

# **TERTIARY BY-LAWS**

**COMMUNITY PLAN NO.**

**22806**

**INCORPORATED**

**ALPHA APARTMENTS**

*Yabled at general  
mtg 25/5/05.  
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## **COMMUNITY TITLES ACT**

### **BY-LAWS**

#### **COMMUNITY CORPORATION NO. 22806 INCORPORATED**

#### **IMPORTANT NOTICE**

These by-laws bind the Community Corporation, the Owners of the Community Lots and any persons entering the Community Parcel.

These by-laws relate to the control and management of the Common Property and the Community Lots and as such may only be amended or revoked by special resolution by the Community Corporation in accordance with Section 39 of the Community Titles Act and Regulations.

#### **PART 1 – DEFINITIONS**

1. The definitions and interpretations set out herein and set out in Section 3 of the Community Titles Act 1996 shall apply to these by-laws and unless the context otherwise requires, the expressions:-

"Act" means the Community Titles Act 1996 as amended;

"Building" means any building constructed wholly or partly on the Community Parcel;

"Common Property" means the Common Property created by Community Corporation Plan Number 22804;

"Corporation" means Community Corporation No 22806 Inc constituted in accordance with Part 9 of the Act and includes an officer, agent, servant, contractor or representative of the Corporation appointed in writing;

"Community Parcel" means the whole of the land comprised in Community Corporation Plan Number 22804, 22805 and 22806

"Lot" means a primary, secondary or tertiary Community Lot within the Community Parcel;

"Lotholder" means the Owner of a Lot;

"Occupier" of a Lot includes, if a Lot is unoccupied, the Owner of the Lot;

"Primary Corporation" means Community Corporation No 22804 Inc constituted in accordance with Part 9 of the Act and includes an officer, agent, servant, contractor or representative of the Corporation appointed in writing

"Secondary Corporation" means Community Corporation No 22805 Inc constituted in accordance with Part 9 of the Act and includes an officer, agent, servant, contractor or representative of the Corporation appointed in writing;

"Tertiary Corporation" means Community Corporation No 22806 Inc constituted in accordance with Part 9 of the Act and includes an officer, agent, servant, contractor or representative of the Corporation appointed in writing;

### **Interpretation**

2. Unless the contrary intention appears, the following applies:
- (a) a reference to an instrument includes any variation or replacement of it;
  - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (c) the singular includes the plural and vice versa;
  - (d) the word "person" includes a firm, a body corporate, an association or an authority;
  - (e) words of any gender include every gender;
  - (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation persons taking by notation) and assigns;
  - (g) a reference to a day is a reference to the period of time commencing at midnight and ending 24 hours later;
  - (h) headings are inserted for convenience and do not affect the interpretation of these by-laws.

If the whole or any part of a provision of these by-laws is invalid, unenforceable or illegal, then it is severed. The remainder of these by-laws will continue to have full force and effect.

## **PART 2 - MANDATORY BY -LAWS**

### **3. Administration, Management and Control of Common Property**

- 3.1 The Corporation is responsible for the administration, management and control of the Common Property;
- 3.2 The Corporation may appoint a Management Committee which shall be responsible to the Corporation for the administration, management and control of the Common Property except with respect to matters concerning:
  - 3.2.1 the appointment of a manager pursuant to by-law 3.3;

- 3.2.2 maintenance, upgrading or improvements to the Common Property where the item to be considered exceeds \$10,000;
  - 3.2.3 the Corporation's obligations regarding the insurance under the Act.
  - 3.3 The Corporation may appoint a manager to assist in carrying out, on behalf of the Corporation, the function of administering, managing and controlling the Common Property.
  - 3.4 The manager shall be appointed on a contract that is subject to annual review by the Corporation.
  - 3.5 The first manager is Ace Body Corporate Management.
  - 3.6 If on annual review the Corporation is dissatisfied with the performance of the manager, the Corporation may terminate the management contract.
- 4. The Building**
- 4.1 The Primary Corporation shall co-ordinate the security and maintenance of the Building and for this purpose may enter into an appropriate contract with a third party for such party to provide such services for the benefit of all Lotholders in the Building on behalf of the Secondary and Tertiary community corporations responsible for the administration, control and management of the Building.
  - 4.2 The Primary Corporation may seek a contribution in respect of such contract from the Corporation which is a member of the Primary Corporation and which Tertiary Corporation is bound to make a contribution pursuant to the by-laws of that Tertiary corporation.
- 5. Use and Enjoyment of the Common Property**

The Common Property is, subject to the Act and these by-laws, for the common use and enjoyment of Lotholders, Occupiers and their invitees.

