

Environmental Upgrade Agreement

Dated

Melbourne City Council, a body corporate established under the Local Government Act 1989 (Vic) ("MCC")

[To be inserted] (ABN **[to be inserted]**) ("Owner")

[To be inserted] (ABN **[to be inserted]**) ("Lending Body")

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A	PAYMENT SCHEDULE
B	PROJECT (OUTLINE OF WORKS)
C	PROJECT BUDGET
D	ENFORCEMENT PROCEDURE
E	REPRESENTATIONS AND WARRANTIES
F	CONSENTS AND AGREEMENTS OF EXISTING TENANTS

- G TERMS FOR ADVANCING FUNDS**
- H LIMITATION OF LIABILITY**
- I ACCESSION DEED POLL**

Reference Table

Item 1	Parties	MCC, Owner and Lending Body
Item 2	MCC	Melbourne City Council, a body corporate established under the Local Government Act
	ABN	55 370 219 287
	Address	[to be inserted]
	Telephone	[to be inserted]
	Fax	[to be inserted]
	Email	[to be inserted]
	Attention	[to be inserted]
Item 3	Owner	[to be inserted]
	ABN	[to be inserted]
	Address	[to be inserted]
	Telephone	[to be inserted]
	Fax	[to be inserted]
	Email	[to be inserted]
	Attention	[to be inserted]
Item 4	Lending Body	[to be inserted]
	ABN	[to be inserted]
	Address	[to be inserted]
	Telephone	[to be inserted]
	Fax	[to be inserted]
	Email	[to be inserted]
	Attention	[to be inserted]
Item 5	Building	[description to be inserted]
Item 6	Approved signatories	

MMC	The chief executive officer of MCC.
Owner	A director or secretary of the Owner, or an officer of the Owner whose title contains the words [to be inserted], or a person performing the functions of any of them.
Lending Body	A director or secretary of the Lending Body, or an officer of the Lending Body whose title contains the words "director", "chief", "head", "associate" or "manager", or a person performing the functions of any of them.

Item 7	Funding Limit	[to be inserted]
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Item 8	Maximum prepayment amount	[to be inserted]
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Item 9	Is the party a trustee?	
	Owner	[insert "Yes" or "No"]
	Lending Body	[insert "Yes" or "No"]

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|-----------------|----------|--|
| Recitals | A | The Land is owned by the Owner, who wishes to carry out the Project. MCC supports the carrying out of the Project. |
| | B | The Lending Body has agreed to provide financial accommodation to the Owner on the terms set out in Annexure G for the purposes of funding the Project. |
| | C | MCC, the Lending Body and the Owner have entered into this agreement for the purposes of implementing the Project in accordance with section 181A of the Local Government Act. |
| | D | The Environmental Upgrade Charge is payable by the Owner to MCC for the Charge Period in relation to the Project in accordance with the Payment Schedule. |
| | E | Subject to the terms of this agreement, MCC will collect the Charge Payments from the Owner, and will pay to the Lending Body a portion of the Charge Payments (but not including any Administrative Costs) that it receives from the Owner equal to the Total Funding Amount and will comply with its other obligations under this agreement. |

Date of agreement	See Signing page
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General terms

1. INTERPRETATION

1.1 Definitions

In this agreement, unless the context requires otherwise:

ADI has the meaning it has in the Banking Act 1959 (Cth).

Administrative Costs means the administrative costs payable by the Owner to MCC in relation to the Environmental Upgrade Charge, as set out in the Payment Schedule.

AFSL Holder means a person who holds an Australian financial service licence issued under Chapter 7 of the Corporations Act.

Approved Signatory means the person or persons specified in Item 6 of the Reference Table, or any other person appointed by a party as an Approved Signatory for the purposes of the Transaction Documents and notified to the other parties, provided that no revocation of that appointment has been notified to the other parties.

Arrears means, as at any date, the aggregate of the Charge Payments due with respect to all Charge Payment Dates occurring on or prior to that date less the aggregate of all amounts paid by MCC to the Lending Body under this agreement prior to that date excluding amounts with respect to Penalty Interest paid by MCC to the Lending Body as contemplated by clause 5.4(a).

Building means the building specified in Item 5 of the Reference Table.

Business Day means a day on which banks are open for general banking business in Melbourne (excluding Saturdays, Sundays and public holidays in that place).

Capital Improved Value has the meaning it has in the Local Government Act.

Charge Expiry Date means the earlier of:

- (a) the date on which the Charge Obligations are fully discharged by the Owner; and
- (b) the date (if any) of a determination by MCC under clause 5.8(b)(iv) that the Environmental Upgrade Charge will no longer apply at all to the Owner and that the Charge Obligations have been fully discharged by the Owner.

Charge Obligations means the obligations of the Owner to MCC to pay the Environmental Upgrade Charge.

Charge Payment means each amount payable by the Owner to MCC on a Charge Payment Date, as set out in the Payment Schedule.

Charge Payment Date means each date on which payment is due from the Owner to MCC in respect of the Charge Obligations, as set out in the Payment Schedule.

Charge Period means the period:

- (a) commencing on the Commencement Date; and
- (b) ending on the Charge Expiry Date.

Commencement Date means the date that the Environmental Upgrade Charge is declared under the Local Government Act.

Collection Obligations means the obligations on MCC to recover unpaid Environmental Upgrade Charges in accordance with Division 2A of Part 8 of the Local Government Act.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Default means any default by the Owner in relation to the Charge Obligations, including a failure by the Owner to pay by the due date any amount payable under the Charge Obligations.

Encumbrance means an interest or power:

- (a) reserved in or over any interest in any asset including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge (whether fixed or floating), hypothecation, lien, pledge, caveat, trust or power,

by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and includes any agreement to grant or create any of the above.

Enforcement Procedure means MCC's procedure concerning the waiver, deferral, recovery and enforcement of the Environmental Upgrade Charge and any other charge declared under section 181C of the Local Government Act (by any means) as at the date of this agreement, as set out in Annexure D and as amended in accordance with clause 5.8.

Environmental Upgrade Charge means the charge payable by the Owner to MCC in relation to the Project under the Local Government Act and this agreement.

Existing Secured Financier means any person in favour of whom the Owner has granted an Encumbrance in relation to the Land before the date of this agreement.

Existing Tenant means each tenant or occupier (other than the Owner) of the Land on the Commencement Date.

Foreign ADI has the same meaning as "foreign ADI" in the Banking Act 1959 (Cth).

Funding Limit means the amount specified in Item 7, being the maximum amount of financial accommodation that may be provided to the Owner on the terms set out in Annexure G.

Government Authority includes the Crown, any government and any governmental, semi-governmental, public, administrative, regulatory or judicial entity. It also includes a statutory corporation, a self-regulatory organisation or a supervisory authority established by statute and any market licensee of a

financial market (as defined in Chapter 7 of the Corporations Act) and any overseas stock or futures exchange.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved; or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) in the case of a natural person, the person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing his or her own affairs for any reason; or
- (i) something having a substantially similar effect to any of paragraphs (a) to (h) above (both inclusive) happens in connection with that person under the law of any jurisdiction.

Land means the land on which the Building is located.

Lending Body means the person or persons so described in Item 4 of the Reference Table.

Local Government Act means the Local Government Act 1989 (Vic).

Material Adverse Effect means a material adverse effect on:

- (a) the value of the Building or the Land; or
- (b) a party's ability (including its administrative ability) to comply with its obligations under this agreement; or
- (c) the rights of a party under this agreement; or
- (d) the business or financial condition of a party.

MCC means the person so described in Item 2 of the Reference Table.

New Tenant means each tenant or occupier (other than the Owner) of the Land which becomes a tenant or occupier (other than the Owner) after the Commencement Date.

Outstanding Administrative Costs means, as at a particular date, the Total Administrative Costs less the total amount of Administrative Costs that have already been paid as at that date.

Outstanding Charge Amount means, as at a particular date, the Total Charge Amount less the total amount of the Charge Payments that have already been paid as at that date.

Outstanding Funding means, at a particular date, the Total Funding Amount less the aggregate of all amounts paid by MCC to the Lending Body under this agreement prior to that date excluding amounts with respect to Penalty Interest paid by MCC to the Lending Body as contemplated by clause 5.4(a).

Owner means the person or persons so described in Item 3 of the Reference Table.

Payment Obligations means the obligations on MCC to distribute to the Lending Body amounts received from the Owner in respect of the Environmental Upgrade Charge, including Charge Payments (other than Administrative Costs), Penalty Interest, Proceeds and Prepayments.

Payment Schedule means the schedule specifying the Charge Payments, the Charge Payment Dates, the Total Charge Amount, the Total Funding Amount, the Administrative Costs and the Total Administrative Costs, as set out in Annexure A and as amended from time to time in accordance with clause 6.1 (as applicable).

Penalty Interest has the meaning it has in clause 4.2(a).

