

THIS AGREEMENT is made the _____ day of

20XX

PARTIES

1. **LATROBE CITY COUNCIL** of 141 Commercial Road, Morwell, Victoria ("Council").
2. **Insert Name** of **Insert Address** ("Owner").

RECITALS

- A. The Owner is the registered proprietor of the Subject Land;
- B. Council is the Responsible Authority for the administration and enforcement of the Latrobe Planning Scheme pursuant to the Act;
- C. Section 173 of the Act permits a Responsible Authority on its own behalf or jointly with any other person or bodies to enter into an agreement under seal not inconsistent with the Act or the applicable Planning Scheme and which regulates the use or the development of the land or the doing of acts on the land;
- D. The Council has granted the Owner the Vehicle Crossing Permit which Permit allowed construction of a vehicle crossing for vehicular access to the Subject Land from a carriageway on a road. The location of the vehicle crossing incorporates all or part of a stormwater drainage pit and accordingly as a condition of granting the Permit, Council requires the Owner to enter into this Agreement pursuant to Section 173 of the Act and that the agreement be registered against title to the owner's land pursuant to Section 181 of the Act; and
- E. The Parties enter into this Agreement to facilitate the requirements referred to in Paragraph D above.

THE PARTIES AGREE

1. DEFINITIONS AND INTERPRETATION

Definitions

In this Agreement unless expressed or implied to the contrary:

"**Act**" means the Planning and Environment Act 1987;

"**Agreement**" means this agreement and any agreement executed by the Parties expressed to be supplemental to this agreement;

"**Council**" means the council for the municipal district of Latrobe City;

"**Subject Land**" means the land situated at **insert address** being the land referred to in Certificate of Title Volume **insert volume** and Folio **insert folio** and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it;

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

"Mortgagee" means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it;

"Permit" means Vehicle Crossing Permit Number **xxxx-xxxx-XX** issued to the Owner by the Council, as amended from time to time;

"Tribunal" means the Victorian Civil and Administrative Tribunal.

Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to a gender includes a reference to all other genders;
- (c) words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa;
- (d) a reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law;
- (e) a reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute;
- (f) the Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals;
- (g) references to the Parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be;
- (h) reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;
- (i) where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning; and
- (j) where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

2. OWNER'S COVENANTS

2.1 The Agreement

The Owner, pursuant to the Permit and all applicable laws, covenants with the Council that the Owner will:-

- (a) not hold Council responsible or liable for any damage or injury whatsoever which may result directly or indirectly from the presence of the stormwater drainage pit within the vehicle crossing and will indemnify the Council against all responsibility or liability for any damage or injury to any other person so caused;

- (b) allow the Council, its officers, employees, agents, workmen and contractors at any time (after such notice as in the circumstances may be reasonable) to restrict access to or from the vehicle crossing and any part or parts thereof to carry out all work as may be deemed necessary by the Council and its authorised officers with the construction, repairing, cleansing, removing, renewing, altering, maintaining or reinstating the stormwater drainage pit and any drain constructed on or through the stormwater drainage pit and the owner shall forthwith on demand pay to the Council so much of the cost and expenses of executing such works as may be attributed, by reason of, or incidental to, the presence of the said stormwater drainage pit in the said vehicle crossing;
- (c) be solely responsible for any injury, loss or damage which may be occasioned to the vehicle crossing and any part or parts thereof by reason of or incidental to the carrying out of the construction, repairing, cleansing, removing, renewing, altering, maintaining or reinstating the stormwater drainage pit and any drain constructed on or through the stormwater drainage pit by reason of, or incidental to, the presence of the said stormwater drainage pit in the said vehicle crossing.

2.2 Notice

The Owner covenants to bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns of the Subject Land.

2.3 Compliance

The Owner covenants to:

- (a) comply with the requirements of all statutory authorities in relation to the development of the Land;
- (b) comply with all statutes, regulations, local laws and planning controls in relation to the Land; and
- (c) take all necessary steps to comply with the obligations of each clause in this Agreement.

2.4 Mortgagee to be Bound

The Owner covenants to obtain the consent of any mortgagee to be bound by the covenants in this Agreement if the mortgagee becomes mortgagee in possession of the Subject Land.

2.5 Council's Costs to be Paid

The Owner covenants to pay immediately on demand to the Council the Council's reasonable costs and expenses (including legal expenses) of and incidental to:

- (a) negotiation, preparation, execution and recording of this Agreement;
- (b) assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement;
- (c) recording of cancellation or alteration of this Agreement; and

- (d) if the Owner defaults in the performance of any obligations under this Agreement, action taken by Council to achieve compliance;

which until paid are and remain a charge on the Subject Land.

2.6 Indemnity

The Owner covenants to indemnify and keep indemnified the Council, its officers, employees, agents, workmen and contractors from and against all costs, expenses, losses or damages which they or any of them may sustain incur or suffer or be or become liable for or in respect of any suit action proceeding judgment or claim brought by any person arising from or referable to this Agreement or any non-compliance with this Agreement.