## **PART 3 - COMMUNITY PARCEL**

### **6. Prohibited Activities**

A person bound by these by-laws must not on the Community Parcel without the consent of the Corporation:

- 6.1 fail to comply with any reasonable direction or request from the Corporation;
- 6.2 ride, lead or drive any horse or horse drawn vehicle;

- 6.3 unlawfully set aside or attempt to exclude the public from any section of the Community Parcel;
- 6.4 fly or attempt to fly any kite, airfoil or toy or any powered model aircraft or glider;
- 6.5 Throw or drop any item from any part of the Community Parcel;
- 6.6 play any game in such a manner as to interfere with the safety or comfort of any other person on the Community Parcel;
- 6.7 perform the work of repairing, washing, painting, panel-beating or other work of any nature on or to any vehicle, except in an area specifically set aside for that purpose and identified as such, and provided that this paragraph shall not extend to running repairs in the case of breakdown;
- 6.8 preach or harangue;
- 6.9 carry, use, discharge or explode any fire arm, explosive, fire works, air gun or any other weapon;
- 6.10 obstruct any footway road or path;
- 6.11 use or occupy any caravan or other vehicle as a place of inhabitation;
- 6.12 erect, hang or attach any advertising or other signs except as permitted by the policy guidelines issued from time to time by the Corporation;
- 6.13 use any language or behave in a manner likely to cause offence or a nuisance or embarrassment to others;
- 6.14 cause or allow loud noise of any other nuisance or disturbance to be made in or to emanate from the Lot;
- 6.15 hang any laundry or other items out to dry or air in public view on or about any part of or in the Community Parcel;
- 6.16 interfere with others use or enjoyment of the Community Parcel;
- 6.17 be inappropriately or inadequately clothed when upon any part of the Community Parcel so as to be visible from a Lot or from the Common Property;
- 6.18 use any language or behave in a manner likely to cause offence or embarrassment to others when on the Community Parcel;
- 6.19 burn rubbish or waste at any time;

- 6.20 damage or deface any building or sign or structure on the Community Parcel;
- 6.21 erect, attach or place any article on the roof of the Building without the consent of the Corporation; ,
- 6.22 obstruct any person's lawful access to any Lot or to the Common Property;
- 6.23 park or stand a motor vehicle in a parking space or elsewhere allocated for others or on a part of the Community Parcel on which the parking or standing of motor vehicles is not authorised by the Corporation. The Corporation shall in addition to any other power, authority, duty and function imposed or conferred upon it have the power to tow away any motor vehicle parked or standing in contravention of these by-laws at the expense of the person whose act has occasioned such contravention and such person shall indemnify the Corporation in respect of all claims for costs and damages arising out of such actions;
- 6.24 roller blade, roller skate or ride a skateboard;
- 6.25 ride any bicycles or drive any motorised vehicles (other than wheelchairs and like vehicles used by handicapped persons or other vehicles approved by the Corporation) except in areas specifically set aside for the purpose;
- 6.26 take any super-market shopping trolley, cycle, boat, surfboard or sailboard in any lift, corridor or foyer without prior written consent of the Community Corporation;
- 6.27 display "for let", "for sale" or other such signs;
- 6.28 Allow any glazed portion of their Lot or the Common Property that surrounds the Lot to be tinted or otherwise treated with the intention to change the visual characteristics of the glazing;
- 6.29 Install window furnishings or blinds in a material or colour other than that which has been approved by the Community Corporation;
- 6.30 fail to comply with any rules posted by the Corporation, including but not limited to any rules in relation to the use of any surrounds.

## **7. Disposal of Garbage**

- 7.1 A person bound by these by-laws must not on the Community Parcel dispose of any rubbish or other material except by depositing the same in the receptacle or areas (if any) specifically provided.



- 7.2 A person bound by these by-laws shall dispose of any rubbish or other material on the Community Parcel in accordance with the rubbish disposal policies passed from time to time by the Corporation.

