

Date: 1 August 2019

CONSTITUTION

for

Club Wyndham South Pacific (formerly WorldMark South Pacific Club)

(“Club”)

by

**Wyndham Vacation Clubs South Pacific Ltd
ACN 090 503 923**

**(“Responsible Entity”)
(Consolidated Copy up to 29th Deed of Amendment)**

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DEED made at _____ on _____

BY: **WYNDHAM VACATION CLUBS SOUTH PACIFIC LTD ACN 090 503 923** of Level 7, 1 Corporate Court, Bundall in the State of Queensland (the “**Responsible Entity**”)

RECITALS:

- A. On 1 March 2000, the constitution for the Club (**Club**) was entered into by the Responsible Entity which was then lodged with the Australian Securities and Investments Commission (**ASIC**) and registered as a registered managed investment scheme on 2 May 2000 and allocated Australian Registered Scheme Number 092 334 015.
- B. The Constitution of the Club was amended by Deeds of Amendment dated 19 May 2000 (First Deed of Amendment), 24 August 2001 (Second Deed of Amendment), 7 September 2001 (Third Deed of Amendment), 5 March 2002 (Fourth Deed of Amendment), 1 July 2002 (Fifth Deed of Amendment), 26 March 2003 (Sixth Deed of Amendment), 26 August 2003 (Seventh Deed of Amendment), 23 February 2004 (Eighth Deed of Amendment), 1 February 2005 (Ninth Deed of Amendment), 1 February 2005 (Tenth Deed of Amendment), 1 November 2005 (Eleventh Deed of Amendment), 1 February 2006 (Twelfth Deed of Amendment), 31 March 2006 (Thirteenth Deed of Amendment), 1 July 2006 (Fourteenth Deed of Amendment), 13 October 2006 (Fifteenth Deed of Amendment), 14 November 2006 (Sixteenth Deed of Amendment), 1 January 2007 (Seventeenth Deed of Amendment), 20 March 2007 (Eighteenth Deed of Amendment), 20 April 2007 (Nineteenth Deed of Amendment), 8 June 2007 (Twentieth Deed of Amendment), 1 July 2007 (Twenty First Deed of Amendment) and 8 August 2007 (Twenty Second Deed of Amendment), Consolidated on 19 August 2008 (Deed of Consolidation), 15 May 2009 (Twenty Third Deed of Amendment), 1 August 2009 (Twenty Forth deed of Amendment), 4 September 2009 (Twenty Fifth Deed of Amendment), 23 September 2009 (Twenty Sixth Deed of Amendment), 26 August 2010 (Twenty Seventh Deed of Amendment) and 12 October 2011 (Twenty Eighth Deed of Amendment) (the constitution as amended being hereinafter referred to as the **Constitution**).
- C. This Deed is declared by the Responsible Entity to be the Constitution of the Club.
- D. The Responsible Entity has agreed to act as Responsible Entity of the Club and to hold all moneys, assets and investments on the trusts and conditions set out in this Deed.
- E. The provisions of this Deed apply to bind and benefit the Owners.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Deed unless the context requires another meaning:

“**Act**” means the *Income Tax Assessment Act 1936* and the *Income Tax Act 1997* or both of them, as appropriate;

“Allocation Effective Date” means the date referred to in clause 4.3(c);

“Anniversary Date” means the first day of the month one year following the month in which Vacation Credits are issued and the same day each year save and except where the Vacation Credits are issued to the Developer and then sold and transferred, in which event the Anniversary Date shall be re-set and mean the first day of the month one year following the month in which the Vacation Credits are registered in the name of a person other than the Developer. Where an Owner acquires more Owner Vacation Credits, either by way of subscription or by transfer, the Anniversary Date of the new Owner Vacation Credits shall be the same as the Anniversary Date of the existing Owner Vacation Credits;

“Anniversary Year” means the one year period commencing each year on the Anniversary Date (or initially, the date of issue of Vacation Credits) and ending on the next succeeding Anniversary;

“Apartment” means an apartment being an asset of the Club or an apartment being asset of a Wholly Owned Subsidiary in either case being at a Resort in respect of which Owner Vacation Credits have been allocated by the Responsible Entity in accordance with the provisions of clause 5.1(b) and to which an Owner receives use rights when an accepted reservation is made in accordance with the Guidelines and Regulations, which apartment may consist of a unit or condominium apartment, an interest in a time-sharing scheme, a separately owned dwelling on a lot whether in a development or otherwise, a hotel suite, a house boat, a motor home or a cabin and/or similar facility suitable for human living quarters.’

“Assets” means all Property, cash, investments, shares (including shares in any Wholly Owned Subsidiary, rights and other property of the Club, but does not include application moneys in respect of which Vacation Credits are yet to be issued, or any distribution which is payable but not yet paid;

“Associate” has the same meaning as in the Law;

“ASIC” means the Australian Securities & Investments Commission or any successor organisation;

“Auditor” means the auditor for the time being of the Club;

“Bank” means a corporation authorised under the *Banking Act 1959* or any other relevant legislation to carry on the general business of banking in Australia;

“Basic Ownership” means in respect of a Standard Owner, an Ownership of 12000 Standard Owner Holiday Units, and in respect of a Premier Owner, an Ownership of 6000 Premier Owner Holiday Units;

“Bonus Time” means the days during which an Owner has use rights in an Apartment under an accepted reservation made in accordance with the Guidelines and Regulations in addition to such Owner’s Vacation Credit Use and for which the Bonus Time Fee is paid;

“Bonus Time Fee” means a fee for the use of Bonus Time;

“Business Day” means a day on which Banks are open for banking business, other than a Saturday or Sunday, on the Gold Coast;

“Club” means the Managed Investment Scheme known as Club Wyndham South Pacific (formerly WorldMark South Pacific Club) as established by this Deed;

“Club Assets” at any time, means the aggregate value of the Assets at that time as calculated by the Responsible Entity in accordance with clause 18;

“Club Liabilities” at any time, means the aggregate value of the liabilities of the Club at that time as calculated by the Responsible Entity in accordance with clause 18;

“Common Area” means all land and Improvements located on the Property of the Club or on property of a Wholly Owned Subsidiary which do not constitute part of an Apartment or other separately owned or rented portion capable of individual occupation, and which are shared in common with others;

“Constitution” means this Deed;

“CPI” means the All Groups Consumer Price Index Australia published by the Australian Bureau of Statistics and where reference is made to an annual percentage increase in the All Groups Consumer Price Index Australia or in the CPI, shall mean the percentage increase in the All Groups Consumer Price Index Australia for the twelve month period ending on the last published quarter of the All Groups Consumer Price Index Australia prior to the applicable review date or prior to the date from which the increased amount is to apply;

“Custodian” means a third party organisation appointed by the Responsible Entity that has a fiduciary obligation to hold the property of the Managed Investment Scheme on trust;

“Deed” means this deed known as the **“Club Wyndham South Pacific Constitution”** as amended from time to time;

“Developer” means the holder of the Developer Vacation Credit;

“Developer Vacation Credit” means the class of Vacation Credit held by the Developer referred to as the developer Vacation Credit;

“Effective Date” means the date upon which the first Owner Vacation Credit is held by an Owner other than the Developer and the Custodian is appointed;

“External Director” in relation to the Responsible Entity has the same meaning given to that expression in section 601JA(2) of the Law;

“Financial Year” means the period from execution of this Deed until midnight on 31 December 2000 and each subsequent year commencing on 1 January and ending at midnight on 31 December;

“Foreign Person” means a person so defined within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*, *Foreign Investment and Takeovers Regulations* and Foreign Investment Policy or otherwise;

“Government Agency” means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board, or other governmental, semi-governmental, judicial, administrative, monetary or fiscal authority, whether statutory or not;

“GST Act” means 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 such Acts;

“GST” means any tax imposed by or through the GST Act on supply (without regard to any input tax credit);

“Guest” means a person other than an Owner who is allowed overnight use of the a Resort through the rights of an Owner in accordance with this Deed and the Guidelines and Regulations;

“Guidelines and Regulations” means the Guidelines and Regulations of the Club made by the Responsible Entity from time to time in accordance with clause 25.5. The initial Guidelines and Regulations of the Club are as set forth in Annexure A and these may be amended from time to time but shall not be inconsistent with this Deed. Any amendment, change, modification, repeal or replacement (“Change”) of the Guidelines and Regulations of the Club or any part thereof shall not constitute a Change to this Deed;

“Improvements” means all buildings, roads, sidewalks, driveways, parking areas, fences, walls, stairs, decks, landscaping, vegetation, poles, fixtures, interior walls, built-in appliances, furnishings and any other structures or attached improvements owned by the Club or owned by a Wholly Owned Subsidiary or located on the Property of the Club or a property of a Wholly Owned Subsidiary;

“Issue Price” means the issue price calculated in accordance with clause 6.2;

“Law” means the *Corporations Law* and *Corporations Regulations* and after the effective date thereof, shall mean the *Corporations Act 2001* and the regulations and any subsequent substituted or amending legislation thereto;

“Liquid” has the same meaning as in the Law;

“Net Asset Value” at any time, means the Club Assets less the Club Liabilities at that time;

“Non-Fully Developed Property” means vacant land, partly developed land, apartments in resorts where refurbishment is to occur or any other property which is intended to be suitable for human living quarters but which is not yet so suitable and in any of the aforesaid cases, in respect of which Owner Vacation Credits have not yet been allocated and whether held in the name of the Responsible Entity or in the name of a Wholly Owned Subsidiary.

“Non-Fully Developed Property Expenditure” means expenditure in relation to Non-Fully Developed Property prior to it becoming an ‘Apartment’ as defined.

“Owner Vacation Credits” means both Standard Owner Vacation Credits and Premier Owner Vacation Credits;

“Owner” means a person for the time being registered under the provisions of this Deed as the holder of Vacation Credits and includes persons registered jointly and includes the Developer;

“Ownership” means the relationship of an Owner to the Club and the relevant proportionate part of the bundle of rights, duties, benefits and obligations set forth in this Constitution and the Guidelines and Regulations of the Club;

“Person” includes any body corporate, association, firm, business or partnership as well as a natural person;

“Premier Owner” means an Owner of Premier Owner Vacation Credits;

“Premier Owner Vacation Credits” means Owner Vacation Credits that continue for the life of the Club and which:

- (a) entitle the Premier Owner to Vacation Credit Use of all present and future Apartments and Resorts;
- (b) permits the Premier Owner to carry over for use, unused Premier Owner Vacation Credits as set out in clause 5.7;
- (c) include the use of Bonus Time; and
- (d) entitle the Premier Owner to a beneficial interest in all of the Assets of the Club.

“Prohibited Securities” means a mortgage or charge over Resorts and/or Apartments or any one or more of them;

“Property” means all property of whatsoever kind and nature held on trust for the Owners subject to the terms of this Deed;

“Register” means the Register of Owners required to be maintained by this Deed and by the Law;

“Registration” means recording an Owner’s interest in the Register;

“Resort” means Apartments and Common Area appurtenant to such Apartments;

“Responsible Entity” means the responsible entity for the time being of the Club who, at the date of this Deed, is Wyndham Vacation Clubs South Pacific Ltd ACN 090 503 923 (formerly known as Wyndham Vacation Resorts South Pacific Limited);

“Scheme” means the Club;

“Section 95 Income” means “net income” within the meaning of section 95 of the Act for a Financial Year;

“Standard Owner” means an Owner of Standard Owner Vacation Credits;

“Standard Owner Apartment” means, in relation a particular Standard Owner, an Apartment which is in the Club or which is in a Wholly Owned Subsidiary at the time that person is accepted and becomes a Standard Owner and includes a subsequent replacement of that Apartment determined by the Responsible Entity in accordance with clause 9, but by way of clarification, shall not include any Apartment where the completion of its acquisition by the Club or by a Wholly Owned Subsidiary occurs subsequent to the person becoming a Standard Owner nor any Apartment in respect of which Owner Vacation Credits are allocated subsequent to the date the person becomes a Standard Owner.

Standard Owner Vacation Credits’ means Owner Vacation Credits that have a **term** being the *first* to occur of:

- (e) 40 years from the date of issue; or
- (f) the date of termination of the Club;

and, which:

- (g) entitle each Standard Owner to Vacation Credit Use in their respective Standard Owner Apartments;
- (h) do not permit the Standard Owner to carry over for use, any Standard Owner Vacation Credits which are unused at the end of an Anniversary Year;
- (i) do not include the use of Bonus Time; and
- (j) entitle each Standard Owner to such beneficial interests as set out in clause 3.1(b).

The Responsible Entity may from time to time for reasons of clarity designate the particular Apartments in respect of which a particular Standard Owner is entitled to Vacation Credit Use and has a beneficial interest in.

“Tax” means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty) imposed at any time by any Government Agency;

- (a) payable now or in the future; or
- (b) required to be remitted to, or imposed, levied, collected, withheld or assessed by any Government Agency;

and any interest, expense, fine, penalty or other charge for those amounts;

“The Treasurer” means the Treasurer of the Commonwealth of Australia or any of his/her agents or associates or otherwise.

“Vacation Credits” means both Owner Vacation Credits and the Developer Vacation Credit, all of which comprise an undivided part or share of the Assets;

“Vacation Credit Use” means the days during which an Owner has usage rights in an Apartment under an accepted reservation made in accordance with the Guidelines and Regulations and for which Owner Vacation Credits are used;

“Vested” means where all of the following conditions have occurred:

- (a) A transfer in registrable form (other than stamp duty notation) of the relevant freehold property or leasehold property is duly executed in favour of the Custodian;
- (b) All necessary documents of title of the relevant freehold property or leasehold property required for registration of the title are given to the Custodian;
- (c) The transfer has been lodged with the relevant Stamp Duty Office;
- (d) The Responsible Entity has given an undertaking to the Custodian to pay any stamp duty or other costs that are payable on the transfer; and
- (e) The Responsible Entity has given an undertaking to the Custodian to do all things necessary to ensure registration is effected.

“Wholly Owned Subsidiary” means a body corporate where the beneficial interest in all the shares are wholly owned by the Club.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference:
 - (i) to the singular include the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to any document (including this Deed) includes references to that document as amended, consolidated, supplemented, novated or replaced;
 - (iv) to an agreement includes any Deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) to any person or any party includes:
 - A. references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and Government Agency as the case requires; and
 - B. that person’s successors, permitted assigns, substitutes, executors and administrators;

- (vi) to law:
 - A. includes references 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
 - B. (including the Law) is a reference to that law as amended, consolidated, supplemented or replaced;
- (vii) to judgment includes references to any order, injunction, decree, determination or award of any court or tribunal;
- (viii) to proceeding includes litigation, arbitration, and investigation;
- (ix) to deliver includes cause to be delivered and references to sell include procure the sale of;
- (x) to time are references to Gold Coast, Australia time;
- (xi) to dollars or “\$” are to the lawful currency of Australia;
- (b) headings are for convenience only and must be ignored in construing this Deed;
- (c) if a period of time is specified and dates from, after or before a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) if a payment or other act must (but for this clause 1.2(d)) 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;
- (e) a warranty, representation, covenant or obligation given or entered into by more than one person binds them jointly and severally;
- (f) the words including or includes mean including but not limited to or including without limitation;
- (g) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (h) where any party is required to provide, or may provide, a notice or application in writing to the other party, then the Responsible Entity may permit that notice or application to be given in electronic form and on such other terms and conditions as the Responsible Entity may determine.

