

CONSTITUTION OF
KORORA BAY VILLAGE LIMITED

History:

Amended: 18/05/2013

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION
of
KORORA BAY VILLAGE LIMITED

1. NAME OF COMPANY

The name of the Company is Korora Bay Village Limited ABN 72 001 779 200

2. LIABILITY OF MEMBERS

The liability of the Members is limited.

3. CLUB

The Members are beneficiaries of the Club and each Member agrees to be bound by the terms of this Constitution.

4. PRELIMINARY

4.1 Replaceable Rules

The Replaceable Rules do not apply to the Company.

4.2 Definitions

In these rules, unless it is inconsistent with the subject or context in which it is used:

‘**Accommodation Unit**’ means any one self-contained apartment consisting of living and sleeping accommodation together with all furniture, fixtures, fittings and white goods contained therein;

‘**Act**’ means the Corporation Act 2001;

‘**Annual Ownership Costs**’ means the annual contribution by each Member to the Club and is defined as Operating Levy, Sinking Fund, Future Refurbishment Fund and Special Levy;

‘**Auditor**’ means the auditor of the Club;

‘**ASIC**’ means the Australian Securities and Investments Commission;

‘**Board**’ means the Directors for the time being of the Club;

‘**business day**’ means a day on which banks (as that term is defined in the *Banking Act 1959*) are open for business in Sydney;

‘**Certificate of Timeshare**’ means a certificate issued by the Club to a Member evidencing the membership of Club;

‘**Certificate of Title**’ means one of the one thousand eight hundred and thirty six (1,836) Certificates of Title issued by the Registrar General of New South Wales in respect of the Resort upon the cancellation of Certificate of Title Volume 11678 Folio 181;

‘**Chairman**’ means one director to hold office pursuant to **rule 20.6**;

‘**Check-in Day**’ means the first day of the Timeshare Week as designated by the Board;

‘**Club**’ means the Korora Bay Village Limited ACN 001 779 200;

‘**Committee**’ means a group comprising persons to which powers have been delegated by the Board pursuant to **rule 20.8**;

‘**Common Facility**’ means each and any fixture and/or structural improvement which is not the whole or part of an Accommodation Unit which is constructed at the Resort and all chattels acquired by the Club except for chattels designated by the Club as being appurtenant to an Accommodation Unit;

‘**Constitution**’ means this constitution;

‘**Date Due**’ means 31 July in each Year or any other date set by the Directors that will not adversely affect the Members;

‘**Director**’ means a person appointed or elected from time to time to the office of director of the Club in accordance with these rules and includes any alternate director duly appointed as a Director;

'Dispute Resolution Service' means the external dispute resolution service of which the Club is a member;

'Exchange Organisation' means any organisation, whether incorporated or unincorporated by means of which timeshare use and accommodation rights may be exchanged one for another;

'Floating Week Timeshares' means those thirty-nine weeks which are not deposited as Peak Week Timeshares or Holiday Week Timeshares;

'Future Refurbishment Fund' means funds applied to a reserve for future capital improvements and refurbishment at the Resort;

'Guest' means Members' families and such of Members' invitees as may be approved by the Board;

'Holiday Week Timeshares' means eight weeks in any year and the Week in each year commencing on the Check-in Day immediately following:

- (i) One Week at the end of the first term for New South Wales State Schools Eastern Division;
- (ii) two Weeks at the end of the second term for New South Wales State Schools Eastern Division;
- (iii) two Weeks at the end of the third term for New South Wales State Schools Eastern Division; and
- (iv) Weeks 50,51 and 4;

'Law' means the *Corporations Act 2001* and the *Corporations Regulations 2001* (as defined in the *Corporations Act 1989*);

'Member' means a person who is the registered owner of a current Certificate of Timeshare or a person who is registered or entitled to be registered as the owner of a Certificate of Timeshare;

'Members present' means Members present at a meeting of the Club in person or by duly appointed representative, proxy or attorney;

'Members Register' means the record of details of Members of the Club subject to **rule 5.6**;

'Office' means the registered office from time to time of the Club;

'Operating Levy' means the cost of all expenses other than amounts applied to the Sinking Fund and Future Refurbishment Fund, less any income derived by the Club;

'Peak Week Timeshares' means four weeks consisting of weeks numbered 52 to 3 inclusive;

'person' and words importing persons include partnerships, associations and corporations unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals;

'Registered address' means the address of a Member not being a Post Office box or electronic address specified on a transfer in the Members Register or any other address of which the Member notifies the Club as a place at which the Member will accept service of notices;

'Rental Pool' mean a pool as defined in **rule 11.3**;

'Replaceable Rules' means all or any of the replaceable rules contained in the Law from time to time and includes any replaceable rule that was or may become, a provision of the Law;

'Resort' means all that piece or parcel of land at Korora in the Shire of Coffs Harbour Parish of Coff and County of Fitzroy being Lot I in Deposited Plan 550722 and, being the whole of the land comprised in cancelled certificate of Title Volume 11678 Folio 181 together with the improvements erected and to be erected thereon and known as Korora Bay Village;

'Retiring Director' means a Director who is required to retire under **rule 16.1** and a Director who ceases to hold office under **rule 18.1**;

'rules' means the rules of this Constitution as altered or added to from time to time;

'Secretary' means a person appointed as secretary of the Club and includes any person appointed to perform the duties of secretary;

'Sinking Fund' means funds applied to reserves for future unforeseen expenses;

'Special Levy' means a levy determined by the Board from time to time;

'Specific Rate' means 2% above the commercial lending rate for \$100,000.00 of the Commonwealth Bank of Australia calculated on a daily balance from the due date until the date of payment;

'State' means the State of New South Wales;

'Timeshare' unless the context shall otherwise require means the right to use and occupy an Accommodation Unit in the Club for exclusive use and occupation periods recurring over more than one year together with the right to use and occupation of the Resort designated by the club for use by the person enjoying such right of exclusive use and occupation as aforesaid in common with other Members of the Club enjoying the like right at the Resort;

'Timeshare Week' means a Week allocated to a Member for his use in accordance with the rules of this Constitution;

'Week' means each period numbered consecutively 1 to 52 representing a one fifty-second (1/52) part of each Year;

'writing' and **'written'** includes printing, typing, lithography and other modes of reproducing words in a visible form; and

'Year' means the period beginning at 4 o'clock in the afternoon on the first Check-in Day in each calendar year and ending at ten o'clock in the forenoon on the first Check-in Day of the following calendar year.

4.3 Interpretation

- (a) Words and phrases which are given a special meaning by the Law have the same meaning in these rules, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) A reference to the Law or any other statute or regulations is to be read as though the words 'as modified or substituted from time to time' were added to the reference.
- (e) The headings and sidenotes do not affect the construction of these rules.
- (f) An expression used in a particular Part, Division, Schedule or regulation of the Law that is given by that Part, Division, Schedule or regulation a special meaning for the purpose of that Part, Division Schedule or regulation has, in any of these rules that deals with a matter dealt with by that Part, Division, Schedule or regulation, unless the contrary intention appears, the same meaning as in that Part, Division, Schedule or regulation.

5. MEMBERSHIP

5.1 Classes

The classes of membership shall be:

- (a) Member with Title being Members who own a Certificate of Title and a Certificate of Timeshare;
- (b) Members with right to use being Members who own a Certificate of Timeshare only; and
- (c) Other being any other class created by the Board from time to time.

5.2 Timeshares

- (a) One thousand eight hundred and thirty-six Timeshares have been created with respect to the Resort numbered consecutively 1 to 1836 inclusive.
- (b) One thousand one hundred and seventy three Timeshares numbered consecutively 1 to 1,173 inclusive are the subject to Accommodation Units 1 through 23 inclusive.
- (c) Accommodation Units 1 through 8 and 16 through 23 inclusive being two bedroom units; and
- (d) Accommodation Units 9 through 15 inclusive being one bedroom units.
- (e) Any Accommodation Unit constructed to replace an existing Accommodation Unit shall be designated as bearing the number which was borne by the replaced Accommodation Unit and shall be of the same class as the Accommodation Unit it has replaced.
- (f) The remaining six hundred and sixty-three Timeshares numbered consecutively 1,174 to 1,836 inclusive shall be the subject of another timeshare scheme or other timeshare schemes.
- (g) From time to time the Board may create further Accommodation Units to expand the Club and these Timeshares of Accommodation Unit shall constitute new timeshare scheme or schemes.

