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| **SECTION 173 AGREEMENT**  **PLANNING AND ENVIRONMENT ACT 1987**  **LATROBE CITY COUNCIL**  Council  - and -  **[INSERT REGISTERED LAND OWNER]**  in relation to land at:  **[insert address]** |
| Harwood Andrews  ABN 98 076 868 034  70 Gheringhap Street, Geelong 3220, Victoria, Australia  DX 22019 Geelong  PO Box 101 Geelong Vic 3220  Telephone: 03 5225 5225 Facsimile: 03 5225 5222 |

**This agreement is made the day of 20**

**PARTIES:**

1. **Latrobe City Council** of 141 Commercial Road, Morwell, Victoria, 3840

(**Council**)

1. **[##INSERT OWNER DETAILS, including ACN details if applicable##]** of [##insert owner’s address##]

(**Owner**)

**RECITALS:**

1. The Owner is or is entitled to be the registered proprietor of the Land.
2. Council is the Responsible Authority under the Act for the Land. Council is also the collecting agency and the development agency specified in the DCP and for the purposes of Part 3B of the Act.
3. Council enters into this Agreement in its capacity as the responsible authority, collecting agency and development agency.
4. The PSP and the DCP apply to the Land.
5. The DCP sets out the contribution required from individual land owners within the area covered by the DCP to fund infrastructure and services required as a result of development of the area covered by the DCP.
6. The DCP provides that, subject to the collecting agency’s agreement, the Owner may provide infrastructure or land identified in the DCP and receive a Credit.
7. Council has issued the Permit for the Land. The Permit requires the payment of the DIL component of the contribution under the DCP within the timeframe specified in the Permit unless an agreement is entered into with the collecting agency to provide for alternative arrangements.
8. This Agreement is entered into between Council and the Owner pursuant to section 173 of the Act in order to:
   1. satisfy the requirements of the Permit;
   2. set out the obligations of the Owner to pay the DIL or, in lieu of payment, provide the land or works specified in this Agreement that the collecting agency has agreed to accept in full or partial satisfaction of the obligation to pay DIL on the terms set out in this Agreement;
   3. set out the obligations of the Owner to transfer the Open Space Land to Council; and
   4. achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Land.
9. All Mortgagees or Caveators have consented to this Agreement.

**IT IS AGREED AS FOLLOWS:**

# Definitions

In this Agreement unless inconsistent with the context or subject matter:

## **Act** means the *Planning and Environment Act* *1987* (Vic).

## **Agreement** means this Agreement and any agreement executed by the Parties varying or expressed to be supplemental to this Agreement.

## **Caveator** means the caveator identified in item 6 of Schedule 1. [##delete definition if not if applicable##]

## **Certificate of Practical Completion** means a written certificate prepared by Council stating that the DCP Construction Project has been completed to the satisfaction of Council.

## **Civil Maintenance Bond** means an irrevocable unconditional bank guarantee from a financial institution approved by Council or other form of security to the satisfaction of Council, in favour of Council, for the amount specified in item 8 of Schedule 1 to secure maintenance of the DCP Construction Project.

## **Civil Maintenance Period** means the period specified in item 7 of Schedule 1 from the issue of a Certificate of Practical Completion for a DCP Construction Project.

## **Council** means:

### in its capacity as responsible authority, Latrobe City Council or its successor as the authority responsible for administering and enforcing the Planning Scheme and includes its agents, officers, employees, servants, workers and contractors; and

### in its capacity as collecting agency, Latrobe City Council or its successor as the authority identified in the DCP as the collecting agency and includes its agents, officers, employees, servants, workers and contractors; and

### in its capacity as development agency, Latrobe City Council or its successor as the authority identified in the DCP as the development agency and includes its agents, officers, employees, servants, workers and contractors.

## **Credit** means a credit for a DCP Construction Project or DCP Land Project against the Owner’s liability to pay the DIL in the amount specified in Column C in Schedule 2 to be adjusted in accordance with Indexation at the date of the issue of a Certificate of Practical Completion for the the DCP Construction Project or as at the date the DCP Land Project is transferred to or vested in Council.