#### **PART 4 - USE OF LOTS**

##### **8. Good Repair**

A Lotholder must:

- 8.1 maintain the Lot in good repair;
- 8.2 carry out any work ordered by a council or other public authority in respect of the Lot;
- 8.3 carry out any work ordered by the Corporation in respect of the Lot.

##### **9. Use of Lot**

A person bound by these by-laws must not:

- 9.1 use the Lot, or permit the Lot to be used, for any unlawful purpose;
- 9.2 do or commit or cause permit or suffer to be done or committed on or about the Lot or Common Property, any act, matter or thing whatsoever which is or may in the opinion of the Corporation be or become an offence under any Act of the State of South Australia or the Commonwealth of Australia or regulation or by-law thereunder for the time being in force;
- 9.3 interfere with or trespass upon the rights of any Lotholder or Occupier of any other Lot;
- 9.4 change the use or alter the character of the Lot or make or permit to be made any additions or alterations of any kind in or to the Lot unless express approval for doing so has been obtained by a unanimous resolution at a general meeting of the Corporation;
- 9.5 must not interfere with any fire alarms, sprinkler system, elevators, escalator, air conditioning or other machinery installed in the Lot or the building;
- 9.6 must not overload the floors of the Lot;
- 9.7 must give to the Corporation prompt notice in writing of any accident to or defect in pipes lights or fittings used in connection with water electricity air conditioning lifts or other services to the Lot;
- 9.8 must take such steps as may be necessary to prevent infiltration and air leakages and shall not do any act or thing whereby the efficient working of the air-conditioning plant in the Building shall be affected;

- 9.9 must immediately make good any damage to the Lot caused by negligence or misconduct by the Lotholder or the person or persons for whom the Lotholder is responsible;
- 9.10 must reinstate damaged glass immediately;
- 9.11 must not do or omit or suffer to be done or omitted any act, matter or thing which may interfere with or impede any fire, security or other safety doors in any way and without limiting the generality of the foregoing the Lotholder or Occupier of the Lot shall ensure that all fire, security and garage doors are kept locked or secure in an operational state (as the case may be) when not in immediate use;
- 9.12 must surrender all keys, access cards and any other access control devices belonging to the Lot or the Building to the Corporation on the sale of the Lot and secure the same undertaking from any tenant on the termination of any tenancy;
- 9.13 must not play music (either live or reproduced) which is audible from outside of the Lot without the prior approval of the Corporation;
- 9.14 must not bring into or keep in the Lot anything which would in any way conflict with any law relating to fires or with the regulations of any fire brigade with any of the rules and ordinances of the Board of Health or with any city or local government ordinances or with any rules or ordinances of any authority controlling water supply and sewerage;
- 9.15 without the consent of the Corporation conduct or allow any auction sale, fire sale, warehouse sale, or liquidation sale on the Lot;
- 9.16 without the consent of the Corporation affix any television or radio mast or antenna to any part of the Lot or use or operate any music or instrument, gramophone radio set television amplifier or other sound producing equipment in the Lot or any part of the Lot in such a manner as to enable to be heard outside the Lot;

AND furthermore, a person bound by these by-laws must:

- 9.17 upon all rates, taxes, charges, outgoings and assessments in respect of their Lot becoming payable, forthwith pay the same;
- 9.18 if requested by the Corporation, entrust any repairs and maintenance to the Corporation and shall pay the Corporation's reasonable costs in connection therewith.

## **10. Alteration to Lots**

10.1 For the purpose of this by-law "prescribed work" means:

- 10.1.1 the erection, alteration, demolition or removal of a building or structure;

10.1.2 the alteration of the external appearance of a building or structure.

10.2 A Lotholder or Occupier shall not perform or carry out any prescribed work to or upon their Lot other than upon the following terms and conditions:-

10.2.1 such person has submitted a proposal for such prescribed work to the Corporation for its consideration and referral (at the option of the Corporation) to an architect of its choosing;

10.2.2 such person has consulted with any architect appointed by the Corporation to advise it in respect of such prescribed work and paid to the Corporation the costs incurred by the Corporation of engaging such architect;

10.2.3 such person obtains the consent of the Corporation at least fourteen 14 days before the commencement of such prescribed work;

10.2.4 such person has obtained all necessary consents or approvals from any government or statutory authority pertaining to such alterations or additions and shall upon request from the Corporation provide the Corporation with a copy of any such consents or approvals;

10.2.5 all work shall be carried out strictly in accordance with the provisions of any consents granted or terms laid down for such works either by the Corporation or any government or statutory authority;

