

Date / /20

**Owners Corporation Rules  
Only Flemington, 1 Acot Vale Road, Flemington,  
Victoria 3031  
All Lots**

**Owners Corporation No. 1 on Plan of Subdivision PS732002P**

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# Owners Corporation Rules

## All Lots

Date        /        /

### 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.

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### 1. Definitions

In these rules:

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

**Commercial Lot** means lots 1R, 2R, 3R and 4R and any ancillary lots on the Plan.

**Commercial Purposes** means use for a restaurant, café or other form of food and/or drink premises, office, showroom or other commercial or retail use.

**Common Property** means the land and any improvements erected on 1 Ascot Vale Road, Flemington, Victoria 3031 designated as common property on the Plan.

**Common Property No.1** means those areas marked as 'Common Property No.1' on the Plan.

**Children** means minors of 13 years of age or under.

**Developer** means Caydon Only Developments Pty Ltd ACN 151 840 118 or a Related Body Corporate engaged by the Owner and responsible for the development of the Development and creation of Lots and includes the Developer's successors and assigns and where it is consistent with the context includes the Developer's employees, agents, builders, contractors, subcontractors and invitees.

**Development** means the development of Only Apartments as a mixed use residential community and associated facilities including the marketing and sale of Lots.

**Development Agreement** means any agreement between the Owner, the Developer and/or Owners Corporation in relation to the Development, including any ancillary agreements between the Owner, the Developer and/or the Owners Corporation such as development leases or other licences.

**Director** has the same meaning as it has in the *Fair Trading Act 1999 (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(s);

- (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(s).

**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.

**Only Apartments** means the land and improvements contained in the Plan and includes all the Lots and the Common Property.

**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(s) 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(s) 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 Caydon Only Development Pty Ltd ACN 151 840 118.

**Owners Corporation(s)** means the Owners Corporation(s) created by the registration of the Plan and includes Owners Corporation No. 1 and Owners Corporation No. 2.

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

**Owners Corporation No. 2** means the limited owners corporation on the Plan.

**Owners Corporation No. 2 Rules** means the Rules for the limited Owners Corporation on the Plan.

**Plan** means plan of subdivision no. PS732002P.

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

**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.

**Special Resolution** has the same meaning as in the Act.

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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(s) 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(s) 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. 2 Rules**

If there is any conflict between these Rules and the Owners Corporation No. 2 Rules, these Rules prevail.

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#### **4. Role and Functions**

- 4.1 The Owners Corporation(s) is responsible for ensuring that appropriate rules, measures and procedures are established to govern issues common to the Members, including that the Common Property and/or a Lot are maintained for the benefit and enjoyment of all Members and Occupiers. The Owners Corporation(s) exercises such responsibilities through enforcing the Rules and through holding regular committee meetings at which matters affecting the operation of the Common Property are resolved and advised to all Members.
- 4.2 The Owners Corporation(s) must abide by the Rules, Act and Regulations, and in carrying out its functions and powers must act honestly and in good faith and exercise due care and diligence.
- 4.3 These Rules are for the purpose of the control, management, administration, use or enjoyment of the Common Property or a Lot and represent the interests of Members and Occupiers. The Rules may be added to, amended or revoked:
- 4.3.1 if a resolution is passed after a ballot or poll is taken and 75% of the total lot entitlements of all the Lots are in favour of such addition, amendment or revocation; or
- 4.3.2 if a resolution is passed in any other case and 75% of the total votes for all the Lots are in favour of such addition, amendment or revocation (**A Special Resolution**).
- 4.4 Under the Act and Regulations, the Owners Corporation(s) is responsible for, amongst other things:
- 4.4.1 electing the Committee (if required);
- 4.4.2 establishing a Maintenance Plan and Fund;
- 4.4.3 establishing and maintaining an Owners Corporation(s) Register;
- 4.4.4 taking out, maintaining and paying the premiums for insurance;
- 4.4.5 keeping proper accounts that cover the income, expenditure, assets and liabilities of the Owners Corporation(s) and providing true reports of the financial situation of the Owners Corporation(s); and
- 4.4.6 preparing annual financial statements.

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#### **5. Provision of Services**

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

- 5.1 the repair and maintenance of all Common Property including gardens, trees, paved areas and landscaping; and
- 5.2 any other service or facility provided by the Owners Corporation(s) for the benefit of the Members.