## **DCP** means the document identified in item 3 of Schedule 1, which is incorporated into the Planning Scheme.

## **DCP Construction Project** means a project for the construction of infrastructure identified in the DCP Construction Project Table in Schedule 2, which comprises such part of the construction project included in the DCP and identified in Column A of Schedule 2 as described in Column B of Schedule 2.

## **DCP Land Project** means the provision of land identified in the DCP Land Project Table Schedule 2, which comprises such part of the land project included in the DCP and identified in Column A of Schedule 2 as described in Column B of Schedule 2.

## **DCP Account** means the bank account maintained by Council for receipt of the contributions under the DCP.

## **DIL** means the development infrastructure levy required to be paid in respect of the Land in accordance with the DCP.

## **Endorsed Plans** means the plans endorsed under the Permit.

## **GST** means the *New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time.

## **GST Regulations** means the *New Tax System (Goods and Services Tax) Regulations 1999 (Cth)* as amended from time to time.

## **Indexation** has the meaning identified in clause 4.5 of the DCP and in the event that one or more of the listed indexes is no longer available then the Council will nominate a replacement index.

## **Land** means the land identified in item 1 of Schedule 1 and includes any lots created by the subdivision of the Land or any part of it.

## **Localised Infrastructure** means works, services or facilities necessitated by the subdivision or development of the Land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local road, bridges, culverts and other water crossings, any required associated traffic control measures and devices. For the purposes of this Agreement, localised infrastructure does not include the infrastructure required in accordance with the DCP or other infrastructure that is in the nature of regional or state infrastructure.

## **Mortgagee** means any person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Land or any part of it.

## **Open Space Land** means the Land for passive open space as shown on the Endorsed Plans to be provided by the Owner to Council.

## **Overprovision Payment** means a reimbursement of the difference between the value of the open space contribution that the Owner is required to make with respect to the Land under clause 53.01 of the Planning Scheme and the value of the Open Space Land the Owner was required to provide under the PSP and the DCP, calculated in accordance with this Agreement.

## *Example: Where clause 53.01 requires the owner to make a contribution of 5% and the PSP requires a contribution of 6%, the Overprovision Payment is 1%.*

## *Example: Where clause 53.01 and the PSP require a contribution of 5% but the Owner elects to voluntarily deliver 10% open space, the Overprovision Payment is 0%.*

## **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Land or any part of it, and includes a Mortgagee in possession.

## **Party** or **Parties** means the Owner and the Council under this Agreement as appropriate.

## **Plan of Subdivision** means a plan showing the subdivision of the Land which creates an additional lot which can be disposed of separately or which can be re-subdivided.

## **Permit** means the planning permit identified in item 4 of Schedule 1, which was issued by Council in its capacity as responsible authority, as amended from time to time.

## **Planning Scheme** means the Latrobe Planning Scheme and any successor instrument or other planning scheme which applies to the Land.

## **PSP** means the document identified in item 2 of Schedule 1, which is incorporated into the Planning Scheme.

## **Residential Lot** means a lot created as a result of the subdivision of the Land which in the opinion of Council is of a size and dimension that it is intended to be developed as a housing lot without further subdivision.

## **Schedule** means a schedule to this Agreement.

## **Stage** is a reference to a stage of subdivision of the Permit as shown on an approved Plan of Subdivision or Endorsed Plan.

## **Statement of Compliance** means a statement of compliance issued by Councilunder the *Subdivision Act* 1988.

## **Surplus Credit** means any Credit that has been issued under clause 6.1 of this Agreement that, after the issue of a Statement of Compliance for final Stage, has not been applied or exhausted under clauses 6.2 & 6.3.

