

Dated 5<sup>th</sup> February

2019

**SHAREHOLDERS' AGREEMENT**

**Between**

**Central Park Property Investment Limited**

**Magsons Investments Limited**

**Everest Central Investment Limited**

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## SHAREHOLDERS' AGREEMENT

### PARTIES

1. Everest Central Investment Limited (the "**Company**")
2. Central Park Property Investment Limited (a "**Shareholder**" and "**Central Park**")
3. Magsons Investments Limited (a "**Shareholder**" and "**Magsons**")

### BACKGROUND

- A. The Company has been incorporated by the Shareholders to acquire and develop the Property, enter into the Lease and enter into the Management Agreement.
- B. This Agreement sets out the terms of the arrangements between the Shareholders in relation to the management of the Company and their respective shareholdings.
- C. This Agreement replaces and supersedes the prior agreement between the parties dated 4 December 2018, which is no longer in effect.

### THE PARTIES AGREE:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

"**A Shares**" means those Shares subscribed for and to be subscribed for by Central Park, the characteristics of which are, as more particularly described in clause 2.3.

"**Act**" means the Companies Act 1993.

"**Agreement**" means this shareholders' agreement as amended or replaced from time to time in accordance with its terms, including any Schedules.

"**Ancillary Agreement**" means any of the following agreements (and "**Ancillary Agreements**" means any two or more of the following agreements, as the context requires):

- (a) Development Agreement;
- (b) Funding Agreement;
- (c) Underwriting Agreement;
- (d) Lease; and
- (e) Management Agreement.

"**B Shares**" means those shares to be subscribed for by Magsons, the characteristics of which are, as more particularly described in clause 2.4.

"**Board**" means the board of Directors for the time being of the Company.

"**Business**" means the business of developing, leasing and managing the Property.

**"Business Day"** means any day of the week other than Saturday, Sunday or a public holiday in Auckland, New Zealand.

**"Capital Raising"** means the capital raising of \$30,000,000 by way of an offer of shares to the public by Central Park pursuant to the Product Disclosure Statement.

**"Change of Control Event"** means, in the case of Magsons, if any one or more of the following events occurs in relation to it (whether by any one transaction or by a series of related transactions completed) after the date on which that Magsons acquired any interest in any Share):

- (a) the transfer of the legal or beneficial ownership of, or of any interest in, any shares in Magsons, or any holding company of Magsons, which:
  - (i) alters the legal or beneficial ownership of 50% or more of the number of shares in the capital of Magsons or its holding company; or
  - (ii) alters the legal or beneficial ownership of shares in Magsons or its holding company carrying 50% or more of the voting rights at any general meeting of Magsons or its holding company respectively; or
  - (iii) alters the legal or beneficial ownership of shares in Magsons or its holding company allowing the holder of those shares to appoint a director or directors having (in aggregate) 50% or more of the voting rights at any directors' meeting of Magsons or such holding company respectively; or
  - (iv) alters the legal or beneficial ownership of shares in Magsons or such holding company carrying an entitlement to receive 50% or more of any dividend or distribution declared by Magsons or such holding company; or
- (b) the happening of any other event which results in or causes a change in the effective control of Magsons or any holding company of Magsons, directly or indirectly.

**"Completion Date"** means 8 March 2019 or such other date as shall be elected by Central Park to be the closing date under the Product Disclosure Statement.

**"Confidential Matter"** means any matter relating to or touching upon the Development Agreement or the Lease and any matter to be determined by the Board pursuant to clause 14.1 of this Agreement.

**"Constitution"** means the constitution of the Company as amended or replaced from time to time, initially being the constitution in, or substantially in, the form attached at Schedule 1.

**"Contractor"** means Vijay Holdings Limited.

**"Deed of Accession"** means a deed, in such form as may be reasonably required by the Board pursuant to which a proposed Share transferee agrees to be bound, as a Shareholder, to the provisions of this Agreement.

**"Development Agreement"** means the agreement between the Company, Magsons and the Contractor for the sale and purchase and development of the Property and dated on or about the date of this Agreement, and includes any variation of that agreement from time to time.

**"Director"** means any director for the time being of the Company.

**"Encumbrance"** includes a charge (whether fixed or floating), mortgage, debenture, pledge, lien, hypothecation, title retention, deferred purchase option, right of pre-emption and any other security interest or third party right (whether legal or equitable) and **"Encumber"** and other derivatives shall have a corresponding meaning.

**"Financial Year"** means the period from 1 April to 31 March.

**"Funding Agreement"** means the indicative letter of offer from Pearlfisher Capital Limited (**"Pearlfisher"**) to the Company dated 17 December 2018 pursuant to which Pearlfisher has made a non-binding offer to advance funds to the Company to be applied by the Company for the development of the Property in accordance with the terms of that agreement and includes any subsequent loan offer and loan and security documentation replacing the indicative Pearlfisher letter of offer and also loan and security documentation from any third party, refinancing the Pearlfisher loan.

**"Insolvency Event"** means in relation to a party, where that party ceases to carry on business; is subject to any form of insolvency proceedings that are not removed within ten (10) Business Days; has any of its assets seized by a creditor; enters into any compromise with a creditor; has a receiver, liquidator, administrator, statutory manager or similar official appointed; becomes insolvent or is deemed by law to be so; or suffers any analogous event.

**"Intellectual Property Rights"** means all intellectual and industrial property, or equivalent property rights and interests of any person (including common law rights and interests) including such property rights and interests that are:

- (a) inventions whether patented or not, patents, trademarks (including branding and trade names), copyright, designs whether registered or not, trade names, symbols and logos, and layout design rights;
- (b) patent applications, applications to register trademarks, service marks and designs; and
- (c) know-how, tools, techniques, computer program code, data, Confidential Information, discoveries, developments, trade secrets, information, and logical sequences (whether or not reduced to writing or other machine or human readable form).

**"Land Purchase Price"** means \$21,200,000.

**"Lease"** means the agreement to lease of the Property between the Company (as landlord), the Tenant and Magsons (as guarantor) dated on or about the date of this Agreement, and includes the deed of lease to be entered into pursuant to that agreement to lease, and any variation of either of those documents from time to time.

**"Maat"** means Maat Consulting Limited.

**"Management Agreement"** means the management agreement between the Company and Maat pursuant to which Maat provides management services to the Company and in respect of the Property, dated on or about the date of this Agreement, and includes any variation of that agreement from time to time.

**"Material Adverse Event"** means any of the following:

- (a) Magsons is in material breach of its obligations under this Agreement; or
- (b) Magsons or a Related Party of Magsons is in material breach of its obligations under the Development Agreement, the Lease or the Funding Agreement.

**"New Securities"** means any Shares or other financial products convertible into, or carrying the right to subscribe for those Shares, issued by the Company after the date of this Agreement.

**"Operational Date"** means the date on which the first rent under the Lease is received by the Company.

**"party"** means a party to this Agreement including its personal representatives, successors and permitted assignees, but excludes the Company.

**"Product Disclosure Statement"** means the product disclosure statement or any replacement product disclosure statement issued by Central Park to raise equity in Central Park, for the purpose of contributing Central Park's equity in the Company.

**"Property"** means the land at 160 Central Park Drive, Waiwaka City, being unique identifier 618171 (North Auckland Registry).

**"Property Settlement Date"** means the Property Settlement Date as determined pursuant to the Development Agreement.

**"Related Company"** has the meaning given to that term in section 2(3) of the Act and the reference to "company" within that definition shall include a company or other entity incorporated or registered in or outside of New Zealand.

**"Related Party"** means in relation to a particular person, any of the following persons:

- (a) a Related Company of that person; or
- (b) any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that same person.

**"Schedule"** means a schedule to this Agreement.

**"Secured Moneys"** means such amounts as are due by Magsons to the Company under clauses 5.2 and 5.3 of the Development Agreement together with such amounts as are due by Magsons or the Tenant to the Company under the Lease.

**"Secured Obligations"** means such obligations (including payment obligations) as are due by Magsons or the Contractor to the Company under the Development Agreement.

**"Shareholder"** means any person who holds (whether individually or jointly) at least one Share, and, upon incorporation, Central Park.

**"Shareholder's Interest"** means, in relation to a party, that party's Shareholder's Interest in the capital of the Company, being:

- (a) in the case of Central Park, 80%; and
- (b) in the case of Magsons, 20%.

**"Shares"** means the A Shares and the B Shares in the capital of the Company and, as the

context may require, means either the A Shares or the B Shares in the capital of the Company.

**"Tenant"** means Magsons Hardware Limited.

**"Underwrite Agreement"** means the agreement between Magsons and Central Park, dated on or about the date of this Agreement, pursuant to which Magsons agrees to subscribe and pay for up to 4,000,000 B Shares in Central Park.

1.2 **Interpretation:** In this Agreement, unless the context requires otherwise:

- (a) the Background and Schedules form part of this Agreement;
- (b) references to clauses and Schedules are to clauses and schedules of this Agreement;
- (c) headings appear as a matter of convenience and do not affect the construction of this Agreement;
- (d) including and similar words do not imply any limitation;
- (e) a reference to a person includes a company, and also any body of persons, whether corporate or unincorporated and includes their representatives, successors and permitted assigns;
- (f) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (g) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations that have been substituted for that enactment or those regulations; and
- (h) the contra proferentem rule shall not apply in the Interpretation of this Agreement.

1.3 **Agreement prevails:** Unless a requirement of the Act is mandatory, the parties agree that the terms of this Agreement will prevail over anything to the contrary contained in, or that may be in conflict or inconsistent with, the Act or the Constitution.

1.4 **Commencement:** This Agreement will come into effect in respect of Central Park and Magsons, and Central Park and Magsons shall be bound by its terms, immediately after it has been dated and validly executed by Central Park and Magsons. This Agreement shall come into effect in respect of the Company, and the Company shall be bound by its terms, immediately after it has been validly executed by the Company following the Company's incorporation.

## 2. COMPANY INCORPORATION

2.1 **Company incorporation:** Promptly following execution of this Agreement, the parties will do all things necessary to incorporate the Company in accordance with this clause 2.

2.2 **Company structure:** On incorporation:

- (a) the Directors will be:
  - (i) Neil Tuffin;

- (ii) Bruce Ellis;
- (iii) Mark Hughson; and
- (iv) Vinod Kumar

**2.3 Characteristics of A Shares:** All A Shares have the following characteristics:

- (a) they have the right to receive notice of and attend every meeting of Shareholders;
- (b) they have an issue price of \$1.00 each;
- (c) they have the right to cast one vote on a poll at a meeting of Shareholders' on any resolution;
- (d) they are fully transferable, notwithstanding any pre-emptive provisions that may be in the Constitution;
- (e) they will have the right to receive such dividends as are declared by the Board from time to time; and
- (f) on a winding up of the Company the holders of the A Shares have the first right to receive the full initial Share subscription price for their A Shares. Once the holders of the A Shares have received their full initial Share subscription price, the holders of the B Shares have the right to receive the full initial Share subscription amount for their B Shares (but not including the initial subscription price for any B Shares repurchased in accordance with clause 14) and thereafter the holders of the A Shares and the B Shares will share in any winding up surplus, proportionate to the respective number of Shares then held by each of them.

