



# Department of Environment, Land, Water & Planning

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OWNERS CORPORATION NOTIFICATION OF MAKING RULES SECTION 27E(1) SUBDIVISION ACT 1988 (WHEN LODGED WITH PLAN)

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### Applicant(s):

MP COMMERCIAL NO 1 PTY LTD (ACN/ARBN: 605707784)  
LEVEL 2 436 JOHNSTON STREET ABBOTSFORD VIC 3067

MP COMMERCIAL NO 2 PTY LTD (ACN/ARBN: 605707793)  
LEVEL 2 436 JOHNSTON STREET ABBOTSFORD VIC 3067

MP COMMERCIAL NO 3 PTY LTD (ACN/ARBN: 605707800)  
LEVEL 2 436 JOHNSTON STREET ABBOTSFORD VIC 3067

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### Plan Number:

PS738832M

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### Owners Corporation Number:

9

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### Proposed rules of the Owners Corporation:

Appended

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### Execution:

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and



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## Electronic Instrument Statement

any Prescribed Requirement.

Executed on behalf of MP COMMERCIAL NO 1 PTY LTD

MP COMMERCIAL NO 2 PTY LTD

MP COMMERCIAL NO 3 PTY LTD

Signer Name MITCHELL SHARMAN

Signer Organisation MADDOCKS

Signer Role AUSTRALIAN LEGAL PRACTITIONER

Execution Date 16 October 2020

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File Notes:

NIL

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# **Owners Corporation Rules “Rise”, Everage Street, Moonee Ponds, Victoria 3039 Residential Lots (Levels 22 and above) only**

**Owners Corporation No. 9 on Plan of Subdivision PS738832M**

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# Owners Corporation Rules

## Residential Lots

### NOTES

The *Owners Corporations Regulations 2007* detail the powers of the Owners Corporation(s), the general duties of members, meetings and administration of the Owners Corporation(s), insurance and other miscellaneous matters. These rules must be read in conjunction with the Regulations and the Owners Corporation No. 1 Rules.

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### 1. Definitions

In these rules:

**Act** means the *Owners Corporations Act 2006 (Vic)* as amended from time to time.

**Building Works** means all design, building and construction works including the construction, erection, fixing, installation or otherwise or any item not originally included with or part of a Lot or Common Property (and without limitation, includes the alteration or modification to the external façade of a Lot, removal or replacement of floor coverings or materials, fixing or having fixed any electrical, audio visual, or communication device or equipment (for example, plasma or LCD televisions or speakers) within or about or relating to a Lot which may affect the acoustic performance of any inter-tenancy wall, floor or ceiling).

**Children** means persons below the age of 16 and **Child** has a corresponding meaning.

**Committee** means a committee of Members (of which the Manager may also be a member) appointed from time to time and where the context requires includes any sub-committee(s).

**Common Property** means the land and any improvements erected on 34-36 Margaret Street and 40 Hall Street and 15 Everage Street, Moonee Ponds, Victoria 3039 designated as common property on the Plan.

**Developer** means the party engaged by the Owner or a Related Body Corporate and responsible for the development of the Development and creation of Lots and includes the Developer's successors and assigns and Related Bodies Corporate and where it is consistent with the context includes the Developer's employees, agents, builders, contractors, subcontractors and invitees.

**Development** means the development to be carried out on the land known as 34-36 Margaret Street and 40 Hall Street and 15 Everage Street, Moonee Ponds as a mixed use community and associated facilities including the marketing and sale of Lots.

**Director** has the same meaning as it has in the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

**Dispute** means a dispute or other matter arising under the Act, Regulations or Rules including a dispute or matter relating to:

- (a) the operation of the Owners Corporation;

- (b) an alleged breach by a Member or Occupier of an obligation imposed on that person under the Act, Regulations or the Rules; or
- (c) the exercise of a function by a Manager in respect of the Owners Corporation.

**Domestic Building Contract** means any domestic building contract within the meaning of the *Domestic Building Contracts Act 1995* (Vic) entered into by the Initial Owner.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Initial Owner** has the same meaning as it has under the Act and where the context requires includes its successors and assigns.

**Land** means the whole of the land described in the Plan.

**Lot** means a lot shown on the Plan.

**Maintenance Fund** means a fund or part of a fund used for implementation of the Maintenance Plan (if any).

**Maintenance Plan** means a maintenance plan (if any) established and approved by the Owners Corporation as contemplated by the Act.

**Manager** means the person or entity appointed by the Owners Corporation as Manager of the Owners Corporation(s) and where relevant includes the Manager's successors and assigns and where the context requires includes the Manager's officers, employees, agents, contractors, subcontractors and invitees.

**Member** means a member of the Owners Corporation by reason of being the owner of a Lot for the time being and where the context requires includes an Occupier or their invitees.

**Occupier** means the person or entity authorised by the Member to occupy the designated Lot as tenant or licensee and where the context requires includes the Occupier's invitees.

