

**SP72677**

**"Escarpment" &  
"The Cooperage Car Park"  
Refinery Drive, Pyrmont**

**Strata Management Statement**

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**Ss28R-28W(F) / Ss 57A-57F(L)**

Strata Schemes (Freehold Development) Act 1973

Strata Schemes (Leasehold Development) Act 1986

## **Strata Management Statement**

- Note: This statement has effect as an agreement under seal binding:*
- i. an owners corporation of a strata scheme for part of the building;*
  - ii. a proprietor, mortgagee in possession or lessee of any lot in such a strata scheme; and*
  - iii. 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. Jacksons Landing Development Pty Ltd is the registered proprietor of the Land.
- B. Lot 39 in the Plan is the component of the Building known as "Escarpment".
- C. Lot 41 in the Plan is the component of the Building known as The "Cooperage Car Park".
- D. The Members are the:
  - (a) Escarpment Owners Corporation; and
  - (b) Cooperage Car Park Owner.
- E. This Statement is required by the Freehold Act and regulates the Members in respect of the control, management and maintenance of the Building.

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## 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, these terms mean:

**"Act"** the Freehold Act or the Management Act or both as the context requires.

**"Building"** the Escarpment Structure and the Cooperage Car Park Structure.

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

**"Business Day"** a day on which banks in NSW are open for business but does not include a Saturday, Sunday or public holiday.

**"Car Park Accessways"** the areas the subject of the Right of Access (EB), Right of Access and Easement for Fire Escape (EC) and Right of Access (EG) on deposited plan.

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

**"Community Management Statement"** the community management statement registered with the Community Plan.

**"Community Plan"** deposited plan 270215.

**"Cooperage"** the building erected on the land comprising lot 40 in the Plan.

**"Cooperage Car Park Lot"** lot 41 in the Plan or if this lot is subdivided by registration of a Strata Plan, the Strata Scheme created by the subdivision.

**"Cooperage Car Park Owner"** either:

- (a) the registered proprietor of the Cooperage Car Park Lot; or
- (b) the Owners Corporation created on registration of a Strata Plan subdividing the Cooperage Car Park Lot.

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**"Cooperage Car Park Structure"** the structure erected on the land comprising lot 41 in the Plan.

**"Defaulting Member"** has the meaning stated in clause 4.10

**"Development Activities"** has the same meaning as that term in the Community Management Statement as that term applies to the redevelopment of the Cooperage Car Park Lot.

**"Escarpment Common Property"** the Common Property of the Escarpment Strata Scheme.

**"Escarpment Owners Corporation"** the owners corporation created on registration of the Plan registered within this Statement.

**"Escarpment Strata Plan"** the Strata Plan registered in respect of Lot 39 in the Plan.

**"Escarpment Strata Scheme"** the strata scheme created on registration of the Escarpment Strata Plan.

**"Escarpment Structure"** the structure erected on the Land comprising Lot 39 in the Plan.

**"Expert"** a person appointed under clause 9.6.

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

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

**"Insurance":**

- (a) each insurance which the Building Management Committee must effect under the Management Act and this Statement; and
- (b) any other insurance which the Building Management Committee determines to effect.

**"Land"** the land contained in Lots 39 and 41 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.

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**"Manager"** a person who the Building Management Committee for the time being appoints as manager under clause 11.

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

**"Management Fee"** the fee for the Strata Manager under clause 10 and Manager under clause 11 (and the proportion payable set out in Schedule 1).

**"Members"** the Escarpment Owners Corporation and the Cooperage Car Park Owner.

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

**"Parties"** the parties bound by this Statement as stated in clause 2.2.

**"Plan"** the community plan of subdivision subdividing lot 31 in the Community Plan.

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

**"Secretary"** the person appointed by the Building Management Committee pursuant to clause 3.7(b).

**"Shared Costs"** the following expenses in relation to a Shared Facility:

- (a) in relation to a Shared Facility:
  - (1) repair, maintenance and operating costs;
  - (2) renewal or replacement costs; and
  - (3) 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 Manager; and
- (d) any amount determined by Resolution to be Shared Costs.

**"Shared Facilities":**

- (a) the services, facilities, machinery and equipment referred to in Schedule 1;
- (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 of Common Property; and

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- (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.