On incorporation Central Park will subscribe for 100 A Shares at a consideration of \$100.

**2.4 Characteristics of B Shares:** All B Shares have the following characteristics:

- (a) they have the right to receive notice and attend every meeting of Shareholders;
- (b) they have an issue price of \$1.00 each;
- (c) they have no voting rights;
- (d) they give no rights to appoint directors;
- (e) subject to clause (f), they have no right to receive any dividends until they are fully paid and until after the Operational Date. After the Operational Date each fully paid B Share will have the same right to receive dividends (at the same dividend rate) as each A Share;
- (f) for so long as Magsons or any Related Company of Magsons is in default under any Ancillary Agreement, the B Shares shall have no dividend rights;
- (g) on a winding up of the Company the holders of the B Shares will have no rights to receive any return on their B Shares until after the holders of the A Shares have received the full initial Share subscription price for their A Shares. Once the holders of the A Shares have received their full initial Share subscription price, the holders of the B Shares will have the right to receive the full initial paid up Share subscription price for their B Shares (but not including the initial subscription price for any B Shares repurchased in accordance with



clause 14) and thereafter the holders of the A Shares and the B Shares will share in any winding up surplus, proportionate to the respective number of Shares then held by each of them; and

- (h) the holders of the B Shares will have no right to transfer, sell or otherwise dispose of those B Shares without:
  - (i) the prior consent of the holders of the A Shares; and
  - (ii) if the holders of the A Shares so require, first offering the B Shares to the holders of the A Shares in accordance with the provisions of the Constitution.

### **3. OBLIGATIONS OF THE PARTIES**

#### **3.1 Obligations of the Company: The Shareholders:**

- (a) will procure that the Company validly executes this Agreement; and
- (b) will do all things necessary to procure the Company and the other relevant parties to enter into and execute each of the Ancillary Agreements, if not already executed on the date of this Agreement.

#### **3.2 Obligations of Central Park:** Central Park will issue the Product Disclosure Statement and proceed with the Capital Raising.

#### **3.3 Property purchase obligations:**

- (a) The Company will have no obligation to settle the purchase of the Property unless and until all of the following conditions have been met:
  - (i) Central Park has raised at least \$26,000,000 from the public pursuant to the Capital Raising;
  - (ii) Magsons has subscribed and paid for such number of B Shares in Central Park, in accordance with the Underwrite Agreement, as shall mean that Central Park has received payment for and allotted \$30,000,000 B Shares in itself;
  - (iii) Central Park has subscribed and paid for \$30,000,000 A Shares in the Company; and
  - (iv) all loan documents and securities in connection with the Funding Agreement have been approved between and signed by the funder and the Company and the Company has satisfied all conditions precedent under those loan documents and securities, so that the Company is in a position to make an initial drawdown of loan funding,

by no later than the Completion Date.

- (b) If all of the conditions in Clause 2.7 (a) are not fulfilled by the Completion Date this Agreement shall be at an end, the Company will be wound up and no party will have any further obligations to any other party.

- (c) If all of the conditions in clause 2.7 (a) are fulfilled by the Completion Date the purchase of the Property will be completed as soon as possible thereafter, as follows:
- (i) Magsons will transfer title to the Property to the Company, free from all charges and security interests;
  - (ii) Subject to the terms of the Underwriting Agreement, the Company will pay \$13,700,000 to Magsons or at Magsons direction, by way of part payment for the Property; and
  - (iii) Magsons will subscribe for 7,500,000 B Shares in the Company and the Company will allot 7,500,000 fully paid B Shares in the Company to Magsons, by way of payment for the balance of the purchase price for the Property.

#### **4. OBJECTIVES OF THE BUSINESS**

- 4.1 **Primary objective:** The primary objective of the Company will be to carry on the Business. Unless otherwise approved under clause 6.2 the Company shall not carry on any business other than the Business.
- 4.2 **Conduct of the Business:** The Business will be conducted on sound commercial principles and in accordance with this Agreement, the Ancillary Agreements, and all applicable laws. To the extent reasonably practicable, the Business shall be conducted in a way that does not negatively affect the reputation or goodwill of any of the parties to this Agreement.

#### **5. PARTIES' OBLIGATIONS AND RIGHTS**

- 5.1 **General obligations:** Each party and the Company shall, to the extent it is able to do so:
- (a) exercise all of its rights and other powers to procure that the provisions of this Agreement and the Ancillary Agreements are given full force and effect;
  - (b) not unreasonably delay any action, approval, direction, determination or decision required under this Agreement;
  - (c) act in good faith towards each other in relation to the affairs and activities of the Company and its Business; and
  - (d) endeavour to promote and enhance the Business.
- 5.2 **Covenants by the Company:** Where any provision of this Agreement requires the Company to perform and observe covenants and obligations, each of the parties covenants to do all things necessary to cause the Company to so perform and observe the covenants and obligations.

#### **6. DECISION MAKING**

- 6.1 **Powers of the Board:** Subject to clause 6.2, the Board has full power to direct the activities of the Company in the conduct of the Business.
- 6.2 **Decisions requiring Magsons' approval:** Notwithstanding clause 6.1, the following actions of the Company will require the prior written consent of Magsons (such consent not to be unreasonably delayed or withheld):

- (a) altering or revoking the Constitution;
- (b) approving an amalgamation of the Company under section 221 of the Act;
- (c) the Company issuing any New Securities to existing Shareholders other than to achieve or maintain the Shareholder's Interests;
- (d) entering into a transaction pursuant to which the Company will acquire or conduct any other business;
- (e) entering into any partnership or joint venture with any person;
- (f) borrowing to debt fund any expenditure for an amount greater than \$1 million total aggregate borrowings (excluding debt funding provided to the Company pursuant to the Funding Agreement or any bank or other borrowings in substitution (in whole or in part) for the funding under the Funding Agreement); and
- (g) making any loan, or granting any credit, or giving any guarantee or indemnity, other than in the ordinary course of the Business.

6.3 **Procedures of the Board:** The Board can regulate its own meeting and other procedures; provided that Vinod Kumar will have no right be present at meetings at which Confidential Matters are to be discussed and will have no vote in relation to any Confidential Matters.

## 7. INDEMNITIES AND INSURANCE

7.1 **Directors:** The Company shall effect all of the indemnities and insurances referred to in subsections 162(3), (4) and (5) of the Act in respect of all of its Directors to the maximum extent permitted by those subsections.

7.2 **Insurance:** The Board shall determine the appropriate level of any Directors' and officers' liability insurance cover taken out and maintained by the Company under this clause 6.3.

## 8. RECORDS

8.1 **Record keeping:** The Company must maintain accurate and complete records of its Business, including accounting and other financial records.

8.2 **Access to records:** Each party and its authorised representatives (including auditors appointed by such persons) shall be allowed:

- (a) access at all reasonable times to examine and take copies of the books, records and other documents relating in any way to the Business and affairs of the Company (including but not limited to all financial and tax records) ("**records**"); and
- (b) to discuss the affairs, finances and accounts of the Company with the Company's officers, employees, and the auditors (as appointed).

## 9. INTELLECTUAL PROPERTY

- 9.1 **Ownership:** As between the parties, each shall own all Intellectual Property Rights in its own materials and information that existed prior to the commencement of this Agreement. Nothing in this clause shall be deemed to transfer any ownership or proprietary interest in such Intellectual Property Rights to the Company. This clause is subject to the provisions of the Development Agreement relating to the transfer of Intellectual Property Rights relating to the development of the Property from the Property Settlement Date.

## 10. DEFAULT

- 10.1 If a Shareholder commits a breach of this Agreement, then the non-defaulting Shareholder may give written notice of the breach ("**Breach Notice**") to the defaulting Shareholder specifying the nature of the breach and requiring the breach to be remedied within twenty (20) Business Days of the date of the Breach Notice.
- (a) if the breach is not material and is either incapable of remedy or remains unremedied for more than twenty (20) Business Days after the date of the Breach Notice, then either Shareholder may give a notice of dispute to the other Shareholder in accordance with clause 11.1; and
  - (b) if the breach is material and is either incapable of remedy or remains unremedied for more than twenty (20) Business Days after the date of the Breach Notice and the defaulting party is Magsons, it will be deemed to have issued a transfer notice in accordance with clause 13.

## 11. DISPUTE RESOLUTION

- 11.1 **Dispute notice:** If a dispute or difference arises out of or in connection with this Agreement, either party may give written notice to the other party specifying the nature of the dispute and brief details of the dispute. The parties must endeavour in good faith to resolve the dispute.
- 11.2 **Arbitration:** If the parties are unable to resolve the dispute within ten (10) Business Days of the date of the relevant dispute notice under clause 11.1, either party may refer the matter to arbitration by notice to the other party ("**Notice of Arbitration**") (with a copy to the Company).
- 11.3 **Rules of arbitration:** The arbitrator shall be as agreed by the parties within five (5) Business Days of the date of the Notice of Arbitration or, failing agreement, shall be as appointed by the chairperson for the time being of the New Zealand chapter of the Resolution Institute. The arbitration will be conducted in accordance with the provisions of the Arbitration Act 1996. The arbitrator's fee will be shared equally between Central Park and Magsons, unless the arbitrator decides that an alternative cost allocation is appropriate.
- 11.4 **Submissions:** Within ten (10) Business Days of receipt of written confirmation of the arbitrator's appointment, the parties may provide the arbitrator with a written submission and with any relevant supporting material. The arbitrator will be provided with a complete copy of this Agreement. Each party will provide to the arbitrator such information and assistance as the arbitrator may reasonably require in order to expedite the resolution of the dispute.

**11.5 Legal Proceedings:** No party or the Company shall commence any legal proceedings in relation to any dispute, difference or question arising out or in connection with this Agreement, without first complying with the above dispute resolution provisions in this clause 11. Notwithstanding this, a party shall be entitled to take immediate steps to seek urgent equitable relief before a Court or other tribunal.

**11.6 Continued performance:** Each party shall continue to perform its obligations under this Agreement as far as possible, acting reasonably, as if no dispute had arisen pending the final resolution of any dispute.

## **12. TRANSFER OF SHAREHOLDER'S INTEREST AND SHARES**

**12.1 Mortgage of Shareholder's Interest and Shares:** Except as may be required by law (or as set out in this Agreement or otherwise agreed between the parties) neither Central Park and Magsons may at any time mortgage (whether by way of fixed or floating charge) pledge or otherwise Encumber its legal or beneficial interest in its Shareholder's Interest or in any Shares.

**12.2 Deed of Accession:** Without limiting the restrictions on Share transfers in this Agreement, the Company will not recognise the transfer of any Shares made unless the transferee has executed a Deed of Accession confirming to the Company and to the other Shareholders that it shall be bound by this Agreement in respect of the Shares transferred.

