

Date 2020

Owners Corporation Rules

Botanic Melbourne – Residential Lots only

Owners Corporation No. 2 of Plan PS801135L/S1

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Owners Corporation Rules – Botanic Melbourne, Residential Lots

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NOTES

The Act and Regulations 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, the Owners Corporation No. 1 Rules and the model rules prescribed under the Regulations.

1. **Definitions**

In these Rules:

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

Botanic Melbourne means the land and improvements contained in the Plan and includes all the Lots and the Common Property.

Building Works means all design, building and construction works including the construction, erection, fixing, excavation, installation or otherwise or any item not originally included with or part of a Lot or Common Property.

Bicycle Rack means a bicycle storage space in the Common Property designated for the storage of bicycles.

Common Property means Botanic Melbourne and any improvements erected on 25-29 Coventry Street, Southbank designated as common property on the Plan.

Council means Melbourne City Council

Developer means Evolve No 21 Pty Ltd ACN 159 050 674 or any Related Body Corporate responsible for the development of the Land 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, contractors, subcontractors and invitees.

Development means the development of Botanic Melbourne as a mixed use residential community and associated facilities including the marketing and sale of Lots.

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; or
- (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.

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

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

Lot means a lot shown on the Plan.

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, guests, servants, employees, agents, children and licensees.

Owners Corporation means the limited Owners Corporation No 2 on the Plan.

Owners Corporation No. 1 Rules means the Rules for the unlimited Owners Corporation on the Plan of which the Owners Corporation forms part.

Plan means Plan of Subdivision No. PS801135L/S1.

Recreational Facilities means those facilities created by Owners Corporation from time to time for use by Members and may include a swimming pool, landscape garden and a function room (for use including but not limited to a boardroom and meeting room for resident use).

Regulations means the *Owners Corporation 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.

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 on the Plan, the restriction will prevail.

3. Relationship with Owners Corporation No. 1 Rules and model rules

If there is any conflict between these Rules and the Owners Corporation No. 1 Rules and the model rules prescribed under the Regulations, the Owners Corporation No. 1 Rules prevail.

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 Botanic Melbourne;
- 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;
- 4.1.6 obstruct or block any car parking spaces forming part of the Common Property;
- 4.1.7 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;

- 4.1.8 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;
- 4.1.9 use or permit their Lot or any part of the Common Property to be used for any trade or business;
- 4.1.10 use machinery hammer drills or jack hammers or other noise emitting power tools in a Lot between the hours of 5:00 pm and 8:00 am on weekdays and on weekends or such hours not permitted by the authorities;
- 4.1.11 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;
- 4.1.12 allow the entry door or any external door of any Lot or on Common Property to be physically restrained from closing in any way;
- 4.1.13 make or permit to be made noise from music, appliances or otherwise between the hours of 11.00 pm to 8:00 am Monday to Friday and from midnight to 8.00 am on Saturday and/or Sunday which may be heard outside the Member's Lot or which would otherwise be in breach of the Environment Protection Act 1970 (Vic) or the Environment Protection (Residential Noise) Regulations 2008 (Vic); or
- 4.1.14 contravene the fire regulations by installing unapproved dead locks or peep holes on its Lot that would void the Owners Corporation insurance policy. Any additional security device(s) installed must be approved by Owners Corporation.

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;
- 4.2.2 comply with all laws relating to the Lot including, without limitation, any requirement, notices and orders of any governmental authority; and
- 4.2.3 without limiting rule 4.2.2, install smoke detectors on their Lot and ensure that all smoke detectors installed are regularly maintained and tested, with batteries replaced regularly.

5. Pets and Animals

- 5.1 A Member or Occupier must not allow their animal/s to enter the Common Property within the Recreational Facilities at any given time unless written consent is obtained from the Owners Corporation.
- 5.2 A Member or Occupier can keep any animal upon a Lot or the Common Property except within the Recreational Facilities, unless the Member or Occupier 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.
- 5.3 A Member or Occupier must ensure that any animal belonging to them does not urinate or defecate on Common Property including internal court yards.
- 5.4 A Member or Occupier must ensure that any animal belonging to them must be on a lead at all times when on the Common Property.