Permitted Assignee means:

- (a) an ADI;
- (b) a Foreign ADI;
- (c) a securitisation or funding vehicle managed by an ADI or a Foreign ADI, provided that, where an ADI or Foreign ADI shall cease to be the lender of record, MCC has consented to the new lender of record, such consent not to be unreasonably withheld or delayed; or
- (d) any AFSL Holder, not being a person which is within any of paragraphs (a), (b) or (c) of this definition, where MCC has consented to that AFSL Holder, such consent not to be unreasonably withheld or delayed.

Prepayment means each payment from the Owner to MCC by way of prepayment of all or part of the Total Charge Amount in accordance with clause 4.3.

Prepayment Date means each date on which MCC receives a Prepayment from the Owner.

Proceeds means any amount received or recovered by MCC as a result of the exercise of its powers of enforcement with respect to the Charge Obligations, including the proceeds of a sale of the Land, net of:

- (a) any costs or expenses of MCC incurred in connection with such enforcement;
- (b) any amounts due and payable by the Owner to MCC in relation to the Land under Part 8 of the Local Government Act which are unpaid as at the date the amount is received or recovered; and
- (c) any Administrative Costs which are part of any Charge Payment due and payable but unpaid as at the date the amount is received or recovered.

Proceeds Date means each date on which MCC receives or recovers any Proceeds.

Project means the environmental upgrade of the Building (including certain works in relation to the Building) by the Owner, as set out in Annexure B.

Project Budget means the project budget, as set out in Annexure C.

Project Costs means the costs of implementing the Project, as set out in the Project Budget.

Reference Table means the section of this agreement headed "Reference Table".

Related Body Corporate has the meaning it has in the Corporations Act.

Related Party has the meaning it has in the Corporations Act.

Subsidiary has the meaning it has in the Corporations Act.

Tax includes a tax, levy, duty or charge (and associated penalty or interest) imposed by a Government Authority. It also includes stamp duty and other taxes of a similar nature, and income, withholding and transaction taxes and duties.

Tenant means each Existing Tenant and each New Tenant.

Termination Date means the date of termination of this agreement as contemplated in clause 6.1(a)(iii).

Total Administrative Costs means the total amount of Administrative Costs payable by the Owner to MCC during the Charge Period, as set out in the Payment Schedule.

Total Charge Amount means the total amount payable by the Owner under the Charge Obligations, as set out in the Payment Schedule.

Total Funding Amount means at any time, the aggregate of all Charge Payments (excluding Total Administrative Costs) required to be paid by MCC to the Lending Body, as set out in the Payment Schedule.

Transaction Documents means:

- (a) this agreement; and
- (b) any document which the parties acknowledge in writing to be a Transaction Document; and
- (c) any other document connected with any of them.

1.2 References to certain general terms

In this agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa; and
- (b) words denoting any gender include all genders; and
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (d) a reference to a party, clause, annexure or other like term is a reference to a party, clause, annexure or other like term to or of this agreement; and

- (e) a reference to this agreement includes any annexures; and
- (f) headings are for convenience and do not affect interpretation; and
- (g) the background or recitals to this agreement are adopted as and form part of this agreement; and
- (h) a reference to any deed or agreement includes a reference to that deed or agreement as amended, novated, supplemented, varied or replaced from time to time; and
- (i) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency; and
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form; and
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa; and
- (m) the word "law" includes common law, principles of equity and legislation;
- (n) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation; and
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory; and
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it; and
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation; and
- (q) if the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day.

1.3 MCC's rights and remedies unfettered

The rights, powers and remedies of MCC under this agreement are in addition to other rights, powers and remedies provided to MCC by law independently of this agreement and nothing in this agreement limits, or otherwise obliges MCC to exercise, those rights, powers or remedies.

1.4 Limitation of liability where Owner or Lending Body is a trustee of a trust

- (a) If either or both of the Owner and the Lending Body enters into a Transaction Document in its capacity as trustee of a trust, as indicated by

the inclusion of a "Yes" in Item 9 of the Reference Table, the limitation of liability clause in Annexure H applies.

- (b) Subject to clauses 1.4(a) and 1.4(c), the parties (other than the Lending Body) may not make any demand or take any action against the Lending Body in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to the Lending Body in its personal capacity or prove in any liquidation, receivership, administration or arrangement of or affecting the Lending Body in its personal capacity, in respect of any act, matter or thing arising directly or indirectly from this agreement.
- (c) The Lending Body is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless the Lending Body's liability is limited in the same manner as set out in this clause 1.4.
- (d) This clause 1.4 applies despite any other provision of this agreement, any other deed, agreement or other instrument, or any principle of equity or law to the contrary.

2. CONSIDERATION

- (a) Each party acknowledges entering into this agreement and granting rights and incurring obligations under this agreement for valuable consideration.
- (b) Without limitation to the provision of valuable consideration for this agreement:
 - (i) the Owner agrees to assume the Charge Obligations and its other obligations under this agreement in consideration of (amongst other matters) MCC agreeing, on the terms set out in this agreement, to pay a portion of the Charge Payments received by MCC in an amount equal to the Total Funding Amount to the Lending Body; and
 - (ii) the Lending Body agrees to comply with clause 11.1 and Annexure G in consideration of (amongst other matters) MCC entering into this agreement.

3. ENVIRONMENTAL UPGRADE CHARGE

3.1 Declaration of Environmental Upgrade Charge

- (a) On the date of this agreement, MCC must declare that the Environmental Upgrade Charge applies to the Land. For the avoidance of doubt:
 - (i) MCC may declare the Environmental Upgrade Charge only once during the Charge Period; and
 - (ii) MCC may declare that more than one environmental upgrade charge under section 181C of the Local Government Act applies to the Land subject to the execution of a separate environmental upgrade agreement (as that term is defined in the Local Government Act) in relation to each such environmental upgrade charge.
- (b) On one or more occasions during the Charge Period, MCC may levy payment of the Environmental Upgrade Charge by sending a notice to

the Owner in accordance with sections 181C(2) and 181C(3) of the Local Government Act.

- (c) In levying payment of the Environmental Upgrade Charge in accordance with clause 3.1(b), MCC shall invoice the Owner for any Environmental Upgrade Charge separately from any other rates or charges in relation to the Land.
- (d) Notwithstanding any other provision of this agreement, the parties agree that this agreement (other than clause 3.1(a)) will be of no force or effect, and the parties will not be bound by this agreement, until the Commencement Date.

3.2 Charge Obligations

The following provisions apply in relation to the Charge Obligations:

- (a) the Charge Obligations shall commence on the Commencement Date; and
- (b) the Charge Obligations shall expire on the Charge Expiry Date; and
- (c) the Total Charge Amount shall be equal to:
 - (i) the Total Funding Amount; plus
 - (ii) the Total Administrative Costs.

3.3 MCC's priority in relation to Charge Obligations

The rights of MCC in relation to the Charge Obligations will rank:

- (a) as a first priority claim in relation to the Land in accordance with sections 156(6), 180, 181 and 181C(6) of the Local Government Act; and
- (b) after all other obligations of the Owner to MCC in relation to the Land under Part 8 of the Local Government Act.

3.4 Application of Local Government Act

Divisions 1, 2 and 3 of Part 8 of the Local Government Act (other than sections 154, 156, 172, 175, 177 (as affected by section 181C(7)), 178, 180 and 181) does not apply in relation to the levying, payments and review of the Environmental Upgrade Charge.

4. OBLIGATIONS OF OWNER

4.1 Charge Payments

- (a) On each Charge Payment Date, the Owner must pay or cause to be paid to MCC the Charge Payment in relation to that Charge Payment Date, in accordance with the Payment Schedule and in such manner as is from time to time specified by MCC to the Owner.
- (b) If the Payment Schedule has been amended under clause 6.1, the Owner must make Charge Payments to MCC in accordance with the amended Payment Schedule.
- (c) Each Charge Payment must be paid or caused to be paid by the Owner to MCC by direct debit or as otherwise notified by MCC to the Owner.

- (d) The Owner must continue to fulfil the Charge Obligations and make Charge Payments to MCC in accordance with the Payment Schedule even if the Land ceases to be rateable by MCC, in accordance with section 181C(10) of the Local Government Act.

4.2 Penalty Interest

- (a) The Owner shall pay penalty interest on any amount of a Charge Payment:
 - (i) which the Owner is liable to pay; and
 - (ii) which has not been paid by the Owner by the Charge Payment Date,

calculated at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) ("**Penalty Interest**").

- (b) The Penalty Interest must be calculated, paid by the Owner and recovered by MCC in accordance with sections 172(2), 172(2A) and 172(4) of the Local Government Act.

4.3 Prepayment of Total Charge Amount

- (a) Notwithstanding the other provisions of this agreement (but subject to clause 11.1 and Annexure G), the Owner may at any time during the Charge Period make Prepayments to MCC.
- (b) The Owner must provide written confirmation to MCC if a payment is a Prepayment at the time the payment is made.

