

DATED: 2<sup>nd</sup> April 2015

BETWEEN:  
**EUMUNDI AND DISTRICT HISTORICAL  
ASSOCIATION INC. ABN 68 998 532 194**

**EHA**

AND:  
**EUMUNDI AND DISTRICT COMMUNITY  
ASSOCIATION INC. ABN 23 186 186 285**

**EDCA**

AND:  
**EUMUNDI CHAMBER OF COMMERCE INC. ABN  
65 835 023 587**

**ECC**

## **MEMBERS' AGREEMENT**

**TONY SOWDEN**  
**Lawyer**  
PO Box 375  
EUMUNDI QLD 4562  
Phone: 07 5442 7088  
Facsimile: 07 5335 1678  
Email: [tony@sowden.com.au](mailto:tony@sowden.com.au)  
Our Ref: AGS:0094

5/03/2015

## TABLE OF CONTENTS

<b>1.</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
	1.1 Definitions .....	1
	1.2 Interpretation.....	4
<b>2.</b>	<b>RATIFICATION AND PRELIMINARY MATTERS .....</b>	<b>4</b>
	2.1 Commencement of Agreement.....	4
	2.2 Membership, Directorship and Other Matters.....	4
<b>3.</b>	<b>BOARD OF DIRECTORS .....</b>	<b>5</b>
	3.1 Board .....	5
	3.2 Composition .....	5
	3.3 Right of Appointment .....	5
	3.4 Right of Appointment .....	5
	3.5 No Alternate Directors .....	5
	3.6 Chair .....	5
	3.7 Term.....	6
	3.8 Chair's Responsibilities.....	6
	3.9 Removal.....	6
	3.10 Rotational Appointment. ....	6
	3.11 Quorum .....	6
	3.12 Right Exercisable.....	6
	3.13 Casting Vote .....	6
	3.14 No Entitlement .....	6
	3.15 Other Capacity.....	6
	3.16 Directors' Meetings .....	6
	3.17 Decision Making by Directors .....	7
<b>4.</b>	<b>CAPITAL CONTRIBUTION .....</b>	<b>7</b>
	4.1 Working Capital .....	7
	4.2 Property .....	7
	4.3 Contributions of Capital .....	7
<b>5.</b>	<b>MANAGEMENT OF THE COMPANY.....</b>	<b>8</b>
	5.1 Appointment of General Manager .....	8
	5.2 Responsibility.....	8
	5.3 Approval.....	8
	5.4 Annual Program.....	8
	5.5 Budget of Capital Expenditure.....	8
	5.6 Duties.....	8
	5.7 Information .....	9
	5.8 Visiting and Inspecting.....	9
	5.9 Requirements .....	10
<b>6.</b>	<b>COMMITMENT TO THE COMPANY AND BUSINESS.....</b>	<b>10</b>
	6.1 Requirements .....	10
	6.2 Liability Generally .....	11
	6.3 Audit.....	11
<b>7.</b>	<b>COMPANY POLICIES .....</b>	<b>11</b>
	7.1 Appointments.....	11
	7.2 Common Facilities .....	11
	7.3 Distribution of Income .....	11
	7.4 Income Application Policy.....	11
	7.5 Matters to be Referred to Members.....	12
	7.6 Action Pending Approval by Members .....	12
	7.7 Voting by Representatives.....	12
<b>8.</b>	<b>TERMINATION.....</b>	<b>12</b>
	8.1 Termination.....	12
	8.2 Rights and Obligations.....	12
	8.3 Surviving Clauses .....	12
<b>9.</b>	<b>RESOLUTION OF DISPUTES .....</b>	<b>12</b>
	9.1 Dispute Mediation Procedure .....	12
	9.2 Continuity.....	14

This Agreement is made the 20<sup>th</sup> day of April, 2015

BETWEEN: **EUMUNDI AND DISTRICT HISTORICAL ASSOCIATION INC.** ABN 68 998 532 194 of care of PO Box 226 Eumundi, Queensland, 4562

**EHA**

AND: **EUMUNDI AND DISTRICT COMMUNITY ASSOCIATION INC.** ABN 23 186 186 285 of care of PO Box 193 Eumundi, Queensland, 4562

**EDCA**

AND: **EUMUNDI CHAMBER OF COMMERCE INC.** ABN 65 835 023 587 of care of PO Box 145 Eumundi, Queensland, 4562

**ECC**

## **BACKGROUND**

- A. The Members have agreed that the Company will act as the vehicle for the conduct of the Activities.
- B. The Members are the only members of the Company.
- C. The Members wish to define and regulate their Rights and Obligations in the conduct of the affairs of the Company.

