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## SPECIAL RESOLUTION TO ADOPT CONSTITUTION

We the undersigned who are, or entitled to be, members of the company FAIRLIGHT SUPER FUND PTY LTD and who are entitled to vote, are in favour of this special resolution made under section 136 of the Corporations Act 2001 to change the constitution of the company from its existing constitution to the one set out below and we hereby adopt the constitution set out below as the constitution of the company and accept its terms as binding upon us.

## RESOLUTION AND CONSENT TO BECOME TRUSTEE

The company resolves and consents for the purposes of section 118 of the Superannuation Industry Supervision Act 1993 to become corporate trustee for the superannuation fund named in the constitution below and all those who are, or entitled to be, members agree to this. The director(s) and secretary of the company have authority to execute the trust deed establishing or continuing the fund, for the company to act as the fund's trustee with all the powers duties and authority as provided in the deed.

Signed by the company secretary  
for and on behalf of the company:

Print name: Joanna Thompson

Signed by member 1:



Print name: Joanna Thompson

Dated: 15th December, 2020

## CONSTITUTION OF FAIRLIGHT SUPER FUND PTY LTD

**Australian Company Number 646 549 171**

### A COMPANY LIMITED BY SHARES

#### 1. DEFINITIONS

**The Company:** FAIRLIGHT SUPER FUND PTY LTD

**Superannuation Fund:** FAIRLIGHT BEACH SMSF

**ASIC:** Australian Securities and Investments Commission

**Legal personal representative** means the executor of the will or

administrator of the estate of a deceased person, and the trustee of the estate of a person under a legal disability. It also includes a person who holds a valid enduring power of attorney.

**Company member:** means a member (shareholder) of the Company or a person who is entitled to be a member of the Company.

## 2. LIABILITY OF COMPANY MEMBERS

The liability of the Company member (or if more than one, the Company members), is limited.

## 3. EFFECT OF REPLACEABLE RULES

3.1 The replaceable rules are those contained in the *Corporations Act 2001 (Cth)*.

3.2 When the replaceable rules apply, they apply in the form contained in the compilation of the *Corporations Act 2001* as amended from time to time. This means that the replaceable rules applying to the Company might differ from those which applied at the time when this constitution was agreed. In the appendix to this constitution is a table of the replaceable rules and the current rules should always be consulted to see any amendments which have been made.

3.3 For any time that the same person is both the sole director and sole Company member the replaceable rules shall not apply. But otherwise they shall apply except for those rules marked in the table in the appendix "does not apply" and except as in so far as any replaceable rule is inconsistent with this Constitution.

## 4. SPECIAL PURPOSE COMPANY

4.1 The Company may not distribute its income or property to any of the Company members.

4.2 The sole purpose of the company is to act as the trustee of the Superannuation Fund which is a regulated superannuation fund within the meaning of s19 of the *Superannuation Industry (Supervision) Act 1993*.

## 5. SELF MANAGED SUPERANNUATION FUND

5.1 The Superannuation Fund is a Self Managed Superannuation Fund within the meaning of s17A of the *Superannuation Industry (Supervision) Act 1993*.

5.2 This clause applies (subject to clause 5.5) if the Superannuation Fund has only one member. The Company may only have one or two directors. If it has one director that director shall be the member of the Superannuation Fund. If it has two directors one of the directors shall be the member of the Superannuation Fund; the other director must not employ the member of the Superannuation Fund unless they are relatives.

5.3 This clause applies (subject to clause 5.5) if the Superannuation Fund has more than one member. The Superannuation Fund must have no more than four members and each member must be a director of the Company. Each director of the Company must be a member of the Superannuation Fund. No member of the Superannuation Fund can be an employee of



another member of the Superannuation Fund, unless the members concerned are relatives.

5.4 The trust deed establishing or continuing the Superannuation Fund shall govern the ability of the Company or a director of the Company to receive remuneration for any duties or services performed in relation to the Superannuation Fund.

5.5 A director may be appointed in the circumstances specified by section 201F of the *Corporations Act 2001* (if applicable) or section 17A of the *Superannuation Industry (Supervision) Act 1993* and in compliance with those sections, that is to say (by way of example) in place of a director on the grounds of that director's death, mental incapacity, bankruptcy (in certain circumstances) or legal disability or if the appointee holds an enduring power of attorney or if the appointee is a parent or guardian of a member of the Superannuation Fund who is a child under the age of majority.

#### 6.0 AUTOMATIC APPOINTMENT OF DIRECTOR

Upon giving the Company a signed consent to act as director by notifying the Company in any way permitted by section 109X of the *Corporations Act 2001* the following person or persons shall automatically become a director of the Company:-

- (a) Any person who was named as a director upon application for registration of the Company with the ASIC.
- (b) Any member of the Superannuation Fund of full legal capacity who by virtue of the law and of clause 5 above is required to be a director of the Company.
- (c) A parent or guardian of any member of the Superannuation Fund who is a child under the age of majority.
- (d) A Legal Personal Representative of any member of the Superannuation Fund who has become and remains of impaired capacity (within the meaning of the relevant law relating to powers of attorney).
- (e) The Legal Personal Representative (or a person appointed by the Legal Personal Representative) of a director of the Company or a member of the Superannuation Fund who has died.
- (f) The trustee in bankruptcy (or a person appointed by the trustee in bankruptcy) of a director of the Company or a member of the Superannuation Fund *but only if* the appointment of a person as director is required by law or by an order of the court.

