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Date / /

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: Saleyards Precinct

Purpose of Agreement: Saleyards Precinct Infrastructure Contributions

City of Greater Geelong

and

The Owner [specified in Schedule 1]

Draft 26 May 2022

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- G.1 implement the Saleyards Precinct Shared Infrastructure Plan;
- G.2 record the terms and conditions on which Council and the Owner have agreed for the Owner to pay the Infrastructure Contribution and facilitate delivery of the Infrastructure Projects; and
- G.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Adjustment Index means the method of adjustment specified in the Saleyards Precinct Shared Infrastructure Funding Plan .

Agreement means this agreement.

Amendment C434 means Amendment C434 to the Planning Scheme prepared by Council in its capacity as the Planning Authority.

Caveator means the person or persons recorded as holding a caveat over the Subject Land or any part of it.

Charge Area means the area identified and delineated on the Charge Area Map and that is subject to an Infrastructure Contribution under the Saleyards Precinct Shared Infrastructure Funding Plan .

Charge Area Map means the charge area map included in the Saleyards Precinct Shared Infrastructure Funding Plan which identifies and delineates the Lots in each Charge Area.

Comprehensive Development Plan means the comprehensive development plan incorporated in the Planning Scheme under the Comprehensive Development Zone Schedule 4.

Saleyards Precinct Shared Infrastructure Funding Plan means the plan identified as 'Saleyards Precinct Shared Infrastructure Funding Plan' prepared by City of Greater Geelong May 2022 and approved by Council as part of the Saleyards Comprehensive Development Plan and Amendment C434.

Infrastructure Contribution means the contribution specified in Schedule 2 required to be made in respect of each hectare of NDA of the Subject Land and adjusted in accordance with clause 4.3.

Infrastructure Contribution Liability means the Owner's liability for the Infrastructure Contribution in respect of the Subject Land under clause 4.1.

Infrastructure Project means a shared infrastructure project identified and delineated in the Saleyards Precinct Shared Infrastructure Funding Plan .

Lot means a lot on the Charge Area Map.

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.

NDA means the Net Developable Area of the Subject Land as set out in Schedule 3.

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

Party or parties means the Owner and Council under this Agreement as appropriate.

Plan of Subdivision means a plan of subdivision of the Subject Land which is not a procedural plan but a plan that upon registration creates an additional lot which can be disposed of separately and is intended to be used for a dwelling or can be re-subdivided.

Planning Scheme means the Greater Geelong Planning Scheme and any other planning scheme that applies to the Subject Land.

Registrar of Titles means the Victorian Registrar of Titles.

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

Schedule means a schedule to this Agreement.

Specified Value means the amount specified in the Saleyards Precinct Shared Infrastructure Funding Plan as being the capital cost of the Infrastructure Project; subject to annual adjustment indexation in the manner set out in the Saleyards Precinct Shared Infrastructure Funding Plan .

Statement of Compliance means a statement of compliance issued by Council under the *Subdivision Act 1988*.

Statement of Practical Completion means a statement signed by Council's authorised representative stating that the Infrastructure Works have been practically completed to the satisfaction of Council.

Subject Land means the land described in Schedule 1 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.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 The singular includes the plural and vice versa.
- 2.2 A reference to a gender includes a reference to each other gender.
- 2.3 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.4 If the Owner comprises more than one party, then this Agreement binds them jointly and each of them severally.

- 2.5 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
- 2.6 A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

3. Purposes of and reasons for this Agreement

The Parties acknowledge and agree that the purposes of and reasons for this Agreement are to:

- 3.1 record the terms and conditions on which the Owner will contribute to the provision of infrastructure; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Obligations of the Owner

4.1 Infrastructure Contribution

The Owner covenants and agrees that subject to this Agreement, the Owner must pay the Infrastructure Contribution and comply with and implement the Saleyards Precinct Shared Infrastructure Funding Plan to the satisfaction of Council.

4.2 Infrastructure Contribution Liability

Prior to the issue of Statement of Compliance in respect of any Plan of Subdivision, the Owner must:

- 4.2.1 subject to the consent of Council which may include a requirement to enter into a further agreement, construct one or more of the Infrastructure Projects to the satisfaction of Council in return for a credit against the Owner's Infrastructure Contribution Liability; or
- 4.2.2 pay the Infrastructure Contribution to Council in cash subject to clause 4.3 and clause 4.4; or
- 4.2.3 subject to the consent of Council which may include a requirement to enter into a further agreement, undertake a combination of the obligations in clause 4.2.1 and clause 4.2.2.