## **Tax Act** means the *Taxation Administration Act 1953* (Cth) as amended from time to time.

# Interpretation

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

## the singular includes the plural and the plural includes the singular;

## a reference to a gender includes a reference to all other genders;

## words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa;

## a reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law;

## a reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute;

## the Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals;

## references to the Parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be;

## reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;

## where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning; and

## where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

# REQUIREMENT TO PAY THE DIL

## **Payment of the DIL**

## The Owner must pay the DIL:

### in accordance with the Permit;

### not more than 21 days prior to the issue of a Statement of Compliance, or where Council has agreed to an alternative timeframe, prior to the time specified in item 9 of Schedule 1; and

### subject to the Owner’s entitlement to a Credit under this Agreement.

## **Entitlement to a Credit**

## The Owner agrees that it will be entitled to a Credit for a Stage if the schedule of contributions endorsed under condition [xx insert condition requiring approval of a schedule of contributions for each stage] identifies that:

### there is an existing Credit in excess of the DIL liability for that Stage, in which event the Credit will be applied in accordance with clause 6 of this Agreement;

### there is an existing Credit which is less than the DIL liability for that Stage, in which event the DIL liability will be reduced by the amount of the Credit;

### the land comprising a DCP Land Project will vest in Council upon the issue of a Statement of Compliance for that Stage, in which event the DIL liability will be reduced by the amount of Credit that will accrue upon the issue of the Statement of Compliance for that Stage; or

### there is a combination of the circumstances described above in clauses 3.2.1, 3.2.2 or 3.2.3.

# dcp construction projects

## **Construction**

## The Owner agrees with Council that it must construct the DCP Construction Projects:

### at its own cost;

### in accordance with plans and specifications approved by Council;

### in accordance with the Permit;

### in compliance with all applicable laws and permits, consents and approvals;

### within the time specified for the DCP Construction Project in column D of Schedule 2 of this Agreement; and

### to the satisfaction of Council.

## **Designs and approval**

## The Owner agrees that prior to commencing any works for a DCP Construction Project, it must, at its own cost:

### prepare plans and specifications for the DCP Construction Project and submit those plans and specifications to Council for its approval; and

### obtain all necessary permits, consents and approvals for the DCP Construction Project.

## **Maintenance of DCP Construction Projects**

## The Owner agrees that it must:

### prior to the issue of a Certificate of Practical Completion for a DCP Construction Project the Owner must provide the following to Council:

#### a copy of as-built plans and any maintenance information, operational manual or other material which is reasonably required for the ongoing operation and maintenance of the DCP Construction Project;

#### a copy of any permit, consent or approval obtained for the DCP Construction Project;

#### payment of any fees or charges outstanding in respect of the DCP Construction Project; and

#### the Civil Maintenance Bond for the DCP Construction Project;

### following the issue of a Certificate of Practical Completion for a DP Construction Project, maintain the DCP Construction Project in good order, condition and repair for the Civil Maintenance Period to the satisfaction of Council.

## **Issue of a Certificate of Practical Completion**

## Upon the completion of a DCP Construction Project to Council’s satisfaction and in accordance with this Agreement, Council will issue a Certificate of Practical Completion for the DCP Construction Project.

## **Application of the Civil Maintenance Bond**

## Council may use the Civil Maintenance Bond to undertake works or repairs to ensure the good order, condition and repair of the Construction Project in the event that:

### any part the Construction Project is not maintained to Council’s satisfaction during the Civil Maintenance Period; and

### the Owner fails to comply with a written direction from Council to undertake any maintenance works or repairs required by Council.

## **Return of Civil Maintenance Bond**

## Following the:

### end of the Civil Maintenance Period; and

### completion of any maintenance works or repairs required by Council,

## Council will return the Civil Maintenance Bond less any monies used by Council in accordance with clause 4.5.

# DCP LAND PROJECTS

## **Provision of DCP Land Projects**

## The Owner agrees that it must transfer to or vest in Council each DCP Land Project within the timeframe identified for the DCP Land Project in column D of Schedule 2 of this Agreement.

