

MAKINSON & d'APICE

— L A W Y E R S —

CORPORATIONS ACT 2001

Constitution

Twenty Macleay Street Limited

MAKINSON & d'APICE
Level 12
135 King Street
SYDNEY NSW 2000

DX: 296 SYDNEY
Tel: (02) 9233 7788
Fax: (02) 9233 1550
Email: mail@makdap.com.au
Ref: RdA:BAS:71854

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Table of Contents

NAME AND TYPE OF COMPANY	1
1. Name and Objects of the Company	1
2. Type of Company	1
DEFINITIONS AND INTERPRETATION	1
3. Definitions and Interpretation	1
SHARES AND CAPITAL	4
4. Shares – Rights and Restrictions	4
5. Outgoings Contributions	7
6. Exclusive Use	8
7. Lease or Licence of Residential Unit	8
8. Powers of the Company	9
9. Duties of the Company	11
10. Managing Agent	12
11. Duties of Members	12
12. Default	15
13. Arbitration	16
14. Power to Issue Shares	17
15. Variation of Rights	17
16. Mortgages, Charges and Recognition of Ownership	17
CERTIFICATES	18
17. Share Certificates	18
FORFEITURE	18
18. Liability to Forfeiture	18
19. Effect of Non Compliance with Notice	19
20. Notice of Forfeiture	19
21. Annulment of Forfeiture	19
22. Consequences of Forfeiture	19
23. Evidence of Forfeiture	20
24. Disposal of Forfeited Shares	20
25. additional rights	20
LIEN	21
26. Right to Lien	21
27. Imposition of Liabilities	21
28. Suspension of Rights	22
29. Enforcement of Lien	22
30. Completion of Sale Pursuant to Lien	23
31. Appropriation of Proceeds	23
TRANSFER OF SHARES	23
32. Transfer of Shares	23
33. Transfers Generally	24
34. Discretion to Refuse to Register	24
35. Retention of Transfer Documents	25
36. Suspension of Transfers	25

TRANSMISSION OF SHARES	25
37. Title to Shares on Death	25
38. Registration of Other Persons	26
39. Rights on Entitlement.....	26
ALTERATION OF CAPITAL	27
40. Power to Alter Capital	27
41. Power to Reduce Capital	27
42. Share Buy-Backs	27
GENERAL MEETINGS.....	27
43. Convening of General Meetings	27
44. Notice of General Meeting	28
45. Cancellation or Postponement of General Meeting	28
PROCEEDINGS AT GENERAL MEETINGS.....	29
46. Quorum	29
47. Chairman	29
48. Adjournments	30
49. Voting Rights	30
50. Voting Disqualification	31
51. Objection to Qualification to Vote.....	31
52. Votes of Joint Holders	31
53. Persons who are incapable of managing their affairs	31
54. Voting	32
55. Circular Resolutions by Members.....	32
56. Polls.....	33
57. Chairman's Casting Vote	33
58. Right of Non-Members to Attend General Meeting.....	33
PROXIES	34
59. Right to Appoint Proxies	34
60. Appointing a Proxy.....	34
61. Lodgment of Proxies.....	35
62. Validity of Proxies	35
63. Rights of Proxies and Attorneys	36
APPOINTMENT AND REMOVAL OF DIRECTORS.....	36
64. Number of Directors	36
65. Director's Qualifications	36
66. term, election and rotation	37
67. Appointment of Directors	37
68. Vacation of Office	38
ALTERNATE DIRECTORS	38
69. Appointment of Alternate Director.....	38
70. Rights and Powers of Alternate Directors.....	38
71. Suspension or Revocation of Appointment.....	39
72. Termination of Appointment.....	39
73. Acting as Alternate for More Than One Director.....	39
REMUNERATION OF DIRECTORS	39

74.	Remuneration of Directors.....	39
75.	Payment of Expenses.....	40
POWERS AND DUTIES OF DIRECTORS		40
76.	Powers of Directors	40
77.	Borrowing Powers	40
78.	Negotiable Instruments.....	41
79.	Attorneys and Agents	41
80.	Conferment of Powers.....	41
81.	Inadvertent Omissions	42
DIRECTORS' DISCLOSURE OF INTEREST		42
82.	Contracts with Directors.....	42
83.	Disclosure of Interest.....	42
PROCEEDINGS OF DIRECTORS		43
84.	Meetings of Directors.....	43
85.	Quorum	44
86.	Chairman	44
87.	Voting	44
88.	Circular Resolutions by Directors	45
89.	Committee of Directors	45
90.	Validation of Acts of Directors.....	45
MINUTES		46
91.	Minutes	46
SECRETARY		46
92.	Appointment and Tenure	46
EXECUTION OF DOCUMENTS.....		47
93.	Execution of Documents.....	47
DIVIDENDS AND RESERVES		47
94.	Declaration of Dividends.....	47
95.	Crediting and Paying Dividends.....	47
96.	Reserves	47
97.	Deductions from Dividends.....	48
98.	Dividends Paid in Kind.....	48
99.	Payment of Dividends.....	48
CAPITALISATION OF PROFITS.....		49
100.	Capitalisation of Profits	49
101.	Director's Powers upon Capitalisation	49
ACCOUNTS, INSPECTION OF RECORDS AND AUDIT		49
102.	Accounts and Inspection.....	49
103.	Audit	50
NOTICES		50
104.	Service of Notices.....	50
105.	Notices to Joint Holders.....	51
106.	Notices of General Meeting	51
WINDING UP		51

107.	Winding Up	51
108.	Sale of Undertaking	52
INDEMNITY		52
109.	Indemnity	52
110.	Payment of Indemnity Policy Premium	53
111.	Indemnity to Continue.....	53
112.	Rules, Policies and GUIDELINES	54
SCHEDULE 1 RULES, POLICIES AND GUIDELINES.....		55

CORPORATIONS ACT 2001
A Public Company Limited by Shares

CONSTITUTION

of

TWENTY MACLEAY STREET LIMITED

NAME AND TYPE OF COMPANY

1. NAME AND OBJECTS OF THE COMPANY

- 1.1 The name of the Company is Twenty Macleay Street Limited.
- 1.2 The objects of the Company are to conduct the building known as Twenty Macleay Street erected on the Property as a first class block of residential units primarily for residence by members of the Company and to their immediate families including, but not limited to the erection, construction, alteration and maintenance of buildings, erections and works of all kinds.

2. TYPE OF COMPANY

- 2.1 The Company is a company limited by shares.
- 2.2 The liability of the Members is limited.

DEFINITIONS AND INTERPRETATION

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the *Corporations Act 2001*.

Board shall mean the Board of Directors of the Company.

Building includes all structures erected on or in the Property and all walls, floors, ceilings, doors, windows, pipes, wiring and other services together with all built-in cupboards, baths, toilets, basins, kitchen sinks and other fixtures attached to the building from time to time.

Change of Control means:

- (1) a transfer in the legal or beneficial interest in shares of the Member corporation;

- (2) an allotment of shares in the Member corporation; or
 - (3) a change in the Member corporation's constitution or governing document,
- which would have the consequence of altering the effective control of the Member corporation.

Committee means a committee of Directors established in accordance with **clause 89**.

Constitution means this Constitution as amended or supplemented from time to time.

Common Property means that part of the Property not comprised in a Residential Unit from time to time.

Company means the company referred to in **clause 1.1**.

Director means any person holding the position of a director of the Company and includes an alternate director and "Directors" means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Dividend includes interim dividend and bonus issues.

Due Date means the date specified as the date for payment of an Outgoings Contribution in a notice issued pursuant to **clause 5.4**.

Independent Director means a person, not being a Member, who is suitably qualified and experienced as a company director (in the Board's opinion), or who has relevant professional qualifications, accreditations or membership to act as a director of the Company.

Member means an owner of a Share Group specified in **clause 4.2**.

Member Present means in connection with a meeting of Members, a Member being present in person or by proxy or attorney or, in the case of a corporation, by a Representative.

Office means the registered office for the time being of the Company.

Officer has the same meaning as given to that term in Section 9 of the Act.

Outgoings Contribution means the levy payable by Members in accordance with **clause 5**.

Percentage means the percentage of contributions relating to each Share Group stipulated in **clause 4.2** being the number of shares in each such Share Group expressed as a percentage of the total shares on issue from time to time.

Prescribed Rate means if the Directors have fixed a rate the rate so fixed, otherwise 8% per annum.

Property means all that piece or parcel of land known as 20 Macleay Street, Potts Point being the whole of the land in Certificate of Title Folio Identifier 1/186859 and all the improvements erected thereon.

Register of Shareholders means the register of Members to be kept pursuant to the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate holding shares in the Company.

Residential Unit means:

- (1) a habitable residential space in the existing building erected on the Property the number of which is set out in the second column in the table which forms part of **clause 4.2** but excluding:
 - (a) the physical walls, floors and ceilings of the space; and
 - (b) all pipes, wires and other connections for water, sewerage, gas, electricity, telephone, cable or other services;
- (2) the habitable parts of space, the boundaries of which are:
 - (a) the inner surface of any wall;
 - (b) the upper surface of any floor;
 - (c) the lower surface of any ceiling, or where there is no ceiling, the horizontal plane representing the extension of the ceiling of the adjacent habitable part and if more than one the part having the higher or highest ceiling,

and includes any part thereof.

Rules, Policies and Guidelines means the rules of the Company made pursuant to **clause 112**.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Share Group means each of the groups of shares in the Company described in **clause 4.2**.

Special Resolution has the same meaning as that in Section 9 of the Act.

3.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (1) the singular includes the plural and vice versa;
- (2) each gender includes the other two genders;
- (3) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (4) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (5) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;

- (6) a reference to any clause, regulation or schedule is to a clause or schedule of this Constitution;
- (7) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 3.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 3.4 The provisions of this Constitution displace the replaceable rules contained in the Act.
- 3.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

SHARES AND CAPITAL

4. SHARES – RIGHTS AND RESTRICTIONS

- 4.1 Shares in the Company do not have a par value. The Directors shall determine the issue price of all shares issued in the future.
- 4.2 The issued capital of the Company consists of ordinary shares divided into Share Groups as set out below. For the avoidance of doubt, the shares in each Share Group constitute a separate class of shares.