2. CLUB

2.1 Name of Trust

- (a) The Club is to be known as Club Wyndham South Pacific or such other name as the Responsible Entity may determine from time to time.

- (b) If a Responsible Entity retires or is removed, its successor as Responsible Entity must change the name of the Club so that it does not include any of the words “*Club Wyndham South Pacific*” or “*WorldMark South Pacific*” nor include a name which implies an association with the Responsible Entity which is retiring or being removed unless that successor obtains the prior written approval of the Responsible Entity which is retiring or being removed.

2.2 Responsible Entity’s Appointment

- (a) The Responsible Entity is hereby appointed and agrees to act as responsible entity of the Club and perform its duties in accordance with section 601FC of the Law.
- (b) Officers of the Responsible Entity shall perform their duties in accordance with sections 601FD(1) and (2) of the Law.
- (c) Employees of the Responsible Entity shall perform their duties in accordance with section 601FE of the Law.

2.3 Initial Settlement

The Responsible Entity acknowledges receipt of \$1.00 prior to the Effective Date which entitles Wyndham Vacation Resorts Asia Pacific Pty Ltd ACN 090 083 613 to be entered in the Register as the holder of the Developer Vacation Credit.

2.4 Club Assets

- (a) The Responsible Entity holds the Assets on trust for the Owners subject to the terms of this Deed.
- (b) The Assets vest in the Responsible Entity but, to the extent required by the Law, must:
 - (i) be clearly identified as property of the Club; and
 - (ii) be held separately from the Responsible Entity’s assets and the assets of any other managed investment scheme or trust for which the Responsible Entity acts as responsible entity or trustee.
- (c) In relation to any application moneys, until the application is accepted, the Responsible Entity will hold them on trust for the person entitled as provided in this Deed.
- (d) This clause 2.4(d) is to be read subject to clause 2.5. Legal title to Apartments will be held by or lodged with a third party Custodian but the Responsible Entity shall be entitled to hold Property which does not comprise Apartments (including without limitation Non-Fully Developed Property and other Property which does not comprise real and leasehold property) and shall also be entitled to hold or have held any Property up to the Effective Date. Unless specifically notified by the Responsible Entity to Members or to the Custodian, until title to freehold property or leasehold property within the Club is Vested in the Custodian or until title to freehold or leasehold property within a Wholly Owned Subsidiary is lodged with the Custodian, then notwithstanding anything to the contrary

elsewhere expressed or implied in this Constitution, any freehold or leasehold property within the Club held on behalf of the Club by the Responsible Entity or any freehold or leasehold property within the Wholly Owned Subsidiary held by the Wholly Owned Subsidiary shall be considered Non-Fully Developed Property in respect of which no Owner Vacation Credits have been allocated in accordance with the provisions of clause 5.1(b). All application moneys will be held by the Responsible Entity until such time as any cooling off period referred to in clause 6.4 has expired.

2.5 Non-Fully Developed Property

- (a) This clause 2.5 shall apply notwithstanding anything to the contrary elsewhere expressed or implied in this Constitution (and without limiting the generality of the foregoing, clauses 2.4, 5.1 and 5.6).
- (b) The Developer may from time to time fund the acquisition and/or development of Non-Fully Developed Property to be placed into the Club or in respect of freehold or leasehold property located in a jurisdiction outside of Australia, then unless otherwise determined by the Responsible Entity to be placed in a Wholly Owned Subsidiary.
- (c) Until development of the Non-Fully Developed Property reaches a stage where accommodation areas are suitable for human living quarters and Owner Vacation Credits have been allocated, then such accommodation areas shall not be considered as Apartments.
- (d) The Club shall not be required to fund any acquisition, development or other costs or expenses including holding costs in the nature of rates and land tax ('Non-Fully Developed Property Expenditure') in relation to Non-Fully Developed Property and all such Non-Fully Developed Property Expenditure shall be borne and paid promptly when due by the Developer. To the extent that the Club or any Wholly Owned Subsidiary may receive invoices in relation to any Non-Fully Developed Property, they shall forward the invoices to the Developer for payment or in an event, where the Club or a Wholly Owned Subsidiary did pay any such amount, it shall be reimbursable forthwith by the Developer.
- (e) The Developer shall have all the rights to proceeds of use and sale of Non-Fully Developed Property (including whether within the Club or within a Wholly Owned Subsidiary) and the Responsible Entity shall if requested by the Developer deal with any Non-Fully Developed Property (including whether within the Club or within a Wholly Owned Subsidiary) in any manner from time to time requested by the Developer which is reasonably consistent with the Developer's rights to proceeds of use and sale of the Non-Fully Developed Property subject to the Responsible Entity or any Wholly Owned Subsidiary (as the case may be) being entitled to deduct from any proceeds any amount of Non-Fully Developed Property Expenditure expended by it and for which they have not received reimbursement and subject also to clause 2.5(f). Additionally, clause 2.5(e) shall not apply in the event of termination or winding up of the Club.
- (f) The Responsible Entity in respect of Non-Fully Developed Property within the Club, and a Wholly Owned Subsidiary in respect of Non-Fully Developed Property within the Wholly Owned Subsidiary, shall be entitled to sell, lease or

otherwise deal with the Non-Fully Developed Property (or any part thereof) in any reasonable manner which they deem fit in order to recover any Non-Fully Developed Property Expenditure expended by them and for which they have not received reimbursement within 60 days of demand therefor.

3. BENEFICIAL INTEREST OF OWNERS

3.1 Beneficial Interest in the Assets

- (a) subject to clause 3.1(b), the beneficial interest in the Club is vested:
 - (i) in the Owners for the time being; and
 - (ii) if there is more than one Owner, in those Owners in the relevant proportions as determined by the rights attaching to each Vacation Credit held.

- (b) A Standard Owner's beneficial interest in the Assets of the Club is limited to:
 - (i) a beneficial interest in that Standard Owner's respective Standard Owner Apartments which are in the Club (including the fixtures, fittings and equipment therein) and other non-Apartment assets of the Club (disregarding for the purpose of this sub clause 3.1(b)(i) shares in any Wholly Owned Subsidiary);
 - (ii) an entitlement to a beneficial interest in any shares or the proceeds or distribution from the sale or disposal of any shares in a Wholly Owned Subsidiary or distributions from sale of Assets of any Wholly Owned Subsidiary but only insofar as it relates to (the sale price or disposal price or if no such price, apportionment by the Responsible Entity in its reasonable discretion of the value of) their respective Standard Owner Apartments within any Wholly Owned Subsidiary and other non-Apartment assets of the Wholly Owned Subsidiary; but excluding Non-Fully Developed Property.

3.2 No Entitlement to any Particular Part of the Assets

Subject to clause 3.1 each Vacation Credit entitles an Owner equally with all other Owners to the beneficial interest in the Club as an entirety. Ownership of Vacation Credits does not entitle the holder of the Vacation Credit to any particular Asset.

3.3 Restrictions

An Owner must not and shall have no entitlement to:

- (a) interfere with any rights, powers, authorities or discretions of the Responsible Entity under this Deed;
- (b) exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset;
- (c) require an Asset to be transferred to it; or

- (d) give any directions to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which may result in the exercise of any discretion expressly conferred on the Responsible Entity by this Deed or the determination of any matter which requires the approval of the Responsible Entity under this Deed.

3.4 Bound by Deed

Each person who becomes registered as the holder of a Vacation Credit (and any person claiming through them) is entitled to the benefit of and is bound by the terms of this Deed.

3.5 Constitution as a Contract

This Constitution has effect as a contract between the Responsible Entity and each Owner (and each Person claiming through the Owner) and between an Owner and each other Owner, under which each Person agrees to observe and perform the terms of the Constitution so far as they apply to that Person and each Person is entitled to the benefit of this Constitution in accordance with its terms as if each Person had been a party to this Constitution.

4. NO MORTGAGE OR CHARGE ETC.

4.1 No Mortgage or Charge by Responsible Entity or Custodian

Neither the Responsible Entity nor the Custodian shall be entitled to mortgage or charge the Property or any part of the Property. The Responsible Entity must ensure that any Wholly Owned Subsidiary and any Custodian appointed by that Wholly Owned Subsidiary does not mortgage any of the assets (including the Apartments) of that Wholly Owned Subsidiary.

4.2 Premises or Operational Leases or Hire Purchase Permitted

The Club shall be permitted to lease premises, office or operational equipment or other chattels or enter into hire purchase agreements in respect of office or operational equipment or other chattels.

4.3 Restriction on Lease of Resort or Apartment

Neither the Responsible Entity nor the Custodian shall be entitled to, and the Responsible Entity must ensure that any Wholly Owned Subsidiary does not, lease a Resort or Apartment to another Person subject to the following exceptions:

- (a) any lease, licence, concession, renting or hire to the general public if a reservation has not been made for an Apartment by an Owner within such time as determined by the Responsible Entity (and in the case of an Apartment within a Wholly Owned Subsidiary, then to the extent if any required, with the consent of the Wholly Owned Subsidiary) and as set forth from time to time in the Guidelines and Regulations or any prospectus or other offer document;
- (b) parts of a Resort which do not constitute Apartments may be leased or licensed to another Person at a commercial rent or other consideration as determined from

time to time by the Responsible Entity (and in the case of an Apartment within a Wholly Owned Subsidiary, then to the extent if any required, with the consent of the Wholly Owned Subsidiary) provided such lease, licence or concession is, in the reasonable opinion of the Responsible Entity, for the benefit of Owners of the Club or in the case of parts of a Resort or Apartments which are within a Wholly Owned Subsidiary, then for the benefit of the Club as sole member of the Wholly Owned Subsidiary or is likely to enhance the holiday experience of Owners and Guests;

- (c) lease, licence or concession of an apartment to the Developer subject to the Developer having notified the Custodian at or prior to the time when the apartment was transferred to or lodged with the Custodian on behalf of the Club or on behalf of a Wholly Owned Subsidiary, that the Developer desires to take a lease, licence or concession over the apartment and for the term of such lease, licence or concession (and any renewal or extension thereof), no Owner Vacation Credits are to be created, authorised, allocated or issued in respect of that apartment. Provided the Developer has caused funding of the acquisition by the Club of the apartment for no monetary consideration by the Club and provided the Developer pays outgoings in respect of the apartment during the term of such lease, licence or concession, there shall be no requirement for any commercial rent, licence fee or other consideration to be charged during such term. On termination of the lease, licence or concession to the Developer in respect of that apartment, Owner Vacation Credits shall become authorised in respect of that apartment and will otherwise be dealt with in the manner set forth in clause 5.1(b) and Vacation Credits will be deemed to have been authorised and the Developer shall thereupon become liable for payment of Annual and Special Levies from that date (“**Allocation Effective Date**”).

5. VACATION CREDITS

5.1 Issue of Vacation Credits

- (a) Subject to this Deed, the Responsible Entity may create and issue:
- (i) One Developer Vacation Credit; and
 - (ii) Owner Vacation Credits from time to time provided that the total Owner Vacation Credits do not exceed the aggregate of Owner Vacation Credits allocated to all Apartments.
- (b) Subject to clause 4.3(c) and subject to clause 2.5, upon each Resort or Apartment being brought into the Club or brought into a Wholly Owned Subsidiary, the Responsible Entity shall allocate to each Apartment the number of Owner Vacation Credits required for occupancy of that Apartment during different seasons of the year and on different days of the week determined by or in accordance with recommendations by the Developer and such allocation shall be deemed to be the authorised number of Vacation Credits relative to that Apartment. In relation to each Apartment, at the time of its acquisition by the Responsible Entity or at the time of acquisition by a Wholly Owned Subsidiary as the case may be, the Responsible Entity will issue a statement of the total number of Owner Vacation Credits authorised in relation to each Apartment. The statements shall be in or substantially in the form of Annexure B unless another

form is determined by the Responsible Entity which provides appropriate information. Such allocation shall be made having regard to:

- (i) the time of the year;
 - (ii) the number of bedrooms in the Apartment;
 - (iii) the day of the week;
 - (iv) the location of the Resort; and
 - (v) any other factor which the Responsible Entity considers relevant.
- (c) Each Owner must hold the Basic Ownership and no Owner may exercise any rights of Ownership if the Owner has less than the Basic Ownership.
- (d) Vacation Credits are renewed annually in the amount acquired by each Owner. That number of Vacation Credits will be credited to the Owner on their Anniversary Date.
- (e) This clause 5.1(e) is subject to clause 2.5 and 5.1(f). Unless otherwise agreed between the Developer and the Custodian, the Developer will introduce various types of property to the Club or a Wholly Owned Subsidiary, fund the acquisition of that property by the Club or by a Wholly Owned Subsidiary and in the case of property acquired by the Club, cause it to be transferred to, or in the case of a Wholly Owned Subsidiary, cause the instruments or indicia of title for the property to be lodged with, the Custodian free of any mortgage or charge **AND** in return for funding the acquisition of the Resort or Apartment:
- (i) the Developer Vacation Credit shall thereafter in accordance with clause 5.6(a)(i) be deemed to be equivalent to a greater number of Vacation Credits due to the allocation of the further Vacation Credits pursuant to clause 5.1(a) although those Vacation Credits have not yet been issued as Owner Vacation Credits; OR
 - (ii) at the election of the Developer as notified to the Responsible Entity and the Custodian as an alternative or part alternative to the situation referred to in clause 5.1(e)(i), the Developer may after a period of 12 months from registration of the Club as a managed investment scheme with the ASIC be issued with Owner Vacation Credits (at the election of the Developer) up to the amount of the additional Owner Vacation Credits authorised in respect of the new Resort or Apartment brought into the Club or brought into a Wholly Owned Subsidiary pursuant to clause 5.1(b). The exception referred to above in this clause 5.1(e)(ii) is that in no event will the Developer be entitled to elect that Vacation Credits be issued to the Developer if this would cause 20 or fewer Owners to become entitled to 75% or a greater percentage of the total issued Vacation Credits in the Club. If Owner Vacation Credits are issued to the Developer, the Developer appoints the Responsible Entity for the purpose of offering Owner Vacation Credits held by it for sale to other Persons.

For so long as there are Owner Vacation Credits which have been authorised in accordance with clause 5.1(b) but not issued, the Developer will be entitled after a period of 12 months from registration of the Club as a managed investments scheme with the ASIC, at its election by notice in writing to the Responsible Entity to require the issue to it forthwith of all or some of those Owner Vacation Credits subject to the Exception referred to above in clause 5.1(e)(ii).

- (f) Any moneys paid to the Responsible Entity by applicants for the issue of Owner Vacation Credits (allocated but not issued) shall on issue of the Owner Vacation Credits belong to and be paid to the Developer (or shall be paid as directed by the Developer).
- (g) The proceeds of sale by the Responsible Entity as agent for the Developer of any Owner Vacation Credits held by the Developer shall be paid to or as directed by the Developer.