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## **6. Use of Common Property**

A Member must not:

- 6.1 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(s) or other Members;
- 6.2 do or permit anything which might cause structural damage to the Common Property;
- 6.3 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(s) to be present at the time of moving if it is considered necessary;
- 6.4 interfere with the operation of any equipment installed on the Common Property without the prior written consent of the Owners Corporation(s);
- 6.5 interfere with any personal property vested in the Owners Corporation(s);
- 6.6 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(s);
- 6.7 obstruct a driveway or entrance to a Lot or any other road in Only Apartments;
- 6.8 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(s);
- 6.9 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;
- 6.10 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;
- 6.11 disregard any requirements made by the Owners Corporation(s) 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;
- 6.12 hold or allow to be held any public auction on or near the Common Property;
- 6.13 directly instruct any contractors or workmen employed by the Owners Corporation(s) unless so authorised;
- 6.14 except with the consent in writing of the Owners Corporation(s), use for their own purposes as a garden any portion of the Common Property;
- 6.15 must notify the Owners Corporation(s) 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(s).
- 6.16 smoke on Common Property
- 6.17 consume, or permit the consumption of, alcohol on Common Property;

- 6.18 ensure that no animals and/or pets are kept in Common Areas (including, but not limited to, any lobby, foyer, Recreational Facilities, courtyards or garages);
- 6.19 without limiting rule 6.18, not bring onto Common Property any restricted dog breeds as that referred to or contemplated by legislation as Members are directed to make inquiries with Moonee Valley City Council to ensure compliance with this rule;
- 6.20 ensure that any animal belonging to them or visiting them does not urinate or defecate on Common Property including internal courtyards; and
- 6.21 allow any animal to do anything which would contravene these rules if that thing was done by the Member himself or herself

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## **7. Use of Lot**

- 7.1 A Member must not do or permit anything on a Lot which may invalidate, suspend or increase the premium for any insurance effected by the Owners Corporation(s).
- 7.2 Each Member must comply with all laws relating to the Lot including, without limitation, any requirement, notices and orders of any governmental authority.
- 7.3 Each Member must maintain, and keep in good repair, each apartment comprising a Lot (including, if relevant, any court yard, balcony or storage cage).
- 7.4 Each Member must regularly clean the exterior windows and walls of their Lot (but only to the extent that direct external access is available to the Lot);
- 7.5 Each Member must regularly clear drains located in any balcony or court yard to remove debris from such drains and avoid flooring;
- 7.6 A Member must not alter any door (for example, by installing any additional locks and/or peep holes) which alters, negates or otherwise affects the fire rated doors installed as part of any Lot and must ensure that any such doors remain fire compliant, including performing any alterations or incurring costs that are necessary to ensure fire compliance.
- 7.7 A Member must not make, or permit to be made, any noise from electronic media or machinery which may be heard outside the Lot outside of the times set by Environmental Protection Act regulations from time to time, which are, as at the date of these Rules:
  - 7.7.1 Monday to Thursday, 10:00pm – 7:00am the following day;
  - 7.7.2 Friday to Saturday, 11:00pm – 9:00am the following day; and
  - 7.7.3 Sunday to Monday, 10:00pm – 7:00am the following day.
- 7.8 A Member must not throw, or permit to be disposed or thrown, anything out of windows or over balconies of any Lot.
- 7.9 A Member must not do anything within any Lot, or on Common Property, that is likely to affect the operation of fire safety devices or reduce the level of fire safety in any Lot or Common Property.

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## **8. Building Works to Lots and Common Property**