#### 7.0 ALTERNATE DIRECTORS

7.1 A director may appoint an alternate to exercise some or all of the director's powers but only:-

- (a) if the alternate is the Legal Personal Representative of the appointing director in the appointing director's capacity as a member of the Superannuation Fund; or



- (b) in the case of a Superannuation Fund with only one member, the company has only one director who is the appointing director and the alternate does not employ the appointing director unless they are relatives; or
- (c) where the alternate is a member of the Superannuation Fund.

7.2 The alternate may only be appointed in the terms set out in the next following clause. The appointment may be for a specified period. The appointment shall not require the approval of any other director.

7.3 The appointment must be in writing and must state that the alternate:-

- (a) may only exercise powers as director when the appointing director is not exercising those powers;
- (b) may only carry out duties for the company when the appointing director is not carrying out those duties;
- (c) acts only in the capacity of director pursuant to the appointment as alternate and not as agent for the appointing director.

7.4 If the appointing director requests the company to give the alternate notice of directors' meetings, the Company must do so.

7.5 When an alternate exercises a power as director or carries out a duty for the company within the terms of the appointment this is just as effective as if it had been done by the appointing director.

7.6 The appointing director may terminate the alternate's appointment at any time in writing.

7.7 Notices of appointment and termination must be given to the Company and the ASIC must be also be notified within 28 days.

#### 8.0 DIRECTOR'S ENDURING POWER OF ATTORNEY

8.1 A person (the "attorney") who holds a director's enduring power of attorney but who is not a director of the Company may exercise all of the director's powers without the approval of any other director whilst the power of attorney remains valid and effective.

8.2 The attorney may request the Company to give him notice of directors' meetings, in which case the Company must do so.

8.3 When an attorney exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.

#### 9.0 DIRECTORS – FURTHER PROVISIONS

9.1 Where there is more than one director of the Company, notwithstanding the provisions of section 248G of the *Corporations Act 2001*, unless otherwise agreed by the directors a director holds the same number of votes as director:-

- (a) as their account balance in the Superannuation Fund; or
- (b) if they represent a member of the Superannuation Fund the account balance of the member of the Superannuation Fund whom they represent;

9.2 If neither (a) or (b) applies, the person shall not hold a vote as director.

9.3 If more than one person is entitled to vote as director in respect of a



member's account balance in the Superannuation Fund, unless otherwise agreed by the directors those persons together hold the same number of votes as the member's account balance.

9.4 In the event of a tie, the Chair has a one casting vote in addition to the exercise of any vote cast as director.

9.5 The Company may appoint a secretary but may not appoint a managing director.

9.6 Where there is a sole director of the Company, notwithstanding the requirements of any execution clause or of section 127 of the *Corporations Act 2001*, the Company may execute a document including a deed without using a common seal if the document is signed by the director even if the director is not the sole company secretary.

9.7 A director may not be removed from office if to do so would be a breach of this constitution.

## 10.0 SHARES

10.1 Notwithstanding the provisions of section 254A of the *Corporations Act 2001*, the Company may only issue ordinary shares. Each director of the Company (but not alternate directors) shall be entitled to hold one share, or if greater the number of shares agreed by the company upon becoming a director. That entitlement shall cease upon ceasing to be a director. Only directors shall be entitled to hold shares in the Company.

10.2 A director who is entitled to hold shares may by notifying the Company in any way permitted by section 109X of the *Corporations Act 2001* elect to be registered as a holder of the shares or may by giving a completed transfer form to the Company transfer the shares to another person. And the Company shall be obliged to register the shares unless that would be a breach of this constitution.

10.3 A Company member is not by reason of the shareholding entitled to any benefit upon the winding up of the company or in any other way and the shareholding is solely for the purpose of facilitating the Company's trusteeship of the Superannuation Fund.

10.4 A Company member is not entitled to dispose of his shares if to do so would breach this constitution.

10.5 A person entitled to hold shares is entitled to the same rights and has the same powers and obligations as a registered Company member notwithstanding that the person may not be registered as a member.

## 11.0 VOTING OF COMPANY MEMBERS

11.1 Where there is more than one person entitled to hold shares, notwithstanding the provisions of section 250E of the *Corporations Act 2001*, each such person holds the same number of votes as Company member:-

- (a) as their account balance in the Superannuation Fund; or
- (b) if they represent a member of the Superannuation Fund the account balance of the member of the Superannuation Fund whom they represent;

11.2 If neither (a) or (b) applies, the person shall not hold a vote as Company member.

11.3 If more than one person is entitled to vote as Company member in respect of a member's account balance in the Superannuation Fund, those persons together hold the same number of votes as the member's account balance.

11.4 In the event of a tie in votes, the Chair has one casting vote in addition to the exercise of any previous vote cast.

#### 12.0 COMPANY MEMBER'S ENDURING POWER OF ATTORNEY

12.1 A person (the "attorney") who holds a Company member's enduring power of attorney may exercise all of the member's powers whilst the power of attorney remains valid and effective.

12.2 The attorney may request the Company to give notice of Company members' meetings, in which case the Company must do so.

12.3 When an attorney exercises the Company member's powers, the exercise of the powers is just as effective as if the powers were exercised by the Company member.

#### 13.0 INDEMNITIES

In so far as is permitted by law the Company indemnifies each director and Company member against any liability or expense of any sort whatsoever, arising from their acts or omissions in pursuance of the purpose of the Company provided they have acted in good faith.

### **Appendix - table of replaceable rules**

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