

# OCEAN GARDENS (INC) CONSTITUTION

April 2019

## NAME

1. The name of the Association is "Ocean Gardens (Inc.)".

## INTERPRETATION

2. Throughout this Constitution, unless the context otherwise requires, terms used have the meaning given to them in the Act and:

"Act" means the *Associations Incorporation Act 2015 (WA)* as amended from time to time;

"Annual General Meeting" means the annual general meeting of the Association described in rule 25;

"Annual Report" has the meaning given it in sub-rule 23 (b);

"Association" means Ocean Gardens (Inc.);

"Auditor" means a duly qualified and experienced person appointed by the Board to audit the Association's accounts;

"Board" means the Board of Management of the Association;

"Committee meeting" means a meeting of the Board of Management;

"Constitution" means all the provisions contained in this constitution including the objects, powers and the rules of the Association and any amendment;

"Deductible Gift Recipient" means a fund, authority, institution or any other entity that is endorsed under or listed in Division 30 of the ITAA97;

"Director" means a member of the Board;

"Financial Year" means from 1 July in any year to 30 June in the following year;

"General Meeting" means a meeting of the Association to which all Members are invited and includes an Annual General Meeting and a Special General Meeting;

"ITAA97" means the *Income Tax Assessment Act 1997 (Cth)* as amended from time to time;

"Member" means a member of the Association;

"Observer" has the meaning given it in sub-rule 10(e) (i);

"Resident" has the meaning given to it in the *Retirement Villages Act 1992 (WA)*, as amended from time to time, in respect of the Village;

"Residents' Association" means the Ocean Gardens Retirement Village Residents Association or such other body as may be constituted from time to time to represent Resident's interests in the Village;

“Senior Employee” means the Association’s General Manager, Finance Manager and any other employee so designated by the Board;

“Special General Meeting” means a meeting of the Members, other than an Annual General Meeting;

“Special Resolution” has the meaning given to it by Section 51 of the Act or its successor;

“Town” means the Town of Cambridge, Perth, Western Australia; and

“Village” means the retirement village known as Ocean Gardens.

## **OBJECTS**

3. a) The Objects of the Association shall be:

- i) To provide independent living accommodation under a retirement village scheme in Western Australia through housing that is suitable for Residents as they age;
  - ii) To provide a safe and healthy living environment which offers a high quality of life for Residents as they age;
  - iii) To provide companionship, mutual activities and the security of community living through the provisions of homes, accommodation, facilities and related services;
  - iv) To provide care and support for the aged;
  - v) To provide a range of social, recreational and health and wellbeing services for Residents (and the wider aged community where appropriate);
  - vi) To facilitate in-home care and other services for Residents where necessary, including personal care services, housekeeping services and meals;
  - vii) To work with other organisations, local authorities, and the State and Federal Governments to develop policies and programs that promote the well-being of Residents;
  - viii) To preserve the prosperity and sustainability of the Village;
  - ix) To act in a manner consistent with that of a public benevolent institution;
  - x) To do all such things that are incidental or conducive to the attainment of any or all of the above objects.
- b) The income and property of the Association shall be applied solely towards the promotion of the objects of the Association and no portion shall be paid or transferred directly or indirectly by way of dividend bonus or other means to its Members providing that nothing herein shall prevent the payment in good faith of remuneration to any officer or servant of the Association for services rendered to the Association as authorised by the Board from time to time.
- c) Where the officer is a Director then any payment or remuneration, other than for out of pocket expenses for travel and accommodation in connection with the performance of the Director’s functions, is to be approved by a resolution of the Association.