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.
- 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.
- 6.4 A Member or Occupier must not use its car park lot for any purposes other than for parking of vehicles without first obtaining the written approval of the Owners Corporation.
- 6.5 A Member or Occupier of a car park lot must not park or leave a vehicle or permit a Member to be parked or left on Common Property so as to obstruct any driveway, entrance or access to a Lot, or in any place other than in a parking area that may be specified for such purpose by the Owners Corporation.
- 6.6 A Member or Occupier of a car park lot must not park or permit to be parked any vehicle, trailer or motorcycle or bicycle other than within that Member's car park lot.

7. Appearance

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.

8. Balconies

Without limiting any other of these Rules, 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;
- 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;
- 8.12 install bars, screens or grilles or other safety devices to the exterior of any windows or doors on the external façade of a Lot;
- 8.13 attach to or hang from the external facade of the Lot any aerial or any security device or wires;
- 8.14 install any external wireless, television aerial, sky dish receiver, satellite dish or receiver or any other apparatus to the external façade of the Lot; and
- 8.15 install any pipes, wiring, cables or the like to the external facade of the Lot.

In accessing any part of a Lot in accordance with Rule 7 of the Owners Corporation No. 1 Rules, the Owners Corporation must endeavour to cause minimal disturbance and inconvenience to that Member or Occupier and must reasonably compensate any Member or Occupier for any damage caused to the Member or Occupier's property or personal effects as a result of any maintenance works to the Common Property undertaken by the Owners Corporation under this Rule.

9. Fire control

9.1 A Member or Occupier must not:

9.1.1 use or interfere with any fire safety equipment except in the case of an emergency;

9.1.2 obstruct any fire stairs or fire escape; and

9.1.3 allow the fire safety equipment (e.g. smoke detectors as installed in respect to their Lot) to become non-operational.

9.2 The Member or Occupier must ensure compliance with all statutory and other requirements relating to fire and fire safety in respect of their Lot, including but not limited to:

9.2.1 ensuring that smoke detectors installed in the Lot are properly maintained and tested on a regular basis; and

9.2.2 that back up batteries relating to smoke detectors are replaced when required.

9.3 To avoid false alarm call outs by the fire brigade, a Member or Occupier must not:

9.3.1 smoke on Common Property, including the corridors, floor landings, foyer, lifts, stairwells and car park or such other parts of the Common Property, as the Owners Corporation or the Manager may designate from time to time;

9.3.2 open the entry door to their Lot in non-dangerous instances (such as smoke from burning toast or other food) to eliminate the resulting smoke from their Lot. Only windows should be opened to allow smoke to escape in non-dangerous situations;

9.3.3 open the entry door to their Lot whilst having steam cleaning or dry cleaning of their carpet undertaken;

9.3.4 utilise fire hoses except in the case of an emergency; and

9.3.5 leave open the entry door of their Lot whilst having building works undertaken.

9.4 For the avoidance of doubt, in cases of negligence resulting in a false alarm call out being made by the fire brigade, the associated cost will be charged to the Member or Occupier identified as being responsible which such amount to be paid within seven (7) days to the Owners Corporation or the relevant fire authority.

