

CERTIFIED AS THE COMPANY'S CONSTITUTION ON
RE-REGISTRATION PER *OR Gilbert*
CONSTITUTION OF

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DOLPHIN SQUARE FLATS LIMITED

1. **Constitution and the Companies Act**
 - 1.1 **Registration**

The company is to be re-registered under the Companies Act 1993 and is regulated by the Act and this constitution.
 - 1.2 **Definitions**

The defined words and expressions in clause 15 shall, where used in this constitution, have the meaning given to them in clause 15.
2. **Issue of shares**
 - 2.1 **Board may issue shares**

The board may issue shares with preferred, deferred or other special rights or restrictions, whether in regard to distributions, voting, return of capital or otherwise.
 - 2.2 **Rights of shares**

Unless the terms of issue of any shares specifically otherwise provide, the board may issue shares that rank as to distributions, voting, return of capital or otherwise, equally with, or prior to, existing shares without any requirement that the shares be offered to shareholders.
 - 2.3

In accordance with section 37(1) the shares of the company are divided into the several groups set out in the first column of Appendix A attached to this constitution and the holding of each such group of shares gives the right to occupy the flat the number of which is opposite the group number in the second column of Appendix A. The present shareholders are shown in the third column of Appendix A.
 - 2.4

The holder of each group of shares shall prior to his or her registration as a member of the company holding such group, execute an agreement with the company in the form set out in Appendix B attached and the company shall on registration of any person, firm or corporation as a member of shareholder, be bound to enter into and execute such agreement.
3. **Purchase by company of its shares**
 - 3.1 **Purchase of shares**

The company may make an offer to all shareholders or to one or more shareholders to purchase or otherwise acquire shares issued by the company.



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4. Right to refuse registration to transfer

- 4.1 The board may refuse to register any transfer of shares in their absolute discretion and without assigning any reason or specifying any ground provided that the directors may not decline to register a transfer of shares arbitrarily or unreasonably in the case of a respectable and solvent proposed assignee.
- 4.2 The board may refuse or delay the registration of a duly completed transfer of any share if the board (subject only to its duty to act in good faith) considers that:
- (a) to effect the transfer would result in a breach of the law or this constitution; or
 - (b) the shareholder has failed to pay to the company any amount due in respect of that share; or
 - (c) the transferee is a person without legal capacity to contract; or
 - (d) the transfer has not been properly executed; or
 - (e) where a share certificate has been issued, the transfer is not accompanied by the relevant share certificate, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board; or
 - (f) where the transfer is not accompanied by the occupation contract between the transferor and the company duly surrendered by the transferor plus a new occupation contract executed by the transferee.
 - (g) it is not in the best interests of the company to register the transfer.

5. Trusts not recognised

Except as required by law, no person will be recognised by the company as holding any share upon trust and the company shall not be bound by or be compelled in any way to recognise (even when having notice of it) any equitable, contingent, future or partial interest in any share or any interest in a fractional part except the absolute legal right to the entirety of the share vested in the registered shareholder.

6. Calls on shares

6.1 Board may make calls

- 6.1.1 The board may make calls for the payment of any amounts unpaid on shares which are not payable at a fixed time or times by the terms of issue of those shares.
- 6.1.2 Failure to give notice to a shareholder will not invalidate a call but the call will not be payable by a shareholder until a notice has been served on that shareholder.
- 6.1.3 The board may, in making any call, differentiate between the shareholders as to the amount to be paid and the time of payment.

6.2 Timing of calls

A call may be made payable at the times and in the amounts which the directors decide.

6.3 Liability of joint holders

Joint shareholders of a share are jointly and severally liable to pay all calls in respect of the share.

6.4 Interest and expenses

If a sum called in respect of a share is not paid before or on the time payment is due, the person from whom the sum is due shall pay:

- (a) interest on that sum from the day payment was due to the day of actual payment, at the rate which the board determines either at or after the time of the call; and
- (b) all expenses which the company may incur by reason of non-payment of the sum called in respect of a share.

The board may waive payment of all or part of that interest or expense.

6.5 Instalments

Any sum which by the terms of issue of a share becomes payable on issue or at any fixed time shall, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable. In the case of non-payment all the relevant provisions of this constitution relating to payment of interest and expenses, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified and the terms of issue shall be deemed to be written notice specifying the time and place of payment.

