

Instrument setting out terms of easements or profits à prendre intended to be created or released and of restrictions on the use of land or positive covenants intended to be created pursuant to section 88B of the *Conveyancing Act 1919*

(Sheet 1 of 1 sheets)

Plan: **Plan of Subdivision of Lot 6 in DP 1058962 covered by Subdivision Certificate No.**

Full name and address of the owner of the land: Mirvac Projects Pty Limited ACN 001 069 245 of Level 26, 60 Margaret Street, New South Wales 2000

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Support and Shelter (Whole of Lot)	1 2	2 1
2	Easement for Fire stairs and Passages (1B)	1 2	2 1
3	Easement for Services (Whole of Lot)	1 2	2 1
4	Easement for Access Variable Width (1A) (Limited in Stratum)	1 2	2 1
5	Easement to Use Loading Dock and Service Corridors (1C) (Limited in Stratum)	1 2	2 1
6	Easement for Public Recreation Variable Width (1D) (Limited in Stratum)	1	Council

Draft 2

7 Railway Street, Chatswood

Strata Management Statement

Strata Schemes (Freehold Development) Act 1973

Strata Schemes (Leasehold Development) Act 1986

Strata Management Statement

Note: This strata management statement has effect as an agreement under seal binding:

- (a) an owners corporation of a strata scheme for part of the building;
- (b) a proprietor, mortgagee in possession or lessee of any lot in such a strata scheme; and
- (c) any other person in whom the fee simple of any part of the building concerned or its site (being a part affected by the Statement) is vested for the time being, or the mortgagee in possession or lessee of any such part. (Section 28W, *Strata Schemes (Freehold Development) Act 1973*; Section 57F, *Strata Schemes (Leasehold Development) Act 1986*.)

Introduction

- A 7 Railway Street is a mixed use “part building strata scheme” regulated by the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes Management Act 1996*.
- B A strata management statement is required where part of a building is subdivided by a strata scheme or strata schemes.
- C This strata management statement regulates the Members and Occupiers of the Building in respect of the control, management and maintenance of the components of the Building. It requires the Members to create a Building Management Committee to manage the shared facilities and attend to the other administrative matters.
- D The Members are the Owners of the different components of the Building. At 7 Railway Street, the Members are the:
 - (a) Residential Owners Corporation; and
 - (b) Commercial/Retail Stratum Lot Owner.

- E 7 Railway Street will be constructed in stages. The Developer has reserved to itself certain rights to enable it to complete the development (see **Part 6** of this Strata Management Statement). When complete, the Building will have two components, set out and described in the table below:

Component	Description	Member
Residential Lot	A residential strata scheme comprising up to 304 apartments and carparking components.	Residential Owners Corporation.
Commercial/Retail Stratum Lot	A Commercial/Retail Stratum lot.	Commercial/Retail Stratum Lot Owner.

- E This Strata Management Statement is divided into 8 parts:

Part 1 – Definitions and Interpretation

Part 2 – Members and Occupier's obligations

Part 3 – Building Management Committee and Managers

Part 4 – Shared Facilities and Special Areas

Part 5 – Maintenance, Repair and Upgrading and Architectural Code

Part 6 – Construction Period

Part 7 – Financial Matters and Insurance

Part 8 – General Disputes and Notices

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PART 1: DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

1.1 Statutory Definitions

A word has the meaning given to it in the Act if:

- (a) it is defined in the Act; and
- (b) used but not defined in this Statement.

1.2 Further Definitions

In this Statement:

Act means the Freehold Act or the Management Act or both as the context requires.

Application means each application lodged or to be lodged with the relevant Authority for Approvals.

Approvals means all consents, approvals, registrations, certifications, licences, permits or authorities from any Authority with respect to all or part of the Land.

Architectural Code means the architectural standards and landscape standards for the Building set out in **Schedule 3**.

Authority means any government or semi government authority or instrumentality, statutory or judicial authority, including Council.

Building means the improvements erected or intended to be erected on part of the Land.

Building Management Committee means the committee required by the Freehold Act and the subject of **clause 3**.

Building Manager means a person who the Building Management Committee for the time being appoints as Building Manager under **clause 7**.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Carpark means the carpark identified on the Plan of Shared Facilities.

Car Wash Bay means the car wash bay and located on the Residential Lot and referred to as a Shared Facility in the Shared Facilities Schedule.

Chairperson means the person appointed by the Building Management Committee as chairperson from time to time under **clause 4.1(a)**.

Commercial Premises means the premises forming part of the Commercial/Retail Stratum Lot.

Commercial/Retail Stratum Lot means lot 2 in the Plan or if this lot is subdivided by registration of a Strata Plan, the Strata Scheme created by the subdivision.

Commercial/Retail Stratum Lot Owner means either:

- (a) the registered proprietor of the Commercial/Retail Stratum Lot; or
- (b) the Owners Corporation created on registration of a Strata Plan subdividing the Commercial/Retail Stratum Lot.

Common Accessways means the areas the subject of the Easement for Access referred to on the Plan and all driveways located in the Building.

Common Property means the common property created on registration of a Strata Plan.

Construction Period means the period starting on the date of this Statement and ending on the later of the date:

- (a) an occupation certificate issues for the Commercial/Retail Stratum Lot; and
- (b) a Strata Plan is registered with respect to the Residential Lot.

Construction Works means all works which are considered, in the absolute discretion of the Developer, necessary or desirable for the Developer to construct buildings and install Services on a Stratum Lot including:

- (a) if necessary, to make an Application (even if an Approval in respect of the subject matter of that Application has already been granted);
- (b) applying to, varying or appealing an Approval;
- (c) dedicating those parts of the Land to be Dedicated;
- (d) engaging contractors and consultants to construct the buildings and install the Services; and
- (e) subdividing (including strata subdividing) and consolidating of one or more Stratum Lots.

Contractor means a person who provides services to the Building Management Committee who is not the Strata Manager.

Council means Willoughby City Council.

Dedicate includes dedicate or transfer with or without consideration.

Defaulting Member has the meaning stated in **clause 21.5**.

Developer means Mirvac Projects Pty Limited ACN 001 069 245 or either of them and includes any transferee and assignee.

Development Act means the *Strata Schemes (Freehold Development) Act 1973*.

Development Consent means the determination of major project application no. [insert] and dated [insert] issued by the [insert] as amended from time to time;

Easement means the easements which benefit or burden the Land from time to time.

Emergency Repairs means any repairs that require immediate rectification due to the nature of the fault and the impact on the operation, use, or enjoyment of the Building (or any part) or the occupational health and safety of any Occupiers or visitors to the Building.

Expert means a person appointed under **clause 25.2(b)**.

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

Insurance means the insurances taken out by the Building Management Committee under **clause 23.1**.

Land means the land contained in lots 1 – 3 inclusive in the Plan.

Law includes:

- (a) the provisions of a statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise; and
- (b) a requirement, notice, order or direction received from or given by a statutory, public or other competent authority.

Lot means a Stratum Lot or a lot in a Strata Plan within the Building.

Management Act means the *Strata Schemes Management Act 1996*.

Management Fee means the fee for the Building Manager under **clause 7** (and payable in the proportions set out in the Shared Facilities Schedule).

Members means those persons described in **clause 3.2**.

Occupier means a person in lawful occupation of a Lot.

Officer means a secretary, chairperson of the Building Management Committee or other officer as determined by the Building Management Committee under **clause 4.1(b)**.