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement unless the context or subject matter otherwise require:

**Activities** means the various current activities or ventures described in Item 5) of the Reference Schedule and/or such other activities from time to time carried on by the Company in the furtherance of the Company's Objects;

**Agreement** means this agreement, (including the recitals, schedules, appendices and exhibits to it), as it may later be amended or supplemented by the parties in writing;

**Agreement Date** means the date specified above the parties' names on page 1 of this Agreement, or if not specified in that place, the date of execution by the last party to execute this Agreement;

**Annual Program** means the Annual Program, as developed and approved by the Board in accordance with clause 5.4 for carrying out the Activities;

**ASIC** means the Australian Securities & Investments Commission;

**Authorised Representative** means:

- (a) in respect of a Member which is a corporation:
  - (i) a company secretary or director or any officer of the corporation whose title or office includes the words manager or director; or
  - (ii) a person acting with the title or in the office of manager or director; or

- (iii) where the context requires, a natural person who is authorised under section 250D of the Corporations Act to represent that Member at general meetings of the Company; and
- (b) in respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative.

**Board** means the board of directors of the Company and **Board meeting** has a corresponding meaning;

**Business Address** means the address or addresses from which the Company's operations (including the Activities) are carried on from time to time;

**Business Day Location** means the city or town set out in Item 6) of the Reference Schedule;

**Business Records** means all books of account, accounting records, records and data of all kinds and all other documents relating to the Company's operations (including the Activities) excluding statutory and/or ASIC records;

**Capacity** means severally any one or more of a promoter, shareholder, director, partner, joint venturer, agent, employee, independent contractor, consultant, adviser, trustee, beneficiary, unitholder, lender, supplier, grantor, licensor, franchisor, creator, owner or part owner or any other capacity whatsoever;

**Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, Right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

**Commencement Date** means the date on which this Agreement takes effect, irrespective of the Agreement Date, being the date specified in Item 1) of the Reference Schedule;

**Company** means **EUMUNDI COMBINED COMMUNITY ORGANISATION LIMITED** ACN 133 941 278;

**Company Records** means the common seal, certificate of incorporation, register of members, directors, managers and secretaries, minute books and all other records which the Company is required to keep by the *Corporations Act*;

**Company's Objects** means the objects for the Company's formation and the application of its income and property, as provided in the Constitution;

**Constitution** means the constitution of the Company in force from time to time;

**Corporations Act** means any law relating to the incorporation, regulation and affairs in general of corporations in Australia, and includes the *Corporations Act 2001 (Cth)* or other statutes applicable to a relevant corporation;

**Directors** means the persons from time to time constituting the Board (being, as at the Agreement Date, the persons set out in the Director Schedule), **Director** means any one of them and **Directorship** has a corresponding meaning;

**Director Schedule** means the schedule contained in Item 3) of the Reference Schedule containing particulars of the Directors and their corresponding Related Members as at the Agreement Date;

**Event of Force Majeure** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it including (without limitation):

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;

- (c) an act of a government or a Government Authority;
- (d) an act of God; or
- (e) a storm, tempest, fire, flood, earthquake or other natural calamity,

and **Force Majeure** has a corresponding meaning;

**Financial Year** means a period of 12 consecutive calendar months commencing on 1 July in each year;

**General Manager** means the person (if any) appointed by the Company from time to time to manage the Activities and the general administration of the Company;

**Government Authority** means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them;

**Income Application Policy** means the policy promulgated by the Members from time to time concerning the application of the net income of the Company, which policy as at the Commencement Date is as set out in clause 7.4;

**Intellectual Property** means any intellectual or industrial property, including (without limitation):

- (a) any patent, trademark or service mark, copyright, registered design, trade secret or confidential information; or
- (b) any licence or other Right to use or to grant the use of any of the above or to be the registered proprietor or user of any of them;

**Interest Rate** means a rate of interest per annum which is two percentage points higher than the rate (expressed as a percentage per annum on a yield to maturity basis) stated by the Company's bank from time to time as the small business indicator rate for business borrowings of more than \$100,000;

**Liabilities** means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatsoever description;

**Member Schedule** means the schedule set out in Item 2) of the Reference Schedule containing details of the identity of the Members as at the Agreement Date;

**Members** means EHA, EDCA and ECC collectively as the only members of the Company, **Member** means any one of them and **Membership** has a corresponding meaning;

**Notice** means a written notice, consent, approval, direction, order or other such written communication;

**Notice Address** means in respect of a party:

- (a) the address, facsimile number or email address specified as such in Item 4) of the Reference Schedule; or
- (b) where a party gives Notice to all other parties of another address, facsimile number or email address, the last such address, facsimile number or email address so notified;

**Obligation** means any legal, equitable, contractual, statutory or other Obligation, agreement, covenant, commitment, duty, undertaking or liability;

**Reference Schedule** means the schedule described as such immediately preceding the execution page of this Agreement;

**Related Member** means the Member appointing a particular Director to the Board (and vested with the power of both appointment and removal pursuant to clause 3) identified in the Director Schedule; and

**Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

## 1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## 2. RATIFICATION AND PRELIMINARY MATTERS

### 2.1 Commencement of Agreement

Irrespective of the Agreement Date, this Agreement will be deemed to commence on the Commencement Date and will continue to have full force and effect until terminated in accordance with clause 8.