Share Group No	Residential Unit No	No and Class of Shares in Share Group	Percentage of All Shares on Issue	Distinctive Share Numbers
1	1	14920 Ordinary	1.49	1 to 14920
2	2	26513 Ordinary	2.65	14921 to 41433
3	3	14920 Ordinary	1.49	41434 to 56353
4	4	14920 Ordinary	1.49	56354 to 71273
5	5	14920 Ordinary	1.49	71274 to 86193
6	6	14920 Ordinary	1.49	86194 to 101113
7	7	14920 Ordinary	1.49	101114 to 116033
8	8	19811 Ordinary	1.98	116034 to 135844
9	9	14920 Ordinary	1.49	135845 to 150764
10	10	14920 Ordinary	1.49	150765 to 165684
11	11	9930 Ordinary	0.99	165685 to 175614

Share Group No	Residential Unit No	No and Class of Shares in Share Group	Percentage of All Shares on Issue	Distinctive Share Numbers
12	12	14920 Ordinary	1.49	175615 to 190534
14	14	11398 Ordinary	1.14	190535 to 201932
15	15	16338 Ordinary	1.63	201933 to 218270
16	16	16338 Ordinary	1.63	218271 to 234608
17	17	16338 Ordinary	1.63	234609 to 250946
18	18	16338 Ordinary	1.63	250947 to 267284
19	19	21328 Ordinary	2.13	267285 to 288612
20	20	16338 Ordinary	1.63	288613 to 304950
21	21	16338 Ordinary	1.63	304951 to 321288
22	22	11398 Ordinary	1.14	321289 to 332686
23	23	16338 Ordinary	1.63	332687 to 349024
24	24	21328 Ordinary	2.13	349025 to 370352
25	25	16338 Ordinary	1.63	370353 to 386690
26	26	16338 Ordinary	1.63	386691 to 403028
28	28	37666 Ordinary	3.77	403029 to 440694
29	29	16338 Ordinary	1.63	440695 to 457032
30	30	11398 Ordinary	1.14	457033 to 468430
31	31	16338 Ordinary	1.63	468431 to 484768
32	32	21328 Ordinary	2.13	484769 to 506096
33	33	16338 Ordinary	1.63	506097 to 522434
34	34	16338 Ordinary	1.63	522435 to 538772
36	36	37666 Ordinary	3.77	538773 to 576438
37	37	16338 Ordinary	1.63	576439 to 592776
38	38	11398 Ordinary	1.14	592777 to 604174
39	39	16338 Ordinary	1.63	604175 to 620512
40	40	21328 Ordinary	2.13	620513 to 641840
41	41	16338 Ordinary	1.63	641841 to 658178
42	42	16338 Ordinary	1.63	658179 to 674516
43	43	21328 Ordinary	2.13	674517 to 695844
44	44	16338 Ordinary	1.63	695845 to 712182
45	45	16338 Ordinary	1.63	712183 to 728520
46	46	11398 Ordinary	1.14	728521 to 739918
47	47	16338 Ordinary	1.63	739919 to 756256

Share Group No	Residential Unit No	No and Class of Shares in Share Group	Percentage of All Shares on Issue	Distinctive Share Numbers
48	48	21328 Ordinary	2.13	756257 to 777584
49	49	16338 Ordinary	1.63	777585 to 793922
50	50	16338 Ordinary	1.63	793923 to 810260
51	51	21328 Ordinary	2.13	810261 to 831588
52	52	16338 Ordinary	1.63	831589 to 847926
53	53	16338 Ordinary	1.63	847927 to 864264
54	54	11398 Ordinary	1.14	864265 to 875662
55	55	16338 Ordinary	1.63	875663 to 892000
56	56	21328 Ordinary	2.13	892001 to 913328
57	57	16338 Ordinary	1.63	913329 to 929666
58	58	16338 Ordinary	1.63	929667 to 946004
59	59	21328 Ordinary	2.13	946005 to 967332
60	60	16338 Ordinary	1.63	967333 to 983670
61	61	16338 Ordinary	1.63	983671 to 1000008

- 4.3 Any Member being the holder of an ordinary share shall hold such share subject to the following rights, privileges and conditions:
- (1) the right to notice of and to attend and vote at all meetings of the Company;
 - (2) the right to participate in the Dividends (if any) declared on the shares of which he is a holder;
 - (3) in a winding up of the Company to repayment of the capital paid upon such share and to participate in the division of any surplus assets or profits of the Company.
- 4.4 Subject to this Constitution, the holder of the shares comprising a Share Group shall be entitled to the exclusive use, occupation and enjoyment of the Residential Unit set opposite that Share Group in **clause 4.2**. The ancillary rights conferred upon shareholders by this clause shall not create any tenancy or other property estate right title or interest nor shall they constitute or imply any relationship of landlord and tenant as between the Company and the Member, and all such ancillary rights so conferred upon any person as a shareholder shall immediately cease to operate in favour of such person in the event of his ceasing through any cause to be a shareholder.
- 4.5 Each holder of the shares comprising a Share Group, its (if leasing is permitted under **clause 7**) tenants and permitted invitees shall have a right to access and use of the Common Property subject to any Rules, Policies and Guidelines which may be made by the Company from time to time.

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- 4.6 A holder of the shares comprising a Share Group shall not be liable for the payment of any rent or other payment to the Company in respect of the occupation of a Residential Unit other than any monies due pursuant to **clauses 5, 8.3 and 8.7** applicable to such Share Group and Residential Unit.
- 4.7 Shares shall be held by Members in the Share Groups and the issued shares comprising each Share Group shall not be transferable or capable of being dealt with in any way (including without limitation transmission by will) other than as a single parcel. The Company shall not issue further shares giving rights in respect of an existing Residential Unit other than to the holder of the shares comprising the Share Group entitled to the exclusive use, occupation and enjoyment of the relevant Residential Unit.
- 4.8 The rights conferred upon shareholders by this **clause 4** do not include any proprietary right in relation to the Building or the Property which rights vest solely in the Company. A Member has no right to make any alteration of any nature to the Building or to the Property without the approval of the Directors first had and obtained which consent may be withheld by the Directors at their discretion and, if granted, may be subject to any Rules, Policies or Guidelines or conditions to which the same may be subjected by the Board.

5. OUTGOINGS CONTRIBUTIONS

- 5.1 The Company may, at the absolute discretion of the Directors, levy an Outgoings Contribution on the Members in their respective Percentages, in order to permit the Company to meet its actual or expected liabilities incurred or to be incurred in the management and ownership of the Property and the Building, or the provision of services to Members, as determined by the Directors.
- 5.2 The Company may, at the absolute discretion of the Directors, levy an Outgoings Contribution on the Members in their respective Percentages, in order to establish a sinking fund to meet the Company's actual or expected liabilities:
- (1) for painting or repainting any part of the Common Property;
 - (2) for the acquisition of any personal property;
 - (3) for renewing or replacing any fixtures or fittings in the Common Property or personal property of the Company; or
 - (4) for any other expenditure determined to be necessary by the Directors.
- The Directors shall be the only persons entitled to determine the adequacy of the moneys standing to the credit of the sinking fund from time to time.
- 5.3 The Directors may at any time after an Outgoings Contribution has been determined reduce or cancel it or refund or repay any part of a Contribution or credit the refund or repayment to the account of the relevant Members.
- 5.4 Each Member will pay the Outgoings Contribution due from it in accordance with the percentage relating to the Member's Share Group on or before the Due Date. In the

event that the Outgoings Contribution is not paid within thirty (30) days of the Due Date :

- (1) the Member will pay interest at the Prescribed Rate on the amount of the Member's unpaid Outgoings Contribution calculated from the date thirty (30) days after the Due Date and any interest so paid shall form part of the fund to which the Outgoings Contribution is to be paid;
- (2) the Company may recover the moneys due from a Member as a debt in any court of competent jurisdiction or exercise its other powers pursuant to this Constitution;
- (3) a Member may not vote at any meeting of the Members whilst there are any monies due to the Company but unpaid under this **clause 5**.

6. EXCLUSIVE USE

- 6.1 The Company may, with the consent in writing of a Member, but only pursuant to a Special Resolution of the Members, confer on that Member the exclusive use and enjoyment of, or special privileges in respect of, the Common Property or a part of it upon such terms and conditions as the Company deems appropriate (including the proper maintenance and keeping in a state of good and serviceable repair of the Common Property or that part of the Common Property, as the case may be, and the payment of money by that Member to the Company as may be specified in the Special Resolution) and may, pursuant to a Special Resolution of the Members, revoke or vary any such arrangement with the consent of the Member having the exclusive use benefit.
- 6.2 The Company may not sell, transfer, assign, let, mortgage, charge, encumber, subdivide, consolidate or otherwise dispose of or deal with the Property notwithstanding any power implied by statute or otherwise without the Special Resolution of the Members.

7. LEASE OR LICENCE OF RESIDENTIAL UNIT

- 7.1 A Member shall not enter into a lease or licence agreement or any arrangement having a like effect of their Residential Unit with any person, other than a member of his immediate family, unless such person has been approved by the Directors.
- 7.2 Members wishing to enter into such an agreement or arrangement must first:
 - (a) make a written application to the Directors in the form prescribed by the Directors from time to time for approval to rent out the Residential Unit and provide such information as the Directors reasonably require to enable the Directors to consider the application; and
 - (b) if the Member's application is approved, arrange for the prospective tenant to complete and provide to the Directors a written application in the form prescribed by the Directors from time to time and provide such information

as the Directors reasonably require to enable the Directors to consider the application.

- 7.3 A Member or occupier shall not transfer or assign a tenancy or other right of occupation of a Residential Unit or sub-let a Residential Unit to any person unless that person has been approved by the Directors pursuant to a like process as that described in clauses 7.2(a) and (b).
- 7.4 The Directors must attend promptly to any written application under clause 7.2 and may decline to approve any such person as a lessee or licensee of a Residential Unit where such person is a minor or who is not, in their reasonable opinion, a respectable and responsible person. The Directors may adopt such policies, and guidelines for the administration of this sub- clause, not being inconsistent with this sub-clause, as shall to them seem appropriate and such policies and guidelines may be revoked, altered, amended or added to by the Directors or by Special Resolution of the Members in general meeting. Where the Directors refuse to approve such person, the Company shall within thirty (30) days after the date of receiving the written application pursuant to clause 7.2(b), give written notice of the refusal to the Member but shall not be required to provide reasons for its decision.
- 7.5 Each Member, occupier and/or tenant that is a party to a lease or licence or any arrangement having a like effect of a Residential Unit in the Building must comply with the terms of the Rental Policy and Guidelines, Real Estate Institute of New South Wales' Residential Tenancy Agreement and Additional Clauses to the Real Estate Institute of New South Wales' Residential Tenancy Agreement annexed at Schedule 1 of this Constitution and forming part of the Rules, Policies and Guidelines whether or not the Member, occupier and/or tenant have executed any of those documents.
- 7.6 The Rental Policy and Guidelines, Real Estate Institute of New South Wales' Residential Tenancy Agreement and Additional Clauses to the Real Estate Institute of New South Wales' Residential Tenancy Agreement may from time to time be revoked, altered, amended or added to by the Directors.