## POWERS

4. In addition to the powers conferred on the Association by the section 14 of the Act, the Association may do all things necessary or convenient for carrying out its objects and purposes, and in particular, has the power:
- a) To acquire, hold, deal with and dispose of any property real or personal by purchase, exchange, gift, devise, lease or by any other means whatsoever subject to or not subject to any special or other condition or conditions and subject to the objects of the Association and to sell all or any of the real or personal property of the Association and to let, mortgage, exchange or otherwise dispose of and execute conveyances, transfers, mortgages and assurances thereof.
  - b) To build, construct, develop, establish, alter, subdivide, consolidate, rebuild, renovate, reconstruct and maintain buildings and land, including houses, flats, apartments, homes, premises, rooms, hostels, nursing homes, day care centres and garages, and social and sporting facilities, grounds and gardens and other things and places generally for the purposes of carrying out the objects of the Association.
  - c) To borrow money and, for the purpose of securing repayment of such money and interest thereon, to mortgage or charge the whole of or any part of the real or personal property of the Association and for such purpose to execute mortgages, bills of sale, debentures or other securities containing such covenants and provisions as the Association may consider necessary.
  - d) To invest all or any of the funds of the Association in any securities or investments and upon any terms and conditions as the Board determines from time to time.
  - e) To establish, assist, support or aid in the establishment or support of any institution or association established or to be established in furtherance of the objects of the Association or any of them and for such purpose to transfer any of the property of the Association whether real or personal by sale or gift to any such institution or association.
  - f) To appoint and dismiss employees for the supervision and management of the Association, the Village or any other undertaking under the control and direction of the Board.
  - g) To make, alter and rescind by-laws, rules, regulations, policies, procedures and other proceedings for the administration and maintenance of the Association and for regulating the duties, control and conduct of persons in the employment or under the care and control of the Association and governing and regulating applications for admission to the dwellings of the Association, the occupancy thereof and the conduct and welfare of the occupants.
  - h) To enter into any lease, deed, agreement or contract it considers necessary or desirable.
  - i) To contribute to any trust fund established for the benefit of Residents.
  - j) To act as trustee and accept or hold real and personal property upon trust.

- k) To do all such other lawful things as may be incidental to or deemed to be conducive to the attainment or execution of the objects and powers or any of them and generally to manage the undertakings of the Association.

## **MEMBERSHIP**

- 5. The Board may receive or invite applications from and admit as Members:
  - a) representatives of any statutory body, voluntary organisation or charitable or benevolent institution having objects similar to those of the Association or whose functions may assist the Association PROVIDED THAT not more than three (3) representatives of each such body, organisation or institution shall be Members at any one time;
    - i) Where an application for membership is received under rule 5 (a) through the Residents' Association the Board must accept and admit the nominee as a Member of the Association.
  - b) any person whose knowledge or experience may be of assistance to the Association; and
  - c) any person who has performed any valuable voluntary service to the Association.

The Board may in its absolute discretion and without assigning any reason therefore refuse to grant an application made for membership under this rule except where a Member is appointed under sub-rule 5(a)(i).

- 6. Any body, organisation or institution which has representatives as Members may, at any time and from time to time, by notice in writing to the Association remove any representative and appoint another in his or her place and may fill any vacancy in its representation.
- 7. Membership of the Association shall be for a period terminating at the conclusion of the second Annual General Meeting of the Association following the date of admission to membership. The Board may renew a person's membership for an additional period or periods.
- 8. The Board may from time to time determine an amount of an annual subscription to be paid by each Member (if any) on or before 1 July of each year, or such other date as the Board from time to time determines.

## **EXPULSION OF MEMBERS**

- 9. a) The Board may, by resolution, expel a Member of the Association if, in the opinion of the Board, the Member has failed to observe the provisions of this Constitution or has conducted himself or herself in a manner prejudicial to the interests of the Association.
- b) The Board shall cause notice stating that the Board has expelled the Member and specifying the grounds for the expulsion to be served upon the Member without delay.

- c) A Member upon whom a notice under sub-rule (b) of this rule is served may appeal against the expulsion to the next General Meeting of the Association by delivering to the Secretary of the Association within fourteen (14) days after service of that notice, a requisition in writing requiring a hearing of his or her appeal.
- d) A Member expelled by the Board shall not be re-admitted except by a resolution of a General Meeting of the Association.

## THE BOARD

- 10. a) The Board shall comprise up to six (6) Directors.
  - b) Four (4) Directors shall form a quorum.
    - i) No business is to be conducted at a committee meeting unless a quorum is present.
    - ii) If a quorum is not present within 30 minutes after the notified commencement time of a committee meeting —
      - (1) in the case of a special meeting — the meeting lapses; or
      - (2) otherwise the meeting is adjourned to the same time, day and place in the following week.
  - c)
    - i) The Directors shall be nominated by the Board and appointed by the Town in accordance with this rule.
    - ii) The Board shall determine the eligibility requirements for the selection of those persons to be nominated by the Board as Directors and notify the Town of those requirements from time to time.
    - iii) The Town must, within 60 days of the date of receipt of the nomination from the Board, in its absolute discretion, appoint or reject any person nominated by the Board by notice to the Board in writing.
    - iv) If the Town does not within 60 days appoint or reject any person nominated under this rule, the Town will be deemed to have appointed that person as a Director.
    - v) The Board may, by notice in writing to the Town, withdraw the nomination of any person nominated under this rule and nominate another person in their place at any time prior to the appointment of the person by the Town.
    - vi) If at any time the number of Directors is less than four, the Town may appoint as Directors (without prior nomination by the Board) persons that comply with the requirements under sub-rule 10(c)(ii) to fill all or any vacancies on the Board.
    - vii) The Board may remove any Director appointed under sub-rule 10(c)(vi) and nominate another person in their place.
- d)
  - i) Subject to sub-rule 10(d) (ii), the term of appointment for each Director is up to three (3) years. If no term is specified at the time of appointment, a Director's appointment shall

expire on the third anniversary of their appointment.

