

Contract of Appointment Owners Corporation Manager

Owners Corporations Act 2006 Section 119, Owners Corporations Regulations 2007 and Owners Corporation Rules
OC 5 (12/07)

This contract must be completed in accordance with the Owners Corporation Rules, Owners Corporations Act 2006, Owners Corporations Regulations 2007 and Fair Trading Act 1999.

REFERENCE SCHEDULE

Details of Owners Corporation

Owners Corporation Number

Name and Plan Number of Owners Corporation

Owners Corporation 1 - Plan No.

Name and address of property

ABN

Representatives of the Owners Corporation

Name of main representative

Position held in Owners Corporation

Chairperson

Telephone number

Fax

Email

Name of alternative representative (if any)

Telephone number

Details of Manager

Manager Registration Number

207

Name of Manager (company or individual)

MBCM STKILDA

Business address

1st flr/ 276B GLEN EIRA RD ELSTERNWICK

Telephone number

95330012

Facsimile

95330122

Email

info@mbcmstkilda.com.au

ABN

17834903613

ACN

05248780

Other Trading/Business Name(s) (if applicable)

Term of Appointment

Number of years

From (commencement date)

To (expiry date) (if applicable)

PLEASE NOTE: If no notice is given by the Owners Corporation to the Manager at least 28 days prior to the expiry date the Appointment will continue until the expiration of one year after the expiry date which date will then become the expiry date.

1. Insurance

1.1 Manager's professional indemnity insurance details

Name of insurer

CGU

Name of policy holder

ROSENMAX PTY LTD

Policy Number

83REA0803538

Date policy commenced

31/3/13

Date policy expires

31/3/14

Level of cover

Two million dollars in accordance with section 119(5) of the Act.

1.2 Australian Financial Services Licence and Authorisations

(Insurance Companies/underwriting agencies/Insurance Broker/s)

Instructions: For each authorisation tailor the dealing and advising services you are permitted to provide by your authorising licensee/s. Check your written authority or agreement for details. Create a separate box for each licensee if you act for more than one. ^Delete the inapplicable authorisations.

Details of insurance services (dealing and advising service)	Authorising Licensee(s)
Dealing service Arrange for a person to deal in a general insurance product^ Issue, acquire, vary or dispose of a general insurance product^ Apply for, acquire, vary or dispose of a general insurance product on behalf of another^ Advising service Providing personal advice^ Providing general advice^ Providing factual information^	

1.3 Insurance Agency Fee and Commissions

1.3.1 INSURANCE AGENCY FEE AND COMMISSIONS

The Owners Corporation acknowledges that it has been fully informed by receipt of this Appointment of the Manager's arrangements with the authorising licensees listed in Clause 1.2 (or with various insurers if the Manager, or the Manager's employer, holds an Australian Financial Services Licence) and that it has agreed that:-

- 1.3.1.1 the manager may receive or retain commissions on the placing of insurance or the insuring of risks by the Owners Corporation;
- 1.3.1.2 if the insurance commission is less than 15% of the premium paid by the Owners Corporation the Owners Corporation will pay to the Manager a fee being the difference between the commission received and 15% of the premium.
- 1.3.1.3 such fee shall be in addition to the fee for services set out in Clause 2.1.

1.3.2 CURRENT PRACTICE

The purpose of this memorandum is to facilitate uniform disclosure of insurance agency fees and commissions received by Managers who are members of OCV and who comply with the conditions set out below.

OCV endorses the current practice of Managers deriving insurance commissions on insurance premiums paid on behalf of Owners Corporations. The conditions applicable to endorsement by OCV are as follows:-

- 1 such fees and commissions do not exceed 20% of the premium payable by the Owners Corporation.
- 2 in all cases the best interest of the client is the paramount criterion when presenting quotations from particular insurance companies or placing insurance with any insurance company or broker that they are an authorised representative of.

The distribution of this document by the Manager to the Owners Corporation members will serve as an announcement that such income is being received and that there is compliance with the restrictions as set out above.

2. Fees and Services

All fees must be listed and include GST

2.1 Annual fee and services

Total Annual fee How often paid (annually, ½ yearly, quarterly, monthly or other)

\$

Quarterly

Description of services to be provided by Manager in respect of annual fee payment

The Manager has the functions and duties provided for in sections 120 to 122 (inclusive) under the Act including:-

ACCOUNTING

Establish and operate a bank account in the name of the Owners Corporation or a trust account for the Owners Corporation;

Keep books of account covering all income and expenditure and assets and liabilities of the Owners Corporation;

Prepare annual financial statements of all income and expenditure and assets and liabilities of the Owners Corporation (the annual accounts);

Issue notices for fees set and special fees levied by the Owners Corporation;

Pay invoices and insurance premiums on behalf of the Owners Corporation (provided reasonable funds are held by the Owners Corporation);

Reconciliation of bank account.

