

DATED 30 JUNE 1993

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**GULF HARBOUR MARINA LIMITED**

**AND**

**THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED**

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**DEED OF PARTICIPATION**

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**RUDD WATTS & STONE  
SOLICITORS  
AUCKLAND,  
WELLINGTON AND NEW PLYMOUTH  
93064.FD**

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**BETWEEN** GULF HARBOUR MARINA LIMITED, a duly incorporated company having its registered office at Auckland (hereinafter together with its successors and permitted assigns called "the Company")

**AND** THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED, a duly incorporated company having its registered office at Wellington (hereinafter together with its successors and assigns called "the Statutory Supervisor")

**RECITALS**

- A. The Empowering Grants (as defined herein) to enable the development and operation of the Marina (as defined herein) were originally granted to a company forming a part of the Wilkins and Davies Group of Companies ("the Original Operator").
- B. The Empowering Grants and the Marina were acquired by the Company from the Original Operator together with all the rights and obligations pertaining to the Marina.
- C. The Original Operator contracted to issue 969 marina berth licences whose maximum term was for a term of five (5) years less one (1) day from 21 July 1988 with a provision for three (3) rights of renewals each of five (5) years less one (1) day from 21 July 1993, 21 July 1998 and 21 July 2003 respectively and four (4) rights of renewal each for twenty (20) years less one (1) day from 21 July 2008, 21 July 2028, 21 July 2048 and 21 July 2068 respectively.
- D. The Company has obtained renewals of the Empowering Grants as therein provided for a further term of five (5) years from 21 July 1993 and reserving to the Company the remaining rights of renewal thereunder;
- E. The Marina Berth Licences (as hereinafter defined) provide for the Licence Holders (as hereinafter defined) to be entitled to renewals of their licences for a further term of five (5) years less one (1) day from 21 July 1993.
- F. The Company wishes to grant for the benefit of the Licence Holders a floating charge over the Charged Property (as hereinafter defined) and to provide certain other covenants in favour of the Licence Holders.
- G. The Statutory Supervisor has agreed to act as statutory supervisor in respect of the Marina and has agreed to hold and apply moneys coming into its hands in relation to the Marina in accordance with the provisions of this Deed for the respective rights and interests of the Company and the Licence Holders.

**OPERATIVE PART:**

**1. INTERPRETATION**

1.1 In this Deed unless the context otherwise requires:

"Act" means the Securities Act 1978;

"Associated Person" has the meaning given to that term in Section 67(2) of the Income Tax Act 1976;

"Auditor" means the person or persons for the time being holding the office of auditor of the Company as provided by the Companies Act;

"Bank" means a registered bank as defined in the Reserve Bank of New Zealand Act 1989;



**"Charged Property"** means all revenue and other earning rights available to the Company from and in respect of the operation of the Marina and includes:

- (a) The Company's right, title and interest in any unsold Marina Berth or in any rental agreement for any unsold Marina Berth; and
- (b) The Company's right, title and interest in each Licence including the management fee payable pursuant to the Licence; and
- (c) all transfer fees, Marina Berth rental receipts and any other monies to which the Company is in any way entitled by virtue of any Licence or any rental agreement for any Marina Berth;

but does not include the Excluded Assets (except as provided in clause 2.6);

**"Companies Act"** means the Companies Act 1955;

**"Company or Issuer"** means Gulf Harbour Marina Limited, as the issuer of the Licences together with its successors and its permitted assigns;

**"this Deed"** means this Deed of Participation, as amended from time to time, and the Schedule hereto as amended from time to time;

**"Empowering Grants"** means the Memoranda of Lease and the Seabed Licence;

**"Event of Default"** means any of those events mentioned in clause 8.1;

**"Excluded Assets"** means in relation to the Company all its undertaking and all its assets whatsoever both present and future including its uncalled capital and called but unpaid capital and includes the Seabed Licence and the Memoranda of Lease but not including its Charged Property except as provided in clause 2.6;

**"Exemption Notice"** means the Securities Act (Gulf Harbour Marina Limited) Exemption Notice 1993 and any amendment or alteration thereof;

**"Extraordinary Resolution"** has the meaning assigned to it in clause 14.1 of the Schedule to this Deed;

**"Head Licensor"** means the licensor under the Seabed Licence;

**"Head Lessor"** means the lessor under the Memoranda of Lease;

**"Licence"** means a licence in the form agreed to between the Statutory Supervisor and the Company (and as amended from time to time) pursuant to which a Licence Holder shall be or is entitled to use, occupy and enjoy a particular Marina Berth subject to the terms of the licence;

**"Licence Holders"** means any Person who enters into a Licence with the Company and is noted on the Register as holding a Licence, and his executors and administrators;

**"Manager's Benefit"** has the meaning ascribed to that term in clause 5.14 hereof;

**"Marina"** means the Marina at Gulf Harbour, Whangaparaoa and includes the floating structures, fingers and jetties, all Marina foreshore areas, administration and service areas, parking areas, ramps and driveways and all other areas under the control or administration of the Company pursuant to the Scheme together with those parts of the appurtenances and facilities which service the Scheme and such other facilities as may be incorporated from time to time to enable the Marina to operate as a fully functional marina;

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**"Marina Berth"** means a berth in the Marina;

**"Market Value"** in relation to an asset means a value which is acceptable to a qualified person selected by the Company and approved by the Auditors;

**"Meeting"** means a meeting of the Licence Holders convened and held according to the provisions of the Schedule hereto;

**"Memoranda of Lease"** means those two leases each dated 23 July 1989 granted by the (then) Rodney County Council to the Original Operator and registered at the Land Transfer Office at Auckland under memorial numbers C.027102.1 and C.027102.2 having the same term and rights of renewal as the Seabed Licence;

**"Moneys Hereby Secured"** means the aggregate amount of monies which the Statutory Supervisor certifies in the Statutory Supervisor's Certificate as being the amount which in the Statutory Supervisor's sole opinion is required to ensure the fulfilment by the Company of its Obligations and/or to rectify the non-performance or repudiation of any of the Obligations by the Company together with all fees, expenses and other moneys owing or payable to the Statutory Supervisor or to any Receiver or any Licence Holder pursuant to the terms of this Deed or any Licence;

**"Obligations"** has the meaning given to that term in clause 2.2 of this Deed;

**"Officer"** means any Director or the Secretary of a body corporate;

**"Operating Expense Account"** means an account in the name of the Company with a Bank and styled "Gulf Harbour Marina Trust Operations Account", into which all Operating Fees received from the Licence Holders by the Company shall be deposited;

**"Operating Fees"** means the operating fees payable by the Licence Holders under the Licences and includes the management fee referred to in clause 5.4 hereof;

**"Ordinary Resolution"** means a resolution passed at a Meeting duly convened and held in accordance with the provisions of this Deed at which persons representing one half (1/2) or more of the number of Licence Holders voting thereat upon a show of hands or if a poll is duly demanded then not less than one half (1/2) of the votes given on such a poll voted in favour of the resolution;

**"Person"** means an individual, a corporation and any association of persons whether corporate or unincorporate;

**"Prospectus"** means the prospectus current from time to time relating to the issue of Licences;

**"Proxy Closing Time"** means 48 hours before the day and time at which any meeting is due to be held or such other time as may with the written approval of the Statutory Supervisor be specified in the notice calling the meeting;

**"Receiver"** means a receiver or receivers appointed under this Deed acting severally or jointly and severally of all or any part of the Charged Property and any other property over which the Company has granted a security interest to the Statutory Supervisor and includes a receiver and manager;

**"Refurbishment Account"** means an account in the name of the Statutory Supervisor held with a Bank and styled the "Gulf Harbour Refurbishment Account", into which the Refurbishment Contribution Charges received from the Licence Holders by the Company shall be deposited;

**"Refurbishment Contribution Charges"** means the refurbishment charges payable by the Licence Holders to the Company under the Licences;

**"Register"** means the register of Licence Holders kept by the Company pursuant to this Deed;

**"Related Costs"** has the meaning given to that term in clause 5.14 hereof;

**"Scheme"** means the scheme for the operation of the Marina and the issue of 969 (nine hundred and sixty nine) Licences to the public or such greater number of Licences as the Company may determine to offer in accordance with clause 3.4;

**"Seabed Licence"** means the seabed licence dated 25 September 1988 granted by the (then) Rodney County Council whereby the Original Operator was granted a licence over the seabed of the Marina for the term of five (5) years from 21 July 1988 with three (3) rights of renewal for five (5) years each and then four (4) rights of renewal for twenty (20) years each from the 21 July 1993, 1998, 2003, 2008, 2028, 2048 and 2068 respectively;

**"Statutory Supervisor"** means The Trustees Executors and Agency Company of New Zealand Limited, and its successors and assigns, and any replacement thereof;

**"Statutory Supervisor's Certificate"** means in respect of a Licence (or all Licences) a certificate or certificates that may be given by the Statutory Supervisor in terms of clause 2.2 on an Event of Default stating the amount that in the Statutory Supervisor's sole opinion is required to ensure the fulfilment by the Company of its Obligations in respect of that Licence (or those Licences) and/or to rectify the non-performance or repudiation by the Company of any of the Obligations, together with all expenses, fees and any other moneys owing or payable to the Statutory Supervisor or to any Receiver or to any Licence Holder by the Company;

**"Tax"** means all forms of taxation including without limitation income tax, any form of withholding tax, capital gains tax, stamp duty, goods and services tax, registration and other duties levies imposts deductions and charges and any penalties expenses and interest relating to any claim for taxation;

**"Taxation Amount"** means in relation to the Company or the Statutory Supervisor an amount of Tax referable to the Company or the Statutory Supervisor in respect of the operation of the Scheme and includes an amount of Tax which the Company is primarily liable to pay in respect of the Operating Expenses Account and the Statutory Supervisor is primarily liable to pay in respect of the Refurbishment Account but does not include taxation chargeable on the management fee earned by the Company;

**"Working Day"** means a day on which Banks are open for business in Auckland.

- 1.2 Clause headings appear as a matter of convenience and shall not affect the construction of this Deed.
- 1.3 In this Deed unless the context otherwise requires:
  - (a) The plural number includes the singular number and vice versa and words importing any gender include the other genders.
  - (b) References to a statute include amendments to that statute and a statute passed in substitution for that statute, and regulations passed under that statute.
  - (c) A reference to "written" or "in writing" includes telexed, facsimiled and cabled communication.
  - (d) References to Clauses and Schedules are to those contained in this Deed.

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## 2. APPOINTMENT OF STATUTORY SUPERVISOR AND UNDERTAKING BY THE COMPANY

### Appointment of Statutory Supervisor

- 2.1 The Company hereby appoints the Statutory Supervisor to be statutory supervisor of the Scheme, and the Statutory Supervisor hereby accepts such appointment. The Statutory Supervisor acknowledges that it is entering into this Deed for the benefit of the Licence Holders and that the covenants enuring to the benefit of the Statutory Supervisor will be held on trust by the Statutory Supervisor for the benefit of Licence Holders.

### Covenant to perform Obligations

- 2.2 The Company covenants with the Statutory Supervisor for the benefit of Licence Holders that it shall perform all promises covenants and undertakings (express or implied) made or given by it to the Statutory Supervisor or the Licence Holders in or pursuant to this Deed and in the Licences, including that it will maintain the Marina and perform all the obligations on its part contained or implied in all Licences (hereinafter collectively referred to as "the Obligations") and the Company covenants that it will on request by the Statutory Supervisor made on or after the occurrence of an Event of Default and delivery of the Statutory Supervisor's Certificate pay to the Statutory Supervisor the Moneys Hereby Secured at such place as the Statutory Supervisor shall by notice in writing direct.

### Trustee's Certificate Conclusive

- 2.3 The Company covenants and acknowledges that for the purposes of clause 2.2 the Statutory Supervisor's Certificate shall be conclusive evidence of the facts stated therein.

### Charges of the Charged Property

- 2.4 The Company hereby charges the Charged Property in favour of the Statutory Supervisor as a first charge with payment of the Moneys Hereby Secured and performance of the Obligations **AND IT IS HEREBY DECLARED:**

- (a) that the charges hereby created shall be continuing securities which shall subsist until all the Moneys Hereby Secured have been paid or satisfied and all the Obligations have been performed and the Statutory Supervisor has executed a formal release of such charges; and
- (b) that in relation to the Company, such charge shall be a floating charge.

### Quiet Enjoyment

- 2.5 Notwithstanding the mortgages and charges upon the Charged Property hereinbefore contained and any further mortgages or charges upon the Charged Property or any part thereof which may be executed by the Company in pursuance of any provision herein contained the Statutory Supervisor shall permit the Company to hold and enjoy the Charged Property and subject to the terms of this Deed to receive and apply as it thinks fit all rents and income arising therefrom and to carry on therein and therewith any of the business for the time being authorised by its Memorandum of Association and by clause 5.2(g) of this Deed until the security hereby constituted becomes enforceable as hereinafter provided and the Statutory Supervisor shall have determined or become bound to enforce the same.

