

CORPORATIONS ACT

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION

of

AUSTRALIAN TIMESHARE & HOLIDAY OWNERSHIP COUNCIL LIMITED  
A.C.N. 065 260 095

**1.0 DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 In this Constitution, unless the subject matter or context otherwise requires, the following expressions have the following meanings:

1.1.1 "**Act**" means the Corporations Act 2001;

1.1.2 "**AFS Licence**" means an Australian financial services licence granted by ASIC under the Act;

1.1.3 "**AGM**" means an annual general meeting of the Company;

1.1.4 "**Alternate Director**" means any person appointed under the Constitution as an alternate director;

1.1.5 "**Annual Subscription**" means the annual subscription payable by a Member in accordance with the Constitution;

1.1.6 "**Applicant**" means a person who has lodged or caused to be lodged with the Board an Application in accordance with the Constitution;

1.1.7 "**Application**" means an application to become a Member in the form or to the effect from time to time determined by the Board;

1.1.8 "**ASIC**" means the Australian Securities & Investments Commission or any successor organisation;

1.1.9 "**Associate**" has the same meaning as in the Act;

1.1.10 "**Associate Members**" has the meaning given in Clause 8.3.8;

1.1.11 "**Auditor**" means the Registered Company Auditor appointed in accordance with the provisions of the Constitution or in accordance with the Act as the Auditor for the time being of the Company and where more than one Auditor is appointed includes each of them;

1.1.12 "**Board**" means the Board of Directors of the Company from time to time or any

committee thereof;

- 1.1.13 "**Board Nomination Form**" means a Nomination Form calling for nominations for Directors in each of the Voting Membership Categories;
- 1.1.14 "**Business Day**" means any day on which normal and usual business is performed and which is not a Saturday, Sunday or public holiday;
- 1.1.15 "**Certificate**" means a certificate or certificates, card, document (by whatever means or form determined by the Board, including, but without limitation, electronic means or form) evidencing membership of the Company which may be issued to a Member under the provisions of the Constitution;
- 1.1.16 "**Chairperson**" or "**President**" means the chairperson of Directors for the time being of the Company and includes any deputy chairperson or other person who is acting for the time being as chairperson of the Company;
- 1.1.17 "**CAC**" means the Code Administrative Committee as constituted under the Code of Practice;
- 1.1.18 "**Code of Practice**" means the Code of Practice adopted by the Board under the Constitution, as the Code of Practice is amended from time to time;
- 1.1.19 "**common seal**" means the common seal of the Company;
- 1.1.20 "**Company**" means Australian Timeshare & Holiday Ownership Council Limited A.C.N. 065 260 095;
- 1.1.21 "**Constitution**" means the constitution from time to time of the Company;
- 1.1.22 "**Corporations Regulations**" mean the regulations made under the Act and for the time being in force;
- 1.1.23 "**Director**" means any director of the Company for the time being and includes a person duly appointed and for the time being acting as an attorney for a Director or as an Alternate Director;
- 1.1.24 "**Exchange Company Members**" has the meaning given in Clause 8.3.3;
- 1.1.25 "**Exempt Applicant**" means an Applicant who is an Exempt Member if the Application of that Applicant is accepted by the Board in accordance with the Constitution;
- 1.1.26 "**Exempt Member**" means a Member who has applied to ASIC for the Scheme to comply with the requirements of one of the exemptions from Section 601ED of the Act contemplated by RG160 and whose application is granted by ASIC and does not include an Operator Member;
- 1.1.27 "**extraordinary resolution**" has the meaning given by the Act;
- 1.1.28 "**Financial Year**" means each consecutive period of twelve (12) months from the 1st January (or such other day as the Board determines) in each year until the 31<sup>st</sup> December

(or such other day as the Board determines) in the following year;

- 1.1.29 "**GST**" means any tax imposed on any supply under the Constitution (without regard to any input tax credit) by or through the *A New Tax System (Goods and Services Tax) Act 1999* and any related *Tax Imposition Act* (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of the foregoing Acts;
- 1.1.30 "**Honorary Members**" has the meaning given in Clause 8.3.7;
- 1.1.31 "**Independent Resort**" has the meaning given in Clause 8.3.5;
- 1.1.32 "**Industry**" means the timesharing and holiday ownership industry in Australia made up of persons engaged or interested in such industry;
- 1.1.33 "**Large Promoter and/or Developer Members**" has the meaning given in Clause 8.3.4;
- 1.1.34 "**Large Scheme**" has the meaning given in Clause 8.11;
- 1.1.35 "**Life Members**" has the meaning given in Clause 8.3.6;
- 1.1.36 "**Management Company**" means the management company of a non-registered Scheme under the old Act;
- 1.1.37 "**Member**" means the person for the time being registered under the provisions of the Constitution as a member of the Company;
- 1.1.38 "**MIA**" means the Managed Investments Act 1998;
- 1.1.39 "**month**" means calendar month;
- 1.1.40 "**Nomination Form**" means the nomination form as determined by the Board for the nomination of a Director;
- 1.1.41 "**Northern Region**" means the geographical region comprising the State of Queensland and that part of the State of New South Wales north of the Hawkesbury River;
- 1.1.42 "**Office**" means the registered office for the time being of the Company;
- 1.1.43 "**old Act**" means the Act as in force immediately before the commencement of the MIA;
- 1.1.44 "**Operator Applicant**" means an Applicant who is an Operator Member if the Application of that Applicant is accepted by the Board in accordance with the Constitution;
- 1.1.45 "**Operator Member**" means a Member who applied to ASIC under ASIC policy statement 160.4 to extend the transitional provisions for the Scheme (which has a fixed termination date) and whose application was granted by ASIC;

- 1.1.46 "**person**" includes a natural person, company, body corporate, association, firm, business, partnership, body of persons, government or semi-government authority or local or municipal authority;
- 1.1.47 "**Prescribed Interest Rate**" means the maximum rate of interest (as published in major Australian daily newspapers) charged in Australia by the Commonwealth Bank of Australia (or its successor) on overdraft accounts as at any day on which interest accrues or such other rate of interest as may be prescribed by the Board from time to time and for the purpose or purposes prescribed by the Board;
- 1.1.48 "**present**" means, when used in relation to a Member, present in person, or by proxy, or by attorney or if a corporation, by a representative appointed pursuant to the Constitution or the Act;
- 1.1.49 "**Product**" means a Timeshare and any and all goods and services offered or available in connection thereto or in association therewith;
- 1.1.50 "**Promoter and/or Developer Members**" has the meaning given in Clause 8.3.1;
- 1.1.51 "**Regions**" means all or any of the Northern Region, Southern Region and Western Region;
- 1.1.52 "**Register**" means the Register of Members required to be maintained by the Constitution and the Act;
- 1.1.53 "**Registered Company Auditor**" means a person registered as an auditor, or deemed to be registered as an auditor, under the Act;
- 1.1.54 "**Regulated Applicant**" means an Applicant who is an Regulated Member if the Application of that Applicant is accepted by the Board in accordance with the Constitution;
- 1.1.55 "**Regulated Member**" means a Member whose Scheme is registered by ASIC under the Act;
- 1.1.56 "**Regulations**" means the rules, by-laws or regulations (including, but without limitation, the Code of Practice) of the Company as they are from time to time made, modified or revoked by the Board in accordance with the Constitution and which may not be inconsistent with the Act or the Constitution;
- 1.1.57 "**Regulatory Guide**" or "**RG**" means a regulatory guide issued by ASIC, as that policy statement may be modified from time to time and includes any replacement policy statement;
- 1.1.58 "**Related Person**" includes a related body corporate, a related entity, a related party, an associate and an associated entity, as each of those expressions is defined in the Act;
- 1.1.59 "**Replaceable Rule**" means any or all of the replaceable rules contained in the Act from time to time and includes any replaceable rule that was or may become a provision of the Act;

- 1.1.60 "**resolution**" means, subject to the Act, a resolution passed at a meeting of Members duly convened and held in accordance with the provisions of the Act and the Constitution by a majority of the votes cast upon a show of hands by the Members present and voting and if a poll is demanded then by a majority of the votes cast on such a poll;
- 1.1.61 "**Responsible Entity**" means the responsible entity of a registered Scheme named in ASIC's record of the Scheme's registration as the responsible entity or temporary responsible entity of the registered Scheme;
- 1.1.62 "**Resort and Resort Management Members**" has the meaning given in Clause 8.3.2;
- 1.1.63 "**RG160**" means Regulatory Guide 160 Time-sharing Schemes issued on the 20<sup>th</sup> April, 2000 by ASIC, as amended;
- 1.1.64 "**Scheme**" means:
- 1.1.63.1 in respect of an Exempt Member or an Operator Member, the timesharing scheme which is not a registered scheme but which complies with the requirements of one of the exemptions from Section 601ED of the Act contemplated by RG160; or
  - 1.1.63.2 in respect of a Registered Member, the timesharing scheme which is registered under Section 601EB of the Act;
- 1.1.65 "**Secretary**" means any person appointed to perform the duties of a Secretary of the Company and includes any person appointed to perform such duties temporarily;
- 1.1.66 "**Southern Region**" means the geographical region comprising the States of Victoria, South Australia and Tasmania, the State of New South Wales south of the Hawkesbury River and the Australian Capital Territory;
- 1.1.67 "**Special Levy**" means the special levy payable by some or all Members in accordance with the Constitution;
- 1.1.68 "**special resolution**" has the meaning give by the Act;
- 1.1.69 "**Timeshare**" means an interest in a timesharing scheme;
- 1.1.70 "**timesharing scheme**" has the meaning given by the Act;
- 1.1.71 "**Trustee**" means the trustee of a non-registered Scheme under the old Act;
- 1.1.72 "**Voting Membership Categories**" means each of the following membership categories:
- 1.1.71.1 Promoter and/or Developer Members;
  - 1.1.71.2 Resort and Resort Management Members;
  - 1.1.71.3 Exchange Company Members;

- 1.1.71.4 Large Promoter and/or Developer Members;
- 1.1.71.5 Independent Resort Members;
- 1.1.73 "**Western Region**" means the geographical region comprising the State of Western Australia and the Northern Territory;
- 1.1.74 "**writing**" includes printing, typing, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning;
- 1.1.75 "**year**" means financial year.