8. POWERS OF THE COMPANY

- 8.1 The Company has all of the powers, rights and immunities of any public company limited by shares established under the Act, unless such powers, rights and immunities are specifically modified by this Constitution.
- 8.2 The Directors or any person authorised by the Directors may at any time and from time to time enter a Residential Unit:
 - (1) upon 48 hours' notice to the Member entitled to exclusive use of the Residential Unit or the occupier of the Residential Unit to effect any work necessary, in the reasonable opinion of the Directors, in order to repair or renew any part of the Common Property;

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- (2) upon 48 hours' notice to the Member entitled to exclusive use of the Residential Unit or the occupier of the Residential Unit to effect any work necessary to repair or renew any part of the Residential Unit in accordance with any notice issued by a competent authority;
 - (3) upon 48 hours' notice to the Member entitled to exclusive use of the Residential Unit or the occupier of the Residential Unit, to inspect the interior of the unit and test any fire safety device or installation and any electrical, gas or plumbing installation for the purpose of ascertaining whether the unit is compliant with any health and safety regulation (including in particular but without limitation, compliance with fire safety regulations) under any of:
 - (a) the *Work Health and Safety Act 2011* and Regulation thereunder or any Act or Regulations replacing the same;
 - (b) the regulations or requirements imposed by the City of Sydney Council; and
 - (c) generally at law.
 - (4) in the case of emergency (including medical emergency) or where damage to the Building might, in the reasonable opinion of a Director result, at any time without notice and by force if necessary to trace and/or repair any defect or leakage, including but not limited to, any defect or leakage in any fire safety device or installation and any electrical, gas or plumbing installation within a Residential Unit, to carry out any other such inspection or work as is required to be urgently carried out and/or to arrange for emergency services to attend the Building.
- 8.3 If such access as specified above in subclause 8.2 is not provided by the Member entitled to exclusive use of the Residential Unit or the occupier of the Residential Unit, entry may be effected by recourse to a locksmith, or any other means which in the reasonable opinion of the Directors is appropriate in the circumstances, at the expense of the Member.
- 8.4 A Member or occupier of a Residential Unit must lodge a set of keys to the Residential Unit with the Company for the purposes of emergency access. Keys must be held in a locked box within the Director's meeting room in the Building, the keys to which are to be held by the resident Directors of the Board. The Company must not allow the keys to Residential Units to be used for unlawful purposes.
- 8.5 If a locksmith (or other service which in the reasonable opinion of the Directors is appropriate in the circumstances) is required to gain entry for any purpose provided for in this Constitution and the Rules, Policies and Guidelines, including but not limited to, repairing or renewing any part of the Residential Unit or ensuring that the Residential Unit is compliant with health and safety requirements, then the costs associated with access to that Residential Unit shall be charged to and borne by the Member, unless otherwise determined by the Directors.
- 8.6 Where any work is carried out by or on behalf of the Company in relation to a Residential Unit which does not relate to the Common Property, the Company may recover the costs of so doing as a debt from the Member holding shares comprising the relevant Share Group as a debt. The amount due will carry interest at the Prescribed Rate until payment.

- 8.7 The Company may enter into an agreement with a Member or occupier of a Residential Unit for the provision of amenities or service by the Company to or in respect of the Residential Unit or the Member or the occupier and the converse shall also apply.

9. DUTIES OF THE COMPANY

- 9.1 The Company shall:

- (1) control manage and administer the Building for the benefit of the Members;
- (2) subject to clause 9.2, properly maintain and keep in a state of good and serviceable repair:
 - (a) the Building (but excluding all floors, ceilings, doors, windows, pipes, wiring and other services together with all built-in cupboards, baths, toilets, basins, kitchen sinks and other fixtures attached to the Building from time to time, which are internal to a Residential Unit); and
 - (b) other assets owned by the Company.
- (3) where necessary and subject to clause 9.2, renew, replace or upgrade any fixtures or fittings comprised in the Building (but excluding all floors, ceilings, doors, windows, pipes, wiring and other services together with all built-in cupboards, baths, toilets, basins, kitchen sinks and other fixtures attached to the Building from time to time, which are internal to a Residential Unit) and any other assets owned by the Company;
- (4) cause to be constructed or maintained at or near the street alignment of the Property a receptacle suitable for the receipt of mail and other documents with the name of the Company clearly shown thereon;
- (5) effect proper and adequate insurance in respect of the Property including an insurance policy which provides:
 - (a) in the event of any part of the Property being destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy, for the rebuilding of the Property or its replacement by a similar building in the event of its destruction; and
 - (b) the repair of damage to, or the restoration of the damaged portion of, the Property in the event of it being damaged but not destroyed,

so that in the case of destruction, every part of the rebuilt improvements or the replacement improvements and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than the condition of that part or portion prior to the occurrence of the destruction or damage. The insurance shall also cover the payment of expenses incurred and the removal of debris and the remuneration of architects and other persons whose services are necessary or incidental to the rebuilding, replacement, repair or restoration. The Company shall also effect workers' compensation insurance (if required) and public risk insurance for a cover not

less than \$10 million and any other insurance required by law or approved by the Members. The Company shall not be responsible for insuring the personal chattels of an owner or occupier of a Residential Unit nor for any damage arising within a Residential Unit except where such damage is directly or indirectly the result of an act or omission on the part of the Company;

- (6) by its Directors, regularly determine the amounts necessary in its opinion to be raised by way of Outgoings Contributions for the purpose of meeting its actual or expected liabilities including the payment of insurance premiums and amounts due for rates, taxes and similar costs and expenses;
- (7) pay when due all rates, taxes, insurance premiums and the like for which it is liable; and
- (8) upon application made to it in writing by a Member or a person authorised to do so by a Member, provide such information as is reasonably required concerning the accounts of the Company in connection with any dealing with shares in the Company.

9.2 Notwithstanding anything else contained herein, the Company may, at the absolute discretion of the Directors, carry out or pay for (in whole or in part) any repairs to or maintenance of the Building.

10. MANAGING AGENT

10.1 If determined by the Company in general meeting, the Company may by written instrument appoint a managing agent and may, by written instrument, delegate to him in relation to the Property:

- (1) all of its powers, authorities, duties and functions in relation to the management of the Property;
- (2) any one or more of its powers, authorities, duties and functions specified in the instrument; or
- (3) all of its powers, authorities, duties and functions except those specified in the instrument,

and may, by written instrument, revoke wholly or in part the delegation.

10.2 The Company may appoint the managing agent or one of its employees as the Secretary.

11. DUTIES OF MEMBERS

11.1 A Member and any occupier of a Residential Unit shall:

- (1) not do anything or permit anything to be done on or in relation to the Residential Unit so that:

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- (a) any support or shelter provided by that Residential Unit for another Residential Unit or Common Property is interfered with; or
 - (b) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio, television and cable services) through or by means of any pipes, wires, cables or ducts for the time being in the Residential Unit is interfered with; or
 - (c) a breach of the Rules, Policies and Guidelines occurs;
- (2) not use or enjoy the Residential Unit, or permit the Residential Unit to be used or enjoyed in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other Residential Unit (whether that person is a Member or not);
 - (3) not use or enjoy the Common Property in such a manner or for such purpose as to interfere unreasonably with the use or enjoyment of the Common Property by the occupier of any other Residential Unit (whether that person is a Member or not) or by any other person entitled to use and enjoyment of the Common Property;
 - (4) not without the written consent of the Company make any structural alterations, improvements or additions to the Residential Unit. The Directors may adopt such policies and guidelines for the administration of this sub-clause, not being inconsistent with this sub-clause, as to them shall seem appropriate and such policies and guidelines may be revoked, altered, amended or added to by the Directors or by a Special Resolution of the members in general meeting;
 - (5) not obstruct the entrance halls, passages, landings, elevators or stairways in and about the Building or use them, or any of them, for any purpose other than ingress or egress in the normal manner;
 - (6) not use the water closets, conveniences and other water apparatus for any purpose other than those for which they are constructed and no sweepings or rubbish or unsuitable substances shall be placed or permitted to enter therein and all damage caused to any such water closet, convenience or apparatus or to the Building or any other Residential Unit or personal property by reason of the act, neglect or default of a Member or said Member's invitees, licensees, servants or agents, shall be made good at the expense of that Member;
 - (7) not use or occupy the Member's Residential Unit or permit the same to be used or occupied for any purpose other than as a private residence and no trade, business, professional or advertising notice shall be exhibited on or about the same;
 - (8) maintain the interior of the Member's Residential Unit and the parts of the Building associated with it in a good state of repair and cleanliness and shall make good from time to time all wear and tear within the Residential Unit, maintain to the reasonable satisfaction of the Company all alterations which the Member, any predecessor as holder of the relevant Share Group, have made to the Property (whether with or without the consent of the Company)

and make good any damage to the Property or the personal possessions belonging to the Company or any occupant as a result of any act or omission of the Member or his employees, agents, tenants, invitees or licensees, and shall from time to time at the Member's own expense comply with the directions given by the Company as to the maintenance, painting, repair and cleaning of the Residential Unit;

- (9) comply with all statutes, ordinances, by-laws and regulations and all orders of any Commonwealth, State, Municipal or other authority and with the requirement of the insurers for the time being of the Company against loss or damage by fire and shall not do or suffer to be done anything in or about the Residential Unit which will or might increase the rate of premiums for fire insurance in relation to the Building , or obstruct or interfere with the rights or comforts of other occupants of the Building or in any way injure or annoy them;
 - (10) notify the Company of any leakage or building defect coming to the Member's notice and shall hold the Company free from liability for any damage caused thereby unless the Company fails within a reasonable time after notification thereof to take all reasonable steps to have such leakage or building defect remedied;
 - (11) comply with this Constitution and the Rules, Policies and Guidelines;
 - (12) be responsible for insuring the contents of the Residential Unit and shall acknowledge that the Company has no obligation to insure the contents of the Residential Unit and that the Company is not liable for any damage or loss in respect of the contents of the Residential Unit except where such loss or damage is the direct result of an act or omission on the part of the Company;
 - (13) allow the Directors or any person authorised by the Directors to access the Residential Unit for any purpose provided for in this Constitution and the Rules, Policies and Guidelines, including but not limited to, repairing or renewing any part of the Residential Unit or any part of the Common Property accessible through the Residential Unit or ensuring that the Residential Unit is compliant with health and safety requirements;
 - (14) lodge a set of keys to the Residential Unit with the Company for the purposes of emergency access. Keys must be held in a locked box within the Director's meeting room in the Building, the keys to which are to be held by the resident Directors of the Board; and
 - (15) be responsible for costs associated with access to Residential Units should a locksmith be required to gain entry for any purpose provided for in this Constitution and the Rules, Policies and Guidelines, including but not limited to, repairing or renewing any part of the Residential Unit or ensuring that the Residential Unit is compliant with health and safety requirements.
- 11.2 A Member shall ensure that any occupier of a Residential Unit relating to his Share Group complies with this Constitution.
- 11.3 Each Member shall, in relation to its own acts or omissions, indemnify and keep indemnified the Company from and against all actions, claims, demands, losses, damages, costs and expenses of any nature whatsoever arising from:

- (1) the use and occupation of the Residential Unit relating to the Share Group held by the Member;
- (2) damage or loss of property within the Property not belonging to the Company;
- (3) the negligent use or misuse, waste or abuse of any water, gas, electricity or other services on the Property;
- (4) the air flow, leakage or escape of water, fire, gas, electricity or any other harmful agent whatsoever in or from the Residential Unit relating to the Share Group held by the Member;
- (5) any damage caused by a Member (or that Member's employees, agents, tenants, invitees or licensees) to the Building;

except where such actions, claims, demands, losses, damages, costs and expenses arise by reason of an act or omission of the Company.