5.2 Non-Vendor Financed Sales

- (a) Notwithstanding any other provision of this Deed, if an amount is shown in an application for Premier Owner Vacation Credits against an item styled “Subject to Finance” or any other term referring to the provision of finance, then the application shall be capable of acceptance by the Responsible Entity subject to the condition that the Developer will use its best endeavours to cause Finance by Wyndham Pty Limited ACN 091 790 993 or another company associated with the Developer or a third party lending institution to lend that amount to the person applying for Premier Owner Vacation Credits on terms acceptable to that person **PROVIDED THAT** if such finance is not provided within 21 days after the date of lodgment of the Application with the Responsible Entity (or such longer period agreed to by the applicant and the Responsible Entity), then either the Applicant or the Responsible Entity may by notice in writing to the other withdraw or cancel the application. In the event of proper withdrawal or cancellation of the application, the Responsible Entity shall cause to be refunded to the applicant all application moneys paid in respect of the Premier Owner Vacation Credits to which the notice of withdrawal or cancellation relates and the applicant shall not be liable to pay the Responsible Entity or the Developer any sum for damages, costs or expenses relating to the withdrawal or cancellation of their application. The rights of cancellation referred to in this clause 5.2(a) are in addition to any rights of cancellation available at law.

5.3 Classes of Vacation Credits

There are two classes of Vacation Credits with two further sub-classes, namely:

- (a) Owner Vacation Credits;
 - (i) Standard Owner Vacation Credits; and
 - (ii) Premier Owner Vacation Credits; and
- (b) The Developer Vacation Credit.

5.4 Partly-Paid and Fully-Paid Vacation Credits

- (a) Owner Vacation Credits may be issued either fully-paid or partly-paid.
- (b) If Owner Vacation Credits are issued partly-paid, the Owner of such Owner Vacation Credits must pay interest, instalments, and comply with such terms and conditions as contained in an agreement between the Responsible Entity and/or the Developer and the Owner (“**Vendor Finance Agreement**”).
- (c) If an Owner breaches any terms or conditions of the Vendor Finance Agreement including, without limitation, the failure to pay any interest or instalment and such default continues for 30 days or such longer period as may be required by law after the Responsible Entity gives written notice of such default to the Owner, the Responsible Entity may, without further notice, forfeit the partly-paid Owner Vacation Credits. Upon forfeiture, the Responsible Entity shall use its best endeavours to sell the forfeited Owner Vacation Credits at the then current applicable Issue Price.
- (ca) The Responsible Entity must apply any proceeds of sale or of other exploitation by it of the forfeited Owner Vacation Credits (including, without limitation, any proceeds of rental of the forfeited Owner Vacation Credits) in the following manner:
 - (i) first, in payment of reasonable costs of the sale or other exploitation;
 - (ii) next, in payment of any reasonable administrative costs arising from the forfeiture;
 - (iii) next, in payment of any outstanding amounts due from the defaulting Owner as Club Assets;
 - (iv) next, in payment of any outstanding amounts due from the defaulting Owner to the Responsible Entity (other than as Club Assets) or any other person in relation to that Owner’s participation in the Club (other than amounts referred to in paragraph (v));
 - (v) next, in payment of any amounts payable by the defaulting Owner under the Vendor Finance Agreement;
 - (vi) next, by paying any remaining amount to the defaulting Owner.
- (d) If Owner Vacation Credits are to be issued as partly-paid, the Owner shall pay such amounts by instalments as set out in the application form as to the first instalment and in the Vendor Finance Agreement (which may be a separate agreement from the application form or incorporated in the application form) as to the balance, and the Owner Vacation Credits shall be issued upon payment of the first instalment. If the Owner fails to pay such instalments on time then subject to the provisions of the Vendor Finance Agreement and/or the law, the application for Owner Vacation Credits shall be terminated and any moneys paid by the Owner shall be forfeited.
- (e) If Owner Vacation Credits are to be issued as fully-paid, the Owner must pay a deposit of such amount as specified in the application form and must pay the

balance of the application moneys within the time set out in the application form;
and

- (f) If an Owner does not pay the balance of the application moneys in accordance with clause 5.4(e), and such default continues for 30 days after the Responsible Entity gives written notice of such default to the Owner, the Responsible Entity may, without further notice, terminate the application and retain the deposit.

5.5 Voting Rights

- (a) On a show of hands:

each Owner has 1 vote.

- (b) On a poll:

- (i) Each Owner (other than the Developer) is entitled to one vote for each dollar of value [as determined pursuant to section 253F(c) of the Law] of the total interests they have in the scheme.
- (ii) The Developer is entitled to one vote for each dollar of value of the interests represented by the authorised but un-issued Vacation Credits and in respect of any Vacation Credits (other than) the Developer Vacation Credit issued to it,

Provided however, that following the Effective Date, the Developer shall be limited to 10% (and covenants that it shall not exercise any vote greater than 10%) of the total voting rights of all other Owners.

5.6 Developer Vacation Credit

- (a) The Developer shall have:

- (i) subject to clause 2.5 all rights and obligations provided to be attached to all *authorised* Owner Vacation Credits allocated pursuant to clause 5.1(b) (including rights of use and occupation, proceeds from use and voting) *other than* any rights and obligations (including payment of levies) attaching to any Owner Vacation Credits which have been issued and shall be entitled to all proceeds from the issue of Owner Vacation Credits to Owners other than the Developer (as well as being entitled to the proceeds from the sale of any Owner Vacation Credits which may be issued to the Developer and then sold by the Responsible Entity as agent for the Developer). The Developer Vacation Credit shall be deemed to be equivalent to the total number of Vacation Credits *authorised* pursuant to clause 5.1(b) less the number of Owner Vacation Credits for the time being issued. The holder of the Developer Vacation Credit shall also be entitled to the right referred to in Clause 5.1(e)(ii) and no further subscription moneys shall be required to be paid in the event of the issue of any Owner Vacation Credits to the Developer – the Developer’s ability to hold issued Vacation Credits is not restricted to the Developer Vacation Credit; and

- (ii) any special rights and obligations provided in this Deed.
- (b) In the event of any inconsistency between clauses 5.6(a)(i) and 5.6(a)(ii), clause 5.6(a)(ii) will have precedence.

5.7 Unused Premier Owner Vacation Credits

- (a) Premier Owner Vacation Credits which are unused by a Premier Owner at the end of an Anniversary Year will automatically carry over for use by that Premier Owner in the subsequent year, and will expire at the end of that subsequent year and such carried over use rights shall also expire. By way of clarification, Vacation Credits will cease to be 'unused' to the extent that an Owner does not have an accepted reservation for use of an apartment in accordance with the Guidelines and Regulations in respect of those Vacation Credits at the end of the second year following the date on which those Vacation Credits were originally credited to the Owner – at the end of that second year, the Owner will cease to have any usage rights in respect of those Vacation Credits.
- (b) Usage will be charged first against any carried over Premier Owner Vacation Credits and then against the current year's Premier Owner Vacation Credits.
- (c) Premier Owners may in the then current Anniversary Year borrow their Vacation Credits from the next succeeding Anniversary Year, so long as such Premier Owners have paid to the Responsible Entity all levies or estimated levies payable in respect of such succeeding year.
- (d) For the avoidance of doubt, this clause 5.7 shall not apply to Standard Owners and their Standard Owner Vacation Credits.

5.8A Use of Points in respect of other affiliation arrangements or reward programmes

From time to time the Responsible Entity may enter into certain resort affiliation arrangements or reward programmes through which Owners can use, exchange or trade in their Vacation Credits for accommodation rights and/or other non-monetary benefits or rewards. For the purposes of clause 5.7(a) and the definition of 'Vacation Credit Use' in this constitution, the Vacation Credits will be deemed to be used or cease to be 'unused' when the Club receives a confirmed exchange or redemption in accordance with the relevant affiliation arrangement or reward programme in respect of those Vacation Credits

5.8 Rights of Use

Each Owner has the right to occupy and use an Apartment and the Common Areas during such Owner's Vacation Credit Use, reserved in accordance with the Guidelines and Regulations, with the exception that Standard Owners can only occupy and use their respective Standard Owner Apartments.

5.9 Use by Foreign Persons

Any acquisition of Vacation Credits by a foreign person or any of that person's associates shall in no event entitle the foreign person and or it's associates to Vacation Credit Use in a resort or resorts in Australia which in aggregate exceeds 4 weeks in any period of

twelve months. This clause shall apply notwithstanding anything to the contrary elsewhere express or implied in this Constitution or in the Guidelines and Regulations unless otherwise consented to by the Treasurer or permitted under the Australian Foreign Investment Policy, Foreign Acquisitions and Takeovers Act 1975, Foreign Investment and Takeovers Regulations or otherwise.

5.10 Bonus Time

Each Premier Owner has the right to occupy and use an Apartment and the Common Areas of the Resort during such Owner's Bonus Time, reserved in accordance with the Guidelines and Regulations.

5.11 Housekeeping Fees

An Owner is entitled to one free housekeeping service each Anniversary Year for up to and including 10,000 Owner Vacation Credits. For each additional full 10,000 Owner Vacation Credits owned, an Owner will receive one additional free housekeeping service. Further use of Owner Vacation Credits in the same Anniversary Year shall be subject to a housekeeping fee per stay as set out in the Guidelines and Regulations.

5.12 Governmental Taxes

An Owner must pay any governmental tax related to their use of an Apartment at the time of the reservation of such Apartment.

6. APPLICATION FOR VACATION CREDITS

6.1 Application for Vacation Credits

A person who wishes to purchase Vacation Credits must:

- (a) complete and lodge an application in the form or manner determined by the Responsible Entity; and
- (b) include the application moneys (or for partly paid Owner Vacation Credits, minimum amount referred to in clause 6.6 unless otherwise determined by the Responsible Entity) with the application in the form or manner specified by the Responsible Entity.

6.2 Issue Price for Vacation Credits

- (a) Subject to clauses 2.3 and 6.2(b), (c), (d), and (e), the Issue Price of a Vacation Credit is the price disclosed in the Product Disclosure Statement or Supplementary Product Disclosure Statement issued by the Responsible Entity.
- (b) The Issue Price may be increased from time to time by the Responsible Entity by modification of this Constitution in accordance with the Law.
- (c) The Developer, as the person entitled to the proceeds of issue of Owner Vacation Credits under the Constitution, may from time to time and at its sole discretion, request the Responsible Entity to, and the Responsible Entity shall if requested by the Developer, offer discounts to the public. The discounts offered to the public

shall be expended from the Developer's entitlement to the proceeds of such issues.

- (d) The Developer, as the person entitled to the proceeds of issue of Owner Vacation Credits under the Constitution, may from time to time and at its sole discretion, request the Responsible Entity to, and the Responsible Entity shall if requested by the Developer, offer discounts to Owners who acquire further additional Owner Vacation Credits which shall be known as upgrades. The discounts offered shall be expended from the Developer's entitlement to the proceeds of such issues.
- (e) The Issue Price in clause 6.2(a) shall apply from the date the Constitution is amended to include that Issue Price and not affect the validity of any previous issue of Vacation Credits at a price or on terms which were applicable at the time of such previous issue.'

6.3 Responsible Entity's Discretion on Application

The Responsible Entity may reject any application for Vacation Credits in whole in its absolute discretion without giving any reasons for the rejection. The Responsible Entity will notify the applicant whether it accepts or rejects the application as soon as possible after receipt of the application. If the application is rejected, the Responsible Entity will return the application moneys received from the applicant to the applicant as soon as possible after the application has been rejected.

6.4 Cooling-Off Period

In the event that it is a condition of any relief granted by ASIC from the requirements of the Law or it is otherwise mandatory that there be a cooling-off period in relation to an application for Owner Vacation Credits and the Law is applicable to the offering of the Vacation Credits, the Responsible Entity must comply with such condition or mandatory requirement. No application for Owner Vacation Credits will be accepted by the Responsible Entity until any relevant cooling-off period has expired. Any deposit or instalment received with the Application Form for Vacation Credits will be held on trust by the Responsible Entity until any relevant cooling off period has expired. [SEE CLAUSE 2.4(d)]

6.5 Ownership

If the Responsible Entity accepts an application for Vacation Credits, that person becomes an Owner.

6.6 Allotment

A Vacation Credit is regarded as issued or granted on the *later* of:

- (a) the time the name of the person to whom it is to be issued is recorded in the Register; and
- (b) the time the Responsible Entity receives as cleared funds a minimum of ten percent (10%) of the purchase price.

No rights or obligations whatsoever attach to an Owner Vacation Credit until it is issued.

6.7 Un-Cleared Funds

Vacation Credits issued against application moneys which are not paid in cleared funds are voidable at the option of the Responsible Entity if the funds are not subsequently cleared within 14 days of receipt of the application.

7. OWNERSHIP

7.1 Licence

Subject to the restrictions on Vacation Credit Use imposed on Standard Owners as set out in this Constitution, an Ownership in the Club constitutes, for so long as Apartments are within the Club or within a Wholly Owned Subsidiary:

- (a) a licence to use and occupy an Apartment during the Owner's Vacation Credit Use or Bonus Time;
- (b) a non-exclusive right to use, enjoy and occupy the Common Areas of the Resort and related recreational facilities during the Owner's Vacation Credit Use or Bonus Time; and
- (c) voting rights in the Club as described in clause 5.5.
- (d) the right on termination of the Club to payment of a relevant proportion of money remaining after sale, calling in and conversion of Assets into money and payment out of all liabilities of the Club in accordance with clause 32.3(d) of this Deed.

7.2 Term of Ownership

- (a) Premier Owner Vacation Credits shall continue until the Club is terminated. Standard Owner Vacation Credits shall expire on the first to occur of 40 years from the date of issue or termination of the Club.
- (b) If Ownership of Owner Vacation Credits has been issued by the Responsible Entity, the term of such Ownership cannot be reduced without the approval of a majority of all Owners so affected.

8. BONUS TIME

- (a) Use of Bonus Time by its Premier Owner or a Guest shall be subject to availability and pre-payment of the Bonus Time Fee.
- (b) The proceeds from Bonus Time Fees shall accrue to the benefit of the Club.
- (c) The Responsible Entity shall determine the amount of the Bonus Time Fee, provided that it shall not:
 - (i) exceed an amount equal to 10% of the then current Issue Price of Premier Owner Vacation Credits; and

- (ii) be increased by more than the greater of 10% or the CPI in any one Financial Year.

9. VACATION CREDITS AND APARTMENTS

9.1 Replacement Resorts

If a Resort or Apartment is to be transferred, sold or assigned and will cease to be an asset of the Club or an asset of a Wholly Owned Subsidiary (“**Old Resort or Apartment**”), the Responsible Entity must ensure that:

- (a) a replacement Resort or Apartment is brought into the Club or into the relevant Wholly Owned Subsidiary as the case may be which is considered by the Responsible Entity on reasonable grounds to be of at least equal quality to the Old Resort or Apartment; and
- (b) such replacement Resort has that number of Owner Vacation Credits allocated to it as is at least equal to the number of Owner Vacation Credits allocated to the Old Resort or Apartment.