7. Suspension of right to dividends and lien**7.1 Notice of suspension of right to dividends**

If a shareholder fails to pay any call on the day appointed for payment, the board may, at any time after that date, while any part of the call remains unpaid, suspend payment of any distributions payable to the shareholder until so much of the call as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the company by reason of the non-payment have been paid to the company in full.

7.2 Application of suspended dividends

7.2.1 All distributions which would have been payable in respect of shares which are subject to a suspension of the right to distributions must be withheld and applied by the company to reduce the amount owing under the call, including amounts owing under clause 7.3.

7.2.2 The amount owing under the call may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.

- 7.3 Lifting of suspension of right to dividends**
When the total distributions withheld and applied under clause 7.2.1 equal the total amount owing under the call, including amounts owing under clause 7.2.2, the suspension of the right to distributions will be lifted, and all rights to be paid distributions on the shares will resume.
- 7.4 Lien**
The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, and upon any distributions from time to time payable in respect of the shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder and for all other money presently payable by the shareholder to the company on any account whatever and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder (whether the period for the payment, fulfilment or discharge respectively has actually arrived or not).
- 7.5 Sale on exercise of lien**
- 7.5.1** If any sum remains unpaid in respect of which a lien on a share held by the shareholder presently exists, the board may at any time thereafter serve notice ("sale notice") on the shareholder requiring payment of that sum.
- 7.5.2** The sale notice shall name a day (not earlier than the expiration of 14 days from the date of service of the sale notice) on or before which the payment required by the sale notice is to be made, and shall state that, in the event of non-payment on or before the time appointed, the shares in respect of which the sale notice was given will be liable to be sold by the company including a sale to itself.
- 7.5.3** If the requirements of any sale notice are not complied with, any share in respect of which the sale notice was given may be sold on whatever terms and in whatever manner the board decides. At any time before sale the sale may be cancelled on whatever terms the board decides. If any share is sold the residue, if any, of the proceeds of the sale after payment of all costs and expenses of the sale and all moneys owing in respect of the shares sold and interest thereon and costs and expenses of any prior attempted sale in respect of that share shall be paid to the shareholder whose share has been sold or to the shareholder's executors, administrators or assigns.
- 7.5.4** A shareholder whose share has been sold pursuant to clause 7.5.3 shall cease to be a shareholder in respect of that share, but shall, nevertheless, remain liable to pay to the company all money which, at the time of sale, was payable by the shareholder to the company in respect of that share, but that liability shall cease if and when the company receives payment in full of all the money in respect of that share.

7.5.5 A statutory declaration in writing made by a director declaring that a share has been duly disposed of on a date stated in the declaration shall be conclusive evidence of the facts stated in the declaration as against all persons claiming to be entitled to that share.

7.5.6 The company may receive the consideration, if any, given for a share on any sale of the share and may authorise any person to execute a transfer of the share in favour of the person to whom the share is sold, and that person shall be registered as the shareholder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall that person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the sale of the share.

8. Management by shareholders

8.1 Shareholders' management resolution is binding

The shareholders may pass a resolution relating to or for the purpose of managing or directing or supervising the management or supervision of the business or affairs of the company. Any such resolution shall be a resolution of the company and shall be binding on the board.

8.2 Resolution may not be binding

The shareholders may pass a resolution regarding the management of the company, expressed as a non-binding resolution, and any such resolution shall not be binding on the company or the board.

8.3 Resolution of the company

The board has the express power to refer any matter arising out of the business or affairs of the company to the shareholders and any resolution passed by the shareholders at a general meeting directing, requiring or affirming a proposed course of conduct shall be a resolution of the company and shall be binding on the board.

9. Meetings of shareholders

9.1 Annual meeting

9.1.1 The board must, in accordance with section 120 of the Act (annual meeting of shareholders), call an annual meeting of shareholders to be held:

- (a) once in each calendar year other than in the calendar year of the company's incorporation;
- (b) not later than six months after the balance date of the company; and
- (c) not later than fifteen months after the previous annual meeting or, in respect of its first annual meeting, not later than eighteen months after the company's date of incorporation.