10.2.6 all work shall be undertaken by qualified trades persons in a proper and workmanlike manner;

10.2.7 all work shall be undertaken only between the hours of 7.30am and 5.30pm on Mondays to Saturdays other than public holidays;

10.2.8 all Common Property shall be fully protected against damage;

10.2.9 any damage caused to Common Property shall be rectified by such person to the satisfaction of the Corporation;

10.2.10 all Common Property areas shall be left in a clean and tidy condition on a daily basis;

10.2.11 all work shall be undertaken in such a way so as to cause minimum disturbance or inconvenience to the Lotholders or Occupiers of any other Lots;

- 10.2.12 such person shall effect all proper insurance cover against damage to persons and property which may be caused or may arise out of such prescribed work and shall upon request from the Corporation provide the Corporation with a copy of such insurance policy or cover;
  - 10.2.13 such person shall permit the Corporation to inspect the work being undertaken from time to time until such work is complete upon reasonable notice of such intended inspections;
  - 10.2.14 any rubble or refuse arising from the performance of such prescribed work must not be disposed of in domestic garbage bins but must be disposed of as directed by the Corporation, and
  - 10.2.15 where such person proposes to remove and replace the floor covering to the floor of any part of a Lot and where such person proposes to replace the existing floor covering with a hard surface floor covering, then where such person has obtained the consent of the Corporation, the person must insert an acoustic underlay between the floor and the hard floor covering.
- 10.3 Save and except for any prescribed work referred to in by-law 10.2 hereof and performed or carried out in accordance with such by-law 10.2 a person bound by these by-laws shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the Common Property without the prior approval in writing of the Corporation.
- 10.4 The Lotholder of Lot 2 in the Community Parcel will have been deemed to have obtained consent of the Corporation to the proposed redevelopment of Lot 2 if the redevelopment is in accordance with the proposals, consents and approvals obtained from any Government or Statutory Authority prior to the commencement of these by-laws.

## **11. Moving Articles To and From Lots**

The Lotholder or Occupier shall comply with and observe the following conditions and restrictions as to delivery or movement of goods or furniture to and from the Lot:

- 11.1 Goods or furniture may be delivered to and from the Lot only through such entrances at such times and in such manner as will ensure minimum interference with persons using the entrances or Common

Property and will be subject to the prior approval of and under the supervision of the Corporation.

- 11.2 Goods or furniture shall not be left on the Common Property at any time and if so left may be removed by the Corporation at the expense and risk of the Lotholder.

**12. Animals**

Subject to the Act, a person bound by these by-laws must not without the consent of the Corporation, keep any animal in, or in the vicinity of, a Lot.

**13. Leasing**

- 13.1 Where a Lotholder leases the Lot or any portion of the Lot the Lotholder must inform the Corporation as to the identity of the Lessee and the essential terms and conditions of the Lease.
- 13.2 The Lotholder must provide a copy of these by-laws to the intended Lessee and ensure that the Lessee is bound by the terms of any lease between the Lotholder and the Lessee to comply with these by-laws.
- 13.3 A Lotholder shall not lease or grant rights in respect of the Lot or any portion of the Lot for valuable consideration for a period of less than 2 months.

**14. Change in Ownership/Occupancy**

A Lotholder must immediately notify the Corporation of:

- 14.1 any change in ownership of the Lot, or any change in address of a Lotholder;
- 14.2 any change in the occupancy of the Lot.

**15. Right to Enter Lot**

The Corporation shall be permitted by each Lotholder or Occupier and shall have the right at all reasonable times and on giving the Lotholder or the Occupier reasonable notice (except in cases of emergency when no such notice shall be required), to enter upon the Lot for the purpose or in the course of carrying out the functions or duties of the Corporation or exercising its powers which, without limiting the generality of the foregoing, shall be deemed to include the power

- 15.1 to inspect the Lot;
- 15.2 to carry out maintenance repairs or work, and

- 15.3 to enter upon and inspect any part of the Lot for the purpose of ensuring that the Act and these by-laws are being observed.

**16. Sale of Lot**

A person bound by these by-laws unless otherwise agreed to in writing by the Corporation:

- 16.1 shall ensure that in the event that a Lot is to be sold by auction, that the auction must take place wholly within the Lot so as to not cause a disturbance to other persons on the Community Parcel;
- 16.2 must not cause, suffer or permit any signs advertising the sale of the Lot to be placed on or in the Community Parcel;
- 16.3 must not interfere with or compromise the security system of the building when conducting an open inspection of the Lot.