5.3 Limitation

The maximum number of Timeshares shall be limited to the number of Accommodation Units multiplied by 51 Weeks (which excludes 1 Week for maintenance).

5.4 In each Year:

- (a) Week one begins on the first Check-in Day of that Year; and
- (b) Weeks numbered two to fifty-two inclusive are each the seven days succeeding the Week bearing the previous consecutive number.
- (c) Each Week will commence at 4 o'clock in the afternoon on the Check-in Day in that Timeshare Week and will end at 10 o'clock in the morning of the following Check-in Day in that Week.
- (d) Two hundred and seventy-six of the Timeshares are hereby designated as Peak Week Timeshares or Holiday Week Timeshares attaching to Accommodation Units of which eighty-four are designated as one bedroom Accommodation Units and one hundred and ninety-two are designated as attaching to the two bedroom Accommodation Units.
- (e) Eight hundred and ninety-seven of the Timeshares are hereby designated as Floating Week Timeshare of which two hundred and seventy three are designated as attaching to the one bedroom Accommodation Units and six hundred and twenty-four are designated as attaching to the two bedroom Accommodation Units.

5.5 Application

- (a) Membership of the Club shall be open only to those persons who have applied for membership of the Club in accordance with this Constitution.
- (b) Outstanding Debts

No application for membership of the Club will be accepted from a prospective Member who seeks to rely as his qualification for membership upon his being registered or entitled to be registered as an owner of at least one Timeshare where he or his predecessor in title is indebted to the Club for any moneys whatsoever provided however the Board shall have the discretion to waive vary and or modify this requirement in circumstances which the Board consider would be beneficial to the Club.

- (c) Member with Title
 - (i) Before an applicant is entitled to become a titled Member he/she must lodge with the Club's solicitor under a Deed of Escrow his/her original Certificate of Title or such instrument of Title as may be issued by the Land Titles Department, together with an Irrevocable Power of Attorney signed by the Member in favour of the Club and registered in the Land Titles Department, giving authority to the Club to sell the Title or interval or prescribed interest as the case may be in the event of the Member(s) failing to pay their contributions within the period prescribed **Rule 7.2**.
 - (ii) The Deed of Escrow and Irrevocable Power of Attorney shall be in such form as may be determined by the Board from time to time.
- (d) Applications for membership, together with the application fee shall be lodged at the Resort on the form provided.
- (e) If the Board considers that the application meets with the requirements of this Constitution, the applicant's name will be entered in the Members Register.
- (f) The applicant will be notified in writing of his admission to membership and he shall thereupon be entitled to the privileges of membership.
- (g) The application fee payable by each Member of the Club shall be such as the Board shall from time to time prescribe.
- (h) The Board may from time to time in its absolute discretion waive the application fee payable by any applicant for membership of the Club in any particular case or generally

5.6 Registration

The details of all Members must be entered into the Members' Register. Such details shall include the Members' names and residential address, postal address and Certificate of Timeshare number.

5.7 Closing Register

Subject to the provisions of the Law, the Register may be closed at any time the Board thinks fit.

5.8 Surrender of Timeshare Membership

In its discretion, the Board may accept a surrender of a Member's Timeshare Weeks by way of compromise of any question as to whether or not those Timeshare Weeks have been validly issued or in any other case where the surrender is within the powers of the Club. Any Timeshare Weeks surrendered may be re-sold in the same manner as forfeited Timeshare Weeks.

5.9 Joint holders

Where 2 or more persons are registered as the holders of any Timeshare Week, they are deemed to hold the Timeshare Week as joint tenants with benefits of survivorship subject to the following provisions:

- (a) **liability for payments** - the joint holders of the Timeshare Week are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Timeshare Week;
- (b) **death of joint holder** - on the death of any one of the joint holders, the survivor is the only person recognised by the Club as having any title to the Timeshare Week but the Board may require evidence of death;
- (c) **notices and Certificates of Timeshare** - only the person whose name stands first in the Members' Register as one of the joint holders of the Timeshare is entitled, if the Club is required by the Law to issue Certificates of Timeshare, to delivery of a Certificate of Timeshare relating to the Timeshare or to receive notices from the Club and any notice given to that person is deemed notice to all the joint holders;
- (d) **votes of joint holders** - any one of the joint holders may vote at any meeting of the Club either personally or by duly authorised representative, proxy or attorney, in respect of the Timeshare as if that joint holder was solely entitled to the Timeshare. If more than one of the joint holders are present at any meeting personally or by duly authorised representative, proxy or attorney, the joint holder who is present whose name stands first in the Members' Register in respect of the Timeshare is entitled alone to vote in respect of the Timeshare.

5.10 Non-recognition of equitable interests, etc

Except as otherwise provided in these rules, the Club is entitled to treat the registered holder of any Membership as the absolute owner of the Membership and is not, except as ordered by a Court or as required by statute, bound to recognise (even when having notice thereof) any equitable or other claim to or interest in the Membership or the part of any other person.

5.11 Variation of rights

- (a) The rights attached to any class of Timeshare (unless otherwise provided by the terms of issue of the Timeshares of that class) may, whether or not the Club is being wound up be varied with the consent in writing of Members with at least 75% of the votes in the class, or with the sanction of a special resolution passed at a separate meeting of the holders of the Timeshares of that class.
- (b) The rights conferred upon the holders of the Timeshares of any class issued with preferred or other rights are, unless otherwise expressly provided by the terms of issue of the Timeshares of that class, deemed not to be varied by the creation or issue of further Timeshares ranking equally with the first-mentioned Timeshares.

5.12 Cessation of Membership

- (a) A Member shall cease to be a Member of the Club in the event of him at any time being no longer registered nor entitled to be registered as owner of at least one Timeshare.
- (b) If any Member or any person who at the invitation of or with the consent and approval of such Member at any time exercises any right of occupation or other right in relation to or at the Resort shall wilfully refuse or neglect to comply with this Constitution or shall be guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interest of the Club the Board shall have power by resolution to censure fine or suspend or forfeit the Member's membership.
- (c) Notwithstanding the provisions of rule 7 at least one week before the meeting of the Board at which such a resolution is to be proposed the Board:
 - (i) shall cause notice of the such meeting and of what is alleged against him and of the intended resolution to be given to such Member.
 - (ii) The Member shall at the meeting and before the passing of the such resolution have an opportunity of giving orally or in writing any explanation or defence he may think fit.
 - (iii) The Member may elect to have the question dealt with by the Club in general meeting and in that event a general meeting of the Club shall be called at the cost of the Member concerned provided that any such election will be made in writing and lodged with the Secretary at least twenty-four hours before the time the meeting is to be held.
 - (iv) For the purpose and if at the meeting such a resolution be passed by a majority of two-thirds of those present and voting the Member concerned shall be dealt with accordingly and in the case of a resolution for his expulsion the Member shall be expelled and his name removed from the Members Register and his Timeshares forfeited to the Club.
- (d) The Board may terminate a Members membership in accordance with the procedure in rule 7.

6. CERTIFICATES OF TIMESHARE

6.1 Forwarding of Certificates of Timeshare

The Club will send a Certificate of Timeshare to a Member by prepaid post addressed to the Member at that Member's Registered address or as is otherwise directed by the Member and every Certificate of Timeshare so sent shall be at the Member's own risk.

6.2 How Certificates of Timeshare are issued

- (a) The Board shall issue Certificates of Timeshare in any form prescribed by the Board permitted under the Law and are to be signed in any manner determined by the Board.
- (b) Certificates of Timeshare shall be issued no later than 2 months after the Member has been registered as a Member.

6.3 Replacement of Certificates of Timeshare

- (a) Old or defaced Certificates

If a certificate is worn out or defaced, upon production of the Certificate of Timeshare to the Club, the Board may order it to be cancelled and may re-issue a Certificate of Timeshare.

- (b) Lost, stolen or destroyed Certificates

If a Certificate of Timeshare is lost, stolen or destroyed, upon the giving of such indemnity (if any) and any evidence that the Certificate of Timeshare has been lost, stolen or destroyed which the Board may require and upon the payment of any fee the Board may from time to time determine, a new Certificate of Timeshare may be re-issued instead of the lost, stolen or destroyed Certificate of Timeshare. A Certificate of Timeshare issued to replace a Certificate of Timeshare which has been lost, stolen or destroyed may be endorsed as having been issued instead of a lost, stolen or destroyed Certificate of Timeshare.