### 2.2 Membership, Directorship and Other Matters

The Members acknowledge and agree that, as at the Commencement Date:

- (a) they are the only Members;

- (b) each Member's Membership has been validly established and properly entered in the Company Records;
- (c) the Directors are the only directors of the Company and have been duly and validly appointed in accordance with the Constitution and the *Corporations Act*, and to the extent necessary each Director's appointment complies in all respects with the requirements of the *Corporations Act*;
- (d) despite that the appointment of the Directors to the Board occurred prior to the Commencement Date they (and each of them) will nevertheless be deemed to have been appointed by a Related Member pursuant to clause 3;
- (e) if a Director has any objection to having been deemed to have been appointed by a Related Member by virtue of subclause 2.2(d), then that Director must immediately give the Related Member a Notice setting out the basis of the Director's objection and will, if required to do so by the Related Member, resign forthwith as a Director.

### 3. **BOARD OF DIRECTORS**

#### 3.1 **Board**

The Board is responsible for the management and administration of the Activities and the affairs of the Company generally.

#### 3.2 **Composition**

The Board will be comprised of the Directors, each of whom has been appointed (or is deemed to have been appointed) by a Related Member. The maximum or minimum number of Directors must not be increased or decreased otherwise than in accordance with clause 7.5.

#### 3.3 **Right of Appointment**

- (a) Each Member will have a continuing Right during the subsistence of this Agreement to have its interest as Member represented on the Board by two Directors (and with effect from the Commencement Date, this Right will be deemed to have been satisfied by clause 2.2(d), but subject to clause 2.2(e)).
- (b) For the avoidance of doubt there will be a maximum of six (6) Directors, subject to the quorum position in clause 3.11, provided that should the Members agree to change the number of Directors there must always be an equal number of Directors representing each Member.

#### 3.4 **Right of Appointment**

The power to appoint a Director under this clause will include a Right to remove a person so appointed at any time by a Related Member and to appoint a substitute Director. Any appointment or removal of a Director will be by Notice to the Company and signed by the Related Member appointing or removing that Director, and will become effective upon service on the Company of the Notice.

#### 3.5 **No Alternate Directors**

Despite any provision of the Constitution to the Contrary, no Member will be entitled at any time to appoint a person to act as an alternate to that Member's appointed Directors or either of them.

#### 3.6 **Chair**

Subject to clauses 3.7 and 3.10, the Directors must appoint a Director as chair of the Board from time to time.

### 3.7 **Term**

The appointment under clause 3.6 may be a standing appointment but the term of the chair's appointment will be for a maximum period of one (1) year and rotated annually in accordance with clause 3.10.

### 3.8 **Chair's Responsibilities**

The chair appointed in accordance with clause 3.6 must, unless the Members otherwise agree:

- (a) chair Board meetings and general meetings of the Company; and
- (b) be the spokesperson for the Company.

### 3.9 **Removal**

If the chair ceases to be a Director (for any reason) or is removed from the office of chair, the Board must appoint a new chair. If a chair ceases to be a Director or is removed prior to the expiry of the term for which that person was originally appointed, then the Member originally appointing that person as Director will have the Right to appoint a substitute chair, but only for the then remaining balance of the term.

### 3.10 **Rotational Appointment.**

The Members will alternate the Right to appoint a chair on a term by term basis.

### 3.11 **Quorum**

There will be a quorum at any Board meeting if there are present three (3) Directors, each of whom is appointed by a different Member.

### 3.12 **Right Exercisable**

Except as may otherwise be provided for in this Agreement or in the Constitution, the Rights vested in or exercisable by the Board under the Constitution will be exercised by the Directors present at a duly constituted Board meeting.

### 3.13 **Casting Vote**

In the event of an equality of votes at a Board meeting, the chair will not have a second or casting vote in addition to the chair's deliberative vote.

### 3.14 **No Entitlement**

Subject to clauses 3.14 and 8.5, the Directors will not be entitled to any directors' fees but will be entitled to reimbursement for any reasonable costs and expenses incurred by them.

### 3.15 **Other Capacity**

Regardless of their appointment as Director, a Director will be entitled to receive remuneration or reimbursement of expenses or costs when acting in a Capacity other than as a Director, including (without limitation) when acting in the Capacity as an employee, agent or servant of or consultant to the Company.