INSURANCE

Arrange insurance or renewal only with or through the authorising licensees listed in Clause 1.2 in accordance with the authority(ies) to provide insurance services listed in Clause 1.2, unless the Manager or the Manager's employer holds its own Australian Financial Services Licence covering the provision of the services;

Arrange a valuation of the cost of reinstatement and replacement of the building/s when requested by the Owners Corporation;

Prepare and lodge routine insurance claims with insurers/brokers (max. 15 minutes);

Provide any other insurance services in respect of insurance products offered through the authorising licensees as listed in Clause 1.2, or as otherwise authorised by the Australian Financial Services Licence held by the Manager, or the Manager's employer.

DOCUMENTATION

Maintain roll of owners names and addresses;

Maintain the Register of the Owners Corporation;

Issue all Owners Corporation certificates and answer reasonable enquiries at the cost of the applicant/enquirer;

Deal with routine inwards and outward correspondence;

Keep and supervise the use of the common seal;

Keep the records of the Owners Corporation including minutes and postal ballots.

ANNUAL GENERAL MEETING

Attend Annual General meetings held during office hours at the Manager's office or at another place agreed between the Owners Corporation and the Manager;

Convene, attend, submit a budget and financial statement to and record minutes of the Annual General Meeting;

Submit a report of the Manager's activities to each Annual General Meeting;

Meetings exceeding one (1) hours duration will be charged at the hourly rate for **Additional Services** set out in 2.2;

Any meeting held outside the Manager's office will attract a fee for travel time as set out in 2.2;

MAINTENANCE - Arrange for minor (< \$1,000) repairs and maintenance of Owners Corporation Property.

GUIDANCE - Provide guidance to the Owners Corporation to enable the Owners Corporation to carry out and perform its duties and functions, as set out in this schedule.

GENERAL - Generally implement the decisions and instructions of the Owners Corporation with respect to its duties and functions as set out in this schedule.

SCHEDULE 2.2
FEES FOR ADDITIONAL DUTIES

Hourly Rate	\$110.00 per hour chargeable in units of 15min
Answering questions or questions arising out of provision of OC Certificates	Hourly Rate
Arrange any major (\$1001 > \$30000) maintenance/repair/replacement of Body Corporate property (% of project value)	2%
Arrange any major project from \$30,001	1.5%
Preparation and lodgement of any additional rules Land Victoria	Hourly Rate
Attendance to VCAT	Hourly Rate
Attend any legal proceedings or hearings affecting the Owners Corporation including instruction debt collectors and solicitors for recovery of funds	Hourly Rate
Any Debt recovery letter to Owner for fees not paid to OC	\$55.00
Attendance to provide inspection of any records of the OC and its Register to authorised persons and responding to enquiries	Hourly Rate
Preparation of records on transfer of management	\$420.00
Instruct debt collectors and or solicitors and generally supervise or attend any legal proceedings or hearing affecting the Owners Corporation	Hourly Rate
Preparation and lodgement of Form 5 (change of address) (excludes lodgement fees)	\$110.00
Form 3 (payable by applicant selling or buying the unit) non urgent (more than 72 hours notice)	\$150.00
Form 3 (URGENT)	\$300.00
Strata Plan	\$35.00
Preparation of Breach Notices & Log Sheet of complaints	Hourly Rate
OC Seal	\$40.00
Supply of copy documents	Hourly Rate
OC SIGN	\$80.00

2.3 Disbursement Fees

How often paid

Upon presentation of invoice

Description of disbursement fees to be claimed by Manager	Amount
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(a)

The Manager shall be entitled to retain all fees paid by applicants for Owners Corporation Certificates or similar enquiries.	\$150.00 per certificate, per Owners Corporation
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(b)

Archive box (Supply only)	
Archive records storage fee (per box per month)	
Owners Corporation Sign (plus cost)	
Certificate of title/Copy of Plan of Subdivision/Plan search (plus cost)	
Cheque summary notice	
Common seal (plus cost)	
Computer charge (levy/ cheque)	
Computer charge (cheque summary)	
Courier charges (plus cost)	
E-mail outwards	
Facsimile inwards	
Facsimile local outwards	
Facsimile long distance outwards	Per facsimile + phone charge
Issue contribution/Levy notices (incl. postage & stationery) per notice	
Payment of creditors (incl. post & stat) (\$1.10 direct debit)	
Photocopying, collating, & stapling per copy	
Photograph (minimum of \$15.00)	
Postage charges – standard letter	
Postage charges other than standard (plus cost)	
Fee for dishonoured members cheque	
Process stop payment on cheque	
Telephone Charge	
Up to 20 lots (per month)	
21 to 80 lots (per lot per month)	
81 lots or more (per lot per month)	

Or, alternatively to (b)

(c)

Per lot per annum fixed fee covering all itemised disbursement fees listed above.	\$40
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2.4 Review of fees (detail any review dates and CPI requirements)

Unless otherwise agreed:

- 2.4.1 the fees and disbursement fees provided for in 2.1 and 2.2 above will be increased annually on each anniversary of the commencement date of this Contract of Appointment by the increase in the CPI index or 5% whichever is the greater.
- 2.4.2 disbursement fees as set out in 2.3 above will be reviewed to reflect cost increases on 1 July during each year of the Term of Appointment.

