

**The Constitution of Sandhurst Club Limited**  
**ACN 083 181 364**

(As amended on 10 August 2001, 2 April 2002, 29 October 2004, 5 July 2005 and 19 August 2010)

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## CORPORATIONS ACT

### A Public Company Limited by Shares and Guarantee

## CONSTITUTION

of

### SANDHURST CLUB LIMITED ACN 083 181 364

## 1. DEFINITIONS AND INTERPRETATION

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1.1 In this Constitution the following definitions apply unless there is something in the subject or context which is inconsistent:

**ABN** means the Australian Business Number.

**ACN** means the Australian Company Number.

**Act** means the *Corporations Act* 2001, or any statutory modification or re-enactment of, or statutory provisions substituted for, such Act.

**AGM** means an annual General Meeting as referred to in clause 18.1.

**Alternate Director** means any natural person who for the time being holds the office of alternate director pursuant to this Constitution.

**Applicant** means a person who wishes to apply for Membership in accordance with the terms of this Constitution.

**Application** means any application for Membership involving the lodgement of a duly completed Application Form with the Company.

**Application Form** means the Membership application form prescribed by the Board under clause 11.5.1.1.

**Associate** means:

- (a) in relation to a Resident Member who is a natural person (**Relevant Person**), any relative of the Relevant Person who resides at the Relevant Lot;
- (b) in relation to a Resident Member who is a trust (**Trust**), any beneficiary of that Trust who resides at the Relevant Lot;
- (c) in relation to a Resident Member who is an incorporated body (**Body**), any member of that Body who resides at the Relevant Lot; and
- (d) in relation to a Resident Member who has chosen a Nominee in accordance with the terms of this Constitution, that Nominee's immediate family, provided that such persons reside at the Relevant Lot.

**Auditor** means any and all auditors of the Company for the time being as appointed pursuant to section 327 of the Act.

**Board** means all of the Directors for the time being of the Company or such number of them as having authority to act for the Company in accordance with this Constitution.

**By-laws and Rules** means by-laws and rules made by the Board pursuant to clause 21.1.2.4.

**Certificate** means any Membership certificate issued by the Company in accordance with clause 11.8.1.

**Child** means a child (whether biological, adopted, step or otherwise) of a Family Member or its Nominee, being a person who is at least 12 years of age.

**Club Facilities** means facilities constructed by Sandhurst Holdings for use by Members and others, and includes, without limitation, the Clubhouse (but not the Private Member's Area), tennis courts, swimming pool, gymnasium, parks and other facilities.

**Club Lifetime Member** means a Golf Member who holds a Lifetime Membership.

**Club Lifetime Membership** means the Membership of a Club Lifetime Member having the rights, privileges and prohibitions specified in clause 13.5, and the obligations set out in the remaining parts of this Constitution.

**Clubhouse** means that part of the Property used or to be used as the Clubhouse (including the Private Member's Area), together with associated facilities situated on the Property.

**Clubhouse Levy** means, in relation to a Golf Member and a Resident Member, the levy determined in accordance with clause 12.1 and imposed on that Member as a minimum compulsory charge payable in respect of food, beverage, and other goods and services available to that Golf Member and the Resident Member (as determined by the Board) as part of its use of the Golf Courses, the Club Facilities and any other part of the Property during the Membership Year, irrespective of whether or not consumption or utilisation (as the case may be) actually occurs.

**Committee** means any committee comprised of any number of Directors or other persons, as provided in this Constitution, and includes the Members' Consultative Committee, the Resident Members' Committee and the Golf Members' Committee.

**Company** means the public company that has adopted this Constitution being a company that is not admitted to the official list of the Australian Stock Exchange.

**Completion Date** means that date which is the later of:

- (a) the Project Completion Date; and
- (b) the date that the last Individual Share, Family Share, Corporate Share and Lifetime Membership is sold by Sandhurst Holdings.

**Constitution** means this Constitution as amended, substituted or supplemented; which shall, for the purposes of the Liquor Control Reform Act, constitute the Rules of the Company.

**Corporate A Member** means a Corporate Member to which clause 13.5 of this Constitution applies.

**Corporate B Member** means a Corporate Member to which clause 13.6 of this Constitution applies.

**Corporate C Member** means a Corporate Member to which clause 13.7 of this Constitution applies.

**Corporate Member** means a Corporate A Member, Corporate B Member or Corporate C Member (as the case may be).

**Corporate Membership** means the Membership of a Corporate Member having the rights, privileges and prohibitions specified in clauses 13.5, 13.6 or 13.7 (as the case may be), and the rights and obligations set out in the remaining parts of this Constitution.

**Corporate A Share** means a 'Corporate A Share' in the capital of Sandhurst Holdings, as defined in Sandhurst Holdings' constitution (as amended, substituted or supplemented).

**Corporate B Share** means a 'Corporate B Share' in the capital of Sandhurst Holdings, as defined in Sandhurst Holdings' constitution (as amended, substituted or supplemented).

**Corporate C Share** means a 'Corporate C Share' in the capital of Sandhurst Holdings, as defined in Sandhurst Holdings' constitution (as amended, substituted or supplemented).

**Corporate Share** means a Corporate A Share, Corporate B Share or Corporate C Share in the capital of Sandhurst Holdings.

**CPI** means the Consumer Price Index - All Groups Melbourne, or if this index is not available, such other index that represents the rise in the cost of living in Melbourne, as the Board reasonably determines.

**Developer Member** means a Member (being a person who is the registered proprietor of a Development Lot or is entitled to be the registered proprietor of a Development Lot) who is registered as having a Developer Membership and who is a shareholder of this Company by virtue of holding a Developer Share.

**Developer Membership** means the Membership of a Developer Member having the rights, privileges and prohibitions specified in clause 13.11, and the obligations set out in the remaining parts of this Constitution.

**Developer Share** means a share in the capital of the Company known as a developer share.

**Development Lot** means, in respect of each Developer Member, a Lot which:

- (a) a Developer Member is the registered proprietor of or is entitled to be the registered proprietor of; and
- (b) has been designated by the Project Developer as a Lot for further development.

**Director** means any natural person who for the time being holds the office of a director of the Company and, where the context permits, includes any Alternate Director.

**Family Member** means a Golf Member who holds a Family Share (formerly a Class B Share in the capital of Sandhurst Holdings).

**Family Membership** means the Membership of a Family Member having the rights, privileges and prohibitions specified in clause 13.4, and the obligations set out in the remaining parts of this Constitution.

**Family Share** means a Family Share in the capital of Sandhurst Holdings.

**General Meeting** means any meeting of Members or of any class of Members and, where the context permits, includes an AGM.

**Golf Members' Committee** means the committee of Golf Members established in accordance with clause 21.5.3.

**Golf Courses** means those parts of the Property used or to be used as golf courses, together with the associated facilities situated on the Property, and includes the Clubhouse.

**Golf Member** means an Individual Member, Family Member, Corporate Member, Club Lifetime Member and a Mid Week Member, being a person who is not a shareholder of this Company unless also a Resident Member or a Developer Member.

**Golf Membership** means the Membership of a Golf Member.

**GST** has the same meaning ascribed to that term in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*, or any statutory modification or re-enactment of, or statutory provisions substituted for, such Act.

**Guest** means, in relation to a Golf Member, a guest of that Member who is invited by the Member to use the Golf Courses and the Club Facilities as determined by the Board and in accordance with this Constitution, and who is otherwise acceptable to the Board in its absolute discretion.

**Holdings Constitution** means the constitution of Sandhurst Holdings, as amended from time to time.

**Honorary Member** means a Member who is registered as having an Honorary Membership in the Company, being a person who is not a shareholder of this Company unless also a Resident Member.

**Honorary Membership** means the Membership of an Honorary Member having the rights, privileges and prohibitions specified in clause 13.9, and the obligations set out in the remaining parts of this Constitution.

**Incorporation Date** means the date of initial incorporation of the Company, being 29 June 1998.

**Individual Member** means a Golf Member who holds an Individual Share (formerly a Class A Share in the capital of Sandhurst Holdings).

**Individual Membership** means the Membership of an Individual Member having the rights, privileges and prohibitions specified in clause 13.3, and the obligations set out in the remaining parts of this Constitution.

**Individual Share** means an Individual Share in the capital of Sandhurst Holdings.

**Infrastructure Works** means any infrastructure constructed or infrastructure works undertaken on a Development Lot, or on any land adjoining a Lot, including but not limited to:

- (a) roads, drainage, curbs, channel and pavement;
- (b) street lighting and furniture;
- (c) golf cart paths;
- (d) landscaping works;
- (e) parks, reserves, lakes and other common areas,

but does not include Optical Infrastructure Works and Recycled Water Infrastructure Works.

**Lease** means the lease between Sandhurst Holdings as lessor and the Company as lessee dated 10 August 2001, under which the lessor leases to the lessee the Golf Courses and other Club Facilities pursuant to the terms and conditions contained in that lease.

**Lifetime Membership** means a Lifetime Membership in Sandhurst Holdings.

**Liquor Control Reform Act** means the *Liquor Control Reform Act* 1998, or any statutory modification or re-enactment of, or statutory provisions substituted for, such Act.

**Lot** means a lot situated within the Property and forming part of the Project, and includes, without limitation, a lot to be utilised for either residential or commercial purposes.

**Manager** means any person who for the time being holds the office of manager pursuant to this Constitution.

**Manager Member** means a Member who is registered as having a Manager Membership in the Company, being a person who is not a shareholder of this Company unless also a Resident Member.

**Manager Membership** means the Membership of a Manager Member having the rights, privileges and prohibitions specified in clause 13.10, and the obligations set out in the remaining parts of this Constitution.

**Member** means any member of the Company on the Register of Members, the following of which shall have the status of "Foundation Members" of the Club and shall be entitled to special rights and privileges as a result of this status (as determined by the Board):

- (a) the first 10 Corporate Members detailed on the Register of Members; and
- (b) the first 150 Individual, Family or Corporate Members (the calculation of which shall not take into account the first 10 Corporate Members referred to in sub-paragraph (a) above).

**Membership** means membership in the Company (including one in which a Member holds a Share), and includes Resident Membership, Golf Membership, Honorary Membership and Manager Membership.

**Membership Qualification** means, for the purposes of Resident Membership, Golf Membership, Honorary Membership, Manager Membership and Developer Membership, the eligibility criteria specified in clauses 11.4.2.1 to 11.4.2.6 inclusive respectively.

**Membership Year** means a period commencing on 1 July and finishing on 30 June the following year.

**Memorandum and Articles** means the original memorandum and articles of association of the Company dated 29 June 1998.

**Mid Week Member** means a Golf Member who holds a Mid Week Membership as further described in clause 13.12.

**Mid Week Membership** means the Membership of a Mid Week Member having the rights, privileges and prohibitions specified in clause 13.12, and the obligations set out in the remaining parts of this Constitution

**Nominee** means any person (subject to approval by the Board) nominated by an Individual, Family, Corporate or Resident Member respectively under the terms of this Constitution as that person's nominee who is entitled to enjoy the rights and privileges, and in return is subject to the prohibitions and is bound by the obligations of an Individual, Family, Corporate or Resident Member respectively under this Constitution (other than in respect of the payment of the Subscription Fee and the Special Levies & Charges) and, in relation to a Family Member, also includes the Spouse or Child.

**Officer** of the Company has the same meaning as given in the Act.

**Optical Infrastructure Works** means all infrastructure constructed or infrastructure works undertaken on a Development Lot, or on any land adjoining a Lot, that consist of or relate to, directly or indirectly, optical fibre cabling and/or wiring or similar infrastructure providing an equivalent or enhanced functionality and includes but is not limited to the construction of trunk mains and domestic fit outs.

**Private Member's Area** means any part of the Clubhouse designated by the Board from time to time as being an area for the exclusive use of Golf Members and any other person determined by the Board.

**Project** means the property development to be carried out in respect of the Property including subdivisional works, the residential development, the construction of the Golf Courses, the Club Facilities and any other commercial facilities in respect of the Property.

**Project Developer** means the developer of the Project from time to time and includes any Related Body Corporate of the Project Developer.

**Project Completion Date** means, in relation to the Project, the date upon which the last Lot is sold by the Project Developer or its successor.

**Property** means the land situated at Thompsons Road, Carrum Downs, Victoria and more particularly described as the whole of the land in Certificates of Title Volume 9755 Folio 485, Volume 9755 Folio 486, Volume 8202 Folio 069, Volume 8599 Folio 370, Volume 8820 Folio 849, Volume 5923 Folio 480, Volume 7180 Folio 888 and Volume 8140 Folio 737.

**Recycled Water Infrastructure Works** means all infrastructure constructed or infrastructure works undertaken on a Development Lot, or on any land adjoining a Lot, that consist of or relate to, directly or indirectly, recycled water and includes but is not limited to the construction of trunk mains and domestic fit outs.

**Registered Office** means the registered office of the Company.

**Register of Members** means the register containing details of all Members as required to be kept under the Act.

**Related Body Corporate** has the same meaning as in the Act.

**Relevant Date** means 10 August 2001.

**Relevant Lot** means, in respect of each Resident Member, the Lot which that Resident Member owns.

**Residence** means:

- (a) in respect of a Resident Member, the private residence of a Resident Member referred to in clause 13.2.5; or
- (b) in respect of a Developer Member, a private residence to be constructed by a Developer member on a Lot that is to be utilised for residential purposes referred to in clause 13.11.4.

**Resident Member** means a Member (being a person who is the registered proprietor of a Lot or is entitled to be the registered proprietor) who is registered as having a Resident Membership and who is a shareholder of this Company by virtue of holding a Resident Share.

**Resident Membership** means the Membership of a Resident Member having the rights, privileges and prohibitions specified in clause 13.2, and the obligations set out in the remaining parts of this Constitution.

**Resident Share** means a share in the capital of the Company issued to and owned by a Resident Member.

**Resident Members' Committee** means the committee of Resident Members established pursuant to clause 21.5.2.

**Restrictive Covenant** means, in relation to any particular Lot, whether such Lot is owned by a Resident Member or a Developer Member, the restrictive covenant that is, or is to become, registered on the Certificate of Title pertaining to that Lot.

**Sandhurst Club** means the club established by this Constitution, being a division or part of the Company.

**Sandhurst Holdings** means Sandhurst Holdings (Australia) Limited ACN 083 189 655, being the owner or future owner of the Property and the body responsible for the construction of the Golf Courses, the Club Facilities and any other facilities situated on the Property.

**Seal** means the common seal of the Company including any duplicate or official seal.

**Secretary** means any natural person appointed to perform the duties of a secretary of the Company and includes any assistant secretary or acting secretary.

**Share** means any share in the capital of the Company and includes a Resident Share.

**Special Levies & Charges** means, in relation to a Member, the special levies and charges referred to in clause 12.1, which are imposed by the Board for Special Purposes.

**Special Purposes** means any purposes determined by the Board including, without limitation, capital works and maintenance of the Golf Courses and the Club Facilities, special projects and any unexpected expenses of the Company arising out of an act of God (including floods, fires, droughts, storms, earthquakes, vermin, insects and other pests).

**Special Resolution** has the meaning given to that term under the Act.

**Spouse** means, in relation to a Family Member or its Nominee, and subject to approval by the Board, the married or de-facto spouse of that Member or its Nominee, and for the sake of clarity includes a spouse of the same sex as the Family Member or its Nominee.