Owner means the registered proprietor of a Stratum Lot or a Strata Lot.

Owners Corporation means an owners corporation created upon registration of a Strata Plan.

Party means a party bound by this Statement as stated in **clause 2.2**.

Plan means deposited plan **[insert]**.

Plan of Shared Facilities means the plan of Shared Facilities attached to this Statement in **Schedule 2**.

Representative means a representative of a Member appointed under **clause 3.3** from time to time.

Residential Carparking Spaces means the carparking spaces in the Carpark comprising part of a Lot within the Residential Lot.

Residential Garbage Room means the shared receptacle for garbage, recyclable material and waste located on the Residential Lot and referred to as a Shared Facility in the Shared Facilities Schedule.

Residential Lot means lot 1 in the Plan.

Residential Owners Corporation means the Owners Corporation constituted under the Management Act upon registration of the Strata Plan registered over the Residential Lot.

Residential Strata Scheme means the strata scheme created on registration of the Strata Plan registered over the Residential Lot.

Resolution means a Special Resolution or Unanimous Resolution, as the context provides.

Secretary means the person appointed by the Building Management Committee as secretary from time to time under **clause 3.4(b)**.

Service means:

- (a) the supply of water, gas, electricity, artificially heated or cooled air or heating oil;
- (b) the provision of sewerage and drainage;

- (c) transmission by telephone, radio, television, satellite or other means;
- (d) the provision of security systems; and
- (e) any other facility, supply or transmission.

Shared Costs means the following expenses in relation to a Shared Facility:

- (a) in relation to a Shared Facility:
 - (i) repair, maintenance, cleaning and operating costs (including energy and water usage);
 - (ii) renewal or replacement costs; and
 - (iii) any amount payable to a contractor under any maintenance agreement;
- (b) costs of insurance;
- (c) the fees and administrative costs in relation to this Statement, the Building Management Committee and the Building Manager; and
- (d) any amount determined by Resolution to be Shared Costs.

Shared Facilities means:

- (a) the services, facilities, machinery and equipment referred to in the Shared Facilities Schedule;
- (b) any alterations, additions or replacement of those items;
- (c) any pipes, wires, cables and ducts connected to or forming part of these items but not those parts exclusively serving a Member's Lot or Common Property;
- (d) any items necessary to operate or service the facilities, such as cleaning equipment and materials;
- (e) any area in which the Shared Facilities are located; and
- (f) any services, facilities, machinery and equipment which the Building Management Committee determines by Resolution are Shared Facilities.

Shared Facilities Schedule means the schedule of Shared Facilities attached to this Statement in **Schedule 1**.

Special Resolution means a resolution which is passed at a meeting of the Building Management Committee by at least three out of the four of those present and entitled to vote at the meeting.

Statement means this strata management statement.

Strata Lot means a lot within a Strata Scheme.

Strata Manager means the licensed strata managing agent appointed under **clause 6**.

Strata Management Fee means the fee for the Strata Manager under **clause 6** (and payable in the proportions set out in the Shared Facilities Schedule).

Strata Plan means a strata plan under the Act.

Strata Scheme means a strata scheme created on registration of a Strata Plan under the Freehold Act.

Stratum Lot means a lot in the Plan which has not been subdivided by a Strata Plan.

Stratum Lot Owner means the registered proprietor of a Stratum Lot.

Substitute Representative means a person appointed by a Member to represent them for the purpose of this management statement as a substitute for their representative.

Treasurer means the person appointed by the Building Management Committee from time to time as treasurer under **clause 4.1(b)**.

Tribunal means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Unanimous Resolution means a resolution which is passed at a meeting of the Building Management Committee against which no vote is cast.

Year means any of the following (as the context requires):

- (a) Year 1; and
- (b) a successive 12 month period commencing on the day after the end of Year 1.

Year End means the year end for accounting purposes determined by the Building Management Committee in accordance with **clause 21.3(a)**.

Year 1 means the period commencing on the date of registration of this Statement and ending on the Year End.

1.3 Interpretation

Unless expressed to the contrary, in this Statement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) a body or authority means, if that body or authority has ceased to exist, the body or authority which then serves substantially the same objects as that body or authority;
- (vi) a right includes a benefit, remedy, discretion or power;
- (vii) time is to local time in Sydney;
- (viii) "\$" or "dollars" is a reference to Australian currency;
- (ix) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (x) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (xi) this document includes all schedules and annexures to it; and
- (xii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;

1.4 Parties Bound Jointly and Individually

A covenant, representation, warranty or an agreement between more than one person binds them jointly and severally.

1.5 Headings

Headings do not affect the interpretation of this document.

1.6 Business Day

- (a) If anything is required to be done under this Statement on a day which is not a Business Day then it must be done on the next Business Day.
- (b) If an event occurs on a day which is not a Business Day, or occurs later than 5.00 pm local time at the place that the event occurs the event is deemed to have occurred on the next Business Day in the place that the event occurs.
- (c) A reference to a day is a reference to a time period which begins at midnight and ends 24 hours later.
- (d) A reference to a period of time unless specifically written otherwise, excludes the first day of that period.

PART 2: MEMBERS AND OCCUPIERS OBLIGATIONS

2 Parties Bound and General Obligations

2.1 Members

- (a) The Building has two components, being the:
 - (i) Residential Strata Scheme; and
 - (ii) Commercial/Retail Stratum Lot.
- (b) The owners of the two components are the Members of the Building Management Committee. They are the:
 - (i) Residential Owners Corporation; and
 - (ii) Commercial/Retail Stratum Lot Owner.

2.2 Parties Bound

This Statement has effect as an agreement under seal binding the Members and every Owner, lessee, Occupier or mortgagee in possession of a Lot in the Building.

2.3 General Obligations

The Members must:

- (a) promptly comply with their obligations under this Statement and the Act;
- (b) obey the directions of the Building Management Committee;
- (c) make sure the Insurances are effected and maintained; and
- (d) implement decisions of the Building Management Committee.

2.4 Inconsistency

- (a) The by laws of a Strata Scheme must not conflict with this Statement and the provisions of this Statement apply to the extent of any inconsistency.
- (b) If a by-law of a Strata Scheme conflicts with the provisions of this Statement, the Owners Corporation must at its own cost amend or repeal the inconsistent by-law.

2.5 Further Strata Management Statement on registration of Strata Plan

- (a) A Party (other than an Authority) must not object to, and is taken to have given its consent to:
 - (i) the registration of any Strata Plan or other plan of subdivision which subdivides one or more of the Stratum Lots; and
 - (ii) a strata management statement to be registered with a Strata Plan or other plan of subdivision set out in **clause 2.5(a)(i)** replacing or amending this Statement provided that the provisions of the strata management statement referred to in this **clause 2.5(a)(ii)**:
 - (A) are substantially similar to the provisions of this Statement; and
 - (B) do not materially adversely affect a Member's rights under this Statement; and

(C) does not affect the Party's interest in the Land.

(b) Each Member must:

- (i) execute a strata management statement referred to in **clause 2.5(a)(ii)** within 30 days of being required to do so by a Stratum Lot Owner;
- (ii) procure the consent of any mortgagee, chargee, covenant chargee, lessee or caveator of their Lot to the registration of a Strata Plan and the strata management statement contemplated by **clause 2.5(a)**; and
- (iii) do anything else reasonably necessary to give effect to the registration of a Strata Plan and the strata management statement contemplated by **clause 2.5(a)**.