## **Condition of the land**

## The Owner agrees that any land transferred to or vested in Council in accordance with clause 5.1 must be:

### sown to grass or landscaped to the satisfaction of Council;

### free from disused structures;

### free of all encumbrances;

### free from contamination;

### connected to services, where applicable;

### unless otherwise agreed to in writing by Council.

## **No further compensation payable**

## The Owner acknowledges and agrees that, upon Council complying with its obligations under this Agreement, no further compensation of any kind whatsoever is payable to the Owner in relation to the land transferred to Council for a DCP Land Project.

# credit

## **Issue of a Credit**

## Council agrees that it will issue the Owner with a Credit as follows:

### in relation to a DCP Construction Project, upon the issue of Certificate of Practical Completion for the DCP Construction Project; and

### in relation to a DCP Land Project, once the land has vested in or transferred to Council.

## **Application of the Credit**

## Council agrees that:

### the Owner will not be required to make cash payments towards the Owner’s obligation to pay DIL until any Credit has been exhausted as determined in accordance with clause 6.3; and

### prior to the issue of a Statement of Compliance for any relevant Stage, Council must deduct the amount of DIL payable in relation to that Stage from any Credit.

## **Exhaustion of the Credit**

## When the amount of the DIL payable in relation to a Stage exceeds the amount of any Credit that has been issued:

### Council must notify the Owner in writing that the Credit has been or will be exhausted;

### in relation to that Stage, the Owner must pay in cash an amount equal to the amount of DIL payable in relation to that Stage that exceeds the amount of any Credit remaining prior to the issue of the Statement of Compliance for that Stage; and

### in relation to subsequent Stages, the Owner must pay the DIL in cash prior to the issue a Statement of Compliance for each Stage or as otherwise agreed by Council, unless a further Credit is issued by Council.

## **Refund of Credit**

## Council agrees that, subject to receiving a written request for a refund of Surplus Credit after a Statement of Compliance has been issued in respect of the final Stage, it will refund the Surplus Credit to the Owner within 24 months of receiving the written request for refund.

# OPEN SPACE LAND

## **Requirement to provide Open Space Land**

## The Owner agrees that prior to the issue of a Statement of Compliance for any Stage or such later time as agreed to by Council in writing, the Owner must provide to Council:

### any Open Space Land; and

### pay to Council the amount specified in item 10 of Schedule 1 as cash in lieu of the provision of open space;

### as required under clause 53.01 of the Planning Scheme, the PSP and the DCP.

## **Overprovision of Open Space Land**

## The Parties agree that where the Owner is providing an area of Open Space Land above the amount required under clause 53.01 and in accordance with the PSP and the DCP:

### the Owner is entitled to an Overprovision Payment; and

### subject to receiving a written request for a refund, the Council will pay the Owner the Overprovision Payment within 120 days of the later of:

#### the Open Space Land being vested in or transferred to Council; and

#### a Statement of Compliance being issued in respect of the final Stage.

## **Overprovision payment**

## The Parties agree that any Overprovision Payment to which the Owner is entitled to under clause 7.2 is the difference between:

### the value of the Open Space Land determined in accordance with the PSP and the DCP at the time that the Open Space Land is vested in or transferred to Council; and

### the total of the value of the public open space contribution required under clause 53.01 and the PSP and the DCP for each Stage, which must be calculated for each Stage at the time that a Statement of Compliance is issued for that Stage.

## **Obligation to provide Open Space Land fulfilled**

## The Parties agree that, upon complying with clause 7.2, the Owner has fulfilled its obligations under the Planning Scheme and the Permit in relation to the provision of open space.

# Owner's further COVENANTS

The Owner warrants and covenants that:

## it is the registered proprietor (or entitled to be so) of the Land;

## save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches;

## neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act 1958* (Vic);

## it will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement;

## it will within 28 days of written demand pay to Council, Council’s reasonable costs (including legal or other professional costs) and expenses of and incidental to the:

### negotiation, preparation, execution and recording of this Agreement;

### assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and

### the cancellation or alteration of this Agreement in the Register.

## to the extent that the costs and expenses to be paid for by the Owner in accordance with clause 8.5 constitute legal professional costs, Council may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the Parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by Council and the Owner;

## it will do all that is necessary to enable Council to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document; and

## until such time as this Agreement is recorded in the Register, the Owner must ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.