3. Delegations to Manager

- 3.1 The Owners Corporation may by instrument delegate any power or function of the Owners Corporation other than a power or function that requires a unanimous resolution or a special resolution.
- 3.2 The Owners Corporation and the committee by this instrument, hereby delegates to the Manager all the powers and functions of the Owners Corporation that are necessary to enable it to perform its duties under this Appointment. Such delegation includes the power to sign on behalf of the Owners Corporation, all necessary documents pursuant to the Act, the Regulations and the Rules other than documents requiring a unanimous resolution or a special resolution or requiring the seal of the Owners Corporation. The Manager may, under section 124 of the Act, delegate to an employee of the Manager any function or duty conferred on the Manager including a function or duty conferred by this delegation.

4. Authority to Pay

The Owners Corporation authorises the Manager to disburse Owners Corporation funds for the purpose of:

- 4.1 Payment of the annual fee for carrying out the Services specified in Clause 2.1,
- 4.2 Payment for performing the Additional Services specified in Clause 2.2
- 4.3 Payment for the disbursements fees listed in Clause 2.3;
- 4.4 Paying moneys in accordance with a budget approved by the Owners Corporation;
- 4.5 Payment of insurance premiums and commission;
- 4.6 Payment of the cost of repairs and maintenance carried out with the authority of the Owners Corporation or by the authority of the Manager and where performance of Additional Services is deemed by the Manager to be necessary for compliance with the Act;
- 4.7 Payment of all other day to day expenses incurred by the Owners Corporation.

5. Duties/Obligations of the Manager

The Manager must perform the following duties and adhere to the following obligations:

- 5.1 Act honestly and in good faith in the performance of the Manager's functions.
- 5.2 Exercise due care and diligence in the performance of the Manager's functions.
- 5.3 Not make improper use of the Manager's position to gain, directly or indirectly, an advantage personally or for any other person.
- 5.4 Hold all money held on behalf of the Owners Corporation on trust for the Owners Corporation.
- 5.5 Account separately for the money held for the Owners Corporation.
- 5.6 Report at the Annual General Meeting.
- 5.7 FUNCTIONS OF THE MANAGER**
- The Manager has the functions conferred by the Act and the Regulations, the Rules of the Owners Corporation, a resolution at a general meeting, a delegation by the Owners Corporation and the matters set out in this instrument or an instruction from the Owners Corporation representative.
- 5.8 DUTIES OF THE MANAGER**
- The Manager must:-
- 5.8.1. submit a report of the Manager's activities to each annual general meeting of the Owners Corporation; and
- 5.8.2. include in the Manager's report details of the professional indemnity insurance held by the Manager in compliance with section 119(5) of the Act.
- 5.9 OBLIGATIONS OF THE MANAGER**
- The Manager must:-
- 5.9.1. perform the Services set out in Clause 2.1 in consideration of the fees there set out plus the disbursement fees set out in Clause 2.3.
- 5.9.2. perform the Additional Services at the rates or the fixed fees as set out in Clause 2.2 if

requested by the Owners Corporation or the committee of the Owners Corporation or the chairperson, secretary or substitute representative and agreed to by the Manager or where the Manager is engaged in dispute resolution involving the Owners Corporation or where performance of Additional Services is deemed by the Manager to be necessary for compliance with the Act;

- 5.9.3. provide the insurance services specified in Clause 1.3 in respect of insurance products offered through the authorising licensees or in accordance with the terms of an Australian Financial Services Licence held by the Manager or the Manager's employer;
- 5.9.4. obtain and present quotations for insurance if instructed by the Owners Corporation from authorising licensees or from other insurance providers provided that the Owners Corporation identifies for the Manager those other insurance providers from whom it wishes to seek insurance terms;
- 5.9.5. not provide insurance services:-
 - (a) as a representative of any person who is not listed as an authorising licensee in Clause 1.3; or
 - (b) as a representative of a person who is listed in Clause 1.3 where the insurance service is outside the authority granted by that authorising licensee,

unless the Manager or the Manager's employer holds its own Australian Financial Services Licence covering the provision of the insurance services;

- 5.9.6. refer the Owners Corporation to an appropriately authorised or licensed insurance adviser if the Owners Corporation requires personal advice in relation to an insurance product and the Manager is not authorised to provide personal advice (as listed in Clause 1.2);
- 5.9.7. not receive any commissions (other than those referred to in Clause 1.3), trade discounts or other fees from contractors, professionals or other providers of services to the Owners Corporation directly or indirectly unless full disclosure of the percentage commission and a genuine estimate of the resulting dollar amount of such commission is given by the Manager in writing and approved by the Representative of the Owners Corporation in writing;
- 5.9.8. observe the Code of Professional Conduct of Owners Corporations Victoria Inc. ("OCV") and any other guideline or standard formally approved or adopted by OCV;
- 5.9.9. if there is a committee of the Owners Corporation, report to the committee as required in writing by the committee, on the carrying out of the functions and duties conferred on the Manager by this instrument.
- 5.9.10. if the committee of the Owners Corporation appoints the Manager to be the secretary* of the committee and of the Owners Corporation the Manager will perform the duties of the secretary under the Act and will keep the minutes of the committee of the Owners Corporation in accordance with section 114 of the Act. If appointed as secretary the Manager will act as secretary only and does not thereby become a member of the committee for any other purpose and the Manager will not have the right to vote on any resolution of the committee or the Owners Corporation.

