

CONSTITUTION

Denarau Golf Terrace Apartments, Inc



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INTRODUCTION

1. NAME

The name of the Society will be Denarau Golf Terrace Apartments, Inc. ("Body Corporate").

2. DEFINITIONS AND INTERPRETATION

In this Constitution unless the context otherwise requires:

2.1 Definitions:

"**Act**" means the Incorporated Societies Act 1908 (New Zealand);

"**Apartment**" means one of the one, two or three bedroom apartments situated on the Land;

"**Apartment Entitlements**" means the entitlement assigned to each Apartment as set out in schedule 3;

"**Apartment Management Agreement**" means an agreement entered into between a Member and the Manager under which the Manager is engaged by the Member to let the Apartment to short term tenants;

"**Auditor**" means the person or persons for the time being holding the office of auditor of the Body Corporate;

"**Authority**" means any local authority, government or other authority having jurisdiction or authority over or in respect of any part of the Property or its use (and includes Denarau Corporation Limited which is the body corporate which has contractual jurisdiction over Denarau Island);

"**Bank**" means a registered bank in Fiji or New Zealand;

"**Board**" means the board members of the Body Corporate acting in accordance with the Constitution;

"**Body Corporate Levy**" means for each year (or part year) ending 31 December, the total amount determined by the Body Corporate as payable by Members as levies due to the Body Corporate for that period to cover all outgoings associated with the Property and other Body Corporate expenses (including reasonable contingency sums);

"**Body Corporate Management Agreement**" means the agreement between the Manager and the Body Corporate under which the Manager agrees to maintain the Common Facilities and carry out certain of the Body Corporate's obligations.

"**Buildings**" means the buildings comprising the Apartments;

"**Common Facilities**" means all areas and shared facilities within the Property excluding the Apartments themselves and facilities exclusively servicing an individual Apartment and includes, without limitation, the exterior, structure and common areas of the Buildings, the swimming pool, pool bure (including BBQ facilities), paths and driveways, utility rooms, landscaped areas, airconditioning, fire protection and fire fighting equipment and the management office;

"**Sublease**" means a sublease of a part of the Lease granted in respect of an Apartment;

"**Year**" means a calendar year;

- 2.2 Plural and Singular:** words denoting the singular will include the plural and vice versa;
- 2.3 Gender:** one gender will include the other genders;
- 2.4 Persons:** words denoting persons will include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- 2.5 Joint and Several:** any covenant or agreement on the part of two or more persons will bind those persons jointly and severally;
- 2.6 Clauses:** references to clauses are references to rules in this Constitution;
- 2.7 Table of Contents and Headings:** the table of contents, the section headings and clause headings have been inserted for convenience and a quick guide to the provisions of this Constitution and will not form part of this Constitution or affect its interpretation in any way; and
- 2.8 Statutes and Regulations:** reference to any statute, regulation, ordinance or bylaw are references to New Zealand legislation and will be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same.

3. OBJECTS

- 3.1 General:** The Body Corporate is formed to promote the following objects for the benefit of Members:
 - 3.1.1 Property:** the operation and maintenance of the Property for the benefit of Members whereby Members are entitled to occupy their Apartments and to use other amenities of the Property while occupying such Apartments;
 - 3.1.2 Scheme:** the operation of the Management Scheme for the benefit of Management Scheme Members;
 - 3.1.3 Lease:** to act as Lessee under of the Lease and sublessor under the Subleases to the Members and meet all its obligations under the Lease and Subleases;
 - 3.1.4 Representative Body:** to be a representative body of the Members and to maintain and operate the Property for the benefit of the Members and regulate the use of the Property by Members in a transparent and equitable manner;
 - 3.1.5 Levying:** the levying of Members for the purpose of providing funds for and meeting the costs and expenses of the Body Corporate;
 - 3.1.6 Services, Utilities and Facilities:** the provision for Members of such services, utilities and facilities in connection with the Property as

the Body Corporate may from time to time deem appropriate or desirable;

3.1.7 Rules and Covenants: the promulgation and enforcement of the Property Rules and covenants benefiting Members and the Management Scheme generally; and

3.1.8 Property and Scheme Generally: the undertaking of any other activity or work relating to the Property, or the Management Scheme, and ancillary or incidental to the above objects as the Body Corporate may from time to time resolve by Extraordinary Resolution.

3.2 Pecuniary Gain not to be an Object: The Body Corporate does not have as an object the pecuniary gain by Members and (subject to clause 16.1) no Member will be entitled to receive any dividend out of any levy, fee, donation or other income or funds of the Body Corporate.

3.3 Members may Contract: A Member may enter any agreement or understanding with the Body Corporate for the supply of any goods or services for such consideration and on such other terms and conditions as would be reasonable if that person were not a Member.

4. MEMBERSHIP

4.1 First Members: The First Members of the Body Corporate will be:

- Tabua Investments Limited;
- Aesop Limited;
- Matatua Limited;
- Aotea Limited; and
- Tokomaru Limited.