9.2 Constant Total

- (a) Subject to clause 9.1 and 9.2(c), the total number of Owner Vacation Credits in the Club shall not alter except upon the addition or deletion of an Apartment.
- (b) Subject to 9.2(c) the Responsible Entity can alter the allocation of Owner Vacation Credits of an Apartment during different seasons of the year and during different days of the week provided that the total number of Owner Vacation Credits for that Apartment does not change. The Responsible Entity will cause any relevant Wholly Owned Subsidiary to consent to alteration of the allocation of Owner Vacation Credits of any Apartment owned by the Wholly Owned Subsidiary to the extent (if any) required.
- (c) The Responsible Entity can reduce the number of Owner Vacation Credits allocated to an Apartment provided that there are always a sufficient number of authorized but un-issued Owner Vacation Credits which are similarly reduced so that the total number of Owner Vacation Credits and the aggregate allocation of Owner Vacation Credits to all Apartments are the same.

10. REGISTER OF OWNERS

10.1 Details of Register

- (a) The Responsible Entity must maintain an up-to-date Register of the Owners in which is entered:
 - (i) the names of the Club and the Responsible Entity;
 - (ii) the name and address of each Owner as provided to the Responsible Entity;

- (iii) the number and type of Vacation Credits for which each Owner (or joint holders) is registered;
 - (iv) in respect of each Standard Owner, details of their respective Standard Owner Apartments within the Club, and those respective Standard Owner Apartments within a Wholly Owned Subsidiary to which the Standard Owner is entitled to a proportion of the proceeds, in the event of termination and winding up of the Club;
 - (v) the date of issue of Vacation Credits;
 - (vi) the amount paid, or agreed to be considered as paid, on the Vacation Credits, whether fully paid or partly-paid;
 - (vii) the Anniversary Date of Vacation Credits;
 - (viii) where distinctive numbers are used by the Responsible Entity, the numbers of the Vacation Credits or Owner identification cards;
 - (ix) particulars of transfers of Vacation Credits;
 - (x) particulars of any mortgage, charge or other security over the Vacation Credits of an Owner which are notified to the Responsible Entity and details of the Mortgagee/Lender; and
 - (xi) such other particulars as the Responsible Entity may decide.
- (b) The Register shall be available to be inspected at any time during normal business hours at the office of the Responsible Entity where the Register is kept:
- (i) by any Owner free of charge; and
 - (ii) by another person, on payment for each inspection of such amount as the Responsible Entity may require, or where the Responsible Entity does not require the payment of an amount, free of charge.
- (c) Notwithstanding the provisions of section 173 of the Law (but subject to any mandatory law to the contrary), the Responsible Entity shall be entitled to refuse to supply a copy of the Register unless the person seeking such copy shall first have entered into a contractual agreement stating that the information contained within it shall not be provided, disclosed or otherwise, in form or content, made available in any form to any other person and will further be used only for the purposes of:
- (i) convening a meeting of Owners
 - (ii) making an offer to purchase Vacation Credits
 - (iii) examining or dealing with matters directly relating to the management of the Club
 - (iv) undertaking statistical or analytical research; or

- (v) any purpose which may be approved by the Club

but shall not be used for commercial purposes or the purposes prohibited by section 177 of the Law.

The Club shall be entitled to charge a fee as prescribed by the Law or if no fee is prescribed, a fee as determined by the Club, for the provision of a copy of the Register.

10.2 Joint Holders

Where 2 or more persons are registered as an Owner of a Vacation Credit (“**joint holders**”) they are, for the purposes of the administration of the Club only, deemed to hold the Vacation Credit as joint tenants on the following conditions:

- (a) the Responsible Entity is not bound to register more than 2 persons as the joint holders of the Vacation Credit;
- (b) the joint holders are jointly and severally liable for all payments, including payment of Tax, which ought to be made in respect of the Vacation Credit;
- (c) any one of the joint holders may give an effective receipt which will discharge the Responsible Entity for any payment or distribution; and
- (d) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications and any such notice, cheque or communication given to that person is deemed to be given to all the joint holders.

Wherever in this Constitution a liability or obligation is imposed on an Owner and the relevant Vacation Credits are registered in the names of 2 or more persons, those persons shall be jointly and severally liable to the Club in respect of that liability or obligation. Further, if a dispute arises between joint holders as to the use of the Vacation Credits, the Club has the right to suspend the use of the Vacation Credits until such time as the dispute is resolved by the joint holders and is agreed to in writing to the Club.

10.3 Consequence of Registration

Except as is otherwise expressly provided in this Deed, a person who is entered in the Register as the holder of Vacation Credits is the only person recognised by the Responsible Entity as entitled to the Vacation Credits.

10.4 Change of Address

If an Owner gives the Responsible Entity notice in writing of a change of address, the Responsible Entity must delete the previous address of that Owner as shown in the Register as soon as may be practicable and insert the new address as notified in its place.

10.5 No Recognition of Trust

Owners have an absolute right to the Vacation Credits registered in their name. The Responsible Entity is not bound to recognise, even when having notice, any equitable, contingent or future interest, or a severable part interest, in a Vacation Credit, or a trust

for the holding of a Vacation Credit, except as may otherwise be expressly provided by this Deed.

11. VACATION CREDIT OWNER IDENTIFICATION CARD

11.1 Issue of Owner Identification Card

- (a) Each Owner is entitled to be issued with an Owner identification card for the Vacation Credits registered in their name.
- (b) Where Vacation Credits are held jointly, the joint holders are entitled only to one Owner identification card in their joint names and delivery of that Owner identification card to any one of the joint Owners is sufficient delivery to all of those holders.

11.2 Form of Owner Identification Card

A Owner identification card may be in the form prescribed by the Responsible Entity from time to time.

11.3 Surrender of Owner Identification Cards

When Vacation Credits are transferred as permitted by this Deed, the Owner identification card for those Vacation Credits, or evidence as to the loss or destruction of the Owner identification Card for those Vacation Credits satisfactory to the Responsible Entity, must be given to the Responsible Entity.

12. TRANSFER OF VACATION CREDITS

12.1 Transfer Form

- (a) An Owner has no right to withdraw from the Club but may transfer all or any of their Vacation Credits by whatever form or mechanism of transfer (including paper-based, electronic or by other technological means) the Responsible Entity may require from time to time with appropriate stamp duty having been duly paid or accounted for (if applicable) and (unless waived by the Responsible Entity) executed by or on behalf of the transferor and the transferee and accompanied by the Owner identification card for the Vacation Credits to be transferred or such other evidence of title (if any) that is required by the Responsible Entity subject to the following conditions:
 - (i) the Owner shall pay to the Responsible Entity an administrative fee of such amount as is determined, from time to time, by the Responsible Entity (in its sole discretion) and set out in the Guidelines and Regulations;
 - (ii) the transferring parties are responsible for any costs, including Taxes (and GST), associated with the transfer;
 - (iii) there are no amounts owing by the transferor to the Responsible Entity;

- (iv) the Vacation Credits retained (if any) and transferred must include enough Vacation Credits to be a Basic Ownership at the then current requirements for each of the transferor and the transferee;
 - (v) when Vacation Credits being transferred are subject to a Vendor Finance Agreement, the transferee must first consent to be bound by the terms of the Vendor Finance Agreement in a form satisfactory to the Responsible Entity and to the Developer; and
 - (vi) when Vacation Credits being transferred are subject to finance from Finance by Wyndham Pty Ltd or another company associated with the Developer or a third party lending institution (“Mortgagee”), the transferring parties must first obtain written consent from the Mortgagee to the transfer, or in the alternative, the transferor must fully repay and obtain a discharge of the loan from the Mortgagee.
- (b) Until the name of the transferee is entered in the Register as the holder of the Vacation Credits:
- (i) the Responsible Entity may deal with the transferor of the Vacation Credits to be transferred; and
 - (ii) the transferor remains the holder of those Vacation Credits.

12.2 Delivery of Certificate

The Responsible Entity shall not be required to issue any Certificate in respect of an Ownership in the Club and the holding of Vacation Credits in it unless it is a mandatory requirement by Law to do so. Accordingly, it is not necessary for a Certificate to be delivered to the Responsible Entity, or for the Responsible Entity to take delivery of the Certificate, in connection with the registration of a transfer of Vacation Credits for which the Responsible Entity is not required to issue a Certificate.

12.3 Rights Attaching to Vacation Credits

Upon any transfer or re-purchase of any Vacation Credits, the whole of the rights and benefits of the transferor attaching to such Vacation Credits shall pass to the new Owner.

12.4 Transferee Bound by Constitution

The transferee of any Vacation Credits shall be deemed to have agreed to be bound and shall be bound by this Constitution.

12.5 Responsible Entity’s Discretion to Register Transfer

Subject to the Law, the Responsible Entity may, in its absolute discretion, refuse to register any transfer of Vacation Credits. If the Responsible Entity refuses to register a transfer of Vacation Credits, the Responsible Entity must give to the lodging party and the transferee written notice of the refusal and the precise reasons for the refusal within 5 Business Days after the date on which the transfer was lodged with the Responsible Entity, or within such other time and to such other parties as may be required by Law.

12.6 Election of Person Entitled to Vacation Credits by Death or Bankruptcy

Any person becoming entitled to any Vacation Credits in consequence of the death or bankruptcy of an Owner or otherwise by operation of Law upon such evidence being produced as may from time to time reasonably be required by the Responsible Entity and subject as hereinafter provided, may elect either to be registered himself as Owner or to have some person nominated by him registered as the transferee thereof. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the Responsible Entity a notice in writing in the form prescribed by the Responsible Entity signed by him stating that he so elects. If he shall elect to have his nominee registered, he and the nominee shall testify to the election by delivering or sending to the Responsible Entity duly stamped (if necessary) a transfer to that nominee. All the provisions of this Constitution relating to the registration of transfers of Vacation Credits shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the Owner or operation of Law had not occurred and the notice or transfer was a transfer executed by such Owner.

12.7 Rights of Person Entitled to Vacation Credits by Death or Bankruptcy

A Person becoming entitled to Vacation Credits in consequence of the death or bankruptcy of a Owner or by operation of Law shall be entitled to receive and may give a discharge for all moneys payable in respect of the Vacation Credits but that Person shall not be entitled to receive notices of or to attend or vote at any meetings of Owners until that Person shall have become the holder of such Vacation Credits.

12.8 Retention of Transfer Instrument

The instrument of transfer, when registered, must be retained by the Responsible Entity for such period as may be required by Law, after which it may be destroyed at any time. Except in the case of fraud, any instrument of transfer which the Responsible Entity declines to register must be returned to the Person lodging it.

12.9 Issue of New Owner Identification Card

(a) Upon:

(i) production to the Responsible Entity of:

A. a properly executed instrument of transfer; and

B. the Owner identification card for the Vacation Credits to be transferred; and

(ii) compliance with the provisions of this Deed concerning the transfer of the Vacation Credits,

the Responsible Entity must:

A. enter the name and address of the transferee as shown in the transfer in the Register as the holder of the Vacation Credits transferred;

- B. cancel the Vacation Credit Owner identification card in the name of the transferor;
 - C. issue a new Owner identification card to the transferee if it so requires for the Vacation Credits transferred; and
 - D. if all of the Vacation Credits comprised in the original Owner identification card have not been transferred, the transferor would maintain the existing Owner identification card which would be deemed to be for the balance of the Vacation Credits held.
- (b) If a Owner identification card is claimed to be lost or destroyed, the Responsible Entity may dispense with production of the Owner identification card upon receiving evidence satisfactory to it of that loss or destruction.

13. TRANSMISSION OF VACATION CREDITS BY DEATH

13.1 Death of an Owner

- (a) If an Owner dies, the survivor (where the deceased was a joint holder), or the legal personal representative of the deceased (in all other cases), is the only person recognised by the Responsible Entity as having any title to or interest in the Vacation Credits held by that Owner.
- (b) The Responsible Entity must be given all evidence it may require to enable it to verify whether an Owner has died or whether a legal personal representative has been validly appointed.

13.2 Election by Representative

- (a) Once all evidence required by the Responsible Entity under clause 13.1(b) has been provided, the legal personal representative of the deceased Owner (where the deceased Owner was not a joint holder):
 - (i) may elect in writing to be registered as the holder of the Vacation Credit; and
 - (ii) is entitled to become registered as the holder of the Vacation Credit by transmission and the Responsible Entity must make an entry to that effect in the Register.
- (b) Where an election under clause 13.2(a) is not made:
 - (i) the provisions of this Deed relating to the transfer of Vacation Credits apply, except that the person entitled will be the transferor; and
 - (ii) a person nominated by the person entitled may become registered as the transferee of the Vacation Credit.

13.3 Rights on Transmission

A person entitled to a Vacation Credit by transmission may receive and give a good discharge for all moneys payable for the Vacation Credit but, except as otherwise provided in this Deed, is not entitled to any other rights or privileges of an Owner unless and until that person becomes registered for the Vacation Credit.

14. MORTGAGES, CHARGES AND/OR SECURITIES OVER VACATION CREDITS

14.1 Responsible Entity to Enter in Register Notified Mortgages

Notwithstanding anything to the contrary elsewhere expressed or implied in this Deed, the Responsible Entity shall be bound to take notice of any written notice given to it of any mortgage, charge or other security (“**Mortgage**”) over or in relation to Vacation Credits held by an Owner accompanied by a copy of the relevant Mortgage (unless this requirement is waived by the Responsible Entity) and to enter in the Register of Owners particulars of the mortgagee/chargee/lender (“**Mortgagee**”) and such other details as the Responsible Entity may think fit and the powers and duties of the Responsible Entity in respect of such Vacation Credits in respect of which a Mortgage has been appropriately notified, shall not be knowingly exercised in any manner without regard to the rights of such Mortgagee and the Responsible Entity shall afford inspection of that part of the register relating to Vacation Credits held by the particular Owner having granted the Mortgage over the Vacation Credits provided the Mortgagee produces to the Responsible Entity an authority from the holder of the relevant Vacation Credits Mortgage to make such inspection or the security documents appear to the Responsible Entity to contain sufficient authority on their face.

14.2 Certificate of Entry of Mortgage on Register

If the Responsible Entity enters particulars of a Mortgagee of Vacation Credits in the Register of Owners, the Responsible Entity shall issue a certificate or acknowledgment to the Mortgagee of the entry having being made in the Register. Once such a certificate of acknowledgment has been issued, then save for any other mandatory requirement at law or at equity to the contrary, the Responsible Entity shall not be bound to process any dealing with the Vacation Credits of an Owner which are subject to a notified Mortgage in respect of which such an certificate of acknowledgment has been issued without production of the certificate or acknowledgment to the Responsible Entity. Furthermore, upon production to the Responsible Entity of evidence satisfactory to the Responsible Entity that default has been made under the Mortgage and such default continues and the Mortgagee is entitled to exercise and is exercising its rights under the Mortgage, then the Responsible Entity may process and register a dealing by or at the insistence of the Mortgagee in respect of the Vacation Credits mortgaged or part thereof without production of the Owner identification card and the Responsible Entity shall not be liable to the Owner/mortgagor of the Vacation Credits or to any third party in respect of the Responsible Entity’s actions in recognising the interest of a Mortgagee as aforesaid and the processing and/or registering of any dealing as mentioned above.