**Owner** means the owner of the Land, being:

- (a) MP Commercial No 1 Pty Ltd ACN 605 707 784;
- (b) MP Commercial No 2 Pty Ltd ACN 605 707 793; or
- (c) MP Commercial No 3 Pty Ltd ACN 605 707 800,

either collectively or singularly as the context requires, or such other registered proprietor or proprietors of the whole or any part of the land comprising the Development from time to time.

**Owners Corporation(s)** means the Owners Corporation(s) created by the registration of the Plan.

**Owners Corporation No. 1** means the unlimited owners corporation on the Plan.

**Owners Corporation No. 1 Rules** means the Rules for unlimited Owners Corporation No. 1 on the Plan.

**Plan** means plan of subdivision no. PS738832M.

**Proximity Card** means a card, magnetic card or other device used to open and close doors, gates, locks in respect of a Lot or Common Property including any remote control or other security device issued to the Member or Occupier.

**Recreational Facilities** means any recreational facilities (if any) located on Common Property created by Owners Corporation from time to time for use by Members.

**Regulations** means the *Owners Corporations Regulations 2007 (Vic)* as amended from time to time.

**Related Body Corporate** has the same meaning given to that term in the *Corporations Act 2001 (Cth)*.

**Rule or Rules** means these rules which are for the purpose of the control, management, administration, use or enjoyment of the Common Property or any Lot as amended from time to time.

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## 2. Interpretation

2.1 Unless the context otherwise requires:

2.1.1 headings are for convenience only;

2.1.2 words imparting the singular include the plural and vice versa;

2.1.3 expressions imparting a natural person includes any company, partnership, joint structure, association or other Owners Corporation and any governmental authority; and

2.1.4 a reference to a thing includes part of that thing.

2.2 The obligations and restrictions in these Rules must be read subject to the rights, grants or privileges that may be given to any person or entity by the Owners Corporation from time to time and to the extent of any inconsistency, such rights, grants or privileges, must prevail over these Rules in respect of the person or entity to whom they are given.

2.3 In these Rules:

2.3.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

2.3.2 if it is not possible to read down a provision as required in this Rule, that provision is severable without affecting the validity or enforceability of the remaining part of that Rule or the other Rule.

2.4 In the event of a conflict between these Rules and any restriction(s) on the Plan, the restriction will prevail.

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## 3. Relationship with Owners Corporation No. 1 Rules

If there is any conflict between these Rules and the Owners Corporation No. 1 Rules, the Owners Corporation No. 1 Rules prevail.

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## **4. Use of a Lot**

### **4.1 A Member must not:**

- 4.1.1 create noise or behave in a manner that is likely to interfere with the peaceful enjoyment of the member of another Lot, or any person lawfully using the Common Property;
- 4.1.2 do or permit anything on a Lot which may invalidate, suspend or increase the premium for any insurance effected by the Owners Corporation;
- 4.1.3 without the prior written consent of the Owners Corporation, maintain inside a Lot anything visible from outside a Lot (including but not limited to a balcony, terrace or garden area) that when viewed from outside the Lot is aesthetically or otherwise detrimental to the amenity of the Development including the hanging of any washing, towel, bedding, clothing or any other article or like matter on any part of their Lot;
- 4.1.4 operate or permit to be operated on a Lot any device or electronic equipment which interferes with any domestic appliance lawfully in use on the Common Property, another Lot or another part of the Development;
- 4.1.5 use that part of a Lot designed for use as a car parking space for any other purpose without the prior written consent of the Owners Corporation; (including storage, with all storage items to be contained within designated storage spaces/cages only);
- 4.1.6 carry out or cause to be carried out on a Lot, road or any other land in the vicinity of a Lot, any dismantling, assembly, repairs or restorations of vehicles unless carried out in an area screened from public view;
- 4.1.7 use the Lot for any purpose that may be illegal or injurious to the reputation of the premises comprised of the lots and the Common Property or which may cause a nuisance or hazard to any other member of a Lot;
- 4.1.8 use or permit their Lot or any part of the Common Property to be used for any trade or business; and
- 4.1.9 install blinds to windows visible from outside the Members Lot other than of a neutral colour and of a type and style general consistent with the fixtures and fittings used throughout at the time the Plan was first registered.

### **4.2 Each Member must:**

- 4.2.1 maintain their Lot and must ensure that their Lot is so kept and maintained as not to be offensive in appearance nor a fire or health hazard to other Members; and
- 4.2.2 comply with all laws relating to the Lot including, without limitation, any requirement, notices and orders of any governmental authority.

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## **5. Pets and Animals**

- 5.1 A Member can keep any animal upon a Lot or the Common Property unless the Member has been given notice by the Owners Corporation to remove and keep removed such animal once the Owners Corporation has resolved that the animal is causing a nuisance.
- 5.2 A Member must ensure that any animal belonging to them does not urinate or defecate on Common Property including internal court yards or gardens.
- 5.3 A Member must ensure that any animal urination or defecation which occurs within a Lot (including on any balcony or other open space area forming part of a Lot) is promptly and

hygienically disposed of).