2.7 Council Access

The Owner covenants to allow the Council and its officers, employees, contractors or agents or any of them, to enter the Subject Land (at any reasonable time) to assess compliance with this Agreement.

2.8 Registration of Agreement

The Owner agrees to do all things necessary to register this Agreement with the Registrar of Titles in accordance with Section 181 of the Act including the signing of any further agreement, acknowledgment or other document and to do so at the Owner's own expense and to provide all required proofs to the Council of the due registration thereof.

3. EFFECT OF AGREEMENT

3.1 Agreement under Section 173 of the Act

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement that this Agreement is made pursuant to Section 173 of the Act.

3.2 Agreement runs with the Land

This Agreement will come into force and effect as from the date of this Agreement and the benefit and burden of this Agreement will run with and be annexed to the Subject Land and bind the Owner, its successors in title, assignees, transferees, purchasers and mortgagees and the registered proprietor for the time being of the Subject Land.

4. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that:

- 4.1 it is the registered proprietor of the Subject Land or entitled to be so; and
- 4.2 apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

5. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner must ensure that, until such time as this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- (b) execute a deed agreeing to be bound by the terms of this Agreement.

6. NOTICES

Any notice or other communication required or permitted to be served on any other party must be in writing and may be served or given by:

- (a) delivering it personally or sending it by pre-paid post to that party at its address as set out in this Agreement or to such other address as that party may nominate in writing from time to time; or
- (b) sending it by email or facsimile to that party;

and unless proved otherwise, the notice of communication will be deemed to have been served or given:

- (c) if delivered personally, on the date of delivery;
- (d) if sent by prepaid post, five business days after being deposited in the mail;
- (e) if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic); and if sent by facsimile, on the date on which the sending party's facsimile machine records that the facsimile has been despatched to the addressee's facsimile number.

7. FURTHER ASSURANCE

Each of the Parties to this Agreement will sign and execute all further documents and deeds and do all acts and things as will reasonably be required to effect the terms and conditions contained in this Agreement.

8. AMENDMENT

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

9. NO WAIVER

The parties agree that:

- 9.1 any time or other indulgence granted by either party to this Agreement to the other party or any variation of the terms and conditions of this Agreement or any judgment or order obtained by either party against the other party will not in any way amount to a waiver of any of the rights or remedies of that party in relation to the terms of this Agreement; and
- 9.2 any delay or omission of any Party to exercise any right under this Agreement in any manner will not impair the exercise of such right accruing to it thereafter.

10. SEVERABILITY

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it will be severed and the other provisions of this Agreement will remain operative.

11. ENTIRE AGREEMENT

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

12. GOVERNING LAW

This Agreement is governed by and will be construed in accordance with the laws from time to time in force in the State of Victoria.

13. DISPUTES

13.1 In the event of any dispute between the Parties concerning the interpretation or implementation of this Agreement, such dispute shall be referred to the Tribunal for resolution to the extent permitted by the Act. In the event of a dispute concerning any matter which is not referable to the Tribunal pursuant to the act, such disputes shall be and is hereby referred for arbitration by an Arbitrator agreed upon in writing by the Parties or, in the absence of such agreement the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia or his nominee, for arbitration.

13.2 Where provision is made in this Agreement that any matter be done to the satisfaction of the Council or any of its officers and a dispute arises in relation to such provision, the dispute shall be referred to the Tribunal in accordance with the Act.

13.3 The Parties shall be entitled to legal representation for the purposes of any arbitration or referred to in clauses 13.1 and 13.2 and, unless the Arbitrator, Chairman, nominee or the Tribunal shall otherwise direct, each party must bear its own costs.

14. NO FETTERING OF RESPONSIBLE AUTHORITY'S POWERS

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

15. COUNTERPARTS AND ELECTRONIC SIGNATURES

15.1 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute an agreement.

15.2 The Parties consent to the execution of this Agreement by or on behalf of a party by electronic signature. Where that method of execution is used by or on behalf of a party, that party warrants and agrees that the electronic signature:

- (a) has been used to identify the person signing; and
- (b) indicates the party's intention to be bound by that signature.

15.3 Execution by either or both Parties of a copy of this Agreement received by fax, email or other electronic transmission, or the fax, email or other electronic transmission of a copy of this Agreement, executed by that party, will constitute valid and binding execution of this Agreement by such party or parties.

EXECUTED AS A DEED PURSUANT TO SECTION 174(1) OF THE ACT

SIGNED, SEALED AND DELIVERED for and)
on behalf of **LATROBE CITY COUNCIL** by)
Steven Piasente pursuant to Instrument of)
Delegation dated **[insert date]** in the presence)
of:)

.....
Steven Piasente
Chief Executive Officer

.....
Witness

[The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 have been met] ***remove if being witnessed in person**

SIGNED SEALED AND DELIVERED by)
.....)
in the presence of :)

..... Witness

[The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 have been met] ***remove if being witnessed in person**

SIGNED SEALED AND DELIVERED by)
.....)
in the presence of :)

..... Witness

[The requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 have been met] ***remove if being witnessed in person**