## **13. DEEMED TRANSFER NOTICES – TRIGGERING EVENTS**

**13.1 Events of a breach nature which trigger a deemed transfer notice:** Magsons will be deemed to have issued a transfer notice to Central Park in respect of all of its Shares and all of its Shareholder's Interest if either of the following events occur:

- (a) Magsons suffers an Insolvency Event;
- (b) Magsons suffers a Change of Control Event; or
- (c) without limiting the prohibition on creating any Encumbrance on Shares, any secured party enforcing or purporting to enforce any Encumbrance created over any Shares held by Magsons.

**13.2 Consequence of a trigger event under clause 13.1 occurring:** If any of the events listed in clause 13.1 occur, then in addition to Magsons having been deemed to have issued a transfer notice to Central Park for all of its Shares, the provisions of the Constitution regarding Share transfers shall apply.

## **14. SHARE REPURCHASE**

**14.1 Events triggering Share repurchase:** If at any time (or from time to time) any of the following events occurs:

- (a) Magsons or the Contractor commits a breach of the Development Agreement;
- (b) Magsons or the Tenant commits a breach of the Lease; or

- (c) Magsons or a Related Party of Magsons fails to make a payment of any amount which it has agreed to pay in connection with the obligations of the Company under the Funding Agreement;

and that event is not remedied within 10 Business Days from the date of its occurrence, then the Company may repurchase from Magsons such number of B Shares at a consideration of \$1.00 per fully paid B Share (or at such lesser consideration the Board (acting reasonably) considers to be the then value of the B Shares) as in the sole opinion of the Board have an aggregate value equal to the amount required to rectify the breach of the Lease, the Development Agreement or the required payments under the Funding Agreement, as may be the case. The Shareholders agree to give all necessary consents, requests and approvals to enable all Share repurchases pursuant to this clause 14.

- 14.2 **Payment:** Upon the Company electing to repurchase any B Shares pursuant to clause 14.1, the Company will cancel such B Shares and will not be required to pay the B Shares repurchase amount to Magsons, but may apply that B Shares repurchase amount (or may deem that B Shares repurchase amount to have been applied) towards rectifying the breach of the Development Agreement, the Lease, or payments under the Funding Agreement, as may be the case. Where any B Shares have not been fully paid no consideration will be required to be paid on those B Shares on any repurchase.

## 15. DEEMED TRANSFER NOTICE ON OTHER SPECIFIED EVENTS

- 15.1 **Other specified events triggering a deemed transfer notice:** Magsons will be deemed to have issued a transfer notice to Central Park in respect of all of its B Shares and all of its Shareholder's Interest if either of the following events occur:

- (a) Magsons or the Tenant fails to pay any Secured Moneys when due; or
- (b) Magsons or the Contractor fails to meet any of its Secured Obligations when due.

- 15.2 **Consequence of a trigger event under clause 14.1 occurring:** If any of the events listed in clause 14.1 occur, then the deemed transfer notice given to Central Park by Magsons for all of its B Shares will be for a total consideration of \$1.00 (that consideration being, and being deemed to be, acceptable to Magsons) and all of the other provisions of the Constitution regarding Share transfers shall apply.

## 16. DRAG ALONG RIGHTS

- 16.1 **Drag Along Notice:** If at any time Central Park is proposing to sell its Shares to a third party buyer, then Central Park may, in its absolute discretion, give a notice (**Drag Along Notice**) to Magsons, stating Central Park's intention to sell its Shares to the third party buyer and;
- (a) specifying the sale price (**Sale Price**) for the Dragged Shares (as defined below);
  - (b) specifying the proposed settlement date (**Settlement Date**);
  - (c) specifying the name of the third party buyer; and
  - (d) attaching a copy of the offer by the third party buyer

and requiring Magsons to sell all of its Shares (**Dragged Shares**) to the third party buyer on the terms and conditions specified in the Drag Along Notice at the same time as Central Park sells its Shares to the third party buyer.

- 16.2 **Same terms and conditions:** The terms and conditions applying to the sale of the Dragged Shares must be no less favourable to Magsons than the terms and conditions applicable to the Central Park Shares being sold; provided however that no consideration will be payable on any B Shares which are Dragged Shares, where those B Shares are not fully paid up.
- 16.3 **Execution of documents:** Magsons must sign all such documents as may be necessary and sell its Dragged Shares to the third party buyer in accordance with the terms of the Drag Along Notice.
- 16.4 **Completion**
- (a) Completion of the sale of the Dragged Shares must take place on the Settlement Date or such later date as is necessary for any regulatory approvals that are required for the implementation of the sale to be obtained.
  - (b) On the Settlement Date Magsons must deliver to the third party buyer title to the Dragged Shares free of all encumbrances.

## 17. NON-COMPETITION

17.1 **Magson's Undertaking:** In consideration of the Company and Central Park entering into this Agreement and discharging their relevant obligations and for the protection of the goodwill of the Business, Magsons agrees and undertakes for the benefit of the Company and Central Park that, except with the prior written consent of Central Park, it will not, and will procure that the Tenant and each other Related Company of Magsons and each company under the effective control of Magsons will not directly or indirectly anywhere in the Auckland Region:

- (a) carry on or be engaged in or be concerned with any business or activity that is the same or similar to the Nido retail store business proposed to be carried on by the Tenant; or
- (b) provide assistance to any person to carry on or be engaged in or concerned with any business or activities that is the same or similar to the Nido retail store business proposed to be carried on by the Tenant,

**provided that** if the turnover from the retail store business on the Property exceeds \$100 million per annum at any time, then from that time Magsons or a Related Company will be entitled to open a second Nido retail store business in the Auckland Region, provided the location of that store is approved by Central Park (acting reasonably).

17.2 **Restraints and undertakings reasonable:** The parties consider the undertakings in clause 17.1 are reasonable in all the circumstances. However, if a Court of competent jurisdiction finds any of them to be unenforceable, the parties agree to accept any modification of area, extent or duration of the restraint concerned which the Court sees fit to impose, or if it does not see fit, which may be required to make the restraint enforceable.

## 18. LIQUIDATION / STATUTORY TERMINATION

Without limiting anything else in this Agreement, this Agreement will terminate when an application or order is made, an effective resolution is passed or analogous proceedings are taken for the liquidation, administration or dissolution of the Company.

## 19. DISCLOSURE

Magsons and the Company acknowledge and agree that Central Park may disclose this Agreement and the Ancillary Agreements as material contracts as part of the disclosures made to facilitate its CapitalRaising..

## 20. RELATIONSHIP OF THE PARTIES

20.1 **No partnership or agency:** None of the provisions of this Agreement will create or constitute, or be deemed to create or constitute (for any purpose whatsoever):

- (a) a partnership between the parties; or
- (b) any party as an agent of any other party or the Company.

20.2 **No authority to bind:** Except as provided in this Agreement or by written agreement between one or more parties, no party or the Company will have any authority or power to bind or commit, act on behalf of, represent, or hold itself out as having authority to act as an agent of, the other parties in relation to any obligations.

20.3 **Several liability and indemnity:** The rights, duties, obligations and liabilities of each of the parties will be several and not joint or collective. Each party will indemnify and hold harmless the other party from and against any and all losses, claims, damages and liabilities arising out of any act of or any assumption of any obligation or responsibility by such party done or undertaken on behalf of any other party, except pursuant to this Agreement or with the express consent of the other party.

## 21. NOTICES

21.1 **Notices:** Each notice given under this Agreement shall be in writing and delivered personally or sent by post or email to the address of the relevant party set out below or to any other address from time to time designated for that purpose by at least five (5) Business Days' prior notice to the other party. Where a notice is given by email, the party giving the notice must confirm in the body of the email that the email constitutes a notice for the purpose of this clause 21.1. The initial addresses of the parties are:

**Central Park Property Investment Limited**

Address: B4 17 Corinthian Drive, Albany  
Auckland 0652

Email: [info@maat.co.nz](mailto:info@maat.co.nz); [ntuffin@maat.co.nz](mailto:ntuffin@maat.co.nz)  
and [mlomas@maat.co.nz](mailto:mlomas@maat.co.nz)

Attention: Neil Tuffin and Michelle Lomas

**Magsons Investments Limited**

Address: 18 Strathnaver Crescent, Lynfield,  
Auckland 1042

Email: [vinod@nidoliving.co.nz](mailto:vinod@nidoliving.co.nz)

Attention: Vinod Kumar



**Everest Central Investment Limited**

Address: B4 17 Corinthian Drive, Albany  
Auckland 0652

Email: [info@maat.co.nz](mailto:info@maat.co.nz); [ntuffin@maat.co.nz](mailto:ntuffin@maat.co.nz)

and [mlomas@maat.co.nz](mailto:mlomas@maat.co.nz)

Attention: Neil Tuffin and Michelle  
Lomas

21.2 **Receipt:** A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, five (5) Business Days after posting; or
- (c) **Email:** sent by email, when actually received in readable form by the recipient,

provided that any notice deemed received after 5 pm or on a non-Business Day shall be deemed to have been received on the next Business Day.

**22. GENERAL PROVISIONS**

22.1 **Amendments:** This Agreement may not be amended, modified or varied in any way unless such amendment, modification or variation is agreed to in writing by each party.

22.2 **Entire agreement:** This Agreement constitute the entire agreement and understanding of the parties relating to the matters dealt with in this Agreement and supersedes any previous agreement (whether oral or written) between the parties in relation to such matters.

22.3 **Warranties:** Each party warrants and represents that:

- (a) it has full power and authority to enter into this Agreement;
- (b) all authorisations and approvals that are necessary or required in connection with the execution of this Agreement, and the assumption of rights and obligations under it, have been obtained or effected; and
- (c) the execution, delivery and performance of this Agreement does not constitute a breach of any law or obligation and will not cause or result in any default or breach under any other agreement or arrangement by which it is bound and which would prevent it from entering into or performing its obligations under this Agreement.

22.4 **Assignment:** Neither Shareholder will assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Shareholder.


22.5 **Successors and permitted assigns:** This Agreement will endure for the benefit of, and be binding on, the respective successors in title and permitted assigns of each party.

- 22.6 **No waiver:** No waiver of a party's rights is effective unless given by that party in writing, and any waiver is only effective in the specific instance and for the purpose of the waiver and no failure on the part of a party to exercise any right under this Agreement will operate as a waiver. No single or partial exercise of any right under this Agreement will preclude any other or further exercise of that right or the exercise of any other right.
- 22.7 **Severability:** If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from this Agreement and the remaining provisions of this Agreement will continue in full force and effect. Despite the preceding sentence, following such a finding the parties will in good faith use all reasonable endeavours to agree to the terms of a mutually satisfactory provision (based on the spirit and intent of the provisions of this Agreement) to be substituted for the provision found to be void or unenforceable.
- 22.8 **Rights and remedies:** Unless otherwise expressly provided in this Agreement, the rights and remedies set forth in this Agreement are in addition to, and not in limitation of, any other rights and remedies under or relating to this Agreement (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any party should fail or refuse to comply with any of the terms or provisions of this Agreement, the other parties will have, in addition to any other of their respective rights and remedies, the right to have any one or more of those terms or provisions specifically enforced.
- 22.9 **Further assurances:** Each party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Agreement.
- 22.10 **Counterparts:** This Agreement may be executed and delivered in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.
- 22.11 **Governing law and jurisdiction:** This Agreement will be governed by, and construed in accordance with, the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this Agreement.