- 5.4 A Member must ensure that any animal belonging to them must be retrained and/or on a lead at all times when on the Common Property.

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## 6. Cleaning and maintenance of a Lot

- 6.1 A Member or Occupier must keep its Lot (including any garage, car park or storage cage utilised by the Member or Occupier) clean and in good repair and utilised solely for its designated purpose.
- 6.2 A Member or Occupier must ensure its car parking space(s) are free of oil, petrol and like substances. The Owners Corporation may clean any car parking space which is excessively stained by oil, petrol or a like substance at the Member's or Occupier's expense if after providing 28 days' notice the Member or Occupier has failed to clean the excessive staining. The Owners Corporation may authorise a person to enter the relevant Lot or Building on its behalf to carrying out cleaning of car spaces in accordance with this Rule.
- 6.3 A Member or Occupier must ensure that all landscaped areas visible from Common Property or which adversely affect the outward appearance or state of repair of the Lot or the use and enjoyment of the Lots or Common Property by other Members or Occupiers are maintained to a standard commensurate with the standard of maintenance of Common Property landscaped areas or as reasonably directed by the Owners Corporation or its Manager.

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## 7. Blinds, windows and awnings

- 7.1 A Member or Occupier must not install or permit the installation of any awnings to the exterior of any Lot or any part of the Common Property other than as permitted by the Owners Corporation.
- 7.2 A Member or Occupier must not allow any glazed portions of the Lot or the Common Property that surrounds the Lot to be tinted or otherwise treated.
- 7.3 A Member or Occupier must not install or permit the installation of any window furnishings to the interior of any window visible from outside the Member's Lot without the prior written consent of the Owners Corporation, unless they are:
- 7.3.1 a translucent roller blind of shearweave material in ivory white or off-white; or
  - 7.3.2 an opaque block out roller blind with the external face in ivory white or off-white.
- 7.4 Each Member must install and maintain internal window furnishings on their Lot in a manner so as to ensure efficient operation of the heating/cooling system of the Lot.

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## 8. Balconies

A Member or Occupier:

- 8.1 must not hang or permit to be hung any clothes or other articles including wind chimes on any balconies, windows, stairways or any part of the Common Property or any part of the exterior of the Lot so as to be visible or audible from the outside of the Lot;
- 8.2 must not construct, erect or fix any shed, enclosure, spa, water feature, or structure of any nature or description or undertaking any building works on a balcony, terrace or garden area forming part of the Lot without the prior written consent of the Owners Corporation;
- 8.3 must ensure that any barbeques, pot plants and outdoor furniture and other movable objects

kept on the balcony to their Lot is secured against strong winds and where necessary remove any loose items from balconies which may be dislodged during periods of strong winds;

- 8.4 must not temporarily or permanently fix or otherwise install on any balcony to their Lot, any equipment or apparatus of any kind (including, any external blind, light fitting, awning, air conditioning unit, antenna or satellite dish);
- 8.5 must ensure that no rubbish, residue or overflow is expelled onto another Lot at all or onto Common Property when cleaning or washing balconies other than to areas specifically designated for such purpose from time to time by the Owners Corporation;
- 8.6 must ensure that when watering or cleaning any balcony, terrace or garden area that forms part of the Lot, the water does not fall onto lower Lots;
- 8.7 must grant and provide to the Owners Corporation, upon the Member or Occupier being given 5 calendar days prior written notice, access to any balcony forming part of the Member's or Occupier's Lot for the purpose of cleaning and/or maintaining the Common Property;
- 8.8 must ensure building materials related to any Building Works are not stacked or stored in or on balcony areas;
- 8.9 must not permit disposal of cigarette butts, cigarette ash or any other item over balconies on Common Property or other Lots;
- 8.10 must keep balconies clean, tidy and well maintained; and
- 8.11 must not permit any bicycle to be brought into a Lot (other than a Lot designated for parking) or the foyer, lifts, stairwells, hallways, garden areas, walkways, balconies.

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## **9. Building Works**

- 9.1 A Member must not undertake any Building Works, and must before commencing any Building Works:
  - 9.1.1 submit to the Owners Corporation for approval plans and specifications of any proposed Building Works;
  - 9.1.2 obtain, for any Building Works proposal submitted for approval, certification by a qualified acoustics engineer that the works when completed will meet the Building Code of Australia minimum requirements for sound attenuation;
  - 9.1.3 receive written approval from the Owners Corporation to proceed with those specified Building Works;
  - 9.1.4 obtain and supply copies to the Manager of all requisite permits, approvals and consents under all relevant Laws;
  - 9.1.5 pay costs to the Owners Corporation where a building contractor or consultant may be engaged to advise the Owners Corporation on the proposed Building Works even if consent is not given;
  - 9.1.6 cause to be effected and maintained during the period of the Building Works a contractor's all risk insurance policy; and
  - 9.1.7 deliver a copy of the contractor's all risk insurance policy and certificate of currency to the Owners Corporation which notes the interests of the Owners Corporation.
- 9.2 A Member or Occupier must ensure that any contractor engaged to perform approved Building Work on their Lot complies with the reasonable directions of the Owners Corporation concerning the method of building operations, means of access, use of the Common Property,

on-site management, building protection and hours of work. The Member or Occupier must also supervise the carrying out of such Building Works and ensure that the following conditions are met:

