

DATED THE

DAY OF

1997

CONSTITUTION

CAULFOLD HOLDINGS LIMITED



SIMPSON GRIERSON
LAW



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CAULFOLD LIMITED

CONSTITUTION

1. INTERPRETATION

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

"Act" means the Companies Act 1993;

"Board" means the Board of Directors of the Company;

"Constitution" means this Constitution as amended from time to time;

"Company" means Caulfold Holdings Limited;

"Local Authority" shall have the meaning ascribed to that term in section 2 of the Transit New Zealand Act;

"Local Authority Trading Enterprise" shall have the meaning ascribed to that term in section 594B of the Local Government Act;

"Local Government Act" means the Local Government Act 1974;

"Shareholder" means The Hutt City Council or the successor of that shareholder.

"Statement of Corporate Intent" means such statement as provided for in accordance with the requirements set out in sections 594S-594U of the Local Government Act; and

2. CONSTRUCTION

2.1 **Companies Act:** Words or expressions not defined in this Constitution but defined in the Act shall be deemed to have the same meaning as they have in the Act.

2.2 **Headings:** Headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Constitution.

2.3 **Months:** References to months shall be deemed to be references to calendar months.

- 2.4 **Persons:** References to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments, state owned enterprises, local authorities and local authority trading enterprises, in each case whether or not having separate legal personality.
- 2.5 **Plural and Singular:** Words importing the singular number shall include the plural and vice versa.
- 2.6 **Statutes and Regulations:** References to a statute include references to regulations, orders or notices made under or pursuant to such statute or regulation made under the statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to as incorporating any of the provisions.
- 2.7 **Writing:** References to written material or to material in writing shall be deemed to include material which is written, printed, typewritten, painted, engraved, photocopied, lithographed or otherwise represented or reproduced in visible form.
- 2.8 **Implied Provisions:** The provisions of the Act are negated, modified, adopted and extended by the Constitution as hereinafter provided.

3. SHARE CAPITAL

- 3.1 **Initial Capital:** The initial capital of the Company shall consist of six million (6,000,000) ordinary shares.
- 3.2 **Ordinary Shares:** Ordinary shares shall confer the rights set out in section 36(1) of the Act, namely -
- 3.2.1 **Voting:** the right to one vote on a poll at a meeting of the Company on any resolution which the meeting is authorised to pass, including any resolution to -
- (a) appoint or remove a director or auditor;
 - (b) adopt a new constitution;
 - (c) alter the Company's constitution;
 - (d) approve a major transaction (as defined in section 129(2) of the Act;

(e) approve an amalgamation of the Company under Section 221 of the Act;

(f) put the Company into liquidation.

3.2.2 Dividends: the right to an equal share in dividends authorised by the board.

3.2.3 Distribution of Surplus Assets: the right to an equal share in the distribution of the surplus assets of the Company.

4. CALLS ON SHARES

4.1 Board May Make Calls: The Board may from time to time make such calls as it thinks fit upon the shareholders in respect of any moneys unpaid on their shares and not by the conditions of issue thereof made payable at a fixed time or times, and each shareholder shall, subject to receiving at least 14 days written notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called. A call may be revoked or postponed as the board may determine.

4.2 Timing of Calls: A call may be made payable at such times and in such amount as the board may decide.

5. REFUSAL TO REGISTER TRANSFERS

5.1 Directors' Right to Refuse Registration: Subject to compliance with the provisions of section 84 of the Act, the board may refuse or delay the registration of any transfer of any share to any person, whether that person is an existing shareholder or not if so required by law;

6. NEW ISSUE OF SHARES

6.1 New Share Issues: Subject to compliance with the Act, the Board may issue shares with such preferred, deferred or other special rights or restrictions as the Company may by resolution determine at any time, to any person, and in any number it thinks fit.

6.2 Pre-emptive Rights: The pre-emptive provisions of section 45 of the Act apply to a new issue of shares.

7. ACQUISITION OF COMPANY'S OWN SHARES

7.1 Authority to Acquire Own Shares: For the purposes of sections 59 and 60(1)(b)(ii) of the Act, the Company is hereby expressly authorised to purchase or otherwise acquire shares issued by it.

- 7.2 **Authority to Hold Own Shares:** The Company may hold shares acquired by it to the fullest extent permitted by law.

8. RESOLUTION IN LIEU OF SHAREHOLDERS MEETING

- 8.1 **Resolutions in Lieu of Meeting:** A shareholders resolution in lieu of meeting authorised by section 122 of the Act may consist of several documents in like form, each signed by one or more shareholders. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.