4.4 Costs and expenses

- (a) The Owner must immediately pay on demand all reasonable costs and expenses of MCC and the Lending Body in connection with:
 - (i) the negotiation, preparation, execution, delivery, registration or completion of this agreement; and
 - (ii) the default by the Owner of its obligations under this agreement.
- (b) The Owner must pay, or immediately on demand reimburse MCC and the Lending Body for, all Taxes which may be payable or determined to be payable by the Owner, MCC or the Lending Body (as applicable) in connection with this agreement or a payment, receipt or other transaction contemplated by this agreement.

4.5 Acknowledgement

For the avoidance of doubt and despite any other provision in this agreement, MCC and the Lending Body acknowledge that if the Owner makes a Charge Payment to MCC in accordance with this agreement, the Owner will have no further liability, either to MCC or the Lending Body, in relation to that Charge Payment and MCC and the Lending Body further acknowledge that the Owner has entered into this agreement in reliance on the representations by MCC and the Lending Body under this clause 4.5.

5. OBLIGATIONS OF MCC

5.1 Collection and payment role

The Lending Body acknowledges the role of MCC in the collection and payment arrangements set out in this clause 5 and sections 181C and 181D of the Local Government Act.

5.2 Subcontracting

- (a) Subject to clauses 5.2(b) and (c), MCC may subcontract with any person for the performance of any of its Collection Obligations under this clause 5.
- (b) MCC must not, without the prior written consent of the Lending Body (such consent not to be unreasonably withheld), subcontract with any person for the performance of any of its Payment Obligations under clause 5.
- (c) If MCC subcontracts with any person for the performance of any of its Collection Obligations or Payment Obligations under this clause 5:
 - (i) MCC must notify the Lending Body and the Owner of the subcontracting arrangement; and
 - (ii) MCC will remain liable for all of its obligations under this agreement notwithstanding the subcontracting arrangement.

5.3 Distribution of Charge Payments

- (a) MCC must, in accordance with section 181D(2) of the Local Government Act, distribute any Charge Payment (other than the Administrative Costs included in the Charge Payment) it has received from the Owner in respect of a Charge Payment Date to the Lending Body by way of electronic transfer within 5 Business Days after MCC has received cleared funds from the Owner for that Charge Payment.
- (b) MCC may retain an amount from each Charge Payment equal to the Administrative Costs in relation to the Charge Payment Date as set out in the Payment Schedule.
- (c) MCC is not liable to the Lending Body or any other person under this clause 5.3 for any amounts other than those received by MCC as cleared funds for Charge Payments.

5.4 Penalty Interest

- (a) MCC will pay to the Lending Body by way of electronic transfer all Penalty Interest received by MCC from the Owner or otherwise recovered by MCC, whether as a result of the exercise of its powers of enforcement or otherwise, less an amount equal to that Penalty Interest calculated at the rate of 0.5% per annum paid with respect to the unpaid amount under clause 4.2(a), which MCC may retain as an administrative cost of imposing and collecting the Penalty Interest. Payment must be made by MCC by way of electronic transfer within 5 Business Days after MCC has received cleared funds for the Penalty Interest.
- (b) MCC is not liable to the Lending Body if MCC fails to receive all Penalty Interest from the Owner. Accordingly, any such failure does not make MCC liable to pay the Lending Body any amount under clause 5.4(a) as if MCC had received that amount from the Owner.

5.5 Proceeds

- (a) Subject to clauses 5.5(b) and 5.5(c), MCC must, within 5 Business Days after it has received cleared funds for any Proceeds, distribute those Proceeds to the Lending Body by way of electronic transfer, in an amount equal to the Arrears as at the date of distribution.
- (b) If the amounts that MCC has received or recovered as Proceeds are less than the Arrears as at the Proceeds Date, those amounts are to be applied as specified in clause 5.5(a).
- (c) MCC is not liable to the Lending Body or any other person under this clause 5.5 for any amounts other than those received or recovered by MCC as cleared funds for Proceeds.

5.6 Prepayment of Total Charge Amount by Owner

- (a) MCC must, within 5 Business Days after it has received cleared funds from the Owner for any Prepayment, distribute that Prepayment (other than Administrative Costs included in that Prepayment) to the Lending Body by way of electronic transfer.
- (b) MCC is not liable to the Lending Body or any other person under this clause 5.6 for any amounts other than those received or recovered by MCC as cleared funds for Prepayments.

5.7 Satisfaction of Total Funding Amount

Payment by MCC in accordance with clauses 5.3, 5.5 or 5.6 constitutes satisfaction of the Total Funding Amount by the Owner to the extent of that payment.

5.8 MCC's rights in relation to enforcement of Charge Obligations

- (a) MCC must take all necessary action to recover or enforce its rights for payment of the Charge Obligations in accordance with the Enforcement Procedure and, for the avoidance of doubt, in a manner and time frame that is consistent with the process that it would adopt to recover or enforce its rights for payment of other rates and taxes owing under Part 8 of the Local Government Act.
- (b) MCC agrees that:
 - (i) its procedure concerning the waiver, deferral, recovery and enforcement of the Environmental Upgrade Charge and any other charge declared under section 181C of the Local Government Act (by any means) is set out in Annexure D; and
 - (ii) it will only vary the Enforcement Procedure as it relates to the Environmental Upgrade Charge if:
 - (A) the Enforcement Procedure is or becomes inconsistent with applicable laws; or
 - (B) it obtains the prior written consent of the Lending Body; and
 - (iii) it will notify the Lending Body of any variation of the Enforcement Procedure under clause 5.8(b)(ii); and

- (iv) it will only waive or defer the imposition of the Environmental Upgrade Charge if the waiver or deferral is in accordance with both:
 - (A) the process contained in the Enforcement Procedure (as may be varied from time to time under clause 5.8(b)(ii)); and
 - (B) part 8 of the Local Government Act, as it applies to MCC and the Environmental Upgrade Charge; and
- (v) it will notify the Lending Body of any waiver or deferral of the Environmental Upgrade Charge it proposes to grant as contemplated under clause 5.8(b)(iv).
- (c) If MCC waives or defers the imposition of the Environmental Upgrade Charge in accordance with clause 5.8(b)(iv), MCC is not liable to the Lending Body for the Environmental Upgrade Charge which has been waived or deferred. Accordingly, any such waiver or deferral does not make MCC liable to pay the Lending Body any Charge Obligations which are the subject of the deferral or waiver as if the Owner had paid those amounts to MCC.
- (d) If MCC:
 - (i) has taken all necessary action to recover or enforce its rights for payment of the Charge Obligations in accordance with the Enforcement Procedure; but
 - (ii) has not received payment of the Charge Obligations,
 then MCC is not liable for:
 - (iii) any failure to receive payment of the Charge Obligations; or
 - (iv) paying the Lending Body any amount under clause 5.8(c) as if MCC had received that amount from the Owner.
- (e) Nothing in this clause 5.8 or any other provision of this agreement will prevent the Lending Body from taking any action to enforce any of its rights against MCC including seeking declaratory orders, orders from a court for specific performance or the issue of an injunction.

5.9 Administrative procedures

MCC agrees to create, implement and maintain administrative and operational procedures and records which are sufficient to allow it to ensure that the Outstanding Charge Amount is:

- (a) readily identifiable; and
- (b) capable of being collected and enforced.

5.10 No liability

Notwithstanding clauses 5.2, 5.3 and clauses 5.5, 5.6, 5.7 and 5.9 but without limiting in any way clauses 5.4(a) and 5.8:

- (a) MCC is not liable to the Owner for any amounts not recovered by the Lending Body in relation to any Transaction Document; and

- (b) in accordance with section 181E of the Local Government Act, MCC's obligations under this clause 5 in respect of each Charge Payment and any Prepayment do not come into effect until the Owner has paid the Charge Payment or the Prepayment to MCC or MCC has received or recovered Proceeds.

5.11 MCC to give notice to the Lending Body

MCC shall as soon as is reasonably practicable give notice in writing to the Lending Body if:

- (a) MCC becomes aware of:
 - (i) a Default; or
 - (ii) any other circumstance that would entitle MCC to take recovery or enforcement action in respect of the Charge Obligations; or
- (b) MCC decides to exercise any power of recovery or enforcement in relation to the Charge Obligations; or
- (c) MCC makes any decision as to the matters contemplated in clause 5.8.

6. PAYMENT SCHEDULE

6.1 Amendments to Payment Schedule

- (a) The Payment Schedule must be amended in accordance with clause 6.1(b) if:
 - (i) the Owner makes a Prepayment to MCC (unless the effect of the distribution of the relevant Prepayment in accordance with clause 5.6(a) is to reduce the amount of the Outstanding Funding to zero); or
 - (ii) MCC receives or recovers proceeds (unless the effect of the distribution of the Proceeds in accordance with clause 5.5(a) is to reduce the amount of the Outstanding Funding to zero); or
 - (iii) this agreement is terminated before the Lending Body provides financial accommodation equal to the Funding Limit to the Owner.
- (b) MCC shall:
 - (i) by agreement with the Lending Body, amend the Payment Schedule, in accordance with the methodology agreed between MCC and the Lending Body after the date of this agreement, to the extent necessary to ensure that the total amount of the remaining Charge Payments is equal to the sum of the Outstanding Funding and the Total Outstanding Administrative Costs:
 - (A) as at the Prepayment Date if the event described in clause 6.1(a)(i) occurs; or
 - (B) as at the Proceeds Date if the event described in clause 6.1(a)(ii) occurs; or
 - (C) as at the Termination Date if the event described in clause 6.1(a)(iii) occurs; and

- (ii) provide the Owner and the Lending Body with a copy of the amended Payment Schedule,

within 5 Business Days after the relevant Prepayment Date, Proceeds Date or Termination Date (as applicable) and the amended Payment Schedule will, on and from that date, be the Payment Schedule for the purposes of this agreement.