6.4 Security over Timeshares

Timeshares may be mortgaged or charged by a Member. If Timeshares interests are mortgaged then:

- (a) The Member shall advise the mortgagee that the Club has a first and paramount lien over the Timeshare interests for the payment of levies and dues; and
- (b) The Member shall advise the Club of the mortgagee's interest, and the Club shall record the mortgage in the Register.

7. FORFEITURE AND LIEN OF TIMESHARES

7.1 Lien

- (a) Without affecting or prejudicing any other right or remedy the Club may have by this Constitution or by law for the recovery of all money presently payable to the Club by the Member the Club shall have a first and paramount lien on every Timeshare of the Member or his estate for the recovery of such money; but the Board of the Club may at any time declare any Timeshare to be wholly or in part exempt from this provision and the Club's lien, if any, in respect of any Timeshare shall extend to all rental income payable in respect thereof.
- (b) The Club may, subject to the Law, sell or otherwise deal with, in such manner as the Board thinks fit any Timeshares over which the Club has a lien, but no exercise of that lien shall be made unless it is in accordance with this Constitution.
- (c) In addition to the power of sale hereby conferred the Club shall have the right to lodge and register upon the Certificate of Title to which the Timeshare relates at the cost and expense of the Member a Caveat to prevent the Member dealing with his Timeshare in such a way as to affect the recovery from the Member of all moneys presently payable by the Member or a Mortgagee to secure the payment of such moneys and for the purposes the Member irrevocably appoints the Club as his duly appointed attorney for the execution of any documents acts matters and things.
- (d) To give effect to any sale of the Timeshare the Board may authorise an agent to transfer the Timeshare sold to the purchaser thereof. The purchaser shall upon settlement of the sale be registered as the holder of the Timeshare comprised in any such transfer, and the Board shall issue to him a Certificate of Timeshare and he shall not be bound to see to the application of the purchase money, nor shall his title to the Timeshare be affected by any irregularity or invalidity in the proceedings of and incidental to the sale of such Timeshare.

7.2 Exercising lien

The Board may not exercise any lien unless:

- (a) a sum in respect of which the lien exists is presently payable and has remained unpaid for more than two (2) calendar months;
- (b) nor until the expiration of one (1) calendar month after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to;
 - (i) the registered owner; or
 - (ii) the person entitled thereto by reason of his death or bankruptcy.

7.3 Notice requiring payment of sums payable

If any Member fails to pay any sum payable on or in respect of any Timeshares, the Board may, at any time after the day specified for payment whilst any part of the sum remains unpaid, serve a notice on the Member requiring that Member to pay the sum together with interest accrued and all expenses incurred by the Club by reason of the non-payment.

7.4 Time and place for payment

The notice referred to in **rule 7.3** is to name a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made. The notice is also to state that, in the event of non-payment at or before the time and at the place specified, the Timeshares in respect of which the sum is payable will be liable to be forfeited.

7.5 Forfeiture on non-compliance with notice

If there is non-compliance with the requirements of any notice given pursuant to **rule 7.3**, any Timeshares in respect of which notice has been given may, at any time after the day specified in the notice for payment whilst any part of levies, interest and expenses (if any) remains unpaid, be forfeited by a resolution of the Board to that effect.

7.6 Notice of forfeiture

When any Timeshare is forfeited, notice of the resolution of the Board is to be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture is to be made in the Members' Register. Failure to give notice or make the entry as required by this rule does not invalidate the forfeiture.

7.7 Disposal of forfeited Timeshares

Any forfeited Timeshare is deemed to be the property of the Club and the Board may sell or otherwise dispose of or deal with the Timeshare in any manner it thinks fit and with or without any money paid on the Timeshare by any former holder being credited as paid up.

7.8 Annulment of forfeiture

The Board may, at any time before any forfeited Timeshare is sold or otherwise disposed of, annul the forfeiture of the Timeshare upon any condition it thinks fit.

7.9 Liability notwithstanding forfeiture

Any Member whose Timeshares have been forfeited is, notwithstanding the forfeiture, liable to pay and is obliged forthwith to pay to the Club all sums of money, interest and expenses owing upon or in respect of the forfeited Timeshares at the time of forfeiture, together with expenses and interest from that time until payment at the rate the Board from time to time determines. The Board may enforce the payment or waive the whole or part of any sum paid or payable under this rule as it thinks fit.

7.10 Sale of Timeshares to enforce lien

The Club may do all such things as may be necessary or appropriate for it to do to effect a transfer or to protect any lien, charge or other right to which it may be entitled under any law or this Constitution.

7.11 Title of Timeshares forfeited or sold to enforce lien

- (a) In a sale of forfeited Timeshares or in the sale of Timeshares to enforce a lien or charge, an entry in the Board's minute book that the Timeshares have been forfeited, sold in accordance with this Constitution is sufficient evidence of that fact as against all persons entitled to the Timeshares immediately before the forfeiture and sale of the Timeshares. The Club may receive the purchase money or consideration (if any) given for the Timeshares on any sale.
- (b) In a sale, the Club may appoint a person to execute or effect a transfer in favour of the person to whom the Timeshares are sold.
- (c) Upon the issue of the receipt or the execution of the transfer the person to whom the Timeshares have been sold is to be registered as the holder of the Timeshares, discharged from all money due in respect of the Timeshares prior to the purchase and the person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration; nor is the person's title to the Timeshares affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale.
- (d) The net proceeds of any sale are to be applied first in payment of all costs of or in relation to the enforcement of the lien or charge or the forfeiture (as the case may be) and of the sale, next in satisfaction of the amount in respect of which the lien exists as is then payable to the Club (including interest and expenses) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the Timeshares immediately prior to the sale or to the person's executors, administrators or assigns upon the production of any evidence as to title required by the Board.
- (e) If a Certificate of Timeshare for the Timeshares is not produced to the Club, the Board will issue a new Certificate of Timeshare distinguishing it from the Certificate of Timeshare (if any) which was not produced.

8. TRANSFER AND TRANSMISSION OF TIMESHARES

8.1 Instrument of transfer

Subject to this Constitution, a Member may transfer all or any of his Timeshare(s) by any instrument in writing in any usual or common form or in any other form that the Directors approve.

8.2 Registration procedure

Where an instrument of transfer referred to in **rule 8.1** is to be used by a Member to transfer Timeshares the following provisions apply:

- (a) it must be executed by or on behalf of both the transferor and the transferee;
- (b) the instrument of transfer must be left for registration with the Club, accompanied by the Certificate of Timeshare for the Timeshares to which it relates and such information as the Directors properly require to show the right of the transferor to make the transfer, and in that event, the Club must, subject to the powers vested in the Directors by these rules, register the transferee as a Member;
- (c) on registration of a transfer of Timeshare, the Club must cancel the old Certificate of Timeshare (if any).

8.3 Entry in the Register

A transferor of Timeshare remains the holder of the Timeshare transferred until the transfer (if any) is registered and the name of the transferee is entered in the Members' Register in respect of the Timeshares.

8.4 Right to refuse transfer

Notwithstanding any other provisions contained in this Constitution, the Club may, in the Directors' absolute discretion and without assigning any reason therefore, refuse to register or may prevent or interfere with the registration of a transfer of Timeshares in the Club.

8.5 Transmission by death

The trustee, executor or administrator of a deceased Member (who is not one of several joint holders) is the only person recognised by the Club as having any title to Timeshares registered in the name of the deceased Member provided that the Board may, subject to compliance by the transferee with this Constitution, register any transfer signed by a Member prior to the Member's death notwithstanding that the Club has notice of the Member's death.

8.6 Transmission by operation of Law

A person who establishes to the satisfaction of the Board that the right to any Timeshares has devolved on him by will or by operation of law may be registered as a Member in respect of the Timeshares or may (subject to the provisions in this Constitution relating to transfers) transfer the Timeshares provided that the Board has the same right to refuse to register him as if he was the transferee named in an ordinary transfer presented for registration.

9. ANNUAL OWNERSHIP COSTS AND SPECIAL LEVIES

9.1 Annual Ownership Costs

Annual Ownership Costs payable by each Member shall be such as the Board shall from time to time prescribe.

9.2 Board shall fix Annual Ownership Costs

Each year the Board shall fix or estimate such an annual sum of money as in the opinion of the Board will be sufficient to pay or provide for the estimated or actual expenses of the Club in that year after taking account of any income generated by the Club and may include amounts designated for a Sinking and/or Future Refurbishment Fund.