10. Building Works

10.1 A Member must not undertake any Building Works affecting the exterior appearance of a Lot, including the removal or replacement of materials, fixing or having fixed any electrical, audio visual, or communication device without first:

- 10.1.1 submitting to the Owners Corporation for approval plans and specifications of any proposed Building Works;
 - 10.1.2 supplying to the Owners Corporation such further particulars of the proposed works as the Owners Corporation may request and as shall be reasonable to enable the Owners Corporation to be reasonably satisfied that those proposed works accord with the reasonable aesthetic appearance of the façade of the Development
 - 10.1.3 obtaining, 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;
 - 10.1.4 receiving written approval from the Owners Corporation to proceed with those specified Building Works;
 - 10.1.5 obtaining and supplying copies to the Manager of all requisite permits, approvals and consents under all relevant Laws;
 - 10.1.6 paying 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;
 - 10.1.7 causing to be effected and maintained during the period of the Building Works a contractor's all risk insurance policy;
 - 10.1.8 delivering 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.
- 10.2 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:
- 10.2.1 the Building Works are undertaken in a reasonable manner so as to minimise any nuisance, annoyance, disturbance and inconvenience to other Members or Occupiers;
 - 10.2.2 building materials are not stacked or stored in Common Property;
 - 10.2.3 scaffolding is not erected on the Common Property or exterior of the Building;
 - 10.2.4 construction work complies with all Laws of the relevant Authorities;
 - 10.2.5 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;
 - 10.2.6 the exterior and Common Property of the Building is at all times be maintained in a clean and tidy state;
 - 10.2.7 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

- 10.2.8 all contractors and tradesmen use only the basement, lifts, lobby and areas designated by the Manager when working in the Lot.
- 10.3 Where a Member or Occupier commissions Building Work in accordance with Rule 10.2, 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.
- 10.4 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.
- 10.5 For the avoidance of doubt, this Rule needs to be satisfied by a Member in addition to its obligations under Rule 7 of Owners Corporation No. 1 Rules.

11. Garbage disposal

A Member of Lot must:

- 11.1 except where the Owners Corporation No. 1 Rules 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 at any time except on days designated for rubbish collection;
- 11.2 comply with all requirements of Governmental Agencies relating to the disposal of garbage;
- 11.3 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;
- 11.4 ensure that rubbish is transported from their Lot to the designated garbage room on the Common Property in an appropriate watertight receptacle; and
- 11.5 comply with the requirements and/or conditions of any waste and/or recycling management plan required by Council as directed by the Owners Corporation of the Manager.

12. 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 indemnify and keep 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.

13. Fittings

13.1 A Member or Occupier must:

13.1.1 not modify any air-conditioning, heating or ventilation system or associated ducting servicing that Lot without the prior consent of the Owners Corporation;

13.1.2 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

13.1.3 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.

13.2 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

14. Provision of Services

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

14.1 the repair and maintenance of all Common Property including gardens, trees, paved areas and landscaping; and

14.2 any other service or facility provided by the Owners Corporation for the benefit of the Members.

15. Support and provision of Services

15.1 Except for the purposes of maintenance and renewal and with the written consent of the Owners Corporation, a Member or Occupier must not do anything or permit anything to be done on or in relation to that Lot or the Common Property which results in:

15.1.1 the structural and functional integrity of any part of the Common Property being altered, changed or impaired; or

15.1.2 the passage or provision of services through the Lot or the Common Property being

15.2 A Member or Occupier must not install a safe in a Lot without the written consent of the Manager and before submitting to the Manager a structural engineering report in respect of the proposed installation. The Member or Occupier acknowledges that they will be liable for all reasonable costs that the Manager may incur in reviewing reports provided pursuant to this Rule.

- 15.3 The Owners Corporation may share among the Members the common costs of supply, consumption and maintenance of any shared facility or services (including that for gas, power and/or water supply) required for heating or cooling the Lots or cooking within the Lots or shared supply of lighting to a Lot or Lots (including any carpark lot or storage lot).
- 15.4 The Manager has the discretion to apportion such costs taking into account the benefit, whether wholly, substantially or nominally, to or usage by a Lot for the particular the period being apportioned or the Manager may charge a proportion of such service and supply charges relating to the relevant Lot calculated by the Manager on a proportional rate by dividing the unit liability of that Lot by the total unit liability of all Lots serviced jointly by the service.
- 15.5 For the avoidance of doubt, the Manager reserves its rights pursuant to section 49(2) of the Act.