### Covenant to Assign Excluded Assets

- 2.6 In consideration of the acceptance by the Statutory Supervisor of its appointment as Statutory Supervisor of the Scheme and to better secure to the Licence Holders the performance of the Obligations the Company shall assign upon demand by the Statutory Supervisor (which demand shall subject to this clause only be given on or after the occurrence of an Event of Default) to

the Statutory Supervisor the Excluded Assets and the Company covenants for the purpose of this clause that it shall promptly make, do, execute and pay all deeds, documents and actions required of it by the Statutory Supervisor to effect the assignment to it of all or any part of the Excluded Assets as the Statutory Supervisor may in its discretion direct **PROVIDED THAT** if the Company shall attempt to mortgage charge or alienate any of the Excluded Assets the Statutory Supervisor shall be deemed to have made demand for the assignment of the Excluded Assets to it immediately prior to the granting of the charge or other alienation and the Excluded Assets shall form part of the Charged Property.

#### **Further Assurance**

- 2.7 The Company shall execute and do all such registrations mortgages and transfers and such assurances and things as the Statutory Supervisor may reasonably require for perfecting the security intended to be hereby created and shall from time to time and at all times after the security hereby constituted shall have become enforceable execute and do all such registrations mortgages and transfers and such assurances and things as the Statutory Supervisor may reasonably require for facilitating the realisation of the Charged Property and on demand made by the Statutory Supervisor the Excluded Assets and for exercising all the trusts powers authorities and discretions hereby conferred on the Statutory Supervisor or any Receiver and in particular and without prejudice to the generality of the foregoing the Company shall execute all mortgages transfers conveyances assignments and assurances of the Charged Property and the Excluded Assets whether to the Statutory Supervisor or its nominees and shall perform or cause to be performed all acts and things requisite or desirable according to law for the purpose of giving effect to the carrying out or exercise of any of the said trusts powers authorities and discretions and shall give all notices orders and directions which the Statutory Supervisor may think expedient and for the purposes of this clause a certificate in writing signed by the Statutory Supervisor to the effect that any particular assurance or thing required by it is reasonably required by it shall be conclusive evidence of the fact.

#### **Power of Attorney**

- 2.8 In consideration of the acceptance by the Statutory Supervisor of its appointment as statutory supervisor under this Deed and for the purposes of enabling the Statutory Supervisor to perform any obligation or duty of the Company relating to the Scheme for and in the name of the Company the Company hereby irrevocably appoints the Statutory Supervisor and the Statutory Supervisor's General Manager, Manager, Manager Corporate Trust Northern and Secretary for the time being severally to be its attorney or attorneys and in its name and on its behalf to enter into execute sign and do all assurances, deeds, instruments, acts and things whatsoever which shall in the opinion of such attorney or attorneys be necessary or expedient or that the Company ought to execute sign and do for the purpose of carrying out any trust or obligation hereby declared or imposed upon it for giving to the Licence Holders or to the Statutory Supervisor on their behalf the full benefit of any of the provisions (expressed or implied) of this Deed and generally to use the Company's name in the exercise of all or any of the powers conferred by this Deed or the Licences on the Company. The Statutory Supervisor shall have power from time to time to appoint and remove a substitute or substitutes, and the Company hereby agrees to ratify and confirm whatsoever the Statutory Supervisor and/or the Statutory Supervisor's substitute shall lawfully do or cause to be done by virtue of this clause.

### **3. OBJECTS OF THE SCHEME**

#### **The Scheme**

- 3.1 The object of the Scheme is the maintenance and operation of the Marina and the issue by the Company of Licences to the Licence Holders in accordance with the terms and conditions set out in the Prospectus. Gross revenues of the Scheme (including capital gains) shall accrue to the benefit of the Company and all expenditure and losses of the Scheme including capital



losses shall be the responsibility of the Company. The Company shall in addition be entitled to hire out from time to time on such terms and conditions on it shall think fit Marina Berths.

- 3.2 The Company will issue renewal Licences to existing licence holders as at 21 July 1993 in terms of the Licences, and thereafter continue to reissue Licences to Licence Holders in accordance with the terms and conditions of the Licences. The Company will procure that offers of new Licences to members of the public made by the Company or by Gulf Harbour Investments Limited shall only be made in accordance with the terms of the Prospectus. The Company shall hold the Marina Berths and the Marina, and all assets relating to the Scheme on trust for the Statutory Supervisor, the Licence Holders and the Company for their respective rights and interests during each period of renewal of the Licences being 20 July 1998, 20 July 2003, 20 July 2008, 20 July 2028, 20 July 2048 and 20 July 2068.
- 3.3 There shall be no capital for the Scheme provided by the Licensees AND for the purposes of clarification it is expressly recorded that the Licence Holders have no interest as owners in the assets of the Scheme. All profits and losses of the Scheme of whatsoever nature including profits or losses of a capital nature shall accrue to the account of the Company.
- 3.4 Unless the Company otherwise determines (with the prior written approval of the Statutory Supervisor) the number of Licences that may be issued in respect of the Scheme at any one time is nine hundred and sixty nine (969). The Statutory Supervisor shall grant its approval to an increase in the number of Licences that may be issued under the Scheme if the reason for the increase is the extension of the Marina and the Statutory Supervisor is satisfied that clause 3.6 has been complied with.
- 3.5 The maximum liability of each Licence Holder is to pay the charges set out in each Licence, and otherwise to observe the terms and conditions applicable to the Licence Holder under the Licence.

#### **Marina Extension**

- 3.6 The Company and the Statutory Supervisor agree that subject to obtaining all necessary statutory and regulatory consents, the Company may extend the Marina by adding further berths and/or piers. Prior to and as a precondition to commencing work the Company shall consult with any Licence Holder whose rights under the Licence may be affected in an adverse manner during the carrying out of the works and agree with the affected Licence Holders appropriate alternative arrangements in relation to their Licences while the works are being carried out.

### **4. ISSUE OF LICENCES**

#### **Company to issue**

- 4.1 The Company covenants with the Statutory Supervisor that it shall issue the Licences to the Licence Holders pursuant to the terms and conditions set out in the Prospectus, and subject to the terms and conditions of this Deed.

#### **Securities**

- 4.2 Subject to clause 4.3 the Licences shall be issued in the form and on the terms and conditions agreed to by the Statutory Supervisor and the Company (and as amended by the agreement between the Statutory Supervisor and the Company from time to time).

#### **Alteration of Terms of Issue of Securities**

- 4.3 The Company may at any time subject to the prior written consent of the Statutory Supervisor, which consent shall not be given until the Statutory Supervisor is satisfied that all preconditions

in the Empowering Grants have been complied with, agree with any Licence Holder or group of Licence Holders to vary any of the terms and conditions of the Licences.

#### **Notice of Equities**

- 4.4 Except as required by law no person shall be recognised by the Company or the Statutory Supervisor as holding any Licence upon any trust and neither the Company nor the Statutory Supervisor shall be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable contingent future or partial interest in any Licence or (except only as herein or by law provided) any other rights in respect of any Licence except an absolute right to the entirety thereof of the person entered on the Register as the holder of a Licence.

#### **Registers**

- 4.5 The Company shall establish and maintain a Register of Licence Holders such Register to be kept at the registered office of the Company or at such other place in New Zealand as the Company may from time to time by agreement with the Statutory Supervisor determine. The following provisions shall apply in respect of each such Register:
- (a) the Company shall comply with all statutory requirements and all requirements of the Statutory Supervisor applicable to such Register;
  - (b) subject to the terms of the Exemption Notice, the Statutory Supervisor, any Licence Holder and any person authorised in writing by the Statutory Supervisor may at all reasonable times inspect such Register and take copies of and extracts from the same;
  - (c) subject to the terms of the Exemption Notice, the Register may be closed for periods not exceeding thirty (30) days in total in any one (1) year;
  - (d) if such Register or particulars to be entered thereon shall be kept by computer the system shall be such as is approved by the Statutory Supervisor and the Auditors such approval not to be unreasonably withheld;
  - (e) such Register shall be audited by or to the satisfaction of the Auditors at regular intervals of not more than twelve (12) months or upon request in writing by the Statutory Supervisor.

#### **Forfeiture**

- 4.6 Any Licence may be forfeited in accordance with the provisions of the Licence and any Licence so forfeited may be sold or otherwise disposed of in such manner as is provided in the Licence.
- 4.7 A statutory declaration in writing stating that the declarant is an Officer of the Company and that a Licence has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Licence, upon which the Statutory Supervisor may rely. In the event of forfeiture of any Licence, the Company shall procure that such a statutory declaration shall be provided in each instance upon demand by the Statutory Supervisor.

#### **Redemption and Transfer**

- 4.8 Each Licence is granted in renewal of the initial term for a period of 5 years less one day from 21 July 1993 subject to rights of renewal contained in each Marina Berth Licence.
- 4.9 No Licence shall be redeemable at any time by the Company but may be surrendered, transferred, transmitted, sublicensed, mortgaged, charged, pledged or encumbered by the Licence Holder as provided by clauses 6 and 7 in the Marina Berth Licence.

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- 4.10 In case of death of the sole Licence Holder the Marina Berth Licence may pass pursuant to will or intestacy.

## 5. MANAGEMENT OF THE SCHEME

### Management Powers

- 5.1 The Company shall manage the Marina with full and complete powers of management. Without limiting the generality of the foregoing, the Company shall supervise, direct and control the management and operation of the Marina and render, supervise, direct and control the performance of all services in relation to the Marina, and do or cause to be done all things that it considers necessary or desirable for the efficient and proper operation of the Marina so as to ensure that the Licence Holders receive the full benefit of their rights and interests under the Licences, and in particular, but without limitation the Company shall have the following management powers and authorities:
- (a) to receive for the purpose of remitting directly to the Operating Expenses Account all amounts payable by the Licence Holders as Operating Fees pursuant to the Licences;
  - (b) to provide sufficient competent staff, offices and equipment as shall be necessary to manage the operation of the Marina;
  - (c) to engage such contractors, subcontractors, workmen and other persons as shall be necessary to manage the operation of the Marina on such terms as the Company sees fit;
  - (d) to execute, all contracts and other documents that the Company considers necessary or desirable for the operation of the Marina;
  - (e) to do all things which the Company considers necessary or desirable to ensure that the Marina is properly maintained;
  - (f) to do all things required to be done by, and exercise all powers conferred on it under the Licences including (without limitation):
    - (i) preparing estimates of annual Operating Fees and other fees and collecting the same;
    - (ii) providing all statements and reports required to be provided to holders of the Licences;
    - (iii) paying all Operating Fees;
    - (iv) determining the Refurbishment Contribution Charges to be charged in each year and collecting such charges which the Company shall pay directly to the Refurbishment Account;
    - (v) consenting or withholding consent to subletting of Marina Berths; and
    - (vi) accepting or refusing to accept transfers and surrenders of the Licences;
  - (g) subject to obtaining the prior consent of the Statutory Supervisor, to make agreements with any landowner adjoining the Marina to provide access through the Marina;
  - (h) to exercise all default remedies and powers contained or implied in the Licences **PROVIDED THAT** in the event of termination of any Licence the Company shall immediately advise the Statutory Supervisor of the exercise of such power of termination;

- (i) to effect and maintain all insurances required by the terms of the Licences or by law or otherwise considered expedient by the Company;
- (j) to institute prosecute and compromise legal proceedings in respect of any matter relating to the Scheme or to obtain or recover any moneys that are payable to the Company pursuant to the Licences or otherwise in accordance with these premises and also to bring legal proceedings for any damages against any person for any loss suffered as a result of any breach of contract, negligence, default, omission or breach of duty.