- 9.2.1 the Building Works are undertaken in a reasonable manner so as to minimise any nuisance, annoyance, disturbance and inconvenience to other Members or Occupiers;
  - 9.2.2 building materials are not stacked or stored in Common Property;
  - 9.2.3 scaffolding is not erected on the Common Property or exterior of the Building;
  - 9.2.4 construction work complies with all Laws of the relevant Authorities;
  - 9.2.5 construction vehicles and construction worker's vehicles are not brought into, or parked on the Common Property except by prior arrangement with the Owners Corporation;
  - 9.2.6 the exterior and Common Property of the Building is at all times be maintained in a clean and tidy state;
  - 9.2.7 suitable floor, wall and other protections is installed in the Common Property before any building materials are taken through those parts of the Common Property; and
  - 9.2.8 all contractors and tradesmen use only the basement, lifts, lobby and areas designated by the Manager when working in the Lot.
- 9.3 Where a Member or Occupier commissions Building Work in accordance with Rule 9.2, a representative of the Owners Corporation and the Member or Occupier must inspect the part of the Common Property which will be affected by the Building Works (for example, the area through which building materials will be transported) prior to commencing the Building Work to establish the state of repair of the Common Property and again after the Building Work has been completed to determine if any damage has been caused to the Common Property.
- 9.4 A Member or Occupier must promptly make good all damage to and dirtying of the Building, the Common Property, the services thereof or any fixtures and fittings and finishes which are caused by any Building Works. If the Member or Occupier fails to do so the Owners Corporation may in its absolute discretion make good the damage and dirtying at the Member's or Occupier's expenses. The Member or Occupier must indemnify and keep indemnified the Owners Corporation for all costs and liabilities incurred by the Owners Corporation in so making good the damage or dirtying caused by the Building Work. The Owners Corporation may at their absolute discretion demand from the Member or Occupier a performance bond in relation to the cleaning or repair of the Common Property to guarantee their performance under this Rule.
- 9.5 For the avoidance of doubt, this rule needs to be satisfied by a Member in addition to its obligations under Rule 8 of Owners Corporation No. 1 Rules.

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## 10. Use of appurtenances

A Member or Occupier must not use the water closet, conveniences or other water apparatus, including water pipes and drains for any other purpose than those which they were constructed and, must not sweep or deposit rubbish or other unsuitable substances therein. The Member indemnifies and keeps indemnified the Owners Corporation on a full indemnity basis for any costs or expenses resulting from any damage or blockage incurred by the Owners Corporation where the damage or blockage was caused by the Member, Occupier or their invitees.

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## **11. Fittings**

11.1 A Member or Occupier must:

- 11.1.1 not modify any air-conditioning, heating or ventilation system or associated ducting servicing that Lot without the prior consent of the Owners Corporation;
- 11.1.2 not install in a Lot a floor safe, a safe, or any other item exceeding 100kg in weight without a written consent of the Owners Corporation and before submitting to the Owners Corporation a structural engineering report in respect to the proposed installation; and
- 11.1.3 ensure that all floor space within a Lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of the Lot noise likely to disturb the peaceful enjoyment of the Member or Occupier of another Lot.

11.2 A Member or Occupier must not affix or have affixed to any Common Property wall, floor or ceiling any electrical, audio visual or communication device or equipment without the prior written consent of the Owners Corporation including but not limited to plasma or LCD televisions or speakers.

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## **12. Provision of Services**

Each Member of the Owners Corporation agrees that the Owners Corporation will provide the following services:

- 12.1 the repair and maintenance of all Common Property including gardens, trees, paved areas and landscaping;
- 12.2 a concierge who will be located near the reception area in Common Property and will assist Members with functions and bookings with respect to the part of the Common Property and other services determined by the Members from time to time; and
- 12.3 any other service or facility provided by the Owners Corporation for the benefit of the Members.

