

# **CONSTITUTION**

**OYSTER BAY MARLBOROUGH VINEYARDS LIMITED**

## TABLE OF CONTENTS

1	INTERPRETATION .....	1
2	RESTRICTION ON ACTIVITIES .....	10
3	ISSUE OF SHARES.....	11
4	ACQUISITION OF OWN SHARES .....	13
5	TRUSTS .....	17
6	SHARE CERTIFICATES .....	17
7	CALLS ON SHARES .....	18
8	COMPANY'S POWER TO FORFEIT OR SELL SHARES.....	20
9	APPLICATION OF PROCEEDS OF SALE .....	23
10	TRANSFER OF SHARES .....	23
11	TRANSMISSION OF SHARES - DEATH .....	24
12	TRANSMISSION OF SHARES - REGISTRATION.....	24
13	NON-FINANCIAL SHAREHOLDER BENEFITS.....	25
14	SHARE REGISTER.....	25
15	ALTERATION OF RIGHTS OF HOLDERS OF SECURITIES .....	26
16	PRE BREAK DISCLOSURE.....	27
17	GENERAL MEETINGS .....	28
18	NOTICE OF GENERAL MEETINGS.....	29
19	PROCEEDINGS AT MEETINGS OF SHAREHOLDERS.....	30
20	VOTES OF MEMBERS.....	33
21	DIRECTORS.....	39
22	ALTERNATE DIRECTORS .....	42
23	DIRECTORS' INTERESTS .....	43
24	PROCEEDINGS OF DIRECTORS .....	44
25	COMMITTEES .....	49
26	POWERS AND DUTIES OF DIRECTORS .....	50

27	INDEMNITY AND INSURANCE .....	55
28	DISTRIBUTIONS .....	57
29	DIVIDENDS .....	58
30	BONUS ISSUES .....	59
31	ACCOUNTS.....	61
32	AUDIT.....	61
33	NOTICES .....	61
34	EXECUTION OF DOCUMENTS .....	63
35	LIQUIDATION .....	63
36	DISTRIBUTION OF ASSETS.....	63

# COMPANIES ACT 1993

## CONSTITUTION OF

### OYSTER BAY MARLBOROUGH VINEYARDS LIMITED

#### PART 1 – PRELIMINARY

## 1 INTERPRETATION

1.1 **Definitions:** In this Constitution unless the context otherwise requires:

“Act” means the Companies Act 1993 and any statutory modification or re-enactment thereof;

“Affected Securities” has the meaning given to that term in rule B3.8.1 of the Listing Rules;

“Aggregate Net Value” means the net value of the assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value;

“Alternate Director” means an Individual appointed as an alternate director under clause 20 (Alternate Directors);

“Appoint” includes “re-appoint” and “elect” includes “re-elect”;

“Associated Person” has the meaning given to that term in rule A1.1.2 of the Listing Rules;

“Attorney” means a Person appointed as an attorney of a Shareholder in accordance with clause 20.5 (Appointment of Attorney);

“Auditor” means any Person or Persons appointed pursuant to the Act to perform the duties of auditor of the Company;

“Average Market Capitalisation” means the average end of day market capitalisation of the Company’s Equity Securities carrying Votes over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market;

“Bank” means a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989 and for the purposes of clause 26.7 includes other banks within the meaning of rule A1.1.2 of the Listing Rules;

“Board” means the Directors for the time being of the Company acting together as the Board of Directors of the Company, and includes a quorum of Directors so acting;

“Business Day” means a day on which the Exchange is open for trading;

“Capital” means the total aggregate amounts received in respect of any issue of Shares from time to time;

“Chairperson” means the Director who has been elected as chairperson of the Board pursuant to clause 24.2.4 (Chairperson);

“Class” means a class of Securities having attached to them identical rights, privileges, limitations and conditions;

“Commencement Date” means the date of the registered prospectus for the initial offering of shares in the Company to the public;

“Company” means Oyster Bay Marlborough Vineyards Limited;

“Constitution” means this constitution as amended from time to time;

“Convert” in respect of a Security, means to convert that Security into, or exchange that Security for, a Security of a different sort, whether at the option of the holder, or of the Company, or otherwise, or to subscribe for or obtain a Security of a different sort pursuant to a right conferred by the first mentioned Security and “Conversion” and “Convertible” have corresponding meanings;

“Default” means non-compliance with the requirements of clause 12;

“Defaulter” means a person who has a Relevant Interest in Shares which has been acquired in breach of clause 12 (other than a breach committed by the Company or the Board);

“Defaulter’s Securities” means in relation to a Defaulter, Shares in which the Defaulter has a Relevant Interest;

“Delegat’s” means Delegat’s Wine Estates Limited;

“Director” means any person occupying the position of director for the time being of the Company (by whatever name called) and, except in clause 22 (Alternate Directors) and clause 24.3 (Resolution in Writing Assented to by all Directors), includes an Alternate Director acting in the place of a Director;

“Distribution” has the meaning given to that term in section 2(1) of the Act;

“Distribution Rights” means a right of the nature referred to in clause 1.1.1 or 1.1.2 of the definition of Equity Security;

“Dividend” has the meaning given to that term in section 53 of the Act;

“Employee” includes an employee or officer of the Company or any of its Subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or with any of its Subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers;

“Equity Security” means:

- 1.1.1 Participation in Assets: a Security that confers a present or future right to participate in the assets of the Company after payment of all claims payable under section 313(1) of the Act; or
- 1.1.2 Participation in Income: a Security that confers a present or future right to participate in the income or profits of the Company; or
- 1.1.3 Voting Rights: a Security that carries, or will in future carry, a Vote or right to participate in the ultimate control of the Company; or
- 1.1.4 Convertible Security: a Security which may be converted into a Security of the nature referred to in clauses 1.1.1 to 1.1.3 (inclusive) above without the agreement of the holder or approval of the precise terms and conditions of issue of the Security of the nature referred to in clauses 1.1.1 to 1.1.3 on conversion, in accordance with clause 3.2,

and includes any other Security which the Exchange in its sole discretion declares by a Ruling to be an Equity Security but does not include any Security that the Exchange in its sole discretion declares by a Ruling not to be an Equity Security;

“Exchange” means New Zealand Exchange Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of the Exchange (including NZX Discipline);

“Executive Director” means a Director who is also an employee of the Company;

“Fixed Price Vineyard Development Agreement” means the fixed price vineyard development agreement between Delekat's, the Company and Delekat's Group Limited and any replacement thereof;

“Giffords Creek Property” means the property commonly referred to as the Giffords Creek Property;

“Grape Purchase Agreement” means the grape purchase agreement between Delekat's, the Company and Delekat's Group Limited and any replacement thereof;

“Independent Consultant” means the consultant or consultants engaged from time to time by the Company to provide independent advice and comment on matters considered appropriate by the Board;

“Individual” means a natural person;

“Interests Register” means the register to be kept under section 189(1)( c) of the Act;

“Listing Rules” means the NZAX listing rules (by whatever name called) for the time being of the Exchange;

“Majority Holder” means a Person who holds 90% of the shares in the Company;

“Major Transaction” has the meaning given to that term in section 129(2) of the Act;

“Material Transaction” means a transaction or a related series of transactions whereby the Company:

- 1.1.5 purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Company;
- 1.1.6 issues Securities or acquires its own Equity Securities having a market value in excess of 10% of the Average Market Capitalisation of the Company;
- 1.1.7 borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Company;
- 1.1.8 enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company to liability in excess of 10% of the Average Market Capitalisation of the Company;
- 1.1.9 provides or obtains any services (including without limitation the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1.5% of the Average Market Capitalisation of the Company; or
- 1.1.10 amalgamates, except for amalgamations of a wholly-owned Subsidiary of the Company with another wholly-owned Subsidiary of the Company or with the Company;

“Member of the Public” means, in relation to the Company and/or Securities of the Company any person other than:

- 1.1.11 a person who holds, or who is one of a group of Associated Persons who together hold, 10% or more of a Class of Securities; or
- 1.1.12 a person who has, or who is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the NZAX Issuer; or
- 1.1.13 any other person or member of a class of persons, whom the Exchange in its discretion declares not be a Member of the Public for the purposes of the Listing Rules;

“Month” means a calendar month;

“Office” means the registered office for the time being of the Company;

“Option” means an option granted by the Company to acquire a Security;

“Ordinary Resolution” means a resolution passed by a simple majority of the valid Votes cast on the resolution by the Shareholders entitled to Vote and voting on the question, and refers to a resolution of a meeting of the holders of Shares which carry Votes except where the context necessarily refers to a resolution of a meeting of a particular Class or Classes of Securities or any Relevant Group;

“Oyster Bay Shareholders Club” means the club established to provide certain benefits to Shareholders;

“Person” includes an Individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, any combination or association of Individuals or corporate or unincorporated bodies and any state or agency of state or government department and local or municipal authority in each case whether or not having a separate legal identity;

“Pre Break Announcement” means an announcement to the market which is made pursuant to clause 16 and Listing Rule B1.1A.2;

“Properties” means all real estate owned or leased by the Company;

“Property” means any one of the Properties;

“Proxy” means an Individual appointed as a proxy of a Shareholder in accordance with clause 20.3 (proxies);

“Quoted” means, in respect of a Class of Securities, where Trading Participants have been granted a right to quote bids and offers for that Class of Security on the Exchange;

“Register” means the register of Shareholders to be kept under section 189(1)(j) of the Act;

“Recognised Stock Exchange” has the meaning given to that term in rule A1.1.2 of the Listing Rules;

“Related Company” has the meaning given to that term in sections 2(3) and 2(4) of the Act;

“Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- 1.1.14 a Director or officer of the Company or any of its Subsidiaries; or
- 1.1.15 a substantial security holder (as defined in the Securities Markets Act 1988) of the Company; or
- 1.1.16 an Associated Person of the Company or any of the persons referred to in clause 1.1.14 or 1.1.15, other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or

1.1.17 a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in clauses 1.1.14, 1.1.15 or 1.1.16, or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

but excludes a wholly owned Subsidiary of the Company, other than a wholly owned Subsidiary which:

- (a) is a party to a Material Transaction of the type described in clause 1.1.8; and
- (b) the Company intends to sell, or otherwise dispose of, the Subsidiary to a Related Party.

“Relevant Group” means each group comprising:

1.1.18 Members of the Public: Shareholders who are Members of the Public; and

1.1.19 Other Members: Shareholders who are not Members of the Public;

in each Class of Shares;

“Relevant Interest” has the meaning given to that term in sections 5 and 6 of the Securities Markets Act 1988;

“Remaining Holders” means persons holding Shares who are not a Majority Holder;

“Renounceable” means in relation to a Right or to an offer of Securities, a Right or offer that is transferable by any holder for the time being to another Person (whether or not an existing holder of any Securities to which the Right or offer relates);

“Representative” means an Individual authorised by a corporation in accordance with clause 20.4 (Corporations Acting by Representatives at Meeting) to act as its representative at a meeting of the Company;

“Right” means any right to acquire any Security or any benefit of any kind, whether conditional or not, and whether Renounceable or not;

“Security” means any interest or right to participate in any Capital, assets, earnings, royalties or other property of the Company and includes any renewal or variation of the terms or conditions of any existing Security, a Right, and an Option;

“Share” means a share in the Company;

“Shareholder” means a Person whose name is entered in the Register as being the holder of Shares;

“Shareholders Funds of the Company” has the same meaning as given to the term Shareholders’ Funds of the NZAX Issuer in rule A1.1.2 of the Listing Rules;

“Solvency Test” has the meaning given to that term in section 4 of the Act;

“Special Resolution” means a resolution approved by a majority of at least 75% of the valid votes cast on the resolution by the Shareholders entitled to

Vote and voting on the question, and refers to a resolution of a meeting of the holders of Shares which carry Votes except where the context necessarily refers to a resolution of a meeting of a particular Class or Classes of Securities or any Relevant Group;

“Subsidiary” means

1.1.20 Defined Subsidiary: a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 inclusive of that Act); and

1.1.21 In Substance Subsidiary: an entity treated as a subsidiary or in substance subsidiary within the meaning of any financial reporting standard approved in terms of section 27(3) of the Financial Reporting Act 1993;

“Terms of Issue” means the terms or conditions attaching to a Security by agreement on or before issue whether by reference to this Constitution or as expressly set out or as implied by law or otherwise as they may be duly modified from time to time, and which determine the rights, privileges and obligations of a holder of that Security;

“Trading Participant” has the meaning given in the NZX Participant Rules;

“Treasury Stock” means Shares acquired by the Company and held as treasury stock pursuant to the provisions of the Act which enable treasury stock to be held by a company and includes shares held by a Subsidiary other than in accordance with section 82(6) of the Act;

“Unit” has the same meaning as given to the term Minimum Holding in rule A1.1.2 of the Listing Rules;

“Vineyard Management and Administration Agreement” means the vineyard management and administration agreement between Delegat's, the Company and Delegat's Group Limited and any replacement thereof;

“Vote” has the meaning given to that term in rule A1.1.2 of the Listing Rules.

1.2 **“In writing” and “Written”:** Any references to “in writing” or “written” include references to words type written, printed, lithographed, photocopied, telexed, copied by facsimile, or represented or reproduced in any other mode in a permanently visible form, or partly in one and partly another.

1.3 **Defined Terms:** Any expression not defined in this Constitution but defined in the Act or the Listing Rules shall, unless the context otherwise requires and subject to clause 1.10.3, bear the same meaning in this Constitution as in the Act or in the Listing Rules as the case may be.

1.4 **Plural and Singular and Gender:** In this Constitution, if not inconsistent with the context, words importing the singular number include the plural, and vice versa, and words importing any gender also include all other genders.