9.3 Costs

Without limiting the generality of this rule such expenses shall include all management, maintenance, refurbishment (or future refurbishment), contributions to a Sinking Fund, replacement and service costs, insurance premiums rent, rates, taxes, audit and other professional fees, all expenses incurred or to be incurred in the administration and operation of the Club the provisions for future replacements and upkeep, deficiencies or surpluses from previous years and all other expenses costs and charges reasonably and properly incurred or charged or likely to be incurred by the Club.

9.4 Members to contribute

Each Member shall contribute to the funds of the Club during each year its proportion of such annual sum as is so fixed by the Board, each Member's proportion being that which the number of Timeshares owned by him at the date upon which such contribution becomes due and payable bears to the total number of Timeshares.

- (a) Any funds received by the Club shall be deposited into the appropriated fund designated.
- (b) Annual Ownership Costs shall become due and payable in advance on the thirty-first day of July in each and every year unless the Board resolves otherwise in any particular case or generally.
- (c) The amount payable by each Member shall be and constitute a debt due by him to the Club if the same shall not have been paid by such date the Club may sue and recover the amount due.

9.5 Special Levy

- (a) From time to time at its absolute discretion the Board may prescribe a special levy.
- (b) Special Levy costs shall become due and payable on the date specified by the Board. The Board must give the Members a minimum of 30 days notice before the levy becomes due and payable.

9.6 Date Due – 'deleted intentionally'

9.7 No occupation

No Member may exercise any rights of use or occupation by right of his ownership of a Timeshare or any other rights or privileges of membership of the Club whilst any monies due and payable to the Club remain outstanding.

9.8 No refund

Subject to this Constitution no Member shall have refunded to him Annual Ownership Costs or any part thereof in the event that he ceases to be a Member of the Club for any other reason whatsoever.

9.9 Late Payments

Late payments of Annual Ownership Costs shall bear interest at the Specific Rate. In addition to interest charges the Club shall also be entitled to charge against the Members account the debt collection, legal costs (Solicitor/Own Client Cost) and any other costs incurred to recover the debt from the Member. On the date following the due date each year, interest and/or other charges will be added to the principal outstanding and shall bear interest at the Specific Rate.

9.10 Prepaid Annual Ownership Costs

- (a) If a Member reserves his Timeshare entitlement for future years, the Member will pay to the Club at the time the future Timeshare entitlement is reserved the current Annual Ownership Costs for each Timeshare used.
- (b) The prepaid Annual Ownership Costs shall be offset against the next Annual Ownership Costs set by the Board and any differences in the amount paid and the amount due shall be paid or credited against future Annual Ownership Costs.
- (c) The Member shall be liable to pay any amounts that remain unpaid by the Date Due for the next Annual Ownership Costs.

10. RIGHTS TO USE AND OCCUPATION OF THE RESORT

10.1 Rules of Occupancy

- (a) The exercise of Timeshare rights by way of use and/or occupation of the Resort shall be subject to the Law this Constitution and By-Laws made by the Board or Club in general meeting.
- (b) A Member may invite guests to use his Timeshare provided that:
 - (i) The Member accepts personal responsibility for his guests' actions; and
 - (ii) The Member indemnifies the Club in respect of any actions of his guests while they are at the Resort.

10.2 Conditions and Obligations

- (a) Each Member of the Club shall be entitled (by virtue of his ownership of a Timeshare and his Membership of the Club during the time attached to his Timeshare) to:
 - (i) the exclusive use and occupation free of rent or other charge except as herein provided of an Accommodation Unit designated to him or reserved under the relevant Timeshare; and
 - (ii) use in common with all other persons permitted by the Club to do so of all Common Facilities at the Resort; and
 - (iii) subject to the law, participate in the surplus assets of the Club on a winding up.
- (b) Each Member must duly perform and observe all other conditions and obligations on his part to be performed and observed under this Constitution.
- (c) Each Member shall keep the Accommodation Unit occupied by him and the Common Facilities in good condition and repair during his use and occupation vacate his unit at the expiration of his time remove all persons and his property there from and leave it in a sound and clean condition and otherwise comply with all such reasonable check-out and other management procedures as may be required by the managers of the Resort.
- (d) No Member shall obstruct the lawful use by any other person of the Resort or of the common facilities at the Resort or cause a nuisance or hazard to or interfere unreasonably with the use or enjoyment of any other person entitled to the use and enjoyment thereof.
- (e) A Member shall not be entitled to more than one week's use and accommodation of an Accommodation Unit in any one calendar year in respect of each Timeshare owned by him.
- (f) No Member may postpone the exercise of his rights to the use and occupation of an Accommodation Unit in any calendar year and any such rights not exercised during the time reserved or otherwise to which he is entitled shall be forfeited.
- (g) No transferee of a Timeshare in any year shall be entitled to exercise any right to the use and occupation of an Accommodation Unit attached to the Timeshare transferred in that calendar year if that right has been exercised by a predecessor in title.
- (h) Any Member intending to use his week shall provide written instructions to the Resort manager at least 120 days before the intended time of use.

10.3 Failure to Vacate

- (a) If any Member fails to vacate his Accommodation Unit at the end of the time attached to his Timeshare or prevents another Member from using and occupying an Accommodation Unit during that other Member's time such Member shall be subject to:
- (i) immediate removal, eviction or ejection from the Accommodation Unit wrongfully occupied by him;
 - (ii) be deemed to have waived any notice required by law with respect to legal proceedings regarding removal, eviction or ejection; and
 - (iii) reimburse the Member otherwise entitled to use the Accommodation Unit for all costs and expenses incurred by him as a result of that Member's conduct including but not limited to costs of alternative accommodation, travel costs, legal fees and like charges.

10.4 Financial Member

Where a Member has failed to pay any fees, charges or contributions (by the due date), then that Member:

- (a) cannot exercise any vote at any meeting of the Club;
- (b) cannot exercise any other rights of membership; and
- (c) may have their membership terminated pursuant to rule 7.

11. RENTAL POOLS

11.1 Financial Members only

Only financial Members may pool their accommodation entitlement, and this pool shall be known as the Rental Pool. The control and operation of the Rental Pool shall rest with the Board and within the rules of this Constitution and current legislation.

11.2 Variation to the Rental Pools

The Board may vary the rules and the administrative arrangements applying to the Rental Pool, but not the terms contained in this rule (unless varied by resolution at a General Meeting of Members).

11.3 The Rental Pool shall comprise twelve (12) divisions, namely:

- (a) Peak Fixed Season Rental Pool, being Weeks 52, 1, 2, and 3 inclusive and concurrently, for one-bedroom units;
- (b) Peak Fixed Season Rental Pool, being Weeks 52, 1, 2, and 3 inclusive and concurrently, for two-bedroom units;
- (c) Summer Holiday Fixed Season Rental Pool, being Holiday Weeks between Weeks 5 to 26 inclusive, for one-bedroom units;
- (d) Summer Holiday Fixed Season Rental Pool, being Holiday Weeks between Weeks 5 to 26 inclusive, for two-bedroom units;
- (e) Winter Holiday Fixed Season Rental Pool, being Holiday Weeks between Weeks 27 to 49 inclusive, for one-bedroom units;
- (f) Winter Holiday Fixed Season Rental Pool, being Holiday Weeks between Weeks 27 to 49 inclusive, for two-bedroom units;
- (g) Summer Floating Season Rental Pool, between Weeks 5 to 26 inclusive, for one-bedroom units;
- (h) Summer Floating Season Rental Pool, between Weeks 5 to 26 inclusive, for two-bedroom units;
- (i) Winter Floating Season Rental Pool, between Weeks 27 to 49 inclusive, for one-bedroom units; and
- (j) Winter Floating Season Rental Pool, between Weeks 27 to 49 inclusive, for two-bedroom units;
- (k) Prime Season Rental Pool, being Weeks 50, 51 and 4 concurrently, for one-bedroom units; and
- (l) Prime Season Rental Pool, being Weeks 50, 51 and 4 concurrently, for two-bedroom units.

Each Rental Pool shall be accounted for and distributed to participating Members separately.

11.4 Give notice to the Board

Members wishing to deposit their Timeshare Week(s) into the Rental Pool shall give 120 days written notice to the Resort manager. Members may withdraw their Timeshare Week(s) from the Rental Pool with the approval of the Board or the Resort manager, but neither the Board nor the Resort manager shall be under any obligation to approve the release of the Timeshare Week(s).