- (c) The Owner must, within 5 Business Days after receipt of an amended Payment Schedule, provide each Tenant that would be liable to pay to the Owner all or part of the remaining Charge Payments with an updated version of the statement described in clause 8.1(b).

6.2 When Payment Schedule ceases to apply

The Payment Schedule ceases to apply when the Owner has fully discharged the Total Charge Amount.

7. REFUND OF OVERPAYMENTS

If, as a consequence of any of the events contemplated in clauses 6.1(a), the Owner has made Charge Payments in excess of the Charge Payments that the Owner is required to pay under this agreement as at that date, then:

- (a) if MCC has paid that excess amount to the Lending Body and the Lending Body agrees that such payment has occurred, the Lending Body must remit that excess amount to MCC; and
- (b) if MCC:
 - (i) has not paid that excess amount to the Lending Body; or
 - (ii) has paid that excess amount to the Lending Body, and has had that excess amount remitted to it by the Lending Body under clause 7(a),

MCC must refund the excess amount to the Owner,

in each case within a reasonable time after MCC becomes aware or the Lending Body agrees (as relevant) that such overpayment has occurred.

For the avoidance of doubt, nothing in this agreement requires MCC to refund any excess amount to the Owner if MCC has paid that excess amount to the Lending Body and the Lending Body has not remitted that excess amount to MCC under clause 7(a).

8. CONFIRMATIONS

8.1 Confirmations from Owner

The Owner confirms that as at the date of this agreement:

- (a) it has advised, in writing, each Existing Secured Financier (if any):
 - (i) that it intends to enter into this agreement; and
 - (ii) of the details of the Environmental Upgrade Charge that is expected to be declared by MCC in respect of the Land under this agreement,

in accordance with its obligations under section 181B(2) of the Local Government Act; and

- (b) each Tenant that would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement, has been provided with a statement specifying:
 - (i) the total amount of the payments that the Tenant would be required to make; and
 - (ii) a repayment schedule that details when the Tenant's liability would become payable and, if the Tenant's liability can be paid by instalment, the amount and timing of each instalment; and
 - (iii) that the repayment schedule may be amended as contemplated in clause 6.1; and
 - (iv) that the Tenant may consent or object, in writing, to the imposition of the Environmental Upgrade Charge in the manner set out in the statement; and
- (c) each Tenant that has received a statement as contemplated in clause 8.1(b) has consented to the imposition of the Environmental Upgrade Charge in the manner set out in the statement;
- (d) it has notified MCC of:
 - (i) details of all registered and unregistered mortgages over the Land including:
 - (A) the total amount owing in respect of each mortgage; or
 - (B) if a relevant mortgage is held against two or more properties including the Land, the proportion of the debt secured by the mortgage that applies to the Land calculated in accordance with section 181B(5) of the Local Government Act; and
 - (ii) details of all taxes, rates and charges owing on the Land (including the total amount owing in respect of each tax, rate or charge) imposed by or under an Act; and
- (e) it has provided MCC with the statutory declarations required under section 181B(4) of the Local Government Act.

8.2 Confirmations from Owner and Lending Body

Each of the Owner and the Lending Body confirms that:

- (a) a default by any party under this agreement will not in itself constitute a default under any Transaction Document (other than this agreement); and
- (b) a default by any person under any Transaction Document (other than this agreement) will not in itself constitute a default under this agreement.

9. REINSTATEMENT OF RIGHTS

Under law relating to a person who is Insolvent, a person may claim that a transaction (including a payment) in relation to this agreement is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Lending Body is immediately entitled as against the Owner to the rights in respect of the Charge Payments and the Prepayments (as applicable) to which it was entitled immediately before the transaction; and
- (b) the Payment Schedule as at the Charge Payment Date or the Prepayment Date (as applicable) which is deemed to be void or voidable is taken to be reinstated without the requirement that any further act, matter or thing take place.

10. REPRESENTATIONS AND WARRANTIES

10.1 Representations and warranties of the Owner

- (a) If the Owner is a corporation, the Owner provides the representations and warranties set out in with section 1.1 of Annexure E.
- (b) If the Owner is a trust, the Owner provides the representations and warranties set out in section 2.1 of Annexure E.
- (c) If the Owner is a managed investment scheme, the Owner provides the representations and warranties set out in section 3.1 of Annexure E.
- (d) If the Owner is a partnership, the Owner provides the representations and warranties set out in section 4.1 of Annexure E.
- (e) If the Owner is an individual, the Owner provides the representations and warranties set out in section 5.1 of Annexure E.

10.2 Representations and warranties of the Lending Body

- (a) If the Lending Body is a corporation, the Lending Body provides the representations and warranties set out in section 1.2 of Annexure E.
- (b) If the Lending Body is a trust, the Lending Body provides the representations and warranties set out in 2.2 of Annexure E.
- (c) If the Lending Body is a managed investment scheme, the Lending Body provides the representations and warranties set out in section 3.2 of Annexure E.
- (d) If the Lending Body is a partnership, the Lending Body provides the representations and warranties set out in section 4.2 of Annexure E.
- (e) If Lending Body is an individual, the Lending Body provides the representations and warranties set out in section 5.2 of Annexure E.

11. UNDERTAKINGS

11.1 Provision of funding

Each of the Lending Body and the Owner agree to comply with the terms and conditions of Annexure G. For the avoidance of doubt, MCC has no rights or obligations under Annexure G and is not obliged to comply with Annexure G.

11.2 General undertaking

- (a) **(Variation of Transaction Documents):** Each of MCC, the Owner and the Lending Body undertakes that it will not, and will not agree to, vary,

replace, amend or terminate or consent to the variation, replacement, amendment or termination of any Transaction Document to which it is a party or any provision of any Transaction Document to which it is a party, without the prior written consent of each other party to this agreement where such variation, replacement, amendment or termination will or may have a Material Adverse Effect.

- (b) **(Related Party transactions):** If a party to a Transaction Document is a Related Party of any other party to a Transaction Document, each of the Owner and the Lending Body (as applicable) undertakes to disclose to MCC the identity and role of the Related Parties.

11.3 Further undertakings from Owner

The Owner undertakes:

- (a) **(New Tenants):** to notify each prospective New Tenant as soon as is reasonably practicable and in any case prior to the commencement of their tenancy or occupation of the Land:
 - (i) of the application of the Environmental Upgrade Charge; and
 - (ii) that the New Tenant is liable to pay the Owner a proportionate amount of the Environmental Upgrade Charge (if applicable); and
- (b) **(Project Costs):** it will use the financial accommodation provided to it on the terms set out in Annexure G only for the purpose of paying the Project Costs; and
- (c) **(no dealings):** without prior written notice from it to the Lending Body and MCC, it will not and will not agree to, either in a single transaction or a series of transactions, sell, transfer, lease or otherwise dispose of the Land or any part of the Land, or create or permit to exist any Encumbrance over the Land or any part of the Land, other than leases of all or part of the Land in the ordinary course of its business.

11.4 Further undertaking from Lending Body

- (a) The Lending Body undertakes that it will not, and will not agree to, take any action to enforce any of its rights against the Owner under clause 11.1 and Annexure G, without the prior written consent of MCC (such consent not to be withheld or delayed) except where, in the reasonable opinion of the Lending Body, a change in law has or is likely to have an Adverse Effect, in which case no consent of MCC is required and the Lending Body may take any such enforcement action it, in its discretion, determines.
- (b) An Adverse Effect will be taken to have occurred for the purposes of clause 11.4(a) if a change in law:
 - (i) adversely affects the ability of the Lending Body to receive payment of the Outstanding Funding on the terms contemplated by this agreement; or
 - (ii) results in a variation of the Enforcement Procedure as contemplated by clause 5.8(b)(ii)(A) which disadvantages the Lending Body; or
 - (iii) adversely affects, in any way, the first ranking priority claim that MCC has in relation to the Land in accordance with sections

12. DEALING WITH INTERESTS

No party may assign or otherwise deal with its rights or obligations under any Transaction Document or allow any interest in them to arise or be varied, in each case, without:

- (a) the prior written consent of each other party to this agreement (such consent not to be unreasonably withheld or delayed), provided that where the Lending Body assigns or otherwise deals with its rights or obligations to a Permitted Assignee no consent of any other party will be required; and
- (b) (whether or not consent is required under paragraph (a)) in the case of a transfer of all of the rights and obligations of that party under this agreement, the transferee first entering into and delivering to each other party to this agreement a deed poll in the form of Annexure I under which the transferee agrees to be bound, with effect on and from the date of the deed poll, by the terms of this agreement as if it was originally named as a party to this agreement instead of the applicable party. On the date on which that executed deed poll is delivered to each other party to this agreement the relevant transferor is released from all of its future obligations under this agreement (but for the avoidance of doubt is not released from any prior breach of this agreement).