### **Interpretation**

- 1.2 In this Constitution, unless the context otherwise requires:
  - 1.2.1 a reference to the singular includes the plural and vice versa;
  - 1.2.2 a reference to a gender includes all genders;
  - 1.2.3 a reference to any person or party includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency as the case requires and to that person's successors, permitted assigns, substitutes, executors and administrators;
  - 1.2.4 a reference to any document (including the Constitution) includes references to that document as amended, consolidated, supplemented, novated or replaced;
  - 1.2.5 a reference to an agreement includes any deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - 1.2.6 all references to Clauses, sub-clauses, Paragraphs, sub-paragraphs, Recitals, Schedules and any Annexures are references to in Clauses, sub-clauses, Paragraphs, sub-paragraphs, Recitals, Schedules and any Annexures in this Constitution as amended from time to time. A reference in this Constitution to a Clause shall apply to whole numbers without decimal indication and to numbers including a decimal number, but any reference to a Clause without such decimal indication shall include all Clauses commencing with that whole number (including those that have a decimal indication) and a reference to a Clause including a decimal in such reference shall refer only to the Clause bearing that decimal number;
  - 1.2.7 a reference to a law includes reference to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, by-law, judgment, rule of common law or equity, rule of any applicable stock exchange and is a reference to that law as amended, consolidated, supplemented or replaced;
  - 1.2.8 without prejudice to Clause 1.2.7, any reference to the Act includes a reference to the Corporations Regulations (including any amendment, consolidation, modification,

- supplement or replacement) and also includes a reference to all relief granted by ASIC with respect to a particular provision or provisions of the Act (including amendment, consolidation, modification, supplement or replacement of such relief);
- 1.2.9 a reference to any judgment includes references to any order, injunction, decree, determination or award of any court or tribunal;
- 1.2.10 a reference to any proceeding includes litigation, arbitration and investigation;
- 1.2.11 a reference to "deliver" includes cause to be delivered and references to "sell" include procure the sale of;
- 1.2.12 all references to any period of time prescribed or allowed under any provision of this Constitution for the giving of any notice, for the doing of any act or the occurrence of any event shall be deemed not to include the day of the act or the event, or of giving any such notice, from or after which such period of time is to be calculated, but to include the last day of which such notice is to be given or such act is to be done or event occurs, as the case may be;
- 1.2.13 unless otherwise expressly defined in this Constitution, words and expressions defined in the Act have the same meanings as are given by the Act;
- 1.2.14 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- 1.2.15 an agreement, representation or warranty on the part of two or more persons, unless expressly stated to the contrary, binds then jointly and severally;
- 1.2.16 a reference to time is a reference to Australian Eastern Standard time;
- 1.2.17 in the absence of anything to the contrary in this Constitution expressed or implied, a reference to a day is to be construed as the period of time commencing at midnight and ending 24 hours later;
- 1.2.18 a reference to dollars or "\$" is a reference to the lawful currency for the time being of Australia.
- 1.3 The headings appearing in this Constitution are for convenience and shall in no way affect the construction of its provisions.
- 1.4 If a payment or other act must (but for this Clause 1.4) be made or done on a day which is not a Business Day, then it must be made or done on the next following Business Day.
- 1.5 The words "including" or "includes" mean including but not limited to or including without limitation.
- 1.6 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 1.7 Where any person is required to provide, or may provide, a notice or application in writing to another person, then the Board may permit that notice or application to be given in electronic

form and on such other terms and conditions as the Board may determine.

1.8 The Replaceable Rules do not apply to the Company.

## **2.0 NAME OF COMPANY**

2.1 The name of the Company is Australian Timeshare & Holiday Ownership Council Limited A.C.N. 065 260 095. The Company is limited by guarantee and does not have share capital.

## **3.0 OBJECTS**

3.1 The objects for which the Company is established are:

- 3.1.1 to unite persons and organisations actively engaged in or interested in the Industry as a single and united body and to represent the Industry;
- 3.1.2 to articulate and advocate the needs and interests of the Industry before legislative, administrative, regulatory, executive and judicial branches of federal, state and local government;
- 3.1.3 to co-operate on behalf of the Industry with suppliers of goods and services directly or through their associations in matters involving the business and government affairs of the Industry;
- 3.1.4 to promulgate policies and to conduct programmes, activities and services for the betterment of the Industry. In particular, to provide opportunities for dialogue, education, advancement and improvement of all aspects within the Industry through meetings, seminars, communications, publications, policy formations and other programmes, services and activities;
- 3.1.5 to provide leadership on issues of concern to Members;
- 3.1.6 to promote and maintain high standards of conduct in the transaction of the Industry business;
- 3.1.7 to codify, prescribe and publish standards for the conduct of aspects of the Industry which in the opinion of the Company are desirable to be met throughout Australia including, but without limitation, the Code of Practice;
- 3.1.8 to maintain and publish a register of timesharing resorts (which may include a sub-register of those resorts which in the opinion of the Board reach and maintain such standards as are prescribed and published by the Company in accordance with Clause 3.1.7) and such other registers for such other matters as the Board may from time to time determine;
- 3.1.9 to convene all such meetings, seminars or conventions and the like as may in the opinion of the Board be useful in furthering the objects of the Company and in furthering the development and understanding of the Industry in the interests of the Industry and consumers and to charge such commission and other fees therefore as



may be necessary to defray all proper related costs;

- 3.1.10 to do and procure all such other things as may in the opinion of the Board be necessary to foster the orderly and responsible growth, development and use of Products or facilities relating to Products or the Industry;
- 3.1.11 to subscribe to, become a member of and co-operate or amalgamate with any other association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company;
- 3.1.12 to purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company. If the Company takes or holds any property which may be subject to any trusts, the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts;
- 3.1.13 to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen, other employees, contractors, consultants and other persons as may be necessary or convenient for the purposes of the Company;
- 3.1.14 to appoint from time to time with either full or restrictive powers and with or without powers of delegation and either with or without remuneration, agents, attorneys or other persons or corporations for the purpose of carrying out and completing any or all the objects of the Company and arranging, conducting or managing the business and affairs of the Company or any matter or concern in which the Company is concerned or interested and from time to time, revoke or cancel any or all such appointments or delegations to remove any person or corporation so appointed;
- 3.1.15 to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependants or connections of such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects or for any public, general or useful object;
- 3.1.16 to invest and deal with the money of the Company not immediately required in such manner as the Board thinks fit;
- 3.1.17 to borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee, indemnity or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, perpetual or otherwise, or by charges upon all or any of the Company's property (both present and future) and to purchase, redeem or pay off any such securities;
- 3.1.18 to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- 3.1.19 in furtherance of the objects of the Company, to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of

the property and rights of the Company;

- 3.1.20 to take any gift of property whether subject to any special trusts or not, for any one or more of the objects of the Company;
- 3.1.21 to take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the shape of donations, Annual Subscriptions or otherwise;
- 3.1.22 in furtherance of the objects of the Company to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- 3.1.23 to make donations for patriotic or charitable purposes;
- 3.1.24 to marshal and develop the resources necessary to ensure that the objects of the Company are met;
- 3.1.25 to create a wide public awareness of the benefits, facilities, services and essential role of the Company;
- 3.1.26 to act as the complaints resolution body of the Industry in Australia, including but not limited to, resolution of complaints involving any aspect of the Industry and in that capacity to deal with any complaints arising from any Products, facilities in relation to Products and the Industry and advice and dealings or transactions involving members of the public and participants in the Industry;
- 3.1.27 to have due regard to all relevant laws, codes of practice or conduct, fairness in the circumstances and good industry practice in, amongst other things, protecting, promoting and advancing the complaints resolution procedures and standards of the Industry;
- 3.1.28 to create or modify procedures for resolving complaints concerning Members including, but without limitation, the Code of Practice which, amongst other things is a contract between a Member and the Company;
- 3.1.29 to take such steps as are considered necessary in the interests of the Australian community at large to ensure that the Industry provides and continues to provide the best standards of complaints resolution to meet and satisfy the changing requirements and needs of that community;
- 3.1.30 to promote high ethical standards in the conduct of complaints resolution within the Industry and to develop the confidence and respect of the public;
- 3.1.31 to assist, advise and co-operate with federal, state and local governments, instrumentalities thereof and other bodies in the area of complaints legislation, codes of practice, regulations, conciliations and complaints resolution procedures and standards generally;

- 3.1.32 to develop complaints resolution efficiency within the Industry;
- 3.1.33 to collect, compile and distribute among Members statistical, technical, trading and other information and data of interest and assistance to Members and, without in any way being obliged to provide legal or other expert advice, to advise Members on matters and questions affecting the Industry;
- 3.1.34 to indemnify any officer or employee of the Company and the members of the CAC and the successors to all such officers in respect of any action taken or to be take or any liability incurred or to be incurred by such officer or employee or member of the CAC in any manner which the Company in general meeting may consider furthers the objects and policy of the Company;
- 3.1.35 to do all such other things as a natural person may do and in particular to have the capacity and powers set out in the Act;
- 3.1.36 in view of the dissolution of the 3 regional incorporated and unincorporated timesharing management associations at or shortly after the 2001 AGM of the Company and the transfer of their assets to the Company to further unite Industry participants, to support, promote and enhance the Industry in all Regions.