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## **13. Use of Common Property**

A Member must not:

- 13.1 do or allow to be done anything on the Common Property which causes a nuisance to or interferes with its lawful use by the Owners Corporation or other Members;
- 13.2 do or permit anything which might cause structural damage to the Common Property;
- 13.3 move any article likely to cause damage or obstruction through Common Property without first notifying the Manager in sufficient time to enable the Manager to arrange for a representative of the Owners Corporation to be present at the time of moving if it is considered necessary;
- 13.4 interfere with the operation of any equipment installed on the Common Property without the prior written consent of the Owners Corporation;
- 13.5 interfere with any personal property vested in the Owners Corporation;
- 13.6 park or leave a vehicle or permit any vehicle to be parked or left upon the Common Property or in any place other than in a parking area specified for such purpose by the Owners Corporation;

- 13.7 obstruct a driveway or entrance to a Lot or any other road on the Development;
- 13.8 paint, drive nails or screws or the like into, or otherwise damage, alter or deface, any structure that forms part of the Common Property including the external facade except with the consent in writing of the Owners Corporation;
- 13.9 when on Common Property (or if on any part of a Lot so as to be visible from another Lot or from Common Property), fail to be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the Member or Occupier of another Lot or to any person lawfully using Common Property;
- 13.10 deposit or throw upon the Common Property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of other Member or any person lawfully using the Common Property;
- 13.11 disregard any requirements made by the Owners Corporation relating to the use of any access keys and intercom system that may be provided as the means of access upon roadways created within the Common Property;
- 13.12 hold or allow to be held any public auction on or near the Common Property;
- 13.13 directly instruct any contractors or workmen employed by the Owners Corporation unless so authorised;
- 13.14 except with the consent in writing of the Owners Corporation, use for their own purposes as a garden any portion of the Common Property;
- 13.15 must notify the Owners Corporation or its Manager promptly when becoming aware of any damage to or defect in the Common Property or any personal property vested in the Owners Corporation.

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#### **14. Behaviour of Invitees**

- 14.1 The duties and obligations imposed by these special rules upon a Member of a Lot must be observed not only by the Member but also by the guest, servants, employees, agents, children, invitees and licensees of the Member or the occupier of their Lot (**Invitees**).
- 14.2 A Member must take all reasonable steps to ensure that their Invitees do not behave in a manner likely to interfere with the peaceful enjoyment of any Member or occupier of another Lot or of any person lawfully using the Common Property.
- 14.3 A Member is liable to compensate the Owners Corporation for all damage to the Common Property or personal property vested in it caused by a breach of Rule 14.1 and 14.2.
- 14.4 Where the Owners Corporation expends money to make good damage caused by a breach of the Act, or of these rules by any Member or Invitees, the Owners Corporation can recover the amount so expended as a debt in action in any Court of competent jurisdiction from the Member of the Lot at the time when the breach occurred.

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#### **15. Owners Corporation Fees**

- 15.1 The Member must pay the fees set by the Owners Corporation to cover general administration and maintenance, insurance and other recurrent obligations either quarterly, bi-annually, or at such other intervals as may be determined by the Owners Corporation from time to time by general resolution, in advance according to their lot entitlement and liability.

- 15.2 The amount of the annual Owners Corporation fees which is payable by each Member will be established at each annual general meeting of the Owners Corporation.
- 15.3 Any special fees or charges levied by the Owners Corporation to cover extraordinary items of expenditure must be paid on the due date set by the Owners Corporation upon the levying of each special fee or charge.

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## 16. Consent of Owners Corporation

A consent given by the Owners Corporation under these Rules will, if practicable, be revocable and may be given subject to conditions including, without limitation, a condition evidenced by a minute of a resolution that the member for the time being of the lot to which the consent or approval relates is responsible for compliance with the terms of the consent.

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## 17. Enforcement of Domestic Building Contract

The Member agrees that for the purpose of its obligations under the Act:

- 17.1 the Members acknowledge and agree that reasonable steps to enforce any domestic building contract (within the meaning of the *Domestic Building Contracts Act 1995*) include:
  - 17.1.1 the making of a demand in writing to the builder under any domestic building contract to comply with the terms of the domestic building contract and/or rectify any breach of the domestic building contract;
  - 17.1.2 the exercise of any right under the domestic building contract to withhold any payment to the builder or have recourse to any security provided by the builder under the domestic building contract;
  - 17.1.3 the settlement of any dispute under any domestic building contract between the original owner and the builder on terms acceptable to the original owner; and
  - 17.1.4 any other enforcement action the Initial Owner considers appropriate in the circumstances; and
- 17.2 the Members agree to pay or reimburse the Initial Owner its portion of any enforcement relative to its lot liability.

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## 18. Complaints and Disputes

- 18.1 Any Dispute must be dealt with at first instance in accordance with this Rule 18.1.
- 18.2 A party to a Dispute must not initiate legal proceedings or complain to the Director in respect of the Dispute unless it has first complied with the dispute resolution procedure set out in this Rule 18.2.
- 18.3 The party making the complaint must in the first instance notify the Manager, or where the Manager is the subject of or involved in the Dispute, the Committee, of the Dispute in writing. The Manager must refer any complaint it receives to the Committee. Upon receipt of a complaint referred by the Manager or received directly from a Member or Occupier, the Committee will then decide (at its absolute discretion having regard to the nature and urgency of the Dispute) whether to:

- 18.3.1 arrange a meeting between the parties to resolve the Dispute; or
  - 18.3.2 waive the requirement for the parties to meet.
- 18.4 Notwithstanding the course of action elected by the Committee under Rule 18.3, the parties must consult with one another in good faith and use their best endeavours to resolve the Dispute to the mutual satisfaction of both parties without resort to legal proceedings or other avenues of dispute resolution.
- 18.5 Without limiting the generality of this Rule 18.4, where no formal complaint is made by a Member or Occupier and the Owners Corporation otherwise becomes aware of a Dispute, the Owners Corporation (through the Manager or the Committee or otherwise) may decide (at its absolute discretion having regard to the nature and urgency of the Dispute) whether:
- 18.5.1 arrange a meeting between the parties to resolve the Dispute; or
  - 18.5.2 waive the requirement for the parties to meet.
- 18.6 If the parties are unable to resolve the Dispute within 30 days (or such other period as the Committee thinks fit) of the meeting arranged pursuant to Rule 18.3.1 or 18.5.2, the parties may revert to the dispute resolution mechanisms set out in the Act or other Law.

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## 19. Cost of Non-compliance

The Member or Occupier must indemnify and keep indemnified the Owners Corporation on a full indemnity basis against any action, demand, cost, liability or loss incurred by the Owners Corporation as a consequence of any default by the Member or Occupier in the performance or observance of any term, covenant or condition contained in these Rules, the Act or Regulations including, without limitation administrative costs, legal costs, the cost of any works performed to rectify any non compliance and the cost incurred by the Owners Corporation in recovering overdue charges from the Member or Occupier.

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## 20. Charges imposed on Members and Occupiers

- 20.1 Any payments to the Owners Corporation imposed on a Member or Occupier under the Rules, Act or Regulations will (until paid) be a charge on the Lot.
- 20.2 The Member or Occupier must accept a certificate signed by the Manager or valid tax invoice issued by the Owners Corporation as prima facie proof of the costs and expenses incurred by the Owners Corporation relating to any charge payable by a Member or Occupier pursuant to these Rules and must not make any claim or dispute the amount specified therein.
- 20.3 The Member or Occupier must pay interest at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic) on outstanding fees and charges set under the Rules, Act or Regulations until they are paid.
- 20.4 Any payments made for the purposes of these Rules, the Act or Regulations will be appropriated first in payment of any interest and any unpaid costs and expenses of the Owners Corporation and then be applied in repayment of the principal sum.



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## **21. Rules Subject to Rights of the Owner and Developer**

21.1 These Rules do not apply to and, are not enforceable against the Owner, the Developer or their mortgagee(s) or chargee(s) (if any), for so long as any of the following apply:

- 21.1.1 the Owner and/or its equity partners (if any) is a Member or Occupier;
- 21.1.2 the Developer and/or its equity partners (if any) is a Member or Occupier;
- 21.1.3 any mortgagee or chargee of the Owner or Developer has an interest in any Lot; or
- 21.1.4 the Owner or Developer and/or their equity partners (if any) is engaged in any action required to complete the Development,

where to do so would prevent, hinder, obstruct or in any way interfere with any works of any nature or description that the Owner, Developer or their mortgagee(s) or chargee(s) may be engaged in or which may need to be carried out in order to complete construction of the Building and facilities comprised in the Plan or the Development.

21.2 Subject to Rule 21.4, the Owner, Developer and their equity partners (if any), their mortgagee(s) and chargee(s) must be and are by this Rule, authorised by each and every member of each and every Owners Corporation(s) in the Plan and by each and every Owners Corporation(s) in the Plan to:

- 21.2.1 erect such barriers, fences, hoardings, signs as it deems necessary to facilitate any works to be carried out in relation to the Development; and
- 21.2.2 take exclusive and sole possession of any parts of the Common Property as it may need to have exclusive possession of in order to carry out any works or activities in relation to the Development; and
- 21.2.3 exclude all and any Members or Occupiers from any parts of the Common Property as may be necessary in order to carry out any works in relation to the Development; and
- 21.2.4 erect for sale promotional advertising or other signs as the Developer may require on any part of the Common Property; and
- 21.2.5 grant rights to use or access through or over the Common Property to third parties on such terms and conditions as the Owner, Developer or their mortgagee(s) or chargee(s) thinks fit; and
- 21.2.6 limit or restrict access to certain areas of the Development including areas of the Common Property in order to expeditiously complete the Development; and
- 21.2.7 use whatever rights of way and/or points of egress and ingress to the Development as necessary to carry out any works and to block for whatever periods are necessary any rights of way or points of egress and ingress to the Development in order to carry out any works,

provided that the Owner, Developer and/or any third party authorised by it under this Rule or any party to which it assigns all or part of the benefits of its rights under this Rule, uses its best endeavours to minimise disturbance and inconvenience to others occupying or using the Common Property.