### 3.16 **Directors' Meetings**

Until otherwise resolved by the Board, Board meetings will be held at least quarterly. In addition to any Notice to be given to the Directors under the Constitution, each Director must receive in respect of each Board meeting no later than five (5) days prior to it:

- (a) a written agenda listing matters for discussion and proposed resolutions together with appropriate background information;
- (b) current financial statements in accordance with clause 5.7(a);



- (c) reports on:
- (i) the Activities' trading performance in the period since the last Board meeting;
  - (ii) potential opportunities; and
  - (iii) such other information and material as the Board may require,

provided that if any Director does not receive any of the information or material to be provided under this clause the Directors may, with the concurrence of that Director, agree to proceed with the Board meeting and any resolutions passed at that Board meeting will be valid and binding.

### 3.17 **Decision Making by Directors**

Despite any fiduciary duty, principle of general law or provision of the *Corporations Act* or the Constitution, any Director may make a decision in the interests of his or her Related Member alone, without being required to have regard to:

- (a) the interests of any other Members; or
- (b) the interests of the Members as a whole,

but this clause will not operate to relieve a Director from any other duty, Liability or Obligation owed by the Director to the Company..

## 4. **CAPITAL CONTRIBUTION**

### 4.1 **Working Capital**

The Members must ensure that the Company has sufficient working capital to conduct the Activities under each Annual Program. Appropriate working capital is to be maintained when setting the Annual Program within the scope of the approved Budget.

### 4.2 **Property**

The property of the Company may not be mortgaged, charged or otherwise used as security unless approved pursuant to clause 7.5.

### 4.3 **Contributions of Capital**

- (a) If there is a further requirement for working capital to enable the Company to conduct the Activities (other than by way of an Annual Program) then the matter must be referred to the Members pursuant to clause 7.5.
- (b) The Members may decide that:
  - (i) a contribution of working capital pursuant to this clause is a contribution of capital by the Members, or
  - (ii) the contribution is by way of loan.
- (c) If the Members decide that the contribution is by way of loan, then the loans from Members will be made on the basis that:
  - (i) each loan will be repayable on demand after a period of 12 months;
  - (ii) each loan will bear interest at the Interest Rate; and
  - (iii) no loan will be repaid to a Member unless all the loans are repaid simultaneously to all Members who made loans (unless a particular Member waives the benefit of this provision).

## 5. MANAGEMENT OF THE COMPANY

### 5.1 Appointment of General Manager

The Board may appoint a General Manager.

### 5.2 Responsibility

The General Manager will be responsible for, without limitation:

- (a) management of all operations of the Company in the conduct of the Activities;
- (b) the general administration of the Company; and
- (c) the day to day management of the financial affairs of the Company and the Activities;

under the direction of the Board.

### 5.3 Approval

The General Manager may not enter into agreements on behalf of the Company without the approval of the Board, other than agreements entered into in relation to the Activities in the normal course of carrying on the Annual Program, and in accordance with approved delegation authorities.

### 5.4 Annual Program

The Board will consider and adopt an Annual Program for each financial year using the following procedure:

- (a) at least two months before the commencement of each financial year, the General Manager (or other such person vested by the Board from time to time with responsibility for its preparation) will submit to each Director a draft Annual Program for that financial year;
- (b) the Board will consider the draft Annual Program and approve an Annual Program before the commencement of the relevant financial year; and
- (c) the Annual Program approved by the Board may, from time to time before or during the period to which the Annual Program relates, be changed by the Board;
- (d) the Board will publish the Annual Program for each financial year on ECCO's website by 31 July each year;
- (e) any change to the Annual Program by the Board is to be published on ECCO's website within one (1) month following the change being approved.

### 5.5 Budget of Capital Expenditure

The draft Annual Program will include a budget with respect to the expected net income (including details of expected revenue, costs and expenses) and capital expenditure of the Company during the succeeding financial year. No capital expenditure may be made by the Company except under the approved Annual Program.

### 5.6 Duties

The Members agree that:

- (a) the Company will, during the financial year to which an Annual Program relates, carry out its activities and make payments in accordance with that Annual Program; and
- (b) all employees of the Company will report to and be under the control and direction of the General Manager (or other such person vested by the Board from time to time with that responsibility).

## 5.7 Information

The Members acknowledge that they are ultimately responsible for ensuring that the Directors receive from the Company sufficient management and financial information and reports to allow them to control the efficient conduct of the Activities, including, without limitation, the following reports:

- (a) an unaudited profit and loss statement and cash flow statement (with projections for the balance of the then current financial year) for the period since the last Board meeting and for the current financial year to date which:
  - (i) are prepared in reasonable detail using generally accepted accounting principles consistently applied; and
  - (ii) include comparisons of the actual results with the projections set out in the current Annual Program;

within a reasonable time (and in any event by no later than five days) before each Board meeting.
- (b) an unaudited balance sheet for each quarter prepared in reasonable detail and using generally accepted accounting principles consistently applied, as soon as practicable after, and in any event within 30 days of, the end of each quarter of the then current financial year; and
- (c) a profit and loss statement for the last preceding financial year and balance sheet to the end of the expiration of that financial year as soon as practicable after, and in any event within 45 days of the end of each financial year.