12. DEFAULT

12.1 A Member's right to occupy his Residential Unit shall cease:

- (1) if the Member shall have committed a breach of the provisions and conditions lawfully imposed by or pursuant to this Constitution or the Rules, Policies and Guidelines and shall have failed to remedy such breach for a period of one (1) month after the Member has received a written notice, from the Secretary with the authority of the Directors, requesting the Member to remedy the breach;
- (2) if the Member shall have made default in the payment of any monies payable by him pursuant to this Constitution and such default has continued for more than one (1) month (or such further time as the Company may allow) after the Member has received a written notice, from the Secretary with the authority of the Directors, requesting the Member to pay such monies;
- (3) upon the Member ceasing, for any reason, to be the registered holder of the Share Group relating to the Residential Unit; or
- (4) if a formal complaint has been made to the Company against a Member, by at least two (2) other Members, stating that that Member (or that Member's employees, agents, invitees or licensees) has or have been a nuisance or annoyance to other Members, or has or have interfered with the quiet and comfort of the other Members without due cause; and
 - (a) a written notice of such complaint has been served upon the Member by the Secretary with the authority of the Directors, together with a copy of this clause;
 - (b) the Member has either:
 - (A) notified the Secretary in writing within seven (7) days after the date of the said notice of the Member's desire to be heard upon the subject of the said complaint at a meeting of the

Directors and has been so heard at such a meeting convened in accordance with the next succeeding paragraph of this clause, or

- (B) failed to be in attendance at such meeting; or
 - (C) failed to notify the Secretary within the period of seven (7) days of the Member's desire to be heard;
 - (c) a meeting of the Directors has been duly convened within twenty-eight (28) days after the date of the notice given to the Member of such complaint (having as one of its objects the hearing of the subject of such complaint and consideration of the determination of membership of the Member), and notice of that meeting has been given to the Member;
 - (d) the Directors have resolved to call a general meeting of the Members for the purpose of considering a recommendation by the Directors that the right of the Member to occupy the Residential Unit shall cease; and
 - (e) a general meeting convened accordingly has resolved by a majority of votes that the right of the Member to occupy the Residential Unit shall cease.
- 12.2 (1) If the right of a Member to the exclusive use and occupation of a Residential Unit has ceased pursuant to **clause 12.1**, the Directors may by notice in writing to such Member require the Member to sell the group of shares to which the Residential Unit is appurtenant, to a purchaser approved by the Directors and if the Member does not find such a purchaser within sixty (60) days after such notice is given to the Member, or within such further time as the Directors may allow, the Company may sell such group of shares at their fair market value, as determined by a qualified real estate valuer appointed by the Directors for the purpose.
- (2) The net proceeds of the sale after deducting any monies due by the Member to the Company and the expenses of and incidental to the sale and to the enforcement of the Company's rights under this clause shall be paid to the Member.
- (3) Each Member hereby appoints the chairman of Directors and the Secretary jointly and severally as the Member's attorneys and attorney for the purposes of effecting such sale, received and giving a good discharge for the purchase money and transferring the shares on his behalf.

13. ARBITRATION

- 13.1 If a dispute, other than a complaint referred to in **clause 12.1(4)**, arises between Members, then without limiting the rights of any Members such dispute shall in the first instance be referred for resolution to a person nominated by the President of the Institute of Arbitrators Australia and willing to so act.

14. POWER TO ISSUE SHARES

- 14.1 Subject to the provisions of the Act and any special rights previously conferred on the holders of any existing shares or class of shares issued by the Company, shares in the Company are under the control of and may be issued by the Directors and any shares may from time to time be issued to such persons on terms and conditions and with preferred, deferred, qualified, guaranteed or other special rights, privileges, conditions, restrictions or limitations whether in regard to dividend, return of capital, distribution of assets, voting, exclusive use of property or otherwise as the Directors may determine.
- 14.2 The Directors may grant to any person an option to call on the Company to issue shares to the person.

15. VARIATION OF RIGHTS

- 15.1 The rights conferred upon the holders of the shares of any class issued with preferred or other special rights shall not, unless otherwise expressly provided by the terms of the issue of the shares of that class, be taken to be varied or cancelled by the creation or issue of further shares ranking equally with the first mentioned shares.
- 15.2 If the share capital is at any time divided into different classes of shares, all or any of the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied or cancelled:
- (1) with the written consent of the holders of seventy-five percent (75%) of the issued shares of that class; or
 - (2) with the sanction of a Special Resolution passed at a general meeting of the holders of shares of that class.

All the provisions of this Constitution relating to general meetings of the Company shall, with appropriate modifications, apply to every such meeting except that the quorum at any such meeting is that number of Members Present holding twenty-five percent (25%) of the issued shares of the class and any Member Present holding shares of the class may demand a poll.

16. MORTGAGES, CHARGES AND RECOGNITION OF OWNERSHIP

- 16.1 The Company shall cause to be entered on the Register of Shareholders details of any mortgage or charge over shares given by a Member which has been notified to the Company by the Member however such entry shall not create any liability of or obligation on the Company or the Directors in favour of any mortgagee or chargee when exercising any rights, powers and discretions conferred on the Company or the Directors by this Constitution in respect of the shares the subject of a mortgage or charge.

- 16.2 Except as required by law the Company shall not recognise any person as holding any share on trust.
- 16.3 Subject to **clause 16.1** and as otherwise permitted by this Constitution and by law, the Company shall not be obliged or compelled to recognise (whether or not it has notice of the interest or rights concerned) any trust, equitable, contingent, future or partial interest in any share or any other right in respect of a share except an absolute right to the share held by the registered holder.

CERTIFICATES

17. SHARE CERTIFICATES

- 17.1 The certificates for shares shall be executed by the Company in the manner provided by **clause 93** and be in the form from time to time prescribed by the Directors, subject to the Act.
- 17.2 Every Member is entitled free of charge to one certificate for all the shares registered in the Member's name, or if desired by such Member, to a separate certificate for each group of shares.
- 17.3 In the case of joint holders of shares the Company shall not be required to issue certificates to all of the joint holders and the delivery of a certificate for a share to one of several joint holders is a sufficient delivery to all of the joint holders.
- 17.4 Subject to the Act:
- (1) if any certificate is worn out or defaced then upon production of it to the Directors, they may order it to be cancelled and may issue, upon cancellation of the certificate and payment of such fee as may from time to time be determined by the Directors, a replacement certificate; and
 - (2) if any certificate is lost or destroyed a replacement certificate shall, upon payment of such fee as may from time to time be determined by the Directors, be issued to the person entitled to the lost or destroyed certificate.

FORFEITURE

18. LIABILITY TO FORFEITURE

- 18.1 If a Member fails to pay the whole or any part of an Outgoings Contribution on or before the due date for payment, the Directors may at any time thereafter while the Outgoings Contribution remains unpaid serve a notice on that Member requiring payment of the unpaid amount together with any interest that may have accrued and all expenses that may have been incurred by the Company by reason of the failure to pay the Outgoings Contribution.

18.2 The notice must:

- (1) set a date and time (not earlier than the expiration of fourteen (14) days from the date of service of the notice) on or before which the payment required by the notice is to be made and the place where the payment is required to be made; and
- (2) state that in the event of non payment on or before the day and at the place appointed the shares in respect of which the notice was issued will be liable to be forfeited.

19. EFFECT OF NON COMPLIANCE WITH NOTICE

- 19.1 If the requirements of any notice given by the Company pursuant to **clause 18** are not complied with, any shares in respect of which the notice has been given may, at any time prior to any payment as required by the notice, be forfeited in accordance with a resolution of the Directors to that effect.
- 19.2 Forfeiture of a share will include all Dividends declared in respect of the forfeited share and not actually paid before the forfeiture.

20. NOTICE OF FORFEITURE

- 20.1 When any share has been forfeited, notice of the resolution of forfeiture must be given to the Member in whose name the share was registered immediately prior to the forfeiture and an entry of the forfeiture with the date on which forfeiture occurred must immediately be made in the Register of Shareholders.
- 20.2 Failure to give any notice of forfeiture of a share or to make the appropriate entry in the Register of Shareholders shall not affect the validity of the forfeiture.

21. ANNULMENT OF FORFEITURE

- 21.1 The Directors may at any time prior to the sale or disposal of a forfeited share annul the forfeiture of the share on such conditions as they think fit.

22. CONSEQUENCES OF FORFEITURE

- 22.1 A person whose shares have been forfeited:
- (1) shall cease to be a Member in respect of the forfeited shares at the time of the resolution of the Directors approving the forfeiture;
 - (2) shall have no claims against the Company in respect of the forfeited shares; and

- (3) shall remain liable to pay the Company all money which at the date of forfeiture was payable by the person to the Company in respect of the forfeited shares together with, if the Directors think fit, interest at the Prescribed Rate from the date of forfeiture until payment of the money for the time being unpaid in respect of the forfeited shares. The Directors may enforce the payment of such money as they shall think fit but shall not be under any obligation to do so.

23. EVIDENCE OF FORFEITURE

- 23.1 A statement in writing by a Director or the Secretary to the effect that a share has been forfeited on a date stated in the statement is conclusive evidence of those facts as against all persons claiming to be entitled to the share.

24. DISPOSAL OF FORFEITED SHARES

- 24.1 A forfeited share may be sold or otherwise disposed of on terms and in such manner as the Directors think fit.
- 24.2 The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of it and may execute or authorise a person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- 24.3 Upon the completion of the transfer of a forfeited share the transferee shall be registered as the holder of the share and will not be bound to see to the application of any money paid as consideration.
- 24.4 The title of the transferee to the share shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture sale or disposal of the share.
- 24.5 Any balance of the proceeds of sale of a forfeited share remaining after the payment to the Company of all amounts due to the Company in respect of the share shall be payable to the person entitled to the share immediately prior to the forfeiture.

25. ADDITIONAL RIGHTS

- 25.1 The rights conferred upon the Directors by virtue of the non-payment of an Outgoings Contribution by a Member pursuant to **clauses 18 to 24** are in addition to the rights conferred upon the Directors pursuant to **clause 12**.

LIEN

26. RIGHT TO LIEN

- 26.1 In addition to any other rights conferred by this Constitution or the law, the Company has a first and paramount lien on every share registered in the name of a Member (whether solely or jointly with others) and upon the proceeds of sale of the share for all money called or payable in respect of that share (including interest and expenses) and any amount that the Company may be required by law to pay in respect of the share.
- 26.2 The Company's lien (if any) shall extend to all Dividends declared in respect of a share and other entitlements arising from the share. Any such Dividends and entitlements may be applied in towards satisfaction of all amounts due and payable to the Company in respect of which the lien exists.
- 26.3 Unless otherwise determined by the Directors the registration of a transfer of shares shall operate as a waiver of the Company's lien (if any) which may exist in respect of a share.
- 26.4 The Directors may at any time exempt a share wholly or in part from the provisions of this Constitution concerning the Company's lien.

27. IMPOSITION OF LIABILITIES

- 27.1 This clause applies where any law for the time being of any jurisdiction in or outside of Australia:
- (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment; or
 - (2) empowers any government or government authority or government official to require the Company to make any payment in respect of any shares registered in the Register of Shareholders as held either jointly or solely by any Member or in respect of any Dividends or other moneys which are or may become due or payable or are accruing due to such Member by the Company on or in respect of any shares so registered,
- for or on account or in respect of any Member and whether in consequence of:
- (3) the death of such Member;
 - (4) the liability for any income or other tax by such Member;
 - (5) the liability for any estate, probate, succession, death, stamp or other duty by the executor or administrator of such Member or by or out of the Member's estate; or
 - (6) any other act or thing.