This clause shall apply notwithstanding anything to the contrary elsewhere expressed or implied in this Deed.

14.3 Default under Mortgage

If default has been made under the Mortgage and such default is continuing, the Mortgagee is entitled to engage the Responsible Entity to forfeit the defaulting Owner's Vacation Credits. Upon forfeiture, the Responsible Entity shall use its best endeavours to sell the forfeited Owner Vacation Credits at then current applicable Issue Price. The Responsible Entity must apply any proceeds of sale or of other exploitation by it of the forfeited Owner Vacation Credits (including, without limitation, any proceeds of rental of the forfeited Owner Vacation Credits) in the following manner:

- (a) first, in payment of reasonable costs of the sale or other exploitation;
- (b) next, in payment of any reasonable administrative costs arising from the forfeiture;
- (c) next, in payment of any outstanding amounts due from the defaulting Owner as Club Assets;
- (d) next, in payment of any outstanding amounts due from the defaulting Owner to the Responsible Entity (other than as Club Assets) or any other person in relation to that Owner's participation in the Club (other than amounts referred to in paragraph (v));
- (e) next, in payment of any amounts payable by the defaulting Owner under the Mortgage to the Mortgagee in relation to any liability of the Owner to the Mortgagee for amounts payable under the Mortgage provided by the Mortgagee in connection with the acquisition of the forfeited interest;
- (f) next, by paying any remaining amount to the defaulting Owner.

15. LEVIES

15.1 Power to Raise Levies

The Responsible Entity shall have the power to levy annual and special levies against each Ownership, including those of the Developer.

15.2 Annual Outgoings

Each year the Responsible Entity shall determine the amounts necessary in its opinion to be raised by way of annual contribution from the Owners for the purpose of meeting the Club's actual or expected liabilities (including making appropriate provisions for reserves) which shall include, amongst other things and without limiting the generality of the foregoing, all amounts payable under or by virtue of any lease, rates and taxes, body corporate levies, insurance premiums, wages and salaries, contractual payments, management and administrative costs, maintenance and repair costs, refurbishment costs, reserves and the costs of complying with any notice requiring work by any competent authority (the "**annual outgoings**").

15.3 Annual Levies

- (a) Each Owner shall contribute to the funds of the Club during each year in respect of the number of Vacation Credits of which that Owner is Registered, his or her proportion of the annual outgoings being determined in accordance with the following formula:

\$X for the first 6000 to 7,500 Owner Vacation Credits,

Plus $(X \times 23.07\%)$ for each additional 2,500 Owner Vacation Credits or portion thereof owned.

Where X is \$358.00 (inclusive of GST) for a notional period of 12 months until 31 December 2000 (and pro rata for a period of less than 12 months) and after the first 12 months or such other period as determined by the Responsible Entity, X shall be such number as is determined by the Responsible Entity.

- (b) No annual levy in any calendar year shall be increased above the annual levy for the immediately preceding Financial Year by an amount greater than the higher of the following two amounts:
- (i) 5%; or
 - (ii) the percentage increase in the CPI for the 12 month period ending on 30 September prior to the year to which the annual outgoings relate,
- (excluding any increases in taxation, GST and/or extraordinary insurance costs levied in respect of the Club Assets).
- (c) For purposes of determining the Developer's contribution to levies, the Developer shall be deemed to hold the number of separate Ownerships determined by dividing the sum of any Owner Vacation Credits issued to or held by the Developer (if any) and the number of authorised but un-issued Owner Vacation Credits by the average number of Owner Vacation Credits per Ownership held by Owners other than the Developer, at the relevant time.

15.4 Payment of Levies

- (a) Liability to pay levies shall commence on the date of Registration and shall be pro-rated for the first calendar year. This levy shall be payable on the first day of the month immediately following the Registration of an Ownership.
- (b) Other than levies payable pursuant to clause 15.4(a), and subject to clauses 15.4(c) and 15.4(d), annual levies shall be payable on 1 January each year.
- (c) An Owner (other than the Developer) may elect to pay the annual levy monthly, quarterly or half yearly, in advance, subject to payment of a processing fee as specified in the Guidelines and Regulations.
- (d) The Developer must pay levies (special and otherwise) in relation to the Vacation Credits held in accordance with clause 15.3(c). The Developer shall pay levies each month within 14 days of the end of that month in relation to the number of

Owner Vacation Credits issued to or held by the Developer (if any) and the number of authorised but un-issued Owner Vacation Credits as at the last day of that month.

15.5 Reserves

The Responsible Entity shall maintain a reserve fund to cover reasonably foreseeable outgoings maintenance, repair and replacement of the Property of the Club and any Apartments and other property of a Wholly Owned Subsidiary, which are subject to major maintenance or repair or replacement on a periodic basis. Such reserves shall be funded from the periodic payments of annual and any special levies for reserves and shall be held in a separate account.

15.6 Special Levies

- (a) Subject to clause 15.6(b), the Responsible Entity may levy special levies at any time if it determines that such levies are necessary for capital improvements or major expenses, repairs or acquisitions for which no reserves have been established or for deficiencies in such reserves, for any purposes related to the mutual health, safety and welfare of the Owners or if the Club becomes liable to pay any moneys that it is unable to immediately pay. Special Levies may include aforesaid amounts payable in respect of Apartments and Common Areas or in respect of other property or intended property of the Club or a Wholly Owned Subsidiary.
- (b) The Responsible Entity shall not impose special levies without the approval of the Owners unless such levies fall within one of the categories set out in clauses 15.6(b)(i), 15.6(b)(ii) and 15.6(b)(iii) below:
 - (i) special levies in the aggregate of a Financial Year that do not exceed 5% of the annual outgoings for that Financial Year, subject to clause 15.6(b)(ii);
 - (ii) special levies for the repair or rebuilding of Apartments that do not exceed 10% of the annual outgoings for the Financial Year in which a special levy is imposed; and/or
 - (iii) special levies against an Owner for reimbursing the Club for the costs of ensuring that Owner's compliance with the Constitution and the Guidelines and Regulations.
- (c)
 - (i) Subject to clause (ii), special levies shall be levied upon the same basis as annual levies, except for special levies against less than all Owners of a type described in clause 15.6(b)(iii) above.
 - (ii) Standard Owners shall only be liable for *special* levies relating to their respective Standard Owner Apartments including their use thereof. However, for the purposes of clarification, Standard Owners shall be liable on the same basis as for all other Owners with respect to annual levies other than special levies.

- (d) Special levies shall be payable upon the date that the Responsible Entity determines the same shall become due and payable.

15.7 Obligation to Pay

- (a) The Developer and each Owner must pay all dues, levies and late charges determined and levied by the Responsible Entity upon each Ownership, including interest and collection costs (including legal fees) for the purpose of paying the annual outgoings by the date upon which the same shall become due and payable.
- (b) Each levy and any late charges and costs of collection (including legal fees) remain a lien upon each Ownership from the date of levy until paid. Transfer of any Ownership shall not affect the lien for levies, charges and costs provided for in this clause 15.7 and the obligation of an Owner to pay levies, charges and costs which become due during the period of that Owner's Ownership shall pass to any transferee unless such charges are paid in full to such transferor of the Ownership. This clause 15.7(b) does not apply to the levy obligation of the Developer.

15.8 Outstanding Levies

- (a) Any levies payable by each Owner shall constitute a debt due by that Owner to the Responsible Entity and if the same shall not have been paid within 30 days of the due date, the Responsible Entity may serve a notice on the Owner (together with a copy to any Mortgagee of relevant Holiday Credits held by that Owner to whom a certificate or acknowledgement has been issued in terms of clause 14.2) advising the Owner of the breach and further advising the Owner that if the breach is not remedied within one month, then the Responsible Entity may forfeit any Holiday Credits in respect of which the notice is given.
- (b) If an Owner or Mortgagee does not comply with the requirements of such a notice from the Responsible Entity, the Responsible Entity may forfeit any Holiday Credit in respect of which the notice has been given.
- (c) Upon forfeiture, the Responsible Entity shall use its best endeavours to sell the forfeited Owner Vacation Credits at the then current applicable Issue Price. The Responsible Entity must apply any proceeds of sale or of other exploitation by it of the forfeited Owner Vacation Credits (including, without limitation, any proceeds of rental of the forfeited Owner Vacation Credits) in the following manner:
 - (i) first, in payment of reasonable costs of the sale or other exploitation;
 - (ii) next, in payment of any reasonable administrative costs arising from the forfeiture;
 - (iii) next, in payment of any outstanding amounts due from the defaulting Owner as Club Assets;
 - (iv) next, in payment of any outstanding amounts due from the defaulting Owner to the Responsible Entity (other than as Club Assets) or any other person in relation to that Owner's participation in the Club (other than amounts referred to in paragraph (v));
 - (v) next, in payment of any amounts payable by the defaulting Owner to any entity entered in the Register of Owners as mortgagee/chargee/lender in relation to any liability of the Owner to such mortgagee/chargee/lender for

amounts with respect to financial accommodation provided by that mortgagee/chargee/lender in connection with the acquisition of the forfeited interest;

- (vi) next, by paying any remaining amount to the defaulting Owner.
- (d) Any levy not paid by the due date shall be subject to the following:
 - (i) a late charge or such other charge prescribed from time to time by the Responsible Entity to compensate the Club for the added cost of collection;
 - (ii) interest at such rate as may be prescribed from time to time by the Responsible Entity from the date due until the date such levy is actually received; and
 - (iii) a return cheque charge (or such other charge prescribed from time to time by the Responsible Entity).
- (e) The Responsible Entity shall have the right to refuse to transfer an Ownership, or to allow the exercise of any rights or privileges of Ownership on account thereof by any such Owner or any person claiming through that Owner until all outstanding levies, late charges, interest and collection costs are paid.

15.9 Notice of Levies

The Responsible Entity shall cause to be sent to Owners a notice of any levies payable by Owners at least 30 days prior to the date due for payment of such levies. Such notice shall set out the following:

- (a) the amount of the levies due from that Owner;
- (b) the date such levies are due;
- (c) where and to whom payment is to be made;
- (d) the purpose for such levies.

15.10 Statement of Charges

The Responsible Entity shall, upon not less than 10 Business Days prior written notice and payment of any fee prescribed in the Guidelines and Regulations, execute, acknowledge and deliver to the party making such request, a written statement stating whether an Owner is in default of its obligations under this clause and setting out the details of any such default. Any such statement may be relied upon by a prospective purchaser or Mortgagee of the Ownership, but such reliance shall not extend to any default of which the Responsible Entity is not aware.

15.11 No Refund

Unless the Responsible Entity determines otherwise, no Owner having paid any levies due by him to the Club shall be entitled to have the same or any part of such levies refunded whether he ceases to be an Owner or for any reason whatsoever.

15.12 Details of Levies

The Responsible Entity must give Owners, on at least an annual basis, details of the composition and calculation of all levies (special and otherwise) to be imposed on Owners.

16. INCOME AND DISTRIBUTIONS

16.1 Determination of Income

- (a) The net income of the Club for each Financial Year will be determined in accordance with generally accepted accounting principles.
- (b) In determining the net income of the Club for a Financial Year the Responsible Entity may, so far as is permitted by law, exercise its powers so as to minimise its liability to tax.
- (c) The Responsible Entity may determine whether a receipt or outgoing is to be regarded as being on account of capital or income or partly on account of capital and partly on account of income.
- (d) If the Responsible Entity fails to make a determination under clause 16.1(c) prior to the end of a Financial Year, the amount of Section 95 Income for that year shall be taken to be the net income of the Club for the purposes of this Deed.

16.2 Distribution of Income to Owners

Subject to clause 17.2 and except as specifically provided for (if any) in this Constitution, there shall be no distribution of income or capital to any Owner except upon the termination of the Club in accordance with clause 32 and in particular clause 32.3.

17. CAPITAL

17.1 Application of Capital

All receipts, including bonus issues, dividends, sale of rights or other benefits received by the Responsible Entity, which the Responsible Entity considers to be in the nature of capital is not available for distribution as income of the Club while the Club continues undetermined, but must be added to and held as capital of the Club upon the trusts of this Deed and applied, invested and dealt with under the provisions of this Deed.

17.2 Distribution of Capital Prior to Termination Date

The Responsible Entity may in its discretion determine at any time that the whole or any part of the capital of the Club be distributed or applied by the Responsible Entity for such persons who at the time of such determination are the Owners in proportion to the Vacation Credits registered in their respective names (or in the case of the Developer, held and deemed to be held by it, but not counting “one” for the Developer Vacation Credit), with the exception of Standard Owners who shall only be entitled to receive distributions made in respect of their Standard Owner Apartments and other non-Apartment Assets of the Club but excluding distributions in relation to Non-Fully Developed Property.

18. DETERMINATION OF CLUB ASSETS, CLUB LIABILITIES AND NET ASSET VALUE

18.1 Valuation of Club Assets and Club Liabilities

- (a) The Responsible Entity may cause any Asset to be valued at any time and may determine the value of any liability relating to any such Asset or property.
- (b) The Responsible Entity may determine the amount of the Club Assets, the Club Liabilities or the Net Asset Value at any time.
- (c) The Responsible Entity may determine valuation methods and policies for each category of asset and liability and may change them from time to time.
- (d) Each asset and liability must be valued at its market value unless the Responsible Entity determines:
 - (i) there is no market in respect of the asset or liability; or
 - (ii) the market value does not represent the fair value of the asset or liability.
- (e) In determining whether a valuation accurately reflects the current value or amount of those items, the Responsible Entity is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of assets or liabilities.

18.2 Currency Conversion

Where it is necessary for any purpose to convert one currency into another, the Responsible Entity may determine the time and the manner of that conversion, in accordance with generally accepted accounting principles.

19. PAYMENT TO OWNERS BY CHEQUE

Moneys payable by the Responsible Entity to an Owner by cheque may be sent through the post to the registered address of the Owner or to any Mortgagee noted on the Register of Owners.

20. STATEMENTS AND ACCOUNTS

20.1 Accounting Records

The Responsible Entity must establish and maintain proper books of account which accurately record all receipts and outgoings of the Club.

The Responsible Entity must cause financial statements to be prepared by a qualified public or chartered accountant, including a profit and loss account and a balance sheet as at the end of each Financial Year, certified by that accountant to be a true and proper statement of the affairs of the Club, and must cause to be established and maintained proper books of account which accurately record all receipts and outgoings of any Wholly Owned Subsidiary in accordance with generally accepted accounting principles and setting out all:

- (a) income of the Club;
- (b) capital of the Club;
- (c) costs and disbursements and other outgoings paid or payable out of the Club and chargeable against income;
- (d) capital expenditure and liabilities chargeable to capital;
- (e) investments and money comprised in the Club;
- (f) amounts held in the accumulated income account; and
- (g) amounts distributed by the Responsible Entity to Owners.