**17. Observance of By-laws**

- 17.1 Where these by-laws restrict the behaviour or activity of a Lotholder or Occupier of a Lot there shall be imposed upon that Lotholder or Occupier an obligation not to permit that behaviour or activity.
- 17.2 A Lotholder or Occupier of a Lot shall take all reasonable steps to ensure that their visitors comply with the provisions of these by-laws and in the event of their inability or any reason to ensure such compliance by any such visitor, they shall thereupon ensure that such visitor leaves the Community Parcel.

**PART 5 – COMMON PROPERTY**

**18. Prohibited Activities**

A person bound by these by-laws must not:

- 18.1 obstruct the lawful use of the Common Property by any person;
- 18.2 erect, place or occupy a tent, or sleep overnight on the Common Property;
- 18.3 interfere, or allow their customers, clients or visitors to interfere, with others in the enjoyment of their rights in relation to Lots or Common Property;
- 18.4 bring objects or materials to the Common Property of a kind that are likely to cause justified offence to the others;

- 18.5 without the consent of the Corporation sing, busk or play an instrument so as to appear to be for the purpose of entertaining other persons;
- 18.6 without the consent of the Corporation damage or interfere with any lawn, garden, tree, shrub, plant or flower on the Common Property;
- 18.7 dig, damage, disfigure, remove or in any way interfere with the soil, turf or any grass plot, lawn or playing surface.
- 18.8 without the consent of the Corporation use any portion of the Common Property for their own purposes as a garden;
- 18.9 throw, roll or discharge any stone, substance or missile to the danger of any person or animal on the Common Property;
- 18.10 deface, paint, write, cut names or letters or make marks on or fix bills or advertisements to any tree, rock, fence, Building, sign or other property of the Corporation on the Common Property.
- 18.11 consume any alcohol except in designated areas.
- 18.12 use or enter upon the common property area at the western most aspect of the sixth floor level or the common property on the roof without the prior consent of the Community Corporation and in any case the Community Corporation shall only grant access to such third parties as are required to keep the balcony area in good repair or Tertiary Corporation Lotholders but in any case under strict safety guidelines set by the Community Corporation

**19. Corporation to keep Common Property in Good Repair**

The Corporation must keep the Common Property tidy and free of graffiti and in a state of good and serviceable repair and shall always properly maintain all chattels, fixtures and fittings held by the Corporation or used or tended, adapted or designed for use in connection with the Common Property or the enjoyment thereof by the Lotholders or Occupiers or by their families or visitors and for this purpose may enter into an appropriate contract with a third party for such party to provide such services for the benefit of Lotholders on behalf of the Corporation but those lotholders mentioned in clause 20.1 hereof shall be solely responsible for the cost of any service provided by the Corporation to their respective lots.

**20. Secondary Corporation allotments**

- 20.1 Without limiting any other by-law, the Lotholders or Occupier of Lots 20, 50, 74, 90, 91, 92, 100, 200 and 300 in the Secondary Corporation must also:

- 20.1.1 be responsible for their own rubbish collection and disposal and only place bins out for rubbish collection on the days appointed for collection and bring those bins in before 8 am on that collection day.
- 20.1.2 Store all bins within appropriate areas of the Lot and must not leave garbage, garbage bins or store garbage bins on the common property.
- 20.1.3 Keep clean and free of chemical or petroleum product spillage, contamination or spoilage the surface of the common property areas adjacent to and within the Lot subsidiaries attached to the Lot.
- 20.1.4 Comply with all health, noise and other regulations in carrying on the business from the Lot.
- 20.1.5 Maintain at its cost in a good and serviceable repair any common property adjacent to and within the Lot subsidiaries or common property used by its tenants or invitees and shall keep those areas clean, tidy and free of any graffiti.