2.6 Requirements for an Authority

(a) An Authority which is also a Party is taken to have given its consent to:

- (i) the registration of any Strata Plan or other plan of subdivision which subdivides one or more of the Stratum Lots; and
- (ii) a strata management statement to be registered with a Strata Plan or other plan of subdivision set out in **clause 2.6(a)(i)** replacing or amending this Statement if a copy of the draft replacement Statement or amendment to the Statement is given to the Authority and that Authority does not object within 15 days of receipt and provided that the provisions of the strata management statement referred to in this **clause 2.6(a)(ii)**:
 - (A) are substantially similar to the provisions of this Statement; and
 - (B) do not materially adversely affect that Authority's rights under this Statement; and
 - (C) does not affect that Authority's interest in the Land.

(b) If an Authority is required to consent to any matter in **clause 2.6(a)**, the Authority must not withhold its consent unreasonably.

2.7 Amending this Statement

Unless otherwise provided in this Statement, this Statement can only be amended in accordance with the relevant provisions of the Freehold Act and any other Laws as may be in force from time to time which set out the manner in which this Statement can be amended.

PART 3: BUILDING MANAGEMENT COMMITTEE AND MANAGERS

3 Building Management Committee

3.1 Establishing the Building Management Committee

- (a) The Members must establish the Building Management Committee within 3 months after the registration of this Statement.
- (b) The Building Management Committee cannot be dissolved while this Statement is in force.

3.2 Members of the Building Management Committee

The Members of the Building Management Committee are:

- (a) Residential Owners Corporation; and
- (b) Commercial/Retail Stratum Lot Owner.

3.3 Representatives

- (a) Each Member must:
 - (i) appoint a representative;
 - (ii) give to each other Member notice of the name, address, email address (if applicable) and telephone number of the representatives; and
 - (iii) serve notice on the other Members each time their contact details change.
- (b) Each Member may:
 - (i) change its representative at any time; and
 - (ii) appoint a casual representative for a particular meeting or meetings.
- (c) The representative or casual representative of a Member who is an Owners Corporation must be appointed by or selected in accordance with a resolution or a by law made by the Member.
- (d) If a Member is the registered proprietor of more than one Stratum Lot, the Member may appoint one representative to represent the Member for both Stratum Lots.

3.4 Functions

The functions of the Building Management Committee are to:

- (a) make decisions about matters delegated to the Building Management Committee under this Statement;
- (b) determine and levy contributions for the administrative fund and the sinking fund under **clause 21**;
- (c) operate, maintain, renew, replace and control the use of Shared Facilities;
- (d) change or add to or extend Shared Facilities;
- (e) change or add to or adjust Shared Costs;

- (f) effect the Insurances;
- (g) appoint and supervise any Contractor or agent, including the Strata Manager and Building Manager, engaged by the Building Management Committee;
- (h) register any variation to this Statement; and
- (i) comply with this Statement and the Act.

3.5 Decision Making

The Building Management Committee can only make decisions in accordance with this Statement and at a meeting by Resolution.

4 Officers of the Building Management Committee

4.1 Appointment of Officers

The Building Management Committee:

- (a) must appoint a Chairperson, Treasurer and Secretary as Officers;
- (b) may appoint any other Officer who the Building Management Committee considers necessary; and
- (c) must immediately appoint a replacement Officer if an Officer vacates his or her position.

4.2 Eligibility for Office

Officers must be a Representative, Substitute Representative or the Strata Manager.

4.3 Appointment of Officers

- (a) The Building Management Committee must appoint Officers within 3 months after the registration of this Statement.
- (b) The Building Management Committee may appoint new officers at any time.

4.4 Vacating Office

An Officer will have vacated their position if:

- (a) they are no longer a Representative or the Strata Manager;
- (b) the Building Management Committee:
 - (i) dismisses the Officer from their position; and
 - (ii) appoints a replacement Officer to that position; or
- (c) an Officer submits their resignation in writing stating the date which their resignation will become effective.

4.5 Performing functions

An Officer must perform his or her functions according to the Act, this Statement and the directions of the Building Management Committee.

4.6 Functions of Secretary

The functions of the Secretary are to perform the administrative, bookkeeping and secretarial functions of the Building Management Committee including:

- (a) answer communications sent to the Building Management Committee;

- (b) perform administrative and secretarial functions for the Building Management Committee;
- (c) convene meetings and prepare and distribute notices, agendas and minutes for those meetings;
- (d) serve notices on behalf of the Building Management Committee;
- (e) keep records (other than records which the treasurer must keep) for the Building Management Committee; and
- (f) make the records of the Building Management Committee available for inspection.

4.7 Functions of the Treasurer

The functions of the Treasurer are to:

- (a) prepare budgets;
- (b) prepare financial statements;
- (c) send out notices for, collect and bank contributions to the administrative fund and the sinking fund;
- (d) prepare outstanding levy certificates;
- (e) arrange for the preparation audit reports;
- (f) pay accounts; and
- (g) keep the accounting records of the Building Management Committee.

4.8 Functions of the Chairperson

The functions of the Chairperson are to preside at those meetings of the Building Management Committee which the chairperson attends. The Chairperson may appoint the Strata Manager to chair meetings of the Building Management Committee in the chairpersons absence or as desired by the chairperson from time to time.

4.9 Other Appointees

If the Building Management Committee appoints an Officer under **clause 4.1(b)**, it must clearly define the duties of the Officer.

5 Meetings and voting

5.1 Holding of Meetings

The Building Management Committee must hold a meeting:

- (a) if a Member requests by notice in writing;
- (b) at least once annually from the date of the first meeting of the Building Management Committee;
- (c) if the Building Management Committee is otherwise required to do so under this Statement; or
- (d) if the Strata Manager determines to hold a meeting.

5.2 Request for Meeting

- (a) A request for a meeting must be made to the Secretary and must state the issue or proposal for the meeting.
- (b) The Building Management Committee is not obliged to hold a meeting if the Member requesting it is a Defaulting Member.

5.3 Notice of Meetings

- (a) The Secretary of the Building Management Committee must normally give at least 5 Business Days' notice of a meeting to each Member.
- (b) In the case of an emergency or with the consent of each Member, the Building Management Committee may give a shorter notice.
- (c) A notice of a meeting must include:
 - (i) the time, date and place for the meeting; and
 - (ii) an agenda for the meeting.
- (d) An agenda for a meeting must include:
 - (i) the terms of the motions for resolution at the meeting;
 - (ii) a reference to whether a Special Resolution or Unanimous Resolution is required for each resolution;
 - (iii) the matters requested by notice in writing to be considered at the meeting by Members, Owners or Occupiers;
 - (iv) a copy of the minutes of the last meeting; and
 - (v) include a motion to adopt the minutes of the last meeting.
- (e) In the case of an emergency meeting a notice is not required to include the matters set out in **clause 5.3 (iii) to (v)**.
- (f) If the levying of contributions is an item on the agenda for a meeting, then the notice must include a copy of a budget and audited financial statements prepared by the Building Management Committee.

5.4 Quorum

- (a) At any meeting of the Building Management Committee, a quorum consists of two representatives of each Member.
- (b) If a quorum is not present within half an hour from the time appointed for a meeting, the meeting is adjourned for 2 Business Days.
- (c) The Building Management Committee must hold the adjourned meeting at the same time and at the same place notified for the original meeting.
- (d) The quorum for the adjourned meeting is that number of representatives present at the time appointed for the adjourned meeting.
- (e) At an adjourned meeting, one person may constitute a quorum.