**Subscriber Member** means a Member who is registered as having a Subscriber Membership, being a person who is not a shareholder of this Company unless also a Resident Member.

**Subscriber Membership** means the Membership of a Subscriber Member (previously known as a Founder Membership under the Memorandum and Articles) having the rights, privileges and prohibitions specified in clause 13.1, and the obligations set out in the remaining parts of this Constitution.

**Subscription Fee** means the annual subscription fee determined by the Board in accordance with clause 12.2.

1.2 In this Constitution, unless the context requires otherwise

1.2.1 an expression in a provision of this Constitution has the same meaning as the same expression in a provision of the Act that deals with the same subject matter;

1.2.2 a reference to a body corporate includes a corporation and other entities within the meaning of that term as given in the Act;

- 1.2.3 a reference to a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 1.2.4 a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.5 a reference to any document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.2.6 a reference to a clause is a reference to a clause in or to this Constitution;
- 1.2.7 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.2.8 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution;
- 1.2.9 if any payment or other act is required by this Constitution to be made or done on a day which is not a business day, the payment or act must be made or done on the next following business day;
- 1.2.10 a reference to the singular includes the plural and vice versa;
- 1.2.11 a reference to a gender includes the other genders;
- 1.2.12 where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has the corresponding meaning; and
- 1.2.13 a reference to a business day is a reference to a day that the banks are opened for business in the State or Territory in which the Company is registered.

## **2. NAME OF THE COMPANY**

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### **2.1 Company's Name**

The name of the company is Sandhurst Club Limited.

### **2.2 Display of Company's Name**

The Company must display its name prominently at its Registered Office (together with the words "Registered Office") and at every place of business that is open to the public.

### **2.3 Company's Name on Documents and Instruments**

Except where the Act provides otherwise, the Company must detail its name on all public documents and negotiable instruments of the Company.

### **2.4 Change of Company's Name**

Subject to any other requirements of the Act, the Company may change its name by passing a Special Resolution of the Company to adopt a new name. Any change in the Company's name does not:

- 2.4.1 create a new legal entity;
- 2.4.2 affect the Company's existing property, rights or obligations; or
- 2.4.3 render defective any legal proceedings by or against the Company.

Any legal proceedings that could have been continued or begun by or against the Company in its former name may be continued or begun by or against the Company in its new name.

### **3. AUSTRALIAN COMPANY NUMBER**

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#### **3.1 Company's ACN**

The Company's ACN is 083 181 364.

#### **3.2 Documents and Instruments**

In addition to the requirement in clause 2.3, the Company must detail on the first page of all its public documents and negotiable instruments the expression "Australian Company Number", or the abbreviated word "ACN", followed by its ACN. Where permitted, the Company may detail its Australian Business Number, or the abbreviated word "ABN", followed by its ABN, in place of its ACN.

#### **3.3 Exceptions to Clause 2.2**

Clause 3.2 does not apply where the Act provides otherwise including, without limitation, to cash register receipts issued by the Company.

### **4. REGISTERED OFFICE**

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The Registered Office will be at such place as the Board may appoint.

### **5. LEGAL CAPACITY**

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#### **5.1 Type of Company**

The Company is a public company limited by shares and guarantee.

#### **5.2 Membership**

5.2.1 Subject to any requirement of the Act, the Company must always have at least one Member but there is no maximum number of Members required (other than in respect of certain classes of Golf Members, which are provided for in clause 11.2.4).

5.2.2 The liability of each Member is limited to the following:

5.2.2.1 in relation to a Member who is a shareholder of the Company, the amount unpaid (if any) on that Member's Shares; and

5.2.2.2 in all other circumstances, the amount specified in clause 29,

together with any other amounts due and payable to the Company under this Constitution including in respect of any outstanding Subscription Fees, Special Levies & Charges and Clubhouse Levies.

- 5.2.3 A person who becomes a Member agrees to observe and perform the provisions of this Constitution including any By-laws or Rules made pursuant to it.

### **5.3 Powers**

Subject to any restrictions in the Act, the Company has the legal capacity and powers of a natural person including, without limitation, the power to:

- 5.3.1 issue and otherwise deal with Memberships, including suspend and forfeit Memberships pursuant to clauses 15 and 16;
- 5.3.2 issue debentures of the Company;
- 5.3.3 grant options over unissued Memberships;
- 5.3.4 grant a fixed as well as a floating charge over the Company's property;
- 5.3.5 procure the registration or recognition of the Company as a body corporate in any jurisdiction, whether within or outside the Commonwealth of Australia; and
- 5.3.6 do anything that the Company is lawfully authorised to do in any jurisdiction, whether within or outside the Commonwealth of Australia.

## **6. OBJECTS**

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The objects for which the Company has been established are all or any of the following:

- 6.1 to operate and make available the Club Facilities, pursuant to the terms of the Lease, for use by the Members and such other persons who are, pursuant to the terms of this Constitution, authorised to use such facilities;
- 6.2 to operate and make available the Golf Courses, pursuant to the terms of the Lease, for the use of the Golf Members and such other Members who are, pursuant to the rights attached to their respective class of Membership, authorised to use the Golf Courses;
- 6.3 to establish a Junior Golf Program at the Golf Courses for persons aged between 12 and 17 years old, and on terms otherwise determined by the Board;
- 6.4 to maintain the Golf Courses and the Club Facilities at a reasonable standard;
- 6.5 in relation to the Golf Courses, to promote the game of golf in accordance with the rules of the game of golf adopted from time to time by The Royal and Ancient Golf Club of St Andrews, except insofar as they are or may be modified by the body for the time being controlling the game of golf in Victoria, Australia;
- 6.6 in relation to the Club Facilities, to promote those facilities in the interests of Members;
- 6.7 to conduct competitions and tournaments in relation to the Golf Courses and the Club Facilities, including those for persons who are not Members;
- 6.8 to provide such other facilities to the Members as the Board determines;

- 6.9 in respect of each Relevant Lot, to regulate the Resident Member's occupation, use and dealings with respect to that Relevant Lot in accordance with the requirements and restrictions set out in this Constitution and any By-laws or Rules;
- 6.10 in respect of each Development Lot, to regulate the Developer Member's occupation, use and dealings with respect to that Development Lot in accordance with the requirements and restrictions set out in this Constitution and any By-laws or Rules; and
- 6.11 to raise funds by any lawful means for the achievement of the objects.

## **7. REPLACEABLE RULES**

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Each of the sections or sub-sections of the Act which would apply to the Company as replaceable rules within the meaning of the Act, if not for this clause, are displaced and do not apply to the Company.

## **8. APPLICATION OF INCOME**

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### **8.1 No Payment or Transfer to Members**

All of the income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution, and no portion of it may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the Members.

### **8.2 Payments in Good Faith**

- 8.2.1 Notwithstanding clause 8.1, the Company may, subject to clauses 8.2.2 to 8.2.5 inclusive, make payments in good faith of remuneration to any Member, Officer or other employee of the Company in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business.
- 8.2.2 The Company must not make any payment to a Director in return for services rendered to the Company in his or her capacity as a Director or officeholder including, without limitation, sitting fees and other emoluments. The Company may, however, reimburse a Director in respect of reasonable out-of-pocket expenses.
- 8.2.3 The Company must not make any payment to a Director for services rendered by that Director (in a capacity other than Director or officeholder) to the Company unless the provision of those services has the prior approval of the Board, the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- 8.2.4 The Company must not make any payment to a Director in his or her capacity as an employee of the Company, unless the terms of employment are first approved by a resolution by the Board.
- 8.2.5 The Company must not make any payment to a Member, Officer or other employee of the Company that represents, either directly or indirectly, a commission or allowance paid by the Company to that person in respect of the sale or disposal by that person of liquor on the Property.

- 8.2.6 The Company may make payment of interest on money borrowed from any Member, and may also make payment in respect of reasonable and proper rent for premises let by a Member to the Company.

## **9. ALTERATION OF CONSTITUTION**

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Subject to clause 13.2.11 and any other requirements of the Act, the Company may alter this Constitution, either wholly or in part, by passing a Special Resolution of the Company.

## **10. SHARE CAPITAL & OTHER MATTERS**

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### **10.1 General**

- 10.1.1 Shares in the Company do not have par value but may have nominal value.
- 10.1.2 Subject to the provisions of this Constitution and any applicable provisions of the Act, Memberships will be under the control of the Board.

### **10.2 Issue of Memberships**

- 10.2.1 Without prejudice to any special rights previously conferred on the holders of any existing Memberships or class of Memberships, and subject to clause 10.2.2, Memberships may be issued by the Board to any person and:
- 10.2.1.1 on such terms and conditions, and at such times, and upon such terms of payment, whether in cash or otherwise, as the Board may determine; and
- 10.2.1.2 under any class or different classes currently provided in this Constitution,
- provided that any particular Membership is only issued with the rights or restrictions that apply to that respective class of Membership as detailed in this Constitution from time to time.
- 10.2.2 The Board may only issue:
- 10.2.2.1 a Resident Share to a person who is otherwise eligible to be a Resident Member; and
- 10.2.2.2 a Developer Share to a person who is otherwise eligible to be a Developer Member.
- 10.2.3 For clarity, the Board may grant to any person any option to call on the Company to issue Memberships to any person or the person's nominee, but the Board must not issue any bearer Memberships or stock, or convert any Memberships into stock.

### **10.3 Rights of Existing Members**

- 10.3.1 Where the rights attached to some of the Memberships in a class are varied:

- 10.3.1.1 the variation is taken to have varied the rights attached to every other Membership that was in the class existing before the variation; and
- 10.3.1.2 Members who hold Memberships to which the same rights are attached after the variation form a separate class.
- 10.3.2 The rights attached to existing Memberships of any class are not taken to have been varied only because of:
  - 10.3.2.1 an issue of new Memberships of the class which rank equally with the existing Memberships in that class; or
  - 10.3.2.2 a conversion of other Memberships or securities into Memberships of the class which rank equally with the existing Shares in that class.

#### **10.4 Ownership**

- 10.4.1 Unless required under the Act, the Company will not recognise any person as holding any Membership upon any trust.
- 10.4.2 Subject to any requirements of the Act, the Company is not bound by or compelled in any way to recognise:
  - 10.4.2.1 any equitable, contingent, future or partial interest in any Membership; or
  - 10.4.2.2 any other right in respect of any Membership,

whether or not the Company has notice of such interest or such right, except an absolute right of ownership in the registered holder.

#### **10.5 Dealing with a Membership**

A Member must not mortgage, charge or otherwise encumber the Member's Membership except as provided for in this Constitution or as approved by the Board.

### **11. MEMBERSHIPS**

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#### **11.1 General**

The following persons are Members:

- 11.1.1 the Manager Members, on and from the Relevant Date; and
- 11.1.2 any other person the Board admits to Membership in accordance with this Constitution after the Relevant Date.

Subscriber Members ceased to be Members on the Relevant Date, and shall no longer have any rights or privileges under this Constitution.

#### **11.2 Membership Classes and Number**

- 11.2.1 The Company is divided into the following categories of Membership:

- 11.2.1.1 Resident Member;
  - 11.2.1.2 Individual Member;
  - 11.2.1.3 Family Member;
  - 11.2.1.4 Corporate Member;
  - 11.2.1.5 Club Lifetime Member;
  - 11.2.1.6 Honorary Member;
  - 11.2.1.7 Manager Member;
  - 11.2.1.8 Developer Member, and
  - 11.2.1.9 Mid Week Member.
- 11.2.2 Subject to clause 10.3, the Company may at any time issue other Memberships or divide Memberships into such other categories of Members as the Company determines, and may also convert Memberships from one class into another class.
- 11.2.3 The Company may admit any number of persons as Resident Members, Developer Members, Honorary Members and Manager Members, provided that the eligibility criteria as specified in this Constitution is otherwise met.
- 11.2.4 The maximum number of persons the Company may admit as Golf Members at any particular time, are as follows (subject to any limitation imposed under clause 11.2.5):
- |          |                       |   |
|----------|-----------------------|---|
| 11.2.4.1 | Individual Members    | Unlimited;                                    |
| 11.2.4.2 | Family Members        | Unlimited;                                    |
| 11.2.4.3 | Corporate Members     | 100;  |
| 11.2.4.4 | Club Lifetime Members | 500;  |
| 11.2.4.5 | Honorary Members      | 10; and                                       |
| 11.2.4.6 | Mid Week Members      | As determined by the Board from time to time. |
- 11.2.5 The Company must not admit any particular combination of persons as Golf Members which may result in there being more than 1900 Golf Members who, at any one time, are entitled to play golf 7 days per week at the Golf Courses.

### **11.3 Shareholding and Membership Interests**

- 11.3.1 A person who has been issued with a Share is, by virtue of having been issued with that respective Share, a Member with the rights, privileges and obligations under this Constitution relating to Membership attaching to the ownership of that Share.

- 11.3.2 In all other cases, the rights and obligations of a Member under this Constitution who does not own a Share attach directly to the Membership interest itself.

## **11.4 Membership Eligibility**

### **11.4.1 General**

Only persons who meet the respective eligibility criteria detailed in clause 11.4.2 will be eligible to be Members.

### **11.4.2 Eligibility Criteria**

The eligibility criteria of the respective classes of Membership are as follows:

#### **11.4.2.1 Resident Member**

Any person who is entitled to become the registered proprietor of a Lot.

For the purposes of this sub-clause 11.4.2.1., a person is regarded as being entitled to become the registered proprietor of a Lot if that person can satisfy the Board that they are in possession of an executed transfer of land capable of registration at the Land Titles Office that will enable them to be recorded as the registered proprietor (whether individually or jointly) of that Lot.

#### **11.4.2.2 Individual, Family and Corporate Members**

Any person who is entitled to be registered as a holder of:

11.4.2.2.1 an Individual Share, in respect of an Applicant for an Individual Membership;

11.4.2.2.2 a Family Share, in respect of an Applicant for a Family Membership;

11.4.2.2.3 a Corporate A Share, in respect of an Applicant for a Corporate A Membership;

11.4.2.2.4 a Corporate B Share, in respect of an Applicant for a Corporate B Membership; and

11.4.2.2.5 a Corporate C Share, in respect of an Applicant for a Corporate C Membership.

For the purposes of this sub-clause 11.4.2.2, a person will be regarded as being entitled to be registered as a the holder of the relevant Share if the Board is satisfied that the person is in possession of documentation that will enable their name to be entered into the register of members of Sandhurst Holdings as the owner of that respective share.

**11.4.2.3 Club Lifetime Member**

Any person who is entitled to be registered as a holder of a Lifetime Membership.

For the purposes of this sub-clause 11.4.2.3, a person will be regarded as being entitled to be registered as a the holder of a Lifetime Membership if the Board is satisfied that the person is in possession of documentation that will enable their name to be entered into the register of members of Sandhurst Holdings as the owner of that respective membership.

**11.4.2.4 Honorary Member**

Any person whom the Board deems appropriate, taking into account that person's association with, and commitment to, the Company.

**11.4.2.5 Manager Member**

Any person who is a Director.

**11.4.2.6 Developer Member**

Any person who is the registered proprietor of or is entitled to become the registered proprietor of a Development Lot.

For the purposes of this sub-clause 11.4.2.6, a person is regarded as being entitled to become the registered proprietor of a Development Lot if that person can satisfy the Board that they are in possession of an executed transfer of land capable of registration at the Land Titles Office that will enable them to be recorded as the registered proprietor (whether individually or jointly) of that Development Lot.