13. NOTICES AND OTHER COMMUNICATIONS

13.1 Form – all communications

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by an Approved Signatory of the sender and marked for the attention of the person identified in the Reference Table or, if the recipient has notified otherwise, then marked for attention in the way last notified.

13.2 Form – communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 13.1. However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

13.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Reference Table; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Reference Table; or
- (c) sent by fax to the fax number set out or referred to in the Reference Table; or

- (d) sent by email to the address set out or referred to in the Reference Table.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

13.4 When effective

Communications take effect from the time they are received or taken to be received under clause 13.5 (whichever happens first) unless a later time is specified.

13.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.

13.6 Receipt outside business hours

Despite clauses 13.4 and 13.5, if communications are received or taken to be received under clause 13.5 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

13.7 Communications by email preferred

Notwithstanding clause 13.1 to 13.6 (both inclusive), each party acknowledges that the preferred means of communication is by email.

14. GST

14.1 Definitions and interpretation

- (a) In this clause 14, unless the context requires otherwise:

GST includes:

- (i) any additional tax, penalty, fine, interest or other charge relating to GST; and
- (ii) an amount an entity is notionally liable to pay as GST or an amount which is treated as GST under the GST Law; and

GST Law means the same as "GST Law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

- (b) Terms defined in the GST Law have the same meaning in this clause 14 unless the context otherwise requires.

14.2 GST pass on

If GST is or will be payable on a supply made under or in connection with this agreement, to the extent that the consideration otherwise provided for that supply under this agreement is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this agreement is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.

14.3 Later adjustment to price or GST

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event.

14.4 Tax invoices

The right of the supplier to recover any amount in respect of GST under this agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within 4 years of the supplier's liability to that GST arising.

14.5 Reimbursements/Indemnities

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this agreement must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

15. GENERAL

15.1 Partial exercising of rights

If a party does not exercise a right or remedy under this agreement fully or at a given time, the party may still exercise it later.

15.2 Remedies cumulative

The rights and remedies of the parties under this agreement are in addition to other rights and remedies given by law independently of this agreement.

15.3 Inconsistent law

To the extent permitted by law, this agreement prevails to the extent it is inconsistent with any law.

15.4 Variation

A provision of this agreement must not be varied except in writing signed by each party.

15.5 Waiver

Without limitation to clause 5.8, a right created under this agreement must not be waived, or a consent under this agreement must not be given, except in writing signed by the party or parties to be bound.

15.6 Confidentiality

- (a) Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence of or contents of this agreement) except:
- (i) the identity of the parties to any person for the purposes of promoting or marketing the Project; or
 - (ii) to any person in connection with an exercise of rights or a dealing with rights or obligations under any Transaction Document and, in the case of the Lending Body, to any potential sub-participant or other person with whom any other transaction may be entered into by reference to the Transaction Documents or the Owner; or
 - (iii) to officers, employees, legal and other advisers and auditors of the parties; or
 - (iv) to any party or any related entity of any party, provided the recipient agrees to act consistently with this clause 15.6; or
 - (v) with the consent of the party who provided the information (such consent not to be unreasonably withheld or delayed); or
 - (vi) under section 229 of the Local Government Act in relation to land information certificates; or
 - (vii) as required by any law, regulation, regulatory or statutory body or stock exchange; or
 - (viii) to rating agencies to the extent required by them.

- (b) Each party consents to disclosures made in accordance with clause 15.6(a).
- (c) Notwithstanding clause 15.6(a), the Owner may disclose the existence or contents of the Charge Obligations to a prospective purchaser or a prospective tenant of the Land without the consent of MCC or the Lending Body.

15.7 Further steps

Each party agrees, at its own expense, to do anything (such as obtaining consents, signing and producing documents and getting documents completed and signed) that another party may reasonably request to give effect to this agreement.

15.8 Entire agreement

This agreement constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this agreement and have no further effect.

15.9 No merger

The provisions of this agreement will not merge on completion of any transaction contemplated in this agreement and, to the extent any provision has not been fulfilled, will remain in force.

15.10 Severability

Part or all of any provision of this agreement that is illegal or unenforceable will be severed from this agreement and will not affect the continued operation of the remaining provisions of this agreement.

15.11 No revocation of power of attorney

Each person who executes this agreement on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this agreement under that power.

15.12 Counterparts

This agreement may consist of a number of copies, each signed by one or more parties. If so, the signed copies are treated as making up the one document.

15.13 Governing law

This agreement is governed by the law in force in Victoria and each party submits to the non-exclusive jurisdiction of the courts of that place.

EXECUTED as an agreement.

Annexure A

PAYMENT SCHEDULE

[To be inserted]

Annexure B

PROJECT (OUTLINE OF WORKS)

[To be inserted]

Annexure C

PROJECT BUDGET

[To be inserted]

Annexure D

ENFORCEMENT PROCEDURE

This process is based on the assumption of mandatory quarterly direct debit payments as outlined in the EUA.

Given that the charge will not be required to be paid in a lump sum and an instalment plan will be offered, each instalment is treated as a separate debt in relation to Council's ability to enforce payment.

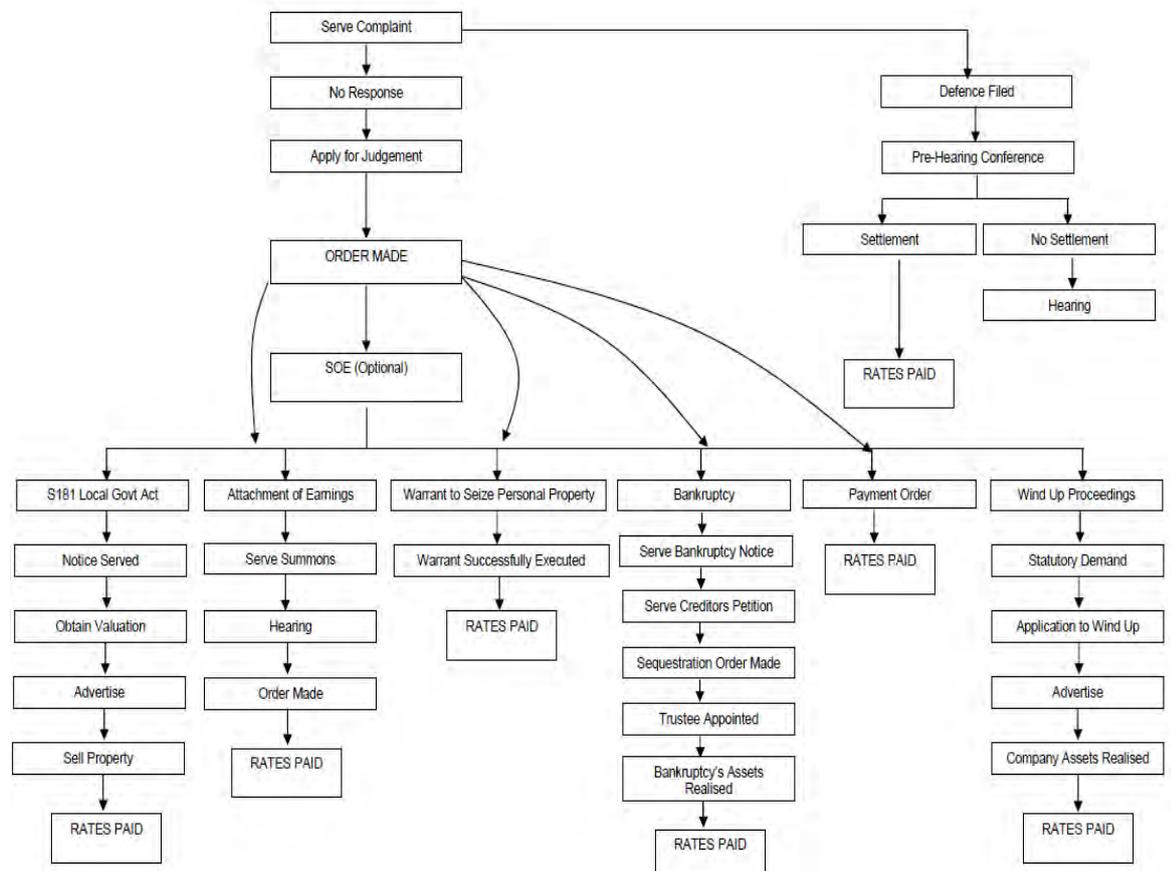
1. Default month 1- 6

- Phone call or email to owner advising of default and request payment within 7 days.
- Final notice demanding payment for overdue instalment
- Ongoing monitoring and negotiation with designated rate staff

2. After 6 months

- Matter referred to external collection agency for commencement of legal action to recover all overdue payments.
- Letter of demand sent from collection agency.
- Complaint issued and served
- Refer flowchart below for additional processes.