5.5 Voting

- (a) At each meeting of the Building Management Committee each Member through any of its representatives is entitled to exercise 2 votes.
- (b) A Defaulting Member is not entitled to vote.

- (c) The chairperson does not have a casting vote at meetings of the Building Management Committee.
- (d) If the Building Management Committee decide on a matter, it must be decided by an Special Resolution unless otherwise stated in this Statement.
- (e) In the event that a vote results in a deadlock between the Members, the motion will be lost.

5.6 Matters requiring Unanimous Resolution

The matters that the Building Management Committee must decide by Unanimous Resolution are:

- (a) amending **clause 2.5** of this Statement or the definition of Unanimous Resolution in **clause 1.2** of this Statement;
- (b) changing, adding to or repealing parts of the Architectural Code;
- (c) the distribution to Members of surplus money in the sinking fund and administration fund;
- (d) changing, adding to or removing Shared Facilities other than a decision to repair Shared Facilities or to renew or replace minor items (unless otherwise specified in this Statement);
- (e) changing, adding to or adjusting Shared Costs (unless otherwise specified in this Statement);
- (f) changing, adding to or removing the Prohibited Purposes set out in **clause 15.1(b)**.

5.7 Location of Meetings

Upon request by the Building Management Committee, the Commercial/Retail Stratum Lot Owner must make available, upon receiving reasonable notice from the Building Management Committee, an area within the Commercial/Retail Stratum Lot for the Building Management Committee to hold a meeting contemplated by this **clause 5**.

6 Appointment of a Strata Manager

6.1 Appointment of a Strata Manager

- (a) The Building Management Committee may appoint a Strata Manager to assist the Building Management Committee in performing its functions, in particular its financial and secretarial functions.
- (b) When appointing a Strata Manager, the Building Management Committee may (but is not obliged to) appoint the same person as a strata manager appointed by an Owners Corporation.
- (c) Any appointment must:
 - (i) be in writing;
 - (ii) be signed by each Member;
 - (iii) be for a term (with options) not exceeding 4 years;
 - (iv) reserve to the Building Management Committee the power to continue exercising any or all of the functions delegated to the Strata Manager.

- (d) The Building Management Committee must monitor the performance of the Strata Manager.

6.2 Strata Management Fee

If a Strata Manager is appointed, the Members must contribute to the Strata Management Fee in the proportions set out in the Shared Facilities Schedule.

6.3 Delegation of functions

- (a) Subject to **clause 6.3(b)**, the Building Management Committee may delegate its functions and the functions of its officers to the Strata Manager.
- (b) The Building Management Committee may not delegate functions to the Strata Manager which the Building Management Committee may only exercise by Unanimous Resolution or functions which the Building Management Committee determines by Special Resolution may only be exercised by the Building Management Committee.

6.4 Strata Manager's Duties

The Strata Manager's duties may include to:

- (a) ensure the proper operation, repair, maintenance and renovation and replacement of the Shared Facilities;
- (b) effect and maintain Insurance on behalf of the Members;
- (c) implement decisions made by the Building Management Committee;
- (d) carry out the Building Management Committee's obligations in respect of any maintenance agreement;
- (e) undertake secretarial and other functions arising from this Statement;
- (f) maintain taxation and other statutory records, provide a public office and obtain an Australian Business Number for the Building Management Committee, and ensure compliance with all legal obligations with respect to taxation;
- (g) comply with any obligations of the Building Management Committee under the Management Act or this Statement; and
- (h) comply with any other duties determined by Resolution.

7 Appointment of a Building Manager

7.1 Appointment of a Building Manager

The Building Management Committee may enter into an agreement with a person to assist the Building Management Committee in the operation and management of the Shared Facilities which agreement must be in accordance with the Management Act and may provide for:

- (a) a term of up to 5 years with a maximum option of 1 option of up to 5 years, with rights for early determination by either the Building Management Committee or the Building Manager;
- (b) the carrying out of or as agent for Members, entering into contracts for cleaning, caretaking, inspection, maintenance, minor repairs, replacements and services to the Shared Facilities and any personal property vested in the Building Management Committee;

- (c) drafting plans under this Statement and administering them;
- (d) the provision of services to Members or Occupiers; and
- (e) anything else which the Building Management Committee agrees is necessary or desirable having regard to the operational and management requirements of the Building Management Committee.

7.2 Management Fee

The Members must:

- (a) contribute to the Management Fee in the same proportions as set out in the Shared Facilities Schedule for the Management Fee for services for the Building Management Committee; and
- (b) pay the whole cost of services provided for a Member pursuant to **clause 7.1(d)**.

7.3 General provisions regarding the Building Manager

- (a) At the expiration of an agreement entered into under **clause 7.1**, the Building Management Committee may enter into a further agreement on terms substantially similar to the agreement contemplated under that clause.
- (b) The Building Management Committee may not without the written consent of the Building Manager enter into more than one agreement under **clause 7.1** at any one time.
- (c) A Member and any Owner or Occupier of a Lot must not:
 - (i) interfere with or obstruct the Building Manager from performing his or her duties under an agreement entered into under **clause 7.1**;
 - (ii) interfere with or obstruct the Building Manager from using any part of the Shared Facilities lawfully designated by the Building Management Committee for use by the Building Manager.

PART 4: SHARED FACILITIES AND SPECIAL AREAS

8 Shared Facilities and Shared Costs

8.1 Shared Facilities

- (a) Shared Facilities are facilities and services which are used by more than one Member or are located on the land of a Member but used by another Member.
- (b) A list of the Shared Facilities is set out in the Shared Facilities Schedule
- (c) The Parties acknowledge that as at the date this Statement is registered, not all of the Shared Facilities listed in the Shared Facilities Schedule will be constructed and available for use by the Parties.

8.2 Use of Shared Facilities

- (a) The Shared Facilities Schedule specifies which Members and Occupiers are entitled to use each Shared Facility. If the Shared Facilities Schedule does not specify entitlement, each Member is entitled to use and enjoy the Shared Facility unless a specific provision of this Statement provides otherwise.
- (b) Each Party must use the Shared Facilities only for their intended purpose and follow the directions of the Building Management Committee.
- (c) The Building Management Committee may make rules in relation to the use of any Shared Facility.

8.3 Maintenance of Shared Facilities

- (a) Except as otherwise specified in this Statement, the Building Management Committee must carry out or arrange for the carrying out of maintenance, repair, operation, renovation and replacement of the Shared Facilities.
- (b) The Building Management Committee may at its discretion enter into maintenance agreements with Contractors to maintain the Shared Facilities.

8.4 Damage to Shared Facilities

A Party must:

- (a) immediately notify the Building Management Committee about damage to or a defect in a Shared Facility; and
- (b) pay the costs of repair for any damage to the Shared Facilities caused by that Party.

8.5 Shared Costs

- (a) The Building Management Committee must apportion the Shared Costs of a Shared Facility using the apportionment stated in the Shared Facilities Schedule.
- (b) The Building Management Committee must advise each Member of its proportion of the Shared Costs and must levy Members for contributions in accordance with **clause 21**.
- (c) Each Member must pay its proportion of the Shared Costs.