**11.4.2.7 Mid Week Member**

Any person who is entitled to be registered as a holder of a Mid Week Membership, as determined by the Board from time to time.

**11.5 Application****11.5.1 Form**

11.5.1.1 Subject to clause 11.5.1.2, an application for Membership must be made in the form the Board prescribes from time to time, and accompanied by any applicable Subscription Fee. An application cannot be lodged by a person who is under 18 years of age at the time of lodgement.

11.5.1.2 A person cannot apply to become an Honorary Member. Rather, a person may only become an Honorary Member upon invitation by the Board.

11.5.1.3 A person who is a Director need not apply to become a Manager Member. Rather, such person will be deemed to be a Manager Member by virtue of being a Director, and agrees to be bound by the terms of this Constitution.

#### 11.5.2 **Irrevocable Offer**

An Application Form lodged by an Applicant with the Company constitutes an irrevocable offer by the Applicant to be issued with a Membership.

#### 11.5.3 **Membership**

With the exception of Honorary Members and Manager Members, any person may apply to become a Member, provided such person otherwise meets the Membership Qualification.

#### 11.5.4 **Nomination where Applicant is Incorporated**

Where an Applicant is incorporated, it must nominate a natural person as its representative in respect of all matters under this Constitution or otherwise which must be done or complied with in relation to Membership.

### 11.6 **Admission**

11.6.1 Applications will be considered by the Board. The Board may, in its absolute discretion, accept or reject the Application. The Board is not required to give any reason for the rejection of an Application.

11.6.2 A person will not become a Member until such time that the person's name and address is entered into the Register of Members.

11.6.3 A person will not be admitted to Membership as a Manager Member after the Completion Date.

### 11.7 **Notification of Acceptance**

The Secretary must send to the successful Applicant notification of acceptance to Membership within a reasonable period of time after such person's Application is approved by the Board.

### 11.8 **Certificate**

11.8.1 Subject to clause 11.8.2, any person whose name is entered as a Member in the Register of Members is entitled to receive a certificate as required by the Act in respect of the Membership held by that Member.

11.8.2 In respect of any Membership jointly held, the Company is not bound to issue more than one Certificate, and delivery of that Certificate to any of the joint holders is deemed to be sufficient delivery to all such holders.

11.8.3 Subject to any other requirements under the Act, any Certificate that is lost, destroyed, worn out or defaced may be replaced:

- 11.8.3.1 upon payment of any fee determined by the Board, not exceeding any amount prescribed under the Act;
  - 11.8.3.2 on provision to the Company of either the Certificate to be replaced (which must be cancelled by the Board) or a statement in writing that the Certificate has been lost or destroyed and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made;
  - 11.8.3.3 where the Certificate has been lost, on provision to the Company of an undertaking in writing that if the Certificate is found, or received by the owner, it will be returned to the Company; and
  - 11.8.3.4 on advertising the intention to seek a replacement Certificate if required by the Board.
- 11.8.4 A Certificate must state:
- 11.8.4.1 the Company's name and its jurisdiction of registration; and
  - 11.8.4.2 the class to which every Membership belongs,
- and any Certificate issued pursuant to clause 11.8.3 as a replacement must prominently display on the Certificate the statement "Issued in replacement of certificate numbered: (number)".

## **12. SUBSCRIPTION FEES, SPECIAL LEVIES & CHARGES AND CLUBHOUSE LEVIES**

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### **12.1 Determination of Fees**

The Board may, subject to any other provision in this Constitution including clause 12.2.2:

- 12.1.1 determine the amount of Subscription Fees, Special Levies & Charges and Clubhouse Levies; and
- 12.1.2 determine when and in what circumstances the Subscription Fees, Special Levies & Charges and Clubhouse Levies are payable.

### **12.2 Subscription Fees**

- 12.2.1 Each Member (except the Project Developer, an Honorary Member or a Manager Member) must pay a Subscription Fee at such intervals as the Board determines which may be, without limitation, quarterly, bi-annually or yearly in advance.
- 12.2.2 The annual Subscription Fees payable by Developer Members will be calculated as follows:

Developer Members  $SF = A \times 12 \times SFR$

where:

SF means Subscription Fee for Developer Members

A means area size of the relevant Development Lot measured in hectares.

SFR means the current Subscription Fee payable by a Resident Member

12.2.3 The Subscription Fees payable by Golf Members may be discounted by the Board in its sole discretion.

12.2.4 The Board in its discretion may increase the Subscription Fees each Membership Year to what it considers to be market rates for golf courses and facilities of a similar standard and offering similar facilities to the Golf Courses and other Club Facilities.

### **12.3 Special Levies & Charges**

Each Member (except an Honorary Member, Manager Member and any Membership held by the Project Developer) must pay to the Company any Special Levies & Charges imposed under clause 12.1.

### **12.4 Clubhouse Levy**

12.4.1 Each Golf Member and Resident Member must pay to the Company any Clubhouse Levy imposed under clause 12.1.

12.4.2 Until the Board resolves otherwise, the Clubhouse Levy payable by a Golf Member in respect of each possible Nominee, and also each Club Lifetime Member, is \$240.00 per year. For the sake of clarity, and until the Board resolves otherwise, a Resident Member, an Individual Member, and a Club Lifetime Member is required to pay a Clubhouse Levy of \$240.00 per year, a Mid Week Member is required to pay \$120.00 per year, a Family Member is required to pay \$480.00 per year and a Corporate Member is required to pay \$720.00 per year, irrespective of whether or not any Nominee has been nominated by the Golf Member.

12.4.3 The Clubhouse Levy payable under clauses 12.4.1 and 12.4.2 is non-refundable (in respect of any unused portion), and is also non-cumulative.

### **12.5 Overdue amounts**

Without affecting any other rights the Company has, the Board may take any action it determines appropriate to recover any outstanding amounts from any Member, including:

12.5.1 taking action in a court of competent jurisdiction to compel the Member to pay all outstanding amounts;

12.5.2 requiring the Member to reimburse the Company for costs and expenses incurred in taking steps to recover all outstanding amounts;

12.5.3 charging interest at the rate of 2% above the rate prescribed under the *Penalty Interests Rates Act* 1983 on all moneys outstanding until they are paid; and

12.5.4 requiring that any payments made by a Member under this clause shall be appropriated first in payment of any interest and any unpaid costs and

expenses of the Company, and then applied in repayment of the principal sum.

### **13. MEMBERSHIP RIGHTS, PRIVILEGES & PROHIBITIONS**

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#### **13.1 Subscriber Membership**

Subscriber Membership ceased to exist as at the Relevant Date, as detailed in clause 11.1, and accordingly such persons do not have any rights or privileges, or are subject to any prohibitions, under this Constitution.

#### **13.2 Resident Membership**

13.2.1 Subject to any By-laws or Rules made by the Company, each Resident Member:

13.2.1.1 is entitled to use the Club Facilities on a "first come first served" basis;

13.2.1.2 may invite its Associates (and other guests permitted by the Board) to use the Club Facilities, but only where the Resident Member or its Associates are also present;

13.2.1.3 may nominate a natural person as its Nominee to enjoy all of the rights and privileges associated with Resident Membership instead of the Resident Member, and may also revoke such nomination, but only one nomination in any twelve month period will be permitted unless the Board resolves otherwise (which may be subject to any conditions determined by the Board including the payment of an administration fee in respect of each additional nomination made by the Resident Member during any particular Membership Year);

13.2.1.4 is entitled to use golf carts at the Golf Courses, subject to the terms and conditions of any licence granted by the Company to such Member;

13.2.1.5 is entitled to nominate to participate in any committee or other working group established by the Company under this Constitution for the purpose of managing or operating the Club Facilities, including the Resident Members' Committee and the Members' Consultative Committee;

13.2.1.6 is entitled to participate in any activities coordinated by the Company for the benefit of Resident Members, including competitions held using the Club Facilities or at any other location;

13.2.1.7 must ensure that the Club Facilities utilised by that Resident Member, its Associates and other guests are used in a manner which is not prejudicial to the interests of other Resident Members, their Associates and other guests (and also any other Member or Guest) and agrees to indemnify the

Company against any claim for loss, damage, costs and expenses in this regard; and

- 13.2.1.8 acknowledges and agrees that any use of the Resident Facilities by that Resident Member, its Associates and other guests is strictly at the risk of that Member, its Associates and other guests. The Company will not be held liable for any loss (including life) or damage in this regard.
- 13.2.2 A Resident Member is not entitled to use the Golf Courses (other than on a fee paying basis and at such times as the Board or the Manager in their absolute discretion determine), unless such Resident Member is also a Golf Member.
- 13.2.3 A Resident Member is prohibited from owning a Relevant Lot unless it also owns the Resident Share to which that Relevant Lot relates.
- 13.2.4 A Resident Member is prohibited from selling, transferring, disclaiming or otherwise disposing of (**Transferring**) its Resident Membership to any third party, unless the Resident Member is Transferring its interest in the Resident Membership to a third party who is also the transferee of the Relevant Lot and in circumstances which comply with the terms of the Restrictive Covenant (whether or not the Restrictive Covenant is enforceable at law).
- 13.2.5 A Resident Member must not develop, subdivide or use its Relevant Lot for any purpose other than one permanent non-transportable private residence and for purposes ancillary thereto.
- 13.2.6 A Resident Member must not do any of the following, except where otherwise permitted by the Board:
- 13.2.6.1 design and construct a Residence or any other improvement on the Relevant Lot;
- 13.2.6.2 operate any mechanical or other equipment on the Relevant Lot;
- 13.2.6.3 adversely impact on the amenity of the Relevant Lot, the neighbourhood of that Relevant Lot or any other Lot;
- 13.2.6.4 park any vehicle on the Relevant Lot or on any road or land in the vicinity of the Relevant Lot;
- 13.2.6.5 neglect to maintain any improvements on the Relevant Lot to the standards required by the Company;
- 13.2.6.6 fail to install or operate any security monitoring system which does not meet standards prescribed by the Board, and which is also not linked to a central monitoring station for the Sandhurst Club as a whole manned 24 hours per day to the satisfaction of the Company;
- 13.2.6.7 neglect to pay fees to the Company in respect of services provided by the Company to the Relevant Lot; or

- 13.2.6.8 fail to comply with any statutory requirements in respect of the Relevant Lot.
- 13.2.7 In deciding whether or not to grant its approval to non-compliance with any of the matters set out in clause 13.2.6, the Company must consider any By-laws or Rules of the Company which specify the standards for Members to comply with in respect of the following:
- 13.2.7.1 the design of a Residence, including the building form, building setbacks, roof materials and pitch, building materials, quality of workmanship and the nature of other improvements;
  - 13.2.7.2 the amenity of the Residence and the neighbourhood of the Residence including visual impacts and the impacts of traffic, overshadowing, overlooking, noise and smell;
  - 13.2.7.3 the safety and security of all Sandhurst Club residents;
  - 13.2.7.4 the cost of all services to Resident Members and the benefit of those services to Resident Members;
  - 13.2.7.5 the protection and improvement of the investment of Resident Members;
  - 13.2.7.6 the installation and operation of a 24 hour manned security system in every Residence of the Sandhurst Club, which is centrally linked; and
  - 13.2.7.7 the maintenance and enhancement of a high standard of landscaping for the whole of the Property.
- 13.2.8 If a Resident Member has not complied with clauses 13.2.3 to 13.2.6 inclusive (**Relevant Provisions**) within 14 days after service of a notice by the Company specifying any non-compliance, and the non-compliance relates to performance of any works required to be performed by a Resident Member pursuant to those clauses (other than the construction of a Residence), the Resident Member agrees to the following:
- 13.2.8.1 to allow the Company, its employees, contractors, or agents to enter the Relevant Lot and rectify the non-compliance;
  - 13.2.8.2 if the Company exercises its power to rectify non-compliance, to pay to the Company any charges levied against the Resident Member in respect of the cost of the works performed as a result of non-compliance which (until paid) are and shall be a charge on the Relevant Lot;
  - 13.2.8.3 to accept a certificate signed by the Secretary (or any other authorised representative or employee of the Company) as prima facie proof of the costs and expenses incurred by the Company to rectify the Resident Member's non-compliance with the Relevant Provisions;
  - 13.2.8.4 to pay interest at the rate of 2% above the rate prescribed under the *Penalty Interests Rates Act* 1983 on all moneys outstanding under this clause, until they are paid; and

- 13.2.8.5 that any payments made for the purposes of this clause shall be appropriated first in payment of any interest and any unpaid costs and expenses of the Company, and then applied in repayment of the principal sum.
- 13.2.9 If a Resident Member has not complied with the notice referred to in clause 13.2.8 within 14 days after service of the notice, the Company may at its discretion and without affecting any other rights it has under clause 13.2.8, take action in a court of competent jurisdiction to compel the Resident Member to comply with the Relevant Provisions.
- 13.2.10 Without limitation to any other remedies the Company may have against that Resident Member, such Member acknowledges and agrees that damages are not an acceptable remedy to a breach of any of the obligations contained in this clause 13, and consents to the Company making application to the court, as referred to in clause 13.2.9, for a mandatory or prohibitory injunction (as the case may be) against that Resident Member to ensure compliance with the above.
- 13.2.11 The Company must not, without a unanimous approval from Members, amend this Constitution in any way so as to reduce or otherwise vary the limitations imposed in clauses 13.2.2 to 13.2.6 inclusive, and clauses 13.2.8 to 13.2.11 inclusive.
- 13.2.12 Without limiting the powers set out in clause 21.1.2.4, the Company may make By-laws and Rules which are enforceable against each Resident Member in respect of any matter concerning a Resident Member's Relevant Lot or any other land within the Project.
- 13.2.13 A Resident Member does not have a right to vote at any General Meeting until the Completion Date.