27.2 If any liability referred to in **clause 27.1** arises or is imposed on the Company, the Company:

- (1) shall be fully indemnified by such Member or his executor or administrator from all liability;
- (2) shall have a lien on the shares registered in the name of that Member and all Dividends and other entitlements in respect of those shares for all moneys paid or payable by the Company in respect of those shares or otherwise under or in consequence of the liability and interest accruing as referred to in **clause 27.2(4)**;
- (3) may recover, as a debt due from such Member or his executor or administrator those moneys together with interest accruing as referred to in **clause 27.2(4)**; and
- (4) may deduct from any Dividend or any other amount payable to the Member in respect of the shares or otherwise the amount due from such Member or his executor or administrator together with interest on the amount from the date of payment of the amount by the Company to the date of payment of the amount due from the Member or his executor or administrator at a rate not exceeding the Prescribed Rate, but the Directors shall be entitled to waive the payment of interest in whole or in part.

27.3 The rights conferred by law on the Company in respect of any liability of a Member to the Company shall not be prejudiced by this clause and shall be enforceable by the Company against the Member or his executor or administrator.

28. SUSPENSION OF RIGHTS

28.1 A Member shall not be entitled to exercise any rights or privileges as a Member until all moneys due and payable (including expenses and interest) in respect of which the Company holds a lien over the Member's shares have been paid in full.

29. ENFORCEMENT OF LIEN

29.1 Subject to **clause 29.2** the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.

29.2 A share on which the Company has a lien shall not be sold unless:

- (1) a sum in respect of which the lien exists is presently payable; and
- (2) at least fourteen (14) days prior to the date of the sale, the Company has given notice in writing to the Member or the person entitled to the share by reason of the death, or bankruptcy of the Member or under any law relating to mental health or financial management, stating and demanding payment of the amount in respect of which the lien exists and which is presently due and payable.

30. COMPLETION OF SALE PURSUANT TO LIEN

- 30.1 To give effect to a sale of shares in respect of which the Company has a lien the Directors may authorise a person to transfer the shares sold to the purchaser of those shares.
- 30.2 The purchaser of the shares will be registered as the holder of the shares comprised in any such transfer and the purchaser will not be bound to see to the application of the purchase money.
- 30.3 The title of the purchaser to the shares shall not be affected by any irregularity or invalidity in connection with the sale.
- 30.4 The shares transferred to the purchaser shall be transferred free from liability to make payment of any amount to the Company except for the consideration for the shares and any other amount agreed between the Company and the purchaser.

31. APPROPRIATION OF PROCEEDS

- 31.1 The proceeds of any sale made under a lien which are received by the Company shall be applied in or towards payment of the amount in respect of which the lien exists and which is presently due and payable including accrued interest and expenses. The residue (if any) shall (subject to a like lien for amounts not presently due and payable as existed on the shares before the sale) be paid to the person entitled to the shares immediately prior to the date of sale.

TRANSFER OF SHARES

32. TRANSFER OF SHARES

- 32.1 Subject to this Constitution (in particular to **clauses 4.7 and 34**) and the Act, a Member's shares may be transferred by instrument in writing in the usual or common form or in such other form as the Directors may from time to time approve.
- 32.2 Where a Member's shares are transferred by instrument in writing the instrument must be executed by both the transferor and the transferee.
- 32.3 In order to enable an instrument of transfer of shares to be registered the following documents must be lodged for registration at the Office:
 - (1) the instrument of transfer, duly stamped in accordance with any relevant law;
 - (2) the certificate (if any) for the shares or satisfactory evidence of the loss or destruction of the certificate as the Directors are entitled to require under this Constitution; and
 - (3) any other information that the Directors may require to establish the transferor's rights to transfer the shares (including where the Register of

Shareholders discloses a mortgage or charge on the relevant shares, the consent in writing of any mortgagee or chargee of those shares or a discharge of the mortgage or charge) and the beneficial ownership of the shares.

33. TRANSFERS GENERALLY

- 33.1 (a) The Directors shall be entitled to charge the transferor of a share, or person to whom shares are allotted, a fee, as may be determined by the Directors from time to time, to cover the costs associated with the transfer or allotment process and the Company shall likewise be entitled to be reimbursed for all legal and other fees (if any) reasonably and properly incurred in connection with such transfer or allotment.
- (b) The Directors may in their absolute discretion require payment of all monies payable pursuant to **clause 33.1(a)** as a condition precedent to the registration of the transfer.
- 33.2 The transferor of a share shall remain the holder of the share until the name of the transferee is entered in the Register of Shareholders in respect of the share.

34. DISCRETION TO REFUSE TO REGISTER

- 34.1 A Member shall not transfer his shares to any person or corporation, other than a member of his immediate family, unless such person or corporation has been approved by the Directors.
- 34.2 Subject to **clause 34.3** the Directors must not refuse to register a transfer of shares in any of the following circumstances:
- (1) where it is established that the proposed transferee is a bona fide transferee and the requirements of **clause 32** have been satisfied; or
- (2) where it is established that the proposed transferee is a bona fide mortgagee or chargee under a mortgage or charge over such shares and:
- (a) the requirements of **clause 32** have been satisfied; and
- (b) the mortgagee or chargee undertakes by deed in favour of the Company that he will sell the shares within such period, not exceeding six (6) months, as shall be agreed by the Directors and a failure on the part of the mortgagee or chargee to complete a sale by transfer shall cause such share to be forfeited at the expiration of such period whereupon the provisions of **clauses 22 to 24** inclusive shall have effect.
- 34.3 The Directors may decline to register any transfer of shares in the Company to any person who is a minor or who is not, in their reasonable opinion, a respectable and responsible person. The Directors may adopt such policies, and guidelines for the administration of this sub-clause, not

being inconsistent with this sub-clause, as shall to them seem appropriate and such policies and guidelines may be revoked, altered, amended or added to by the Directors or by Special Resolution of the Members in general meeting. Where the Directors refuse to register a transfer of any shares, the Company shall within thirty (30) days after the date of lodgement of the transfer give written notice of the refusal to the person lodging the transfer but shall not be required to provide reasons for its decision.

- 34.4 (1) The provisions of **clauses 34.1 to 34.3** inclusive shall apply mutatis mutandis to a Change of Control of a corporation which is a Member and if any such change occurs without the prior written consent of the Directors, the Member shall be deemed to be in default of a notice given under **clause 18** and its shares liable to forfeiture under **clauses 19 to 24** inclusive.
- (2) A reference to a proposed transferee in **clause 34.2** is a reference to the directors and shareholders of a corporation which is a proposed transferee, or its holding corporation, traced back to individual persons.

35. RETENTION OF TRANSFER DOCUMENTS

- 35.1 All instruments of transfer which are registered will be retained by the Company but any instrument of transfer which the Directors may decline to register must (except in case of fraud) be returned on demand in writing to the person who lodged it with the Company.

36. SUSPENSION OF TRANSFERS

- 36.1 The registration of transfers of shares may be suspended and the Register of Shareholders closed at such times and for such periods as the Directors think fit not exceeding an aggregate of thirty (30) days in each calendar year.

TRANSMISSION OF SHARES

37. TITLE TO SHARES ON DEATH

- 37.1 In the case of the death of a Member:
- (1) the survivor or survivors where the deceased was a joint holder;
 - (2) the legal personal representative of the deceased where the deceased was a sole holder; and
 - (3) the mortgagee or chargee of the shares noted in the Register of Shareholders (if any)

shall be the only persons recognised by the Company as having any title to the deceased's interest in the shares.

- 37.2 The Directors shall be entitled to require such evidence satisfactorily proving the death of the Member as they think fit.
- 37.3 Nothing in this Constitution will release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by the holder with other persons.

38. REGISTRATION OF OTHER PERSONS

- 38.1 Any person becoming entitled to shares in consequence of the death or bankruptcy of any Member or under any law relating to mental health or financial management may upon such information being produced as may from time to time properly be required by the Directors elect either:
- (1) to be registered personally as holder of the shares; or
 - (2) to have some other nominated person registered as the transferee of the shares.
- 38.2 If the person so becoming entitled elects to be registered as the holder of the shares, the person must deliver or send to the Company a notice in writing signed by the person stating the election made. If the person elects to have another person registered as the holder of the shares the person entitled shall transfer the shares to the other person.
- 38.3 All the limitations, restrictions and provisions of this Constitution relating to:
- (1) the right to transfer shares;
 - (2) the registration of a transfer of shares;
 - (3) the right of the Directors to decline to register a transfer of shares,
- are applicable to any notice or transfer effected pursuant to this clause.
- 38.4 If for any reason a transfer of shares to a minor is registered, such transfer is void and of no effect and the Company shall be entitled (but not obliged), upon satisfying itself as to the age of the shareholder and the fact that the shareholder is, or was at the date of registration of the share transfer, a minor, to reinstate as a Member in respect of those shares the person previously registered as the holder of those shares.

39. RIGHTS ON ENTITLEMENT

- 39.1 A person entitled to be registered as a Member in respect of shares by transmission shall upon production of all information as is properly required by the Directors, be entitled to the same Dividends and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the registered holder would otherwise have been entitled.

- 39.2 Where two or more persons are jointly entitled to any share in consequence of the death of a Member they shall for the purposes of this Constitution, be deemed to be joint holders of the share.

ALTERATION OF CAPITAL

40. POWER TO ALTER CAPITAL

- 40.1 The Company may by resolution passed in general meeting:
- (1) subject to **clause 15**, convert all or any of its shares on issue into a larger or smaller number of shares. In doing so any amount unpaid on shares which are converted is to be divided equally among the replacement shares;
 - (2) cancel any shares which have been forfeited and reduce the amount of its share capital by the amount of the shares so cancelled;
 - (3) subject to **clause 15**, convert any class of share into any other class of share.

41. POWER TO REDUCE CAPITAL

- 41.1 The Company may from time to time, in the manner permitted by the Act, reduce its share capital.

42. SHARE BUY-BACKS

- 42.1 The Company may buy back its own shares on terms and at times determined by the Directors, provided that any purchase must be in accordance with the Act.

GENERAL MEETINGS

43. CONVENING OF GENERAL MEETINGS

- 43.1 All annual general meetings of the Company shall be held at least once in every calendar year and within five (5) months after the end of its financial year at such place as determined by the Directors. An annual general meeting is to be held in addition to any other meetings held by the Company during a year.
- 43.2 The Directors by resolution may convene a general meeting of the Company.
- 43.3 Except as provided by the Act, no Member or Members shall be entitled to convene a general meeting of the Company.