#### Company's Covenants

5.2 The Company covenants with the Statutory Supervisor that the Company shall procure that the management of the Marina be carried out in a proper and efficient manner. Without limiting the generality of the foregoing, the Company undertakes as follows:

- (a) that as at the date of these presents and at all times thereafter during the currency of the Scheme the Company has and enjoys and will have and will enjoy all the rights accorded to the lessee under the Memoranda of Lease and accorded to the licensee under the Seabed Licence.
- (b) It will use its best endeavours and skill to carry out its duties and obligations under this Deed in a proper and efficient manner, and in particular will ensure that at all times the Marina is maintained in a thoroughly good and efficient manner and is working to the highest standard and in accordance with the best of most modern boat harbour and marina practices prevailing;
- (c) It will use due diligence and vigilance in the exercise and performance of its functions, powers and duties as a manager;
- (d) It will account to the Statutory Supervisor and the Licence Holders for all monies that it receives on behalf of the Scheme and will pay any such monies into the appropriate bank accounts;
- (e) Unless otherwise secured by Bond or Guarantee on terms and conditions approved by the Statutory Supervisor, it will procure that the balance standing to the credit of the Operating Expenses Account shall not fall below the sum of one hundred thousand dollars (\$100,000) or such greater sum as the Statutory Supervisor may from time to time require under clause 5.5;
- (f) Neither it nor any of its subsidiaries will except with the prior written consent of the Statutory Supervisor dispose either in a single transaction or in a series of transactions of any part of the Company's undertaking or any substantial asset relating thereto including the Seabed Licence or the Memoranda of Lease;
- (g) It will supply to the Licence Holders, in general meeting, such reasonable oral or written information relating to the affairs of the Scheme which any Licence Holder has given it reasonable notice to supply;
- (h) It will not without the prior approval in writing of the Statutory Supervisor:
  - (i) vary, alter, amend or change in any respect whatsoever the constitutional documents of the Company;
  - (ii) carry on any business other than that directly related to the ownership, management and operation of the Marina;
  - (iii) vary, alter, amend or change in any respect whatsoever the terms of the Seabed Licence, the Memoranda of Lease (or either of them) or the Licence;

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- (iv) incur indebtedness or obligations in respect of any one item of expenditure of a value totalling greater than \$50,000 (fifty thousand dollars) (increased in the same proportion from time to time as the amount specified in Clause 5.2(e));
  - (v) create a charge or grant a mortgage or any other form of security interest over any of its assets (including without limitation the Marina the Seabed Licence, the Memoranda of Lease or any part thereof);
  - (vi) guarantee any obligation of any Person or provide any indemnity to any Person;
  - (vii) lend any money to an Associated Person or provide to or accept from any such Associated Person any services except for proper value and on reasonable commercial terms;
  - (viii) offer any licences to persons not resident in New Zealand without complying with all applicable law.
- (i) It will to the same extent as if the Statutory Supervisor were a director of the Company make available or cause to be made available for inspection to the Statutory Supervisor or to the Auditor such accounting and other records of the Company as the Statutory Supervisor may require;
  - (j) It will duly comply with all requirements of the Companies Act and the Act and with all statutory requirements with respect to the filing of reports and statements and maintaining and keeping open of registers for inspection and all other like matters;
  - (k) It will duly pay or cause to be paid promptly on becoming due and payable all rents, rates, taxes, duties, assessments, liabilities and outgoings assessed or levied against itself or the Marina in respect of the Marina unless an Officer of the Company has certified to the Statutory Supervisor in writing that the Company has contested and has written legal advice that it has reasonable grounds for contesting any such assessment or levy;
  - (l) It will procure that the structural integrity of the Marina will be maintained out of the Refurbishment Account and the Operating Expenses Account and keep all parts of the Marina which shall be of a repairable nature in proper repair, order and condition and maintain the same in reasonable working order and efficiency including that it will keep the bed of the sea within the Marina properly dredged and not pull down, remove or injure any part of the same (except in the ordinary course of business or pursuant to any lawful requirement or except with any other reasonable justification) without restoring or replacing the same and will obtain all necessary consents required under the Empowering Grants prior to undertaking any such work and will permit the Statutory Supervisor and any person authorised by it in writing (but without imposing on the Statutory Supervisor any obligation so to do) to enter upon and inspect the Marina or any part thereof and to view the state of repair and condition thereof and give all reasonable facilities for the purpose;
  - (m) It will cause to be kept insured with a reputable insurer for the full insurable value all parts of the Marina which may be of an insurable nature against fire and any other risks usually insured against including (without limiting the generality of the foregoing) storm and tempest, and marina fire and at all times pay or cause to be paid the premiums and other sums of money payable for all the above purposes and will not do or permit or suffer to be done any act or thing which may prejudice or vitiate any such insurance;
  - (n) The Company will from time to time produce satisfactory evidence to the Statutory Supervisor that the Marina has been insured and will whenever so required by the Statutory Supervisor at least seven days before the due date of such premiums lodge with the Statutory Supervisor a duplicate receipt for the payment of such premium and in default the Statutory Supervisor may insure the Marina and pay the premiums

payable in respect thereof and any premiums paid may be recovered by the Statutory Supervisor out of the Operating Expenses Account;

- (o) If the Marina or any part thereof is destroyed or damaged by fire or by storm or tempest then all monies received in respect of such insurance shall be expended with all convenient speed in repairing and reinstating the Marina (with such modifications as may be necessary to obtain all necessary approvals), which approvals the Company shall exercise its best endeavours to obtain;
- (p) It will comply with and observe each of the covenants, obligations, provisions and conditions contained in this Deed or in the Empowering Grants and on its part to be observed and performed, and will ensure that it so conducts itself as to obtain a renewal of the Empowering Grants and will also ensure that any Prospectus issued by it in respect of the Scheme complies with all applicable law;
- (q) It will from time to time furnish to the Statutory Supervisor copies of all reports, accounts, notices and circulars issued or sent by the Company or any Officer or agent thereof to all or any of the Licence Holders at the same time as it issues or sends the same as aforesaid;
- (r) It will procure that its Officers notify the Statutory Supervisor immediately they are aware that any condition or requirement of this Deed or of the Empowering Grants cannot be fulfilled;
- (s) It will keep proper books of account in accordance with the provisions of the Companies Act and prudent accounting requirements and therein enter full particulars of all investments dealings and transactions in relation to its business and the Marina and procure that the same and all other documents shall at all reasonable times (whether kept at the registered office or any other place or places) be open for the inspection of the Statutory Supervisor;
- (t) It will furnish after the end of each quarter in respect of the Scheme (and if requested by the Statutory Supervisor on a more frequent basis) a certificate signed by two directors in the form agreed with the Statutory Supervisor as at the date hereof, with such amendments as the Statutory Supervisor may reasonably require from time to time;
- (u) It will duly comply with all provisions of each and every Act of Parliament statutory regulation or by-law for the time being in force in New Zealand so far as the same relate to or affect the business or operations of the Company;
- (v) It will not make an application under the amalgamation or compromise provisions of the Companies Act without obtaining the Statutory Supervisor's prior written consent;
- (w) It will not write up the value of any asset in its books of account beyond its Market Value at the time of such writing up;
- (x) It will procure that its Officers notify the Statutory Supervisor immediately any of them becomes aware of any event that could adversely impact on the orderly running of the Scheme;
- (y) It will not enter into any arrangement or contract which would have the effect of defeating any of the terms of this Deed or of creating any obligation or liability on the Statutory Supervisor;
- (z) It will not without the approval of the Statutory Supervisor publish or cause to be published any advertisement circular or other document containing any statement with respect to the issue of Licences and that in any letter or circular reference shall be made to the Statutory Supervisor only in terms approved of by the Statutory Supervisor.

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### **Assistance in Solution of Disputes and Problems**

- 5.3 Whenever it shall appear to the Company that there has arisen or may arise any question, case or proceeding the determination of which is or may be of significance to the Company, the Statutory Supervisor or to the interests of Licence Holders whether arising directly hereunder or associated with rights or liabilities of a Licence Holder, then the Company or the Statutory Supervisor may itself or may request the other to obtain such opinions as either of them considers desirable to obtain advice on the question, and take such further steps to decide or compromise the case or proceeding concerned, and to this end the Company may itself co-operate and may request the Statutory Supervisor to co-operate, including by supply of information or assistance with other parties interested in the resolution of such question case or proceeding. All costs and expenses or other liability so incurred by the Statutory Supervisor or the Company or for which the Statutory Supervisor or the Company may be liable shall be paid by the Company (and if considered appropriate by the Company) out of the Operating Expenses Account. Without restricting the generality of the foregoing it is expressly noted that questions, cases or proceedings relating to matters of Tax or arising under the Act are included in the provisions of this clause.

### **Remuneration**

- 5.4 Subject always to the sum standing to the credit of the Operating Expenses Account being not less than one hundred thousand dollars (\$100,000.00) or such greater amount as may be specified by the Statutory Supervisor under Clause 5.5 hereof or otherwise secured to the satisfaction of the Statutory Supervisor, the Company shall be entitled to receive the management fee paid by the Licence Holders pursuant to the Licences, being a management fee equal to 15% of the annual Operating Fees (excluding Goods and Services Tax and excluding the management fee itself) charged under the Licences and to appropriate the management fee as and when the Company sees fit. Subject to the Company not being in default of any covenant or obligation on its part to be performed or observed, the management fee shall be authorised by the Statutory Supervisor to be paid to the Company from the Operating Expenses Account. In the event that the Operating Expenses Account falls below the sum of one hundred thousand dollars (\$100,000.00) or such greater sum as aforesaid, the Statutory Supervisor shall be entitled to retain the Company's remuneration to the extent of the amount of the shortfall.
- 5.5 Unless otherwise secured by Bond or Guarantee on terms and conditions approved by the Statutory Supervisor, the Statutory Supervisor shall be entitled to request from time to time that the minimum amount standing to the credit of the Operating Expenses Account may be increased to an inflation adjusted amount. In specifying any such greater sum, the Statutory Supervisor shall have regard to the consumer price index (all groups) as published from time to time by the New Zealand Government statistician. If the parties are unable to agree upon the figure, the dispute will be resolved in accordance with Clause 15.2.

### **Operating Fees**

- 5.6 The Company shall establish the Operating Expenses Account and shall deposit all Operating Fees received from Licence Holders to the credit of the Operating Fees Account. The Statutory Supervisor shall be a duly authorised and alternative signatory to the Operating Expenses Account. Except where the Company is in default of its obligations under this Deed or under a Licence, only the Company shall make withdrawals and draw cheques on the Operating Expenses Account. Where the Company is in default of its obligations under this Deed or the Licence only the Statutory Supervisor (or its agent) shall make withdrawals and draw cheques on the Operating Expenses Account.
- 5.7 The Company shall hold the Operating Expenses Account as trustee for the respective interests of the Company, the Licence Holders and the Statutory Supervisor, to be applied in and towards the Operating Fees of the Marina and the management fee referred to in clause 5.4 in accordance with the provisions of the Marina Berth Licence. It shall be a pre-condition to the opening of the Operating Expenses Account that the banker with whom it is intended to

open that account first acknowledge in a form approved by the Statutory Supervisor, that the Operating Expenses Account is a trust account and that the bank has no right of set-off in respect of monies standing to the credit of the Operating Expenses Account.

#### **Refurbishment Account**

- 5.8 The Statutory Supervisor shall establish in the Statutory Supervisor's name the Refurbishment Account and the Company shall deposit all Refurbishment Contribution Charges received from Licence Holders to the credit of the Refurbishment Account. The Statutory Supervisor shall hold the Refurbishment Account as trustee for the respective interests of the Company and the Licence Holders and shall subject to clause 8.12 of this Deed apply the Refurbishment Account towards the major refurbishment of the Marina or replacement of fixed and floating structures. The Company shall report to the Statutory Supervisor not less than once in each financial year as to the adequacy of the Refurbishment Account to meet future expenditure on the Marina. Such report shall state the amount that in the Company's reasonable opinion is required to be expended on the refurbishment of the Marina in the next three (3) years, and the adequacy of the Refurbishment Account (assuming normal recoveries from the Licence Holders) to meet such expenditure.
- 5.9 The Statutory Supervisor shall be the sole signatory to the Refurbishment Account, and shall (unless the Statutory Supervisor does not give its approval to the expenditure under Clause 5.10) make withdrawals and draw cheques on the Refurbishment Account only, (except where an Event of Default has occurred), on the recommendation of the Company.
- 5.10 When in the opinion of the Company any refurbishment of the Marina is required, the Company shall consult with the Statutory Supervisor and obtain the Statutory Supervisor's approval to the expenditure of money on the Marina from the Refurbishment Account (such approval not to be unreasonably withheld). In any such case, the Statutory Supervisor shall be entitled to require and act on a certificate given in accordance with Clause 7.16(b) of this Deed. Upon granting its approval to the refurbishment of the Marina the Statutory Supervisor shall sign any cheques drawn on the Refurbishment Account required to pay for the refurbishment of the Marina.
- 5.11 The Company shall at the end of each quarter transfer from the credit of the Operating Expenses Account to the credit of the Refurbishment Account any money collected from the Licence Holders as an Operating Expense on account of refurbishment of the Marina.