**EXECUTION**

**SIGNED** for and on behalf of  
**EVEREST CENTRAL INVESTMENT  
LIMITED** by

Director 


Director 

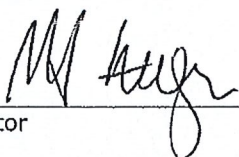
**SIGNED** for and on behalf of  
**MAGSONS INVESTMENTS LIMITED**  
by

Director 

Director \_\_\_\_\_

**SIGNED** for and on behalf of  
**CENTRAL PARK PROPERTY INVESTMENT  
LIMITED** by

Director 

Director 

**SCHEDULE 1**  
**Constitution**

**CONSTITUTION**

**OF**

**EVEREST CENTRAL INVESTMENT LIMITED**

**UNDER THE COMPANIES ACT 1993**

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**Constitution of Everest Central Investment Limited  
under the Companies Act 1993**

**PART I: PRELIMINARY**

**1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:** In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

“**Act**” means the Companies Act 1993;

“**Alternate Director**” means a Director appointed pursuant to clause 15.10;

“**Amalgamation**” means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company;

“**Annual Meeting**” means a meeting of Shareholders held pursuant to clause 13.1;

“**A Share**” means a Share which confers on the holder the powers set out in clause 11.1(a) of this Constitution;

“**A Shareholder**” means a holder of A Shares;

“**Balance Date**” means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements;

“**Board**” means the Directors numbering not less than the required quorum acting as the Board of Directors of the Company, and where one Director is a quorum it means that Director so acting alone;

“**B Share**” means a Share which confers on the holder the powers set out in clause 11.1(c) of this Constitution;

“**Business**” means acquisition, development and leasing of the Property, carried on by the Company;

“**B Shareholder**” means a holder of B Shares;

“**Class**” and “**Class of Shares**” means a class of Shares having attached to them identical rights, privileges, limitations, and conditions and for the avoidance of doubt the A Shares and the B Shares shall each comprise a separate Share Class;

“**Chairperson**” means the Chairperson of the Board, elected or appointed under clause 18.2;

“**Company**” means **Everest Central Investment Limited**;

“**Constitution**” means this Constitution of the Company and all amendments to it from time to time;

“**Director**” means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a Director of the Company;

“**Distribution**”, means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of a Shareholder; or

(b) the incurring of a debt by the Company to or for the benefit of a Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means;

**"Dividend"** means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Act applies;

**"Interests Register"** means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

**"Major Transaction"**, in relation to the Company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company, the value of which is more than half the value of the Company's assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the Company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Company.

Nothing in paragraph (b) or paragraph (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the Company's assets for the purpose of securing the repayment of money or the performance of an obligation. In assessing the value of any contingent liability for the purpose of paragraph (c) of this definition, the Directors:

- (i) must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
- (ii) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- (iii) may take account of:
  - (A) the likelihood of the contingency occurring; and
  - (B) any claim the Company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability;

**"Manager"** means Maat Consulting Limited or any other person appointed as manager pursuant to the Management Agreement;

**"Management Agreement"** means the management agreement entered into by the Company and the Manager in relation to the management of the Property;

**"Managing Director"** means a Director who is appointed under clause 20.1 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee);

**"month"** means calendar month;

**"Ordinary Resolution"** means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

**"Property"** means the property at 160 Central Park Drive, Henderson, comprised in unique identifier 61871;



**“PPSA”** means the Personal Property Securities Act 1999;

**“Register”** means the register of Shares required by clause 6 and section 87 of the Act to be kept;

**“Registrar”** means the Registrar of Companies appointed under section 357(1) of the Act;

**“Shares”** means A Shares or B Shares, or both or any of them as the context may require;

**“Shareholder”** means a person:

- (a) registered in the Register as the holder of one or more Shares; or
- (b) until the person’s name is entered in the Register, a person named as a Shareholder in the application for registration of the Company at the time of registration of the Company; or
- (c) until the person’s name is entered in the Register, a person who is entitled to have that person’s name entered in the Register under a registered Amalgamation proposal as a Shareholder in an amalgamated company;

**“Shareholders’ Agreement”** means the agreement relating to the conduct of the Business and the relationship between the Shareholders, entered into between the A Shareholder, the B Shareholder and the Company,;

**“Solvency Test”** means an examination to be applied to the financial state of the Company, which will be satisfied if:

- (a) the Company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the Company’s assets is greater than the value of its liabilities, including contingent liabilities and in respect of which regard has been had to the matters referred to in section 4(2) of the Act,

for the purpose of this definition **“debts”** and **“liabilities”** have the meanings given to those terms in sections 52(4) or 108(5) of the Act, as applicable;

**“Special Meeting”** means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board or by any other person who is authorised by the Board to call meetings of Shareholders;

**“Special Resolution”** means a resolution of Shareholders approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question;

**“Tax”** includes all present and future taxes, duties, levies, deductions, withholdings and other charges imposed, assessed or levied by any government authority including any penalties, interest or other amount imposed in respect of the foregoing;

**“Tax Act”** means the Income Tax Act 2007, or the Tax Administration Act 1994 (as applicable);

**“Tax Item”** means any Tax Relief and any amount of deemed or actual income, gain, or accrual that is taken into account for Tax purposes;

**“Tax Ledger”** means the ledger maintained by the Company in accordance with clause 23;

**“Tax Relief”** means any credit, rebate, offset or refund in respect of Tax and any cost, deduction, expenditure or loss (including depreciation loss) that is taken into account for Tax purposes;

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day;

- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

1.2 **Interpretation:** In this Constitution unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) “**written**” and “**in writing**” includes any means of reproducing words, figures or symbols:
  - (i) in a tangible and visible form in any medium; or
  - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;
- (f) “**signature**” includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory’s approval of the information contained in the document; and
- (g) a reference to a clause is to that clause in this Constitution unless stated otherwise.

1.3 **Other definitions have meaning set out in the Act:** Subject to clause 1.1, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time.

1.4 **Constitution subject to changes in the Act:** If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

1.5 **Use of electronic means:** Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the Electronic Transactions Act 2002 in the same manner as is required by the Electronic Transactions Act 2002 to meet that legal requirement under the Act. In this clause, the term “legal requirement” has the meaning given to it by the Electronic Transactions Act 2002.

- 1.6 **Receipt of electronic communications:** For the purposes of section 11 of the Electronic Transactions Act 2002, a document under this Constitution which is sent in electronic form and via an electronic communication is taken to be received:
- (a) if sent by the Company, on the Working Day it is sent or the next Working Day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication;
  - (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

## 2. CONSTITUTION AND SHAREHOLDERS' AGREEMENT

- 2.1 **Rights, powers and duties:** Subject to clause 2.2, the Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.
- 2.2 **Constitution subject to Shareholders' Agreement:** To the extent permitted by law, and so long as the parties to the Shareholders' Agreement (including any permitted assigns thereunder) are Shareholders, this Constitution is subject to the provisions of the Shareholders' Agreement and, in the event of any conflict or inconsistency between this Constitution and the Shareholders' Agreement, the provisions of the Shareholders' Agreement shall prevail.
- 2.3 **Purpose:** Without limiting clauses 2.1 and 2.2, the Company has been incorporated for the purpose of purchasing, Developing and leasing the Property.

## PART II: SHARES AND DIVIDENDS

### 3. ISSUE OF SHARES

- 3.1 **Number and class of initial Shares:** As at the date of this Constitution there are 100 A Shares in the Company.
- 3.2 **Board may issue Shares:** Subject to the Act and this Constitution, the Board may issue additional Shares (and rights or options to acquire Shares) of any Class (including Redeemable Shares) at any time, to any person and in such numbers as the Board thinks fit.
- 3.3 **Issue of A Shares and B Shares:** Without limiting clause 3.2, the Board may issue the following Shares:
- (a) 30,000,000 A Shares to Central Park Property Investment Limited; and
  - (b) 7,500,000 B Shares to Magsons Investments Limited.
- 3.4 **Redeemable Shares:** If redeemable Shares are to be issued, the terms of issue of the redeemable Shares must make provision for the redemption of each redeemable Share by the Company:
- (a) at the option of the Company; or
  - (b) at the option of the holder of redeemable Shares; or
  - (c) on a specified date;

for a consideration that is:

- (d) specified; or
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

**3.5 Requirements for Board issuing Shares:** Subject to clause 3.6, before the Board issues Shares pursuant to clause 3.2, it must:

- (a) decide the consideration for which the Shares will be issued and the terms on which they will be issued;
- (b) if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
- (c) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
- (d) if the Shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the Shares would be credited as paid up.

**3.6 Exceptions to requirements in case of certain Share issues:** Clauses 3.5, 3.8 and 3.9 do not apply to:

- (a) the issue of Shares that are fully paid up from the reserves of the Company to all Shareholders of the same Class in proportion to the number of Shares held by each such Shareholder; or
- (b) the consolidation or subdivision of Shares.

**3.7 Consideration may take any form:** The consideration for which Shares are issued, or for the payment of Shares already issued, may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the Company.

**3.8 Directors' certificate on consideration for issue:** The Directors who vote in favour of a resolution under clause 3.5 must sign a certificate:

- (a) stating the consideration for, and the terms of, the issue;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value has been determined in accordance with clause 3.5, stating that value and the basis for assessing it;
- (d) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
- (e) if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the Shares.

**3.9 Directors' certificate to be filed:** A copy of the Directors' certificate given under clause 3.8 must be filed with the Registrar within 10 Working Days after it is given.

**3.10 Deemed payment other than for cash:** For the purposes of clauses 3.5, 3.6, and 3.7, Shares that are (or are to be) credited as paid up (whether wholly or partly) as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments (whether simultaneously or not), must be treated as paid up other than in cash to the value of the property or services.

- 3.11 **Amount owing on issue of Shares:** Where money or other consideration is due at a fixed time to the Company on Shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the Shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.
- 3.12 **Bonus Shares:** The Board may authorise the allotment of Shares, to all Shareholders of the same Class, issued as fully or partly paid up (from the assets of the Company) in proportion to the number of Shares held by each such Shareholder.
- 3.13 **Consolidation and subdivision of Shares:** The Board may authorise:
- (a) the consolidation and division of Shares or any Class of Shares in proportion to those Shares or the Shares in that Class; and
  - (b) the subdivision of the Shares or any Class of Shares in proportion to those Shares or the Shares in that Class.
- 3.14 **Issue of Shares by unanimous assent:** If all entitled persons have agreed or concurred in writing and have not withdrawn that agreement or concurrence as permitted by section 107(6) of the Act, Shares may be issued otherwise than in accordance with clauses 3.2 to 3.9.