The Owners may inspect those statements upon proper written request. The Responsible Entity must use reasonable endeavours to cause financial statements to be prepared in respect of any Wholly Owned Subsidiary by a qualified public or chartered accountant, including a profit and loss account and a balance sheet as at the end of each Financial Year, certified by that accountant to be a true and a proper statement of the affairs of the Wholly Owned Subsidiary (subject to and except to the extent lawfully able to be grouped or consolidated with the statement of the affairs or other financial aspects of the Club) in accordance with generally accepted accounting principles.

20.2 Auditor

- (a) The accounts of the Club must be audited and reported as required by the Law.
- (b) The Responsible Entity may, with the ASIC's consent, remove the Auditor from office.
- (c) The Auditor may resign by written notice to the Responsible Entity to that effect if:
 - (i) the Auditor:
 - A. has, by notice in writing given to the ASIC, applied for consent to the resignation and stated the reasons for the application; and
 - B. has, at or about the same time as giving the notice to the ASIC, given the Responsible Entity notice in writing of the application to the ASIC; and
 - (ii) the ASIC has given its consent.

The resignation of the Auditor shall take effect on the last to occur of:

- (iii) the day (if any) specified for the purpose in the notice of resignation; or
- (iv) the day on which the ASIC gives its consent to the resignation; or

- (v) the day (if any) fixed by the ASIC for the purpose.

The Auditor shall lodge with the ASIC any required notice of the removal or resignation.

The costs of the Auditor are to be paid out of the Club and are to be determined by the Responsible Entity.

20.3 Appointment of Person as Scheme Auditor

- (a) The Responsible Entity may appoint a Person to act as the Scheme Auditor provided that the Person:
 - (b) is a registered company auditor;
 - (c) does not owe more than \$5,000 (or such other amount as provided in the Law or applicable legislation) to the Responsible Entity, to a Related Corporation or to an entity that the Responsible Entity controls; and
 - (d) is not an officer of the Responsible Entity or a partner, employer or employee of an officer of the Responsible Entity or a partner or employee of an employee of an officer of the Responsible Entity.

20.4 Appointment of Firm as Scheme Auditor

The Responsible Entity may appoint a firm to act as the Scheme Auditor provided that:

- (a) at least one member of the firm is a registered company auditor who is ordinarily resident in Australia;
- (b) the business name of the firm is registered under a Law of a State or Territory relating to the registration of business names;
- (c) no member of the firm owes more than \$5,000 (or such other sum as provided by the Law or applicable legislation) to the Responsible Entity or to an entity that the Responsible Entity controls;
- (d) no member of the firm is an officer of the Responsible Entity or a partner, employer or employee of an officer of the Responsible Entity or a partner or employee of an employee of an officer of the Responsible Entity; and
- (e) no officer of the Responsible Entity receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

20.5 Time to Appoint Scheme Auditor

Within one month after the day on which the Scheme is registered, the Responsible Entity must appoint a Person(s) or firm(s) as Scheme Auditor.

20.6 Consent of Scheme Auditor

The Responsible Entity must not appoint a Person or firm as Scheme Auditor unless that Person or firm has, before the appointment, consented to act as Scheme Auditor by notice in writing given to the Responsible Entity. If the Scheme Auditor is to be a firm, that notice must be signed by a member of the firm who is a registered company auditor in the firm's name and in the member's name.

20.7 Vacancy in Office of Scheme Auditor

Within one month after a vacancy occurs in the office of Scheme Auditor, if there is no surviving or continuing Scheme Auditor, the Responsible Entity must appoint a Person(s) or firm(s) to fill the vacancy. While a vacancy in the office of Scheme Auditor continues, the surviving or continuing Auditor (if any) may act.

21. ACCOUNT AND AUDIT

21.1 Director's Report

The Scheme must prepare a report by the directors of the Responsible Entity for each year and half-year which must report upon such matters in respect of the Scheme as are required by the Law.

21.2 Notes to the Financial Statements

The notes to the financial statements are:

- (a) disclosures required by the Law;
- (b) notes required by the accounting standards; and
- (c) any other information necessary to give a true and fair view of the financial position and performance of the Scheme and (if consolidated financial statements are required), the financial position and performance of the consolidated entity.

21.3 Directors' Declaration

The directors' declaration is a declaration by the directors of the Responsible Entity:

- (a) that the financial statements and notes comply with the accounting standards and give a true and fair view of the financial position and performance of the Scheme and the consolidated entity (if required);
- (b) whether, in the directors' opinion, there are reasonable grounds to believe that the Scheme will be able to pay its debts as and when they become due and payable; and
- (c) whether, in the directors' opinion, the financial statements and notes are in accordance with the Law.

The declaration must be made in accordance with a resolution of the directors of the Responsible Entity, specify the date on which the declaration is made and be signed by a director of the Responsible Entity. A declaration must be made in respect of each financial report for a Financial Year.

21.4 Reporting to Owners

Subject to the Law, the Scheme must report to Owners for a Financial Year by either sending Owners copies of the year's financial report, directors' report and Auditor's report, or sending Owners a concise financial report for the year that complies with the requirements of section 314(2) of the Law. The Scheme must report to Owners within three months after the end of the Financial Year.

22. COMPLIANCE PLAN AUDITOR

22.1 Appointment of Compliance Plan Auditor

Subject to the Law, the Responsible Entity must ensure that at all times a registered company Auditor is engaged to audit compliance with the Scheme's Compliance Plan **PROVIDED THAT** the person engaged to act as the Compliance Plan Auditor is not:

- (a) an Associate of the Responsible Entity;
- (b) an agent holding Scheme Property on behalf of the Responsible Entity or an Associate of an agent of that kind; or
- (c) the Responsible Entity Auditor.

The Compliance Plan Auditor and the Responsible Entity Auditor may, however, work for the same firm of auditors.

22.2 Functions of the Auditor of the Compliance Plan

It is acknowledged by the Responsible Entity that subject to the Law, within 3 months after the end of a Financial Year of the Scheme, the Compliance Plan Auditor must:

- (a) examine the Scheme's Compliance Plan;
- (b) carry out:
 - (i) if the Scheme has only had one Responsible Entity during the Financial Year – an audit of the Responsible Entity's compliance with the Compliance Plan during the Financial Year; or
 - (ii) if the Scheme has had more than one Responsible Entity during the Financial Year – an audit of each Responsible Entity's compliance with the Compliance Plan during that part of the Financial Year when it was the Scheme's Responsible Entity; and
- (c) give to the Scheme's current Responsible Entity a report that states whether, in the Auditor's opinion:

- (i) the Responsible Entity, or each Responsible Entity, complied with the Scheme's Compliance Plan during the Financial Year or that part of the Financial Year when it was the Scheme Responsible Entity; and
- (ii) the Compliance Plan continues to meet the requirements of part 5C.4 of the Law.

22.3 Compliance Plan Auditor to Notify the ASIC

It is further acknowledged by the Responsible Entity that subject to the Law, the Compliance Plan Auditor must, as soon as possible, notify the ASIC in writing if the Auditor:

- (a) has reasonable grounds to suspect that a contravention of part 5C.4 of the Law has occurred; and
- (b) believes that the contravention has not or will not be adequately dealt with by commenting on it in the Auditor's report prepared under clause 22.2 or bringing it to the attention of the Responsible Entity.

22.4 Powers of the Compliance Plan Auditor

Additionally, the Responsible Entity acknowledges that the Auditor of the Compliance Plan:

- (a) has a right of access at all reasonable times to the books of the Scheme; and
- (b) may require an officer of the Responsible Entity to give the Auditor information and explanations for the purposes of the audit.

22.5 Assistance

An officer of the Responsible Entity must allow the Compliance Plan Auditor to have access to the books of the Scheme, give the Auditor information or explanation required by the Auditor and otherwise assist the conduct of the audit.

22.6 Lodgment of the Compliance Plan Auditor's Report

The Responsible Entity must lodge the Compliance Plan Auditor's report with the ASIC at the same time as the financial statements and reports in respect of the Scheme are to be lodged with the ASIC.

22.7 Additional Audits

The Responsible Entity may arrange for the Compliance Plan Auditor to carry out audits in addition to those required by clause 22.2.

22.8 Removal or Resignation of the Compliance Plan Auditor

Any removal or resignation of the Compliance Plan Auditor will be in accordance with the Law and, in the event that the Compliance Plan Auditor is removed or resigns, the

Responsible Entity will also ensure that the record of the Scheme's registration with ASIC (to the extent applicable) is altered to show the name of the new Compliance Plan Auditor.

22.9 Remuneration of Compliance Plan Auditor

The remuneration of the Compliance Plan Auditor shall be fixed by the Responsible Entity.

23. CUSTODIAN

23.1 Appointment

Without limiting its powers included or referred to in this Constitution, the Responsible Entity may, subject always to the obligations of the Responsible Entity in this Constitution, from time to time appoint a body corporate (including without limitation any prior Responsible Entity) to act as a Custodian to perform the following actions, whether within or outside Australia or both, namely to:

- (a) purchase or sell or dispose of, lease or sublease, Apartment or Resorts at the direction of the Responsible Entity and execute all transfers and assurances necessary for any such purpose;
- (b) receive any Apartment and Resort and any document of title thereto in safe custody;
- (c) procure registration of such Apartment and Resort;
- (d) receive, hold and disburse moneys forming part of Club Property;
- (e) receive or hold or procure the receipt and holding, or purchase, sell, lease or sublease, or procure the purchase, sale, lease or sublease of any Club property, Apartment or Resort;
- (f) if directed by the Responsible Entity or by Law, receive or hold share certificates or indicia of title for shares held by the Club in any Wholly Owned Subsidiary;
- (g) if directed by the Responsible Entity or by Law, receive and hold as Custodian for any Wholly Owned Subsidiary (whether in the name of the Wholly Owned Subsidiary or otherwise) instruments or indicia of title for Apartments or Resorts within a Wholly Owned Subsidiary;
- (h) do anything necessary or expedient in the interest of preserving the Apartment or Resort, documents of title and any money held by the Custodian (including where held as provided in clause 23.1(e)); and
- (i) perform all actions incidental to any of the foregoing powers.

23.2 Terms of Appointment

The Responsible Entity may in the terms of any appointment under clause 23.1 include such provisions for the protection and convenience of those dealing with any such

Custodian as it thinks fit. The Responsible Entity may pay the fees and expenses of any such Custodian out of the Scheme Property.

23.3 Sub-Custodians

For the purposes of clauses 23.1 and 23.2, a Custodian may hold an Apartment or a Resort either directly or through another Custodian.

23.4 Registration of Investments

- (a) Subject to clauses 23.1 to 23.3 inclusive, any proposed investments or Apartment or Resort required to be registered must as soon as reasonably practicable after receipt of the necessary documents by the Responsible Entity be registered in the name of the Responsible Entity or Custodian and held in safe custody by the Responsible Entity or Custodian and remain so registered and held until sold or disposed of in accordance with this Constitution. Subject to clause 2.5 and any other specific provisions of this Constitution, but otherwise notwithstanding anything to the contrary elsewhere expressed or implied, title to any Resort or Apartment brought into the Club after the Effective Date shall be registered in the name of a Custodian and not the Responsible Entity.
- (b) After appointment of a Custodian and receipt by the Custodian of a transfer, gift or otherwise of Resorts and Apartments, and if thought fit by the Responsible Entity, other Property, the Responsible Entity waives any right to and shall not be entitled to nor shall it call for transfer to it of any such Resorts, Apartments and/or other Property received by the Custodian.
- (c) If a current Custodian proposes to retire or the Responsible Entity proposes to terminate the appointment of the current Custodian, then any such retirement or termination of appointment shall be conditional upon appointment of a new substitute Custodian and the transfer to that substitute Custodian of Resorts and Apartments and if not transferred to the Responsible Entity, any other Property held by the outgoing current Custodian provided however that failing the appointment of such a substitute Custodian, then should the current Custodian retire or have its appointment terminated, then the Club shall be wound up in accordance with this Deed.

24. RETIREMENT, REMOVAL AND APPOINTMENT OF RESPONSIBLE ENTITY

24.1 Retirement

- (a) If the Responsible Entity wants to retire, it must call a meeting of Owners to explain its reason for wanting to retire and to enable the Owners to vote on a resolution to choose a company to be the new Responsible Entity. The resolution must be an extraordinary resolution, if the Club is not listed.
- (b) If the Owners choose a company to be the new Responsible Entity and that company has consented, in writing, to becoming the Club's Responsible Entity, as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Responsible Entity must lodge a notice with ASIC asking it to alter the record of the Club's registration to name the chosen company as the Club's Responsible Entity.

- (c) If the Owners do not choose a company to be the new Responsible Entity, or the company they choose does not consent to becoming the Club's Responsible Entity, the current Responsible Entity may apply to the Court for appointment of a temporary Responsible Entity pursuant to the Law. If a temporary Responsible Entity is appointed, it must take steps for the appointment of a new Responsible Entity in accordance with the Law.

24.2 Removal of Responsible Entity by Members

- (a) If Owners of the Club want to remove the Responsible Entity, they may take action under Division 1 of part 2G.4 of the Law for the calling of an Owners' meeting to consider and vote on a resolution that the current Responsible Entity should be removed and a resolution choosing a company to be the new Responsible Entity. The resolutions must be extraordinary resolutions if the Club is not listed.
- (b) If the Owners vote to remove the Responsible Entity and, at the same meeting, choose a company to be the new Responsible Entity that consents, in writing, to becoming the Club's Responsible Entity as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Responsible Entity must lodge a notice with ASIC asking it to alter the record of the Club's registration to name the chosen company as the Club's Responsible Entity.

24.3 Court Appointment of Temporary Responsible Entity

In addition to the circumstances referred to in clause 24.1(c), the ASIC or an Owner may apply to the Court for the appointment of a temporary Responsible Entity under Section 601FP if the Club does not have a responsible entity that meets the requirements of Section 601 FA of the Law.

24.4 Deed Binding a New Responsible Entity

An appointment of a new Responsible Entity is not complete until the new Responsible Entity covenants by Deed to be bound by this Deed.

24.5 Transfer of Books and Records

- (a) Subject to clause 24.7, on retirement the Responsible Entity must give the new Responsible Entity all books, documents and records owned by the Club or in the former Responsible Entity's possession or control that the Law requires to be kept in relation to the Club; and
- (b) give other reasonable assistance to the new Responsible Entity to facilitate the change of Responsible Entity.

24.6 Changes Only Take Effect When ASIC Alters Record of Registration

Subject to the Law, the company named in ASIC's record of registration as the Responsible Entity or temporary Responsible Entity of the Club remains the Club's Responsible Entity until the record is altered to name another company as the Club's Responsible Entity or temporary Responsible Entity.

24.7 Payment of Expenses

The new Responsible Entity must pay all costs and expenses reasonably incurred by a former Responsible Entity in complying with its obligations under clause 24.5.