- 8.1 A Member must not undertake any building works within or about or relating to a Lot except in accordance with the following requirements:
- 8.1.1 such works may only be undertaken if all required permits, approvals and consents under all relevant laws have been obtained and copies given to the Manager; and
  - 8.1.2 the Member must ensure that all works are undertaken in a reasonable manner so as to minimise any nuisance, disturbance or inconvenience to other Members.
- 8.2 The Member of a lot must not proceed with any such works until the Member:
- 8.2.1 submits to the Owners Corporation(s) plans and specification of any works proposed by the Member which affect the external appearance of the Development, and such further particulars of those proposed works as the Owners Corporation(s) may request; and
  - 8.2.2 receives written approval from the Owners Corporation(s) that the works accord with the reasonable aesthetic and orderly development of Only Apartments. Such approval is not to be unreasonably withheld but may be given subject to the condition including that the reasonable costs of the Owners Corporation(s) be met by the Member.
- 8.3 The Member must ensure that all works undertaken by the Member and the Member's agents and contractors complies with the reasonable directions of the Owners Corporation(s) concerning the method of building operation, means of access, use of the Common Property, on site management, and building protection and hours of work.
- 8.4 All agents and contractors must be supervised in the carrying out of such works so as to minimise any damage to or dirtying of the Common Property and services therein.
- 8.5 The Member must immediately make good all damage to, and dirtying of, the Common Property, the services thereof or any damage to fixtures fittings and finishes which are caused by such works. If the Member fails to immediately do so the Owners Corporation(s) may in its absolute discretion make good the damage and dirtying at the cost of the Member.
- 8.6 A Member must not construct or permit the construction or erection of any fence, pergola, screen, awning or other structure or outbuildings of any kind within or upon a Lot or on Common Property without the written approval of the Owners Corporation(s).
- 8.7 A Member must not install or permit the installation of blinds or curtains on the interior of any windows or doors forming part of the Lot, which directly face the outside of a Lot, unless they are:
- 8.7.1 a translucent roller blind of shearweave material in ivory white or of white; or
  - 8.7.2 an opaque block out roller blind with the external face in ivory white or off white,
  - 8.7.3 and must not install any curtains or other furnishings on the interior of any windows or doors.
- 8.8 The OC will implement the responsibilities detailed in the Safety and Environment Management Plan (SEMP) including
- 8.8.1 a notification mechanism to all future site workers, subcontractors and residents to ensure that all parties are aware of the existence of the SEMP;

- 8.8.1 contact the appointed maintenance company if the system fails;
- 8.8.2 logging and documenting the maintenance and system operations (i.e. failure, errors) of the ventilation system installed in the basement car parks.

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## **9. Private Roads and Other Common Property**

- 9.1 All Members must ensure that their car parking space is maintained, cleaned and free of oil. The Owners Corporation(s) reserves its right to clean any area and charge the owner for the costs incurred.
- 9.2 A Member must:
  - 9.2.1 not drive or permit to be driven any motor vehicle in excess of 2 tonnes weight into or over the Common Property;
  - 9.2.2 not park, cause or permit to be parked any caravan, campervan, boat, trailer, commercial vehicle or any other vehicle or structure determined by the Owners Corporation(s) from time to time onto or throughout the Common Property or on any Lot or within the vicinity of a Lot, unless it is housed in a garage and is not visible from any part of the Common Property, road or the street;
  - 9.2.3 not obstruct the private roadways, pathways, drives and visitor car parking in the Common Property and any easement giving access to Only Apartments by any Member, the tenants, guests, servants, employees, agents, children, invitees, licensees of any Member or used by them for any purpose other than the reasonable access to and from their respective Lots or the parking areas provided;
  - 9.2.4 not permit any occupation of a caravan on a Lot;
  - 9.2.5 not permit the riding of skateboards, roller blades, skates, carts or other similar means of transport on or over the Common Property, in driveways or on footpaths without the consent of the Owners Corporation(s). The riding of bicycles on the roadways is permitted;
  - 9.2.6 observe every traffic sign on or at the entrance or exit of any car parking spaces;
  - 9.2.7 not keep any unregistered or any un-roadworthy vehicles in any car parking spaces;
  - 9.2.8 not carry out any mechanical repairs or spray painting of any vehicles in any car parking spaces or otherwise on Common Property.

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## **10. Behaviour of Invitees**

- 10.1 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**).
- 10.2 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.
- 10.3 A Member is liable to compensate the Owners Corporation(s) for all damage to the Common Property or personal property vested in it caused by a breach of rule 10.1 and 10.2.