- 43.4 A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

44. NOTICE OF GENERAL MEETING

- 44.1 Subject to consent to shorter notice being given in accordance with the Act, at least twenty-one (21) days notice of any general meeting must be given specifying:
- (1) the place, day and hour of the meeting;
 - (2) the general nature of any business to be transacted at the meeting;
 - (3) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (4) if the meeting is to be held in two or more places the technology that will be used to facilitate this;
 - (5) any other information required by the Act.
- 44.2 The accidental omission to give notice of any general meeting to or the non receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

45. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

- 45.1 Subject to the provisions of the Act and this Constitution the Directors may cancel a general meeting of the Company:
- (1) convened by the Directors; or
 - (2) which has been convened by a Member or Members pursuant to the Act upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- 45.2 The Directors may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- 45.3 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (1) the Directors must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and

- (2) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

46. QUORUM

- 46.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- 46.2 Five (5) Members Present and entitled to vote constitute a quorum for all general meetings except where the Company has a single Member in which case a quorum is constituted by that Member. If a Member has appointed more than one proxy or Representative, only one of them is to be counted for the purposes of the quorum.
- 46.3 If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
- (1) the meeting if convened upon the requisition of Members shall be dissolved;
 - (2) in any other case:
 - (a) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors may by notice to the Members appoint; and
 - (b) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting the meeting shall be dissolved.

47. CHAIRMAN

- 47.1 The chairman of Directors shall be entitled to preside as chairman at every general meeting.
- 47.2 Where a general meeting is held and:
- (1) there is no chairman; or
 - (2) the chairman is not present within thirty (30) minutes after the time appointed for the holding of the meeting or if present is unwilling to act as chairman of the meeting,

the Directors present may choose another Director as chairman of the meeting. If no Director is so chosen or if all the Directors present decline to take the chair the Members Present may choose one of their number to be chairman of the meeting.

- 47.3 The rulings of the chairman of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

48. ADJOURNMENTS

- 48.1 If at a general meeting at which a quorum is present the Members Present with a majority of votes agree or direct the chairman to do so, the chairman must adjourn from time to time and place to place as the meeting determines, the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion or the taking of any poll and may adjourn any business, motion, question, resolution, debate, discussion or poll either to a later time at the same meeting or to an adjourned meeting.
- 48.2 The adjournment of any business, motion, question, resolution, debate, discussion or poll shall not prevent the continuance of any other business remaining to be considered at the general meeting.
- 48.3 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 48.4 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 48.5 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for ten (10) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

49. VOTING RIGHTS

- 49.1 Subject to this Constitution and to any rights or restrictions for the time being attached to any class or classes of shares:
- (1) at meetings of Members or classes of Members each Member entitled to attend and vote may attend and vote personally or by proxy or by attorney or in the case of a corporation, by its Representative;
 - (2) no person shall be entitled to vote unless the person is a Member or the proxy or attorney of a Member or in the case of a corporation, its Representative;
 - (3) whether on a show of hands or on a poll, every Member Present entitled to vote has one (1) vote for every fully paid up share held.

50. VOTING DISQUALIFICATION

- 50.1 A Member is not entitled to be present or to vote at any general meeting unless all sums presently payable by the Member in respect of shares held by the Member have been paid.

51. OBJECTION TO QUALIFICATION TO VOTE

- 51.1 Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the chairman whose decision shall be final and conclusive and a vote allowed by the chairman shall be valid for all purposes.

52. VOTES OF JOINT HOLDERS

- 52.1 In the case of joint holders of a share any holder may vote but the vote of the person whose name appears first in the Register of Shareholders in respect of the share, whether in person or represented by proxy, attorney or Representative, will be accepted to the exclusion of the votes of the other joint holders.

53. PERSONS WHO ARE INCAPABLE OF MANAGING THEIR AFFAIRS

- 53.1 A Member:
- (1) who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health or financial management;
 - (2) who is a minor; or
 - (3) who is otherwise incapable of managing his affairs;
- shall not be entitled to vote at a meeting of the Members unless such voting occurs in accordance with this clause 53.
- 53.2 Subject to clause 53.3, where a Member referred to in clause 53.1, appoints a person to manage his estate (whether attorney or otherwise), or a financial manager is appointed for a Member (as the case may be), that person or financial manager so appointed may:
- (1) vote on behalf of the Member, whether on a show of hands or on a poll: and
 - (2) the person or financial manager may vote by proxy or representative.
- 53.3 Any person having the right of management or guardianship of the person or estate in respect of a Member as referred to in **clause 53.1** must not exercise any of the

rights conferred under this clause 53 unless and until the person has provided to the Directors satisfactory evidence of the appointment of the person accordingly.

- 53.4 The Chairman shall be entitled to make a ruling as to the existence of any circumstance referred to in this clause upon such evidence as shall to him appear proper and sufficient, and such a ruling shall be a binding on all Members and on the Company unless such ruling is reversed by the same or another Chairman, or a motion of dissent from such ruling is passed by a majority of Members present at the meeting at which the ruling is made or a subsequent meeting, or the ruling is overturned or negated by a court of law.

54. VOTING

- 54.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
- (1) the chairman of the meeting;
 - (2) at least five (5) Members Present and entitled to vote on the resolution; or
 - (3) by a Member Present or Members Present who represent at least five percent (5%) of the votes that may be cast on the resolution on a poll.
- 54.2 However if the Company has only one (1) Member, the Member may pass a resolution in the manner set out in section 249B of the Act.
- 54.3 Before a vote on a resolution is taken, the chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 54.4 A declaration by the chairman of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the chairman of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

55. CIRCULAR RESOLUTIONS BY MEMBERS

- 55.1 Subject to the Act, a resolution of Members may be passed without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Where there are joint holders of a share each joint holder must sign the document.
- 55.2 A resolution effected by **clause 55.1** may consist of several documents in identical form each signed by one or more Members.
- 55.3 Every such resolution shall be taken to have been passed on the day and at the time at which the document was signed by the last Member.

- 55.4 A facsimile transmission which is received by the Company and which purports to have been signed by a Member shall for the purposes of this clause be taken to be in writing and signed by that Member at the time of the receipt of the facsimile transmission by the Company in legible form.

56. POLLS

- 56.1 A poll may be demanded:
- (1) by at least two (2) Members entitled to vote on the resolution;
 - (2) before a vote on a resolution is taken;
 - (3) before the voting results on a show of hands are declared; or
 - (4) immediately after the voting results on a show of hands are declared.
- 56.2 If a poll is demanded it must be taken in such manner and at such time and place as the chairman of the meeting directs subject to **clause 56.5**.
- 56.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 56.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 56.5 A poll demanded on the election of a chairman or any question of adjournment of the meeting must be taken immediately.
- 56.6 The demand for a poll may be withdrawn.

57. CHAIRMAN'S CASTING VOTE

- 57.1 In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to any vote or votes to which he may be entitled to as a Member except in the case where there are only two (2) Members of the Company at the time in which case the chairman will not have a casting vote.

58. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

- 58.1 The chairman of a general meeting may invite any person who is not a Member to attend and address a meeting.
- 58.2 Any Secretary who is not a Member shall be entitled to attend and, at the request of the chairman, address a general meeting.

- 58.3 Any auditor of the Company shall be entitled to attend and address a general meeting.

PROXIES

59. RIGHT TO APPOINT PROXIES

- 59.1 A Member may appoint not more than two (2) proxies neither of whom need be a Member.
- 59.2 If a Member appoints one proxy only, that proxy is entitled to vote on a show of hands. If a Member appoints two (2) proxies, neither proxy is entitled to vote on a show of hands.
- 59.3 Where a Member appoints two proxies but the appointment does not specify the proportion or number of votes that each proxy may exercise, each proxy may exercise half of the votes of the Member.
- 59.4 Any fraction of a vote resulting from a Member appointing two (2) proxies who are entitled to exercise the Member's voting rights in respect of a proportion of the Member's shares is to be disregarded.

60. APPOINTING A PROXY

- 60.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised officer or attorney of the corporation.
- 60.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
- (1) the name and address of the Member;
 - (2) the name of the Company;
 - (3) the proxy's name or the name of the office of the proxy; and
 - (4) the meetings at which the instrument of proxy may be used.
- 60.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 60.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 60.2**.
- 60.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

61. LODGMENT OF PROXIES

61.1 An instrument appointing:

- (1) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- (2) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Directors may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

61.2 For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile or email at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile or email was received at that place.

62. VALIDITY OF PROXIES

62.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (1) the death or unsoundness of mind of the Member;
- (2) the bankruptcy or liquidation of the Member;
- (3) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted; or
- (4) the transfer of the share in respect of which the instrument of proxy or the power of attorney was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation, revocation or transfer at least 48 hours (or such shorter period as the Directors may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

62.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

63. RIGHTS OF PROXIES AND ATTORNEYS

- 63.1 The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- 63.2 Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- 63.3 A proxy will not be revoked by the appointor attending and taking part in any general meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- 63.4 Notwithstanding **clause 52**, where an instrument of proxy is signed by all of the joint holders of any share, the votes of the proxy so appointed shall be accepted in respect of that share to the exclusion of any votes tendered by a proxy for any one of those joint holders.
- 63.5 The chairman of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chairman that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity he may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

64. NUMBER OF DIRECTORS

- 64.1 The number of Directors (not including alternate Directors) must not be less than three (3) nor more than seven (7) unless and until otherwise determined by the Company by resolution in general meeting.

65. DIRECTOR'S QUALIFICATIONS

- 65.1 A Director must:
- (1) hold at least one Share Group in the Company either as sole or joint holder; or
 - (2) be a person who is appointed in writing by a body corporate that holds at least one Share Group in the Company to be its Representative, which nomination may be revoked at any time. Upon such revocation of appointment, or upon the body corporate ceasing to hold such Share Group, such person shall thereupon cease to be a Director; or
 - (3) be an Independent Director.

66. TERM, ELECTION AND ROTATION

- 66.1 Each Director shall hold office for a term of three (3) years and will be eligible for re-election.
- 66.2 (1) Subject to **clause 65**, any Member, including a retiring Director, shall be eligible for election to the office of Director at the annual general meeting of the Company, where that Member or retiring Director, or another Member intending to propose that Member, has, at least eleven (11) clear days before such annual general meeting, deposited at the Office a notice in writing duly signed by the nominee or the retiring Director giving his consent to his proposed appointment or re-election as a director.
- (2) For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile or email at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile or email was received at that place.
- 66.3 (1) At the annual general meeting of the Company each year, one-third of the Directors for the time being, or if their number is not three or a multiple of three, then the number nearest one-third, shall retire.
- (2) The Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day, those to retire (unless they otherwise agree among themselves) shall be determined by lot.

67. APPOINTMENT OF DIRECTORS

- 67.1 Subject to the Act, the Company may by resolution passed in general meeting:
- (1) remove any Director; or
- (2) appoint a person as a Director (whether or not as a replacement for a Director who has been removed or otherwise ceased to be a Director).
- 67.2 Subject to the Act, the Directors may at any time appoint any person as a Director either to fill a casual vacancy or as an addition to their number. Any Director so appointed must have his appointment confirmed by resolution passed at the next general meeting of the Company held after the appointment is made. If the appointment is not confirmed at that meeting, the person ceases to be a director of the Company at the end of that meeting.
- 67.3 The Directors may act despite any vacancy in their body but if the number falls below the minimum fixed (if any) in accordance with **clause 64** the Directors may act for the purpose of increasing the number of Directors to the minimum or of convening a general meeting or in emergencies but for no other purpose.

