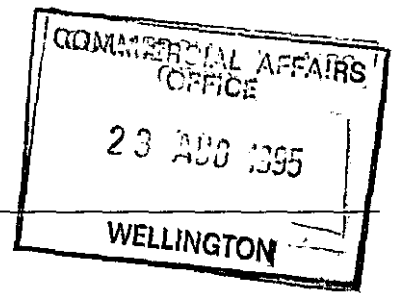


DATED: 23 August 1995



**THE CONSTITUTION OF
FOODSTORE PROPERTIES LIMITED**

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SOLICITORS
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THE CONSTITUTION OF FOODSTORE PROPERTIES LIMITED

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**THE CONSTITUTION OF
FOODSTORE PROPERTIES LIMITED**

PART A: INTRODUCTION

Interpretation

1. Defined terms

In this constitution:

1.1 The following expressions have the following meanings:

the Act means the Companies Act 1993;

the Company means Foodstore Properties Limited;

this constitution means this constitution as it may be altered from time to time in accordance with the Act;

special resolution means:

(a) subject to paragraph (b) of this definition, a resolution approved by a majority of 75 percent of shareholders entitled to vote and voting on the question;

(b) for the resolutions described in clause 5.2(a), a resolution approved by 100 percent of shareholders entitled to vote and voting on the question;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a non-ephemeral and visible form.

1.2 Expressions which are defined in the Act (whether in section 2, or elsewhere for the purposes of a particular subsection, section or sections) and not defined in clause 1.1 have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

2. Construction

In this constitution:

2.1 Headings appear as a matter of convenience and do not affect the interpretation of this constitution;

- 2.2 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.3 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 2.4 The Schedules form part of this constitution.

The relationship between this constitution and the Act

3. *Effect of the Act on this constitution*

The Company, the Board, each director, and each shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

4. *Effect of this constitution*

- 4.1 This constitution has no effect to the extent that it contravenes the Acts, or is inconsistent with it.
- 4.2 If a provision of this constitution is held by a body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair or affect the legality, validity or enforceability of the remaining provisions of this constitution. In the event of such a determination, the Company, the shareholders and entitled persons must adopt such reasonable and practical alternative course of lawful action as will most closely achieve the objects of the intended performance of the rights and obligations contained in the illegal, void or unenforceable provision.

5. *Shareholders may alter or revoke this constitution*

- 5.1 Subject to clause 5.2, the shareholders may alter or revoke this constitution by special resolution;
- 5.2 For the purposes of clause 5.1:
 - (a) the term "special resolution" in relation to the alteration or revocation of any provision relating to -
 - (i) the appointment or removal of directors or the powers of shareholders in connection therewith including without limitation clause 33;
 - (ii) paragraph (b) of the definition of special resolution in clause 1.1; and

(iii) this clause 5.2,

has the meaning set out in paragraph (b) of the definition of special resolution in clause 1.1;

(b) the term "special resolution" in relation to the alteration or revocation of any provision of this constitution other than the provisions specified in clause 5.2(a)(i) to (iii) has the meaning set out in paragraph (a) of the definition of special resolution in clause 1.1.

5.3 With the effects set out in clauses 5.4 to 5.6 inclusive the shareholders may by special resolution approve or ratify any act or omission which was, or is, or would otherwise be:

5.3.1 a breach of this constitution; or

5.3.2 a breach of, or non-compliance with, the Act,

including a breach of duty by any director or the board of the Company.

5.4 Subject to clauses 5.5 and 5.6 and the express terms of the resolution, and so far as is lawful, ratification or approval under clause 5.3 shall have the following effects:

5.4.1 it shall expunge the breach and validate the relevant act or omission;

5.4.2 an act or omission which is so ratified or approved shall be deemed not to be, nor to have been, a breach of the constitution nor of a duty of a director or the board; and

5.4.3 the ratification or approval shall not be an act that affects the rights attached to shares.

5.5 A resolution for ratification or approval under clause 5.3 shall as may be required by the Act but not otherwise, be deemed to be a resolution for alteration of the constitution as mentioned in section 106(1)(a) of the Act for the purposes of application in this constitution of sections 110 to 115 (minority buy out rights) of the Act.