#### **Delegation**

- 5.12 At any time during the continuance of the Scheme the Company may with the prior written consent of the Statutory Supervisor (whose consent shall not be unreasonably or arbitrarily withheld) contract with a third party to fulfil all or any part of the Company's management obligations under this Clause 5. The Company shall ensure that any delegate appointed by the Company observes and performs all the obligations of the Company delegated to the delegate in relation to the management of the Marina, but without in any way releasing the Company from its obligation to manage the Marina. Without in any way affecting the generality of the foregoing the Company in carrying out and performing the duties and obligations on its part herein contained may subject to the prior approval of the Statutory Supervisor:
- (a) by power of attorney or other deed or agreement appoint in New Zealand any person to be attorney or agent of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Company) as it thinks fit;
  - (b) appoint and engage in New Zealand by writing or otherwise any person to be sub-agent of the Company as the Company may think necessary or proper for such purposes and with such powers authorities and discretions (not exceeding those vested in the Company) as it thinks fit;

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- (c) appoint and engage in New Zealand any manager, solicitors, barristers, accountants, computer experts and consultants and other persons necessary, usual or desirable for the purpose of exercising its powers and performing its obligations and all reasonable and proper fees charges and moneys payable to any such persons and all disbursements expenses duties and outgoings properly chargeable in respect thereto shall if considered appropriate by the Company be paid out of the Operating Expenses Account. The Statutory Supervisor acknowledges and consents to the Company appointing Gulf Harbour Investments Limited to carry out certain of the Company's managerial functions in terms of a management agreement dated 29 June 1993.

#### Retirement

- 5.13 The Company shall promptly retire from the management of the Marina if and when so required by an Extraordinary Resolution of Licence Holders at any Meeting called for that purpose or if and when so requested by the Statutory Supervisor but in either case only in any of the following circumstances namely:
- (a) if an Event of Default has occurred or if the Company is in material breach of its obligations under this Deed or fails or neglects to carry out its duties in a material respect and such breach failure or neglect has not been remedied within a reasonable time (which in no event shall exceed the period of three months) after notice in writing from the Statutory Supervisor requesting the Company so to do;
  - (b) if the Company goes into liquidation or ceases to carry on business or if a claim is presented for the winding up of the Company and is not withdrawn or struck out within fourteen (14) days of service on the Company or if a resolution is passed for the voluntary liquidation of the Company; or
  - (c) if a receiver or receiver and manager of the undertaking of the Company or a substantial part thereof is appointed and shall not have been removed or withdrawn within thirty (30) days after such appointment.

In default of the Company retiring in conformity with this sub-clause the Statutory Supervisor shall forthwith have the right to and shall remove the Company from the management of the Marina.

- 5.14 On the retirement of the Company under any of the provisions of Clause 5.13 or upon the Company resigning under Clause 5.15:
- (a) The Statutory Supervisor shall be entitled to appoint in writing some other person to be the temporary manager of the Marina and such temporary manager shall have all the powers conferred on the Company by this Deed or by law until a new manager is appointed;
  - (b) Pending the appointment of a temporary manager, the Statutory Supervisor shall have all the powers conferred on the Company by this Deed, provided that in entering into any contracts pursuant to this clause on behalf of the Scheme the Statutory Supervisor shall be entitled to limit its liability to the assets of the Scheme so that the other party to the contract shall have no right of recourse against the assets of the Statutory Supervisor in its individual capacity;
  - (c) The Company shall be entitled for a period of three (3) years (or such longer period as the Statutory Supervisor may in its absolute discretion allow) to endeavour to find and nominate to the Statutory Supervisor some other party to be the new manager, which nominee shall if approved by the Statutory Supervisor be a permitted assignee of the Company and appointed manager;
  - (d) During any period of temporary management, the Company shall be entitled to receive the benefit of any financial reward for managing the Marina (including the benefit of

the management fees and any transfer fee to which the Company is entitled pursuant to the Licences) ("the Manager's Benefit") less all costs incurred by the Statutory Supervisor in appointing and retaining a temporary manager;

- (e) Upon the appointment of a new manager, the Company shall lose all right and entitlement to the Manager's Benefit **PROVIDED THAT** nothing in this provision shall be interpreted to suggest that the Company shall upon the appointment of any new manager lose its right and entitlement to the ownership of the Marina and Empowering Grants;
  - (f) Any consideration obtained by the Company for the appointment of a new manager shall be for the account of the Company subject to payment or reimbursement to the Statutory Supervisor for all costs, and expenses incurred by the Statutory Supervisor related in any way to retirement of the Company and/or the appointment of a temporary manager and/or new manager not otherwise already paid or recovered by the Statutory Supervisor ("the Related Costs");
  - (g) Any consideration obtained by the Statutory Supervisor for the appointment of a new manager shall, after deduction of the Related Costs, be paid to the Company;
  - (h) For the purposes of clause 5.14(d) and 5.14(f) a certificate given by the Statutory Supervisor as to the costs incurred or the Related Costs if given in good faith shall be conclusive.
- 5.15 The Company may upon giving to the Statutory Supervisor six (6) months' notice (or such shorter period as the Statutory Supervisor approves) in writing of its desire so to do resign as manager of the Marina.
- 5.16 The new manager shall execute a deed in such form as the Statutory Supervisor may require whereby the new manager shall undertake to the Statutory Supervisor to be bound by all the covenants on the part of the Company hereunder from the date thereof. From the date of its removal and retirement the retiring Company shall be absolved and released from complying with all such covenants and the new manager shall and may thereafter exercise all the powers and enjoy all the rights, powers, privileges and immunities whether actual, contingent or prospective conferred on the Company in its capacity as manager under clause 5.1 of this Deed and shall be subject to all the duties and obligations of the Company hereunder as fully as though the new manager had been originally named as a party hereto. No release under the provisions of this Clause shall extend to any existing or antecedent breach or repudiation, default or breach of trust on the part of the retiring Company or to any existing or antecedent breach of its duties imposed by law, and nothing herein contained shall render the new manager liable in respect of any antecedent breach neglect or default on the part of the retiring Company.
- 5.17 The Statutory Supervisor shall be entitled to settle with the Company the amount of any sums payable by the Company to the Statutory Supervisor or by the Statutory Supervisor to the Company under the provisions hereof and to give to or accept from the Company a discharge in respect thereof and any such agreement or discharge shall be conclusive and binding upon all persons claiming hereunder and in particular even though no new manager is appointed in its place the Statutory Supervisor may with the consent of an Ordinary Resolution of Licence Holders at a Meeting make such arrangements as it thinks fit for the discharge of the Company from any existing liability and any liability which might thereafter arise under the provisions hereof and may discharge the Company in accordance with such arrangements and any such discharge shall be conclusive and binding as aforesaid.

#### **Taxation**

- 5.18 The Statutory Supervisor or the Company may deduct or require to be deducted from the Refurbishment Account or the Operating Expenses Account as the case may be an amount equal to the Taxation Amount which is payable or anticipated to be payable by the Statutory

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Supervisor or the Company on its own account as a result of the operation of the Scheme. Amounts deducted under this clause shall be applied in payment of the Taxation Amount to the authority entitled thereto or in reimbursement of the Statutory Supervisor or the Company for any corresponding amount paid from their own funds, and neither the Company nor the Statutory Supervisor shall be liable to any Licence Holder or to each other for any payment made in good faith notwithstanding that such payment ought not to have been made.

## 6. MEETINGS

- 6.1 The Company shall summon a meeting of Licence Holders for the purpose of considering the accounts and balance sheets of the Scheme for its last preceding financial year, and to transact any other business relating to the Scheme. The meeting shall be held no later than six months after the end of the financial year. Unless otherwise agreed by the Company and the Statutory Supervisor the financial year shall be from 1 April to 31 March.
- 6.2 At the request in writing of the Statutory Supervisor or of persons holding not less than one-tenth of the allotted Licences pursuant to the Scheme, the Company shall summon a meeting of Licence Holders for the purpose of giving to the Statutory Supervisor their opinions or directions in relation to the Scheme or any matter relating to the Scheme including the exercise of the Statutory Supervisor's powers.
- 6.3 Every meeting summoned pursuant to this Deed shall be summoned by sending by post to each Licence Holder and to the Statutory Supervisor a notice, specifying the time and place of the meeting and the nature of the business proposed to be dealt with at the meeting.
- 6.4 Meetings of the Licence Holders shall be convened and held in accordance with the rules set out in the Schedule to this Deed.

## 7. STATUTORY SUPERVISOR

### Appointment of Statutory Supervisor

- 7.1 The Statutory Supervisor is hereby appointed as statutory supervisor of the Scheme. The Statutory Supervisor shall be entitled to receive and the Company shall pay to the Statutory Supervisor on demand by the Statutory Supervisor the following or such other remuneration as may from time to time be agreed between the Statutory Supervisor and the Company:
  - (a) on the execution by the Statutory Supervisor of this Deed an acceptance fee of \$5,000 (five thousand dollars);
  - (b) in respect of the year commencing on the date of the Deed and any subsequent year commencing on the anniversary of such date a fee of \$10,000 (ten thousand dollars) or such other amount as may from time to time be agreed between the Company and the Statutory Supervisor which fee shall cover the consideration of routine reports, the attendance at the annual general meeting and attendances on routine matters relating to the Scheme;
  - (c) in addition to the fees hereinbefore calculated such fee for any special work undertaken by the Statutory Supervisor relating to the exercise of all discretions powers or privileges conferred on the Statutory Supervisor under this Deed or to any work of an unusual or special nature relating to modifications of this Scheme or special or extraordinary meetings of Licence Holders, or the carrying out of any directions or resolutions of such meeting;
  - (d) All fees or remuneration arising annually shall accrue from day to day and be payable quarterly on such dates as shall be agreed from time to time between the Company and the Statutory Supervisor;

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- (e) Without limiting the generality of the other provisions of this Deed the Company shall pay to the Statutory Supervisor on demand all costs charges and expenses reasonably and properly incurred by or on behalf of the Statutory Supervisor:
- (i) in or about the preparation execution and registration of this Deed;
  - (ii) in or in connection with the carrying out by the Statutory Supervisor of any rights powers or privileges by this Deed conferred on the Statutory Supervisor or upon any Licence Holder;
  - (iii) in or in connection with any breach or default in the observance or performance by the Company of the covenants obligations and conditions of this Deed;
  - (iv) in or in connection with the convening or holding of any meeting of Licence Holders or the carrying out of any directions or resolutions of any such meeting; and
  - (v) otherwise properly incurred by the Statutory Supervisor or in connection with or incidental to the carrying out of its obligations hereunder or under any statute of a special or unusual nature.

#### **Statutory Supervisor's Obligation**

- 7.2 Subject to the provisions of this Deed conferring on the Statutory Supervisor any powers, authorities or discretion, the Statutory Supervisor shall exercise reasonable diligence to ascertain whether or not any breach of the terms of this Deed or the offer of the Licences contained in the Prospectus has occurred and, except where it is satisfied that the breach will not materially prejudice the interests of the Licence Holders, shall do all such things as having regard to its powers and discretions it reasonably thinks fit to cause any breach of those terms to be remedied.

#### **Entitlement to receive notices and other information**

- 7.3 The Statutory Supervisor shall be entitled to receive all notices and other communications relating to the Scheme which any Licence Holder is entitled to receive.
- 7.4 The Statutory Supervisor, or any representative of the Statutory Supervisor (being a person authorised to act for the purposes of this clause by the Statutory Supervisor), shall be entitled to attend any meetings of the Licence Holders and to be heard at any such meeting on any part of the business of the Meeting which concerns the Statutory Supervisor as such or the Licence Holders.
- 7.5 The Company shall:
- (i) at the request in writing of the Statutory Supervisor, its employees or agents, make available for inspection the whole of its accounting and other records; and
  - (ii) give to the Statutory Supervisor such information it requires with respect to all matters relating to such records or to the Scheme.

#### **Retirement**

- 7.6 The appointment of the Statutory Supervisor under this Deed will be terminated forthwith if the Statutory Supervisor:
- (i) ceases to carry on business or if a liquidator or provisional liquidator is appointed (except for the purposes of amalgamation or reconstruction); or

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- (ii) has a receiver or receiver and manager appointed who is not removed within thirty (30) days after appointment; or
  - (iii) ceases to be qualified under section 48 of the Act to act as a statutory supervisor.
- 7.7 The Statutory Supervisor may subject to compliance with the Act retire upon giving six (6) months' written notice to the Company of its desire to do so.
- 7.8 On the termination of the Statutory Supervisor's appointment the Company shall forthwith, subject to any approval required by law, appoint some other person or corporation approved by the Securities Commission to be the Statutory Supervisor.
- 7.9 The new statutory supervisor shall execute a deed undertaking to the Company and the Licence Holders to be bound by all the obligations of the Statutory Supervisor as from the date of the appointment and thereafter the new statutory supervisor will be entitled to exercise all the powers and shall be subject to all the duties and obligations of the Statutory Supervisor as though the new statutory supervisor had been originally named as a party to this Deed. The removed or retiring Statutory Supervisor shall, from such date, be released from complying with the obligations under this Deed but will remain liable for any antecedent breach of covenant or duty.
- 7.10 Until the appointment of the new statutory supervisor is complete, subject to approval being obtained from the Securities Commission or from the Court and subject to an undertaking to be bound by all the obligations on the part of the Statutory Supervisor under this Deed, the Company may act as statutory supervisor.