4.2 Duties of First Members: The First Members will:

4.2.1 Resign: resign from the Body Corporate as soon as there are more than 15 "other" Members; and

4.2.2 Rights and Obligations: be entitled to vote at any meeting of the Body Corporate and to elect a Board, but will otherwise have none of the rights or obligations of Members set out in this Constitution (whether for the payment of levies or otherwise) as Members.

4.3 Number of Memberships: Every Member must be the owner of an Apartment and the number of Members at any one time cannot exceed 44.

4.4 Owners of Apartments to be Members: Subject to clause 4.1, every owner of an Apartment will, upon being registered as the owner become a Member.

4.5 Member Ceasing to Own an Apartment: Upon a Member ceasing to be the owner of an Apartment for whatever reason, that Member will be deemed to have resigned from the Body Corporate with immediate effect, and will have no entitlement to the use and enjoyment of the Property.

4.6 Register: The Body Corporate will maintain a full and complete register of Members. Each Member will, immediately upon becoming entitled to be registered as the owner of an Apartment (and thereafter as any details change), provide the Body Corporate with the details necessary for maintenance of the Register.

4.7 Transfers: The rights, privileges and obligations of a Member can only be transferred in the manner specified in the Sublease.

4.8 More than One Owner: Notwithstanding anything inconsistent or to the contrary in this Constitution, if there is more than one owner of an Apartment:

4.8.1 Collectively Constitute: such owners will collectively constitute one Member, and for all purposes of this Constitution, the liability of such owners in relation to their Membership will be joint and several; and

4.8.2 Nominee: such owners will nominate one of their number to be their agent (or if they fail to nominate, the first named of them in the Register will be deemed to be that agent) and:

(a) such nominee will be deemed to be the agent of and acting on behalf of all such owners; and

(b) where the Constitution requires notice in respect of anything concerning or connected with the relevant Membership to be forwarded by the Body Corporate, the Body Corporate will be deemed to have discharged its obligation to notify the owners if it has given notice to the nominee.

5. MEMBERSHIP RIGHTS, OBLIGATIONS AND RESTRICTIONS

5.1 Comply with Constitution and Rules: Each Member must comply, at all times, with the terms of this Constitution and the Property Rules as modified or added to from time to time.

5.2 Compliance by Others: Members must take reasonable steps to ensure that guests who are invited onto the Property by the Member comply with the Property Rules.

6. BODY CORPORATE LEVIES

Every Member will pay to the Body Corporate the Member's Proportion applicable to that Member of the Body Corporate Levy and any penalties or default interest imposed for late or non-payment on that Member. Each payment shall be made in accordance with such payment terms as the Body Corporate may from time to time prescribe (which may at the Body Corporate's discretion include direct debit arrangements for payment at monthly or other frequencies).

7. CHARGES

The Body Corporate may charge Members for additional services provided to individual Members. Such services may include (without limitation) additional housekeeping and equipment hire services. Any such charges will be set by the Board from time to time and will be payable by Members in addition to Body Corporate Levies.

8. BREACH OF OBLIGATIONS

In the event that any Member fails to pay its applicable Member's Proportion of the Body Corporate Levy or any other moneys payable to the Body Corporate when due, or otherwise is in breach of any term of this Constitution, the Body Corporate may (without prejudice to any other rights of the Body Corporate) take any or all of the following actions:

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- 8.1 Legal Proceedings:** commence legal proceedings against the Member to recover any sums due, together with all costs and expenses (including reasonable legal costs) which the Body Corporate incurs or becomes liable for as a result of bringing such proceedings; or
- 8.2 Withdraw Access:** serve a notice on the Member notifying the Member that its entitlement to use the Common Facilities has been suspended and following receipt of such notice the relevant Member shall have no right to use the Common Facilities until payment in full of all sums outstanding by the Member to the Body Corporate have been received.

9. EXCLUSION OF LIABILITY

- 9.1 No Body Corporate Liability:** The Body Corporate shall have no obligation or liability for any loss of or damage to any personal property located at the Property, nor shall the Body Corporate be under any obligation or liability to a Member in respect of any loss, damage, cost or expense incurred by a Member except where such loss, damage, cost or expense has been directly or indirectly caused by or results from a breach of the provisions of this Constitution by the Body Corporate.
- 9.2 General:** A Member must:
- 9.2.1 Void Insurance:** not do any act or permit or suffer any act to be done which may void any insurance policy or which may prejudice or add to any insurance premium payable in respect of the Property; and
- 9.2.2 Interfere:** not interfere with or obstruct the Body Corporate, any authorised representative of the Body Corporate or the Operator from performing their duties.

10. POWERS AND OBLIGATIONS OF THE BODY CORPORATE

- 10.1 Enforcement Obligations:** The Body Corporate must:
- 10.1.1 Enforcement:** do all things reasonably necessary for the enforcement of the Lease, Subleases or Property Rules in relation to the Property; and
- 10.1.2 Insurance:** do all things reasonably necessary for the enforcement of any contract of insurance entered into under clause 11.2.
- 10.2 Act in Member's Interests:** The Body Corporate must promptly and properly exercise all of its rights and obligations under the Constitution and must ensure, as far as is reasonably practicable, that a Member does not suffer any loss or damage and is not prejudiced by the Body Corporate's failure to do so.
- 10.3 Property Rules:** In the fulfilment of the purposes and objects of the Body Corporate, the Body Corporate will have the powers to promulgate, amend and distribute to Members from time to time the Property Rules relating to the use of the Property (including any restrictions on use for security, maintenance or other reasons) and rules concerning the behaviour of Members.