ii) A Director is eligible for reappointment but a person may not be a Director for more than nine (9) years in aggregate.

iii) A Director seeking reappointment may be nominated and reappointed under rule 10 at any time within three (3) months before the expiry of their current term in which case the reappointed Director's new term of office commences on the first day after the expiry of their current term.

e) (i) The Residents' Association may from time to time appoint one (1) Resident to be an observer to the Board who shall be entitled to attend committee meetings ("Observer").

ii) The Observer shall not be a Director and shall not be entitled to speak without the permission of the Chairman but he or she shall be subject to the same duty of confidentiality as a Director.

iii) The Residents' Association may by notice in writing to the Association remove any Resident so appointed as Observer and appoint another Resident in his or her place and may fill any vacancy which may arise in the resident's appointment as Observer.

iv) The Board may remove any Resident so appointed as an Observer if it is of the view that that person does not respect Board confidentiality or does not understand their role as Observer. Where an Observer is removed by the Board, the Residents' Association may appoint another Resident in his or her place.

11. If any Director resigns, is unwilling to act, becomes incapable of acting, dies or permanently resides out of the Perth Metropolitan Area or is absent without leave previously granted by a resolution of the Board for three (3) consecutive meetings of the Board or for any reason whatsoever ceases to act as a Director then that person shall cease to be a Director.

12. All Directors shall automatically become Members during their period of appointment to the Board.

13. The Board shall have and exercise the sole control direction and management of the Association and all undertakings of the Association, shall authorise expenditure and payments and carry out the objects of the Association, and shall receive and determine applications for admission to the Village.

14. The Board shall at its first meeting following an Annual General Meeting elect from among the Directors:

a) a Chairman; and

b) a Vice Chairman,

both of such office bearers shall be eligible for re-election.

15. The Board shall meet at such times as the Board may from time to time decide. The Chairman or any two (2) Directors may call a meeting of the Board at any time.
16. At least three (3) clear days' notice of any meeting of the Board and the business to be brought forward at the meeting shall be given to each Director by facsimile or email or by letter delivered to the address of the Director or by prepaid post. A notice sent by facsimile or email shall be deemed to have been delivered on the day after the day the same has been electronically dispatched. A notice sent by prepaid post shall be deemed to have been delivered on the second day after the same has been put into the post. Directors may accept short notice of meetings.
17.
  - a) The Chairman or in his or her absence the Vice Chairman shall preside at all meetings of the Board but in the absence of both the Chairman and the Vice Chairman the Directors present shall choose from among their number a chairman for that meeting.
  - b) All questions at the meeting of the Board shall be determined by consensus. In the event that a consensus cannot be achieved, questions may be determined by a majority of the votes of the Directors present, each of whom shall be entitled to one (1) vote, provided that in the case of an equality of votes the Chairman at the meeting shall have a second or casting vote.
  - c) The presence of a Director at a committee meeting need not be by attendance in person but may be by that Director and each other Director at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
  - d) A Director who participates in a committee meeting as allowed under sub-rule (17) (c) is taken to be present at the meeting and, if the Director votes at the meeting, the Director is taken to have voted in person.
  - e) The Board may determine matters by circular resolution, which may be circulated and responded to by hand, post, fax or email provided that all Directors are sent the circular resolution by the Chairman, General Manager or Secretary at approximately the same time. The passing of a circular resolution requires four (4) Directors to agree to the resolution set out in the document in writing or by fax or email. Separate copies of a circular resolution may be used for approval by the Directors if the wording of the resolution and statement is identical in each copy.

## **SECRETARY**

18. The Board may appoint a Secretary at such remuneration and on such terms and conditions and with such powers and authorities as it thinks fit and may terminate the appointment of any Secretary so appointed by it. Nothing herein contained shall prevent the Board appointing an Honorary Secretary. A Secretary or Honorary Secretary may hold another office of the Association.
19. The Secretary shall attend all meetings of the Board and of any subcommittee to which he or she is appointed and shall be entitled to be heard on any question but shall not be entitled to vote in his or her capacity as Secretary.