- 1.5 **Headings:** Headings and marginal notes contained in this Constitution are aids to interpretation only and do not form part of this Constitution.
- 1.6 **Statutes:** Unless the context otherwise requires, references to a statute mean any statute, act, regulation, ordinance, rule, by-law or order-in-council of New Zealand and include:
- 1.6.1 **Amendments:** amendments to that statute;
- 1.6.2 **Substitutions:** a statute passed in substitution for that statute; and
- 1.6.3 **Regulations:** regulations passed under that statute or any of its amendments or under a statute passed in substitution for that statute.
- 1.7 **Constitution Subject to Act:** The provisions of this Constitution shall apply to all the Company's business and affairs, except to the extent (if any) that such provisions contravene or are inconsistent with the Act.
- 1.8 **Constitution to Prevail in Some Instances:** If there is any conflict between:
- 1.8.1 **Provisions:** a provision of this Constitution and a provision which is expressly permitted by the Act to be altered by this Constitution; or
- 1.8.2 **Words/Expressions:** a word or expression defined or explained in the Act and a word or expression defined or explained by this Constitution;
- the provision, word or expression in this Constitution prevails.
- 1.9 **Change of Name:** A Director with approval of the Board may apply to change the name of the Company.
- 1.10 **The Listing Rules**
- 1.10.1 **Compliance with the Listing Rules:** For so long as the Company is listed on the Exchange, the Company shall comply with the Listing Rules provided that, if the Exchange has made a ruling in relation to the Company authorising any act or omission which in the absence of such ruling would be in contravention of the Listing Rules or this Constitution, that act or omission shall, unless a contrary intention appears in this Constitution, be deemed to be authorised by the Listing Rules and by this Constitution.
- 1.10.2 **Transactions not Affected:** Any failure to comply with the Listing Rules or clauses to and of this Constitution shall not itself affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by or affecting the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those provisions of this Constitution at the time of entering into the transaction or contract shall not be entitled to enforce that transaction or contract provided however that this clause does not affect the rights of any holder of Securities of the Company against the

Company, or the Directors of the Company, arising from the failure to comply with the Listing Rules or those provisions of this Constitution.

- 1.10.3 **Listing Rules to Prevail:** Nothing in this Constitution will prohibit or restrict any action which is or may be expressly permitted by the Listing Rules or the Exchange to be taken by the Company, the Board, each Director or the holders of Securities of the Company. In the event of any inconsistency between the Listing Rules and this Constitution, the Listing Rules shall prevail.

## PART II – CAPACITY AND POWERS

### 2 RESTRICTION ON ACTIVITIES

- 2.1 **Activities Restricted:** the activities of the Company are restricted to the ownership of vineyards and the growing of grapes and the holding of shares in a company or companies which has or have similarly restricted activities. For the avoidance of doubt, the activities of the Company shall not include the processing of grapes into wine or the holding of a financial interest in any entity which processes grapes as a part of its business.
- 2.2 **Use of Properties:** the Company shall not use any part of any Property suitable for growing the grapes for any purpose other than the growing and production of grapes (or any associated purpose), and shall not use any part of any Property not suitable for growing the grapes for any purpose which may prejudicially affect the growing of the grapes.

## PART III – CAPITAL

### 3 ISSUE OF SHARES

- 3.1 **Board to Issue Shares:** Subject to clause 3.2, the Board may issue Shares of the Company if 75% of Directors vote in favour of the issue at a meeting of the Board where a quorum is present.
- 3.2 **Prohibition on Issue:** No Equity Securities shall be issued unless:
- 3.2.1 the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to clause 3.4) by separate resolutions (passed by a Special Resolution) of holders of each Class of Quoted Equity Securities of the Company, whose rights or entitlements could be affected by the issue, and the issue is completed within the time specified in clause 3.3; or
- 3.2.2 the issue is made in accordance with clauses 3.5 or 3.7.
- 3.3 **Time Limit:** An issue authorised by resolutions passed pursuant to clause 3.2.1 shall be completed:
- 3.3.1 if that issue is made solely to Employees, within 36 months after the passing of those resolutions; or
- 3.3.2 in all other circumstances, within 12 months after the passing of those resolutions.
- 3.4 **Exception:** A resolution pursuant to clause 3.2.1 of the holders of a Class of Securities shall not be required if:
- 3.4.1 the terms of issue of those Securities expressly reserved the right to make the issue of the new Equity Securities in question, and specified at least the maximum number and Class of new Equity Securities which could be issued, and the time within which they could be issued; or
- 3.4.2 those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in clause 3.2.1 and the issue is approved by a resolution (passed by a Special Resolution) of holders of all the relevant Classes voting together.
- 3.5 **Pro Rata Issues:** The Company may issue Equity Securities if:
- 3.5.1 those Equity Securities are offered to holders of existing Equity Securities of the Company on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights, and that offer is Renounceable; or

3.5.2 those Equity Securities are issued to holders of existing Equity Securities of the Company as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights.

Notwithstanding clauses 3.5.1 and 3.5.2 above, the Company shall be entitled:

3.5.3 to issue any Equity Securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Directors consider equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer;

3.5.4 to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained;

3.5.5 to authorise a disproportionate offer to the extent necessary to round up a holding of Equity Securities to a Unit, or to avoid the creation of holdings which are not Units; and

3.5.6 to not offer or issue Equity Securities to holders of existing Equity Securities the terms of which expressly exclude the right to participate in the relevant offer or issue.

3.6 **Transfer of Rights:** Every person to whom unissued Equity Securities are offered pursuant to clause 3.5.1 may decline or accept the offer, or transfer their Rights thereunder to any person or persons to whom the Equity Securities, when issued, could be transferred but the Directors have the same right to decline to accept any such transfer as they would have if the transfer were a transfer of Securities, and the provisions of this Constitution as to the transfer of Securities, with all necessary modifications, apply to transfers of Rights to unissued Equity Securities.

3.7 **Other Issues:** Subject to clause 4.15, the Company may issue Equity Securities if:

3.7.1 the issue is made as consideration in an offer made by the Company in accordance with:

- (a) any takeover code approved under section 28 of the Takeovers Act 1993; or
- (b) provisions of the constitution or Trust Deed of another NZAX Issuer which comply with Listing Rules B3 when that NZAX Issuer is not a code company; or
- (c) any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least as useful to the recipients

of the offer as the requirements of one or more of the provisions referred to in clause 3.7.1(a) or (b);

and that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities in any company or other entity listed on the Exchange or a Recognised Stock Exchange which is not a company or other entity that is an Associated Person of the Company or of any Director of the Company; or

- 3.7.2 the issue is made upon Conversion of any Securities from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to Equity Securities of the kind issued; or
- 3.7.3 the issue is made to an existing holder of Equity Securities of the Company in order to bring that holder's holding up to a Unit; or
- 3.7.4 the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part XIII or Part XV of the Act; or
- 3.7.5 the issue is made pursuant to a plan for the issue of Securities in lieu of Dividends or as part of a dividend reinvestment plan that entitles an existing Security holder to subscribe for Securities by applying all or any specified part of any dividend declared by the Company and payable to that person, and which issue or dividend reinvestment plan would maintain the existing proportionate right of each existing holder relative to other holders of Equity Securities to Votes and Distribution Rights, if the offer were accepted by all such holders.

- 3.8 **Board Need Comply with Statutory Pre-emptive Rights:** Section 45 of the Act shall not apply to the Company.
- 3.9 **Notice of Meeting:** Any notice calling a meeting of an interim group for the purpose of clause 3.2 shall comply with the provisions of this Constitution and the Listing Rules as to notices of meetings.

#### **4 ACQUISITION OF OWN SHARES**

- 4.1 **Company May Acquire Own Shares:** The Company may in accordance with the Act and this Constitution purchase or otherwise acquire Shares issued by it.
- 4.2 **Acquisition of Own Securities other than Pro Rata:** Subject to this clause 4, the Company may make an offer to one or more holders of Securities of the Company to purchase or otherwise acquire Securities issued by the Company other than on a pro rata basis, in accordance with the Act.
- 4.3 **Redeemable Securities:** The Company may redeem those Securities, which by their terms of issue are redeemable, in accordance with the Act and any applicable provisions of clause 4:
  - 4.3.1 at its option; or

- 4.3.2 at the option of the holder of the Security if permitted by the terms of issue; or
- 4.3.3 on a date specified in this Constitution or the terms of issue of the Security;

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company as provided in section 68 of the Act.

4.4 **Redeemable Securities:** Subject to clauses 4.5 to 4.12 and 4.15, the Company may exercise an option to redeem Securities issued by the Company in relation to one or more holders of Securities of the Company other than on a pro rata basis, in accordance with the Act.

4.5 **Prohibition on Acquisition of Equity Securities:** Subject to clause 4.6, the Company shall not acquire Equity Securities of the Company unless the acquisition is:

- 4.5.1 effected by offers made by the Company through the Exchange's order matching market, or through the order matching market of a Recognised Stock Exchange; or
- 4.5.2 effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or
- 4.5.3 an acquisition of the nature referred to in section 61(7) of the Act; or
- 4.5.4 approved in accordance with clause 4.11; or
- 4.5.5 required by a Security holder of the Company pursuant to section 110 or 118 of the Act; or
- 4.5.6 effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act and:
  - (a) is made only from any person who is not a Director, Associated Person of a Director or Employee of the Company; and
  - (b) the total number of Equity Securities of the same Class acquired, together with all other Equity Securities that are to be acquired pursuant to this clause 4.5.6, during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date on which the Company was listed on the Exchange, to the date of the acquisition will not exceed 20% of the total number of Equity Securities of that Class on issue at the commencement of that period:

Provided that for the purposes of clause 4.5.6 Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert. Provided also that where the Conversion ratio of those Securities is fixed by reference to the market

price of the underlying Securities, the market price for the purposes of paragraph 4.5.6 shall be the average end of day market price over the 20 Business Days before the earlier of the day the acquisition is entered into, or announced to the market.

4.6 **Prior Notice of Acquisition:** Before the Company acquires Equity Securities of the Company, other than an acquisition from a holder who holds less than a Unit, the Company shall give at least three Business Days' notice to the Exchange. That notice shall:

4.6.1 specify a period of time not exceeding 12 months from the date of the notice within which the Company will acquire Equity Securities; and

4.6.2 specify the Class and maximum number of Equity Securities to be acquired in that period.

The Company may at any time during the three Business Days' notice to the Exchange, vary any notice so given and may cancel such notice at any time. The requirements of this clause 4.6 are in addition to the obligations imposed on the Company in respect of the acquisition of its own shares under the Act.

4.7 **Prohibition on Redemption:** The Company shall not redeem Equity Securities of the Company, other than a redemption from a holder who holds less than a Unit, unless:

4.7.1 those Equity Securities were issued in compliance with clause 3.2.1 or clause 3.5 and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or

4.7.2 those Equity Securities are redeemed in compliance with section 69(1)(a) of the Act; or

4.7.3 those Equity Securities are Debt Securities (as defined in the Securities Act 1978) which may be Converted into shares in the Company and, before that Conversion, they are redeemed in cash; or

4.7.4 the redemption of those Equity Securities is approved in accordance with clause 4.11.

4.8 **Prohibition on Financial Assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company unless the giving of that assistance:

4.8.1 is in accordance with the Act and complies with clause 4.9; or

4.8.2 is approved in accordance with clause 4.11.

4.9 **Permitted Financial Assistance:** The Company may give financial assistance of the nature referred to in clause 4.8 if:

4.9.1 the financial assistance is not given in whole or in part to any Director, Associated Person of a Director or Employee of the Company, and the amount of the financial assistance, together with the amount of all other

financial assistance given under this clause 4.9.1 by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Company was listed on the Exchange to the date of giving of the financial assistance, does not exceed 5% of the Shareholders' Funds of the Company; or

- 4.9.2 the financial assistance is given to Employees of the Company and:
- (a) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph 4.9.2 by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from the date on which the Company was listed on the Exchange, to the date of giving of the financial assistance, does not exceed 2% of the Shareholders' Funds of the Company; and
  - (b) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph 4.9.2 during the shorter of the period of five years preceding the date of giving of the financial assistance and the period from the date on which the Company was listed on the Exchange, to the date of giving of the financial assistance, does not exceed 5% of the Shareholders' Funds of the Company; and
  - (c) the financial assistance is not given to any Director or Associated Person of a Director; or
- 4.9.3 the financial assistance is offered or given so that all holders of Equity Securities of the Company are treated, or given the opportunity to be treated, on the same basis.

4.10 **Exception:** For the purposes of clause 4.9.2(c) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.

4.11 **Acquisition, Redemption or Assistance with Approval of Holders:** The Company may acquire Equity Securities under clause 4.5.4 or redeem Equity Securities under clause 4.7.4, or give financial assistance under clause 4.8.2, if the precise terms and conditions of the specific proposal (the "Proposal") to acquire or redeem those Equity Securities, or of the giving of that financial assistance, have been approved by separate resolutions (passed by Special Resolution) of members of each separate group of each Class of Quoted Equity Securities of the Company, whose rights or entitlements are materially affected in a similar way by the Proposal. Any such acquisition shall be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolutions.

4.12 **Treasury Stock:** The Company may in accordance with the Act and this Constitution hold any Shares acquired by it under this clause 4 and, if the Board so resolves, any such Shares shall not be deemed cancelled on acquisition provided that the number of

Shares acquired together with any Shares of the same Class held by the Company pursuant to this clause at the time of acquisition, does not exceed 5% of the Shares of that Class previously issued (excluding any Shares of that Class previously acquired and deemed to be cancelled under section 66(1) of the Act).

4.13 **Rights Attaching to Treasury Stock:** The rights attaching to any Class held by the Company under clause 4.12 shall not be exercised while the Company holds that Share.

4.14 **Re-Issue of Treasury Share:** Subject to the Act, the Company may re-issue or transfer any Shares held by the Company under clause 4.12. Such a re-issue or transfer shall be deemed to constitute an issue of Shares for the purposes of clause 3.2.