9. DIRECTORS

- 9.1 **Number of Directors:** Unless and until otherwise determined by Shareholders the number of directors shall be not less than two nor more than six.
- 9.2 **Tenure of office:** Each director of the Company shall hold office until:
- 9.2.1 **Removal:** removal in accordance with the Constitution; or
- 9.2.2 **Vacation of Office:** vacation of office pursuant to section 157 of the Act or in accordance with this Constitution.
- 9.3 **Appointment and Removal by Shareholders:** The directors of the Company shall be such person or persons as may from time to time be appointed by the Shareholder by notice in writing to the Company but so that the total number of directors shall not at any time exceed the maximum number, if any, fixed pursuant to clause 9.1. Every director shall hold office subject to the provisions of this Constitution and may at any time be removed from office by notice in writing to the Company by the Shareholder. Directors may be appointed together unless an Ordinary Resolution requires any Director's appointment to be voted on individually.
- 9.4 **Statutory Requirements:** Any appointment or retirement of directors and the composition of the board shall at all times comply with section 594R of the Local Government Act.
- 9.5 **Disqualification of Directors:** The office of a director shall be vacated if the director:
- 9.5.1 **Incapacity:** becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment & Treatment) Act 1992;

- 9.5.2 Ceases to be Member or Employee:** being a member or employee of any Local Authority at the time of his or her appointment as a director ceases for any reason to be such a member or employee; or
- 9.5.3 Becomes Member or Employee:** not being a member or employee of any Local Authority at the time of his or her appointment as a director becomes such a member or employee and, as a consequence, the Company is in breach of section 594R of the Local Government Act.
- 9.6 Cross Directorships:** A director of the Company may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interests in, any such other company unless the Company otherwise directs or the law requires.
- 9.7 Professional Directors:** Any director may act by himself or herself or his or her firm in a professional capacity for the Company, and a director or firm shall be entitled to remuneration for professional services as if he or she were not a director provided that nothing herein contained shall authorise a director or his or her firm to act as auditor to the Company.
- 9.8 Director's Remuneration and Other Benefits:** The board shall not exercise any of the powers contained in or implied by section 161 of the Act without the prior written approval of the Shareholder.
- 9.9 Alternate Directors:** Each director shall have the power from time to time to nominate, by notice in writing to the Company, any person not already a director and who is acceptable to the Shareholder to act as an alternate director in his or her place either for a specified period or generally during the absence from time to time of such director and in like manner to remove any such alternate director.
- 9.10 Rights and Powers:** Unless otherwise provided for by terms of his or her appointment, an alternate director shall have the same rights, powers and privileges (including the right to receive notice of meetings of the board but excluding the power to appoint an alternate director) and shall discharge all the duties of and be subject to the same provisions as the director in whose place he or she acts.
- 9.11 Remuneration and Vacation of Office:** An alternate director shall not be remunerated otherwise than out of the remuneration of the director in whose place he or she acts and shall ipso facto vacate office if and when the director in whose place he or she acts vacates office.

- 9.12 **Notice of Appointment:** Any notice appointing or removing an alternate director may be given by delivering the same or by sending the same through the post or by facsimile to the Company and shall be effective as from the receipt thereof.

10. MANAGING DIRECTOR

- 10.1 **Power to Appoint Managing Director:** The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A director so appointed shall be subject to the same provisions as to vacation of office as apply to the other directors, and if he ceases from any cause to hold office as a director, he shall thereupon vacate and immediately cease to hold office of managing director.
- 10.2 **Remuneration of Managing Director:** A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.
- 10.3 **Powers of Managing Director:** The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

11. PROCEEDINGS OF DIRECTORS

- 11.1 **Third Schedule:** The provisions of the Third Schedule to the Act are deleted and replaced as provided in this clause 11.
- 11.2 **Regulation of Meetings, Quorum and Convening:** The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. The quorum necessary for the transaction of business by the board may be fixed by the board and, unless so fixed, shall be two directors appointed in accordance with clause 9.1. A director may, and an employee at the request of a director shall, at any time, by any means of communication, summon a meeting of the board. It shall not be necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand.
- 11.3 **Voting:** Questions arising at any meeting of the board shall be decided by a majority of votes. The chairperson shall not have a second or casting vote. No business shall be transacted when a quorum is not present.

- 11.4 Vacancies:** The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number necessary for a quorum, the continuing directors or director may act only for the purpose of increasing the number of directors to the number necessary for a quorum or for the purpose of summoning a special meeting of the Company.
- 11.5 Chairperson:** The Board shall elect a chairperson of its meetings at the first meeting of the Board following each Annual General Meeting; but if no such chairperson is elected, or if at any meeting the chairperson is not present within fifteen minutes after the time appointed for the meeting, the directors present may choose one of their number to be chairperson of the meeting.
- 11.6 Resolution in Writing:** A resolution in writing, signed by a majority of the directors for the time being entitled to receive notice of a meeting of the board shall be as valid and effectual as if it had been passed at a meeting of the board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.
- 11.7 Method of Meeting:** A meeting of the board may be held either -
- 11.7.1 Physical:** by a number of the directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- 11.7.2 Other:** by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 11.8 Minutes:** The board shall ensure that minutes are kept of all proceedings at meetings of the board.