16. Use of Common Property

A Member or Occupier must not:

- 16.1 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;
- 16.2 create any undue noise, odours, vibrations or behave in a manner likely to interfere with the peaceful enjoyment of the Proprietor or Occupier of another Lot or of any person lawfully using Common Property;
- 16.3 do or permit anything which might cause structural damage to the Common Property;
- 16.4 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;
- 16.5 interfere with the operation of any equipment installed on the Common Property without the prior written consent of the Owners Corporation;
- 16.6 interfere with any personal property vested in the Owners Corporation;
- 16.7 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;
- 16.8 obstruct a driveway or entrance to a Lot or any other road on Botanic Melbourne;
- 16.9 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;
- 16.10 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;
- 16.11 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;

- 16.12 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;
- 16.13 hold or allow to be held any public auction on or near the Common Property;
- 16.14 directly instruct any contractors or workmen employed by the Owners Corporation unless so authorised;
- 16.15 except with the consent in writing of the Owners Corporation, use for their own purposes as a garden any portion of the Common Property;
- 16.16 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;
- 16.17 smoke or consume alcohol on any part of the Common Property including but not limited to the stairwells, lifts, foyers and carpark forming part of the Common Property or such other parts of the Common Property as the Owners Corporation or the Manager may designate from time to time;
- 16.18 use or permit to be used in or on the Common Property, tricycle, (non-motorised) scooters, skateboards, rollers skates, roller blades or the like;
- 16.19 dispose nor permit disposal of cigarette butts, cigarette ash or any other type of rubbish over their balconies/terrace, windows or on any Common Property;
- 16.20 use their balcony/terrace/external area without consideration for surrounding properties (particularly with respect to noise, behaviour and appropriate clothing); and
- 16.21 dirty, soil or stain any part of the Common Area floors with muddy, dusty or dirty shoes

A Member and/or Occupier use the Common Property at their own risk.

17. Behaviour of Invitees

- 17.1 The duties and obligations imposed by these 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**).
- 17.2 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.
- 17.3 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 17.1 and 17.2.
- 17.4 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.

18. Owners Corporation Fees

- 18.1 The Member must pay the fees set by the Owners Corporation to cover general administration and maintenance (including the cost of maintenance of any lifts within the Common Property), insurance and other recurrent obligations quarterly in advance according to their lot entitlement.
- 18.2 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.
- 18.3 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.

19. Security

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

20. Security of Common Property

- 20.1 A Member or Occupier must not do anything which may prejudice or be detrimental to the security, integrity or safety of the Common Property or Botanic Melbourne. This includes, but is not limited to, ensuring that all entry into and exit from Botanic Melbourne is carried out via a secure airlock entry access area or by way of the designated carpark entries and exits.
- 20.2 A Member or Occupier must not allow persons unknown to or un-accompanied by them to follow them through or entry to the secured doors to Botanic Melbourne or carpark to the lobby or any other Common Property.

21. Contact

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

22. 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.

23. Complaints and Disputes

- 23.1 Any Dispute must be dealt with at first instance in accordance with this Rule 23.1.

- 23.2 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 23.2.
- 23.3 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:
- 23.3.1 arrange a meeting between the parties to resolve the Dispute; or
- 23.3.2 waive the requirement for the parties to meet.
- 23.4 Notwithstanding the course of action elected by the Committee under Rule 23.3, 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.
- 23.5 Without limiting the generality of this Rule 23.4, 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:
- 23.5.1 arrange a meeting between the parties to resolve the Dispute; or
- 23.5.2 waive the requirement for the parties to meet.
- 23.6 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 23.3.1 or 23.5.2, the parties may revert to the dispute resolution mechanisms set out in the Act or other Law.

24. 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.