8.6 Review of Shared Costs

- (a) Where a Shared Cost has been calculated on the basis of usage, a review of usage shall be undertaken annually by the Building Management Committee to confirm that the percentage cost allocation in the Shared Facilities Schedule substantially reflects the actual usage by the respective Member.
- (b) If the actual usage of a Member is substantially different to the percentage cost allocation in the Shared Facilities Schedule the Parties shall adjust the percentage cost allocation in the Shared Facilities Schedule to accord with the percentages of actual use.
- (c) The Building Management Committee may recover from a Member costs associated with a Member's unauthorised use of a Shared Facility for a purpose that is not the intended purpose for the Shared Facility set out in the Shared Facilities Schedule.

8.7 Government Agency Compliance

The Building Management Committee must:

- (a) arrange for the inspection of Shared Facilities if required by a Government Agency; and
- (b) obtain any certification of the Shared Facilities required by Law.

9 Amending Shared Facilities and Shared Costs

- (a) The Building Management Committee may vary, modify, add a new facility, repair, renew or replace the Shared Facilities.
- (b) The Building Management Committee may add Shared Costs or adjust the division of Shared Costs if required.
- (c) As set out in **clause 5.6**, a Unanimous Resolution of the Building Management Committee is required to:
 - (i) change, add to or remove Shared Facilities other than for a decision to repair Shared Facilities or to renew or replace minor items; and
 - (ii) change, add to or adjust Shared Costs, unless otherwise specified in this Statement.
- (d) If the Building Management Committee passes a Unanimous Resolution to vary the Shared Costs and Shared Facilities, the Shared Facilities Schedule is automatically varied at the time the chairperson signs the minutes which record the Unanimous Resolution.

10 Access

10.1 Access to Shared Facilities

- (a) Each Party must give the Building Management Committee and other Members:
 - (i) access to and from the Shared Facilities by the most appropriate means provided access does not unreasonably interfere with that Members lawful use of the area; and

- (ii) access to operate, maintain, repair, renovate and replace the Shared Facilities.
- (b) Appropriate means of access to a Shared Facility does not include:
 - (i) access through a Strata Lot without the prior consent of the Occupier of that Strata Lot; and
 - (ii) any other means of access prohibited under this Statement.
- (c) Occupiers must give the Building Management Committee, Members and Occupiers access to use the Shared Facilities located within that Occupiers' Lot in accordance with the provisions of this Statement.
- (d) Reasonable notice must be given to an Occupier under **clause 10.1(a)** if access is required to maintain, repair or replace Shared Facilities.

10.2 Member's Right to Access

Members and Occupiers who access parts of the Building in accordance with their rights set out in this Statement must not unreasonably interfere with other Member's lawful use of the Building.

10.3 Emergency Access

In an emergency, each Member must give to all Parties access to all exit routes in the Building.

10.4 Conditions of Access

Except in an emergency and unless otherwise specified in this Statement, Occupiers may determine the times and reasonable terms of access (including reimbursement of costs) under this **clause 10**.

11 Additional Shared Facilities

11.1 Additional Shared Facilities

- (a) The development of a stage or stages in the Building by the Developer may or may not result in the creation of additional Shared Facilities.
- (b) The Parties acknowledge that the Developer may (acting reasonably) request the Parties to vary this Statement at any time to:
 - (i) include additional Shared Facilities, including specifying those Members entitled to use those additional Shared Facilities;
 - (ii) vary a Member's entitlement to use an existing Shared Facility as a result of the creation of the additional Shared Facilities; and
 - (iii) change, add to or adjust the division of Shared Costs to take into account the inclusion of the additional Shared Facilities and each Member's entitlement to use those additional Shared Facilities.

11.2 Consent

A Party must, if requested by the Developer under **clause 11.1(b)**:

- (a) consent to the creation of the additional Shared Facilities;
- (b) vote in favour of a Resolution to vary this Statement; and

- (c) execute all necessary documentation and do all things necessary to register an amendment to this Statement,

unless the rights of that Party will be materially detrimentally affected by the variation to this Statement.

12 Residential Garbage Room

12.1 Use of the Residential Garbage Room

The Residential Garbage Room is a Shared Facility for use by:

- (a) Residential Owners Corporation; and
- (b) Commercial/Retail Stratum Lot Owner.

12.2 Rules

- (a) Owners and Occupiers of a Lot:
 - (i) must comply with any rules regarding garbage disposal and recycling made by the Owners Corporation under the by-law instrument affecting that Lot (if applicable); and
 - (ii) may dispose of garbage and waste directly in the Residential Garbage Room or in the garbage chutes for each of the Residential Lot and the Commercial/Retail Stratum Lot (depending on size and volume);
 - (iii) place recyclable material in an area in the Residential Garbage Room determined from time to time by the Building Management Committee.
- (b) Members acknowledge that the Council or a private contractor may be responsible for collecting garbage and recyclable materials from the Residential Garbage Room.
- (c) Garbage, trade waste or recyclable material must not be placed:
 - (i) outside the Building; or
 - (ii) on any part of the Land,
that is not the Residential Garbage Room or is not otherwise designated by the Building Management Committee as an area for the storage of garbage and recyclable materials.

12.3 Amendment

Notwithstanding any other provision in this Statement, the Building Management Committee may not propose to amend or repeal this **clause 12** without first obtaining the prior written consent of the:

- (a) Residential Owners Corporation; and
- (b) Commercial/Retail Stratum Lot Owner.

13 Car Wash Bay

13.1 Use of the Car Wash Bay

The Car Wash Bay is a Shared Facility for use by:

- (a) Residential Owners Corporation; and

- (b) Commercial/Retail Stratum Lot Owner.

13.2 Hours

The Car Wash Bay may be used for car washing purposes between the hours of 7.30 am and 6.00 pm or other times as determined by time to time by Unanimous Resolution of the Building Management Committee pursuant to **clause 5.6**.

13.3 Amendment

Notwithstanding any other provision in this Statement, the Building Management Committee may not propose to amend or repeal this **clause 13** without first obtaining the prior written consent of the:

- (a) Residential Owners Corporation; and
- (b) Commercial/Retail Stratum Lot Owner.

14 Common Accessways

14.1 Shared Facility

The Common Accessways are a Shared Facility for use by the Members and their respective Owners and Occupiers.

14.2 Construction Period

During the Construction Period:

- (a) this clause only applies to so much of the Common Accessways as have been completed and are available for general use by more than one Member, subject to **clause 20.1(b)**; and
- (b) the Developer may without the prior consent of the Building Management Committee, from time to time, vary the position of the Common Accessways provided the variation of position still allows Members to access the Building.

15 Uses and Operation of the Commercial Premises

15.1 Permitted Use

- (a) Subject to **clause 15.1(b)**, Owners and Occupiers of the Commercial Premises must occupy and use a Commercial Premises only for commercial purposes permitted by Council.
- (b) The Building Management Committee may from time to time by Unanimous Resolution pursuant to **clause 5.6** determine other Prohibited Purposes for a Commercial Premises.