68. VACATION OF OFFICE

- 68.1 Any Director may retire from office on giving written notice to the Company at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- 68.2 In addition to other circumstances in which the office of a Director becomes vacant as provided in this Constitution, the office of a Director shall automatically be vacated if the Director:
- (1) is prohibited from being or ceases to be or is removed as a Director pursuant to the provisions of the Act or by reason of any order made under the Act;
 - (2) becomes an insolvent under administration or makes any composition or arrangement with his creditors or any class of his creditors;
 - (3) becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or financial management;
 - (4) is absent from meetings of the Directors during a period of three (3) consecutive months without special leave of absence from the Directors and the Directors as a result declare his office to be vacant;
 - (5) ceases to be a Member of the Company unless the director is an Independent Director;
 - (6) dies; or
 - (7) is removed from office by a Special Resolution of the Company.

ALTERNATE DIRECTORS

69. APPOINTMENT OF ALTERNATE DIRECTOR

- 69.1 Any Director may in writing signed by the Director appoint any person who is approved by the majority of the other Directors to be an alternate Director in the appointor's place during any period the appointor thinks fit.

70. RIGHTS AND POWERS OF ALTERNATE DIRECTORS

- 70.1 Every alternate Director is entitled:
- (1) to receive notice of meetings of the Directors, if the appointor requests notice to be given to the alternate Director; and
 - (2) to attend and vote at meetings of the Directors at which the appointor is not present.

- 70.2 An alternate Director may exercise all the powers and rights of the appointor in the absence of the appointor and shall be subject to the same terms and conditions affecting the appointor.
- 70.3 The exercise of any power by an alternate Director shall have the same effect as if the appointing Director had exercised the power. The exercise of such power shall be as agent of the Company and not as agent of the appointor.
- 70.4 An alternate Director does not require any share qualification and is not entitled to receive any remuneration from the Company for acting as alternate Director although shall be entitled to be reimbursed for expenses incurred in the same manner as Directors are entitled to be reimbursed for expenses under this Constitution.

71. SUSPENSION OR REVOCATION OF APPOINTMENT

- 71.1 A Director may at any time revoke or suspend the appointment of an alternate Director appointed by him by notice in writing signed by the Director and delivered to the Office.
- 71.2 The Directors may at any time suspend or remove an alternate Director by resolution after giving the appointor reasonable notice in writing of their intention to do so.

72. TERMINATION OF APPOINTMENT

- 72.1 The appointment of an alternate Director shall automatically terminate if:
- (1) the appointor of the alternate Director ceases to be a Director; or
 - (2) an event occurs which if the alternate Director were a Director would result in the vacation of the office of Director; or
 - (3) the alternate Director resigns as an alternate Director by written notice delivered to the Office and the appointor of the alternate Director.

73. ACTING AS ALTERNATE FOR MORE THAN ONE DIRECTOR

- 73.1 A Director or any other person may act as an alternate Director to represent more than one Director.

REMUNERATION OF DIRECTORS

74. REMUNERATION OF DIRECTORS

- 74.1 The Directors shall not be paid for their services as Directors unless the Members in general meeting determine:

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- (1) that the Directors shall be paid; and
 - (2) the fees that the Directors shall be paid,
for their services as Directors.
- 74.2 The sum so fixed shall be divided amongst the Directors in such proportion and manner as they shall agree or, failing agreement, equally.
- 74.3 The remuneration of each Director for his ordinary services as Director under this clause shall be regarded as accruing from day to day and shall be apportioned accordingly.

75. PAYMENT OF EXPENSES

- 75.1 The Directors shall be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in connection with any meeting of the Directors, any meeting of a Committee, general meetings of the Company and otherwise in connection with the business or affairs of the Company.

POWERS AND DUTIES OF DIRECTORS

76. POWERS OF DIRECTORS

- 76.1 Subject to the Act and this Constitution, the management and control of the business and affairs of the Company shall be vested in the Directors who may exercise all powers of the Company which are not by the Act or this Constitution required to be exercised by the Company in general meeting.
- 76.2 No resolution passed by the Company in general meeting shall have the effect of invalidating any prior act of the Directors which would have been valid if the resolution had not been passed.

77. BORROWING POWERS

- 77.1 Subject to **clauses 77.2 and 77.3**, the Directors may exercise all the powers of the Company to:
- (1) raise or borrow any sum or sums of money for the purposes of the Company; and
 - (2) secure the payment or repayment of any amount payable by the Company and any other obligation or liability in such manner and on such terms and conditions as they think fit whether upon the security of any mortgage or by the issue of debentures of the Company or charged upon all or any of the property, undertaking and assets of the Company both present and future and on all or any of its uncalled capital.

- 77.2 Before raising or borrowing any sum of money, the Directors shall call a General Meeting under **clause 43**, with a notice issued in accordance with **clause 44**, providing full details of the proposed amount to be raised or borrowed, the purposes for which money is to be raised or borrowed, the security, if any, to be offered and the interest and any other cost to be payable and the period over time during which the debt or liability is to be repaid.
- 77.3 Where the requirements of **clause 77.2** have been met, the General Meeting may approve, amend or reject the resolution to raise or borrow the sum of money proposed by a simply majority vote.

78. NEGOTIABLE INSTRUMENTS

- 78.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by the persons and in the manner determined from time to time by the Directors and failing such determination by any two Directors.

79. ATTORNEYS AND AGENTS

- 79.1 The Directors may from time to time by resolution, power of attorney or other instrument appoint any firm, company, corporation 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 the Directors may from time to time think fit.
- 79.2 Any such resolution, power of attorney or other instrument may contain provisions for the protection and convenience of persons dealing with the attorney or agent as the Directors think fit and may also authorise the attorney or agent to delegate all or any of the powers, authorities and discretions for the time being vested in the attorney or agent.

80. CONFERMENT OF POWERS

- 80.1 The Directors may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Directors as they may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as they think expedient.
- 80.2 Powers conferred under this clause may be exercised concurrently with the powers of the Directors in that regard and the Directors may from time to time withdraw, revoke or vary all or any of such powers.

81. INADVERTENT OMISSIONS

- 81.1 If it is discovered that a formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission shall not invalidate any resolution, act, matter or thing which but for such omission would have been valid unless it is proved to the satisfaction of a majority of the Directors that such omission has directly and materially prejudiced any Member. The decision of the Directors on any such question shall be conclusive, final and binding on all Members.

DIRECTORS' DISCLOSURE OF INTEREST

82. CONTRACTS WITH DIRECTORS

- 82.1 A Director may hold any other office or place of profit under the Company except that of auditor of the Company in conjunction with the office of Director and may act in a professional capacity in relation to the Company and in any such case on such terms as to remuneration and otherwise as the Directors may determine.
- 82.2 A Director shall not be disqualified by his office from contracting with the Company either with regard to such other office or place of profit or as vendor purchaser or otherwise, nor shall:
- (1) any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be avoided;
 - (2) any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of the Director holding that office or of the fiduciary relationship established by the Director holding that office,

but the nature of his interest must be disclosed by him in the manner required by the Act.

83. DISCLOSURE OF INTEREST

- 83.1 A general notice given to the Directors by a Director that the Director is an officer, a Member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Directors than was stated in the notice.
- 83.2 If the requirements of the Act and this Constitution have been complied with by any Director with regard to any contract or arrangement in which the Director is interested:
- (1) the Director may vote on whether the Company enters into the contract;

- (2) the contract may be entered into;
- (3) the Director may vote on matters involving the contract;
- (4) the Director may participate in the execution of the contract by the Company.

PROCEEDINGS OF DIRECTORS

84. MEETINGS OF DIRECTORS

- 84.1 The Directors shall meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- 84.2 A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of Directors by giving notice of the meeting to all Directors except a Director who the person convening the meeting reasonably believes to be outside Australia.
- 84.3 Notice of a meeting of Directors need not be in writing.
- 84.4 Without limiting the discretion of the Directors to regulate their meetings under this clause, a meeting of the Directors may with the consent of all Directors consist of a conference between Directors some or all of whom are in different places if each Director who participates is able:
 - (1) to hear each of the other participating Directors addressing the meeting; and
 - (2) if he so wishes, to address each of the other participating Directors simultaneously

whether directly, by conference telephone, video conferencing facility or any other form of communications equipment or by a combination of such methods. A meeting held in this way will be taken for the purposes of this Constitution to be held at the place where the largest group of participating Directors is assembled or, if no such group is readily identifiable, at the place where the chairman of the meeting participates. Any Director may, by prior notice to the Secretary, indicate that he wishes to participate in a meeting in such manner. In this event, the Directors, if they all consent to the meeting being held in the manner referred to in this clause, shall procure that an appropriate conference facility is arranged at the expense of the Company. A Director who has consented to a meeting being held in the manner referred to in this clause may only withdraw his consent within a reasonable period before the meeting.

- 84.5 No Director may leave a conference held in accordance with **clause 84.4** by disconnecting his means of communication unless he has previously obtained the express consent of the chairman of the meeting. A Director will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he has previously obtained the express consent of the chairman to leave the conference.

- 84.6 All resolutions of the Directors passed at a meeting of Directors where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

85. QUORUM

- 85.1 Until the Directors resolve to the contrary, two Directors personally present (or in conference in accordance with **clause 84.4**) form a quorum and a quorum must be present at all times during the meeting. An alternate Director, provided that he is not also a Director, shall be counted in a quorum at a meeting at which his appointor is not present.

86. CHAIRMAN

- 86.1 The Directors shall elect one of their number to be chairman of their meetings and determine the period during which the chairman is to hold office.

- 86.2 If a meeting of Directors is held and:

- (1) a chairman has not been elected; or
- (2) the chairman is not present at the time appointed for the holding of the meeting or otherwise does not wish to chair the meeting,

the Directors present must elect one of their number to be chairman of the meeting.

87. VOTING

- 87.1 A resolution of the directors must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Directors.
- 87.2 Each Director shall have one vote except that a person who is an alternate Director shall be entitled (in addition to his own vote if he is a Director) to one (1) vote on behalf of each Director whom he represents as an alternate Director at the meeting and who is not personally present.
- 87.3 In case of an equality of votes at a meeting of Directors, the chairman does not have a second or casting vote.

88. CIRCULAR RESOLUTIONS BY DIRECTORS

- 88.1 A resolution in writing signed by a majority of the Directors for the time being entitled to vote in relation to the resolution (not being less than a quorum) and stating that the signatories are in favour of the resolution will be as valid and effectual from the time it is signed by the last Director as if it had been passed at a duly convened meeting of Directors provided each Director has received reasonable notice of the resolution.
- 88.2 A resolution in writing may consist of several documents in like form each signed by one (1) or more Directors.
- 88.3 Every such resolution shall be deemed to have been passed on the day and at the time at which the document was last signed by a Director. An alternate Director may sign such a document in the place of an alternate Director's appointor.
- 88.4 A facsimile transmission which is received by the Company and which purports to have been signed by a Director or an alternate Director shall for the purposes of this clause be taken to be in writing and signed by that Director or alternate Director at the time of the receipt of the facsimile transmission by the Company in legible form.