#### **4. PURCHASE OF OWN SHARES**

- 4.1 **Purchase by Company of its Shares:** The Company may purchase or otherwise acquire its Shares in accordance with, and subject to, sections 58 to 65, 107, 108 and 110 to 112 of the Act, and may hold the acquired Shares in accordance with sections 67A to 67C of the Act.

#### **5. TRANSFER OF SHARES**

- 5.1 **Entry in Register:** Subject to clauses 5.3 and 5.5:
- (a) A Shares may be transferred by entry of the name of the transferee on the Register; and
  - (b) B Shares may only be transferred:
    - (i) with the prior consent of the A Shareholders; and
    - (ii) if the A Shareholders so require, by first offering of the B Shares to the A Shareholders (pro-rata to the number of A Shares held by them).
- 5.2 **Value of B Shares on transfer:** Where the B Shareholder proposes to sell its B Shares or is deemed to have given a transfer notice under the Shareholders' Agreement the provisions of Schedule 1 shall apply, except as otherwise provided in the Shareholders Agreement.
- 5.3 **Signed transfer:** For the purpose of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.
- 5.4 **Form of transfer:** The form of transfer:
- (a) may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board; and
  - (b) must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

- 5.5 **Board's right to refuse or delay registration of transfer:** The Board may refuse or delay the registration of the transfer if:
- (a) the transferee has not acceded to the terms of the Shareholders' Agreement; or
  - (b) the Board considers that to effect the transfer would result in a breach of the law; or
  - (c) the Board considers that it is not in the best interests of the Company to register the transfer; or
  - (d) the Board does not approve of the transferee, in respect of which matter the Board shall have absolute discretion in its decision; or
  - (e) clause 7.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 5.4;
- 5.6 **Board resolutions refusing or delaying Share transfers:** A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Working Days of the date of the resolution being passed.
- 5.7 **Registration of transfer:** Subject to clauses 5.3 and 5.5, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with clause 5.5 to refuse or delay the registration of the transfer of the Shares.
- 6. SHARE REGISTER**
- 6.1 **Maintain Register:** The Company must maintain a Register which records all Shares issued by the Company and which states:
- (a) whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
  - (b) where any document that contains the restrictions or limitations may be inspected.
- 6.2 **Agent may maintain:** The Company may appoint an agent to maintain the Register.
- 6.3 **Contents of Register:** The Register must state, with respect to each Class of Shares:
- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a Shareholder;
  - (b) the number of Shares held by each Shareholder within the last 10 years; and
  - (c) the date of any:
    - (i) issue of Shares to; or
    - (ii) repurchase or redemption of Shares from; or
    - (iii) transfer of Shares by or to,each Shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred.
- 6.4 **Directors' duty to supervise Register:** It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 5.7.
- 6.5 **Register prima facie evidence:** Subject to section 91 of the Act, the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

- 6.6 **Register evidence of rights:** The Company may treat the registered holder of a Share as the only person entitled to:
- (a) exercise the right to vote attaching to the Share;
  - (b) receive notices in respect of the Share;
  - (c) receive a Distribution in respect of the Share; and
  - (d) exercise the other rights and powers attaching to the Share.
- 6.7 **Trust not to be registered:** No notice of a trust, whether express, implied, or constructive, may be entered on the Register.
- 6.8 **Trust not to be recognised:** Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the Share vested in the registered holder.
- 6.9 **Personal representative may be registered:** A personal representative of a deceased holder of Shares is entitled to be entered in the Register as the holder of such Shares as a personal representative.
- 6.10 **Personal representative not to constitute notice:** The registration of a trustee, executor or administrator as a personal representative of a deceased Shareholder does not constitute notice of a trust.
- 6.11 **Change of name or address:** Any change in the name or address of any Shareholder must be notified in writing to the Company and the Company must alter the Register accordingly.
- 7. SHARE CERTIFICATES**
- 7.1 **Application for Share certificate:** A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.
- 7.2 **Issue of Share certificate:** The Company must, within 20 Working Days after receiving an application for a Share certificate under clause 7.1, send to the Shareholder a certificate stating the name of the Company, and the Class and number of Shares to which the certificate relates. If the application relates to some but not all of the applicant's Shares, the Company must separate the Shares shown in the Register as owned by the applicant into separate parcels; one parcel being the Shares to which the Share certificate relates, and the other parcel being any remaining Shares.
- 7.3 **Transfer to be accompanied by Share certificate:** Notwithstanding clause 5 and section 84 of the Act, where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the Share certificate relating to the Shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).
- 7.4 **Surrendered Share certificate:** Where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate will be issued except at the request of the transferee.
- 8. CALL ON SHARES**
- 8.1 **Board may make Calls:** Subject to the terms of issue of any Shares, the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. The terms of the resolution will constitute the terms of the obligation to pay the Call (including payment by instalments). The Call may be revoked or postponed at any time by the Board.

- 8.2 **Calls to apply equally:** Subject to the terms of issue of any Class of Shares and to clause 8.9, unless all the holders of a Class of Shares subject to a Call unanimously agree, a Call (or the postponement or revocation of a Call) will apply to all the holders of Shares of the Class equally.
- 8.3 **Notice of Calls:** Notice of the Call must be given to the Shareholder at the time of the Call or to a subsequent holder of the Shares. Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder. The notice must specify the day by which and the place at which the Call must be paid.
- 8.4 **Deemed receipt of notice:** Subject to section 392(1)(b) of the Act, notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the day after it was posted. To avoid doubt, the notice may be sent via an electronic communication in accordance with clause 1.6 if the Shareholder has provided the Company with an address for the receipt of electronic communications.
- 8.5 **Joint Shareholder liability:** The joint holders of Shares are jointly and severally liable to pay all Calls in respect of the Shares.
- 8.6 **Unpaid calls to accrue interest:** If a Call is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the Board determines either at the time of the Call or subsequently.
- 8.7 **Current Shareholder liable:** The liability for a Call which has become due and payable attaches to the current Shareholder and not a prior Shareholder, notwithstanding that at the date of the Call (or the date the Call fell due for payment) another person was the holder of the Shares or that the notice of the Call was served on the then Shareholder and not the current Shareholder.
- 8.8 **No notice to new Shareholder required:** Following the registration in the Register of a change of ownership of Shares in respect of which a Call has been made, a notice of the Call is not required to be served on the new Shareholder.
- 8.9 **Agreement to differentiate between Calls:** The Board may, on the issue of Shares, by agreement with the Shareholders concerned, differentiate between the holders of the same Class as to the amount to be paid on the Shares and the times for payment.
- 9. SUSPENSION OF RIGHT TO DIVIDENDS, FORFEITURE AND LIEN**
- 9.1 **Board may withhold distributions for non-payment of Calls:** If a Shareholder fails to pay any Call (or instalment of a Call) on the day appointed for payment, the Board may at any time after that date, while any part of the Call or instalment payable by the Shareholder remains unpaid, suspend payment of any Dividends or other Distributions payable to the Shareholder.
- 9.2 **Amount owing under Call may include interest:** The amount owing under the Call for the purposes of clauses 9.1, 9.3 and 9.4 may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the Shareholder of the amount owing under the Call.
- 9.3 **Application of suspended Dividends:** All Dividends and other Distributions suspended pursuant to clause 9.1 may be applied by the Company to reduce the amount owing under the Call. Dividends so applied will be deemed to have been paid in full. The Company is not required to give a notice to a Shareholder where dividends or other distributions have been applied to reduce the amount owing under the Call.
- 9.4 **Lifting suspension of right to Dividends:** When the total Dividends and Distributions withheld and applied under clause 9.3 equal the total amount owing under the Call, including amounts owing under clause 9.2, the suspension of the right



to Dividends and Distributions will be lifted, and all rights to be paid Dividends and Distributions on the Shares will resume.

- 9.5 **Notice of non-payment of Call:** If a Shareholder fails to pay any Call or instalment of a Call on the day appointed for payment of it the Board may, while any part of the Call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the Call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- 9.6 **Notice to specify date of potential forfeiture:** The notice shall name a further day (not earlier than the expiration of 10 Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the Call was made will be liable to be forfeited.
- 9.7 **Forfeiture by Board resolution:** If the requirements of the notice are not complied with, any Share in respect of which the notice has been given may, at any time after the notice is given and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and any other Distribution in respect of the forfeited Shares and not actually paid before the forfeiture.
- 9.8 **Effect of forfeiture:** When any Share has been forfeited:
- (a) notice of the resolution shall be given to the Shareholder in whose name the Share was registered immediately before the forfeiture;
  - (b) an entry of the forfeiture, with the date of the forfeiture, shall be made in the Register; and
  - (c) the Share certificate of any Shares forfeited shall be immediately cancelled by the Company and the Shareholder shall return the Share certificate for the forfeited Share to the Company within 10 Working Days of receiving notice of the resolution.
- 9.9 **Shareholder liability remains on forfeited Shares:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of the forfeiture was payable by him or her to the Company in respect of the Shares but his or her liability shall cease if and when the Company receives payment in full of all such money in respect of the Shares.
- 9.10 **Forfeiture for non-payment of other sums:** The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.
- 9.11 **No invalidation of forfeiture:** Any failure to give the notice, or to make the entry, required under clause 9.8 does not invalidate the forfeiture.
- 9.12 **Lien:** The Company has a first and paramount lien upon every Share registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale of those Shares. This lien is for:
- (a) all money payable (whether presently or not) in respect of Shares held by the Shareholder;
  - (b) all other money presently payable by the Shareholder to the Company on any account whatever; and
  - (c) any amount the Company may be called upon to pay under any statute or regulation in respect of Shares of a deceased Shareholder or other

Shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).

- 9.13 **Lien extends to Dividends:** The lien extends to all Dividends from time to time declared in respect of the Shares.
- 9.14 **Disposal of forfeited Shares:** Subject to clauses 9.15 to 9.18 a forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.
- 9.15 **Power to sell Shares subject to lien:** Subject to clauses 9.15 to 9.18, the Company may sell in such a manner as the Board thinks fit any Shares on which the Company has a lien. No sale may be made until:
- (a) a sum in respect of which the lien exists is due and payable;
  - (b) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the Share (or the person entitled to that Share by reason of the registered holder's death or bankruptcy); and
  - (c) 10 Working Days have expired since the giving of that notice.
- 9.16 **Proceeds of sale:** The net proceeds of the sale of any forfeited Share or any Shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid Calls, instalments or, in the case of a lien, any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the Shares.
- 9.17 **Certificate evidence of forfeiture:** A certificate signed by a Director stating that the power of sale provided in clause 9.14 or 9.15 has arisen, and is exercisable by the Company under this Constitution, or that a Share in the Company has been duly forfeited on the date stated, will be conclusive evidence of the facts stated in the certificate.
- 9.18 **Transfer of Shares after forfeiture:** For giving effect to any sale after forfeiture or for enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the Share certificate for the forfeited Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the Share certificate not delivered up.
- 9.19 **PPSA provisions:** Sections 108, 109, 116, 120(2), 132 and 133 of the PPSA will not apply to the extent they are inconsistent with this clause 9.