### **13.3 Individual Membership**

- 13.3.1 Subject to any By-laws or Rules made by the Company, each Individual Member:
- 13.3.1.1 is entitled to play golf at the Golf Courses 7 days per week during any Membership Year (including full rights to use the Clubhouse and the Club Facilities), subject to the Board requiring the Golf Courses at any time for the preparation and staging of tournaments, corporate golf days, or for any other Special Purpose;
- 13.3.1.2 is exempt from the payment of green fees in respect of the Golf Courses;
- 13.3.1.3 is entitled to meals, refreshments and privileges as are provided by the Company for Golf Members, their Guests and anyone else the Board admits to the Golf Courses and the Club Facilities, at prices determined by the Board from time to time. For the sake of clarity, a Golf Member may apply any amount paid by that Member to the Company by way of a Clubhouse Levy towards the payment of such meals, refreshments and

- privileges, but only up to the amount of the Clubhouse Levy actually paid by such Member;
- 13.3.1.4 may nominate a natural person as its Nominee to enjoy all of the rights and privileges associated with Golf Membership instead of that Individual Member, and may also revoke such nomination, but only one change of nomination in respect of the Nominee will be permitted in any twelve month period unless the Board resolves otherwise (which may be subject to any conditions determined by the Board including the payment of an administration fee in respect of each additional nomination made by the Individual Member during any particular Membership Year);
  - 13.3.1.5 may lease its Individual Membership to any third party approved by the Board, subject to any terms and conditions determined by the Board from time to time;
  - 13.3.1.6 may invite Guests to utilise the Golf Courses and the Club Facilities, but only in accordance with the criteria detailed in any By-law or Rule relating to Guests or rules of play (or both), and otherwise as the Board determines in its sole discretion. Unless the Board determines otherwise:
    - 13.3.1.6.1 only three Guests may utilise the Golf Courses on any one occasion; and
    - 13.3.1.6.2 any particular Guest may only utilise the Golf Courses a maximum of six times per year;
  - 13.3.1.7 must ensure that the Golf Courses and the Club Facilities utilised by that Individual Member or its Guests are used in a manner which is not prejudicial to the interests of other Golf Members, their Guests, or any other Member or person, and agrees to indemnify the Company against any claim for loss, damage, costs and expenses in this regard;
  - 13.3.1.8 acknowledges and agrees that any use of the Golf Courses and the Club Facilities by that Individual Member or its Guests are strictly at the risk of that Individual Member or its Guests. The Company will not be held liable for any loss (including life) or damage in this regard; and
  - 13.3.1.9 is not entitled to transfer or otherwise transmit its Individual Membership to any third party under this Constitution, but may, however, transfer or transmit its respective share held in Sandhurst Holdings:
    - (a) to a third party in accordance with the Holdings Constitution, in which case the Individual Membership in this Company will be cancelled by the Board and the transferee of the Member's share in Sandhurst Holdings must apply for a new Individual Membership in accordance with the provisions contained in this Constitution; or

(b) to the Company or an entity nominated by the Company, if the Company consents, and subject to the notice period and any other conditions as determined by the Board from time to time, in which case the Individual Membership in the Company will be cancelled.

13.3.2 Where an Individual Member has nominated a Nominee in accordance with clause 13.3.1.4, then that Nominee shall be entitled to all of the rights and privileges, and be bound by the prohibitions, contained in clause 13.3, however such Nominee is not entitled to nominate any person as its Nominee under clause 13.3.1.4.

13.3.3 The provisions of clause 13.2.13 in respect of voting entitlements of Resident Members, apply equally to Individual Members. A Nominee of an Individual Member is not entitled to vote at any General Meeting.

#### **13.4 Family Membership**

13.4.1 Each Family Member is entitled to all of the rights and privileges, and is bound by all of the obligations, of an Individual Member (as detailed in clauses 13.3.1 and 13.3.2) subject to the following:

13.4.1.1 A Family Member may, where a Family Member is a natural person, nominate:

13.4.1.1.1 one Nominee to enjoy the rights and privileges of Golf Membership who, in such an event, must be a Spouse or Child (of the Family Member); or

13.4.1.1.2 two Nominees, where the first Nominee is to enjoy the rights and privileges of Golf Membership instead of that Family Member, and the second Nominee must be either a Spouse or Child (of the first Nominee);

13.4.1.2 Family Member must, where a Family Member is not a natural person, nominate two Nominees, where the first Nominee is to enjoy the rights and privileges of Golf Membership and the second Nominee is either a Spouse or Child (of the first Nominee);

13.4.1.3 any nomination of a Nominee may be revoked by the Family Member, however only one change of nomination is permitted in any 12 month period in respect of each possible Nominee (being two nominations in total), unless the Board resolves otherwise (which may be subject to any conditions determined by the Board including the payment of an administration fee in respect of each additional nomination made by the Family Member during any particular Membership Year);

13.4.1.4 the Company may request evidence from the Family Member that a nominated Spouse is, in fact, married to, or in a de-facto relationship with, the Family Member or its Nominee, and the

Company reserves the right to reject such person where it believes otherwise; and

- 13.4.1.5 any Spouse or Child may elect to either utilise the Golf Courses only on week-days, in which case the Family Member shall be entitled to a discount in respect of the Subscription Fees otherwise payable by the Family Member in relation to the Spouse or Child, as detailed in this Constitution or as the Board otherwise directs.
- 13.4.2 The provisions of clause 13.2.13 in respect of voting entitlements of Resident Members, apply equally to Family Members. A Nominee of a Family Member is not entitled to vote at any General Meeting.

### **13.5 Corporate A Membership**

- 13.5.1 Each Corporate A Member is entitled to all of the rights and privileges, and is bound by all of the obligations, of an Individual Member (as detailed in clauses 13.3.1 and 13.3.2) subject to the following:
  - 13.5.1.1 a Corporate A Member may nominate two Nominees to enjoy the rights and privileges of Golf Membership (and for the sake or clarity is not permitted to nominate any more than two Nominees) and may also revoke such nomination, but only one change of nomination in respect of each Nominee will be permitted in any twelve month period unless the Board resolves otherwise (which may be subject to any conditions determined by the Board including the payment of an administration fee in respect of each additional nomination made by the Corporate A Member during any particular Membership Year);
  - 13.5.1.2 a Corporate A Member is entitled to hold one corporate golf day per year at the Golf Courses on a week-day, at a discount to be determined by the Board (at a discount not less than 10%) and during the first year of operation of the North Course may hold one corporate golf day for a maximum of 40 persons (the green fees in respect of whom shall be waived) on a day approved by the Board;
  - 13.5.1.3 the Guests of a Corporate A Member, or its Nominee, may utilise the Golf Courses and the Club Facilities on a week-day unaccompanied, provided that the number of Guests per year does not exceed 20 in total, and no particular Guest uses the Golf Courses and the Club Facilities more than six times per year;
  - 13.5.1.4 the name of the Corporate A Member shall be included in a Corporate Member directory, which will be prominently displayed in the Clubhouse;
  - 13.5.1.5 each Corporate A Member will receive a listing in any annual Membership golf programme produced by the Company;

- 13.5.1.6 each Corporate A Member will have a right of first refusal to sponsor any tournaments held by the Company, however the Company will not guarantee that any particular Corporate A Member will be afforded the right to be a sponsor over another Corporate Member; and
- 13.5.1.7 any Nominee of a Corporate A Member may elect to utilise the Golf Courses only on week-days, in which case the Corporate Member shall be entitled to a discount in respect of the Subscription Fees otherwise payable by the Corporate A Member in relation to the relevant Nominee, as detailed in this Constitution or as the Board otherwise directs.
- 13.5.2 For the purposes of clause 13.5.1.3, in calculating the number of Guests utilising the Golf Courses and the Club Facilities in any one year, or the number of times a particular Guest has utilised the Golf Courses and the Club Facilities, the Guest of any Nominee of a Corporate A Member will be counted.
- 13.5.3 The provisions of clause 13.2.13 in respect of voting entitlements of Resident Members, apply equally to Corporate A Members. A Nominee of a Corporate A Member is not entitled to vote at any General Meeting.

## **13.6 Corporate B Membership**

- 13.6.1 Each Corporate B Member is entitled to all of the rights and privileges, and is bound by all of the obligations, of an Individual Member (as detailed in clauses 13.3.1 and 13.3.2) subject to the following:
  - 13.6.1.1 a Corporate B Member may nominate three Nominees to enjoy the rights and privileges of Golf Membership (and for the sake or clarity is not permitted to nominate any more than three Nominees) and may also revoke such nomination, but only one change of nomination in respect of each Nominee will be permitted in any twelve month period unless the Board resolves otherwise (which may be subject to any conditions determined by the Board including the payment of an administration fee in respect of each additional nomination made by the Corporate B Member during any particular Membership Year);
  - 13.6.1.2 a Corporate B Member is entitled to hold one corporate golf day per year at the Golf Courses on a week-day, at a discount to be determined by the Board (at a discount not less than 10%) and during the first year of operation of the North Course may hold one corporate golf day for a maximum of 40 persons (the green fees in respect of whom shall be waived) on a day approved by the Board;
  - 13.6.1.3 the Guests of a Corporate B Member, or its Nominee, may utilise the Golf Courses and the Club Facilities on a week-day unaccompanied, provided that the number of Guests per year does not exceed 30 in total, and no particular Guest uses the Golf Courses and the Club Facilities more than six times per year;

- 13.6.1.4 the name of the Corporate B Member shall be included in a Corporate Member directory, which will be prominently displayed in the Clubhouse;
  - 13.6.1.5 each Corporate B Member will receive a listing in any annual Membership golf programme produced by the Company;
  - 13.6.1.6 each Corporate B Member will have a right of first refusal to sponsor any tournaments held by the Company, however the Company will not guarantee that any particular Corporate B Member will be afforded the right to be a sponsor over another Corporate Member; and
  - 13.6.1.7 any Nominee of a Corporate B Member may elect to utilise the Golf Courses only on week-days, in which case the Corporate Member shall be entitled to a discount in respect of the Subscription Fees otherwise payable by the Corporate B Member in relation to the relevant Nominee, as detailed in this Constitution or as the Board otherwise directs.
- 13.6.2 For the purposes of clause 13.6.1.3, in calculating the number of Guests utilising the Golf Courses and the Club Facilities in any one year, or the number of times a particular Guest has utilised the Golf Courses and the Club Facilities, the Guest of any Nominee of a Corporate B Member will be counted.
- 13.6.3 The provisions of clause 13.2.13 in respect of voting entitlements of Resident Members, apply equally to Corporate B Members. A Nominee of a Corporate B Member is not entitled to vote at any General Meeting.

## **13.7 Corporate C Membership**

- 13.7.1 Each Corporate C Member is entitled to all of the rights and privileges, and is bound by all of the obligations, of an Individual Member (as detailed in clauses 13.3.1 and 13.3.2) subject to the following:
- 13.7.1.1 a Corporate C Member may nominate four Nominees to enjoy the rights and privileges of Golf Membership (and for the sake or clarity is not permitted to nominate any more than four Nominees) and may also revoke such nomination, but only one change of nomination in respect of each Nominee will be permitted in any twelve month period unless the Board resolves otherwise (which may be subject to any conditions determined by the Board including the payment of an administration fee in respect of each additional nomination made by the Corporate C Member during any particular Membership Year);
  - 13.7.1.2 a Corporate C Member is entitled to hold one corporate golf day per year at the Golf Courses on a week-day, at a discount to be determined by the Board (at a discount not less than 10%) and during the first year of operation of the North Course may hold one corporate golf day for a maximum of 40 persons (the green fees in respect of whom shall be waived) on a day approved by the Board;

- 13.7.1.3 the Guests of a Corporate C Member, or its Nominee, may utilise the Golf Courses and the Club Facilities on a week-day unaccompanied, provided that the number of Guests per year does not exceed 40 in total, and no particular Guest uses the Golf Courses and the Club Facilities more than six times per year;
  - 13.7.1.4 the name of the Corporate C Member shall be included in a Corporate Member directory, which will be prominently displayed in the Clubhouse;
  - 13.7.1.5 each Corporate C Member will receive a listing in any annual Membership golf programme produced by the Company;
  - 13.7.1.6 each Corporate C Member will have a right of first refusal to sponsor any tournaments held by the Company, however the Company will not guarantee that any particular Corporate C Member will be afforded the right to be a sponsor over another Corporate Member; and
  - 13.7.1.7 any Nominee of a Corporate C Member may elect to utilise the Golf Courses only on week-days, in which case the Corporate Member shall be entitled to a discount in respect of the Subscription Fees otherwise payable by the Corporate C Member in relation to the relevant Nominee, as detailed in this Constitution or as the Board otherwise directs.
- 13.7.2 For the purposes of clause 13.7.1.3, in calculating the number of Guests utilising the Golf Courses and the Club Facilities in any one year, or the number of times a particular Guest has utilised the Golf Courses and the Club Facilities, the Guest of any Nominee of a Corporate C Member will be counted.
- 13.7.3 The provisions of clause 13.2.13 in respect of voting entitlements of Resident Members, apply equally to Corporate C Members. A Nominee of a Corporate C Member is not entitled to vote at any General Meeting.

## **13.8 Club Lifetime Membership**

- 13.8.1 Each Club Lifetime Member is entitled to all of the rights and privileges, and is bound by all of the obligations, of an Individual Member (as detailed in clauses 13.3.1 and 13.3.2) subject to the following:
  - 13.8.1.1 a Club Lifetime Member is not entitled to nominate a Nominee, unless the Board agrees otherwise;
  - 13.8.1.2 any particular Guest of a Club Lifetime Member may only utilise the Golf Courses four times per year;
  - 13.8.1.3 a Club Lifetime Member cannot lease its Membership to any third party; and
  - 13.8.1.4 a Club Lifetime Member is not permitted, at any time, to transfer or otherwise transmit its Membership in the Company to any third party.

- 13.8.2 Unless otherwise determined by the Board, a Club Lifetime Member may, in accordance with the provisions contained in the Holdings Constitution and this clause 13.8.2, resign its Membership by giving at least 30 days written notice (**notice period**) to the Company, such resignation to take effect on the next 30 June following the expiration of the notice period.
- 13.8.3 A Club Lifetime Member (or its Nominee) is not entitled to attend or vote at any General Meeting, whether before or after the Completion Date.

### **13.9 Honorary Membership**

- 13.9.1 Each Honorary Member is, subject to any other provisions contained in this Constitution, entitled to all of the rights and privileges, and is bound by all of the obligations, of an Individual Member (as detailed in clauses 13.3.1 and 13.3.2) subject to the following :
- 13.9.1.1 an Honorary Member is not entitled to nominate a Nominee;
- 13.9.1.2 an Honorary Member cannot lease its Membership to any third party; and
- 13.9.1.3 an Honorary Member is not permitted, at any time, to transfer or otherwise transmit its Membership in the Company to any third party.
- 13.9.2 The provisions of clause 13.8.3 which apply to Club Lifetime Members, apply equally to Honorary Members.

### **13.10 Manager Membership**

- 13.10.1 A Manager Member is not entitled to any rights or privileges under this Constitution other than the right to vote at any General Meeting, but only prior to the Completion Date. Thereafter a Manager Member will cease to be a Member and must deliver to the Company that Member's Certificate for cancellation.
- 13.10.2 A Manager Member ceases to be a Member if, at any time, he or she ceases to be a Director in accordance with the terms of this Constitution.