89. COMMITTEE OF DIRECTORS

- 89.1 The Directors may form and delegate any of their powers to a Committee consisting of such Directors as they think fit and may from time to time revoke such delegation.
- 89.2 A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Directors. A power so exercised shall be taken to be exercised by the Directors.
- 89.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Directors contained in this Constitution.
- 89.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Act and this Constitution to be made entered and signed.
- 89.5 Where a Committee consists of only one Director, a document signed by that Director recording his decision as the Committee shall be valid and effective as if it were a decision made at a meeting of that Committee and that document shall constitute a minute of that decision.

90. VALIDATION OF ACTS OF DIRECTORS

- 90.1 All acts done:
- (1) at any meeting of the Directors; or

- (2) by a Committee; or
- (3) by any person acting as a Director; or
- (4) by any person purporting to act as an attorney of the Company under a power of attorney executed by the Company,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director, person or attorney or that they or any of them were disqualified or were not entitled to vote or that the number of Directors was less than seven (7) (provided that it was not less than three (3)), be as valid as if every such person had been duly appointed, had continued in office and was duly qualified to be a Director or attorney and had been entitled to vote or as if there were seven (7) Directors.

MINUTES

91. MINUTES

- 91.1 The Directors must cause minutes to be kept in accordance with the Act for the purposes of recording:
- (1) the names of the Directors present at each meeting of the Directors and of Directors present at each meeting of any Committee;
 - (2) all orders, resolutions and proceedings of general meetings and of meetings of Directors and of Committees;
 - (3) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- 91.2 Such minutes shall be signed by the chairman of the meeting, or the chairman of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

SECRETARY

92. APPOINTMENT AND TENURE

- 92.1 One or more Secretaries shall, in accordance with the Act, be appointed by the Directors on terms and conditions (including remuneration) as they think fit.

92.2 Any Secretary so appointed may be removed by the Directors.

EXECUTION OF DOCUMENTS

93. EXECUTION OF DOCUMENTS

93.1 Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute any agreement, deed or other document by:

- (1) two Directors signing the same;
- (2) one Director and one Secretary signing the same.

DIVIDENDS AND RESERVES

94. DECLARATION OF DIVIDENDS

94.1 Subject to the provisions of the Act and any special rights and restrictions attached to any shares the Members in general meeting may from time to time declare and pay Dividends as appear to them to be justified by the profits of the Company.

94.2 No Dividend shall bear interest against the Company.

95. CREDITING AND PAYING DIVIDENDS

95.1 Subject to any special rights and restrictions attached to any shares, all Dividends shall be declared and paid according to the amount paid or credited as paid on the shares on which the Dividend is to be paid.

95.2 Dividends will be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the Dividend is paid but if any share is issued on terms providing that it will rank for Dividend as from a particular date that share will rank for Dividend accordingly.

96. RESERVES

96.1 The Directors may at any time set aside out of the profits of the Company such sums as they think proper as reserves which shall at the discretion of the Directors be applicable for any purpose to which the profits of the Company may be properly applied.

- 96.2 Pending any such application the reserves may either be employed in the business of the Company or invested in such investments as the Directors may from time to time think fit.
- 96.3 The Directors may carry forward any profits which they may think prudent not to distribute as Dividends without placing those profits to reserve.

97. DEDUCTIONS FROM DIVIDENDS

- 97.1 The Directors may deduct and retain from any Dividend payable to a Member all sums of money presently payable by the Member to the Company on account of sums due in relation to shares held by the Member and may apply that Dividend in or towards satisfaction of such debts and liabilities.

98. DIVIDENDS PAID IN KIND

- 98.1 The Directors when declaring a Dividend may direct that the Dividend be paid wholly or partly by cash, the issue of shares or the distribution of specific assets and in particular of fully paid shares of any other company.
- 98.2 The Directors may settle any difficulty which arises with regard to a distribution of specific assets by way of Dividend as they think expedient and in particular in order to adjust the rights of all Members may:
- (1) fix the value for distribution of specific assets or any part of them;
 - (2) determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all parties; and
 - (3) vest any cash or specific assets in trustees upon trust for all the Members entitled to the Dividend.

99. PAYMENT OF DIVIDENDS

- 99.1 Any Dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to the address of the holder as shown in the Register of Shareholders or in the case of joint holders to the address shown in the Register of Shareholders of the joint holder who is first named in the Register of Shareholders unless the holder or joint holders notify the Company in writing of another address.
- 99.2 Any one (1) or more of the joint holders of a share may give effectual receipts for any Dividends, interest or other money payable in respect of shares held by them as joint holders.
- 99.3 Subject to any applicable law, all Dividends declared but unclaimed may be invested or otherwise used by the Directors for the benefit of the Company until claimed or dealt with in accordance with the relevant law.

CAPITALISATION OF PROFITS

100. CAPITALISATION OF PROFITS

100.1 Subject to the Act and the rights and restrictions attaching to shares, the Members in general meeting or the Directors may from time to time resolve to capitalise any profits in any manner approved by the Members or the Directors (as the case may be) for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of those profits by way of Dividend.

101. DIRECTOR'S POWERS UPON CAPITALISATION

101.1 The Directors shall do all things necessary to give effect to any resolution passed as referred to in **clause 100** and in particular to the extent necessary to adjust the rights of the Members may without limitation:

- (1) make cash payments in cases where securities become issuable in fractions or determine that fractions may be disregarded;
- (2) fix the value for distribution of any specific assets or any part of any assets;
- (3) vest any cash or specific assets in trustees and upon trusts for the person entitled;
- (4) authorise any person to make on behalf of Members entitled to any further securities upon the capitalisation, an agreement with the Company providing for the issue to them as fully paid up, of any such further securities or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

101.2 Any agreement made under an authority referred to in **clause 101.1(4)** is effective and binding on all Members concerned.

ACCOUNTS, INSPECTION OF RECORDS AND AUDIT

102. ACCOUNTS AND INSPECTION

102.1 The Directors shall cause proper financial records to be kept and distribute copies of financial reports and a Directors' report in the circumstances required by the Act and also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations any other records of the Company or any of them will be open to the inspection of Members not being Directors.

102.2 The financial records of the Company shall be kept at the Office or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

103. AUDIT

- 103.1 Auditors shall be appointed and their duties shall be regulated in accordance with the Act.

NOTICES

104. SERVICE OF NOTICES

- 104.1 A notice may be given by the Company to any Member by:
- (1) serving it on the Member personally;
 - (2) sending it by post to the Member or leaving it at the Member's address shown in the Register of Shareholders or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (3) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (4) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- 104.2 Any Member who has not left at or sent to the Office his place of address for inclusion in the Register of Shareholders as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- 104.3 Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- 104.4 Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.
- 104.5 A notice may be given by the Company to the person entitled to exercise the rights of a Member in respect of his shares in consequence of the death, or bankruptcy of a Member, or under any law relating to mental health or financial management or any other reason, by:
- (1) service on the person personally;
 - (2) sending it by post addressed to the person by name or by the title of the representative of the Member or by any like description at the address, if any, within Australia supplied for the purpose by the person;
 - (3) by giving the notice in any manner in which the same might have been given had such other person not become so entitled.

- 104.6 Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

105. NOTICES TO JOINT HOLDERS

- 105.1 A notice may be given by the Company to the joint holders of a share by giving notice to the joint holder first named in the Register of Shareholders in respect of the share and such notice shall be taken to be notice to all joint holders.

106. NOTICES OF GENERAL MEETING

- 106.1 Subject to the rights and restrictions attaching to any share and **clause 104.2**, notice of every general meeting must be given in any manner authorised by this Constitution to:
- (1) every Member;
 - (2) every person entitled to a share in the Company in consequence of the death or bankruptcy of a Member or under the law relating to mental health or financial management;
 - (3) every Director; and
 - (4) the auditor (if any) for the time being of the Company.

WINDING UP

107. WINDING UP

- 107.1 If the Company is wound up and the assets available for distribution among the Members are insufficient to repay the whole of the paid up capital, those assets shall be distributed so that as nearly as may be the losses will be borne by the Members in accordance with and by reference to each Member's Percentage.
- 107.2 If the Company is wound up and the assets available for distribution among the Members are more than sufficient to repay the whole of the capital paid up at the commencement of the winding up the excess shall be distributed among the Members in accordance with and by reference to each Member's Percentage.
- 107.3 If the Company is wound up the liquidator may with the sanction of a Special Resolution of the Company divide among the Members in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and the liquidator may:

- (1) for that purpose set such value as he considers fair upon any assets to be divided; and
- (2) determine how the division shall be carried out as between the Members or different classes of Members; and
- (3) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Members as the liquidator thinks fit but so that no Member will be compelled to accept any shares or other securities on which there is any liability.

108. SALE OF UNDERTAKING

On the sale of the Company's main undertaking or upon the liquidation of the Company, no commission or other remuneration whatsoever shall be paid to any Director or to any liquidator in respect of or in connection with such sale or liquidation, unless the payments shall have been ratified by resolution of the Members at a meeting and at least seven (7) days prior notice was given to the Members specifying the amount of the proposed payment or payments.

INDEMNITY

109. INDEMNITY

109.1 To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (1) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (2) it is in respect of a liability for costs and expenses incurred:
 - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (b) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

109.2 No Director, manager, Secretary, Committee member or other Officer shall be liable for:

- (1) the acts, receipts, neglects or defaults of any other Director or Officer;

- (2) joining in any receipt or other act for conformity;
- (3) any loss or expense happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company;
- (4) the insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested;
- (5) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited;
- (6) any loss occasioned by any error of judgment or oversight on his part; or
- (7) any other loss, damage or misfortune whatever,

which shall happen in the execution of the duties of his office or in relation thereto, unless the same happen through his own negligence, default, breach of duty or breach of trust.

110. PAYMENT OF INDEMNITY POLICY PREMIUM

110.1 To the extent permitted by law the Company may at the discretion of the Directors enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (1) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of sections 182 or 183 of the Act.

The Directors shall have the discretion to approve the terms and conditions of any such policy of insurance.

110.2 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 109** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

111. INDEMNITY TO CONTINUE

111.1 The indemnity granted by the Company contained in **clause 109** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

112. RULES, POLICIES AND GUIDELINES

- 112.1 The Directors may from time to time make, alter or revoke the Rules, Policies and Guidelines for the efficient economic and orderly conduct of the Company and of the Building and a copy of such Rules, Policies and Guidelines and of any amendments from time to time thereto shall be forwarded to every Member. Such Rules, Policies and Guidelines form part of this Constitution and are set out in Schedule 1.
- 112.2 The Rules, Policies and Guidelines made by the Directors may be changed by the Members by Special Resolution only.
- 112.3 Each Member and its (if leasing is permitted under **clause 7**) tenants and permitted invitees must comply with the Rules, Policies and Guidelines.

SCHEDULE 1

Rules, Policies and Guidelines

[Current Rules, Policies and Guidelines to be inserted]