11. MAINTENANCE AND INSURANCE OF PROPERTY

- 11.1 Maintenance:** The Body Corporate must ensure the proper maintenance, repair, renovation and replacement of the Property in accordance with its obligations under the Lease and Subleases.

11.2 Insurance: The Body Corporate must insure and keep insured the Property for its full replacement value.

12. LIMITATIONS OF THE BODY CORPORATE

12.1 No Indebtedness: The Body Corporate will not borrow any money, other than short-term borrowing to cover any temporary shortfall in meeting the Body Corporate's obligations under this Constitution, except by Extraordinary Resolution.

12.2 No Investments: The Body Corporate will hold all funds with a Bank, and will not invest those funds other than by deposit with a Bank, except by Extraordinary Resolution.

12.3 Application of funds: All money paid to the Body Corporate by Members in accordance with this Constitution is to be applied exclusively for the objects of the Body Corporate.

13. TERMINATION OF MANAGEMENT AGREEMENTS

13.1 Meeting of Management Scheme Members: If:

13.1.1 Occupancy Rate: the percentage occupancy rates for Apartments under the Management Scheme average less than 30% for any two consecutive calendar years, (provided that this clause shall not apply if the Manager has been able to establish that the failure to achieve the occupancy rate was due to an event beyond the Manager's control and such failure was not due to the default or any omission of the Manager); or

13.1.2 Termination of Management Agreement: if any Apartment Management Agreement or the Body Corporate Management Agreement is lawfully terminated by a Member or the Body Corporate respectively due to the Manager's breach of that agreement;

then any Member or Board member may call a meeting of the Management Scheme Members to consider, and if thought fit, pass a resolution to replace the Manager, provided that no meeting shall be called unless it is called within 12 months of the happening of the event referred to in clauses 13.1.1 or 13.1.2 and that the notice must be accompanied by details of a third party ("New Manager") willing to take over the Manager's role under the Apartment Management Agreements and Body Corporate Management Agreement and must also contain details of the New Manager's experience and credentials and any proposed changes to the terms of those agreements.

13.2 Meeting Procedures: Subject to matters specifically set out in this clause 13, the provisions and procedures relating to meetings set out in schedule 2 shall apply to any meeting called pursuant to clause 13.1 as if it were a meeting of Members.

13.3 No Confidence: If at least 50% of the Management Scheme Members vote in favour (either in person, in writing or by proxy) of the resolution to replace the Manager, then notice shall be given to each Management Scheme Member of the passing of the resolution and the New Manager will become the Manager subject to:

13.3.1 a new Body Corporate Management Agreement being entered into between the New Manager and the Body Corporate; and

13.3.2 either:

- (a) unless the New Manager has been approved on the basis that there will be changes to the terms of the Apartment Management Agreements, the New Manager delivering to each Management Scheme Member a copy of a deed agreeing to be bound by the terms of each Apartment Management Agreement as if it was named as the "Manager" under each of those agreements, (whereupon each Apartment Management Agreement will be novated in accordance with its terms such that the New Manager will assume the Manager's obligations); or
- (b) if the New Manager has been approved on the basis of changes to the Apartment Management Agreements, the New Manager presenting to each Management Scheme Member a replacement Apartment Management Agreement on those modified terms duly signed by the New Manager.

14. BOARD

14.1 Powers: The administration of the Body Corporate will be vested in the Body Corporate in general meeting, and will be delegated to the Board. The Board may exercise all the powers, authority and discretions of the Body Corporate as permitted by this Constitution and do on its behalf all such acts as they deem necessary or expedient. The powers, authority and discretions as exercised by the Board are subject always to any limits which may from time to time be imposed by the Body Corporate. The Board may delegate any of its power to boards consisting of such member or members of their body as they think fit. Any board so formed will in the exercise of the powers so delegated conform to directions of the Board.

14.2 Documents: All documents and written announcements requiring execution on behalf of the Body Corporate must be signed by at least one Board Member.

14.3 Composition: The Board shall comprise a minimum of two and a maximum of four members and will comprise the following persons:

14.3.1 Chairperson: a chairperson;

14.3.2 Treasurer/Secretary: a treasurer/secretary; and

14.3.3 General Board Members: up to two general Board members, as determined by the Body Corporate in general meeting before election of Board members.