## 10. DISTRIBUTIONS

- 10.1 **Distributions must satisfy Solvency Test:** Subject to clause 10.3, the Board may, if it is satisfied on reasonable grounds that the Company will satisfy the Solvency Test immediately after the Distribution, authorise a Distribution by the Company to Shareholders of any amount as it thinks fit.
- 10.2 **Board to sign certificate:** The Directors who vote in favour of a Distribution must sign a certificate stating that, in their opinion, the Company will satisfy the Solvency Test immediately after the Distribution. The grounds for that opinion must also be stated in that certificate.

- 10.3 **Dividends payable pari passu:** Subject to clause 10.5, the Board may not authorise a Dividend:
- (a) in respect of some but not all the Shares in a Class; or
  - (b) that is of a greater value per Share in respect of some Shares of a Class than in respect of other Shares of that Class,
- unless the amount of the Dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the Shareholder's liability under this Constitution or under the terms of issue of the Share.
- 10.4 **Monthly Distributions:** Subject to clauses 10.1 to 10.3 above and to the provisions of the Shareholders' Agreement, the Board may distribute and pay to the Shareholders Dividends or cash Distributions monthly in arrears on the last day of each month or the next Working Day, if that day is not a Working Day. Subject to the other provisions of this Constitution and to the provisions of the Shareholders' Agreement, Dividends or cash Distributions will be apportioned between the Shareholders pro-rata according to the number of Shares held by them.
- 10.5 **Shareholder may waive rights to Dividend:** A Shareholder may waive his or her entitlement to receive a Dividend by giving a notice in writing, signed by or on behalf of the Shareholder, to the Company.
- 10.6 **Dividends payable other than pari passu:** If all the Shareholders of the same Class concur in writing in respect of each proposed Dividend, the Company may pay a Dividend which is distributed other than in accordance with clause 10.3.
- 10.7 **Investment of unclaimed Distributions:** Any Distribution that has not been claimed after one year from the date of the Distribution may be invested or otherwise made use of by the Board for the benefit of the Company until it is claimed. The Company shall not be regarded as holding any such amount used on trust for the claimant.
- 10.8 **Forfeiture of unclaimed Distributions:** Any Distribution remaining unclaimed for a period of five years from the date of the Distribution may be forfeited by the Board for the benefit of the Company, provided that the Board may in its discretion cancel the forfeiture and pay the Distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.
- 10.9 **Financial assistance on acquisition of Shares:** The Company may, subject to and in accordance with sections 76 to 80, 107 and 108 of the Act, give financial assistance (whether directly or indirectly) to a person for the purpose of, or in connection with, the purchase of Shares issued (or to be issued) by the Company, or by its holding company.

### **PART III: SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

#### **11. SHAREHOLDERS' RIGHTS**

##### **11.1 A Shares:** All A Shares:

- (a) give the right to the A Shareholders to receive notice of and attend every meeting of Shareholders;
- (b) have an issue price of \$1.00;
- (c) give the right to the A Shareholders to appoint and remove Directors, in accordance with this Constitution;
- (d) are fully transferable, without any pre-emptive restrictions; and
- (e) will receive such Dividends as are declared by the Board from time to time.

**11.2 B Shares:** All B Shares:

- (a) give the right to the B Shareholders to receive notice of and attend every meeting of Shareholders;
- (b) have an issue price of \$1.00;
- (c) do not carry any voting rights;
- (d) do not give the right to appoint Directors; and
- (e) will receive such Dividends as are declared by the Board from time to time provided however, they will have no right to receive Dividends until after the first rent has been received under the Lease (and subject in all cases to the Shareholders Agreement).
- (f) are only transferable in accordance with clause 5.1.

**12. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS**

**12.1 How powers may be exercised:** Powers reserved to Shareholders by the Act or by this Constitution may be exercised:

- (a) at an Annual Meeting or a Special Meeting; or
- (b) by a resolution in lieu of a meeting pursuant to clause 13.5.

Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

**12.2 Powers exercised by Special Resolution:** When Shareholders exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (b) a Major Transaction;
- (c) an Amalgamation;
- (d) the liquidation of the Company.

Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

**12.3 Unanimous assent to certain types of action:** Notwithstanding clauses 10.1 and 10.2, if all entitled persons have agreed or concurred in writing and have not withdrawn that agreement or concurrence as permitted by section 107(6) of the Act:

- (a) a Dividend may be authorised otherwise than in accordance with clause 10.3;
- (b) Shares that have been issued as redeemable at the option of the Company may be redeemed otherwise than in accordance with sections 69 to 72 of the Act; and
- (c) any of the matters referred to in clause 19.1 may be authorised otherwise than in accordance with that clause.

**12.4 Duty to satisfy Solvency Test:** A power referred to in clause 12.3 must not be exercised unless the Board is satisfied on reasonable grounds that the Company will, immediately after the exercise of the power, satisfy the Solvency Test.

- 12.5 **Directors must Sign Certificate:** The Directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the Company will, after the exercise of the power, satisfy the Solvency Test.
- 12.6 **Management review by Shareholders:** A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders. Shareholders may pass a resolution relating to the management of the Company. The proceedings of any meeting of Shareholders at which a resolution under this clause 12.6 is passed shall be in accordance with clauses 13 and 14. Notwithstanding section 128 of the Act or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of Shareholders (in accordance with this clause 12.6) is not binding on the Board.
- 12.7 **Dissenting Shareholder may require Company to purchase Shares:** Where:
- (a) a Shareholder is entitled to vote on the exercise of one or more of the powers set out in:
    - (i) clause 12.2(a) and the proposed alteration imposes or removes a restriction on the activities of the Company; or
    - (ii) clause 12.2(b) or 12.2(c); and
  - (b) the Shareholders resolved, pursuant to clause 12.2, to exercise the power; and
  - (c) the Shareholder casts all the votes attached to Shares registered in the Shareholder's name and having the same beneficial owner against the exercise of the power; or
  - (d) where the resolution to exercise the power was passed under clause 13.5, the Shareholder did not sign the resolution,
- that Shareholder is entitled to require the Company to purchase those Shares in accordance with section 111 of the Act.
- 12.8 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 12.9 **Board to give notice of Shareholder proposals:** If the notice is received by the Board:
- (a) not less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must (at the expense of the Company) give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting; or
  - (b) not less than five Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must (at the expense of the Shareholder) give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting; or
  - (c) less than five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, if practicable and (at the expense of the Shareholder) give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 12.10 **Statement in support of proposal:** If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the

proposal, together with the name and address of the proposing Shareholder. The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).

12.11 **Costs of notice to be met by Shareholder:** Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must (on giving notice to the Board) deposit with the Company or tender to the Company a sum sufficient to meet those costs.

### 13. MEETINGS OF SHAREHOLDERS

13.1 **Annual Meeting:** The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:

- (a) not later than six months after the Balance Date of the Company; and
- (b) not later than 15 months after the previous Annual Meeting, or in respect of the first Annual Meeting not later than 18 months after the date of the Company's incorporation.

13.2 **Date of meeting:** The Company must hold the Annual Meeting on the date on which it is called to be held.

13.3 **Resolution instead of Annual Meeting:** It shall not be necessary for the Company to hold an Annual Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.

13.4 **Special Meetings:** A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting;
- (b) must be called by the Board on the written request of Shareholders holding not less than 5% of the votes entitled to be cast on the issue; and
- (c) will be called by the Board not less than 6 months prior to the final repayment date for the funding secured by the Manager to develop the Property to resolve whether the Property should be sold and the Company wound up.

If a meeting the Shareholders called pursuant to this clause 13.4(c) does not resolve to sell the Property and wind up the Company, then the Company will continue until such time as the Shareholders resolve to wind up the Company at a subsequent meeting convened pursuant to this Constitution.

13.5 **Resolution in lieu of meeting:** Subject to clause 13.7, a resolution in writing signed by not less than 75% (or where it is greater, the percentage required for the passing of a Special Resolution) of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders, who together hold not less than 75% (or where it is greater, the percentage required for the passing of a Special Resolution) of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.

13.6 **More than one document:** Any resolution in writing under clause 13.5 may consist of one or more documents in similar form (including letter, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution.

- 13.7 **Resolution not to appoint an auditor:** A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided in clause 13.5, provided that the resolution must be signed by all the Shareholders entitled to vote on the resolution.
- 13.8 **Copy of resolution to non-signing Shareholder:** Within five Working Days of a resolution being passed under this clause, the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.
- 13.9 **Chairperson of meetings of Shareholders:** If the Directors have elected a Chairperson, and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting. If no Chairperson has been elected or if, at any meeting of Shareholders, the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.
- 13.10 **Shareholders entitled to notice of meeting:** The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders of the relevant Class:
- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register on that date; or
  - (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.
- 13.11 **Date on which entitlement decided:** A date fixed by the Board under clause 13.10(a) must not precede by more than 30 Working Days nor less than 10 Working Days the date on which the meeting is to be held.
- 13.12 **Notice of meeting:** Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the auditor of the Company, not less than 10 Working Days before the meeting.
- 13.13 **Content of notice:** The notice referred to in clause 13.12 must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
  - (b) the text of any special resolution to be submitted to the meeting;
  - (c) the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
  - (d) that the postal vote must be received by the person referred to in paragraph (c) at least 48 hours prior to the start of the meeting.
- 13.14 **Irregularities in notice:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 13.15 **Accidental omission not to invalidate proceedings:** The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- 13.16 **Method of holding meeting:** A meeting of Shareholders may be held either:
- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

13.17 **Adjournments:** The chairperson of a meeting of Shareholders may, at the request of those Shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting. No business shall be transacted of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

13.18 **Notice of the adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clauses 13.12 and 13.13.

13.19 **Minutes:** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

#### 14. VOTING AT MEETINGS

14.1 **Quorum:** A quorum for a meeting of Shareholders is present if those Shareholders who are present, or their proxies who are present, are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting. Subject to clause 14.2, no business may be transacted at a meeting of Shareholders if a quorum is not present.

14.2 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called pursuant to a requisition of Shareholders under clause 13.4(b), the meeting is dissolved;
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders present or their proxies are a quorum.

14.3 **Voting at actual meeting:** In the case of a meeting of Shareholders held under clause 13.16(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:

- (a) voting by voice; or
- (b) voting by show of hands.

14.4 **Voting at meeting by conference:** In the case of a meeting of Shareholders held under clause 13.16(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

14.5 **Declaration by Chairperson that resolution is carried:** A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 14.6.