#### **Exoneration**

- 7.11 The Statutory Supervisor may be released for breach of any duty of care where the Statutory Supervisor has failed to show the degree of care and diligence required either with respect to specific prior acts or omissions or on the Statutory Supervisor ceasing to act where such release is given by an Ordinary Resolution of the Licence Holders at a meeting convened for that purpose.
- 7.12 The Statutory Supervisor shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of Licence Holders in respect whereof a proper record has been made and which the Statutory Supervisor believes to have been properly and regularly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings thereat or otherwise howsoever.

#### **Representation of Licence Holders**

- 7.13 The Statutory Supervisor may at its discretion, or as directed by resolution of the Licence Holders, represent the Licence Holders generally in any investigation, negotiation, action, transaction or proceeding concerning the Scheme.

#### **Waiver of Breach**

- 7.14 The Statutory Supervisor may (except when previously directed by an Extraordinary Resolution of the Licence Holders at a Meeting), waive in writing from time to time and at any time and on any terms and conditions any breach or anticipated breach of the covenants or obligations by the Company of this Deed provided that the Statutory Supervisor is satisfied that the interests of the Licence Holders will not be materially prejudiced thereby but such waiver shall not prejudice the rights of the Statutory Supervisor or any Licence Holder in respect of any other breach.

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### **Delegation**

- 7.15 The Statutory Supervisor may delegate from time to time and at any time to any person or persons any of the obligations, trusts, powers or discretions hereby created in or assumed by the Statutory Supervisor which cannot conveniently be exercised by it or through its employees upon such terms and conditions and under such regulations (including the giving of power to sub-delegate) as the Statutory Supervisor may in the interests of the Licence Holders think fit and the Statutory Supervisor shall not be responsible for any loss incurred by any misconduct or default on the part of such delegate or subdelegate unless such misconduct or default could have been reasonably foreseen.

### **Acting on Advice and Certificates**

- 7.16 The Statutory Supervisor may, without liability for loss, take and act on, or decline and elect not to act on:
- (a) the advice or opinion of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, accountant, chartered accountant, auditor or other expert whether obtained by the Statutory Supervisor or the Company or otherwise; or
  - (b) any certificate signed by any two of the Officers of the Company or by any two persons authorised by the Officers of the Company as to any fact or matter prima facie within the knowledge of the Officers of the Company or that any particular dealing, transaction, step or thing is expedient or commercially desirable as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing.

### **Liberty to Act**

- 7.17 Nothing in this Deed shall prohibit the members or directors of the Statutory Supervisor (hereinafter in this clause where the context permits being included in the expression "the Statutory Supervisor") from being a Licence Holder or from acting in any representative capacity for a Licence Holder, or from entering into any contracts or transactions with the Company in the ordinary course of the business of the Statutory Supervisor, and the Statutory Supervisor shall not be accountable to the Licence Holder, or the Company for any profits arising from such contracts, transactions or offices.

### **Powers, Authorities and Discretions**

- 7.18 The powers hereby conferred upon the Statutory Supervisor shall be in addition to any powers which may from time to time be vested in statutory supervisors and trustees by law and in particular by the Act or the Companies Act 1955.
- 7.19 The Statutory Supervisor shall except where otherwise expressly provided have absolute unfettered and uncontrollable discretion as to the exercise or non-exercise of all powers conferred or trusts vested in it by this Deed and as to the commencement, variation, discontinuance, compromise or conduct of any action, proceeding or claim, and save in the case of a wilful breach of trust, it shall not be responsible for any loss that may result from the exercise or non-exercise thereof, whether that loss be caused to the Company or to the Licence Holders.
- 7.20 Without prejudice to the right of indemnity by law given to trustees, the Statutory Supervisor and every attorney, agent, or other person appointed by the Statutory Supervisor pursuant to this Deed shall be entitled to be indemnified by the Licence Holders:
- (a) In respect of all expenses and liabilities incurred by it in the execution or purported execution of the duties of the Statutory Supervisor hereunder or of any powers, trusts, authorities or discretions vested in it pursuant to this Deed; and

- (b) against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted relating hereto, other than a claim arising out of a wilful breach of trust.
- 7.21 The Statutory Supervisor has assumed its office on the express condition and understanding that as statutory supervisor it is under no obligation to inspect the Marina. In addition, the Statutory Supervisor will be entitled to rely on certificates of the Auditor in respect of the establishment and setting of the Operating Fees and Refurbishment Contribution Charges and the levies in respect thereof to Licence Holders, and on certificates given by the Company under clauses 5.2(r).
- 7.22 (a) The Statutory Supervisor shall not be responsible for any loss incurred by any act deceit neglect mistake default or discrepancy of the Company or any agent of the Company;
- (b) The Statutory Supervisor shall not be responsible to check any information or documents forms or lists supplied to it by the Company provided that the Statutory Supervisor has no reason to believe that it is not genuine (whether or not an error in any such information documents forms or lists is reproduced by the Statutory Supervisor).
- (c) The Statutory Supervisor shall not incur any liability to anyone in respect of any failure to perform or do any act or thing which by reason of any provision of any present or future law of New Zealand or any ordinance rule regulation or bylaw made pursuant thereto or of any decree order or judgment of any competent Court the Statutory Supervisor shall be hindered prevented or forbidden from doing or performing.
- 7.23 The Statutory Supervisor shall not incur any liability in respect of any action taken or thing suffered by the Issuer or the Statutory Supervisor in reliance upon any notice resolution direction consent certificate receipt affidavit statement certificate or other paper or document believed by Statutory Supervisor to be genuine and to have been passed signed or endorsed by the proper parties where liability but for this indemnity would attach by reason that such paper or document was not in fact genuine or so passed signed or endorsed.
- 7.24 The Statutory Supervisor shall not be liable to account to the company or to any Licence Holder or otherwise for any payments made by the Statutory Supervisor in good faith to any duly empowered fiscal authority of New Zealand for Taxes in respect of the Scheme or with respect to any transaction under this Deed notwithstanding that any such payment did not have to be made.
- 7.25 All other duties and rights of the Statutory Supervisor as set out in the Seventh Schedule to the Securities Regulations 1983 are hereby incorporated.

#### **Investments**

- 7.26 Any moneys received by the Statutory Supervisor and not required to be immediately applied under any of the trusts or powers hereinbefore contained may at the discretion of the Statutory Supervisor be invested in the name of the Statutory Supervisor or of its nominee in any of the investments for the time being authorised by law for the investment of trust funds or may be placed on deposit either at call or for a fixed term in the name of the Statutory Supervisor or its nominees at any Bank and the Statutory Supervisor may at any time at its discretion vary such investments for others of a like nature and from time to time deal with or dispose of all such investments or any part thereof, and may charge and retain its usual commission on the investment of trust funds.

#### **Court Order**

- 7.27 The Statutory Supervisor may at any time apply to the Court for an order that the powers and trusts hereof be exercised and carried into execution under the direction of the Court and for any other order in relation to the execution and administration of the powers and trusts hereof

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as the Statutory Supervisor shall deem expedient and it may assent to or approve of any application to the Court made at the instance of any of the Licence Holders and shall be indemnified by the Company and by the Licence Holders against all costs charges and expenses incurred by and in relation to any such application or proceedings.

## 8. ENFORCEMENT OF SECURITY UPON DEFAULT

### When Security Enforceable

- 8.1 The security hereby created or by any security collateral or supplemental hereto constituted shall at the option of the Statutory Supervisor become enforceable on the happening of any one or more of the following events:
- (a) If default shall be made for a period of fifteen (15) Working Days after demand in the payment of any moneys payable by the Company whether pursuant to this Deed or otherwise howsoever or any covenant contained in the Empowering Grants is broken by the Company and notice specifying the breach is given by the Licensor or Lessor (as the case may be) under any of the Empowering Grants and not remedied within the period required under the relevant notice;
  - (b) If an order is made or a resolution is passed for the winding up or dissolution of the Company other than for the purposes of reconstruction or amalgamation the terms of which have been approved by the Statutory Supervisor or by an Extraordinary Resolution of the Licence Holders passed prior to the resolution for winding up; or
  - (c) If a receiver is appointed of or an encumbrancer takes possession of or exercises its powers of sale in respect of the Charged Property or the Excluded Assets or any part thereof; or
  - (d) If a distress or execution or other legal process shall be levied or enforced upon or sued out against any part of the Charged Property or the Excluded Assets and is not stayed or satisfied within 7 days or within such further period as the Statutory Supervisor may in writing agree; or
  - (e) If the Company stops or suspends payment to its creditors or in the opinion of the Statutory Supervisor and without its consent in writing ceases or threatens to cease to carry on its business or to stop or suspend payment to its creditors; or
  - (f) If the Company is unable to pay its debts within the meaning of Section 218 of the Companies Act; or
  - (g) If without the prior consent of the Statutory Supervisor the Company sells or parts with its undertaking or any substantial part thereof; or
  - (h) If the Company without the consent in writing of the Statutory Supervisor shall reduce or attempt to reduce its capital other than in a case where in terms of an Order of the High Court a separate fund is established equal to the amount of capital so reduced, which fund shall not be distributed to the members of the Company without the written approval of the Statutory Supervisor; or
  - (i) If the Company (except in accordance with the provisions of these presents) creates or purports to create or permits to subsist any mortgage or charge on the Charged Property or the Excluded Assets or any part thereof; or
  - (j) If the Company without the prior consent in writing of the Statutory Supervisor enters into any arrangement or composition with creditors generally or any class thereof; or



- (k) If the Company requests the Statutory Supervisor to appoint a receiver of the Charged Property; or
- (l) If an inspector or inspectors are appointed to investigate the affairs of the Company pursuant to Section 169 of the Companies Act or the Registrar of Companies requires the Company to be investigated under the Corporations (Investigations and Management) Act 1989; or
- (m) If default is made by the Company in the performance or observance of any covenant condition or provision binding upon it under this Deed or any Licence, or in any deed or instrument collateral or supplemental hereto other than a default specifically referred to in any other paragraph of this Clause (whether or not the Statutory Supervisor shall have waived any prior default) and such default shall continue for more than fifteen (15) Working Days after receipt by the Company of a notice from the Statutory Supervisor specifying the default and requiring the same to be remedied; or
- (n) If the Company fails to furnish a certificate under Clause 5.2(t) within a period of fifteen (15) Working Days after demand has been made therefor by the Statutory Supervisor hereof; or
- (o) If a certificate given under Clause 5.2(t) hereof discloses a materially adverse matter which in the reasonable opinion of the Statutory Supervisor is likely to affect the interests of the Licence Holders; or
- (p) If the Company commits any breach of clause 5.2(h); or
- (q) If the Company fails to comply at any time with Clause 5.2(e) within a period of fifteen (15) Working Days after demand has been made therefor by the Statutory Supervisor.

**AND IT IS HEREBY EXPRESSLY DECLARED THAT** upon the happening of any of the aforementioned events the Statutory Supervisor may by notice in writing to the Company convert the floating charge to a fixed charge **PROVIDED ALWAYS** that notwithstanding the preceding provisions hereof stipulate that the charge hereby created is to convert to a fixed charge only on notice by the Statutory Supervisor nevertheless if the Company shall attempt to mortgage charge or alienate any of its undertaking or assets in contravention of Clause 5.2(g)(v) the charge hereby created shall immediately prior to the granting of the charge or other alienation attach and become a fixed charge in respect of the assets the subject of the attempt to charge or alienation in contravention of Clause 5.2(g)(v).

8.2 At any time after the security hereby constituted shall have become enforceable the Statutory Supervisor may in its discretion and shall upon a request of the Licence Holders by an Ordinary Resolution pursuant to the provisions of the Schedule directing it so to do (and in any case without any further consent on the part of the Company):

- (a) enter upon or take possession of the Charged Property or any part thereof;
- (b) either with or without taking possession but subject to clause 8.3 sell call in collect and convert into money the Charged Property or any part thereof in such manner at such time and for such consideration as the Statutory Supervisor shall think fit and upon any such sale the Statutory Supervisor may sell any part of the Charged Property either together or in parcels and either by public auction or by private contract and either for a lump sum or for a sum payable by instalments or for a sum on account and a mortgage or charge on the property sold and/or shares or debentures in any other company for the balance; and upon every such sale the Statutory Supervisor may make any special or other stipulations as to title or otherwise which it deems proper and may buy-in or rescind or vary any contract of sale and may resell without being responsible for any loss occasioned thereby;

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AND the Statutory Supervisor may compromise and effect compositions and for all or any of the purposes aforesaid may execute and do all such assurances and things as the Statutory Supervisor may think fit.