## **21. Lifts**

- 21.1 Without limiting any other by-law, the Lotholders, Occupiers, Customers and Invitees of Lots 20, 50, 74, 100, 200 and 300 in the Secondary Corporation shall only have use of those lifts in the western most aspect of the Community parcel and shall be responsible for the day to day cleaning and mechanical, electrical and structural maintenance and in so doing shall pay to the corporation the full costs required to maintain the lift with a lift maintenance contractor to a high safety standard and ensure that any compliance certificate required by law shall be held.
- 21.2 The lotholders comprising the Tertiary Corporation or their invitees or guests shall have the exclusive use of the lift area in the eastern most aspect of the Community Parcel to the exclusion of the Lotholders, Occupiers, Customers and Invitees of Lots 20, 50, 74, 90, 91, 92, 100, 200 and 300 in the Secondary Corporation.
- 21.3 The lotholders comprising the Tertiary Corporation and the Lotholders of Lots 90, 91 and 92 in the Secondary Corporation or their invitees and guests shall have the use of the lifts in the western most aspect of the Community Parcel.

## **22. Air-conditioning Plant**



- 22.1 Portions of the air-conditioning plant for each Lot are (or may be) located on the Common Property;
- 22.2 The obligation of maintenance and liability for the cost of such maintenance in relation to any air-conditioning plant located on Common Property lies with each Lotholder to the extent that such plant exclusively services the Lotholder's Lot;
- 22.3 Each Lotholder shall indemnify the Community Corporation for any loss or damage caused by any air-conditioning plant located on Common Property to the extent that such plant exclusively services the Lotholder's Lot.

## **PART 6 - MISCELLANEOUS**

### **23. Insurance**

- 23.1 The Corporation is a Tertiary community corporation.
- 23.2 The Primary Corporation is responsible for coordinating the security and for maintenance and insuring the buildings of the Community Parcel.
- 23.3 The Tertiary Corporation shall be liable to the Primary Community Corporation to make contributions for any insurance taken out by the Primary Community Corporation over the Community Parcel.
- 23.4 Each Lotholder shall carry their own third party property and bodily injury insurance on the Lot extending to cover any person occupying the Lotholder's Lot. Such policy shall give cover for a minimum of \$10,000,000 per claim or such other amount as the Corporation may from time to time determine.
- 23.5 Proof of coverage by way of copy of the Lotholders current receipted insurance or policy shall be provided forthwith by the Lotholder on request by the Corporation.

### **24. Corporation's Rights and Powers - Unpaid Levies**

- 24.1 A Lotholder (which includes a corporation and a mortgagee in possession) must pay on demand:
  - 24.1.1 the whole of the Corporation's costs and expenses (including solicitor's and own client costs) incurred in recovering levies or money levied upon that Lotholder's Lot by the Corporation pursuant to the Act or pursuant to the by-laws, and

24.1.2 any costs that are ordered to be paid by the Lotholder to the Corporation by any Court Tribunal or body with authority to order the payment of costs.

**24.2** If the Lotholder does not pay such costs and expenses after demand is made for them, the Corporation may take action to recover them in any Court of competent jurisdiction provided that, in respect of the Corporation's party and party costs, the Corporation complies with any procedure for the taxation and recovery of costs provided for in the rules of the Court, Tribunal or other body which orders payment of costs in favour of the Corporation. The Corporation may also enter any costs payable to it against the levy account of the Lotholder's Lot and note the amount of such costs on any certificate issued in respect of the Lot pursuant to the Real Property Act.

**24.3** If a contribution levied under the Act is unpaid 30 days after it falls due for payment, the amount of the unpaid contribution will bear interest at the annual rate determined by the Corporation from time to time, unless otherwise determined by ordinary resolution at a general meeting. At the discretion of the Corporation, any Manager has discretion to write off interest to a limit to be determined by the Corporation from time to time.

**24.4** If when a person becomes the Lotholder of a Lot, another person is liable in respect of the Lot to pay interest on a contribution, the Lotholder is jointly and severally liable with the other person for the payment of the interest.

**24.5** The amount of any interest is recoverable by the Corporation as a liquidated debt.

**24.6** If the Corporation spends money to make good damage caused by a breach of the Act, or of these by-laws by any Lotholder or the tenants, occupiers, guests, servants, employees, children, invitees or licensees of the Lotholder the Corporation may recover the amount spent as a debt in an action in any court of competent jurisdiction.

## **25. Sinking Fund**

**25.1** The Corporation must establish a Sinking Fund to fund the provisions of major items of repair or maintenance to the Community Parcel.

**25.2** The Corporation must advise the Lotholders in writing of the establishment of any such Sinking Fund and of the contribution to be made by the Lotholder.