4.15 **Issues and Buybacks of Securities Affecting Control:** Notwithstanding anything else in this Constitution but subject to the Listing Rules, no issue, acquisition, or redemption of Securities shall be made by the Company if:

4.15.1 there is a significant likelihood that the issue, acquisition or redemption will result in any Person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and

4.15.2 that Person or group of Associated Persons is entitled before the issue, acquisition or redemption to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Company,

unless the precise terms and conditions of the issue, acquisition, or redemption have been approved by a Special Resolution.

## 5 TRUSTS

Except as required by law or as expressly authorised by this Constitution, no Person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or an interest in any fractional part of a Share or any other rights in respect of a Share except an absolute right to the entirety thereof in the registered holder.

## 6 SHARE CERTIFICATES

### 6.1 Issue of Share Certificates:

6.1.1 **Issue of Certificates:** Subject to clauses 6.1.2. and 6.1.5 every Shareholder shall be entitled without payment to receive, within five Business Days after issue, or registration of a transfer of Shares in the Company, a share certificate stating:

- (a) the name of the Company;
- (b) the Class of Shares held by the Shareholder; and
- (c) the number of Shares held by the Shareholder.

- 6.1.2 **Only One Certificate Required:** The Company shall not be bound to issue more than one certificate in respect of Shares held jointly by several Persons and delivery of a certificate for Shares to one of several joint holders shall be sufficient delivery to all such holders.
- 6.1.3 **Defaced and Lost Certificates:** If a Share certificate is worn out or defaced, then on production thereof to the Board it may order the same to be cancelled and may issue a new certificate in lieu thereof. If any certificate is lost or destroyed, then upon proof thereof to the satisfaction of the Board, and on such indemnity as the Board deems adequate being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.
- 6.1.4 **Cancellation of Certificate:** Upon any change in the amount paid up or credited as paid up on any Shares, or any change in the name of the Company, the Company may by resolution of the Board deem the certificates issued in respect of those Shares to be cancelled.
- 6.1.5 **No Certificate Required:** Subject to section 54 of the Securities Act 1978, the Company shall not be obliged to provide a share certificate in relation to Shares that can be transferred under a system authorised or approved under the Securities Transfer Act 1991 that does not require a share certificate for the transfer of Shares.
- 6.2 **Charges for Issue of Share Certificates:**
- 6.2.1 **No Charge for Certificates Generally:** The Company shall register transfer forms, split certificates, renunciations and transfer forms, issue certificates and transmission receipts and mark or note transfer forms without charge, except where the issue of certificates is to replace those defaced, lost or destroyed.
- 6.2.2 **Charges for Defaced and Lost Certificates:** The Board may before issuing a new certificate pursuant to clause 6.1.3, require the payment of the actual expenses of the Company of investigating and dealing with the matter as the Board thinks fit.

## 7 CALLS ON SHARES

- 7.1 **Board to Make Calls:** The Board may from time to time make such calls as it thinks fit upon the Shareholders in respect of all or any of the money which is unpaid on their Shares and which is not by the conditions of allotment thereof made payable at a fixed time or fixed times. Each Shareholder shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay the amount of every call so made on him or her to the Company or Person (if any) appointed for the purpose and at the times and places appointed by the Board. For the avoidance of doubt, it is recorded that unless expressly stated to the contrary in its Terms of Issue, liability for calls in respect of a Share will in all cases attach to the holder of such Share for the time being and not to any prior holder of the Share. A call may be made payable by instalments and may be revoked or postponed, as the Board may determine from time to time.

- 7.2 **Time Call Made:** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.
- 7.3 **Liability of Joint Holders:** The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.
- 7.4 **Interest on Calls:** If the sum payable in respect of any call or instalment is not paid on or before the day appointed for payment thereof, the Person from whom the sum is due shall be liable to pay interest on the sum from the day appointed for the payment thereof to the time of actual payment, at such rate as the Board may determine. The Board shall be at liberty to waive payment of that interest wholly or in part.
- 7.5 **Sums Due on Issue Are Calls:** Any sum which by the terms of any prospectus or by the Terms of Issue of a Share becomes payable on issue or at any fixed date or which is payable by instalments, shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which, under the terms of the prospectus or by the Terms of Issue, the same becomes payable, as if it were a call duly made by the Board, and of which due notice has been given, and all the relevant provisions of this Constitution with respect to the payment of calls. In the case of non-payment the payment of interest and expenses and forfeiture of Shares for non-payment of calls, shall apply as if the amount had become payable by virtue of a call duly made and notified.
- 7.6 **Power to Differentiate Between Holders:** The Board may, by the Terms of Issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 7.7 **Payment of Call in Advance:** The Board may, if it thinks fit, receive from any Shareholder willing to advance the same, all or any part of the money uncalled and unpaid upon any Shares held by him or her, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate as may be agreed upon between the Shareholder paying the sum in advance and the Board. The Board may at any time repay to any Shareholder the whole or any portion of any money so advanced upon giving such Shareholder at least one month's notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid. No Shareholder shall be entitled as of right to any payment on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance shall not be taken into account in ascertaining the amount of any Dividend or other Distribution payable upon the Shares concerned or the voting rights in respect of the Shares concerned.
- 7.8 **Proof of Liability:** The amount of any unpaid call may be recovered as a debt due from the Shareholder to the Company by proceedings commenced at any time after the call becomes payable. In any such proceedings it shall be sufficient to prove that:
- 7.8.1 **Name on Register:** the name of the Shareholder sued is entered in the Register as the holder or one of the holders of the Share in respect of which such debt accrued;
- 7.8.2 **Resolution:** a resolution of the Board making the call was duly recorded in the minute book; and

7.8.3 **Notice:** notice of such call was duly given to the Shareholder sued.

It shall not be necessary to prove the appointment or qualification of any member of the Board that made such call nor any other matter whatsoever. The proof of the matters aforesaid shall be conclusive evidence of the debt.

7.9 **Cancellation of Unpaid Amounts:** No obligation to pay any amount which is unpaid on any Share shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution passed in accordance with clause 20.2.6.

## 8 COMPANY'S POWER TO FORFEIT OR SELL SHARES

### 8.1 Forfeiture of Shares:

8.1.1 **Notice Requiring Payment of Calls:** If a Shareholder fails to pay any call or instalment of a call on or by the day appointed for payment the Board may, at any time thereafter, serve a notice on that Shareholder requiring payment of the amount unpaid, together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.

8.1.2 **Notice to State Time and Place:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment on or before the time appointed, the Shares in respect of which the amount was owing will be liable to be forfeited.

8.1.3 **Forfeiture on Non-Compliance:** If the requirements of any such notice are not complied with, any Share in respect of which the notice has been given may be forfeited at any time before the required payment has been made, by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and other Distributions declared in respect of the forfeited Shares and not actually paid before the forfeiture.

8.1.4 **Company May Dispose of Forfeited Share:** A forfeited Share shall be deemed to be the property of the Company and may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit, and the provisions of clause 8.3.4 shall apply (with all necessary modifications) in relation to any such sale or other disposition. The Board may at any time before such Share is disposed of, cancel the forfeiture upon such terms and conditions as it may approve.

8.1.5 **Consequences of Forfeiture:** 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 amounts which, at the date of forfeiture, were payable by that Person to the Company in respect of the Shares, but that liability shall cease if and when the Company receives payment in full of all such amounts.

8.1.6 **Notice of Forfeiture:** On the forfeiture of any Share the Board shall cause a note of such forfeiture and the date thereof to be entered in the

Register and shall cause notice of such forfeiture and the date thereof to be sent to the Shareholder in whose name the Share stood immediately prior to the forfeiture and shall upon the disposal of any forfeited Share cause a note of the manner and date of such disposal to be similarly entered in the Register.

- 8.1.7 **Title to Forfeited Share:** A written statutory declaration given by a Director that a Share has been duly forfeited on a date stated shall be conclusive evidence of the facts stated in the declaration as against all Persons claiming to be entitled to the Share.
- 8.1.8 **Validity of Sale:** The Company may receive the consideration, if any, given for the forfeited Share on any sale or disposition thereof and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of. The Person to whom the Share is sold or disposed of shall be entered upon the Register as the holder of the Share and shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or other disposal of the Share. If the certificate for the forfeited Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered up, whereupon the latter shall be deemed to have been cancelled.
- 8.1.9 **When Forfeiture Applies:** The provisions of these clauses 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.
- 8.2 **Surrender of Shares:** The Board may accept from any Shareholder a surrender of that Shareholder's Shares which are liable to forfeiture or any part thereof upon such terms as may be agreed upon between the Shareholder and the Board.
- 8.3 **Company's Lien:**
  - 8.3.1 **When Lien Imposed:** The Company shall have a first and paramount lien upon all the Shares that are registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale thereof for any amount payable in respect of the Shares and interest thereon, and sale expenses owing to the Company in respect of such Shares and also for such amounts (if any) as the Company may be called upon to pay under any statute in respect of Shares of that Shareholder, whether the period for the payment, fulfilment or discharge thereof respectively shall have actually arrived or not, and no equitable interest in any Share shall be created except upon the basis and condition that clause 6 is to have full effect and such lien shall extend to all Dividends and other Distributions from time to time declared in respect of such Shares.
  - 8.3.2 **Registration to Operate as Waiver:** The registration of a transfer of Shares on which the Company has any lien shall, unless notice to the contrary shall first be given to the transferee, operate as a waiver of the Company's lien, if any, on such Shares.

- 8.3.3 **Sales of Shares Subject to Lien:** The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Person entitled thereto by reason of the registered holder's death or bankruptcy.
- 8.3.4 **Title to Shares Sold Subject to Lien:** To give effect to any such sale the Board may authorise any Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and thereupon shall be the holder of such Shares and discharged from all calls due prior to such purchase. The purchaser shall not be bound to see to the application of the purchase money, nor shall his or her title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any Person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for the forfeited Shares is not delivered up to the Company the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered up, whereupon the latter shall be deemed to have been cancelled.
- 8.4 **Power to Sell Where Less Than Unit of Shares:**
- 8.4.1 **Notice to Shareholder Holding Less Than a Unit of Shares:** Where the number of Shares registered in the name of a Shareholder is less than a Unit of Shares the Board may at any time give written notice of that fact and of the provisions of clause 8.4.2 to the Shareholder.
- 8.4.2 **Power of Sale:** The Company may, at any time after the expiration of three months after the date of a notice given under clause 8.4.1, if the Shares then registered in the name of the Shareholder are less than an Unit of Shares, sell the Shares, and account to the Shareholder for the proceeds of sale after deduction of reasonable sale expenses.
- 8.4.3 **Provisions Relating to Sale:** To give effect to any sale under clause 8.4.2 the Board may authorise any Person to transfer the Shares sold to the purchaser thereof. The purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any Person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for the Shares sold is not delivered up to the Company, the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered up, whereupon the latter shall be deemed to have been cancelled.
- 8.5 **Evidence of Power of Sale or Forfeiture:** A written statutory declaration of a Director that a power of sale under this clause 8 has arisen and is exercisable by the Company or that a Share has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

## 9 APPLICATION OF PROCEEDS OF SALE

The proceeds of sale of any Shares sold under clause 8 shall be applied as follows:

- 9.1 **Expenses:** first, in payment of any expenses incurred in relation to the sale;
- 9.2 **Unpaid Calls:** secondly, in satisfaction of any unpaid calls, instalments or premiums, interest thereon, expenses and any other money in respect of which a lien existed; and
- 9.3 **Residue:** the residue (if any) shall be paid to, or in accordance with a direction of, the Person who was the holder of the Shares immediately before the sale or surrender of the Person's certificate for the Shares or the executors or administrators or assigns of that Person.

## 10 TRANSFER OF SHARES

10.1 **Power to Transfer:** Subject to clause 10.3 and any applicable law, any Shareholder may transfer all (if all constitute a single unit) or any such number that comprise a Unit of his or her Shares together with (but subject to the Terms of Issue) any liability in respect of unpaid calls, by instrument of transfer complying with clause 10.2, or by using a wholly or partly electronic system for the transfer of securities which has been approved by any statute.

### 10.2 Form of Transfer:

10.2.1 **Securities Transfer Act:** Any Shares disposed of by an "authorised transaction" within the meaning of those terms in the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act.

10.2.2 **Transfers Executed Outside New Zealand:** Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation or by some other method required by law for entering into an obligation by deed as transferor or if the signature of the transferor who is an Individual has been witnessed by an Individual who has added his or her occupation and address after his or her signature.

10.2.3 **Other Transfers:** Every instrument of transfer not falling within the provisions of clauses 10.1, 10.2.1 or 10.2.2 shall comply with the following provisions:

- (a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;
- (b) the instrument of transfer shall be signed or executed by the transferor or the transferor's representative;

- (c) if registration of the transfer imposes any liability on the transferee, as holder of the shares, to the Company the instrument of transfer shall be signed or executed by the transferee;
  - (d) except where execution is under the common seal of a corporation or by some other method required by law for entering into an obligation (by deed), every signature to the instrument of transfer shall be witnessed by an Individual who shall add his or her occupation and address after his or her signature.
- 10.2.4 **No Fee:** No fee shall be payable to the Company upon any transfer of Shares.
- 10.2.5 **Transfer Effective on Registration:** The transferor of a Share shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect thereof.
- 10.3 **Power to Refuse or Delay Registration:** The Board may, in its absolute discretion, refuse or delay registration of a transfer of any Shares if:
  - 10.3.1 **Lien:** the Company has a lien on the Shares; or
  - 10.3.2 **Unit of Shares:** the registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than an Unit of Shares.
- 10.4 **Deposit of Transfer for Registration:** Every instrument of transfer shall be delivered to the Office or the office of the agent of the Company which maintains the Register for registration.