#### **Notice of Exercise of Statutory Supervisor's Powers**

- 8.3 The powers conferred by the preceding Clause and these presents shall be exercisable by the Statutory Supervisor without notice to the Company but the Statutory Supervisor shall not exercise those powers if within the last mentioned period the breach or event so specified is remedied to the satisfaction of the Statutory Supervisor or the Statutory Supervisor notifies the Company in writing that the particular breach or event relied upon no longer in the opinion of the Statutory Supervisor detrimentally affects the security created by or pursuant to this Deed **PROVIDED HOWEVER** that if the Statutory Supervisor has appointed a Receiver no further notice shall subject to Section 92 of the Property Law Act 1952 be required before exercising the power of sale and conversion.

#### **Statutory Supervisor's Powers after Entry**

- 8.4 After entry into possession as aforesaid and without obliging the Statutory Supervisor to do so until the powers of conversion shall have been exercised in respect of the whole of the Charged Property and/or the Excluded Assets the Statutory Supervisor may if it thinks fit so do to carry on any class of business in and with the Charged Property and/or the Excluded Assets or any part thereof and may manage and conduct the same in such manner as it shall in its absolute sole unfettered and uncontrolled discretion think fit and for the purposes of the said business may generally do all such things respecting the Charged Property and/or the Excluded Assets as it could do if it were absolutely entitled thereto including without limitation the power to grant Licences and without being responsible for any loss or damage which may arise or be occasioned by the grant of such Licences and the Statutory Supervisor shall out of the revenue of the Charged Property and/or the Excluded Assets and the said business pay the expenses incurred therein and shall apply the balance of the revenue in the manner provided in Clause 8.12. The Statutory Supervisor may for any such purpose and for the purpose of payment to the Statutory Supervisor of any moneys arising to it in terms of this Deed borrow or raise money on the security of the Charged Property and/or the Excluded Assets or any part thereof on such terms as the Statutory Supervisor in its absolute sole unfettered and uncontrolled discretion shall think fit.

#### **Events in Which a Receiver may be Appointed**

- 8.5 At any time after the security hereby constituted shall have become enforceable or after a petition for winding up the Company shall have been presented or a notice shall have been given of a proposed resolution for winding up the Company and so that no delay or waiver of the right to exercise the powers hereby conferred shall prejudice the future exercise of such powers, the Statutory Supervisor may in its discretion and shall upon the request of the Licence Holders by an Ordinary Resolution passed in accordance with the provisions contained in Schedule hereto and without further notice appoint in writing either under seal or under the hand of any officer or solicitor of the Statutory Supervisor any person severally or persons (whether an officer of the Statutory Supervisor or not) jointly and severally to be a Receiver of all or any part of the Charged Property with power from time to time to remove any Receiver so appointed and in case of removal retirement or death to appoint another in his place. Any such Receiver may be appointed either before or after the Statutory Supervisor has entered into or taken possession of the Charged Property or any part thereof. If such petition as aforesaid is dismissed or withdrawn or any such resolution for the winding up shall not be passed by the necessary majority then without prejudice to any rights exercisable otherwise than in consequence of the presentation of such petition or the giving of such notice and subject to anything done in the meantime in pursuance of the powers given by this Clause possession of the Charged Property shall be restored to the Company and subject to the provisions herein contained as to costs charges and expenses incurred and payments made the Company and all persons concerned shall be restored to their original rights AND the charge by the Company in favour of the Statutory Supervisor in so far as it was a floating charge over

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the Charged Property shall revert from a fixed charge to a floating charge of the nature provided in this Deed.

#### **Powers Rights and Duties of Receiver**

8.6 The powers rights and duties of any Receiver shall be as follows:

- (a) The Receiver shall unless otherwise directed by the Statutory Supervisor be invested by the Statutory Supervisor with such of the powers authorities and discretions as are conferred upon the Statutory Supervisor by this Deed and are capable of being exercised by the Receiver including power of management and power to sub-delegate the same;
- (b) The Receiver shall in the exercise of his powers authorities and discretions conform to any regulations and directions from time to time made and given by the Statutory Supervisor;
- (c) The Statutory Supervisor may from time to time fix the remuneration of the Receiver and direct payment thereof out of the Charged Property but the Company shall be primarily liable for the payment of such remuneration;
- (d) The Statutory Supervisor may (but shall not be obliged to) from time to time and at any time require the Receiver to give security for the due performance of his duties as the Receiver and may fix the nature and amount of the security to be given by the Receiver;
- (e) Save so far as otherwise directed by the Statutory Supervisor all moneys from time to time received by the Receiver shall be paid over to the Statutory Supervisor to be held by it on the trusts hereinafter declared of and concerning moneys which arise from any sale calling in collection or conversion of the Charged Property;
- (f) The Statutory Supervisor may pay over to the Receiver any moneys arising from or constituting part of the Charged Property to the intent that the same may be applied for the purposes hereof by the Receiver and the Statutory Supervisor may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as the Receiver;
- (g) Subject as hereinafter provided the Receiver may for the purposes of carrying on the business of the Company and of defraying any costs charges losses or expenses (including his remuneration) which shall be incurred by him in the exercise of the powers authorities and discretions vested in him and for all other purposes hereof or any of them from time to time and at any time raise and borrow money on the security of the Charged Property or any part thereof by any security collateral hereto constituted or otherwise at such rate or rates of interest and generally on such terms and conditions as he may think fit and no person lending any such money shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any moneys to be raised or borrowed **PROVIDED THAT** a Receiver shall not exercise this present power without first obtaining the written consent of the Statutory Supervisor thereto but the Statutory Supervisor shall incur no responsibility or liability to the lender or otherwise by reason of its giving or refusing such consent whether absolutely or subject to any limitation or condition;
- (h) Every Receiver appointed over the Charged Property of the Company shall be the agent of the Company as the case may be for all purposes and the Company shall be responsible for his acts and defaults loss or misconduct and subject to paragraph (d) hereof for his remuneration and neither the Statutory Supervisor nor the Licence Holders shall incur any liability therefor or in respect thereof by reason of their making or consenting to his appointment as such Receiver;
- (i) The above powers shall be in addition to and not in substitution for the rights and powers conferred upon receivers and mortgagees by law.

### **Powers if Charged Premises in Jeopardy**

- 8.7 In addition to the powers hereunder given the Statutory Supervisor may without any notice to the Company enter into possession of and hold or appoint a Receiver to take possession of any part of the Charged Property or the Excluded Assets which may at any time appear to the Statutory Supervisor to be in jeopardy whether by any process of law or otherwise, and when a Receiver is appointed under this Clause the provisions of Clauses 8.5 and 8.6 hereof shall apply mutatis mutandis and the Statutory Supervisor may at any time give up possession or withdraw the receivership.

### **No Liability as Mortgagee in Possession**

- 8.8 The Statutory Supervisor shall not nor shall any Receiver be liable by reason of any entry into possession of the Charged Property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

### **Protection of Persons Dealing with Statutory Supervisor and Receiver**

- 8.9 No person dealing with the Statutory Supervisor or any Receiver appointed by it or its or his agents shall be concerned to enquire whether the security hereby constituted has become enforceable or whether any moneys remain due upon the security of these presents or as to the necessity or expedience of the stipulations and conditions subject to which any sale shall be made or otherwise as to the propriety or regularity of any sale calling-in collection or conversion or to see to the application of any moneys paid to the Statutory Supervisor or to any Receiver and in the absence of fraud on the part of such person such dealing shall be deemed so far as regards the safety and protection of such person to be within the powers hereby conferred and to be valid and effectual accordingly and the remedy of the Company and its respective assigns in respect of any irregularity or impropriety whatsoever in the exercise of such powers shall be in damages only.

### **Receipt of Statutory Supervisor or Receiver**

- 8.10 Upon any such sale calling-in collection or conversion as aforesaid and upon any other dealing under this Deed or under any security collateral hereto the receipt of the Statutory Supervisor or the Receiver for purchase money of the property sold and for any other moneys paid to it shall effectually discharge the purchaser or purchasers or person paying the same therefrom and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

### **Concurrent Sale or Receivership**

- 8.11 The Statutory Supervisor may upon such terms as it thinks proper join in exercising its powers hereunder with any other secured creditor of the Company and in particular may on such terms as it thinks proper so join in appointing a common Receiver of the Charged Property and/or the Excluded Assets or any part thereof subject to the Statutory Supervisor retaining such priority as is enjoyed by it in respect of the Charged Property but with liberty for the Statutory Supervisor to make any arrangement it thinks proper for the purpose of ensuring the respective priorities.

### **Trust of Proceeds of Conversion**

- 8.12 All moneys arising from any exercise of the powers of conversion or under any powers hereby conferred upon a Receiver or upon the Statutory Supervisor after the security hereby constituted shall have become enforceable and the Statutory Supervisor shall have determined or become bound to enforce the same shall be held and applied:

First (subject to any direction made by any Court in respect thereof under Section 347 of the Companies Act) in payment or retention of all costs charges expenses and liabilities incurred

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and payments made by or on behalf of the Statutory Supervisor or any Receiver under the provisions contained in this Deed or any collateral security and of all remuneration payable to the Statutory Supervisor or any Receiver hereunder with interest thereon as herein provided.

**Secondly** in payment of preferential payments (if any) payable under the provisions of Section 101 of the Companies Act.

**Thirdly** in paying all principal interest and other moneys owing under any prior charge.

**Fourthly** in or towards payment to the Licence Holders *pari passu* in proportion to the amounts certified by the Statutory Supervisor in a Statutory Supervisor's Certificate as owing to them and whether or not the time fixed for payment of the said amounts shall then have arrived.

**Lastly** the residue of any moneys received by the Receiver shall be paid to the Company or other person or persons who but for the possession of the Receiver would have been entitled to the income of the Charged Property or who shall be otherwise entitled to the Charged Property or the proceeds of sale thereof by reason of any subsequent charges in the order of their priority.

- 8.13 If the Statutory Supervisor shall be of opinion that in the interest of Licence Holders it is expedient so to do and if it is within the powers of the Statutory Supervisor so to do the Statutory Supervisor may direct that Licence Holders shall continue to enjoy their contractual rights to Licences, and the enjoyment of such contractual rights shall **pro tanto** reduce the amount to which an Licence Holders would have been entitled if the Statutory Supervisor had not directed that Licence Holders continue to enjoy their contractual rights to Licences.
- 8.14 The Statutory Supervisor shall give not less than fourteen days notice to the Licence Holders of the day place and time fixed for any payment to them under Clause 8.12 hereof.
- 8.15 Payment to any Licence Holders may be made by cheque crossed not negotiable and payable to the order of the Licence Holders and posted by ordinary letter post in an envelope addressed to the Licence Holders at the Licence Holders's Registered Address or in the case of joint Licence Holders to the Registered Address of that one who is first named on the Register or if approved by the Statutory Supervisor to such person and at such address as the Licence Holders or Licence Holders may in writing direct.

## 9. SCHEME ACCOUNTS

- 9.1 (a) The Company shall, keep or cause to be kept proper accounting records and shall keep true accounts of all sums of monies expended by or on behalf of the Scheme and the matters in respect of which each receipt and expenditure takes place and all sales and transfers of Licences.
- (b) The accounting records of the Company shall be kept (or be made available) at its office and shall be open to the inspection of the Statutory Supervisor and of the Auditor. The Auditor shall be furnished by the Company with all such information, accounts and explanations as may be necessary for the performance of the duty of the Auditor.
- 9.2 At the end of each financial year, accounts shall be prepared or caused to be prepared by the Company. A copy of such accounts shall be forwarded by post by the Company to the Statutory Supervisor and to all Licence Holders as soon as practicable after the end of the financial year but in any case no later than three (3) months thereafter.
- 9.3 At the time of preparing the accounts for the end of each financial year in accordance with clause 9.2 the records kept in accordance with clause 9.1 shall be examined by the Auditor. The Company shall utilise its best endeavours to ensure that the Auditor shall certify:

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- (a) that he has conducted the audit;
- (b) whether or not he has obtained all the information and explanations he has required;
- (c) whether or not the accounts are in his opinion properly drawn up so as to give a true and fair view of the results and operations, cash flows, and state of affairs of the Company and of the Scheme;
- (d) whether or not the Register is in his opinion properly drawn up to give a true account of the Licence Holders of the Scheme;

and a copy of his certificate shall appear on all printed copies of such accounts. In addition the Auditor shall at the same time as he furnishes his report on the accounts furnish to the Statutory Supervisor a separate report in respect of the Company stating:

- (i) whether or not in the performance of his duties he has become aware that the Company has done or omitted to do any act which in his opinion contravenes or may contravene in a material respect any of the provisions of this Deed and if so giving particulars thereof;
- (ii) whether or not his audit has disclosed any matter (and if so particulars thereof) calling in his opinion for further investigation by the Statutory Supervisor in the interests of Licence Holders;
- (iii) that he has perused the certificates given by the Company for the financial year in question and that so far as matters which he has observed in the performance of his duties are concerned he does not have any reason to doubt that the statements made in such certificates are correct.