### **13.11 Developer Membership**

- 13.11.1 A Developer Member is not entitled to use the Golf Course, the Clubhouse or the Club Facilities, unless such Developer Member is also a Golf Member.
- 13.11.2 A Developer Member is prohibited from owning a Development Lot unless it also owns the Developer Share to which that Development Lot relates.
- 13.11.3 A Developer Member may only sell, transfer, disclaim or otherwise dispose of (**Transfer**) its Developer Membership, Developer Share or the Development Lot to which the Developer Membership relates, to a third party (**Transferee**) if:

- 13.11.3.1 the Transferee is also the transferee from the Developer Member of the Developer Membership, Developer Share and the Development Lot to which the Developer Membership relates and in circumstances which comply with the terms of the Restrictive Covenant (whether or not the Restrictive Covenant is enforceable at law); and
- 13.11.3.2 the Project Developer has provided its prior written consent to the Transfer of the Developer Membership and the Development Lot by the Developer Member to the Transferee.
- 13.11.4 A Developer Member may develop, subdivide or use its Development Lot for the construction of permanent non-transportable private residences, including the development of associated infrastructure, and for purposes ancillary thereto and for no other purpose provided that:
  - 13.11.4.1 all Infrastructure Works are constructed or otherwise undertaken on a Development Lot in accordance with the specifications and standards determined by the Board in respect of a Development Lot from time to time;
  - 13.11.4.2 the Developer Member must construct or otherwise undertake on the Development Lot and at its own cost, such Optical Infrastructure Works and Recycled Water Infrastructure Works as requested by the Board in writing from time to time; and
  - 13.11.4.3 all Optical Infrastructure Works and Recycled Water Infrastructure Works:
    - 13.11.4.3.1 are approved in writing by the Project Developer prior to being constructed or otherwise undertaken on a Development Lot; and
    - 13.11.4.3.2 are constructed or are otherwise undertaken by a person who has been approved in writing by the Project Developer to construct or perform such works on the relevant Development Lot.
- 13.11.5 A Developer Member is prohibited from developing, subdividing, or using its Development Lot for the construction and/or development of commercial, retail or recreational facilities.
- 13.11.6 If a Developer Member subdivides its Development Lot, then upon the registration of any plan of subdivision of the Development Lot:
  - 13.11.6.1 the Developer Member must ensure that any such subdivision is carried out in accordance with Plan of Subdivision PS 500745K (**Plan**);
  - 13.11.6.2 the Developer Member must transfer to the Project Developer, or such other entity as nominated by the Project Developer, all lots designated as 'C' and 'P' lots on the plan of subdivision (in

accordance with the Plan) for consideration of \$1.00 for all such lots;

13.11.6.3 the Developer Member must ensure that any contract of sale or other transfer of a Lot to be contains an obligation on the purchaser/transferee of that Lot:

13.11.6.3.1 that the Lot can only be utilised for residential purposes;

13.11.6.3.2 to accept a transfer of the Resident Share and the Resident Membership in respect of that Lot; and

13.11.6.3.3 to impose a similar obligation on any subsequent purchaser/transferee of that Lot;

13.11.6.4 the Developer Member will be deemed to have forfeited its Developer Membership and Developer Share to the Company;

13.11.6.5 the Developer Member will be deemed to have transferred its legal and beneficial interest in all Infrastructure Works, Optical Infrastructure Works and/or Recycled Water Infrastructure Works, that have been constructed or undertaken on the relevant Development Lot, to the Company or its nominee and the Developer Member will be responsible for all costs associated with this transfer, including without limitation stamp duty;

13.11.6.6 the Developer Member will execute all documents and do all other things reasonably required by the Company or its nominee to complete and perfect the transfer referred to in clause 13.11.6.5; and

13.11.6.7 the Company will issue to the Developer Member:

13.11.6.7.1 a Resident Membership and Resident Share for each Lot created by the subdivision of the Development Lot to be utilised for residential purposes; and

13.11.6.7.2 a new Developer Membership for each other Development Lot (if any) created by the plan of subdivision (in accordance with the plan) that has been registered by the Developer Member.

13.11.7 A Developer Member must not do any of the following, except where otherwise permitted by the Board:

13.11.7.1 design and construct a Residence or any other improvement on the Development Lot or any Lot created by the subdivision of the Development Lot;

13.11.7.2 operate any mechanical or other equipment on the Development Lot;

- 13.11.7.3 adversely impact on the amenity of the Development Lot, the neighbourhood of that Development Lot or any other Lot;
  - 13.11.7.4 park any vehicle on the Development Lot or on any road or land in the vicinity of the Development Lot;
  - 13.11.7.5 neglect to maintain any improvements on the Development Lot to the standards required by the Company;
  - 13.11.7.6 fail to install or operate any security monitoring system in any Residence constructed on the Development Lot or a Lot created from the subdivision of the Development Lot, which does not meet standards prescribed by the Board, and which is also not linked to a central monitoring station for the Sandhurst Club as a whole manned 24 hours per day to the satisfaction of the Company;
  - 13.11.7.7 neglect to pay fees to the Company in respect of services provided by the Company to the Development Lot; or
  - 13.11.7.8 fail to comply with any statutory requirements in respect of the Development Lot.
- 13.11.8 In deciding whether or not to grant its approval to non-compliance with any of the matters set out in clause 13.11.7, the Board must consider any By-laws or Rules of the Company which specify the standards for Members to comply with in respect of the following:
- 13.11.8.1 the design of a Residence, including the building form, building setbacks, roof materials and pitch, building materials, quality of workmanship and the nature of other improvements;
  - 13.11.8.2 the amenity of the Residence and the neighbourhood of the Residence including visual impacts and the impacts of traffic, overshadowing, overlooking, noise and smell;
  - 13.11.8.3 the safety and security of all Sandhurst Club residents;
  - 13.11.8.4 the cost of all services to Developer Members and Resident Members and the benefit of those services to Developer Members and Resident Members;
  - 13.11.8.5 the protection and improvement of the investment of Developer Members and the Resident Members;
  - 13.11.8.6 the installation and operation of a 24 hour manned security system in every Residence of the Sandhurst Club, which is centrally linked; and
  - 13.11.8.7 the maintenance and enhancement of a high standard of landscaping for the whole of the Property.
- 13.11.9 If a Developer Member has not complied with clauses 13.11.2 to 13.11.7 inclusive (**Relevant Provisions**) within 14 days after service of a notice by the Company specifying any non-compliance, and the non-compliance relates to performance of any works required to be performed by a

Developer Member pursuant to those clauses (other than the construction of a Residence), the Developer Member agrees to the following:

- 13.11.10 to allow the Company, its employees, contractors, or agents to enter the Development Lot and rectify the non-compliance;
- 13.11.10.1 if the Company exercises its power to rectify non-compliance, to pay to the Company any charges levied against the Developer Member in respect of the cost of the works performed as a result of non-compliance which (until paid) are and shall be a charge on the Development Lot;
- 13.11.10.2 to accept a certificate signed by the Secretary (or any other authorised representative or employee of the Company) as prima facie proof of the costs and expenses incurred by the Company to rectify the Developer Member's non-compliance with the Relevant Provisions;
- 13.11.10.3 to pay interest at the rate of 2% above the rate prescribed under the *Penalty Interests Rates Act* 1983 on all moneys outstanding under this clause, until they are paid; and
- 13.11.10.4 that any payments made for the purposes of this clause shall be appropriated first in payment of any interest and any unpaid costs and expenses of the Company, and then applied in repayment of the principal sum.
- 13.11.11 If a Developer Member has not complied with the notice referred to in clause 13.11.9 within 14 days after service of the notice, the Company may at its discretion and without affecting any other rights it has under this Constitution, in equity or otherwise at law, take action in a court of competent jurisdiction to compel the Developer Member to comply with the Relevant Provisions.
- 13.11.12 Without limitation to any other remedies the Company may have against that Developer Member, such Member acknowledges and agrees that damages are not an acceptable remedy to a breach of any of the obligations contained in this clause 13.11, and consents to the Company making application to the court, as referred to in clause 13.11.11, for a mandatory or prohibitory injunction (as the case may be) against that Developer Member to ensure compliance with the above.
- 13.11.13 If a Developer Member fails to fulfill any of its obligations under this Constitution, including the payment of any monies payable to the Company, whether in respect of the Membership of the Developer Member or in respect of any other monies payable to the Company including, without limitation, any subscription fee, special levies and charges, then the Developer Member agrees that in addition to the lien over the Membership in favour of the Company under clause 14.1.1, the amount of any monies unpaid and owing to the Company shall be a charge on the Development Lot in favour of the Company and the Developer Member shall consent to the Company lodging a caveat on the registered title to the Development Lot until such time as all monies owing under the charge are paid to the Company.

- 13.11.14 Without limiting the powers set out in clause 21.1.2.4, the Company may make By-laws and Rules which are enforceable against each Developer Member in respect of any matter concerning a Developer Member's Development Lot or any other land within the Project.
- 13.11.15 A Developer Member does not have a right to vote at any General Meeting until the Completion Date.
- 13.11.16 All rights, privileges and prohibitions set out under this Constitution in relation to a Developer Member of Developer Shareholder, including without limitation clauses 13.11.1 to 13.11.16 (inclusive) and any defined terms relating (directly or indirectly) thereto, may be varied or cancelled by a Special Resolution passed at a General Meeting of Members who are entitled to attend and vote at that General Meeting.

### **13.12 Mid Week Membership**

- 13.12.1 Each Mid Week Member is, subject to any other provisions contained in this Constitution, entitled to the rights and privileges, and is bound by all of the obligations, as determined by the Board from time to time, subject to the following:
- 13.12.1.1 a Mid Week Member shall only be permitted to use their Membership to play at the Golf Courses from Monday to Friday each week (including full rights to use the Clubhouse and the Club Facilities), subject to the Board requiring the Golf Courses at any time for the preparation and staging of tournaments, corporate golf days, or for any other Special Purpose;
- 13.12.1.2 a Mid Week Member is exempt from the payment of Green Fees in respect of the Golf Courses for use of the Golf Courses from Monday to Friday each week;
- 13.12.1.3 a Mid Week Member is not entitled to nominate a Nominee;
- 13.12.1.4 a Mid Week Member cannot lease its Membership to any third party;
- 13.12.1.5 may invite Guests to utilise the Golf Courses and the Club Facilities, but only in accordance with the criteria detailed in any By-Law or Rule relating to Guests or rules of play (or both), and otherwise as the Board determines in its sole discretion. Unless the Board determines otherwise, any particular Guest of a Mid Week Member may only utilise the Golf Courses four times per year;
- 13.12.1.6 must ensure that the Golf Courses and the Club Facilities utilised by that Mid Week Member or its Guests are used in a manner which is not prejudicial to the interests of other Golf Members, their Guests, or any other Member or person, and agrees to indemnify the Company against any claim for loss, damage, costs and expenses in this regard;
- 13.12.1.7 acknowledges and agrees that any use of the Golf Courses and the Club Facilities by that Mid Week Member or its Guests are

strictly at the risk of that Mid Week Member or its Guests. Neither the Company nor the Club will be held liable for any loss (including life) or damage in this regard;

- 13.12.1.8 a Mid Week Member is not permitted, at any time, to transfer or otherwise transmit its Membership in the Company to any third party; and
- 13.12.1.9 Unless otherwise determined by the Board, a Mid Week Member may resign its Membership by giving at least 30 days written notice (**notice period**) to the Company, such resignation to take effect on the next 30 June following the expiration of the notice period.
- 13.12.2 A Mid Week Member is not entitled to attend or vote at any General Meeting, whether before or after the Completion Date.

## **14. LIENS**

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### **14.1 First and Paramount Liens**

- 14.1.1 The Company has a first and paramount lien on every Membership (which, in the case of a Member that owns a Share, means the respective Share of that Member):
  - 14.1.1.1 for all moneys payable to the Company (whether presently payable or not) in respect of the Membership; and
  - 14.1.1.2 for all other moneys presently payable to the Company by each and every Member, or by the estate of such a Member, including, without limitation, any Subscription Fee, Special Levies & Charges, Clubhouse Levy or other moneys which the Company may be required by any law or otherwise to pay on account of or in respect of such holder.
- 14.1.2 If a Member fails to fulfill any of its obligations under this Constitution, including the payment of any monies payable to the Company, whether in respect of the Membership of the Member or in respect of any other monies payable to the Company including, without limitation, any subscription fee, special levies and charges or Clubhouse levy, then if such Member has an interest in a Relevant Lot, the Member agrees that in addition to the lien over the Membership in favour of the Company under clause 14.1.1, the amount of any monies unpaid and owing to the Company shall be a charge on the Relevant Lot in favour of the Company and the Member shall consent to the Company lodging a caveat on the registered title to the Relevant Lot until such time as all monies owing under the charge are paid to the Company.
- 14.1.3 The Board may exempt any Membership, wholly or in part, from the provisions of this clause 14.
- 14.1.4 The Company's lien on a Membership extends to all proceeds of sale of a Membership.

## **14.2 Sale of Membership on Lien**

- 14.2.1 Subject to clause 14.2.2, the Company may sell, in such manner as the Board thinks fit, any Membership on which the Company has a lien, other than in respect of Resident Members. For the purposes of such sale, where necessary, the Membership will be deemed to be held by the Company unless prohibited under the Act.
- 14.2.2 A Membership on which the Company has a lien must not be sold unless:
- 14.2.2.1 a sum in respect of which the lien exists is presently payable;
  - 14.2.2.2 the Company has, at least 30 days before the date of the sale, given to the relevant Member or such other person known to the Company as being entitled to the Membership by reason of the death, bankruptcy, insolvency or mental incapacity of that Member, a written notice demanding payment of the sum referred to in clause 14.2.2.1; and
  - 14.2.2.3 in respect of Golf Members, the Company also has a right, as attorney or otherwise, to sell the relevant Golf Member's share or membership in Sandhurst Holdings.

## **14.3 Method of Sale**

- 14.3.1 For the purpose of effecting a sale pursuant to clause 14.2.1, the Company may execute a transfer of a Share (or any other document relating to Membership) which is subject to the lien in favour of the person to whom the Membership is sold. The Board may authorise any person to execute such transfer or document.
- 14.3.2 Upon execution of the transfer or other document pursuant to clause 14.3.1, the transferee will be registered as the holder of the Membership which is subject to the lien but is not bound to see to the application of any money paid by the transferee as consideration.
- 14.3.3 The title of the transferee referred to in clause 14.3.2 as registered holder will not be affected by any irregularity or invalidity in connection with the sale of the Membership to that transferee.

## **14.4 Proceeds of Sale**

The proceeds received on a sale pursuant to clause 14.2.1 must be applied by the Company to satisfy all amounts owing by the relevant Member to the Company in respect of the lien, and any residue must be paid to that Member or such other person otherwise entitled to the proceeds.

## **14.5 Protection of Company's Lien**

The Company may do anything that may lawfully be done to protect any lien the Company has in respect of a Membership.

## **15. SUSPENSION OR FORFEITURE OF MEMBERSHIP**

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### **15.1 Suspension**

The Board may suspend a Membership for any period of time it determines if, at any time:

- 15.1.1 the Board forms the view that the Member to which that Membership relates has acted in a way unbecoming of a Member;
- 15.1.2 the Member owes any money to the Company for a period of at least 30 days including, without limitation, in relation to unpaid Subscription Fees, Special Levies & Charges or the Clubhouse Levy; or
- 15.1.3 the Member breaches any provision of this Constitution.

### **15.2 Forfeiture**

15.2.1 If, for any reason and at any time, any of the following arises, then upon written notice from the Company the Membership of a Golf Member will be forfeited immediately without compensation by the Company to that Member, and that Member will at that time be removed from the Register of Members:

- 15.2.1.1 the Member ceases to satisfy the Membership Qualification;
- 15.2.1.2 the Subscription Fees or Clubhouse Levy of the Member remain unpaid for a period greater than 3 months and the Member fails to make a suitable arrangement with the Company in respect of the payment of all outstanding amounts; or
- 15.2.1.3 the Member, following a period of suspension under clause 15.1, continues to act in a manner unbecoming of a Member.

### **15.3 Reinstatement**

The Board may, at any time and under any conditions it determines (including the payment of a reinstatement fee), and without giving reasons, reinstate the Membership of a Member following suspension or forfeiture under clauses 15.1 and 15.2 respectively.