- 10.4 Where the Owners Corporation(s) 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(s) 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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**11. Owners Corporation(s) Fees**

- 11.1 The Member must pay the fees set by the Owners Corporation(s) to cover general administration and maintenance, insurance and other recurrent obligations quarterly in advance according to their lot entitlement.
- 11.2 The amount of the annual Owners Corporation(s) fees which is payable by each Member will be established at each annual general meeting of the Owners Corporation(s).
- 11.3 Any special fees or charges levied by the Owners Corporation(s) to cover extraordinary items of expenditure must be paid on the due date set by the Owners Corporation(s) upon the levying of each special fee or charge.

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**12. Garbage disposal**

A Member of a Lot must:

- 12.1 except where the Owners Corporation provides some other means of disposal of garbage, maintain within their Lot, or on such part of the Common Property as may be authorised by the Owners Corporation, a receptacle for garbage and to keep such receptacle in a clean and tidy condition and not visible to the public except on days designated for rubbish collection;
- 12.2 comply with all requirements of Governmental Agencies relating to the disposal of garbage; and
- 12.3 ensure that rubbish does not accumulate on their Lot, and that the health, hygiene and comfort of other Members is not adversely affected by their disposal of garbage.
- 12.4 comply with signage for chutes and bins. In the event that a chute becomes blocked and the Owners Corporation is able to identify the responsible Member, then the cost to reinstate the chute will be recovered from that Member. The cost to reinstate the chute must be paid by the offending Member to the Owners Corporation within 7 days of the date of receipt by the Member of an invoice for such costs;
- 12.5 drain and securely tie garbage in plastic bags prior to transferring garbage into the dedicated chute;
- 12.6 un-cap, drain and rinse recycling containers (paper, cardboard, PET, glass, aluminum, steel, and HDPE container) prior to disposal into the appropriate chute or bin - bagged recycling of recyclables is not permitted;
- 12.7 seek the assistance of any Manager for the disposal of:
- 12.7.1 garden waste;
  - 12.7.2 hard waste;
  - 12.7.3 unwanted items that are in good condition for charities; or

- 12.7.4 other waste (such as electronic/liquid waste and home detox such as paint and chemicals; and
  - 12.8 not burn rubbish or waste within a Lot or Common Property.
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### **13. Bicycles**

- 13.1 A Member or Occupier must not:
    - 13.1.1 permit any bicycle to be stored on Common Property except in areas designated by the Owners Corporation or otherwise with its written consent; and
    - 13.1.2 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 or balconies.
  - 13.2 Members or Occupiers must indemnify and keep indemnified the Owners Corporation on a full indemnity basis for the costs of repairing any damage to the Common Property arising out of bringing their bicycles on to any Lot (for example, corridors).
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### **14. Signage and Windows**

- 14.1 A Member is not permitted to display signs, advertising or notices on any Lot, including for the purpose of offering for sale or lease or letting any Lot or Common Property, without the consent of the Owners Corporation. Any sign that is erected must be of a standard that shall not detract from the overall appearance of the Development.
  - 14.2 A Member is not permitted to display any advertising material, logos or sign writing to any external window, glazing or external solid face of a lot without the written consent of the Owners Corporation.
  - 14.3 A Member must not allow any glazed portions of the Lot or Common Property to be tinted or otherwise treated with the intention of changing the visual characteristic of the Development.
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### **15. Rights of Entry**

A Member of a Lot, upon receiving reasonable notice from the Owners Corporation(s), must allow the Owners Corporation(s) or any contractors, sub-contractors, workmen or other person authorised by it, the right of access to their Lot for the purpose of carrying out works or effecting repairs on mains, pipes, wires or connection or any water, sewerage, drainage, gas, electricity, telephone or other system or service, whether to their Lot or to any adjoining Lot or the Common Property.

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### **16. Security**

The Owners Corporation(s) may make rules and regulations to ensure the security of Only Apartments from intruders and otherwise with regard to the use and means of access to any roadways created upon the Common Property.

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**17. Contact**

Each Member must advise the Manager of any out of normal business hours contact address, email and telephone number for their Lot and must promptly advise the Manager of any change in their address, email and telephone number.

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**18. Consent of Owners Corporation(s)**

A consent given by the Owners Corporation(s) 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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**19. Enforcement of Domestic Building Contract**

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

- 19.1 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:
- 19.1.1 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;
  - 19.1.2 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;
  - 19.1.3 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
  - 19.1.4 any other enforcement action the Initial Owner considers appropriate in the circumstances; and
- 19.2 the Members agree to pay or reimburse the Initial Owner its portion of any enforcement relative to its lot liability.