#### **4.0 LIABILITY OF MEMBERS**

- 4.1 The liability of Members is limited.
- 4.2 Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while that Member is a Member or within 1 year afterwards for payment of the debts and liabilities of the Company contracted before the time at which that Member ceased to be a Member and the costs and charges and expenses of winding up and for an adjustment of the rights of contributories among themselves such amount as may be required, not exceeding \$50.00.
- 4.3 To the extent provided for in the Constitution and subject to Clause 4.2, funds required for the purpose of carrying out the Company's objects shall be provided by Members and may also be received from other sources including, but without limitation, donations, sponsorship and grants.

#### **5.0 APPLICATION OF INCOME AND PROPERTY**

- 5.1 The income and property of the Company whencesoever derived shall be applied solely towards the promotion of the objects of the Company as set out in the Constitution and no part will be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to Members.
- 5.2 Nothing contained in Clause 5.1 prevents the payment in good faith of remuneration to any officers or servants of the Company or to any Member in return for any services rendered to the Company nor for goods supplied to the Company in the ordinary and usual course of business nor prevent the payment of interest at a rate not exceeding the Prescribed Interest Rate on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member.

## **6.0 WINDING UP OF COMPANY**

- 6.1 If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever, such property will not be paid to or distributed among Members but will be given or transferred to some institution or institutions having objects similar or in part similar to the objects of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed on the Company under the Constitution.

## **7.0 ACCOUNTS**

- 7.1 True accounts will be kept of the sums of money received and expended by the Company and the manner in respect of which receipts or expenditure takes place and of the assets (including property) and liabilities of the Company. Once at least in every year, the accounts of the Company will be examined and reported upon by one or more Auditor or Auditors.
- 7.2 Without limiting Clause 7.1, the Board must establish and maintain proper books of account, including written financial records which correctly record and explain the Company's transactions and financial position and performance and which would enable true and fair financial statements to be prepared and audited.
- 7.3 Without limiting Clause 7.1, the accounts of the Company must be audited and reported as required by the Act.
- 7.4 The Board shall from time to time determine whether and the extent to which and the times and places at which and under what conditions or regulations the records, accounts and books of the Company or any of them are open for inspection by Members and no Member has any right to inspect any record, account, book or paper of the Company except such right as is given by the Act or under the Constitution or is authorised by the Board or by the Company in general meeting.

## **8.0 MEMBERSHIP**

- 8.1 The maximum number of Members is unlimited.
- 8.2 Members are those persons admitted to membership of the Company by the Board in accordance with the Constitution.

### **Categories of Members**

- 8.3 The categories of Members or membership are as follows:

#### **Promoter and/or Developer Members**

- 8.3.1 Promoter and/or Developer Members are:

8.3.1.1 those persons whose Applications are accepted by the Board and who

are directly or indirectly engaged or involved in the promotion and development of Schemes (whether under the old Act or the Act) and includes, without limitation, Exempt Applicants, Operator Applicants and Regulated Applicants in their respective capacities as promoters and/or developers; or

- 8.3.1.2 those persons (excluding Responsible Entities) whose Applications are accepted by the Board and who are directly or indirectly engaged or involved in sales or marketing of Schemes or Products and regardless of whether or not those persons hold AFS Licences;

### **Resort and Resort Management Members**

- 8.3.2 Resort and Resort Management Members are those persons whose Applications are accepted by the Board:

8.3.2.1 for particular Schemes and who are Regulated Applicants, Exempt Applicants or Operator Applicants in respect of those Schemes. A separate Application may be made in respect of separate Schemes by any Applicant; or

8.3.2.2 who are Management Companies or Trustees; or

8.3.2.3 who directly or indirectly carry out the day to day management of property forming part or all of a Scheme; or

8.3.2.4 who directly or indirectly provide professional management or reservation services to or on behalf of Schemes;

### **Exchange Company Members**

- 8.3.3 Exchange Company Members are those persons whose Applications are accepted by the Board and who directly or indirectly provide timesharing exchange or reservation facilities for their own members;

### **Large Promoter and /or Developer Members**

- 8.3.4 Large Promoter and/or Developer Members are those persons whose Applications are accepted by the Board and who are directly or indirectly engaged or involved in the promotion and development of Large Schemes (whether under the old Act or the Act) and includes, without limitation, Exempt Applicants, Operator Applicants and Regulated Applicants in their respective capacities as promoters and/or developers.

### **Independent Resort Members**

- 8.3.5 Independent Resort Members are those persons whose Applications are accepted by the Board and who directly or indirectly manage a member-controlled club as defined by ASIC Regulatory Guide 160.67.

### **Life Members**

- 8.3.6 Life Members are those persons accepted by the Board upon whom the Board confers and who accept life membership of the Company subject to the benefits, privileges and restrictions and other terms determined and specified by the Board. A Life Member is not required to (but may) be an Applicant nor to pay Annual Subscriptions nor Special Levies;

### **Honorary Members**

- 8.3.7 Honorary Members are those persons accepted by the Board upon whom the Board confers and who accept honorary membership of the Company subject to the benefits, privileges and restrictions and other terms determined and specified by the Board. An Honorary Member is not required to (but may) be an Applicant nor to pay Annual Subscriptions nor Special Levies;

### **Associate Members**

- 8.3.8 Associate Members are those persons whose Applications are accepted by the Board and who do not qualify under any other category of membership of the Company with such persons including, without limitation, persons who provide goods, services, donations or sponsorship to the Company or any part of the Industry. Notwithstanding anything to the contrary in the Constitution, the Board has power to create such sub-categories of Associate Members as the Board determines and has power to levy different Annual Subscriptions, Special Levies and other fees, costs, charges and expenses against Members in different sub-categories of Associate Members as the Board determines.

- 8.4 The Board may require a Member of any category to transfer to another category of membership which the Board reasonably believes appropriate and to pay the difference (if any) in the Annual Subscription. If the Member does not comply with these requirements, then the Member may (after notice of such failure to comply has been sent to that Member by the Secretary) be debarred by resolution of the Board from all privileges of membership and that Member's name may be removed by the Board from the Register.
- 8.5 All Members are entitled to attend at all meetings of the Company but are not entitled to attend at meetings of the Board unless by invitation by the Board. All Members shall if so determined by the Board be eligible to serve on any sub-committees or advisory committees.
- 8.6 All Members other than Life Members, Honorary Members, and Associate Members shall be entitled to vote in accordance with the Constitution.

### **Application for Membership**

- 8.7 Every Applicant must lodge with the Secretary an Application duly completed and signed by the Applicant together with such information, documents and things as the Board requires.
- 8.8 The Board shall consider the Application as soon as practicable and if the Board is satisfied that an Applicant is eligible, it shall in its absolute discretion determine whether to admit or reject the Applicant. The Board may reject any Application without being required to assign any reason for such rejection.

- 8.9 When an Applicant has been accepted for membership, the Secretary shall, as soon as practicable, send to the Applicant written notice of the Applicant's acceptance together with a request for payment of any entrance fee determined by the Board and the Annual Subscription, upon clearance of payment of which and upon the Applicant's name being entered in the Register, the Applicant becomes a Member. If the Applicant does not make cleared payment of such entrance fee and Annual Subscription within 1 month (or such other period as the Board reasonably determines) after the date of the Secretary's written notice mentioned before, the Board may in its discretion cancel its acceptance of the Applicant for membership and the Secretary will notify the Applicant accordingly.

### **Condition of Membership**

- 8.10 Notwithstanding anything to the contrary in the Constitution, if:
- 8.10.1 a Promoter and/or Developer Member or Applicant for Promoter and/or Developer membership:
- 8.10.1.1 is or has applied to ASIC to become the responsible entity of a particular Scheme; or
- 8.10.1.2 is involved or engaged principally or exclusively in the sale or marketing of interests in a particular Scheme; or
- 8.10.2 a Resort and Resort Management Member or Applicant for Resort and Resort Management membership is such a Member or Applicant in its own or in another capacity, rather than in its capacity as responsible entity of a particular Scheme,

that Member or Applicant (as the case requires), as a condition of either continuing membership or the Application (as the case requires) must lodge an Application with the Secretary to become and must become and remain a Resort and Resort Management Member for that particular Scheme for so long as that Member is engaged or involved in the promotion or development of that particular Scheme or is the responsible entity of that particular Scheme or is involved or engaged principally or exclusively in the sale or marketing of interests in that particular Scheme, as the case requires. The Board has power to modify or suspend the operation of this 9.12, in whole or in part, for such period as the Board determines, with or without conditions.

### **Large Schemes**

- 8.11 For the purposes of Clause 8.3.4 which deals with Large Promoter and/or Developer Members:
- 8.11.1 a Large Scheme is a Scheme which has that number of members, at a date and for such period or periods, in each case as the Board from time to time determines and in the absence of any such determination, a Large Scheme must have no less than 20,000 members at the date the Application under Clause 8.3.4 is made and for such period as there is no less than 20,000 such members; and
- 8.11.2 only those members of a Scheme for or in respect of whom Annual Subscriptions are paid when due are considered members of that Scheme and taken into account in the calculation of the number of Scheme members referred to in Clause 8.11.1.
- 8.12 One person is entitled to be nominated as Director in each Voting Membership Category, except

for Large Promoter and/or Developer Members for which 2 persons are entitled to be nominated as Directors, but no two Directors can be from or nominated by the same Member or a Related Person of that Member.