### **15.4 Cancellation of Membership and Transfer of shares in Sandhurst Holdings**

Where the Membership of a Member (Defaulting Member) is suspended or forfeited under this clause 15, notwithstanding clause 15.3 the Board may at its discretion give notice to the Defaulting Member of conditions that it determines must be satisfied by the Defaulting Member for the Defaulting Member's Membership to be reinstated. If a Defaulting Member does not, in the discretion of the Board, satisfy the conditions for reinstatement of Membership as determined by the Board, the Defaulting Member shall be deemed, at the election of the Board, to have cancelled the Defaulting Member's Membership and to have offered to transfer the Defaulting Member's share in Sandhurst Holdings in accordance with the provisions of clause 15.1.2(c) of the Sandhurst Holdings Constitution for nil

consideration (**Transfer Notice**). The Defaulting Member consents to and appoints any member of the Board or Officer of the Company as the Defaulting Member's attorney to execute any share transfer or other document necessary to give effect to the Transfer Notice.

## **16. TRANSFER OF MEMBERSHIPS**

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### **16.1 General**

- 16.1.1 Subject to any requirements under the Act and this Constitution, only a Member who owns a Share may transfer its Membership (which includes that Member's respective Share) to a third party, but the Company must not register or give effect to such transfer unless otherwise permitted in this Constitution and the provisions of clause 16.2 have been complied with.
- 16.1.2 An Individual, Family and Corporate Member cannot dispose of its Membership other than in accordance with the process contained in clause 13.3.1.9 or 15.4.
- 16.1.3 Upon the transfer of a Member's share in Sandhurst Holdings (Sandhurst Share) governed by the process contained in clause 13.3.1.9(a), the Membership of that Member will be cancelled (and all of the rights relating to that Membership, including also in relation to Nominees, will cease) and a new Membership, being the same type of Membership that was previously held by the relevant transferor of the respective Sandhurst Share (unless otherwise approved by the Board in its sole discretion), will be granted to the transferee of the respective Sandhurst Share subject to approval of that transferee's application by the Board.
- 16.1.4 Upon the transfer of a Member's share in Sandhurst Holdings (Sandhurst Share) under clause 13.3.1.9(b), the Membership of that Member will be cancelled (and all of the rights relating to that Membership, including also in relation to Nominees, will cease) unless otherwise determined by the Board in its sole discretion.
- 16.1.5 The Transfer of a Resident Membership under clause 13.2.4 must be conducted in accordance with procedure established by the Board from time to time for Transferring Resident Memberships.

### **16.2 Procedure for Registration**

The instrument of transfer must comply with the following to be in registrable form:

- 16.2.1 in a form that is approved by the Board;
- 16.2.2 executed by or on behalf of both the transferor and the transferee, and in the case of joint holders, the instrument must be executed by or on behalf of all the holders;
- 16.2.3 duly stamped (if required by law); and
- 16.2.4 deposited at the Registered Office (marked to the attention of the Secretary) together with:

- 16.2.4.1 such transfer fee determined by the Board not exceeding any amount prescribed under the Act;
- 16.2.4.2 all Certificates relating to the Membership transferred (and if any such Certificate is lost or destroyed, the replacement of that Certificate); and
- 16.2.4.3 any other information as may be required by the Board including, without limitation, to enable the Board to establish the right of the transferor to make such transfer.

### **16.3 Board's Discretion**

The Board may in its absolute discretion:

- 16.3.1 refuse to register any transfer of a Membership without being bound to assign any reason for such refusal; and
- 16.3.2 decline to register a transfer of a Membership on which the Company has a lien or which is not accompanied by the Certificate to which the transfer relates.

### **16.4 Transfer of Title**

A transferor of a Membership remains the registered holder of the Membership transferred until the transfer is registered, and the name of the transferee is entered in the Register of Members in respect of the Membership transferred.

### **16.5 Closure of Register**

Subject to any restrictions under the Act, the registration of any transfer of a Membership may be suspended at such time, or for such period of time, as the Board may determine provided that such suspension does not exceed in aggregate 30 days in any year.

### **16.6 Instruments of Transfer**

All instruments of Membership transfer which are registered by the Company will be retained by the Company, and all instruments of Membership transfer which the Board has refused to register must, except in the case of fraud, be returned to the persons who deposited such instruments with the Company.

## **17. TRANSMISSION OF MEMBERSHIP**

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### **17.1 General**

17.1.1 On the death of any Resident Member:

- 17.1.1.1 the surviving holder, where the deceased was a joint holder; or
- 17.1.1.2 the legal personal representative, where the deceased was the sole holder,

is the only person recognised by the Company as having any title to the deceased's interest in the Resident Membership held by the deceased. Despite any recognition of the surviving holder in respect of a Resident

Membership jointly held, the estate of the deceased joint holder is not released from any liability in respect of such Resident Membership.

17.1.2 On the death of any Golf Member, Honorary Member or Manager Member:

17.1.2.1 the respective Membership shall be cancelled;

17.1.2.2 the estate of the deceased holder will be liable to pay any outstanding monies due and payable to the Company in respect of the cancelled Membership; and

17.1.2.3 in the case of a Golf Member (other than a Club Lifetime Member or a Mid Week Member), the succeeding holder of the respective share of that Member in the capital of Sandhurst Holdings must lodge an Application with the Company and apply for a new Membership under this Constitution in respect of that share.

17.1.3 On the death of any Developer Member:

17.1.3.1 the surviving holder, where the deceased was a joint holder; or

17.1.3.2 the legal personal representative, where the deceased was the sole holder,

is the only person recognised by the Company as having any title to the deceased's interest in the Developer Membership held by the deceased. Despite any recognition of the surviving holder in respect of a Developer Membership jointly held, the estate of the deceased joint holder is not released from any liability in respect of such Developer Membership.

## **17.2 Registration of Transmission**

17.2.1 Subject to the requirements of any law, the person becoming entitled to any Resident Membership in consequence of the death, bankruptcy, insolvency or any other incapacity of a Resident Member may, upon producing such information as is properly required by the Board, elect either to be personally registered as the holder of the Resident Membership or to nominate another person to be registered.

17.2.2 Where the person becoming entitled to any Resident Membership pursuant to clause 17.1.1 elects to be personally registered as the holder of the Resident Membership, the person must give to the Company a signed written notice of the election.

17.2.3 Where the person becoming entitled to any Resident Membership pursuant to clause 17.1.1 elects to nominate another person to be registered as the holder of the Resident Membership, that person must transfer that Resident Membership to the nominated person in accordance with the relevant provisions of this Constitution.

17.2.4 Where any Golf Member, Honorary Member, Manager Member or Developer Member becomes bankrupt, insolvent or suffers from any other incapacity:

- 17.2.4.1 the respective Membership shall be cancelled;
- 17.2.4.2 the person who held the Membership will still be liable to pay any outstanding monies due and payable to the Company in respect of the cancelled Membership; and
- 17.2.4.3 in the case of a Golf Member (other than a Club Lifetime Member or a Mid Week Member), the succeeding holder of the respective share of that Member in the capital of Sandhurst Holdings must lodge an Application with the Company and apply for a new Membership under this Constitution in respect of that share.

## **18. GENERAL MEETINGS**

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### **18.1 Annual General Meeting**

- 18.1.1 Subject to any requirement under the Act, the Company must (except when it has only one Member) hold an AGM at least once in each calendar year except that the AGM must be held within five months after the end of the Company's financial year.
- 18.1.2 An AGM is to be held in addition to any other General Meetings which may be held in a calendar year, and will be held at such time and place as the Board may determine.
- 18.1.3 The business of an AGM may include any of the following, whether or not such matters are referred to in the notice calling the AGM:
  - 18.1.3.1 the consideration of the annual financial report of the Company, the Directors' report and the Auditor's report;
  - 18.1.3.2 the election of Directors;
  - 18.1.3.3 the appointment of the Auditor; and
  - 18.1.3.4 the fixing of the Auditor's remuneration.
- 18.1.4 Subject to any requirements under the Act, the chair of an AGM must allow a reasonable opportunity for the Members as a whole at the AGM to ask questions about or make comments on the management of the Company.
- 18.1.5 Subject to any requirements under the Act, where the Auditor or its representative is present at an AGM, the chair of the AGM must allow a reasonable opportunity for the Members as a whole at the AGM to ask the Auditor or its representative questions relevant to:
  - 18.1.5.1 the conduct of the Company's audit as detailed in the Auditor's report; and
  - 18.1.5.2 the preparation and content of the Auditor's report.

## **18.2 General Meeting other than AGM**

A General Meeting (other than an AGM) may be convened by any Director at such time and such place as the Director thinks fit, but must be convened at such other times and in such manner as required under the Act (if any). In any case, a General Meeting may only be held for a proper purpose and at a reasonable time and place. Members may also convene a General Meeting, but only in accordance with the Act.

## **18.3 Notice of General Meeting**

18.3.1 Subject to any requirement of the Act, at least 21 days' written notice must be given of any General Meeting. However, the Company may call on shorter notice:

18.3.1.1 any AGM, if all the Members entitled to attend and vote at the AGM agree beforehand; and

18.3.1.2 any other General Meeting, if Members with at least 95% of the votes that may be cast at the General Meeting agree beforehand,

except any General Meeting at which a resolution will be moved to:

18.3.1.3 remove a Director or appoint a Director in place of a Director who has been removed; or

18.3.1.4 to remove an Auditor pursuant to section 329 of the Act.

18.3.2 Subject to any restrictions under the Act, any General Meeting or any proceeding at such meeting is not invalidated merely because of:

18.3.2.1 an accidental omission to give a notice of the meeting;

18.3.2.2 the non-receipt of such notice by any person entitled to that notice; or

18.3.2.3 a defect in the notice given.

18.3.3 Written notice of a General Meeting pursuant to clause 18.3.1 must be given individually to:

18.3.3.1 each Member entitled to attend and vote at the meeting and in the case of joint holders, to the joint holder whose name appears first in the Register of Members in respect of the Membership jointly held;

18.3.3.2 each Director;

18.3.3.3 each Auditor; and

18.3.3.4 every person known to the Company as being entitled to a Membership in consequence of the death, bankruptcy or mental incapacity of a Member who would otherwise be entitled to receive notice of the meeting.

- 18.3.4 Each notice of a General Meeting given pursuant to clause 18.3.3 must:
- 18.3.4.1 detail the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - 18.3.4.2 state the general nature of the business of the meeting;
  - 18.3.4.3 where a Special Resolution of the Company is to be moved at the meeting, state the Special Resolution and the intention to move that Special Resolution at the meeting;
  - 18.3.4.4 where a Member is entitled to appoint a proxy, contain a statement that the Member has a right to appoint a proxy, that the proxy does not have to be a Member, and where the Member is entitled to cast two or more votes, that Member may appoint two or more proxies but must specify the proportion or number of votes each proxy is appointed to exercise; and
  - 18.3.4.5 comply with any other disclosure requirements under the Act.

#### **18.4 Cancellation of Meeting**

Subject to any restrictions under the Act, the Board may, as it sees fit, cancel a General Meeting before the meeting is held.

### **19. PROCEEDINGS AT GENERAL MEETINGS**

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#### **19.1 General**

- 19.1.1 A General Meeting may be held at two or more venues using any technology or electronic means that gives the Members as a whole at the meeting a reasonable opportunity to participate.
- 19.1.2 Subject to any requirements under the Act, the quorum required to hold a General Meeting is two Members (up to the Completion Date, then three Members after this date), who are entitled to vote on any business transacted at the meeting (except when the Company has only one Member in which case the quorum is constituted by that sole Member), and no business can be transacted at the meeting without the presence of the quorum.
- 19.1.3 For the purpose of determining whether a quorum is present, any person attending as a proxy or as a representative of a Member is deemed to be a Member except:
  - 19.1.3.1 where the Member has appointed two or more proxies or representatives, then only one of them is counted; and
  - 19.1.3.2 where the Member is attending both in the Member's own capacity and as proxy or representative of another Member, then that Member's attendance is counted only once.

## **19.2 Quorum Not Present**

- 19.2.1 Where a quorum is not present within 30 minutes from the time appointed for a General Meeting:
- 19.2.1.1 the meeting will be dissolved if it was convened upon the requisition of Members; and
  - 19.2.1.2 in any other case, the meeting stands adjourned to such day, such time and such place as the Board may determine, or otherwise, to the same day in the following week at the same time and place.
- 19.2.2 Where at a meeting resumed after an adjournment, a quorum is not present within 30 minutes from the time appointed for the meeting, that meeting will be dissolved.
- 19.2.3 Where any General Meeting is held at two or more venues by electronic means or other technology and there is a failure of the electronic means or other technology, which prevents any or all of the Members present from participating in the meeting, that meeting will be adjourned until the failure is rectified. If rectification is not possible within 60 minutes of the initial failure, the chair of the meeting must adjourn the meeting until such date and such time that the chair considers it possible to give the Members as a whole a reasonable opportunity to participate in that meeting.

## **19.3 Chair of Meetings**

- 19.3.1 Where the Board has elected one of the Directors to chair all meetings of the Board, that chair is entitled to preside as chair at every General Meeting.
- 19.3.2 Where at a General Meeting:
- 19.3.2.1 a chair has not been appointed pursuant to clause 19.3.1; or
  - 19.3.2.2 the chair appointed pursuant to clause 19.3.1 is either not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act,
- the Members present will elect one of the Directors present, and if no Director is present or no Director is willing to act, then one of their own number, to chair the meeting.

## **19.4 Adjournment of Meeting**

- 19.4.1 The chair of a General Meeting may, with the consent of the meeting (at which a quorum is present), adjourn that meeting from time to time and from place to place, but the chair must adjourn that meeting if directed by the meeting. Only the business left unfinished at the meeting as adjourned may be transacted at the resumed meeting.
- 19.4.2 Where a General Meeting is adjourned for 30 days or more, notice of the meeting to be resumed must be given as in the case of an original

meeting. However, any resolution passed at the meeting resumed is passed on the day it was passed.

- 19.4.3 Except as provided in clause 19.4.2, it is not necessary to give notice of any adjournment or of the business to be transacted at any meeting to be resumed after an adjournment.

## **19.5 Resolutions at Meetings**

- 19.5.1 Any resolution put to the vote of a General Meeting will be decided on a show of hands unless a poll is properly demanded.
- 19.5.2 Unless a poll is properly demanded, a declaration by the chair that a resolution has on a show of hands been carried by a particular majority or unanimously, or lost, which is confirmed by an entry to that effect in the minutes of the meeting, is conclusive evidence of the result without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 19.5.3 Subject to any prohibition under the Act, where the Company has only one Member and that Member records in the minutes of Company's meetings a decision to a particular effect, that Member's decision as recorded is deemed to be a resolution of the Company passed at a General Meeting.

## **19.6 Poll at Meetings**

- 19.6.1 Subject to any requirements under the Act, a poll may be demanded by:
- 19.6.1.1 the chair of the meeting;
- 19.6.1.2 at least five Members entitled to vote on the resolution at the meeting; or
- 19.6.1.3 Members with at least 5% of the votes that may be cast on the resolution on a poll. The percentage of votes that Members have is to be worked out as at midnight the day before the poll is demanded.
- 19.6.2 Subject to any requirements under the Act, a poll may be demanded:
- 19.6.2.1 before a vote is taken;
- 19.6.2.2 before the results from a vote on a show of hands are declared; or
- 19.6.2.3 immediately after the results from a vote on a show of hands are declared,
- and the demand for the poll may be withdrawn before the poll is taken.
- 19.6.3 Where a poll is duly demanded at any General Meeting, it must be taken when and in such manner (subject to clause 19.6.4) as the chair of the meeting directs, and the result of the poll will constitute a resolution of the meeting at which the poll was demanded.