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**20. Complaints and Disputes**

- 20.1 Any Dispute must be dealt with at first instance in accordance with this Rule 20.1.
- 20.2 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 20.
- 20.3 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:
- 20.3.1 arrange a meeting between the parties to resolve the Dispute; or

- 20.3.2 waive the requirement for the parties to meet.
- 20.4 Notwithstanding the course of action elected by the Committee under Rule 20.3, 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.
- 20.5 Without limiting the generality of this Rule 20.4, where no formal complaint is made by a Member or Occupier and the Owners Corporation(s) otherwise becomes aware of a Dispute, the Owners Corporation(s) (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:
- 20.5.1 arrange a meeting between the parties to resolve the Dispute; or
- 20.5.2 waive the requirement for the parties to meet.
- 20.6 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 20.3.1 or 20.5.2, the parties may revert to the dispute resolution mechanisms set out in the Act or other Law.

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## **21. Cost of Non-compliance**

The Member or Occupier must indemnify and keep indemnified the Owners Corporation(s) on a full indemnity basis against any action, demand, cost, liability or loss incurred by the Owners Corporation(s) 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(s) in recovering overdue charges from the Member or Occupier.

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## **22. Charges imposed on Members and Occupiers**

- 22.1 Any payments to the Owners Corporation(s) imposed on a Member or Occupier under the Rules, Act or Regulations will (until paid) be a charge on the Lot.
- 22.2 The Member or Occupier must accept a certificate signed by the Manager or valid tax invoice issued by the Owners Corporation(s) as prima facie proof of the costs and expenses incurred by the Owners Corporation(s) 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.
- 22.3 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.
- 22.4 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(s) and then be applied in repayment of the principal sum.

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

- 23.1 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:

- 23.1.1 the Owner and/or its equity partners (if any) is a Member or Occupier;
- 23.1.2 the Developer and/or its equity partners (if any) is a Member or Occupier;
- 23.1.3 any mortgagee or chargee of the Owner or Developer has an interest in any Lot; or
- 23.1.4 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.

- 23.2 Subject to Rule 23.4, 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:
  - 23.2.1 erect such barriers, fences, hoardings, signs as it deems necessary to facilitate any works to be carried out in relation to the Development; and
  - 23.2.2 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
  - 23.2.3 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
  - 23.2.4 erect for sale promotional advertising or other signs as the Developer may require on any part of the Common Property; and
  - 23.2.5 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
  - 23.2.6 limit or restrict access to certain areas of the Development including areas of the Common Property in order to expeditiously complete the Development; and
  - 23.2.7 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.

- 23.3 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 23 or contravene any right or reprieve afforded to the Owner and Developer under this Rule 23.

- 23.4 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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**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, 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 an assignment or novation of the contracts referred to in Rule 24.1 at the first meeting of the Owners Corporation.
- 24.3 The Owners Corporation must maintain any contracts 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, 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, 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 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. Restrictions – Trade or Business**

- 25.1 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 unless that Lot is a Commercial Lot, without the express written consent of the Owners Corporation(s).
- 25.2 If authorised to do so by the Owners Corporation(s), the Member or Occupier of any Lot may carry on a trade, business or other commercial use from the relevant Lot, provided:
- 25.2.1 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
- 25.2.2 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
- 25.2.3 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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**26. Signage & Other Licences**

- 26.1 The Owners Corporation(s) may grant the Owner or the Developer:
- 26.1.1 a lease and licence including but not limited to for the provision of information technology infrastructure relating to broadband services to the Development;
  - 26.1.2 a licence to host festivals, parties or other celebratory or promotional events in the main lobby area or any other recreational areas within the Development;
  - 26.1.3 a licence to place and maintain sale signs, insignias, logos and other fixtures and fittings for marketing purposes on the Common Property; or
  - 26.1.4 allow the Owner's or the Developer's representatives and their invitees to conduct selling activities from a Lot, if not sold prior to completion, which will serve as a display unit,
- provided the Owner and/or Developer uses their 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(s).
- 26.2 A Member or Occupier of the Lot must not hinder or impede the Owner and/or the Developer from exercising their rights under any agreement entered into under this Rule.
- 26.3 The Owners Corporation(s) must procure all the necessary consents and resolutions to give effect to the matters set out in this Rule 26.
- 26.4 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 26.