11.5 Administration fee

Twenty five percent (25%) or direct expenses whichever is the greater of the gross rental income from each Rental Pool division shall be paid to the Club to cover expenses and commission and Goods and Services Tax ("GST") (if applicable) shall be deducted from Rental Pool dividends before distribution.

11.6 Rental Pool dividends

Dividends from each Rental Pool division shall be paid out to participating Members within 2 months following conclusion of the applicable Rental Pool period.

11.7 Surplus Accommodation

The Board or the Resort manager may rent out any surplus accommodation that is not reserved by a Member, or that has not been committed to the Rental Pool by a Member, or that is not committed to an Exchange Organisation. The rental income from surplus accommodation shall be paid to the Club and utilised to operate and maintain the Resort.

11.8 Rights to deposit Weeks

- (a) A Member that is not financial does not have any rights or privileges, including the right to deposit a Week(s) into the Rental Pool or to receive a dividend from the Rental Pool for the period that the Member is not financial.
- (b) Members depositing their Week(s) into the Rental Pool must be financial, and remain financial throughout the term of the applicable Rental Pool period. The Board or the Resort manager shall withdraw any Week(s) from the Rental Pool belonging to a Member that is not financial.

11.9 Offset

Notwithstanding rule 11.8, if a Member is entitled to a distribution from the Rental Pool and the Member has amounts outstanding and due and payable to the Club, the Board at its own discretion may offset all or part of this distribution against the amount payable to the Club.

11.10 Trust account

All Rental Pool receipts less the administration fee payable to the Club under **rule 11.5** shall be deposited in a trust account set up for the sole purpose of holding monies for distribution to Rental Pool participants. The Auditor shall review the Rental Pool and the operation of the trust account and report to Members at each Annual General Meeting

12. EXCHANGE ORGANISATION

The Board may cause the Club to subscribe to or affiliate with any number of timesharing exchange organisations in the interests of its Members and to make all appropriate and necessary provision for the implementation of exchange arrangements.

13. GENERAL MEETINGS

13.1 General meetings

- (a) General meetings of the Club may be called and held at the times and places and in the manner determined by the Board. Except as permitted by the Law, the Members may not convene a meeting of the Club. By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or called by Members in accordance with the Law) may be cancelled or postponed prior to the date on which it is to be held.
- (b) The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - (v) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) who is not:
 - (A) a Member or a proxy, attorney or representative of a Member;
 - (B) a Director; or
 - (C) the Auditor.
- (c) A person, whether or not a Member, who is requested by the Board or the Chairman to attend a general meeting, is entitled to be present.

13.2 Notice of general meeting

- (a) Not less than 21 days' notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of Directors be held. Notice of meetings shall be given to the Members and to such persons as are entitled under these rules or the Law to receive notice. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.
- (b) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Law in relation to the use of such technology.

14. PROCEEDINGS OF MEETINGS

14.1 Business of general meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Law to be laid before each annual general meeting, to elect Directors in the place of those retiring under these rules, when relevant to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Law, no person may move at any meeting either:
 - (i) in regard to any special business of which notice has been given under rule 13.2, any resolution or any amendment of a resolution; or
 - (ii) any other resolution which does not constitute part of special business of which notice has been given under rule 13.2.
- (b) The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

14.2 Quorum

Five Members present in person, by proxy or attorney constitute a quorum for a general meeting except if the Club is a wholly owned subsidiary or otherwise has only one Member or where a class of Members is constituted by one Member. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

14.3 Adjournment in absence of quorum

If, within 15 minutes after the time specified for a general meeting, a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

14.4 Chairman

- (a) The Chairman of the Board is entitled to take the chair at every general meeting.
- (b) If, at any general meeting:
 - (i) the Chairman of the Board is not present at the specified time for holding the meeting; or
 - (ii) the Chairman of the Board is present but is unwilling to act as Chairman of the meeting,the deputy Chairman of the Board is entitled to take the chair at the meeting.
- (c) If, at any general meeting:
 - (i) there is no Chairman of the Board or deputy Chairman of the Board;
 - (ii) the Chairman of the Board and deputy Chairman of the Board are not present at the specified time for holding the meeting; or
 - (iii) the Chairman of the Board and the deputy Chairman of the Board are present but each is unwilling to act as Chairman of the meeting,

the Directors present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

14.5 Acting Chairman

If during any general meeting the Chairman acting pursuant to **rule 14.4** is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as Chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be Acting Chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the Acting Chairman is to withdraw and the Chairman is to resume acting as Chairman of the meeting.

14.6 General conduct of meeting

Except as provided by the Law, the general conduct of each general meeting of the Club and the procedures to be adopted at the meeting are as determined by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present. The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Club, whether on a show of hands or on a poll.

14.7 Adjournment

The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting pursuant to this rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14.8 Voting

- (a) Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote. Subject to rule 14.8(b), in the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy, attorney or duly appointed representative of a Member.
- (b) On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman cannot vote but has a casting vote in the case of an equality of votes cast by Members entitled to vote at the meeting.

14.9 Declaration of vote on a show of hands; when poll demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Club signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
 - (i) the Chairman;
 - (ii) at least 5 Members present entitled to vote on the resolution;
 - (iii) by a Member or Members present with at least 5% of the votes that may be cast on the resolution on a poll.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

14.10 Taking a poll

If a poll is demanded as provided in rule 14.9, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

14.11 Continuation of business

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

14.12 Special meetings

All the provisions of these rules as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these rules or the Law.

15. VOTES OF MEMBERS

15.1 Voting rights

Subject to the restrictions on voting from time to time affecting any class of Timeshares and subject to **rules 5.9(d), 10.4, 15.4 and 15.8:**

- (a) subject to rule 15.1(b) and (c), on a show of hands, each Member present has one vote;
- (b) where a Member has appointed 2 persons as proxies for that Member, neither proxy may vote on a show of hands;
- (c) subject to rule 15.1(d), where a person is entitled to vote by virtue of rule 15.1(a) in more than one capacity, that person is entitled only to one vote on a show of hands; and
- (d) if the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands; and
- (e) on a poll, each Member present has one vote for each Timeshare held.

15.2 Voting rights of personal representatives, etc

Any person entitled under **rules 8.5 and 8.6** to transfer any Timeshares may vote at a general meeting in the same manner as if the person were the registered holder of the Timeshares provided that at least 48 hours before the time of holding the meeting at which the person proposes to vote the person has satisfied the Board of the person's right to transfer the Timeshares, unless the Board has previously admitted the person's right to vote at the meeting in respect of the Timeshares.

15.3 Appointment of proxies

- (a) Any Member entitled to vote at a general meeting may appoint a proxy. Any Member who is entitled to cast 2 or more votes at a general meeting may appoint not more than 2 proxies to vote at a general meeting on that Member's behalf and may, but need not, direct the proxy or proxies how to vote in relation to each or any resolution.
- (b) A proxy need not be a Member in the Club.
- (c) Where a Member appoints 2 proxies and each proxy is not appointed to represent a specified proportion or number of the Member's voting rights, then each proxy may exercise half of the Member's voting rights.
- (d) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Directors may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (e) No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Club until revocation.

15.4 Voting by corporation

Any corporation, being a Member and entitled to vote, may by resolution of its directors or other governing body or by an instrument of proxy authorise any person, though not a Member of the Club, or any person occupying a particular office from time to time, to act as its representative, and such representative is, in accordance with their authority and until their authority is revoked by the corporation which they represent, entitled to exercise the same powers at meetings on behalf of the corporation which they represent as that corporation could exercise if it were a natural person who was a Member and exercise any other powers permitted to be exercised by a body corporate representative under the Law.

15.5 Validity of vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney or transfer of the Timeshares in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind, revocation or transfer has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

15.6 Form and execution of instrument of proxy

- (a) An instrument appointing a proxy is required to be in writing signed by the Member or the attorney of the Member or, if the Member is a corporation, under its common seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept.
- (b) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

- (c) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Law and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.

15.7 Board to issue forms of proxy

The Board may issue with any notice of general meeting of Members or any class of Members forms of proxy for use by the Members. Each form is to make provision for the Member to write in the name of the person or persons to be appointed as proxy and may provide that, if the Member does not so write in one or more names, the proxy are to be one or more persons named on the form. The form may include the names of any of the Directors or of any other persons as suggested proxies. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

15.8 Attorneys of Members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Club. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

15.9 Rights of Member indebted to Club in respect of other Timeshares

Subject to any restrictions from time to time affecting the right of any Member or class of Members to attend any meeting, a Member holding a Timeshare in respect of which for the time being no moneys are due and payable to the Club is entitled to be present at any general meeting and to vote and be reckoned in a quorum notwithstanding that moneys are then due and payable to the Club by the Member in respect of any other Timeshare held by the Member provided that, upon a poll, a Member is only entitled to vote in respect of Timeshares held by the Member upon which, at the time when the poll is taken, no moneys are due and payable to the Club.