5.10 WARRANTIES OF THE MANAGER

The Manager warrants that:-

- 5.10.1. the Manager is registered as a Manager under Part 12 of the Act and will continue to remain registered during the currency of this Appointment;
- 5.10.2. the Manager is a member of OCV and the Manager will immediately inform the Owners Corporation should that membership cease;
- 5.10.3. the Manager or an employee of the Manager holds an Australian Financial Service Licence with the appropriate licence authorisations or is an authorised representative of the authorising licensees listed in Clause 1.2 with authority to provide the financial services listed in Clause 1.2;
- 5.10.4. the Manager has been appropriately trained to provide the insurance services for which the Manager is authorised (as listed in the Clause 1.2) or as otherwise authorised under an Australian Financial Services Licence held by the Manager or the Manager's employer;
- 5.10.5. the Manager holds professional indemnity insurance that is sufficient to meet claims up to a level of the prescribed amount in any one year as required by section 119(5) of the Act and will continue to hold such insurance at all times during the continuance of this Appointment.

6. Transfer/Assignment of this Appointment

The Manager may transfer or assign this Appointment in the following ways:

The Manager may transfer or assign this Appointment to a person or company which is a member of OCV and is a Manager registered under Part 12 of the Act without the consent of the Owners Corporation, provided the procedures set out in this Clause are observed. The assignee must execute a Deed of Covenant whereby the assignee covenants with the Owners Corporation to be responsible for compliance with the obligations of the Manager pursuant to this Appointment and must deliver the Deed of Covenant to the Owners Corporation or the chairperson of the Owners Corporation on behalf of the Owners Corporation. On such delivery, and without execution of the Deed of Covenant by the Owners Corporation, the assignee will be entitled to all the benefits of the Manager under this Appointment. If the consent of the Owners Corporation is required to any other transfer or assignment, such consent must not be unreasonably withheld. The Owners Corporation must if called upon by the assignee formally appoint the assignee and execute a substitute instrument of delegation of powers pursuant to Clause 3 above to enable the assignee to comply with the terms of this Appointment.

7. Indemnities

The Owners Corporation will indemnify the Manager from:

INDEMNITY BY THE OWNERS CORPORATION AND LIABILITY OF MANAGER

- 7.1. The Manager is liable to the Owners Corporation:-
 - 7.1.1. only for services actually supplied; and
 - 7.1.2. on the terms of this Clause 7.
- 7.2. The Owners Corporation **hereby releases and indemnifies** the Manager and holds the Manager harmless from and against all actions, omissions, claims, demands, losses, costs, damages and expenses (including without limitation reasonable legal costs on a solicitor and own client basis) ("the loss") in relation to or arising directly or indirectly out of the performance or non performance by the Manager of any services or the exercise of its functions and powers pursuant to this Appointment or otherwise from any cause of action including negligence and including without limitation:-
 - 7.2.1. defects or dangers arising in or out of the Owners Corporation Property;
 - 7.2.2. arising from the failure of the Owners Corporation to supply adequate information and advice or direction when requesting work to be performed by the Manager;
 - 7.2.3. arising from goods or services provided by or to third parties at the request of the Manager provided that such request was made in accordance with the provisions of this Appointment;
 - 7.2.4. arising from the handling or storage of goods, products or chemicals;
 - 7.2.5. resulting in death, bodily injury, damage to property or economic loss suffered by any person or persons whatsoever including members and occupiers of the property or part thereof;

except to the extent that such loss is caused by or contributed to by the Manager's dishonesty or fraud.
- 7.3. Clauses 7.1 and 7.2 apply to the extent permitted by law.
- 7.4. If the Manager breaches its obligations in relation to the services and the Owners Corporation has contributed to the Manager's breach, the Owners Corporation agrees to indemnify the Manager immediately upon demand against any claim, or liability for loss to the extent that the Owners Corporation has contributed to the breach.
- 7.5. This instrument evidences the resolution of the Owners Corporation to grant this indemnity.
- 7.6. The Owners Corporation must on demand repay to the Manager any amounts advanced by way of loan or otherwise by the Manager to it, and make good any funds overdrawn in the bank accounts of the Owners Corporation.
- 7.7. The Owners Corporation **hereby indemnifies** the Manager and will hold the Manager harmless against any claim cost or demand made by any third party in respect of monies lent, goods or services provided to or for the Owners Corporation at the request of the Manager provided that such request was made in accordance with the provisions of this Appointment. This instrument evidences the resolution of the Owners Corporation to grant this indemnity.