14.4 Board Members:

14.4.1 Election of Board Members: Subject to clause 14.4.2, the Board will be elected by the Body Corporate at every annual general meeting, and may be elected at any other time by the Body Corporate in general meeting, provided that the Body Corporate will only elect natural individuals as members of the Board, and will not elect any person specifically as chairperson;

14.5 Tenure of Positions: A Board member will hold an elected position until the earliest of:

- 14.5.1 Next Annual General Meeting:** the next annual general meeting following election (when the Board member will be eligible for re-election);
 - 14.5.2 Resignation:** the date written resignation from such position is received by the Body Corporate;
 - 14.5.3 Removal:** the date of removal from such position by the Body Corporate in general meeting; or
 - 14.5.4 Cessation of Membership:** the date the Board Member ceases to be a Member.
- 14.6 Vacancy of Positions:** In the event of a casual vacancy in any position on the Board (whether caused by death, cessation of membership, or some other means) the remaining Board members may appoint another Member to fill the vacancy until the position is filled by the Body Corporate in general meeting.
- 14.7 Duties of Treasurer/Secretary:** The treasurer/secretary will:
- 14.7.1 Convene General Meetings:** convene general meetings when requested to do so in accordance with this Constitution;
 - 14.7.2 Attend Meetings:** attend all meetings of the Board and have full speaking rights at such meetings;
 - 14.7.3 Give Notices:** give all notices required to be given by the provisions of this Constitution or as directed from time to time by the Body Corporate or the Board;
 - 14.7.4 Keep Minutes:** keep minutes at all general meetings and Board meetings and enter into the minute book:
 - (a) the time, date and venue of such meeting; and
 - (b) all business considered and resolutions passed at such meeting;
 - 14.7.5 Hold Common Seal:** hold in safe custody the common seal of the Body Corporate;
 - 14.7.6 Receive and Issue Receipts:** receive, and issue receipts for, all Body Corporate levies, additional fees, and any other moneys paid to the Body Corporate;
 - 14.7.7 Pay Accounts:** pay all accounts properly incurred by or on behalf of the Body Corporate;
 - 14.7.8 Report to Body Corporate:** report immediately to the Body Corporate any Member who fails to pay any levies, additional fees or other money payable under this Constitution within the prescribed period;
 - 14.7.9 Keep Financial Records:** keep all financial records and any security documents in safe custody;
 - 14.7.10 Compile Accounting Records:** compile all proper accounting records from time to time as required by the Act or by the Board which

give a true, fair and complete account of the financial affairs and transactions of the Body Corporate;

14.7.11 Compile Financial Statements: compile the financial statements immediately following each financial year as required by the Act, and provide for the auditing of those records and the distribution of the audited financial statements to Members; and

14.7.12 Register: ensure the Register is maintained in accordance with clause 4.6.

14.8 Conduct of Meetings: The Board may meet together, adjourn and otherwise regulate its meetings and procedures for conducting its business as it thinks fit. A majority of the members of the Board from time to time, will form a quorum for a Board meeting. No business of the Board will be conducted at any time when less than a quorum is present at the same time and place. The Board may meet at any time and the secretary will, upon the request of the chairperson or any three Board members, convene a meeting of the Board.

14.9 Chairperson: The Board from time to time will appoint, remove and replace a chairperson for such term as it sees fit from one of their number to chair Board meetings and otherwise exercise the powers of the chairperson set out in this Constitution.

14.10 Casting Vote: In the case of a tie in votes the chairperson may exercise a casting vote.

14.11 Seal: The Board will obtain a common seal for the use of the Body Corporate and will provide for its safe custody. The common seal will not be used except by resolution of the Board. Every instrument to which the common seal is affixed will be signed by any two members of the Board.

14.12 Voting: Resolutions of the Board will be passed by majority. Each Board member will be entitled to exercise one vote, provided that the treasurer/secretary will not be entitled to vote. Notwithstanding any contrary provision in this Constitution, a resolution in writing signed by such of the Board members as would constitute a quorum at a Board meeting will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted.

14.13 Resolution in Lieu: A resolution of the Board in lieu of a meeting authorised by clause 14.12 may consist of several documents in like form, each signed by one or more Board members. A facsimile of any such signed resolution will be as valid and effectual as the original signed document with effect from completion of its transmission.

14.14 Validity of Board's Actions: All acts properly done by any meeting of the Board or by any person acting as a Board member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such Board member, or that they were disqualified, will be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Board member.

14.15 Board Minutes and Records: The Board will cause proper minutes to be kept of the proceedings of all meetings of the Body Corporate and of the Board. All business transacted at such meetings signed by the chairperson will be accepted as a correct and accurate record of the business transacted at such meetings without any further proof of the facts contained in such minutes.

15. GENERAL MEETINGS

The contents of schedule 2 shall apply in respect of Body Corporate Meetings.

16. GENERAL

16.1 Dissolution: The Body Corporate may be wound up in accordance with section 24 of the Act. Upon the winding up of the Body Corporate, ownership of the assets of the Body Corporate will vest in the Members as tenants in common in shares equal to the Member's Proportion applicable to each Member as at the date of winding up, and the Body Corporate will take all necessary steps to vest legal title to such assets in the Members.

16.2 Alteration of Constitution: Subject to Clause 10.3:

16.2.1 Amendment by Extraordinary Resolution: no provision contained in this Constitution, including this one, will be amended, added to or rescinded except by Extraordinary Resolution; and

16.2.2 Acceptance by Registrar: no such amendment, addition or rescission will be valid unless and until accepted by the Registrar.