16. DIRECTORS

16.1 Number and appointment of Directors

- (a) The number of Directors (not including alternate Directors) is required to be the number, not being less than 3 nor more than 5, which the Board may from time to time determine provided that the Board may not reduce the number below the number of Directors in office at the time of the reduction.
- (b) All Directors are required to be natural persons.
- (c) At least two Directors must ordinarily reside in Australia.

16.2 Power to appoint Directors

The Board has the power at any time to appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board but so that the number of Directors does not exceed the maximum number determined pursuant to **rule 16.1(a)**. Any Director appointed under this rule may hold office only until the next general meeting of the Club and is then eligible for election at that meeting but is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting.

16.3 Remuneration of Directors

- (a) Subject to rule 16.3(b), the Directors are to be paid out of the funds of the Club as remuneration for their services as Directors, such sum accruing from day to day as the Club in general meeting determines to be divided among them in such proportion and manner as they agree or in default of agreement, equally.
- (b) The Directors' remuneration for their services as Directors is by fixed sum and not a commission on or percentage of profits or operating revenue and may not be increased except at a general meeting where particulars of the proposed increase have been given to the Members in the notice convening the meeting.

16.4 Remuneration of Directors for extra services

Any Director who serves on any Committee, or who devotes special attention to the business of the Club, or who otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, or who at the request of the Board engages in any journey on the business of the Club, may be paid extra remuneration as determined by the Board.

16.5 Travelling and other expenses

Every Director is, in addition to any other remuneration provided for in these rules, entitled to be paid from Club funds all reasonable travel, accommodation and other expenses incurred by the Directors in attending meetings of the Club or of the Board or of any Committees or while engaged on the business of the Club.

16.6 Directors may contract with Club

- (a) A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Club or any other person either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Club or any other person by a Director or any contract or arrangement entered into by or on behalf of the Club or any other person in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Club for any profit realised by any contract or arrangement, by reason of holding the office of Director or of the fiduciary relationship established by the office.
- (b) No Director may as a Director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Law and if the Director does vote his vote may not be counted nor shall the Director be counted in the quorum present at the meeting but either or both of these prohibitions may at any time be relaxed or suspended to any extent by ordinary resolution passed at a general meeting, if permitted by the Law.
- (c) A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to, or otherwise executing any document evidencing or otherwise connected with the contract or arrangement.

16.7 Director may hold other office

- (a) A Director may hold any other office or position under the Club (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.
- (b) A Director may be or become a director of or hold any other office or position under any corporation promoted by the Club, or in which it may be interested, whether as a vendor or Member or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a director or Member of or holder of any other office or position under that corporation or organisation.

16.8 Exercise of voting power in other corporations

The Board may exercise the voting power conferred by the Timeshares in any corporation held or owned by the Club as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation or voting or providing for the payment of remuneration to the directors of that corporation) and a Director of the Club may vote in favour of the exercise of those voting rights notwithstanding that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

16.9 Directors may lend to the Club

Any Director may lend money to the Club at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Club and underwrite or guarantee the subscription of Timeshares or other Timeshares of the Club or of any corporation in which the Club may be interested without being disqualified in respect of the office of Director and without being liable to account to the Club for the commission or profit.

17. ALTERNATE DIRECTORS

17.1 Director may appoint alternate Director

- (a) Subject to these rules, each Director has power from time to time to appoint any person to act as an alternate Director in the Director's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director.
- (b) The Director must first seek and obtain the consent of the Board to the appointment, which consent is not to be unreasonably withheld or delayed. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Club by forwarding or delivering it to the Office.
- (c) The appointment takes effect immediately upon receipt of the appointment at the Office.

17.2 Conditions of office of alternate Director

The following provisions apply to an alternate Director:

- (a) the alternate Director may be removed or suspended from office upon receipt at the Office of written notice, letter, facsimile transmission or other form of visible communication from the Director by whom the alternate Director was appointed to the Club;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all duties of a Director, in so far as the Director by whom the alternate Director was appointed had not exercised or performed them;

- (d) the alternate Director is not, unless the Board otherwise determines, (without prejudice to the right to reimbursement for expenses pursuant to rule 16.5) entitled to receive any remuneration as a Director from the Club, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the alternate Director by the Club is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;
- (e) the office of the alternate Director is vacated upon vacation of office by the Director or written resignation being given to the Club by the Director, by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the Club for the alternate Director's own acts and defaults and is not to be deemed to be the agent of the Director by whom the alternate Director was appointed.

18. VACATION OF OFFICE OF DIRECTOR

18.1 Vacation of office by Director

- (a) The office of a Director is vacated:
 - (i) upon the Director becoming an insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;
 - (ii) upon the Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
 - (iii) upon the Director being absent from meetings of the Board during a period of 3 consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
 - (iv) upon the Director resigning office by notice in writing to the Club;
 - (v) upon the Director being removed from office pursuant to the Law; or
 - (vi) upon the Director being prohibited from being a Director by reason of the operation of law.

18.2 Directors who are employees of the Club

The office of a Director who is an employee of the Club and/or any of its subsidiaries, becomes vacant upon the Director ceasing to be employed (so that they are no longer employed by the Club or any subsidiary of the Club) but the person concerned is eligible for reappointment or re-election as a Director of the Club.

19. ELECTION OF DIRECTORS

19.1 Retirement of Directors

A Director shall hold office for a period of three years unless he resigns or is removed under **rule 15.1**. A retiring Director retains office until the dissolution or adjournment of the meeting at which the retiring Director retires.

19.2 Rotation of Directors

At every annual general meeting of the club one third of the Board, or if the number is not a multiple of three (3) than such number nearest one third of the Board shall determine, shall retire from office. Nothing in this rule shall require a Director to be subject to election earlier than three years from the date of the previous election.

19.3 Election of Directors

- (a) The election of Directors of the Board shall take place in the following manner:
 - (i) Any Member of the Club may nominate himself (or, if that Member be a corporation, partnership or body of persons, then a duly authorised representative of the Member) or any other Member (or, if that Member be a corporation, partnership or body of persons, then a duly authorised representative of the Member) to serve as a Director of the Board.
 - (ii) The nomination, which shall be in writing and signed by the candidate and his proposer (if any) shall be lodged with the Secretary no later than 31st January in the year of the Annual General Meeting.
 - (iii) A list of the candidates' names in alphabetical order, with the proposers' names, if any, shall be posted in a conspicuous place in the registered office of the Club for at least twenty-one (21) days immediately preceding the Annual General Meeting and be contained in the notice of meeting.
- (b) Balloting lists shall be prepared (if necessary) containing the names of the candidates only in alphabetical order, and each Member present at the Annual General Meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies.

20. PROCEEDINGS OF DIRECTORS MEETINGS

20.1 Procedures relating to Directors' meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise determined by the Board, 3 Directors form a quorum.
- (c) Notice is deemed to have been given to a Director, and all Directors are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any fax number or electronic address is notified to the Club) or at any other address given to the Secretary by the Director from time to time subject to the right of the Director to withdraw such consent within a reasonable period before a meeting.

20.2 Meetings by telephone or other means of communication

The Directors may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting is at that place for the duration of the meeting.

20.3 Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes.

20.4 Chairman has casting vote

Subject to, **rule 20.3** in the case of an equality of votes, the Chairman has a casting vote in addition to the vote or votes to which the Chairman may be entitled.

20.5 Convening of meetings

The Chairman or the Board may at any time, and the Secretary, upon the request of any one Director, must convene a meeting of the Board.

20.6 Chairman

The Board may elect a Chairman and a deputy Chairman of its meetings and determine the period for which each is to hold office. If no Chairman or deputy Chairman is elected or if at any meeting the Chairman and the deputy Chairman are not present at the time specified for holding the meeting (or, if being present, the relevant Directors refuse to act as Chairman or deputy Chairman), the Directors present may choose one of their number to be Chairman of the meeting.

20.7 Powers of meetings

A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretion for the time being vested in or exercisable by the Board.

20.8 Delegation of powers to committees

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

20.9 Proceedings of committees

The meetings and proceedings of any Committee are to be governed by the provisions of these rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under **rule 20.8**.