**25.3** The following provisions shall apply to any Sinking Fund established under this by-law:

- 25.3.1 the Corporation will establish a separate fund for such monies and all monies paid by the Lotholder in this regard will be paid into that fund;
- 25.3.2 that fund or so much of the balance standing to the credit of that fund as remains unexpended from time to time for a purpose for which the fund was established will be held by the Corporation in a separate interest bearing account; and
- 25.3.3 any amounts paid by the Corporation to the credit of that fund, and the net interest earned by the Corporation on that fund, will not be applied by the Corporation for any purpose other than payment of outgoings for which the fund was established.

## **26. Indemnity and Release**

A person bound by these by-laws shall:

- 26.1 indemnify and forever hold harmless the Corporation from and against all and any actions, claims, demands, losses, damages, costs and expenses which the Corporation shall or may become liable in respect of or arising out of any loss or injury personal or in respect of property (suffered by any person in on or about the Lot or Common Property) except and to the extent that such loss or injury was n caused or contributed to by the negligence of the Corporation;
- 26.2 Occupy and use and keep the Lot at the risk in all things of the Lotholder and the Lotholder hereby releases to the full extent permitted by the law the Corporation from any and all claims, demands and damages of every kind resulting from any accident, damage or injury occurring therein except and to the extent that any such claims, demands and damages arise from or as a consequence of the negligence of the Corporation or any servant or agent of the Corporation.

## **27. Removal of Persons**

The Corporation may remove any person from a part of the Community Parcel who is found committing a breach of a by-law in that part.

## **28. Services**

Notwithstanding any implication or rule of law to the contrary, the Corporation shall not in any circumstances be liable to the Lotholder for any loss or damage suffered by the Lotholder for any malfunction, failure to function or interruption of or to the water, gas, electricity, power, telephone or other services to the Lot or for the blockage of any sewers, wastes, drains, gutters, downpipes or stormwater drains from any cause whatsoever.

**29. Permits**

- 29.1 In any by-law of the Corporation, unless the contrary intention is clearly indicated, the words "the consent of the Corporation" means the permission of the Corporation given in the form of a written permit;
- 29.2 the Corporation shall have the power to grant permits in respect of any activity in or on the Community Parcel;
- 29.3 The Corporation may attach such conditions to a permit as it thinks fit and may vary or revoke such conditions or impose new conditions by notice in writing to the permit holder;
- 29.4 The Corporation may grant a permit either for a term of up to twelve (12) months or for an identified activity or schedule of activities as it thinks appropriate;
- 29.5 A permit holder shall comply with each and every condition of the permit. Each event which is a breach of the permit shall constitute a separate offence under these by-laws;
- 29.6 A permit holder shall pay to the Corporation in advance, such fee as may be determined by the Corporation for the Corporation issuing the permit to the permit holder;
- 29.7 Subject to the terms of the permit, the Corporation may cancel, suspend or revoke the permit at any time by notice in writing to the permit holder.

**30. Offences**

A person who contravenes or fails to comply with the provisions of these by-laws is guilty of an offence.

Maximum penalty: The maximum prescribed under the Act.

**31. Breach**

Where a person bound by these by-laws has acted in breach thereof and the Corporation has incurred expense in remedying such breach, the Corporation shall be entitled to recover such expense from such person.

**32 Rules**

The management committee of the Corporation as constituted or elected from time to time has the power to make such rules as it considers necessary to

ensure that Lotholders and Occupiers have proper use and enjoyment of their Lot and the Common Property. Such rules may include (but are not limited to) traffic restrictions and regulations in relation to use of any general or community area (if any) and the like. The Rules in force from time to time shall be enforceable by the Corporation as if those rules formed part of these By- Laws.

**33. Waiver**

No waiver by the Corporation of one breach of any rule, covenant, obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or any other rules, covenants, obligations or provisions herein contained or implied.

**34. Notice**

Any notice required to be served under these by-laws shall be sufficiently served on the Lotholder if left on the Lot addressed to the Lotholder or if addressed to the Lotholder at the last known address of the Lotholder and forwarded by pre-paid post and if a notice is given by post it shall be deemed to be served at the time when in the ordinary course of post it would be delivered at the address to which it was sent.

Executed by  
KYREN PTY LTD  
By the authority of the  
Sole Director/Secretary

.....  
Sole Director/Secretary  
Theo Samaras