**"Statement"** this Strata Management Statement.

**"Strata Manager"** the licensed strata managing agent appointed under clause 10.

**"Strata Plan"** a strata plan under the Act.

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

### 1.3 Interpretation

In this Statement, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) any gender includes all other genders;
- (c) a defined word or phrase, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) month or monthly means calendar month or calendar monthly;
- (e) quarter means calendar quarter;
- (f) a person includes:
  - (1) a corporation, partnership, joint venture and government body;
  - (2) the legal representatives, successors and assigns of that person; and
  - (3) where the context permits, the employees, agents, contractors and invitees of that person;
- (g) a document includes a reference to that document as amended or replaced;
- (h) a thing includes a part of that thing and includes a right;
- (i) a part, clause, annexure, exhibit or schedule is a reference to an item of that type in this Statement;
- (j) a by-law, attachment or annexure means a by-law, schedule of, or an attachment or annexure to this Statement;

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- (k) a Party to the Statement includes a reference to that party's successors and permitted assigns;
- (l) a Law includes all laws amending or replacing them;
- (m) a document is a reference to a document of any kind including an agreement in writing, a certificate, a notice, or an instrument;
- (n) a provision of this Statement is not to be construed against a Party solely on the ground that the Party is responsible for the preparation of this Statement or a particular provision;
- (o) an asset includes all property of any nature including a business, a right, a revenue and a benefit;
- (p) 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;
- (q) "including" and similar expressions are not words of limitation.

## 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 and bolding are for guidance only and do not affect the construction of this Statement.

## 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.



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## 2. Parties Bound and General Obligations

### 2.1 Members

The Building has two components, being the Escarpment Strata Scheme and the Cooperage Car Park Lot. The owners of those two components are the Members of the Building Management Committee. They are the Escarpment Owners Corporation and the Cooperage Car Park Owner.

### 2.2 Parties Bound

This Statement has effect as an agreement under seal binding:

- (a) the Escarpment Owners Corporation;
- (b) the Cooperage Car Park Owner;
- (c) an owner, lessee, occupier or mortgagee in possession of a lot in the Escarpment Strata Scheme; and
- (d) a lessee, occupier or mortgagee in possession of the Cooperage Car Park Lot.

### 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 that the Building Management Committee is constituted in accordance with this Statement and the Freehold Act;
- (d) make sure the Insurances are effected and maintained; and
- (e) implement decisions of the Building Management Committee.

### 2.4 Emergency Access

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

### 2.5 Consolidation

The Escarpment Owners Corporation may not object if the Cooperage Car Park Owner consolidates the Cooperage Car Park Lot with lot 40 in the Plan.

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### 2.6 Inconsistency

*N* (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.~~

*N* (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.

### 3. Building Management Committee

#### Composition

3.1 The Building Management Committee must comprise of 2 representatives being a natural person of each Member.

3.2 The Members must establish the Building Management Committee within 1 month after the registration of this Statement. The Building Management Committee cannot be dissolved while this Statement is in force.

#### Representatives

3.3 Each Member must:

- (a) appoint a representative; and
- (b) give to each other Member notice of the name, address and telephone number of the representatives and notify each other about any changes.

3.4 Each Member may:

- (a) change its representative at any time; and
- (b) appoint a casual representative for a particular meeting or meetings.

3.5 The representative or casual representative of a Member who is an Owners Corporation must be appointed by or selected in accordance with an ordinary resolution or a by law made by the Member.

#### Functions

3.6 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 4;
- (c) operate, maintain, renew, replace and control the use of Shared Facilities;

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- (d) change or add to or extend Shared Facilities;
- (e) change or add to or adjust Shared Costs;
- (f) effect the Insurances;
- (g) supervise any contractor or agent, including the Manager, engaged by the Building Management Committee; and
- (h) comply with this Statement and the Act.

### 3.7 The Building Management Committee:

- (a) must appoint one of the Building Management Committee's Members to act as chairperson for each meeting;
- (b) must appoint a secretary (who may be the Strata Manager); and
- (c) may appoint any other office bearer, who the Building Management Committee considers necessary so long as an office bearer is the representative of a Member or the Strata Manager.

### **Meetings**

### 3.8 The Building Management Committee must hold a meeting if:

- (a) requested by notice in writing by a Member;
- (b) no other meeting has been held in the preceding 12 month period on each anniversary of the date of this Statement; or
- (c) the Building Management Committee is otherwise required to do so under this Statement.