5.6 Ratification or approval under clause 5.3 shall not exclude the rights under sections 117 and 174 of the Act of dissenting and prejudiced shareholders respectively to whom the acts or omissions subject to ratification or approval are materially prejudicial.

PART B: SHARES AND SHAREHOLDERS

Shares and issue of shares

6. *Company's shares*

At the time of registration, the Company has 1000 shares, in respect of which the liability of shareholders to the Company is limited to \$1.00 per share, when called in accordance with this constitution.

7. *Board to issue shares*

7.1 The Board may issue shares at any time, to any person, and in any number it thinks fit.

7.2 The Board may issue further shares that rank as to voting or distribution rights, or both, equally with or prior to any existing shares in the Company. Any such issue will not be treated as an action affecting the rights attached to the existing shares.

8. *Board need not comply with statutory pre-emptive rights*

If the Board issues shares that rank as to voting or distribution rights, or both, equally with or prior to any existing shares in the Company, the Board need not first offer those shares for acquisition to existing shareholders.

Share register

9. *Status of registered holder*

The Company may treat the registered holder of a share as the only person entitled to:

9.1 exercise the right to vote attaching to the share;

9.2 receive notices;

9.3 receive a distribution in respect of the share; and

9.4 exercise the other rights and powers attaching to the share.

10. *Trusts not to be entered on share register*

The Company must not enter any notice of a trust on the share register, whether that trust is express, implied or constructive.

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Transfer of shares

11. *Signed transfer to be delivered to Company*

Where shares are to be transferred, a form of transfer signed by the present holder of the shares, or by that holder's attorney, personal representative, or by any other person who may lawfully sign on behalf of that holder, must be delivered to the Company or an agent who maintains the share register. The transferee must sign the transfer form if the registration imposes a liability to the Company on the transferee.

12. *Shares transferred by entry on share register*

Shares shall be transferred by entry on the Company's share register of the name of the transferee which appears on the transfer form delivered to the Company or the Company's agent.

13. *Board may refuse or delay a share transfer in certain cases*

The Board may in its absolute discretion refuse or delay the registration of any transfer of shares if:

- 13.1 the holder of the shares has failed to pay the Company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with this constitution;
- 13.2 registration would impose a liability to the Company on the transferee and the transferee has not signed the transfer form;
- 13.3 the transfer is for more than one class of shares;
- 13.4 the transfer is not accompanied by such evidence as the Board may reasonably require to establish the right of the transferor to make the transfer;
- 13.5 the registration of the transfer would result in the transferor or the transferee holding less than 3,000 shares.

14. *Board must refuse a share transfer in certain cases*

The Board must refuse the registration of any transfer of shares if it is required to do so by law.

Calls, forfeiture and liens

15. *Board may make calls*

The Board may make calls on any shareholder for any money that is unpaid on that shareholder's shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those shares or any contract for the issue of those shares. The First Schedule governs calls on shares.

16. *Forfeiture of shares where calls or other amounts unpaid*

The Board may commence procedures in accordance with the First Schedule for forfeiture of any shares if the holder of those shares fails to pay:

16.1 a call, or an instalment of a call, on those shares; or

16.2 any amount that is payable under this constitution or the terms of issue of those shares or any contract for the issue of the shares.

17. *Company's lien*

The Company has a lien on shares, proceeds of sale of shares, and dividends on the terms set out in the First Schedule.

Acquisition of own shares

18. *Company may acquire and hold its own shares*

The Company may purchase or otherwise acquire shares issued by the Company and may hold those shares in accordance with the Act.

19. *Board may acquire shares in the Company on a non-proportional basis*

The Board may purchase or otherwise acquire shares issued by the Company from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

Redemption of shares

20. *Company may redeem shares*

20.1 The Company may redeem any one or more of its shares at its option for a consideration of \$1.00 each.

- 20.2 The Company may exercise an option to redeem shares issued by the Company in relation to one or more holders of shares in accordance with the Act.