16.3 Registered Office: The registered office will be situated at a place nominated by the Board.

16.4 Liability of Members:

16.4.1 No Liability: No Member will be under any liability in respect of any contract or other obligation made or incurred by the Body Corporate.

16.4.2 Indemnity: The Body Corporate will indemnify each Member against any liability properly incurred by such Member in respect of the affairs of the Body Corporate, to the extent of property owned by the Body Corporate.

16.4.3 No Action Against Other Members: No action in law or otherwise will lie in favour of any Member against any other Member or the Board, or any Board member in respect of any act or omission pursuant to the provisions of this Constitution.

16.4.4 Wilful Default: Nothing in this clause will prevent an action in respect of any loss or expense arising from the wilful default of the person against whom such action is taken.

16.5 Indemnity: Each Member will indemnify and keep indemnified the Body Corporate from and against any action, claim, demand, loss, damage, cost, expense and liability which the Body Corporate may suffer or incur, or for which the Body Corporate may become liable in respect of or arising from any breach of this Constitution by the Member.

16.6 Arbitration: Any difference or dispute which may arise between a Member and the Body Corporate concerning this Constitution or any act or thing to be done, suffered or omitted under this Constitution, or concerning the construction of this Constitution will be referred to the arbitration of a single arbitrator if the parties can agree upon one, but otherwise to two arbitrators (one to be appointed by either party) and an umpire (to be appointed by the arbitrators before entering upon the reference). Any dispute, difference or question as to the jurisdiction of the arbitrator will be determined by the arbitrator. The arbitration will be conducted

in accordance with and subject to the provisions of the arbitration statutes for the time being in force in New Zealand. Such arbitration will be a condition precedent to the commencement of any action at law.

16.7 Approval: Where in this Constitution any reference is made to the approval or consent of the Body Corporate:

16.7.1 Sole Discretion: such approval or consent will be given at the sole discretion of the Body Corporate;

16.7.2 No Precedent: no approval or consent given on any occasion by the Body Corporate will serve as a precedent for, or be binding in any way with respect to, any future application for consent or approval; and

16.7.3 Prior Written Approval: such reference will mean the prior written approval or consent of the Body Corporate, as appropriate.

16.8 Force Majeure: If a Member or the Body Corporate is unable to perform in whole or in part its obligations under this Constitution by reason of war, riots, terrorism, civil commotion, labour disputes, strikes, airport closure, blockouts, inability to obtain labour or materials, accidents, catastrophes or other causes beyond its control so as to cause an adverse affect on the Property then it shall be relieved of its obligations to the extent that it is so unable to perform and for as long as it is unable to perform and no liability shall arise from such non-performance.

16.9 Notification to Members: Any documents, reports or other information which the Body Corporate is required to give to Members from time to time as a whole, and any proposed resolution, may be provided to Members by the Body Corporate posting such document, report or other information on the Body Corporate's website and notifying Members electronically that it has done so. Upon undertaking the above, the Body Corporate shall be deemed to have provided the document, report or other information to Members as required. The Body Corporate may, with the approval of the Board, adopt new methods of providing Members with material of a type referred to above in the future as advances in technology permit.

SCHEDULE 1

The Property Rules

1. CONDUCT AND NOISE

- 1.1** No Member will engage in, or allow any person to engage in, any criminal activity within the Property.
- 1.2** The Body Corporate reserves the right to exclude or evict from the Common Facilities any person who in the opinion of the Body Corporate is under the influence of intoxicating liquor, drugs or substances, or who in any manner acts in violation of the Constitution or these rules.
- 1.3** No Member will burn any material or substance within the Property or do anything which may create a fire hazard or contravene fire regulations.
- 1.4** No Member will dispose of any rubbish except into bins or receptacles for removal on usual days by the Body Corporate, relevant Authority or by independent contractors (as applicable).

2. USE OF APARTMENTS

- 2.1** Each Member will have the duty to keep the exterior of their Apartment in a clean and tidy condition and will not permit the accumulation of unsightly rubbish or materials or in any other way permit the appearance of an Apartment to detract from the general standards established for the Property.
- 2.2** No Member will use or permit to be used an Apartment for any purpose other than for residential accommodation purposes.
- 2.3** A Member shall not permit more than 8 persons, including children of any age, to occupy an Apartment at any one time.
- 2.4** Members, Guests and their guests are the only persons permitted to occupy an Apartment. Such persons under the age of 18 years shall only occupy an Apartment under parental supervision.
- 2.5** Any activities, which will affect the plumbing, electrical systems or structural integrity of any improvement or which will alter any structure of the Property, shall be prohibited.
- 2.6** Nothing shall be done in or upon any Apartment or the Property which will increase the cost of or cause the cancellation of any insurance maintained by the Body Corporate or the Manager covering liability, fire damage, theft and other risks customarily insured against in similar projects, without the express written consent of the Manager.

3. USE OF SWIMMING POOL

No person shall bring into the swimming pool area either any glass or breakable item.