### **Request for Meeting**

### 3.9 A request for a meeting must be made to the Secretary and must state the issue or proposal for the meeting.

### 3.10 The Building Management Committee is not obliged to hold a meeting if the Member requesting it is a Defaulting Member.

### **Notice of Meetings**

### 3.11 The Secretary of the Building Management Committee must normally give at least 5 Business Days' notice of a meeting to each Member.

### 3.12 In the case of an emergency or with the consent of each Member, the Building Management Committee may give a shorter notice.

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## **Quorum**

- 3.13 At any meeting of the Building Management Committee, a quorum consists of a representative of each Member.
- 3.14 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.
- 3.15 The Building Management Committee must hold the adjourned meeting at the same time and at the same place notified for the original meeting.
- 3.16 The quorum for the adjourned meeting is that number of representatives present at the time appointed for the adjourned meeting.
- 3.17 At an adjourned meeting, one person may constitute a quorum.

## **Voting**

- 3.18 At each meeting of the Building Management Committee each Member through any of its representatives is entitled to exercise 1 vote.
- 3.19 A Defaulting Member is not entitled to vote.
- 3.20 The chairperson does not have a casting vote at meetings of the Building Management Committee.
- 3.21 If the Building Management Committee decide on a matter, it must be decided by a Resolution.
- 3.22 The matters that the Building Management Committee must decide by Resolution include:
  - (a) amending this Statement;
  - (b) changing, adding to or extending Shared Facilities; and
  - (c) changing, adding to or adjusting Shared Costs.

## **Functions of the Secretary**

- 3.23 The Secretary's functions are to:
  - (a) convene meetings and prepare notices and agendas for those meetings;
  - (b) answer communications directed to the Building Management Committee;
  - (c) perform secretarial functions for the Building Management Committee; and
  - (d) distribute minutes and keep the Building Management Committee's records.

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## 4. Financial Affairs

### Administrative and Sinking Fund

- 4.1 The Building Management Committee must promptly establish an administrative fund and may establish a sinking fund.
- 4.2 The administrative fund and sinking fund (if applicable) must be maintained by the Strata Manager.
- 4.3 The administrative fund must be used to pay the costs of:
  - (a) operating and maintenance of the Shared Facilities;
  - (b) Insurance;
  - (c) administration; and
  - (d) any other costs which are not amounts which are to be paid from the sinking fund.
- 4.4 If a sinking fund is established the funds must be used to pay the costs of renewal or replacement of the Shared Facilities.

### Budget

- 4.5 The Building Management Committee must determine a budget for each 12 month period.
- 4.6 The budget must be based on an estimate of the costs and expenditures to:
  - (a) pay Shared Costs;
  - (b) pay any Management Fees;
  - (c) effect the Insurance;
  - (d) satisfy any obligation of the Building Management Committee under this Statement or the Management Act.
- 4.7 The budget must contain details of:
  - (a) each item or matter, including Shared Costs, for which a Member is responsible;
  - (b) each Member's proportion of a particular matter or item including any amount under clause 4.2;
  - (c) the amount of that proportion to be paid into the sinking fund and administrative fund (if applicable); and

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- (d) the amount and date of each payment which a Member must make.

### **Notice of Payment to Members**

- 4.8 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.

### **Payment by Members**

- 4.9 A Member must pay each amount on the date the payment is due.
- 4.10 If a Member fails to pay an amount owing when it is due and payable, that Member becomes a Defaulting Member.

### **Interest for Late Payment**

- 4.11 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.
- 4.12 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.
- 4.13 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.

### **Financial Statement**

- 4.14 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.

### **Additional Amounts Payable**

- 4.15 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.

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### **Deposit of Moneys**

- 4.16 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.

### **Dispute**

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

### **Surplus Funds**

- 4.19 The Building Management Committee may decide to distribute surplus funds to the Members by Resolution (having regard to the proportions in which the Members contributed the surplus funds).

## **5. Shared Facilities and Shared Costs**

### **Shared Facilities**

- 5.1 A list of the Shared Facilities as at the date of registration of this Statement is set out in Schedule 1.

### **Use of Shared Facilities**

- 5.2 Unless this Statement specifies otherwise, each Member is entitled to use and enjoy each Shared Facility in accordance with this Statement.

### **Shared Costs**

- 5.3 The Building Management Committee must apportion the Shared Costs of a Shared Facility using the apportionment stated in Schedule 1.
- 5.4 The Building Management Committee must advise each Member of its proportion of the Shared Costs.
- 5.5 Each Member must pay its proportion of the Shared Costs.