Shareholder rights

21. *Share confers rights on shareholder*

Subject to the terms on which a share is issued, a share in the Company confers on the holder:

- 21.1 the right to one vote on a poll at a meeting of shareholders on any resolution including any resolution to:
- (a) appoint or remove a director (subject to clause 33), or an auditor;
 - (b) adopt a constitution;
 - (c) alter this constitution;
 - (d) approve a major transaction;
 - (e) approve an amalgamation under the Act; and
 - (f) put the Company into liquidation;
- 21.2 the right to an equal share in dividends authorised by the Board; and
- 21.3 the right to an equal share in the distribution of the Company's surplus assets.

22. *Statement of rights to be given to shareholders*

Where the Act requires, the Company must issue a statement of shareholder rights complying with the Act to any shareholder who asks for one.

23. *Company must obtain approval before altering shareholders' rights*

The Company must not take any action that changes the rights attached to shares unless that action has been approved by a special resolution of each interest group in accordance with the Act.

Distributions

24. Board may authorise distributions

The Board may authorise a distribution by the Company in accordance with the Act.

25. Board's power to authorise dividend is restricted

The Board must not authorise a dividend:

25.1 in respect of some but not all the shares in a class; or

25.2 that is of a greater value per share in respect of some shares than it is in respect of other shares of that class,

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share or under the contract for the issue of the share. Nothing in this clause prevents the Board issuing shares wholly or partly in lieu of dividend in accordance with the Act.

26. Shareholder may waive dividend

Notwithstanding clause 25, a shareholder may waive his or her entitlement to receive a dividend by giving a written notice to the Company signed by or on behalf of the shareholder.

27. Board may deduct from dividend amounts owed to Company

The Board may, at its discretion, deduct from any dividend payable to any shareholder any amount owed by the shareholder to the Company on account of any call or otherwise.

Meetings of shareholders

28. Company must hold annual meeting of shareholders

28.1 Subject to clause 28.2, the Board must call an annual meeting of shareholders to be held:

(a) once in each calendar year; and

(b) not later than 15 months after the date of the previous annual meeting of shareholders; and

- (c) not later than 6 months after the balance date of the Company.

However no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with clause 30.

- 28.2 The Company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.
- 28.3 The Company must hold the meeting on the date on which it is called by the Board to be held.

29. *Company may hold special meetings of shareholders*

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

- 29.1 may be called at any time by the Board; and
- 29.2 must be called by the Board on the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

30. *Written shareholders' resolution instead of holding a meeting*

- 30.1 A written resolution signed by at least 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, and who together hold at least 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders. Any such resolution may consist of several copies of the resolution, each signed by one or more shareholders. A copy of a resolution, which has been signed and sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.
- 30.2 The Company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed, within five working days of the resolution being passed.

31. *Proceedings at meetings of shareholders*

The Second Schedule governs the proceedings at meetings of shareholders.

PART C: DIRECTORS

Appointment and removal

32. *Number of directors*

The minimum number of directors shall be 2 and the maximum number of directors shall be 7. The Board may increase the maximum number of directors.

33. *Appointment and removal of directors*

33.1 Farmers' Mutual Investment Services Limited may appoint all of the directors, and may remove any director.

33.2 Appointment or removal of a director under clause 33.1 shall be by written notice to the Company and shall take effect from the date specified in that notice.

34. *Shareholding qualification for directors*

There is no shareholding qualification for directors.

Chairperson

35. *Directors to elect chairperson of the Board*

The directors may elect one of their number as chairperson of the Board.

36. *Chairperson to hold office on certain terms*

The chairperson of the Board holds that office until he or she vacates office or the directors elect a chairperson in his or her place.

Vacation of office

37. *Office of director vacated in certain cases*

The office of director is vacated if the person holding that office:

37.1 dies; or

37.2 becomes disqualified from being a director pursuant to section 151 of the Act; or

37.3 resigns that office in accordance with clause 38; or

37.4 is removed from office in accordance with this constitution.

38. *Directors' resignation procedure*

A director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

Management of the Company

39. *Board to manage Company*

The Company's business and affairs must be managed under the direction or supervision of the Board, except to the extent that the Act or this constitution provides otherwise.

40. *Board has powers necessary to manage Company*

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this constitution provides otherwise.

41. *Special resolutions necessary for major transactions*

The Company must not enter into a major transaction unless the transaction is:

41.1 approved by a special resolution of shareholders; or

41.2 contingent on approval by a special resolution of shareholders.