- 7.8. The Owners Corporation must indemnify the Manager for all reasonable costs reasonably incurred by the Manager:
- 7.8.1. in connection with any matter relating to the Owners Corporation or its property; or
 - 7.8.2. from the exercise, attempted exercise or non-exercise of any function under this Appointment; or
 - 7.8.3. in consequence of the manager being a party to any proceeding relating to the Owners Corporation.
- 7.9. The Manager may exercise the power of the Owners Corporation under Sections 23 and 24 of the Act to levy fees and to cover extraordinary items of expenditure to cover the requirements for payment of any moneys due to the Manager.
- 7.10. The indemnities granted under this Clause survive termination of this Appointment.

8. Termination of Manager's Appointment

The Manger's appointment may be terminated in the following ways:

- 8.1. This Appointment may be terminated by notice of termination in the following ways:
- 8.1.1. either party may terminate the Appointment at any time if the other party has committed a fundamental breach of the terms of this Appointment and fails to rectify such breach within a reasonable time after written notice from the other party specifying such breach.
 - 8.1.2. after the initial term the Owners Corporation may by ordinary resolution of the Owners Corporation, at a general meeting only, resolve to terminate this Appointment effective upon the expiry date or any anniversary of the expiry date by giving 28 days prior notice in writing to the Manager without having to specify the reason for termination. This instrument evidences the resolution of the Owners Corporation that the committee its chairperson secretary or delegate shall not have the power or function to terminate the Manager's Appointment unless so resolved at a general meeting of the owners Corporation.
 - 8.1.3. after the initial term the Manager may terminate the Appointment at any time without having to specify the reason for termination.
- 8.2. The Owners Corporation must comply with the Act and the Regulations when deciding to terminate the Appointment.
- 8.3. This Appointment will continue until the expiration of the period of 28 days referred to in Clause 8.5 or such earlier time as the records and funds of the Owners Corporation are collected pursuant to Clause 8.5.

If the Manger's appointment is terminated the following conditions/obligations will apply:

- 8.4. The Owners Corporation will remunerate the Manager;
- 8.4.1. pro-rata for services performed under Clause 2.1 up to the end of the Appointment; and
 - 8.4.2. for any Additional Services rendered pursuant to Clause 2.2; and
 - 8.4.3. for any outstanding Disbursement Fees at the rates specified in Clause 2.3; and
 - 8.4.4. for work required to effect the termination and transfer of records including the cost of preparation of additional financial statements.
- 8.5. The Manager must within 28 days of lawful termination of this Appointment as Manager return to the secretary (or to the chairperson if the manager has been appointed as secretary*) of the Owners Corporation all records relating to the Owners Corporation or funds of the Owners Corporation held or controlled by the Manager pursuant to Section 127 of the Act and will also provide a statement of income and expenditure and balance sheets up to the end of the Appointment.

9. Obligations of the Owners Corporation

The Owners Corporation must:

- 9.1 In carrying out its functions and powers act honestly and in good faith, and must exercise due care and diligence.

9.2 OBLIGATIONS OF THE OWNERS CORPORATION

The Owners Corporation must:-

- 9.2.1. have at all times a chairperson to deal with the Manager and must give the chairperson appropriate powers to act by executing an instrument of delegation under Section 102(2) of the Act;
- 9.2.2. if the Owners Corporation appoints a substitute representative, give the substitute representative appropriate powers to act by executing an instrument of delegation under section 102(2) of the Act;
- 9.2.3. appoint a grievance committee and execute an instrument of delegation giving the grievance committee appropriate powers to act pursuant to section 102(2) of the Act;
- 9.2.4. make the Manager aware of any defects or hazards in the Owners Corporation Property and make prompt decisions in relation to any necessary repairs maintenance or other works;
- 9.2.5. resolve and this instrument evidences, the resolution of the Owners Corporation that the powers and functions of the Owners Corporation delegated under the Act or otherwise to the committee, its chairperson secretary or delegates do not include the power or function to terminate this Appointment, which is a matter which must be dealt with only by the Owners Corporation in General Meeting;
- 9.2.6. read the Product Disclosure Statement provided by the Manager before making a decision to purchase the insurance and decide as to the appropriate insurer, the amount of cover and the appropriate policy in good time to enable insurance renewal each year;
- 9.2.7. obtain a valuation of the cost of reinstatement and replacement of the building/s which the Owners Corporation is obliged to insure not less frequently than every three years;
- 9.2.8. ensure that each of the chairperson secretary representatives or members of shall not without giving seven days prior written notice to the Manager:-
 - (a) Issue a notice to convene an annual general meeting or a special general meeting of the Owners Corporation; or
 - (b) Arrange a ballot of the Owners Corporation.

9.3 COMMITTEE OF OWNERS CORPORATION

The Owners Corporation and the committee or subcommittee of the Owners Corporation must ensure that:-

- 9.3.1. reasonable notice of all meetings of the committee and of any subcommittee/s are provided to the Manager;
- 9.3.2. copies of all minutes of the committee and of any subcommittee/s are provided to the Manager to enable the Manager to keep the records of the Owners Corporation in compliance with Part 9 of the Act.