9.1.2 The company must hold the annual meeting on the date on which it is called to be held.

9.2 Special meetings

A special meeting of shareholders entitled to vote on an issue:

- (a) may be called at any time by the board or a person who is authorised by this constitution to call the meeting; and
- (b) must be called by the board on the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

9.3 Resolution in lieu of meeting

9.3.1 Subject to clause 9.3.2 a resolution in writing signed by not less than 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.

9.3.2 A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided in clause 9.3.1 provided that the resolution must be unanimous and be signed by all the shareholders entitled to vote on the resolution.

9.3.3 Within 5 working days of a resolution being passed under this clause the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

9.4 Proceedings at meetings of shareholders

9.4.1 The provisions of the First Schedule to the Act shall apply to meetings of shareholders, including the right of shareholders to cast a postal vote.

10. Appointment and removal of directors**10.1 Number of directors**

The number of directors may not be fewer than 2 or more than 5.

10.2 Appointment and removal by notice

10.2.1 Subject to clauses 10.2 and 10.4 the directors are the persons appointed from time to time as directors by a notice in writing signed by shareholders holding the majority of the ordinary shares and who have not been removed or resigned or disqualified from office under this constitution. The qualification of a director shall be the holding either alone or jointly with one or more other persons of one group of shares in the capital of the company.

10.2.2 A director may be removed from office at any time by a notice in writing signed by the shareholders holding the majority of the ordinary shares.

10.2.3 A notice given under clauses 10.2.1 or 10.2.2 takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by shareholders giving the notice.

10.2.4 A director holds office until his or her retirement, disqualification or removal in accordance with this constitution.

10.3 Appointment and removal of directors by resolution

10.3.1 In addition to the appointment or removal of directors under clause 10.2 a director may be appointed or removed from office by an ordinary resolution.

10.3.2 A resolution to appoint two or more directors may be voted on as one resolution without each appointment being voted individually.

10.3.3 A notice of meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of the director.

10.4 Disqualification and removal

A person will be disqualified from holding the office of director if he or she:

- (a) is removed under clause 10.2 or clause 10.3; or
- (b) resigns in writing; or
- (c) becomes disqualified from being a director pursuant to sections 151, 382 or 385 of the Act;
- (d) dies;
- (e) becomes a protected person under the Protection of Personal and Property Rights Act 1988;
- (f) is under 18 years of age;
- (g) is an undischarged bankrupt;
- (h) is prohibited by the Companies Act 1995 from being a director or would be so prohibited but for the repeal of that Act;
- (i) does not acquire the number of shares required under clause 10.2.1 to qualify him or her for office within two calendar months after election or appointment or if after the expiration of such time he or she ceases at any time to hold such required number of shares. A person vacating office under this clause shall be incapable of being reappointed a director of the company until that person has obtained the necessary share qualification under clause 10.2.1.

10.5 Alternate directors

10.5.1 Every director may be notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place either generally or in respect of a specified meeting or meetings during the director's absence or inability to act as a director and at the director's discretion by notice in writing to the company, to remove the

director's alternate director. On any such appointment being made the alternate director, may while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson and signing board resolutions) of the director appoint the alternate director and is subject in all respects to the same terms and provisions as that director except as regards remuneration and except as regards the power to appoint an alternate director under this constitution. For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.

- 10.5.2 The notice of appointment of an alternate director should include an address for service of notice of meetings of directors. Failure to give an address will not invalidate the appointment but notice of meetings of the board need not be given to the alternate director until an address is provided to the company.
- 11. **Powers and duties of the board**
 - 11.1 **Powers of the board**
 - 11.1.1 Subject to clause 8 the business and affairs of the company must be managed by or under the direction or supervision of the board.
 - 11.1.2 Subject to clause 8 the board has, and may exercise, all the powers necessary for managing, directing and supervising the management, business and affairs of the company except to the extent that this constitution or the Act expressly require those powers to be exercised by the shareholders or any other person.
 - 11.2 **Directors to act in good faith**
 - 11.2.1 Subject to the subclauses set out below in this clause 11.2 a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.
 - 11.2.2 If the company is incorporated to carry out a joint venture between its shareholders the director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.
 - 11.2.3 Nothing in this clause 11.2 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business.