Proceedings of the Board

42. *Meetings of the Board*

The Third Schedule governs the proceedings at meetings of the Board. The Third Schedule to the Act does not apply to proceedings of the Board.

43. *Written resolutions of Board permitted*

A resolution in writing signed or assented to by a majority of the directors then entitled to receive notice of a meeting of the Board (or their alternate directors) shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

44. *Written resolutions may be in counterparts*

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the directors (or their alternate directors). A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

Delegation of powers

45. *Restriction on Board's right to delegate its powers*

The Board may delegate to a committee of directors, a director, an employee of the Company or any other person, any one or more of its powers other than its powers under any of the sections of the Act set out in the Second Schedule to the Act.

46. *Board delegates to comply with regulations*

In exercising the Board's delegated powers, any committee of directors, director, employee or employees of the Company or any other person must comply with any regulations that the Board may impose.

47. *Committee proceedings*

The provisions of this constitution relating to proceedings of the Board shall, insofar as they are not altered by regulations made by the Board, also apply to proceedings of any committee of directors.

Interested directors

48. *Directors must disclose their interests*

As soon as a director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, then unless the Act provides otherwise or all entitled persons have agreed to or concur in the Company entering into the transaction, that director must cause to be entered in the interests register, and disclose to the Board:

48.1 the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or

48.2 the nature and extent of his or her interest (if the monetary value of the interest cannot be quantified).

49. *General disclosure in certain cases will suffice*

For the purposes of clause 48 a general notice entered in the interests register and disclosed to the Board to the effect that a director:

49.1 is a shareholder, director, officer, or trustee of another named Company or other person; and

49.2 is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other Company or person,

shall be a sufficient disclosure of that interest in relation to such transactions.

50. *Failure to disclose does not affect validity of transaction*

Any failure by a director to comply with clause 48 does not affect the validity of a transaction entered into by the Company or the director. However, the transaction may be avoided under clause 51.

51. *Company may avoid transaction if director interested*

Where the Company enters into a transaction in which a director is interested, the Company, if it is permitted to do so by the Act in the circumstances, may avoid that transaction in accordance with the Act. However, if all entitled persons have agreed to or concur in the Company entering into such a transaction then this clause will not apply.

52. *Interested director may vote*

A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:

52.1 vote on the transaction or a matter relating to the transaction;

52.2 attend, form part of the quorum, and speak at a meeting of directors at which the transaction or a matter relating to the transaction arises,

52.3 sign a document relating to the transaction on behalf of the Company; and

52.4 do any other thing as a director in relation to the transaction, as if he or she were not interested in the transaction.

Remuneration

53. Board's power to authorise remuneration and other benefits

The Board may authorise:

- 53.1 the payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity, including managing director;
- 53.2 the payment by the Company to a director of compensation for loss of office;
- 53.3 the making of loans by the Company to a director;
- 53.4 the giving of guarantees by the Company for debts incurred by a director; and
- 53.5 the entering into of a contract to do any of the things set out in this clause 53,

in accordance with the Act.

Alternate directors

54. Directors may appoint and remove alternate directors

Every director may:

- 54.1 appoint any person who is not disqualified by the Act from being a director to act as an alternate director in his or her place; and

- 54.2 remove that person from that office,

by giving written notice to that effect to the Company.

55. Alternate director has powers of appointor

While acting in the place of the director who appointed him or her, the alternate director has, and may exercise and discharge, all the powers, rights, duties and privileges of that director (including the right to sign any document, including a written resolution, and to act as chairperson, but excluding the right to appoint an alternate). He or she is also subject to the same terms and conditions of appointment as that director, except in respect of remuneration.

56. *Termination of appointment of alternate director*

The appointment of an alternate director terminates automatically if the director who appointed him or her ceases to be a director.

Managing director

57. *Board may appoint managing director*

The Board may appoint one or more directors to the office of managing director for such period and on such terms as the Board thinks fit. Subject to the terms of any agreement entered into between the Board and the director concerned, the Board may revoke the appointment. The appointment of a managing director shall terminate automatically if he or she ceases to be a director.

58. *Remuneration of managing director*

A managing director will receive in addition to remuneration and benefits for services as a director such remuneration and benefits as the Board may determine in accordance with clause 53.