20. a) The Secretary shall maintain in an up to date condition a register of the Members and their postal, email or residential addresses and, upon the request of a Member, shall make the register available for the inspection of the Member and the Member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.

If —

- i) a Member inspecting the register of members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
- ii) a Member makes a written request under section 56(1) of the Act to be provided with a copy of the register of members,
- iii) the Board may require the Member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association.
- iv) The Board may determine a reasonable charge for the cost of complying with a request under sub-rules 20 (a) (i) & (ii); and require the person making the request to pay the charge to the Association.

- b) The Secretary must cause the name of a person who dies or who ceases to be a Member to be deleted from the register of Members referred to in sub-rule 20(a).

21. The Secretary shall have custody of all books, documents, records and registers of the Association and upon the request of a Member shall make the records available for inspection by that Member.

22. The Secretary shall keep or cause to be kept minutes of the proceedings of every General Meeting and of every committee meeting and of every meeting of a subcommittee which when confirmed by a subsequent meeting of the that body and signed by the Chairman of the meeting in question shall be conclusive evidence that the proceedings as minuted took place. The minutes shall be kept by the Secretary and shall be available for inspection by Members during usual business hours on application to the Secretary.

## **AUDIT AND ANNUAL REPORT**

23. a) At least once in every year and after the conclusion of the Financial Year the Board shall cause the Association's accounts to be audited by a duly qualified and experienced Auditor.
- b) The Chairman shall direct that an annual report on the activities of the Association during the Financial Year ("Annual Report") be prepared.
- c) The Board shall send a copy of the audited accounts and the Annual Report to each Member



with the notice of the Annual General Meeting and to the Chief Executive of the Town at the same time.

d) The Annual Report and audited annual accounts shall be available to the public.

## **SUBCOMMITTEES**

24. a) The Board may from time to time appoint a subcommittee or subcommittees of the Board which may include non-Directors and may depute, delegate and refer to such subcommittees such of the powers and duties of the Board as the Board thinks fit.

b) Any such subcommittee in the exercise of the powers and duties so deputed, delegated or referred to it shall conform to any charter that may be imposed on it by the Board.

c) Any member of a subcommittee may be appointed or elected Chairman of that subcommittee.

## **GENERAL MEETINGS**

25. Annual General Meetings shall be held each year during the month of October. All other General Meetings shall be Special General Meetings.

26. Any Member may on giving to the Secretary written notice together with a copy of the proposed resolution on or before the 15th day of September in any year submit any resolution to the next Annual General Meeting. Notice of such proposed resolution shall be given to the Members with notice of the Annual General Meeting as hereinafter required.

27. The business of the Annual General Meeting shall be:

a) the confirmation of the minutes of the last Annual General Meeting and of any Special General Meeting;

b) the receipt and adoption of the Annual Report;

c) the receipt and adoption of the Auditor's report and the annual accounts;

d) special business (if any) of which written notice has been given under sub-rule 29; and general business.

28. A Special General Meeting shall be called by the Secretary upon the written demand of the Chairman or, in his or her absence, of the Vice Chairman, or upon the written demand of any two (2) Directors or of not less than one third (1/3) of the Members.

29. The Secretary shall give at least fourteen (14) days' notice of all General Meetings to the Members by posting notice thereof to each Member at the address appearing in the records of the Association for the time being. Such notice shall specify the nature of the business to be transacted at the

meeting, and each notice shall be deemed to have been delivered on the second day after the notice has been put into the post.

#### **QUORUM**

30. At any General Meeting one third of the Members present in person or by proxy shall form a quorum.

#### **CHAIRMAN**

31. The Chairman or in his or her absence the Vice Chairman shall preside at all General Meetings but in the absence of both the Chairman and the Vice Chairman the Members present shall choose from among the Members a Chairman for that meeting.

#### **VOTING**

32. Each Member shall have one (1) vote only.
33. At all General Meetings voting shall be by a show of hands. In the event of an equality of votes the vote shall be determined in the negative.
34. If a Member is unable to attend a General Meeting he or she shall be entitled to cast his or her vote by proxy. A proxy shall be in writing and shall nominate the person in whose favour the proxy is given which person need not be a Member. Proxies shall be delivered to the Secretary before the commencement of the meeting at which the proxy is to be exercised and shall be signed by the Member.

#### **COMMON SEAL**

35. The Association shall have a Common Seal which shall be held in the custody of the Secretary at all times. The Common Seal may be affixed to documents by resolution of the Board and in the presence of any two Directors or a Director and the Secretary.