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## **Amending Shared Facilities**

- 5.6 The Building Management Committee may vary, modify, add a new facility, repair, renew or replace the Shared Facilities.
- 5.7 The Building Management Committee may add Shared Costs or adjust the division of Shared Costs if required by Resolution.
- 5.8 If the Building Management Committee passes a Resolution to vary the Shared Costs and Shared Facilities, Schedule 1 is automatically varied at the time the chairperson signs the minutes which record the Resolution.
- 5.9 The Building Management Committee must promptly register any variation to this Statement.

## **Upgrading and Redevelopment**

- 5.10 Where a Member requisitions a meeting of the Building Management Committee to consider a motion to vary, modify, add a new facility, repair, renew or replace the Shared Facilities, including where such change is in connection with upgrading and redevelopment works proposed to be undertaken by a Member to its own lot, the Members agree to:
  - (a) act reasonably; and
  - (b) not to unreasonably withhold their consent

in relation to the change, and will procure that their representatives appointed to the Building Management Committee similarly comply with this clause.

## **Maintenance**

- 5.11 The Building Management Committee must carry out or arrange for the carrying out of maintenance, repair, operation, renovation and replacement of the Shared Facilities.
- 5.12 The Building Management Committee at its discretion may enter into maintenance agreements with contractors to maintain the Shared Facilities.
- 5.13 Each Party must:
  - (a) use the Shared Facilities only for their intended purposes and following the directions of the Building Management Committee;
  - (b) immediately notify the Building Management Committee about damage to or a defect in a Shared Facility; and
  - (c) pay the costs of repair for any damage to the Shared Facilities caused by that Party.



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- 5.14 Each Member must give the Building Management Committee and the other Member access to operate, maintain, repair, renovate and replace the Shared Facilities.

### **Government Agency Compliance**

- 5.15 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.

## **6. Insurances and Release**

### **Insurances**

- 6.1 The Building Management Committee must:
- (a) effect the Insurances; and
  - (b) take out each policy:
    - (1) in the joint names of each Member; and
    - (2) if applicable, in the name of a mortgagee under a mortgage for that person's respective rights and interests.
  - (c) each member must effect public liability insurance.

### **Review Insurances**

- 6.2 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.

### **Payment of Premiums**

- 6.3 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.

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## **Affect Insurances**

6.4 Members must not at any time do anything that might:

- (a) void or prejudice the Insurances; or
- (b) increase the Insurance premiums

except with the consent of the Building Management Committee.

6.5 If a Party does anything to increase an Insurance premium, the Member must pay the increased amount.

## **Use by a Party of property**

6.6 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:
  - (1) claim and demand of any kind; and
  - (2) 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.

## **7. Maintenance, Repair and External Appearance**

### **Owners Corporation**

7.1 An Owners Corporation who is a Member must carry out its obligations under Section 62 of the Management Act.

7.2 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.

7.3 If an Owners Corporation breaches clause 7.2, the Owners Corporation must still maintain, renew, replace or repair the particular item which is the subject of the determination.

### **Cooperage Car Park Owner**

7.4 If the Cooperage Car Park Owner is not an Owners Corporation, the Cooperage Car Park Owner must properly maintain and keep in a state of good and serviceable repair that part of the Building within the Cooperage Car Park Lot.

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- 7.5 The Cooperage Car Park Owner must renew or replace any fixtures or fittings comprised in the Cooperage Car Park Lot.
- 7.6 The obligations of the Cooperage Car Park Owner under clause 7.4 and 7.5 commences when the owner of the Cooperage has completed the redevelopment of the Cooperage. For removal of doubt the owner of the Cooperage may carry out its initial redevelopment works on and from from the date of this Statement without any need for the approval of the other Members.

## **Upgrading and Redevelopment**

- 7.7 Each Member acknowledges that throughout the life of the Building upgrading and redevelopment works may be carried out to the Cooperage Car Park Lot or the Escarpment Strata Plan lots and Common Property or any of them. The Members agree to act reasonably and, if applicable, to not unreasonably withhold their consent if a proposal is made to upgrade or redevelop all or part of the Building.

## **Exclusion**

- 7.8 Clauses 7.1 to 7.5 inclusive do not apply to the Shared Facilities.