We do not provide a one solution fits all. There will be individual circumstances that may impact on the collection process invoked for a particular property



Annexure E

REPRESENTATIONS AND WARRANTIES

1 Representations and warranties for corporations

1.1 Owner representations and warranties

The Owner represents and warrants that:

- (a) **(incorporation and existence):** it has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted; and
- (b) **(power):** it has power to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (c) **(no contravention or exceeding power):** the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its directors to be exceeded; and
- (d) **(authorisations):** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to comply with its obligations and exercise its rights under them and to allow them to be enforced; and
- (e) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (f) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (g) **(benefit):** it benefits by entering into the Transaction Documents to which it is a party; and
- (h) **(solvency):** there are no reasonable grounds to suspect that it or any of its Subsidiaries is unable to pay its debts as and when they become due and payable; and
- (i) **(not a trustee):** it does not enter into any Transaction Document to which it is a party as trustee; and

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draft

- (j) **(no immunity):** neither it nor any of its Subsidiaries has immunity from the jurisdiction of a court or from legal process; and
- (k) **(non-residential purposes):** the Building is an existing building in the City of Melbourne that is used entirely or predominantly for non-residential purposes; and
- (l) **(efficiency or sustainability):** the Project will improve the energy, water or environmental efficiency or sustainability of the Building; and
- (m) **(Existing Tenants):**
 - (i) each Existing Tenant who is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement consents to the application of the Environmental Upgrade Charge and agrees to pay the Owner an agreed amount of the Environmental Upgrade Charge; and
 - (ii) a copy of each consent and agreement of each Existing Tenant referred to in section 1.1(m)(i) above is contained in Annexure F; and
 - (iii) other than each Existing Tenant whose consent and agreement is contained in Annexure F, no other Existing Tenant is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement.

1.2 Lending Body representations and warranties

The Lending Body represents and warrants that:

- (a) **(incorporation and existence):** it has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted; and
- (b) **(power):** it has power to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (c) **(no contravention or exceeding power):** the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its directors to be exceeded; and
- (d) **(authorisations):** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to comply with its obligations and exercise its rights under them and to allow them to be enforced; and
- (e) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and

- (f) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (g) **(credit assessment):**
- (i) it has prepared, or procured the preparation of, a credit assessment of the Owner for the purposes of the credit approval processes of the Lending Body; and
 - (ii) the credit assessment referred to in section 1.2(g)(i) above demonstrates that the Owner will be able to comply with its obligations under this agreement; and
- (h) **(Funding Limit):** it has provided or will provide financial accommodation equal to the Funding Limit on the terms set out in Annexure G.

2 Representations and warranties for trusts

2.1 Representations and warranties of the Owner

The Owner represents and warrants that:

- (a) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (b) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (c) **(existence):** the Trust has been duly established; and
- (d) **(sole trustee):** it is the only trustee of the Trust; and
- (e) **(appointment and no removal):** it has been validly appointed as trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust; and
- (f) **(disclosure of terms):** true copies of the Trust Deed (including any amending documents) have been provided to the Lending Body and MCC and disclose all terms of the Trust; and
- (g) **(power):** it has power under the terms of the Trust to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (h) **(authorisations):** it has in full force and effect the authorisations (including any authorisation required under the Trust Deed) necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and

- (i) **(indemnity):** it has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under the Transaction Documents to which it is a party; and
- (j) **(adequacy of Trust Property):** the Trust Property is sufficient to satisfy the right of indemnity referred to in section 2.1(i) above and all other obligations in respect of which the Owner has a right to be indemnified out of the Trust Property; and
- (k) **(no default):** it is not, as at the date of this agreement, in default under the Trust Deed and no action has been taken or proposed to terminate the Trust; and
- (l) **(priority):** each of MCC's and the Lending Body's rights under the Transaction Documents they enter into with the Owner rank in priority to the interests of the beneficiaries of the Trust; and
- (m) **(exercise of powers):** it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (n) **(benefit):** entry into the Transaction Documents to which it is a party is a valid exercise of its powers under the Trust Deed for the benefit of beneficiaries of the Trust;
- (o) **(non-residential purposes):** the Building is an existing building in the City of Melbourne that is used entirely or predominantly for non-residential purposes; and
- (p) **(efficiency or sustainability):** the Project will improve the energy, water or environmental efficiency or sustainability of the Building; and
- (q) **(Existing Tenants):**
- (i) each Existing Tenant who is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement consents to the application of the Environmental Upgrade Charge and agrees to pay the Owner an agreed amount of the Environmental Upgrade Charge; and
 - (ii) a copy of each consent and agreement of each Existing Tenant referred to in section 2.1(q)(i) above is contained in Annexure F; and
 - (iii) other than each Existing Tenant whose consent and agreement is contained in Annexure F, no other Existing Tenant is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement.

In this section, these meanings apply unless the contrary intention appears:

Trust means [*to be inserted*].

Trust Deed means [*to be inserted*].

Trust Property means all the Owner's rights, property and undertaking which are the subject of the Trust:

- (a) of whatever kind and wherever situated; and

- (b) whether present or future.

2.2 Representations and warranties from Lending Body

The Lending Body represents and warrants that:

- (a) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (b) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (c) **(existence):** the Trust has been duly established; and
- (d) **(sole trustee):** it is the only trustee of the Trust; and
- (e) **(appointment and no removal):** it has been validly appointed as trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust; and
- (f) **(disclosure of terms):** true copies of the Trust Deed (including any amending documents) have been provided to the Owners and MCC and disclose all terms of the Trust; and
- (g) **(power):** it has power under the terms of the Trust to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (h) **(authorisations):** it has in full force and effect the authorisations (including any authorisation required under the Trust Deed) necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and
- (i) **(indemnity):** it has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under the Transaction Documents to which it is a party; and
- (j) **(adequacy of Trust Property):** the Trust Property is sufficient to satisfy the right of indemnity referred to in section 2.2(i) above and all other obligations in respect of which the Lending Body has a right to be indemnified out of the Trust Property; and
- (k) **(no default):** it is not, as at the date of this agreement, in default under the Trust Deed and no action has been taken or proposed to terminate the Trust; and
- (l) **(priority):** each of MCC's and the Owner's rights under the Transaction Documents they enter into with the Lending Body rank in priority to the interests of the beneficiaries of the Trust; and

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- (m) **(exercise of powers):** it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (n) **(benefit):** entry into the Transaction Documents to which it is a party is a valid exercise of its powers under the Trust Deed for the benefit of beneficiaries of the Trust; and
- (o) **(credit assessment):**
 - (i) it has prepared, or procured the preparation of, a credit assessment of the Owner for the purposes of the credit approval processes of the Lending Body; and
 - (ii) the credit assessment referred to in section 2.2(o)(i) above demonstrates that the Owner will be able to comply with its obligations under section 11.1 and Annexure G; and
- (p) **(Funding Limit):** it has provided or will provide financial accommodation equal to the Funding Limit on the terms set out in Annexure G.

In this section, these meanings apply unless the contrary intention appears:

Trust means [*to be inserted*].

Trust Deed means [*to be inserted*].

Trust Property means all the Lending Body's rights, property and undertaking which are the subject of the Trust:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

3 Representations and warranties for managed investment schemes

3.1 Representations and warranties of the Owner

The Owner represents and warrants that:

- (a) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (b) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (c) **(existence):** the Scheme has been validly constituted as a Managed Investment Scheme; and

- (d) **(sole responsible entity):** it is the only responsible entity of the Scheme; and
- (e) **(appointment and no removal):** it has been validly appointed as the responsible entity of the Scheme and no action has been taken or proposed to remove it as responsible entity of the Scheme; and
- (f) **(disclosure of terms and compliance):**
- (i) true copies of the Scheme Constitution (including any amending documents) have been provided to the Lending Body and MCC and disclose all terms of the Scheme; and
 - (ii) the Scheme Constitution complies with the Corporations Act; and
- (g) **(power):** it has power under the terms of the Scheme Constitution to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (h) **(authorisations):** it has in full force and effect the authorisations (including any authorisation required under the Scheme Constitution) necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and
- (i) **(Compliance Plan):**
- (i) true copies of the Compliance Plan (including any amending documents) have been provided to the Lending Body and MCC; and
 - (ii) the Compliance Plan complies with the Corporations Act; and
- (j) **(indemnity):** it has a right to be fully indemnified out of the Scheme Property in respect of obligations incurred by it under the Transaction Documents to which it is a party; and
- (k) **(adequacy of Scheme Property):** the Scheme Property is sufficient to satisfy the right of indemnity referred to in section 3.1(j) above and all other obligations in respect of which the Owner has a right to be indemnified out of the Scheme Property; and
- (l) **(no default):** it is not, as at the date of this agreement, in default under the Scheme Constitution and no action has been taken or proposed to terminate the Scheme; and
- (m) **(priority):** each of MCC's and the Lending Body's rights under the Transaction Documents they enter into with the Owner rank in priority to the interests of the members of the Scheme; and
- (n) **(exercise of powers):** it has not exercised its powers under the Scheme Constitution to release, abandon or restrict any power conferred on it by the Scheme Constitution; and
- (o) **(benefit):** entry into the Transaction Documents to which it is a party is a valid exercise of its powers under the Scheme Constitution for the benefit of the members of the Scheme; and

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- (p) **(non-residential purposes):** the Building is an existing building in the City of Melbourne that is used entirely or predominantly for non-residential purposes; and
- (q) **(efficiency or sustainability):** the Project will improve the energy, water or environmental efficiency or sustainability of the Building; and
- (r) **(Existing Tenants):**
- (i) each Existing Tenant who is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement consents to the application of the Environmental Upgrade Charge and agrees to pay the Owner an agreed amount of the Environmental Upgrade Charge; and
 - (ii) a copy of each consent and agreement of each Existing Tenant referred to in section 3.1(r)(i) above is contained in Annexure F; and
 - (iii) other than each Existing Tenant whose consent and agreement is contained in Annexure F, no other Existing Tenant is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement.