4.3 Amount of Infrastructure Contribution

The Owner agrees that:

- 4.3.1 the levies in the Saleyards Precinct Shared Infrastructure Funding Plan is are the Infrastructure Contributions for the Subject Land for the purposes of clause 4.1

4.4 Indexation of Infrastructure Contribution

The Parties agree that the amount of the Infrastructure Contribution will be adjusted each year by applying the Adjustment Index in the manner set out in the Saleyards Precinct Shared Infrastructure Funding Plan .

4.5 Facilitation of Infrastructure Projects

The Owner covenants and agrees that:

- 4.5.1 it is the Owner's responsibility to facilitate the delivery of all Infrastructure Projects required to service the development of the Subject Land by entering into a separate agreement with Council to deliver the Infrastructure Projects as works in kind to offset the contributions required under this Agreement;
- 4.5.2 in exceptional circumstances, and provided the Owner has demonstrated to Council's satisfaction that it has made all reasonable endeavours to facilitate delivery of the Infrastructure Projects, Council will initiate the delivery of the Infrastructure Projects based on the criteria in clause 4.5.3 and clause 4.5.4;
- 4.5.3 Council will only facilitate an Infrastructure Project at a time when Council determines there are sufficient funds in Council's infrastructure contributions account, collected under the Saleyards Precinct Shared Infrastructure Funding Plan to meet the cost of delivering the Infrastructure Project(s); and
- 4.5.4 Council's delivery of any Infrastructure Project will be subject to:
- (a) Council's normal budgetary cycles;
 - (b) normal legislative processes and timeframes for any acquisition of land that may be required to facilitate an Infrastructure Project; and
 - (c) all costs and scope beyond those specified in the Saleyards Precinct Shared Infrastructure Funding Plan relating to an Infrastructure Project being met by the Owner.

4.6 Further section 173 agreement

The Owner acknowledges that it may be required to enter into a further agreement under section 173 of the Act with Council as a condition of Council consenting to the Owner delivering an Infrastructure Project as envisaged in clause 4.2 of this Agreement.

5. Acknowledgements of Council

Council acknowledges that it will:

- 5.1 apply any amount received under this Agreement for the purpose of the Infrastructure Projects as detailed in the Saleyards Precinct Shared Infrastructure Funding Plan; and
- 5.2 apply any remaining funds after the delivery of the Infrastructure Projects as detailed in the Saleyards Precinct Shared Infrastructure Funding Plan to other infrastructure projects in or around the area of the Comprehensive Development Plan, at the complete discretion of Council.

9. Successors in title

Until such time as a memorandum of this Agreement is recorded on the Certificate of Title of the Subject Land, the Owner must require successors in title to:

- 9.1 give effect to this Agreement; and
- 9.2 enter into a deed agreeing to be bound by the terms of this Agreement.

10. General matters**10.1 Notices**

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 10.1.1 personally on the person;
- 10.1.2 by leaving it at the person's current address for service;
- 10.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 10.1.4 by facsimile to the person's current number for service; or
- 10.1.5 by email to the person's current email address for service.

10.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

10.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

10.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

10.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

10.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

11. GST

11.1 GST Act

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act* 1999 have the same meaning as their definition in that Act.

11.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

11.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 11.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

11.4 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 11.3.

12. Commencement of Agreement

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

13. Amendment of Agreement

13.1 This Agreement may be amended in accordance with the Act.

13.2 If notice of a proposal to amend this Agreement is required pursuant to section 178C of the Act, the parties agree that only Council and the Owner of the Subject Land or that part of the Subject Land that is the subject of the proposal to amend this Agreement are required to be notified of the proposal.

14. Ending of Agreement

14.1 On the issue of a Statement of Compliance for a Plan of Subdivision for Residential Lots created over the Subject Land or earlier by agreement with Council, the Agreement ends in respect of that part of the Subject Land in the Plan of Subdivision in accordance with section 177 of the Act provided that at all times, the Agreement must remain registered on the balance of the Subject Land.