## 10. AUDITOR

### Auditor to be Chartered Accountant

- 10.1 Subject to subclause 2 of this Clause 10 the Auditor shall be a reputable firm of chartered accountants recommended by the Company and shall be approved of by the Statutory Supervisor. If required pursuant to this Deed a new Auditor shall be appointed by the Statutory Supervisor and shall hold office subject to clause 10.2. The Company and the Statutory Supervisor shall agree upon the services to be performed by the Auditor and the scope thereof and the contract of appointment shall provide that the Statutory Supervisor is a third party beneficiary of the contract of audit. The remuneration of the Auditor shall be determined by the Company.

### Removal and Retirement of Auditor

- 10.2 (a) The Statutory Supervisor may and, if so required by an Extraordinary Resolution of Licence Holders, shall from time to time remove the Auditor and appoint another or others in his place and the Auditor so appointed shall if practicable be the person (if any) nominated for that office in the Extraordinary Resolution of Licence Holders.
- (b) The Auditor may retire upon the expiration of two (2) months' notice to the Statutory Supervisor.
- 10.3 Any vacancy in the office of the Auditor shall, subject to subclause 10.2(a), be filled by the Statutory Supervisor appointing an auditor who would be qualified to be appointed under subclause 1 of this Clause 10.

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## 11. MODIFICATIONS AND ALTERATIONS

11.1 The Statutory Supervisor may join with the Company in making by deed supplemental to this Deed in respect of the Scheme any alteration modification addition or cancellation to this Deed (including this present Clause) or any deed supplemental hereto if such alteration modification addition or cancellation:

- (a) is in the opinion of the Statutory Supervisor necessary or desirable in connection with an offer of Licences to members of the public; or
- (b) is in the opinion of the Statutory Supervisor necessary or expedient to comply with the Act or the provisions of any statute ordinance regulation or by-law or any law made under the authority of any statute ordinance regulation or by-law or is the requirement of any competent statutory authority; or
- (c) is in the opinion of the Statutory Supervisor made to correct a manifest error or is of a formal technical or administrative nature only; or
- (d) is in the opinion of the Statutory Supervisor desirable in consequence of any amendment or cancellation of any exemption order granted in respect of the Scheme; or
- (e) in respect of the Scheme is considered by the Statutory Supervisor not to be or be likely to become prejudicial to the interests of any of the Licence Holders; or
- (f) in respect of the Scheme will in the opinion of the Statutory Supervisor enable the provisions of this Deed to be more conveniently advantageously profitably or economically administered or managed; or
- (g) is approved by an Extraordinary Resolution of Licence Holders; or
- (h) is otherwise expressly authorised by this Deed.

11.2 Without limiting the rights, powers and discretions conferred on the Statutory Supervisor by the provisions of this Deed (and without altering the Company's interest in its assets including the Marina) a meeting of Licence Holders shall have the following powers exercisable by Extraordinary Resolution:

- (a) power to sanction either unconditionally or upon any conditions the release of the Company or the Statutory Supervisor from the performance of any of its obligations hereunder; and
- (b) power to sanction, assent to release or waive any breach or the performance by the Company or the Statutory Supervisor of any of its obligations under this Deed; and
- (c) power to assent to any alteration of or addition to the provisions contained in this Deed and to authorise the Statutory Supervisor to concur in and execute any supplemental deed embodying such alteration or addition; and
- (d) power to sanction the merger or amalgamation of the Scheme with any other scheme, entity or company whether managed by the Company or not; and
- (e) power to sanction any alteration release modification waiver variation or compromise or any arrangement in respect of the rights of Licence Holders against the Company however such rights shall have arisen; and
- (f) Power to remove the Statutory Supervisor from its office of Statutory Supervisor;

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- 11.3 The Statutory Supervisor and the Company shall take all reasonable steps to cause this Deed to be amended from time to time to satisfy the requirements of any such statute ordinance regulation or by-law.

## 12. PERMITTED ASSIGNS OF MARINA

### Disposal of interest in the Marina

- 12.1 Subject to clause 12.2, the Company shall not assign, transfer, charge, mortgage or dispose of any part of its interest in the Marina, the Seabed Licence or the Memoranda of Lease.

- 12.2 The Company shall be able to assign or transfer either or both of its:

- (a) entire interest in the Marina, the Seabed Licence or the Memoranda of Lease; and/or
- (b) its interest as manager pursuant to this Deed;

with prior written consent of the Statutory Supervisor. The Statutory Supervisor shall not unreasonably withhold its consent to an assignment or transfer to a solvent and suitable assignee or transferee, but before giving consent the Statutory Supervisor shall be entitled to have the following conditions satisfied:

- (c) the Company shall demonstrate to the satisfaction of the Statutory Supervisor that the proposed assignee or transferee is capable of performing the Company's obligations under this Deed and is of sound financial standing; and
  - (d) the Company shall procure from the assignee or transferee a covenant by the assignee or transferee with the Statutory Supervisor, in a form prepared by the Statutory Supervisor's solicitors at the Company's cost and approved of by the Statutory Supervisor that the assignee or transferee will at all times during the continuance of this Deed observe and perform the relevant covenants, conditions and agreements contained or implied on the part of the Company to be observed and performed and to obtain a like covenant from any subsequent assignee or transferee.
- 12.3 For the purpose of Clause 12.2 any change in the shareholding of the Company or its assignee or transferee (as the case may be), altering the effective control of the Company or its assignee or transferee, shall be deemed a proposed assignment of the Company's interest in the Marina and will require the consent of the Statutory Supervisor.

## 13. MISCELLANEOUS PROVISIONS

### Registration

- 13.1 The Company shall forthwith at its own cost register or procure the registration and recording of this Deed as may be required by law and as may be necessary to give full legal effect thereto and shall pay all stamp duty registration fees and other expenditure incidental thereto including the costs of preparation thereof.

### Release

- 13.2 Upon proof being given to the reasonable satisfaction of the Statutory Supervisor that all Obligations owed to Licence Holders have been performed or that arrangements have been entered into which in the Statutory Supervisor's opinion are satisfactory to secure to the Licence Holders the performance of the Obligations and upon payment or retention of all costs charges and expenses incurred by or payable to the Statutory Supervisor or the Receiver appointed by it hereunder in relation to this Deed and the remuneration of the Statutory Supervisor and of any Receiver and all other moneys intended to be hereby secured the



Statutory Supervisor shall at the request and cost of the Company surrender release or transfer to the Company or as it may direct the Charged Property and/or the Excluded Assets or such part thereof as may remain charged in the Statutory Supervisor's favour freed and discharged from the charges created hereby or by any collateral or further assurances secured pursuant hereto.

#### **Licence Holders bound by Deed**

- 13.3 The terms and conditions of this Deed shall be binding on the Statutory Supervisor and the Company and each Licence Holder and the terms and conditions of any supplemental deed relating to the Scheme shall be binding on all Licence Holders and all persons claiming through them respectively and as if each such Licence Holder had been party to this Deed.

#### **13.4 Winding up of the Scheme**

- (a) The Scheme shall expire and all terms of the Marina Berth Licences will terminate on 19 July 2088. On termination of the Scheme the Company may dispose of the Marina as it in its sole discretion thinks fit. For the avoidance of doubt it is declared that on termination of a Marina Berth Licence in accordance with its terms the Licence Holder will not be entitled to any compensation.
- (b) The parties acknowledge the remaining terms of each of the Seabed Licence and the Memoranda of Lease are three (3) each of five (5) years (renewable on 21 July 1993, 1998 and 2003) and four (4) each of twenty (20) years (renewable on 21 July 2008, 2026, 2048 and 2068).
- (c) The only other circumstance in which the Scheme may be wound-up is in the event of a default by the Company and the liquidation of the Company. In that event the dissolution of the Scheme shall proceed subject to the rights and interests of the Licence Holders in the Charged Property and/or the Excluded Assets.

#### **14. NOTICES**

- 14.1 Any notice permitted or required to be given under this Deed shall be in writing and shall either be:

- (a) delivered;
- (b) mailed by pre-paid registered mail; or
- (c) sent by facsimile transmission to the addressee at the addressee's last known address or facsimile number in New Zealand or, in the case of a corporation to its registered office;

AND any notice sent by registered mail shall be deemed to have been received on the third working day following the date of mailing. Any notice sent by facsimile transmission during a working day between 8am and 5pm shall be deemed to be received upon completion of an error-free transmission and in every other case shall be deemed to be received at 8am on the next working day after it is sent.

#### **15. DISPUTES**

- 15.1 The Statutory Supervisor may determine as between itself and any Licence Holders all questions and matters of doubt arising in relation to any of the provisions of this Deed or arising in connection therewith and every such determination made in good faith whether upon a question actually raised or implied in the acts or proceedings of the Statutory Supervisor shall be conclusive and shall bind all Licence Holders.

- 15.2 If any dispute or difference (other than one which has been left by this Deed to the decision or discretion of some person) touching or concerning this Deed or the construction meaning operation of effect of any of the covenants or provisions of this Deed or as to the rights duties or liabilities of the Company or the Statutory Supervisor under this Deed shall arise between the Company and the Statutory Supervisor then and in every such case the Company or the Statutory Supervisor may give to the other notice in writing of such dispute or difference, the notice to state that it is a notice under this subclause and to specify the dispute or difference concerned, and at the expiration of seven (7) days unless it shall have been otherwise settled between them the matter in question shall be submitted to an arbitrator agreed upon by the parties or failing such agreement to a solicitor or barrister nominated by the President of the New Zealand Law Society. The arbitration shall be conducted in accordance with the Arbitration Act 1908.

## 16. COUNTERPART EXECUTION

- 16.1 This Deed may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument any of the parties hereto may execute this Deed by signing any such counterpart.

EXECUTED as a deed

THE COMMON SEAL of GULF HARBOUR MARINA LIMITED was affixed in the presence of:



*[Signature]*  
Signature of Authorised Person

Tan Kok Sang  
Name of Authorised Person

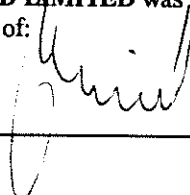
*Director*  
Office Held

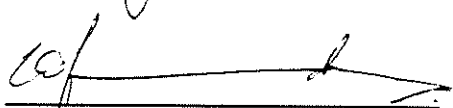
*[Signature]*  
Signature of Authorised Person

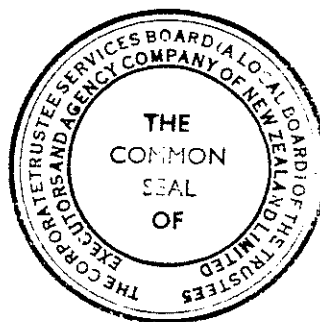
G.B. JOHNSTONE  
Name of Authorised Person

DIRECTOR.  
Office Held

THE COMMON SEAL of THE  
CORPORATE TRUSTEE SERVICES  
BOARD (a local Board) of THE  
TRUSTEES EXECUTORS AND  
AGENCY COMPANY OF NEW  
ZEALAND LIMITED was affixed by the  
authority of:

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Authorised Signatory



93-CT128

## SCHEDULE

### RULES FOR MEETINGS OF LICENCE HOLDERS

#### 1. INTERPRETATION

- 1.1 Words defined in Clause 1 of this Deed shall have the same meaning in these rules.

#### 2. PLACE

- 2.1 A Meeting shall be held at the registered office of the Company or at such other place as the Statutory Supervisor shall stipulate.

#### 3. NOTICE

- 3.1 Notice of every Meeting of the Licence Holders shall be given in the manner provided in Clause 14.1 of this Deed to:


- (a) every Licence Holder who is entered on the Register as at the close of business five business days prior to the date of dispatch of the notice; and
- (b) every person upon whom, to the actual knowledge of the Company as at that date, the ownership of any Marina Berth Licence has devolved by reason of his being a legal personal representative or an assignee in bankruptcy of a Licence Holder where the Licence Holder but for his death or bankruptcy would in accordance with the foregoing paragraphs be entitled to receive notice of the Meeting.

- 3.2 Fourteen (14) days notice at least of every Meeting shall be given. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. The notice shall specify the place and appointed time of the Meeting and the general nature of the business to be transacted but it shall not be necessary to specify in the notice the terms of the resolutions to be proposed, except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case the text of the proposed resolution shall be set out. The notice shall also include a statement that a Licence Holder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of him and that such proxy need not be a Licence Holder.