## **8. Books and Records**

- 8.1 The Building Management Committee must:
- (a) keep records and books of account of all the amounts payable and payments made under this Statement;
  - (b) enter all matters and transactions usually entered in books of account kept by property managers; and
  - (c) retain all records and books of account for a period of 6 years from the date of the last entry.
- 8.2 The Building Management Committee must make available the records and books of account for inspection during normal business hours on reasonable notice by a Party.
- 8.3 The Building Management Committee must keep copies of notices given or received, agendas, motions and minutes.
- 8.4 The Building Management Committee must make available for inspection the materials the subject of clause 8.3 during normal business hours on reasonable notice by a Party.

## **9. Disputes**

- 9.1 Members must endeavour in good faith to resolve a dispute about this Statement before they take action under this clause.

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## Notice of Dispute

- 9.2 A Member may at any time notify the other Members of a dispute in connection with this Statement.
- 9.3 A notice advising of a dispute must:
- (a) identify the subject matter of the dispute;
  - (b) state the facts upon which the Member relies;
  - (c) identify the provisions of the Statement relevant to the dispute;
  - (d) 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
  - (e) contain any particulars of the amount in dispute (if any).
- 9.4 If the dispute is not resolved within 10 Business Days from the time of receipt of the notice, a Member may by written notice request the Building Management Committee to convene a meeting to discuss whether to:
- (a) refer the dispute for mediation under Chapter 5 Part 2 of the Management Act; or
  - (b) if the dispute is not appropriate for mediation, apply for an order under Chapter 5 Part 1 of the Management Act.

## Appointment of an Expert

- 9.5 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.
- 9.6 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.
- 9.7 The Expert acts as an expert and not as an arbitrator.
- 9.8 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.
- 9.9 The appointment must require the Expert to make a decision within 20 Business Days of the appointment.
- 9.10 The Expert may appoint consultants as the Expert thinks necessary to advise on any aspect of the dispute.

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9.11 Each Member may make written submissions to the Expert about the dispute and costs.

### **Submission to Expert**

9.12 If a Member makes a submission, that Member must:

- (a) submit it within 10 Business Days of the appointment of the Expert; and
- (b) provide the other Members with a copy of submissions within 24 hours of submission to the Expert.

9.13 A Member who makes a submission must:

- (a) co-operate with the Expert; and
- (b) 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.

9.14 Clause 9.13 does not apply if the information would be subject to a claim for privilege if the matter were the subject of legal proceedings.

9.15 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.

### **Expert's Determination**

9.16 The Expert must:

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

9.17 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 9.

## **10. Appointment of a Strata Manager**

### **Appointment**

10.1 The Building Management Committee may appoint a Strata Manager to assist the Building Management Committee in performing its functions and specifically its financial and secretarial functions.

10.2 The Building Management Committee should consider the benefit of having the same person appointed as the Strata Manager for the Owners Corporation when appointing the Strata Manager.

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## **Delegation of functions**

- 10.3 Subject to clause 10.4, the Building Management Committee may delegate its functions and the functions of its officers to the Strata Manager.
- 10.4 The Building Management Committee may not delegate functions to the Strata Manager which the Building Management Committee may only exercise by Resolution or functions which the Building Management Committee determines by Resolution may only be exercised by the Building Management Committee.

## **11. Appointment and Obligations of Manager**

### **Appointment**

- 11.1 The Building Management Committee must appoint the Manager and delegate to that Manager the authority necessary to carry out the Manager's obligations.
- 11.2 The Building Management Committee must monitor the performance of the Manager.

### **Management Fee**

- 11.3 If a Manager is appointed, the Members must contribute to the Management Fee in the proportions set out in Schedule 1.

### **Manager's Duties**

- 11.4 The Manager's duties may include:
- (a) ensuring the proper operation, maintenance, repair, renovation and replacement of the Shared Facilities;
  - (b) implementing decisions made by the Building Management Committee;
  - (c) carrying out the Building Management Committee's obligations in respect of any maintenance agreement;
  - (d) supervising the Shared Facilities;
  - (e) carrying out any other duties determined by a unanimous Resolution.

### **Services Contractor**

- 11.5 An agreement with the Manager may provide for:
- (a) a term of 5 years with a maximum of 1 option with a term of 5 years with rights for earlier determination by either the Building Management Committee or the Manager; and
  - (b) the carrying out of or engaging contractors for repairs and replacements and services to the Shared Facilities; and

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- (c) the granting of exclusive rights to occupy a Shared Facility.