# ACKNOWLEDGEMENT BY THE PARTIES

## The Parties acknowledge and agree that:

## this Agreement relates only to infrastructure that is set out in the DCP and not Localised Infrastructure except to the extent that the Localised Infrastructure is specifically funded under DCP; and

## compliance with the obligations of this Agreement does not relieve the Owner of any obligation imposed by Council or a Tribunal to provide Localised Infrastructure which obligation may be imposed as a requirement in a planning permit for the subdivision or development of the Land.

# Further assurance

The Parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

# Amendment

This Agreement may be amended only in accordance with the requirements of the Act.

# No waiver

The Parties agree that:

## no waiver by any Party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be:

### a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement; or

### a waiver or release any Party from compliance with any provision, condition or requirement in the future; and

## any delay or omission of any Party to exercise any right under this Agreement in any manner will not impair the exercise of such right accruing to it thereafter.

# No Fettering Council’s POWERS

The Parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Land or relating to any use or development of the Land.

# interest on overdue moneys

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 227A of the *Local Government Act 1989* (Vic) and any payment made shall be first directed to payment of interest and then the principal amount owing.

# Notices

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery, email or by facsimile to the Current Addresses for Service, Current Email Address for Service or Current Number for Service of the Parties, and may be sent by an agent of the Party sending the notice. Each notice or communication will be deemed to have been duly received:

## not later than two business days after being deposited in the mail with postage prepaid;

## when delivered by hand;

## if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic); or

## if sent by facsimile transmission upon completion of that transmission and production of a transmission report stating that the facsimile was sent to the addressee’s facsimile number.

# Costs on Default

If the Owner defaults in the performance of any obligations under this Agreement it will pay to the Council its reasonable costs of action taken to achieve compliance with this Agreement.

# Invalidity of any Clause

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

# Agreement Binding on Successors of Owners

This Agreement will extend to and bind the Owner’s successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

# Joint Obligations

In the case of each Party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that Party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that Party.

# Entire Agreement

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

# GST

## The Parties agree that:

## expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act;

## a supply under this Agreement of:

### in-kind contributions of any kind provided by the Owner to the Council for the supply by the Council to the Owner of a right to develop land where the right/s granted comply with requirements imposed by or under an Australian law (as that term is understood in the GST Act) will be exempt from GST;

### payments, fees, charges levies or other amounts payable (the amount payable) by the Owner to the Council for the supply of a right to develop land, to the extent:

#### the amount payable is a payment of an Australian tax under subsection 81-5(1) of the GST Act; or

#### is an amount that is subject to subsection 81-10(1) of the GST Act and is not an amount listed in regulation 81-10.01 of the GST Regulations; or

#### is an amount that is not subject to subsection 81-10(1) of the GST Act but is listed in regulation 81-15.01 of the GST Regulations; or

#### is an amount that is subject to subsection 81-10(1) of the GST Act and is listed in regulations 81-10.01 and 81-15.01 of the GST Regulations but is listed in subregulation 81-10.01(1)(g);

#### will be exempt from GST.

## the recipient of a taxable supply made under or in respect of this Agreement must pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply. This obligation extends to supply consisting of a Party’s entry into this document; and

## a Party is not obliged, under clause 21.3, to pay the GST on a taxable supply to it until given a valid tax invoice for the supply.

# FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING TAX

## The Parties agree that the words defined or used in subdivision 14-D of schedule 1 of the Tax Act have the same meaning in this clause unless the context requires otherwise.