## **EMPLOYEES**

36. The Board or a subcommittee to which such function has been delegated may employ such persons or contract such firms on such terms and conditions as it considers necessary.

## **BANKING**

37. All moneys received by the Association shall be banked in one or more accounts to be opened with a bank selected by the Board. The Board shall determine which of its Members and employees shall have the authority to sign cheques and operate the bank accounts of the Association and of any undertaking of the Association, the circumstances under which such authority can be exercised and the amounts and limits of such authority.

## **ACCOUNTS FOR PAYMENT**

38. a) The Board shall cause true accounts to be kept of all moneys received and expended by or for the Association and proper books of account shall be kept at the Association's principal office or at whatever other place the Board may determine.
- b) The Board may delegate payment of accounts to Senior Employees.

## **INDEMNITY**

39. All Directors and every subcommittee of the Board and all other officers of the Association shall be indemnified and saved harmless out of the funds of the Association from and against all charges, costs, losses, damages and expenses which they or any of them shall or may incur or sustain in or about the execution of their respective offices except as may be occasioned by or through their own willful default or fraud and none of them shall be answerable for the acts of the others of them.

## **DISTRIBUTION OF PROPERTY ON REVOCATION OF DEDUCTIBLE GIFT RECIPIENT STATUS**

40. a) If the Association's endorsement as a Deductible Gift Recipient is revoked, any surplus of the following assets must be transferred to one or more funds, authorities or institutions identified pursuant to sub-rule 40(b):
- i) gifts of money or property received by the Association for the principal purpose of promoting and advancing the Association's objects;
  - ii) contributions described in items 7 and 8 of the table in section 30-15 of the ITAA97 received in relation to a fundraising event held for the purpose of promoting and advancing the Association's objects; and
  - iii) money received by the Association because of such gifts and contributions.

- b) The surplus assets referred to in rule 40 (a) must be transferred to one or more funds, authorities or institutions each of which must:
  - i) have objects similar to the Association's objects;
  - ii) be a Deductible Gift Recipient; and
  - iii) prohibit distribution of its income and property among its members and directors or committee (if any) to an extent at least as great as is imposed on the Association by rule 3.
- c) The identity of the funds, authorities and institutions referred to in sub-rule 40(a) must be decided by the Town of Cambridge.
- d) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions.

#### **DISTRIBTUTION OF SURPLUS PROPERTY ON WINDING UP**

- 41. a) Upon the winding up or dissolution of the Association, any surplus money or property of the Association, after satisfaction of all of the Association's debts and liabilities, must be given or transferred to one or more associations incorporated under the Act each of which must:
  - i) have objects similar to the Association's objects;
  - ii) be a Deductible Gift Recipient; and
  - iii) prohibit distribution of its income and property among its members and directors or committee (if any) to an extent at least as great as is imposed on the Association by rule 3.
- b) The identity of the associations referred to in sub-rule 41(a) must be decided by the Town of Cambridge before the time of winding up or dissolution of the Association and in default thereof by such judge of the relevant Supreme Court or such other court as may have or acquire jurisdiction in the matter.
- c) Where gifts to an association are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions.
- d) If the Association's endorsement as a Deductible Gift Recipient is revoked, any surplus of the following assets must be transferred to one or more funds, authorities or institutions identified pursuant to sub-rule 40(b):
  - i) gifts of money or property received by the Association for the principal purpose of promoting and advancing the Association's objects;

- ii) contributions described in items 7 and 8 of the table in section 30-15 of the ITAA97 received in relation to a fundraising event held for the purpose of promoting and advancing the Association's objects; and
  - iii) money received by the Association because of such gifts and contributions.
- e) The surplus assets referred to in sub-rule 40(a) must be transferred to one or more funds, authorities or institutions each of which must:
- i) have objects similar to the Association's objects;
  - ii) be a Deductible Gift Recipient; and
  - iii) prohibit distribution of its income and property among its members and directors or committee (if any) to an extent at least as great as is imposed on the Association by rule 3.
- f) The identity of the funds, authorities and institutions referred to in rule 40(a) must be decided by the Town of Cambridge.
- g) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions.

#### **INTERPRETATION OF THE CONSTITUTION**

42. Should any question arise as to the interpretation of this Constitution or of the by-laws rules or regulations which the Association is authorised and empowered to make, such questions shall be decided by the Board whose decision shall be final and binding.

#### **ALTERATION TO THE CONSTITUTION**

43. Subject to the prior written approval of the resolution by the Town, the Constitution of the Association may be altered added to or repealed at any General Meeting of the Association by a Special Resolution passed by the Members present at that meeting.