59. *Powers conferred on managing director*

Subject to clause 45, the Board may:

- 59.1 confer on a managing director any of the powers exercisable by the Board; and
- 59.2 without affecting the powers of the managing director to act as a member of the Board, impose such terms and conditions and such restrictions as the Board thinks fit; and
- 59.3 alter or revoke any of the powers it confers under this clause 59.

60. *Managing director has no power to appoint alternate managing director*

The power to appoint an alternate director conferred on directors by this constitution does not confer on any managing director the power to appoint an alternate managing director.

PART D: GENERAL

Change of Company name

61. *A director may apply to change Company name*

A director may apply to the Registrar of Companies to change the name of the Company if the Board has approved the director doing so.

Indemnity and insurance for directors and employees

62. *Company may indemnify directors and employees for certain liabilities*

The Company is authorised to indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

63. *Company may effect insurance for directors and employees*

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

Execution of contracts

64. *Manner of execution*

A contract or other enforceable obligation may be entered into by the Company as follows:

- 64.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by -
- (a) two or more directors; or
 - (b) a director whose signature must be witnessed; or
 - (c) the person for the time being holding the office of secretary of the Company together with a director, whose signatures must be witnessed; or

(d) one or more attorneys appointed by the Company in accordance with clause 65;

64.2 an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and

64.3 an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

65. *Company may appoint attorneys*

The Company may, by an instrument in writing executed in accordance with clause 64.1, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

Removal of Company from register

66. *Directors may remove Company from register*

If the Company:

66.1 has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or

66.2 has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the Board may request the Registrar to remove the Company from the New Zealand register.

Secretary

67. *Appointment of Secretary*

The Board may appoint a Secretary of the Company for such term, at such remuneration and upon such conditions as the Board thinks fit, and may remove any Secretary so appointed, subject to the terms of any agreement with the Secretary.

68. *Powers and duties of Secretary*

Subject to clauses 45 and 46 the Board may confer on the Secretary, and alter or revoke, such powers on such terms and conditions, as the Board thinks fit, but so that shareholders wishing to communicate with the Board may do so through correspondence sent to the Secretary.

FIRST SCHEDULE
CALLS, FORFEITURE AND LIENS

Interpretation

1. *Clause references*

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

Calls on shares

2. *Shareholders must pay calls*

Every shareholder on receiving at least 10 working days' written notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any shares that he or she holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.

3. *Call made when Board resolution passed*

A call is regarded as having been made at the time when the Board resolution authorising the call was passed.

4. *Joint holders are jointly and severally liable*

The joint holders of a share are jointly and severally liable to pay all calls for that share.

5. *Unpaid calls will accrue interest*

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.

6. *Amounts payable under terms of issue treated as calls*

Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of a share or under a contract for the issue of a share, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant

provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

7. *Board may differentiate between holders as to calls*

On the issue of shares, the Board may differentiate between the holders of shares as to the amount of calls to be paid and the times of payment.

8. *Board may accept payment in advance for calls*

Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any share or shares of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.

Forfeiture of shares

9. *Directors may by notice require forfeiture of shares if calls unpaid*

The directors may during the time that a call, instalment, or other amount remains unpaid on a share, serve a notice on the shareholder requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest.

10. *Notice of forfeiture must satisfy certain requirements*

The notice served on a shareholder under clause 9 must specify a date not earlier than 10 working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the shareholder.

11. *Failure to comply with notice may lead to forfeiture*

Where a valid notice under clause 9 is served on a shareholder and the shareholder fails to comply with the notice, then the Board:

11.1 may resolve that any share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited; and

11.2 may cancel any share certificate relating to any share which has been forfeited pursuant to any such resolution.

12. *Board may deal with forfeited share*

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the share is paid.

13. *Shareholder whose shares are forfeited loses rights*

A person whose shares have been forfeited immediately ceases to be a shareholder in respect of those shares notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount he or she owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those shares.

14. *Director's statutory declaration is conclusive*

A statutory declaration given by a director that a share has been duly forfeited on a stated date shall be conclusive evidence of the facts stated in that declaration against any person claiming an entitlement to that share.