## **9.0 ANNUAL SUBSCRIPTIONS AND SPECIAL LEVIES**

### **Power to Levy Annual Subscriptions and Special Levies**

- 9.1 The Company has the power to levy Annual Subscriptions and Special Levies and other fees, costs, charges and expenses against each Member in accordance with the Constitution.

### **Annual Subscriptions**

- 9.2 Unless and until the Company in general meeting otherwise resolves, the Board shall set such Annual Subscriptions as it thinks fit and may in its discretion set Annual Subscriptions at different rates for different categories of Members and, in exceptional circumstances or cases where hardship is proven to the satisfaction of the Board, different rates within the same category of Members.
- 9.3 By no later than 1 month before the due date for payment of the Annual Subscription and as soon as possible before the due date for payment of any Special Levy, the Company will send to each Member a tax invoice containing such of the following as the Board determines or such further or other matters as the Board determines:
- 9.3.1 the Annual Subscription or the Special Levy due from that Member;
  - 9.3.2 the due date for payment of the Annual Subscription or the Special Levy;
  - 9.3.3 the date when late charges and interest begins to accrue;
  - 9.3.4 the amount of GST payable or whether the Annual Subscription or Special Levy is inclusive of GST.
- 9.4 The Annual Subscriptions are payable in advance of the Financial Year in question on each 1<sup>st</sup> January or on such other date as the Board determines. In its discretion, the Board may reduce or pro-rata the Annual Subscription of any Applicant accepted as a Member after the date upon which Annual Subscriptions become due and payable. Unless and until the Board otherwise determines, each Financial Year of the Company commences on the 1<sup>st</sup> January and expires on the 31<sup>st</sup> December next.
- 9.5 The Annual Subscription and any Special Levy payable by each Member constitutes a debt due by that Member to the Company and, without prejudice to any other remedies available at law or under the Constitution, the Company may sue the Member for recovery of any outstanding Annual Subscriptions and Special Levies together with all interest thereon at the Prescribed Interest Rate and any costs, charges and expenses occasioned thereby.
- 9.6 The Board may, but is not required to, allow payment of the Annual Subscriptions and any Special Levy:
- 9.6.1 by all Members by lump sum or by instalments payable on such dates and in such



amounts together with such reasonable administrative and other surcharge as the Board determines;

- 9.6.2 by some Members by instalments payable on such dates and in such amounts and by such means as the Board determines together with a surcharge determined by the Board to adequately compensate the Company for any interest foregone;
  - 9.6.3 in exceptional cases or in cases where hardship is proven to the satisfaction of the Board, to be reduced, deferred or waived on such conditions as the Board may determine.
- 9.7 For payment of the Annual Subscription or any Special Levy after the due date for payment, the Board may impose the following interest, fees and charges:
- 9.7.1 interest at the Prescribed Interest Rate calculated from the due date until the date of actual payment; and
  - 9.7.2 a late payment charge in the amount determined by the Board (to compensate the Company for the added cost of collection, and which late payment charge may be imposed once only for a particular outstanding amount);and
  - 9.7.3 a return cheque charge in the amount determined by the Board if a payment by cheque or other payment instrument is dishonoured or returned or if the whole or part of a payment by direct debit is rejected; and
  - 9.7.4 any relevant bank or other fees or charges by any credit provider in the event that any payment by cheque or other payment instrument is dishonoured or returned or if the whole or part of a payment by direct debit is rejected.
- 9.8 Upon production of a tax invoice, each Member must pay GST payable by the Company for all supplies of goods or services made by the Company under the Constitution and in respect of Annual Subscriptions and any Special Levies.

### **Special Levies**

- 9.9 In addition to the Annual Subscription payable by Members, the Company may, from time to time, require some or all Members to pay a Special Levy in accordance with the Constitution.
- 9.10 A Special Levy shall be used for such purposes as are reasonably determined by the Board at the time that the Special Levy is struck.
- 9.11 Moneys raised by a Special Levy shall be used for that purpose provided however the Board may, in its discretion, determine to apply those moneys for any other purpose relating to the Company's activities.
- 9.12 In relation to any Special Levy, the Board may determine in its sole and absolute discretion:
  - 9.12.1 which category of Members shall be subject to the Special Levy;
  - 9.12.2 the manner of calculation of the amount of the Special Levy;

- 9.12.3 the date on which the Special Levy is struck;
- 9.12.4 the date on which the Special Levy shall be due for payment.
- 9.13 Without prejudice to Clause 9.3 of the Constitution, the Board will exercise reasonable endeavours to ensure that all Members subject to any Special Levy are forwarded notice in accordance with Clause 9.3 of the Constitution at least 1 month before the due date for payment of such Special Levy.
- 9.14 The Board may in its discretion raise Special Levies calculated on different bases for:
- 9.14.1 each category of Members; and
- 9.14.2 different Members within the same category of Members in exceptional circumstances or cases where hardship is proven to the satisfaction of the Board.
- 9.15 Any Special Levy raised by the Board may be cancelled or modified if 51% or more of the Members subject to that Special Levy in a general meetings of the Members in that category of Members so resolve and provided that such resolution is passed by no later than 1 month after the due date for payment of such Special Levy by Members affected.

## **10.0 CESSATION OF MEMBERSHIP**

- 10.1 Subject to Clauses 9.4 and 9.5 of the Constitution, if Annual Subscriptions and any Special Levies of a Member are unpaid for a period of 2 months after the due date for payment, then the Member may after notice of the default has been sent to the Member by the Secretary be debarred by resolution of the Board from all privileges of membership of the Company and that Member's name may be removed from the Register. Notwithstanding the removal of that Member's name from the Register, the Board may, in its absolute discretion if the Board believes it to be in the interest of the Company, reinstate that Member to membership of the Company and restore that Member's name to the Register on payment of all arrears of Annual Subscriptions and any Special Levies and, if the Board so determines, payment of interest, fees and charges in accordance with the Constitution for payment of the Annual Subscriptions and any Special Levy after the due date for payment.
- 10.2 Any Member may resign from membership of the Company at any time by giving to the Secretary at least 1 month's notice in writing to that effect. The Board may, in its absolute discretion, resolve to accept the resignation of a Member notwithstanding that such notice has not been given.
- 10.3 If any Member:
- 10.3.1 ceases to carry on business in any category which would entitle it to membership of the Company;
- 10.3.2 ceases to be authorised to carry on any business which would entitle it to be admitted to membership of the Company;
- 10.3.3 becomes insolvent or is deemed to have become insolvent;

10.3.4 has a receiver, receiver and manager, liquidator, provisional liquidator, administrator, official manager or similar official is appointed in respect of or over the assets or any substantial part of the assets of the Member, except where such appointment is stayed or removed within 14 days;

10.3.5 has a mortgagor or other encumbrancer in possession or control (whether personally or by an agent or otherwise) of the Member or the estate of the Member or a substantial part of the Member's assets;

10.3.6 becomes bankrupt or makes any arrangement or composition with his or her creditors generally,

such Member will, ipso facto cease to be a Member, unless the Board otherwise determines.

10.4 If in the bona fide opinion of the Board, a Member:

10.4.1 has refused or neglected to comply with the provisions of the Constitution or the Code of Practice or any decision or determination of the CAC and without prejudice to any other sanctions available under the Code of Practice; or

10.4.2 engages in conduct which is unbecoming of a Member or prejudicial to the interests of the Company or the Industry,

without prejudice to the Code of Practice, the Board has the power by resolution approved by not less than two thirds of the Board to censure, fine, suspend or expel the Member from the Company and in the latter case to remove that Member's name from the Register.

10.5 A Member shall not be expelled under Clause 10.4 unless:

10.5.1 that Member has been given at least 14 days' notice (or any lesser period as that Member agrees) of the meeting of the Board at which the resolution for expulsion is to be considered and of the matters alleged against that Member; and

10.5.2 that Member has been given a proper opportunity of answering and explaining in writing or through that Member's representative or other officer nominated in writing to the Board the matters alleged against that Member.

10.6 Any Member who ceases to be a Member shall remain liable for and shall pay to the Company all Annual Subscriptions, any Special Levies and such further or other moneys as may be due at the date of cessation of membership of the Company.

## **11.0 CERTIFICATES**

11.1 Subject to the Act, the Board may determine that each Member be issued with a Certificate that is current for such period as the Board determines. A Member who ceases to be a Member of the Company must immediately return to the Company any Certificate and any current Certificate issued to that Member.

11.2 Subject to the Act, a Certificate may be in the form and with such content as from time to time determined by the Board and may be signed either by the President or the Secretary.

The Board may include some, none or all of the following in the Certificate which are not otherwise required to be included by the Act and such further or other matters as the Board determines:

- 11.2.1 particulars of the Member including the category of membership;
  - 11.2.2 particulars as to whether the Member is from the Northern Region, Southern Region or Western Region;
  - 11.2.3 the date upon which the Member first became a Member of the Company.
- 11.3 If a Certificate is worn out or defaced, upon production of the Certificate to the Company, the Board may order it to be cancelled and may issue a new Certificate.
- 11.4 If a Certificate is lost, stolen or destroyed, the Member must give to the Company such indemnity and such evidence that the Certificate has been lost, stolen or destroyed as the Board determines and upon payment of any fee determined by the Board, a new Certificate (appropriately endorsed as being a replacement Certificate) may be issued to replace the lost, stolen or destroyed Certificate.
- 11.5 The Board may issue supplementary Certificates to a Member for use by an Associate (who is not a Member) or to show the different business names of that Member or Associate. Any supplementary Certificate is not a new or different Certificate.