## 12. Notices and Service

### Notices

12.1 A notice under this Statement must be in writing.

12.2 Each Member may send a notice:

- (a) by hand;
- (b) by facsimile transmission; or
- (c) by security post.

12.3 A notice is deemed to be given:

- (a) if sent by hand, at the time of delivery;
- (b) if sent by facsimile transmission, at the time recorded on the transmission report; and
- (c) if sent by security post, at the time that the recipient or its agent acknowledges receipt.

### Service by Facsimile

12.4 Clause 12.3(b) 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.

### Address

12.5 Each Member must address a notice to the representative of a Member as notified under clause 3.3.

12.6 Anything done by a representative of a Member appointed to the Building Management Committee has the same effect as if the Member did it.

## 13. General

### Waiver

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

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- (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.

### **Exercise of a right**

13.2 A Member may exercise a right:

- (a) at the Member's discretion: and
- (b) separately or together with another right.

13.3 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.

13.4 If a Member fails to exercise a right or delays in exercising a right, that Member may still exercise that right later.

### **Severance**

13.5 Subject to clause 13.6:

- (a) 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;
- (b) if, despite clause 13.5(a), 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
- (c) in any other case, the whole provision must be severed.

13.6 If an event under clause 13.5 occurs, the remainder of this Statement continues in full force and effect.

### **Consent**

13.7 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.

### **Entire Statement**

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



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## **To the extent the law permits**

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

## **Cumulative rights**

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

## **Further assurances**

13.11 Each Member at the Member's own expense must:

- (a) do everything reasonably necessary to give effect to:
  - (1) this Statement; and
  - (2) 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.

## **14. Driveways**

14.1 The Car Park Accessways are a Shared Facility for use by the Escarpment Owners Corporation, the Cooperage Car Park Lot Owner and their respective Owners and Occupiers.

14.2 The Building Management Committee must subject to the terms of any applicable easements control, manage and maintain the Car Park Accessways.

14.3 The Building Management Committee may prepare a traffic management plan about the use of the Car Park Accessways.

14.4 The Building Management Committee may require a Member to display a summary of the traffic management plan at the entrance and exit to the Car Park Accessways, or in any other part of the Car Park Accessways.

14.5 Each Member, Owner and Occupier having a right to use or travel through the Car Park Accessways must observe and perform the provisions of the traffic management plan.

14.6 The traffic management plan may impose rules about the shared common areas of the Car Park Accessways and may cover actions in the event of:

- (a) safety measures such as imposition of speed limits in the Car Park Accessways;
- (b) fire hazards to persons and property;
- (c) personal or vehicular accident;

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- (d) transporting, loading and unloading of goods, furniture and equipment within Car Park Accessways;
- (e) security and the use of security keys to open and shut any doors or gates to the car park; and
- (f) cleaning of oil or grease marks,

## 15. Garbage Storage Areas

### Cooperage Car Park Owner's rights

- 15.1 The Escarpment Owners Corporation has the right to use the Garbage Room pursuant to an easement benefiting the Escarpment Owners Corporation. The Building Management Committee must, in accordance with the terms of the easement, and from time to time develop rules to apply as between the Escarpment Owners Corporation and the Cooperage Car Park Owner in relation to the operation, management and use of the Garbage Room.
- 15.2 The rules specified in clause 15.1 must include provisions about the transportation of garbage to or from the Garbage Room through the Car Park Accessways and the temporary storage of garbage for collection in the Garbage Room and in other designated areas of the Building.
- 15.3 The Escarpment Owners Corporation must at all times ensure it complies with the provisions of the easement granting its lot rights to use the Garbage Room.
- 15.4 In this clause 15, "Garbage Room" means that area burdened by the easement for garbage room registered with the plan creating the Escarpment Strata Scheme.

Executed by Jacksons Landing )  
 Development Pty Limited by its Attorneys )  
 under a Power of Attorney dated 17 MARCH )  
 2004 registered Book 4421 No 962 )  
 in the presence of )

.....  
 Signature of witness

.....STEPHEN HANDING.....  
 Name of witness

ACN 073932 206.