20.10 Validity of acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a Member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed pursuant to these rules, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Club but for no other purpose.

20.11 Resolution in writing

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors.
- (b) For the purposes of this rule the references to 'Directors' include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director.
- (c) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by the Director.

21. POWERS OF THE BOARD

21.1 General powers of the Board

The management and control of the business and affairs of the Club are vested in the Board, which (in addition to the powers and authorities conferred upon them by these rules) may exercise all powers and do all things as are within the power of the Club and are not by these rules or by the Law directed or required to be exercised or done by the Club in general meeting.

21.2 Power to borrow and guarantee

Without limiting the generality of **rule 21.1**, the Board may exercise all the powers of the Club to raise or borrow money, may guarantee the debts or obligations of any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

21.3 Power to give security

Without limiting the generality of **rule 21.1**, the Board may charge any property or business of the Club or any of its uncalled capital and may issue debentures or give any other security for a debt, liability or obligation of the Club or of any other person, in each case, in the manner and on the terms it thinks fit.

22. MINUTES

22.1 Contents of minutes

The Board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the Directors present at each meeting of the Board and of any Committees; and
- (b) details of all resolutions and proceedings of general meetings of the Club and of meetings of the Board and any Committees.

22.2 Signing of minutes

The minutes of any meeting of the Board or of any Committee or of the Club, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

23. DIVIDENDS

23.1 No dividend

No dividends shall be paid to any Member.

24. RESERVES

24.1 The Board will create a:

- (a) Sinking Fund Reserve; and
- (b) Future Refurbishment Fund Reserve.

The Board may set aside out of Annual Ownership Costs or the profits of the Club any sums as it thinks proper as a reserve.

25. **POWER TO CAPITALISE PROFITS**

The Board may resolve that the whole or any portion of any sum forming part of the Annual Ownership Costs or undivided profits of the Club be capitalised.

26. **NOTICES**

26.1 Service of notices

A notice may be given by the Club to a Member, or in the case of joint holders to the Member whose name stands first in the Register, personally, by leaving it at the Member's Registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's Registered address or by sending it to the electronic address (if any) nominated by the Member. All notices sent by prepaid post to persons whose Registered address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

26.2 When notice deemed to be served

Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's Registered address is deemed to have been served when delivered. Any notice served on a Member by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Club's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee. Any notice served on a Member by electronic means is deemed to have been served when the electronic message is sent.

26.3 Member not known at Registered address

Where a Member does not have a Registered address or where the Club has bona fide reason to believe that a Member is not known at the Members Registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Club of a registered place of address.

26.4 Signature to notice

The signature to any notice to be given by the Club may be written or printed.

26.5 Reckoning of period of notice

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.

26.6 Notice to transferor binds transferee

Every person who, by operation of law, transfer or any other means becomes entitled to be registered as the holder of any Timeshares, is bound by every notice which, prior to the person's name and address being entered in the Register in respect of those Timeshares, was duly given to the person from whom the person derives title to those Timeshares.

26.7 Service on deceased Members

A notice delivered or sent by post to the Registered address of a Member pursuant to these rules is (notwithstanding that the Member is then dead and whether or not the Club has notice of the Member's death) deemed to have been duly served in respect of any registered Timeshares, whether held solely or jointly with other persons by the Member, until some other person is registered in the Member's place as the holder or joint holder and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators and all persons (if any) jointly interested with the Member in the Timeshares.

26.8 Persons entitled to notice of general meeting

(a) Notice of every general meeting is to be given to:

- (i) each Member individually who is entitled to vote at general meetings of the Club;
- (ii) each Director;
- (iii) each person entitled as a consequence of the death or bankruptcy of a Member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
- (iv) the Auditor.

(b) No other person is entitled to receive notices of general meetings.

27. WINDING UP

27.1 Club wound up

If the Club is wound up during the term of their membership or within one year after they cease to be a Member, each Member undertakes to contribute to the Club's property and assets for the payment of the Club's debts and liabilities contracted before they ceased to be Member and for the costs, charges and expenses of winding up and for the adjustment of the rights of the Members among themselves, such amount as may be required from each Member not exceeding ten dollars (\$10.00).

27.2 The Club shall not be dissolved

The Club shall not be dissolved except at an Extraordinary Meeting of the Club especially convened for the purpose and by a resolution carried by a majority of seventy-five percent of the votes recorded in a ballot in respect of the same.

27.3 After Termination

After termination of the Club, the Board must:

- (a) not accept any further Members;
- (b) settle the Members Register;
- (c) sell and realise all assets of the Club;
- (d) apply the assets of the Club in payment of all outstanding debts and liabilities of the Club;
- (e) in payment of all the costs of sale (including the selling agent's commission on sale), and the costs of winding-up the Club;
- (f) the Board will divide the balance on a pro-rata basis according to each Member's Timeshare; and
- (g) prepare or cause to be prepared accounts which correctly record and explain the winding up of the Club, appoint a registered company auditor (within the meaning of the Law) to audit those accounts, and send a copy of the auditor's report to each Member.

27.4 Distribution in specie

If the Club is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the Members as the liquidator thinks fit in specie or in kind any part of the assets of the Club, and may vest any part of the assets of the Club in trustees upon any trusts for the benefit of all or any of the Members as the liquidator thinks fit.

27.5 Variation of rights of Members

If thought expedient, any division may be otherwise than in accordance with the legal rights of the Members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the Members is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed pursuant to the Law relating to the sale or transfer of the Club's assets by a liquidator in a voluntary winding up.

27.6 Membership

For the avoidance of doubt only those Members who are financial Members (being Members who have paid all outstanding fees, charges and contributions by the due date) are entitled to participate in any surplus on a winding up of the Club. Any person whose membership has been cancelled prior to the winding up of the Club has no entitlement to participate in any surplus.

28. PAYMENTS BY THE CLUB

28.1 Payments by the Club

- (a) Members will only be entitled to a payment or distribution on a winding up of the Club. Any money payable by the Club to a Member under this rule may be paid by any means as directed by the Member from time to time and, in the absence of a direction, may be made by direct Bank transfer or by crossed not negotiable cheque payable to the Member or order and sent through the post to the Member at its address in the Members Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Members at the address shown in the Members Register of the joint holder who is first named in the Members Register. Payment of a cheque drawn and posted in accordance with this rule is in full satisfaction of the monies payable to the Member and a good discharge to the Club.
- (b) If any law of any place imposes or purports to impose any immediate or future or possible liability on the Club to make any payment or empowers any government or taxing authority or government official to require the Club to make any payment in respect of any Timeshares held either jointly or solely by any Member or in respect of any transfer of those Timeshares or in respect of any moneys due or payable or accruing due or which may become due or payable to the Member by the Club on or in respect of any Timeshares or for or on account or in respect of any Member of Timeshares, whether in consequence of:

- (i) the death of the Member;
- (ii) the non-payment of any income tax or other tax by the Member;
- (iii) the non-payment of any estate, probate, succession, death, stamp or other duty by the Member or the trustee, executor or administrator of that Member or by or out of the Member's estate; or
- (iv) Club any other act or thing,

the Club may exercise any of the rights set out in **rule 28.2**.

28.2 Rights of the Club

In each of the situations described in **rules 28.1(b)(i) to 28.1(b)(iv)** the Club and the Directors:

- (a) are to be fully indemnified from all liability by the Member or the Member's trustee, executor or administrator and by any person who becomes registered as the Member of the Timeshares on the distribution of the deceased Member's estate;
- (b) have a lien or charge upon the Timeshares for all moneys paid by the Club in respect of the Timeshares under or in consequence of any law;
- (c) have a lien upon all moneys payable in respect of the Timeshares registered in the Members' Register as held either jointly or solely by the Member for all moneys paid or payable by the Club in respect of the Timeshares under or in consequence of any law, together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment, and may deduct or set off against moneys payable any moneys paid or payable by the Club together with interest;
- (d) may recover as a debt due from the Member or the Member's trustee, executor or administrator or any person who becomes registered as the Member of the Timeshares on the distribution of the deceased Member's estate, any moneys paid by the Club under or in consequence of any law which exceed any money then due or payable by the Club to the Member together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment; and
- (e) may, if any money is paid or payable by the Club under any law, refuse to register a transfer of any Timeshares by the Member or the Member's trustee, executor or administrator until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any money then due or payable by the Club to the Member, until the excess is paid to the Club.