15. *Company may sell forfeited share*

The Company may receive consideration, if any, given for a forfeited share following a sale or disposition, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and register that person as the holder of the share. That person shall not be bound to see to the application of the purchase money, if any, nor shall the title to the share be affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that share.

Liens

16. *Company's lien*

The Company shall have a lien, ranking in priority over all other equities, on:

- 16.1 all shares registered in the name of a shareholder (whether solely or jointly with others);
- 16.2 the proceeds of sale of such shares; and
- 16.3 all dividends authorised in respect of such shares,

for:

- 16.4 unpaid calls and instalments payable in respect of any such shares;
- 16.5 interest on any such calls or instalments;
- 16.6 sale expenses owing to the Company in respect of any such shares; and
- 16.7 any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of the shares of a shareholder, whether the period for payment has arrived or not.

17. *Waiver of lien*

Registration of a transfer of shares on which the Company has any lien will operate as a waiver of the lien, unless the Company first gives notice to the contrary to the transferee.

18. *Company may sell share on which it has a lien*

The Company may sell a share on which it has a lien in such manner as the Board thinks fit, where:

- 18.1 the lien on the share is for a sum which is presently payable; and
- 18.2 the registered holder of the share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 14 days after the Company has served him or her with written notice demanding payment of that sum.

19. *The Company may transfer share and apply proceeds*

- 19.1 The Company may receive consideration given for a share sold under clause 18, and may execute a transfer of the share in favour of the person to whom the share is sold, and register that person as the holder of the share discharged from all calls due prior to the purchase. The purchaser shall not be bound to see to the application of the purchase money, and his or her title to the shares shall not be affected by any irregularity or invalidity in the proceedings relating to the sale.
- 19.2 The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the share before the sale) be paid to the person entitled to the shares at the date of sale.

SECOND SCHEDULE
PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

Interpretation

1. Construction

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

Notice

2. *Written notice must be given to shareholders, directors and auditors*

Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the Company not less than 10 working days before the meeting.

3. *Notice must state nature of business*

The notice must state:

- 3.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- 3.2 the text of any special resolution to be submitted to the meeting.

4. *Irregularities in notice may be waived*

Any irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or if all such shareholders agree to the waiver.

5. *Company's accidental failure to send notice does not invalidate meeting*

If the Company accidentally fails to send notice of a meeting to any person entitled to that notice, the failure to send the notice will not invalidate the proceedings at that meeting.

6. *Notice of an adjournment*

- 6.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.
- 6.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

Meeting and quorum

7. *Methods of holding meetings*

A meeting of shareholders may be held either:

- 7.1 by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 7.2 by means of an audio, or audio and visual, communication by which all shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting.

The Company is not required to hold meetings of shareholders in the manner specified in clause 7.2. Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.

8. *Business to be transacted only if a quorum is present*

Subject to clauses 10 and 11, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

9. *Quorum for shareholders' meeting*

A quorum for a meeting of shareholders is present if 10 or more shareholders are present.

10. *Meeting convened at shareholders' request dissolved if no quorum*

If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding shares together carrying at least 5 percent of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

11. *Other meetings to be adjourned if no quorum*

Subject to clause 10 if a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present will constitute a quorum.

Chairperson

12. *Chairperson of Board to be chairperson of meeting*

The chairperson of the Board, if one has been elected by the directors and is present at a meeting of shareholders, will chair the meeting.

13. *Directors may elect chairperson if chairperson of Board not available*

If no chairperson of the Board has been elected or, if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the directors present may elect one of their number to be chairperson of the meeting.

14. *As a last resort shareholders may elect chairperson*

If at any meeting of shareholders, no director is willing to act as chairperson or if no director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

15. *Chairperson's power to adjourn meeting*

The chairperson of a meeting at which a quorum is present:

15.1 may adjourn the meeting with the consent of the shareholders entitled to attend and vote at that meeting; and

15.2 must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

Voting

16. Voting by show of hands or voice vote at meeting

In the case of a meeting of shareholders held under clause 7.1, unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

17. Voting by voice if audio-conference meeting

In the case of a meeting of shareholders held under clause 7.2, unless a poll is demanded, voting at the meeting will be by the shareholders signifying individually their assent or dissent by voice or by such other manner as the chairperson may decide.