24.8 Release

Subject to clause 24.5, the Responsible Entity is released from all obligations in relation to the Club arising after its retirement or removal.

25. POWERS OF RESPONSIBLE ENTITY

25.1 General Power of Investment

Subject to the provisions of this Deed and clauses 4, 9 and 23, the Responsible Entity has all the powers that it is possible to confer on a responsible entity and has all the powers that are incidental to ownership of the Assets from time to time as though it were the absolute and beneficial owner of those Assets.

25.2 Specific Powers

Without limiting clause 25.1 but subject to section 601FC(4) of the Law and to the provisions of this Deed including clauses 4, 9 and 23 of this Deed, the Responsible Entity has the power to invest in, dispose of or otherwise deal with the Assets as the Responsible Entity may determine in its absolute discretion and to borrow or guarantee whether or not on security (other than a mortgage or charge over the Resorts and/or Apartments [**“Prohibited Securities”**]) and to incur all types of obligations and liabilities (save for Prohibited Securities).

25.3 Power to Delegate

Subject to section 601FB of the Law, the Responsible Entity may authorise any person or persons including its subsidiaries or related body corporates to act as its delegate, to hold title to any Assets, and to perform any act or exercise any discretion within the Responsible Entity’s power, including the power to appoint its own delegate.

Subject to part 5C.7 of the Law, the delegate may be an associate of the Responsible Entity.

25.4 Power to Act Despite Personal Interest

Subject to part 5C.7 and section 253E of the Law, the Responsible Entity may exercise or concur in exercising all powers and discretions given under this Deed or by law despite that it or any person being a director, member or Associate of the Responsible Entity, has or may have, a direct or indirect interest in the mode or result of exercising a power or discretion or may benefit either directly or indirectly as a result of the exercise of a power or discretion.

25.5 Power to Make and Amend Guidelines and Regulations

The Responsible Entity shall have power to make Guidelines and Regulations not inconsistent with this Deed governing the operation of the Club and the conduct and

procedures to be followed by the Owners and to amend any such Guidelines and Regulations from time to time as it sees fit. The Responsible Entity shall enforce the observation of all such Guidelines and Regulations at all times. The Responsible Entity shall adopt such means as it shall deem fit to bring to the notice of Owners all such Guidelines and Regulations.

26. RIGHTS AND LIABILITIES OF RESPONSIBLE ENTITY

26.1 Holding of Vacation Credits

Subject to sections 253E and 601FG and part 5C.7 of the Law, the Responsible Entity and its Associates may hold Vacation Credits in the Club in any capacity.

26.2 Other Capacities

Subject to part 5C.7 and section 253E of the Law, nothing in this Deed restricts the Responsible Entity or its Associates from:

- (a) dealing with the Club or any Wholly Owned Subsidiary or any Owner; or
- (b) being interested in any contract or transaction with the Club or any Wholly Owned Subsidiary or any Owner or retaining for its own benefit any profits or benefits derived from any contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme,

subject to their acting at all times with good faith toward Owners.

26.3 Remuneration

- (a) The Responsible Entity is entitled to an annual management fee of 15% of the actual consolidated expenditures of the Club for managing the operations of the Club and of any Wholly Owned Subsidiary (but without double counting) for the Financial Year to which the management fee relates.
- (b) Such management fee may be billed on a monthly basis at either a higher or lower amount than 15% so long as the annual management fee does not exceed 15% of the actual consolidated expenses for the Financial Year to which the management fee relates.
- (c) The management fee is payable in arrears to the Responsible Entity within 30 days of the end of each month.

26.4 Expenses

Subject to section 601GA(2) of the Law, the Responsible Entity is entitled to be paid or reimbursed for all costs, charges and expenses incurred by it in performing its duties in relation to the Club.

26.5 GST

- (a) In addition to the remuneration set out in clause 26.3, the Responsible Entity will be entitled to receive from the Club the amount of goods and services tax payable by the Responsible Entity under the GST Act.
- (b) The Responsible Entity must provide the Club with a tax invoice as required under the GST Act.

26.6 Priority

The remuneration and expenses of the Responsible Entity have priority over the payment of all other amounts payable from the Assets.

26.7 Legal and Other Advice

- (a) The Responsible Entity may take and act upon:
 - (i) the opinion of a solicitor or barrister in interpreting the provisions of this Deed or any document or statute, or any matter concerning the administration of the Club or of any Wholly Owned Subsidiary or any other matter in connection with the Club or any Wholly Owned Subsidiary; or
 - (ii) the advice, statements or information of any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Responsible Entity,

without being liable to any Owner for any act done by the Responsible Entity in reasonable reliance on any such opinion, advice, statements or information.

Nothing in this clause 26.7 prohibits or impedes the Responsible Entity from applying to any court if the Responsible Entity thinks fit.

- (b) The Responsible Entity may rely and act upon:
 - (i) any document which the Responsible Entity believes in good faith to be a copy of an appointment by an Owner of a person to act as their agent or attorney for any purpose relating to the Club or any Wholly Owned Subsidiary; and
 - (ii) any other document which relates to the Club or any Wholly Owned Subsidiary which the Responsible Entity reasonably believes to be correct and accurate,

without being liable to any Owner for any act done by the Responsible Entity in reasonable reliance on any such document.

26.8 Limitation of Liability

- (a) Except to the extent that a loss arises out of the Responsible Entity's fraud, negligence or breach of trust, the Responsible Entity is not liable to Owners or members of the Club's Compliance Committee in contract, tort or otherwise for any loss suffered in relation to the Club or in relation to any Wholly Owned Subsidiary.
- (b) The liability of the Responsible Entity to any person other than an Owner or members of the Club's Compliance Committee in relation to the Club or in relation to any Wholly Owned Subsidiary including any contracts entered into as responsible entity of the Club or in relation to any Wholly Owned Subsidiary, is limited to the extent that the Responsible Entity is indemnified out of the Assets.
- (c) The Responsible Entity is not obliged to enter into any agreement, sign any document or assume any liability on behalf of the Club, unless that agreement, document or assumption of liability includes a provision, satisfactory to the Responsible Entity in its reasonable discretion, limiting the Responsible Entity's liability under that agreement, document or assumption of liability to the amount which may be satisfied by the Responsible Entity's right of indemnity out of the Assets.

26.9 Indemnity

- (a) To the extent permitted by section 601GA(2) of the Law, the Responsible Entity is entitled to be indemnified out of the Assets for all liabilities incurred by it in relation to the proper performance of its duties.
- (b) This indemnity is in addition to any indemnity that the Responsible Entity may have in law or in equity.
- (c) The indemnities in this Deed continue to apply after the Responsible Entity ceases to be Responsible Entity of the Club.
- (d) Subject to sections 601FB(2) and 601GA(2) of the Law, the indemnities in this clause 26.9 extend to any liability incurred by the Responsible Entity as a result of any act or omission by any delegate or agent of the Responsible Entity appointed in accordance with this Deed.

26.10 Release of Power

- (a) Unless a power or discretion that may be exercised by the Responsible Entity is required by the terms of this Deed to be irrevocable, the Responsible Entity may release or revoke any power conferred upon it by this Deed.
- (b) Any other person upon whom any power is conferred by this Deed may release or revoke any power conferred upon them.
- (c) Upon the exercise of any release or revocation under this clause 26.10, the power to release or revoke is absolutely and irrevocably terminated.

26.11 Exercise of Power

Where in this Deed the Responsible Entity is entitled to exercise a power or a discretion, that power or discretion must be exercised reasonably.

26.12 Agents

The Responsible Entity may appoint an agent or delegate its functions in accordance with the Law.

27. COMPLIANCE COMMITTEE

27.1 Establishment

For so long as less than half of the directors of the Responsible Entity are External Directors and the Law so requires or to the extent that the Responsible Entity desires to establish a Compliance Committee, the Responsible Entity shall establish a Compliance Committee to operate in respect of the Scheme and to the extent relevant, shall ensure that the Scheme complies with the Law.

27.2 Insurance

The Responsible Entity may pay or agree to pay a premium in respect of a contract insuring a person who is a member of the Club's Compliance Committee against any liability or expenses permitted pursuant to section 601JG of the Law.

27.3 Limitation of Liability

Subject to section 601JF of the Law:

- (a) a member of the Club's Compliance Committee is not liable to Owners or the Responsible Entity in contract, tort or otherwise for any loss suffered in relation to the Club except to the extent that a loss arises out of a lack of good faith, the fraud, negligence or breach of trust of that member; and
- (b) the liability of a member of the Club's Compliance Committee to any person other than an Owner or the Responsible Entity in relation to the Club is limited to the extent the relevant member is indemnified out of the Assets.

27.4 Indemnity

- (a) A member of the Club's Compliance Committee is entitled to be indemnified by the Responsible Entity out of the Assets for all liabilities to another person (other than the Responsible Entity or a related body corporate of the Responsible Entity) incurred by him or her in acting in good faith as a member of the Club's Compliance Committee.
- (b) The indemnities in this Deed continue to apply after the member of the Club's Compliance Committee ceases to be a member of the Club's Compliance Committee.

28. INCORPORATION OF STATUTORY REQUIREMENTS AND CHANGING THIS DEED

28.1 Incorporation of Statutory Requirements

This Deed is deemed to incorporate any provisions which the Law or any relief granted by the ASIC requires that this Deed contain, at the times the Law or that relief requires those provisions be incorporated. Any such provisions will prevail over any other provisions of this Deed to the extent of any inconsistency with the provisions expressly set out in this Deed.

28.2 Updated in Compliance with the Law

In particular and without prejudice to the generality of clause 28.1, whilst the Scheme remains subject to the Law, then to the extent as subject, the following provisions apply in addition to any other relevant provision concerning the Law herein:

- (a) notwithstanding anything contained in this Constitution, if the Law prohibits an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Law requires to be done;
- (c) if the Law requires an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Law requires this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Law requires this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Law, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

28.3 Changing this Deed

Subject to any mandatory law to the contrary, the Trust Deed for the Club may be modified or repealed and replaced with another Trust:

- (a) by special resolution of the Owners; or
- (b) by the Responsible Entity, if the Responsible Entity reasonably considers the change will not adversely affect Owner's rights.

28.4 Time Change Takes Effect

Subject to section 601GC(2) of the Law, a change will take effect from the time the relevant event specified in clause 28.2 occurs.

28.5 Registration of New Constitution

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

If so directed by ASIC, the Responsible Entity must lodge within ASIC a consolidated copy of the Scheme's Constitution following any such modification, or repeal and replacement.

28.6 Modification That Adversely Affect Owners

Notwithstanding the provisions of clause 28.2(b) where the Responsible Entity reasonably believes that a proposed modification to this Constitution will adversely affect the rights of the Owners, such modification may not be made unless:

- (a) the question of whether the modification should be made has been approved by a Special Resolution of the Owners;
- (b) the Responsible Entity convened the meeting by sending by post, to the last known address of each Owner, at least 21 days before the meeting, a notice that set out:
 - (i) the date, time and place of the meeting; and
 - (ii) the reason for convening the meeting; and
- (c) the Owners who at the meeting vote in favour of making the modification hold Vacation Credits equal in value to at least 75% of the total value of all of the Vacation Credits held by the Owners who vote on the question at the meeting.

28.7 Copy of the Constitution

The Responsible Entity must send a copy of this Constitution to an Owner within 7 days if the Owner asks the Responsible Entity, in writing, for the copy; and pays any fee (up to the prescribed amount) required by the Responsible Entity.

29. COMPLAINTS

29.1 Complaint by Owner

- (a) If an Owner makes or submits a complaint to the Responsible Entity in relation to the Scheme then the Owner must provide such further information and assistance as the Responsible Entity requires to enable the Responsible Entity to understand the nature of the complaint and the extent to which the Owner's rights have been adversely affected. The Responsible Entity must as soon as reasonably practicable:
- (b) acknowledge the complaint in such manner as the Responsible Entity determines;
- (c) use reasonable endeavours to deal with the complaint appropriately and within a reasonable timeframe having regard to the nature of the complaint;

- (d) communicate to the Owner:
 - (i) the remedies which the Responsible Entity may make available to the Owner such as compensation, an apology or information;
 - (ii) the decision of the Responsible Entity and any further avenue for complaint.

29.2 Internal Complaints Resolution Scheme

Complaints are handled in accordance with the Constitution, any relevant Law requirements and the 1995 edition of Australian Standard AS4269: Complaints Handling, or any substituted Australian standards approved by the Board.

Within 5 Business Days of receipt of a complaint, unless resolved earlier, from an Owner of the Scheme;

- (a) receipt of the complaint is acknowledged; and
- (b) unless revealed at the time of receipt of the complaint is acknowledged, the complainant is advised of the expected time frame within which the Responsible Entity intends to resolve the complaint.

In resolving the complaint, the Responsible Entity will:

- (c) aim to resolve it within 28 days of its receipt;
- (d) if exceptional circumstances apply, advise the complainant and aim to resolve it within 90 days of its receipt;
- (e) keep the complainant informed regarding progress of the complaint;
- (f) consider which, if any, remedies should be made available to the complainant in accordance with the Responsible Entity's policy from time to time regarding remedies;
- (g) communicate to the complainant the remedies considered by the Responsible Entity;
- (h) advise the complainant of the outcome; and
- (i) advise the complainant of further avenues available for the Complainant if they are dissatisfied with the Responsible Entity's resolution of the matter.

29.3 External Complaints Resolution Scheme

For so long as the Law or ASIC policy requires, the Responsible Entity shall belong to an external complaints resolution scheme approved by the ASIC and comply with the rules of that scheme in the handling and resolution of complaints.

30. MEETINGS OF OWNERS

30.1 Convening and Adjourning a Meeting of Owners

- (a) The Responsible Entity may convene a meeting of Owners whenever it thinks fit.
- (b) The Responsible Entity must convene a meeting of Owners if required to do so by the Law and unless otherwise required by the Law:
 - (i) The Responsible Entity must call and arrange to hold a meeting of Owners upon the request of:
 - A. members with at least 5% of the votes that may be cast on the resolution; or
 - B. at least 100 Owners who are entitled to vote on the resolution;
 - (ii) The request for a meeting must be:
 - A. in writing;
 - B. state any resolution to be proposed at the meeting; and
 - C. be signed by the Owners proposing to move the resolution;
 - (iii) The request must be accompanied by a statement about the proposed resolution provided by the Owners making the request;
 - (iv) The Responsible Entity must call a meeting within 21 days after the request is given to it. The meeting is to be held not later than 2 months after the request is given to the Responsible Entity;
 - (v) The Responsible Entity must distribute a copy of the proposed resolution and statement to each of the Owners, unless the resolution and/or statement is more than 1000 words or is defamatory. The Responsible Entity may meet the expenses of holding the meeting out of the Club's assets;
 - (vi) Notice of a meeting of Owners must satisfy the requirements as to content and be in accordance with section 252J of the Law.

30.2 Failure by Responsible Entity to call a meeting

Pursuant to section 252C of the Law, Owners may call and arrange to hold a meeting if the Responsible Entity fails to hold a meeting as set forth above.