## The Owner acknowledges and agrees that if Council is required to pay the Commissioner an amount in accordance with subdivision 14-D of schedule 1 of the Tax Act for any transfer to or vesting of land by the Owner in Council under this Agreement (**the Amount**):

### at least 60 days prior to the transfer to or vesting of such land in Council, the Owner must provide Council with a clearance certificate issued by the Commissioner under section 14-220 (1) of schedule 1 to the Tax Act, which must be valid for the period within which the relevant land is to be vested in or transferred to Council and must be issued in the exact name of the Owner; or

### where a clearance certificate is not provided in accordance with clause 22.2.1:

#### if the land is to be transferred or vested in Council in exchange for a cash payment to the Owner, then the Amount is to be deducted from the total cash payment;

#### if the land is to be transferred or vested in Council in exchange for non-cash consideration, the Owner must pay the Amount to Council at least 30 daysprior to the transfer to or vesting of the land in Council; and

#### if the land is to be transferred or vested in Council in exchange for part cash payment and part non-cash consideration, then the Amount is to be deducted from the total cash payment and to the extent that the total cash payment is less than the Amount, the Owner must pay the difference to Council at least 30 daysprior to the transfer to or vesting of the land in Council.

### The Owner acknowledges and agrees that it must provide Council with all information and assistance necessary to enable Council to comply with its obligation to make a payment under subdivision 14-D of schedule 1 of the Tax Actin respect to the transfer to or vesting of land in Council under this Agreement.

### The Owner indemnifies Council against any interest, penalty, fine or other charge or expense incurred by Council arising from a failure by Council to pay the Amount in accordance with subdivision 14-D of schedule 1 of the TaxAct as a result of the Owner’s failure to comply with its obligations under this clause of the Agreement.

# COUNTERPARTS, electronic signing and exchange

## The parties acknowledge and agree that:

## this Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute this Agreement;

## execution by either or both parties of a fax or email copy of this Agreement, or transmission or email of a copy of this Agreement, executed by that party, will constitute valid and binding execution of this Agreement by such party or parties;

## a party may execute this Agreement (and any variation and renewal of this Agreement) with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted technology which the parties agree satisfies applicable requirements for execution by digital signature of the document, including requirements of the *Electronic Transactions (Victoria) Act 2000* (Vic);

## a party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party.

# Commencement of Agreement

## This Agreement will commence:

## on the date that it bears; or

## if it bears no date, on the date it is recorded in the Register.

# ENDING OF AGREEMENT

## The Parties agree:

## this Agreement will end:

### in respect of a Residential Lot, upon the issue of a Statement of Compliance for a subdivision that creates that Residential Lot; or

### in respect of all other land, once the Owner has completed, to the satisfaction of Council all of the obligations imposed upon it under this Agreement and Council has complied with its obligations under the Agreement; or

### otherwise by agreement between the Parties in accordance with Section 177(2) of the Act;

## once this Agreement ends with respect to part or all of the Land, Council will, within 28 days of the Agreement ending with respect to that part of all of the Land, following a request from the Owner and at the cost of the Owner, complete and execute within 21 days all documents necessary to make application to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of this Agreement on the register in relation to the relevant land.

**EXECUTED BY THE PARTIES**

**Signed sealed and delivered as a deed by the Parties**

**Date:**

**SIGNED** for and on behalf of )

**LATROBE CITY COUNCIL** by                  )

Gary Van Driel pursuant to Instrument      )

of Delegation dated 20 April 2018 )

in the presence of: )        ­­­­­­­­­­­­­­­­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                                                                               Chief Executive Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

By witnessing this Agreement, the witness confirms that either:

## this Agreement was signed physically in their presence; or

## where this Agreement was witnessed via audio-visual link, the requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* (Vic) have been met.