14.6 **Demand of a poll:** At a meeting of Shareholders, a poll may be demanded by:

- (a) not less than five Shareholders having the right to vote at the meeting; or
- (b) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or



- (c) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right; or
- (d) the chairperson of the meeting.

A poll may be demanded either before or after the vote is taken on a resolution.

- 14.7 **Counting of votes on a poll:** If a poll is taken, each Share has one vote and votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting (including postal votes).
- 14.8 **Chairperson not entitled to casting vote:** The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 14.9 **Right of proxy to demand a poll:** For the purposes of clause 14.6, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.
- 14.10 **Proxies:** A Shareholder may exercise the right to vote either by being present or by proxy.
- 14.11 **Rights of proxy:** A proxy for a Shareholder is entitled to attend, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- 14.12 **Appointment of proxy:** A proxy must be appointed by notice in writing signed by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- 14.13 **Representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.
- 14.14 **Votes of joint holders:** Where two or more persons are recorded in the Register as the holder of a Share, the vote of the person named first in the Register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.
- 14.15 **Unpaid sums:** If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholders' meeting other than at a meeting of an Interest Group.
- 14.16 **Other proceedings:** Except as provided in this Constitution the Shareholders may regulate their own procedure.

## **PART IV: THE BOARD**

### **15. APPOINTMENT AND REMOVAL**

- 15.1 **Number of Directors:** Subject to clause 18.19, the number of Directors may not be fewer than two nor more than four.
- 15.2 **Directors:** Upon registration of the Company under the Act the Directors are the persons named as the Directors in the application for registration of the Company.
- 15.3 **Shareholders may appoint Directors:** Subject to clause 15.2, any person who is not disqualified under the Act may be appointed as a Director by:
  - (a) a written notice to the Company signed by A Shareholders holding Shares which carry more than 50% of the total votes attaching to the Shares; or
  - (b) an Ordinary Resolution of B Shareholders, which may appoint more than one Director.
- 15.4 **Shareholders may remove Directors:** Any Director may be removed from office by:

- (a) a written notice to the Company signed by the A Shareholders holding Shares which carry more than 50% of the votes attaching to the A Shares; or
  - (b) an Ordinary Resolution of A Shareholders passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.
- 15.5 **Period of office:** A Director holds office until his or her resignation, disqualification or removal in accordance with this Constitution.
- 15.6 **Notice of appointment or removal of Directors:** Any notice of appointment or removal of a Director may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Act, or from such later time as the notice states that it is to take effect.
- 15.7 **Disqualification and removal:** A person will be disqualified from holding the office of Director if he or she:
- (a) is removed under clause 15.3 or 15.6; or
  - (b) resigns in writing under clause 15.8 and is not reappointed in accordance with this Constitution; or
  - (c) becomes disqualified from being a director pursuant to section 151 of the Act; or
  - (d) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383 or 385 of the Act; or
  - (e) dies; or
  - (f) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
  - (g) is under 18 years of age; or
  - (h) is an undischarged bankrupt; or
  - (i) is prohibited by Act from being a director.
- 15.8 **Resignation:** A Director may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon the later of the receipt of it at the registered office of the Company (including receipt of a facsimile or electronic copy) and any later time specified in the notice.
- 15.9 **Shareholding qualification:** A Director is not required to hold Shares.
- 15.10 **Appointment and removal of Alternate Directors:** Every Director may, by notice given in writing to the Company, appoint any person (including any other Director) to act as an Alternate Director in the Director's place, either generally, or in respect of a specified meeting or meetings during the Director's absence from a meeting. At the Director's discretion, by notice in writing to the Company, the appointing Director may remove the Director's Alternate Director.
- 15.11 **Powers of Alternate Director:** An Alternate Director may, while acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as Chairperson and signing Board resolutions) of the appointing Director. The Alternate Director is subject in all respects to the same terms and provisions as the appointing Director, except as regards remuneration and except as regards the power to appoint an Alternate Director under this Constitution.
- 15.12 **Alternate Director counted in quorum:** For the purpose of establishing a quorum of the Board, an Alternate Director is deemed to be the Director appointing him or her, and if the Alternate Director is a Director he or she can count separately in both capacities.

- 15.13 **No right to attend meetings if appointed Director present:** An Alternate Director does not have a right to attend, speak or vote at a meeting of the Board while his or her appointing Director is present.
- 15.14 **Lapse of appointment:** An Alternate Director's appointment lapses upon his or her appointing Director ceasing to be a Director.
- 15.15 **Address of Alternate Director required:** The notice of appointment of an Alternate Director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.
- 15.16 **Board may fill casual vacancies:** The Board may appoint any person to be a Director to fill a casual vacancy or as an additional Director, but subject to the maximum number of Directors provided for under this Constitution.
- 15.17 **Duties independent:** An Alternate Director shall not be the agent of his or her appointor, and shall exercise his or her duties as a Director independently of his or her appointor.

## 16. INDEMNITY AND INSURANCE

- 16.1 **Types of proceedings that may be indemnified against:** The Board shall cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:
- (a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
  - (b) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- 16.2 **Types of liability that may be indemnified against:** The Board shall cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:
- (a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
  - (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;
- not being:
- (c) criminal liability; or
  - (d) liability for the breach of section 131 of the Act; or
  - (e) liability for breach of any fiduciary duty owed to the Company or related company.
- 16.3 **Insurance of Directors and employees:** The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and employees of the Company or a related company in respect of:
- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
  - (b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
  - (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

- 16.4 **Directors to sign certificate:** The Directors who vote in favour of authorising the effecting of insurance under clause 16.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- 16.5 **Entry in the Interests Register:** The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are forthwith entered in the Interests Register.
- 16.6 **Definitions:** For the purpose of this clause 16, “**Director**” includes a former Director and “**employee**” includes a former employee.

## 17. POWERS AND DUTIES OF THE BOARD

- 17.1 **Management by Board:** Subject to clause 17.2 and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- 17.2 **Powers of Board:** The Board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.
- 17.3 **Delegation by Board:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:
- (a) section 23(1)(c) (change of company name);
  - (b) section 42 (issue of other shares);
  - (c) section 44 (Shareholder approval for the issue of shares);
  - (d) section 47 (consideration for the issue of shares);
  - (e) section 49 (consideration for the issue of options and convertible securities);
  - (f) section 52 (distributions);
  - (g) section 54 (shares in lieu of dividends);
  - (h) section 55 (shareholder discounts);
  - (i) section 60 (offers to acquire shares);
  - (j) section 61 (special offers to acquire shares);
  - (k) section 63 (stock exchange acquisitions subject to prior notice to Shareholders);
  - (l) section 65 (stock exchange acquisitions not subject to prior notice to Shareholders);
  - (m) section 69 (redemption of shares at the option of the company);
  - (n) section 71 (special redemptions of shares);
  - (o) section 76 (provision of financial assistance);
  - (p) section 78 (special financial assistance);
  - (q) section 80 (financial assistance not exceeding 5% of Shareholders’ funds);
  - (r) section 84(4) (transfer of shares);
  - (s) section 187 (change of registered office);
  - (t) section 193 (change of address for service);
  - (u) section 221 (manner of approving an amalgamation proposal); and
  - (v) section 222 (short form amalgamations).

- 17.4 **Board's responsibility for delegation:** The Board is responsible for the exercise of a power by any delegate (where that power is delegated under clause 17.3) as if the power had been exercised by the Board, unless the Board:
- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and
  - (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.
- 17.5 **Proceedings of committees:** The proceedings of meetings of any committee formed pursuant to clause 17.3 shall be in accordance with the provisions of clause 18, with such consequential amendments as may be necessary, and any other rules that may be imposed on it by the Board.
- 17.6 **Directors to act in good faith:** A Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.
- 17.7 **Exercise of powers in relation to employees:** Nothing in clause 17.6 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.
- 17.8 **Major Transactions:** The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:
- (a) approved by a Special Resolution; or
  - (b) made contingent on approval by a Special Resolution.

## 18. PROCEEDINGS OF THE BOARD

- 18.1 **Third Schedule:** The provisions of the third schedule to the Act are deleted and replaced by this clause 18.
- 18.2 **Chairperson:** The Directors may elect one of their number as Chairperson of the Board. The Director elected as Chairperson holds that office until he or she ceases to be a Director or the Directors elect a Chairperson in his or her place. If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.
- 18.3 **Convening a meeting:** A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with clauses 18.4 and 18.5.
- 18.4 **Notice of meeting:** Not less than two Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted. The notice must include the date, time and place of the meeting and the matters to be discussed. To avoid doubt, the notice may be sent via an electronic communication in accordance with clause 1.6 if the Director has provided the Company with an address for the receipt of electronic communications.

- 18.5 **Notice not required to absent Director:** It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand but if a Director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand, and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 15.15) be given to the Alternate Director.
- 18.6 **Irregularity in notice:** The giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 18.7 **Method of holding meetings:** A meeting of the Board may be held either:
- (a) by a number of Directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual communication, by which all the Directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 18.8 **Acknowledgment of presence at meeting by conference:** Where a meeting of the Board is held pursuant to clause 18.7(b), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the other Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.
- 18.9 **Quorum:** A quorum for a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of Directors if a quorum is not present. In accordance with clause 15.12, an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.
- 18.10 **Voting:** Every Director has one vote.
- 18.11 **Chairperson not entitled to casting vote:** The Chairperson does not have a casting vote.
- 18.12 **Resolution passed by majority of votes:** A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast are in favour of it.
- 18.13 **Absence of vote counts for the resolution:** A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless he or she expressly dissents from (or votes against) the resolution at the meeting.
- 18.14 **Director may vote on interested transaction:** A Director may vote in respect of any transaction in which the Director is interested and if the Director does so the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.
- 18.15 **Alternate Director may attend:** An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clauses 15.10 to 15.16 if the Director that has appointed the Alternate Director is absent from the meeting.
- 18.16 **Minutes:** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board. Minutes of proceedings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

- 18.17 **Unanimous resolution:** A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile, electronic or other similar means of communication) in like form each signed or assented to by one or more Directors. A copy of any such resolution must be entered in the minute book of Board proceedings.
- 18.18 **Other proceedings:** Except as provided in this clause 18 the Board may regulate its own procedure.
- 18.19 **Continuing Directors:** The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. If their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors will comprise the Board only for the purpose of summoning a Special Meeting.