30.3 Calling of Meeting of Owners by Owners

Pursuant to section 252D of the Law, Owners may call and arrange a meeting of the Owners. The expense of such meeting shall be borne by the Owners calling the meeting. The procedures for the calling of the meetings is set forth in section 252F of the Law.

30.4 Meeting of Owners called by the Court

Pursuant to section 252E of the Law, the court may order a meeting of the Owners

30.5 Failure to Give Notice

A meeting is still valid even if the Responsible Entity omits to give an Owner notice of a meeting or an Owner does not receive notice of a meeting.

30.6 Amount of Notice of Meetings

At least 21 days notice must be given of a meeting of the Owners.

30.7 To Whom Notice are Given

Written notice of a meeting of Owners must be given to:

- (a) Each member of the Club entitled to vote at the meeting; and
- (b) Each director of the Responsible Entity; and
- (c) The auditor of the Club; and
- (d) The auditor of the Compliance Plan.

If Vacation Credits are held by Owners jointly, notice need only be given to 1 of the Owners.

30.8 Time and Place for Meetings of Members

A meeting of Owners must be held at a reasonable time and place.

30.9 Meeting Using Technology

The Responsible Entity may hold a meeting of Owners at 2 or more venues using any technology that gives the Owners as a whole a reasonable opportunity to participate.

30.10 Quorum

The quorum for a meeting is 2 or more Owners present personally, by proxy, by representative or attorney, who represent in total not less than 10% of the Vacation Credits, unless the Club has only 1 Owner who is entitled to vote on a resolution, in which case that Owner will constitute a quorum.

30.11 No Quorum

- (a) If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Owners, dissolved; or

- (ii) otherwise, adjourned to a place and time decided by the Responsible Entity.
- (b) At any adjourned meeting, those Owners present in person or by proxy constitute a quorum.

30.12 Appointment of Chairman

- (a) Subject to the Law, the Responsible Entity may nominate some person, whether an Owner or not, to preside as chairman of the meeting of Owners.
- (b) Subject to clause 30.18, the decision of the chairman on any matter is final.

30.13 Determination of Questions

Every question arising at a meeting of Owners is to be decided in the first instance by a show of hands unless:

- (a) it is a question which this Deed or the Law requires must be decided by the holders of a prescribed percentage or more of the Vacation Credits, in which case a poll is to be taken; or
- (b) a poll is demanded under clause 30.14.

30.14 Calling a Poll

A poll may be demanded by Owners present in person or by proxy entitled to vote at meetings of the Owners. If at any meeting a poll is demanded as aforesaid, it shall be taken in such manner and either at once or after an adjournment as the Chair directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn at any time before the completion of the poll.

30.15 Voting Rights

Upon a poll every Owner present in person or by proxy, will have the voting rights set out in clause 5.5.

30.16 Giving of Votes

Votes may be given either personally, by proxy, by attorney or, in the case of an Owner, which is a company, by a person appointed as an authorised representative of the company under the Law.

30.17 Voting

Every question submitted to a meeting of the Owners shall be decided by a show of hands unless it is a vote on a Special or Extraordinary Resolution which must be decided on a poll or unless it is a question which under this Constitution must be decided by a percentage of the Vacation Credits in Issue or unless a poll be properly demanded as hereinafter mentioned.

30.18 Chair has No Casting Vote

The Chair shall not have a casting vote and in the case that there is an equality of votes in respect of a resolution, the resolution shall be deemed not to have been passed.

30.19 Proxies and representatives.

- (a) Every instrument of proxy or appointment of a representative must be in the form prescribed by the Responsible Entity or otherwise in a common or ordinary form and must be signed by the Owner.
- (b) The instrument appointing a proxy must be deposited at the office of the Responsible Entity not less than 24 hours, or any lesser period agreed to by the Responsible Entity, before the time of holding the meeting or adjourned meeting (as the case may be) at which the person named as proxy proposes to vote.
- (c) Other requirements with respect of appointment, rights and otherwise in respect of proxy voting are as set forth in sections 252V-Z and 253A-B of the Law.

30.20 Resolutions Binding

- (a) A resolution by Owners binds all Owners whether or not they are present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

30.21 Minutes

Minutes of all resolutions passed and proceedings at every meeting of the Owners shall be made and duly entered in a book to be provided for the purpose by the Responsible Entity within 1 month of such proceedings or Resolutions. Any such minute as aforesaid if purporting to be signed by the Chair of that meeting or by the Chair of the next succeeding meeting (if any) of Owners shall be conclusive evidence of the matters therein stated, unless the contrary is proved.

30.22 Inspection of Minutes

The Responsible Entity must ensure that the minute books for the meetings of Owners are open for inspection by Owners free of charge. A Owner may ask the Responsible Entity in writing for a copy of the minutes of a meeting of Owners or an extract of the minutes. If the Responsible Entity requires payment for the copy, the Responsible Entity must send the copy within 14 days after the Responsible Entity receives the payment or, if payment is not required, within 14 days after the Owner asks for it or, in either case, within any longer period that the ASIC approves. The amount of any payment cannot exceed the prescribed amount in the Corporations Regulations.

31. LIMITATION ON LIABILITY OF OWNERS

31.1 No Partnership

Nothing in this Deed constitutes or is to be taken to constitute:

- (a) the relationship of principal and agent between the Responsible Entity and the Owners;
- (b) the relationship of partners between the Responsible Entity and the Owners; or
- (c) the relationship of partners between the Owners.

31.2 No Indemnity from Owners

- (a) Despite any other provision of this Deed or any rule of law to the contrary, no Owner is, whether because they hold Vacation Credits or because of the relationship created by this Deed, under any obligation personally to indemnify the Responsible Entity (except for their own personal acts and deeds) or any creditor of the Responsible Entity in the event of there being any deficiency of the Assets as compared with the liabilities of the Responsible Entity for the Club.
- (b) The rights of indemnity of the Responsible Entity or of any creditor are limited to recourse to the Assets.
- (c) An Owner is not liable for any loss or damage incurred or suffered by the Responsible Entity in acting as responsible entity of the Club, or otherwise in connection with the Club, to the extent to which the loss or damage exceeds any unpaid and outstanding consideration (if any) payable for issue of the Vacation Credits held by the Owner.
- (d) The Responsible Entity expressly waives and releases all rights and remedies which it otherwise might have at law or in equity to recover money from an Owner because of any right of indemnity or subrogation but nothing shall affect an Owner's liability to pay to the Responsible Entity any maintenance levies or special levies applicable in respect of their Ownership and relating to a period prior to termination of the Club.

32. TERMINATION OF CLUB

32.1 Termination Date of Club

The Club commenced on 1 March 2000 and subject to the provisions of this Constitution providing for earlier determination will terminate on the earlier of:

- (a) the expiration of 80 years from the Commencement Date of the Club;
- (b) the date on which the Responsible Entity decides that the Club is to be wound up if the Responsible Entity considers that the purpose of the Club has been accomplished or cannot be accomplished, **AND** the Responsible Entity shall give

notice to all Owners in accordance with the provisions of Section 601NC(2) of the *Corporations Law* and shall otherwise comply with the provisions thereof; or

- (c) the happening of an event or in the circumstances set forth in clause 32.2 of this Constitution.

32.2 Circumstances Whereupon Club will Wind Up

If:

- (a) the Responsible Entity has ceased to carry on business or has, to the prejudice of the Owners, failed to comply with the provisions of this Constitution or this Constitution provides that the Club is to terminate;
- (b) in the opinion of the Responsible Entity, it is in the interests of Owners to wind up the Club;
- (c) the Owners pass an Extraordinary Resolution directing the Responsible Entity to wind up the Club;
- (d) the Court makes an order directing the Responsible Entity to wind up the Club; or
- (e) the Members pass an Extraordinary Resolution to remove the Responsible Entity but do not, at the same meeting, pass an Extraordinary Resolution choosing a company to be the new Responsible Entity where the chosen company consents to becoming the Scheme's Responsible Entity then, unless as permitted by law no new Responsible Entity is required to be appointed,

then subject to the Law, the Responsible Entity must ensure that the Club is wound up in accordance with this Constitution and any court orders under Section 601NF(2) of the *Corporations Law*.

32.3 Procedure on determination

On termination, the Responsible Entity must:

- (a) as soon as practicable sell, call in and convert into money the Assets;
- (b) to the extent that the Law or ASIC policy requires, arrange for an independent review or audit of the Club's final accounts by a registered auditor;
- (c) pay out all liabilities of the Club and cause all liabilities of any Wholly Owned Subsidiary to be paid (including the expenses of the termination and including any liabilities or expenses in relation to the disposal or transferring of shares in any Wholly Owned Subsidiary or the liquidating of the assets of such Wholly Owned Subsidiary);
- (d) pay the remainder, less all proper costs, disbursements, fees and other outgoings and less all proper provisions for future liability, to the Owners in proportion to the number of Vacation Credits that they are registered as holders of at the date of termination and in relation to partly-paid Owner Vacation Credits, proportionately to the amount that the amount paid up on the Owner Vacation Credits bears to the

purchase price of such Owner Vacation Credits PROVIDED HOWEVER that each Standard Owner shall only be entitled to the net proceeds or distributions as set out in clause 3.1(b);

- (e) the Responsible Entity must ensure that the Scheme is wound up in accordance with this Constitution and any court orders under section 601NF(2) of the Law.

32.4 Application of Terms Pending Final Distribution

Subject to the Law, clauses 4.3, 4.6, 4.7, 4.8, 4.9, 6.1, 12 and 14 [except in relation to any levies (special or otherwise) or other amounts outstanding as at the date of termination)] will not apply from the date termination occurs until the date final distribution is made in accordance with clause 32.3 and during this period no new applications for Vacation Credits may be accepted by the Responsible Entity.

32.5 Postponement of Sale

In winding up the Club the Responsible Entity may postpone the sale, calling in and conversion of any part of the Assets for the time it thinks desirable in the interests of the Owners and the Responsible Entity will not be responsible for any loss attributable to such postponement.

32.6 Provision for Liabilities

In winding up the Club the Responsible Entity may make any provision it considers necessary to provide for any outgoing or liabilities (actual or contingent) of the Club or any of the Assets before making any distribution to the Owners, and subject to this, must hold the part of the Assets retained in trust for the Owners otherwise entitled.

32.7 Reimbursement for Expenses of Winding Up Scheme

Without prejudice to anything in this Constitution contained referred to or implied, if the Scheme is wound up the Responsible Entity shall be entitled to reimbursement from the Scheme Property of all expenses of the Responsible Entity of and incidental to the giving notice to Owners of the specified circumstances or the happening of a specified event pursuant to the provisions of this Constitution or if the Responsible Entity considers that the purpose of the Club has been accomplished or cannot be accomplished in accordance with section 601NC of the Law and of any action taken by the Responsible Entity as a result of any such notification, and the Responsible Entity shall also be entitled to reimbursement from the Scheme Property of any expenses of the Responsible Entity of and incidental to holding a meeting to consider the proposed winding up and the winding up of the Scheme itself.

32.8 Retention of Proceeds of Winding Up of Scheme

If under clause 32.6 the Responsible Entity decides to make any provision, then it may retain such part of the proceeds of realisation as it thinks fit for as long as it thinks fit to meet Club Liabilities. Any proceeds so retained that are ultimately found not to be so required shall be distributed in accordance with this Deed.

32.9 Auditing of Final Accounts

The Responsible Entity must cause the final accounts of the Scheme to be audited by a registered company auditor following the winding up of the Scheme.

33. NOTICES

33.1 Address for Notices

Subject to the Responsible Entity's right under clause 1.2(h), all notices or other communications required under this Deed must be:

- (a) in legible writing and in English addressed:
 - (i) to the registered office of the Responsible Entity, if to the Responsible Entity;
 - (ii) to the Owner's address specified in the Register, if to a Owner;
- (b) sent to the recipient by hand, prepaid post (airmail, if to or from a place outside Australia), facsimile or e-mail; and
- (c) signed by a person duly authorised by the sender.

33.2 Time of Receipt

- (a) 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 33.2(b) a notice will be deemed to be duly received:
 - (i) if sent by hand, when left at the address of the recipient;
 - (ii) if sent by pre-paid post, 3 days (if posted within a country to an address in that country) or 10 days (if posted from one country to another) after the date of posting; or
 - (iii) 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 with the exception of any notice of meeting which is sent by facsimile or other electronic means, in that event, the notice of meeting will be taken to have been given on the business day after it is sent.
- (b) If a notice is served by hand, or is received by facsimile on a day which is not a Business Day, or after 5.00 pm (recipient's local time) on any Business Day, that notice will be deemed to be duly received by the recipient at 9.00 am (recipient's local time) on the first Business Day after that day. This provision also applies to receipt of applications for Vacation Credits.

34. GENERAL PROVISIONS

34.1 Severance

If any clause of this Constitution or part thereof is judged to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the validity, enforceability or operation of the remainder of this Constitution, and such invalid or unenforceable clause or part shall be deemed to have been deleted from this Constitution.

34.2 Waiver and Exercise of Rights

- (a) A waiver of a provision or of a right arising under this Deed must be given in writing signed by the party giving it.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

34.3 Rights Cumulative

The rights, remedies and powers of the parties under this Deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

34.4 Consents and Approval

A party may give its consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Deed expressly provides otherwise.

34.5 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of **Queensland**;
- (b) waives any claim or objection based on absence of jurisdiction or inconvenient forum; and
- (c) agrees that a document required to be served in proceedings about this Deed may be served:
 - (i) by being left at or delivered to its address for service of notices under clause 33; or
 - (ii) in any other way permitted by law.

34.6 Governing Law

This Deed is governed by and is to be construed under the laws of **Queensland**.

34.7 Wholly Owned Subsidiary Covenant to be bound

The Responsible Entity must as a condition of establishment of any Wholly Owned Subsidiary, caused such Wholly Owned Subsidiary to sign any reasonable deed of covenant or form of consent, agreeing to be bound by such of the provisions of the Constitution as refer or apply to it and to better safeguard the interests of members of the Club and for such deed of covenant or form of consent to be for the benefit of the Club and its members (as well as for the benefit of the group including the Club and the relevant Wholly Owned Subsidiary).

ANNEXURE A
Guidelines and Regulations

ANNEXURE B

Property Description and Vacation Credits Created

The real property located in [name of county and state], described as follows:

[insert description]

(“Resort”)

Vacation Credits are hereby created in relation to the Resort and allocated to the Apartments as follows:

Lot/Apartment No.	Season/week	Vacation Credits

Note: Vacation Credits are allocated for [] weeks per year and deemed to become authorised and part of the inventory of Vacation Credits available for issue.

Executed as a Deed

THE COMMON SEAL of WYNDHAM)
VACATION CLUBS SOUTH PACIFIC LTD)
ACN 090 503 923 as the Responsible Entity was)
affixed in accordance with its Constitution in the)
presence of:)

.....
(Signature of Director)

.....
(Signature of Secretary/Director)

.....
(Name of Director in Full)

.....
(Name of Secretary/Director in Full)

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