15.2 Operation of Commercial Premises

Owners and Occupiers of the Commercial Premises must:

- (a) use all reasonable endeavours to ensure that invitees and patrons of a Commercial Premises do not behave in a manner reasonably likely to cause harm, offence, embarrassment, nuisance or inconvenience to any Owner or Occupier of the Building;
- (b) ensure that the use of a Commercial Premises is commensurate with the high level quality of the Building and is not a Prohibited Purpose;

- (c) comply with the obligations under the Architectural Code with respect to signage and the exterior appearance of the Commercial Premises;
- (d) maintain the cleanliness and good reputation of the Building, and in that regard Owners and Occupiers of the Commercial Premises must:
 - (i) promptly and properly:
 - (A) dispose of any rubbish; and
 - (B) load and unload goods for use by the Commercial Premises from designated loading zones or when otherwise permitted by a development consent for the Commercial Premises;
- (e) ensure the use of a Commercial Premises does not generate unacceptable noise levels or offensive or strong odours that adversely affect Owners and Occupiers of the Building;
- (f) ensure the business activities (including the setting up and removal of furniture, deliveries to and from the Commercial Premises and garbage collection) of Owners and Occupiers of Commercial Premises does not cause Owners and Occupiers of the Building to be unreasonably disturbed by noise.

15.3 Development Consent

- (a) Owners and Occupiers of the Commercial Premises must not lodge a development application with Council relating to all or part of the Commercial Premises without the prior written consent of the Building Management Committee.
- (b) The Building Management Committee when considering a request by an Owner or Occupier of a Commercial Premises to lodge a development application with Council under **clause 15.3(a)** must not unreasonably withhold its consent if the development application complies with the rules relating to the Commercial Premises set out in this **clause 15**.

15.4 Future Services

- (a) Owners and Occupiers of the Commercial Premises may from time to time be required to install new Services in the Building, but outside the Commercial Premises, for the purpose of carrying out a business in a Commercial Premises.
- (b) Members must not object to an Owner or Occupier of a Commercial Premises installing new Services in the Building, but outside the Commercial Premises, if;
 - (i) the Owner or Occupier of the Commercial Premises seeking to install the Service is occupying and using the Commercial Premises for a purpose that is not a Prohibited Purpose;
 - (ii) the Owner or Occupier of the Commercial Premises seeking to install the Service has development consent to occupy and use the Commercial Premises for a purpose that is not a Prohibited Purpose;
 - (iii) the proposed Service is required by the Owner or Occupier of the Commercial Premises to carry out the approved business under the development consent; and

- (iv) the location proposed Service cannot be located in any existing easement; and
- (v) the location and nature of the proposed Service does not unreasonably interfere with the use and enjoyment of that Members Lot.

15.5 Amendment

Notwithstanding any other provision in this Statement, the Building Management Committee may not propose to:

- (a) determine other Prohibited Purposes for a Commercial Premises; or
- (b) amend or repeal this **clause 15**,

without first obtaining the prior written consent of the Owners and Occupiers of the Commercial Premises.

PART 5: MAINTENANCE, REPAIR AND UPGRADING

16 Maintenance, Repair and External Appearance

16.1 Owners Corporation

- (a) An Owners Corporation who is a Member must carry out its obligations under Section 62 of the Management Act.
- (b) An Owners Corporation who is a Member must not make a determination under Section 62(3) of the Management Act without the consent of the Building Management Committee.
- (c) If an Owners Corporation breaches **clause 16.1(b)**, the Owners Corporation must still maintain, renew, replace or repair the particular item which is the subject of the determination.
- (d) The obligations of a Stratum Lot Owner under **clause 16.1** commence on creation of an Owners Corporation with respect to the relevant Stratum Lot.

16.2 Stratum Lot Owners

- (a) If a Member is not an Owners Corporation, the Member must properly maintain and keep in a state of good and serviceable repair that part of the Building within the relevant Member's Lot.
- (b) The obligations of the a Stratum Lot Owner under **clause 16.2(a)** commences upon the date being the date of first issue of a final occupation certificate with respect to the relevant Stratum Lot after the date of this Statement.

16.3 Access into other Members' areas

Each Member must allow the other Members at reasonable times on reasonable notice to access that Member's Lot, or if the Member is an Owners Corporation, the Common Property of the relevant Strata Scheme, in order to have access to:

- (a) items within that Member's Lot; or
- (b) the Common Property of the relevant Strata Scheme; or
- (c) the site of any Easement,

to carry out repairs, maintenance, inspections, tests, renewals and replacements where alternative access is not reasonably available for is likely to be substantially more costly.

16.4 Exclusion

Clauses 16.1, 16.2 and 16.3 do not apply to the Shared Facilities.

17 Emergency Repairs

17.1 Rights of access

- (a) The Building Management Committee and persons authorised by the Building Management Committee can enter and remain in all parts of the Building in order to carry out Emergency Repairs to the Building.

- (b) The Building Management Committee must cause as little inconvenience as is reasonable to Members and Occupiers in carrying out its rights under this clause given the type of emergency.

17.2 Negligence by Member

If the Emergency Repairs carried out by the Building Management Committee are required as a result of the negligence of a Member or an Occupier, that Member is responsible to reimburse the Building Management Committee for those costs.

18 Upgrading and Redevelopment

18.1 Works

Each Party acknowledges that upgrading and redevelopment works may be carried out to Common Property or to lots within the relevant Strata Plan or to a Stratum Lot or to any of them.

18.2 Consent

The other Members agree to act reasonably and, if applicable, to not unreasonably withhold their consent in connection with any proposal by a Member to upgrade or redevelop all or part of the Building owned by the Member.

19 Architectural Code

19.1 Comply with Architectural Code

The Architectural Code controls the external appearance of in the Building in order to preserve the design integrity of the Building. Each Member and Occupier must comply with the Architectural Code.

19.2 Approval

- (a) Each Member must:
 - (i) make a written application to the Building Management Committee for any consent required under the Architectural Code; and
 - (ii) submit to the Building Management Committee the plans, specifications and other information required by the Building Management Committee to consider any consent under the Architectural Code.
- (b) The Building Management Committee is deemed to have refused an application for a consent under the Architectural Code if the Committee has not made a decision within 1 month.
- (c) The Building Management Committee must supply to each Member a copy of the Architectural Code as soon as practicable after receiving a request.

19.3 Amending the Architectural Code

The Building Management Committee may amend, add to or repeal parts of the Architectural Code by Unanimous Resolution pursuant to **clause 5.6**.

19.4 Construction Period

During the Construction Period, the Developer does not need consent under the Architectural Code to carry out the development of the Stratum Lots (see **Part 6** of this Statement).

Indicative Only

PART 6: CONSTRUCTION PERIOD

20 Construction Period

20.1 Construction Period

- (a) During the Construction Period the balance of the Building will be built in stages to be determined in the absolute discretion of the Developer.
- (b) During the Construction Period, the Parties must allow the Developer and the Developer's employees, contractors and consultants to carry out the Construction Works in any part of the Building on and from the date of this Statement without any need for the approval of the Parties, but subject to the terms of any Easements and covenants and to the requirements of any Laws.

20.2 Consent

A Party must consent to, and must execute all documentation and do all things necessary to provide consent to, any plans and documents (including the creation of any Easements and covenants) as required by the Developer for the:

- (a) carrying out of the Construction Works; and
- (b) completion of a stage or stages in the Building.

20.3 Right to Access

The Parties will allow the Developer and the Developer's employees, contractors and consultants during the Construction Period to access all parts of the Building which the Developer reasonably requires to access for the purpose of:

- (a) carrying out the Construction Works for the relevant stage;
- (b) connecting, installing, extending, augmenting, maintaining or accessing any existing Services;
- (c) connecting, installing, extending, augmenting, maintaining or accessing any future Services; and
- (d) carrying out any work relating to the temporary propping or structural support of the Building.