- 3.3 If the Meeting is not convened by the Statutory Supervisor a copy of the Notice shall be sent to the Statutory Supervisor. In either case the Notice shall be sent to the Company or the Statutory Supervisor (as the case may be) at the same time as the Notice is sent to the Licence Holders.

- 3.4 Except in the case of the Statutory Supervisor or the Company the accidental omission to give notice to or the non-receipt of notice by any person entitled thereto shall not invalidate the proceedings at any Meeting. In the case of the Statutory Supervisor and the Company the omission to give due notice of any Meeting by each to the other shall invalidate the proceedings at that Meeting.

#### 4. QUORUM

- 4.1 No business shall be transacted at any Meeting unless a quorum is present at the commencement of business. In the case of all Meetings the quorum shall be five (5) Licence Holders present in person or by representative. The quorum for an adjourned Meeting shall be five (5) Licence Holders present in person or by representative.
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- 4.2 If within 30 minutes or such longer time not exceeding 60 minutes as the chairman of the Meeting shall decide after the appointed time a quorum is not present the Meeting if convened upon the request of Licence Holders shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than ten (10) days thereafter and to such place as may be appointed by the chairman and at such adjourned Meeting all the Licence Holders present in person or by representative (provided there are not less than five Licence Holders present in person or by representative) shall be a quorum for the transaction of business (including the passing of Extraordinary Resolutions of Licence Holders).

- 4.3 Notice of any such adjourned Meeting of the Licence Holders at which an Extraordinary Resolution is to be submitted shall be given in the same manner as for an original Meeting (except that only seven (7) clear days notice shall be required) and such notice shall state that Licence Holders present in person or by representative shall form a quorum.

## **5. CHAIRMAN**

- 5.1 A person nominated in writing by the Statutory Supervisor shall preside at every Meeting and if no such person is nominated or if at any Meeting the person nominated is not present within fifteen (15) minutes after the appointed time the Licence Holders present shall choose one of their number to be chairman.

## **6. RIGHT TO ATTEND AND SPEAK**

- 6.1 Any director, officer or solicitor of the Statutory Supervisor or any other person authorised in that behalf by the Statutory Supervisor and any officer or the secretary or solicitor of or any other person authorised in that behalf by the Company may attend and speak at any Meeting.

## **7. ADJOURNMENT**

- (a) The chairman may with the consent of any Meeting at which a quorum is present and shall if so directed by the Meeting adjourn the Meeting from time to time and from place to place for any period not exceeding 30 days.
- (b) No business shall be transacted at any adjourned Meeting except business which might have been lawfully transacted at the Meeting from which the adjournment took place.
- (c) If the Meeting is to be adjourned for a period of more than fourteen (14) days notice of any such adjourned Meeting shall be given in the same manner as for an original meeting (except that only seven (7) clear days notice shall be required).

## **8. LICENCE HOLDERS**

- 8.1 The persons registered as Licence Holders in the Register, and no other person or persons, shall be recognised and treated as the legal holders of the Marina Berth Licences therein mentioned whether such persons are or are not in fact the owners thereof.

## **9. AUTHORITY TO VOTE**

- 9.1 A Licence Holder (being an individual) may vote personally or by his representative.
- 9.2 In these rules "representative" means a person appointed by an instrument by way of proxy or by Power of Attorney.
- 9.3 The following persons shall be exclusively entitled to vote in person or by representative:

- (a) the persons registered as at the Proxy Closing Time as Licence Holder in the Register in respect of the Marina Berth Licences recorded as owned by them respectively at that time;
- (b) the persons who are entitled to receive notice of the meeting pursuant to Clause 4.1(b) of these Rules in respect of the Marina Berth Licences devolving upon them respectively.

For the purpose of establishing voting entitlements at a Meeting, the Register shall be closed as of close of business on the business day immediately preceding the day on which the Proxy Closing Time falls and shall remain closed until after the relevant Meeting has been closed or adjourned.

## 10. PROXIES

- 10.1 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing.
- 10.2 A person appointed to act as a proxy need not be a Licence Holder and a holder of a proxy shall have the right to speak at the Meeting.
- 10.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a notary public or in such other manner as the Statutory Supervisor shall approve shall be deposited at such place as the Statutory Supervisor may direct or (if no such place is appointed) then at the registered office of the Company not later than the Proxy Closing Time and subject as hereinafter provided in default the instrument of proxy shall not be treated as valid **PROVIDED THAT** the Statutory Supervisor may in its absolute discretion accept as valid any instrument of proxy notwithstanding that such instrument or any power of attorney or other authority is received or produced at a place other than that specified above or out of time.
- 10.4 An instrument of proxy may be in any usual common form or in such other form as the Statutory Supervisor shall approve and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- 10.5 A proxy whether in a usual or common form or not shall unless the contrary is stated thereon be valid as well for any adjournment of the Meeting as for the Meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of twelve (12) months from the date of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.
- 10.6 An instrument of proxy in favour of the chairman of the Meeting or the chairman, (howsoever expressed) shall be valid and effectual as though it were in favour of a named person and shall constitute the person who chairs the Meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointor.

## 11. LICENCE HOLDER MAY APPOINT ATTORNEY

- 11.1 Any Licence Holder may by power of attorney appoint an attorney (who need not be a Licence Holder) to vote and act on his behalf at any meeting. An attorney shall be entitled to produce evidence of his appointment at any time before the appointed time for the Meeting. An attorney if so empowered may appoint a proxy for the Licence Holder granting the power of attorney.

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## 12. RIGHTS OF REPRESENTATIVES

- 12.1 A representative shall have the right to demand or join in demanding a poll and shall (except and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the Meeting for the Licence Holder concerned.

## 13. VOTING PROCEDURE AND POLLS

- 13.1 A resolution put to the vote of a Meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of a show of hands) demanded by the chairman or the Statutory Supervisor or any representative of the Statutory Supervisor or by five Licence Holders present in person. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against such resolution.
- 13.2 On show of hands each person present at the meeting and entitled to vote (whether personally or as a representative) shall have one vote only. On a poll every Licence Holder who is present in person or by a representative shall have one vote per Marina Berth Licence.
- 13.3 If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the Meeting at which the poll was demanded.
- 13.4 In the case of an equality of votes whether on the show of hands or on a poll the chairman of the Meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Licence Holder or on behalf of Licence Holders.
- 13.5 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty (30) days from the date of the Meeting) and place as the chairman may direct. The result of such poll shall be deemed to be the resolution of the Meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 13.6 The demand for a poll shall not prevent the continuance of a Meeting for the transaction of business other than the question on which the poll has been demanded.
- 13.7 On a poll votes may be given either personally or by representative.
- 13.8 In the case of joint Licence Holders the vote of the senior who tenders a vote whether in person or by representative shall be accepted to the exclusion of the votes of the other joint Licence Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.
- 13.9 A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form shall be valid notwithstanding the previous death, insanity or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy was executed provided that no intimation in writing of such death, insanity or liquidation or revocation is received by the Statutory Supervisor or the Company at its registered office before the commencement of the Meeting or adjourned Meeting at which the proxy is used.

## 14. EXTRAORDINARY RESOLUTIONS

- 14.1 The expression "Extraordinary Resolution" means a resolution passed at a Meeting duly convened and held in accordance with the provisions herein contained at which persons

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representing three-fourths (3/4ths) or more of the number of Licence Holders voting thereat upon a show of hands or if a poll is duly demanded then not less than three-fourths (3/4ths) of the votes given on such a poll voted in favour of the resolution.

- 14.2 Without limiting the rights, powers and discretions conferred on the Statutory Supervisor by the Deed of Participation, a Meeting of the Licence Holders shall, in addition to all other powers which by this Deed are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary Resolution namely:

- (a) Power to give any sanction, assent, release or waiver of any breach or default by the Company under any of the provisions of this Deed.
- (b) Subject to the Securities Act 1978, power to discharge, release or exonerate the Statutory Supervisor from all liability in respect of any act of commission or omission for which the Statutory Supervisor has or may become responsible under this Deed.
- (c) Subject to the provisions of this Deed power to remove any Statutory Supervisor and to approve the appointment of or appoint a new Statutory Supervisor.
- (d) Power to sanction either unconditionally or upon any conditions the variation, sale, compromise, variation or winding-up of the Scheme.

- 14.3 An Ordinary Resolution or Extraordinary Resolution passed at a Meeting duly convened and held in accordance with the provisions of this Schedule shall be binding upon all Licence Holders and the Company in its capacity as manager of the Scheme whether present or not present or entitled to be present or not at the Meeting and each of the Licence Holders, the Company and the Statutory Supervisor (subject to the provisions of its indemnity contained in this Deed) shall be bound to give effect thereto accordingly and the passing of any such resolution shall as between the Statutory Supervisor and the Licence Holders be conclusive evidence that the circumstances justify the passing thereof the intention being that it shall rest with the Meeting to determine without appeal whether or not the circumstances justify the passing of any such resolution.

## 15. MINUTES TO BE KEPT

- 15.1 Minutes of all resolutions and proceedings at every Meeting shall be made by the Company or if the Company shall not be present at such meeting by some person appointed by the chairman of such Meeting and duly entered in books from time to time provided for that purpose at the expense of the Company and any such minutes as aforesaid if purporting to be signed by the chairman of the Meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding Meeting of the Licence Holders shall be prima facie evidence of the matters therein stated and until the contrary is proved every such Meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed. Copies of such minutes shall be furnished to the Statutory Supervisor by the Company as early as possible after the holding of the Meeting to which they refer.

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**GULF HARBOUR MARINA LIMITED**  
**TRUSTEES EXECUTORS LIMITED**

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**DEED OF VARIATION**

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DEED dated

5<sup>TH</sup> MAY.

2009

**BETWEEN**

1. **GULF HARBOUR MARINA LIMITED**, a duly incorporated company having its registered office at Auckland (hereinafter together with its successors and permitted assigns called the "**Company**"); and
2. **TRUSTEES EXECUTORS LIMITED**, a duly incorporated company having its registered office at Wellington (hereinafter together with its successors and assigns called the "**Statutory Supervisor**").

**RECITALS**

- A. The Company and the Statutory Supervisor entered into a Deed of Participation on or about 30 June 1993 pursuant to which the Statutory Supervisor was appointed as statutory supervisor of the Scheme (the "**Deed of Participation**").
- B. The Company and the Statutory Supervisor have agreed to enter into this Deed to make an amendment of a formal and technical nature to the definition of the "Scheme" so that the definition may be in accordance with various provisions in the Deed of Participation which provides that the Licence Holders shall have no interest as owners in the Marina assets and that all profits and losses relating to the utilisation of Marina assets shall be to the account of the Company.

**NOW IT IS HEREBY AGREED** as follows:

1. **INTERPRETATION**

Except as specified in this Deed, words and expressions defined in the Deed of Participation shall have the same meanings in this deed.

2. **VARIATION TO DEED OF PARTICIPATION**

- 2.1 **Scheme:** Clause 1.1 of the Deed of Participation shall be amended by deleting the definition of Scheme contained therein and replacing it with the following definition:

"**Scheme**" means the scheme for the issue of Licences from time to time and the enjoyment by Licence Holders of Marina Berths, and the maintenance and operation of the Marina in accordance with the provisions of each Licence and the provisions of this Deed, including that the Marina assets of the Company required to enable the Company to meet its obligations in respect of the Scheme shall be made available to the extent and as and when required for Scheme purposes to be used in accordance with the provisions of the Licences but so that the Licence Holders shall have no interest as owners in such Marina assets, and that all profits and losses relating to the utilisation of the Marina assets shall be to the account of the Company.

3. **FURTHER PROVISIONS**

- 3.1 The remaining provisions of the Deed of Participation are confirmed and remain in full force and effect.

Handwritten signatures and initials at the bottom right of the page.

EXECUTED as a Deed

GULF HARBOUR MARINA LIMITED by:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signature of director

Name of director

THE COMMON SEAL OF TRUSTEES  
EXECUTORS LIMITED was affixed by the  
authority of:

Signature of witness

Name of witness

Deborah Robyn Gipson  
Corporate Business Analyst  
Auckland

Occupation of witness

City/town of residence

Signature of authorised signatory

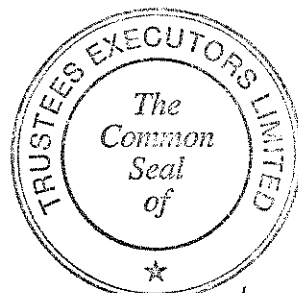
Clynton Neil Hardy

Name of authorised signatory

Signature of authorised signatory

Matthew Joseph Band

Name of authorised signatory



2009/CTN/040/11