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**27. Commercial Area**

- 27.1 Without limiting any other rule, the proprietor or occupier of a Commercial Lot used for Commercial Purposes must:
- 27.1.1 take out its own bins on each garbage collection day to the bin collection area nominated by the Owners Corporation(s), and bring the bins in before 9:00am on each collection day Monday to Saturday and before 10:00am on Sundays;
  - 27.1.2 avoid unnecessary noise when filling bins and ensure contractors pick up between 8:00am and 9:00am Monday to Saturday and between 9:00am and 10:00am on Sundays;
  - 27.1.3 ensure lids on bins are securely closed at all times and ensure that bins are kept clean;
  - 27.1.4 ensure all cardboard and paper waste is cut up or folded and neatly contained in bins;
  - 27.1.5 store all bins, bottles, cardboard/paper and any other refuse within the relevant Lot (but not any car park forming part of that Lot) and must not store bins, bottles, cardboard/paper or any other refused on common property except where designated by the Owners Corporation(s) from time to time;

- 27.1.6 any perishable rubbish must be refrigerated and hidden from view;
  - 27.1.7 washing down of bins must only be carried out within the Lot, excluding car spaces;
  - 27.1.8 comply with all health, noise and other regulations in carrying on the business from the Lot;
  - 27.1.9 any mechanical fluing must be charcoal filtered or equivalent;
  - 27.1.10 small utility deliveries are to be between 5:30am-6:00pm Monday to Friday and 6:30am – 6:00pm Saturdays & Sundays;
  - 27.1.11 large deliveries are to be between:
    - (a) 8:00am – 6:00pm Monday to Friday; and
    - (b) 9:00am – 6:00pm Saturday to Sunday;
  - 27.1.12 not permit electronic gambling machines;
  - 27.1.13 make all reasonable attempts to address/treat any odours that emanate from the Lot;
  - 27.1.14 ensure that all wall, floor and ceiling linings and treatments are acoustically treated to ensure that an acoustic performance level of STC30 is achieved; and
  - 27.1.15 ensure that its employees, customers, contractors or invitees use only the toilet facilities within the Commercial Lot and not any other toilet facilities in the Development.
- 27.2 Nothing herein will prevent or prohibit any owner or Occupier of a Commercial Lot from carrying on its reasonable business operations within a Commercial Lot and to apply for, and obtain, any planning permit, liquor licence, or any other legislative consent or permit which the owner of any commercial Lot may apply for, provided that all times the proprietor or occupier of any such commercial Lot:
- 27.2.1 operates lawfully;
  - 27.2.2 obtains each and every permit, liquor licence or other consent required; and
  - 27.2.3 operates within the terms of any such liquor licence, permit or consent.
- 27.3 The owner or Occupier of any Commercial Lot will be responsible for all costs associated with the cleaning, repairs and maintenance of the areas licensed to them. The licensees will be responsible for ensuring that these areas are kept in a pristine condition at all times.
- 27.4 Any owner or Occupier of a Commercial Lot will be entitled to reasonable access at all times for invitees and customers through those parts of the Common Property necessary for usual business practice.
- 27.5 The Owners Corporation(s) will not hinder access to the Commercial Lots via the main front entry except when they are required to undertake routine maintenance of these areas.
- 27.6 Rule 14 does not apply to a Lot used for Commercial Purposes.
- 27.7 The owner or any Occupier of any Commercial Lot must only place or install signage in specified areas available for signage as directed by the Owners Corporation.

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## **28. Moving object on or through Common Property**