20.4 Repair

The Building Management Committee must procure the Developer to:

- (a) repair without delay any damage caused to the Common Property or other parts of the Building as a result of the Developer and the Developer's employees, contractors and consultants carrying out the works described in **clause 20.3**.
- (b) not cause unreasonable inconvenience to the Parties as a result of the Developer and the Developer's employees, contractors and consultants carrying out the works described in **clause 20.3**.

PART 7: FINANCIAL MATTERS AND INSURANCE

21 Financial Affairs

21.1 Administrative and Sinking Fund

- (a) The Building Management Committee must establish an administrative fund and a sinking fund within 3 months of registration of this Statement.
- (b) Until such time as a sinking fund report is completed and received by the Building Management Committee, the sinking fund may be determined by the Building Management Committee to be a nominal amount
- (c) As soon as practicable after the sinking fund report is completed and received by the Building Management Committee, the Building Management Committee must determine the contribution of each Member to the sinking fund, having regard to the Shared Facilities and to the recommendations of the sinking fund report.
- (d) The administrative fund and sinking fund must be maintained by the Strata Manager or if no Strata Manager is appointed, by the Building Management Committee.
- (e) The administrative fund must be used to pay the costs of:
 - (i) operating and maintenance of the Shared Facilities (including energy and water usage);
 - (ii) Insurance;
 - (iii) administration; and
 - (iv) any other costs which are not amounts which are to be paid from the sinking fund.
- (f) The Building Management Committee must use the sinking fund to pay the costs of renewal or replacement of the Shared Facilities.

21.2 Budget

- (a) The Building Management Committee must determine a budget for each 12 month period.
- (b) The budget must be based on an estimate of the costs and expenditures to:
 - (i) pay Shared Costs;
 - (ii) pay any Management Fees and Strata Management Fees;
 - (iii) effect the Insurances;
 - (iv) satisfy any obligation of the Building Management Committee under this Statement or the Management Act.
- (c) The budget must contain details of:
 - (i) each item or matter, including Shared Costs, for which a Member is responsible;
 - (ii) each Member's proportion of a particular matter or item;
 - (iii) the amount of that proportion to be paid into the sinking fund and administrative fund (if applicable); and

- (iv) the amount and date of each payment which a Member must make.
- (d) The budget must reflect that until the completion of the Building, only some of the Shared Facilities will be operational.

21.3 Year End

- (a) The Building Management Committee must determine the Year End for accounting purposes.
- (b) The budget must be for the relevant Year.

21.4 Notice of Payment to Members

The budget must be submitted to each Member together with a notice advising:

- (a) the total expenditure for the 12 month period to which the budget relates;
- (b) the amount that each Member must pay in the 12 month period to the administrative and sinking funds in accordance with the budget; and
- (c) the date each payment is due.

21.5 Payment by Members

- (a) The Building Management Committee must levy Members for contributions it will need for its administrative fund and sinking fund based on the budget for each Year.
- (b) A Member must pay each amount on the date the payment is due.
- (c) If a Member fails to pay an amount owing when it is due and payable, that Member becomes a Defaulting Member.

21.6 Interest for Late Payment

- (a) A Defaulting Member must pay interest on each amount not paid on time from and including the date on which the payment was due until the date it is paid.
- (b) The Building Management Committee must calculate interest on daily balances at the rate equal to 2% per annum above the overdraft rate quoted by the Building Management Committee's bank, building society or credit union at the time of default.
- (c) A certificate from the Building Management Committee's bank, building society or credit union stating the interest rate is final and binding on a Member.

21.7 Financial Statement

- (a) As soon as practicable, but no later than 3 months, after the expiration of each 12 month period, the Building Management Committee must provide each Member with an audited financial statement for the funds of the Building Management Committee.

21.8 Additional Amounts Payable

If the amounts payable or paid into one or both of the funds are insufficient, the Building Management Committee can by notice require each Member to pay an additional amount to enable the Building Management Committee to carry out its obligations under this Statement and the Management Act.

21.9 Deposit of Moneys

The Building Management Committee must:

- (a) deposit all amounts received from Members into its administrative fund and sinking fund as applicable;
- (b) apply all amounts towards the payment of all invoices, statements and accounts of the Building Management Committee; and
- (c) if the deposit moneys accrue interest, credit the interest to the account of the Building Management Committee.

21.10 Dispute

- (a) If there is a dispute about the payment of an amount, before resolution of the dispute, each Member must pay the amounts advised.
- (b) After resolution of the dispute, the Building Management Committee must make an appropriate adjustment or payment.

21.11 Surplus Funds

The Building Management Committee may decide to distribute surplus funds to the Members by Unanimous Resolution pursuant to **clause 5.6** (having regard to the proportions in which the Members contributed the surplus funds).

22 Books and Records

22.1 Obligations of the Building Management Committee

- (a) The Building Management Committee must:
 - (i) keep records and books of account of all the amounts payable and payments made under this Statement;
 - (ii) enter all matters and transactions usually entered in books of account kept by property managers;
 - (iii) keep a copy of this Statement;
 - (iv) keep copies of all agendas, motions and minutes;
 - (v) hold the executed agreement with the Strata Manager and Building Manager and any other agreements it has entered into in relation to Shared Facilities;
 - (vi) keep the details of Representatives and Substitute Representatives in accordance with **clause 3.3**;
 - (vii) keep audit reports and budgets;
 - (viii) keep notices served on the Building Management Committee and notices served by the Building Management Committee; and
 - (ix) keep insurance records.
- (b) The Building Management Committee must retain all records, agreements and books of account for a period of 6 years.

22.2 Inspection of Books and Records

- (a) Members and persons authorised by Members may inspect the Building Management Committee's records by:

- (i) applying in writing to the Building Management Committee; and
 - (ii) paying the Building Management Committee a fee (determined by the Building Management Committee acting reasonably).
- (b) Copies may be taken by persons inspecting the records under **clause 22.2(a)** so long as the Building Management Committee is reimbursed for any costs incurred.

23 Insurances

23.1 Insurances

- (a) The Building Management Committee must:
 - (i) effect building insurance in accordance with the Act;
 - (ii) effect machinery breakdown insurance for Shared Facilities (which are not covered under warranty);
 - (iii) effect public liability insurance for Shared Facilities; and
 - (iv) effect any other type of insurance which the Building Management Committee determines by Resolution (such as office bearers liability insurance or workers compensation insurance).
- (b) Each Member must have a current public liability insurance policy at all times.

23.2 Insurance Policies

The Building Management Committee must take out each policy:

- (i) in the joint names of each Member; and
- (ii) if applicable, in the name of a mortgagee under a mortgage for that person's respective rights and interests.

23.3 Review Insurances

The Building Management Committee must:

- (a) review the Insurances at least once every 12 months;
- (b) have the Building valued for insurance purposes by a qualified valuer at least once every 24 months; and
- (c) immediately effect new insurance or adjust existing Insurances if there is an increase in or a new risk to the Building.

23.4 Payment of Premiums

The Building Management Committee must ensure that the Members pay the premiums in the proportions set out in Section 84(4) of the Management Act or as determined by an adjudicator under section 84(5) of the Management Act.

23.5 Affect Insurances

- (a) A Party must not at any time do anything that might:
 - (i) void or prejudice the Insurances; or
 - (ii) increase the Insurance premiums,except with the consent of the Building Management Committee.

- (b) If a Party does anything to increase an Insurance premium, the Member must pay the increased amount.