4. CONDUCT AND GENERAL USE OF THE PROPERTY

4.1 Conduct and General Use of the Property

All persons, whilst at the Property, shall observe the following:

- 4.1.1 not conduct themselves in any manner which shall be in violation of any law or ordinance, or may be a nuisance, disturbance, hazard, or an unreasonable interference with the use and peaceful enjoyment of the Property by other Members and Guests;
- 4.1.2 not use the Property for any purpose which is or may be illegal or injurious to the reputation of the Property or the Body Corporate;
- 4.1.3 not mark, paint, drive nails, screws or the like into, or otherwise damage or deface any part of the Property;
- 4.1.4 not hang any washing or other article from any part of the Property including patios and railings and do things so as to be visible from any other Apartment or Common Facilities, except where provision is made in the Apartment, without the prior written consent of the Manager;
- 4.1.5 not camp or erect any temporary structure at the Property without the prior written consent of the Manager;
- 4.1.6 not install or maintain any exterior lighting on any Apartment or the Common Facilities without the prior written consent of the Manager;
- 4.1.7 not barbecue outside designated areas;
- 4.1.8 ensure that any child for whom they are responsible is properly supervised at all times;
- 4.1.9 not bring or keep any animal, bird or reptile at the Property, including in any type of vehicle; or
- 4.1.10 not advertise or cause the advertising of any matter of any kind or display or exhibit any material whatsoever or approach or solicit any Member or guest for any professional or commercial purpose without the prior written consent of the Manager.

4.2 The Disposal of Rubbish and General Cleanliness

All persons whilst at the Property shall:

- 4.2.1 have regard for and keep clean, neat and tidy their Apartment and all other parts of the Property; and
- 4.2.2 not leave any garbage, rubbish, waste, disposable napkins, bottles and cans otherwise than in the receptacles provided.

5. GUEST USE AND VISITORS

- 5.1 Members and Guests may invite visitors to the Property but such visitors may only be at the Property whilst in the company of the inviting Member or Guest and such visitors may not exceed the occupancy limit allowed for the Apartment.
- 5.2 Members and Guests shall advise the Manager of intending visitors to assist the Body Corporate in maintaining security at the Property.
- 5.3 Members shall not let or rent their Apartments to third parties for periods of less than 6 months except pursuant to the Management Scheme.

6. LIABILITY FOR OWNERS' AND GUESTS' PROPERTY

- 6.1** Apartments should be locked when unattended. Any suspicious or unusual activity should be reported immediately to the Manager.
- 6.2** All property lost or found should be reported to and if found handed to the Manager.
- 6.3** Except in areas which may be designated for such purpose, neither Members nor Guests may store personal property on the Property other than within an Apartment.

SCHEDULE 2

MEETINGS OF MEMBERS

1. CONVENING OF MEETINGS

1.1 Annual meetings: The Body Corporate shall convene an annual Meeting in each Year in addition to any other Meetings in that Year not later than:

1.1.1 6 months after the balance date of the Body Corporate; and

1.1.2 15 months after the previous annual Meeting.

1.2 Time and place of Meetings: Each Meeting shall be held at such time and place as the Body Corporate determines.

1.3 Resolution in lieu of annual Meeting: It is not necessary for the Body Corporate to hold an annual Meeting in any Year if everything required to be done at the Meeting (by resolution or otherwise) is done by resolution in writing signed by Members who hold together the required number of votes to pass such resolution.

1.4 Special Meetings: All Meetings other than annual Meetings shall be called special Meetings.

1.5 Calling of Meetings: A special Meeting:

1.5.1 may be called by the Body Corporate at any time; and

1.5.2 shall be called by the Body Corporate on the written request of not less than 5 Members.

1.6 Alternative forms of Meeting: A Meeting may be held either:

1.6.1 by a number of Members, who constitute a quorum, being assembled together at the place, date and time appointed for the Meeting; or

1.6.2 if determined by the Body Corporate, by means of audio, or audio and visual, communication by which all Members participating and constituting a quorum, can simultaneously hear each other throughout the Meeting.

2. NOTICE OF MEETINGS

2.1 Written notice: Written notice of the time and place of a Meeting shall be sent to:

2.1.1 every Member at the address in the Register as at the close of business on the Business Day immediately preceding the date of the notice;

2.1.2 every Board member;

2.1.3 the Body Corporate, provided that notice need not be given to the party convening the Meeting; and

2.1.4 the Auditor,

not less than 15 Business Days before the Meeting, but with the consent of all Members entitled to attend and vote at a Meeting, it may be convened by such shorter notice and in such manner as those Members agree.

2.2 Contents of notice: A notice of Meeting shall state:

2.2.1 the nature of the business to be transacted at the Meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it; and

2.2.2 the text of any Extraordinary Resolution to be submitted to the Meeting.

2.3 Waiver of notice irregularity: An irregularity in a notice of a Meeting is waived if all the Members entitled to attend and vote at the Meeting attend the Meeting without protest as to the irregularity, or if all such parties agree to the waiver.

2.4 Accidental omission of notice: The accidental omission to give notice of a Meeting to, or the failure to receive notice of a Meeting by, a Member does not invalidate the proceeds at that Meeting.

2.5 Notice of adjourned Meeting: If a Meeting is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned Meeting other than by announcement at the Meeting which is adjourned, or in accordance with clause 3.4 of this schedule. In any other case, notice of the adjourned Meeting shall be given in accordance with clause 2.1 of this schedule.

3. PROCEEDINGS AT MEETINGS

3.1 Requirement for quorum: Subject to clause 3.3 of this schedule, no business may be transacted at a Meeting if a quorum is not present.

3.2 Quorum: Subject to clause 3.3 of this schedule, a quorum for a Meeting is 5 Members present in person or by Representative.

3.3 Lack of quorum: If a quorum is not present within 30 minutes after the time appointed for the Meeting:

3.3.1 in the case of a Meeting called by the Body Corporate on the written request of Members entitled to exercise that right, the Meeting is dissolved; and

3.3.2 in the case of any other Meeting, the Meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Body Corporate may appoint and, if at the adjourned Meeting a quorum is not present within 30 minutes after the time appointed for the Meeting, the Members or their Representatives present are a quorum.

3.4 Notice of adjourned Meeting: Not less than 7 days' notice of any such adjourned Meeting at which an Extraordinary Resolution is to be submitted shall be given in the same manner (except in respect of the period of notice) as of an original Meeting and such notice shall state that the Members present in person or by Representative at the adjourned Meeting, whatever their number, shall form a quorum.

3.5 Regulation of procedure: The Chair may regulate the procedure at Meetings.

3.6 Adjournment of Meeting: The Chair may, with the consent of a Meeting at which a quorum is present (and shall, if so directed by the Meeting), adjourn the Meeting from time to time and from place to place. No business may be transacted at an adjourned Meeting other than the business left unfinished at the relevant Meeting.

4. CHAIR OF MEETINGS

4.1 Chairperson: If the Board have elected a chairperson, and he or she is present at a Meeting of Members, he or she shall chair the Meeting, unless or except to the extent that he or she considers it not proper or desirable to act as Chair, either in relation to the entire Meeting or in relation to any particular business to be considered at the Meeting.

4.2 Members may appoint chairperson: If no Chair has been appointed in accordance with clause 4.1 of this schedule or if, at any Meeting, the Chair is not present within 15 minutes after the time appointed for the commencement of the Meeting, or considers it not proper or desirable to act as Chair, either in relation to the entire Meeting or in relation to any particular business to be considered at the Meeting, the Members present may elect a Member to chair the Meeting or that part of the Meeting which relates to the particular business, as the case may require.

5. VOTING AT MEETINGS

5.1 Voting at Meeting in one place: In the case of a Meeting held under clause 1.6.1 of this schedule, unless a poll is demanded in accordance with clause 6.1 of this schedule, the Chair shall determine whether voting will be by voice or by show of hands.

5.2 Voting at audio/visual Meeting: In the case of a Meeting held under clause 1.6.2 of this schedule, unless a poll is demanded in accordance with clause 6.1 of this schedule, voting at the Meeting shall be by the Members signifying individually their assent or dissent by voice.

5.3 Entitlement to Vote: A Member may exercise the right to vote either in person or by Representative. For the purpose of establishing voting entitlements, the persons registered in the Register at the last time for receipt of proxies in relation to a Meeting shall, be the only persons entitled to vote (in person or by Representative) with respect to that Meeting.

5.4 Postal Votes: Unless the Board determines otherwise, Members may not exercise the right to vote at a Meeting by casting postal votes. If the Board determine that postal voting will be permitted at a Meeting, the provisions of clause 7 of the first schedule to the Companies Act 1993 (New Zealand) (relating to postal votes) shall apply, as if the Members were shareholders, with such modification (if any) as the Board thinks fit.

5.5 Electronic Votes: Unless the Board determines otherwise, Members may not exercise the right to vote at a Meeting by casting electronic votes. If the Board determine that electronic voting will be permitted at a Meeting, the provisions of clause 7 of the first schedule to the Companies Act 1993 (New Zealand) (relating to postal votes) shall apply with such modifications so that references in that clause to postal votes shall be taken to be references to votes by electronic means

and as if the Members were shareholders and such other modifications (if any) as the Board thinks fit.

- 5.6 Number of Votes:** Subject to clause 5.10:
 - 5.6.1** where voting is by show of hands or by voice every Member present in person or by Representative has one vote; and
 - 5.6.2** on a poll every Member present in person or by Representative has one vote in respect of each Apartment owned by that Member.
- 5.7 Declaration by Chair:** A declaration by the Chair that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 6.1 of this schedule.
- 5.8 Chair's Casting Vote:** The Chair is entitled to a casting vote.
- 5.9 Joint Members:** Where two or more persons are registered as 1 Member for the purposes of clause 4.8 the vote of the person named first in the Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 5.10 No Vote When Amount Owning:** A Member is not entitled to vote at any Meeting if any amount is due and payable by the Member to the Body Corporate.
- 5.11 Ordinary Resolution:** Unless otherwise provided, all matters to be determined at a Meeting shall be determined by a majority of Members voting by voice or by show of hands, or by a majority of votes given on a poll (hereinafter, such a vote referred to as an "Ordinary Resolution").