- 19.6.4 Any poll demanded on the election of a chair of any General Meeting, or on a question of adjournment of a General Meeting, must be taken immediately.

## **19.7 Votes**

- 19.7.1 Subject to any requirements under the Act, each Member entitled to vote, as detailed in clause 13, is entitled to one vote in respect of a show of hands or on a poll.
- 19.7.2 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any deliberative vote which the chair has.
- 19.7.3 Where a Membership is jointly held, only the vote of the registered holder whose name appears first in the Register of Members in respect of that Membership will be counted, whether such vote is taken in person or as provided otherwise in this Constitution.
- 19.7.4 Where a Member becomes mentally incapacitated or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the person who in such event, by the operation of law, has the management of that Member's estate, and upon producing such information as may be properly required by the Board to show this, may exercise any rights (including the right to vote) which could otherwise be exercised by that Member in relation to any General Meeting.
- 19.7.5 Despite anything contained in this Constitution, no Member is entitled to vote at any General Meeting unless all sums presently payable in respect of that Member's Membership have been paid.
- 19.7.6 Any objection to the qualification of a Member's vote may only be raised at the meeting at which the vote objected to is given or tendered. Such objection will be referred to the chair of the meeting and the decision of the chair will be final. For clarity, a vote which has been objected against but is not disallowed, is valid for all purposes.
- 19.7.7 Any Member present in person at any General Meeting may abstain from voting on any question put to the meeting, but will not, because of this action be considered absent from the meeting.

## **19.8 Proxies**

- 19.8.1 The appointment of a proxy is valid where substantially similar to the form detailed below (or any other form prescribed by the Board) and signed by the Member (or an authorised attorney), such form being subject to any requirements under the Act including, without limitation, the requirements of section 250A(1) of the Act.

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### **PROXY FORM**

*I/We, [name of Member] of [address of Member] being a member of Sandhurst Club Limited, hereby appoint:*

- (a) *[proxy's name or name of office held] of [proxy's address] as my/our proxy to vote for me/us on my/our behalf in respect of [ number of ] per cent of my/our voting rights in the Company; and*
- (b) *[if there is another proxy, that proxy's name or name of office held] of [that proxy's address] as my/our proxy to vote for me/us on my/our behalf in respect of [number of] per cent of my/our voting rights in the Company;*

*or failing my/our proxy or proxies to vote, hereby appoint:*

- (c) *the chair of the meeting as my/our proxy to vote for me/us on my/our behalf,*

*in each case at the annual general meeting/general meeting of the Company to be held on the [date of meeting] and at any adjournment of that meeting.*

*If applicable, this form is to be used in favour of/against the resolution to [state the resolution].*

*[the date and the signature of the Member ]*

- 19.8.2 A proxy need not be a Member.
- 19.8.3 The appointment of a proxy may specify the way in which the proxy is to vote on any particular resolution and, where specified, the proxy is only entitled to vote on the resolution as specified.
- 19.8.4 A proxy duly appointed has the same rights as the appointor (subject to the terms of the proxy's appointment) to speak and vote at a any General Meeting. Such rights are suspended while the appointor is present at the meeting to exercise those rights.
- 19.8.5 For the appointment of a proxy to be effective for a General Meeting, the following documents must be received by the Company at least 48 hours before the meeting (or in the case of a meeting adjourned, before the meeting is resumed):
- 19.8.5.1 the proxy's appointment pursuant to clause 19.8.1; and
- 19.8.5.2 where the appointment is signed by an authorised attorney, the authority under which the appointment was signed or a certified copy of the authority,
- 19.8.6 For the purposes of clause 19.8.5, the proxy's appointment, and authority of attorney (if any), must be received by the Company at:
- 19.8.6.1 the Registered Office;
- 19.8.6.2 a fax number at the Registered Office; or
- 19.8.6.3 a place, fax number or electronic address specified for such purpose in the notice of meeting.
- 19.8.7 A Member who is not entitled to vote on a resolution may vote as a proxy for another Member who is entitled to vote on the resolution if their

appointment specifies that they are to vote on the resolution and they vote that way.

- 19.8.8 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes, the appointor:
- 19.8.8.1 dies or is mentally incapacitated;
  - 19.8.8.2 revokes the proxy's appointment;
  - 19.8.8.3 revokes the authority under which the proxy was appointed by a third party; or
  - 19.8.8.4 transfers the Membership in respect of which the proxy was given.

## **19.9 Representative and Attorney**

- 19.9.1 Any Member which is incorporated may appoint any natural person as that Member's representative to exercise all or any of the powers of that Member:
- 19.9.1.1 at any General Meeting;
  - 19.9.1.2 at any meeting of creditors or debenture holders; or
  - 19.9.1.3 relating to any resolution of the Company which can be passed without holding a General Meeting.
- Such appointment may be a standing one, and may detail certain restrictions on such powers exercisable by the representative.
- 19.9.2 More than one representative may be appointed pursuant to clause 19.9.1, but only one of them may exercise any power of the appointor at any one time. Where there is more than one representative at any General Meeting, the chair of the meeting will conclusively decide which of the representatives will represent the appointor in respect of any proceeding of the meeting.
- 19.9.3 Any Member who is a natural person may, by power of attorney lawfully executed, appoint any natural person as attorney to act on behalf of the Member to do anything that the Member may lawfully do as a Member including, without limitation, the appointment of a proxy.
- 19.9.4 For the appointment of an attorney to be effective for any General Meeting, such power of attorney or authority must be received by the Company at least 48 hours before the meeting, or in the case of a meeting adjourned, before the meeting is resumed, at:
- 19.9.4.1 the Registered Office;
  - 19.9.4.2 a fax number at the Registered Office; or
  - 19.9.4.3 a place, fax number or electronic address specified for such purpose in the notice of meeting.

## **20. DIRECTORS OF THE COMPANY**

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### **20.1 General**

- 20.1.1 Subject to any requirements under the Act, the Company must at all times have at least 3 Directors (not including any Alternate Director) of whom 2 must ordinarily reside in Australia.
- 20.1.2 Subject to clause 20.1.1, the number of Directors will be determined by the Board and in the absence of such decision, will be a minimum of 3 Directors (not including any Alternate Director) and a maximum of 9 Directors (not including any Alternate Director).
- 20.1.3 Despite clause 20.1.2 but subject to clause 20.1.4, the Company may pass a resolution at a General Meeting to increase or reduce the number of Directors.
- 20.1.4 The Company may pass a resolution at a General Meeting to appoint any natural person as a Director (other than an Alternate Director) provided that a motion for the appointment of two or more such Directors by a single resolution must not be moved, unless a resolution that such motion be put has first been unanimously passed at the meeting.
- 20.1.5 Any nomination for election to the office of Director must be made in writing and lodged with the Company at least 15 business days before the date of the election.

### **20.2 Tenure of Office**

- 20.2.1 Subject to clause 20.2.2, all of the Directors in office as at the Completion Date will remain in office until the second AGM following the Completion Date (Relevant AGM), subject to their right to resign from office. At that AGM, and each subsequent AGM, one-third of the Board for the time being, or if the number on the Board is not three or a multiple of three, the number nearest to one-third, will retire from the office of Director
- 20.2.2 A Director retiring pursuant to clause 20.2.1 is eligible for re-election.
- 20.2.3 Subject to clauses 20.2.4 and 20.3.2, the Directors to retire at an AGM (other than at the Relevant AGM) will be those who have been longest in office since their last election but as between persons who became Directors on the same day, those of them to retire will be decided by lot unless they agree among themselves.
- 20.2.4 At a General Meeting at which a Director retires, the Company may elect another person to fill that office. Where no such person is elected and the retiring Director offers to stand for re-election at the meeting, the retiring Director will be deemed, subject to any restrictions under the Act, to have been re-elected unless:
  - 20.2.4.1 the meeting has resolved not to fill the office; or
  - 20.2.4.2 a resolution to re-elect that retiring Director has been put at the meeting and lost.

### **20.3 Additional or Casual Director**

- 20.3.1 The Board, or the Company at a General Meeting, may at any time appoint any natural person as a Director (other than an Alternate Director) to fill a casual vacancy on the Board or as an additional member of the existing Board, provided that the total number of Directors after such appointment does not exceed the maximum number (if any) determined in accordance with clauses 20.1.2 or 20.1.3.
- 20.3.2 Any Director appointed pursuant to clause 20.3.1 will only hold office until the next following AGM, but will be eligible for re-election. Such Director is not to be taken into account for the purposes of clause 20.2.3.

### **20.4 Membership Qualification of a Director**

There is no Share qualification for Directors unless the Company at a General Meeting determines otherwise. However, a Director will be deemed, and agrees at all times whilst he or she is a Director to remain, a Manager Member until such time as the Completion Date. Thereafter a Director need not be a Member.

### **20.5 Removal of Director**

- 20.5.1 Subject to clause 20.5.2 and any requirements of this Constitution or the Act, the Company may remove any Director before the expiration of that Director's tenure of office, and may elect another person to fill that office. A Relevant Director must not be removed prior to the Completion Date, unless the Board determines otherwise by a majority vote.
- 20.5.2 Where a Director removed pursuant to clause 20.5.1 was appointed to represent the interests of a particular class or classes of Members or debenture holders, the resolution of the Company to remove the Director does not take effect until a successor has been appointed to represent those interests.

### **20.6 Vacation of Office**

- 20.6.1 In addition to any provisions under the Act regarding the circumstances in which the office of Director is vacated, the office of Director will be vacated if the Director:
- 20.6.1.1 ceases to meet the Membership Qualification;
  - 20.6.1.2 becomes mentally incapacitated or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - 20.6.1.3 resigns the office by giving at least thirty days' written notice to the Company (or in the case of a Relevant Member, six months);
  - 20.6.1.4 is absent, without the consent of the Board, from meetings of the Board held during a continuous period of six months or more, subject to any attendance by an Alternate Director appointed by that Director, which is deemed to have been attendance by that Director;

- 20.6.1.5 dies or becomes bankrupt;
- 20.6.1.6 subject to clause 20.7, is interested in any operation, contract, undertaking or business arrangement in which the Company is engaged or concerned, and fails to disclose such interest to the Company as required by any law;
- 20.6.1.7 is removed as a Director pursuant to clause 20.5.1; or
- 20.6.1.8 becomes disqualified under the Act from holding office.

## **20.7 Conflict of Interest**

20.7.1 Subject to any restrictions under the Act, and despite any rule of law or equity providing differently, a Director may in another capacity:

- 20.7.1.1 be appointed to any office or place of profit in the Company; or
- 20.7.1.2 be interested in any operation, contract, undertaking or business arrangement in which the Company may be engaged or concerned,

provided that the Director has, subject to any requirements under the Act, at the relevant time fully and fairly disclosed any relevant interest at a meeting of the Board.

20.7.2 No Director may vote on any resolution of Directors relating to any operation, contract, undertaking or business engagement referred to in clause 20.7.1.2, or in any other matter in which the Director has a material personal interest, unless the Board resolves otherwise (if permitted under the Act). In addition, unless the Board resolves otherwise (if permitted under the Act), such Director must not be present whilst a resolution or such matter is being considered by the Board, unless the Board (excluding that Director) pass a resolution:

- 20.7.2.1 specifying the name of that Director, the subject matter and the nature and extent of the interest of that Director and its relation to the affairs of the Company; and
- 20.7.2.2 declaring that the Board is satisfied that such interest as specified should not, in the opinion of the Board, disqualify that Director from considering or voting on that subject matter.

## **21. POWERS AND DUTIES OF DIRECTORS**

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### **21.1 General**

21.1.1 Subject to the provisions of this Constitution and the Act, any business of the Company will be managed by the Board. The Board may pay all expenses incurred in promoting and furthering the Company's business, and may exercise all such powers of the Company as are not required to be exercised by the Company at a General Meeting.

21.1.2 Without limiting the operation of clause 21.1.1, the Board may exercise any of the following powers as the Board sees fit:

21.1.2.1 power to raise or borrow money for the purposes of the Company;

21.1.2.2 power to charge any property or business of the Company;

21.1.2.3 power to issue debentures or give any other security for any debt, liability or obligation of the Company or of any other person; and

21.1.2.4 power to make By-laws and Rules for the management and operation of the Company.

## **21.2 Appointment of Company's Attorney**

21.2.1 Subject to any limitations in the Act, the Board may, by power of attorney lawfully executed, appoint any natural person as the Company's attorney or agent for such purposes and with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period of time and subject to such conditions, as the Board sees fit.

21.2.2 Any power of attorney pursuant to clause 21.2.1 may contain provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit, and may authorise the attorney to delegate, subject to any restrictions in this Constitution or the Act, all or any of the powers, authorities and discretions vested in the attorney.

## **21.3 Execution of Cheques and Bills of Exchange**

All cheques, promissory notes, bank drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Board may determine.

## **21.4 Register of Charges**

The Board must cause a proper register to be kept in accordance with the Act of all mortgages and charges specifically affecting the Company's property, and all the requirements of the Act pertaining to the registration of such mortgages and charges must be complied with.

## **21.5 Delegation**

### **21.5.1 General**

Subject to any restrictions in this Constitution or the Act, the Board may delegate any of its powers to any Director or Committee (in addition to the Committee of Directors referred to in clause 22.6), but such delegated powers must be exercised in accordance with any directions of the Board.

### **21.5.2 Resident Members' Committee**

The Company will establish a Resident Members' Committee at such time and in accordance with such processes and procedures that it deems appropriate (including without limitation the process for accepting nominations and appointing Resident Members to the Committee) which will have the following features and functions:

- 21.5.2.1 the Committee will comprise at least four Resident Members nominated by the Resident Members and with whom the Company must consult in respect of issues concerning Resident Membership, including the passing of any resolution of the Company or otherwise that may affect the Membership of a Resident Member;
- 21.5.2.2 subject to clause 21.5.2.3 each member of the Committee will be appointed by the Company for a period of twelve months and is eligible for reappointment; and
- 21.5.2.3 the Board may remove a Member from his or her position as a member of the Committee upon providing that Member with 14 days written notice without providing any reasons; and
- 21.5.2.4 if a member of the Committee ceases to be a Member, the remaining members of the Committee may appoint a successor.

### **21.5.3 Golf Members' Committee**

The Company will establish at such time that it deems appropriate a Golf Members' Committee, which will have the following features and functions:

- 21.5.3.1 the Committee will comprise at least four Golf Members nominated by the Golf Members and with whom the Company must consult in respect of issues concerning Golf Membership, including the passing of any resolution of the Company or otherwise that may affect the Membership of a Golf Member; and
- 21.5.3.2 clauses , 21.5.2.2, 21.5.2.3 and 21.5.2.4 shall apply equally to the Golf Members' Committee.

## **21.6 Valid Appointment**

Subject to any restrictions under the Act, the actions of any Director are valid despite any defect that may afterwards be discovered in the appointment or qualification of the Director, and the resolutions passed by that Director are deemed to be valid.

## **22. PROCEEDINGS OF BOARD MEETINGS**

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### **22.1 General**

- 22.1.1 The Board may meet to dispatch business, adjourn and otherwise regulate its meetings as it sees fit.