24 Use by a Party of property

If a Party is permitted to occupy or use or have access to or from any part of another Party's property in the Buildings, that Party:

- (a) does so at its own risk; and
- (b) releases the other Party from any:
 - (i) claim and demand of any kind; and
 - (ii) liability which may arise from any accident or damage to property or death of or injury to any person in or near that other Party's property or the Buildings,

unless the damage, death or injury is caused by the negligence of that Party.

25 Disputes

25.1 Notice of Dispute

- (A) Members must endeavour in good faith to resolve a dispute about this Statement before they take action under this **clause 25**.
- (b) **A MEMBER MAY** At any time notify the other Members of a dispute in connection with this Statement.
- (c) A notice advising of a dispute must:
 - (i) identify the subject matter of the dispute;
 - (ii) state the facts upon which the Member relies;
 - (iii) identify the provisions of the Statement relevant to the dispute;
 - (iv) have attached copies of all correspondence and background information relevant to the dispute in the possession or control of the Member giving the notice; and
 - (v) contain any particulars of the amount in dispute (if any).
- (d) Members must use all reasonable endeavours to resolve a dispute within 10 Business Days after a notice is served under **clause 25.1(c)**.
- (e) If the dispute is not resolved within 10 Business Days from the time of receipt of the notice referred to in **clause 25.1(b)**, a Member may by written notice request the Building Management Committee to convene a meeting to discuss whether to:
 - (i) refer the dispute to the Tribunal under Chapter 5 Part 5 of the Management Act;
 - (ii) refer the dispute for mediation under Chapter 5 Part 2 of the Management Act; or
 - (iii) if the dispute is not appropriate for mediation, apply for an order under Chapter 5 Part 1 of the Management Act.

25.2 Appointment of an Expert

- (a) If the meeting decides not to refer the dispute for mediation or apply for an order or makes no decision, a Member may within a period of 5 Business Days from the meeting, submit the dispute for decision by an Expert.
- (b) If each Member cannot agree to and jointly appoint an Expert, any of them may request the President of the Law Society of NSW to appoint an appropriate Expert given the nature and subject of the dispute.
- (c) The Expert acts as an expert and not as an arbitrator.
- (d) Except as to matters of law, the Expert's decision including any decision about an expense arising from the dispute, is final and binding on each Member.
- (e) The appointment must require the Expert to make a decision within 20 Business Days of the appointment.

- (f) The Expert may appoint consultants as the Expert thinks necessary to advise on any aspect of the dispute.
- (g) Each Member may make written submissions to the Expert about the dispute and costs.

25.3 Submission to Expert

- (a) If a Member makes a submission, that Member must:
 - (i) submit it within 10 Business Days of the appointment of the Expert; and
 - (ii) provide the other Members with a copy of submissions within 24 hours of submission to the Expert.
- (b) A Member who makes a submission must:
 - (i) co-operate with the Expert; and
 - (ii) as required by the Expert, promptly provide the Expert with information in the possession or control of that person and relevant to the matter to be determined.
- (c) **Clause 25.3(b)** does not apply if the information would be subject to a claim for privilege if the matter were the subject of legal proceedings.
- (d) Within 20 Business Days of the Expert's appointment, the Expert must determine the matters in dispute having regard to the written submissions, this Statement and the Expert's own enquiries.

25.4 Expert's Determination

The Expert must:

- (a) give reasons for the determination; and
- (b) determine how the cost of any determination is paid.

25.5 Commencement of Action

- (a) A Member is only entitled to commence or maintain an action, either by way of legal proceedings or arbitration for a dispute if that person has first referred the dispute for determination under this **clause 25**.
- (b) When a dispute concerns a matter that falls within the jurisdiction of the Tribunal, legal proceedings must, in the first instance, be commenced in the Tribunal.

26 Notices and Service

26.1 Notices

- (a) A notice or communication under this Statement must be in writing in English.
- (b) A notice or communication under this Statement may be given:
 - (i) by hand;
 - (ii) by facsimile transmission;
 - (iii) by email; or

- (iv) by security post.
- (c) A notice is deemed to be given:
 - (i) if sent by hand, at the time of delivery;
 - (ii) if sent by facsimile transmission, at the time the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time recorded on the transmission report;
 - (iii) if sent by email, at the time a delivery confirmation report is received by the sender, which records the time that the email was delivered to the addressee's last notified email address and is prima facie evidence of its receipt by the addressee; and
 - (iv) if sent by security post, at the time that the recipient or its agent acknowledges receipt.

26.2 Service by Facsimile

Clause 26.1(c)(ii) does not apply if:

- (a) the intended recipient promptly informs the sender that the transmission was received in an incomplete or garbled form; or
- (b) the transmission report of the sender indicates a faulty or incomplete transmission.

26.3 Service by Email

Clause 26.1(c)(iii) does not apply if the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered to the addressee.

26.4 Address

- (a) Each Member must address a notice to the Representative of a Member as notified under **clause 3.3(d)**.
- (b) Anything done by a Representative of a Member appointed to the Building Management Committee has the same effect as if the Member did it.

27 General

27.1 Waiver

A provision of or right created under this Statement may only be:

- (a) waived if the waiver is in writing and signed by the Member granting the waiver; or
- (b) varied if the variation is in writing and signed by each Member.

27.2 Exercise of a right

- (a) A Member may exercise a right:
 - (i) at the Member's discretion; and
 - (ii) separately or together with another right.
- (b) If a Member exercises a single right or only partially exercises a right, that Member may still exercise that right or any other right later.

- (c) If a Member fails to exercise a right or delays in exercising a right, that Member may still exercise that right later.

27.3 Severance

- (a) Subject to **clause 27.3(b)**:
 - (i) if a provision of this Statement is void or voidable, unenforceable or illegal but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, the provision must be read down;
 - (ii) if, despite **clause 27.3(a)(i)**, a provision is still void, voidable, unenforceable or illegal and the provision would not be void, voidable, unenforceable or illegal if words were severed, those words must be severed; or
 - (iii) in any other case, the whole provision must be severed.
- (b) If an event under **clause 27.3(a)** occurs, the remainder of this Statement continues in full force and effect.

27.4 Consent

Subject to an express provision in this Statement, a Member may in the Member's absolute discretion:

- (a) give the Member's consent conditionally or unconditionally; or
- (b) withhold the Member's consent.

27.5 Entire Statement

This Statement constitutes the entire agreement of each Member and supersedes all prior discussions, undertakings and agreements.

27.6 To the extent the law permits

The terms of this Statement apply to the extent the law permits.

27.7 Cumulative rights

A Member's rights under this Statement are in addition to the rights of the Members at law.

27.8 Further assurances

Each Member at the Member's own expense must:

- (a) do everything reasonably necessary to give effect to:
 - (i) this Statement; and
 - (ii) the transactions contemplated by this Statement, including the execution of documents; and
- (b) make a reasonable effort to cause relevant third parties to do likewise.

Executed by Mirvac Projects)
Pty Limited)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Indicative Only

Schedule 1

Shared Facilities Schedule

Shared Facility	Location Within the Building	Purpose	Maintenance	Residential Owners Corp Share of Costs	Commercial Lot Owner's Share of Cost

Shared Facility	Location Within the Building	Purpose	Maintenance	Residential Owners Corp Share of Costs	Commercial Lot Owner's Share of Cost

Schedule 2

Plan of Shared Facilities

Indicative Only

Schedule 3

Architectural Code

Indicative Only