9.4 REPRESENTATIVE AND SUBSTITUTE REPRESENTATIVE OF THE OWNERS CORPORATION

The Owners Corporation must appoint the chairperson as representative and may appoint a substitute representative as named in the Reference Schedule, being members of the committee of the Owners Corporation, to communicate with the Manager and to receive communications from the Manager on behalf of the Owners Corporation and to give instructions to the Manager upon which the Manager may act. The Owners Corporation may from time to time appoint other members of the committee of the Owners Corporation to be the chairperson and substitute representative and must give written notice to the Manager of such appointment whereupon the previous appointees shall cease to have the authority of the Owners Corporation. Binding instructions to the Manager may only be given by a Representative and in the event of any inconsistency or ambiguity the Manager may notify the chairperson the substitute representative and the committee in writing to seek clarity. The Manager shall be entitled to act upon a direct instruction applying the following order of precedence:-

- 9.4.1. from the chairperson;

9.4.2. from the substitute representative;

9.4.3. from the secretary (unless the manager is appointed secretary*);

9.4.4. from the committee.

9.5 RESPONSIBILITY FOR REPAIRS AND MAINTENANCE

9.5.1. The Owners Corporation is responsible under the Act and the Regulations for repair and maintenance of the Owners Corporation Property. The Manager is not liable to the Owners Corporation or to any other party in respect of any defects in the Owners Corporation Property, failure to comply with any building or other statutory regulations or town planning requirements or any need for repair or the existence of any danger or hazard unless:-

- (a) it has been brought to the attention of the Manager and the Manager fails to take steps within a reasonable time to make the Owners Corporation aware of its need to make appropriate decisions in respect of and to raise funds for the necessary repairs maintenance or other works, or
- (b) the Manager has been instructed to arrange for the repairs maintenance or other works and sufficient funds are available for them to be carried out but fails to make such arrangements within a reasonable time,

9.5.2. The Manager is not required to:-

- (a) inspect the Owners Corporation Property, attend itself to any repairs maintenance or other works, make itself aware of any defects in the Owners Corporation Property, or remedy any failure to comply with the Building Code of Australia or other applicable requirements or town planning requirements or any need for repair or the existence of any danger or hazard; or
- (b) perform any services other than those referred to in Clauses 2.1, 2.2.

9.5.3. The Owners Corporation acknowledges that:-

- (a) the Owners Corporation is the entity in control of the premises and Owners Corporation Property
- (b) the Owners Corporation has an obligation to ensure the safety of any person/s at the premises and on or using the Owners Corporation Property
- (c) the Manager as agent will nominate the Owners Corporation as the Principal in respect of any contracts or agreements entered into on behalf of the Owners Corporation and has no liability as the Principal. The Manager is not in the business of providing repairs and maintenance services to the Owners Corporation and will not do so.

9.5.4. The Owners Corporation must ensure:-

- (a) compliance with the obligations under the OHS Act including but not limited to:
 - (i) obligations as employers for its employees and others at its Place of Work;
 - (ii) the obligations as occupier of premises;
 - (iii) obligations it has as controller of any plant or substance used by people at its *Place of Work*;
- (b) that it and all persons employed or engaged by it or on its behalf comply at all times with the requirements of the OHS Act and any directions, manuals, policies or rules formulated from time to time by the Owners Corporation;
- (c) that it has systems in place to assess and eliminate risks and hazards at the Owners Corporation Property and premises which meet the standards required by the OHS Act;
- (d) that where risks and hazards cannot be eliminated the risks and hazards are adequately controlled in a way which meets the standard required by the OHS Act;
- (e) that all persons employed or engaged by it at the Owners Corporation Property are appropriately trained and supervised;
- (f) that only qualified persons are engaged to carry out any third-party work.

9.5.5. The Owners Corporation will to the extent permitted by law, indemnify the Manager against all claims for any loss or damage which may arise as a result of any breach by the Owners Corporation of obligations applicable to the principal contractor under the OHS Act in accordance with Clause 7;

9.5.6. The terms used in this Clause shall have the same meaning as in the OHS Act.

10. Dispute/Complaints process

The Manager and Owners Corporation must adhere to the following dispute/complaints process in accordance with Part 10 of the Owners Corporations Act 2006 and the Owners Corporation Rules:

10.1 DISPUTE RESOLUTION INVOLVING THE OWNERS CORPORATION LOT OWNERS OR OCCUPIERS NOT INVOLVING COMPLAINT AGAINST THE MANAGER

- 10.1.1 The Manager may if requested by the Owners Corporation, the committee of the Owners Corporation, the chairperson, secretary, representative substitute representative or grievance committee participate in dispute resolution or the grievance procedure set out in the Rules of the Owners Corporation.
- 10.1.2 If the Manager participates in any dispute resolution process, attends on receipt or issue of a complaint, meets with the grievance committee, issues or receives any Notices required under Part 10 of the Act or takes part in any proceeding under Part 11 of the Act or otherwise the Manager will be entitled to payment of the fees and charges set out in Clause 2.2 from the Owners Corporation.