In this section, these meanings apply unless the contrary intention appears:

Compliance Plan means the compliance plan of the Scheme established in accordance with part 5C.4 of the Corporations Act.

Managed Investment Scheme has the meaning it has in the Corporations Act.

Scheme means *[to be inserted]*.

Scheme Constitution means *[to be inserted]*.

Scheme Property means all the Owner's rights, property and undertaking which are the subject of the Scheme:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

3.2 Representations and warranties of the Lending body

The Lending Body represents and warrants that:

- (a) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (b) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and

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- (c) **(existence):** the Scheme has been validly constituted as a Managed Investment Scheme; and
- (d) **(sole responsible entity):** it is the only responsible entity of the Scheme; and
- (e) **(appointment and no removal):** it has been validly appointed as the responsible entity of the Scheme and no action has been taken or proposed to remove it as responsible entity of the Scheme; and
- (f) **(disclosure of terms and compliance):**
 - (i) true copies of the Scheme Constitution (including any amending documents) have been provided to the Owner and MCC and disclose all terms of the Scheme; and
 - (ii) the Scheme Constitution complies with the Corporations Act; and
- (g) **(power):** it has power under the terms of the Scheme Constitution to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (h) **(authorisations):** it has in full force and effect the authorisations (including any authorisation required under the Scheme Constitution) necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and
- (i) **(Compliance Plan):**
 - (i) true copies of the Compliance Plan (including any amending documents) have been provided to the Owner and MCC; and
 - (ii) the Compliance Plan complies with the Corporations Act; and
- (j) **(indemnity):** it has a right to be fully indemnified out of the Scheme Property in respect of obligations incurred by it under the Transaction Documents to which it is a party; and
- (k) **(adequacy of Scheme Property):** the Scheme Property is sufficient to satisfy the right of indemnity referred to in section 3.2(j) above and all other obligations in respect of which the Lending Body has a right to be indemnified out of the Scheme Property; and
- (l) **(no default):** it is not, as at the date of this agreement, in default under the Scheme Constitution and no action has been taken or proposed to terminate the Scheme; and
- (m) **(priority):** each of MCC's and the Owner's rights under the Transaction Documents they enter into with the Lending Body rank in priority to the interests of the members of the Scheme; and
- (n) **(exercise of powers):** it has not exercised its powers under the Scheme Constitution to release, abandon or restrict any power conferred on it by the Scheme Constitution; and

- (o) **(benefit):** entry into the Transaction Documents to which it is a party is a valid exercise of its powers under the Scheme Constitution for the benefit of the members of the Scheme; and
- (p) **(credit assessment):**
 - (i) it has prepared, or procured the preparation of, a credit assessment of the Owner for the purposes of the credit approval processes of the Lending Body; and
 - (ii) the credit assessment referred to in section 3.2(p)(i) above demonstrates that the Owner will be able to comply with its obligations under clause 11.1 and Annexure G; and
- (q) **(Funding Limit):** it has provided or will provide financial accommodation equal to the Funding Limit on the terms set out in Annexure G.

In this section, these meanings apply unless the contrary intention appears:

Compliance Plan means the compliance plan of the Scheme established in accordance with part 5C.4 of the Corporations Act.

Managed Investment Scheme has the meaning it has in the Corporations Act.

Scheme means [*to be inserted*].

Scheme Constitution means [*to be inserted*].

Scheme Property means all the Lending Body's rights, property and undertaking which are the subject of the Scheme:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

4 Representations and warranties for partnerships

4.1 General representations and warranties of the Owner

The Owner represents and warrants that:

- (a) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (b) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document.
- (c) **(disclosure of terms):** true copies of the Partnership Agreement (including any amending documents) have been provided to the Lending Body and MCC and disclose all terms of the Partnership; and

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- (d) **(power):** it has power under the terms of the Partnership Agreement to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (e) **(authorisations):** it has in full force and effect the authorisations (including any authorisation required under the Partnership Agreement) necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and
- (f) **(no default):** it is not, as at the date of this agreement, in default under the Partnership Agreement and no action has been taken or proposed to terminate the Partnership; and
- (g) **(priority):** each of MCC and the Lending Body's rights under the Transaction Documents they enter into with the Owner rank in priority to the interests of the members of the Partnership; and
- (h) **(benefit):** entry into the Transaction Documents to which it is a party is a valid exercise of its powers under the Partnership Agreement; and
- (i) **(no contravention):** the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene the Partnership Agreement or any law or obligation by which it is bound; and
- (j) **(proper administration):** it enters into the Transaction Documents to which it is a party as part of the proper administration of the Partnership; and
- (k) **(internal management):** all acts of internal management of the Partnership in respect of the Transaction Documents to which it is a party and the assumption by it of liability for the performance of its obligations under the Transaction Documents to which it is a party have been performed; and
- (l) **(not a trustee):** unless stated in Item 9 of the Reference Table, it does not enter into any Transaction Document to which it is a party as trustee; and
- (m) **(non-residential purposes):** the Building is an existing building in the City of Melbourne that is used entirely or predominantly for non-residential purposes; and
- (n) **(efficiency or sustainability):** the Project will improve the energy, water or environmental efficiency or sustainability of the Building; and
- (o) **(Existing Tenants):**
 - (i) each Existing Tenant who is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement consents to the application of the Environmental Upgrade Charge and agrees to pay the Owner an agreed amount of the Environmental Upgrade Charge; and
 - (ii) a copy of each consent and agreement of each Existing Tenant referred to in section 4.1(o)(i) above is contained in Annexure F; and

- (iii) other than each Existing Tenant whose consent and agreement is contained in Annexure F, no other Existing Tenant is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement.

In this section, these meanings apply unless the contrary intention appears:

Partnership means [*to be inserted*].

Partnership Agreement means [*to be inserted*].

Partnership Assets means all the Owner's rights, property and undertaking which are the subject of the Scheme:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

4.2 Representations and warranties of Lending Body

The Lending Body represents and warrants that:

- (a) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms, subject to any equitable principles and laws generally affecting creditors' rights (including laws relating to bankruptcy, insolvency, liquidation, receivership, administration, reorganisation, reconstruction, fraudulent transfer or moratoria); and
- (b) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (c) **(disclosure of terms):** true copies of the Partnership Agreement (including any amending documents) have been provided to the Owner and MCC and disclose all terms of the Partnership; and
- (d) **(power):** it has power under the terms of the Partnership Agreement to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (e) **(authorisations):** it has in full force and effect the authorisations (including any authorisation required under the Partnership Agreement) necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and
- (f) **(no default):** it is not, as at the date of this agreement, in default under the Partnership Agreement and no action has been taken or proposed to terminate the Partnership; and
- (g) **(priority):** each of MCC and the Owner's rights under the Transaction Documents they enter into with the Lending Body rank in priority to the interests of the members of the Partnership; and

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- (h) **(benefit):** entry into the Transaction Documents to which it is a party is a valid exercise of its powers under the Partnership Agreement; and
- (i) **(no contravention):** the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene the Partnership Agreement or any law or obligation by which it is bound; and
- (j) **(proper administration):** it enters into the Transaction Documents to which it is a party as part of the proper administration of the Partnership; and
- (k) **(internal management):** all acts of internal management of the Partnership in respect of the Transaction Documents to which it is a party and the assumption by it of liability for the performance of its obligations under the Transaction Documents to which it is a party have been performed; and
- (l) **(credit assessment):**
 - (i) it has prepared, or procured the preparation of, a credit assessment of the Owner for the purposes of the credit approval processes of the Lending Body; and
 - (ii) the credit assessment referred to in section 4.2(l)(i) above demonstrates that the Owner will be able to comply with its obligations under section 11.1 and Annexure G; and
- (m) **(Funding Limit):** it has provided or will provide financial accommodation equal to the Funding Limit on the terms set out in Annexure G.