21.3 The Owners Corporation(s) must, within 7 days of being requested by the Developer or its mortgagee or chargee, sign whatever consents, authorities, permits or other such

documents as may be required to enable the Owner, Developer or their mortgagee(s) or chargee(s) to complete the Development. A Member must not vote in favour of any motion for a resolution proposed for consideration by a general meeting of the Owners Corporation(s) which would revoke this Rule 21 or contravene any right or reprieve afforded to the Owner and Developer under this Rule 21.

- 21.4 In case of any inconsistency between the Rules and the rights of the Owner and/or the Developer under any Development Agreement, the Owner's and/or the Developer's rights under the Development Agreement will prevail and the Members, Occupiers and Owners Corporation must not seek to enforce the Rules against the Owner and/or the Developer where to do so would conflict with the Owner's and/or the Developer's Rights under any such Development Agreement.
- 21.5 A Member or Occupier must comply with the terms of any Development Agreement between the Owner, the Developer and/or the Owners Corporation that is disclosed to the Member or Occupier.
- 21.6 Every Member hereby consents to and agrees to the Owner and the Developer undertaking any or all of the rights of the Owner and the Developer set out in this Rule without any prevention or hindrance of such Member.
- 21.7 In exercising its rights under this Rule, the Owner and/or Developer must act honestly and in good faith and with due care and diligence in the interests of the Owners Corporation(s) and must have regard to the amenity of Members. The Owner and/or Developer must only exercise their rights to the extent genuinely necessary for the Development. The Owner and Developer must not exercise their rights under this Rule to arbitrarily exclude the Owners Corporation(s) or the participation of Members.

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## **22. Development Lease/Licence, Signage & Other Licences**

- 22.1 The Owners Corporation may grant the Owner and/or the Developer:
- 22.1.1 a development lease or licence for the purpose of access to the Common Property for the purpose of facilitating the completion of the Development including without limitation the completion and integration of the carpark areas, landscaping and common areas within the various stages of the Development;
  - 22.1.2 a lease and licence including but not limited to for the provision of information technology infrastructure relating to broadband services to the Development;
  - 22.1.3 a licence to place and maintain sale signs, insignias, logos and other fixtures and fittings for marketing purposes on the Common Property;
  - 22.1.4 a lease or licence to allow the Owner's and/or the Developer's representatives and their invitees to conduct selling activities from a Lot, if not sold prior to completion;
  - 22.1.5 a licence to host festivals, parties or other celebratory or promotional events on Common Property or any other recreational areas within the Development; or
  - 22.1.6 any other leases, licences or other rights of occupation which are reasonably required for the purpose of the Development or for the use and occupation of any Lot,

provided the Owner and/or the Developer uses its best endeavours to minimise disturbance and inconvenience to others Members' or Occupiers' use of the Common Property and at all times acts honestly and in good faith and with due care and diligence in the interests of the Owners Corporation.

- 22.2 A Member or Occupier of the Lot must not hinder or impede the Owner or the Developer from exercising its rights under any agreement entered into under this Rule.

- 22.3 The Owners Corporation(s) must procure all the necessary consents and resolutions to give effect to the matters set out in this Rule 22.
- 22.4 A Member must not vote in favour of any motion for a resolution proposed for consideration by a general meeting of the Owners Corporation(s) which would impede the powers of the Owners Corporation(s) under this Rule 22.

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**23. Restrictions – Trade or Business**

- 23.1 The Member or Occupier must not use or permit others from using that Lot or any part of the Common Property for any trade, business or other commercial use without the express written consent of the Owners Corporation.
- 23.2 If authorised to do so by the Owners Corporation, the Member or Occupier of any Lot may carry on a trade, business or other commercial use from the relevant Lot, provided:
  - 23.2.1 the planning scheme of the relevant Authority governing the use of that Lot permits the trade, business or other commercial use to be carried on from the Lot; and
  - 23.2.2 any requirements in respect of the trade, business or other commercial use stipulated by any relevant Authority from time to time are complied with; and
  - 23.2.3 the trade, business or other commercial use can be carried on and is carried on without causing undue nuisance or, creating a greater security risk to the Members and Occupiers of other Lots.

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**24. Warranties & Novation or assignment of contracts**

- 24.1 The Owner and/or Developer may at their discretion enter into time limited contracts to supply, service, clean, manage, maintain and/or inspect building essentials services, other building services or functions, common areas of the Building, landscaping, or any other Common Property, and any other service or other contract deemed appropriate and necessary for the proper care and function of the Common Property.
- 24.2 The Owners Corporation(s) must accept a commencement, assignment or novation of the contracts referred to in Rule 24.1 at a meeting of the Owners Corporation.
- 24.3 The Owners Corporation must maintain any contracts commenced, assigned or novated to it under this Rule to the end of its current term except where it is deemed that the contract is unreasonable or unnecessary or is replaced by a contract for similar services by the same service provider.
- 24.4 The Owners Corporation must comply with the terms of and properly manage any time or condition limited warranties for items, services, components or parts of the Common Property provided by subcontractors or suppliers so as to ensure they remain valid for the benefit of the Owners Corporation.
- 24.5 The Owners Corporation must ensure that it provides for or enters into contracts to provide for care, cleaning, management, maintenance and inspection of any item or component of Common Property to enable it to perform its obligations under the Law and these Rules upon the lapse of any subcontractor or supplier backed warranty or upon the end of any contract commenced, assigned or novated to it by the Developer or the Owner.
- 24.6 All Members must contribute its proportion of the cost incurred by the Owners Corporation in complying with this Rule 24 relative to the lot liability on the Plan.