- 14.2 Once this Agreement ends as to part of the Subject Land in accordance with clause 14.1 Council will, within a reasonable time, following a request from the Owner and at the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the register as to that part of the Subject Land.
- 14.3 On completion of all the Owner's obligations in accordance with this Agreement, Council must as soon as practicable following the ending of this Agreement and at the request and at the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the register.

15. Electronic execution

15.1 Consent to electronic execution

Each party consents to the signing of this Agreement by electronic means. The parties agree to be legally bound by this Agreement signed in this way.

Schedule 1

The Owner

Owner name	Owner address
12-14 Thompson Road Pty Ltd	35 Market Street South Melbourne Vic 3205
Dun-Ra Investments Proprietary Limited	2 Thompson Road North Geelong Vic 3215

Subject Land

- Address: Land known as 8-14 THOMPSON ROAD NORTH GEELONG VIC 3215; and
- Address: Land known as 6A THOMPSON ROAD NORTH GEELONG VIC 3215
- Address: Land known as 2 – 6 THOMPSON ROAD NORTH GEELONG VIC 3215

- Title Details: Certificate of Title VOLUME 11009 FOLIO 083 [12 – 14 Thompsons Road Pty Ltd]
- Title Details: Certificate of Title VOLUME 09442 FOLIO 503 [12 – 14 Thompsons Road Pty Ltd]
- Title Details: Certificate of Title VOLUME 08820 FOLIO 717 [Dun Ra Investments Pty Ltd]

Schedule 2

Infrastructure Contribution (as detailed within the Saleyards Precinct Shared Infrastructure Funding Plan)

Summary	Charge Area 1	Total
Total Area	12.5194ha	12.5194ha
Net Developable Area or NDA	9.0458ha	9.0458ha
Total Infrastructure Contribution	\$5,325,853.79	\$5,325,853.79
Contribution per hectare of NDA. (NDH) (\$/NDH)	\$588,765.37	\$588,765.37



Schedule 3: Detailed Land Budget

- Appendix A of Shared Infrastructure Funding Plan to be included within this schedule following exhibition. It will be in the same format as set out in the land budget below.

LAND BUDGET HA															
					Transport - Included in NDA							Land Required for Drainage - Not included in NDA	Unencumbered Open Space	Encumbered Openspace	Total Open-space - Not included in NDA
PROPERTY NO.	PROPERTY ADDRESS	TOTAL PROPERTY AREA	TOTAL PROPERTY AREA INCLUDED IN PRECINCT	NET DEVELOPABLE AREA (NDA)	STREET - EAST WEST STREET	LOCAL STREETS	BLUE STONE STREET	PARK STREET	EAST WEST PARKING STREET	CIVIC PLAZA	LINEAR PARKS/ POCKET PARKS	DRAINAGE RESERVE	LOCAL PARK (MINUS HERITAGE ELEMENTS)	HERITAGE ELEMENTS (IN LOCAL PARK)	
1	125-135 Weddell Rd, NORTH GEELONG	6.0570	6.0570	3.7826	0.0000	0.2749	0.2406	0.0000	0.2931	0.0998	0.0914	1.7669	0.4503	0.0572	0.5075
2	125 Weddell Road, NORTH GEELONG	1.1992	1.1992	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	1.1992	0.0000	0.0000	0.0000
3	8-14 Thompson Road, NORTH GEELONG	3.7757	3.7757	3.7757	0.4716	0.1916	0.0000	0.0000	0.0000	0.0333	0.1370	0.0000	0.0000	0.0000	0.0000
4	6A Thompson Road, NORTH GEELONG	0.9282	0.9282	0.9282	0.0000	0.0000	0.0000	0.1751	0.0000	0.0000	0.0915	0.0000	0.0000	0.0000	0.0000
5	2-6 Thompson Road, NORTH GEELONG	2.2074	0.5593	0.5593	0.0000	0.1032	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
TOTAL		14.1675	12.5194	9.0458	0.4716	0.5697	0.2406	0.1751	0.2931	0.1331	0.3199	2.9661	0.4503	0.0572	0.5075

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Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed for and on behalf of the **Greater Geelong**)
City Council by)
pursuant to a properly delegated authority:)
)