## 19. INTERESTED DIRECTORS

- 19.1 **Authority to remunerate Directors:** The Board may authorise:
- (a) the payment of remuneration (or the provision of other benefits) by the Company to a Director for his or her services as a Director (or in any other capacity), or by way of compensation for loss of office;
  - (b) the making of loans by the Company to a Director;
  - (c) the giving of guarantees by the Company for debts incurred by a Director; and
  - (d) the entering into of a contract to do any of the things set out in paragraphs (a) to (c) of this clause 19.1,
- if the Board is satisfied that to do so is fair to the Company.
- 19.2 **Separate authorisation unnecessary:** The payment of remuneration (or the giving of any other benefit) to a Director in accordance with a contract authorised pursuant to clause 19.1 need not be separately authorised by the Board.
- 19.3 **Entry in Interests Register:** The Board must ensure that forthwith after authorising any payment, loan, guarantee, or contract under clause 19.1, particulars are entered in the Interests Register.
- 19.4 **Directors to sign certificate:** The Directors who vote in favour of authorising a payment, loan, guarantee or contract under clause 19.1 must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, or the entering into of the contract is fair to the Company. Grounds for that opinion must also be stated in the certificate.
- 19.5 **Director may act in other professional capacity for Company:** Any Director may act by himself or herself, or by the Director's firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor for the Company.
- 19.6 **Director may hold other position in Company:** A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the Director's office of Director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- 19.7 **Transaction with Company valid:** Other than as provided in clauses 19.8 to 19.10, a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a Director and not in a fiduciary relationship with the Company. No such Director shall be liable to account to the Company for

any profit realised by the transaction by reason of the Director holding that office or of the fiduciary relationship thereby established.

- 19.8 **Notice of Interest to be given:** A Director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:
- (a) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (b) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- 19.9 **Disclosure not required:** A Director is not required to comply with clause 19.8 if:
- (a) the transaction or proposed transaction is between the Director and the Company; and
  - (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.
- 19.10 **General notice of interest may be given:** For the purposes of clause 19.8, a general notice entered in the Interests Register and, if the Company has more than one Director, disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

## 20. MANAGING DIRECTORS

- 20.1 **Appointment:** The Board may from time to time appoint one or more of their number to the office of Managing Director or Managing Directors of the Company, either for a fixed term or an indefinite term.
- 20.2 **Dismissal:** Every Managing Director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the Company with any person who is or is about to become a Managing Director with regard to the length and conditions of the Managing Director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will not have a right or claim to continue in office as Managing Director contrary to the will of the Board.
- 20.3 **Termination of employment:** A Managing Director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other Directors. If the Managing Director ceases to hold the office of Director for any reason, the Managing Director will immediately cease to be a Managing Director.

## PART V: ADMINISTRATION AND MISCELLANEOUS

### 21. AUTHORITY TO BIND

- 21.1 **Method of Contracting:** A contract or other enforceable obligation may be entered into by the Company as follows:
- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
    - (i) two or more Directors of the Company (or where there is only one Director, by that Director whose signature must be witnessed); or



- (ii) a Director or any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed;
  - (iii) one or more attorneys appointed by the Company in accordance with clause 21.3;
- (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
  - (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.
- 21.2 **Resolution of authority proof of authority:** A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.
- 21.3 **Attorneys:** The Company may, by an instrument in writing executed in accordance with clause 21.1(a), appoint a person as its attorney either generally or in relation to a specified matter or matters. An act of the attorney in accordance with the instrument binds the Company.

## 22. LIQUIDATION

- 22.1 **Appointment of Liquidator:** A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.
- 22.2 **Distribution of assets:** On a liquidation of the Company, the A Shareholders shall have the first right to receive the full initial Share subscription price for their A Shares before any other Class of Shareholders. Once the A Shareholders have received their full initial Share subscription price the B Shareholders will have the right to receive the full initial Share subscription amount for the B Shares then held by them and thereafter the A Shareholders and the B Shareholders will share in any surplus winding up assets, proportionate to the respective number of Shares then held by each of them.
- 22.3 **Distribution of assets in kind:** Upon the liquidation of the Company the liquidator may, with the sanction of an Ordinary Resolution and any other sanction required by law, divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not). The liquidator may for that purpose set such value, as the liquidator deems fair upon any assets to be divided as aforesaid but must in making any distribution in kind follow the order of distribution in clause 22.2.
- 22.4 **Removal from New Zealand register:** Subject to sections 318 and 320 of the Act, a Director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand register on the grounds that:
- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
  - (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation.
- 22.5 **Distribution of assets on solvent dissolution:** For the purposes of clause 22.4(a) the Company shall have distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clause 22.2 or 22.3 except that no liquidator needs to be appointed and references to the liquidator in that clause

shall be construed as references to the Shareholders acting by an Ordinary Resolution.

## **23. TAX**

### **23.1 Tax Ledger**

The Company must establish a ledger for the purpose of managing Tax obligations in relation to the Company.

### **23.2 Disclosure of information to tax authorities**

The Board and the Company are hereby authorised to make such disclosure as may be required by the Commissioner of Inland Revenue of the details of Shareholders, any distributions to Shareholders or any other details or information arising out of or in connection with the Company. Subject to any legal requirement to the contrary, neither the Board nor the Company is required to notify any Shareholder of the fact or content of that disclosure.

## SCHEDULE 1 -

### Transfer Provisions

#### 1 Definitions

The following definitions apply in this Schedule, unless inconsistent with the context or otherwise specified:

**"Independent Expert"** means an umpire (acting as an expert and not as an arbitrator) nominated by the parties concerned or, in the event of disagreement as to nomination, appointed by the President for the time being of the New Zealand Institute of Chartered Accountants; and

**"Original Shareholders"** means persons who were shareholders of the Company on the date of adoption of this Constitution, together with their permitted transferees.

#### 2 Pre-emptive rights

Except as otherwise provided in this Schedule, every shareholder who desires or is required to transfer any Shares shall give to the Company notice in writing of such desire (a **"Transfer Notice"**). Where the Transfer Notice is deemed to have been given it is referred to as a **"Deemed Transfer Notice"**. The transferor under a Transfer Notice and under a Deemed Transfer Notice is in this paragraph 2 called the **"Vendor"**. Transfer Notices and Deemed Transfer Notices shall constitute the Company the Vendor's agent for the sale of the Shares specified in them (**"Sale Shares"**) in one or more lots at the discretion of the Board at the Sale Price (as defined below).

#### 3 Calculation of the Sale Price

The sale price of the Sale Shares shall be the price agreed by the Vendor and the Board (**"Sale Price"**). If the Vendor and the Board are unable to agree a price within 21 days of the Transfer Notice being given or being deemed to have been given the Sale Price will instead be the price which the Independent Expert shall certify to be in his opinion a fair value of the Sale Shares. In arriving at his opinion the Independent Expert will value the Sale Shares as at the date the Transfer Notice is given or is deemed to have been given on a going concern basis as between a willing seller and a willing buyer ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest and on the assumption that the Sale Shares are capable of transfer without restriction. The decision of the Independent Expert as to the Sale Price shall be final and binding.

#### 4 Right of Vendor to reject partial sales

A Transfer Notice may contain a condition (a **"Total Transfer Condition"**) that unless all the Shares comprised in the notice are sold by the Company pursuant to this paragraph 4 none shall be sold. Any such provision shall be binding on the Company, and the remainder of this Schedule shall be interpreted accordingly. A Deemed Transfer Notice will be deemed to include a Total Transfer Condition

#### 5 Certification of the Sale Price and right of Vendor to cancel

If the Independent Expert is asked to certify the fair value his certificate shall be delivered to the Company. As soon as the Company receives the certificate it shall deliver a copy of it to the Vendor. The Vendor shall be entitled by notice in writing given to the Company within seven days of the service upon him of the copy certificate to cancel the Company's authority to sell the Sale Shares unless the Shares are to be sold pursuant to a Deemed Transfer Notice. The cost of obtaining the certificate shall be paid by the Company unless the Vendor cancels the authority in which case the Vendor shall bear the cost.

## 6 **Pre-emptive offers - general**

Once the Sale Price has been determined then unless the Vendor has given a valid notice of cancellation the Sale Shares shall be offered for sale as set out below.

## 7 **Preliminary offer**

Unless the holders of 75% or more of the A Shares agree otherwise, any Shares being sold by reason of a Compulsory Employee Transfer shall be offered to the Company within 14 days of the Sale Price being determined (and the Sale Price will not be considered determined until the expiry of any period during which the Vendor can cancel the sale). Any Shares not sold under this paragraph 7 within seven days of such offer will be available for sale to the shareholders as set out below.

## 8 **Offer to shareholders**

As soon as the Sale Shares become available they shall forthwith be offered for sale by the Company giving notice in writing to that effect to all shareholders (other than the Vendor). The notice shall specify:

- (a) the number of Sale Shares on offer and the Sale Price;
- (b) whether the Sale Shares are subject to a Total Transfer Condition;
- (c) the date by which the application to purchase the Sale Shares has to be received by the Company (being a date no less than 14 days and no more than 21 days after the date of the notice).

The notice shall set out the method of allocation of the Sale Shares and shall invite each member to apply in writing to the Company for as many of the Sale Shares (if any) as that shareholder would like to purchase.

## 9 **Basis of allocation to shareholders**

- (a) If the total number of Sale Shares applied for by the shareholders is equal to or less than the number of Sale Shares available, the Sale Shares shall be allocated in satisfaction of the applications received.
- (b) If the total number of Sale Shares applied for is more than the number of Sale Shares available, the Board shall allocate Sale Shares in satisfaction of each shareholder's application for Sale Shares in accordance with the following formula. This formula shall be applied repeatedly until such time as there are no Sale Shares remaining to be allocated. Each application of the formula is referred to below as an "**iteration**".

$$A = B/C \times D$$

where:

A is the number of Sale Shares to be allocated to the relevant shareholder in the iteration;

B is the number of Shares held by the shareholder;

C is the number of Shares held by all shareholders to whom the iteration is being applied;

D is the number of Sale Shares or, after the first iteration, the number of Sale Shares remaining unallocated by previous iterations.

If, in any iteration, a shareholder would be allocated all or more than all of the Sale Shares for which he applied (including allocations from previous iterations) then any excess will not be allocated to that shareholder. That shareholder will cease to take part in any further iterations and the excess Sale Shares will be available for allocation in the next iteration.

The Company shall notify the Vendor and each shareholder who applied for Sale Shares of the number of Sale Shares that have been allocated and the persons to whom they have been allocated. The notification shall include the place and time (being not later than 14 days after the date by which applications had to be received) at which the sale of the Sale Shares shall be completed.

**10 Transfer procedure for pre-emptive rights**

If the Company finds a purchaser or purchasers for all or any of the Sale Shares under the terms of this paragraph 10 the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of them for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor defaults in transferring Sale Shares the Company shall if so required by the person or persons willing to purchase such Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Company's share register as the holder of such of the Sale Shares as shall have been transferred to them.

**11 Transfers free of pre-emption**

If the Company does not find purchasers for all of the Sale Shares under the terms of this paragraph 11 the Vendor shall at any time within six months after the date of the offer by the Company to its shareholders be free to sell and transfer such of the Sale Shares as have not been so sold to any person at a price which is no less than the Sale Price. However if the Sale Shares were the subject of a Total Transfer Condition such a sale may only be made of all the Sale Shares and not part only.