## 11 TRANSMISSION OF SHARES - DEATH

- 11.1 **Persons Recognised on Death of Shareholder:** In the case of the death of a Shareholder, the survivor, or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he or she was the sole holder, shall be the only Persons recognised by the Company as having any title to the deceased's interest in the Shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by him or her with any other Person or Persons.

## 12 TRANSMISSION OF SHARES - REGISTRATION

- 12.1 **Registration on Death, Bankruptcy or Mental Disorder:**
  - 12.1.1 **Manager or Personal Representative:** Any Person appointed pursuant to the Protection of Personal Property Rights Act 1988 to be in charge of the affairs of a mentally disordered Shareholder or any Person becoming entitled to Shares in consequence of the death or bankruptcy of a Shareholder, may, upon such evidence being produced as may from time to time be properly required by the Board and subject as hereinafter provided, elect either to be registered as the holder of the Shares or to

nominate some other Person as the transferee of the Shares but the Board shall, in either case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the Shares by that Shareholder before that Shareholder becoming mentally disordered or before that Shareholder's death or bankruptcy, as the case may be.

12.1.2 **Notice in Writing:** If the Person so becoming entitled elects to be registered as the holder of the Shares, then that Person shall deliver or send to the Company a notice in writing signed by that Person stating that that Person so elects. If that Person elects to have another Person registered that election shall be testified by that Person executing in favour of the other Person a transfer of the Shares. All the limitations, restrictions and provisions of this Constitution relating to the right to transfer and the registration of transfers of Shares shall be applicable to any such notice or transfer as aforesaid as if the mental disorder, death or bankruptcy of the Shareholder had not occurred and the notice of transfer were a transfer signed by that Shareholder.

12.1.3 **Entitlement to Distributions and Other Rights:** Where the registered holder of any Shares becomes mentally disordered, dies or becomes bankrupt that Person's personal representative or the assignee of that Person's estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the Board, be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if the registered holder had not died or become bankrupt. Where two or more Persons are jointly entitled to any Shares in consequence of the death of the registered holder they shall, for the purposes of this Constitution, be deemed to be joint holders of the Shares.

### 13 NON-FINANCIAL SHAREHOLDER BENEFITS

Each Shareholder is entitled to be a member of the Oyster Bay Shareholders Wine Club, although entitlement to benefits from membership of the Oyster Bay Shareholders Wine Club only arises if a Shareholder holds at least 2,500 Shares.

### 14 SHARE REGISTER

14.1 **Share Register:** Subject to section 88 of the Act, the Board may divide the share register into two or more registers to be kept in different places.

#### 14.2 **Registration of Shareholdings in Parcels:**

14.2.1 **Separate Parcels:** The share registrar of the Company, on request by a Shareholder, or proposed transferee, may register a shareholding in separate parcels, provided they are a minimum of a Unit, identified by a distinguishing word, number or other parcel differentiator. Where a Shareholder's shareholding is so registered, the Company may communicate separately with the Shareholder in respect of each parcel, pay Dividends and Distributions and otherwise act, so far as the Board

considers convenient, as if the separate parcels belonged to different Shareholders.

- 14.2.2 **Apportionment of Parcels According to Relevant Interests:** If a Defaulter (for the purposes of clauses 11 and 14) holds its Relevant Interests in a parcel of Securities in which there are also Relevant Interests held by persons who are not Defaulters, on request by the Shareholder holding the Securities the proportion of the parcel equal to the proportion which the Defaulter's Relevant Interests bear to the Relevant Interests of the other persons, may be registered as a separate parcel under clause 14.2.1. For so long as the Board is reasonably satisfied as to the fairness of the determination of the relevant proportions (recognising the dissimilarities there may be among types of Relevant Interest) the Defaulter may be treated by the Company as not having Relevant Interests in the other parts of the parcel.

## 15 ALTERATION OF RIGHTS OF HOLDERS OF SECURITIES

- 15.1 **The Act:** The Company shall comply with the provisions of sections 116 and 117 of the Act. For the purposes of this clause, those sections shall be deemed to be modified so that:

15.1.1 **References:** references in those sections to “shares” shall (subject to clause 15.2 be deemed to include reference to all Equity Securities of the Company, and reference to “shareholders” shall be read accordingly;

15.1.2 **Equity Securities not Shares:** in respect of Equity Securities of the Company which are not Shares:

- (a) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of Votes of the holders of those Equity Securities entitled to vote and voting; and
- (b) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

- 15.2 **Exception:** The Company shall be required by clause 15.1 to comply with sections 116 and 117 of the Act but shall not be required by the modifications deemed to be made by clause 15.1 above, to comply with those sections in respect of actions that affect the rights attached to:

15.2.1 Equity Securities of the Company which are not Quoted; or

15.2.2 Equity Securities of the Company which are not shares if those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

- 15.3 **Issue of Shares:** For the purposes of section 117(3) of the Act the issue of further Shares ranking equally with, or in priority to, existing Shares, whether as to voting rights or Distributions, is permitted provided such issue is made in accordance with this Constitution.

## 16 PRE BREAK DISCLOSURE

- 16.1 **Pre Break Announcement:** The Company shall not:

- 16.1.1 issue or buy back any Equity Securities;
- 16.1.2 confer an entitlement to holding the security of a third party; or
- 16.1.3 enter into any transaction; or
- 16.1.4 otherwise do any act or thing,

specified in Appendix 1 of the Listing Rules (together referred to as “transaction”) otherwise than in accordance with the provisions set out in Appendix 1 for the entering into or conduct of such transactions, unless, at least ten Business Days prior to the entering into or conducting such transaction, or prior to such transaction becoming unconditional, as the case may be, the Company has released a Pre Break Announcement to the Market.

- 16.2 **No Special Meeting:** On the expiration of the period of ten Business Days referred to in clause 16.1, the Company may proceed with the transaction if, but only if:

- 16.2.1 no special meeting of the Shareholders has been called pursuant to section 121 of the Act within that ten Business Day period; or
- 16.2.2 a special meeting has been called under clause 16.2.1, at that special meeting the transaction has been approved by the requisite majority.

- 16.3 **Exchange Approval:** Such Pre Break Announcement shall be provided to the Exchange for approval, pursuant to Listing Rule B1.1.A.2.

## PART IV – GENERAL MEETINGS

### 17 GENERAL MEETINGS

#### 17.1 Annual Meetings:

17.1.1 **Annual Meeting:** The Board shall in each calendar year, not later than six months after the balance date of the Company, call a meeting of Shareholders in addition to any other meetings in that year, and shall specify the meeting as the annual meeting in the notice calling it.

17.1.2 **Maximum 15 Months Between Meetings:** No more than 15 months shall elapse between the date of one annual meeting of Shareholders and that of the next.

17.1.3 **Board to Appoint Time and Place:** Subject to the provisions of the Act, all meetings of Shareholders shall be held at such time and place as the Board appoints.

17.1.4 **Other Meetings:** All meetings of Shareholders other than annual meetings shall be called special meetings.

17.2 **Special Meetings:** Whenever it thinks fit, the Board may convene a special meeting, and special meetings shall also be convened on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

17.3 **Attendance at Meetings:** Equity Security holders of all Classes shall be entitled to attend meetings of holders of Equity Securities carrying Votes.

17.4 **Methods of Holding Meetings:** A meeting of shareholders may be held either:

17.4.1 **Shareholders Present:** by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

17.4.2 **Audio/Visual Meetings:** if determined by the Board, 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.

17.5 **Powers Exercisable by Special Resolution:** Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders shall be exercised by way of Special Resolution.

## 18 NOTICE OF GENERAL MEETINGS

### 18.1 Method and Format of Notice:

18.1.1 **Written Notice:** Written notice of the time and place of a meeting of Shareholders must be sent to every Security holder entitled to receive notice of meetings and to every Director and Auditor of the Company not less than 10 Business Days before the meeting.

18.1.2 **Notice to State Nature of Business:** The notice calling any meeting of Shareholders must state 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 and set out the text of any Special Resolution to be submitted to the meeting.

18.1.3 **Resolutions:** So far as is reasonably practicable, resolutions shall be framed in a manner which enables Shareholders to instruct a Proxy to vote either for or against any resolution.

### 18.2 Persons to Whom Notice to be Given: Notice of every meeting of Shareholders shall be given in any manner authorised by clause 33 to:

18.2.1 **Shareholders:** every Shareholder eligible to receive notice pursuant to clause 18.3.1 or 18.3.2;

18.2.2 **Representatives:** every Person (of whom the Company has due notice) upon whom the ownership of Equity Securities has devolved by reason of his or her being the manager, or a legal personal representative, or an assignee in bankruptcy of a holder of Equity Securities, where the holder of Shares but for his or her mental disorder, or for his or her death or bankruptcy, as the case may be, would be entitled to receive notice of the meeting;

18.2.3 **Directors and Auditor:** the Directors and the Auditor;

18.2.4 **Exchange:** where required under the Listing Rules, the Exchange; and

18.2.5 **Other Persons:** any other Person entitled under contract, the provisions of the Act or this Constitution to receive such notice.

No other Person shall be entitled to receive notice of meetings of Shareholders.

### 18.3 Register Conclusive: The Shareholders entitled to receive a notice of meeting shall:

18.3.1 **Shareholders on Fixed Date:** if the Board fixes a date for the purpose of determining the entitlement, be those Shareholders entered in the Register on that date; or

18.3.2 **Shareholders on Day Before Notice is Given:** if the Board does not fix a date, be those Shareholders entered in the Register at the close of

business on the day immediately preceding the day on which the notice is given;

provided that the Board shall not fix a date under this clause if such date precedes by more than 30 Business Days or less than 15 Business Days the date upon which the meeting is to be held.

- 18.4 **Omission of Notice:** The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 18.5 **Notice Irregularity:** Any irregularity in a notice of meeting shall be waived if all of 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.
- 18.6 **Form of Proxy to be Included with Notice of Meeting:** The Company shall send a proxy form complying with clauses 20.3.4, 20.3.5 and 20.3.9 to every Shareholder entitled to attend and vote at a meeting of the Company with the notice convening the meeting. In every such notice, there shall appear with reasonable prominence a statement that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a Proxy to attend and vote instead of him or her and that a Proxy need not be a Shareholder of the Company.

## 19 PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

### 19.1 Quorum:

- 19.1.1 **Quorum Required:** Subject to clause 19.1.2, no business shall be transacted at any meeting of Shareholders unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as is otherwise provided in this Constitution, the quorum for a meeting shall be 10 Shareholders and having the right to vote at the meeting present in Person or by Proxy, Attorney, or Representative.
- 19.1.2 **Quorum Not Present:** If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders under section 121 of the Act, shall be dissolved; in any other case the meeting shall stand adjourned to the same day in the following week, at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the Shareholder or Shareholders having the right to vote at the meeting who are present in Person or by Proxy, Attorney or Representative at the meeting shall be a quorum.

### 19.2 Chairperson:

- 19.2.1 **Chairperson of Board to be Chairperson:** The Chairperson if any, must, if present, preside as chairperson of every meeting of the Shareholders, unless or except to the extent that the Chairperson considers it not proper or desirable to act as Chairperson, either in

relation to the entire meeting or in relation to any particular business to be considered at the meeting.

- 19.2.2 **Directors to Appoint Chairperson:** If no Chairperson has been elected, or if at any meeting, the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as Chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may choose one of their members to be chairperson of the meeting.
- 19.2.3 **Shareholders to Appoint Chairperson:** If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to be chairperson of the meeting.
- 19.3 **Regulation of Procedure:** Subject to the provisions of the Act, and except as provided in the Constitution, the Chairperson may regulate the proceedings at meetings of Shareholders.
- 19.4 **Powers to Adjourn Meetings:**
  - 19.4.1 **Chairperson's Power to Adjourn:** The Chairperson of any meeting at which a quorum is present may, with the consent of the meeting (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place.
  - 19.4.2 **Business at Adjourned Meeting:** No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
  - 19.4.3 **Notice of Adjourned Meeting:** When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 19.5 **Powers to Dissolve Meetings:**
  - 19.5.1 **Chairperson may Adjourn or Dissolve:** If any meeting shall become so unruly, disorderly or inordinately protracted that in the opinion of the Chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the Chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may in his or her sole and absolute discretion and without giving any reason therefore, either adjourn or dissolve the meeting.
  - 19.5.2 **Unfinished Business:** If any meeting is dissolved by the Chairperson pursuant to clause 19.5.1, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of any resolution not voted upon by the meeting concerning the remuneration of the Auditor, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the Auditor; and
- (b) the Chairperson may direct that any item of business which is uncompleted at the meeting and which in his or her opinion requires to be voted upon be put to the vote by a poll without further discussion in accordance with clause 19.7.

19.6 **Voting:**

19.6.1 **Show of Hands or Voice:** In the case of a meeting of Shareholders held in accordance with clause 17.4.1, unless a poll is demanded, any voting at any meeting shall be by show of hands or voice vote (as the Chairperson may direct).

19.6.2 **Voice Vote:** In the case of a meeting of Shareholders held in accordance with clause 17.4.2, unless a poll is demanded, voting at any such meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

19.6.3 **Passage of Resolution:** A declaration by the Chairperson that a resolution has on a show of hands or on a voice vote been carried by the requisite majority, shall be conclusive evidence of the fact unless a poll is demanded.

19.7 **Polls:** At a meeting, a poll may be demanded by:

19.7.1 **Five Shareholders:** not less than five Shareholders having the right to vote at the meeting; or

19.7.2 **Shareholders Representing 10% of Voting Rights:** 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

19.7.3 **Shareholders Holding 10% of Capital:** 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 the Shares that confer that right; or

19.7.4 **Chairperson:** the Chairperson.

19.8 **Poll May be Demanded Before or After Show of Hands or Voice Vote:** A poll may be demanded either before or after the vote by show of hands or voice vote.

19.9 **Poll Procedure:** A poll shall be taken in such manner as the Chairperson directs.