## 5.8 Visiting and Inspecting

- (a) Subject to clause 5.8(b), the Members will ensure that the Company permits, after receiving reasonable Notice, a Member or that Member's Directors or other Authorised Representatives to:
  - (i) visit and inspect any premises used in the Activities, and any property of the Company;
  - (ii) inspect and take copies of documents relating to the Activities and the Company's affairs including its books of account; and
  - (iii) discuss the Company's affairs, finances and accounts with the Company's officers, employees and auditors,

at that Member's cost, at reasonable times and as often as is reasonable.
- (b) Each Member acknowledges and agrees that:
  - (i) membership of a Member does not thereby connote or imply Membership in or other Rights in respect of the Company; and
  - (ii) each Member must use its best endeavours to ensure that each of its own members understands that:
    - (A) members of a Member have no standing in that Capacity to involve themselves in the operations or governance of the Company (except if nominated by that Member to serve as a Director or secretary of the Company); and
    - (B) unless a member of a Member is also a Director of the Company, that person must address and direct any queries or concerns regarding the Company, the Activities or the Board to and through the Member of which they are a member, and not directly to or through the Company or the Board;

- (c) Each Member further acknowledges and agrees that other than pursuant to clause 5.8(a), Members may only obtain access to information concerning the Company through:
- (i) publications or other intentional releases of information by the Company to the public at large;
  - (ii) reports and explanations that are provided by Directors and other officers to Members at Annual General Meetings or at any other general meetings of Members;
  - (iii) ASIC publications;
  - (iv) any written request for information permitted under Rule 28 of the Constitution; or
  - (v) permitted disclosure of information by the Company's officers at meetings of the members of each individual Member.

## 5.9 Requirements

The Members acknowledge that they are ultimately responsible for ensuring that the Company:

- (a) keeps its assets in good repair, working order and condition (reasonable fair wear and tear excepted) and makes, from time to time as is necessary, proper repairs, renewals and replacements;
- (b) complies with the contracts, arrangements and property and equipment leases to which it is a party;
- (c) keep its tangible assets which are able to be insured, insured by a financially sound and reputable insurer against loss or damage by fire, explosion or other risks customarily insured against by entities conducting activities similar to the Activities in amounts not less than the full insurable value of those assets;
- (d) maintains insurance with a financially sound and reputable insurer against other hazards and risks and liability to persons and property to an amount and in the way customarily insured against by entities conducting operations similar to the Activities;
- (e) keeps true records and books of account in which full, true and correct entries are made of all dealings or transactions concerning the Activities and the Company's affairs using generally accepted accounting principles consistently applied; and
- (f) observes and conforms with all valid requirements of Government Authorities relating to the Activities.

## 6. COMMITMENT TO THE COMPANY AND BUSINESS

### 6.1 Requirements

Each Member will:

- (a) co-operate and use that Member's best endeavours to ensure that the Company successfully conducts the Activities;
- (b) not unreasonably delay any action, approval, direction, determination or decision which it is required in the proper and efficient conduct of the Company's affairs and the Activities; and
- (c) be just and faithful in the Member's activities and dealings with the other Members and the Company.

## 6.2 **Liability Generally**

The Members agree that:

- (a) the Rights and Obligations of the Members under this Agreement are several and not joint or joint and several;
- (b) nothing in this Agreement will constitute nor be construed so as to constitute a Member as a partner, agent, employee or representative of another Member; and
- (c) except as specifically provided in this Agreement, a Member has no authority to act for, nor to create or assume any responsibility or Obligation for, another Member.

## 6.3 **Audit**

A Member may, at its own cost and on reasonable Notice, conduct an audit of the financial affairs of the Company at any time.

## 7. **COMPANY POLICIES**

### 7.1 **Appointments**

If the Company requires services that may be provided by a Member, the Company may wherever reasonably practicable and if that Member agrees, engage that Member to provide the necessary services on usual commercial terms.

### 7.2 **Common Facilities**

Where the Company uses common facilities provided by a Member, the Company may pay the costs of those common facilities on the basis of the proportion of time and overheads incurred by that Member in providing those common facilities.

### 7.3 **Distribution of Income**

The Board will distribute its income in accordance with its Income Application Policy.

### 7.4 **Income Application Policy**

Despite clause 7.5:

- (a) the Members acknowledge that the Constitution requires the net income and property of the Company to be applied solely for the benefit and promotion of the Company's Objects; and
- (b) until resolved otherwise by the Members, the Income Application Policy of the Company will be to:
  - (i) retain at least twenty percent (20%) of the net income of the Company in each Financial Year as a reserve fund for:
    - (A) budgeted and unbudgeted operational and contingency expenses arising in the course of the Company's operations; and
    - (B) unforeseen and/or unbudgeted applications in furtherance of the Company's Objects; and
  - (ii) distribute the balance of the net income of the Company in each Financial Year in accordance with the Annual Program.