18. Votes of joint holders

Where two or more persons are registered as the holders of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

19. Shareholder loses voting rights if calls unpaid

A shareholder is not entitled to vote at any meeting of shareholders other than a meeting of an interest group, unless all sums due to the Company by that shareholder in respect of any share registered in that shareholder's name have been paid.

20. Chairperson allowed casting vote

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson of the meeting is entitled to a casting vote.

21. Chairperson's declaration of result

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

Polls

22. Poll may be demanded by shareholders

At a meeting of shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

22.1 at least 5 shareholders having the right to vote at the meeting; or

22.2 a shareholder or shareholders having the right to exercise at least 10 percent of the total votes to be cast on the business to be transacted at the meeting; or

22.3 a shareholder or shareholders holding shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10 percent of the total amount paid up on all the shares that confer that right.

23. *Time at which polls to be taken*

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

24. *Counting votes cast in a poll*

If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

25. *Result of a poll to be treated as resolution of the meeting*

The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

26. *Proxy allowed to demand a poll*

The instrument appointing a proxy to vote at a meeting confers authority to demand, or join in demanding a poll, and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

Shareholder proposals

27. *Shareholder proposals by written notice*

A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.

28. *Board to give notice of proposal at Company's expense*

If the Board receives the notice at least 20 working days before the last day on which notice of the relevant meeting of shareholders is required to

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be given by the Board, the Board must, at the expense of the Company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

29. *Board to give notice of proposal at shareholder's expense*

If the Board receives the notice at least 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

30. *Board may give notice of proposal on short notice*

If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if reasonably practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

31. *Proposing shareholder may include statement*

If the directors intend that shareholders may vote on the proposal by proxy, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

32. *Board may exclude statement in some cases*

The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous or vexatious.

33. *Shareholder to give security for costs for proposal with short notice*

Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

Proxies

34. Proxies permitted

A shareholder may exercise the right to vote by being present in person or represented by proxy.

35. Proxy to be treated as shareholder

A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

36. Appointment of proxy must be in writing and specify restrictions

A proxy must be appointed by a notice in writing that is signed by the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months. A proxy need not be a shareholder of the Company.

37. Notice of proxy to be produced at least 48 hours before meeting

No proxy is effective in relation to a meeting unless a copy of the notice of appointment is sent to the registered office, or such other place within New Zealand as is specified for that purpose in the notice convening the meeting, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of the power of attorney must accompany the notice.

38. Form of notice of proxy

A notice appointing a proxy shall be in the form set out in the Fourth Schedule or in a form as near to it as circumstances allow, or in such other form as the Board may direct.

39. Vote by proxy valid where Company not notified before meeting of disqualified proxy

Where:

39.1 the shareholder has died or become incapacitated; or

39.2 the proxy, or the authority under which the proxy was executed, has been revoked; or

39.3 the share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

Postal votes

40. *Postal votes are not permitted*

A shareholder may not exercise the right to vote at a meeting by casting a postal vote.

Corporate representatives

41. *Corporations may act by representative*

A body corporate which is a shareholder may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

Minutes

42. *Board must keep minutes of proceedings*

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

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THIRD SCHEDULE
PROCEEDINGS OF THE BOARD

Notice of meeting

1. *Director or employee under director's instructions to convene meetings*

A director, or an employee of the Company at the request of a director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

2. *Notice to contain certain details*

The notice of meeting must include the date, time and place of the meeting and the matters to be discussed.

3. *Period of notice required to be given to directors*

At least 1 days' notice of a meeting of the Board must be given to every director who is in New Zealand. If a director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number, telephone number or address to which notices are to be sent during his or her absence, then notice must be given to that director. Otherwise notice need not be given to any director for the time being absent from New Zealand. However, if he or she has an alternate director who is in New Zealand, then notice must be given to that person. Where the chairperson or, in the chairperson's absence from New Zealand, any other director believes it is necessary to convene a meeting of the Board as a matter of urgency, shorter notice of the meeting of the Board may be given, so long as at least 1 hour's notice is given.