- 28.1 Members intending to move furniture through Common Property must only move furniture:
- 28.1.1 with 72 hours prior approval from the Manager for the day and time, in order to coordinate the movement of carriers or removalists and to protect lifts, etc.
  - 28.1.2 only move furniture through Common Property during the following hours:
    - (a) Monday to Friday, between 8:00am and 4:00pm;
    - (b) Saturday, between 8:00am and 1:00pm; and
- 28.2 Outside approved move days and hours and on public holidays, charges of \$150 per hour including GST (in 15 minute increments) must be paid to the Manager, upon presentation of an invoice to the Member.
- 28.3 Members moving furniture in or out at any time must not:
- 28.3.1 move any furniture or other article likely to cause damage or obstruction through Common Property without first notifying the Manager in sufficient time (72 hours prior notice) to enable the Manager to approve the request and be present and supervise the movement of any furniture or other article;
  - 28.3.2 permit any carriers or removalists to commence operations prior to their making contact upon arrival with the Manager;
  - 28.3.3 permit any vehicles to restrict access to any car park;
  - 28.3.4 conduct operations so as to unduly restrict access of other Members to any lifts or lobbies or restrict access to fire escapes;
  - 28.3.5 place any furniture or items in a lift other than that specified by the Manager and not until protective covers have been placed in the lift by the Manager;
  - 28.3.6 allow, or permit others to allow, furniture or items to come into contact in any way with any lift doors, including static contact of leaning or stacking against lift doors;
  - 28.3.7 damage Common Property when transporting any furniture, large object or deliveries to or from any Lot;
  - 28.3.8 leave rubbish, papers or other debris along the path of the move. The Member must ensure that carriers do not leave empty boxes, cartons or moving materials in any building or Common Property; and
  - 28.3.9 conduct the move in a quick and timely manner.
- 28.4 At the completion of the move in or out, the Manager will inspect the lifts, lobbies and Common Property for damage, marking or debris and if any is found, the Manager will notify the Member of amount payable for rectification of the damage or the removal of rubbish. The amount must be paid to the Owners Corporation within 7 days of the date of the invoice.

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## **29. Recreational Facilities**

- 29.1 When using the Recreational Facilities a Member and an Occupier must ensure that:

- 29.1.1 children below the age of 13 years are not in or around the Recreational Facilities unless accompanied by an adult Member or Occupier exercising effective control over them;
- 29.1.2 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 Manager's prior consent; and
- 29.1.3 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.
- 29.2 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 Committee) unless the consent of the Owners Corporation is obtained to use the facilities outside of these hours.
- 29.3 The Owners Corporation Committee shall determine and resolve the operational and access rules for the recreational Pod facilities, including bookings and the number of guests.
- 29.4 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.
- 29.5 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.
- 29.6 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.
- 29.7 A person who enters or leaves a Recreational Facility must ensure that any gate or door forming part of the Recreational Facility is in the closed position at all times, except when that person is in the act of entering or leaving the Recreational Facility.
- 29.8 No jumping, diving, running or boisterous behavior is permitted in any Recreational Facility.
- 29.9 No spitting is allowed in any Recreational Facility.
- 29.10 Suitable attire must be worn at all times in any Recreational Facility. Topless or nude bathing, sauna, steaming or exercise is prohibited in these areas and Common Property.
- 29.11 All users of the Recreational Facilities must carry their own towel and dry off before leaving a Recreational Area, as applicable.
- 29.12 All users of the Recreational Facilities do so at their own risk.

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## **30. Concierge**

- 30.1 Each Member and Occupier acknowledges that:
  - 30.1.1 a concierge will be engaged by Owners Corporation to service the residents of the Building, assist with functions and bookings with respect to parts of the Common Property within the Building; and
  - 30.1.2 the concierge will be located in the lobby area of the Building, which forms part of Common Property No. 1.

- 30.2 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.
- 30.3 The concierge service will operate from 8:00am to 4:00pm Monday to Friday, and at the discretion of the Owners Corporation on weekends and public holidays. The Owners Corporation may change the concierge hours at any time at its absolute discretion.

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### **31. Proximity Cards**

- 31.1 A Member in possession of a Proximity Card must:
- 31.1.1 keep the Proximity Card for their exclusive use and must not give the Proximity Card to any other person;
  - 31.1.2 not duplicate the card or permit it to be duplicated without the Owners Corporation's written permission;
  - 31.1.3 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;
  - 31.1.4 promptly notify the Owners Corporation if a Proximity Card is lost or destroyed; and
  - 31.1.5 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.
- 31.2 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.
- 31.3 Where a Member is in arrears in payment of the Owners Corporation levies in excess of two quarters, or in repeat breach of the rules, the Owners Corporation may suspend or cancel the Proximity Card for access to recreational facilities.
- 31.4 The Member must pay the cost of replacing any lost, stolen or destroyed Proximity Card issued to them.