.....  
 Signature of Attorney

.....Paul Shaw.....  
 Name of Attorney

.....  
 Signature of Attorney

.....PAUL MARTIN.....  
 Name of Attorney

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Executed by TOWER Trust (NSW) Limited )  
by its Attorney under a Power of )  
Attorney dated 22/4/03 registered )  
Book 4385 No 84 in the presence of )

*A. Ingano*.....  
Signature of witness

*AUSSIA JONES*.....  
Name of witness

*Yolanda Matus*.....  
Signature of Attorney

*YOLANDA MATUS* | *SEAN DA SILVA*  
Name of Attorney |  
*SENIOR ADMINISTRATOR* | *NSW REGIONAL MANAGER*  
*TT (NSW) LTD* | *CORPORATE TRUSTS*

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**Schedule 1**

**Shared Facilities, Shared Costs and Management Fees**

Shared Facility	Location Within the Building	Purpose	Maintenance	Escarpment Owners Corp Share of Costs	Cooperage Car Park Owner's Share of Cost
Hose Reels, Fire Extinguishers and Hydrants	Adjacent to fire stairs in Escarpment and on each level of common area in Cooperage Car Park	For fire fighting by occupants	6 monthly inspections	57%	43%
Fire Separation Door	Boundary of Cooperage Car Park and Escarpment Lot (CE)	Fire separation	As required	57%	43%
Emergency Evacuation Lighting in Level 1 Car Park and Fire Stair No 2	Corridors, car park levels, plant room	Lighting to egress routes in event of failure of normal power supply	Inspection & testing every 6 months. Replacement of batteries and lamps as required by AS2293	85%	15%
Downdrains	On the boundary between Escarpment and Car Park	Drains rainwater from Buildings	When required	100%	NIL
Main Switchboard	Refinery Drive, Lower Carp Park	Distribution of electricity	Monthly visual, annual detailed inspection	GFA 71055 100%	GFA of Cooperage and Cooperage Car Park Lot
Car Park Ventilation	Throughout the car parks of the Buildings	Natural ventilation of the car parks	Inspection of fire dampers in accordance with code	57%	43%

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(Escarpment & The Cooperage Car Park)

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Shared Facility	Location Within the Building	Purpose	Maintenance requirements	Escarpment Owners Corp Share of Costs	Cooperage Car Park Owner's Share of Cost
Car Park Lighting	Throughout the car parks of the Building	Lighting of the car parks	Annual maintenance	57%	43%
Access Control Shutter and Intruder Detection System	Level 1 Cooperage Car Park	To ensure safety of occupants and controlled access to the Buildings	As required	57%	43%
Boom Gate	Level 1 Cooperage Car Park	To ensure safety of occupants and controlled access to the Buildings	As required	83%	17%
Garbage Room	Level 1 Cooperage Car Park	Collection point for garbage pick up	Maintenance including cleaning costs	85%	15%
Shared Accessways, including roller shutter door	Throughout the car parks of the Building and at entrance	Common driveways for access	Maintenances such as cleaning	57%	43%
Cleaning and Pest Control	Throughout the car parks of the Building	Not applicable	Pest control and cleaning as required	57%	43%
Security Personnel	Throughout the car parks of the Building	Required in event of security equipment failure	Not applicable	57%	43%
Accounting and Audit	n/a	Production and audit of accounts	n/a	90%	10%

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Shared Facility	Location Within the Building	Purpose	Maintenance	Escarpment Owners Corp Share of Costs	Cooperage Car Park Owner's Share of Cost
Taxation	n/a	Preparation and lodgement of tax returns, obtaining ABN, preparation and lodgement of BAS forms	n/a	90%	10%
Strata Manager	n/a	Provide Strata and/or Building Management Services	n/a	90%	10%
Services Contractor, if appointed	n/a	Arrange and manage repair and maintenance and statutory obligations regarding essential services, Occupational Health & Safety Requirements etc., provide other services	n/a	90%	10%
Legal fees	n/a	Advice to Members and their representatives regarding the Building Management Committee and the Strata Management Statement	n/a	90%	10%
Valuation Experts	n/a	Provision of valuation and advice for budgeting, insurance and other purposes	n/a	90%	10%
Insurances	n/a	As per Strata Management	n/a	Relevant amounts	Relevant amounts

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Shared Facility	Location Within the Building	Purpose	Maintenance	Escarpment Owners Corp Share of Costs	Cooperage Car Park Owner's Share of Cost
		Statement		as determined by broker	as determined by broker
Accounting and Audit	n/a	Production and audit of accounts	n/a	90%	10%