19.10 **Votes Attached to Shares Counted in a Poll:** If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or represented by Proxy or otherwise and voting. The result of a poll declared

by the Chairperson of the meeting shall be deemed to be the resolution of the meeting at which the poll was demanded.

- 19.11 **Chairperson Allowed Casting Vote:** In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the Chairperson of the meeting shall be entitled to a second or casting vote.
- 19.12 **Different Polls to be Taken at Different Times:** A poll demanded on the election of a Chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs, and the meeting may proceed to deal with any business other than that upon which a poll has been demanded, pending the taking of the poll.
- 19.13 **Proxy Allowed to Demand a Poll:** 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 shall have the same effect as a demand by the Shareholder.
- 19.14 **Directors May Attend Meetings:** Each Director shall be entitled to attend every meeting of Shareholders notwithstanding that he or she is not a Shareholder of the Company.
- 19.15 **Notices, Reports, Financial Statements:** Holders of Equity Securities of all Classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.
- 19.16 **No Postal Votes:** Unless the Board determines otherwise, clause 7 of the First Schedule to the Act providing for postal votes shall not apply to the Company.

## 20 VOTES OF MEMBERS

### 20.1 Power to Vote:

20.1.1 **General Power:** Subject to any rights or restrictions for the time being attaching to any Class or Classes of Shares and to any restrictions in this Constitution, every holder of Shares present in person or by Proxy, Attorney, or Representative shall be entitled:

- (a) on a vote by voices or show of hands, to one vote; and
- (b) on a poll:
  - (i) to one vote for each Share held by such Shareholder the issue price of which is fully paid; or
  - (ii) in respect of each Share held by such Shareholder the issue price of which is not fully paid, a proportion of the vote which would be exercisable if the issue price of such Share were fully paid, equivalent to the proportion of the total issue price of such Share which has been paid.

- 20.1.2 **Joint Holders Right to Vote:** In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by Proxy, Attorney, or Representative, shall be accepted to the exclusion of the votes of the other joint holders. For this purpose seniority shall be determined by the order in which their names appear in the Register.
- 20.1.3 **Votes of Personal Representatives:** Where two or more persons are entitled under sections 93 or 94 of the Act to be registered as holder of Shares of a deceased or bankrupt Shareholder, the right of one of them to vote shall be determined by the order in which their names appear in the Register.
- 20.1.4 **Shareholders within Protection of Personal and Property Rights Act:** A Shareholder who is a mentally disordered Person (within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992) and who is subject to assessment or a compulsory treatment order or a Shareholder who is subject to the jurisdiction of the Family Court under the Protection of Personal and Property Rights Act 1988 or whose Shares are subject to a property order or an administration order thereunder, may vote by his or her manager, administrator, welfare guardian or other Person having authority to administer his or her estate. Any such manager, administrator, welfare guardian or other Person as aforesaid may vote whether on voices or on a show of hands or on a poll may vote by Proxy.
- 20.1.5 **Other Shareholders Not Able to Manage Their Own Affairs:** The provisions of this clause apply in respect of Shareholders who are not subject to the jurisdiction of the Family Court under the Protection of Personal and Property Rights Act 1988 and to whom the provisions of clause 20.1.4 are accordingly not applicable. Every such member who would if ordinarily resident in New Zealand, be subject to the jurisdiction of the Family Court under the Protection of Personal and Property Rights Act 1988 or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on voices or on a show of hands or on a poll by his or her committee, receiver, or curator bonis or other Person in the nature of a committee, receiver, or curator bonis or appointed by that court and any such committee, receiver, curator bonis or other Person may on a poll vote by Proxy.
- 20.1.6 **Share Subject to Unpaid Calls:** A Shareholder who holds Shares in respect of which any calls or other sums presently payable by it, him or her to the Company have not been paid shall only be entitled to exercise a fraction of the Vote which would be exercisable if the Shares were fully paid. The fraction shall be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).
- 20.1.7 **Votes Need Not be Cast in Same Way:** On a poll a Shareholder (including a Proxy) entitled to more than one vote need not use all its, his or her votes or cast all the votes it, he or she uses in the same way.

20.2 **Restriction on voting:**

20.2.1 **Restriction:** Notwithstanding anything to the contrary in this Constitution or the Listing Rules, on any resolution of the nature listed in column 1 of the table below, no Vote in favour of a resolution shall be cast on any Securities held by a Person of the nature listed in respect of that resolution in column 2 of the table below, or by any Associated Person of such a Person.

<b>Column 1 RESOLUTION</b>	<b>Column 2 DISQUALIFIED PERSON</b>
Resolution under clause 21.11 (Directors' Remuneration)	The Director intended to receive a payment upon cessation of office.
Resolution under clause 3.2 (Issue of Securities)	Subject to clause 20.2.2:  (a) Any Person to whom it is proposed to issue the new Securities referred to in the resolution; or  (b) If the resolution does not specify the persons to whom it is proposed to issue Securities, any Director who is not excluded by the terms of the resolution from participation in the issue.
Resolution under clause 3.2 to approve a Rights issue of Equity Securities which is not Renounceable.	Any Director and any Associated Person of the Company.
Resolution under clause 3.7.2(c) (Ratification of Issue)	Any Person who has been issued, or has acquired, Securities the subject of ratification by that resolution.
Resolution under clause 3.8 (Issue to employees)	Any Director intended or likely to benefit from the issue referred to in the resolution.
Resolution under clause 4.15 (Approval of issues, buybacks and redemptions affecting control)	Any Person whose effective control of the Company would be materially increased.
Resolution under clause 26.10 (Related party transaction)	Any Related Party who or which is a party or beneficiary (in terms of clause 26.10.1(a) or 26.10.1(b)) to or of the transactions the subject of the resolution.
Resolution under clause 7.9 (Reduction, cancellation, or deferral of amount unpaid on Equity Securities)	Any person who is intended to benefit from the reduction, deferral or cancellation, unless the reduction, deferral or cancellation benefits all holders of Equity Securities of the Company on the same basis.

- 20.2.2 **Exception:** On a resolution under clause 3.2, a Person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from Voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that Person.
- 20.2.3 **Proxies or Representatives:** Clause 20.2.1 shall not prevent a Person disqualified from Voting under that clause, who has been appointed as a proxy or Voting representative by another Person who is not disqualified from Voting under that clause, from Voting in respect of the Securities held by that other Person in accordance with the express instructions of that other Person.
- 20.2.4 **Discovery of Disqualified Persons:** The Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in clause 20.2.1, the identity of holders of Securities who are disqualified from Voting on that resolution pursuant to clause 20.2.1, and on request shall supply a list of such holders to the Exchange and any holder of Equity Securities of the Company.
- 20.2.5 **Deadline for Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of clause 20.2.1, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 20.2.1. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to clause 20.2.4 shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.
- 20.2.6 **Further Restrictions:** Notwithstanding anything to the contrary in this Constitution or the Listing Rules, on any resolution of the nature listed in column 1 of the table above, no Vote in favour of a resolution shall be cast on any Securities held by a person of the nature listed in respect of that resolution in column 2 of the table above, or by any Associated Person of such a person.
- 20.3 **Proxies:**
- 20.3.1 **Votes by Proxy:** A Shareholder may exercise the right to vote at a meeting either by being present in person or by Proxy.
- 20.3.2 **Proxy May Attend Meeting:** A Proxy is entitled to attend and be heard at a meeting as if the Proxy were the Shareholder.
- 20.3.3 **Appointment of Proxy to be in Writing:** A Proxy must be appointed by a notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or for a specified period not exceeding 12 months. A Proxy need not be a Shareholder.

20.3.4 **Form of Proxy:** A notice appointing a Proxy shall be in the following form or in such other form as the Board may approve –

I \_\_\_\_\_ of \_\_\_\_\_ being a shareholder of OYSTER BAY MARLBOROUGH VINEYARDS LIMITED hereby appoint \_\_\_\_\_ or failing him or her \_\_\_\_\_ as my proxy to vote for me and on my behalf at the meeting of shareholders to be held on the \_\_\_\_\_ day of [ \_\_\_\_\_ ], and at any adjournment thereof.

SIGNED this \_\_\_\_\_ day of [ \_\_\_\_\_ ].

This form is to be used in favour of/against the resolution (strike out the inappropriate words)

Unless otherwise instructed the Proxy will vote or abstain from voting as he or she thinks fit.

20.3.5 **Proxy Not to be Named:** The Company shall not issue any proxy form with a Proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain Persons are willing to act as a Proxy if a Shareholder desires to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the Directors for the time being of the Company.

20.3.6 **Validity on Death or Mental Disorder:** A vote given in accordance with the terms of a notice of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy is given or the transfer of the Share in respect of which the proxy is given, if no intimation in writing of such death, mental disorder, revocation, or transfer has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or has been handed to the Chairperson of the meeting before the vote is given.

20.3.7 **Notice of Proxy to be Lodged 48 Hours Before Meeting:** No Proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not less than 48 hours before the time of the meeting in the manner set out in clause 20.3.8.

20.3.8 **Notice of Proxy to be Lodged in Particular Manner 48 Hours Before Meeting:** A copy of the written notice appointing a Proxy and a copy of the power of attorney or other authority, if any, under which it is signed or, if required by the Board, a notorially certified copy of that power or authority shall be deposited at the Office or at such other place within New Zealand as is specified for that purpose in the Notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the Person named in the notice proposes to vote.

20.3.9 **Proxy Form to Allow Vote For or Against:** A proxy form shall (to the extent that the subject matter and form of the relevant resolution

reasonably permits) allow Shareholders to instruct the Proxy to vote either for or against any resolution.

- 20.4 **Corporations Acting by Representatives at Meeting:** Any corporation which is a Shareholder, or an Attorney of a Shareholder, of the Company may by resolution of its directors or other governing body authorise such Individual as it thinks fit to act as its representative at any particular meeting of Shareholders, or any particular meeting of any Class of Shareholders, or at all such meetings until notice of revocation of such authority shall have been given to the Company and any Individual so authorised shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as that corporation could exercise if it were an individual Shareholder of the Company.
- 20.5 **Appointment of Attorney:** Any Shareholder may at any time and from time to time by power of attorney appoint any Person to be his or her attorney to attend meetings of the Company and on behalf of the Shareholder to vote and generally to act for the Shareholder in the capacity as such as fully and effectually to all intents and purposes as such Shareholder could do if present in person or by Proxy or Representative.

## PART V – DIRECTORS

### 21 DIRECTORS

- 21.1 **Number of Directors:** The number of Directors shall be five or such other number as is fixed by a Special Resolution and approved by a resolution of 75% of the Directors, provided however there shall always be at least two (2) Directors who must be ordinarily resident in New Zealand.
- 21.2 **Existing Directors to Continue:** The persons holding office as Directors on the date of adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.
- 21.3 **No Shareholding Qualification for Directors:** An Individual shall not be required to hold Shares in order to make him or her eligible for appointment as a Director or as an Alternate Director.
- 21.4 **Nominations for Appointment:** No Individual (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders unless that Individual has been nominated by a Shareholder entitled to attend and vote at the meeting and notice in writing of the nomination has been left at the Office signed by a Shareholder duly qualified to attend and vote at the meeting for which the notice is given. The opening date for nominations shall be no later than a date three months before and the closing date for nominations shall be no earlier than two months before the date of the meeting at which the election is to take place. There shall be no restriction on the Persons who may be nominated as Directors, nor shall there be any precondition to the nomination of a Director other than the time limits in this clause.
- 21.5 **Notice of Nomination:** Notice of every nomination shall be given by the Company to all Persons entitled to attend the meeting together with, or as part of, the notice of meeting.
- 21.6 **Appointment of Directors:** Other than a Director appointed pursuant to clause 21.9, the Directors shall be appointed by an Ordinary Resolution at a meeting of Shareholders.
- 21.7 **Rotation of Directors:**
- 21.7.1 **Number to Retire:** At the annual meeting of Shareholders in every year at least one third of the Directors' or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected. A retiring Director shall if re-elected be deemed to have held office until he or she is re-elected. If a retiring Director is not re-elected, he or she shall be deemed to have held office until the meeting at which he or she retires, or any adjournment thereof, elects someone in his or her place or, if the meeting does not do so, until the end of that meeting or any adjournment thereof. Subject to clause 21.12, a retiring Director shall be eligible for re-election.

21.7.2 **Term of Appointment:** No term of appointment of an Executive Director of the Company shall exceed five years. This provision shall not preclude reappointment of an Executive Director upon expiry of a term of appointment, and shall not affect the terms of engagement of that Executive Director as an employee.

21.8 **Appointment Voted on Individually:** No resolution to appoint a Director shall be put to Shareholders unless:

21.8.1 the resolution is for the appointment of one Director; or

21.8.2 the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote cast against it.

Nothing in this clause prevents the election of two or more Directors by ballot or poll.

21.9 **Power to Appoint to Fill Casual Vacancy:**

21.9.1 **Board's Powers:** The Board shall have the power at any time when their number is reduced below the number fixed by clause 21.1 to appoint any Individual to be a Director, either to fill a casual vacancy or as an addition to the existing Directors. Any Director so appointed shall hold office only until the next annual meeting of Shareholders, and shall then be eligible for re-election, but shall not be taken into account in determining the number of Directors who are to retire by rotation at that meeting.

21.10 **Resignation and Removal of Directors:**

21.10.1 **Resignation:** A Director may resign from office at any time by tendering to the Company a written notice of resignation or by announcing the same at a meeting of the Board. A resignation by written notice shall take effect as from the time of receipt of the notice at the Office unless a later date is specified in the notice, in which case such registration shall take effect from the date specified in the notice.

21.10.2 **Removal:** The Company by Ordinary Resolution may remove any Director before the expiration of his or her period of office notwithstanding anything in this Constitution or in any agreement between the Company and that Director. Any such removal shall be without prejudice to any claim that the Director may have for damages for breach of any contract of service between him or her and the Company.