## **12.0 REGISTER OF MEMBERS**

### **Contents of Register**

- 12.1 The Company must set up and maintain an up-to-date Register of Members which, subject to the Act:
- 12.1.1 must contain the name and address of each Member as provided to the Company;
  - 12.1.2 must contain the date on which the entry of the Member's name in the Register is made;
  - 12.1.3 must contain the category of membership of that Member;
  - 12.1.4 must contain the name and details of each person who stopped being a Member of the Company within the last 7 years (these entries may be kept separately from the rest of the Register);
  - 12.1.5 may contain reference to any distinctive numbers of Certificates;
  - 12.1.6 will contain such other particulars as the Board may determine.

### **Index of Register**

- 12.2 If the Company has more than 50 Members, the Company must include in the Register an up-to-date index of Members' names. The index must be convenient to use and allow a

Member's entry in the Register to be readily found. A separate index need to not be included if the Register itself is kept in a form that operates effectively as an index.

### **Change of Address**

- 12.3 If a Member gives the Company notice in writing of a change of address, the Company must delete the previous address of that Member as shown in the Register as soon as may be practicable and insert the new address as notified in its place.

### **Keeping of Register**

- 12.4 Subject to the Act, the Register must be kept at:

12.4.1 the Office; or

12.4.2 an office at the principal place of business of the Company; or

12.4.3 an office (whether of the Company or of someone else) where the work involved in maintaining the Register is done; or

12.4.4 another office approved by ASIC.

The office must be in Australia.

### **Inspection and Copies**

- 12.5 Subject to the Act (and in particular, Section 177 of the Act) and to any relief from ASIC:

12.5.1 during normal business hours a Member may inspect the Register without charge and any other person may inspect the Register only on payment of any fee required by the Company up to the fee prescribed in the Corporations Regulations;

12.5.2 the Company must give a person a copy of the Register (or a part of the Register) within 7 days if the person asks for the copy and pays any fee required by the Company up to the fee prescribed in the Corporations Regulations.

- 12.6 The Company is not required to allow a Member or a person to inspect or to give a person a copy of the Register or a part of the Register that contains Certificate numbers and other matters not required by the Act to be contained in the Register of Members and which are in any event contained in the Register of Members.

## **13.0 GENERAL MEETINGS**

### **Calling and Holding General Meetings**

- 13.1 An AGM of the Company shall be held in accordance with the provisions of the Act. All general meetings, other than an AGM, shall be called extraordinary general meetings.

- 13.2 Subject to the Act and any relief from ASIC, in respect of an AGM:

- 13.2.1 an AGM must be held at least once in each year and within 5 months after the end of the Financial Year; and
  - 13.2.2 an AGM is to be held in addition to any other general meetings held by the Company in the year; and
  - 13.2.3 the Board must lay before the AGM:
    - 13.2.3.1 the annual financial report of the Company; and
    - 13.2.3.2 the Board's report; and
    - 13.2.3.3 the Auditor's report,for the last Financial Year that ended before the AGM; and
  - 13.2.4 the business of an AGM may include any of the following, even if not referred to in the notice of meeting:
    - 13.2.4.1 the consideration of the annual financial report, Board's report and Auditor's report;
    - 13.2.4.2 the election of Directors;
    - 13.2.4.3 the appointment of the Auditor;
    - 13.2.4.4 the fixing of the Auditor's remuneration; and
  - 13.2.5 the chair of an AGM must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company; and
  - 13.2.6 if the Auditor or the representative of the Auditor is at the AGM, the chair of an AGM must allow a reasonable opportunity for Members as a whole at the meeting to ask the Auditor or the Auditor's representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.
- 13.3 Any 2 Members of the Board may whenever they think fit call a general meeting of the Company and hold that general meeting at the time and place and in the manner determined by the Board. The Board may cancel or postpone any general meeting prior to the date upon which it is to be held, except a general meeting called and arranged to be held by the Board on the request of Members in accordance with the Act or a general meeting called and arranged to be held by Members in accordance with the Act.

#### **Notice of General Meetings**

- 13.4 Subject to the provisions of the Act relating to resolutions, special resolutions and agreements for shorter notice, at least twenty-one (21) days notice (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given) must be given specifying:

- 13.4.1 the place, the day and time for the meeting and if the general meeting is to be held in two or more places, the technology that will be used to facilitate this;
- 13.4.2 the general nature of the business of the general meeting;
- 13.4.3 if a special resolution is to be proposed:
  - 13.4.3.1 an intention to propose the special resolution; and
  - 13.4.3.2 the special resolution itself;
- 13.4.4 if a Member is entitled to appoint a proxy, then:
  - 13.4.4.1 that Member has a right to appoint a proxy;
  - 13.4.4.2 the proxy does not need to be a Member.
- 13.5 The accidental omission to give notice of a general meeting to or the non-receipt of such notice by any person entitled to receive notice thereof shall not invalidate any resolution passed or proceedings had at any general meeting.
- 13.6 All business shall be deemed special that is transacted at a general meeting and also all business that is transacted at an AGM with the exception of the business referred to in Clauses 13.2.3 and 13.2.4 all of which business is ordinary business.

### **Members of Board**

- 13.7 Members of the Board are entitled to attend all general meetings notwithstanding that they or any of them may not be duly appointed representatives of Members.

## **14.0 PROCEEDINGS AT GENERAL MEETINGS**

### **Quorum**

- 14.1 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise provided for in the Constitution, 5 Members present in person (including a person attending as a proxy, attorney or representative of a Member) and representing at least 3 categories of membership whose members have voting rights in accordance with the Constitution shall be a quorum.
- 14.2 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present in person or by proxy, attorney or representative (being not less than 3 in number and representing at least 3 categories of membership whose members have voting rights in accordance with the Constitution) shall be a quorum.

### **Chairing General Meetings**

- 14.3 The President shall preside as chairman at every general meeting of the Company or if there is no President or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the First Vice-President shall be the chairman or if the First Vice-President is not present or is unwilling to act, then the Second Vice-President shall be the chairman or if the Second Vice-President is not present or is unwilling to act, then the Members present shall elect one of their number to be chairman of the meeting.
- 14.4 The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of any adjournment of the business to be transacted at an adjourned meeting.

### **Decisions at General Meetings**

- 14.5 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded by:
- 14.5.1 the chairman; or
- 14.5.2 at least 3 Members entitled to vote on the resolution present in person or by proxy, attorney or representative and representing at least 3 categories of membership whose Members have voting rights in accordance with the Constitution.

Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

- 14.6 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. On a poll, votes may be given by proxy or attorney.
- 14.7 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and any motion in respect of which there is an equality of votes shall be deemed not to have been passed.

## **15.0 VOTES OF MEMBERS**

### **Voting at General Meetings**



- 15.1 Subject to any special rights or restrictions imposed on or attaching to any category of membership, each Member present in person or by proxy or by attorney or if a corporation, by a representative appointed pursuant to the Constitution or the Act is entitled to vote at meetings of Members and on a show of hands and on a poll, each such Member has 1 vote.

#### **Voting by Board or Trustee**

- 15.2 A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the laws relating to mental health may vote, whether on a show of hands or on a poll, by that Member's committee or trustee or by such other person as properly has the management of that Member's estate and any such committee, trustee or other person may vote by proxy or attorney.

#### **Entitlement to Vote**

- 15.3 Unless the Board otherwise determines, no Member shall be entitled to vote at any general meeting unless that Member has paid all Annual Subscriptions and Special Levies (if any) and such other sums as are then due by that Member to the Company.

### **16.0 PROXIES**

#### **Appointment of Proxies**

- 16.1 Each Member entitled to attend and cast a vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at the general meeting.
- 16.2 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or if the appointor is a corporation, in accordance with the constitution of that corporation. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct that Member's proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed, the proxy may vote as he or she thinks fit.
- 16.3 A proxy need not be a Member of the Company.

#### **Instrument of Appointment**

- 16.4 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notorially certified copy of that power or authority shall be received by the Company at the Office or at such other place, facsimile number or electronic address as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote (unless a short period is specified in the notice of general meeting to which the proxy relates) and in default, the instrument of proxy shall not be treated as valid unless otherwise determined by the chairman.
- 16.5 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the power under which the instrument was executed if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the

Company at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used.

16.6 Subject to the Act, the instrument appointing a proxy may be in the following form or in any other form which the Board may approve:

"AUSTRALIAN TIMESHARE & HOLIDAY OWNERSHIP COUNCIL LIMITED A.C.N. 065 260 095

I, ..... being

a member of Australian Holiday & Ownership Council Limited A.C.N. 065 260 095

("Company") hereby appoint .....

of .....

or failing him/her .....

of .....

as my proxy to vote for me on my behalf at the (annual) general meeting of the Company to

be held on the ..... day of ..... and at any adjournment thereof.

My proxy is hereby authorised to vote

\*in favour of/

\*against the following resolutions:

Signed this ..... day of

(Signature)

Note: In the event of the Member desiring to vote for or against any resolution, that Member shall instruct that Member's proxy accordingly. Unless otherwise instructed, the proxy may vote as the proxy thinks fit.