25. Owners Corporation Committees

- 25.1 The Committee, as appointed by the Owners Corporation, may from time appoint sub-committees (**Sub-Committees**) to assist in the performance of its functions. The Committee can delegate any or all its functions to a Sub-Committee as permitted by law.
- 25.2 Sub-Committees must:
- 25.2.1 be comprised of Lot owners or Lot owner proxy holders;
- 25.2.2 act in accordance with the Committee's instructions; and

- 25.2.3 report to the Committee in relation to the performance of its functions.
- 25.3 A member of the Owners Corporation Committee or Sub-Committee must:
 - 25.3.1 act honestly and in good faith in the performance of his or her functions; and
 - 25.3.2 exercise due care and diligence in the performance of his or her functions; and
 - 25.3.3 not make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person.
- 25.4 The Owners Corporation may implement a Code of Conduct for the Committee or a Sub-Committee. If a Committee or Sub-Committee member fails to abide by an approved Code of Conduct it will provide good reason for the member to be removed.

26. Charges imposed on Members and Occupiers

- 26.1 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.
- 26.2 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.
- 26.3 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.
- 26.4 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.

27. Rules Subject to Rights of the Developer

- 27.1 These Rules do not apply to and, are not enforceable against the Developer or its mortgagee or chargee, for so long as any of the following apply:
 - 27.1.1 the Developer and/or its equity partners (if any) is a Member or Occupier;
 - 27.1.2 any mortgagee or chargee of the Developer has an interest in any Lot; or
 - 27.1.3 the Developer and/or its 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 Developer their mortgagee or chargee may be engaged in or which may need to be carried out in order to complete construction of the Buildings and facilities comprised in the Plan or the Development.

- 27.2 Subject to Rule 27.4, the Developer and its equity partners (if any), its mortgagees and chargees must be and are by this Rule, authorised by each and every member of each and every Owners Corporation in the Plan and by each and every Owners Corporation in the Plan to:

- 27.2.1 erect such barriers, fences, hoardings, signs as it deems necessary to facilitate any works to be carried out in relation to the Development; and
- 27.2.2 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
- 27.2.3 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
- 27.2.4 erect for sale promotional advertising or other signs as the Developer may require on any part of the Common Property; and
- 27.2.5 grant rights to use or access through or over the Common Property to third parties on such terms and conditions as the Developer or its mortgagee or chargee thinks fit; and
- 27.2.6 limit or restrict access to certain areas of the Development including areas of the Common Property in order to expeditiously complete the Development; and
- 27.2.7 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; and
- 27.2.8 have exclusive use of the amenities located on the Common Property, up to a maximum of 3 occasions within the first 12 months following completion of the construction of the Development for the sole purpose of marketing and promotional activities,

provided that the Developer and 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

- 27.3 The Owners Corporation 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 Developer or its mortgagee or chargee 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 which would revoke this Rule 27 or contravene any right or reprieve afforded to the Developer under this Rule 27.
- 27.4 Every Member hereby consents to and agrees to the Developer undertaking any or all of the rights of the Developer set out in this Rule without any prevention or hindrance of such Member.
- 27.5 In exercising its rights under this Rule, the Developer must act honestly and in good faith and with due care and diligence in the interests of the Owners Corporation and must have regard to the amenity of Members. The Developer must only exercise its rights to the extent necessary for the genuine Development. The Developer must not exercise its rights under this Rule to arbitrarily exclude the Owners Corporation or the participation of Members.

28. Restrictions – Trade or Business

- 28.1 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.
- 28.2 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:
- 28.2.1 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
 - 28.2.2 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
 - 28.2.3 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.
 - 28.2.4 This Rule 28 does not prevent the activities of carers and/or support workers to be provided within a Lot.

29. Warranties & Novation or assignment of contracts

- 29.1 The Developer or its builder or subcontractors (all the '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.
- 29.2 The Developer must and the Owners Corporation(s) must accept, assignment or novation of the contracts referred to in Rule 29.1 at the first meeting of the Owners Corporation.
- 29.3 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.
- 29.4 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.
- 29.5 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.
- 29.6 All Members must contribute its proportion of the cost incurred by the Owners Corporation in complying with this Rule 29 relative to the lot liability on the Plan.