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## **25. Use of Recreational Facilities**

The Owners Corporation may do all things necessary, including enacting further rules or issuing directions, to prevent a Member or Occupier from accessing Recreational Facilities which are:

25.1 not located in the building that the Member or Occupier occupies; or

25.2 not otherwise intended for use by the Member or Occupier.

The Member or Occupier must comply with any rule or direction issued by the Owners Corporation under this Rule 25, and any breach will constitute a breach of these Rules.

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## **26. Recreational Facilities**

26.1 When using the Recreational Facilities referred to in these Rules, a Member and an Occupier must ensure that:

26.1.1 children below the age of 16 years are not in or around the Recreational Facilities unless accompanied by an adult Member or Occupier exercising effective control over them; and

26.1.2 the Member's or Occupier's guests only use the Recreational Facilities if accompanied by the Member or Occupier and the Member or Occupier acknowledges that no more than 4 guests per Member are permitted at any one time without the Owners Corporation's prior consent; and

26.1.3 alcohol is not taken into or consumed around the Recreational Facilities, except as otherwise permitted by the Owners Corporation and subject to any conditions which the Owners Corporation may impose with respect to such consumption.

26.2 Members and Occupiers may only use the Recreational Facilities between the hours of 6:00am to 10:00pm (or such other hours determined by the Owner Corporation) unless the consent of the Owners Corporation is obtained to use the facilities outside of these hours.

26.3 The Owners Corporation may make additional or separate rules relating to the use of the Recreational Facilities provided they are not inconsistent with these Rules. If breached, rules relating to the Recreational Facilities will constitute a breach of these Rules.

26.4 A Member or Occupier must not move any article of furniture or any other article (e.g. pot plants, ornaments etc.) through or around the Common Property without the prior approval of a representative of the Owners Corporation.

26.5 A Member or Occupier must not remove any article of furniture or any other article (e.g. pot plants, ornaments etc.) from the Common Property.

26.6 A Member or Occupier and persons under their control must ensure that when in the Recreational Facilities appropriate attire is worn at all times.

26.7 Smoking is not permitted in the Recreational Facilities.

26.8 Users of the Recreational Facilities do so at their own risk and must not make any claim against the Owners Corporation and must indemnify and keep indemnified the Owners Corporation against any action, demand, cost, liability or loss due to any damage, loss, injury or death arising out of use of the Recreational Facilities by the Member or Occupier or their invitees.



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**27. Concierge**

- 27.1 Each Member and Occupier acknowledges that a concierge may be engaged by Owners Corporation to service the residents of a building within the Development, including to assist with functions and bookings with respect to parts of the Common Property within a building within the Development.
- 27.2 Each Member of the Owners Corporation(s) must not either directly or indirectly do anything to interfere with or restrict the role or functions of the concierge and must comply with the reasonable directions of the concierge from time to time.
- 27.3 The concierge service will operate during periods nominated by the Owners Corporation. The Owners Corporation may change the concierge hours at any time at its absolute discretion.

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**28. Proximity Cards**

- 28.1 A Member in possession of a Proximity Card must:
- 28.1.1 keep the Proximity Card for their exclusive use and must not give the Proximity Card to any other person;
  - 28.1.2 not duplicate the card or permit it to be duplicated without the Owners Corporation's written permission;
  - 28.1.3 take all reasonable precautions to ensure that the Proximity Card is not lost or handed to a person other than the Member and is not to dispose of the Proximity Card in any way other than by returning it;
  - 28.1.4 promptly notify the Owners Corporation if a Proximity Card is lost or destroyed; and
  - 28.1.5 include in any lease or licence of a Lot to the Member a condition or obligation requiring the return of the Proximity Card to the Owners Corporation upon demand by the Owners Corporation acting reasonably.
- 28.2 The Owners Corporation may make a number of Proximity Cards as deemed appropriate available to Members free of charge. The Owners Corporation may charge a reasonable fee for any additional Proximity Cards required by a Member.
- 28.3 Where a Member is in arrears in payment of the Owners Corporation levies in excess of 120 days, or is in breach of these Rules, the Owners Corporation may suspend or cancel the Proximity Card (or suspend or cancel access to Recreational Facilities using the Proximity Card).
- 28.4 The Member must pay the cost of replacing any lost, stolen, damaged, non-functioning or destroyed Proximity Card issued to them.