28.3 Rights not prejudiced

Nothing in **rules 28.1 or 28.2** prejudices or affects any right or remedy which any law confers on the Club, and, as between the Club and each Member, each Member's trustee, executor, administrator and estate, any right or remedy which the Law confers on the Club is enforceable by the Club.

29. INDEMNITY

29.1 Indemnity in favour of Directors, Secretaries and Executive Officers

Subject to the Law and **rule 29.2**, the Club shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Club, other than:

- (a) a Liability owed to the Club or a related body corporate of the Club;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law;
- (c) a Liability owed to a person other than the Club that did not arise out of conduct in good faith.

29.2 Indemnity for legal costs

The Club shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Club other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under rule 29.1;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 29.2(c) does not apply to costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Law in which the court denies the relief.

29.3 Indemnity for employees

Subject to the Law and **rule 29.4**, the Club may indemnify an employee, who is not a Director, Secretary or executive officer of the Club, to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an officer of the Club, other than:

- (a) a Liability owed to the Club or a related body corporate of the Club;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or
- (c) a Liability owed to a person other than the Club that did not arise out of conduct in good faith.

29.4 Indemnity for legal costs of employees

The Club may indemnify an employee other than a Director, Secretary or executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or by virtue of their holding office as, and acting in the capacity of, an officer of the Club other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the officer is found to have a Liability for which they could not be indemnified under rule 29.3;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 29.4 does not apply to costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the officer under the Law in which the court denies the relief.

29.5 Proceedings

For the purposes of **rules 29.2** and **29.4**, 'proceedings' includes the outcomes of the proceedings and any appeal in relation to the proceedings.

29.6 Insurance for the benefit of Directors, Secretaries and executive officers

Subject to the Law, the Club may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Club acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

29.7 Insurance for other officers

Subject to the Law, the Club may pay a premium for a contract insuring a person who is or has been an employee and officer of the Club, acting in that capacity, but who is not a Director, Secretary or executive officer of the Club against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct .

29.8 When insurance may not be provided by the Club

The Club shall not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer or an employee who is also an officer of the Club, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Club; or
- (b) a contravention of section 182 or section 183 of the Law.

29.9 Definitions for the purposes of rule 29

In this **rule 29**, except to the extent the context otherwise requires:

'**Liability**' includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

'**executive officer**' means a person who is concerned, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a Director of the Company);

'**officer**' means:

- (a) a Director or Secretary of the Company;
- (b) a person:

- (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
- (ii) who has the capacity to affect significantly the Company's financial standing; or
- (iii) in accordance with whose instructions or wishes the Directors is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).

30. RESORT MANAGER

30.1 Appointment

The Board may appoint a Resort manager for such term at such remuneration and upon such terms and conditions as it thinks fit and any Resort manager so appointed may be removed by it.

- (a) A Resort manager so appointed shall reside at the Resort in accommodation provided by the Club for that purpose and shall be responsible for the management of the Accommodation Units and Common Facilities of the Club.
- (b) Nothing contained in this rule shall prevent the Board from appointing a Member of the Club as the Resort manager and any person so appointed shall be subject to this Constitution.

31. INSPECTION OF RECORDS

The Board shall determine whether and to what extent and at what time and places and under what conditions the accounting records and other documents of the Club or any of them will be open to the inspection of Members other than Members of the Board and a Member other than a Member of the Board does not have the right to inspect any document of the Club except as provided by law these Rules or authorised by the Board or by the Club in general meeting.

32. AUDITOR

32.1 Appointment

The Board will appoint the Auditor. The appointments will be a registered company auditor according to the provisions of the Act.

32.2 Removal or Retirement of Auditor

The Club may only remove the Auditor in accordance with the procedure provided in the Law. Unless otherwise agreed, the Auditors may retire after giving at last one month's written notice to the Board.

33. GOODS AND SERVICES TAX

If any supply made by the Club to the Members under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act:

- (a) Then in addition to any amount or consideration expressed as payable to the Club elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Club shall be entitled to recover from the Members an additional amount on account of GST, such amount to be equal to the amount of the Club's GST liability in respect of each supply and shall be recoverable at the same time as the amount or consideration is payable for such supply.
- (b) The Board will review in good faith the terms of this Constitution, other than the timing of the recovery of GST, and make such amendments (if any) as are necessary to ensure that, having regard to paragraph (a), neither the Club nor the Members are unfairly disadvantaged (nor advantaged) by the consequences of the GST and associated measures (such as the decreasing or removal of existing taxes, duties, levies and excise by the Commonwealth, State or Territory).
- (c) In the event that Members by way of ordinary resolution resolve that the amendments proposed under paragraph (b) are not in accordance with that Rule then the changes to the arrangement will be determined by a person with expertise in goods and services tax by a person nominated by the President of the Institute of Chartered Accountants.
- (d) The Club and the Members acknowledge and agree that each supply made by the Club under this Constitution is made:
 - (i) on a progressive or periodic basis;
 - (ii) for consideration that is to be provided on a progressive or periodic basis; and
 - (iii) each progressive or periodic component of the supply is to be treated as a separate supply.

34. GENERAL

34.1 Copies of this Constitution

A copy of this Constitution must be held by the Club at its principal office and registered office and made available during normal business hours at those places for inspection by Members. A Member is entitled to a copy of this Constitution upon payment to the Club of the reasonable costs and expenses of preparing a copy.

34.2 Governing law and jurisdiction

This Constitution is governed by and is to be construed in accordance with the laws of the State of New South Wales. Each party and the Members and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New south Wales and courts entitled to hear appeals from those courts.

34.3 No Waiver

The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waiver, and shall be effective only to the extent specifically set out in that waiver.

35. CHANGING THE CONSTITUTION

35.1 Power to Amend

The Constitution may be modified, or repealed and replaced with a new Constitution by special resolution of the Members.

35.2 Lodgement of Amendment

The Club must lodge with the ASIC a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

36. RESOLUTION OF DISPUTES

36.1 Complaints Handling System

The Club shall establish a complaints handling framework that complies with Australian Standard - Complaints Handling AS4269 for the handling of disputes under this Constitution.

36.2 Essential Elements

The complaints handling process shall have as minimum requirements for:

- (a) **(Commitment)**. There shall be a commitment to efficient and fair resolution of complaints.
- (b) **(Fairness)**. The complaints handling process shall recognise the need to be fair to both the complainant Member and the Club.
- (c) **(Resources)**. There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (d) **(Visibility)**. The complaints handling process shall be well publicised to Members and staff of the Club and shall include information to Members about the right to complain.
- (e) **(Access)**. The complaints handling process shall be assessable to all Members and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance)**. Assistance shall be available for Members in a formulation and lodgement of complaint.
- (g) **(Responsiveness)**. Complaints shall be dealt with quickly and the Members shall be treated courteously.
- (h) **(Charges)**. Complaints handling shall be at no charge to the particular complaining Member.
- (i) **(Remedies)**. The complaints handling process shall have the capacity to determine and implement remedies.
- (j) **(Data collection)**. There shall be appropriate systematic recording of complaints by Members and their outcome.
- (k) **(Systematic and recurring problems)**. Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.

- (l) **(Accountability).** There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (m) **(Review).** The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

36.3 Best Efforts to Resolve the Dispute

- (a) On receipt of the written notice of dispute from the Member, the Club shall promptly reply (within 7 Business Days) acknowledging receipt of the notice of dispute.
- (b) The designated dispute resolution officer of the Club shall immediately investigate the complaint and if necessary correspond directly with the complainant Member in relation to the disputed matter.
- (c) The dispute resolution officer shall within 30 Business Days of receipt of the notice of dispute from the Member finalise its investigation of the dispute and report in writing to the Member the result of the dispute.
- (d) Where the dispute is not resolved to the satisfaction of the Member the Member shall have 30 days from receipt of the report of the dispute resolution officer to refer the matter to the Board.
- (e) The Board shall meet within 21 Business Days of receipt of a written complaint by a Member, received pursuant to paragraph (d) to consider the dispute.
- (f) The Member shall be entitled to be present at the meeting of the Board with or without legal representation and to be heard either in person or through the Member's legal representative.
- (g) Subsequent to hearing the Member's complaint the Board shall have a maximum of 14 Business Days within which to consider the complaint and either accept, reject or resolve the dispute.
- (h) The Board must notify the Member within 21 Business Days of the hearing under paragraph (e), of its decision.
- (i) If the Member is dissatisfied with the determination of the Board then the Member may refer the complaint to the Dispute Resolution Service.

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