### 7.5 **Matters to be Referred to Members**

The following matters must not be determined by the Board but are to be referred to the Members for determination by Special Resolution:

- (a) any increase or decrease in the number of Directors;
- (b) any increase in the number of members of the Company and/or the admission of any further or other members of the Company;
- (c) any requirement for the Members to provide working capital for the conduct of the Activities (other than under an Annual Program);
- (d) the payment of Directors' fees or the payment of other remuneration to Directors.

### 7.6 **Action Pending Approval by Members**

The General Manager must not be permitted to take any action in respect of any matter referred to the Board, or to the Members under clause 7.5, until the Board or the Members, as the case may be, have established the policies and limits applicable in relation to that matter.

### 7.7 **Voting by Representatives**

The Members must ensure that their respective Directors attending any Board meeting vote in conformity with any relevant decision agreed to by that Director's Related Member at any meeting of the Members at which any matter referred to in clause 7.5 is considered or, failing such agreement, vote against taking action in respect of any such matter.

## 8. **TERMINATION**

### 8.1 **Termination**

This Agreement will be terminated:

- (a) on the date agreed in writing by all the Members;
- (b) on the date when the Company is wound up by an order of a court; or
- (c) for a Member, when it ceases to be a Member.

### 8.2 **Rights and Obligations**

Termination of this Agreement will not prejudice any accrued Rights or Obligations of a party.

### 8.3 **Surviving Clauses**

Clause 9 will:

- (a) survive for a period of three (3) years after the termination of this Agreement;
- (b) be enforceable at any time at law and in equity;
- (c) enure for the benefit of and be enforceable by the Members and by the Company, and by their or its successors or assigns; and
- (d) be binding on each party and its or their successors or assigns.

## 9. **RESOLUTION OF DISPUTES**

### 9.1 **Dispute Mediation Procedure**

If any dispute arises between any of the Members as to the interpretation or effect of this Agreement or any part of it then the Members will comply with the following dispute resolution

procedures as a condition precedent to the commencement of any litigation arising out of that dispute:

- (a) where a dispute arises, the complainant will, by notice to the other Members, set out in writing the nature of the dispute;
- (b) the Members will act in good faith making all reasonable efforts to resolve the dispute by negotiation;
- (c) if the Members are unable to reach a resolution of the dispute within 14 days after the date of the complainant's Notice, any Member may by Notice advise the other Members that it seeks to have the dispute resolved by mediation;
- (d) within 7 days or such other time period agreed to between the Members, the Members may refer the matter to a mediator (**Mediator**) mutually agreed between them. If no agreement can be reached as to an appropriate Mediator, the dispute will be referred to a Mediator nominated by the President from time to time of the Queensland Law Society Inc. (or its successor or replacement);
- (e) the Mediator:
  - (i) will have the Right to determine procedures;
  - (ii) may or may not allow legal representation on behalf of the Members; and
  - (iii) may co-opt other expert assistance;
- (f) the Members must make a genuine effort to resolve the dispute and to co-operate in good faith with each other and with the Mediator;
- (g) the proceedings of the Mediator will be as informal as is consistent with the proper conduct of the matter and will allow the Mediator to communicate privately with the Members or with their legal representatives;
- (h) the Members agree that:
  - (i) everything that occurs before the Mediator will be in confidence and in closed session;
  - (ii) all discussions will be without prejudice; and
  - (iii) no documents brought into existence specifically for the purpose of the mediation process will be called into evidence in any subsequent litigation by any Member;
- (i) it will be the role (and a term of the appointment) of the Mediator to act fairly, in good faith and without bias with the purpose of seeking a resolution of the dispute and to treat all matters in confidence;
- (j) each Member will have the opportunity to adequately present its case;
- (k) the Mediator will have regard to the fairness and reasonableness of Members' actions, and will give a broad and generous interpretation to the spirit and intent of this Agreement;
- (l) the Mediator will deal with any matter as expeditiously as possible but not later than 14 days after referral to the Mediator;
- (m) the parties to the mediation will bear the mediation costs on an equal basis and, should the Mediator require it, grant immunity from liability to the Mediator;
- (n) the Members will report back to the Mediator, within 14 days, on actions taken based on the outcome of the mediation,

but nothing contained in these dispute resolution procedures will:

- (o) deny a Member any Right to seek declaratory relief from an appropriate Court, where a failure to obtain such relief would cause irreparable damage to the Member concerned or to property or the Rights of any Member; or
- (p) apply to events giving rise to the immediate termination of this Agreement where such events are clearly specified in this Agreement and there is no legitimate dispute as to the interpretation of their meaning or factors giving rise to such events.

## 9.2 Continuity

This clause 9 will continue in full force and effect between the parties to this Agreement notwithstanding the termination or rescission (or purported termination or rescission) of this Agreement, whether before or after a matter has arisen to which this clause relates, and notwithstanding that the matter concerns the termination or rescission (or purported termination or rescission) of this Agreement.

