.1 shall report to the Members on the accounts to be laid before the Company at a Meeting and on the Company's accounting records relating to those accounts.

### **PART VII - MISCELLANEOUS**

#### **49. CONFIDENTIAL INFORMATION**

49.1 Every Director, manager, trustee or member of a committee of the Company shall observe strict confidentiality in respect of Board discussion and the general affairs of the Company.

## **50. NOTICES**

50.1 Any notice to be given by the Company under or in reference to this Constitution may be served on the person to be notified either personally, by facsimile, email, electronic conveyance or by sending it through the post in a prepaid letter envelope or wrapper to the person to be notified at his registered place of address.

50.2 The signature to any notice to be given by the Company may be written, electronically written, typewritten or printed.

50.3 Any notice sent by post shall be deemed to have been served on the day following that on which the email, letter envelope, electronic conveyance or wrapper containing the same was posted.

50.4 In proving service of a notice by post it shall be sufficient to prove that the letter envelope or wrapper containing the notice was properly addressed stamped and posted or by email by providing electronic evidence. A certificate in writing signed by any Director, Company Secretary or other officer of the Company that the letter envelope or wrapper containing the notice was so addressed and posted or emailed shall in the absence of evidence to the contrary be conclusive evidence thereof.

## **51. INDEMNITY AND LIABILITY OF DIRECTORS AND OTHER OFFICERS**

51.1 To the extent permitted by law, the Company shall:

- (a) indemnify a person who is or has been an Officer of the Company against liability incurred by the person as such an Officer to another person (other than the Company or a related body corporate); and
- (b) subject to the prior approval of the Board indemnify a person who is or has been an Officer or Auditor of the Company against liability for all reasonable costs and expenses incurred by the person in defending proceedings, whether civil or criminal or found not guilty.

51.2 The Company may pay, or agree to pay, at the discretion of the Directors, a premium in respect of a contract insuring a person who is or has been an Officer of the Company against the liability incurred by the person as such an Officer, except for a liability arising out of conduct involving a willful breach of duty in relation to the Company or a contravention of sections 232(5) or (6) of the Corporations Law. In the case of a Director, any such premium shall be paid in addition to any remuneration



paid to that Director by the Company in accordance with the Clause 27.1.

51.3 For the purpose of this Clause "Officer" shall have the meaning ascribed to that term in section 241 of the Corporations Law.

## **52. RESERVES**

52.1 The Directors may set aside out of the surpluses of the Company such sums as they think proper as a reserve to meet depreciation or contingencies or for repairing or improving and maintaining any of the property of the Company or for such other purposes as the Directors in their absolute discretion think conducive to the interests of the Company, but subject at all times to this Constitution.

## **53. WINDING UP**

53.1 If upon winding up or dissolution of the Company there remains after satisfaction of its debts and liabilities any property whatsoever, the remainder shall be distributed to Ordinary Members equally.

## **54. DISPUTE RESOLUTION - EXTERNAL DISPUTES**

54.1 If any members are in dispute with respect to a matter not related to the Company, those members (or any of them) may request the Chair to appoint a person (herein called "the Mediator") for the purposes of resolving the dispute. The Mediator shall act as an expert and not as an arbitrator and the written determination of the Mediator shall be conclusive and binding upon the members in dispute. The fees and expenses of the Mediator shall be borne and paid for by the members in dispute in equal shares, notwithstanding the result of any such determination.

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