10.2 DISPUTE RESOLUTION INVOLVING A COMPLAINT AGAINST THE MANAGER BY THE OWNERS CORPORATION A LOT OWNER OR OCCUPIER

- 10.2.1 The party making the complaint must prepare a written statement in the approved form (available on request from the secretary chairperson or Manager of the owners corporation) setting out the complaint and inviting the Manager and any other party or parties to a meeting.
- 10.2.2 The party making the complaint must serve a copy of the complaint on the Manager and the secretary of the owners corporation and if appropriate, on any other party involved.
- 10.2.3 If there is a grievance committee of the owners corporation, it must be notified of the dispute by the secretary and the Manager of the owners corporation.
- 10.2.4 If there is no grievance committee, the secretary and chairperson must be notified of any dispute by the complainant regardless of whether the owners corporation is an immediate party to the dispute.
- 10.2.5 The parties to the dispute must if requested by the complainant meet and discuss the matter in dispute with the Manager and the grievance committee (if any) and the chairperson on a date within 14 working days after the dispute comes to the attention of all the parties.
- 10.2.6 A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting and each party shall have the right to make submissions and to be heard by the grievance committee.
- 10.2.7 The parties must each:-
 - (a) use their best endeavours to make available to the Manager, grievance committee and chairperson all facts and circumstances required in order to consider and resolve the dispute or difference; and
 - (b) ensure that their respective employees, agents or consultants are available to appear at the meeting.
- 10.2.8 The grievance committee or chairperson shall be entitled to make reasonable directions to expedite or adjourn any meeting or determination of this dispute resolution process as they in their sole discretion think fit on behalf of the owners corporation.

10.3 REFERENCE OF DISPUTE TO AN EXPERT

In the event of any dispute or difference as to the effect of or operation of the plan of subdivision of the owners corporation, the interpretation and performance of obligations under these rules, the Act or the Regulations, that dispute or difference may, if the Manager, grievance committee and the complainant agree, be referred for determination by a person (**Expert**) who shall be agreed upon between the parties or appointed by the President for the time being of the Law Institute of Victoria.

10.3.1 Parties to use best endeavours

When any dispute or difference has been referred for expert determination, the parties must each:-

- (a) use their best endeavours to make available to the Expert all facts and circumstances which the Expert requires in order to settle or determine the dispute or difference; and

- (b) ensure that their respective employees, agents or Consultants are available to appear at any hearing or enquiry called for, by the Expert.

10.3.2 **Right to be heard**

The parties each have the right to:-

- (a) make submissions to; and
- (b) be heard by; and
- (c) each party may be legally represented before the Expert.

10.3.3 **Expert's decision**

The decision of the Expert must be made and delivered to the parties within a period of 1 month (or such other period as the parties may agree, or the Expert may determine) after the date of submission of the dispute or difference to the Expert and shall be final and binding upon the parties.

10.3.4 **Expert may appoint other expert to assist**

The Expert may appoint any other expert to consult with, assist and advise the Expert. The cost of such other expert is deemed to form part of the determination costs and expenses.

10.3.5 **Expert to act as an expert**

The Expert must act as an expert, not as an arbitrator, and his or her decision will be final and binding upon the parties.

10.3.6 **Costs of determination**

The Expert must also determine:-

- (a) the amount of the costs and expenses of, and relating to, the reference of any dispute or difference to him or her; and
- (b) which party or parties must bear the costs and expenses, and in what shares, and in making the determination, the Expert must take into account the reasonableness of the parties leading up to the expert determination including any offers made to resolve the dispute.

10.4 **CONDUCT PENDING DISPUTE RESOLUTION AND/OR EXPERT DETERMINATION**

In the event of any matter being the subject of dispute resolution or referred for the decision of an independent expert:-

- (a) This Contract of Appointment, the rules, the Act and the Regulations will be adhered to pending the decision; and
- (b) If either party is challenging any payment claimed by the other:-
 - (i) so much of that payment (as is admitted to be owing) must be paid immediately; and
 - (ii) an appropriate adjustment must be made within 14 days of resolution.

10.5 **GENERAL PROVISIONS FOR DISPUTE RESOLUTION**

10.5.1 The grievance committee or chairperson may determine the costs and expenses arising out of any breach by a lot owner, or an occupier of a lot, of an obligation imposed on that person under the Act the Regulations or the Rules incurred by the owners corporation including any costs payable by the owners corporation to the manager pursuant to clause 2.2 (but excluding the personal time cost of any person acting in an honorary capacity including the chairperson secretary or committee member of the owners corporation). The costs and expenses so determined shall be due and payable as a debt due by the party in default or breach to the owners corporation. This instrument evidences the resolution of the owners corporation to recover such costs and expenses.

10.5.2 If the dispute is not resolved, the grievance committee, secretary or chairperson must issue the Notices required under Part 10 and notify each party of his or her right to take further action under Part 11 of the Act.