.....
Witness



Executed as a deed by 12-14 Thompson Road Pty)
Ltd ACN 630 309 009 in accordance with s 127(1) and)
s 127(3) of the *Corporations Act 2001*:)
)

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

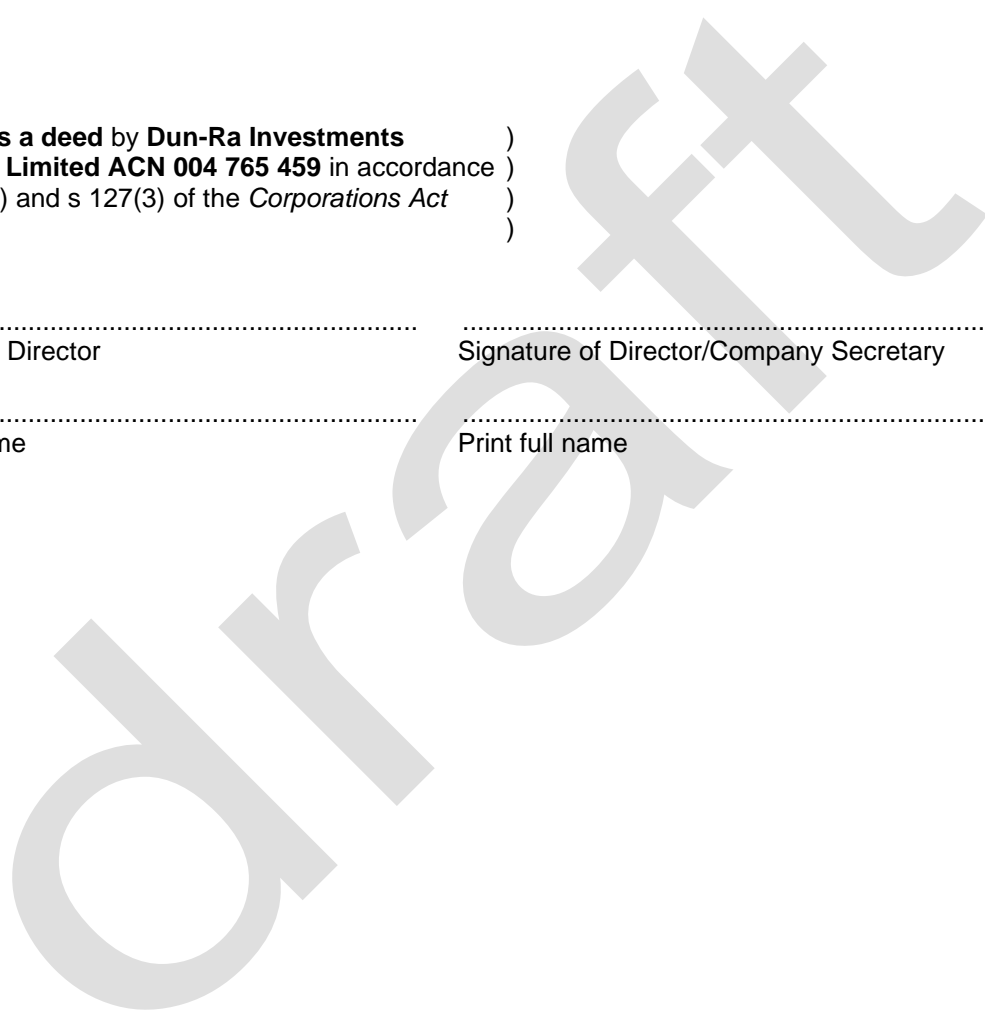
Executed as a deed by Dun-Ra Investments)
Proprietary Limited ACN 004 765 459 in accordance)
with s 127(1) and s 127(3) of the *Corporations Act*)
2001:)
)

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name





Mortgagee's Consent
For COT 11009/083

BENDIGO AND ADELAIDE BANK LTD as Mortgagee under instrument of mortgage no. **AT460037V** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

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Mortgagee's Consent
For (COT 8820 /717) 2 – 4 Thompsons Road North Geelong

Westpac Banking Corporation Ltd as Mortgagee under instrument of mortgage no. K483356 consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

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Caveator's Consent

as caveator under instrument no. ## consents to recording of this Agreement on each of the relevant Certificates of Title comprising Subject Land.

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