## 10. THIRD PARTY OBLIGATION

### 10.1 Benefit of Third Party

Without in any way limiting the Rights of the Members (or of the Company), any covenant by the Members to do or refrain from doing any act or thing which can be construed as a covenant in favour of the Company will be deemed to be a promise for the benefit of the Company in terms of section 55 of the *Property Law Act 1974*:

- (a) made by the Members upon their execution of this Agreement; and
- (b) accepted by the Company upon the passing of a resolution to that effect by the Board.

## 11. MISCELLANEOUS

### 11.1 Inconsistency of Terms

This Agreement is intended by the Members to regulate their relationship as Members in the Company. It is the intention (and agreement) of the parties that the terms of this Agreement are paramount and in the event of any inconsistency between the terms of this Agreement and the Constitution, this Agreement will prevail to the extent of any inconsistency unless prohibited by law.

### 11.2 No Agency or Partnership

Nothing in this Agreement may be construed so as to cause a Member or the Company to be or become a partner of any Member or the Company or to create any agency.

### 11.3 Amendment of Constitution

If there is any inconsistency between this Agreement and the Constitution, then any Member may by Notice to each other Member require them to procure the Company to amend the Constitution to remove that inconsistency.

### 11.4 Formal Requirements

Without limiting the application of clause 11.3, to the extent that it is necessary in order to give effect to this Agreement (and for the removal of doubt):

- (a) all meetings required of the Members and/or of the Directors, whether to resolve to amend the Constitution or for any other purpose related to the formation and paramountcy of this Agreement, have been agreed by the Members to have been properly called, convened, held and recorded to the extent expressed or implied to be required by this Agreement;



- (b) all Notices required by the Constitution and the *Corporations Act* to have been given by or to the Members or the Directors relating to any meeting required, by this Agreement or by any law, to have been held prior to or not later than the formation of this Agreement are deemed to have been duly given by an appropriate method and within an appropriate time, or duly dispensed with by agreement (as the case may be); and
- (c) the provisions of the Constitution dealing with Notices to and meetings of Directors and Members, as the case may be are deemed to have been duly amended to the extent that those provisions conflict with any provision of this Agreement.

## 12. **FORCE MAJEURE**

### 12.1 **Excuse from Performance of Obligation.**

If a Member is prevented, hindered or delayed from performing its Obligations under this Agreement by an Event of Force Majeure, then as long as that situation continues, that Member will be excused from performance of the Obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the Obligation will be extended accordingly, but if time is of the essence of this Agreement, time will continue to remain of the essence.

### 12.2 **Notification**

A Member affected by an Event of Force Majeure will immediately give the other Members a Notice of its occurrence and its effect or likely effect, and (subject to the provisions of the next clause) use all reasonable endeavours to minimise the effect of the Event of Force Majeure and to bring it to an end.

### 12.3 **Industrial Action**

No Member will be obliged to settle any strike or other industrial action, dispute or disturbance of any kind, except on terms wholly satisfactory to it.

## 13. **NOTICES**

### 13.1 **Form of Notices**

Notices given under this Agreement must be:

- (a) in writing;
- (b) signed by the Member giving the Notice or its Authorised Representative; and
- (c) addressed to the Notice Address of the person to whom it is to be given.

### 13.2 **Method and Address for Giving Notices**

Notices must be either:

- (a) delivered by hand;
- (b) posted by pre-paid security or certified mail;
- (c) transmitted by facsimile; or
- (d) transmitted by email,

to the Notice Address of the person receiving the Notice.

### 13.3 Time of Receipt

A Notice given to a person in accordance with this Agreement is deemed to have been given and received if:

- (a) delivered, on the day of delivery if delivered before 5:00pm on a Business Day, otherwise on the next Business Day;
- (b) posted by pre-paid security mail or certified mail, on the second day after the day on which the Notice was accepted by the post office from the party sending the Notice; or
- (c) transmitted by facsimile:
  - (i) the transmission report states that it was sent in full and without error; and
  - (ii) no objection is received from the recipient.

on the day of transmission if that report states that the transmission was completed before 5:00pm on a Business Day, otherwise on the next Business Day;
- (d) transmitted by email:
  - (i) the sender's email program shows the email as having been sent in full and without error; and
  - (ii) no objection is received from the recipient,

on the day of transmission if the email was sent before 5:00pm on a Business Day, otherwise on the next Business Day.

## 14. PROPER LAW, JURISDICTION

### 14.1 Choice of Law

This Agreement is governed by and construed in accordance with the laws of the State of Queensland.

### 14.2 Jurisdiction

Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in the State of Queensland.

### 14.3 Submission to Jurisdiction

Each Member irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

### 14.4 Service of Process

A Member may by Notice appoint another person at a specified address in the State of Queensland to receive service of process in connection with proceedings and process served on that person is taken to be served on the Member making the appointment.