21.11 **Remuneration of Directors:**

21.11.1 **Remuneration:** The Company shall by Ordinary Resolution from time to time set a maximum amount for annual Director's fees. The remuneration payable to the Directors in the capacity as Directors shall be the sum so determined by Ordinary Resolution or such lesser sum as the Directors

shall from time to time determine. Each resolution shall express Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or
- (b) a monetary sum per annum payable to any Individual who from time to time holds office as a Director.

21.11.2 **Increase In Directors:** In the event of an increase in the number of Directors holding office, and if remuneration is expressed in accordance with clause 21.11.1(a), the Directors may without the necessity of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable payment to the additional Director or Directors of remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the Chairperson).

21.11.3 **Notice of Resolution:** No resolution which increases the amount referred to in clause 21.11.1 shall be passed at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.

21.11.4 **Payments Upon Cessation of Office:** The Company may make a payment to a Director or former Director, or his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if either:

- (a) the amount of the payment or the method of calculation of the amount of the payment is authorised by Ordinary Resolution; or
- (b) if the Director or former Director was in office on or before 1 May 2004 and has continued to hold office since that date and the total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in any three years chosen by the Company.

Nothing in this clause 21.11.4 shall affect any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme or paid upon or in connection with the termination of a Director's employment with the Company.

21.11.5 **Directors Entitled to Expenses:** The Directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of the Board or a committee, or of the Company and when in any other manner whatsoever and wheresoever engaged on the business or affairs of the Company.

21.11.6 **Special Remuneration:** Notwithstanding the provisions of clause 21.11.1 but subject to clause 26.10, the Board may authorise the Company to pay special remuneration to any Director who is or has been engaged by the Company to carry out any services which in the opinion of the Board are additional to those usually required of directors of similar companies.

- 21.12 **Disqualification of Directors:** The office of Director shall be vacated by a Director, if the Director:
- 21.12.1 **Bankruptcy:** becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
  - 21.12.2 **Prohibition:** becomes prohibited from being a Director by reason of section 151(2) of the Act; or
  - 21.12.3 **Protection of Personal and Property Rights Act 1988:** becomes of unsound mind or becomes subject to a property order under the Protection of Personal and Property Rights Act 1988; or
  - 21.12.4 **Resignation:** resigns his or her office pursuant to clause 21.10.1; or
  - 21.12.5 **Absence:** absents himself or herself from attendance at meetings of the Board continuously for the space of six months (calculated from the date of the last meeting of the Board attended by that Director) without special leave of absence from the Board and his or her Alternate Director (if any) shall not have attended any such meeting in his or her stead, unless the Board resolves otherwise; or
  - 21.12.6 **Removal:** is removed from office pursuant to clause 21.10.2.
- 21.13 **Validity of Acts:** The actions taken by the Board, or any committee, or any Director to whom the Board has delegated any of its powers or by any Individual acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or Person acting as aforesaid or that they or any of them were not qualified for appointment, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

## 22 ALTERNATE DIRECTORS

- 22.1 **Appointment of Alternate Director:** Each Director shall have the power to appoint, by notice in writing to the Company, any Individual who is not already a Director and who is approved by a majority of the other Directors, to act as an alternate director in his or her place, either for a specified period, or generally during the absence or inability to act from time to time of such Director, and may revoke such appointment by written notice to the Company at any time. No Director may appoint a deputy or agent otherwise than by way of appointment of an alternate under this clause 22.
- 22.2 **Termination of Appointment:** The appointment of an Alternate Director shall terminate on the happening of any event which if he or she were a Director would cause him or her to vacate such office, or if his or her appointor ceases to be a Director or if a majority of Directors other than his or her appointor give written notice to that appointor and to the Company withdrawing the approval of that Individual as an Alternate Director (provided that a Director retiring by rotation or pursuant to clause 21.10.1 at a meeting of the Company and being re-elected at that meeting shall not for the purposes of this provision be treated as having ceased to be a Director).
- 22.3 **Powers of Alternate Director:** An Alternate Director shall, unless otherwise provided by the terms of his or her appointment, whilst acting in the place of the Director he or

she represents, have, exercise, and discharge all the powers, rights, duties, and privileges (including without limitation the right to receive notice of, and participate in, meetings of the Board, the power to sign resolutions of the Directors in accordance with clause 24.3, excluding the right to appoint an Alternate Director) of the Director appointing him or her and be subject in all respects to the same terms and provisions as that Director except in respect of remuneration.

- 22.4 **Remuneration of Alternate Directors:** An Alternate Director may be paid expenses, and shall be entitled to be indemnified by the Company to the same extent, with any necessary modifications, as if he or she were a Director but he or she shall not be entitled to receive from the Company, in respect of his or her appointment as Alternate Director, remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may by notice in writing to the Company from time to time direct.

## 23 DIRECTORS' INTERESTS

### 23.1 Directors' Declaration of Interests:

23.1.1 **Entry in Interests Register:** If a Director becomes aware of the fact that he or she is interested (as that term is defined in section 139 of the Act) in a transaction or proposed transaction with the Company, he or she must cause to be entered in the Interests Register, and disclose to the Board:

- (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.

23.1.2 **General Notice:** For the purposes of clause 23.1.1, a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director:

- (a) is a shareholder, director, officer, or trustee of another named company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other company or person;

shall be a sufficient disclosure of interest in relation to such transactions.

23.1.3 **Failure to Comply:** Failure by a Director to comply with clause 23.1.1 shall not affect the validity of a transaction entered into by the Company or the Director.

23.1.4 **Interested Director May Not Vote:** Subject to clause 23.1.5, a Director shall not vote in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter.

23.1.5 **Exception:** Notwithstanding clause 23.1.4, a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which that Director is interested if that matter is in respect of which, pursuant to an express provision of the Act, directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act and clause 27 of this Constitution.

## 24 PROCEEDINGS OF DIRECTORS

24.1 **Third Schedule Does Not Apply:** The proceedings at meetings of the Board shall be as set out in this Constitution and the provisions set out in the Third Schedule to the Act shall not apply to proceedings of the Board.

### 24.2 Meetings of Directors:

24.2.1 **Convening of Meetings:** The Board may meet for the despatch of business, adjourn, and otherwise regulate its meetings and proceedings as it thinks fit. Any Director may at any time summon a meeting of the Board (including a teleconference meeting as provided for in clause 24.4).

24.2.2 **Notice of Meetings:** Notice of every meeting of the Board shall be given to every Director either personally or by written notice sent to the last address notified to the Company by the Director for this purpose. A notice convening a meeting of the Board shall be in writing and shall specify:

- (a) the date and time (in accordance with New Zealand time) at which the meeting is to be held;
- (b) the place at which the meeting is to be held; and
- (c) in the case of a meeting which may be attended by telephone or other instantaneous audio (or audio and visual communication) the telephone number to which it is necessary to be connected for the purposes of attending the meeting by such means.

24.2.3 **Quorum:** Until otherwise determined by the Board, the quorum necessary for the transaction of the business of the Board shall be three Directors. A meeting of the Board at which the quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution for the time being vested in or exercisable by the Board.

24.2.4 **Chairperson:** The Board may elect a Chairperson and determine the period for which each is to hold office. The Chairperson shall preside at all meetings of the Board but if the Chairperson is not present within 5 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

- 24.2.5 **Votes:** Questions arising at any meeting of the Board shall be decided by a majority of votes. Each Director present at the meeting shall have one vote. Except in situations where a quorum for a meeting of Directors is two, the Chairperson shall have a casting vote in the event of a tie unless the Directors otherwise resolve. 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, or expressly abstains from voting on, the resolution at the meeting.
- 24.2.6 **Proceedings in Case of Vacancy:** The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors or Director may act only for the purposes of increasing the number of Directors to the said minimum number or to summon a meeting of the Company but for no other purpose.
- 24.2.7 **Presence by Telephone:** Without limiting clause 24.4, a Director may participate in any meeting of the Board by telephone or other instantaneous audio (or audio and visual) communication provided such Director has given notice in writing of his or her intention to do so, to the Company at least 48 hours prior to the scheduled commencement time of such meeting. The requirements as to such notice may be waived by the Board. Any such Director:
- (a) must throughout the meeting be able to hear each of the other Directors taking part;
  - (b) must, at the commencement of the meeting, acknowledge his or her presence for the purpose of the meeting, to all the other Directors taking part;
  - (c) may not leave such meeting by disconnecting his or her telephone or other means of communication unless he or she has first obtained the express consent of the Chairperson; and
  - (d) shall (for the purposes of this Constitution) be conclusively presumed to have been physically present and to have formed part of the quorum at all times during the meeting unless he or she first obtained the express consent of the Chairperson of the meeting to leave the meeting as aforesaid. Neither the meeting, nor any business conducted thereat, shall be invalidated if a Director does leave a meeting conducted as aforesaid without the express consent of the Chairperson.
- 24.2.8 **Provisions to Apply - Except Where Otherwise Agreed:** The provisions contained in this clause 24 shall apply in relation to all meetings of the Board, except where otherwise agreed by all the Directors for the time being in relation to any particular meeting or meetings.

24.2.9 **Omission of Notice:** The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Director shall not invalidate the proceedings at that meeting.

24.3 **Resolution in Writing Assented to by All Directors:** A resolution in writing signed or assented to by letter, telex, facsimile, or other written message, by each Director (or by his or her Alternate Director) shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted. Any such resolution may consist of several documents in like form, each signed or purporting to have been despatched by one or more Directors or their Alternate Directors as the case may be. Every such resolution shall be recorded in the minutes and copies shall be sent to any Directors by whom the resolution has not been signed.

24.4 **Teleconference Meeting of Directors:**

24.4.1 **Power to Meet by Teleconference:** For the purpose of this Constitution the contemporaneous linking together by telephone or other means of instantaneous audio (or audio and visual) communication of a number of the Directors not less than the quorum of a meeting of the Board, whether or not anyone or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of a meeting by telephone or other means of communication and to be linked by telephone or such other means for the purposes of such meeting. Notice of any such meeting may be given on the telephone or by other means of communication at least twelve hours before the time of commencement of the meeting;
- (b) each of the Directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other Directors taking part; and
- (c) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part.

24.4.2 **Restriction on Leaving Teleconference:** A Director may not leave a meeting conducted pursuant to clause 24.4.1 by disconnecting his or her telephone or other means of communication unless he or she has first obtained the express consent of the Chairperson of the meeting. A Director shall for the purposes of this Constitution be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she first obtained the express consent of the chairperson of the meeting to leave the meeting as aforesaid. Neither the meeting nor any business conducted thereat shall be invalidated if a Director does leave a meeting conducted pursuant to this clause without the express consent of the Chairperson.

24.4.3 **Minutes at Teleconference:** A minute of the proceedings at a meeting by telephone or other means of communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairman of the meeting.

24.5 **Scheduling and Notice of Meetings:**

24.5.1 **Regular Meetings:** The Board shall schedule its regular meetings in advance as follows:

- (a) as soon as reasonably practicable after the commencement of each calendar year, the Board shall decide upon the date, time and place of every meeting (“scheduled meeting”) of the Board then proposed to be held during the remainder of the then current calendar year; and
- (b) as soon as reasonably practicable after the Board has decided upon the date, time and place of every scheduled meeting of the Board for any calendar year any Director appointed for that purpose by the Board, shall give a notice to every Director setting out that information and such notice shall serve as notice of each such meeting for the purposes of this clause 24.5.

24.5.2 **Notice Periods:** The following periods of notice shall apply to the convening of meetings of the Board.

- (a) In the case of a scheduled meeting of the Board, where notice of that meeting has previously been given in accordance with clause 24.5.1(b) no further notice shall be required. The minimum period of notice required in order to change the scheduled date, time or place of a scheduled meeting of the Board shall be seven clear days.
- (b) Except in the case of urgency falling within clause 24.5.2(c), the minimum period of notice for convening a meeting of the Board other than a scheduled meeting shall be seven clear days.
- (c) In the case of urgency where, in the opinion of the Chairperson or in his or her absence the Deputy Chairperson (if any) or in the absence of both, the Managing Director (if any), or any other two Directors, a meeting of the Board is required in the interests of the Company to be convened on less than seven clear days notice, the meeting may be convened on shorter notice provided that:
  - (i) not less than three-quarters of the Directors consent to such shorter notice; or
  - (ii) the Chairperson or in his or her absence the Deputy Chairperson (if any) or in the absence of both, the Managing Director (if any) and at least one other Director consider that by reason of extreme urgency, a meeting on shorter notice determined by them is required in the

interests of the Company and that it is not practicable to comply with clause 24.5.2(c)(i) above.

24.5.3 **Meetings Convened on Short Notice:** In the case of a meeting convened on short notice pursuant to clause 24.5.2(c) so far as can reasonably be achieved:

- (a) a copy of the notice convening the meeting shall be given to each Director either personally or sent by facsimile transmission to his or her facsimile number prior to the holding of the meeting;
- (b) the Chairperson, if any, or Managing Director shall endeavour to contact every Director personally or by telephone prior to the holding of the meeting to try to ensure that every Director is aware that the meeting is to be held;
- (c) every Director shall be entitled to participate in the meeting by telephone notwithstanding his or her failure to give the required notice provided for under clause 24.2.7; and
- (d) the business to be transacted at the meeting shall be limited to business related to the urgent matter or matters which necessitated the meeting being called on short notice.

24.5.4 **Despatch of Notices:** Subject as provided in clause 24.5.3(a), notices convening a meeting of the Board shall, so far as the circumstances reasonably permit, be despatched as follows:

- (a) in the case of a Director having an address within New Zealand, either:
  - (i) delivered to each Director at his or her address; or
  - (ii) sent by facsimile transmission to the Director's facsimile number; or
  - (iii) handed to the Director personally; or
- (b) in the case of a Director having an address outside New Zealand, either:
  - (i) sent by air courier to the Director's address (in which case an advice of despatch shall be promptly sent by facsimile transmission to the Director's facsimile number); or
  - (ii) sent by facsimile transmission to the Director's facsimile number; or
  - (iii) handed to the Director personally.