[##Execution clause if Owner is individual (delete if not)##]

|  |  |
| --- | --- |
| **SIGNED SEALED AND DELIVERED** by [##insert Owner's name##]inthe presence of: |  |
|  |
| Signature of witness |  |
|  |  |
| Name of witness |  |
|  |  |
| Address of witness |  |

[##Execution clause if Owner is Company with sole director (delete if not)##]

|  |  |
| --- | --- |
| **Executed** by [##insert Owner's name##] in accordance with section 127(1) of the *Corporations Act* 2001: | )  )  )  ) |

Signature of Sole Director and Sole Company Secretary

Print full name

[##Execution clause if Owner is Company with multiple directors (delete if not)##]

|  |  |
| --- | --- |
| **Executed** by [##insert Owner's name##] in accordance with section 127(1) of the *Corporations Act* 2001: | )  )  )  ) |

Signature of Director Signature of Director (or Company Secretary)

Print full name Print full name

**MORTGAGEE CONSENT [##DELETE PAGE IF NOT APPLICABLE]**

The Mortgagee identified in item 5 of Schedule 1 under the Instrument/s of Mortgage identified in item 5 of Schedule 1 consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

DATED:

Executed for and on behalf of [**insert**]

**[##Where there is more than one Mortgagee, include additional consent endorsement]**

**CAVEATOR CONSENT [##DELETE PAGE IF NOT APPLICABLE]**

The Caveator identified in item 6 of Schedule 1 under the Instrument identified in item 6 of Schedule 1 consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

DATED:

Executed for and on behalf of [**insert**]

**[##Where there is more than one Caveator, include additional consent endorsement]**

**Schedule 1**

|  |  |
| --- | --- |
| **Item 1 – Land** | **[##Insert Certificate of Title and any other description. Where there are multiple properties, list them.]** |
| **Item 2 – Precinct Structure Plan** | Lake Narracan Precinct Structure Plan (March 2015) |
| **Item 3 – Development Contributions Plan** | Lake Narracan Development Contributions Plan, March 2015 (Amended June 2017) |
| **Item 4 – Permit** | **[##Insert Permit Number]** |
| **Item 5 – Mortgagee & Instrument/s of Mortgagee** | **[##Insert Mortgagee Name** under Instrument of Mortgage/s **##insert instrument number/s]**  **[or if no registered mortgage insert** N/A**]** |
| **Item 6 – Caveator & Instrument of Caveat** | **[##Insert Caveator** under Instrument of Caveat **##insert instrument number]**  **[or if no caveat insert** N/A**]** |
| **Item 7 – Civil Maintenance Period** | **[##Insert the number of months or N/A if no relevant maintenance period – typically 3 months]** |
| **Item 8 – Civil Maintenance Bond Amount** | **[#insert $ or % of Credit or N/A if no bond required or no relevant maintenance period – typically 5% of construction cost]** |
| **Item 9 – Time for payment of DIL** | **[##Insert any alternative agreed timeframe if relevant otherwise insert N/A]** |
| **Item 10 – Amount of Open Space Payment** | **[##Insert amount of payment required]** |

**Schedule 2**

**DCP CONSTRUCTION PROJECTS TABLE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **A – DCP Project Number and Description** | **A1 – Total DCP Project Value** | **B – Extent of DCP Project** | **C – Credit** | **D – Timing for delivery** |
| [**##insert project number from DCP and DCP project description**] | **[##insert total DCP project value identified in the DCP]** | [**##insert – (Whole Project) or (Part Project and describe the extent of the project)**] | $[**insert**] | [**##insert timeframe – eg. prior to Statement of Compliance for Stage X; or by 30 June 2018**] |
|  |  |  |  |  |
|  |  |  |  |  |

**DCP LAND PROJECTS TABLE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **A – DCP Project Number and Description** | **A1 – Total DCP Project Value** | **B – Extent of DCP Project** | **C – Credit** | **D – Timing for delivery** |
| [**##insert project number from DCP and DCP project description**] | **[##insert total DCP project value identified in the DCP]** | [**##insert – (Whole Project) or (Part Project and describe the extent of the project, including land area)**] | $[**insert**] | [**##insert timeframe – eg. prior to Statement of Compliance for Stage X; or by 30 June 2018**] |
|  |  |  |  |  |
|  |  |  |  |  |