10.5.3 This dispute resolution process must comply with Part 10 of the Act.

11. Additional conditions/provisions

The following additional conditions/provisions apply:

11.1 ENTIRE AGREEMENT

This document embodies the entire agreement between the parties and any previous or simultaneous negotiations, representations, arrangements and agreements are superseded by this Appointment. No amendment or variation may be made to the terms of this Appointment other than in writing executed by each of the parties.

11.2 SEVERANCE

In the event that any condition or provision of this Appointment is held to be invalid or unenforceable for any reason whatsoever that condition or provision shall be read down to the extent necessary to give it, if possible, partial operation, but if that is not possible the condition or provision may be severed and the remainder of this Appointment shall remain in full effect.

11.3 SPECIAL CONDITIONS

- A. The Manager will apply to become registered under Part 12 of the Act within three months after the commencement day of the Act.
- B. Any delegation made by a subdivision body corporate existing immediately before the commencement day of the new Act continues in force as a delegation of powers or functions unless inconsistent with the new Act and the provisions of this Appointment and there has been an effective overriding delegation of powers or functions.
- C. The appointment of the Manager as secretary where denoted in this Appointment by an asterisk (*) is subject to the passing by the Legislative Council of the ***Fair Trading and Consumer Acts Further Amendment Bill 2007*** amending Section 107 of the Act.
- D. Additional Special Conditions (if any) are attached.

12. Definitions/Interpretations

INTERPRETATIONS

- 12.1 "Act" means the Owners Corporations Act 2006 as amended from time to time.
- 12.2 "Additional Services" means the additional services set out in Clause 2.2.
- 12.3 "Appointment" means this Instrument of Appointment of Manager pursuant to section 119 of the Act and includes any Special Conditions.
- 12.4 "Arrange" means to arrange for the issue of the Policies by initiating applications for a contract of insurance or facilitating the renewal of a contract of insurance.
- 12.5 "Australian Financial Services Licensee" means a person who holds an Australian financial service licence under the Corporations Act 2001.
- 12.6 "Authorised Representative" has the meaning given to that term under section 761A of the Corporations Act 2001.
- 12.7 "CPI" means the number as published by the Australian Government Statistician under the heading "All Groups" for Melbourne for the previous financial year.
- 12.8 "General advice" means any recommendation or statement of opinion intended to influence a person to make a decision in relation to a Policy that is not Personal Advice.
- 12.9 "GST" means the tax levied by A New Tax System (Goods and Services Tax) Act 1999 (Cth.)
- 12.10 "Manager" means the Manager named in the Reference Schedule and includes its successors and assigns and its officers and employees.
- 12.11 "OCV" means Owners Corporations Victoria Inc. ABN 91 066 558 592.
- 12.12 "OHS Act" means the Occupational Health and Safety Act 2004 (Vic).
- 12.13 "Owners Corporation Property" means the common property of the Owners Corporation and any chattels, fixtures, fittings, equipment and services on common property or provided by the Owners Corporation to lot owners, occupiers or the public.
- 12.14 "Personal advice" means any recommendation or statement of opinion intended to influence a person to make a decision in relation to a Policy where one or more of the person's objectives, financial situation or needs have been considered or a reasonable person might expect those matters to have been considered.
- 12.15 "Regulations" means the Owners Corporations Regulations 2007 as amended from time to time.
- 12.16 "Rules" means the Rules of the Owners Corporation as amended by the Model Rules or by the Owners Corporation from time to time.
- 12.17 "Services" means the services set out in Clause 2.1 and the Additional Services set out in Clause 2.2.

13. GST

The fees and disbursement fees are inclusive of GST at a rate of 10%; and will be amended appropriately if the rate of GST changes so that the GST exclusive fees and disbursement fees payable to the Manager remain unchanged.

14. Declarations and Signatures

Owners Corporation Declaration and Signature

The Owners Corporation hereby appoints the Manager specified in this contract to carry out the duties and meet the obligations specified in this contract and act on behalf of the Owners Corporation in accordance with the Owners Corporations Act 2006, Owners Corporations Regulations 2007 and Owners Corporation Rules.

THE COMMON SEAL of OWNERS CORPORATION NO.

was affixed and witnessed by and in the presence of persons who declare they are Lot Owners of separate lots and members of the Owners Corporation or by a director of a corporation that is a Lot Owner in accordance with section 20 and 21 of the Owners Corporations Act 2006.

Signature of Witness

Signature of Witness

Name of Witness (print full name)

Name of Witness (print full name)

Address of Witness

Address of Witness

Lot Owner

Lot Owner

Position (Lot Owner or Director)

Position (Lot Owner or Director)

Date:

Appointed Manager Declaration and Signature

I agree to carry out the duties and meet the obligations specified in this contract. I agree to act on behalf of the Owners Corporation in accordance with the Owners Corporations Act 2006, Owners Corporations Regulations 2007 and Owners Corporation Rules.

Signature

Name (print full name)

Address

Company Seal (if applicable)

Position (if corporation)

Date: