

APPENDIX 3

BODY CORPORATE NO.

[387500]

and

DONNA SMIT

Body Corporate Secretary

BODY CORPORATE ADMINISTRATION AGREEMENT

for

OHOPE BEACH RESORT

**307 – 309 Harbour Road
Ohope**



**BUDDLE BENTLEY TWEED
Solicitors
Whakatane**

BODY CORPORATE ADMINISTRATION AGREEMENT

Dated: 12 September 2007

PARTIES:

1. **BODY CORPORATE NO. 387500** (South Auckland Registry) (“**the Body Corporate**”)
2. **DONNA SMIT** (“**the Body Corporate Secretary**”)

INTRODUCTION:

- (a) The Body Corporate has resolved to appoint by way of contract a Body Corporate Secretary pursuant to rule 2.31 of the Body Corporate Rules and to delegate to it the powers, authorities, duties and functions of the secretary of the Body Corporate as are hereinafter set forth.
- (b) The Body Corporate Secretary has agreed to accept such appointment as Body Corporate Secretary and the delegation of powers, authorities, duties and functions of the secretary upon and subject to the terms and conditions hereinafter provided.

AGREEMENT:

1. DEFINITIONS IN THIS AGREEMENT

“**Act**” means the Unit Titles Act 1972

“**Administration Fee**” means:

- (a) during the first year of the Term, the amount specified in the fourth schedule; and
- (b) for each subsequent year, the administration fee as adjusted pursuant to clause 9.

“**Body Corporate Rules**” means the rules of the Body Corporate including and incorporating any amendments made to the rules.

“**Business Day**” means any day in New Zealand other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, Waitangi Day and the provincial anniversary as observed in the Bay of Plenty; and
- (b) A day in the period commencing with the 24th day of December in any year and ending with the 5th day of January in the following year.

A Business Day shall be deemed to commence at 9.00am and terminate at 5.00pm (New Zealand time).

“**Term**” means the contract term specified in the first schedule.

2. **INTERPRETATIONS:** Headings and subheadings are included for ease of reference and none of the provisions of this agreement are to be construed or interpreted by reference to such headings or subheadings.
3. References to:
 - 1.1 statutes, regulations, ordinances, or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them; and
 - 1.2 money shall be New Zealand dollar money which shall be the currency of this agreement.
4. Unless the context otherwise requires:
 - 1.1 words importing a particular gender include any gender;
 - 1.2 the singular shall include the plural and vice versa;
 - 1.3 “**person**” includes a body corporate and vice versa;
 - 1.4 whenever a body corporate is a party to this agreement, the words designating such body corporate shall extend to and include such body corporate, its successors and (subject to any provision in this agreement to the contrary) his permitted assigns;
 - 1.5 whenever a person is a party to this agreement, the words designating such a person shall extend to and include that person’s executors, administrators and (subject to any provision in this agreement to the contrary) his permitted assigns;
 - 1.6 where two or more parties are bound by a provision, then, whether those parties are referred to individually or together, the provision shall bind those parties jointly and each of them severally; and
 - 1.7 derivatives of any defined terms have a corresponding meaning to that of the defined term.
5. **APPOINTMENT:** In the exercise of the powers conferred upon it by rule 2.30 of the Body Corporate Rules and in pursuance of a resolution of a general meeting of the Body Corporate passed on 12th September 2007 the Body Corporate appointed the Body Corporate Secretary as its body corporate secretary for the duration of the Term.
6. The Body Corporate in pursuance of the said resolution and in accordance with rule 2.31 of the Body Corporate Rules hereby delegates for the duration of the Term;
 - 1.1 the powers, authorities, duties and functions of the secretary as specified in the Body Corporate Rules;
 - 1.2 the custody of the common seal of the Body Corporate; and
 - 1.3 the authority to operate on the Body Corporate bank accounts or a trust account;

1.4 the duties set out in the second schedule.

7. **ACCEPTANCE OF APPOINTMENT AND DELEGATION:** The Body Corporate Secretary agrees to act as body corporate secretary of the Body Corporate upon and subject to the terms and conditions and provisions contained herein and in the Body Corporate Rules and to exercise the powers, authorities, duties and functions of the secretary of the Body Corporate, which by this agreement the Body Corporate delegates or which may from time to time be delegated by the Body Corporate.
8. **REMUNERATION:** In consideration of the performance during the first year of the Term of the Body Corporate Secretary's duties set out in the Second Schedule and in the Body Corporate Rules, the Body Corporate shall pay to the Body Corporate Secretary the Administration fee as specified in the Fourth Schedule by equal monthly installments on the first day of each calendar month during the Term.
9. The administration fee for each subsequent year shall be reviewed on each anniversary date after the commencement of the Term and shall be determined by the Body Corporate.
10. **REIMBURSEMENT FOR OUTLAYS:** The Body Corporate shall pay to the Body Corporate Secretary an amount for all expenditure incurred or payable by the Body Corporate Secretary pursuant to this agreement in the performance of its obligations hereunder which expenditure shall include, without limiting the generality thereof, the costs of printing, stationery, telephone, photocopying and postage.
11. The first of the payments referred to in clause 10 shall be made one month after the date of commencement of the Term and monthly thereafter.
12. **SECTION 36 FEES:** The Body Corporate Secretary shall be entitled to charge and retain for its own benefit a reasonable fee for the preparation of certificates pursuant to Section 36 of the Act.
13. **DUTIES:** In consideration of the Body Corporate paying the Administration Fee the Body Corporate Secretary shall perform the Body Corporate Secretary's duties set out in the Second Schedule and in the Body Corporate Rules.
14. **ADDITIONAL DUTIES:** If the Body Corporate or the committee of the Body Corporate requests the Body Corporate Secretary to attend to any matter other than those specified in clause 13 including those items in the Third Schedule, the Body Corporate shall pay to the Body Corporate Secretary on demand in addition to any other amount payable pursuant to this agreement an amount calculated at the reasonable rate per hour applicable to the relevant staff members of the Body Corporate Secretary for the time spent by the Body Corporate Secretary and his staff performing such matters except in the instance of clause 8 of the Third Schedule in which instance the fee charged may be on a fixed fee basis rather than time occupied.
15. **COMMISSIONS:** It is acknowledged by the Body Corporate that commissions may be paid by insurers or insurance brokers in respect of any insurance that may be effected by the Body Corporate Secretary for or on behalf of the Body Corporate. In all such instances, any commission payable shall be to the credit of the Body Corporate and

the Body Corporate Secretary shall provide the Body Corporate with no less than three alternative quotes for the insurance so purchased on behalf of the Body Corporate.

16. **BREACH BY THE BODY CORPORATE SECRETARY:** If the Body Corporate Secretary shall allow any breach of its obligations hereunder to continue for one month after receiving written notice specifying such breach from the Body Corporate, then this agreement may be terminated by the Body Corporate by giving one months written notice to the Body Corporate Secretary.
17. **BREACH BY THE BODY CORPORATE:** If the Body Corporate shall fail to pay the Body Corporate Secretary any amount herein provided for and if such failure shall continue for a period of 21 days after notice of such failure from the Body Corporate Secretary to the Body Corporate, then the Body Corporate Secretary may terminate this agreement by giving one month's notice to the Body Corporate.
18. **NOTICES:** Any notice to be given under this agreement to the Body Corporate or the Body Corporate Secretary shall be in writing and shall either be:
- 1.1 personally delivered;
 - 1.2 mailed by prepaid registered mail;
 - 1.3 by facsimile transmission; or
 - 1.4 by e-mail,

to the addressee at the addressee's last known address or facsimile number in New Zealand or, last known e-mail address, or in the case of a corporation, to its registered office.

The following are the parties' addresses, facsimile numbers, and e-mail addresses at the date of this agreement:

Body Corporate details:

Address: 307 Harbour Road, OHOPE

Facsimile No. : 07 3124120 E-mail: representative@ohopebeachresort.co.nz

Body Corporate Secretary details:

Donna Smit

Address: Otakiri Road RD 2, WHAKATANE

Facsimile No. : 07 3049921 E-mail: cdsmit@xtra.co.nz

19. Any notice required to be given under this agreement or implied by statute shall be valid and effectual if given under the hand of the party, the party's solicitor, or any authorized representative for the time being of the party, and if the party is a corporation, by its general manager, company secretary or a director.

20. Any notice sent by registered mail shall be deemed to have been received on the third Business Day following the date of mailing. Any notice sent by facsimile transmission during a Business Day between 9.00am and 5.00pm shall be deemed to be received upon completion of an error free transmission and in every other case shall be deemed to be received at 9.00am on the next Business Day after it is sent. Any notice sent by e-mail shall be deemed to be received, if within twenty-four hours the said e-mail has not been returned undelivered.
21. If a party changes address, facsimile number, or e-mail address, the address, facsimile number, or e-mail address specified shall continue to be the address, facsimile number, or e-mail address of that party for the purposes of this agreement until that party gives written notice to the other party giving full particulars of the changed address, facsimile number, or e-mail address.
22. **SEVERANCE:** Every provision in this agreement shall be read and construed so as not to be in contravention of law and where any term or provision hereof would but for this clause be void, inoperative or ineffective wholly or partly for any reason it shall nevertheless be valid to the extent that it is not void, inoperative or ineffective and shall not effect the validity or force of any other provision or term hereof. It is hereby expressly agreed that for the purpose of giving effect to this clause any provision herein or any part thereof may be severed ignored or read down.
23. **GOVERNING LAW:** This agreement shall be governed and construed in all respects in accordance with the laws of New Zealand and to the extent that the Body Corporate and the Body Corporate Secretary are legally able to do so they hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any legal proceedings in connection therewith.
24. **COSTS:** Each party shall pay its own costs and disbursements incurred in the preparation and execution of this agreement.
25. **ENTIRE AGREEMENT:** This agreement records the entire agreement and understanding between the parties in relation to the matters contemplated by this agreement and supersedes any prior agreement, correspondence, or undertaking made between the parties.
26. **NO ASSIGNMENT BY BODY CORPORATE SECRETARY:** The Body Corporate Secretary shall not be entitled to directly or indirectly (including due to, or by way of, a change of control) assign, transfer, mortgage, charge, pledge or otherwise dispose of (including by way of subcontract) any of its rights or interest in or any of its respective obligations or liabilities under, or in connection with, or arising out of, this agreement, except with the prior written consent of the Body Corporate, which shall be given if the Body Corporate is satisfied that the proposed assignee, transferee or dispossesee is suitably qualified and financially sound.
27. **OPTION FOR NEW AGREEMENT**
- (a) If the Body Corporate Secretary has complied with all of its obligations under this Agreement during the Term, the Body Corporate Secretary may request the Body

Corporate to enter into a new agreement, subject to the following provisions.

- (b) If the Body Corporate Secretary wants to enter into a new agreement under Clause 27(a) then the Body Corporate Secretary must give notice to the Body Corporate not earlier than three (3) calendar months prior to and not later than thirty (30) days prior to the Expiry Date.
- (c) Unless determined otherwise by the Body Corporate, the new agreement is to be identical with the prior agreement, except that:
 - (i) the commencement date of the new agreement is to be the day after the expiry of the term;
 - (ii) the term of the new agreement is to be for the same term;
 - (iii) the expiry date of the new agreement is to be the last day of the term of the new agreement;
 - (iv) the Administration Fee is to be determined for the period of the new contract by the Body Corporate.

EXECUTION

THE COMMON SEAL of BODY CORPORATE No. 387500 (South Auckland registry) was affixed in the Presence of:

Member

Member

SIGNED on behalf of Ohope Point Apartments Limited
By:

Director

Director

FIRST SCHEDULE

Term: The term of the contract for the Body Corporate Secretary shall be for one year, commencing on the day of issue of final Code of Compliance and ending twelve months later. If this agreement is not renewed in accordance with Clause 27 or notice of termination is not given within the 30 day period following the date on which this agreement ends, the agreement will continue on an annual basis on the same terms and conditions (including review of the Administration Fee under Clause 9)

SECOND SCHEDULE

The Body Corporate Secretary shall cause the following to be carried out:

1. Pay the accounts of the Body Corporate;
2. Establish an annual budget for the Body Corporate and prepare notices levying administrative and sinking fund contributions;
3. Prepare annual statements of account;
4. Effect insurances as required pursuant to the Act subject to the Body Corporate having sufficient funds to cover the cost of insurances;
5. Submit insurance claims to the Body Corporate insurer;
6. Maintain a body corporate roll pursuant to section 54 of the Act;
7. Maintain the books and records of the Body Corporate;
8. Convene and attend the general meeting of the Body Corporate and prepare minutes of the meeting;
9. Convene and attend up to four committee meeting per annum and prepare minutes of meetings;
10. The meetings referred to in Clause 8 and 9 are included in the Administration Fee when the meetings are held in normal office hours. Meetings held outside normal office hours may be subject to an additional fee;
11. Deal with inward and outward correspondence to the Body Corporate.
12. Subject to Clause 12, prepare certificates pursuant to Section 36 of the Act as and when requested by any Body Corporate member.

THIRD SCHEDULE

1. Attending to applications to any referee and any matter arising therefrom;

2. Attendance at hearings conducted by tribunals;
3. Attendance on solicitors in relation to legal proceedings by the Body Corporate;
4. Convening and attending meetings additional to those specified in the second schedule;
5. The keeping of any wage, income tax or other records in respect of any employees or contractors of the Body Corporate and completion and submission of returns in respect thereof;
6. The preparation and submission of income tax returns on behalf of the Body Corporate;
7. Attendance on auditors of the Body Corporate accounts and lodgement of prescribed reports and statements;
8. Attending to recovery of levies in arrears;
9. Attending to matters in relation to amendments to the Body Corporate rules.

FOURTH SCHEDULE

Administration Fee for the first year of term - \$NZ 5,000 per annum.