6. POLLS

- 6.1 Right to Demand Poll:** At a Meeting a poll may be demanded by:
 - 6.1.1** the Chair; or
 - 6.1.2** not less than 5 Members having the right to vote at the Meeting.
- 6.2 When Poll May Be Demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 6.3 Poll Procedure:** A poll shall be taken in such manner as the Chair directs and the result of a poll is deemed to be a resolution of the Meeting at which the poll is demanded.
- 6.4 When Poll Taken:** A poll demanded on the election of a Chair or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the Chair directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 6.5 Votes:** On a poll:
 - 6.5.1** votes may be given either personally or by Representative;
 - 6.5.2** each Member present in person or by Representative shall have one vote in respect of each Apartment Owned by that Member; and

- 6.5.3** a Member need not cast all the votes to which the Member is entitled and need not exercise in the same way all of the votes which the Member casts.

7. PROXIES

- 7.1 Right to Appoint:** A Member may appoint a proxy to vote on behalf of the Member at a Meeting. The proxy is entitled to attend and be heard at the Meeting and to demand or join in demanding a poll, as if the proxy were the Member.
- 7.2 Notice of Appointment:** A proxy shall be appointed by written notice signed by the appointing Member and the notice shall state whether the appointment is for a particular Meeting or for a specified term not exceeding 12 months.
- 7.3 Production of Notice:** No appointment of a proxy is effective in relation to a Meeting unless a copy of the notice of appointment is received by the Body Corporate at its registered office, or at such other address as is specified for that purpose in the notice convening the Meeting, not later than 48 hours before the start of the Meeting.
- 7.4 Validity of Proxy Vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, if no written notification of such death, mental disorder, or revocation, is received by the Body Corporate at its registered office before the commencement of the Meeting or adjourned Meeting for which the proxy is appointed.

8. REPRESENTATIVES

- 8.1** A Representative shall have the right to demand, or join in demanding a poll and shall (except and to the extent to which the Representative is directed to vote for or against any proposal) have the power generally to act at any Meeting for the Member concerned.

9. RESOLUTIONS

- 9.1** A Meeting shall, in addition to all other powers which by this deed are exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary Resolution:
- (a) power to discharge, release or exonerate the Body Corporate from all liability in respect of any act or omission for which the Body Corporate has or may become responsible under this Constitution;
 - (b) power to sanction any alteration, release, modification, waiver, variation or compromise in respect of the rights of the Members against the Body Corporate, howsoever such rights have arisen; and
 - (c) power to sanction either unconditionally or upon any condition the variation of the Scheme.
- 9.2** An Ordinary Resolution or Extraordinary Resolution shall be binding upon the Body Corporate and all Members (whether present at the Meeting or not, or entitled to be present or not) and each shall be bound to give effect thereto. The passing of any such resolution shall, as between the Members, be conclusive

evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the Meeting to determine, without appeal, whether or not the circumstances justify the passing of any such resolution.

10. MINUTES

10.1 Minutes of all resolutions and proceedings at every Meeting shall be made by a person appointed by the Chair, and duly entered in books kept by the Body Corporate for that purpose. Any minutes signed by the Chair, or the Chair of the next Meeting, shall be prima facie evidence of the matters therein stated.

11. ELECTRONIC MEETINGS

Notwithstanding any other provision contained in this schedule, any meeting may, if so determined by the Board, be held electronically in which case the following provisions shall apply in respect of the meeting:

11.1 Notice of Meeting: Written notice of the meeting shall be sent to each of the persons referred to in clause 2.1.1 to 2.1.4 of this schedule as provided for in clause 2.1. Such notice shall advise Members that the matters referred to in clause 2.2 of this Schedule in respect of the Meeting have been posted on the Body Corporate's website along with details of the period during which Members may vote ("Voting Period").

11.2 Voting: Each Member may vote electronically during the Voting Period.

11.3 Resolution: An Ordinary Resolution at a meeting undertaken as provided for above shall be passed if a majority of Members voting on the resolution vote in favour of the resolution and an Extraordinary Resolution shall be passed if not less than 75% of all the Members (and not just those voting on the resolution) vote in favour of the resolution.

**SCHEDULE 3
 APARTMENT ENTITLEMENT**

Apartment No.	Apartment Entitlement
101	248
102	248
103	248
104	248
105	248
106	248
107	248
108	248
109	149
110	149
111	149
112	149
113	172
114	172
115	149
116	149
117	172
118	172
201	240.5
202	240.5
203	240.5
204	240.5
205	240.5
206	240.5
207	240.5
208	240.5
209	240.5
210	240.5
211	240.5
212	240.5
213	240.5
214	240.5
215	240.5
216	240.5
217	240.5
218	240.5
219	240.5
220	240.5
221	286
222	286
223	240.5
224	240.5
225	286
<u>226</u>	<u>286</u>
Total	<u>10001</u>