30. Signage & Other Licences

- 30.1 The Owners Corporation may grant the Developer:
- 30.1.1 a lease and licence including but not limited to for the provision of information technology infrastructure relating to broadband services to the Development;
 - 30.1.2 a licence to host festivals, parties or other celebratory or promotional events in the main lobby area;
 - 30.1.3 a licence to place and maintain sale signs, insignias, logos and other fixtures and fittings for marketing purposes on the Common Property; or
 - 30.1.4 allow 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,
 - 30.1.5 provided 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.
- 30.2 A Member or Occupier of the Lot must not hinder or impede the Developer from exercising its rights under any agreement entered into under this Rule.
- 30.3 The Owners Corporation(s) must procure all the necessary consents and resolutions to give effect to the matters set out in this Rule 30.
- 30.4 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 30.

31. Swimming Pool Area

A Member or Occupier must not breach or permit to be breached the rules stipulated by the Owners Corporation in respect to the use of the pool, spa (if any) and surrounding designated areas (**Pool Area**). These rules are:

- 31.1 Members and Occupiers only and guests when accompanied and supervised by a Member or Occupier (to a maximum of four guests per Lot) may use the Pool Area;
- 31.2 Children under the age of 16 years and non-swimmers in the Pool Area must be supervised at all times;
- 31.3 diving, running, ball games, noisy or hazardous activities or rough play are not permitted in the Pool Area;
- 31.4 no glassware, drinking glasses and sharp objects of any kind are permitted in the Pool Area (other than in the case of Owners Corporation functions);
- 31.5 users must shower before entering the Pool Area and dry off before leaving the Pool Area;
- 31.6 users must be suitably attired at all times consistent with the community and family nature of the Pool Area;
- 31.7 animals are not permitted in the Pool Area;

- 31.8 hours of use are between 6.00am and 10.00pm, or as otherwise determined by the Manager or the Committee of Management;
- 31.9 all users must wear suitable footwear to and from the Pool Area;
- 31.10 alcohol and food are not permitted in the Pool Area;
- 31.11 smoking is not permitted in the Pool Area;
- 31.12 spitting is not permitted in the swimming pool or spa or elsewhere in the Pool Area;
- 31.13 users of the Pool Area 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 Pool Area; and
- 31.14 no audible music is permitted within the Pool Area.

32. Use of Function Room/Residents Lounge/Kitchen & Dining

Rules governing the use of the function room will be determined from time to time by the Manager and/or the Committee of Management of the Owners Corporation otherwise the following applies:

- 32.1 use of the function rooms must be booked in advance with the Manager prior to use;
- 32.2 hours of use are between 7.30am and 10.00pm, or as otherwise determined by the manager and the Committee of Management from time to time;
- 32.3 a charge for use may apply, such charge being determined by the Manager and/or the Committee of Management of the Owners Corporation from time to time;
- 32.4 a bond may be required to be paid when using the function room, such bond being determined by the Manager and/or the Committee of Management of the Owners Corporation from time to time;
- 32.5 users are required to ensure that the facilities are left in a neat and tidy condition and any costs incurred by the Owners Corporation to clean these facilities will be deducted from the bond; and
- 32.6 in the event that a function is greater than 20 or more attendees, security will need to be provided at the direction of the Owners Corporation and at the cost of the Member or Occupier of the Lot organising the function.

33. Recreational Facilities

- 33.1 In addition to the obligations under Rules 31 and 32 when using the Recreational Facilities a Member and an Occupier must ensure that:
 - 33.1.1 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;

- 33.1.2 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 2 guests per Member are permitted at any one time without the Manager's prior consent;
 - 33.1.3 alcohol is not taken into or consumed around the Recreational Facilities without the prior consent of the Owners Corporation; and
 - 33.1.4 it does not smoke within the Recreational Areas.
- 33.2 Members and Occupiers may only use the Recreational Facilities between the hours of 8am and 8pm (or such other hours determined by the Manager or as specified in these Rules) unless the consent of the Owners Corporation is obtained to use the facilities outside of these hours.
- 33.3 If a Member or Occupier breaches Rules 31 to 33 the Owners Corporation may cancel the Member or Occupier's access card to the Recreational Facilities such temporary or permanent basis that the Owners Corporation considers is necessary.
- 33.4 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.