12. Proceedings of the board**12.1 Third Schedule to apply**

The provisions of the Third Schedule to the Act apply to meetings of the board.

12.2 Alternate directors

It is not necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under this constitution, notice must (subject to clause 1(3) of the Third Schedule to the Act and to clause 10.5.2 of this constitution) be given to the alternate director.

13. Dividends**13.1 Dividends proportionate to paid up capital**

Subject to the rights of persons, if any entitled to shares with special rights as to dividends, all dividends are to be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share, in advance of calls, is to be treated for the purpose of this clause 13.1 as paid on the share. All dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it is to rank for dividend as from a particular date, that share will rank for dividend accordingly.

13.2 Deductions from dividends

The board may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by that member to the company on account of calls, instalments, premiums or otherwise.

14. Notices**14.1 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.

14.2 Time of service by facsimile

A notice served by facsimile shall be deemed to have been served on the day following completion of transmission of the notice.

14.3 Time of service by post

A notice sent by post or delivered to a document exchange shall be deemed to have been served:

- (a) 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
- (b) in the case of a person whose last known address is outside New Zealand, at the expiration of four days after the envelope or package containing the same was duly posted by fastpost in New Zealand.

14.4 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 delivered 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.

14.5 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 register in respect of the share.

15. Definitions

In this constitution the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993.

"alternate director" means a director appointed pursuant to clause 10.6.1.

"annual meeting" means a meeting of shareholders held pursuant to clause 9.1.1.

"board" means the directors numbering not less than the required quorum acting as the board of directors of the company and where one director is a quorum it means that director so acting alone.

"call" means a resolution of the board pursuant to clause 6.1.1 requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"company" means Dolphin Square Flats Limited.

"constitution" means this constitution of the company and all amendments to it from time to time.

"director" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"distribution" means:

- (a) the direct or indirect transfer of money or property, other than shares, by the company to or for the benefit of a shareholder; and
- (b) the incurring of a debt by the company to or for the benefit of a shareholder,

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

"dividend" means a distribution by the company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies.

"ordinary resolution" means a resolution of shareholders approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

"share" means a share issued by the company.

"shareholder" means a person:

- (a) registered in the share register as the owner of one or more shares;
- (b) until such time as his, her or its name is entered in the share register, a person named as a shareholder in the application for registration of the constitution of the company at the time of the incorporation of the company; and
- (c) until the person's name is entered in the share register, a person who is entitled to have that person's name entered in the register under a registered amalgamation proposal as a shareholder in an amalgamated company.

"special meeting" means any meeting (other than an annual meeting) of shareholders entitled to vote on an issue, called at any time by the board or by any other person who by this constitution is entitled to call meetings of shareholders.

"special resolution" means a resolution of shareholders approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question.

15.2 Words importing the singular number only include the plural number and vice versa.

15.3 A reference to a person includes any firm, company or other body corporate.

- 15.4 Subject to the above, expressions contained in this constitution bear the same meaning as in the Act, at the date on which this constitution becomes binding on the company.
- 15.5 A reference to a clause means a clause of this constitution.
- 15.6 The clause headings and footnotes are included for the purposes of convenience and do not affect the construction of this constitution.

APPENDIX A

Share Numbers	Flat Number	Shareholder
1 - 2575	Flat 1	Gloria Randell
2576 - 5150	Flat 2	Albert Harris
5155 - 8100	Flat 3	Alexander & Brenda Rennie
8101 - 10675	Flat 4	Calvin J Alsford
10676 - 13250	Flat 5	Joyce E L Stott
13251 - 15825	Flat 6	Graeme L Jarvis
15826 - 18775	Flat 7	Max Stevens
18776 - 21350	Flat 8	John & Edith Barrett
21351 - 23925	Flat 9	Elaine J Boathé & Ronald J Tustin
23926 - 26500	Flat 10	Patrick F Jones
26501 - 29075	Flat 11	Pauline Ludlow
29076 - 31650	Flat 12	Rodney A Maxted
31651 - 34225	Flat 13	Mary Haywood
34226 - 37175	Flat 14	Kathleen & Collette Williams
37176 - 39750	Flat 15	Richard Coutts
39751 - 42325	Flat 16	Ann Mugford