4. *Method of notice*

The notice of meeting must be sent to the address or facsimile number or given by telephone to the telephone number which the director provides to the Company for that purpose, but if an address or facsimile number or telephone number is not provided, then to his or her last place of employment or residence or facsimile or telephone number known to the Company.

5. *Directors may waive irregularities in notice*

Any irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

Meeting and quorum

6. *Methods of holding meetings*

A meeting of the Board may be held either:

- 6.1 By a number of directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 6.2 By means of audio, or audio and visual, communication by which a quorum of directors participating can simultaneously hear each other throughout the meeting.

7. *Quorum for Board meeting*

The quorum necessary for the transaction of business at a meeting of the Board is two directors. No business may be transacted at a meeting of the Board unless a quorum is present.

8. *Meeting adjourned if no quorum*

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson will adjourn the meeting to a specified day, time and place, the day being within the next 7 days. If no such adjournment is made the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present will constitute a quorum.

Chairperson

9. *Chairperson to chair meetings*

The chairperson of the Board will chair all meetings of the Board at which he or she is present.

10. *Directors may elect chairperson of meeting if chairperson of Board is not present*

If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, then the directors present may elect one of their number to be chairperson of the meeting.

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Voting

11. *Voting on resolutions*

Each director has one vote. A resolution of the Board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it. A director present at a meeting of the Board may abstain from voting on a resolution, and any director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

12. *Chairperson does not have casting vote*

In the case of an equality of votes, the chairperson of directors does not have a casting vote.

Minutes

13. *Board must keep minutes of proceedings*

The Board must ensure that minutes are kept of proceedings at meetings of the Board and that a record is kept of all written resolutions of directors. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

Other proceedings

14. *Board may regulate other proceedings*

Except as set out in this Schedule, the Board may regulate its own procedure.



**FOURTH SCHEDULE
FOODSTORE PROPERTIES LIMITED**

PROXY FORM

SECTION 1: SHAREHOLDER DETAILS (please print clearly)

Full name:

Full address:

If shares are held jointly, enter details of other joint holders:

Full name:

Full address:

Full name:

Full address:

SECTION 2: APPOINTMENT OF PROXY

(Please note that if the shares are held jointly, the appointment made in this section is made on behalf of each joint holder).

I appoint

Full name:

Full address:

as my proxy to exercise my vote at the *[annual/special] meeting of shareholders of the Company to be held on *[date], and at any adjournment of that meeting. If the person I have appointed is unable to be my proxy then I appoint

Full name:

Full address:



SECTION 3: VOTING INSTRUCTIONS

(Please note that if the shares are held jointly, the voting instructions given in this section are given on behalf of each joint holder).

I direct my proxy to vote in the following manner:

	<i>(Tick the box that applies)</i>	
	For	Against
*[General Business]		
1.	<input type="checkbox"/>	<input type="checkbox"/>
2.	<input type="checkbox"/>	<input type="checkbox"/>
3.	<input type="checkbox"/>	<input type="checkbox"/>
*[Special Business]		
*[4. Identify resolution]	<input type="checkbox"/>	<input type="checkbox"/>

Signed by each shareholder named in Section 1

Date:

NOTES

1. As a shareholder you may attend the meeting and vote, or you may appoint a proxy to attend the meeting. A proxy need not be a shareholder of the Company.
2. If you are joint holders of shares each of you must sign this proxy form. If you are a Company this proxy form must be signed on behalf of the Company by a person acting under the Company's express or implied authority.



3. For this proxy form to be valid, you must complete it and send it to **[addressee]* at **[full postal address]* so as to ensure that it is received by **[time]* on **[day and date]*. If it has been signed under a power of attorney please send a copy of the power of attorney and a signed certificate of non-revocation of the power of attorney with this proxy form.
4. If you return this form without directing the proxy how to vote on any particular matter, the proxy will vote as he or she thinks fit.




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FOODSTORE PROPERTIES LIMITED

**CERTIFICATE AS TO CONSTITUTION
(Section 12(1)(f) of the Companies Act 1993)**

Date: *23 August 1995*

I, Kathryn Ann Rogers of Wellington, Solicitor the applicant for registration of the proposed company under Part II of the Companies Act 1993, certify that the attached document, the pages of which have been initialled by me, is the constitution of the proposed company.



K.A. Rogers