- 22.1.2 Subject to any requirements under the Act, any Director may at any time convene a meeting of the Board, but a Secretary must convene such meeting at the request of the Director or the Board, provided that reasonable notice of the meeting (which need not be in writing) has been given to each and every Director, except any Director who is known to the Company to be beyond the reach of communication.
- 22.1.3 Any meeting of the Board may be held at two or more venues using any technology or electronic means consented to by all the Directors and such consent has not been withdrawn by any Director at least two days before the meeting concerned is held.
- 22.1.4 Where any meeting of the Board is held at two or more venues by electronic means or other technology, and there is a failure of the electronic means or that technology which prevents any or all of the Directors present from participating in the meeting, the meeting will be adjourned until the failure is rectified. If rectification is not achieved or possible within sixty minutes of the initial failure, the Directors present who are able to communicate with one another must adjourn the meeting until such date and such time as the chair of the meeting considers possible and practicable to give the Directors as a whole at the meeting to be resumed a reasonable opportunity to participate in that meeting.

## **22.2 Quorum**

Subject to any requirements under the Act, the Board may determine the quorum for its meetings, provided that such quorum must constitute at least three Directors (including any Alternate Director) who are entitled to vote on any business to be transacted at the meeting, and in the absence of such determination the quorum will be three such Directors. The quorum must be present at all times to transact any business of the meeting.

## **22.3 Vacancies**

In the event of any vacancy in the office of Director, the remaining Directors may hold a meeting of the Board to transact any business but if the number of such remaining Directors is not sufficient to constitute a quorum, they may only hold the meeting to:

- 22.3.1 increase the number of Directors (pursuant to clause 20.3) to a number sufficient to constitute a quorum; or
- 22.3.2 convene a General Meeting.

## **22.4 Chair**

- 22.4.1 The Directors will elect one of their number to chair all the meetings of the Board and may determine the period of that privilege.
- 22.4.2 Where at a meeting of the Board:
- 22.4.2.1 a chair has not been elected pursuant to clause 22.4.1; or
- 22.4.2.2 the chair is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act,

the Directors present will elect one of their number to chair the meeting.

## **22.5 Decisions of the Board**

- 22.5.1 Subject to any requirements in this Constitution or the Act, any question arising at any meeting of the Board will be decided by a simple majority of votes of the Directors who are present at the meeting and entitled to vote in relation to the question. Such resolution passed is deemed to be the decision of the Board as a whole.
- 22.5.2 In case of an equality of votes at any meeting of the Board, the chair of the meeting has a casting vote in addition to any deliberative vote which the chair has.
- 22.5.3 Subject to any prohibition under the Act, where all Directors have signed a document containing a statement that they are in favour of a resolution in terms detailed in the document, the resolution in those terms is deemed to have been passed (subject to clause 22.5.6) as if at a meeting of the Board held on the day on which the document was last signed by a Director.
- 22.5.4 For the purposes of clause 22.5.3, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in those terms signed by those Directors.
- 22.5.5 A reference in clause 22.5.3 to "all the Directors" does not include a reference to any Director who would not be entitled to vote on the resolution.
- 22.5.6 A resolution pursuant to clause 22.5.3 is only deemed to have been passed if the resolution is recorded in the minutes of meetings of the Board.
- 22.5.7 Subject to any restrictions under the Act, any Director who is unable to attend at any meeting of the Board may authorise any other Director to vote on that Director's behalf at the meeting, provided that such authority is put in writing, signed by both the Directors, and given to the Secretary in advance of the meeting. Such other Director as authorised may, in addition to any own deliberative vote, cast a vote on such Director's behalf where the Director is absent but would otherwise have been entitled to vote.

## **22.6 Committee of Directors**

- 22.6.1 Subject to any restrictions in this Constitution or under the Act, the Board may delegate any of its powers to any Committee consisting of such number of Directors as the Board thinks fit.
- 22.6.2 Each Committee must exercise all of its powers in accordance with the directions (if any) of the Board, and any exercise by the Committee of any of its powers is deemed to have been an exercise of such power by the Board as a whole.

- 22.6.3 Each Committee may elect one of the Directors of the Committee to chair all the meetings of the Committee and, where the Committee comprises of one Director, that Director will be the chair. Where at any meeting of any Committee:
- 22.6.3.1 such chair has not been elected; or
- 22.6.3.2 the chair is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act,
- the Directors present at the meeting may elect one of their number to chair the meeting.
- 22.6.4 Each Committee may meet and adjourn as it thinks proper.
- 22.6.5 Subject to any requirements in this Constitution or the Act, any question arising at any Committee's meeting will be decided by a simple majority of votes of the Directors who are present at the meeting and entitled to vote in relation to the question.
- 22.6.6 In the case of an equality of votes at any Committee's meeting, the chair of the meeting has a casting vote in addition to any deliberative vote which the chair has.

## **23. ALTERNATE DIRECTOR**

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- 23.1 Any Director (excluding any Alternate Director) may, with the approval of the Board, appoint (subject to clause 23.5) any natural person (whether a Member or not) to be an Alternate Director to act in the appointor's place for such period of time as the appointor thinks fit.
- 23.2 Every Alternate Director is entitled to receive notice of any meeting of the Board (whether such notice has been given to the appointor or not). Where the appointor is not present at the meeting, the Alternate Director is entitled to participate in the meeting including, without limitation, the right to vote.
- 23.3 Subject to any restrictions under the Act, an Alternate Director may exercise any power that the appointor may exercise as a Director, but such exercise is not to be taken as the exercise of such power by the appointor. The Alternate Director is not an agent of the appointor and will be personally responsible to the Company.
- 23.4 An Alternate Director is not required to meet any Membership Qualification.
- 23.5 Subject to clause 23.6, the appointment of any Alternate Director may be terminated by the appointor at any time even if any fixed period of appointment has not expired. In any case, the office of the Alternate Director will be vacated where the appointor's office of Director has been vacated.
- 23.6 The appointment, and the termination of the appointment, of any Alternate Director must be effected by a written notice, signed by the appointor and given to the Secretary.

## **24. MANAGER**

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### **24.1 General**

The Board may appoint one or more Managers for such period of time and on such terms as the Board thinks fit. Subject to the terms of any agreement entered into in a particular case, the Board may revoke any such appointment as it sees fit.

### **24.2 Remuneration of Manager**

Each Manager is entitled to receive (subject to the terms of any agreement entered into in a particular case) such remuneration as the Board determines, for services rendered.

### **24.3 Powers of Manager**

24.3.1 The Board may confer on the Manager any of the powers exercisable by the Board, and on any condition or with any restriction as the Board sees fit.

24.3.2 Any power conferred on the Manager may be concurrent with or to the exclusion of such power in respect of the Board.

24.3.3 The Board may withdraw or vary any of the powers conferred on any Manager.

24.3.4 Subject to any restrictions under the Act, the Board may delegate the responsibility for the day to day management of any part or the whole of the Company's operations to any Manager.

24.3.5 Each Manager must carry out the directions (if any) of the Board and report to the Board.

## **25. SECRETARY AND PUBLIC OFFICER**

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25.1 Subject to any requirements under the Act, each Secretary will hold office on such terms and conditions, and for such period of time as the Board sees fit. Only a natural person may be appointed as a Secretary.

25.2 Subject to any requirements under the Act, the Board may remove any Secretary at any time as the Board sees fit.

25.3 At least one of the Secretaries must ordinarily reside in Australia.

25.4 Subject to the provisions of any applicable law, the Board will appoint a public officer of the Company and may terminate such appointment at any time as the Board sees fit, and appoint another person as a replacement.

## **26. EXECUTION OF COMPANY DOCUMENTS**

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26.1 The Company may execute any document (including any deed) without using the Seal if the document is signed by:

26.1.1 two of the Directors; or

- 26.1.2 one Director and another person who is a Secretary.
- 26.2 The Board may approve and adopt a Seal, and must provide for the safe custody of the Seal.
- 26.3 The Board may approve and adopt a duplicate of the Seal, which is a facsimile of the Seal with the words "Share Seal" on its face.
- 26.4 The Board may approve and adopt any official seal of the Company, which are facsimiles of the Seal with the name of different places where they are to be used on their faces.
- 26.5 Any Seal must only be used by the authority of the Board, or of any Committee that has been authorised by the Board to use the Seal as the Committee sees fit.
- 26.6 Every document to which a Seal is affixed must be signed by one Director and countersigned by another Director, Secretary or any other person appointed by the Board to countersign that document or a class of such documents.

## **27. FINANCIAL RECORDS AND REPORTS**

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### **27.1 Financial Records**

The Board must cause the Company to keep written financial records that:

- 27.1.1 correctly record and explain the transactions (including transactions undertaken in the capacity of trustee), financial position and performance of the Company; and
- 27.1.2 would enable true and fair financial statements to be prepared and audited.

### **27.2 Financial Reports to be tabled**

27.2.1 Subject to any requirements under the Act, the Board must ensure that the following documents are tabled before each AGM:

- 27.2.1.1 the financial report of the Company;
- 27.2.1.2 the Directors' report; and
- 27.2.1.3 the Auditor's report,

in each case in respect of the last financial year that ended before the AGM. The reports must be prepared in accordance with the requirements (if any) under the Act.

27.2.2 Subject to any requirements under the Act, the Board must on the Company's behalf report to all the Members in respect of every financial year that has ended, by sending to every Member (and in the case of joint holders, to the registered holder whose name appears first in the Register of Members in respect of the joint holding) either:

- 27.2.2.1 copies of the Company's financial report, the Directors' report and the Auditor's report, each as referred to in clause 27.2.1, for that financial year; or

27.2.2.2 a concise report for that financial year prepared in accordance with section 314(2) of the Act,

by the earlier of 21 days before the next AGM after the end of that financial year, or four months after the end of that financial year.

27.2.3 Subject to any restrictions under the Act, any accidental omission to give a report pursuant to clause 27.2.1, or a non-receipt of such report by a Member, does not invalidate any of the proceedings of the AGM.

### **27.3 Members' Right to Inspect**

27.3.1 The Board may decide, subject to any requirements under the Act, to what extent, at what time, at what place, and under what conditions the financial records, reports and other documents of the Company or any of them will be made available for the inspection of Members who are not Directors.

27.3.2 No Member has any right to inspect any record, report or document of the Company except:

27.3.2.1 as provided by law;

27.3.2.2 as authorised by the Board; or

27.3.2.3 as authorised by the Company at a General Meeting.

## **28. NOTICES AND OTHER DOCUMENTS**

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28.1 Subject to any requirements under the Act, and in addition to any provision for service of documents in any applicable law, any Notice may be given to any Member by:

28.1.1 delivering it to the Member personally or leaving it at the Member's address as shown in the Register of Members or such other address as is given in writing by the Member for such purposes, or in the case of a body corporate Member, at its registered office for the time being;

28.1.2 sending it by prepaid post to the Member's address as shown in the Register of Members or such other address as is given in writing by the Member for such purposes, or in the case of a body corporate Member, to its registered office for the time being;

28.1.3 sending it by facsimile transmission to the Member's facsimile number as is given in writing by the Member for such purposes; or

28.1.4 sending it by any electronic means to the Member's electronic address as is given in writing by the Member for such purposes.

28.2 Subject to any applicable provisions under the Act, any Notice given in accordance with clause 28.1 is deemed to have been received by the Member:

28.2.1 if by personal delivery or leaving it at an address pursuant to clause 28.1.1, on the day of delivery;

- 28.2.2 if by post, on the day it would have been received in the normal course of post;
- 28.2.3 if by facsimile transmission, when the transmitting machine confirms successful completion of the transmission during the recipient's normal business hours, or otherwise on the business day after it has been transmitted; and
- 28.2.4 if by any electronic means, on the business day after it has been sent.
- 28.3 In the case of joint holders of any Membership, any Notice given in accordance with clause 28.1 to the holder whose name appears first in the Register of Members in respect of the Membership is deemed to have been given to all the holders of the Membership.
- 28.4 Any Notice may be given to any person entitled to any Membership in consequence of the death, bankruptcy or mental incapacity of any Member by:
- 28.4.1 delivering it to the person personally or leaving it, as addressed to the person by name, title of representation, as assignee of the bankrupt Member or any like description, at:
- 28.4.1.1 the address given by the person for such purposes; or
- 28.4.1.2 to the Member's address as shown in the Register of Members;
- 28.4.2 sending it by prepaid post, as addressed to the person by name, title of representation, as assignee of the bankrupt Member or any like description, to:
- 28.4.2.1 the address given by the person for such purposes; or
- 28.4.2.2 to the Member's address as shown in the Register of Members.
- 28.5 Unless provided otherwise in this Constitution, any notice or other kind of written document to be given to the Company, as required under this Constitution, may be given by:
- 28.5.1 delivering it, or sending it by prepaid post, to the Registered Office; or
- 28.5.2 sending it by facsimile transmission or any electronic means to the Company's facsimile number or electronic address specified for such purposes.
- 28.6 For the purposes of this clause 28:
- Notice** means any notice or other kind of written document to be given by the Company including, without limitation, cheques, reports or forms.

## **29. WINDING UP**

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### **29.1 Contribution on Winding Up**

Every Member undertakes to contribute to the property of the Company if it is wound up:

- 29.1.1 while that person is a Member; or
- 29.1.2 within one year after that person ceases to be a Member;

in respect of the debts and liabilities of the Company contracted before that person ceases to be a Member, in respect of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

The amount to be contributed by any Individual Member, Family Member, Corporate Member, Club Lifetime Member, Honorary Member, Mid Week Member and Manager Member will not exceed \$1.00. In relation to any Resident Member (or any other Member who owns a Share), the liability is limited to the amount referred to in clause 5.2.2.1.

## **29.2 Distribution of Property on Winding Up**

- 29.2.1 If, on the winding up or dissolution of the Company after the satisfaction of all its debts and liabilities there remains any property, the property must not be paid to or distributed among the Members.
- 29.2.2 Instead, the property must be given or transferred to some other institution or institutions which:
  - 29.2.2.1 has objects similar to the objects of the Company; and
  - 29.2.2.2 has a constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution.

## **30. INDEMNITY FOR OFFICERS**

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- 30.1 Subject to any prohibition or limitation under the Act, each and every Officer of the Company will be, and where approved by the Company at a General Meeting any other employee or authorised agent of the Company and any Auditor or professionals engaged by the Company may be, indemnified out of the property of the Company against:
  - 30.1.1 any and all liabilities arising by virtue of their respective offices, as owed to any other person except the Company and any of its related bodies corporate (as that term is defined in the Act), and provided that such liability does not result from any conduct involving a lack of good faith; and
  - 30.1.2 all costs and expenses incurred:
    - 30.1.2.1 in defending any proceeding, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted; and
    - 30.1.2.2 in connection with any application made, whether or not made by them, in relation to any proceeding, whether civil or criminal, in which the Court grants relief to them pursuant to the Act.

- 30.2 Subject to any restrictions under the Act, the Board may on behalf of the Company take out any policy of insurance, on such terms and conditions as the Board decides, in favour of any person who is presently or has previously been an Officer of the Company, against any liability incurred by the person by virtue of the office, whether in respect of acts or omissions before or after the issue of such policy except any liability resulting from:
- 30.2.1 wilful breach of duty in relation to the Company; or
  - 30.2.2 a contravention of section 182 or 183 of the Act.
- 30.3 Any indemnity pursuant to clause 30.1 and any policy of insurance effected pursuant to clause 30.2 will, despite any alteration to the provisions of clause 30.1 or clause 30.2, continue in full force and effect in respect of any acts or omissions before such alteration is effected.

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