\* strike out whichever is not desired."

**17.0 BODY CORPORATE REPRESENTATIVE**

**Appointment of Representative**

17.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

17.1.1 at a meeting of Members; or

17.1.2 at a meeting of creditors or debenture holders; or

17.1.3 relating to resolutions to be passed without meetings.

The appointment may be a standing one.

#### **Restrictions on Representative's Powers**

17.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

#### **More than One Representative**

17.3 Subject to Clause 19.10.7 a body corporate may appoint more than one representative but only one representative may exercise the powers of the body corporate at any one time.

#### **Representative's Powers**

17.4 Unless otherwise specified in the appointment, the representative may exercise, on behalf of the body corporate, all the powers that the body corporate could exercise at a meeting or in voting on a resolution.

#### **Certificate of Appointment**

17.5 A certificate executed in accordance with the constitution of the body corporate accompanied by such other evidence as the Board may require of any appointment of a representative, must be received by the Company at the Office or such other place, facsimile number or electronic address specified for that purpose in the notice of meeting, before the commencement of the meeting or adjourned meeting at which the person named in the certificate proposes to vote.

### **18.0 ATTORNEY OF MEMBER**

18.1 A Member may appoint an attorney to act for that Member and on that Member's behalf at all general meetings of the Company at which that Member is not present personally and to give any consent and sign any appointment or resolution or other document which the Member could give or sign.

18.2 Any appointment must be made by power of attorney duly executed by the Member and attested by at least one witness or if the Member is a body corporate, in accordance with its constitution. The power of attorney must be received by the Company at its Office or any other place, facsimile number or electronic address specified for that purpose in the notice of meeting, not less than 48 hours before the attorney becomes entitled to act thereunder (unless a shorter period is specified in the notice of general meeting to which the power of attorney relates) accompanied by such evidence of its due execution and non-revocation as the Board requires. The power of attorney may be in any usual form or any other form that the Board approves.

18.3 In the absence of the Member and while the power of attorney remains unrevoked, the attorney of that Member may attend at, participate in and vote at all general meetings of the Company and demand or join in the demand for a poll in the same manner as the Member could do if

personally present and may give any consent and sign any appointment or resolution or other document which the Member could give or sign.

## **19.0**

### **THE BOARD**

#### **Number of Directors**

- 19.1 Subject to the Constitution and unless the Act otherwise requires, the Company must have no less than 3 and no more than 11 Directors (not counting Alternate Directors) at least 2 of whom must ordinarily reside in Australia. Subject to the foregoing and also subject to any contrary resolution of the Company in accordance with Clause 19.2, the Board may from time to time determine the number of Directors and may also determine in what rotation (if any) the increased or reduced number is to go out of office.
- 19.2 The Company may from time to time by resolution passed at a general meeting or by resolution passed without a meeting, fix the number of Directors or increase or reduce the number of Directors (but so that the number shall not be less than the minimum number required by the Act) and may also determine in what rotation (if any) the increased or reduced number is to go out of office.

#### **Term of Office**

- 19.3 Each Director holds office as Director until that Director dies or vacates office in accordance with the Constitution or the term for which that Director is appointed or elected expires as provided in the Constitution.

#### **Composition of Board**

- 19.4 Unless the Board otherwise determines from time to time:
- 19.4.1 the Board as constituted in accordance with the Constitution shall comprise:
- 19.4.1.1 up to 7 Directors elected by Members;
  - 19.4.1.2 up to 3 Directors appointed by the Board;
- 19.4.2 members of the Board shall elect from their number the President, First Vice-President and Second Vice-President, each of whom together with such other Members of the Board as the Board may determine, are office bearers for a term of 1 year or longer if re-elected. A Member of the Board is only eligible to hold the office of President for four consecutive years however if a Member of the Board has held the office of President for four consecutive years, they are not eligible for re-election in the fifth year but are eligible for re-election in the sixth year for a further maximum of four consecutive years (and so on). The requirement that a Member of the Board cannot hold the office of President for longer than four consecutive years can be waived if two thirds or more of Members present at a General Meeting vote in favour of such a waiver;
- 19.4.3 other than Directors appointed by the Board, Directors shall retire from office at the second AGM following their election, but shall be eligible for re-election;

19.4.4 any Directors appointed by the Board shall retire from office at the next AGM following their appointment, but shall be eligible for re-appointment.

### **Appointment and Removal of Directors**

19.5 Subject to the Constitution and unless the Act otherwise requires, the Company may by resolution:

19.5.1 appoint a person to be a Director;

19.5.2 remove a Director;

19.5.3 appoint another person as a Director in place of any Director who dies, is removed or vacates office pursuant to the Constitution; and

19.5.4 may appoint additional Directors.

19.6 The Board shall have power at any time and from time to time to appoint any person to be a Director either to fill a casual vacancy, or as an addition to the existing Board, but so that the total number of Directors shall not at any time exceed the number fixed in accordance with the Constitution. Unless otherwise determined by the Board, such an appointed Director shall hold office only until the next following AGM, but shall be eligible for election or re-appointment.

19.7 Unless the Board otherwise determines from time to time, a Director must be a Member who is a natural person or a duly authorised representative of a Member who is a corporation. All Directors are eligible for re-election or re-appointment.

19.8 A Director may hold any other office or place of profit in the Company in addition to or in conjunction with that Director's directorship and may be so appointed upon such terms as to remuneration, tenure or term of office and otherwise as may be determined by the Board. A Director is not accountable for any benefits received as a Director or holder of any other office or place of profit in the Company.

### **Elections for Board**

19.9 As soon as practicable before an AGM and on such dates as the Board determines, having regard to the dates on which Board Nomination Forms must be returned to the Secretary, the Secretary shall send notices as determined by the Board and Board Nomination Forms to each Member entitled to vote, calling for nominations for Directors in each of the Voting Membership Categories (if circumstances permit, by no later than 6 weeks before the AGM); and

19.10 Unless the Board otherwise determines:

19.10.1 the Board may impose reasonable minimum level entry requirements for any person nominated as Director having regard to the interests of the Company and the Industry including, but without limitation, requirements relating to experience and qualifications;

19.10.2 Board Nomination Forms must be returned to the Secretary by no later than 4 weeks before the AGM; and

- 19.10.3 Board Nomination Forms must be in writing, signed by the nominating or proposing Member. The nominated Member must consent to his or her nomination and provide such information and documents as the Board reasonably requires including, but without limitation, information or documents relating to the nominated person;
- 19.10.4 the nominated Member must be in the same Voting Membership Category as the nominating or proposing Member;
- 19.10.5 a Member may nominate himself or herself or its natural person representative as Director.
- 19.10.6 if the nominating or proposing Member is not a natural person, it may nominate a natural person representative who is authorised in writing to represent the nominating or proposing Member and who need not be a Member. If the Board is not satisfied that the nominated natural person representative is either an employee of or otherwise substantially involved in the business affairs of the nominating or proposing Member, the Board may determine that such nomination is invalid, in which case the nomination will be invalid and will not be counted as a nomination under the Constitution;
- 19.10.7 a Member who is not a natural person and its related body corporate (as that term is defined in the Corporations Act) may not have any more than:-
- 19.10.7.1 one representative in each Voting Membership Category; and
- 19.10.7.2 two representatives in total.
- 19.10.8 having regard to the Board Nomination Forms received, and regardless of whether or not Board Nomination Forms are received in each Voting Membership Category, the Secretary shall prepare one or more ballot papers as determined by the Board specifying in alphabetical order the names of persons nominated as Directors in each Voting Membership Category.
- 19.10.9 Members entitled to vote at the AGM are entitled to vote for:
- 19.10.9.1 only one candidate in each of the Voting Membership Categories (other than the Large Promoter and/or Developer Members category and Independent Resort Member category) and the candidate in each Voting Membership Category (other than the Large Promoter and/or Developer Members category and Independent Resort Members category) with the most votes is elected;
- 19.10.9.2 two candidates in the Large Promoter and/or Developer Members category and the two candidates in the Large Promoter and/or Developer Members category with the most and next most votes are elected; and
- 19.10.9.3 two candidates in the Independent Resort Members category and the two candidates in the Independent Resort Members category with the most and next most votes are elected.
- 19.10.10 the Secretary shall forward ballot papers relating to Board Nomination Forms by no

later than 3 weeks before the AGM to each Member so entitled together with the Notice of AGM. Completed ballot papers must be received by the Secretary (or such other person as the Board determines) at the Office (or such other place as the Board determines) by no later than 1 week before the AGM;

19.10.11 the results of the ballot for Directors shall be announced at the AGM following which, those Directors required to retire in accordance with the Constitution shall retire and the newly elected Directors shall assume office;

19.10.12 Director elections are held every other year;

19.10.13 following receipt by the Secretary of Board Nomination Forms in accordance with Clauses 19.10.2 and 19.10.3:

19.10.13.1 if there is only 1 nominated Member in a particular Voting Membership Category (other than for the Large Promoter and/or Developer Members category and the Independent Resort Members category); or

19.10.13.2 if there are 2 nominated Members in the Large Promoter and/or Developer Members category; or

19.10.13.3 if there are 2 nominated Members in the Independent Resort Members category,

that nominated Member is deemed elected as Director without the need for election and such deemed election will be referred to in the ballot papers prepared by the Secretary under Clause 19.10.10;

19.10.14 following receipt of ballot papers endorsed with the vote of Members if 2 or more candidates in a particular Voting Membership Category (other than for the Large Promoter and/or Developer Members category or Independent Resort Members category) or 3 or more candidates in the Large Promoter and/or Developer Members category or Independent Resort Members category receive the same number of votes ("Tied Board Candidates") the Board will determine an appropriate time, date, place, mode and method for a random draw of the names of Tied Board Candidates. Such random draw will be conducted by the returning officer for the election (appointed by the Board) in the presence at all times of a scrutineer (appointed by the Board). As the case requires, the first name drawn of Tied Board Candidates will be deemed elected in that particular Voting Membership Category and the deemed elected candidate is to be announced at the AGM.