24.5.5 **Board Papers:**

- (a) The documentation required for each meeting of the Directors (“board papers”) shall comprise:
  - (i) an agenda of the general nature of the business to be transacted at the meeting;
  - (ii) where practicable, details of the resolutions to be put to the meeting; and
  - (iii) such explanatory or background papers as the Chairperson, or failing him or her the Deputy Chairperson (if any), shall think fit.
- (b) The requirements concerning the despatch of the board papers relating to a meeting of the Directors are as follows:
  - (i) the board papers shall be despatched in a timely manner, having regard to the circumstances of each Director;
  - (ii) the board papers shall be delivered or sent in the same manner as is laid down by clause 24.5.6 in relation to notices; and
  - (iii) in the case of a meeting convened on short notice pursuant to clause 24.5.3 a Director shall be entitled to require the Company to send the board papers to him or her by facsimile transmission to his or her facsimile number provided that the Director is able to give satisfactory assurances that confidentiality will be preserved in relation to the facsimile transmission.

**24.5.6 Notices:**

- (a) Each Director shall from time to time give written notice to the Company of his or her address, facsimile number, and telephone number or numbers for the purposes of this clause 24.
- (b) A notice given to a Director pursuant to this clause 24 shall be deemed to be given when delivered at the address notified under clause 24.5.6(a) or in the case of a facsimile transmission when the Company receives an acknowledgment of receipt.

**25 COMMITTEES**

The Board may, from time to time subject to section 130 of the Act, appoint committees consisting of an Individual or such Individuals (whether or not Directors) as it thinks fit and may delegate any of its powers to any such committee and may, from time to time, vary, suspend or remove such delegation. Any committee so formed shall in the exercise of its powers so delegated conform to any regulation that may be imposed on it by the Board and subject to any such regulations the proceedings of any committee appointed under this clause shall be governed by clause 24 but substituting the words “committee member” for the word “Director” on each occasion therein.

## 26 POWERS AND DUTIES OF DIRECTORS

- 26.1 **Management of Company:** Subject to clauses 26.6, 26.9 and 26.12 the business and affairs of the Company shall be managed by the Board except to the extent of any provision to the contrary in this Constitution.
- 26.2 **General Power:** The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs.
- 26.3 **Exercise of Powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act, the Listing Rules or this Constitution, to be exercised by the Shareholders.
- 26.4 **Appointment of Attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a Person as its attorney, either generally or in relation to a specific matter. Any such power of attorney may contain such provisions for the protection of Persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 26.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other Person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of that power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.
- 26.6 **Change of Main Undertaking:** The Company must not, subject to clause 26.7, without the prior approval of the Company by Special Resolution, enter into, or permit any of its Subsidiaries to enter into, any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of or to be held by the relevant company:
- 26.6.1 **Change Essential Nature of Business:** which would change the essential nature of the business of the Company and its Subsidiaries taken as a whole; or
- 26.6.2 **Gross Value Exceeds 50% of Average Market Capitalisation:** in respect of which the gross value is an amount that is more than 50% of the Average Market Capitalisation of the Company.

The notice of meeting containing the resolution to approve any transaction referred to in this clause 26.6 shall contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable Shareholders to appraise the implications of the transactions.

- 26.7 **Exception:** Clause 26.6 shall not apply to:
- (a) a takeover offer by an NZAX Issuer; or

- (b) any transaction entered into by the Company with a Bank, on arms length terms and in the ordinary course of business, as a result of which transaction the Company or the Subsidiary has recourse to the credit risk of that Bank.

26.8 **Conditional Transaction:** Clause 26.6 shall not apply to any agreement entered into by the Company or any of its Subsidiaries if the agreement provides that the transaction is conditional upon the passing of a Special Resolution and may not be completed until such resolution is passed.

26.9 **Major Transactions:** The Company must not enter into a Major Transaction unless the transaction is:

26.9.1 **Special Resolution:** approved by a Special Resolution; or

26.9.2 **Contingent on Special Resolution:** contingent upon approval by a Special Resolution.

26.10 **Transactions with Related Parties**

26.10.1 **Restriction:** Notwithstanding clauses 26.12 to 26.16 or any other clause of this Constitution, but subject to clause 26.10.2, the Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in clause 1.1.7 of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless:

- (c) that Material Transaction is an employment agreement with a natural person who is not a director (within the meaning of section 126 of the Act) of the Company or any of its subsidiaries; or
- (d) that Material Transaction is approved by an Ordinary Resolution.

26.10.2 **Exception:** Clause 26.10.1 shall not apply to:

- (a) any transaction entered into by the Company with a Bank which is a Related Party of the Company, on arm's length terms and in the normal course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank; or

- (b) the issue, acquisition, or redemption, by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a Distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this clause, a transfer by the Company of shares held by the Company in itself is deemed to constitute an issue of Securities; or
- (c) any employment or service contracts which are Material Transactions where the Exchange is satisfied that the terms of the contract have been set on an arm's length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee of the Company or a Related Company which would be a Material Transaction, where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Act.

26.10.3 **Notice of Meeting:** The text of any resolution to be put to a meeting of the Company for the purposes of this clause 26.10 shall be set out in the notice of the relevant meeting. The notice shall:

- (a) be approved by the Exchange;
- (b) be accompanied by a certificate from the Directors (other than any Director who is interested in the transaction) certifying that the terms of the transaction are fair and reasonable to Shareholders and in the best interests of the Company; and
- (c) contain such other material as is necessary to enable the holders of Securities of the Company to decide whether the transaction price and terms are fair.

26.11 **Board to Cause Minutes to be Kept:**

26.11.1 **Minutes:** The Board shall cause minutes to be made, in books provided for the purpose of recording:

- (a) all appointments of officers made by the Board;
- (b) the names of all the Directors present at each meeting of the Board and the names of all committee members present at each meeting of a committee;

- (c) all resolutions and proceedings at all meetings of the Company, and of the Board, and of committees of the Board; and
- (d) all instruments whose execution is authorised.

26.11.2 **Evidence of Minutes:** Any minutes of any meeting of the Company or of the Board or of any committee, purporting to be signed by the Chairperson of such meeting or of the next succeeding meeting, shall be receivable in all courts, and by any Person authorised to take evidence, and may be relied on by all other Persons (not being Persons having actual knowledge to the contrary), as prima facie evidence of the matters stated in such minutes.

26.12 **Acts in Interest of Holding Company:**

26.12.1 **Wholly-Owned Subsidiary:** If at any time the Company is a wholly-owned Subsidiary, a Director may, when exercising his or her powers or performing his or her duties as a Director, act in a manner which he or she believes is in the best interests of the Company's Holding Company even though it may not be in the best interests of the Company.

26.12.2 **Subsidiary:** If at any time the Company is a Subsidiary (not being a wholly-owned Subsidiary), a Director may, when exercising powers or performing duties of a Director, with the prior consent of the Shareholders (excluding the Company's Holding Company), act in a manner which he or she believes is in the best interests of the Company's Holding Company even though it may not be in the best interests of the Company.

26.13 **Restrictions on Activities of Company:** The activities of the Company are restricted as follows:

26.13.1 **No Sale of Property:** The Company will not subdivide, lease, sell or otherwise part with possession or control of the Properties or any part of the Properties or part with possession or control of any entity or entities owning the Property or Properties during the period of five (5) years from the Commencement Date. For the avoidance of doubt, this clause shall not prevent any sale or transfer of shares in the Company or the Company mortgaging, creating a charge over, or otherwise encumbering any part of any Property or any part thereof in the normal course of its business, and subject to clause 26.13.2 shall not prevent the holder of any such mortgage, charge or other encumbrance from selling any Property or any part thereof in the course of legally enforcing any mortgage charge or other encumbrance that person may hold over any Property. The mortgage granted by the Company to Deleat's Group Limited over the Giffords Creek Property (as described in clause 26.13.5) or any of the Properties shall not be a breach of this clause.

26.13.2 **Right of First Refusal:** If it is proposed that any Property or any part of any Property or any or all of the shares in any entity owning any Property (other than shares in the Company) will be sold or otherwise transferred or pass out of the possession or control of the Company, the Property (or

part thereof) or shares (or part thereof) must first be offered to Delegat's. If Delegat's refuses the offer, the Property (or part thereof) or shares (or part thereof) may then be offered to any third party, provided that such Property (or part thereof) or shares (or part thereof) cannot be sold or transferred to any third party without the Property (or part thereof) or such shares (or part thereof) first again being offered to Delegat's at the same price and on the same terms agreed with that third party.

26.13.3 **Transferee to be Acceptable to Delegat's and to Accept Assignment:** Any agreement to sell or otherwise part with possession of any Property (or any part thereof) or any or all of the shares in any entity or entities which owns any Property (other than shares in the Company) which is not a mortgage, charge or other encumbrance entered into in accordance with clause 26.13.4 must be conditional upon:

- (a) **Right of First Refusal:** Delegat's right to first be offered such Property or shares set out in clause 26.13.2;
- (b) **Approval:** the Company obtaining the approval of Delegat's to the proposed transferee (which must not be unreasonably withheld); and
- (c) **Proposed Transferee Accepting Assignment:** the proposed transferee accepting an assignment of Delegat's rights to manage any Property (or part thereof) and to purchase the grapes grown on any Property (or part thereof) being transferred to the third party on the terms set out in the Grape Purchase Agreement and the Vineyard Management Agreement.

26.13.4 **Encumbrance of Property:** The Company shall not during the term of this agreement mortgage, create a charge over or otherwise encumber any part of any Property unless the holder of such mortgage, charge or other encumbrance is a registered bank under the Reserve Bank of New Zealand Act 1989 and the holder has agreed in writing that such holder's right of sale under such mortgage, charge or other encumbrance is subject to Delegat's rights set out in clause 26.13.3 above. For the avoidance of doubt, the provisions of clauses 26.13.1 and 26.13.3 shall not apply to any mortgage, charge or other encumbrance entered into by the Company in accordance with the provisions of this clause.

26.13.5 **Mortgage over Giffords Creek Property:** The mortgage granted over the Giffords Creek Property in favour of Delegat's Group Limited pursuant to an agreement for sale and purchase of shares in Giffords Creek Vineyards Limited between Delegat's Group Limited, the Company and Delegat's shall be deemed not to be a breach of clause 26.13.4.

26.14 **Favourable Report and Agreement Prior to Purchase:** The Company shall not acquire any land other than the Properties owned or leased at the date of this Constitution, or any shares in any entity which holds property which contains a vineyard or which it is intended would be developed as a vineyard, unless such property has obtained a favourable report from the Independent Viticultural

Consultant regarding the suitability of the property to produce premium quality grapes in commercial volumes and a formal agreement with a credible and financially strong counterparty has been concluded to develop (if necessary) and manage the additional land to be acquired and to purchase the grapes produced on such land.

- 26.15 **First Right to Delegat's:** In the event that the Company is proposing a purchase in accordance with clause 26.14, the Company will first consult with Delegat's with a view to Delegat's entering into the formal agreements contemplated by clause 26.14. If Delegat's and the Company have not reached consensus on the main terms of those formal agreements within a reasonable time, the Company may offer the formal agreements to third parties but may not enter into an agreement with such third parties on any better terms than the terms discussed with Delegat's without first reoffering the agreements to Delegat's on those better terms.
- 26.16 **Option:** None of the restrictions contained in this clause 26 extend to any sale of any part of the Properties pursuant to the deed of option granted to Delegat's under the Long Term Co-Operation Agreement.

## 27 INDEMNITY AND INSURANCE

- 27.1 **Indemnity of Directors:** Subject to clause 27.3, every Director shall be indemnified by the Company:
- 27.1.1 **Unsuccessful, Acquitted or Discontinued Actions:** for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a Subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued;
- 27.1.2 **Acts or Omissions:** in respect of liability to any person, other than the Company or a Related Company, for any act or omission by him or her in his or her capacity as a Director or a director of a Subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.
- 27.2 **Other Indemnities:** Subject to clause 27.3, the Company may, with the prior approval of the Board, indemnify a director of a Related Company, or an Employee of the Company or a Related Company:
- 27.2.1 **Unsuccessful, Acquitted or Discontinued Actions:** for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued;
- 27.2.2 **Acts or Omissions:** in respect of liability to any person, other than the Company or a Related Company, for any act or omission by him or her in such capacity, or costs incurred by him or her in defending or settling any claim or proceeding relating to such liability.
- 27.3 **Exceptions:** An indemnity conferred by clause 27.1.2, or given pursuant to clause 27.2.2, shall not apply in respect of:

- 27.3.1 **Criminal Liability:** any criminal liability;
- 27.3.2 **Breach of Fiduciary Duty:** in the case of an Employee of the Company or a Related Company, any liability in respect of a breach of any fiduciary duty owed to the Company or a Related Company; or
- 27.3.3 **Directors' Duties:** in the case of a Director or a director of a Related Company, any liability in respect of a breach of the duties specified in section 131 of the Act.
- 27.4 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or Employee of the Company or a director or Employee of a Related Company, in respect of:
  - 27.4.1 **Acts or Omissions:** liability, not being criminal liability, for any act or omission by him or her in such capacity; or
  - 27.4.2 **Claims or Proceedings:** costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
  - 27.4.3 **Criminal Proceedings:** costs incurred by him or her in defending any criminal proceedings in which he or she is acquitted.
- 27.5 **Definitions:** In this clause 27:
  - 27.5.1 **Director:** “Director” includes a former Director and “director” includes a former director; and
  - 27.5.2 **Other Extended Meanings:** other words given extended meanings in section 162(9) of the Act have those extended meanings.