34. Building inductions

- 34.1 To protect the health and safety of persons and upkeep of the building, the Owners Corporation may require Owners and Occupiers that enter Common Property to undertake a building induction.
- 34.2 Should a building induction be required, the Owners Corporation will conduct up to two (2) building inductions per occupiable Lot every calendar, year free of charge. The number of persons, per occupiable Lot, to participate in an induction is unlimited.
- 34.3 If a Lot requires more than two (2) inductions to be undertaken within a calendar year, the Owners Corporation may charge a reasonable fee to the Lot owner for every additional induction.
- 34.4 If an Owner or Occupier has not completed an induction the Owners Corporation may take measures to restrict non-essential areas of the Common Property (i.e. recreational facilities) to the relevant party(s) on either a temporary or permanent basis.

35. Rights of Entry

- 35.1 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 including maintenance of the façade and planter boxes and/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.
- 35.2 The Owners Corporation(s) will provide a Member with written notification of its intention to enter through and/or onto a Lot in accordance with this Rule.
- 35.3 In exercising its rights under this Rule, the Owners Corporation(s) will, or use its best endeavours that any of its contractors, sub-contractors, workmen or other person authorised

by it, will cause as little inconvenience to a Member or its invitees as is reasonable in all the circumstances.

35.4 In particular, the Owners Corporation(s):

35.4.1 will as and when required, cause the inaccessible windows of the Development to be professionally cleaned. For clarity the Member acknowledges that windows that are to be regularly cleaned from balconies are to be done so by the Member at the Member's expense; and

35.4.2 may access through and and/or onto a Lot for the purposes of carrying out the cleaning referred to in clause 35.4.1 upon giving a Member reasonable notice.

35.5 In relation to planter boxes that exist on the eastern aspect of the building and which are positioned within Common Property No. 1 adjacent to lots G08, G09, G10, G11 and G12, the Owners Corporation(s) may access the Lot at least quarterly in order to maintain the plants in the planter boxes.

35.6 A Member agrees not to refuse and to facilitate access to the Owners Corporation(s), its contractors, sub-contractors workmen or other person authorised by it provided that reasonable security arrangements are in place during such access.

36. Bicycle Racks

36.1 Each Lot will be allocated at least one Bicycle Rack in the area specified for such purpose on the Common Property by the Owners Corporation.

36.2 The Manager may allocate any Bicycle Rack to Members and Occupiers from time to time so that each Lot will have access to at least one Bicycle Rack at all times.

36.3 A Member or Occupier must not:

36.3.1 use a Bicycle Rack for any purpose other than is designed, without the prior written consent of the Owners Corporation;

36.3.2 assign, sub-let or grant any licence to any person for a Bicycle Rack without the prior written consent of the Owners Corporation; or

36.3.3 obstruct or block any Bicycle Rack or the use or operation of any Bicycle Rack forming part of the Common Property.

36.4 A Member or Occupier must not make any claim against the Owners Corporation or the Manager for any loss or damage it may suffer resulting from the use of any Bicycle Rack.

36.5 A Member or Occupier must comply with all directions of the Manager in relation to the allocation or use of any Bicycle Rack.

37. Infectious diseases

In the event of any infectious disease which may require notification by virtue of any statute, regulation or ordinance affecting any person in any Lot, the Member or Occupier of such Lot shall give, or cause to be given, written notice thereof and any other information which may be required relative thereto to the Manager and shall pay to the Owners Corporation the

expenses of disinfecting the Building where necessary and replacing any articles or things the destruction of which may be rendered necessary by such disease.