19.11 The new Board shall meet as soon as practicable after the AGM and may appoint that number of other Directors so that the total number of Directors does not exceed the maximum number of Directors allowed by the Constitution. Without limitation, the Board may take into account, in such appointment, experience, qualifications, skills, geographic or any other factors. Any such appointee need not be a Member.

### **Remuneration of Directors**

19.12 The Directors shall be paid from the funds of the Company such sums as is determined by the Company in general meeting or by the Board as remuneration for their services as Directors and

such remuneration shall be divisible between the Directors as they may determine and in default of such determination, equally. Such remuneration shall be deemed to accrue from day to day.

- 19.13 The Directors are entitled to be paid or reimbursed all or any expenses properly incurred by them or any of them on behalf of the Company in attending at meetings of the Board or of any committee of Directors or any other committee or sub-committee or general meetings of the Company and in connection with the business of the Company as the Board may from time to time determine.
- 19.14 If any Director devotes special attention to the business of the Company or undertakes and performs extra services which in the opinion of the Board are outside the scope of the ordinary duties of a Director or at the request of the Board engages in any journey on the business of the Company, the Company may remunerate that Director for so doing either by a fixed sum or by a percentage of profits or otherwise as may be determined by the Board and such remuneration may be either in addition to or in substitution for that Director's remuneration as otherwise provided for in the Constitution.

#### **Vacation of Office**

- 19.15 The office of a Director is vacated if the Director:
- 19.15.1 ceases to be a member of the Board by virtue of the Act or under the Constitution;
  - 19.15.2 becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - 19.15.3 becomes prohibited from being a director of a company or corporation by reason of any order made under the Act;
  - 19.15.4 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - 19.15.5 resigns his or her office by notice in writing to the Company;
  - 19.15.6 absents himself or herself from 2 consecutive ordinary meetings of the Board without its leave;
  - 19.15.7 is removed or is required to retire from office pursuant to the Constitution;
  - 19.15.8 ceases to be a Member, unless the Board otherwise determines;
  - 19.15.9 the Member of which he or she is the duly appointed representative ceases to be a Member, unless the Board otherwise determines; or
  - 19.15.10 the Member of which he or she is the duly appointed representative by written notice to the Company revokes the authority of that Director to remain the duly appointed representative of that Member, in which case the Board may (but is not required to) appoint as Director a nominated and duly appointed representative of that Member, unless the Board otherwise determines.



## **Contracting with Company**

19.16 Notwithstanding any rule of law or equity to the contrary, but subject to the Act:

19.16.1 a Director is not disqualified by his or her office from contracting or entering into any arrangement with the Company or any other person as vendor, purchaser or otherwise or from being employed or acting in any capacity professionally or otherwise by or on behalf of the Company and no such contract or arrangement entered into with the Company or any other person by a Director or any contract or arrangement entered into by or on behalf of the Company or any other person in which a Director is in any way interested may be avoided for that reason;

19.16.2 no Director so contracting or being involved in such arrangement or being so interested is liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding his or her office or of the fiduciary relationship thereby established or by reason of such interest;

19.16.3 and subject to Clause 19.16.7, a Director (including an Alternate Director) may not be present at a meeting of the Board while a matter relating to a contract or arrangement in which the Director has a direct or indirect material personal interest is being considered and may not vote on that matter;

19.16.4 a Director may sign or attest the affixing of the common seal to any document evidencing or otherwise connected with the contract or arrangement in which the Director has an interest;

19.16.5 a Director may hold any other office or place of profit in the Company in conjunction with the office of Director on such terms as to remuneration, tenure or term of office and otherwise as the Board may from time to time determine;

19.16.6 a Director may be or become a director of any other companies or corporations promoted by the Company and any subsidiary company or company having dealings with the Company and no such Director is accountable for any benefits received as director or member of or holder of any office or place of profit in any such company or corporation;

19.16.7 the provisions of Clause 19.16.3 do not apply to an interest that a Director has:

19.16.7.1 as a Member and in common with other Members; or

19.16.7.2 in a matter relating to an existing or proposed contract of insurance merely because the contract insures or would insure that Director as an officer of the Company in accordance with the provisions of the Constitution; or

19.16.7.3 if the Board has at any time passed a resolution that identifies the Director and the interest of that Director and the Directors voting for the resolution are satisfied that the interest of that Director should not disqualify that Director from being present while the matter is being considered or voting on the matter; or

19.16.7.4 as otherwise permitted by the Act.

### **Alternate Directors**

- 19.17 Any Director may, with the approval of a majority of the Board (which must not be unreasonably withheld or delayed) appoint any person, whether a Member or not, to be an Alternate Director in that Director's place during such period as that Director thinks fit.
- 19.18 At all times during the period that an Alternate Director holds office as an Alternate Director, that Alternate Director is entitled to notice of meetings of Directors and to attend and vote at such meetings and to exercise all the powers of the appointor in place of the appointor except the power to appoint an Alternate Director.
- 19.19 An Alternate Director immediately vacates office if the appointor of the Alternate Director vacates office as a Director or removes the Alternate Director from office.
- 19.20 Any appointment or removal of an Alternate Director is by written notice by the Director who makes the appointment or removal to each of the other Directors at the Office.

### **Office Bearers**

- 19.21 The Board may from time to time appoint one or more Directors as office bearers for such period and on such terms as they think fit and subject to the terms of any agreement entered into in a particular case, may revoke any such appointment. The Board may entrust to and confer upon any one or more of the office bearers any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit and may from time to time revoke withdraw alter or vary all or any of those powers.

### **Related Persons**

- 19.22 Notwithstanding anything to the contrary elsewhere in this Constitution expressed or implied, a Member (including the Related Persons of that Member) must not at any time nominate a candidate as Director or allow its representative to remain a Director if the consequence is reasonably likely to be or is that the representatives of that Member (including the Related Persons of that Member) constitute or will constitute the majority of the Directors of the Board at any time ("Majority Position Event").
- 19.23 If at any time the Majority Position Event occurs in respect of any Member (including that Member's Related Persons) that Member must immediately take such action as is necessary to ensure that the provisions of Clause 19.22 cease to be breached and in default, all Board representatives of that Member (including Related Persons of that Member) are suspended from the Board until that Member is no longer in breach of Clause 19.22, without limiting any other remedies that may be available to any other Director or Member or any other person.

## **20.0 POWERS OF BOARD**

### **20.1 Subject to the Act:**

- 20.1.1 the business of the Company is to be managed by or under the direction of and vested in the Board who may exercise all such powers of the Company as are not by the Act or by the Constitution required to be exercised by the Company in general meeting;

- 20.1.2 the Board shall have the management and control of the income, funds and property of the Company and, within and subject to any policy determined at general meetings of the Company, the management and superintendence of all other affairs and executive functions of the Company, including, but without limitation, taking legal action or initiating proceedings to enforce against Members any rules, regulations and any provisions in the Code of Practice;
- 20.1.3 no resolution of or regulation made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made;
- 20.1.4 the Board may exercise any of the powers of the Company to borrow money and to mortgage or charge its property or any part thereof nor to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company;
- 20.1.5 cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two members of the Board or in such other manner as the Board may from time to time determine.
- 20.2 The Board may make, modify or revoke any Regulations.
- 20.3 All Members are bound by the Regulations as fully as though the Regulations were included in and formed part of the Constitution.
- 20.4 The Board shall adopt such means as it shall deem fit to bring the Regulations to the notice of Members.
- 20.5 Unless disallowed by an extraordinary meeting of Members, Regulations (including any modification or termination) become effective on the date determined by the Board.
- 20.6 Without in any way limiting the powers of the Board with respect to Regulations, Regulations may concern the objects of the Company, the conduct of Members, complaints handling procedures, the control, administration and management of the Company's finances, affairs, interests, effects and property and the enforcement and observance of the Regulations.
- 20.7 The Regulations may contain any requirements of ASIC or other relevant regulator. A Member may not take legal action and must not permit anyone to take legal action against the Company or its officers and employees or any member of the Board for anything done in order to comply with any requirement of ASIC or other relevant regulator.

## **21.0 PROCEEDINGS OF THE BOARD**

### **Board Meetings**

- 21.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit using any technology agreed to from time to time by all the Directors.

- 21.2 A Director may, and the Secretary on the requisition of a Director shall, at any time call a meeting of the Board.
- 21.3 Notice of a meeting of the Board shall be given to each Director in such manner as the Board may from time to time determine.

#### **Votes at Meetings**

- 21.4 Questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the members of the Board shall for all purposes be deemed a determination of the Board. In the case of an equality of votes, the Chairperson of the meeting shall not have a second or casting vote and the motion shall be deemed not to have been passed.

#### **Quorum**

- 21.5 The quorum necessary for the transaction of the business of the Board shall be 3 or such greater number as may be fixed by the Board.