## PART VI - DISTRIBUTIONS

### 28 DISTRIBUTIONS

- 28.1 **Power to Make Distribution:** The Board may in accordance with the Act authorise a Distribution by the Company at any time, and of an amount, and to any Shareholder the Board thinks fit, if it is satisfied on reasonable grounds that the Company will, immediately following the Distribution, satisfy the Solvency Test. If after a Distribution is authorised and before it is made, the Board ceases to be satisfied on reasonable grounds that the Company will, immediately after the Distribution is made, be able to satisfy the Solvency Test, the Distribution is deemed not to have been authorised.
- 28.2 **Rules for Application of Solvency Test:** In applying the Solvency Test for the purposes of clause 28.1, “Debts” and “Liabilities” have the meanings given to those terms in section 52(4) of the Act.
- 28.3 **Solvency Test:** The Directors who vote in favour of a Distribution must sign a certificate stating that, in their opinion the Company will, immediately after the Distribution is made, satisfy the Solvency Test and the grounds for that opinion in terms of and in the manner provided under the Act.
- 28.4 **Distribution to Joint Holders:** If several Persons are registered as joint holders of any Shares, and such Persons are entitled to receive Distributions in respect of the Shares, anyone of them may give effectual receipts for any Distribution.
- 28.5 **Manner of Payment:** Any Distribution may be paid in any usual manner (whether by direct credit or otherwise) reasonably directed by the Person entitled thereto and failing any such direction may be paid by cheque or warrant sent through the post to the registered address of the Person entitled thereto or in the case of joint holders to anyone of such joint holders at his or her registered address, or to such Person and such address as the Person entitled or such joint holders, as the case may be, may direct, and the Company shall not be responsible for any loss arising from such mode of transmission.
- 28.6 **Deductions from Distributions:** The Board may deduct from Distributions payable to any Person all such sums of money as may be due from him or her to the Company on account of calls or otherwise or any debt or liability in respect of which the Company has a lien pursuant to this Constitution upon the specific Shares in respect of which the Distribution is payable, and on account of such amounts as the Company may be called upon to pay under any statute or legislative enactment in respect of the Shares of a deceased or other Shareholder.
- 28.7 **Persons to Whom Distributions Payable:** Distributions shall be payable to the Persons who are the registered holders of the Shares in respect of which they are authorised at the time of the authorisation of such Distributions or, if so stipulated by the terms of the authorisation, at the time when such Distributions are resolved to be payable.

- 28.8 **Shareholder May Agree That Distribution Payable To Third Party:** Notwithstanding clause 28.5, the Board may enter into any agreement on behalf of the Company with a Person (whether as a term of the issue of Shares or otherwise) for Distributions in respect of all or some of the Shares held by that Person to be paid, during such period or periods as may be specified in such agreement, to such one or more third parties nominated by that Person. Payment by the Company of any Distribution to one or more third parties in accordance with that agreement shall constitute a full discharge of the obligations of the Company to that Person in respect of the relevant Distribution. Nothing in this clause 28.8 shall derogate from clause 5.
- 28.9 **Right Not Transferred:** Subject to the terms of authorisation of any Distribution, a transfer of any Share shall not as against the Company pass the right to any Distribution authorised in respect of that Share payable before the registration of the transfer.
- 28.10 **Distributions Payable in Currencies other than the Currency of New Zealand:** The Board may direct the payment of any Distribution wholly or partly in a currency or in currencies other than the lawful currency of New Zealand and may direct that the Distribution payable in respect of any Shares shall be paid wholly or partly in one currency and that the Distribution payable in respect of other Shares shall be paid in one or more other currencies. The Board may determine or provide for the determination of the exchange rate or exchange rates to be used in calculating the amount of any Distribution to be paid in a currency or currencies other than the lawful currency of New Zealand and where any question arises in regard to any payment of a Distribution in a currency or in currencies other than the lawful currency of New Zealand the Board may settle the same as it considers expedient.
- 28.11 **No Interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

## 29 DIVIDENDS

- 29.1 **Entitlement to Dividends:** The provisions of clause 28 apply to any Dividend authorised by the Board provided that the Board must not authorise a Dividend:

29.1.1 **Selective:** in respect of some but not all of the Shares in a Class; or

29.1.2 **Unequal Amounts:** that is of a greater value per Share in respect of some Shares of a Class than it is 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 liability of the Shareholder under this Constitution or the Terms of Issue of the Share. Nothing in this clause prevents the Board from issuing Shares wholly or partly in lieu of any Dividend in accordance with the Act.

- 29.2 **Unclaimed Dividends:**

29.2.1 **Investment:** All Dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed and the Company shall be entitled to mingle the amounts of any such Dividends with other money of the

Company or spend the same, and shall not be required to hold them or regard them as being impressed with any trust.

29.2.2 **Forfeiture:** All Dividends, and any other moneys payable to any Shareholder or former Shareholder in respect of Shares and/or interest in respect of Debt Securities issued by the Company remaining unclaimed for five years after having been declared or otherwise having become payable, shall be automatically forfeited for the benefit of the Company, unless the Board resolves otherwise. Subject to the provisions of clause 28, the Board shall at any time annul such forfeiture and pay the Dividend or other money so forfeited to any Person producing evidence that he or she is entitled to the same.

29.3 **Waiver:** A Shareholder may waive his or her right to receive a Dividend by notice in writing to the Company signed by or on behalf of the Shareholder.

### 30 BONUS ISSUES

30.1 **Power to Issue Bonus Shares:** The Board may resolve that any Distribution authorised under clause 28 or clause 29 may be applied either in or toward paying up any amounts for the time being unpaid on any Shares held by those Persons respectively or paying up in full the issue price of Securities issued as fully paid up to and amongst those Persons, in the proportion as they would have been entitled to the same, or partly in the one way and partly in the other, and the Board shall give effect to every such resolution.

30.2 **Participation by Holders of Shares Having Special Terms of Issue:** Where the holders of any Shares issued by the Company are, by virtue only of the Terms of Issue thereof, entitled to participate in any Distribution whether at the time such Distribution is made or at some future time, such holders shall participate in any such Distribution to the extent and in the manner authorised by the Terms of Issue, and all the provisions of clauses 28 and 29 shall be subject to the Terms of Issue and shall be deemed to be modified in order to give effect thereto.

30.3 **Power of Directors on Distribution:** In the event of any Distribution under clause 30.2 the Board shall make all allotments and issues of fully paid Securities, if any, and generally shall do all acts and things required to give effect thereto, and may either round up or disregard fractional entitlements to a Security or make such provision by the issue of fractional certificates or by payment in cash or otherwise as the Board thinks fit. The Board may also authorise any Person to enter on behalf of all the Persons entitled thereto into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further Security to which they may be entitled upon any such Distribution, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the Distribution, of the amounts or any part of the amounts remaining unpaid on their existing Shares and any agreement made under any such authority shall be effective and binding on all such Persons.

30.4 **Issue of Shares in Lieu of Dividends:** The Board may, in its discretion, constitute, implement and maintain, on such terms and conditions as it may determine from time to time, one or more schemes for the benefit of the holders of Shares in the Company

pursuant to which the holders of all or some of the Shares in the Company may be given anyone or more of the following options, namely:

- 30.4.1 **Subscription for Shares:** instead of taking in cash the whole or any part of any Dividend which is declared on any ordinary Shares held by them, to invest such cash in subscribing for Shares payable in full or by instalments, or in paying up any unpaid or partly paid ordinary Shares held by them, on the terms and conditions of any such scheme; or
- 30.4.2 **Forgo Entitlement:** to forgo their entitlement to any Dividend or Distribution declared on ordinary Shares in respect of all or any ordinary Shares held by them and to take instead fully paid ordinary Shares, to be issued by the Company by way of bonus, on the terms and conditions of any such scheme; or
- 30.4.3 **Not Rank for Dividend:** to elect that all or any of the Shares held by them will not rank for Dividend during such period or periods as may be fixed by the terms and conditions of any such scheme and will instead entitle the Shareholder to the issue of fully paid Shares, to be issued by the Company by way of bonus, on the terms and conditions of any such scheme; or
- 30.4.4 **Other Options:** any other option in respect of the whole or any part of any Dividend on any ordinary Shares held by them as the Board shall determine.

Participation in any such scheme shall be available to such Shareholders who wish to participate therein and are eligible to do so under the terms and conditions of the scheme. The Board may in its discretion vary, terminate or suspend any such scheme which may be in existence from time to time on reasonable written notice to all Shareholders who are eligible (under the terms and conditions of that scheme) to participate in that scheme.

## PART VII – GENERAL

### 31 ACCOUNTS

#### 31.1 Books to be Kept:

- 31.1.1 **Accounting Records:** The Board shall cause accounting records to be kept that comply with the requirements of the Act.
- 31.1.2 **Place of Records:** The books of account shall be kept at the Office or, subject to section 195 of the Act, at such other place or places as the Board thinks fit.
- 31.1.3 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.
- 31.1.4 **Inspection by Shareholders:** Subject to the provisions of sections 215, 216, 217 and 218 of the Act, the Board shall from time to time determine whether, to what extent, at what times and places, and under what conditions or regulations the accounts and books of the Company, or any of them, shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or papers of the Company except as conferred by statute or authorised by the Board.

- 31.2 **Accounts to be Prepared:** The Board shall from time to time, in accordance with the Financial Reporting Act 1993, cause to be prepared financial statements and shall send to every shareholder the annual report and financial statements of the Company in accordance with sections 208 to 212 (both inclusive) of the Act.

### 32 AUDIT

Auditors shall be appointed and their duties regulated in accordance with sections 196 to 207 (both inclusive) of the Act.

### 33 NOTICES

- 33.1 **Manner of Notice:** A notice may be given by the Company to any Shareholder either personally or by sending it by post (which, in the case of a registered address outside New Zealand, shall be airmail post) to that Shareholder or to that Shareholder's registered address.
- 33.2 **Notice to Other Holders:** All notices, reports, accounts and other documents required to be sent to a holder of any other Equity Security, shall be sent in the same manner, as though the holder were a Shareholder.
- 33.3 **Service of Notice:** Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter

containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. In proving the giving of any notice by mail it shall be sufficient to prove that the letter, postcard, envelope or wrapper containing the notice was properly addressed, stamped and posted and a certificate in writing signed by any Director or other officer or Employee of the Company that the letter, postcard, envelope or wrapper containing the notice was so addressed, stamped and posted and this shall be conclusive proof thereof. If a holder of a Security quoted on the Exchange has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that Security holder at such address and shall be deemed to have been received by that Security holder 24 hours after the time of the posting.

- 33.4 **Notice Where Shareholder has no Registered Address:** If a Shareholder has no registered address he or she shall not be entitled to have any notice sent to him or her from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if he or she had due notice thereof. If a Shareholder has no registered address, a notice may (but need not) be given by the Company to any such Shareholder by advertisement in a newspaper circulating in the neighbourhood of the Office addressed to the Shareholders of the Company generally and any notice so given shall be deemed to have been duly given at noon on the day on which the advertisement appears.
- 33.5 **Notice to Joint Holders:** A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.
- 33.6 **Notice to Representatives or Manager:** A notice may be given by the Company to the Person entitled to a Share in consequence of the mental disorder, death or bankruptcy of a Shareholder, by sending it through the post in a prepaid letter addressed to him or her by name, or by the title of the manager of the mentally disordered Person, or the legal personal representatives of the deceased, or the assignee of the bankrupt, or by any like description, as the case may be, at the address, if any, supplied for the purpose by the Person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the mental disorder, death or bankruptcy had not occurred.
- 33.7 **Signature of Notice:** The signature on any notice to be given by the Company may be written in accordance with the definition of “written” in clause 1.2.
- 33.8 **Registered Address:** The address entered in the Register shall be the registered address of each Shareholder. It shall be the duty of each Shareholder upon changing his, her or its address to notify the Company of such change. If notices or communications posted to a Shareholder's registered address are returned to the Company marked by the postal authorities or otherwise to the effect that the Shareholder is not known at that address or that delivery cannot be effected at that address, then the Company may send a registered letter to the Shareholder's registered address and if such registered letter is returned not having been delivered, then the Shareholder shall be deemed to have no registered address.

- 33.9 **Accidental Omissions:** The failure to send an annual report, notice or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.
- 33.10 **Notices to Equity Security Holders:** Equity Security holders of all Classes shall be entitled to receive copies of all notices, reports' and financial statements issued generally to holders of Securities carrying Votes.
- 33.11 **Waiver by Shareholders:** Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

## 34 EXECUTION OF DOCUMENTS

Contracts and other enforceable obligations requiring the signature of the Company may be signed:

34.1 **Deeds:** if a deed, by:

- (a) two or more Directors; or
- (b) a Director and one other person appointed by the Board for the purpose, both of whose signatures must be witnessed; or
- (c) one or more attorneys of the Company; or

34.2 **Other Written Obligations:** if not a deed, by any person acting under the express authority of the Company.

## 35 LIQUIDATION

If the Company is liquidated, the liquidator may, with the sanction of the Company by Special Resolution and any other sanction required by the Act 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) and may for that purpose set such value as he or she deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders or different Classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories, as the liquidator, with the like sanction, thinks fit, but so that no Shareholder shall be compelled to accept any Shares or other Securities on which there is any liability.

## 36 DISTRIBUTION OF ASSETS

36.1 **Distribution of Excess Assets:** Subject to the terms and conditions upon which any Class of Securities may have been issued, upon liquidation the surplus assets of the Company shall be distributed among the Shareholders in proportion to the number of

Shares held by them respectively, less any amount of the issue price for such Shares which remains outstanding.

- 36.2 **Interpretation:** In this clause 36 “surplus assets” means the assets in the hand of the liquidator after the payment of all the debts and liabilities of the Company including all the costs of the winding up.

Certified as the constitution of the Company

Applicant      Date