12. DUTIES OF DIRECTORS AND BOARD

- 12.1 Statement of Corporate Intent:** The business of the Company shall be managed by the Board in accordance with the Statement of Corporate Intent.
- 12.2 Interest of Shareholder:** For the purposes of section 131(2) of the Act each director of the Company is expressly permitted to act in a manner which he or she believes is in the best interests of the Shareholder even though it may not be in the best interests of the Company.

- 12.3 Consent for Shareholding:** Notwithstanding anything else contained in this Constitution or the Act the Board may not subscribe for, purchase, or otherwise acquire shares in any other company or other person without the prior written approval of the Shareholder.

13. DIRECTORS' INDEMNITIES

- 13.1 Indemnity and Insurance:** The Company is expressly authorised to indemnify and/or insure any director or employee against liability for acts or omissions and/or costs incurred in connection with claims relating thereto of the type specifically contemplated by subsections (3), (4) and (5) of section 162 of the Act to the maximum extent permitted by those subsections.

14. ACCOUNTS

- 14.1 Availability for Inspection:** In addition to complying with the provisions of the Act the Company shall also comply with sections 594ZA and 594ZB of the Local Government Act.
- 14.2 Statement of Corporate Intent:** In each financial year of the Company the directors of the Company shall deliver to the Shareholder a Statement of Corporate Intent no later than one month after the commencement of that financial year.
- 14.3 Accounts to be Prepared:** Within two months after the end of the first half of each financial year of the Company the directors shall deliver to the Shareholder a report of the Company's operations during that half-year. Such half-year report shall include the information required by the Statement of Corporate intent to be included therein.
- 14.4 Reports to be Delivered to Members:** Within three months after the end of each financial year of the Company the directors shall deliver to the members:
- 14.4.1 Operations:** a report on the operations of the Company and those of its subsidiaries during the financial year; and
 - 14.4.2 Financial Statements:** audited consolidated financial statements for that financial year in respect of the Company and its subsidiaries; and
 - 14.4.3 Auditor's Report:** the auditor's report on:
 - (a) those financial statements; and

- (b) the performance targets and other measures by which performance has been judged in relation to the objectives.

14.5 Contents of Operations Report: Every report under clause 13.4 shall:

14.5.1 Information Contained: Contain such information as is necessary to enable an informed assessment of the operations of the Company and its subsidiaries including a comparison of the performance of the Company and its subsidiaries with any relevant Statement of Corporate Intent; and

14.5.2 Dividends: State the maximum dividend (if any) recommended to be payable by the Company in respect of its equity securities (other than fixed interest securities) for the financial year to which the report relates.

14.6 Contents of Financial Statements: The audited consolidated financial statements under clause 14.4.2 shall consist of those reports required under section 594Z of the Local Government Act:

14.6.1 a statement of financial position;

14.6.2 an overall operating statement;

14.6.3 one operating statement in respect of each significant activity;

14.6.4 a statement of cash flows; and

14.6.5 such other statements as may be necessary to fairly reflect the financial position of the Company and its subsidiaries, the resources available to them and the financial results of their operations.

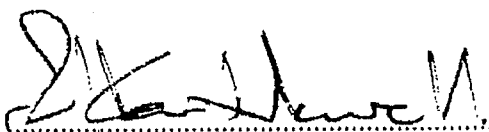
14.7 Audit: In accordance with section 594ZC of the Local Government Act the Audit Office shall be the auditor of the Company.

15. NOTICES

15.1 Service: A notice may be served by the Company upon any director or shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such director or shareholder.

- 15.2 Time of Service by Facsimile:** A notice served by facsimile shall be deemed to have been served on the day following completion of transmission thereof.
- 15.3 Time of Service by Post:** A notice sent by post or delivered to a document exchange shall be deemed to have been served:
- 15.3.1 In New Zealand:** in the case of a person whose last known address is in New Zealand, at the expiration of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
- 15.3.2 Outside New Zealand:** in the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or wrapper containing the same was duly posted by fast post in New Zealand.
- 15.4 Proof of Service:** In proving service by post or delivery to a document exchange it shall be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or dispatched with all attached postal or delivery charges paid. In proving service by facsimile, it shall be sufficient to prove that the document was properly addressed and sent by facsimile.
- 15.5 Service on Joint Holders:** A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the share register in respect of the share.

Certified as the Constitution of the Company.



Applicant

21-4-97

Date