#### **Vacancy in Board**

- 21.6 The continuing members of the Board may act notwithstanding any vacancy in the Board but if and so long as their number is reduced below the number fixed by or pursuant to the Constitution as the necessary quorum of the Board, the continuing member or members may act for the purpose of increasing the number of members of the Board to that number or of convening a general meeting of the Company, but for no other purpose.

#### **Chairperson**

- 21.7 The President shall preside as chairman at every meeting of the Board, or if there is no President, or if at any meeting the President is not present within ten (10) minutes after the time appointed for holding the meeting or is unwilling to act, the First Vice-President shall be chairman or if the First Vice-President is not present at the meeting or is unwilling to act, then the Second Vice-President shall be chairman or if the Second Vice-President is not present at the meeting or is unwilling to act, then the members may choose one of their number to be chairman of the meeting.

#### **Delegation of Powers**

- 21.8 The Board may delegate any of its powers or functions to one (1) or more sub-committees consisting of not less than one (1) member of the Board. Any sub-committee so formed shall conform to any regulations that may be imposed by the Board and subject thereto shall have power to co-opt any Member of the Company. Unless otherwise determined by the Board, any member of any such sub-committees shall have 1 vote.
- 21.9 The Board may delegate any of its powers or functions (not being duties imposed on Directors by the Act or law) to one or more sub-committees consisting of such Members as the Board thinks fit. Any sub-committee so formed shall conform to any regulations that may be imposed by the Board and subject thereto shall have power to co-opted any Members and unless otherwise determined by the Board, all members of such sub-committees shall have 1 vote.
- 21.10 Subject to any regulations determined by the Board, any sub-committee may meet and adjourn

any such meeting as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes, the chairman shall not have a second or casting vote and the motion shall be deemed not to have been passed.

- 21.11 The Board may delegate any of their powers to a Director who shall, in the exercise of the powers so delegated, conform to any regulations which may be imposed upon that Director by the Board and receive such remuneration as the Board may determine.
- 21.12 The Board may appoint one or more advisory boards consisting of such member or members of the Board as the Board thinks fit. Such advisory boards shall act in an advisory capacity only. They shall conform to any regulations that may be imposed by the Board and subject thereto shall have power to co-opt any Member or Members and unless otherwise determined by the Board all members of such advisory boards shall have 1 vote.

### **Minutes**

- 21.13 The Board shall cause minutes to be made of names of members of the Board present at all meetings of the Company and of the Board. Such minutes shall be signed by the Chairperson at which the proceedings were held or by the Chairperson of the next succeeding meeting.

### **Validity of Acts**

- 21.14 All acts done by any meeting of the Board or of a sub-committee or by any person acting as a member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or person acting as aforesaid or that the members of the Board or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.

### **Resolutions without Meetings**

- 21.15 A resolution in writing signed by all members of the Board for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one (1) or more members of the Board.

### **Electronic and Other Communications**

- 21.16 Without limiting the discretion of the Board to regulate their meetings as the Board may think fit, the Board may meet either in person or by telephone or by electronic or other means of communication agreed to by all Directors subject to the following conditions, namely:
- 21.16.1 all persons participating in the meeting must be able to hear and be heard by all other participants;
- 21.16.2 at the commencement of the meeting, each Director must acknowledge that Directors presence for the purpose of a meeting of the Board to all other Directors participating in the meeting;
- 21.16.3 a Director is conclusively presumed to have been present at all times during the meeting unless that Director has previously obtained the consent of the Chairperson to leave the meeting either temporarily or permanently;

21.16.4 any resolution passed shall, notwithstanding that the Directors may not be present together in one place at the time of the meeting, be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which a conference is held. The provisions of the Constitution regulating the proceedings of the Board apply, so far as they are capable of applying, to such conferences.

## **22.0 SECRETARY**

22.1 Subject to and in accordance with the provisions of the Act, the Board shall appoint one or more Secretaries for such term, at such remuneration and upon such conditions as the Board deems fit and any Secretary or Secretaries so appointed may be removed by the Board.

22.2 The Secretary or Secretaries shall be present at the Office or such other office as the Board determines in person or by an agent or clerk on the days and at the hours during which the Board determines.

22.3 Anything required or authorised to be done by or in relation to the Secretary or Secretaries may be done by or in relation to any Secretary or Secretaries or may (if the Office or other office determined by the Board is vacant or there is, for any other reason, no Secretary capable of acting or willing or available to act) be done by any assistant or deputy secretary or if there is no assistant or deputy secretary capable of acting or willing or available to act, by any officer of the Company or other person authorised generally or specifically in that behalf by the Board.

## **23.0 CHIEF EXECUTIVE OFFICER**

23.1 The Board may appoint a Chief Executive Officer (who may also be the Secretary) for such term, at such remuneration and upon such conditions as the Board deems fit and may vest in the Chief Executive Officer such powers and authorities as the Board may from time to time determine and the Chief Executive Officer shall exercise all such powers and authorities subject at all times to the control of the Board.

23.2 The Chief Executive Officer may attend at the Board's invitation to be heard at all meetings of the Board and of the Company.

## **24.0 COMMON SEAL**

24.1 The Company may have a common seal. The Board may resolve to maintain a common seal, cease a common seal or adopt a new common seal.

24.2 For so long as the Company has a common seal, the Board shall provide for the safe custody of the common seal which shall only be used by the authority of the Board or of a sub-committee formed by the Board authorised by the Board in that behalf and every instrument to which the common seal is affixed shall be signed by at least one member of the Board and shall be countersigned by the Secretary or some other person appointed by the Board for that purpose.

24.3 The Board may by resolution determine either generally or in any particular case where the common seal is to be affixed to any instrument and that the signature of any member of the

Board or the Secretary or any other person may be affixed by some mechanical or other means (other than autographic) specified in such resolution.

- 24.4 Notwithstanding the Constitution, any document (including a deed) may also be executed by the Company in any other manner permitted by the Act or law.

## **25.0 INDEMNITY AND INSURANCE**

### **Indemnity**

- 25.1 Subject to the Act, the Company must indemnify a person who is or has been an officer of the Company or a member of the CAC to the full extent permitted by law, out of the property of the Company, against all losses or liabilities to any person which any one of them has or may sustain or incur as such officer of the Company (including any subsidiary) or a member of the CAC in the proper performance of their duties at law or pursuant to the Constitution including, but not limited to, any liability for negligence or for reasonable costs and expenses incurred:

25.1.1 in defending proceedings, whether civil or criminal, in which either judgment is given in favour of the person or in which the person is acquitted or there is a non suit of the trial, or the proceeding is otherwise discontinued, dismissed or stayed or withdrawn before judgment; or

25.1.2 in connection with any application in relation to such proceedings in which the court grants relief to the person under the Act; or

25.1.3 in connection with any administrative proceedings relating to the person's position with the Company or the CAC, except proceedings which give rise to civil or criminal prosecutions against that person in which judgment is not given in that person's favour or for which that person is not acquitted or which arise out of conduct involving a lack of good faith.

- 25.2 Subject to the Act, the Company must indemnify a person who is or has been an officer of the Company (including any subsidiary) or a member of the CAC, to the full extent permitted by law, out of the property of the Company, against any liability to another person (other than the Company or any subsidiary) as such an officer or such a member of the CAC unless the liability arises out of conduct involving a lack of good faith.

### **Insurance**

- 25.3 Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been an officer of the Company (including its subsidiaries) or a member of the CAC against:

25.3.1 any liability incurred by that person as such officer or such member of the CAC which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of Sections 182 or 183 of the Act; and

25.3.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company or with the CAC, whether civil or criminal, and whatever their outcome.

## 26.0

## NOTICES

### Service

26.1 Subject to the right of the Board under Clause 1.7, all notices or other communications required under the Constitution must be:

26.1.1 in legible writing and in English addressed:

26.1.1.1 if to a Member, to the Member's address specified in the Register;

26.1.1.2 if to the Company, to the Office or such other address as is from time to time notified by the Board or a person authorised by the Board;

26.1.2 sent to the recipient by hand, telegram, prepaid post (airmail, if to or from a place outside Australia) facsimile or e-mail; and

26.1.3 signed by a person duly authorised by the sender.

### Timing

26.2 Without limiting any other means by which a party may be able to prove that a notice has been received by another party, subject to Clause 26.3 a notice will be deemed to be duly received:

26.2.1 if sent by hand, when left at the address of the recipient;

26.2.2 if sent by pre-paid post, 1 day after the date of posting;

26.2.3 if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; or

26.2.4 if sent by e-mail, within 24 hours of the e-mail being sent, provided that within that period there is no notification of e-mail transmission errors or undeliverability.

26.3 If a notice is served by hand, or is received by facsimile or e-mail on a day which is not a Business Day, or after 5.00pm (recipient's local time) on any Business Day, that notice will be deemed to be duly received by the recipient at 9.00am (recipient's local time) on the first Business Day after that day. This provision also applies to receipt of notices of meetings.

### Persons Entitled to Notice

26.4 Notice of every general meeting shall be given in any manner hereinbefore authorised to:

26.4.1 every Member having a right to attend and vote thereat except Members who have not supplied to the Company an address for the giving of notices to them;

26.4.2 the Auditor for the time being of the Company; and



26.4.3 such other persons as required by the Act.

26.5 No person other than the persons referred to in Clause 26.4 shall be entitled to receive notice of general meetings.

**WMB**

*Wilder Moses Bengasino*

CORPORATIONS ACT  
A COMPANY LIMITED BY GUARANTEE

CONSTITUTION  
OF  
AUSTRALIAN TIMESHARE & HOLIDAY OWNERSHIP COUNCIL LIMITED  
A.C.N. 065 260 095

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