## 15. GENERAL PROVISIONS

### 15.1 Variations

No variation of this Agreement nor consent to a departure by a Member from a provision, will be of effect unless it is in writing, signed by the Members or (in the case of a waiver) by the Member giving it. Any such variation or consent will be effective only to the extent to or for which it may be made or given.

**15.2 Waiver**

The non-exercise of or delay in exercising a Right of a Member will not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by Notice, signed by the Member (or its Authorised Representative) to be bound by the waiver.

**15.3 Further Assurances**

Each party to this Agreement must do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by Notice from another Member to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the Rights of the other Members.

**15.4 Counterparts**

This Agreement may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

**15.5 Warranty of Authority**

Each person signing this Agreement:

- (a) as attorney, by so doing, warrants to the other Members that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an Authorised Representative, agent or trustee of a Member, warrants to the other Members that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that Member.

**15.6 Severability**

This Agreement will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

**15.7 Delivery as a Deed**

Subject to:

- (a) any express provisions in this Agreement to the contrary; and
- (b) due execution of this Agreement by all parties to it;

each Member by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being legally bound by this Agreement.

**15.8 Entire Agreement**

The Members acknowledge that:

- (a) this Agreement comprises the whole of the agreement between the Members in relation to the subject matter of it;

- (b) this Agreement supersedes any prior agreement between the Members or on their behalf in relation to the subject matter of it (including, without limitation, the "Inter-Party Agreement" dated 5 November 2008 which is to be terminated prior to or contemporaneously with the execution of this Agreement); and
- (c) no further or other covenants are implied or arise between the Members by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by any Member to the others on or before the execution of this Agreement and the existence of any implied, collateral or other agreement is negated.

## REFERENCE SCHEDULE

## Item 1)

**Commencement Date:**

The Agreement Date.

20th April 2015.

## Item 2)

**Member Schedule:**

**EHA**  
**EDCA**  
**ECC**

## Item 3)

**Directorship**

**Director**

Donata Page  
Terry John Lawrence  
Adrian Coombs  
Paul Curtis  
Michael Arnett  
Barrie Adams

**Member**

EHA  
EHA  
EDCA  
EDCA  
ECC  
ECC

## Item 4)

**Notice Addresses:**

**EHA:**

**Service address:**

PO Box 226  
Eumundi Q 4562

**Email Address:**

secretary@eumundihistorical  
assn.org

**EDCA:**

**Service address:**

PO Box 193  
Eumundi Q 4562

**Email Address:**

adelain1@bigpond.com.au

**ECC:**

**Service address:**

PO Box 145  
Eumundi Q 4562

**Email Address:**

ecc@eumundi.info

## Item 5)

**Activities:**

The acquisition and operation of community activities including, without limitation, community market carparks and the publication "The Green".

## Item 6)

**Business Day Location:**

Eumundi, Queensland

Executed as a deed.

**EXECUTED** by **EUMUNDI AND DISTRICT HISTORICAL ASSOCIATION INC.** ABN 68 998 532 194 in accordance with its constitution or rules by:




Authorised Signatory  
Name (printed):

)  
)  
)  
)  


Authorised Signatory  
Name (printed)

**EXECUTED** by **EUMUNDI AND DISTRICT COMMUNITY ASSOCIATION INC.** ABN 23 186 186 285 in accordance with its constitution or rules by:

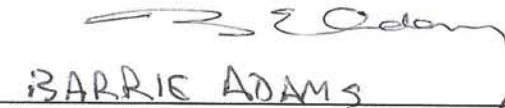


Authorised Signatory  
Name (printed):

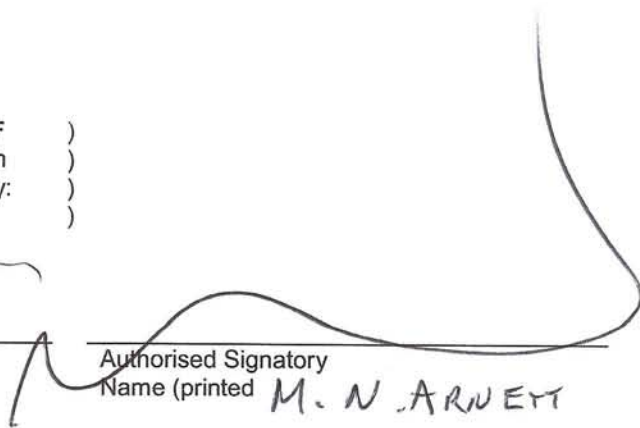
)  
)  
)  
)  


Authorised Signatory  
Name (printed)

**EXECUTED** by **EUMUNDI CHAMBER OF COMMERCE INC.** ABN 65 835 023 587 in accordance with its constitution or rules by:



Authorised Signatory  
Name (printed):

)  
)  
)  
)  


Authorised Signatory  
Name (printed) **M. N. ARNETT**