In this section, these meanings apply unless the contrary intention appears:

Partnership means [to be inserted].

Partnership Agreement means [to be inserted].

Partnership Assets means all the Lending Body's rights, property and undertaking which are the subject of the Scheme:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

5 Representations and warranties for individuals

5.1 Representations and warranties of the Owner

The Owner represents and warrants that:

- (a) **(power):** it has power to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and
- (b) **(authorisations):** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and

- (c) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms; and
- (d) **(no contravention):** the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene any law or obligation by which it is bound or to which any of its assets are subject; and
- (e) **(litigation):** there is no pending or threatened proceeding affecting it or its assets before a court, authority, commission or arbitrator; and
- (f) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (g) **(benefit):** it benefits by entering into the Transaction Documents to which it is a party; and
- (h) **(bankruptcy):** it is not bankrupt; and
- (i) **(not a trustee):** unless stated in Item 9 of the Reference Table, it does not enter into any Transaction Document to which it is a party as trustee; and
- (j) **(no immunity):** it does not have immunity from the jurisdiction of a court or from legal process; and
- (k) **(non-residential purposes):** the Building is an existing building in the City of Melbourne that is used entirely or predominantly for non-residential purposes; and
- (l) **(efficiency or sustainability):** the Project will improve the energy, water or environmental efficiency or sustainability of the Building; and
- (m) **(Existing Tenants):**
- (i) each Existing Tenant who is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement consents to the application of the Environmental Upgrade Charge and agrees to pay the Owner an agreed amount of the Environmental Upgrade Charge; and
 - (ii) a copy of each consent and agreement of each Existing Tenant referred to in section 5.1(m)(i) above is contained in Annexure F; and
 - (iii) other than each Existing Tenant whose consent and agreement is contained in Annexure F, no other Existing Tenant is or would be liable to pay for all or part of the Environmental Upgrade Charge levied under this agreement.

5.2 Representations and warranties of the Lending Body

The Lending Body represents and warrants that:

- (a) **(power):** it has power to enter into the Transaction Documents to which it is a party and comply with its obligations under them; and

- (b) **(authorisations):** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, perform obligations under them and allow them to be enforced; and
- (c) **(validity of obligations):** its obligations under the Transaction Documents to which it is a party are valid and binding and are enforceable against it in accordance with their terms; and
- (d) **(no contravention):** the Transaction Documents to which it is a party and the transactions under them which involve it do not contravene any law or obligation by which it is bound or to which any of its assets are subject; and
- (e) **(litigation):** there is no pending or threatened proceeding affecting it or its assets before a court, authority, commission or arbitrator; and
- (f) **(arm's length terms):** it enters into the Transaction Documents to which it is a party in good faith and on terms that are reasonable in the circumstances, reflect market costs for the financial accommodation to be provided by the Lending Body to the Owner and are at arm's length to each other party to any Transaction Document; and
- (g) **(credit assessment):**
- (i) it has prepared, or procured the preparation of, a credit assessment of the Owner for the purposes of the credit approval processes of the Lending Body; and
 - (ii) the credit assessment referred to in section 5.2(g)(i) above demonstrates that the Owner will be able to comply with its obligations under section 11.1 and Annexure G; and
- (h) **(Funding Limit):** it has provided or will provide financial accommodation equal to the Funding Limit on the terms set out in Annexure G.

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Annexure F

CONSENTS AND AGREEMENTS OF EXISTING TENANTS

[To be inserted]

Annexure G

TERMS FOR ADVANCING FUNDS

1 Cash Advance

On or by the Cash Advance Date, the Lending Body will, subject to section 2 of this Annexure G, make the Cash Advance referable to that Cash Advance Date in Australian dollars into the Cash Advance Account.

2 Payment of Cash Advance

Each Cash Advance made in accordance with section 1 will be paid by the Lending Body as soon as practicable after the Lending Body has received evidence satisfactory to the Lending Body that the Owner has entered into the Construction Contract.

3 Withdrawals from Cash Advance Account

The Owner acknowledges and agrees that it will only use the Cash Advance in connection with the Project and subject to the Owner's Engineer certifying to the Owner that an amount is due and payable to a Construction Contractor in accordance with the Construction Contract.

4 Indemnity for change of law

The Owner will on demand by the Lending Body indemnify the Lending Body against any cost, expense, loss, damage or claim which the Lending Body may sustain or incur as a consequence of or in connection with:

- (a) any change of law, including without limitation any amendment of the Local Government Act; or
- (b) any waiver or deferral by MCC of the imposition of the Environmental Upgrade Charge or any change to the Enforcement Procedure on the terms contemplated by clause 5.8(b)(ii)(A) of this agreement,

which results in the Owner not being required to make the Charge Payments in full on the Charge Payment Dates, as contemplated by this agreement.

5 Prepayment of Environmental Upgrade Charge

- (a) Notwithstanding any other provision of this agreement, the Owner may only prepay the Total Charge Amount in full (so that following the Prepayment the Outstanding Funding is zero) or in part by a minimum of, and in multiples of, the amount specified in Item 8 of the Reference Table.
- (b) If the Owner makes any Prepayment then, as soon as practicable after the date on which the Prepayment is made and the Lending Body has received the amount to which it is entitled under clause 5.6, in respect of that Prepayment, the Lending Body will refund to the Owner the amount it determines, acting reasonably, equals the benefit received by it as a consequence of receiving the payment under clause 5.6 on an earlier date than specified in accordance with Annexure A.

6 Definitions

For the purposes of this Annexure G:

Cash Advance means [*insert cash advance amounts*].

Cash Advance Account means a bank account nominated by the Owner into which the Cash Advance payable under section 1 of this Annexure G is to be paid.

Cash Advance Date means [*insert dates on which the Cash Advances are to be made.*]

Construction Contract means the contract between the Owner and the Construction Contractor dated on or before the date of this agreement for the carrying out of the works required for completion of the Project. [**Note: Assumes one contract.**]

Construction Contractor means [*insert name of construction contractor*].

QS Certificate means a certificate issued by a quantity surveyor approved by the Lending Body certifying that an amount is payable to the Construction Contractor under the Construction Contract, in a form approved by the Lending Body.

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Annexure H

LIMITATION OF LIABILITY

1 Limitation of liability of trustees

- (a) Each of the parties other than the [**Owner/Lending Body**] acknowledges that:
 - (i) the [**Owner/Lending Body**] enters into this agreement as trustee of the Trust and in no other capacity.
 - (ii) the [**Owner/Lending Body**] incurs obligations under the Transaction Documents to which it is a party solely in its capacity as trustee of the Trust and will cease to have any obligation under those Transactions Documents if it ceases to be trustee of the Trust; and
 - (iii) the [**Owner's/Lending Body's**] liability under the Transaction Documents to which it is a party is limited to the Trust Property and the [**Owner/Lending Body**] will not be liable to pay or satisfy any of the obligations imposed on it under those Transaction Documents, expressed or implied, out of any assets held by it personally, as trustee of any other trust, or on behalf of any other person.
- (b) In this section, the words "Trust" and "Trust Property" have the same meaning as in section 2 of Annexure E, as applicable.

Annexure I

ACCESSION DEED POLL

Accession Deed Poll dated []

By: *[Insert full name of relevant transferee] [Insert ABN] (Transferee)*

In favour of: Each other party to the Environmental Upgrade Agreement, as defined below (**Beneficiary**)

1 Definitions and interpretation

- (a) **Environmental Upgrade Agreement** means the agreement entitled "Environmental Upgrade Agreement" dated on or about [] between Melbourne City Council, [] and [].
- (b) Unless otherwise defined, expressions used in this deed poll have the meanings given to them in the Environmental Upgrade Agreement.
- (c) Clause 1.2 of the Environmental Upgrade Agreement applies in this deed poll as if it was set out in full in this deed poll and as if all references in that clause to "this agreement" were references to this deed poll.

2 Agreements, confirmations and representations

The Transferee:

- (a) enters this deed poll for valuable consideration, the receipt of which is acknowledged; and
- (b) agrees to:
 - (i) become, with effect on and from the date of this deed poll, **[MCC/the Owner/the Lending Body]** under the Environmental Upgrade Agreement;
 - (ii) be bound by the Environmental Upgrade Agreement in that capacity with effect on and from the date of this deed poll; and
 - (iii) perform its obligations as **[MCC/the Owner/the Lending Body]** under the Environmental Upgrade Agreement.

3 Governing law

This deed poll is governed by the law applying in Victoria.

4 Deed Poll

This document is executed as a deed poll by the Transferee in favour of each Beneficiary. Each Beneficiary has the benefit of this deed poll and is entitled to enforce this deed poll, whether itself or with any one or more other Beneficiaries even though it is not a party to this deed poll.

Executed as a deed poll.

[Insert execution block.]

D r a f t

Signing page

DATED: _____

MCC

[Signing panel to be inserted]

OWNER

[Signing panel to be inserted]

LENDING BODY

[Signing panel to be inserted]